

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM LEXINGTON COUNTY
Master-In-Equity

S.C. Supreme Court

James O. Spence, Master-In-Equity

Opinion No. 4832 (S.C.Ct.App. filed June 23, 2011)

Crystal Pines Homeowners Association, Inc.

Petitioner,

v.

Don E. Phillips, Crystal Lake Land Developers, Inc.,
and Crystal Pines Yacht Club, LLC

Respondents.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on June 23, 2011.

QUESTIONS PRESENTED

1. Did the Court of Appeals err in its interpretation of the nature of the action and apply the incorrect standard of review?
2. Did the Court of Appeals err in holding that the deed does not unambiguously obligate CLLD to maintain the roads?
3. Did the Court of Appeals err in holding that the extrinsic evidence supports CLLD's reading of the deed?
4. Did the Court of Appeals err in failing to remand the case for a determination of unresolved issues?

STATEMENT OF THE CASE

Petitioner is the Crystal Pines Homeowners Association, a group of homeowners who purchased property from Crystal Lake Land Developers, Inc. ("CLLD") under the terms of a master deed. When the roads of Crystal Pines required repair, Petitioner sought to have CLLD repair the roads under the terms of the deed. When CLLD refused, Petitioner initiated an action against the Respondents in circuit court on December 19, 2005. Petitioner's principal claim was one for breach of the contractual obligation contained within the deed to maintain the roads. Petitioner sought to recover actual damages for Respondents' breach of the covenants contained within the deed. The matter was referred to the Master in Equity by consent on July 20, 2007 and tried before him on September 30, 2008.

A. Development of Crystal Pines

In 1979, Respondent Don Phillips' predecessor, CLLD, began development of a subdivision in Lexington County called Crystal Pines. (R. p. 81, line 23-p. 82, line 1).¹ Over the past 30 years, CLLD and Phillips have sold approximately 60% of the land within Crystal Pines to members of the Petitioner, but retained much of the land for themselves. (R. p. 59, lines 8-16; p. 101, line 17-p. 102, line 4). By master deed dated May 13, 1981 ("Deed"), CLLD conveyed the roads of Crystal Pines to the Crystal Lake Road Company ("CLRC"). (R. p. 125, ¶ 10). Although the Deed conveyed the roads to CLRC, CLLD agreed to "carry out or cause to be performed all improvements, maintenance, and repair of the said roads as nearly as may be practicable in the same condition and repair as originally paved." (*Id.* at ¶ 11). The Deed remains in full force and effect today. (R. 51, lines 13-19; R. p. 135, Fact 2).

Between 1981 and 1997, CLRC operated as an unincorporated association. It served as a primitive version of the homeowners' association for Crystal Pines. (R. p. 45, lines 4-7, p. 133). On October 4, 1986, CLRC changed its name to the Crystal Pines Homeowners Association ("CPHOA"). (R. 47, lines 9-11; pp. 162-164).

B. Subsequent Efforts to Transfer Obligations for the Roads.

Beginning in 1996, CLLD/Phillips began efforts to transfer their road maintenance obligations to the Petitioner. CLLD's first attempt was the creation of a corrected deed to the roads. (R. pp. 143-145). The proposed deed granted title to the roads to Petitioner instead of the unincorporated CLRC. (*Id.*). In addition to this conveyance, the deed was accompanied by an attachment ("Exhibit B") which contained the following language: "The Grantee [Respondent]

¹ The Master concluded that Respondent Phillips was the successor to CLLD's obligation (R. p. 9-11). Respondents appealed this ruling to the Court of Appeals, but it was not ruled upon. For purposes of this petition, Petitioner presumes that Phillips is the successor to CLLD.

and its successors and assigns shall adequately maintain the roadways for use by vehicular and pedestrian traffic....” (R. p. 144).

In 1997, CLLD conveyed its interest in the remaining property of Crystal Pines to Phillips. (R. pp. 141-142). Shortly thereafter, in July 1997, Phillips dissolved CLLD. (R. p. 84, lines 1-9).

Even after CLLD transferred the interest in the property of Crystal Pines to him, Phillips continued the effort to have Exhibit B executed. Phillips repeatedly proposed Exhibit B to the Petitioner in effort to transfer the road maintenance obligations to the Petitioner. (R. p. 73, line 24-p. 74, line 7; p. 76, line 21-p. 77, line 13; R. pp. 143-146). Despite repeated attempts by Phillips, the corrected deed and Exhibit B were never executed. (R. p. 75, line 23- p.76, line 3).

In 1998, Phillips again attempted to shift the road maintenance obligation away from himself. This time, he filed an amendment to the restrictions governing Sections I, III, and IV of Crystal Pines. (Supp. R. pp. 3-4, ¶ 19). This amendment contained a single new paragraph which obligated the Respondent to maintain the roads of Crystal Pines. (*Id.*)² The revised restrictions did not attempt to transfer ownership of the roads.

The roads of Crystal Pines have been in poor condition for some time. (R. p. 52, lines 16-18; R. p. 53, line 9-p. 55, line 6; p. 78, lines 12-23). In the late 1990s, CLLD/Phillips repaired the roads of Crystal Pines. (Supp. R. p. 1, line 22- p. 2, line 4). Despite these repairs, the roads were in need of further maintenance. (R. p. 52, lines 16-18). Petitioner contacted Phillips about repairing the roads, but he refused to perform additional work. (R. p. 43, lines 11-19; p. 57, lines 17-22). Petitioner, at its own expense, was eventually required to undertake emergency repairs of the roads. (*Id.*, R. p. 55, lines 10-19). In March 2006, Petitioner retained Zack Smith’s Paving and Sealcoating (“Zack Smith”) to patch particular areas of severe damage. (R. p. 55, lines 10-

² The Master concluded that these restrictions did not shift the road maintenance obligations. This conclusion was not appealed and is therefore the law of the case.

24; R. pp. 147-149). Even after these repairs, the roads remain in need of repair. (R. p. 52, lines 16-18; p. 53, line 9-p.55, line 6). In June 2007, Petitioner retained Geo-Systems Design & Testing, Inc. (“Geo-Systems”) to provide an estimate to repair the roads in their entirety. (R. p. 57, line 23-p. 58, line 23; pp. 165-187).

C. Procedural History

Following a trial, the Master In Equity issued his ruling on January 20, 2009. In the order, he held that Respondents had breached the covenants of the deed by failing to provide road maintenance to the Petitioner. (R. pp. 11-12). He entered judgment in the amount of \$460,000.00 against Phillips to cover the past and current costs to repair the roads. (*Id.*). His order also decided an issue concerning title to a boat ramp and counterclaims regarding breaches of the restrictive covenants. (R. pp. 13-16).

Respondents appealed the Master’s ruling on the breach of contract question and the boat ramp issue. The Court of Appeals issued its initial opinion on May 4, 2011. *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed May 4, 2011). The opinion reversed the Master’s ruling on the breach of contract issue and affirmed his decision on the boat ramp. (*Id.*) Petitioner then filed a Petition for Rehearing on the breach of contract issue. The Court of Appeals denied the Petition for Rehearing but did withdraw its original opinion and substitute another opinion. *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011). The revised opinion merely clarified the Court of Appeals’ original ruling; it did not change the holding of the case. (*Id.*) Petitioner seeks a writ of certiorari to review portions of that decision.

As grounds for the writ of certiorari, Respondent would show unto the Supreme Court that this matter contains novel questions of law and that the decision of the Court of Appeals is in conflict with prior decisions of the Supreme Court, specifically:

- a) The Court of Appeals Applied An Incorrect Standard of Review;
- b) The Court of Appeals Ignored the Unambiguous Obligations of CLLD to Maintain the Roads;
- c) If the Deed Is Ambiguous, the Court of Appeals Misconstrued Its Meaning; and
- d) The Court of Appeals Failed to Remand the Case for a Determination of Unresolved Issues.

ARGUMENT

A. The Court of Appeals Applied An Incorrect Standard of Review.

The Court of Appeals reviewed the Master's decision under an equitable standard of review based solely on the fact that the action involved the interpretation of a deed. South Carolina jurisprudence makes clear that the presence of a deed, standing alone, is insufficient to mandate equitable review. Instead, case law requires an analysis of the action as a whole to determine the appropriate standard of review. The Court of Appeals failed to apply the required analysis to the action.

1. There is No Blanket Rule Regarding Standard of Review When a Deed is Involved.

The Court of Appeals' decision regarding the appropriate standard of review is premised on the fact that the "action [was] viewed as interpreting a deed...." *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011) (Davis Adv.Sh. No. 21 at 64). It appears that the Court of Appeals simply assumed that because a deed was involved, the action involved the interpretation of a deed. This shorthand ignores the fact that South Carolina has no blanket rule requiring an equitable standard of review simply because a deed is involved. In fact, the Supreme

Court has, where appropriate, rejected a blanket approach and utilized a legal standard of review for cases involving deed interpretation. See *S.C. Dep't. of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001); *Slear v. Hanna*, 329 S.C. 407, 496 S.E.2d 633 (1998).

2. South Carolina Law Requires An Analysis of the Entire Action to Determine the Appropriate Standard of Review.

More importantly, the Court of Appeals ignored the nuanced analysis required by *Slear* and similar cases to determine the proper standard of review. The appellants in *Slear* brought an action at law to determine land use rights based on the interpretation of various easements and deeds. *Id.* The Court of Appeals treated the case as one involving an interpretation of a deed and applied an equitable standard of review. *Id.* The Supreme Court reversed because the “pleadings and evidence present[ed] the primary issue of whether or not the deed creates an easement....” *Id.* at 411, 496 S.E.2d at 634. The Supreme Court therefore rejected the oversimplified analysis that the presence of a deed automatically led to an equitable review.

It was not the mere presence of a deed which drove the standard of review question but rather the primary issue raised by the litigation. *Id.* The primary issue in *Slear* was the existence of an easement which was a question of fact subject to the any evidence standard of review. *Id.* The *Slear* court held that the action was not subject to an equitable determination simply because the easement was contained within a deed. *Id.*

The case of *Manning v. City of Columbia*, 297 S.C. 451, 377 S.E.2d 335 (1989) also demonstrates the analysis articulated by *Slear*. In *Manning*, the grantor transferred a parcel of land to the City of Columbia. The deed to the City contained a covenant requiring the city to maintain the existing dikes on the property. The grantor sued the City for a breach of contract when the dikes broke and flooded his adjacent land. The Supreme Court reviewed the matter under a legal standard of review because Plaintiff had alleged a breach of contract against the

City. The fact that the covenant was contained within a deed was not determinative of the appropriate standard of review. Rather the Court determined the standard of review based on the cause of action and the relief sought.

The Court of Appeals has also recently employed this form of analysis. In *Major v. Penn Community Servs. Inc.*, Op. No. 4838 (S.C.Ct.App. filed June 8, 2011), the Court of Appeals held that an action to quiet title, while normally sounding in equity, was legal when the main purpose of the suit was to determine title to property. *Id.* It reached this conclusion, despite the fact that the boundary lines in question were contained within deeds. *Id.*

3. The Court of Appeals Failed to Undertake the *Slear* Analysis.

The Court of Appeals' determination regarding standard of review in this action falls short of the analysis required by *Slear*. The Supreme Court in *Slear* recognized that the litigation's primary issue dictated the standard of review, not whether a deed was present. *Slear*, 329 S.C. at 411, 496 S.E.2d at 634. "The nature of the issues raised by the pleadings and character of relief sought under them determines the character of the action as legal or equitable." *Verenes v. Alvanos*, 387 S.C. 11, 16, 690 S.E.2d 771, 773 (2010); *In re Estate of Holden*, 343 S.C. 267, 278, 539 S.E.2d 703, 709 (2000); *see also Clark v. Hargrave*, 323 S.C. 84, 86, 473 S.E.2d 474, 476 (Ct.App. 1996) (*citing Ins. Fin. Serv., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 247 S.E.2d 315 (1978) ("[T]he character, as legal or equitable, of an action is determined by the complaint in its main purpose, the nature of the issues as raised by the pleadings or the pleadings and proof, and the character of the relief sought under them."))).

Equitable review of a deed is of course appropriate when the action raises a question about the interest transferred by a deed. *See K & A Acquisition Group, LLC v. Island Pointe, LLC*, 383 S.C. 563, 682 S.E.2d 252, 261-62 (2009) (determination of whether easement included roadway based on reference to roadway in deed); *Eldridge v. City of Greenwood*, 331 S.C. 398,

433-34, 503 S.E.2d 191, 209-10 (Ct. App. 1998) (determination of extent of grant of use over railroad); *Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime*, 329 S.C. 206, 211-12, 494 S.E.2d 465, 467-68 (Ct.App. 1997) (determination of whether deed meant to convey common elements). In cases where equitable review of a deed was approved, the court was called on to do nothing more than interpret the interest transferred by a deed. This matter, unlike those cited above, does not raise a question of what interest was transferred by a deed. Instead, it concerns a breach of an obligation which happens to be contained within a deed. *See Manning v. City of Columbia*, 297 S.C. 451, 377 S.E.2d 335 (1989).

4. The Court of Appeals Should Have Affirmed the Master's Ruling Under a Legal Standard of Review.

The mere presence of a deed in *Slear* did not convert the action to one at equity. Instead, the case as a whole had to be evaluated to determine the primary issue. Here, all the aspects of this case point squarely to an action at law:

Petitioner's complaint alleged a breach of contract (R. pp. 31-32);

Petitioner and Respondents both sought a jury trial in their pleadings (*Id.* at pp. 29 and 35)³;

Petitioner sought, and was awarded, actual damages, not specific performance, on its claim for breach of contract (*Id.* at pp. 11-12, 34); and

The entire case was referred to the Master in Equity "with authority to take testimony arising under the pleadings and to make findings of fact and conclusions of law." (*Id.* at p. 1).

"The 'main purpose' rule evolved from a determination that where a plaintiff has prayed for money damages in addition to equitable relief, characterization of the action as equitable or legal

³ The Court of Appeals has previously held that submission of an equitable cause of action to a jury converts the case to an action at law with review under the question of law standard. *Horn v. Davis Elec. Constr., Inc.*, 302 S.C. 484, 487, 395 S.E.2d 724, 725 (Ct.App. 1990). The situation here is analogous because the parties initially requested a jury trial and then consented to a transfer to the Master to make findings of fact.

depends on the plaintiff's 'main purpose' in bringing the action." *Floyd v. Floyd*, 306 S.C. 376, 380, 412 S.E.2d 397, 399 (1991).

Indeed, the underlying action here is remarkably similar to the action in *Manning*. In *Manning*, the plaintiff sued the defendant for a breach of a covenant to maintain dikes which was contained in a deed. The Supreme Court did not hesitate to review the decision under a legal standard because the action was nothing more than a breach of contract, regardless of the deed's presence.

The Court of Appeals oversimplified the question of the appropriate standard of review. As soon as the Court of Appeals identified a deed was present, it jumped to the conclusion that the case involved interpretation of a deed, thereby ignoring the analysis required by *Slear*. This case does indeed involve a deed, but the underlying suit is still a straightforward breach of contract action. It should not have been judged by an equitable standard based simply on the presence of a deed. *See Slear*, 329 S.C. at 411, 496 S.E.2d at 634; *Manning*, 297 S.C. at 454-55, 377 S.E.2d at 337-38.

Because the sole claim before the Court of Appeals was a legal one, it should have applied a legal standard of review. "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assoc., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). There was evidence in the record to reasonably support the Master's findings, including the following:

- The Deed contains an express obligation to maintain the roads. (R. pp. 125-126, ¶ 11);
- CLLD paid for road repairs following the delivery of the deed. (Supp. R. p. 1, line 22- p. 2, line 4); and

- CLLD attempted to transfer the road maintenance obligations beginning in the late 1990's. (R. p. 73, line 24-p. 74, line 7; p. 76, line 21-p. 77, line 13, pp. 143-146) (Supp. R. pp. 3-4, ¶ 19).

If the appropriate standard of review is utilized, the Master's Order should be affirmed based on the copious evidence supporting the findings.

B. The Court of Appeals Ignored the Unambiguous Obligations of CLLD to Maintain the Roads.

The Court of Appeals ignored the clear obligations in the deed which place responsibility for road maintenance squarely on CLLD. There is no dispute that CLLD agreed to open and pave the roads of Crystal Pines when the subdivision was opened. *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011) (Davis Adv.Sh. No. 21 at 65). The Court of Appeals identified an ambiguity regarding what roads CLLD agreed to maintain past that date. This ambiguity, however, simply is not present.

After agreeing to open the roads, CLLD then agreed to "determine and carry out or cause to be performed all improvements, maintenance, and repair of the *said roads* as nearly as practicable in the same condition as originally paved." (R. pp. 125-126, ¶ 11) (emphasis added). In the clause that precedes this language, CLLD agreed to transfer ownership of five roads. The paragraph goes on to describe maintenance obligations of "said roads". The antecedent is clear. "Said roads" are those roads which were transferred in the prior clause.

C. If the Deed Is Ambiguous, the Court Of Appeals Misconstrued Its Meaning.

In the alternative, if the Court affirms the Court of Appeals' determination that this case involves an equitable interpretation of a deed, the deed should be construed to obligate CLLD to maintain the roads.

1. The Court of Appeals Misinterpreted the Extrinsic Evidence.

“In construing a deed it is elementary that the cardinal rule of construction is to ascertain and effectuate the intention of the parties, unless the intention contravenes some well settled rule of law or public policy.” *Bean v. Bean*, 253 S.C. 340, 343, 170 S.E.2d 654, 655 (1969). Intention is a unique question in a master deed. A master deed is typically filed by a developer without input from prospective purchasers. A purchaser’s first contact with the deed comes during the investigation of a potential purchase.

The Court of Appeals concluded that the deed was ambiguous. *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011) (Davis Adv.Sh. No. 21 at 65). “When the intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it.” *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987). The extrinsic evidence here is consistent with only two possible constructions: (a) CLLD initially intended to obligate itself to maintain the roads; or (b) CLLD mistakenly obligated itself to maintain the roads and then sought to shift responsibility to unsuspecting members of the Respondent when it recognized its mistake. Under either of these constructions, CLLD should bear responsibility for road maintenance.

a. CLLD Did Not Develop Crystal Pines in a Typical Manner.

The Court of Appeals noted that the Lexington County Development Guidelines state the general rule that subdivision homeowners take over road maintenance following approval of the final plat. *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011) (Davis Adv.Sh. No. 21 at 66). While this guideline may reflect the general rule for a typical developer, CLLD is far from a typical developer. Development in Phase I of Crystal Pines began in 1981.

(R. p. 135). As of the late 1990s, Phases II and V remained undeveloped. *Id.* CLLD (Phillips) still owns approximately 40% of the land in Crystal Pines, including half of the property which fronts roads (R. p. 59, lines 8-16; p. 101, line 17-p. 102, line 4). After 30 years of development, CLLD still owns a significant portion of the land in the subdivision. This methodical development model is absolutely consistent with a developer focused on maintaining control of all aspects of the development, including road maintenance.

The Lexington County Development Guidelines are just that, guidelines, and do not override the obligations contained within the deed. CLLD was free to draft a deed which varied from the guidelines and conformed to its development strategy.

b. CLLD Has Repeatedly Attempted to Assign the Road Maintenance Obligations.

CLLD's intent regarding the maintenance obligations is further illustrated by its actions following the filing of the deed. The overwhelming evidence indicates that CLLD repeatedly tried to assign the road maintenance obligations after the deed was filed. If, as the Court of Appeals held, the deed obligated Respondent to maintain the roads, CLLD's actions were superfluous and inexplicable. As the following examples clearly demonstrate, CLLD has known that it had the road maintenance obligations for many years and repeatedly has sought to relieve itself of those obligations.

i. The Corrected Deed and Exhibit B.

On three separate occasions (1997, 1998, 2000), CLLD proposed a corrected deed to the Respondent for the roads in question (R. p. 73, line 24-p. 74, line 7; p. 76, line 21-p. 77, line 13, pp. 143-146). On each occasion, CLLD attached Exhibit B to the proposal (*Id.*). The Respondent never accepted the proposed deed with Exhibit B because it recognized that CLLD was attempting to place the burden of road maintenance on the homeowners. (R. p. 75, line 5-p. 76, line 12). The Court of Appeals concluded that Exhibit B reflected CLLD's desire to clear up

ambiguity regarding ownership of the roads. *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011) (Davis Adv.Sh. No. 21 at 67-68).

A review of Exhibit B makes clear that it had little to do with transfer of road ownership, but was principally designed to transfer road maintenance obligations to the Respondent. CLLD's letter of intent makes clear what it intended to accomplish with the deed and Exhibit B.

(R. p. 146). The letter reads:

I will deliver a legal description of the premises and properly transfer the real property to the Crystal Pines Homeowners Association with the performance of assurances. *These assurance are attached as Exhibit 'B'.*

(*Id.* emphasis added). CLLD did indeed intend to confirm transfer of the roads with the corrected deed, but only in exchange for Respondent's assurances. Exhibit B makes clear what those assurances were. The first lettered paragraph of Exhibit B specifically obligates the Respondent to maintain the roads. "The Grantee [Respondent] and its successors and assigns shall adequately maintain the roadways for use by vehicular and pedestrian traffic...." (R. p. 144). The corrected deed and Exhibit B were not merely an attempt to convey the roads to the proper entity, but rather a calculated effort to transfer the road maintenance obligations.

ii. The Amended Restrictions.

In 1998, CLLD attempted to amend the restrictions for Phases I, III, and IV of Crystal Pines. (Supp. R. pp. 3-4, ¶ 19). The Court of Appeals concluded that these amendments were also designed to clear up ambiguity in the original deeds. *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011) (Davis Adv.Sh. No. 21 at 67-68). Unlike the corrected deeds described above, however, the amended restrictions made no effort to transfer

ownership. Rather, the sole addition to the restrictions was the addition of the following paragraph:

19. Notwithstanding any possible provision or implication to the contrary contained herein (which contrary provisions or implications are here expressly superceded) the *individual Owner of each lot in Crystal Pines, Sections I, III or IV shall be responsible for the maintenance of all roads* and common areas in the subdivision, such duties to be accomplished in a fair and equitable manner through mandatory contribution and cooperation with a duly organized homeowners' association....

Id. at 66 (emphasis added). This new paragraph serves a singular purpose-to assign the road maintenance obligation to the Respondent.

CLLD's atypical development plan and subsequent efforts at correction are susceptible of only two constructions: (a) CLLD always intended to maintain the roads; or (b) CLLD mistakenly obligated itself to maintain the roads and then sought to correct its mistake. Under either of these constructions, CLLD should bear responsibility for the maintenance obligations.

If CLLD originally intended to accept the obligations, it has never successfully absolved itself of that responsibility. The corrected deed was never accepted by the Respondent and the Amended Restrictions were ineffective to amend the deed. If CLLD mistakenly obligated itself to repair the roads, CLLD should bear the consequences of its mistake, not innocent homeowners who purchased based on the representations contained within the deed.

The extrinsic evidence presented by the Petitioner reasonably supports an affirmance of the Master's findings on intent. The Court of Appeals was obligated to affirm the master's factual findings "unless there [wa]s no evidence that reasonably support[ed] those findings." *Jefferies v. Phillips*, 316 S.C. 523, 451 S.E.2d 21 (Ct.App. 1994). While the Court of Appeals was permitted a broad scope of review, it could not "disregard the findings of the Master, who saw and heard the witnesses and was in a better position to evaluate their credibility." *Jocoy v. Jocoy*, 349 S.C. 441, 562 S.E.2d 674 (Ct.App. 2002).

2. The Court of Appeals Ignored Important Maxims of Construction.

Even if the Court of Appeals correctly concluded that the deed was ambiguous, it ignored two important maxims of construction: (a) a deed should be construed against the grantor; and (b) a deed should be construed to uphold moral obligations.

“If there is any ambiguity in a deed, . . . it will be construed against the grantor and favorably to the grantee.” *Coleman v. Gaskins*, 165 S.C. 301, 163 S.E. 790, 792 (1932); *see also Ward v. Woodward*, 287 S.C. 343, 345, 338 S.E.2d 347, 348 (Ct.App. 1985).

In addition, the deed should be construed to uphold CLLD’s moral obligations. CLLD controlled the contents of the deed and filed it with an expectation that others would rely on the promises within. “When the provisions of a deed are susceptible of two interpretations, one of which recognizes a legal and moral obligation, resting upon the grantor towards a third person, while the other savors of wrong and fraud on his part, the presumption is that he intended the act in accordance with the moral law, and the rights of such third person.” *Bell v. Gardner & Lacey Lumber Co.*, 85 S.C. 182, 67 S.E. 151, 152 (1910). Additionally, “[a] covenant imposing an affirmative duty on the grantee will be strictly construed and not enforced unless the obligation is imposed in clear and unambiguous language sufficiently definite to guide the court in its application.” *Manning v. City of Columbia*, 297 S.C. 451, 454, 377 S.E.2d 335, 337 (1989).

Because the deed must be construed against the grantor and to uphold CLLD’s moral obligation, it must be construed to honor CLLD’s obligation to the Petitioner. The deed should be construed to protect Petitioner, a group of property owners who purchased land from CLLD on the basis of representations contained in the deed. If CLLD created confusion by drafting an ambiguous deed, it should bear the consequences of the Petitioner’s reasonable interpretation of

the deed.⁴ See *Williams v. Teran, Inc.*, 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) (“The rule of law is that where the contract is susceptible of more than one interpretation, a doubt shall be resolved against the party whose business it was to speak without ambiguity.”). The construction placed on the deed by the Petitioner is reasonable, and the Court of Appeals failed to protect Petitioner from CLLD’s post hoc interpretation.

D. The Court of Appeals Failed to Remand the Case for Resolution of Unresolved Issues.

Even if the Court of Appeals’ opinion is upheld, the result leaves two unresolved issues which require remand.

The Court of Appeals did not fully absolve CLLD of responsibility for road maintenance. Instead, it held that CLLD was responsible for road maintenance “to the extent of damage that occurs during further development of the subdivision.” *Crystal Pines Homeowners Association, Inc. v. Phillips, Crystal Land Developers, Inc., and Crystal Pines Yacht Club, LLC*, Op. No. 4832 (S.C.Ct.App. filed June 23, 2011) (Davis Adv.Sh. No. 21 at 68). This ruling implies that CLLD would also be responsible for damage already caused to the roads by development. CLLD admitted that it made repairs in 1997/1998 that were necessitated by development of the subdivision. (Supp. R. p. 1, line 22- p. 2, line 4). It is undisputed that the roads are currently in need of repair, but it is unclear to what extent these repairs are a result of further development by CLLD. The case should be remanded for development of further evidence that would determine to what extent the current damage is related to CLLD’s development, and therefore CLLD’s responsibility.

Additionally, the Court of Appeals reversed the Master’s ruling on the breach of contract claim, but this was not the sole claim before the Master. Petitioner’s complaint also alleged

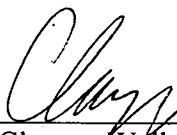
⁴ If CLLD mistakenly obligated itself to maintain the roads, CLLD is not without a remedy. CLLD could seek to reform the deed to correct its mistake, a step it has never undertaken.

CONCLUSION

For the reasons set forth above, Petitioner requests that its Petition for Certiorari be
Granted.

Respectfully submitted,

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July 25, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Master-In-Equity
James O. Spence, Master-In-Equity

Case No. 06-CP-32-4364

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JUL 25 2011

S.C. Supreme Court

Crystal Pines Homeowners Association, Inc.

Petitioner,

v.


Don E. Phillips, Crystal Lake Land Developers, Inc.,
and Crystal Pines Yacht Club, LLC

Respondents.

PROOF OF DELIVERY

I certify that I have served Appellant's Petition for a Writ of Certiorari by depositing a copy of it in the United States Mail, postage prepaid, on July 25, 2011, addressed to their attorney of record Shaun C. Blake, Post Office Box 2285, Columbia, SC 29202.

July 25, 2011



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