THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Case No. 2012-CP-18-02583

Jennifer McFarland and Carlton Holcombe,

Appellants,

v.

Thomas Morris and David Hannemann,

Respondents.

FINAL REPLY BRIEF OF APPELLANTS

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Believing, most respectfully, that the merit of their position is amply set forth in their principal brief, Appellants[1] make these brief points in reply to Respondents.

ARGUMENT IN REPLY

1. No, this appeal should not be dismissed for lack of subject matter jurisdiction.

"Subject matter jurisdiction is [a court's] power to hear and determine cases of the general class to which the proceedings in question belong." *Dove v. Gold Kist*, 314 S.C. 235, 237–238, 442 S.E.2d 598, 600 (1994) (citations and internal quotations omitted). This is an action for declaratory (and related injunctive) relief,[2] and without question, the trial court (specifically, the South Carolina Court of Common Pleas[3]) was duly empowered to hear and determine it. *See* S.C. Code Ann. § 15-53-20 ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground

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[1] Shorthand references already defined in Appellants' principal brief (like referring to Mrs. McFarland and Mr. Holcombe as "Appellants," collectively) are continued in this reply brief.

[2] (*See* Br. of Appellants' pp. 4–5; *see also* R. pp. 38–39.)

[3] *See Id.* at 238, 442 S.E.2d at 600 ("There is but one Circuit Court in South Carolina, with uniform subject matter jurisdiction throughout the State. The circuit court is made up of the court of common pleas, which hears civil actions, and the court of general sessions, which hears criminal cases. The phrase court of common pleas . . . refers to the South Carolina Court of Common Pleas, and not a particular circuit or county.") (citations and internal quotations omitted).

that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree."). Likewise, this Court is duly empowered to hear and determine this appeal from the trial court's decision. *See* S.C. Code Ann. § 18-9-10 ("An appeal may be taken to the Supreme Court or the Court of Appeals in the cases mentioned in Sections 14-3-320 and 14-3-330."); S.C. Code Ann. § 14-3-320 ("The Supreme Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases when the facts are settled by a jury and the verdict not set aside . . . ."); S.C. Code Ann. § 14-3-330 ("The Supreme Court[] shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from; . . . (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and (4) An interlocutory order or decree in a court of common pleas granting, continuing,

modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.").

Moreover, this Court has already ruled—in its decision in Appellants' prior (successful) appeal of the trial court's grant of summary judgment in favor of Respondents on the Declaratory Judgment Claim—that the Declaratory Judgment Claim constitutes a justiciable controversy.[4] Accordingly, besides being without

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[4] In pertinent part, the Court's decision reads as follows:

> Appellants McFarland and Holcombe argue the circuit court erred by granting summary judgment on their declaratory judgment cause of action because they showed a justiciable controversy. We agree. McFarland and Holcombe properly stated a cause of action under the Declaratory Judgments Act (DJA) because a justiciable controversy existed. *See* S.C. Code Ann. § 15-53-30 (2005) ("Any person interested under a . . . written contract or other writings constituting a contract or whose rights, status[,] or other legal relations are affected by a . . . contract . . . may have determined any question of construction or validity arising under the instrument . . . [or] contract . . . and obtain a declaration of rights, status[,] or other legal relations thereunder."); *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) ("Under the [DJA], a party whose rights, status, or other legal relations are affected by a contract may seek a court's determination of any question of construction or validity of the contract and obtain a declaration of the party's rights, status, or other legal relations thereunder."); *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) ("To state a cause of action under the [DJA], a party must demonstrate a justiciable controversy. 'A justiciable controversy is a real and substantial controversy which is

appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical[,] or abstract character.'" (citation omitted) (quoting *Power v. McNair*, 255 S.C. 150, 154, 177 S.E.2d 551, 553 (1970))); *id.* (explaining the DJA "should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships").

McFarland and Holcombe's allegations amount to claims that Respondents Morris and Hannemann were violating the covenants and restrictions (C&R), which was an agreement contractual in nature, in their capacities as directors. They claimed Morris and Hannemann had already violated the C&R, rather than alleging some hypothetical, future event would violate the C&R. We believe such allegations amount to a claim of an existing controversy regarding the rights and status of a writing or contract. Such allegations reasonably come within section 15-53-30 and satisfy the requirement for a justiciable controversy.

Additionally, we find the circuit court erred by requiring McFarland and Holcombe to establish constitutional standing, which includes showing an injury in fact. The circuit court explained they lacked standing to bring a declaratory judgment action because they failed to satisfy our supreme court's test for constitutional standing. However, we find McFarland and Holcombe acquired standing to bring this cause of action by statute, specifically the DJA. *See ATC S., Inc. v. Charleston Cty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (explaining there are three ways a party may acquire standing, including "by statute"). Therefore, they were not required to possess constitutional standing.

(R. pp. 58–62.)

merit, any attempt by Respondents to challenge the jusiticiability of the Declaratory Judgment Claim now improper because of issue preclusion[5] and/or the law of the case doctrine. *See Sloan Const. Co., Inc. v. Southco Grassing, Inc.*, 395 S.C. 164, 717 S.E.2d 603 (2011) ("Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.") (citation and internal quotation omitted).

2. **No, this appeal should not be dismissed because the Appellants failed to state the issues on appeal in conformance with Rule 208, SCACR; however, out of an abundance of caution, to the extent that the Court may find fault with Appellants' issue statement, to allow Appellants to correct the same—a task which would appear to be as simple as copying and pasting their argument headings (slightly revised so as to be phrased as questions) into their issue statement—is consistent with the interests of justice and works no undue prejudice on Respondents.**

"[A]ppellate rules should not be written or interpreted to create a trap for the unwary lawyer or party,"[6] yet that is exactly what Respondents would have this Court do here. The trial court decided this nonjury matter in a 17-page order that enumerates 20 separate findings of fact and 7 conclusions of law,[7] and Appellants

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[5] *See Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 834–835 (1997) (explaining that issue preclusion bars re-litigation of a particular issue that has already been litigated and decided).

[6] *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004).

[7] (*See generally* R. pp. 36–53.)

take issue with nearly all of them. (*See generally* Br. of Appellants.) Appellants' issue statement does not warrant dismissal. It is a meaningful and reasonably tailored expression of the substance of each argument they present to the Court for review with respect to each of the various specific findings and conclusions in issue. *Cf. Johnson v. Roberts*, 422 S.C. 406, 411, 812 S.E.2d 207, 210 (Ct. App. 2018) ("The factual theory Appellant presented to the circuit court is not identical to the factual theory she argues here. *But Appellant's statement of issues on appeal is broad enough to encompass the argument she presents to this court . . . .*") (emphasis added).

But, out of an abundance of caution, even to the extent that the Court may find fault with Appellants' issue statement, dismissal of Appellants' appeal is unwarranted. Appellants can and, most respectfully, should—given the interests of justice (favoring judgment on the merits) and the lack of any undue prejudice to Respondents—be allowed to amend their brief to correct any such problem, a task which would appear to require no more than copying and pasting their argument headings (slightly revised so as to be phrased as questions) into their issue statement. *See Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992) (finding dismissal of an appeal was not mandatory where the brief filed by the appellant failed to comply with Rule in that it was not correctly organized and labeled, the issues were not distinctively headed, the table of authorities was not alphabetized or referenced to

the body of the brief, the statement of the case contained contested matter and omitted required information, and the arguments contained no citations to the record or to the cases listed in the table of authorities; however, the appellant would be required to amend his brief).

CONCLUSION

For the foregoing reasons, along with those already set forth in their principal brief, Appellants ask the Court to reverse the trial court and enter, or direct that the trial court enter, judgment in their favor or, alternatively, remand this matter to the trial court for any further proceedings necessary, to include, without limitation, a new trial.

Respectfully submitted,
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Dated: 11/19/19

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APPELLANTS' CERTIFICATION FOR FINAL BRIEFS

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I, Russell G. Hines, do hereby certify that the **Final Brief of Appellants** and the **Final Reply Brief of Appellants** comply with Rule 211(b), SCACR. Additionally, the undersigned hereby certifies that this filing complies with the Supreme Court order of April 15, 2014.

Respectfully submitted,

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