

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2014-CP-07-2438
Appellate Case No. 2015-0001795

RECEIVED
JUN 30 2016
SC Court of Appeals

Community Services Associates, Inc. Appellant,

v.

Stephen H. Wall and Maria P Snyder Wall, Respondents.

REPLY BRIEF

John S. Nichols
SC Bar No. 4210
Bluestein, Nichols,
Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202
jsnichols@bntdlaw.com
(803) 779-7599

F. Ward Borden
SC Bar No. 10117
Jones Simpson & Newton, PA
7 Plantation Park Dr., Suite 3
Bluffton, SC 29910
wborden@jsplaw.net
(843) 706-6111

Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Introduction	1
Arguments	2
I. The Court Should Consider the 1981 ARB File and Supporting Testimony Proffered at Trial	2
II. There Is No Concession That the Walls' Home Complies with the Covenants	3
III. The Master's Ruling on the Letter to the Editor Was Not Based upon the Exercise of His Discretion	5
Conclusion	7

TABLE OF AUTHORITIES

CASES

SOUTH CAROLINA

<i>Ahrens v. State</i> , 392 S.C. 340, 709 S.E.2d 54 (2011)	3
<i>First Savings Bank v. McLean</i> , 314 S.C. 361, 444 S.E.2d 513 (1994)	3
<i>Fontaine v. Peitz</i> , 291 S.C. 536, 354 S.E.2d 565 (1987)	6
<i>Silvester v. Spring Valley Country Club</i> , 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001)	3

RULES

Rule 52, SCRCF	2
Rule 59, SCRCF	2

INTRODUCTION

The Respondents' Brief is remarkable for its lack of particularity. The essential issue in this dispute is the appropriate *use* of a "single family dwelling" in Sea Pines.

While Respondents argue strict construction, they fail to specifically address the language of the covenant at issue, which states in relevant part:

All lots in said Residential Areas shall be *used* for residential purposes exclusively. No structure, except as herein provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling...and provided further, that such building is not *used* for any activity normally conducted as a business.

(emphasis added).

In fact, Respondents have converted the use of a single family dwelling into a multi-family facility which they operate as a business. There is no dispute about Respondents' use of the property and there can be no dispute that Respondents' business use of "single family dwelling" is contrary to the clear intent of the covenant at issue. The structure of Respondents' home is not at issue, rather, it is their *use* of that home that constitutes a violation of the covenant. That use is not in keeping with the language of the covenant, the intent of the covenant, or the character of Sea Pines.

ARGUMENTS

I. The Court Should Consider the 1981 ARB File and Supporting Testimony Proffered at Trial

CSA offered testimony through Ken Rabon, administrator for Sea Pines Architectural Board (ARB). (R. p. 93, ll. 1-2; p. 93, l. 24 - p. 94, l. 1). Mr. Rabon described prior approvals for work at the subject residence, including correspondence regarding the 1981 addition that is at issue in this case. (R. p. 95, l. 18 - p. 96, l. 11).

The Walls objected to the subject correspondence on the ground of relevancy. (R. p. 96, l. 17 - p. 98, l. 2; p. 100, ll. 4-19). The Master asked if the covenants were the same in 1981 as the time of the hearing so that “if they were ambiguous then, they are ambiguous now. If they weren’t, they weren’t.” (R. p. 101, ll. 12-17). The Master then ruled the information was irrelevant and sustained the objection. (R. p. 104, ll. 22-24). CSA then proffered the file and the Master accepted it, although describing it as “not an exhibit.” (R. p. 105, l. 3 - p. 56, l. 2).

After the Master entered its judgment in favor of the Walls, CSA moved pursuant to Rules 52 and 59, SCRPC, for reconsideration. One of the errors asserted was the Master’s exclusion of the ARB’s file on the ground of relevance. (R, pp. 47-48, ¶¶ 13, 14). In denying the motion the Master did not specifically address this point of error.

These materials were proffered to give background to the ARB’s prior approval to the prior owner to modify the home. They explain how the Walls’ home came to exist in its current condition.

The cases the Walls cite in their brief do not preclude this Court’s consideration

of those materials. For instance, in *Ahrens v. State*, the Supreme Court stated “an issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.” 392 S.C. 340, 709 S.E.2d 54 (2011). In *First Savings Bank v. McLean*, the Court held an issue was not preserved where an appellant failed to provide argument or supporting authority for his argument that the trial court should have granted the relief requested in the motion to reconsider. 314 S.C. 361, 444 S.E.2d 513 (1994). And in *Silvester v. Spring Valley Country Club*, the issue the Court addressed regarding error preservation was not raised to nor ruled upon by the trial court, nor was it raised at oral argument before this court. 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001).

The issue in this case is whether the Walls’ use of the property violates the restrictive covenants. The ARB’s file provides background information informing that determination. These documents were presented to the Master and were proffered for the record. The Court should consider them as it decides whether the Master erred in denying CSA’s request for injunctive relief.

II. There Is No Concession That the Walls’ Home Complies with the Covenants

The Walls contend that testimony by Brett Martin, CSA’s president, that the physical structures on the property do not violate the covenants, is an admission that “disposes of any argument that [the] Respondents’ home has more than one kitchen or that Respondents’ use of their home occasionally converts it into a multi-family dwelling.” (Resp. Br. pp. 1-2). This is a gross over-reading of Mr. Martin’s testimony.

Mr. Martin was asked “Are there any structures on the property that violate the

covenants?” (R. p. 83, ll. 2-3). He responded “I do not believe so.” (R. p. 83, l. 4). It is a major stretch to construe this response as conceding that the Walls’ *use* of their property does not violate the covenants. As noted in the introduction to this brief, the structure of the Walls’ home is not at issue; rather, it is their use that violates the covenant.

As noted in CSA’s principal brief, Mr. Martin described CSA’s position on how the Homeowners are using the second story area:

Specifically, it’s renting a portion of the premise to an unrelated party while they remain or renting a portion of the premise to multiple parties. I believe that is where we started, I believe. Where we are today is where they remain in renting it to another unrelated party.

(R. p. 76, l. 18 - p. 77, l. 2). CSA was seeking a permanent injunction to prevent Homeowners from leasing a portion of the home while they remain or a portion of the home to multiple parties even if they were not to remain. (R. p. 77, ll. 16-21). CSA had no objection to Homeowners renting the entire premises to someone, and that is what the covenants permit. (R. p. 77, l. 22 - p. 78, l. 1; p. 87, ll. 6-12; p. 89, ll. 2-10). CSA considered the entire premises as being under one lease agreement. (R. p. 78, ll. 8-11). Any lease of less than the entire premises would violate the covenants. (R. p. 88, ll. 11-21). This is so even if the premises have a “guest suite.” (R. p. 89, ll. 8-10).

Mr. Martin agreed that short-term rentals of property subject to the Class “A” Covenants are permitted. (R. p. 78, ll. 22-25). Further, a renter could bring servants with him or her and permit them to occupy the home at the same time. (R. p. 79, ll. 1-16). A renter could also bring friends so long as they were invited guests. (R. p. 85, ll. 17-23). However, taking in a roommate who pays rent might violate the covenants if they entered

into a contract for gain. (R. p. 81, ll. 3-22). Mr. Martin agreed that the covenants did not only permit members of the same family to occupy a home that is subject to the Class “A” Covenants. (R. p. 82, ll. 2-7).

Mr. Martin stated that the covenants may prohibit someone residing in a home that is subject to the Class “A” Covenants from engaging in income-producing activity. (R. p. 83, l. 10 - p. 84, l. 21). On questions from the Master, Mr. Martin agreed that short-term rental is permitted. (R. p. 89, ll. 21-24). He stated that if the rental came with 24-hour service, then the servants still could not live on the premises because the premises are limited to single-family residential use. (R. p. 90, l. 13 - p. 91, l. 5).

Thus, placed back into context it is apparent that there was *no* concession that disposed of CSA’s argument that the Walls’ *use* of their property violated the applicable covenants.

III. The Master’s Ruling on the Letter to the Editor Was Not Based upon the Exercise of His Discretion

The Walls contend the Master exercised his discretion when he excluded the letter to the editor Mrs. Wall wrote. (Resp. Br. p. 5). The record does not support this contention.

As noted in the principal brief, on August 5, 2015, the Master sent an email to the parties as follows:

Thank you for the message,
however, I’m not going to consider matters outside the original record.
Also, the Plaintiff’s interpretation of “healthy dialogue” seems a stretch.
Best to all,

(R. p. 373). Other than saying these matters were “outside the original record” the Master gave no reason for refusing to consider the letter. The Master most certainly did not indicate he was exercising discretion. *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) (“When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.”).

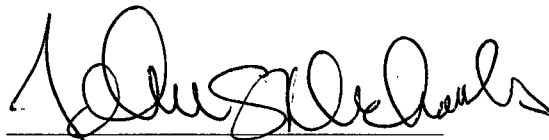
The ruling here is contrary to the express language of Rule 59(a), which permits a judge in a nonjury matter to “open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.” To exclude evidence simply because it is “outside the record” does not amount to an exercise of discretion.

This Court should reverse that decision and should either remand for that consideration or take the letter into consideration on appeal under the Court’s authority in equity.

CONCLUSION

For the reasons stated in this Reply and in the principal brief of Appellant this Court should reverse the Master's order and remand the matter for proceedings consistent with this Court's ruling.

Respectfully submitted,



John S. Nichols
SC Bar No. 4210
Bluestein, Nichols,
Thompson & Delgado, LLC
Post Office Box 7965
Columbia, South Carolina 29202
jsnichols@bntdlaw.com
(803) 779-7599

F. Ward Borden
SC Bar No. 10117
Jones Simpson & Newton, PA
7 Plantation Park Dr., Suite 3
Bluffton, SC 29910
wborden@jsplaw.net
(843) 706-6111

Attorneys for Appellant

June 28, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2014-CP-07-2438
Appellate Case No. 2015-0001795

RECEIVED
JUN 30 2016
SC Court of Appeals

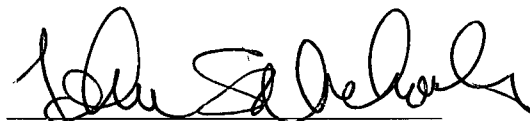
Community Services Associates, Inc., Appellant,

v.

Stephen H. Wall and Maria P Snyder Wall, Respondents.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that the *Brief of Appellant* and *Reply Brief* comply with the provisions of Rule 211(b), SCACR, and with the August 13, 2007, Supreme Court Order regarding personal data identifiers.



John S. Nichols, SC Bar # 4210
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
jsnichols@bntdlaw.com

June 29, 2016

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2014-CP-07-2438

RECEIVED
JUN 30 2016
SC Court of Appeals

Community Services Associates, Appellant,

v.

Stephen H. Wall and Maria P Snyder Wall, Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondents with a copy of the *Final Brief of Appellant and Reply Brief* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Drew A. Laughlin
Laughlin & Bowen, PC
PO Drawer 21119
Hilton Head Island, SC 29925-1119

June 30, 2016
Columbia, South Carolina


Erin Bridges
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

June 30, 2016

RECEIVED
JUN 30 2016
SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Community Services Associates, Inc. v. Stephen H. Wall
Case Tracking No.: 2015-001795

Dear Ms. Kitchings:

Please find enclosed for filing the original unbound and fifteen (15) bound copies of the Final Brief of Appellant and Reply Brief in reference to this case. I have also enclosed a certificate of compliance and proof of service on counsel for the Respondents. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to John S. Nichols
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

/emb

Enclosures

cc: F. Ward Borden, Esquire
Drew A. Laughlin, Esquire