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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Appellate Case Nos. 2020-001583 & 2021-001014

Bonnie Wall, individually and derivatively,
and Walter B. Wall, Jr.,..... Appellants,

vs.

Jonathan Dye, Shaun Dye, Shellmore Homeowners' Association, Inc., and
John H. Chakides, Jr., individually and in his capacity as Director of Shellmore
Homeowners' Association, Inc.,..... Respondents.

**REPLY IN SUPPORT OF MOTION TO CONSOLIDATE
APPEALS**

Respondents Jonathan and Shaun Dye file this reply in support of their motion to consolidate Appellate Case Nos. 2020-01583 and 2021-001014 and state as follows:

Appellants argue that Rule 214, SCACR, does not allow for consolidation because the appeals arise from different orders in the same case. This narrow reading of Rule 214 seeks to impermissibly constrain the discretion of this Court to consolidate appeals arising from different orders in the same case which involve overlapping legal questions. Indeed, an examination of case law indicates that appellate courts in this state have historically consolidated appeals in the very circumstance presented here. *See, e.g., Thompson v. Watts*, 316 S.E.2d 393, 281 S.C. 504 (1984)

(noting the consolidation of appeals from two different orders in the same case involving overlapping legal issues). In such a case as this, this Court has the discretion to consolidate appeals to promote judicial efficiency.

Here, Appeal I asks whether it was the fiduciary duty of the HOA board members, or their appointed review committee, to deny the Dyes' request to build a covered dock. As covered extensively in Respondents' briefing to this Court, answering that question necessarily entails an examination of the applicable restrictive covenants to determine whether covered docks were prohibited or whether the board had the discretion to approve the Dyes' request. Those very issues are also raised in Appeal II which asks whether the lower court erred in its declaratory judgment ruling that the covenants did not prohibit covered docks and that the board, acting through its designated committee, had discretion to approve the Dyes' covered dock request. Appellants' submission to the contrary is simply without merit.

Because of these overlapping issues, these appeals should be consolidated for oral argument—if oral argument is necessary. The timing of the appeals has already prevented consolidation for purposes of briefing. Should oral argument be requested by the Court, however, these appeals should be consolidated for argument. The entire case revolves around the proper interpretation of the restrictive covenants and to consider and decide some issues without simultaneously considering all the issues raised by the two appeals would result in duplicative effort by counsel and this Court in two hearings. Whereas, a just and efficient result could be had in a single hearing.

As such, these appeals should be consolidated in the interests of the efficient administration of justice.


CONCLUSION

For the reasons stated above and in the original motion, the Court should consolidate Appellate Case Nos. 2020-01583 and 2021-001014 for argument and for all other purposes deemed appropriate by the Court.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the foregoing Reply in Support of Motion to Consolidate Appeals on all parties of record by sending an electronic copy to their respective attorneys' primary e-mail addresses listed in the Attorney Information System (AIS) pursuant to the Supreme Court's Order, dated August 25, 2021, regarding Methods of Electronic Filing and Service, as follows: Ian S. Ford (ian.ford@fordwallace.com) and Ainsley F. Tillman (ainsley.tillman@fordwallace.com) for Appellants; and L. Sidney Connor, IV, (sconnor@classactlaw.net) for Respondents Shellmore Homeowners' Association, Inc., and John H. Chakides, Jr.

[Signature Page to Follow]

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