THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED
MAY 14 2018
SC Court of Appeals

The Honorable Mikell R. Scarborough, Master-In-Equity
Ninth Judicial Circuit

Case No. 2016-CP-10-1560
Appellate Case No. 2017-002546

CARPENTER BRASELTON, LLC ..... Appellant,

vs.

ASHLEY ROBERTS, JEREMY COOK, and
SALAHEDDINE EZZAOUDI, ... Respondents.

INITIAL BRIEF OF RESPONDENTS

Demetri K. Koutrakos, SC Bar #11318
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia, SC 29202-1390
Telephone: (803) 404-6900
Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. CASES

B. STATUTES

None

C. OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. Should the Master be affirmed when many of the issues raised by Plaintiff have not been preserved for review as they were either not raised or ruled upon by the Master and Plaintiff failed to file a motion to alter or amend judgment?

II. Did the Master consider extrinsic evidence when he determined the notations on the Plat do not create a restriction even though the Master expressly stated in his written order that he was not considering extrinsic evidence and did not refer to extrinsic evidence in so ruling?

III. Whether the Master correctly determined the notations on the Plat do not create a restriction when it is evident in reviewing the four corners of the Plat that the notations were not placed on the Plat by the landowners but instead were placed on the Plat by Charleston County as part of its approval process and were related to the availability of septic or sewer?

IV. Did the Master correctly make an alternative finding and ruling that, if the Plat was found to be ambiguous, then all extrinsic evidence shows the notations on the Plat were placed on the Plat by Charleston County and were not intended to restrict the property?

V. Whether the Master granted summary judgment prematurely even though Plaintiff failed to advance a good reason why it had insufficient time, failed to set forth why further discovery would uncover additional evidence to create an issue of fact, failed to comply with Rule 59(f), and took no depositions in nearly 18 months?

STATEMENT OF THE CASE

Appellant Carpenter Braselton, LLC ("Plaintiff") appeals the Order of the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County, dated November 8, 2017, and entered November 14, 2017 ("Order"). Plaintiff contends the Master erred in finding certain notations placed on a plat depicting the parties' properties do not restrict the property.

Plaintiff filed this action against Respondents Ashley Roberts n.k.a. Ashley Roberts Cyronak, Jeremy Cook, and Salaheddine Ezzaoudi ("Defendants") on March 28, 2016, seeking a declaratory judgment and a permanent injunction enjoining Defendants from building residences or other structures upon their lots because Plaintiff claims those lots are burdened by claimed restrictions on a plat. (Compl., R. at ___). On June 17, 2016, Defendants served their Answers and Counterclaims, in which they too sought a declaratory judgment as to the effect of certain notations on the plat. (Answer, R. at __). This case was referred to the Master by order of reference entered April 3, 2017. (R. at ___).

After written discovery was exchanged and Plaintiff was deposed on March 22, 2017, through its designee Edward L. Terry, Defendants moved for summary judgment on August 2, 2017. (R. at ___). Defendants moved for summary judgment on their Counterclaims and on Plaintiff's Complaint. (R. at ___).

A hearing on Defendants' summary judgment motion was held on September 21, 2017. The Order was entered November 14, 2017, granting summary judgment to Defendants. (R. at ___).

Plaintiff failed to file a motion to alter, amend, or reconsider pursuant to Rule 59(e), SCRCP.

This appeal followed.

FACTS

1. Subdivision of the property and the Plat.

In 1990, the heirs of James Roper subdivided an 11.95-acre tract to create five lots, Lots C-1, C-2, C-3, C-4, and C-5, with a private road to access those lots. (Quinn Aff. ¶¶ 3-4, R. at ___). The property was surveyed by F. Elliotte Quinn, III, a professional land surveyor, who prepared a plat entitled "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA." This plat was recorded December 31, 1990, in the RMC Office for Charleston County in Plat Book CB at Page 130 ("the Plat"). (Id. ¶ 3-4, R. at ___).

Charleston County was required to approve the subdivision of the 11.95-acre tract into five lots. (Id. ¶ 5, R. at ___). On June 22, 1989, Mr. Quinn's surveying company applied for subdivision approval. (*Chas. Planning Dept. FOIA Response 3/7/17* p. 12, R. at ___). During the permitting and approval process for the subdivision, the Charleston County Planning Board determined that one of the five lots, Lot C-1, met the current minimum health department standards for a modified conventional sub-surface disposal system. (Quinn Aff. ¶ 9, R. at ___).

The Charleston County Planning Board, based on a letter dated September 6, 1989, from the South Carolina Department of Health and Environmental Control ("DHEC"), determined that four of the five lots, Lots C-2, C-3, C-4, and C-5, did not meet the current minimum health department standards for a modified conventional sub-surface disposal system. (*Chas. Planning Dept. FOIA Response 3/7/17* pp. 19-20, R. at ___).

On July 5, 1989, the Heirs of James Roper wrote the Charleston County Planning Board and stated as follows:

Re.: Application #13511; Heirs of James Roper

Dear Sirs:

We the Heirs of James Roper would like to request variances from sections of the Charleston County Subdivision regulations due to the fact that we are trying to subdivide this tract for family purposes. We as heirs of James Roper, Sr. are ourselves getting old and would like to straighten out the title of this property prior to our deaths so that our children and grandchildren don't have the problems associated with heirs property.

Through the years this tract which once stretched from Riverland Drive to the marshes of the Stono River, has been subdivided until this 5.95 Acre tract remained with only a 20' access connecting it to Bradham Road. We cannot give an additional 5' for road right-of-way due to the fact that a great portion of it would have to come from someone else's property. We are aware that this land possesses very poor soil conditions for septic systems and would like to request that the subdivision be approved with the stipulation that any lot which will not support a septic system be restricted from becoming a building lot until such time that public sewer service can be provided to that lot.

Please consider our request and thank you for your time.

(*Chas. Planning Dept. FOIA Response 3/7/17* p. 24, R. at ___).

According to Mr. Quinn, the Charleston County Planning Board then required the following language be placed on the Plat:

- THIS LOT MEETS CURRENT MINIMUM HEALTH DEPARTMENT STANDARDS FOR A MODIFIED CONVENTIONAL SUB-SURFACE DISPOSAL SYSTEM (FOR LOT C-1 ONLY)
- THESE LOTS, C-2, C-3, C-4, & C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES[1]

(Quinn Aff. ¶ 8, R. at ___).

Also, according to Mr. Quinn, these notations were placed on the Plat by Charleston County to indicate Charleston County would not, at that time, approve building permits for Lots C-2, C-3, C-4, and C-5, because those lots did not meet current minimum standards for a modified

[1] This language is derived from Standard Subdivision Stipulations that Charleston County used at that time. (Chas. Planning Dept. FOIA Response 3/7/17 p. 4, R. at ___.).

conventional sub-surface disposal system. ((Quinn Aff. ¶ 11, R. at ___). Lot C-1 did meet the current minimum standards for a modified conventional disposal system, and that is why Charleston County did not say Lot C-1 was not to be used for building purposes. (Id. ¶ 9, R. at ___).

Mr. Quinn further stated in his affidavit that these notations on the Plat were not requested to be placed on the Plat and were not placed on the Plat by or at the request of the heirs of James Roper. He further stated these notations on the Plat were not, and are not, restrictions from use placed on Lots C-2, C-3, C-4, & C-5 by the heirs of James Roper. (Id. ¶ 10, R. at ___).

The heirs of James Roper indicated to Mr. Quinn they wanted the ability to build residential homes on all five lots. Charleston County required that each lot be suitable for a septic system before issuing building permits. At that time, lots would not be suitable for a septic system if they did not "perk."[2] At that time, Charleston County would not permit septic systems on four of the lots because four of the lots did not "perk." Apparently, at that time, Lot C-1 did perk, but the others did not. That is why Charleston County placed a different notation for Lot C-1 on the Plat. (Id., R. at ___).

These notations were placed on the Plat by Charleston County to warn buyers of issues related to sewer disposal services. (Id. ¶ 11, R. at ___). Charleston County would not permit buildings to be placed on Lots C-2, C-3, C-4, and C-5 because, at that time, those lots did not meet the current minimum standards for a sewer disposal system, because those lots did not "perk." (Id. R. at ___).

---

[2] A perc or perk test is or was used to evaluate the suitability of soils for septic tank systems to see if the soil properly absorbs fluids.

As indicated on the face of the Plat, Charleston County approved the Plat on December 4, 1990.

2. Acquisition of the Lots.

A. Lot C-5: Plaintiff Carpenter Braselton, LLC.

Lot C-5 is described as follows:

> All that certain lot, piece or parcel of land, situate, lying and being at the end of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 31,845.3 square feet of highland and six (6) acres of marshland, more or less, and known and designated as LOT C-5 on a plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 TRACT (5.95 HIGHLAND) OWNED BY JAMES ROPER TO CREATE 5 LOTS ON JAMES ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," made by F. Elliotte Quin, III, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130 in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.
>
> BEING the same property conveyed to Carpenter Braselton, LLC by deed of Herbert Brown dated November 10, 2014, and recorded November 12, 2014, in the RMC Office for Charleston County in Book 440 at Page 255.
>
> TMS: 341-00-00-029

Plaintiff Carpenter Braselton, LLC owns Lot C-5. Plaintiff purchased Lot C-5 by deed of Herbert Brown dated November 10, 2014, and recorded November 12, 2014, in the RMC Office for Charleston County in Book 440 at Page 256. (R. at ___).

Herbert Brown acquired the property by deed of Virginia R. Brown a/k/a Virginia Roper Brown, dated February 22, 1995, and recorded February 22, 1995, in the RMC Office for Charleston County in Book U-252 at Page 034 (R. at ___); by Decree Quieting Title (Case No: 07-CP-10-1185) dated June 7, 2007, and filed in the Clerk of Court of Common Pleas on June 13, 2007 ("Decree Quieting Title") (R. at ___); and by confirmatory deed dated June 15, 2007, and recorded July 10, 2007, in the RMC Office for Charleston County in Book T-631 at Page 283 (R. at ___).

Lot C-5 is unimproved. Of all the lots in this case, Lot C-5 is closest to the Stono River.

B. Lot C-4: Defendant Salaheddine Ezzaoudi.

Lot C-4 is described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being on the South Side of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 24,0062.7 square feet of land, more or less and known and designated as Lot C4 on a plat entitled "Plat of the Subdivision of 11.95 acre tract (5.95 highland) owned by James Roper to Create 5 lots on James Island, Charleston County, South Carolina", made by F. Elliotte Quinn, Ill, R.L.S., dated January 9, 1989 and recorded December 31, 1990 in Plat Book CB at Page 130, RMC Office for Charleston County.
>
> BEING the same property conveyed to Perciel R. DeLaine, James A. Roper, III, Mildred R. Anderson, Ruby Roper and Raymond Roper by Decree Quieting Title (Case No: 07-CP-10-1185) dated June 7, 2007 and filed in the Clerk of Court of Common Pleas on June 13, 2007 ordered by the Honorable Mikell R. Scarborough, Master in Equity for Charleston County and by Master's Deed dated June 15, 2007 and recorded July 10, 2007 in the RMC Office of Charleston County in Book T631 at Page 287.
>
> TMS No: 341-00-00-072

Defendant Salaheddine Ezzaoudi owns Lot C-4, having acquired it from Perceil R. Delaine, James A. Roper, III, Mildred R Anderson, Ruby Roper and Raymond Roper by Deed executed on various dates in 2013 and recorded August 1, 2013, in the RMC Office for Charleston County in Book 349 at Page 974. (R. at ___).

Perceil R. DeLaine, James A. Roper, III, Mildred R. Anderson, Ruby Roper and Raymond Roper acquired Lot C-4 by the Decree Quieting Title and by confirmatory deed dated June 15, 2007, and recorded July 10, 2007, in the RMC Office of Charleston County in Book T631 at Page 287. (R. at ___).

Lot C-4 is unimproved.

C. Lot C-3: Defendants Ashley Roberts and Jeremy Cook.

Lot C-3 is described as follows:

> All that certain piece, parcel or lot of land, situate, lying and being on the South side of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 23,669.9 square feet, more or less, and known and designated as Lot C3 on a plat entitled "Plat of the Subdivision of a 11.95 tract (5.95 Highland) owned by James Roper to Create 5 lots on James Island, Charleston County, South Carolina" made by F. Elliotte Quinn, III, R.L.S., dated January 9, 1989, and recorded on December 31, 1990 in Plat Book CB, Page 130, RMC Office for the County of Charleston.
>
> BEING the same property conveyed by Deed from Mikell R. Scarborough, as Master in Equity for Charleston County, to Ruth Craig dated June 15, 2007 and recorded July 10, 2007 in Deed Book T631 at Page 279.
>
> TMS No: 341-00-00-073

Defendants Ashley Roberts and Jeremy Cook own Lot C-3, having acquired it from Ruth R. Craig, by her attorney-in-fact Percile DeLaine, by Deed dated September 6, 2007, and recorded September 11, 2007, in the RMC Office for Charleston County in Book J638 at Page 712. (R. at ___).

Ruth R. Craig acquired Lot C-3 by the Decree Quieting Title and by confirmatory deed dated June 15, 2007, and recorded July 10, 2007, in the RMC Office of Charleston County in Book T631 at Page 279. (R. at ___).

On July 30, 2007, the City of Charleston Department of Planning approved the plans for the construction of a home on Lot C-3.[3] (R. at ___). The City of Charleston Department of Planning noted as follows:

> The plans submitted for the development of the above referenced property have been reviewed and approved by the City of Charleston Zoning Division and Architecture & Preservation Division.
>
> The above referenced property has a base zoning classification of SR-1 (Single Family Residential) under the City of Charleston Zoning Ordinance. The use of "881. One family detached dwelling" is a permitted use in the SR-1 district. There are currently no pending zoning violations on this property. Legal non-conforming

[3] The Planning Department provided this approval for construction of a home on both Lot C-3 and Lot C-2, although a home was only constructed on Lot C-3. (R. at ___).

uses are subject to the restrictions contained in Article 1, Part 2 of the Zoning Ordinance.

The architectural and structural design including all necessary elevation and plan views were in accordance with building requirements set by the Board of Architectural Review (BAR).

(Charleston Planning Department letter dated July 30, 2007, R. at ___).

Defendants Ashley Roberts and Jeremy Cook constructed a home on Lot C-3, which construction was completed February 5, 2009.[4] (Exhibit 6 to Summary Judgment Motion; R. at ___).

D. Lot C-2: Defendants Ashley Roberts and Jeremy Cook.

Lot C-2 is described as follows:

All that certain piece, parcel or lot of land, situate, lying and being on the south side of Roper Road, James Island, County of Charleston, State of South Carolina, measuring and containing 1.26 acres, more or less, and known and designated as Lot C2 on a plat entitled "Plat of the Subdivision of a 11.95 acre tract (5.95 Highland) owned by James Roper to create 5 lots on James Island, Charleston County, South Carolina" made by F. Elliotte Quinn, III, R.L.S., dated January 9, 1989 and recorded on December 31, 1990, in Plat Book CB, Page 130, in the RMC Office of the County of Charleston.

BEING the same property conveyed by Deed from Mikell R. Scarborough, as Master in Equity for Charleston County, to John Fleming dated June 15, 2007 and recorded in Deed Book T631 at Page 275.

TMS No: 341-00-00-074.

Defendants Ashley Roberts and Jeremy Cook own Lot C-2 having acquired it from John W. Fleming by Deed dated September 6, 2007, and recorded September 11, 2007, in the RMC Office for Charleston County in Book J638 at Page 717. (R. at ___).

---

[4] Plaintiff is not seeking injunctive relief as to the house constructed on Lot C-3. See Tr. p. 27 (Wherein Plaintiff's counsel stated, "No, Your Honor, we are not looking to do that at all. We're just trying to keep it as it is. So that's our requested declaration."). (R. at ___).

John W. Fleming acquired Lot C-2 by the Decree Quieting Title and by confirmatory deed dated June 15, 2007, and recorded July 10, 2007, in the RMC Office of Charleston County in Book T631 at Page 275. (R. at ___).

Lot C-2 is unimproved.

3. Plaintiff's Adjacent Property.

In its Complaint, Plaintiff claims it derives a benefit from the alleged restriction. Among other benefits, Plaintiff claims the restriction allows Plaintiff to experience and benefit from the "views, peace, and comfort of the undeveloped properties." (Compl. ¶ 23, R. at ___).

Despite this claimed concern by Plaintiff regarding "views, peace, and comfort of the undeveloped properties," Plaintiff constructed a two-story single-family residence on property it owns adjacent to Lot C-5, which property is located at 2284 Lucky Road. (Terry Dep. p. 37, ex. 11, R. at ___). Plaintiff constructed a two story "Barn," which has horse stables on the first floor. Id. The second floor contains an office apartment with two bedrooms and one bath. People spend the night at this building. (Id. p. 38, R. at ___).

4. This Action.

A. Plaintiff.

Edward L. Terry is the authorized agent of Plaintiff. His wife is the sole member and manager of Plaintiff. (Terry Dep. pp. 27-28, R. at ___). Mr. Terry has developed numerous subdivisions in multiple states. (Id. pp.12-14, R. at ___). He has developed approximately 20 subdivisions in South Carolina. (Id. p. 14, R. at ___). Some of the subdivisions he developed were restricted by traditional covenants, conditions, and restrictions. (Id. pp. 18-21 R. at ___). Mr. Terry was extensively involved in the purchase of the property, reviewing documents and visiting the property. (Id. pp. 25, 40-41, R. at ___).

B. Plaintiff's Complaint.

On March 28, 2016, Plaintiff filed this action claiming the notation on the Plat that Charleston County mandated be placed on the Plat and which provides "THESE LOTS, C-2, C-3, C-4, & C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES," creates a restriction that the lots not be used for building purposes and be limited to agricultural uses. (R. at ___).

Plaintiff asserted claims for injunctive relief and declaratory relief.

C. Defendants' Answers and Counterclaims.

Defendants denied the material allegations of the Complaint and asserted various affirmative defenses. (R. at ___).

Defendants asserted counterclaims for declaratory relief asking the Court to declare Defendants own their lots free and clear of any use restriction claimed to be created by the Plat and the claims of Plaintiff and its successors and assigns. (R. at ___).

Defendants asserted counterclaims to quiet title to their respective lots in their respective names free and clear of any claimed restriction and of any right, title, claim, lien, or interest of Plaintiff and its successors and assigns. (R. at ___).

D. Summary Judgment.

Defendants moved for summary judgment on their Counterclaims and on Plaintiff's Complaint arguing there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law. (R. at ___).

A hearing on Defendants' summary judgment motion was held before the Master-in-Equity on September 21, 2017. The Order was entered November 14, 2017, granting summary judgment to Defendants. (R. at ___).

In the Order, the Master reviewed the four corners of the Plat to determine whether the notations on the Plat create a restriction on use by express terms or by plain and unmistakable implication. The Master determined from a review of the Plat and considering all matters shown within the four corners of the Plat, and not considering extrinsic evidence, that the notations on the Plat related to agricultural use were placed on the Plat by Charleston County and they do not create restrictions. (Order pp. 11, 12, R. at ___).

STANDARD OF REVIEW

"An appellate court reviews a grant of summary judgment under the same standard applied by the [circuit] court pursuant to Rule 56, SCRCP." Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). Summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that . . . no genuine issue [exists] as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Even though courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ARGUMENT

I. MANY OF THE ISSUES RAISED BY PLAINTIFF HAVE NOT BEEN PRESERVED FOR REVIEW AS THEY WERE EITHER NOT RAISED OR RULED UPON BY THE MASTER AND PLAINTIFF FAILED TO FILE A MOTION TO ALTER OR AMEND JUDGMENT.

Plaintiff makes numerous arguments that are not preserved for appellate review.

First, Plaintiff argues the Master erred as a matter of law in relying on extrinsic evidence, including the surveyor's affidavit and a letter from the heirs of James Roper (Appellant's Brief pp.

10-15). Second, Plaintiff argues summary judgment was premature because it was granted before Plaintiff could take many key party depositions. See (Appellant's Brief at p. 2 n. 2; p. 8 n. 3). As set forth more fully below, these arguments are not preserved for appellate review.

An appellant may not argue one ground at trial and an alternate ground on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). For an issue to be preserved for appellate review, it must have been raised to and ruled upon by the lower court. Anonymous v. State Board of Medical Examiners, 323 S.C. 360, 473 S.E.2d 870, 879 (Ct. App. 1996) rev'd on other grounds, 329 S.C. 371, 496 S.E.2d 17 (1998). It is the responsibility of counsel to preserve issues for appellate review. See State v. Rivers, 411 S.C. 551, 555 n.2, 769 S.E.2d 263 n.2 (2015) ("our appellate courts have consistently refused to apply the plain error rule and it is the responsibility of counsel to preserve issues for appellate review"). An appellate court may not reverse a trial court's ruling merely for any reason appearing in the record; rather, the losing party must first try to convince the trial court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the trial court erred. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

The record must show the issue was raised to the trial court, and any issue not raised to and ruled upon by the trial judge is not preserved for appeal. Zaman v. S.C. Bd. of Med. Examrs., 305 S.C. 646, 594 S.E.2d 462 (2004); I'On, 338 S.C. at 421, 526 S.E.2d at 724 (stating parties should raise all necessary issues and arguments to trial court and attempt to obtain a ruling). Further, a party must file a motion to alter or amend judgment when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review. Rule 59(e), SCRCP; Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Imposing these preservation requirements on appellants is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. See Roche v. South Carolina Alcoholic Beverage Control Comm'n, 263 S.C. 451, 211 S.E.2d 243 (1975) (purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal).

Further, when an order is claimed to be internally inconsistent, that inconsistency must be raised to the trial court by way of a post-trial motion before it is preserved for appellate review. Parker v. Shecut, 340 S.C. 460, 480, 531 S.E.2d 546, 557 (Ct. App. 2000), rev'd on other grounds, 349 S.C. 226, 562 S.E.2d 620 (2002). A post-trial motion must also be made where there are errors or inconsistencies in the trial court's final order. Grant v. South Carolina Costal Council, 319 S.C. 348, 356, 461 S.E.2d 388, 392 (1995) (alleged inaccuracies or prejudicial matter in trial court's order were not preserved for appeal where no post-trial motion was made raising these errors).

A. Plaintiff Failed to Preserve for Appellate Review its Argument that the Master Erred in Relying upon Extrinsic Evidence.

Plaintiff argues the Master considered extrinsic evidence, including the surveyor's affidavit and a letter from the heirs of James Roper. That is simply not the case because the Master, in finding the notations on the Plat did not create a restriction, expressly stated he was not considering extrinsic evidence. Nonetheless, Plaintiff never raised this issue to the Master and failed to file a motion pursuant to Rule 59(e), SCRCP, failing to preserve this issue for appellate review.

Plaintiff argues the Master's ruling is inconsistent because the Master claimed in his Order he was not relying on any extrinsic evidence in reaching his finding but then referenced extrinsic evidence in the Order. (Appellant's Brief p. 14) (". . . the trial court in its November 14, 2017

Order claimed that it was not relying on any extrinsic evidence in reaching its findings. Yet the court clearly did just that") ("The Order repeatedly referenced and relied upon an Affidavit of F. Elliotte Quinn, III, Order pp. 3-4, and a July 5, 1989 letter from the heirs of James Roper to the Charleston County Planning Board support its decision to grant Respondents summary judgment"). Plaintiff argues that because the Master found the Plat to be unambiguous, he "erred as a matter of law in relying on extrinsic evidence, including Mr. Quinn's Affidavit and the July 5, 1989 letter from the heirs of James Roper, in interpreting the restrictive notation on the Plat and granting Respondents summary judgment." (Appellant's Brief p. 15).

The record must show the issue was raised to the trial court, and any issue not raised to and ruled upon by the trial judge is not preserved for appeal. Zaman v. S.C. Bd. Of Med. Examrs., 305 S.C. 646, 594 S.E.2d 462 (2004). However, at no time did Plaintiff raise the issue regarding alleged inconsistencies in the ruling to the Master, much less obtain a ruling on the issue.

Further, and most importantly, Plaintiff failed to file a motion pursuant to Rule 59(e), SCRCP, seeking to alter or amend the Order. Plaintiff claims the Order is inconsistent because it states the Master is not relying on extrinsic evidence, but then cites extrinsic evidence. However, this issue is not preserved for appellate review. When an order is alleged to be internally inconsistent or the written order is not consistent with an oral order, those inconsistencies must be raised to the trial court by way of a post-trial motion to preserve the issue for appellate review. See Parker v. Shecut, 340 S.C. 460, 531 S.E.2d 546 (Ct. App. 2000), rev'd on other grounds, 349 S.C. 226, 562 S.E.2d 620 (2002); see also Grant v. South Carolina Costal Council, 319 S.C. 348, 461 S.E.2d 388 (1995) (alleged inaccuracies or prejudicial matter in trial court's order were not preserved for appeal where no post-trial motion was made raising these errors); Pelican Bldg. Ctrs. of Horry–Georgetown, Inc. v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993) (holding when

trial court's oral and written orders are inconsistent, appellant must bring these inconsistencies to the trial court's attention through a motion to alter or amend to preserve the issue for appeal); Dowd v. Imperial Chrysler-Plymouth, Inc., 298 S.C. 439, 441, 381 S.E.2d 212, 213 (Ct. App. 1989) (Any question regarding the inconsistency of a verdict must be raised by a motion for a new trial).

Here, Plaintiff failed to move under Rule 59(e), SCRCP, regarding Plaintiff's claim that the Master wrongfully considered extrinsic evidence, that the Order is internally inconsistent, or that the Order is not consistent with the Master's oral ruling. These issues are therefore not preserved for appellate review.

B. Plaintiff Failed to Preserve its Argument that Summary Judgment was Premature.

Plaintiff argues summary judgment was premature because it was granted before Plaintiff could take many key party depositions. (Appellant's Brief p. 2 n. 2) ("Appellant's deposition is the sole deposition that has been taken in this case. The surveyor's deposition has not been taken. None of the Defendants' depositions have been taken . . . These are material questions which must be tried before a factfinder, and therefore the Court erred in granting summary judgment to Respondents." (Id. at p. 8 n. 3) ("Appellant has not yet been able [to] depose Respondent Roberts or Respondent Cook, who currently reside in California. Summary judgment was a drastic and premature remedy where, as here, discovery-including taking party depositions-had not yet been completed.").

Plaintiff failed to preserve this argument because it failed to obtain a ruling on this issue. See Rule 59(e), SCRCP; Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (holding that a party must file a motion to alter or amend a judgment when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review). Although Plaintiff

raised this issue in its Memorandum in Opposition to Summary Judgment (see Memorandum in Opposition at p. 7 n. 2, R. at ___), Plaintiff failed to obtain a ruling from the Master on the issue. At no time did Plaintiff raise this argument with the Master at the summary judgment hearing. (Summary Judgment Hearing Tr., R. at ___). The Master did not rule on the issue orally from the bench or address the issue in his Order. See (Summary Judgment Hearing Tr. and Order, (R. at ___). Plaintiff also failed to raise the issue in any sort of post-trial motion. Therefore, because Plaintiff failed to obtain a ruling from the Master and failed to raise the issue in a motion to alter or amend the judgment, Plaintiff's argument that summary judgment is premature is not preserved and may not be considered on appeal.

Furthermore, Plaintiff made no mention of the issue in its statement of issues on appeal. See Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of issues on appeal.").

Accordingly, this issue is not preserved for review.

II. THE MASTER DID NOT CONSIDER EXTRINSIC EVIDENCE WHEN HE DETERMINED THE NOTATIONS ON THE PLAT DO NOT CREATE A RESTRICTION BECAUSE MASTER EXPRESSLY STATED IN HIS WRITTEN ORDER THAT HE WAS NOT CONSIDERING EXTRINSIC EVIDENCE AND DID NOT REFER TO EXTRINSIC EVIDENCE IN SO RULING.

Plaintiff argues the Master improperly considered extrinsic evidence. Assuming this issue is preserved for appellate review, this argument is without merit.

Defendants acknowledge the Master did reference extrinsic evidence at the summary judgment hearing. (Tr. p. 28, R. at ___) ("Good or bad, this is extrinsic evidence because it has to do with my background."). However, despite any oral statements made by the Master at the hearing, the final written Order granting summary judgment makes it clear he did not consider extrinsic evidence in reaching his decision.

In the Order, the Master stated:

> From a review of the Plat and considering all matters shown within the four corners of the Plat, *and not considering any extrinsic evidence,* I find and conclude the notations on the Plat related to agricultural use were placed on the Plat by Charleston County.
>
> ***
>
> By reviewing and considering all matters shown on the Plat and *not considering extrinsic evidence,* the notations on the Plat related to agricultural use are due to Charleston County's determination at that time that the four lots did not meet current minimum health department standards for a modified conventional sub-surface disposal system. However, if sewer or a modified conventional sub-surface disposal system would become available, then the lots could be used for building purposes.
>
> Because the notations on the Plat do not create restrictions, and certainly do not create restrictions enforceable by Plaintiff, Defendants are entitled to summary judgment.

(Order pp. 11-12, R. at ___) (emphasis added).

The Master's oral statements at the summary judgment hearing are inconsequential in light of the final written Order. Although a court may make an oral ruling, it is only the final written order that is determinative. An order is not final until it is written and entered by the clerk of court. First Union National Bank of South Carolina v. Hitman, Inc., 306 S.C. 327, 411 S.E.2d 681 (Ct. App. 1991), aff'd, 308 S.C. 421, 418 S.E.2d 545 (1992) (holding a judge was not bound by a prior oral ruling and could issue a written order which conflicted with the prior oral ruling); see also Case v. Case, 243 S.C. 447, 451, 134 S.E.2d 394, 396 (1964) (holding even if the trial judge made an oral ruling in favor of one party, such pronouncement is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the judge, and delivered for recordation).

Until an order is written and entered by the clerk of court, the judge retains discretion to change his mind and amend his ruling accordingly. Id. In Bayne v. Bass, 302 S.C. 208, 394 S.E.2d 726 (Ct. App. 1990), the court stated as follows:

> ***Until the paper has been delivered by the judge to the clerk of court, to be filed by him as an order in the case, it is subject to the control of the judge, and may by him be withdrawn at any time before such delivery.*** ... 'A judgment is the final determination of the rights of the parties in an action. ***While the written instrument purporting to be the judgment in a cause remains in the possession of the judge who is to pronounce it, it is of no effect,*** and like a deed not delivered. * * * ' Even if as contended by defendant the trial Judge granted an oral divorce to plaintiff such pronouncement ***is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the Judge and delivered for recordation.*** The Decree must be in writing and until such time the Judge may modify, amend or rescind such an oral Order.

302 S.C. at 209-210, 394 S.E.2d at 727 (Ct. App. 1990) (citation omitted) (quoting Archer v. Long, 46 S.C. 292, 24 S.E. 83 (1896) (emphasis added).

Although the Master in his oral ruling referenced extrinsic evidence, his final written order makes it abundantly clear he did not base his decision on extrinsic evidence. The Master mentioned twice that he was not considering extrinsic evidence. The Master only referenced extrinsic evidence in that part of his ruling where he made an alternative finding if the notations on the Plat were considered to be ambiguous. There is nothing wrong with the Master making this alternative finding and considering extrinsic evidence in making this finding, as the Master is allowed to do when considering an ambiguous contract or an ambiguous alleged restriction.

Accordingly, Plaintiff's argument is without merit and the Master should be affirmed.

III. THE MASTER CORRECTLY DETERMINED THE NOTATIONS ON THE PLAT DO NOT CREATE A RESTRICTION WHEN IT IS EVIDENT IN REVIEWING THE FOUR CORNERS OF THE PLAT THAT THE NOTATIONS WERE NOT PLACED ON THE PLAT BY THE LANDOWNERS BUT INSTEAD WERE PLACED ON THE PLAT BY CHARLESTON COUNTY AS PART OF ITS APPROVAL PROCESS AND WERE RELATED TO THE AVAILABILITY OF SEPTIC OR SEWER.

Plaintiff argues the Master erred as a matter of law in finding the "agricultural use only" notation on the Plat did not create a valid restriction on the use of Defendants' land. The Master correctly reviewed the four corners of the Plat, did not consider extrinsic evidence, but looked at all notations on the Plat and read them together to properly conclude the notations on the Plat do not create a restriction on the use of the property.

"The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). "Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001) (quoting Taylor v. Lindsey, 332 S.C. 1, 4-5, 498 S.E.2d 862, 863-64 (1998)).

"To discover the intention of a contract, the court must first look to its language—if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect." Ecclesiastes Production Ministries v. Outparcel Assocs., L.L.C., 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007). The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof. Thomas–McCain, Inc. v. Siter, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977); see also Barnacle Broad., Inc. v. Baker Broad., Inc., 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct. App. 2000) ("The primary test as to the

character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used."). If practical, documents will be interpreted to give effect to all of their provisions. Ecclesiastes, 374 S.C. at 498, 649 S.E.2d at 502. In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered. Klutts Resort Realty, Inc. v. Down'Round Development Corp., 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977).

With that in mind, "restriction[s] on the use of 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." Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). In addition, "a covenant must express the purpose of the parties thereto to be valid and enforceable and it must not be too indefinite." Vickery v. Powell, 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976).

In construing restrictive covenants, ambiguities must be strictly construed against the party seeking to enforce them, here, Plaintiff, and strictly against limitations upon the property's free use. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 893-94 (1987); Seabrook Island Prop. Owners Assoc. v. Marshland Trust, Inc., 358 S.C. 655, 662, 596 S.E.2d 380, 383 (Ct. App. 2004); Hyer v. McRee, 306 S.C. 210, 212, 410 S.E.2d 604, 605 (Ct. App. 1991).

Where there is doubt, the doubt must be resolved in favor of the property's free use. Hyer, 306 S.C. at 212, 410 S.E.2d at 605. Where a restriction on land is capable of two different constructions, the construction which least restricts the property is favored. Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005).

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) (citing 17A Am. Jur.2d Contracts § 338, at 345 (1991)). Once the Court decides the language is ambiguous, evidence may be admitted showing the intent of the parties. Id.

The Master reviewed the four corners of the Plat to determine whether the notations on the Plat create a restriction on use by express terms or by plain and unmistakable implication. The Master determined from a review of the Plat and considering all matters shown within the four corners of the Plat, and not considering any extrinsic evidence, that the notations on the Plat related to agricultural use were placed on the Plat by Charleston County. (Order p. 11. R. at ___).

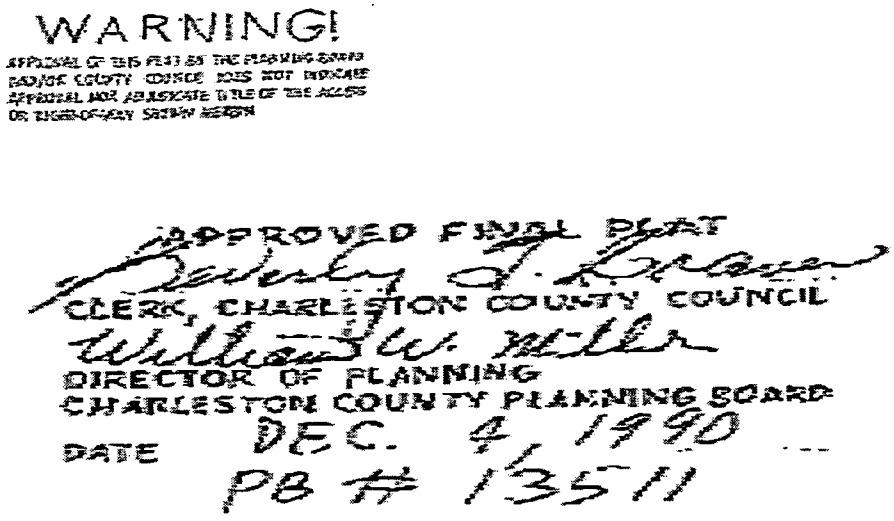
The Master properly found the notations were not placed on the Plat by either the surveyor or the owners of the property. Charleston County placed these notations on the Plat as part of its approval process. After all, the Plat is stamped approved as an "approved final plat" by Charleston County, with an associated planning board number. The other notations including the notations in question are in the same or similar typeface as those notations that were without question placed on the Plat by Charleston County. The typeface of the remaining parts of the Plat are much different that the notations on the Plat in question.

These notations and markings placed by Charleston County on the Plat are:

THIS LOT MEETS CURRENT MINIMUM
HEALTH DEPARTMENT STANDARDS
FOR A MODIFIED CONVENTIONAL
SUB-SURFACE DISPOSAL SYSTEM ONLY.
(FOR LOT C-1 ONLY)

THESE LOTS C-2, C-3, C-4, C-5
FOR AGRICULTURAL USE ONLY;
NOT TO BE USED FOR BUILDING
PURPOSES.

THE APPROVAL OF THIS PLAT IS NOT
OBLIGATE THE COUNTY OF CHARLESTON TO
ACCEPT FOR OWNERSHIP MAINTENANCE ANY
OF THE ROADS OR EASEMENTS SHOWN HEREON



A review of all matters shown on the Plat, without considering extrinsic evidence, shows the notations on the Plat related to agricultural use are due to Charleston County's determination at that time that the four lots did not meet the current minimum health department standards for a modified conventional sub-surface disposal system. Charleston County set forth a notation related to Lot C-1, as it apparently was sufficient for a modified conventional sub-surface disposal system. The language related to agricultural use only and not for building purposes did not include Lot C-1.

There was no notation that says Lots C-2, C-3, C-4, and C-5 were suitable for a modified conventional sub-surface disposal system. Thus, a proper reading of the Plat that gives effect to all provisions of the Plat is that those lots were not suitable for a modified conventional sub-surface disposal system. However, if sewer or a modified conventional sub-surface disposal system would become available, then those other lots could be used for building purposes.

The notation saying "not for building purposes" was not placed in the middle of the lots. This notation was not signed by the landowners. The landowners had signed another part of the Plat related to dedication of a road. They did not sign anywhere near this notation on the Plat, all

placed in that part of the Plat where the above-notations were placed by Charleston County and in similar typeface and font, different from the typeface and font used by the surveyor.

Plaintiff cites cases to support its argument that the Master erred in considering extrinsic evidence. None of these cases apply here or support Plaintiff's arguments.[5]

Plaintiff cites Bluffton Towne Ctr., LLC v. Gilleland-Prince, for the proposition that "[b]y referencing certain testimony and exhibits to support his interpretation of the lease, the master erred in considering extrinsic evidence outside the four corners of the contract." 412 S.C. 554, 572, 772 S.E.2d 882, 892 (Ct. App. 2015). In Bluffton, the appellate court reviewed the Master's determination of whether restrictions in a lease were enforceable where the Master determined the subject lease was unambiguous and then considered extrinsic evidence. Id. While the court found that the Master did err in considering extrinsic evidence after determining the lease was unambiguous, the court makes it clear that the error was harmless because the Master, in referencing extrinsic evidence, was simply setting forth alternative grounds for his ruling. The court explained:

> Based upon our review of the order as a whole, we find any error in considering extrinsic evidence was harmless because it is reasonable to infer the master was simply setting forth alternative grounds for his interpretation of the contract. See Williams, 363 S.C. at 123 n. 1, 609 S.E.2d at 814 n. 1 (noting that, in construing a judge's order, an appellate court must do so in light of the judge's intent "as discerned from the order as a whole"); Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 336, 676 S.E.2d 139, 145 (Ct. App. 2009) (stating it was "reasonable to infer that the circuit court was setting forth alternative grounds for its interpretation of the contract" by referencing certain testimony and exhibits in its order).
>
> Id.

[5] While Plaintiff argues the Master erred in considering extrinsic evidence, which is simply incorrect, Plaintiff cites to a document created years after the Plat, its title insurance policy and exceptions noted therein, to argue the property is restricted.

Further the court explained: "In construing a master's order, an appellate court must do so in light of the master's intent as discerned from the order as a whole. Adhering to this principle, this court has refused to hold parties bound by language in a lower court order that we found was not necessary to the decision of the issues presented." Id. (citing White's Mill Colony, Inc. v. Williams, 363 S.C. 117, 123 n. 1, 609 S.E.2d 811, 814 n. 1 (Ct. App. 2005) (internal quotations omitted).

Here, the extrinsic evidence was set forth in the Order because the Master made an alternative finding had he found the notations on the Plat to be ambiguous. Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 336, 676 S.E.2d 139, 145 (Ct. App. 2009) ("It is reasonable to infer that the circuit court was setting forth alternative grounds for its interpretation of the contract.").

In his ruling on the meaning of the notations, the Master expressly stated that he was reviewing only the four corners of the Plat and not considering extrinsic evidence. The Master did not cite to extrinsic evidence in setting forth his ruling on the plain meaning of the notations on the Plat. Any argument to the contrary is wholly without merit and is a gross misreading of the Order.

Plaintiff also relies upon the case of Defeo v. Community Services Assocs., Inc., No. 2007-UP-357, 2007 WL 8327948 (S.C. Ct. App. 2007). The plat in Defeo contained the following restriction on the lot in question: "RESERVED FOR FUTURE USE FOR GOLF COURSE." Id. at *1. In that case, the Court of Appeals rejected the developer's argument that this language merely reserved its right to develop the land for golf course use but did not prevent it from developing the land for other purposes, such as for residential use. Id. at *2. This Court held that nothing in the phrase conveyed a similar intent to develop the lot for non-golf course use, and

therefore "the clear, unambiguous language of the Plat restrict[ed] the Lot to golf course use only." Id. Plaintiff argues that the restriction in Defeo, is similar to the restriction at issue in our case. However, unlike Defeo, the notations the Plat here are grouped with other notations that, when read as a whole, support the Master's interpretation. Furthermore, Defeo is an unpublished opinion that has no precedential value. See Rule 220(a), SCACR; Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 338 S.C. 343, 349, 526 S.E.2d 253, 256 (Ct. App. 2000) ("unpublished opinions have no precedential value").

Further, Plaintiff cites SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla, 415 S.C. 72, 781 S.E.2d 115 (Ct. App. 2015), for the proposition that there are no 'magical words' required to create a restrictive covenant. (Appellant's Brief p. 17, n. 5). However, that same case holds that "[i]n order to enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by a plain and unmistakable implication." Id. at 83, 781 S.E.2d at 121.

Plaintiff relies on Marshall v. Columbia & E. C. Electric Street R. Co., 73 S. C. 241, 53 S. E. 417 (1906), which involved a circle shown on a plat that bounded plaintiff's lots also shown on the plat. The seller represented to plaintiff that the circle was dedicated for public use and would be kept open. The seller then tried to subdivide the circle into lots. The court found in favor of plaintiff, found the circle was dedicated to public use, and relied heavily on representations made by the seller to plaintiff. That case is not a restrictions case, but instead is a dedication and easement case. Also, the court in that case relied heavily on representations made by the seller to the plaintiff. That case simply does not apply here.

Because the notations on the Plat do not create restrictions, the Master should be affirmed.

IV. THE MASTER CORRECTLY MADE AN ALTERNATIVE FINDING AND RULING THAT, IF THE PLAT WAS FOUND TO BE AMBIGUOUS, THEN ALL EXTRINSIC EVIDENCE SHOWS THE NOTATIONS ON THE PLAT WERE PLACED ON THE PLAT BY CHARLESTON COUNTY AND WERE NOT INTENDED TO RESTRICT THE PROPERTY.

The Master correctly made an alternative ruling that, had he found the notations on the Plat to be ambiguous, then all extrinsic evidence shows the notations did not create a restriction. Moreover, if this Court were to find the notations on the Plat created an ambiguity as it relates to the issues raised in this appeal, it should affirm the Master's decision.

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) (citing 17A Am. Jur. 2d Contracts § 338, at 345 (1991)). Once the Court decides the language is ambiguous, evidence may be admitted showing the intent of the parties. Id.

"A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation." See Hawkins, 328 S.C. at 592, 493 S.E.2d at 878-79. Again, where a restriction on land is capable of two different constructions, the construction which least restricts the property is favored. Anderson v. Buonforte, 365 S.C. 482, 495, 617 S.E.2d 750, 757 (Ct. App. 2005).

If this Court finds the notations on the Plat to be ambiguous, this Court must then look at extrinsic evidence to determine the intent of the parties. At the same time, the Court must remember the essential guideposts created by our case law that, where there is doubt, the doubt must be resolved in favor of the free use of property and where a restriction on land is capable of two different constructions, the construction which least restricts the property is favored.

Here, the evidence conclusively shows the owners of the property at that time, the Heirs of James Roper, did not want the property restricted. They sought a variance to allow the subdivision

of the lots. Because the lots were not suitable for a septic system, Charleston County placed the notations on the Plat. The owners of the property wanted the lots to be used for residential purposes when sewer was available. The surveyor testified as to why these notations were placed on the Plat, and they were not placed on the Plat to create a restriction. Plaintiff provided no evidence to the contrary.

As a result, the undisputed extrinsic evidence, considered by the Master if he had alternatively found the Plat to be ambiguous, shows there was no intent to create a private restriction on the use of the lots. See Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (ambiguities must be resolved in favor of the free use of property).

Plaintiff relies on language in some of the deeds that states the conveyances are being made subject to all restrictions, reservations, easements and other limitations that appear of record including on the recorded Plat. (Appellant's Brief p. 19). Plaintiff concludes the "subject to" language creates a restriction. Id.

However, this language does not create a restriction. It is just a limitation on the general warranty provided in the respective deeds. A conveyance that "is made 'subject to' restrictions set forth in some other deed or instrument referred to will not, without more, make the restrictions applicable to the property conveyed, if in fact the restrictions do not otherwise apply thereto." 20 Am. Jur. 2d Covenants, Conditions, and Restrictions § 151 (2017).

> If the "subject to" language of the instrument in question refers to restrictions which in fact do not exist at all at the time of the conveyance, it does not operate to impose the supposed restrictions on the granted land; nor does a conveyance made expressly subject to restrictions existing on the conveyed land "if any such there be" thereby impose restrictions where none existed theretofore. A conveyance of land with warranties which are expressly made "subject to" the restrictions set forth in a certain instrument referred to does not subject the conveyed lands to the restrictions so designated when by their terms the restrictions do not apply to such land. *While conveyances "subject to" restrictions give notice that such restrictions are of record, they are not an acknowledgment of the validity of such restrictions.*

Id. (emphasis added).

Here, just because some of the deeds provide that the property is being conveyed subject to restrictions that "may appear of record on the recorded plats," that language does not create a restriction where none exists. Nor does the language create a restriction when there is no plain and unmistakable implication to create a restriction. Because no restrictions are created by the subject notations on the Plat, the subject language in some of these deeds does not create a restriction.

The Master properly and correctly made an alternative finding and ruling based on if he had found the Plat to be ambiguous. All extrinsic evidence shows the notations on the Plat were placed on the plat by Charleston County and were not intended to restrict the property. Accordingly, the Master should be affirmed.

V. THE MASTER DID NOT GRANT SUMMARY JUDGMENT PREMATURELY.

Plaintiff argues the Master granted summary judgment prematurely. Even assuming this argument is preserved for review, this argument is without merit.

Plaintiff argues summary judgment was premature because it was granted before Plaintiff could take many key party depositions. See (Appellant's Brief p. 2 n. 2) ("Appellant's deposition is the sole deposition that has been taken in this case. The surveyor's deposition has not been taken. None of the Defendants' depositions have been taken . . . These are material questions which must be tried before a factfinder, and therefore the Court erred in granting summary judgment to Respondents."); (Id. at p. 8 n. 3) ("Appellant has not yet been able [to] depose Respondent Roberts or Respondent Cook, who currently reside in California. Summary judgment was a drastic and premature remedy where, as here, discovery-including taking party depositions-had not yet been completed.").

"A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009); see also Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (holding that a summary judgment motion heard four months after the action was filed and granted nine months after the action was filed was not premature on grounds that plaintiffs did not have a full and fair opportunity for discovery and finding the nonmoving party must demonstrate it is not merely engaged in a 'fishing expedition' by showing the likelihood that further discovery will uncover additional relevant evidence); Rule 56(f), SCRCP ("Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition . . . the court . . . may order a continuance to permit . . . discovery to be had . . . ."); Doe v. Batson, 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001) ("Thus, Rule 56(f) requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery.").

Here, Plaintiff had a full and fair opportunity to participate in discovery before the motion for summary judgment was heard. Plaintiff filed its Complaint on March 28, 2016, nearly a year and six months before the summary judgment hearing on September 21, 2017. In that span of time, Defendants were able to depose Plaintiff. However, Plaintiff never noticed a single deposition, yet Plaintiff now complains that, at the time of the summary judgment hearing, Plaintiff had not yet deposed any of the Defendants or the surveyor.

Plaintiff has not provided a good reason why nearly a year and a half is not sufficient time in this case to have developed facts in opposition to Defendants' motion for summary judgment.

Thus, Plaintiff had a full and fair opportunity to engage in discovery and the Master's grant of summary judgment was not premature.

CONCLUSION

For the above-referenced reasons, the Master's Order should be affirmed.

Respectfully submitted,

Demetri K. Koutrakos, SC Bar #11318
Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite #200
P. O. Box 1390
Columbia, SC 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: jimkoutrakos@callisontighe.com

ATTORNEYS FOR RESPONDENTS

May 14, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAY 14 2018
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity
Ninth Judicial Circuit

Case No. 2016-CP-10-1560
Appellate Case No. 2017-002546

Carpenter Braselton, LLC, ... Appellant,

vs.

Ashley Roberts, Jeremy Cook, and Salaheddine Ezzaoudi, ... Respondents.

CERTIFICATE OF SERVICE

I, Kathleen S. Romero, an employee of Callison Tighe & Robinson LLC, Attorneys for the Respondents, do hereby certify that, on this date, I caused to be served a copy of the **Initial Brief of Respondents** and a copy of **Respondents' Designation of Matter to be Included in the Record on Appeal** upon Appellant's counsel, by depositing a copy of the same in the United States mail, with proper first-class postage affixed thereon, addressed as follows:

John E. Rosen, Esquire
Liam D. Duffy, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting Street, Suite #400
P. O. Box 893
Charleston, SC 29402

Kathleen S. Romero

May 14, 2018