

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate No.: 2015-001555

RECEIVED

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S.C. Supreme Court

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr., Respondents,

v.

Watson's Orchard Property Owners Association, Inc., a South Carolina Corporation, and Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, Defendants,

Of whom Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as co-Personal Representative of the Estate of James B. Stephens, Petitioners,

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Iona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and

Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herman,.....Third-Party Defendants.

RESPONDENTS R.C. FREDERICK HANOLD, III AND ROSE F. HANOLD, CAROL R. MITCHELL AND GEORGE P. MITCHELL JR.'S RETURN TO PETITION FOR WRIT OF *CERTIORARI*

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ATTORNEYS FOR RESPONDENTS

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Pursuant to Rule 242(f), SCACR, Respondents, R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr., respectfully submit this Return in opposition to the Petition for Writ of Certiorari filed by Petitioners.

STATEMENT OF THE CASE

The property at issue (the “Stephens Property”) is subject to Restrictions and Covenants (“R&Cs”), which were created in 1981 (“1981 R&Cs”). The 1981 R&Cs apply to the Stephens Property, a five-acre parcel of land serving as a “buffer” to a lot owned by Petitioners located in Watson’s Orchard, as well as to another parcel of “buffer property” located in Greenville, South Carolina, that is owned by third-party Defendants, Watson’s Orchard Property Owners Association, Inc. The 1981 R&Cs specifically provide that the 1981 R&Cs can only be amended “by a vote of a majority of the then owners of the *lots into which the property described above shall have been developed* and in Watson’s Orchard Subdivision.” (R. p. 322) (emphasis added).

In 2009, Petitioners filed Amended Restrictions and Covenants (“2009 R&Cs”) in the Greenville County Register of Deeds Office on November 9, 2009. Shortly thereafter, on September 9, 2009, Respondents filed the underlying action seeking a declaratory judgment that the 2009 R&Cs were not validly adopted and were void and of no force and effect. (R. p. 20-25). Petitioners answered and counterclaimed for a declaration that the 2009 R&Cs were valid. (R. pp. 56-103, 107-157).¹ The parties filed cross-motions for summary

¹ None of the third-party defendants answered and judgment by default was entered against them on February 22, 2012. (R. pp. 1-4). Because the third-party defendants have failed to appeal the trial court’s decision, that decision is now the law of the case. This failure to appeal means that Petitioners appeal is now moot as a sufficient number of remaining votes

judgment and the court denied both motions.

The matter was tried on September 4-5, 2012, and post-trial memoranda were submitted on September 14, 2012, by Petitioner and Respondent. By Order dated October 19, 2012, the court held, among other things, that the amendment filed by the Petitioners was not validly adopted and was of no force and effect. (R. p. 17). Specifically, the court held that the Stephens Property “has not been developed into lots for the purpose of being entitled to vote to amend or modify the restrictive covenants.” (R. p. 17). Petitioners’ subsequent motion for reconsideration was summarily denied on January 28, 2013. (R. p. 19).

Petitioners timely appealed the Circuit Court’s decision on February 25, 2013. (R. pp 195-196). The Court of Appeals heard arguments on November 4, 2014, and, on April 15, 2015, issued a unanimous decision affirming the decision of the court below. *Hanold v. Watson’s Property Owners Assoc.*, 412 S.C. 387, 772 S.E.2d 528 (Ct. App. 2015). Petitioners’ subsequent request for a rehearing was summarily denied on June 19, 2015. This petition followed.

STATEMENT OF THE FACTS

Richard Watson and his wife, Evelyn, once owned an extensive orchard in Greenville County situated in the area of what is now Interstate 385, Haywood Road and Pelham Road.

While the land was a beautiful country orchard in the 1960s, that former orchard land is now nestled among sprawling medical buildings and hospital complexes, shopping centers and strip malls, office parks and commercial buildings. The area continues to experience explosive growth in both residential and commercial development. The Respondents want to

in favor of amending the 1981 R&Cs have conceded that the amendment is null and void, rendering the five Stephens Property votes inadequate to support the amendment.

prevent that growth from backing up to their doorstep by enforcing the existing restrictions and covenants that currently provide a buffer between their property and the commercial development along Pelham Road.

At some point in the 1960s, the Watsons began to develop their substantial landholdings. Restrictions were placed on the entire property requiring the properties' use as single family residential. (R. p. 404). Subsequently, a subdivision plat was recorded creating forty-seven (47) lots in what is now known as Watson's Orchard Subdivision. (R. p. 396). These lots were then developed into upscale homes.

In 1979, the Watsons realized that the portion of their former orchard located on the south side of Pelham Road would fetch a greater price if developed commercially. As a result, Watson, through a company, Lincoln of South Carolina, Inc., entered into negotiations with the existing owners of lots in Watson's Orchard in order to obtain a release of the original restrictions for substantially all of the property the Watsons still owned on the south side of Pelham Road. (R. p. 378). Ultimately, all of the subdivision lot owners except one – J.B. Stephens – agreed to execute a release of the restrictions. In exchange for execution of this release, Lincoln would transfer a parcel of twenty-two acres of land to serve as a “buffer” and which could only be developed as single-family residential lots. (R. p. 444-451). This buffer zone was to be subject to previously approved covenants and restrictions similar to those already in place in Watson's Orchard Subdivision. (R. p. 444-451).

In order to effectuate the transfer of the buffer zone property, a for-profit corporation was created, the Third-Party Defendant, Watson's Orchard Property Owner's Association, Inc. (WOPOA), and was tasked with the responsibility of owning, developing, and selling single-family lots in the “buffer zone”. The existing owners of lots in the subdivision at the

time became the owners of stock in WOPOA. (R. p. 423-425). As single-family lots were developed and sold, the stockholders in WOPOA would share in the financial gain.

J.B. Stephens was the only resident of Watson's Orchard Subdivision who refused to agree to the release of the covenants in exchange for a share of ownership of the "buffer zone". Instead, Mr. Stephens insisted on striking his own deal for his own "buffer property" (the "Stephens Property") - the property at the heart of this appeal over thirty years later - in exchange for his consent to release the property on the south side of Pelham Road from the existing covenants and restrictions. As part of that deal, Mr. Stephens would purchase from WOPOA approximately six acres carved out of the "buffer property", located directly across Pelham Road from his home. (R. p. 565). Under the existing covenants, this property was large enough to subdivide into five residential lots should Stephens decide to do so at some point in the future. Mr. Stephens' successors are the Petitioners in the case at bar.

To effectuate these transfers of the "buffer properties" as well as the release of the existing covenants as to the property on the south side of Pelham Road, Lincoln of South Carolina instituted a friendly quiet title lawsuit to confirm the transaction. On December 7, 1980, Judge Frank McGowan issued an order authorizing the release of the covenants as to the property on the south side of Pelham Road so that it could be developed commercially. Specifically important for the case at bar, Judge McGowan found that "more than a majority of the ... stockholders in Watson's Orchard Property Owners Association, Inc. are willing to sell **five (5) lots** [] described in the deed shown as Exhibit 14, for the consideration of One Hundred Five Thousand Five Hundred and 00/100 (\$105,000.00) Dollars, pursuant to the Offer shown as Exhibit 15...." (R. p. 391). This property to which Judge McGowan referred to as "five (5) lots" in his 1980 Order is the Stephens property.

In 1981, Lincoln of South Carolina, Inc., as Declarant, then imposed the Covenants and Restrictions, the “1981 R&Cs”, which are the subject of this action, upon the twenty-two acre “buffer property”. (R. p. 322-330). The 1981 R&Cs included a provision requiring a majority vote of the current property owners of Watson’s Orchard Subdivision, as well as the owners of the lots in the buffer property, to change or amend the 1981 R&Cs. The pertinent provision states:

[T]he covenants, conditions[,] and restrictions hereinafter set forth shall run with the property . . . and be binding upon all parties having any right, title or interest in the said described properties . . . until January 1, 2010[,] at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, *by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson’s Orchard Subdivision*, the within covenants, conditions[,] and restrictions are changed or amended, in whole or in part. (R. p. 322) (emphasis added).

Thereafter, Lincoln conveyed the twenty-two acre “buffer property” to WOPOA, which then conveyed the six-acre “Stephens Property”, carved out of the twenty-two acres just conveyed by Lincoln to WOPOA, to J.B. Stephens.

For thirty years, not a thing happened to the Stephens Property. Stephens and his successors enjoyed the property as the buffer for which it was originally intended. The land lay fallow and undisturbed. The five lots referenced by Judge McGowan in 1980, prior to the recording of the 1981 R&Cs and the subsequent transfer of the Stephens Property remained exactly as they were in 1980 and 1981. The Stephens Property was never developed into five lots. It was never developed in any fashion. It was never hooked up to city sewer or water services or any other utilities. Curb cuts were never sought. Roads were never built. Taxes were paid on the property as a whole as undeveloped land with a single tax map number as opposed to five individual subdivided lots. Permits for development

were never sought. Proposed subdivision plats were never submitted to the planning commission. Single-family homes were never built.

Then, in 2005, J.B. Stephens made an offer to purchase the remainder of the buffer property owned by WOPOA for over two million dollars. While the deal was never consummated, it ultimately spurred the Petitioners' efforts to amend the 1981 R&Cs prior to the January 1, 2010 deadline contained in the 1981 R&Cs in order to remove the single-family residential development requirement. As part of this effort, after postulating a number of different ways in which to tabulate votes in order to obtain a majority, Petitioners obtained twenty-nine of fifty-four possible votes in favor of amending the 1981 R&Cs, and then filed the amended Restrictions and Covenants ("2009 R&Cs") in the Greenville County Register of Deeds Office on November 9, 2009. (R. p. 332-55). The amended R&Cs would allow low-density commercial development of the Property, such as medical offices. Included in the twenty-nine votes, Petitioner claimed to possess five votes based on the five undeveloped "lots" contained in the Stephens Property.

This action followed. Respondents contend that the 2009 R&Cs were not validly adopted on the grounds that the owners of Stephens Property, the Petitioners, were not entitled to cast five votes because any lots contained in the Stephens Property were never developed. Without the five Stephens Property votes, the Petitioners did not have sufficient votes to achieve the majority necessary to amend the 1981 R&Cs and, as such, the 2009 R&Cs must be declared null and void.

ARGUMENT

The case at bar is not complicated or novel. It involves the straightforward application of unambiguous and plain requirements of the 1981 R&Cs. The decision of both

courts below, as well as the position of the Respondents, is plain and simple: the Petitioners lacked the majority votes required to amend the 1981 R&Cs. Likewise, the language of the 1981 R&Cs, spelling out who may vote to amend the 1981 R&Cs, is plain and simple: “a vote by a majority of the then owners of the lots into which the property described above shall have been developed....”

Both courts below acknowledged the unambiguous requirement that the lots “shall have been developed” in order to vote. And, the trial court and the Court of Appeals, based on the simple evidence presented at trial – evidence which showed the Stephens Property was never developed in thirty years – correctly ruled that the owners of the Stephens Property were not entitled to cast five votes because they never developed the five “lots” on the property. Without these five votes, the 1981 R&Cs could not be amended and the 2009 R&Cs were properly declared null and void.

The primary thrust of the Petitioners’ Petition for a Writ of *Certiorari* is that the circuit court and the court of appeals either misapprehended the plain and unambiguous language of the 1981 R&Cs or applied that plain language incorrectly. Essentially, Petitioners contend that the courts below incorrectly interpreted the plain and unambiguous language of the 1981 R&Cs requiring that lots be developed in order to cast a vote and that, despite uncontroverted evidence to the contrary, the Stephens Property was somehow magically developed into five separate lots such that they were entitled to cast five separate votes. These contentions are mistaken, and Petitioner’s Petition should be denied.

I. THE DECISION BY THE COURT OF APPEALS DOES NOT WARRANT FURTHER REVIEW PURSUANT TO RULE 242, SCACR.

The South Carolina Appellate Court Rules provide that a “writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. Typically, the grant of certiorari is limited to cases wherein: (1) there are novel questions of law; (2) there is a dissent in the decision of the court of appeals; (3) the decision by the court of appeals is in conflict with a prior decision of this Court; (4) substantial constitutional issues are directly involved; or (5) a federal question is included, and the decision by the court of appeals conflicts with a decision of the Supreme Court of the United States. Rule 242(b), SCACR; *see also* Toal, Vafai & Muckenfuss, *Appellate Practice in South Carolina* (2d Ed.) at p. 276. The present case does not fit within any of these categories, and no “special and important” reason exists to merit further review.

The categories enumerated in Rule 242(b) by definition do not apply to Petitioners’ Petition and, therefore, do not require extensive discussion. The Court of Appeals’ decision does not contain a dissenting opinion or decide any federal question. This case does not present any novel legal issue, and the result is not in conflict with any prior decision by this Court. The Court of Appeals correctly applied existing law and unanimously affirmed the decision by the trial court that the Stephens Property had “not been developed into lots for the purpose of being entitled to vote to amend or modify the restrictive covenants.”

While the elements enumerated in Rule 242(b) are not the exclusive bases upon which this Court may decide to grant or deny certiorari, no other compelling reason exists for this Court to grant Petitioners’ Petition. The ruling of the Court of Appeals simply does not present the significant or far-reaching issues contemplated by Rule 242(b). Moreover, the

analysis by the Court of Appeals is straightforward and does not involve new or emerging legal doctrines or issues of general public importance sufficient to justify additional review.

II. THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DECLARATORY JUDGMENT THAT THE 2009 R&C's ARE INVALID.

Both the trial court and the Court of Appeals correctly concluded that the unambiguous, plain language of the 1981 R&Cs only afford a property owner voting rights for "lots into which the property ... shall have been developed." The 1981 R&Cs specifically and plainly required the lot to be developed prior to possessing a right to vote to change the 1981 R&Cs. The courts below correctly found that the Petitioners failed to develop the Stephens Property prior to amending the 1981 R&Cs and, as such, the 2009 R&Cs are invalid and null and void.

"Restrictive covenants are contractual in nature." *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). It is a question of law for the court whether the language of a contract is ambiguous. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). "[A] restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Id.* "Words of restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution" *Taylor v. Lindsey*, 322 S.C. 1, 498 S.C.2d 862 (1998). "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone, determines the contract's force and effect. . . ." *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999) (citation omitted). When "the language imposing

restrictions upon use of property is unambiguous the restrictions will be enforced according to their obvious meaning.” *Shipyards Property Owners Association v. Mangiaracina*, 307 S.C. 299, 308, 414 S.C.2d 705, 801 (Ct. App. 1992). “When a term is not defined within a contract, evidence of its usual and customary meaning is competent to aid in determining its meaning.” *Anderson v. Buonforte*, 365 S.C. 482, 490, 617 S.E.2d 750, 754 (Ct. App. 2005).

The 1981 R&Cs, interpreted from the four corners of the document, are unambiguous. The words “lot” and “developed”, while not defined terms, must be given their plain, ordinary meaning from the time of execution. *See Strother v. Lexington Cty. Recreation Comm’n*, 332 S.C. 54, 62, 504 S.E.2d 117, 122 (1998) (holding that court must interpret undefined term in accordance with its usual and customary meaning). This plain and ordinary meaning means exactly what it says: lots that have been developed may cast a vote. The five potential lots contained in the Stephens Property were never developed under any definition. The Petitioners presented no evidence at trial that the property was ever developed in thirty years. No roads were built, curbs cut, grading done, sewer or water lines connected, or homes built. The only “evidence” Petitioners could provide was an unrecorded plat showing five “lots”, which is inconclusive because the plat was never recorded in contravention of state and local law. Moreover, this unrecorded plat shows no change to the *status quo* of five potential, but undeveloped, lots contained within the Stephens Property. These potential lots existed in exactly the same fashion at the time of Judge McGowan’s 1980 Order, which shows Petitioner’s so-called development of these potential lots had already occurred prior to the enactment of the 1981 R&Cs.

The 1981 R&Cs unambiguously require a lot to have been developed prior to casting a vote. The Stephens Property was never developed prior to amending the 1981 R&Cs, and

the Court correctly found the 2009 R&Cs were invalid. As such, the trial court's judgment declaring the 2009 R&Cs invalid was appropriate, and Petitioners' Petition should be denied.

III. THE COURT APPROPRIATELY RELIED ON STATE AND LOCAL LAW

The court properly looked to state and local law in reaching the conclusion that Petitioners failed to develop the Stephens Property prior to amending the 1981 R&Cs.² At trial, Petitioners argued that the Stephens Property was developed into lots, but submitted no proof that anyone ever submitted a plat, received approval for a plat, or recorded a plat as contemplated and required by law. Section 30-5-240 of the South Carolina Code provides:

When real property is subdivided for the purpose of sale and is sold or offered for sale according to a plat of a survey thereof, the person first offering such property for sale *shall* file a plat or blueprint of such survey in the office of the clerk of court in the county in which such real estate is situate[d]. In the event that the owner fails to comply with the above provision he shall become liable to the purchaser or to any subsequent grantee of the land, or of any portion thereof, in such sum as shall be found necessary to procure and record such plat. (emphasis added).

The relevant portion of the Greenville County ordinance similarly provides:

The owner ... of any land ... who transfers, sells, or agrees to sell such land by reference to, or exhibition of, or by other use of a plat or subdivision of such land before such plat has been approved by the Planning Commission and recorded in the office of the County Register of Deeds shall forfeit and pay a penalty of \$100 for each lot so transferred, sold, or agreed or negotiated to be sold.

Greenville County, S.C., Ordinance 3870, § 1.3 (Dec. 13, 2004).

In thirty years, the Petitioners did nothing to comply with either the state or local law regarding subdivision of these lots. Petitioners contended at trial that they intended to

² The Court's reliance on state and local law was not necessary to reach the ultimate conclusion that the petitioners failed to develop the Stephens Property into lots in light of the fact that Petitioners did absolutely nothing to the Stephens Property in thirty years. Nonetheless, to the extent the court looked to state and local law to bolster its determination

subdivided the Stephens Property, but they have not filed a plat in the office of the Greenville County Clerk of Court at any point in the last thirty years. Petitioners similarly have not filed a plat with, nor received any approval from, the Planning Commission indicating the subdivision of the Stephens Property into five lots. The Circuit Court, as well as the Court of Appeals, correctly found that the Petitioners failure to fulfill the requirements enunciated in the foregoing state and local law are further evidence that Petitioners did not intend to subdivide the Stephens Property for development purposes when the plat was initially prepared. Moreover, the Court of Appeals properly echoed the ruling of the Circuit Court below when it found “it would be inequitable to permit Appellants to use an unrecorded plat as evidence that the lots were subdivided and intended for sale if the ordinance and statute require recordation as a prerequisite to sale.” *Hanold v. Watson’s Property Owners Assoc.*, 412 S.C. 387, 772 S.E.2d 528 (Ct. App. 2015). The Petitioner’s Petition should be denied.

IV. THE “EVIDENCE” TO WHICH THE PETITIONERS AGAIN POINT IN AN ATTEMPT TO SUPPORT THEIR PETITION WAS PROPERLY EXCLUDED BY THE COURTS BELOW

In their Petition, Petitioners contend (1) the circuit court erred in ruling it could not consider extrinsic evidence of Lincoln’s alleged intent with regard to who could vote to amend the 1981 R&Cs; and (2) there is, in fact, extrinsic evidence in the record of Lincoln’s true intent in the form of testimony by counsel. This argument misapprehends the law.

Where an agreement is clear on its face and unambiguous, “the court’s only function is to interpret its lawful meaning and the intent of the parties as found within the agreement.”

that the lots were not developed, the lower courts’ decision was not in error.

Miles v. Miles, 393 S.C. 111, 117 (S.C. 2011); *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 42-43 (S.C. 2013); *Preservation Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 320 (S.C. 2013); *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001); *Duncan v. Little*, 384 S.C. 420, 425, 682 S.E.2d 788, 790 (2009) (stating extrinsic evidence may only be considered if the contract is ambiguous); *Stevens Aviation, Inc. v. DynCorp Int'l, L.L.C.*, 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011) (When the contract's language is unambiguous it must be given its plain and ordinary meaning and the court may not look to extrinsic evidence to interpret its provisions.").

As already detailed above, the language of the 1981 R&Cs is clear and unambiguous. The court correctly concluded that, as the language was unambiguous, the court may not look beyond the four corners of the 1981 R&Cs in assessing Lincoln's intent. As such, the court did not need to consider extrinsic evidence – by way of testimony of counsel or otherwise – regarding the meaning of the terms within the 1981 R&Cs or the intent of the parties.³ Accordingly, further review of any extrinsic evidence is unnecessary and unwarranted, and Petitioner's Petition should be denied.

CONCLUSION

Based on the foregoing, Respondents respectfully urge the Court to deny Petitioner's Petition for Certiorari.

³ The trial court also correctly determined that the Petitioner's so-called "expert" opinion testimony from Mr. Grayson, Mr. Shouse, and Mr. Estridge was inadmissible and were discarded as unnecessary and improper testimony on an issue of law. "In general, expert testimony on issues of law is inadmissible." *Dawkins v. Fields*, 354 S.C. 58, 66 (S.C. 2003).



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August 21 2015

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Of whom Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as co-Personal Representative of the Estate of James B. Stephens, are the Petitioners,

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo;

Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herman,.....Third Party Defendants.

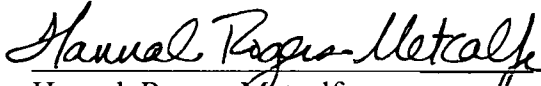
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below, she served counsel for the Petitioners with a copy of the *Return to Writ of Certiorari* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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Hannah Rogers Metcalfe
METCALFE & ATKINSON, LLC

August 24, 2015
Greenville, South Carolina

RECEIVED
AUG 26 2015
SC SUPREME COURT