

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

Case No. 2004-CP-26-2075  
Appellate Case No. 2012-212773

**RECEIVED**

MAY 23 2013

**SC Court of Appeals**

John Musick, .....Respondent

v.

Thomas L. Dicks and Robert E. Dicks, Jr., ..... Appellants.

**APPELLANTS' RETURN TO RESPONDENT'S  
MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

Appellants, Thomas L. Dicks and Robert E. Dicks, Jr., respectfully submit this Return to Respondent's Motion to Supplement the Record on Appeal.

Respondent seeks to include in the Record on Appeal a stand-alone document which contains a re-typed version of certain restrictions (the "1958 Restrictions") which are relevant to this appeal. These 1958 Restrictions, however, only exist as a part of a certain larger plat (referred to herein as the "1955 Plat"). The 1958 Restrictions were never independently recorded and do not exist of record or otherwise other than as a part of this 1955 Plat. In fact, the 1958 Restrictions are not signed, witnessed or notarized.

Appellants have included in the Record on Appeal a large version of the 1955 Plat which actually shows a more legible version of the 1958 Restrictions than the

Respondent's re-typed version of these restrictions. Therefore, the inclusion of Respondent's re-typed version should not be necessary to aid this Court in review of these restrictions.

The document suggested by Respondent for inclusion in the Record was not introduced as evidence at the trial of this matter or otherwise presented to the lower court as required by Rule 210(c), SCACR. Accordingly, this document was not designated *by either party* to be included in the Record on Appeal. Therefore, this document is not properly included in the Record on Appeal pursuant to Rule 210(c), SCACR.

Furthermore, the origin of this re-typed version of the 1958 Restrictions is unknown, no foundation having been established for it before the lower court, and, perhaps of greater importance, the document includes handwritten markings and notations which are *not* a part of the actual 1958 Restrictions which are of record as a portion of the 1955 Plat. The re-typed version of the 1958 Restrictions submitted by Respondent is prejudicial, and an inaccurate depiction of the actual 1958 Restrictions, in that the version presented by Respondent makes the 1958 Restrictions appear to be stand-alone restrictions (which is clearly not the case), and because the version of the 1958 Restrictions submitted by Respondent includes handwritten notations, and emphasis, which is simply not a part of the actual 1958 Restrictions shown on the 1955 Plat which is of record and properly before this Court.

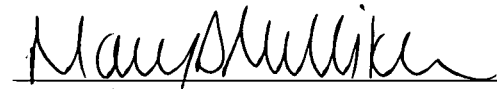
In sum, the document proposed by Respondent for inclusion in the Record on Appeal: 1) is not necessary in light of the large version of the 1955 Plat provided by Appellants; 2) was not presented to or before the lower court and therefore is not properly included in the Record on Appeal pursuant to Rule 210(c), SCACR; 3) prejudices

Appellants to the extent it suggests the 1958 Restrictions ever existed as a stand-alone document in the form suggested to be included by Respondent; and 4) prejudices Appellants to the extent of the handwritten markings and emphasis included in the proffered document which are not a part of the actual 1958 Restrictions.

For the reasons set forth above, Respondent's Motion should be denied.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**



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**ATTORNEYS FOR APPELLANTS**

May 28, 2013

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THE STATE OF SOUTH CAROLINA  
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John Musick, ..... Respondent

v.

Thomas L. Dicks and Robert E. Dicks, Jr., ..... Appellants.

**CERTIFICATE OF SERVICE**

I, Kathleen S. Romero, an employee of Callison Tighe & Robinson LLC, Attorneys for the Appellants, do hereby certify that, on this date, I caused to be served the **Appellants' Return to Respondent's Motion to Supplement the Record on Appeal** upon Respondent's counsel, by depositing a copy of the same in the United States mail, with proper first-class postage affixed thereon, addressed as follows:

Thomas C. Brittain, Esquire  
The Brittain Law Firm, PA  
4614 Oleander Drive  
Myrtle Beach, SC 29577  
*(Attorneys for Respondent)*

  
KATHLEEN S. ROMERO

May 28, 2013

**Mary Dameron Milliken**

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MaryMilliken@callisontighe.com

May 28, 2013

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street  
P. O. Box 11629  
Columbia, SC 29211

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MAY 28 2013  
SC Court of Appeals

RE: John Musick vs. Thomas L. Dicks, *et al.*  
Case No. 2004-CP-26-2075  
Appellate Case No. 2012-212773

Dear Ms. Kitchings:

Enclosed herewith please find an original and seven (7) copies of Appellants' Return to Respondent's Motion to Supplement the Record on Appeal in the above-referenced matter. Kindly file the same and return a clocked-in copy to the courier.

By copy of this letter, the enclosed Return is being served upon Respondent's counsel.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Mary Dameron Milliken

MDM:ksr

Enclosures

cc (w/enc.): Thomas C. Brittain, Esquire  
Mr. Thomas L. Dicks  
Mr. Robert E. Dicks, Jr.

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