

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

SC Court of Appeals

Mikell R. Scarborough, Master-in-Equity

Case No. 2012-213155

Rivers Point Row Horizontal Property Regime a/k/a Rivers Point Row Property Owners
Association, Inc.,.....Respondents,

v.

Palms Properties, LLC,.....Defendant.

Palms Properties, LLC,.....Third-Party Plaintiff,

v.

Rivers Point Row, LLC, John Derbyshire, Linda Derbyshire, and John
Hagerty,.....Appellants.

APPELLANTS' REPLY BRIEF

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APPELLANTS' REPLY TO RESPONDENT'S ARGUMENT

Respondent's first, and only, argument in its Initial Brief is, "[n]o right or authority existed for Developer to transfer by General Warranty Deed to a third party for value a portion of the Common Area or Common Elements of a real property development that Developer as Declarant previously deeded in its entirety to POA under a Master Deed creating a horizontal property regime, no genuine issues of material fact exist, and a grant of summary judgment declaring the deed transfer to be invalid as a matter of law is proper." In reply, Appellant states that Respondent admitted to multiple issues of material fact and improperly relies on the case of Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 494 S.E.2d 465 (S.C. Ct. App. 1997). (Resp't Br. 4-10).


Respondent admits to but glosses over multiple issues of material fact that necessitate a reversal of the lower Court's grant of Summary Judgment. (Resp't Br. 4-7). For example, Respondent admits that the Property Owners Association subdivided the subject parcel and approved the conveyance it now seeks to rescind, but Respondent refuses to recognize that admission creates a genuine issue of material fact as to control of the association at the time of the subject conveyance, which should be determined through a trial of this matter. (Resp't Br. 5). Instead, Respondent improperly focuses solely on the recording of the Master Deed and on the date that seventy-five percent of the subject condominiums were sold to support its contention that the subject conveyance should be rescinded, neither of which was set forth in an Affidavit or deposition testimony in support of its Motion for Summary Judgment. See McManus v. Bank of Greenwood, 171 S.E. 473, 475 (S.C. 1933) (recognizing the long standing rule that courts cannot consider statements of fact appearing only in argument of counsel). Furthermore, Respondent continues to seek adherence to the Master Deed when it is favorable to its position, while ignoring that it failed to comply with Master Deed by not electing a replacement Board of Directors after the seventy-five percent mark was reached, which to follow to its logical conclusion, would thereby forfeit all actions by the Property Owners Association from December 2004 until the Fall of 2005 when it reached a quorum. (Resp't Br. 4-7).

Additionally, Respondent's argument improperly relies on the Reyhani case, which is notably distinguishable from the case at bar. 494 S.E.2d 465 (S.C. Ct. App. 1997). Importantly, Mr. Reyhani did not put forth evidence that he was in control of the homeowners' association at the time of his subject conveyance whereas Appellants have put forth ample evidence that they were properly in control of the homeowners' association on the date of the subject conveyance, properly subdivided the subject parcel, and rightly approved the subject conveyance on behalf of the association. Id. at 466-67. In fact, the subject property in Reyhani had been through foreclosure, while in the case at bar, Appellants retained control of the association until it transferred ownership in the Fall of 2005 despite earlier efforts to transfer control of the association to the property owners. Id.

Respondent has not met its burden of demonstrating no genuine issue of material fact. Instead, Respondent glosses over multiple genuine issues of material fact, and seeks adherence to portions of the Master Deed while ignoring the terms with which it did not comply. In addition to the reply made herein, Appellants refer this Honorable Court to Appellants' Initial Brief for the arguments made therein, and requests this Honorable Court to rule accordingly.

Respectfully submitted,

February 25, 2013



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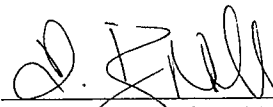
Rivers Point Row, LLC, John Hagerty, John Derbyshire, and Linda Derbyshire

Appellants.

PROOF OF SERVICE

I certify that I served Appellants' Reply Brief on Rivers Point Row Horizontal Property Regime a/k/a Rivers Point Row Property Owners Association, Inc. and Palms Properties, LLC by depositing a copy of it in the United States Mail, postage prepaid, on February 25, 2013, addressed to their respective attorneys of record, Michael J. Buhmeyer, Esquire, 4107 Perrine Street, Charleston, SC 29414; Dan M. David, Esquire PO Box 32097, Charleston, SC 29417; and O. Grady Query, Esquire, 147 Wappoo Creek Drive, Suite 202, Charleston, SC 29412.

February 25, 2013



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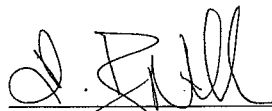
Rivers Point Row, LLC, John Hagerty, John Derbyshire, and Linda Derbyshire

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellants' Reply Brief complies with Rule 208(a)(3) and Rule 208(b)(3), SCACR.

February 25, 2013



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellants' Reply Brief contains all materials proposed to be included by any of the parties and not any other material, in compliance with Rule 211(b), SCACR.

April 16, 2013



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April 16, 2013



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