RECEIVED
Jun 03 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Case No. 2020-CP-10-04185

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

v.

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.

INITIAL BRIEF OF RESPONDENTS

Andrew M. Connor
SC Bar No. 100050
Connor Law, PC
1501 Belle Isle Avenue, Suite 110
Mount Pleasant, SC 29464
(843) 606-1578

Counsel for Respondents Jonathan and Shaun Dye

L. Sidney Connor, IV
SC Bar No. 1363
Kelaher Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648

Counsel for Respondents Shellmore Homeowners Association, Inc., and John H. Chakides, Jr.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

RULES

OTHER AUTHORITIES

STATEMENT OF THE ISSUES ON APPEAL

1. Did the Master-In-Equity correctly grant summary judgment against Appellants due to Appellants' failure to properly request or argue a need for additional time for discovery?

2. Did the Master-In-Equity correctly grant summary judgment against Appellants and properly disregard portions of Appellants' submitted verified pleadings and affidavits as inadmissible?

3. Did the Master-In-Equity correctly grant summary judgment against Appellants based on an interpretation of the Declaration that covered docks are not prohibited and may be approved by the Architectural Review Committee or the Board of Directors?

STATEMENT OF THE CASE

Appellants, the Walls, do not like covered docks. When their neighbors, the Dyes, received approval from the neighborhood architectural review committee for a covered dock and started construction, Appellants sued.[1] All of the claims asserted by Appellants are based on their assertion that the appointment of the architectural review committee by the board of the homeowners' association was legally invalid and that the committee's approval of the Dyes' covered dock was invalid as well. The Respondents counter that the restrictive covenants, as a matter of law, authorize the board to appoint an architectural committee for the consideration and approval of covered docks and, thus, the approval of the Dyes' dock was proper. The determination of the case and this Appeal depends upon which interpretation of the restrictive covenants is legally correct.

A. Undisputed Facts

Shellmore is a waterfront subdivision consisting of fourteen (14) lots[2] located in McClellanville, South Carolina. (*See* Am. Compl., ¶¶ 1-2, 8-9.) The lots in Shellmore are subject to certain restrictive covenants set out in a Declaration of Covenants ("Declaration") dated March 18, 1975 and recorded March 19, 1975 in the Charleston County Register of Deeds Office in Book J106, Page 195. (*See* Dye MSJ, Ex. 1 (Decl. of Shellmore HOA), ¶ 4, Ex. 1-B; Am. Compl., ¶¶ 12-14.) No amendments to the Declaration have ever been recorded. *Id.* The Declaration names Cape Romain Lookout Homeowners Association, Inc., as the "Association" having jurisdiction to enforce the restrictive covenants of the subdivision. (Dye MSJ, Ex. 1-B.) Later, the name of the

[1] Although Appellants named the Dyes, the homeowners' association, and a board member in their lawsuit, Appellants did not name the architectural review committee or any of its members in their lawsuit.

[2] Charleston County property records and related GIS system show fourteen (14) lots within the Shellmore community identified by the following parcel numbers: 712-0000089, 712-0000090, 712-0000091, 712-0000092, 712-0000093, 712-0000094, 712-0000095, 712-0000096, 712-0000097, 712-0000098, 712-0000099, 712-0000100, 712-0000101, and 712-0000102. To the extent necessary, Defendants ask the Court to take judicial notice of facts reflected in public filings and property records. *See S.C. Dep't of Soc. Servs. v. Janice C.*, 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) ("[A] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.").

Association was changed to Shellmore Homeowners Association, Inc. ("Association"), a nonprofit corporation organized pursuant to the South Carolina Nonprofit Corporation Act. (*See* Dye MSJ, Ex. 1, ¶ 5, Ex. 1-C.)

The Declaration contains restrictive covenants vesting architectural control of exterior improvements within Shellmore with the Board of Directors ("Board") of the Association or an Architectural Review Committee ("ARC") designated by the Board. (*See* Dye MSJ, Ex. 1-B, p. 8.) Article V, Section 1, of the Declaration states in pertinent part:

> Section 1. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

(Dye MSJ, Ex. 1-B, p. 8.) Article V of the Declaration goes on to specifically address the construction of docks in Section 8 and states in pertinent part:

> Section 8. Boat Houses, Docks, etc. No boat houses, docks, piers, or wharves shall be constructed on any lot without first obtaining the written approval of the Association, or its designated representative.

(Dye MSJ, Ex. 1-B, p. 11.)

Respondents Jonathan and Shaun Dye own and reside at 945 Shellmore Lane within the Shellmore subdivision. (*See* Dye MSJ, Ex. 2 (Decl. of J. Dye), ¶ 3.) In January of 2020, the Dyes submitted a permit application to the Office of Ocean & Coastal Resource Management ("OCRM") and a federal permit application with the United States Army Corps of Engineers ("USACOE") with plans and specifications for the construction of a proposed covered dock. (Dye

MSJ, Ex. 2, ¶¶ 8, 13.) The Dyes also submitted the same plans to the ARC which voted to approve the Dyes' proposed dock.[3] (Dye MSJ, Ex. 1 at ¶¶ 10-11, Ex. 1-H, and Ex. 2 at ¶¶ 9-10.) Subsequently, the Board considered and upheld the ARC's vote approving the Dyes' proposed dock. (Dye MSJ, Ex. 1 at ¶ 12, Ex. 1-I, and Ex. 2 at ¶ 11.) The Dyes later submitted revised plans to both OCRM and the ARC deleting a proposed boat lift but keeping the proposed covered dock. (Dye MSJ, Ex. 1 at ¶ 13, Ex. 1-J, and Ex. 2 at ¶¶ 12-13.) Both OCRM and the ARC approved the Dyes' revised plans.[4] (Dye MSJ, Ex. 1 at ¶ 13, Ex. 1-J, and Ex. 2 at ¶¶ 14-15.) In all, OCRM, USACOE, the ARC, and the Board approved the Dyes' plans for the construction of a covered dock with OCRM and USACOE issuing the required permits. (Dye MSJ, Ex. 2, ¶¶ 10-15.)

After OCRM issued the Dyes a permit to construct their dock, the Dyes' immediate neighbors, Larry Fritz to the south and the Appellants, the Walls, to the north, requested review of OCRM's decision by the Board of Health and Environmental Control to which OCRM staff filed a response. (Dye MSJ, Ex. 2, ¶ 16, Ex. 2-A.) Ultimately, the review requests were denied. (Dye MSJ, Ex. 2, ¶ 17.) Thereafter, the Dyes commenced construction on their covered dock. (Dye MSJ, Ex. 2, ¶ 18.) This litigation ensued.

B. Procedural History

Appellants commenced the action below by filing a summons and verified complaint on September 22, 2020 asserting claims against the Dyes for breach of the restrictive covenants, declaratory and injunctive relief, and nuisance claiming that the Dyes' proposed covered dock had not been properly approved as required under the Declaration. Appellants also filed a petition for

[3] The Walls claim to dispute this fact (Br. of App., pp. 7, 32) but their citations to the record include nothing more than legal conclusions and hearsay which the Master ruled inadmissible. (Hearing Transcript, Mar. 22, 2021, 44:16-45:4; Order, July 28, 2021, p. 15.) The Walls also claim there are no "minutes" evidencing the ARC's approval or the Board's ratification of the ARC vote. (Br. of App., pp. 19-20.) The Walls claim fails to account for the written approvals submitted in the record and cited herein.

[4] The Walls claim the Board did not review or approve the Dyes' revised dock plans (Br. of App., p. 9) but offer no citation to record evidence disputing that the ARC reviewed and approved the Dyes' revised plans.

an *ex parte* temporary restraining order and a motion for temporary injunction on September 23, 2020. On September 29, 2020, the Dyes filed a motion to dismiss the complaint and briefing in opposition to the Appellants' requested injunctive relief. On September 30, 2020, a hearing was held before the Hon. Roger Young, Circuit Judge, on the motions for preliminary injunctive relief. That day, Judge Young issued an order declining to issue the requested injunctive relief and referring the case to the Master-In-Equity in accordance with Rule 53, SCRCP. (Order, dated Sept. 30, 2020.)

On October 2, 2020, the Master-In-Equity issued an order preliminarily granting the Appellants' requested injunctive relief to preserve the status quo as to the proposed roof on the Dyes' dock but denying the Appellants' request to halt construction of the other portions of the dock. (Order, dated Oct. 2, 2020.) Additionally, based on the representations and agreement made by the parties at the hearing, the Master-In-Equity ordered a briefing schedule for cross motions for summary judgment.

On October 5, 2020, the Appellants filed a Verified Amended Complaint naming the Association and John H. Chakides, Jr. ("Chakides"), as additional defendants and asserting claims for injunction and declaratory judgment (against the Dyes and the Association), breach of restrictive covenants (against the Dyes and the Association), breach of fiduciary duty claims (against the Association and Chakides), civil conspiracy (against Jonathan Dye, Chakides, and the Association), and nuisance (against the Dyes). (Am. Compl.)

On October 15, 2020, the Dyes filed their motion for summary judgment (Dye MSJ) and Appellants filed a motion for partial summary judgment. (Wall MSJ.) The Dyes filed their Answer to the Amended Complaint on October 20, 2020. (Dye Answer.) The Dyes also filed a motion to dissolve the preliminary injunction on October 21, 2020 (Mot. To Dissolve) to which Appellants

filed opposing briefing the next day. (Opp. to Mot. To Dissolve.) On October 23, 2020, Respondents the Association and Chakides filed their Answer (HOA Answer) and motion for summary judgment. (HOA MSJ.)

The Master-In-Equity held a hearing on the cross motions for summary judgment and the motion to dissolve the preliminary injunction on November 2, 2020. The Master took the matter under advisement and allowed the parties time to submit additional briefing for consideration. The Dyes and the Walls submitted additional briefing on November 6, 2020. (Dye Supp. MSJ; Wall Supp. MSJ.)

On November 19, 2020, the Master-In-Equity entered an order on the then-pending motions. (Order, dated Nov. 19, 2020.) In the order, the Master granted the Dyes' motion to dissolve the preliminary injunction based on the Appellants' failure to establish the required elements for preliminary injunctive relief. Next, the lower court granted the Respondents' motions for summary judgment as to the Appellants' claims for breach of fiduciary duty upon a finding that no fiduciary duty exists in this context. The Master also granted the Respondents' motions for summary judgment as to Appellants' claim for civil conspiracy finding that Appellants had failed to present any evidence of special damages. However, the lower court denied the parties' cross motions for summary judgment as to Appellants' remaining claims of declaratory judgment, breach of the restrictive covenants, and nuisance and directed the parties to resolve the remaining issues by mediation or by vote at the annual meeting of the Association to be held in January 2021.

On November 22, 2020, Appellants filed a notice of appeal of the Master's November 19, 2020 order. The appeal of the November 19, 2020 order is still pending before this Court in Appellate Case Number 2020-01583.

In accordance with the Master's order, the Dyes made the following motion at the Association's Annual Meeting held on January 23, 2021:

> WHEREAS, Bonnie and Walter Wall have brought a lawsuit against the Dyes, Mr. Chakides, and the Shellmore Homeowners Association, Inc., related to the construction of a covered dock by the Dyes; and
>
> WHEREAS, the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, issued an order in that lawsuit on November 19, 2020 directing the "parties . . . to pursue resolution of these issues by mediation and/or by vote at the Annual Shellmore HOA Meeting to be held in Jan. 2021";
>
> NOW THEREFORE, Jonathan and Shaun Dye move for a vote to approve the construction of Johnathan and Shaun Dye's covered dock as permitted by the appropriate governmental authorities and submitted to and approved by the Architectural Review Committee and the Board of Directors of the Association.

(Minutes of the Shellmore Homeowners Association, Inc., Annual Meeting, held Jan. 23, 2021, p. 2, Ex. 4 to Dyes' Renewed MSJ.) The motion was seconded and was approved[5] with nine (9) votes in favor of the Dyes' dock and five (5) votes against out of the total fourteen (14) membership votes.[6] (*Id.*)

Based on this vote and the arguments presented in their previous briefing, the Dyes filed a renewed motion for summary judgment on January 25, 2021. (Dyes' Renewed MSJ.) On January 26, 2021, the Association filed its own renewed motion for summary judgment incorporating the Dyes' arguments by reference. (HOA's Renewed MSJ.) On February 26, 2021, the Walls responded by filing their own renewed motion for partial summary judgment. (Wall's Renewed MSJ.) On March 18, 2021, after the summary judgment hearing was set, the Walls filed a motion

[5] The Walls claim this vote was legally improper (Br. of App., pp. 36-38) but failed to raise that contention to the lower court or in the appeal of that order. Unlike the Walls, Respondents do not contend the vote was legally improper but only that it was unnecessary for the approval of the Dyes' dock.

[6] The Walls claim certain voting agreements obtained by the Dyes relevant to this vote are "deeply problematic". (Br. of App., pp. 10-11.) Voting agreements, such as the ones collected by the Dyes, however, are expressly authorized by statute. *See* S.C. Code § 33-31-730.

to compel the depositions of the HOA corporate representative and Mr. Chakides[7]. (Walls' Motion to Compel.) That same day, the HOA and Mr. Chakides filed a motion for protective order. (HOA's and Chakides' Motion for Protective Order.) Also on March 18, 2021, the Dyes filed their reply in support of their motion for summary judgment and opposition to the Walls' motion for partial summary judgment. (Dye's Reply and Response.)

A hearing was held on the parties' cross motions for summary judgment on March 22, 2021. (Hearing Transcript, March 22, 2021.) Thereafter, on July 28, 2021, the Master-In-Equity issued an order granting the Dyes' motion for summary judgment, denying the Walls' motion for partial summary judgment, and denying the discovery motions as moot. (Order, dated July 28, 2021.) On August 9, 2021, the Walls filed a motion to reconsider (Walls' Motion to Reconsider) which was denied by the Master-In-Equity on August 13, 2021. (Order, dated August 13, 2021.) The Walls filed their notice of appeal on September 14, 2021.

STANDARD OF REVIEW

When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011) (citing *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002)). Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the

[7] By this time, all claims against Mr. Chakides had been dismissed from the case pursuant to the Master's November 19, 2020 order and, thus, Mr. Chakides was no longer a defendant in the case.

non-moving party." *Turner*, 392 S.C. at 122, 708 S.E.2d at 769 (quoting *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860).

"Summary judgment should be granted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." *ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 551–52, 854 S.E.2d 171, 174–75 (Ct. App. 2021) (citations omitted), *reh'g denied* (Feb. 12, 2021). "When a party makes no factual showing in opposition to a motion for summary judgment, the trial court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as matter of law." *Id.* (citations omitted). "[T]o resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial." *Id.*; *see also* Rule 56(e), SCRCP ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.").

"It is a question of law for the court whether the language of a contract is ambiguous" and "the construction of a clear and unambiguous deed is a question of law for the court." *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001).

"Determining the proper interpretation of a statute is a question of law" which is reviewed de novo on appeal. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

"A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Bruce*, 412 S.C. 504, 509, 772 S.E.2d 753, 755 (2015).

ARGUMENT

I. The Appellants Failed to Properly Request or Argue a Need for Additional Time for Discovery.

For the first time on appeal, Appellants formally complain of the lack of discovery prior to the parties' submission of cross motions for summary judgment in the lower court and seek reversal on that basis. (Br. of App., pp. 19-23.) Appellants, however, failed to properly raise this issue with the lower court pursuant to Rule 56(f), SCRCP, which states:

> **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

Rule 56(f), SCRCP.

"Rule 56(f) of the South Carolina Rules of Civil Procedure provides parties an easy mechanism for notifying the circuit court in advance of a scheduled hearing of the party's need for additional time in which to complete discovery before defending a motion for summary judgment." *Smith v. Jones (In re Estate of Smith)*, 419 S.C. 111, 120, 796 S.E.2d 158, 162 (Ct. App. 2016) (J. Few, concurring). Rule 56(f) simply requires the party opposing summary judgment to at least present affidavits explaining why the party needs more time for discovery. If the party opposing summary judgment fails to comply with Rule 56(f), summary judgment is proper. *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 734 S.E.2d 161 (2012) (holding master-in-equity's grant of summary judgment was proper where appellant failed to submit an affidavit in requesting a discovery extension under Rule 56(f), SCRCP); *Middleborough Horizontal Prop. Regime Council*

of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 480, 465 S.E.2d 765, 771 (Ct. App. 1995) (affirming summary judgment where the record disclosed opposing party made no formal motion for a continuance or pointed out in any specific manner how it would be prejudiced by its inability to conduct discovery under Rule 56(f), SCRCP); *see also Estate of Smith*, 419 S.C. 111, 120-21, 796 S.E.2d 158, 163 ("When a party seeks additional time, but fails to comply with the Rule [56(f)] setting forth the procedure for requesting additional time, an appellate court should be very hesitant to say the trial court abused its discretion in denying the request.") (J. Few, concurring).

Here, Appellants never filed a motion for a continuance of the summary judgment hearing, never cited to Rule 56(f) in any submissions to the lower court opposing summary judgment, and never submitted any affidavits to the lower court explaining the supposed need for additional discovery. As warned by Justice Few during his time on this Court:

> Nevertheless, [a]ppellant chose to proceed in the hope the circuit court would not enforce the Rules of Civil Procedure. The Rules, however, are designed to be enforced, *Ex parte Wilson*, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005) ("If a rule's language is plain, unambiguous, and conveys a clear meaning, … the stated meaning should be enforced."), and we have repeatedly stated we allow trial judges the discretion in which to do so, *see, e.g., Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 108, 727 S.E.2d 407, 416 (2012) ("A trial court's rulings in matters related to discovery generally will not be disturbed on appeal in the absence of a clear abuse of discretion.").
>
> The circuit court correctly enforced a plainly-written rule [56(f)], and therefore, its decision to deny additional time in which to complete discovery was within its discretion.

Estate of Smith, 419 S.C. 111, 122, 796 S.E.2d 158, 163. Appellants failed to follow the procedure set forth in Rule 56(f) and, thus, summary judgment was properly granted. Moreover, Appellants' failure to properly raise this issue in the lower court precludes them from raising the issue for the first time on appeal. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is

axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

Appellants further complain about the expedited timeline of the case with the summary judgment hearing being held six months after the complaint was filed. However, in light of Appellants' failure to submit the required affidavit explaining the need for additional discovery, the timeline of the case is immaterial. *See Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003) (holding that summary judgment was properly granted despite lower court hearing summary judgment arguments mere four months after complaint was filed); *Montedison*, 320 S.C. at 479-80, 465 S.E.2d at 771 (affirming summary judgment where appellants "advance[d] no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment").

Finally, the fact that Appellants filed their own motion for summary judgment precludes them from complaining of a need for further discovery under the doctrine of judicial estoppel. Here, Appellants twice filed motions for partial summary judgment with the lower court. By doing so, Appellants impliedly represented to the lower court that there had been "adequate time for discovery". *See Bray v. Marathon Corp.*, 347 S.C. 189, 194, 553 S.E.2d 477 (Ct. App. 2001) (holding summary judgment appropriate "after adequate time for discovery"). Appellants are judicially estopped from taking the opposite factual position in arguing the need for additional discovery. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472 (1997) ("Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation."). For this additional reason, summary judgment was properly granted.

II. The Master-In-Equity Properly Disregarded Much of Appellants' Submitted Verified Pleadings and Affidavits as Inadmissible.

In total, Plaintiffs submitted two verified pleadings[8] and four affidavits in support of their own motion for partial summary judgment and in opposition to the Dyes' and the HOA's motions for summary judgment. However, these submissions were not limited to "facts as would be admissible in evidence" as is required under Rule 56, SCRCP. Rather, they contain an abundance of conclusory allegations, legal opinions, argument, inadmissible hearsay, and other irrelevant, inadmissible material. The Dyes objected to the admissibility of large portions of the Walls submissions both in briefing to the lower court and at the summary judgment hearing. (Dyes' Reply and Response, pp. 8-14[9]; Hearing Transcript, dated March 22, 2021, 11:14-12:8.) The Master-In-Equity found these portions to be inadmissible and properly disregarded them in ruling on the summary judgment motions. (Order, July 28, 2021, pp. 15, 20.) The Walls, however, did not submit any briefing in response to the Dyes' objections, did not offer any argument as to admissibility at the summary judgment hearing, and did not raise or argue the issue of admissibility in their motion for reconsideration. By not contesting this issue in the lower court, Appellants have failed to preserve the issue for appeal. *Wilder*, 330 S.C. at 76, 497 S.E.2d at 733.

Nevertheless, even if this Court considers the issue, the inadmissible material presented by these submissions was properly disregarded by the Master-In-Equity. *See Dawkins*, 354 S.C. at 65, 580 S.E.2d 433 (upholding trial court's refusal to consider affidavit offering legal conclusions in opposing summary judgment because it impermissibly invaded the exclusive province of the trial court); *id.*, 354 S.C. at 68 ("Likewise, because of the abundance of conclusory allegations

[8] Because the allegations of Appellants' first verified complaint were restated and subsumed by the later pleading, only the allegations of the Amended Verified Complaint are addressed herein.

[9] In their briefing to the lower court, the Dyes' made specific, detailed objections as to each paragraph of the Walls' submissions. Rather than restate those objections in this brief verbatim, Respondents incorporate those arguments by reference and highlight key objections herein.

found in respondents' verified complaint, it simply is not an appropriate substitute for an affidavit."); *see also* SCRCP 56 (requiring that affidavits "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."); 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil 3d § 2738 (1998) ("Few pleadings will satisfy these requirements, even when verified."); *id.* ("ultimate or conclusory facts and conclusions of law, as well as statements made on . . . 'information and belief,' cannot be utilized on a summary-judgment motion").

As to the remaining material factual allegations of the verified pleading and the affidavits, the Respondents do not dispute those facts and, thus, summary judgment was properly granted in Respondents' favor.

In this case, the Master-In-Equity determined the Declaration to be unambiguous (a legal question for the court) and interpreted the unambiguous Declaration (also a legal question for the court) and state statutes (again, a legal question) to find:

- The Declaration does not prohibit covered docks and, instead, plainly and unmistakably implies that approval and construction of dock coverings is allowed. (Order, July 28, 2021, pp. 10-15.)
- The Declaration requires either that the Association's Board or an ARC designated by the Board approve of all exterior structures, including covered docks. (Order, July 28, 2021, pp. 16-17.)
- The Board was authorized under the Declaration and state statutory law to designate an ARC not composed of Board members for this purpose. (Order, July 28, 2021, pp. 17-18.)

- The Declaration has never been amended and the 2016 annual meeting vote "to prohibit covered docks" was ineffective to amend the Declaration as required under the Declaration. (Order, July 28, 2021, pp. 19-20.)
- Under the Declaration, a vote of the Association's membership is not required for the approval of covered docks. (Order, July 28, 2021, p. 19.)

After answering these legal questions, the remaining factual issues revolved around whether the Dyes' covered dock had been approved by either the Board or the ARC or both.

On that point, the Walls have admitted in their pleadings (Am. Compl. ¶¶ 40-42) and in their brief (Br. of App., p. 7) that the ARC approved the Dyes' covered dock. Moreover, the Walls' other submissions also admit—expressly and impliedly—that the ARC voted and approved the Dyes' covered dock. (Aff. of W. Wall, Feb. 23, 2021, ¶ 14; Aff. of H. Fritz, Oct. 13, 2020, ¶ 20; Aff. Of H. Fritz, Feb. 19, 2021, ¶¶ 9, 16-18; Aff. of H. Schweers, Feb. 19, 2021, ¶ 15.) Furthermore, none of the Walls' submissions disputed that the ARC voted to approve the Dyes' covered dock. The Walls only disputed the legal validity of that vote. Thus, there is no dispute of fact. The ARC voted to approve the Dyes' covered dock. Under the Master-In-Equity's correct interpretation of the Declaration, this ARC vote was sufficient to confer approval of the Dyes' covered dock. Summary judgment was properly granted in Respondents' favor.

As to a Board vote on the issue, Mr. Wall makes the conclusory claim that the Board "never approved the Dyes' dock." (Aff. of W. Wall, Feb. 23, 2021, ¶ 15.) The Dyes objected to the admissibility of this statement as a legal conclusion (Dyes' Reply and Response) and the Walls offered no argument in response. The Master-In-Equity ruled Mr. Wall's conclusory denial inadmissible. (Order, July 28, 2021, p. 20.) Nevertheless, within the same paragraph as his conclusory denial, Mr. Wall admitted the Board "decided that the ARB Board does represent the

Homeowners and their vote stands." (Aff. of W. Wall, Feb. 23, 2021, ¶ 15.) Based on this admission, and the lack of admissible evidence to the contrary, the Master-In-Equity correctly found, as a matter of law, that this decision of the Board constituted a ratification[10], and thus approval[11], of the ARC vote. (Order, July 28, 2021, p. 20.) Moreover, there is no semantic distinction between the Board approving the ARC vote and the Board directly approving the Dyes' dock. By ratifying the ARC vote, the Board adopted the ARC decision as its own. Thus, the undisputed evidence presented to the Master-In-Equity demonstrates that both the Board and the ARC approved the Dyes' covered dock. Based on those facts and the Master's correct interpretation of Declaration and relevant law, the Master-In-Equity properly granted summary judgment in Respondents' favor.

III. The Master-In-Equity's Decision Granting Summary Judgment Against Appellants Should Be Affirmed Based on the Declaration Which Does Not Prohibit Covered Docks and Indicates Covered Docks May Be Approved by the Architectural Review Committee or the Board of Directors.

As in their first appeal, Appellants continue in their erroneous argument that the Declaration prohibits covered docks and that the appointment of the ARC contravened the Declaration and state law. In doing so, Appellants ignore the plain and unambiguous language of the Declaration and disregard relevant statutory provisions. Contrary to Appellants' claims, covered docks are not prohibited in Shellmore but may be approved in the discretion of the Board, or its designated ARC. Also, the Declaration and state law provide the Board with authority to designate the ARC for the consideration and approval of covered docks.

[10] What constitutes ratification is a question of law. *Hull v. Young*, 8 S.E. 695, 697, 30 S.C. 121 (1889).

[11] "Ratification is the affirmance and approval of an act, giving sanction and validity to something done by another." *Hull v. Young*, 8 S. E. 695, 697, 30 S.C. 121 (1889). Ratification "may be manifested by any writing, act, or words which evidence an intent to confirm or adopt a previous act of oneself or of another." *Multimedia, Inc. v. Greenville Airport Com'n*, 339 S.E.2d 884, 886, 287 S.C. 521, 522 (Ct. App. 1985).

A. Covered docks are not prohibited in Shellmore.

In their brief, Appellants offer the erroneous legal conclusion that covered docks are prohibited within Shellmore through either the restrictive covenants, a common scheme of development, or a 2016 vote of the Association's membership. Upon closer examination, Appellants' conclusory assertions are without any basis in law or admissible fact.

i. The restrictive covenants do not prohibit covered docks.

First, the restrictive covenants contained in the Declaration—and which Appellants have admitted are binding and unambiguous[12]—do not prohibit covered docks.[13] Our Supreme Court has repeatedly set out the rules for interpreting restrictive covenants in South Carolina:

> Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. The court may not limit a restriction in a deed, *nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.* It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and *all doubts resolved in favor of the free use of the property,* subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. It follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property. A *restriction on the use of property must be created in express terms or by plain and unmistakable implication,* and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.

Town of McClellanville, 345 S.C. at 622, 550 S.E.2d at 302 (emphasis in original) (quoting *Taylor v. Lindsey*, 332 S.C. 1, 4-5, 498 S.E.2d 862, 863-64 (1998)). Thus, for covered docks to be

[12] In their pleadings, the Appellants admitted that the Declaration is controlling (*see* Am. Compl., ¶¶ 12-14, 17) and affirmatively alleged that the Declaration is unambiguous. (Am. Compl., ¶ 49.)

[13] "It is a question of law for the court whether the language of a contract is ambiguous" and "the construction of a clear and unambiguous deed is a question of law for the court." *Town of McClellanville,* 345 S.C. at 623, 550 S.E.2d 299.

prohibited within Shellmore, the restriction must be "created in express terms or by plain and unmistakable implication". *Id.* The Declaration contains no such language, express or implied.

A thorough examination of the Declaration reveals no express prohibition on covered docks in Shellmore. Indeed, the only portion of the Declaration which expressly mentions docks in any capacity—whether covered or uncovered—occurs in Article V, Section 8, which reads as follows:

> Section 8. Boat Houses, Docks, etc. No boat houses, *docks*, piers, or wharves shall be constructed on any lot without first obtaining the written approval of the Association, or its designated representative.

(Dye MSJ, Ex. 1-B, p. 11 (emphasis added).) Thus, the Declaration allows construction of docks upon "written approval" but makes no distinction between covered or uncovered docks even though the drafter could have easily made such a distinction and prohibited covered docks. Consequently, there is no express prohibition on covered docks in the Declaration. *See Town of McClellanville,* 345 S.C. at 621, 550 S.E.2d 299 (upholding decision of Master in Equity refusing "to read restrictions into the deed which [the drafter] could have effortlessly written in itself"); *Taylor*, 332 S.C. at 5-6, 498 S.E.2d 862 (refusing to index minimum home value restriction in deed to inflation where grantor "could have easily done so" but did not).

Moreover, the language of the Declaration plainly and unmistakably implies that covered docks are allowed upon "written approval." The same Article V, Section 8, cited above expressly contemplates the approval of "boat houses" which are, as noted by the Master-In-Equity, covered docks for boats. (Order, dated July 28, 2021, pp. 11-12.) *See Serra v. Maryland Dept. of Envir.*, 758 A.2d 1057, 1059 (Md. App. 1999) ("Boathouse means a structure with a roof or cover, or similar device placed over open water to protect a boat or other vessel."). If roof coverings large

enough to house a boat can be approved, covered docks can also be approved pursuant to the Declaration.

ii. The absence of covered docks does not prohibit their future approval and construction.

Next, Appellants appear to argue under multiple theories that the absence of covered docks[14] within Shellmore prior to construction of the Dyes' dock should have precluded approval of the Dyes' covered dock. Under one ill-founded theory, Appellants claim that the Declaration precludes approval of the Dyes' covered dock because, in the absence of other covered docks, the Dyes' dock lacks "harmony of external design" with other structures in Shellmore. (Br. of Appellants, p. 33.) Appellants cited language comes from Article V, Section 1, of the Declaration which provides, in pertinent part:

> No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to *harmony of external design* and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board.

(Dye MSJ, Ex. 1-B, p. 8 (emphasis added).) All the various considerations listed in the cited section, including "harmony of external design", are subjective aesthetic considerations which the Declaration indicates are to be judged in the discretion of the Board, or its designated ARC. *See Palmetto Dunes Resort, Div. of Greenwood Dev. Corp. v. Brown*, 287 S.C. 1, 7, 336 S.E.2d 15, 19 (Ct. App. 1985) (covenant requiring preconstruction approval of structures based on aesthetic considerations vested approving entity with discretion to render decision). Our Supreme Court,

[14] The Walls claim that there has never been a covered dock in Shellmore. (Br. of App., p. 4.) As argued to the lower court by Respondents (Dyes' Reply and Response, pp. 8-14), none of the Walls' submissions contain the necessary foundational testimony to make such a claim admissible. Moreover, as determined by OCRM, there are two covered docks within view of the Dyes' covered dock. (Dye MSJ, Ex. 2-A, p. 4.)

considering a nearly identical provision[15] in a restrictive covenant listing "harmony and compatibility of . . . external design" as a criterion, found the covenant vested the community architectural review board with discretion to make approval decisions "constrained only to act reasonably and in good faith." *O'Shea v. Lesser*, 308 S.C. 10, 16, 416 S.E.2d 629, 632 (1992). Similarly, in this case, rather than require rigid uniformity, the Declaration vests the Board, or its designated ARC, with the discretion to approve or disapprove of structures based on subjective aesthetic considerations. In Article V, Section 2, the Declaration provides that "the Declarant reserves unto itself, its successors and assigns, or its designated representative, the right to control absolutely and solely to decide the precise site and location of any home or other structure upon the lots". (Dye MSJ, Ex. 1-B, p. 9.) Thus, either the Association, as successor to the Declarant and governed by the Board, or the ARC, as its designated representative, possesses sole and absolute discretion to approve structures in Shellmore. Although the Appellants may have aesthetic sensibilities disfavoring covered docks, under the Declaration, discretionary approval authority for docks—covered or uncovered—rests with the Board, or its designated ARC. *O'Shea*, 308 S.C. at 16, 416 S.E.2d at 632. ("Although people reasonably may differ as to whether an addition is aesthetically pleasing, the Board has been vested with the sole authority to make this judgment.").

Furthermore, Appellants' argument is circular and unworkable when taken to its logical conclusion. Appellants argue that the Dyes' covered dock could not be properly approved because, at the time it was approved, no other covered docks existed in Shellmore.[16] According to

[15] The provision, as cited in the Supreme Court's opinion, read as follows: "No building, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained upon the common properties, nor shall any landscaping be done, nor shall any exterior addition to any such existing structure or change or alteration therein, be made until the plans and specification therefor showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by Fripp Island Development Corporation and its duly appointed agents." *O'Shea v. Lesser*, 308 S.C. 10, 13, 416 S.E.2d 629, 631 (1992).

[16] As noted above, there are two covered docks within view of the Dyes' covered dock and which are closer to the Walls' property than some docks within Shellmore. (Dye MSJ, Ex. 2-A, p. 4.) While not connected to lots within the

Appellants, the absence of covered docks precludes approval of any covered dock in the future. Thus, under Appellants' argument, architectural approval is dependent on the prior existence of similar structures within the neighborhood. The question then becomes, how did the first dock—or the first house—in Shellmore get approved? Indeed, under Appellants' argument, without any pre-existing structures for reference, approval of the first dock or house in the neighborhood would be impossible. Accordingly, when tested, Appellants' argument fails.

Under another theory, Appellants argue that the Declaration sets out a common scheme of development prohibiting covered docks. "Generally, the developer must establish the general scheme of development before any lots are sold." *Gambrell v. Schriver*, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1993). At the summary judgment hearing, Appellants conceded that only the Declaration should be considered in evaluating whether a common scheme of development exists. (Hearing Transcript, Mar. 22, 2021, 21:22-22:11.) As demonstrated above, however, the express language of the Declaration anticipating approval of "boat houses" militates against a finding that covered docks are clearly and unmistakably prohibited by a common scheme of development. Moreover, the remaining evidence cited by Appellants on this point—e.g., that previous covered dock applications were denied—post-dates the first sale of property within Shellmore and is, as Appellants conceded to the lower court, irrelevant and inadmissible to show that the developer implemented a general scheme of development prohibiting covered docks. Even if considered, previous denials of covered docks indicate only the exercise of the then-existing ARC's or Board's discretion without any prohibitory effect on future covered docks. Furthermore, this extrinsic evidence is also inadmissible because the Declaration is, as Appellants allege in their

Shellmore subdivision, these other covered docks would still be "surrounding structures" for consideration of "harmony of external design" under the Declaration. (Dye MSJ, Ex. 1-B, p. 8.) Accordingly, covered docks are not unprecedented as the Walls claim.

Amended Complaint (*see* Am. Compl., ¶ 49), unambiguous on its face. *See Town of McClellanville*, 345 S.C. at 623 (holding only after "the court decides the language [of a deed] is ambiguous . . . may [evidence] be admitted to show the intent of the parties"); *Mooney v. James*, 288 S.C. 466, 467, 343 S.E.2d 453 (Ct. App. 1986) ("One of the most valuable safeguards thrown around a deed is that parol evidence is not admissible to vary or contradict the terms of a written contract, and this applies in all its strictness to actions involving deeds.") (quoting *Scott v. Scott*, 216 S.C. 280, 293, 57 S.E.2d 470, 476 (1950)).

Even if this extrinsic evidence could be considered because the Declaration is found to be ambiguous, that ambiguity must, as a matter of law, be "resolved in favor of the free use of property" which, in this case, would favor construction of the Dyes' covered dock. *Town of McClellanville*, 345 S.C. at 622, 550 S.E.2d at 302. Similarly, any doubts regarding the creation of a general scheme of development "must be resolved in favor of the freedom of land from restriction." *Gambrell*, 312 S.C. at 358, 440 S.E.2d 393. Consequently, even if the evidence proffered by the Appellants were admissible, despite the parol evidence rule, it would, at best, create an ambiguity or an uncertainty necessitating a resolution in favor of the Dyes.

iii. The 2016 "vote" was ineffective to prohibit covered docks.

Appellants appear to contend that a vote of the Association's membership during the 2016 annual meeting was effective to "prohibit covered docks and lifts" within Shellmore. (Br. of Appellants, pp. 34-35.) However, Appellants failed to produce any evidence to the lower court—and there is none—that the 2016 "vote" met the Declaration's requirements for amending its restrictive covenants. Indeed, Appellants conceded this point at the summary judgment hearing. (Hearing Transcript, Mar. 22, 2021, 35:22-36:19.) Without such an amendment, the purported 2016 "vote" has no restrictive effect on the Dyes' property. *See Town of McClellanville*, 345 S.C.

617, 550 S.E.2d 299 (refusing to restrict town from charging permit fees for public boat landing where there was no prohibition on permit fees in the restrictive covenants); *Taylor*, 332 S.C. at 4-5, 498 S.E.2d at 863-64 (refusing to enlarge a restrictive covenant beyond its plain language in order to prohibit the erection of mobile homes).

For these reasons, covered docks are not prohibited in Shellmore. Instead, they may be approved in the discretion of the Board or its designated ARC.

B. The Board was authorized under the plain and unambiguous language of the Declaration to directly approve the Dyes' covered dock or to designate the ARC as its representative for the same purpose.

Appellants offer the specious argument that neither the Board nor the ARC had authority under the Declaration to approve covered docks in Shellmore. In doing so, Appellants, ignore the clear and unambiguous language in the Declaration and misinterpret multiple state statutes.

The Declaration clearly and unambiguously vests authority for approval of all exterior structures in Shellmore with either the Board, or its designated ARC. In that regard, Article V, Section 1, states in pertinent part:

> No building, fence, wall or *other structure* shall be commenced, erected or maintained upon the Properties, nor shall *any exterior addition to or change or alteration* therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the *Board of Directors of the Association*, or by an *architectural committee* composed of three (3) or more representatives appointed by the Board. In the event said Board, or *its designated committee*, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

(Dye MSJ, Ex. 1-B, p. 8 (emphasis added).) Thus, the Declaration plainly and unmistakably grants the Board the authority to approve or disapprove of any "structure" in Shellmore or to designate

an ARC with the same power. *Id.* Further down in Article V, Section 8, of the Declaration specifically addresses the construction of docks within the Shellmore community:

> Section 8. Boat Houses, Docks, etc. No boat houses, docks, piers, or wharves shall be constructed on any lot without first obtaining the written approval of the Association, or its designated representative.

(Dye MSJ, Ex. 1-B, p. 11.) Thus, the Declaration explicitly designates both "the Association" and "its designated representative" as entities with authority to approve the construction of docks in Shellmore. Reading Sections 1 and 8 of Article V together, reference to "the Association" in Section 8 plainly refers to "the Board" as referenced in Section 1. Similarly, the "designated representative" mentioned in Section 8 unmistakably refers to the "representatives" on the "designated" "architectural committee" as referenced in Section 1.

Article I, Section 1, of the Declaration defines "Association" as the corporate entity "Cape Romain Lookout Homeowners Association, Inc., its successors and assigns." (Dye MSJ, Ex. 1-B, p. 2.) In 1994, that corporation filed Articles of Amendment changing its name to the "Shellmore Homeowners Association, Inc." (Dye MSJ, Ex. 1-C.) Thus, it is the corporate HOA entity which constitutes the "Association" under the Declaration. In South Carolina, the control of a corporate entity—and, thus, the authority to act on its behalf—is vested in the entity's board of directors. *See* S.C. Code § 33-31-801 ("Except as provided in this chapter . . . all corporate powers must be exercised by or under the authority of and the affairs of the corporation managed under the direction of its board."); S.C. Code § 33-8-101 ("Unless otherwise provided . . . all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors."); *see also Carolina First Corp. v. Whittle*, 343 S.C. 176, 185, 539 S.E.2d 402, 407 (Ct. App. 2000) ("In South Carolina, the authority to direct the business and affairs of a corporation is delegated to a board of directors, not the

shareholders."). Thus, under the plain terms of the Declaration and pursuant to black letter law, the Board of Directors is authorized to approve or disapprove of docks either directly or through the appointment of an ARC as its designated representative. There is no other reasonable interpretation of the Declaration.

C. The Board acted within its authority in designating the ARC and allowing it to approve the Dyes' covered dock.

Under the uncontroverted facts presented to the lower court, the Board exercised its authority under the Declaration to designate an ARC for the approval of docks in Shellmore. The meeting minutes for the Association's 2019 annual meeting indicate that Michael Grooms and John Horres were appointed to the ARC at a meeting of the Board held on March 26, 2018. (*See* Dye MSJ, Ex. 1, ¶ 7, Ex. 1-E.) The Board subsequently solicited additional volunteers to serve on the ARC; however, only Bernard Bozzelli volunteered. (Dye MSJ, Ex. 1, ¶ 8, Ex. 1-F.) The Board unanimously approved Mr. Bozzelli's appointment to the ARC on February 14, 2020. (Dye MSJ, Ex. 1, ¶ 9, Ex. 1-G.) This ARC—composed of John Horres, Michael Grooms, and Bernard Bozzelli—voted to approve both the original and the revised proposed covered dock plans submitted by the Dyes. (Dye MSJ, Ex. 1, ¶¶ 11, 13, Ex. 1-H, Ex. 1-J.) Moreover, the Board explicitly and unanimously ratified the ARC vote to approve the Dyes' dock. (*Id.* at ¶ 12; Ex. 1-I.) Thus, the ARC was properly designated by the Board under the Declaration and properly acted to approve the Dyes' covered dock.

In addition to their arguments based on the Declaration, Appellants argue, incorrectly, that the appointment of the ARC by the Board was invalid under both the Nonprofit Corporation Act and the HOA Act. First, Appellants argue that the ARC's appointment is invalid under the South Carolina Nonprofit Corporation Act because the ARC members are not Board members. (Br. of App., pp. 27-29.) Appellants would point to S.C. Code § 33-31-825(a) which allows the Board of

Directors to create "committees of the board and appoint members of the board to serve on them." S.C. Code § 33-31-825(a). Under S.C. Code § 33-31-801(c), however, "[t]he articles" or, in the case of a homeowners association, the restrictive covenants, "may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board." S.C. Code § 33-31-801(c); *see also Seabrook Island Prop. Owners Ass'n v. Marshland Tr., Inc.*, 358 S.C. 655, 663, 596 S.E.2d 380, 384 (Ct. App. 2004) (recognizing architectural review board's authority granted by restrictive covenants); 17 S.C. Jur. Covenants § 88 ("Restrictive covenants often authorize the creation of a homeowners' association, usually in the form of a not-for-profit corporation, and grant it authority to manage common areas, make regulations, levy assessments, and other similar privileges."). The Declaration plainly authorizes the Board of Directors to appoint non-board members to the ARC and, thus, the Board's appointment of the ARC complies with S.C. Code § 33-31-801(c) of the South Carolina Nonprofit Corporation Act. Appellants' argument to the contrary is without merit.

Second, Appellants argue that "the architectural review committee has no authority because the Association never recorded any sort of instrument giving it power over homeowners' property, which would have been required by the HOA Act." (Br. of App., pp. 29-30.) Appellants' argument fails on both the law and the facts. The undisputed facts in this case indicate that the Declaration, giving the Board authority to designate the ARC as its representative for the approval of structures including docks, was recorded. Appellants appear to suggest that an additional resolution of the Board explicitly designating the ARC should have been recorded. However, there is no such requirement under the HOA Act. Indeed, the HOA Act only requires the recording of "governing documents" defined as the "declaration, master deeds, or bylaws, or any amendments" and "rules, regulations, and amendments". *See* S.C. Code § 27-30-130. There is no statutory

requirement that an HOA record a designation of an architectural committee as its representative. Appellants' proposed reading of the HOA Act would require recording of every decision of every HOA board throughout the state and deed recording offices would be overrun with unnecessary filings. The statute is not so broad. Accordingly, Appellants' argument based on the HOA Act fails.

Consequently, the Master-In-Equity correctly held the Declaration does not prohibit covered docks and that Dyes' covered dock was properly approved by both the ARC and the Board.

CONCLUSION

For the reasons stated above, Respondents respectfully request that this Court affirm the Master-In-Equity's Order granting summary judgment in their favor on Appellants' claims.

Respectfully submitted,

By: /s/ Andrew M. Connor

Andrew M. Connor
SC Bar No. 100050
Connor Law, PC
1501 Belle Isle Avenue, Suite 110
Mount Pleasant, SC 29464
(843) 606-1578

Counsel for Respondents Jonathan and Shaun Dye

L. Sidney Connor, IV
SC Bar No. 1363
Kelaher Connell & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648

Counsel for Respondents Shellmore Homeowners Association, Inc., and John H. Chakides, Jr.

June 3, 2022