THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

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, ...Appellants.
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 0. 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.

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 0. 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.

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..2

STATEMENT OF THE CASE..4

STATEMENT OF FACTS..5

ARGUMENTS...8

I. The Court of Appeals did not hold the 1981 R&C's limited eligibility to vote on changes to the R&C's to owners who held "developed lots"..........8

II. The Court of Appeals construction of the 1981 R&C's is the only logical construction...10

III. The Court of Appeals properly disregarded the Petitioner's evidence at trial...11

IV. The Court of Appeals and Circuit Court rightfully refused to consider the testimony of Patrick Grayson...12

V. No evidence exists that the Stephen's lots have been "developed into lots" so as to be entitled to vote...13

VI. The Court of Appeals correctly held that the Circuit Court correctly held that S.C. Code Annotated Section 30-5-240 and the Greenville County Subdivision Ordinance were applicable...15

CONCLUSION...17

TABLE OF AUTHORITIES

CASES

Atlantic Coast Builders v Lewis, Opinion 27044 (2012)..............................16

Beach Co. v. Twillman, Ltd., 566 S.C.2nd 863 (Ct. App. 2002)....................16

Cent. States Health & Life Co. of Omaha v. Miracle Hills Ltd. P'ship., 456 N.W.2d 474 (Neb. 1990)...16

Cook v. Eller, 298 s.C. 395, 280S.C. 2nd 853 (Ctt. App. 1989)......................16

Dawkins v. Fields, 354 S.C. 58, 580 S.C.2nd 433 (2003)..............................11

Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2nd 710, 714 (2005)........8
Gilliland v. Phillips, I S.C. 152 (1869)........16
id at 30-31 586 S.C.2nd at 864........7
Historic Charleston Holdings v. Mallon, 381 S.C. 417, 429-430, 673 S.C. 2nd 448, 454 (2009)........8
Jackson v. Bi-Lo Stores, Inc, 437 S.C.2nd 168 (Ct. App. 1993)........16
King v. PYA Monarch, Inc., 317 S.C. 385, 389, 453 S.E.2nd 885, 888 (1995)........14
McConnell v. Kitchens, 20 S.C. 430, 43738 (1884)........16
North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 379, 769 S.C. 2nd 237, 241 (215)........11
Pendarvis v. Berry, 214 S.C. 363, 369, 52 S.E.2d 705, 707 (1949)........16
Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n. 343 S.C. 335, 339, 540 S.E.2nd 843, 845 (2001)........8
Queen's Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361 628 S.E. 2nd 902, 913 (Ct.App.2006)........8

STATUTES

SC Code of Laws Section 30-5-240........14

OTHER AUTHORITIES

Greenville County Subdivision Ordinance........15
Record on Appeal........5, 6, 7
WOPOA Restrictions and Covenants........10, 12, 13, 14
Transcript of Hearing........9, 10, 14, 15

STATEMENT OF CASE

This action was commenced on September 8, 2009, wherein Respondents sought a declaratory judgment that certain restrictive covenants prepared and filed by Appellants had not been validly adopted and were void and of no force and effect. An amended complaint was filed on September 10, 2009. The Defendant, Watson's Orchard Property Owners Association, Inc. (hereinafter WOPOA) answered on October 12, 2009. WOPOA and Appellants filed a joint answer and counterclaim on November 11, 2009. In the counterclaim they sought a declaratory judgment that the 2010 covenants had been validly adopted. On June 27, 2011 Appellants and WOPOA filed an amended answer, counterclaim and third party claim which brought in the property owners in Watson's Orchard Subdivision as third party defendants. None of the third party defendants answered and judgment by default was entered against them on February 22, 2012.

The matter was tried on September 4 and 5 of 2012 and post trial memoranda were submitted on September 14 by Appellant and Respondent. By Order dated October 19, 2012 the Court held, among other things, the amendment filed by the Appellants was not validly adopted and was of no force and effect. Appellants' subsequent motion for reconsideration was denied on January 28, 2013. Petitioners filed and served a notice of appeal on February 25, 2013. On November 4, 2014, the Court of Appeals heard arguments in the case and on April 15, 2015 the Court affirmed. Petitioners filed a Petition for Rehearing on April 30, 2015 and on June 19, 2015 the Court of Appeals denied rehearing.

Petitioners sought review by the Supreme Court of that decision pursuant to Rule 242, S.C.A.C.R.. On April 15, 2016 the Supreme Court issued on Order granting the Petition and issuing a Writ of Certiorari to review the Court of Appeals decision.

STATEMENT OF FACTS

The issue in this case is whether the amended restrictions and covenants prepared, executed and recorded by the original Defendants were done in accordance with the requirements set forth in the original.

This saga began on January 20, 1962 when Richard F. Watson and Evelyn P. Watson recorded "Preliminary Restrictions and Protective Covenants applicable to certain property on both sides of Pelham Road". (R. Pg. 404) Ultimately, 47 lots were platted and approved by the Greenville County Planning Commission on Plat entitled "Watson Orchard" recorded in Plat Book 000 Page 99. (R. Pg. 396) Additional "Restrictions and Protective Covenants applicable to certain property on the North side of Pelham Road" were recorded on September 22, 1964. (R. Pg. 412) These restrictions are still in effect for Watson's Orchard Subdivision.

In 1980, Lincoln of S.C., Inc. acquired all, or substantially all, of Watson's property on the south side of Pelham Road and endeavored to remove the restrictive covenants from that property to allow commercial development. (R. Pg. 378) In an effort to induce the lot owners in Watson's Orchard Subdivision to consent to the release of the restrictions Lincoln ultimately negotiated the payment of $50,000.00 in cash, conveyed a parcel of approximately 14.7 acres fronting on the southern side of Pelham Road as a Buffer zone and purchased an additional tract from a third party containing approximately 8 acres fronting on the eastern side of Haywood Road. (R. Pg. 379) The Haywood tract was acquired to provide a Buffer on both major roads. Restrictions were also imposed on the use of the Buffer zone and Haywood tract as well as some restrictions on the commercial use of the property being released. (R. Pg. 444-451) These negotiations were memorialized in an Agreement to Release of Restrictions prepared by Lincoln and executed by the then property owners. Subsequent to the execution of the Agreement to Release of Restrictions an action was brought in common pleas court and an Order entered accomplishing the provisions set forth in the agreement with the exception that a portion of the Buffer zone containing approximately 6.2 acres was agreed to be sold to J.B. Stephens after consummation of the

transaction between Lincoln and the homeowners. (R. Pg. 391)

Immediately subsequent to the issuance of the Order of Judge McGowan, Lincoln imposed the restrictive covenants at issue on the Buffer zone and the Haywood property then conveyed the premises to Watson Orchard Property Owners Association, Inc. (hereinafter WOPOA). (R. Pg. 431) Stock was then issued from the corporation to all of the lot owners with the exception of J.B. Stephens. (R. Pg. 423-425) The restrictive covenants that were recorded affect only the Buffer zone and the Haywood Road property and do not affect or modify the existing covenants that were applicable, and are still applicable, to the Watson Orchard Subdivision. (R. Pg. 452)

Immediately after the conveyance by Lincoln to WOPOA, WOPOA sold a portion of the Buffer zone to J.B. Stephens for $105,000.00. (R. Pg. 565) The net effect to the then homeowners in Watson Orchard Subdivision was that they each received $3,000.00 in cash and vicariously owned property having a present value of at least $211,000.00 in 1981 dollars if sold as residential lots as the restrictions required. (R. Pg. 373)

Although apparently some effort initially was made by the corporation to abide by its stated purpose in the Articles of Incorporation (R. Pg. 729), between 1984 and 2005 it does not appear the corporation was in any way active as there is a dearth of corporate records for that time period. It wasn't until 2005 that J.B. Stephens made an offer in excess of two million dollars for the WOPOA property, as restricted, that kindled the greed and selfishness which led to the actions necessitating this litigation (R. Pg. 698-699). Although that transaction was never reduced to contract, or consummated, it was then that WOPOA obviously realized that the interest of the shareholders and the interest of the property owners were rapidly diverging. WOPOA acknowledged that they now comprised less than one third of the current owners of homes in the subdivision and with visions of a substantial windfall above and beyond that originally intended, it could only be obtained by removing the covenants and restrictions from the Buffer zone (R. Pg. 710-711). Although living next door to commercial offices was unacceptable when the shareholders of WOPOA owned the homes in1981, it apparently is perfectly acceptable now that they most do not.

Ralph Aiken, President of WOPOA undertook to appoint a committee, led by him, to

explore all possible methods of removing the restrictions of single family use only from the Buffer zone (R. Pg. 700).

Throughout the subsequent process of attempting to remove the covenants the Defendants adopted whatever view they deemed expedient as to the number of votes entitled to participate (R. Pg. 778). When J.B. Stephens was not on their side he had one vote. Sometimes they believed 47 votes were appropriate, sometimes 56 votes and sometimes 64 votes (R. Pg. 707-708). Votes necessary were directly a function of how many favorable votes they had, or what they thought they could get away with, not what the document required.

They hired attorneys, including Mr. Grayson (R. Pg. 747) who filed an affidavit in this action, to give them an opinion as to how many votes were necessary. Despite Mr. Grayson's now affidavit, in 2008 he didn't seem to know how many votes were needed as he sent a packet of documents to a title insurance company for an opinion (R. Pg. 695-696). Ultimately, even the improperly recorded covenants still reflect the Defendants' lack of consensus on the proper method to tally the appropriate votes (R. Pg. 148).

ARGUMENTS

SCOPE OF REVIEW

In a declaratory judgment case an action may be legal or equitable, depending upon whether law or equity would have had jurisdiction if there had been no declaratory judgment procedure. Historic Charleston Holdings v. Mallon, 381 S.C. 417, 429-430, 673 S.C. 2nd 448, 454 (2009. The only issue tried by the Circuit Court and the only relief granted by the Circuit Court was a declaration that the agreement to release declarations and restrictions and protective covenants recorded by the Petitioners were void and of no force and effect.

"Restrictive covenants are construed like contracts and may give rise to actions for breach of contract." Queen's Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361 628 S.E. 2nd 902, 913 (Ct.App.2006). "An action to construe a contract is an action at law reviewable under an 'any evidence' standard." Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2nd 843, 845 (2001. "On appeal of an action at law tried without a jury this court's review is limited to correction of errors at law." Epworth Children's Home v. Beasley, 365 S.C. 157, 164, 616 S.E.2nd 710, 714 (2005).

I. The Court of Appeals did not hold the 1981 R&C's limited eligibility to vote on changes to the R&C's to owners who held "developed lots".

The argument of Petitioner misrepresents the opinion of the Court of Appeals. The phrase "developed lots" was never utilized in the opinion. Indeed, the Court of Appeals went out of its way to discuss the actual language contained within the R&C's that the question related to "lots which shall have been developed".

The Court of Appeals then went on to set forth numerous examples of the definition of "developed" as it relates to real property, at least seven of which defined "developed" consistently as the act of converting a tract of land into an area suitable for residential or business uses.

Any superfluous discussion about the physical acts, i.e. installing roads, water, sewer, etc., is irrelevant to the interpretation given to that language by the Circuit Court and the

Court of Appeals in light of the fact that the **initial** act which is essential for any of the other acts to occur, did not.

The single most important and uncontroverted fact is that none of the physical activities to develop or improve the real property could legally commence unless and until the property was subdivided in accordance with the Greenville County Subdivision Ordinance. The head of the Greenville County Planning Department testified as follows:

16 Q. And and and it is .true, is it not, that no application
17 has ever been filed with your department to subdivide any of
18 the property that's involved in this litigation?
19 A. That is correct.
20 Q. Okay. There's never been a submittal of any type to
21 subdivide this property into lots.
22 A. We have no record in in our office of any plats.
23 Q. And at -- during 1980 and 1981 was there a subdivision
24 ordinance in effect for Greenville County?
25 A. Yes, there was.
1 Q. And was it your responsibility or your department's
2 responsibility to enforce that ordinance?
3 A. That is correct.
4 Q. Alright, and in order to comply with that ordinance and
5 then be able to subdivide a piece a property would you have
6 had to have submitted a plat for approval by the department?
7 A. To divide property into more than three lots requires
8 what we call a "summary plat", shows the lots, has a title C
9 block, who's dividing it, metes and bounds of the properties
10 and there are letters that accompany that document, uh, one
11 from the water system saying water's available, one from Wade
12 Hampton Sewer saying sewer's available, one from the highway
13 department saying that encroachment permits could be issued,
14 several other letters but that basically the summary plat does
15 not require the developer to go through the full preliminary
16 plat, final plat, much more of a lengthy process, so a summary
17 plat let's the plat be recorded ---
18 Q. If it meets certain criteria.
19 A. If it meets the criteria.
20 Q. Okay, and and and that criteria must be met before those
21 properties can be legally subdivided.
22 A. That's correct.
23 Q. Alright, and absent the submission of a summary plat if
24 that's appropriate or a full-scale plat, it would be unlawful
25 to subdivide that property or convey property that had been or

1 conveyed portions of that property as individual lots, would
2 it not?
3 MR. HERLONG: Object, object to the form of the question.
4 It would be in violation of the ordinance.
5 BY MR. HILLER:
6 Q. Okay, wou -- it would be in violation of the Greenville
7 County Subdivision Ordinance, would it not?
8 A. That's correct.
9 Q. Alright, and and and your job is to require people to
10 comply with that ordinance.
11 A. That's correct.

(Appendix-TR-28 L.16-30 L.11)

In the context of the R&Cs "shall have been developed" obviously referred to the subdivision of the property into residential lots. Petitioner acquired sufficient land to subdivide into a maximum of 5 lots, just as the remaining property was capable of being subdivided into multiple lots. Neither of which occurred. The language "the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard subdivision" could have no other possible meaning, in the context in which it is used, that the subject property would have to be divided into lots so that the total number of votes would be capable of being ascertained. It anticipated the creation of additional lots, and thus votes, but it did not require it. Appellant has never taken the position that the Petitioner's property is not entitled to one vote. However, absent developing the lots by subdividing them as required by law the property could never acquire the characteristics intended to provide it additional votes.

The Court should affirm both the Court of Appeals and Circuit Court on this issue.

II. The Court of Appeals construction of the 1981 R&C's is the only logical construction.

Petitioner asserts that its interpretation of the language is logical but fails to set forth what its interpretation is or that it is less restrictive.

Petitioner's "equally logical" argument is not logical at all. The sole purpose of the property transferred from Lincoln to WOPOA was to provide a residential buffer between the existing owners and the commercial development while also providing a wind fall to those

owners upon the sale of those residential lots. Arguing that that was not the intention of Lincoln is nonsensical. The "shall have been developed" language was perfectly appropriate to the intention that WOPOA would subdivide the property into individual residential lots, sell them, and distribute the money between its shareholders. As demonstrated below in argument V(B), the property purchased by Petitioner's predecessor in title was never intended to be subdivided as related by his personal attorney at the time. It therefore was an option that he never saw fit to exercise even up to the date of trial.

The Circuit Court and the Court of Appeals opinions do not find that the Petitioner does not have a vote they only find that it did not have five votes because it had failed, over a thirty year period, to take any action, including the most important one set forth above, to do anything to change the character of the property from the single lot it acquired into more than one lot. There is nothing "restrictive" about the allocation of voting rights in covenants and restrictions.

The Court should affirm both the Court of Appeals and Circuit Court on this issue.

III. The Court of Appeals properly disregarded the Petitioner's evidence at trial.

Petitioner's statement, "The only evidence at trial was that the property had, in fact, been 'developed into lots'" is patently false.

The official charged with the responsibility of administering the Greenville County Subdivision Ordinance, which was applicable to all real property in Greenville County, testified repeatedly that the Petitioner's property constituted a single lot and it would be a violation of the Ordinance to sell or attempt to sell it as anything other than a single lot. He further testified that that had been true since 1981, was true when the vote was held to amend the restrictive covenants and was true as of the date of the trial.

Those facts do not render the term "shall have been developed" ambiguous.

Petitioner's arguments, and the cases relied on therefore, that the perceived ambiguity would somehow make relevant and admissible the testimony of Shouse, Estridge, Manning or Grayson ignores the underlying rule for the admission of extrinsic evidence.

North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 379, 769 S.C. 2nd

237, 241 (215) as cited by the Petitioner is the correct statement of the law, once the Court determines language is ambiguous evidence may be admitted to show the intent of the parties. However, neither the Petitioner nor the Appellants were parties to the restrictive covenants. Lincoln of SC, Inc. was the declarant of the R&Cs at issue and never conveyed any property to Petitioner or Petitioner's predecessor in interest. Simply put, the parties to the documents that the Petitioner wishes to be found ambiguous are not parties to the litigation. Just as obviously, the persons that the Petitioner goes on to discuss, Shouse, Estridge and Manning, are not parties nor did they have anything to do with the preparation of the document in question. They were hired as expert witnesses, designated as expert witnesses and put on the stand as expert witnesses. Shouse and Estridge were properly ignored pursuant to Dawkins v. Fields, 354 S.C. 58, 580, S.E. 2nd 433 (2003). Manning's testimony was not admitted for failure to comply with S.C.R.C.P. Rule 32 and S.C.R.C.P. 702 but likewise would have fallen under Dawkins.

Under Petitioner's interpretation of ambiguity a word that has a definition is necessarily ambiguous. Were that the case, given that virtually every word contained in a document has a dictionary definition, every document would be ambiguous as a matter of law.

Finally, the Petitioner continues to ignore throughout the course of all of its arguments that neither the Circuit Court nor the Court of Appeals made a determination that the Petitioner did not have a "developed" lot. What they did determine was that the Petitioner did not take even the initial essential step required for the property to be sold, used or developed as more than one lot.

The Court should affirm both the Court of Appeals and Circuit Court on this issue.

IV. The Court of Appeals and Circuit Court rightfully refused to consider the testimony of Patrick Grayson.

For the same reasons as set forth in Argument number III, it is irrelevant whether the R&Cs were or were not ambiguous since the testimony of Mr. Grayson was properly excluded because he was not a party to that document, nor was Mr. Grayson ever a party as contemplated by any of the cases allowing the use of extrinsic evidence of the parties

intentions in the event that an ambiguity is found to exist by the trial court.

The Court should affirm both the Court of Appeals and Circuit Court on this issue.

V. No evidence exists that the Stephen's lots have been "developed into lots" so as to be entitled to vote.

A. Every document submitted in support of the contention that the subject premises had been converted to or were conveyed with language stating that they "contained five lots" was made, created or signed by the Petitioners, non-parties or WOPOA (the entity that did not appeal the Circuit Court's Order). None of the documents were prepared, signed, offered or created by the declarant of the R&Cs.

Accordingly, they are completely irrelevant to a determination of the intent of the creator of the R&Cs which are the subject of this action, whether ambiguous or not.

Appellants' entire argument under their paragraph B mistakes the law and argues that breaking the law just a little bit is okay. More importantly it continues to completely ignore what the covenants say. They do not say "could be developed", "may be developed" or "we meant to develop them". It says lots that "shall have been developed". From the Declarant's view that could be one lot or multiple lots, the result was solely up to the grantee subject only to the minimum lot requirements contained in the R&Cs.

The issue is not whether lots may be conveyed pursuant to unrecorded plats nor is it whether you can get away with violating the county subdivision ordinance nor how easy it would have been to comply with the subdivision ordinance. The issue is whether the plain ordinary meaning of the words 'shall have been developed' into lots is to be defined by what has happened rather than what could have happened for voting purposes. Shall have been developed is to be defined from the four corners of the covenants and restrictions. The sole purpose of this property was that it be developed as a residential buffer to induce the existing Watson Orchard Property Owners to agree to commercial development, just not adjoining their residential subdivision. It is unimaginable that at the time these restrictions were placed upon this property that the Declarant or the owners of homes in the subdivision could have remotely contemplated that this property would lie fallow for thirty years and then be "subdivided" only so that it could vote to avoid the originally intended purpose.

The simple fact remains that if this property had been subdivided into lots and a subdivision plat had been filed and recorded, thereby enabling these lots to be sold individually, building permits and curb cuts obtained for each, and then actually sold, this litigation and this appeal would never have been necessary. The exercise of "discovering" that these were really intended to be five separate developed lots for which real estate taxes should have been paid for the past thirty years would not now be necessary. Indeed, had the Appellants actually recorded the subdivision plat and sold the lots they would not now be required to rely on what some employee wrote in the index at the Register of Mesne Conveyance office thirty years ago as "evidence" that this property is actually multiple "lots".

The Court should affirm both the Court of Appeals and Circuit Court on this issue.

B. The testimonial evidence was irrelevant and does not support Petitioner's position.

Grayson, in the excerpt utilized by Petitioner, states that the lots were conveyed by Watson's Orchard Property Owner Association. Affirmation that all of the conveyances were performed by other than the declarant of the R&Cs and therefore could not possibly be admissible or relevant as to the declarant's intent.

Kiel testified as Petitioner states but noticeably absent was the following:

"No, um, Jim was acquiring a piece of property that was, uh, described by metes an bounds, uh, I understand that if, um, -at least by today's standards would have to have recorded the plat but it was not considered necessary by me at that time."

20 Q. Alright, so you received the deed, you gave Mr. Stephens
21 a title opinion and then from that point forward you just
22 duplicated the language in the deed in all the transactions
23 that occurred thereafter.
24 A. Obviously that's the case.
25 Q. Alright, and at no time did any of the deeds, the
1 mortgages, your notes or anything else reflect that there was
2 a recorded plat of this property.
3 A. There is not a recorded plat referred to.
4 Q. And I believe you testified in in on direct that you
5 understood that if he wanted to convey any of those lots it
6 would be necessary for him to record a plat.
7 A. That was my understandin'.
8 Q. Okay. Did you convey that to him that he he would have

9	to subdivide the property and record a plat if he wanted to
10	sell any a those lots?
11	A.	No,	that really wasn't,	uh	discussed.	He had no
12	interest in anything other than utilizing those five lots as a
13	buffer for his property.
14	Q.	Yeah, he was simply buyin' that property so nobody could
15	build across the street from him to block his view.
16	A.	I think that is what he wanted to do.
(App. Pg. 171 Ln. 20-Pg. 172 Ln. 16)

All of the evidence continues to yield just one logical conclusion. In order to sell this property as more than one single piece of land it must be surveyed into multiple pieces of real property, submitted to the Greenville County Planning Commission, approved, and then recorded in the ROD Office for Greenville County. Absent that action it cannot possibly be considered more than one lot.

The Court should affirm both the Court of Appeals and Circuit Court on this issue.

VI. The Court of Appeals correctly held that the Circuit Court correctly held that S.C. Code Annotated Section 30-5-240 and the Greenville County Subdivision Ordinance were applicable.

Both 30-5-240 of the *South Carolina Code of Laws* and the Greenville County Subdivision Ordinance are clear and unambiguous.

Petitioner's statement that recording the plat is not necessary for the valid transfer of lots does not make it any less illegal under Section 30-5-240 plain language "when real property is subdivided for the purpose of sale and are sold or offered for sale according to a plat of the survey thereof, the person first offering such property for sale shall file a plat or blue print for such survey in the office of the Clerk of Court of the county in which such real estate is situate". Both cases cited by Petitioner in support of its position, do not. One refers only to an easement, the 1918 case preceded the statute in question and the case of Cook v. Eller, 298 S.C. 395, 280 S.C. 2nd 853 (Ct. App. 1989) is referring to a chain of title and two unrecorded plats that date back more than a hundred years and also preceded the existence of the statute.

The Petitioner then continues its argument that it is not a violation of the law to

violate the law if the penalty is only a $100.00 fine.

"The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract", Jackson v. Bi-Lo Stores, Inc, 437 S.C.2nd 168 (Ct. App. 1993). "The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decision", Beach Co. v. Twillman, Ltd., 566 S.C.2nd 863 (Ct. App. 2002). It is a well-settled principle of contract law that "a contract to do an act which is prohibited by statute, or which is contrary to public policy, is void, and cannot be enforced in a court of justice." McConnell v. Kitchens, 20 S.C. 430, 43738 (1884); *see also* Pendarvis v. Berry, 214 S.C. 363, 369, 52 S.E.2d 705, 707 (1949) *See also* Cent. States Health & Life Co. of Omaha v. Miracle Hills Ltd. P'ship., 456 N.W.2d 474 (Neb. 1990) (holding that when a lease restricts the use of a premises to a single purpose that is prohibited by zoning regulations, that lease is unenforceable and relieves the parties of all obligations thereunder). As such, the parties must be left as the court found them. *See* 17A C.J.S. *Contracts* § 362 (2011) ("As a general rule, both at law and in equity, a court will not aid either party to an illegal contract... but leaves the parties where it finds them."). Atlantic Coast Builders v Lewis, Opinion 27044 (2012). ("Men may enter into any agreements they please and, as between themselves, may either respect or disregard them. When, however, they are submitted to the courts for adjudication, they must be tested and governed by the law.'") Pendarvis v. Berry, 52 S.C.2nd 705 (1949).(quoting Gilliland v. Phillips, I S.C. 152 (1869).

Defendants' alleged "subdivision" of the tract into "lots" by virtue of a deed is undeniably violative of public policy and statutory law and therefore cannot be a basis, under any circumstances, for its claim of five votes.

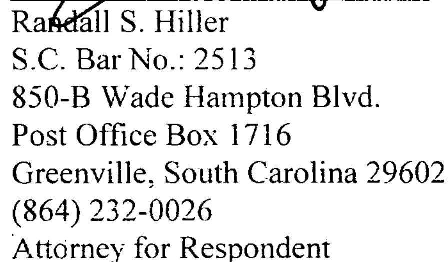
The Court should affirm both the Court of Appeals and Circuit Court on this issue.

CONCLUSION

Every year for thirty years the Appellant, upon opening his tax bill, was reminded that the public records for the County of Greenville reflected this property as consisting of one lot. Not one time during those thirty years did the Appellant takes his deeds, his grantor indexes and Mr. Grayson down to the assessor's office to correct that misconception. Never during that time did the Appellant take that "evidence" to the Planning Commission or the ROD Office to insure that the public records accurately reflected the subdivision of this property into five individual lots. The only person in the State of South Carolina who now claims they knew and intended that this property be five lots, and could have done something about it, did nothing. Nothing, that is, until faced with the realization that a majority of the homeowners in Watson Orchard Subdivision were most decidedly not going to vote to remove the restrictions from this property. Then, and only then, when having five votes became essential, the Appellant, for the first time during his ownership, sought to claim otherwise.

The trial court heard the evidence and made findings of fact for which there is evidence to support within the record. Based upon those facts the trial court interpreted the covenants and restrictions as being unambiguous and gave the words therein their plain, ordinary meaning as the court was required to do. In doing so the court found that the phrase "shall have been developed" required doing something and at a minimum required placing the property into a condition whereby it could legally be built upon and sold. The failure of the Appellants to do anything was found to be fatal by the trial court and the decision should be affirmed.

RANDALL S. HILLER, P.A.



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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP23-7707

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, ... Apellants.

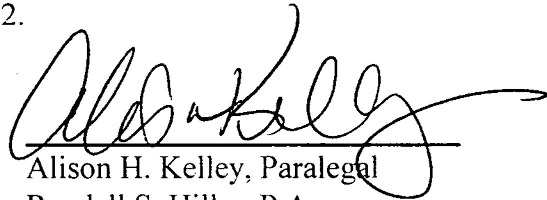
v.

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 0. 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. Herrman,..Third Party Defendants.

PROOF OF SERVICE

I certify that I have served the Brief of Respondents by depositing a copy of it in the United States Mail, postage prepaid, on June 17, 2016, addressed to its attorneys of record, William Herlong, Esq., Post Office Box 2003, Greenville, South Carolina 29602 and John S. Nichols, Esq., P.O. Box 7965, Columbia, SC 29202.



June 17, 2016

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The Hon. Daniel Shearouse
Clerk of Court
Supreme Court of South Carolina
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