THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-in-Equity

Court of Common Pleas Case No. 2016-CP-10-1560
South Carolina Court of Appeals Appellate Case No. 2017-002546
Opinion No. 2021-UP-280 (S.C. Court of Appeals filed July 21, 2021)

CARPENTER BRASELTON, LLC, ... Petitioner,

vs.

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

PETITION FOR A WRIT OF CERTIORARI

Daniel F. Blanchard, III (SC Bar No. 65342)
ROSEN HAGOOD, LLC
151 Meeting Street, Suite 400
Post Office Box 892
Charleston, SC 29402
Telephone: (843) 577-6726
dblanchard@rosenhagood.com
ATTORNEYS FOR PETITIONER

Other Counsel of Record:
Demetri K. Koutrakos (SC Bar No. 11318)
Harry A. Dixon (SC Bar No. 103509)
CALLISON TIGHE, & ROBINSON, LLC
1812 Lincoln Street, Suite 200
P.O. Box 1390
Columbia, SC 29202
Telephone: (803) 404-6900
jimkoutrakos@callisontighe.com
harrydixon@callisontighe.com
ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF COUNSEL

Counsel for the Petitioner certifies that the Petition for Rehearing *En Banc* was made and finally ruled on by the Court of Appeals on October 27, 2021. (App. 59-60).[1]

QUESTIONS PRESENTED

I. Did the Court of Appeals err as a matter of law by relying upon extrinsic evidence to contradict the plain language of the unambiguous restrictive covenants placed on the face of the recorded subdivision plat, which state that the lots in question are "for agricultural use only" and "not to be used for building purposes," and to hold this language was not intended by the grantors to create any restrictions on the use of the lots?

II. Did the Court of Appeals err as a matter of law by holding the County's restrictions placed on the face of the recorded plat as conditions to its approval of the grantors' subdivision of the property into smaller lots do not constitute restrictive covenants running with the land enforceable by subsequent grantees of property in the subdivision?

III. Did the Court of Appeals err as a matter of law by holding that Petitioner could not rely upon the restrictive covenants on the recorded subdivision plat because it was on notice that another grantee in the subdivision had built a house in violation of the covenants?

INTRODUCTION

The disposition of this appeal is important not only to the instant parties, but to real estate purchasers, developers, creditors, lenders, and others with interests in real property situated in this state. The determination of the appeal will either strengthen or weaken the enforceability of restrictive covenants shown on recorded subdivision plats. It will either bolster or erode the protections that our real estate recording acts provide to subsequent purchasers and creditors.

The principal issue is whether the Court of Appeals erroneously relied upon extrinsic evidence to contradict the plain language of an agricultural use restriction unambiguously written on the face of a subdivision plat (the "Plat"), which the property's grantors had recorded with the Register of Deeds as part of their subdivision of the property and had incorporated by reference

[1] Citations to the pagination of the Record on Appeal filed in the Court of Appeals are referred to herein as "R. __" and citations to the Appendix in this Court are referred to as "App. __."

into their deeds conveying the subdivided lots out to subsequent purchasers and grantees, including Petitioner Carpenter Braselton, LLC ("Petitioner"). The Court of Appeals's opinion is reproduced in the Appendix at pages 1-9 and is available on Westlaw at Carpenter Braselton, LLC v. Roberts, No. 2017-002546, 2021 WL 3076690 (S.C. Ct. App. July 21, 2021).

The Plat, which demarcates five lots and labels them 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." (R. 91, 178-79).[2] Petitioner owns Lot C-5. Respondents Ashley Roberts, Jeremy Cook, and Salaheddine Ezzaoudi ("Respondents") collectively own Lots C-2, C-3, and C-4. Petitioner filed this action to enforce the restrictions plainly expressed on face of the Plat and to enjoin Respondents from building structures upon their lots in violation of the restrictions.

The Court of Appeals correctly found the Plat's language stating Lots C-2 through C-5 are to be utilized "for agricultural use only" and "not to be used for building purposes" is unambiguous. (App. 3). Despite this finding, however, the Court erroneously held it could rely upon extrinsic evidence to find this unambiguous language was "never intended to create a restrictive covenant requiring the lots to be used for agricultural use only." (App. 8). The Court held that "while the language used [on the Plat] is not ambiguous, *the origin of this language* on the Plat may create an ambiguity," thus it resorted to extrinsic evidence not contained within the Plat's four corners supposedly to divine the grantors' "true intent." (App. 3) (emphasis added).

Based on this extrinsic evidence, the Court found the County's Planning Commission had placed the restrictions on the recorded Plat as a condition to its approval of the grantors' request

[2] The Plat does not impose the agricultural use restriction on Lot C-1, thus that lot is not at issue in this litigation. (R. 91, 178-79).

to subdivide the property into smaller lots. (App. 4, 6). Because the restrictions purportedly "were not placed on the Plat, by or at the request of" the grantors, the Court held the grantors did not subjectively intend for the Plat language to impose any restrictions on the property's use. Id.

The Court of Appeals held it can consider extrinsic evidence regarding the "origin" of otherwise unambiguous terms on a recorded plat to contradict or vary those terms. This Court's prior precedents have ruled that extrinsic evidence cannot be used to contradict or vary the unambiguous terms of restrictive covenants, except in cases of fraud, accident, or mistake, which are not claimed in this case. Our case law had not previously allowed for the admission of extrinsic evidence to create an ambiguity in a recorded plat where none existed in the language on the plat. The Court of Appeal's decision departs from this Court's precedents and creates a new standard for construing restrictive covenants placed on recorded subdivision plats.

Petitioner respectfully submits the Court of Appeals has disregarded well-settled state law and, in the process, has created bad policy for this state. The Court's holding fundamentally alters the law governing restrictive covenants involving real property and will undermine their enforceability. To allow extrinsic evidence to introduce and establish an ambiguity in the meaning of the plain language on a recorded plat, when the language itself is unambiguous, obliterates the purpose of our recording statutes involving instruments affecting real estate, which is to ensure that subsequent purchasers of property have notice of and can rely upon the record information involving the property.

In view of the exceptional importance of the issues addressed in this appeal and the impact it will have on existing law as well as real estate transactions in this state, Petitioner respectfully requests this Court to issue a writ of certiorari to review the decision of the Court of Appeals in accordance with SCACR 242.

STATEMENT OF THE CASE

In 1990, the heirs of James Roper subdivided an 11.95-acre tract to create five smaller lots with a private road to access those lots. (R. 273-79). 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." (R. 91). The Plat demarcates the five lots as Lots C-1, C-2, C-3, C-4, and C-5. The heirs recorded the Plat in the Register of Deeds for Charleston County on December 31, 1990. (R. 91, 178-79).

Petitioner is a subsequent grantee and current owner of Lot C-5. Petitioner owns that lot and an adjacent 5.53-acre tract not part of the subdivision called "Lucky Road." (R. 377 ln.15-24; 389 ln.7-9). Petitioner purchased Lot C-5 by deed recorded in the Register of Deeds on November 12, 2014. (R. 263-67). Edward Terry, a retired real estate developer, was its agent. (R. 354, ln.13-16; 359, ln.13-16; 374, ln.11-12). His wife is Petitioner's sole member and manager. (R. 374, ln. 18 – 375, ln. 4). They bought Lot C-5 to be used as a farm for their grandchildren's horses. (R. 379 ln.8-10; 383, ln.10–384, ln.12; 398 ln.12 - 399 ln.3). Lot C-5 is unimproved. Petitioner's other adjacent tract has a barn and stables built on it. (R. 383 ln.18 – 384 ln.6).

Respondents Roberts and Cook are also subsequent grantees and the current owners of Lots C-2 and C-3, which they acquired by deeds recorded in the Register of Deeds on September 11, 2007. (R. 315-19, 325-30). Lot C-2 is unimproved. Respondents Roberts and Cook built a house on Lot C-3 before Petitioner purchased Lot C-5. (R. 401 ln. 2-21; 408 ln. 24 – 410 ln.18).

Respondent Ezzaoudi is another subsequent grantee and the current owner of Lot C-4. He acquired his lot via deed recorded in the Register of Deeds on August 1, 2013. (R. 301-08). Lot C-4 is unimproved.

Each of the above-referenced deeds conveying Lots C-2, C-3, C-4 and C-5 to the Respondents and Petitioner specifically reference the Plat prepared by Mr. Quinn and recorded on December 31, 1990. The deeds all state the conveyances are being made "subject to" all restrictions, reservations, easements, and other limitations that appear of record, which include those on the recorded Plat. (R. 263-67, 301-08, 315-19, 325-30, 648, ln. 10-15).

The Plat 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." (R. 91). There is no dispute this restriction refers to Petitioner's and Respondents' properties. No document or record has ever been recorded purporting to amend, waive, or rescind the agricultural use restriction stated on the Plat.

Petitioner purchased Lot C-5 in reliance on the agricultural restriction stated in the Plat, which created and limits the use of Lots C-2, C-3, C-4 and C-5. (R. 646, ln. 1 - 647, ln. 21). Petitioner also relied on its review of the Plat and advice from its attorney. (R. 646, ln. 19 - 647, ln. 22). Petitioner further relied on its title insurance company and the title insurance policy it issued as to Lot C-5 in concluding the restriction on the property is valid. (R. 644, ln. 25 - 645, ln. 10). The title insurer took exception to the agricultural use restriction in its policy. (R. 615-19). The policy provides in pertinent part 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).

On March 28, 2016, Petitioner filed this action for a declaratory judgment and a permanent injunction enjoining Respondents from using Lots C-2, C-3, and C-4 for non-agricultural uses, including building purposes, on the grounds those lots are subject to the "agricultural use only" restriction in the Plat referenced above. (R. 25-35).

On June 17, 2016, Respondents served their Answers and Counterclaims. (R. 36-59). The Counterclaims sought a declaratory judgment declaring the notation on the Plat is not a restriction on the use of Lots C-2, C-3, C-4 and C-5. They allege that Charleston County placed the "agricultural use only" notation on the Plat and it was not intended to limit the use of the lots to agricultural use or to prevent future construction of buildings on the lots if and when the County ever determined the lots were suitable for construction. Respondents also sought to quiet title to their respective lots and requested a judgment declaring they own Lots C-2, C-3, and C-4 free and clear of any restriction and further declaring they are entitled to build residences or other structures on their lots notwithstanding the "agricultural use only" notation on the Plat.

The matter was referred to the Master-in-Equity by Consent Order. (R. 2-3). On August 2, 2017, Respondents filed a Motion for Summary Judgment. (R. 69-89). In support thereof, Respondents submitted hundreds of pages of materials extraneous to the Plat, including an affidavit from Mr. Quinn, who was the surveyor who prepared the Plat. (R. 88-335). His affidavit offers his explanation of the subjective intent behind the restrictions on the Plat. He stated the restrictions were placed on the Plat so the grantors could obtain approval to subdivide their larger tract of property into smaller lots. (R. 93-95). He said the language on the Plat stating the lots must be utilized "for agricultural use only" and not "for building purposes" was added as part of the County's subdivision approval process. He also said that "Charleston County was required to

approve the subdivision of the property into five lots," "[a]s noted on the Plat, the Plat was approved by Charleston County on December 4, 1990," "[a]s part of the approval process, Charleston County made various notations on the Plat," and among the notations which the County placed on the Plat are the following: "THESE LOTS, C-2, C-3, C-4, & C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES." (R. 94).

Master-in-Equity Mikell R. Scarborough conducted a hearing on the Respondent's Motion for Summary Judgment on September 21, 2017. (R. 649-801). Petitioner opposed the motion. However, on November 14, 2017, Judge Scarborough issued an Order granting summary judgment in Respondents' favor. (R. 6-21).

Petitioner received written notice of the entry of Judge Scarborough's Order on November 15, 2017. (R. 622). Petitioner timely filed a Notice of Appeal to the Court of Appeals on December 12, 2017. (R. 622-41).

On July 21, 2021, without oral argument, the Court of Appeals issued an unpublished opinion affirming the Master-in-Equity's Order. (App. 1-9). On August 3, 2021, the Petitioner filed a Petition for Rehearing *En Banc*. (App. 10-27). Respondents filed a Return on August 23, 2021. (App. 28-44). Petitioner filed a Reply to the Return on August 27, 2021. (App. 45-58).

The Court of Appeals denied the Petition on October 27, 2021. (App. 59-60).

ARGUMENTS

I. THE STANDARD OF REVIEW ON APPEAL.

"In reviewing the grant of a summary judgment motion, this Court applies the same standard which governs the trial court under Rule 56(c), SCRCP." Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). Summary judgment is only proper when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of

law." S.C. R. Civ. P. 56(c). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

"On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." Osborne, 346 S.C. at 7, 550 S.E.2d at 321. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law" and "should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002).

"Where an action presents a question as to the construction of a written [restrictive covenant] and the language of the [covenant] is clear and unambiguous, the question is not one of fact but one of law." Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992).

II. THE COURT OF APPEALS ERRED BY RELYING UPON EXTRINSIC EVIDENCE TO CONTRADICT THE PLAIN LANGUAGE OF THE UNAMBIGUOUS RESTRICTIVE COVENANTS ON THE FACE OF THE RECORDED SUBDIVISION PLAT, WHICH STATE THE LOTS ARE "FOR AGRICULTURAL USE ONLY" AND "NOT TO BE USED FOR BUILDING PURPOSES," AND IN FINDING THIS LANGUAGE WAS NOT INTENDED TO CREATE ANY RESTRICTIONS ON THE USE OF THE LOTS.

The Court of Appeals's reliance upon extrinsic evidence to find the unambiguous language on the face of the Plat stating the subdivision lots are to be utilized "for agricultural use only" and "not to be used for building purposes" was "never intended to create a restrictive

covenant requiring the lots to be used for agricultural use only" contravenes this Court's prior precedents. (App. 8). Those precedents have never countenanced the admission of extrinsic evidence to contradict an unambiguous language on a recorded subdivision plat because the "origin" of the language supposedly is unclear.

"Restrictive covenants, sometimes referred to as 'real covenants,' are agreements 'to do, or refrain from doing, certain things with respect to real property.'" SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla, 415 S.C. 72, 83, 781 S.E.2d 115, 121 (Ct. App. 2015). Restrictive covenants "in a sense are contractual in nature and bind the parties thereto in the same manner as would any other contract." Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). "Restrictive covenants are construed like contracts and may give rise to actions for breach of contract." Id. "However, restrictive covenants affecting real property cannot be properly and fully understood without resort to property law." Id. Specifically, "[r]estrictive covenants differ from contracts in that they 'run with the land,' meaning that they are enforceable by and against later grantees." Id.

Long ago this Court held that "where the owner of a tract of land subdivides it and sells the distinct parcels thereof 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, either on the theory that there is a mutuality of covenant and consideration, or on the ground that mutual negative equitable easements are created." McDonald v. Welborn, 220 S.C. 10, 18-19, 66 S.E.2d 327, 331 (1951); see Maxwell v. Smith, 228 S.C. 182, 197, 89 S.E.2d 280, 287 (1955) ("By their purchases within the subdivision, the respondents became parties to the restrictive covenants, and among them and the appellants these arose mutuality of covenant and consideration.").

Under our law, a "restriction of property must be created in express terms or by plain and unmistakable implication." Edwards v. Surratt, 228 S.C. 512, 521, 90 S.E.2d 906, 910 (1956). Restrictive covenants may be created several ways, such as by deed, by declaration, and by implication from a general plan or scheme of development. Queen's Grant., 368 S.C. at 362, 628 S.E.2d at 913. Numerous cases recognize that restrictive covenants can be created when property is sold by a deed which refers to a recorded plat or map. See, e.g., Epps v. Freeman, 261 S.C. 375, 388, 200 S.E.2d 235, 242 (1973). When a deed incorporates or refers to a plat describing the property conveyed, the plat becomes a part of the deed. Carolina Land Co. v. Bland, 265 S.C. 98, 105, 217 S.E.2d 16, 19 (1975); 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 ("A deed and the plat which includes the property granted must be read together, and whatever appears on the plat is to be considered as a part of the deed."); McDonald, 220 S.C. at 16, 66 S.E.2d at 330 ("Here the restrictive covenants contained in a separate instrument, specifically referred to in defendants' deed and easily to be found of record, were just as fully and effectually a part of defendant's deed as if copied therein.").

"Where the language imposing restrictions upon the use of property is unambiguous, the covenant will be enforced according to its obvious meaning" and "[i]n such cases there is no room for construction and the rule requiring a strict construction is without relevance." Donald E. Baltz, Inc. v. R.V. Chandler & Co., 248 S.C. 484, 488, 151 S.E.2d 441, 443 (1966). "To that end, when the language creating restrictions on the use of property is unambiguous, the restrictions will be enforced according to their plain and obvious meaning." Hanold, 412 S.C. at 396-97, 772 S.E.2d at 533; Shipyard, 307 S.C. at 308, 414 S.E.2d at 801.

When the restrictive covenant is unambiguous, this Court looks only to the language of

the covenant itself and not to extrinsic evidence to discover the parties' intent—i.e., that intention must be found within the covenant's "four corners." Windham v. Riddle, 381 S.C. 192, 201, 672 S.E.2d 578, 583 (2009); see Moser v. Gosnell, 334 S.C. 425, 431, 513 S.E.2d 123, 126 (Ct. App. 1999). The language "contained therein is to be taken as conclusive evidence of the intention of the parties." Kirven v. Bartell, 266 S.C. 385, 389, 223 S.E.2d 597, 599 (1976). "[O]nly if the document itself creates an ambiguity should a court look to outside evidence to aid in interpretation." N. Am. Rescue Prod., Inc. v. Richardson, 411 S.C. 371, 379, 769 S.E.2d 237, 241 (2015).

"Extrinsic evidence is admissible to resolve ambiguities but not to create them where none exist." Walters v. Summey Bldg. Sys., Inc., 311 S.C. 507, 509, 429 S.E.2d 854, 856 (Ct. App. 1993); Kirven, 266 S.C. at 389, 223 S.E.2d at 599. "[I]f 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, 292 S.C. at 111, 355 S.E.2d at 3.

In construing a restrictive covenant, the Court "is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed." Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc., 393 S.C. 65, 71, 710 S.E.2d 90, 93 (Ct. App. 2011); see also Kepler-Fleenor v. Fremont Cty., 268 P.3d 1159 (Idaho 2012) (engineer's affidavit regarding his intent when drafting subdivision plat was inadmissible in action involving whether unnamed road in subdivision was public by common law dedication, as plat unambiguously dedicated the disputed road to the public); Hollis v. Garwall, Inc., 974 P.2d 836 (Wash. 1999) (affidavits of owners/developers of subdivision and of county plat administrator stating that restrictive covenants in recorded subdivision plat were not intended to limit use of land held inadmissible

when they conflicted with the plat); Northpark Assoc. No. 2 v. Homart Dev. Co., 414 S.E.2d 214 (Ga. 1992) (developer's and county's subjective intent in recording a plat inadmissible where plat is unambiguous); Great Water Lanier, LLC v. Summer Crest at Four Seasons on Lanier Homeowners Ass'n, Inc., 811 S.E.2d 1, 7 (Ga. Ct. App. 2018) (holding parties' "statement of intent" executed along with deed was inadmissible to contradict unambiguous terms of deed).

The decision in Defeo v. Cmty. Servs. Assocs., Inc., No. 2007-UP-357, 2007 WL 8327948 (S.C. Ct. App. July 24, 2007), illustrates these principles. Although that unpublished decision is not binding, it is persuasive given its parallel to the facts of this case. In Defeo, a recorded plat depicted the plaintiff's property as well as the defendant's adjacent parcel of property. The reference on the plat to the adjacent parcel contained a label stating: "RESERVED FOR FUTURE USE FOR GOLF COURSE." 2007 WL 8327948 at *1. The Court held this language unambiguously restricted the use of the adjacent parcel to golf course purposes only, thus it enjoined the defendant from building residential structures on the property. Id. at *2.

The Defeo Court rejected the defendant's argument that it should have allowed extrinsic evidence to explain the unambiguous label on the plat. At trial, the defendant offered the testimony of its owner and officer as well as expert testimony from a real estate attorney to explain why the label was used on the plat and what it meant. They testified that the use of the word "reserved" on the plat label was simply to "reserve" the right to develop the lot for golf course use, but it was not intended to affect the owner's right to use the lot for other purposes, such as for residential use. Id. at *2. The Court held the testimony of the owner and lawyer was inadmissible as extrinsic evidence. Id. at *3. In so finding, the Court cited to the settled rule that "[w]ere 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." Id.

The Court reached a similar holding in Bernier v. Morrow, No. M2012-01984-COA-R3CV, 2013 WL 1804072 (Tenn. Ct. App. Apr. 26, 2013). There, a subdivision plat contained a notation stating that "Lot # 2 is approved for a maximum three (3) bedroom residence with use of a conventional subsurface sewage disposal system." Id. at *1. When it was determined the Lot 2 property was unsuitable for the installation of a conventional subsurface sewage disposal system, the owners of that lot sought permission to install "an experimental wetland sewage disposal system" on the lot. Id. In a subsequent lawsuit to enforce the plat notation as a restrictive covenant, the owners of Lot 2 offered the affidavit of the surveyor who drafted the subdivision plat to show that the "Notes on the Plat referring to the 'conventional subsurface sewage system' were placed on the map for descriptive purposes and to satisfy [the county's] rules," but were "were not intended as restrictive covenants." Id. at *5. The Court disagreed and deemed the affidavit inadmissible because the plat notation was unambiguous. Id. at *5-6.

The Court of Appeals erred by not reaching the same result in this appeal. Because the Court correctly determined that the terms "for agricultural use only" and "not to be used for building purposes" on the Plat are unambiguous, the analysis should have ended there. Gibson v. Huffman, 540 S.E.2d 222, 223 (Ga. Ct. App. 2000) (deed allowing "agricultural or recreational purposes only" was not ambiguous); Circle Square Co. v. Atlantis Dev. Co., 267 S.C. 618, 626, 230 S.E.2d 704, 707 (1976) ("The scheme of development is not ambiguous and requires no resort to matters not within the four corners of the Declaration."). The Court should have simply enforced the unambiguous language on the Plat as plainly written. It was error to engage in construction or to consider extrinsic evidence to find the parties did not intend for this unambiguous language to restrict the property to agricultural usage. Baltz, 248 S.C. at 488, 151

S.E.2d at 443; Hanold, 412 S.C. at 396-97, 772 S.E.2d at 533.[3]

The Court of Appeals did not enforce the restrictions on the Plat as plainly written. Instead, it rewrote them based on extrinsic evidence which it believed shows the grantors did not intend for the lots to be restricted to agricultural use if sewer or a modified conventional sub-surface disposal system ever became available in the future. However, "[t]he judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous." Hardee v. Hardee, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003). Courts "are without authority to alter a contract by construction or to make new contracts for the parties." C.A.N. Enterprises, Inc. v. S.C. Health & Hum. Servs. Fin. Comm'n, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988). The Court's "duty is limited to the interpretation of the contract made by the parties themselves '... regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully.'" Id.

If the grantors had wanted to place a caveat on the Plat stating that Lots C-2, C-3, C-4, and C-5 will no longer be restricted to "agricultural use only" if sewer or a modified conventional sub-surface disposal system becomes available in the future, they could have stated such on the Plat. They did not do so. The Court erroneously "construed" the Plat to include language the grantors should have added to it, not the actual language on the Plat. It is not the Court's function to add language to the restrictions which the grantors may have desired if they

---

[3] The Court of Appeals suggested it was proper to consider extrinsic evidence on the grounds the Plat restrictions are "implied easements." (App. 3). However, this assertion is misguided because the restrictions in this case were created *in express terms*. It was unnecessary to "imply" any restrictions because they were express. Edwards, 228 S.C. at 521, 90 S.E.2d at 910 ("A restriction of property must be created *in express terms or by plain and unmistakable implication.*") (emphasis added).

had thought about it more carefully, but which they did not in fact include on the recorded Plat. Arcadian Shores Single Fam. Homeowners Ass'n, Inc. v. Cromer, 373 S.C. 292, 299, 644 S.E.2d 778, 782 (Ct. App. 2007); Steffenson v. Olsen, 360 S.C. 318, 322, 600 S.E.2d 129, 131 (Ct. App. 2004).

The Court's decision to allow extrinsic evidence to create an ambiguity in the meaning of plain language on the Plat undermines the protections of our state statutes involving the recording of instruments affecting real estate. The obvious consequence for real estate purchasers is they can no longer trust or rely upon the unambiguous language of a recorded plat involving the property. Instead, purchasers now must go beyond the unambiguous language on the plat and investigate its origin or source and determine whether the parties intended something different. Otherwise, subsequent purchasers will be bound by what such an investigation or inquiry into the unambiguous language on the plat would have revealed. South Carolina law has never imposed such an unrealistic duty on subsequent purchasers of real estate.[4]

The South Carolina recording acts provide that "[a]ll deeds of conveyance of lands ... and generally all instruments in writing conveying an interest in real estate required by law to be

---

[4] The Court of Appeals cited Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980), as support for the proposition that the "[c]ircumstances surrounding the origin of an alleged restriction may also be considered in construing that restriction." (App. 3). However, it misread the holding in Hamilton, which involved the construction of a plat that was deemed "obviously ambiguous." 274 S.C. at 157, 263 S.E.2d at 381. Unlike this case, Hamilton considered extrinsic evidence to resolve an ambiguity in the plat, not to create one. When the plat restrictions are unambiguous, as here, it is improper to "construe" their plain terms or to inquire into the circumstances surrounding their origin. See 21 C.J.S. Covenants § 25 ("If the language of a restrictive covenant is clear and unambiguous, the covenant is given effect according to its terms, and *if the plain terms of restrictive covenants are sufficiently clear, the court interprets them without reference to any attendant facts and circumstances or extrinsic evidence*. That is, when there is no ambiguity, there is no need to inquire into the intention of the parties to a restrictive covenant. In fact, *when the language of a restrictive covenant is clear and unambiguous, it is improper to inquire into surrounding circumstances or objects and purposes of restrictions for aid in its construction.*") (footnotes omitted and emphasis added).

recorded ... are valid so as to affect the rights of subsequent creditors ... or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds...." S.C. CODE ANN. § 30-7-10. The statutes mandate that "[w]hen real property is subdivided for the purpose of sale and is sold or offered for sale according to a plat of a survey thereof, the person first offering such property for sale shall file a plat or blueprint of such survey in the office of the clerk of court of the county in which such real estate is situate." Id. § 30-5-240.

The recording acts protect subsequent purchasers and creditors by giving them notice of instruments involving the property, including restrictions affecting the property's use. Epps v. McCallum Realty Co., 139 S.C. 481, 138 S.E. 297, 302 (1927). Restrictions shown on the subdivision plat "cannot be modified by *ex parte* acts or secret intentions of those who by the public records are shown to be bound by the restrictive covenants." Coffman v. James, 177 So. 2d 25, 30 (Fla. Dist. Ct. App. 1965). "Purchasers of property covered by lawful restrictive covenants running with the land ... [are] entitled to rely on the public records and are not bound by such secret intentions of which they had no knowledge." Id.

Under the recording laws, subsequent purchasers are charged with notice of the record of an instrument affecting the land. Indeed, these statutes impose a "*duty* upon a person about to advance money or anything else of value for the purchase of property, or to extend credit to the owner of such property, *to investigate the record* before paying out his money, or parting with anything else of value, *to ascertain if there are any instruments of record affecting the title*, and if he fails to do this he will be bound by what the record shows." First Presbyterian Church of York v. York Depository, 203 S.C. 410, 27 S.E.2d 573, 576 (1943) (emphasis added).

The Court of Appeals's opinion means this duty has been expanded to require purchasers

to investigate the origins of even unambiguous record information involving the property. It is unclear how any purchaser could ever hope to achieve compliance with such a duty. If a purchaser can no longer rely upon the unambiguous language of a recorded plat when they buy property because they are deemed to be on notice of facts that may contradict the unambiguous record, then the recording acts offer little protection. Broadwater Dev., L.L.C. v. Nelson, 219 P.3d 492, 501 (Mont. 2009) ("[G]ood-faith purchasers of real property are entitled to rely on publicly recorded deeds, plats, and certificates of survey pertaining to the subject property to disclose accurately all encumbrances, easements, and impediments thereon; they are not required to track down unrecorded extrinsic evidence in order to ascertain the use or necessity of a purported easement depicted on a plat or certificate of survey in their chain of title. Requiring subsequent purchasers to investigate not only their chain of title but also the 'context' within which each conveyance in the chain was executed 'would be an impractical burden, perhaps an impossible one, and would virtually destroy the utility of the real estate recording system.'").

In City of Rio Rancho v. Amrep Sw. Inc., 260 P.3d 414 (N.M. 2011), the Court addressed this very issue. In that case, which involved a recorded plat depicting a drainage easement that had been granted to the city over a parcel of property (Parcel F), a subsequent purchaser (Cloudview) of the property challenged the city's claim that the plat was really intended to grant the city an open space easement. The city relied upon extrinsic evidence to show the term "drainage easement" as expressed on the recorded plat was really meant as a surrogate term for "open space." The city also offered extrinsic evidence showing the prior owner of the parcel had represented to the city it would set aside the parcel "as open space in perpetuity" when the city approved the plat. Id. at 421.

In rejecting the city's claim, the Court held that the unambiguous language on the

recorded plat showed the easement's purpose was for drainage only and it was not an open space easement, thus Cloudview was "entitled to rely upon the recorded plat's specific recital of the city's right to use Parcel F only for drainage purposes." Id. at 421, 424. The Court further rejected the city's attempt to introduce extrinsic evidence to show the plat "was ambiguous as to the true intent of the parties regarding the designation and future use of Parcel F." Id. at 425. The Court held that "[t]o allow extrinsic evidence to establish an ambiguity in the meaning of language in a plat, when the language itself is unambiguous, would frustrate the purpose of our law that governs the recording of instruments affecting real estate." Id. at 425-26. The Court ruled "[t]he final recorded plat is what governs in this case, and the recorded plat unambiguously grants a drainage easement to the City." Id.

The outcome should be the same in this case. When Petitioner purchased its property, the Plat's unambiguous language showed the lots are to be utilized "for agricultural use only" and "not to be used for building purposes." Nothing in the Plat notified Petitioner that Respondents could use their properties for any purpose other than agricultural use. The decision to allow extrinsic evidence to create an ambiguity in the notation on the Plat, when the language itself is unambiguous, thwarts the protections of the recording statutes. It means real estate purchasers cannot trust or rely upon the unambiguous language on a recorded plat when they buy property.

III. THE COURT OF APPEALS ERRED BY HOLDING THE COUNTY'S RESTRICTIONS PLACED ON THE FACE OF THE RECORDED SUBDIVISION PLAT AS CONDITIONS TO ITS APPROVAL OF THE GRANTORS' SUBDIVISION OF THE PROPERTY DO NOT CONSTITUTE RESTRICTIVE COVENANTS RUNNING WITH THE LAND ENFORCEABLE BY GRANTEES OF PROPERTY IN THE SUBDIVISION.

Relying on extrinsic evidence regarding the "origin" of the Plat restrictions, the Court of Appeals held as a matter of law that the County placed the restrictions on the Plat as part of its

approval of the subdivision plan and the restrictions were not placed thereon by or at the grantors' request. (App. 4, 6).[5] Based on this evidence, the Court further ruled as a matter of law that the grantors did not intend for the restrictions to limit the property to agricultural use. In reaching this holding, the Court of Appeals assumed as a matter of law that if the County (rather than the grantors or their surveyor) placed the restrictions on the Plat, then those restrictions cannot constitute binding covenants running with the land. This assumption is legally incorrect.

It does not matter who placed the restrictions on the Plat. The important fact is that the grantors recorded the Plat containing the notations as part of their plan to subdivide the property. Plat restrictions are enforceable even if they were placed there by a governmental entity as part of its approval of the subdivision plan for the properties. By recording a Plat for the subdivision containing use restrictions, the grantors subjected the subdivision property to those restrictions, which run with the land as lots are sold to grantees.

As discussed above, to subdivide their property and offer the subdivided lots for sale, state law required the grantors to record a plat of the subdivided property. S.C. CODE ANN. § 30-5-240. A "plat" is a term of art that generally refers to a subdivision map prepared for approval by a governmental authority. Metro. Gov't of Nashville & Davidson Cty. v. Barry Const. Co., 240 S.W.3d 840, 845 n.12 (Tenn. Ct. App. 2007); Sellon v. City of Manitou Springs, 745 P.2d 229, 233-34 (Colo. 1987).

---

[5] The affidavit of F. Elliotte Quinn, III, the surveyor who prepared the Plat, indicates the language on the Plat stating that the properties must be utilized "for agricultural use only" and not "for building purposes" was added as part of the County's approval process involving the subdivision of the properties. (R. 93-95). He states that "Charleston County was required to approve the subdivision of the property into five lots," "[a]s noted on the Plat, the Plat was approved by Charleston County on December 4, 1990," "[a]s part of the approval process, Charleston County made various notations on the Plat," and among the notations which the County placed on the Plat are the following: "THESE LOTS, C-2, C-3, C-4, & C-5 FOR AGRICULTURAL USE ONLY, NOT TO BE USED FOR BUILDING PURPOSES." (R. 94).

Notes added or attached to a plat as conditions to government approval of a subdivision plan constitute restrictive covenants running with the land that may be enforced in equity by grantees of property in the subdivision. Perrige v. Horning, 654 A.2d 1183, 1185 (Pa. Sup. Ct. 1995); Doylestown Township v. Teeling, 635 A.2d 657, 661 (Pa. Sup. Ct. 1993); Green v. Lawrence, No. RE-03-23, 2004 WL 6241302, at *2 (Me. Super. Ct. Oct. 01, 2004); see also Brescia v. N. Shore Ohana, 168 P.3d 929, 951 (Haw. 2007) (setback requirements that were included on recorded subdivision map as condition to county planning commission's approval of subdivision plan constituted restrictive covenants imposed on properties in subdivision); Spinell Homes, Inc. v. Municipality of Anchorage, 78 P.3d 692, 696-97 (Alaska 2003) (observing that municipality's platting authority was authorized to place conditions on the final approval of a subdivision plat by indicating those conditions through notations on the plat and the notes become restrictive covenants that run with the land); Albright v. Lombardo, No. 09 CV 7772, 2010 WL 2746467, *11 (Pa. Com. Pl. Mar. 2, 2010) (conditions contained in notes that were added to a recorded subdivision plan so that the developer could receive final approval of the development from the township were enforceable as restrictive covenants running with the land); Village of Los Ranchos de Albuquerque v. Shiveley, 791 P.2d 466, 469-71 (N.M. Ct. App. 1989) (conditions relating to design, dedication of land, improvements, and restrictive use of land imposed by county or municipality as part of approval of a subdivision plat can be enforced through specific performance); Stansbury v. Jones, 812 A.2d 312, 329 (Md. 2002) (noting that conditions attached to parcels at the direction of the governmental entity that approves the subdivision plats are enforceable).

In Perrige, for instance, the owners of a farm hired surveyors to draft plans for the subdivision of the farm into four parcels (Lots 1 through 4). The plan was approved by the

town's planning commission and was recorded with the county recorder of deeds. The plan contained several notes of conditions the town had imposed as part of its approval of the subdivision of the property. Id. at 1186. The notes included the following:

> 2. TOTAL NUMBER OF LOTS 3 + RESIDUE (TO REMAIN FARM USE) A) LOT NO. 4 (RESIDUE) WILL BE USE [sic] FOR AGRICULTURAL USE ONLY.
> .....
> 9. THE RESIDUE LOT WAS AND WILL REMAIN AGRICULTURAL USE, NO WETLAND DELINEATION IS REQUIRED.

Perrige, 654 A.2d at 1185.

Subsequent purchasers of one of the lots (Lot 3) later sued to enjoin the owner of Lot 4 from using the property for any purpose other than agricultural use based on the grounds that the notes on the subdivision plan constituted enforceable restrictive covenants. The court agreed and held that "Notes 2A and 9 on the Plan clearly state that Lot 4, or 'the residue lot,' will remain agricultural use." Id. at 1187. The Court held the subsequent purchasers could enforce the covenants restricting the Lot 4 property to "agricultural use only." Id.; see also Doylestown, 635 A.2d at 660 ("Because the subdivider agreed to the notation restricting further subdivision, that restriction, which runs with the land, is binding upon all subsequent purchasers."); Albright, 2010 WL 2746467 at *11 ("[T]hese notes were added to the plan so that the developer could receive final approval of the development from the township.... These notes became conditions or prerequisites to final approval of the subdivision plan.... Because the conditions in the Phase II plan were added to the plan to receive final approval, they relate to the land and were intended to be binding on the current property owner and successors in interest. Therefore, the notes contained in the Phase II subdivision plan are restrictive covenants running with the land.").

Likewise, in Green, the defendant owned an 89-acre parcel of real property that was a

former youth summer camp, which it intended to subdivide into 18 lots. After the defendant applied for subdivision approval with the town's planning board, it was discovered that lots 8-11 did not have soil conditions suitable for construction of a wastewater septic system. As a result, the town required that lots 8-11 be limited to "wood lot use only." The subdivision plan that the town approved included notes for each of the four lots stating "Lot_ Not Suitable For Subsurface Sewerage Disposal" and also stating: "No more than one single-family dwelling shall be maintained on lots 1, 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, and 16. *Lots 8, 9, 10, and 11 are restricted to use as wood lots only.*" Green, 2004 WL 6241302 at *1 (emphasis added). This subdivision plan was later incorporated into the deeds for each parcel as they were sold.

Years later, after soil requirements for subsurface disposal systems had changed so that lots 8-11 could qualify for residential development, the defendant sought approval from the town to develop the lots. Id. However, in a subsequent lawsuit by other owners in the subdivision to prevent the defendant from developing the lots, the Court ruled that the "wood lots only" language in the plan constituted a restrictive covenant enforceable by those owners. Id. at *2. The Court found "there is no ambiguity in the 'wood lots only' language and it is not necessary to consider extrinsic evidence for purposes of interpretation of the contract." Id. It enforced the notations on the subdivision plan as written and entered a judgment declaring that lots 8-11 "are limited to wood lot use only as provided in the provisions of the ... restrictive covenants unless this restriction is removed by those property owners benefiting from this restriction." Id. at *3.

In the present case, the Court of Appeals erred by holding as a matter of law that the unambiguous restrictions on the Plat are not enforceable against the Respondents because the County placed them on the Plat as part of its approval of the subdivision plan for the properties. Even assuming the County (and not the grantors) placed the restrictions on the Plat, the

restrictions nevertheless constitute restrictive covenants running with the land that may be enforced by Petitioner (a grantee of property in the subdivision).

IV. THE COURT OF APPEALS ERRED BY HOLDING THAT PETITIONER COULD NOT RELY UPON THE RESTRICTIONS UNAMBIGUOUSLY EXPRESSED ON THE RECORDED SUBDIVISION PLAT BECAUSE IT WAS ON NOTICE THAT ANOTHER GRANTEE IN THE SUBDIVISION HAD BUILT A HOUSE IN VIOLATION OF THE COVENANTS.

The Court of Appeals held that Petitioner's reliance upon the unambiguous restrictions on the recorded Plat could not defeat the grantors' "true intentions" because extrinsic evidence showed that another grantee subsequently built a house on one of the lots in the subdivision before Petitioner bought its lot. (App. 7). Although the Court's reasoning is rather opaque, the Court apparently held as a matter of law that the restrictive covenants are no longer valid based on an alleged change of conditions in the subdivision due to unchecked violations of the restrictive covenants.

Under South Carolina law, when lands are platted and sales are made by the owner under deeds making reference to the plat, the grantees are entitled to rely on the recorded deeds and plat to determine their rights involving use of the property. Murrells Inlet Corp. v. Ward, 378 S.C. 225, 236, 662 S.E.2d 452, 457 (Ct. App. 2008). "[T]he purchaser of lots with reference to the plat of the subdivision acquire[s] every easement, privilege[,] and advantage shown upon said plat ...." Carolina Land, 265 S.C. at 105, 217 S.E.2d at 19; Corbin v. Cherokee Realty Co., 229 S.C. 16, 24, 91 S.E.2d 542, 546 (1956). The fact the grantor may have subjectively intended a contrary use of the property cannot defeat the grantees' right to rely upon the information in the recorded deeds and plats. Murrells Inlet, 378 S.C. at 236, 662 S.E.2d at 457.

Despite these rules, "a party may bring a declaratory judgment action to invalidate a restrictive covenant based on a change of conditions." Menne v. Keowee Key Prop. Owners'

Ass'n, Inc., 368 S.C. 557, 564, 629 S.E.2d 690, 694 (Ct. App. 2006) (citing cases). "The party bringing the action bears the burden of proof by the preponderance of the evidence." Menne, 368 S.C. at 564, 629 S.E.2d at 694 (citations omitted).

In the present case, Respondents' pleadings did not plead any claim seeking to invalidate the Plat restrictions based on a change of conditions. (R. 36-59). Respondent's summary judgment motion also did not argue the Plat restrictions are unenforceable due to a change of conditions. (R. 69-85). The Master-in-Equity's Order granting summary judgment did not find or hold the restrictions are invalid based on a change of conditions. (R. 6-21). The Court of Appeals simply adopted this rationale on its own.

Even assuming for argument's sake this issue was properly before the Court, to invalidate a restrictive covenant based on a change of conditions, it was the Respondents' burden to show "there is such a change in the character of the neighborhood as to render the enforcement of the covenant valueless to the covenantee and oppressive and unreasonable as to the covenantor." Menne, 368 S.C. at 564, 629 S.E.2d at 694. Our case law holds that the "party seeking to annul a restrictive covenant must show the change of conditions represented so radical a change that the original purpose of the restrictive covenant can no longer be realized." Id. (citing Inabinet v. Booe, 262 S.C. 81, 202 S.E.2d 643 (1974); Pitts v. Brown, 215 S.C. 122, 54 S.E.2d 538 (1949)).

In Pitts, for instance, this Court held that "the violation of some of the restrictions by some of the purchasers of lots in the tract, without action by appellant, does not affect his right to enforce the restrictions against the respondents" when "there has been no fundamental change in the residential character of the [subdivision] making inequitable the specific enforcement of the restrictions." Pitts, 215 S.C. at 132, 54 S.E.2d at 543; see Martin v. Cantrell, 225 S.C. 140, 148, 81 S.E.2d 37, 41 (1954) (holding there were no radical changes the residential character of the

property which would make it inequitable or oppressive to enforce the specific restrictions).

Respondents presented no proof showing—and the Master-in-Equity made no finding—that the construction of one house on one of the lots in the subdivision had so fundamentally or radically changed the subdivision's character that it would be inequitable to enforce the restrictions. In the absence of a radical change in the subdivision's character, which was not alleged or proved, Petitioner is not barred from enforcing the restrictive covenants simply because it was on notice that another grantee had violated the covenants. It certainly cannot be said that Respondents were entitled to summary judgment on this issue as a matter of law.

CONCLUSION

For the reasons stated, the Petitioner respectfully requests that this Court grant its Petition for a Writ of Certiorari.

Respectfully submitted,

By: *Daniel F. Blanchard, III*
Daniel F. Blanchard, III (SC Bar 65342)
ROSEN HAGOOD, LLC
151 Meeting St., Suite 400
Charleston, SC 29401
(843) 577-6726
dblanchard@rosenhagood.com
ATTORNEYS FOR PETITIONER

Charleston, South Carolina
November 24, 2021.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-in-Equity

Court of Common Pleas Case No. 2016-CP-10-1560
South Carolina Court of Appeals Appellate Case No. 2017-002546
Opinion No. 2021-UP-280 (S.C. Court of Appeals filed July 21, 2021)

CARPENTER BRASELTON, LLC, ... Petitioner,

vs.

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

PROOF OF SERVICE

I hereby certify that on the date referenced below, true and correct copies of the Petition for a Writ of Certiorari and Appendix in the above-captioned action were deposited in the U.S. mail with sufficient first-class postage affixed thereto and addressed to:

Demetri K. Koutrakos, Esquire
Harry A. Dixon, Esquire
Callison Tighe, & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202

This the 24th day of November, 2021.

ROSEN HAGOOD, LLC

By:/s/ Daniel F. Blanchard, III
Daniel F. Blanchard, III (SC Bar No. 65342)
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726 telephone
dblanchard@rosenhagood.com

ATTORNEYS FOR PETITIONER

ROSEN | HAGOOD

DANIEL F. BLANCHARD III
dblanchard@rosenhagood.com

November 24, 2021

VIA ELECTRONIC FILING:
The Honorable Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Carpenter-Braselton, LLC v. Ashley Roberts, Jeremy Cook, and Salaheddine Ezzaoudi
Court of Common Pleas Case No. 2016-CP-10-1560
South Carolina Court of Appeals Appellate Case No. 2017-002546
Opinion No. 2021-UP-280 (S.C. Court of Appeals filed July 21, 2021)

Dear Ms. Howard:

Please find enclosed for electronic filing the following:

1. Petition for a Writ of Certiorari,
2. Appendix (Volumes I – III), and
3. Proof of Service.

We are also mailing you a filing fee check in the amount of $250.00 in today's mail.

We would greatly appreciate your filing these on our behalf and returning clocked-in copies to us. By copy of this letter, we are filing copies of the Petition for a Writ of Certiorari and Proof of Service with the Clerk of Court for the South Carolina Court of Appeals.

With best regards, I am

Sincerely,

/s/ Daniel F. Blanchard, III

Daniel F. Blanchard, III

DFB/db
Encls.

cc: The Honorable Jenny Abbott Kitchings, Clerk of Court for South Carolina Court of Appeals (w/ enclosed Petition for a Writ of Certiorari and Proof of Service)
Demetri K. Koutrakos, Esquire (w/ encls.)
Harry A. Dixon, Esquire (w/ encls.)

US POSTAGE
$ 02.16
First-Class
Mailed From 29401
11/24/2021
033A 0001835592

9144.011 DFB

ROSEN | HAGOOD

151 Meeting Street, Suite 400
Charleston, South Carolina 29401

RECEIVED
NOV 29 2021
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211