THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Robert E. Hood., Circuit Court Judge
Case No. 2018-CP-26-06033

Appellate Case No. 2022-000031

Royal Garden Resort Regime Homeowners Association, Inc. ..... Respondent

vs.

Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc. ..... Appellants

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INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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STATEMENT OF THE CASE

The Royal Garden Resort Regime Homeowners Association (HOA) manages the Royal Garden Resort located at 1210 N. Waccamaw Drive, Garden City, South Carolina. Royal Garden Resort HOA is duly elected by the homeowners and is the managing entity for the HOA. Royal Garden Resort HOA brought this lawsuit against its prior manager, Calvin Donaldson, Seabreeze Property Management & Contract Services, Inc. and Phoenix of the Strand, Inc. Donaldson had been the property manager for more than twenty years and controlled all HOA activities. Donaldson is president and owner of both Sea Breeze and Phoenix.

Donaldson resigned as HOA manager on or about December 31, 2018. Thereafter, the new HOA manager noticed discrepancies in the accounting records and ordered a complete forensic audit of the records and accounts of the Association by the accounting firm of Cooper & Jaskot, CPA. An audit determined there were serious discrepancies in the financial records and the HOA then filed this complaint seeking (1) a declaratory judgment determining ownership of various units in the common areas along with authority of the regime; (2) damages against Sea Breeze, Donaldson and Phoenix for the handling of the HOA funds; and (3) declaratory relief so that the HOA could continue to offer telephone, television, internet communications and other necessary services at the HOA.

During the course of its investigation, the new HOA Board determined that Donaldson, Phoenix and Sea Breeze had entered into various sweetheart deals with prior HOA Boards or with HOA Board members individually concerning the use and leasing of certain common elements.

During the course of its internal investigation, the new HOA also learned that the internet and cable service contract for the HOA was with Time Warner/Spectrum and that certain limited common elements (storage closets) had been used to house equipment for service to all of the homeowners. The HOA sought from Donaldson, Phoenix and Sea Breeze access to the storage units only to replace the cable boxes with new boxes from Horry Telephone Cooperative (HTC), the new service provider. The new cable boxes would be placed in the exact same place in the storage units where they had been placed by Time Warner/Spectrum over the previous twenty years. Further, installation of the new cable boxes would not damage any of the interior parts of the storage units. Significantly, the HOA, the homeowners and the Appellants would save a lot of money and get premium service by switching from Spectrum to HTC.

Donaldson, on behalf of Phoenix and Sea Breeze, refused to allow entry. The HOA advised Donaldson on March 12, 2019 that Article IX, Section 2 of the Master Deed required such entry. It states as follows:

> There is hereby granted an easement subject to the regulations and requirements of the Board of Directors of Association upon, across, over and under *all* of the Property for ingress, egress, installations, replacing, repairing and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain utility wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the Units.[1]

Further, the HOA advised Donaldson, Phoenix and Sea Breeze that this provision in the Master Deed required that Donaldson could not charge fees for access to the storage closets. When Donaldson refused, the HOA filed a motion with the circuit court to allow it to authorize HTC

[1]The Royal Garden Resort Master Deed fully complies with the South Carolina Homeowners Association Act, S.C. Code § 27-30-110 effective May 17, 2018. S.C. Code § 27-30-110 (4) defines the master deed as the governing document of the Association.

representatives to install the cable boxes in the storage closets. This was the second time the HOA had to appear before the court regarding interference of limited common elements by Donaldson. The circuit court had previously ordered Donaldson to not interfere with the interior trash chutes in the building. Also, another order of the circuit court dated December 21, 2018 required Donaldson not to destroy or misplace any of the HOA documents, papers, computer files or other records. (R. ____).

The HOA filed its motion with the court requesting declaratory relief and/or allowing it to enter the storage closets for the sole purpose of replacing telephone, television and internet communication equipment to be installed by HTC. Photographs of what was to be installed in the interior of the units are found in the record. (R. ____).

The HOA's motion regarding the HTC cable box switch out in the storage closet was heard before the circuit court at a hearing on August 4, 2021. At the hearing, the attorney for the HOA provided affidavits of Dan Stacy (an expert on condominium master deeds) and Stephen Hunt (the HOA Manager) as to the necessity for HTC to change the communication boxes in the storage closets. The circuit court, after reviewing the Master Deed and the multiple affidavits of Hunt and Stacy, ordered that the HOA be allowed entry to change out the television, telephone and/or internet boxes in the storage closets. The Order of Circuit Court dated September 15, 2021 provides in pertinent part:

> Defendants, Sea Breeze, Donaldson and Phoenix shall, "within ten (10) days of the date of this Order provide access to the storage closets on each of the floors (1-16) of the Royal Garden Resort, and, further, that Defendants shall provide keys to each of the storage closets on those floors (1-16) for the purpose of allowing Horry Telephone Cooperative to begin the installation process." (R. ____).

On September 21, 2021, Defendants filed a motion to reconsider the Order of the court dated September 15, 2021. The HOA filed a Supplemental Affidavit of Hunt (Sept. 28, 2021) along with pictures of the storage closets which show that there would be no damage done to them by the installation of the HTC telephone, television and internet communications equipment and it would

only be a replacement of similar boxes to those which were in the storage closets which had been owned by Spectrum. (R. ____). The Circuit Court denied the motion for reconsideration on December 30, 2021. This appeal followed.

STANDARD OF REVIEW

While Defendants argue that the standard of review involves that of an injunction, the HOA believes that in fact the correct standard of review for this motion essentially entails a request for declaratory relief. In *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1990) this Court set down a bright line rule that a suit for declaratory judgment is neither legal nor equitable but is determined by the nature of the underlying issue. An issue essentially one at law will not be transformed into one in equity simply because declaratory relief is sought. Since this is an action to construe a master deed and thus an action at law, the lower court order must be affirmed when there is any evidence to support its findings. See *Townes Assoc. Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). The "any evidence" standard in essence requires the Appellate Court give great deference to the trial court. See also, *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997) (The determination of the extent and grant of an easement is an action in equity).

Our Courts have been explicit that when a controversy regarding the rights of condominium unit owners arises, the courts must examine all relevant provisions of the Horizontal Property Act, the Master Deed of the HOA and allied documents. Those sources of rights and obligations of the condominium owners must be read together in relation to each other and harmonized if possible. See *Harrington v. Blackston*, 319 S.C. 1, 459 S.E. 2d 309 (1995). See also, *Kneale v. Bonds*, 317 S.C. 262, 267, 452 S.E2d 840, 842 (1994) holding the master deed of the horizontal property regime shall be strictly enforced. See also *Seabrook Island Property Owners Assoc. v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987) (The board of directors of a horizontal property regime may

exercise only those powers that are granted to it by law, its master deed and any bylaws made pursuant thereto). See also *Cedar Cove Homeowners Assoc, Inc. v. DiPietro*, 368 S.C. 254, 628 S.E.2d 284 (S.C. App. 2006); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891, 894 (1987) (As voluntary contracts, restrictive covenants will be enforced unless they are indefinite or contravene public policy).

Respondent's Additional and Sustaining Grounds Require this Court Affirm the Trial Court.

If Respondent is incorrect about the standard of review in this case, Respondent would offer an additional and sustaining ground for affirming the appeal. South Carolina Rule of Civil Procedure 56 provides:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In this case, the Court's Order allowing the HOA to change out the cables and internet boxes is based on the evidence that there is no genuine issue of material fact, and this is a question of law. The HOA's evidence at the hearing was that there was a filed Master Deed which provided the HOA with an easement over the entire project, the HOA produced multiple affidavits including that of an expert, Dan Stacy, who testified that the HOA had a filed recorded easement and had the authority to change the cables and internet boxes. Further, the HOA Manager, Steve Hunt, also testified that the changing out of the cables and internet boxes was well within the scope of that easement.[2]

Also, a utility easement had already been signed by Donaldson on a previous occasion so that Spectrum could put in the cable and internet boxes. All this evidence was presented to the Court and viewing the evidence in the light most favorable to the non-moving party, i.e., Donaldson, the Order

[2] While the HOA's motion was to enter the property, in essence it was for a motion for summary judgment.

of the Court is appropriate. There are no ambiguities in the filed Master Deed or in the affidavits and all conclusions and inferences provide no grounds for reversing summary judgment. As this court has said, the purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. See *George v. Fabri*, 345 S.C. 440, 442, 548 S.E.2d 868, 874 (2001) ("summary judgment is proper when there is no genuine issue of material fact."). See also, *Baughman v. American Telephone and Telegraph Co.,* 306 S.C. 101, 410 S.E.2d 537, 538 (1991).

In sum, when this Court reviews the evidence presented at the hearing and it applies the same standard that the circuit court applies, this Court will find that there was no genuine issue of material fact regarding HOA's right to replace the cables and internet boxes pursuant to a filed easement. Thus, under any standard of review, the HOA was entitled to judgment on this issue as a matter of law. See *Hurst v. East Coast Hockey League, Inc.*, 371 S.C. 33, 637 S.E.2d 560 (S.C. 2006) (when reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court). Accordingly, in this case, no error was committed under either standard of review listed by appellant or respondent and thus this Court should dismiss this appeal.

ARGUMENT

I. THE CIRCUIT COURT HAD AMPLE EVIDENCE TO GRANT THE ROYAL GARDEN HOA RELIEF.

In support of its motion to allow it to access the storage closets on each floor of the Royal Garden Resort, the HOA offered the following evidence:

A. The Master Deed.

The Circuit Court was presented with a filed copy of the Master Deed for Royal Garden Resort Regime Homeowners Association. Article IX, Section 2 of the Master Deed states as follows:

> There is hereby granted an easement subject to the regulations and requirements of the Board of Directors of Association upon, across, over and under *all* of the Property for ingress, egress, installations, replacing, repairing and maintaining a master

> television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity. Such easements grant to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain utility wires, circuits, and conduits on, above, across and under the roofs and exterior walls of the Units.

Clearly under Article IX, Section 2 of the Master Deed, the HOA had the express legal authority to use any portion of the Royal Garden Resort to run cabling and/or other equipment for telephones, television and internet services. The pertinent portion of the Master Deed is found at ROA _____.[3]

B. Prior Cable Communications Easement.

Defendant Donaldson, acting as property manager for the HOA, had previously granted with permission by HOA a Time Warner Cable Communications Easement. This easement was filed in the Horry County Register of Deeds Office February 7, 2006 and provided:

> Hereby grants, bargains and sells to Grantee, its agents, successors and assigns, a perpetual nonexclusive easement for the construction, operation and maintenance of cable communications facilities including without limitation, wires, conduit, connectors and related equipment installed or to be installed from time to time with a right to reconstruct, improve, add to or remove any such facilities, and the right to ingress and egress to the premises at all times, this easement shall be for the benefit of the Grantee.
> (R. ____).

The significance of the Cable Communications Easement is that it was signed by Donaldson as Property Manager for the HOA in 2006 and provided a blanket easement over the Royal Garden Resort for the same type of cable equipment that Donaldson now objects to, and which is currently in the same storage closets, and which benefits both the homeowners, Donaldson and his businesses.

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[3] Significantly, Appellants do not contest this or any portion of the Master Deed or argue that it is invalid or violates public policy.

C. Supplemental Affidavit of Daniel W. Stacy, Jr.

The HOA also presented the July 30, 2021 Affidavit of Daniel W. Stacy, Jr., an attorney specializing in real estate law which includes real estate closings, preparing master deeds, condominium association bylaws and the like. Stacy stated in his Affidavit that he had reviewed the Phoenix of the Strand's motion for partial summary judgment in regard to an alleged lease it had for certain storage facilities at Royal Garden Resort. (R. ____).

Stacy further opined that Article IX Section 2 of the Royal Garden Resort Regime HOA Master Deed had granted an express easement over and under all property for ingress, egress, installations, replacing, repairing and maintaining a master television antenna and all utilities including but not limited to water, gas, sewer, telephones and electricity. (R. ____).

Stacy also opined that because the Master Deed controlled, any contract entered into by the HOA and Sea Breeze for the leasing of such storage facilities was *void ab initio* since HOA had a blanket easement over the entire project for utilities and thus was not required to pay lease payments to Donaldson. (R. ____).

Stacy also noted in his affidavit that the storage room agreement was for replacement of a telephone switchbox, however this agreement was void because HOA already had a blanket easement to provide for any telephone, television, and internet communications equipment. Stacy's opinion to a reasonable degree of legal certainty was that the Master Deed at the Royal Garden Resort Regime HOA, specifically Article IX Section 2, controls and that the leases for the storage facility agreements dated February 1, 2012 along with the storage room agreement dated March 6, 1995 was of no force and effect. This affidavit was unopposed by Donaldson and the other Defendants at the hearing. (R. ____).

D. Affidavit of Stephen Hunt, Sr.

The August 2, 2021 Affidavit of Stephen Hunt, Jr., the Property Manager at Royal Garden Resort HOA, was presented. Hunt opined that he had reviewed both the Storage Facility Agreement dated February 1, 2012 and the Storage Room Agreement dated March 6, 1995. Hunt stated in his affidavit that the telephone switchboard referenced in the 1995 Storage Room Agreement was not operated by Phoenix of the Strand and is not located on property owned or leased to Phoenix. (R. ____).

Hunt further stated that the switchboard had previously been in the Sea Breeze office but that the switchboard was moved by a prior HOA manager to the Royal Garden Resort HOA office December 2018 and was not in use. (R. ____).

Hunt further opined that Section IX (2) of the Master Deed provided the HOA had the authority to use any portion of the building to run television, telephone or internet computer lines. (R. ____).

E. Stephen Hunt's Affidavit of September 28, 2021.

After the trial court issued its order allowing replacement of the television, telephone and internet boxes in the storage closets, Sea Breeze, Donaldson and Phoenix filed a motion to reconsider. (R. ____). In response to the motion, the HOA filed a supplemental Affidavit of Steve Hunt which attached photographs of the cabling and the internet boxes in the storage room. Hunt stated:

> The current wiring for internet and television service runs to all condominiums through storage closets on each floor of the Royal Garden Resort. This wiring has been in place since Royal Garden Resort was constructed in the 1980s and used for television service. Royal Garden Resort is simply replacing old equipment--nothing else. (R. ____).

Hunt further testified that only communication boxes would be replaced and there would be no ripping out of any wiring and no damage would be done to any storage closets by any HTC

employees. Hunt stated this work was being performed pursuant to an express written easement in the Master Deed and that the work would provide the homeowners with upgraded premium television and internet service. Further Hunt opined, "the wiring and boxes will not interfere with the use of storage closets and will only replace certain equipment." (R. ____).

In light of Hunt's Affidavit, the circuit court properly declined to grant Defendant's motion for reconsideration.

F. Affidavit of Harold Outz.

The HOA also provided the Affidavit of Harold Outz, a former member of the Board of Directors of the HOA for over twenty years. Outz testified that the wiring and the cable systems had been in the storage closets since the construction of the resort. He also testified that he did not live at the resort and was not aware nor was he made aware by Donaldson that Article IX Section 2 of the Master Deed granted unlimited easements over Royal Garden Resort for water, gas sewer, telephones, and electricity including a television antenna system. (R. ____)

II. ROYAL GARDEN RESORT HOA HAD THE RIGHT UNDER THE MASTER DEED TO ENTER THE STORAGE CLOSETS.

It is well settled under South Carolina condominium law that when an owner buys a condominium, he or she has actual knowledge of the master deed and thus agrees to its contents. In this case, when Royal Garden HOA was formed the owner of the property in fee simple declared the land subject to a master deed when he recorded it. See S.C. Code § 27-31-30 which states:

> Whenever a lessee, sole owner, or the owners of property expressly declare through the recordation of a master deed or lease, which shall set forth the particulars enumerated in Section 27-31-100, their desire to submit their property to the regime established by this chapter, there shall thereby be established a horizontal property regime.

See also, *Egrets Pointe Townhouses Property Owners Assoc. v. Fairfield*, 870 F.Supp. 110 (1994) (in order to establish a horizontal property regime, the master deed must be recorded in compliance with Section 27-31-100 is mandatory.)

Further, Royal Garden Resort HOA had a legal duty to comply with the Master Deed and bylaws and it was its obligation to require Donaldson, Sea Breeze and Phoenix to abide by the Master Deed. See *Fisher v. Shipyard Village Council of Co-Owners, Inc.*, 409 S.C. 164, 760 S.E.2d 121, *cert. granted, affirmed as modified*, 415 S.C. 256, 781 S.E.2d 903 (2014) (a homeowners association is bound to follow its covenants and bylaws and cannot defend something that violates those documents on the basis that it is a reasonable alternative). Royal Garden HOA has a continuing statutory duty and a responsibility to make sure that its owners were provided with fast, reasonable, efficient and stable telephone, television and internet service. The HOA chose HTC as its provider and only desired to switch out cable boxes and some wiring. No damages would have been done to the interior of the storage units and the Master Deed specifically provided the HOA has an easement over the entire project. As a result, the Circuit Judge properly exercised his discretion to authorize the HOA to replace the boxes and wiring inside each of the storage units.

In sum, this court in reviewing the trial court is required to construe the Master Deed of Royal Garden Resort HOA and the affidavits under the "any evidence" standard of review. See *Felts v. Richland County*, 303 S.C. 354, 400 S.E.2d 781 (1991) and *Townes Assoc. Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). See also *Nationwide Mutual Fire Ins. Co. v. Walls*, 433 S.C. 206, 858 S.E.2d 150 (S.C. 2021) (reaffirming in an action at law the appellate court will not disturb the trial court's finding of fact unless there is no evidence to reasonably support them). Accordingly, the trial court committed no error in allowing entry into the storage closets to "change out" equipment.

III. ROYAL GARDEN RESORT HOA HAD A UTILITY EASEMENT OVER THE ENTIRE PROPERTY.

As this brief indicates and as the filed Master Deed provides, Article IX, Section 2 of the Master Deed granted an unqualified, blanket easement for utilities over "all of the Property for ingress, egress, installations, replacing, repairing and maintaining a master television antenna system and all utilities including, but not limited to, water, gas, sewers, telephones and electricity."

In this case, the HOA was simply acting like a utility company in changing out the internet boxes. The HOA's authority allows it to replace wires and repair utilities for the benefit of all of the owners. The Master Deed gives the HOA this right to repair or replace the internet/TV cables. See *Simmons v. Berkeley Electric Coop.*, 404 S.C. 172, 744 S.E.2d 580 (Ct. App. 2013) (explaining that utility easement was first acquired when landowner granted a seventy-five feet-wide easement to the Berkeley County Electric for the construction and maintenance of an electric transmission line or lines, towers, poles, anchors and necessary fixtures and wires attached thereto...). See also *Leppard v. Central Carolina Telephone Co.*, 205 S.C. 1, 30 S.E.2d 755, 756 (1944) (State Highway Department had laid telephone lines after acquiring a "unqualified right-of-way"); *Richland County v. Palmetto Cablevision*, 261 S.C. 222, 199 S.E.2d 163 (1973) wherein our Supreme Court addressed the ability of a cable television provider to contract from the telephone company and power company for use of their poles and right of ways to lay cable. *Palmetto Cablevision* holds that cable television provider's use of the telephone and electric poles and rights-of-way was permissible. The *Palmetto Cablevision* Court noted that "the extent of the right-of-way is granted to these utilities (telephone, electric lighting and power utilities) is very broad." See *Leppard v. Central Carolina Telephone Co.*, 205 S.C. 1, 30 S.E.2d, 755 (1944). The *Palmetto Cablevision* Court also found "the stringing of additional cables and leasing of new cable for newly conceived uses is clearly authorized by the same

reasoning, the licensing of the defendant to string its cables on the existing poles of utilities is also authorized. *Palmetto Cablevision*, 199 S.C. at 173.

In *Gressette v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 635 S.E.2d 538 (2006), the Supreme Court addressed whether SCE&G who had been conveying excess fiber optic capacity to third-party telecommunications companies without notice or compensation to the affected landowners, could apportion its allowed use to third parties under the terms of easements granted by the landowners. Because the parties agreed that the fiber optic cable lines were within the scope of the easement, the Court noted that "there is no real issue of an additional servitude."

In this case, the Master Deed clearly provides the HOA the express authority to run cables, electric lines, sewer lines over the entire building akin to a utility provider. The cases described above support the HOA's position that it had the unqualified absolute right to access these areas not to strip out or damage the storage closets, but to replace those lines for the benefit of all of the owners.

IV. THERE IS NO HARM CHANGING OUT INTERNET BOXES IN STORAGE CLOSETS.

The HOA merely sought to change out internet boxes in storage closets to provide better more cost-effective service. No damage would occur to Appellants' property and no additional room was required to perform this routine upgrade. If an injunction was necessary or required in this case, which is denied, Appellants could not establish harm from the enforcement of this easement. On the other hand, the denial by Appellants to allow the HOA and its homeowners access to a utility created irreparable harm. Further, Appellants retained the absolute right to continue to sue Respondent for back rent based on their alleged illegal, duplicitous contract for the storage closets. In sum, the HOA has a valid legally recorded easement to enter the Appellants' property and thus no injunction was necessary for the Court in construing the Master Deed. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008).

V. A BOND IS NOT REQUIRED TO ENFORCE AN EASEMENT GRANTED IN A MASTER DEED.

The Appellants argue a bond is necessary in this case. However, a bond is not necessary to enforce a recorded express easement. In this case the HOA had a recorded Easement allowing it to run cable lines, water lines, electric lines and sewer lines over the entire HOA property. The HOA is simply exercising its legal right for the benefit of all the homeowners in changing out the cable boxes in the storage rooms pursuant to Article IX, Section 2 of the Master Deed. Just like public utilities that have easements for roads, electric lines, water and sewers, a bond is not necessary when legal rights derived from easements which are recorded in the Courthouse are enforced.

Appellants cite *Atwood Agency v. Black*, 374 S.C. 68, 646S.E.2d 882, 884 (2007) for the proposition that a bond is required. However, *Atwood* has no application here in that the HOA was simply asking the Court for declaratory relief regarding a filed easement in the Master Deed. The *Atwood* case does not deal with a filed easement in a Master Deed. It dealt with a prior employee allegedly stealing a homeowners list and using it to take business to a separate company. This, of course, was the subject of much dispute between the parties and the Supreme Court found that a nominal bond effectively decided the case before a trial.

In this case, there is no damage to Appellants by simply replacing cabling and internet boxes. Further, the Master Deed explicitly provides for such, and the HOA had a recorded easement pursuant to the Master Deed which allowed it to proceed. Under those circumstances a bond is not necessary in this case. This is especially true since the "status quo" is not affected by the HOA simply replacing existing internet boxes and cables with new internet boxes and cables.

VI. APPELLANTS' ARGUMENT THERE IS NO MASTER TELEVISION SYSTEM IS MISPLACED.

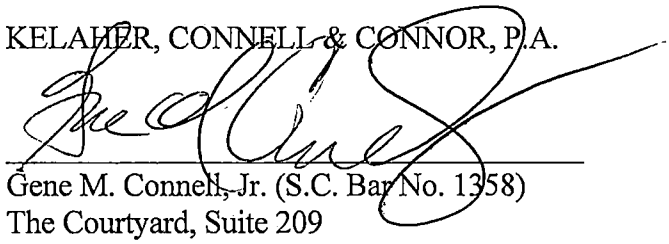
The Appellants argue that there is no master television antenna, so the easement language is inapplicable. In fact, the internet cables and boxes control all television functions including reception of signals. These cables and boxes are connected to a master antenna system owned by a cable provider which controls television viewing at the HOA. Further, the Master Deed, Article IX, Section 2 gives the HOA an easement for all "utilities." Clearly, internet cables and boxes are a "utility" and the trial court recognized this in its Order. See *Gardner v. Mozingo*, 293 S.C. 23, 358 S.E.2d 390 (1987) (The construction of a clear and unambiguous deed is a question of law for the Court, and it is improper to use extrinsic evidence to contradict the plain language of the deed.). *Rabon v. Mali*, 289 S.C. 37, 344 S.E.2d 608 (1986) (objecting property owners knew of commercial use of property for years and never expressed concern or objected to it being used for commercial use). Here, Donaldson had actual knowledge of the cable and internet boxes in the closets and signed a telecommunications easement to Spectrum. Thus, he is estopped from objecting to the HOA's motion to enforce its easement rights.

CONCLUSION

In sum, the resolution of this case turns on the application of an undisputed recorded portion of the Master Deed (Article IX, Section 2) and thus a question of law which involves the any evidence standard of review. See *Moser v. Gosnell*, 334 S.C. 425, 513 S.E.2d 123, 125 (Ct. App. 1999) (holding that when a covenant or contract is clear and unambiguous, matters of construction are questions of law for the court.) Thus, when this Court applies this standard, the circuit court's Order allowing entry to replace telephone, television and internet communication equipment must be affirmed.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.A.



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May 25, 2022
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PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Initial Brief of Respondents** on the 25th day of May, 2022 by depositing a copy of same in the United States Mail, postage prepaid, to:

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SWORN AND SUBSCRIBED before me,
this 25th day of May, 2022.

Notary Public for South Carolina
My Commission Expires: 1-22-29

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May 25, 2022

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Appellate Case No. 2022-000031
Royal Garden Resort Regime Homeowners Association, Inc. v. Sea Breeze Property Management & Contract Services, Inc.; Calvin Donaldson; and Phoenix of the Strand, Inc.
C/A No. 2018-CP-26-06033
Our File No. 2018-0334C

Dear Ms. Kitchings:

Enclosed please find the following for filing in the above-captioned matter: (1) Initial Brief of Respondent, with Proof of Service; and (2) Respondent's Designation of Matter to be Included in Record on Appeal, with Proof of Service.

Please be so kind as to return a filed copy of the Proof of Service of each document in the self-addressed, stamped envelope provided for your convenience.

By copy of this letter, we hereby serve the above-stated documents on Appellants through counsel of record

Should you have any question or need anything further at this time, please do not hesitate to contact me.

Sincerely yours,

Gene M. Connell, Jr.

GMCJr:sm
Enclosures
cc w/enc: Douglas M. Zayicek, Esquire
Holly M. Lusk, Esquire
Kirby D. Shealy III, Esquire
Luke M. Allen, Esquire

KELAHER, CONNELL & CONNOR, PC
ATTORNEYS AT LAW
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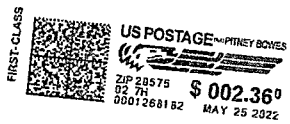

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To

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