THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

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

CARPENTER BRASELTON, LLC, ... Appellant,

vs.

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

APPELLANT'S FINAL BRIEF

John E. Rosen (SC Bar No. 72625)
Liam D. Duffy (SC Bar No. 102234)
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
jrosen@rrhlawfirm.com
lduffy@rrhlawfirm.com
(843) 577-6726

ATTORNEYS FOR THE APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err as a matter of law in allowing and relying upon extrinsic evidence to conclude there was no intent to create a restriction on the use of the parties' adjoining lots, despite the plain language on the face of the Plat that the lots were to be utilized "for agricultural use only"?

2. Did the trial court err as a matter of law in concluding that the language: "LOTS C-2, C-3, C-4 & C-5 FOR AGRICULTURAL USE ONLY; NOT TO BE USED FOR BUILDING PURPOSES" was *not* a valid restriction on the use of those properties?

STATEMENT OF THE CASE

This case arises from a dispute between adjoining landowners over the meaning and effect of certain restrictive language placed on a Plat (hereinafter the "Plat") which depicts the parties' properties, and which is incorporated by reference in the pertinent deeds. Specifically, the Plat—which describes five (5) lots (delineated as Lots C-1 through C-5)—contains the following notation:

> THESE LOTS C-2, C-3, C-4 & C-5 FOR AGRICULTURAL USE ONLY; NOT TO BE USED FOR BUILDING PURPOSES.[1]

As discussed more fully below, Appellant is the owner of lot C-5, and Respondents are the owners of lots C-2, C-3, and C-4. Appellant filed this action on March 28, 2016, seeking declaratory judgment and a permanent injunction enjoining Respondents from building residences or other structures upon their lots because those lots are burdened by the "agricultural use only" restriction described above.

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[1] This notation does not apply to Lot C-1, and therefore that property is not implicated by this lawsuit.

On or about June 17, 2016 Respondents served their Answers and Counterclaims, in which they, too, sought declaratory judgment as to the effect of the restriction contained on the Plat. Respondents claimed that the notation on the Plat was not a restriction on the use of their properties. Instead, they claimed the "agricultural use only" notation was a stamp placed on the Plat by Charleston County which did not prevent future construction, if and when the County later determined that the land was suitable for construction. Respondents likewise sought to quiet title to their respective lots and requested an order from the Court declaring that they own lots C-2, C-3, and C-4 free and clear of any restriction, and declaring that they are entitled to build residences or other structures on their land, despite the "agricultural use only" notation on the Plat.

After written discovery was exchanged, and Appellant's deposition was taken (through its corporate designee, Mr. Edward L. Terry) on March 22, 2017,[2] Respondents filed a Motion for Summary Judgment on August 2, 2017. Appellant opposed the motion, and a hearing was held on September 21, 2017 before Mikell R. Scarborough, Master-in-Equity for Charleston County. Thereafter, on November 14, 2017, the trial court issued its Order granting summary judgment to Respondents. Appellant received written notice of the entry of the Order on November 15, 2017. Appellant filed a Notice of Appeal on December 12, 2017.

[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 Respondents' depositions have been taken. And importantly, no depositions have been taken of the heirs of James Roper to understand more fully their intent with respect to the restrictions placed on lots C-2, C-3, C-4 and C-5. These are material questions which must be tried before a factfinder, and therefore the Court erred in granting summary judgment to Respondents.

STATEMENT OF THE 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. The property was surveyed by F. Elliotte Quinn, III, a professional land surveyor, who prepared the 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." The Plat was recorded December 31, 1990, in the RMC Office for Charleston County in Plat Book CB at Page 130.

2. Acquisition of Lots.

A. Lot C-5: Appellant 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

Appellant Carpenter Braselton, LLC owns Lot C-5. Edward L. Terry, an experienced real estate developer, is the authorized agent of Appellant. Mr. Terry's wife

is the sole member and manager of Appellant. In his capacity as authorized agent of Appellant, Mr. Terry was involved in the purchase of Lot C-5, including reviewing related documents and visiting the property.

Appellant 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.

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; 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"); 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.

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: Respondent 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, III, 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

Respondent 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.

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.

Lot C-4 is unimproved.

C. Lot C-3: Respondents 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

Respondents Roberts and 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.

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.

Respondents Ashley Roberts and Jeremy Cook constructed a home on Lot C-3, which construction was completed February 5, 2009.

D. Lot C-2: Respondents 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.

Respondents 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.

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.

Lot C-2 is unimproved.

3. <u>This Action.</u>

In this action, Appellant sought declaratory judgment that the Plat contained a valid and enforceable restriction on the lots of all of the parties. The deeds conveying Lots C-2, C-3, C-4 and C-5 to Appellant and Respondents specifically state that the conveyances are being made subject to all restrictions, reservations, easements, and other limitations that appear of record, *including on the recorded Plat.* R. p. 648, ln. 10-15. Each of the deeds conveying Lots C-2, C-3, C-4 and C-5 to Appellant and Respondents specifically reference the Plat. The Plat has been public record since December 31, 1990 and contains a notation near the center of the page in all capital letters that reads:

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

The Plat was recorded December 31, 1990 in the RMC Office for Charleston County in Plat Book CB at Page 130. No document or record has ever been filed purporting to amend, waive, or rescind the agricultural use restriction stated on the Plat.

Moreover, Appellant purchased Lot C-5 in reliance on the agricultural restriction stated in the Plat, which created and limited the use of Lots C-2, C-3, C-4 and C-5. R. p. 646, ln. 1-p. 647, ln. 21. Appellant also relied on its review of the plat and advice from its attorney. R. p. 646, ln. 19-p. 647, ln. 22. Respondents' contentions that Appellant was

made aware through Mr. Terry that the Plat's agricultural use restriction was somehow defective is without merit or support in the record.[3]

Appellant also relied on its title insurance company and the title insurance policy it issued as to Lot C-5 to conclude that the restriction on the property for only agricultural use was valid. R. p. 644, ln. 25-p. 645, ln. 10. The title insurance company took exception to the agricultural building restriction in its policy. See R. pp. 615-619. That policy provides as follows:

> Subject to any and all applicable easements, restrictions, conditions, rights-of-way, setback and other matters which may be disclosed by that certain plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 AC. 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.
>
> **Note Building Restriction shown on said plat: "These lots C-2, C-3, C-4 and C-5 for Agricultural Use only, not to be used for Building Purposes**.

Id. (emphasis added).

In response to Appellant's lawsuit, Respondents sought their own declaratory judgment and introduced an affidavit of Mr. Elliotte Quinn, along with a litany of other

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[3] Appellant has not yet been able 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. See Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) ("[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery."); see also Robertson v. First Union Nat. Bank, 350 S.C. 339, 346–47, 565 S.E.2d 309, 313 (Ct. App. 2002) ("Generally, it is not premature for the trial court to grant summary judgment ***after all relevant parties have been deposed*** because the litigants have had a full and fair opportunity to develop the record in the case.") (emphasis added).

documents obtained through FOIA requests and discovery, to support their position that no valid restriction on the use of their properties exists. Respondents now desire to sell their lots to purchasers who intend to build residential structures on one or more of the lots.

The underlying action before the trial court presented a relatively simple and straight-forward matter. Namely, whether the Plat (and the restrictive language contained therein) unambiguously speaks for itself, or whether it is ambiguous such that extrinsic evidence should have been allowed to explain, contradict, elaborate upon, or otherwise controvert the ordinary, plain, and unambiguous. Respondents sought, and were granted summary judgment because the trial court ultimately allowed the introduction of extrinsic evidence which injected a contrived ambiguity into the four corners of the Plat, which is unequivocally unambiguous on its face.

ARGUMENT

I. APPLICABLE STANDARD OF REVIEW

The appellate court must review a grant of summary judgment under the same standard of review applied by the trial judge. Zurich Am. Ins. Co. v. Tolbert, 378 S.C. 493, 496-97, 662 S.E.2d 606, 607-08 (Ct. App. 2008) aff'd, 387 S.C. 280, 692 S.E.2d 523 (2010) (citing Cowburn v. Leventis, 366 S.C. 20, 30, 619 S.E.2d 437, 443 (Ct. App. 2005)). "Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law." Id. (citing S.C.R. Civ. P. 56(c)). When determining whether a material issue of fact exists, the appellate court must view all evidence and the inferences to be drawn in a light most favorable to the non-moving party. Murphy v. Tyndall, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009), reh'g denied (Aug. 25, 2009) (citing Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161,

165 (2003)). If more than one inference can be drawn, then the task is one for the jury, and summary judgment should not be granted. Id. (citing Vaughan v. Town of Lyman, 370 S.C. 436, 448, 635 S.E.2d 631, 638 (2006).

II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN RELYING ON EXTRINSIC EVIDENCE TO CONCLUDE THAT THE UNAMBIGUOUS "AGRICULTURAL USE ONLY" NOTATION ON THE PLAT DID NOT CREATE A VALID USE RESTRICTION.

The trial court committed reversible error in granting summary judgment to the Respondents based on its clearly erroneous reliance on extrinsic evidence to reach the conclusion that the Plat's clear "agricultural use only" limitation was not a valid restriction on the use of Respondents' land. Under the relevant facts of this case and a proper application of the law, extrinsic evidence should not have been allowed because the restriction is unambiguous on its face and not susceptible to any interpretation other than that the Respondents' land is to be put to agricultural use only, and not to be used for building purposes.

A. The trial court 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.

Restrictive covenants are contractual in nature. Seabrook Island Prop. Owners' Ass'n v. Berger, 616 S.E.2d 431, 434 (S.C. Ct. App. 2005). "A restriction 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 the property." Hamilton v. CCM, Inc., 263 S.E.2d 378, 380 (S.C. 1980). Despite this general rule of strict construction, such restrictive covenants remain fully enforceable when their intent is clearly expressed. Sea Pines Plantation Co. v. Wells, 363 S.E.2d 891, 894 (S.C. 1987). "A restrictive covenant will be enforced if the covenant expresses the

party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant." Id. Where the language used in a restrictive covenant is unambiguous, there is no room for construction and the language must be enforced in accordance with its plain meaning. Donald E. Baltz, Inc. v. R.V. Chandler & Co., 248 S.C. 484, 151 S.E.2d 441 (1966); Hardy v. Aiken, 631 S.E.2d 539, 542 (2006).

It is a fundamental aspect of contract and property law that the intention of the grantor must be found within the four corners of the document. Windham v. Riddle, 672 S.E.2d 578, 582–83 (S.C. 2009); Moser v. Gosnell, 513 S.E.2d 123, 126 (S.C. Ct. App. 1999) (stating when a covenant is clear and unambiguous, the court looks only to the language of the covenant and not to extrinsic evidence to determine the intent of the parties). It is error for a court to rely on extrinsic evidence where a document is unambiguous on its face and where its meaning can be ascertained from within the four corners of the document. See Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C. 554, 572, 772 S.E.2d 882, 892 (Ct. App. 2015) ("By 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.");[4] Triple-A Baseball Club Assocs. v. Ne. Baseball, Inc., 832 F.2d 214, 220–21 (1st Cir. 1987) (holding that "[i]n the absence of any express language or any ambiguous language, which would permit the admission of relevant

[4] In Bluffton, the South Carolina Supreme Court ultimately determined that the master's error was harmless because the "master's interpretation—based on the extrinsic evidence presented at trial—was consistent with the contract's language." Bluffton, 412 S.C. at 572, 772 S.E.2d at 892. Here, the master's conclusion that the "notations on the Plat do not create restrictions," Order p. 12, is patently *inconsistent* with the Plat's language, which on its face clearly expresses a *restriction* to "agricultural use only."

extrinsic evidence," the four corners of the document shall govern the court's interpretation).

Furthermore, where a deed describes land as it is shown on a plat, the plat becomes part of the deed. Bellamy v. Bellamy, 292 S.C. 107, 110, 355 S.E.2d 1, 3 (Ct. App. 1987); see also 20 Am. Jur. 2d Covenants, Conditions and Restrictions § 158, n. 2 citing Parrish v. Newbury, 279 S.W.2d 229 (Ky. 1955) ("[B]uilding restrictions properly written upon a recordable plat become part of [the deed] and constitute constructive public notice of the restrictions."). And it is fundamental law in South Carolina that "if a deed description is unambiguous, extrinsic evidence cannot add to, subtract from, vary or explain its terms, in the absence of fraud, accident or mistake in its procurement." Bellamy at 111.

Bellamy was a case in which the plaintiff sought declaratory judgment to resolve a boundary line dispute between the parties. Id. at 108. The plaintiff's father had conveyed to him certain property, a portion of which the plaintiff later conveyed to the defendant. Id. at 108–09. The property was clearly and accurately described in the deed which conveyed it. Id. at 111. The deed contained a written description of the land, and then incorporated the plat by reference using the following phrase: "*as reference to above mentioned plat will fully show.*" Id. at 108.

Over the defendant's objection, the master-in-equity allowed the plaintiff to testify about his deceased father's (and his own) intentions in making the relevant conveyances. Bellamy at 108–09. The sole issue on appeal was whether the trial judge erred in allowing the extrinsic evidence relating to the intent of the plaintiff and his father. Id. at 110. The Court of Appeals reversed the master's finding in favor of the plaintiff, stating that [s]ince there was no ambiguity in the description of the realty conveyed by the deed, [the

plaintiff]'s intent must be determined from within the four corners of the deed . . . ." Id. at 111. It noted that "[e]xtrinsic evidence is admissible to resolve ambiguities, not to create them where none exists." Id. Therefore, the Court concluded that the trial court erred in allowing extrinsic evidence relating subsequent plats of the property and relating to the plaintiff's and his father's intent. Id.

The case of Defeo v. Community Services Assocs., Inc., No. 2007-UP-357, 2007 WL 8327948 (S.C. Ct. App. 2007), is also instructive. 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. Defeo, 2007 WL 8327948 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. (emphasis added).

Here, the restriction on Appellant's and Respondents' land comes in the form of the "agricultural use only" notation on the Plat, which is expressly referenced and incorporated in the pertinent deeds.

In its Order granting Respondents' Motion for Summary Judgment, the trial court 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 no create restrictions, and certainly do not create restrictions enforceable by [Appellant], [Respondents] are entitled to summary judgment.
>
> R. pp. 16-17 (emphasis added).

As shown above, 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. See R. p. 676, ln. 9-11 ("Good or bad, this is extrinsic evidence because it has to do with my background."). 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. The letter from the heirs and the sworn statements contained in Mr. Quinn's Affidavit both constitute impermissible extrinsic evidence. Both pieces of extrinsic evidence are akin to the testimony regarding intent that this Court found to be erroneously admitted in Bellamy, where the four corners of the deed and plat were unambiguous in meaning.

In this case, setting aside all extrinsic evidence and looking solely within the four corners of the deeds (and the Plat which is part of them), only one conclusion can be reached—that the properties at issue are restricted to "agricultural use only, [and] not to be used for building purposes." Merriam-Webster Dictionary defines the word "agricultural" as meaning "of, relating to, used in, or concerned with agriculture" – i.e., farming. (R. pp.

693-702.) It defines "only" as meaning "alone in a class or category," "as a single fact or instance and nothing more or different," or "with the *restriction* that." (R. pp. 703-716.) Under any of those accepted definitions, it is clear that the notation on the Plat prohibits the use of Lots C-2, C-3, C-4 and C-5 for anything *other than* agricultural use.

As a result, the trial court 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. This Court should reverse the trial court's ruling and should instead interpret the plain and unambiguous language of the Plat's restriction, without reference to extrinsic evidence.

B. The trial court erred as a matter of law in finding that the "agricultural use only" notation did not create a valid restriction on the use of Respondents' land.

There are a number of ways to create valid restrictions on the use of land, including by a plat referenced within a deed. See Queens Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 628 S.E.2d 902, 913 (S.C. Ct. App. 2006) (restrictions can be created: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development); see also Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975) ("[P]urchaser of lots with reference to the plat of the subdivision acquired every easement, privilege and advantage shown upon said plat."). Although the Plat in this case was signed, even unsigned restrictions can create valid restrictions on property. See 17 S.C. Jur. Covenants § 63 (citing McDonald v. Welborn, 220 S. C. 10, 66 S. E. 2d 327 (1951) for the proposition that "(1) irrespective of their validity, the restrictions were incorporated

by reference into the deed to the grantees; and (2) in any event, the unsigned restrictions gave notice of the restrictions and the general scheme incorporated in them.").

Murrells Inlet v. Ward, 378 S.C. 225 (Ct. App. 2008), is a case which demonstrates the significance of restrictive language located on a plat description—*referenced by the deed.* 378 S.C. 225 (Ct. App. 2008). In Murrells, an easement was created when the owner (Ward) subdivided a large tract of land in an effort to allow her children to live and enjoy the property. Id. at 228. Though Ward admitted she provided the fifty foot right-of-way road access pursuant to Horry County Zoning and Planning Regulations, she argued that the surveyor erroneously included the easement in the plat, and that she never intended for this use. Id. First, the Court of Appeals stated the general rules regarding restricting land use, focusing on the extensive case law supporting the view that a plat mentioned in a deed, *is part of the deed.* Id. at 232–33 (emphasis added). More specifically, the court said an "easement referenced in the plat is dedicated to the use of the owners of the lots, their successors in title, and to the public in general." Id. at 233. Further still, "[a]s to the grantor, who conveyed the property with reference to the plat, and the grantee and his successors, the dedication of the easement is complete at the time the conveyance is made." Id.

The Court of Appeals explained that "when Ward subdivided the property and recorded a plat referencing a fifty foot right-of-way, it may be inferred that she intended the right-of-way to be a private easement dedicated to the use of the lot owners, their successors in title, and the public." Id. at 236. Furthermore, "[b]y recording the easement on the plat, Ward evidenced an intention to grant that easement to any future lot owners in the subdivision." Id. Importantly, the Court of Appeals emphasized that "[s]ubsequent

purchasers are *entitled to rely on recorded deeds and plats* to determine their rights in respect to property." Id. (emphasis added); see also Bomar v. Echols, 270 S.C. 676, 679, 244 S.E.2d 308, 310 (1978) (explaining restrictive covenants arising by implication and stating, "where the owner of a tract of land subdivides it and sells the distinct parcels thereto to separate grantees, imposing restrictions on its use pursuant to a general plan of development or improvement, such restrictions may be enforced by any grantee against any other grantee").[5] Thus, regardless of what she "now argues were her intentions at the time the plat was recorded," it would be unfair to deny a subsequent purchaser the right to use the easement since it "relied on the recorded plat when it purchased [the lot]" and since the "dedication of the private easement was complete when Ward originally conveyed the lot." Id.

Likewise, the settled principles of Marshall v. Columbia & E.C. Electric Street Ry. Co., 73 S.C. 241, 53 S.E. 417 (S.C. 1906) provide guidance in this matter.[6] In Marshall, the defendant owned a large acreage which was platted for the purpose of laying out the town of Eau Claire, South Carolina. Marshall, 53 S.E. at 418. At the intersection of two main streets, about four acres were designated on the map as the 'Circle.' Id. The plaintiff purchased large abutting lots which were described by reference to a plat, and the 'Circle' was designated as one of the boundaries of her property. Id. The defendant also orally

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[5] There are no 'magical words' required to create a restrictive covenant. SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla, 415 S.C. 72, 84 (Ct. App. 2015).

[6]While Marshall deals with an easement, as opposed to a restrictive covenant, for purposes of "incorporation by reference"—this difference is immaterial. See e.g., Newington Plantation Estates Ass'n v. Newington Plantation Estates, 318 S.C. 362, 365 (1995) (finding both restrictive covenants and easements based on a recorded plat referenced in a deed).

represented to the plaintiff that the 'Circle' which bordered her lots had been dedicated for public purposes and would be "kept open," a fact upon which the plaintiff relied in making the purchase. Id. The defendant later altered its plan and subdivided the area of the 'Circle' into lots which were sold to various purchasers. Id.

The plaintiff brought an action to enjoin the defendant and its subsequent purchasers from building on the 'Circle' previously dedicated for public uses only. Marshall, 53 S.E. at 418. The court concluded that the seller had dedicated the 'Circle' to public uses and that the plaintiff, having bought her land in reliance on that fact, had an easement in the 'Circle' area and none of it could be sold as lots to others who had notice of her contention that it should remain open to the public. Id. at 419. In affirming the lower court's issuance of a permanent injunction, the South Carolina Supreme Court said that, "[e]ven if the 'Circle' was not dedicated so as to confer rights that could be enforced by the public, nevertheless, if the [defendant] represented to the plaintiff that the 'Circle' would be kept open, and thereby induced the plaintiff to purchase her lots, such representations would be binding upon the defendant." Id. at 421.

Here, the language of the plat at issue is clear and unambiguous. It states: "THESE LOTS C-2, C-3, C-4, C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES." As in Defoe, this language unequivocally created a restrictive covenant for the use of the properties in question. Appellant purchased Lot C-5 in reliance on the agricultural restriction stated in the Plat (which created and limited the use of Lots C-2, C-3, C-4 and C-5), as Appellant intended to, and did, in fact, build a barn and is now utilizing its property adjacent to these lots for a horse farm. Appellant was entitled to rely

on the recorded deeds and plat which contained the restrictive language. See Murrells, 378 S.C. at 226.

In their Motion for Summary Judgment, Respondents claimed that Appellant bought Lot C-5 after Respondent Roberts' house was already built on Lot C-3, and therefore, Appellant must have known there were issues with the agricultural restriction on the Plat. However, Appellant testified that he relied on his title insurance company and the title insurance policy it issued as to Lot C-5 to conclude that the restriction on the property for only agricultural use was, in fact, valid. R. p. 644, ln. 25-p. 645, ln. 10. The title insurance company took exception to the agricultural building restriction in its policy. See R. pp. 615-619. That policy provides as follows:

> Subject to any and all applicable easements, restrictions, conditions, rights-of-way, setback and other matters which may be disclosed by that certain plat entitled, "PLAT OF THE SUBDIVISION OF A 11.95 AC. 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.
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> **Note Building Restriction shown on said plat: 'These lots C-2, C-3, C-4 and C-5 for Agricultural Use only, not to be used for Building Purposes.'**

The deeds conveying Lots C-2, C-3, C-4 and C-5 specifically state that the conveyances are being made subject to all restrictions, reservations, easements and other limitations that appear of record *including on the recorded Plat.* R. p. 648, ln. 10-15. Appellant relied on its review of the Plat and advice from his attorney. R. p. 646, ln. 19-p. 647, ln. 22. Appellant also stated that it would not have bought lot C-5—at least not for the price which was paid—if there had not been the "agricultural use only" restriction on

the adjoining lots. R. p. 643, ln. 10-21. The Plat created a valid restrictive covenant that requires the Lots C-2, C-3, C-4 and C-5 be used for agricultural purposes only.

The well-established law in this state, as discussed above, is that a restrictive use provision located on a plat which is referenced by a deed can operate as a valid restriction on the use of property. Such is the case here. Furthermore, if any inference is to be made, it must be made in the light most favorable to Appellant. Murphy, 384 S.C. at 54, 681 S.E.2d at 30. Therefore, based on the foregoing analysis, the trial court erred as a matter of law in finding that the Plat's clear agricultural use limitation did not create a valid restriction on the use of Respondents' land.

CONCLUSION

For the reasons stated, this Court should reverse the trial court's Order granting summary judgment to the Respondents.

ROSEN, ROSEN & HAGOOD, LLC

John E. Rosen, Esquire
Liam D. Duffy, Esquire
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726 (o)
(843) 724-8036 (f)

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
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