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Feb 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Master-in-Equity

Hon. Shannon M. Phillips, Master-in-Equity

Case No.: 2022-001149

Derrick S. Hester, Debra S. Hester, James H. Nicholls, Emma Viola Nicholls,
James E. Gregg, Jr., Paulette J. Gregg, Michael Ben Coley, Ashley Coley,
Grady L. Barnes, Sr., Julia W. Barnes, Ewen Lennon, and Amy Lennon, ...Respondents.

v.

Mark Razzano and Carre Razzano.....Appellants,

RECORD ON APPEAL

Mark A. Bible, Jr. (S.C. Bar # 101624)
John T. Crawford, Jr. (S.C. Bar # 69682)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
Telephone: (864) 242-4899
E-mail: crawford@conlaw.com
E-mail: bible@conlaw.com
Attorneys for Appellants

Kenneth C. Anthony, Jr. (S.C. Bar # 0404)
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, S.C.
Telephone: (864) 582.2355
E-mail: kanthony@anthonylaw.com
Attorney for Respondents

K. Jay Anthony (S.C. Bar # 77433)
The Anthony Law Firm, P.A.
650 E. Washington Street
Greenville, South Carolina 29601
Telephone: (864) 582-2355
E-mail: janthony@anthonylaw.com
Attorney for Respondents

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Derrick S. Hester, Debra S. Hester,) C.A. No.: 2018-CP-42-02247
James H. Nicholls, Emma Viola)
Nicholls, James E. Gregg, Jr.,)
Paulette J. Gregg, Michael Ben)
Coley, Ashley Coley, Grady L.)
Barnes, Sr., Julia W. Barnes, Ewen)
Lennon, and Amy Lennon,)
Plaintiffs,)
v.)
Mark Razzano and Carre Razzano,)
Defendants.)

ORDER

RECEIVED
May 27 2020
SC Court of Appeals

This matter came before the Court for trial on February 25, 2020. Present at the trial were K. Jay Anthony and Kenneth C. Anthony, Jr., counsel for Plaintiffs, as well as John T. Crawford, Jr. and Mark A. Bible, Jr., counsel for Defendants. The parties were also in attendance.

The basis for Plaintiffs' Complaint is: (i) Defendants' construction of a garage structure containing living space above the garage bays (hereinafter the "Garage") on their property within the Solitude Bay neighborhood on Lake Bowen; and (ii) Defendants' use of their main residence for rental of individual rooms, including through the website www.airbnb.com. Plaintiffs sought a permanent injunction prohibiting the Defendants from making commercial use of their property and further prohibiting Defendants from making residential use of the living space in the Garage, alleging that both acts violated the applicable Restrictive Covenants.

Following the conclusion of the Plaintiffs' case, both Plaintiffs and Defendants moved for a directed verdict. For the reasons stated below, I grant the Plaintiffs' motion for directed verdict and deny Defendants' motion for the same. Further, by virtue of granting the Plaintiffs' motion for

directed verdict, the Court did not find it necessary for the Defendants to call their witnesses and present their case. However, the Court heard from Defendant Carre Razzano, who was called as the first witness by Plaintiffs and was cross-examined by Defendants' counsel. Additionally, Defendants admitted numerous exhibits prior to the commencement of the trial, with the consent of Plaintiffs' counsel, and made reference to those exhibits during the Plaintiffs' presentation of the case.

LAW

“An action to enforce restrictive covenants by injunction is in equity.” See S.C. Dep’t of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). The grant of an injunction lies within the sound discretion of the trial court. See City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 581, 520-21 (2000). To enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant’s express language or by plain unmistakable implication. See Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270-71, 363 S.E.2d 891, 894 (1987). A Court shall enforce restrictive covenants unless they are indefinite or contravene public policy. See id. Restrictive covenants are contractual in nature, and thus, the language used in restrictive covenants is to be construed according to its plain and ordinary meaning. See Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). “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. See Taylor v. Lindsey, 332 S.C. 1, 4, 5, 498 S.E.2d 862, 863.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After considering the testimony and evidence presented, as well as facts admitted by both parties, I make the following Findings of Fact and Conclusions of Law:

1. This matter came before me pursuant to the Order of Reference dated January 3, 2020.

2. The pleadings of the parties, as well as the testimony at trial, demonstrate that the Restrictive Covenants found at Book 39-N, Page 400-401 (hereinafter the "Covenants") in the Offices of the Spartanburg County Register of Deeds apply to the properties at issue.

3. The Covenants provide, in relevant part:

No lot shall be used for commercial . . . uses or purposes.

No . . . garage . . . or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.

. . . . Each lot owner and his tenants, if any, shall make adequate provision for garbage disposal.

. . . . Any person may use one lot and a portion of another lot, or may use two or more lots, placing one residence thereon.

4. Neither J.G. Landrum Compton nor Lillie W. Compton (collectively the "Comptons"), the original authors of the Covenants, were available to offer testimony as to their intent in drafting the Covenants, nor were any other persons formerly associated with the Comptons offered to present testimony or other evidence of the same. Furthermore, the parties in this matter could not agree as to the intent of the Comptons or the meaning of terms set forth in the Covenants. This question is therefore one for the Court.

5. As part of the Plaintiffs' case, Plaintiffs called Defendant Carre Razzano and introduced various exhibits. Through this testimony, it was established that a number of facts in

this matter are undisputed by the parties, including the following: (i) The Garage includes 1,350 square feet of living space, with two bedrooms, two bathrooms, a full kitchen, a separate power meter, and a dedicated septic system; (ii) At the time of the trial, the Garage was not connected to the main residence, though the contract with the builder was signed February 23, 2018; (iii) It is the Defendants' plan to connect the Garage and main residence with a trellis and walkway, which would include some translucent enclosure; (iv) Until the temporary injunction in this matter, the Defendants rented two individual rooms within their main residence out on the website www.airbnb.com (hereinafter the "Website"); and (v) Mrs. Razzano admitted the authenticity of the screenshots of the listing of the property on the Website.

6. Both parties moved for a directed verdict at the conclusion of Plaintiffs' case. Based on the testimony, other evidence, and facts admitted by both parties, I determined that only questions of law remained for the Court, and a directed verdict was appropriate, pursuant to Rule 50(a), SCRCP.

7. I find that the Garage is an "outbuilding" within the language of Section 6 of the Covenants, which provides that "[n]o trailer, basement, shack, garage, barn or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted."

8. As the Garage is an "outbuilding," it cannot be used as a residence, temporarily or permanently. I therefore grant the Plaintiffs' motion for a directed verdict on this issue, deny Defendants' motion for a directed verdict, and issue a permanent injunction. Under the terms of the injunction, as long as the Garage remains unattached from the main residence, the Garage, including the living space above, may not be used as a residence, temporarily or permanently. However, I retain jurisdiction over this matter such that, in the event that the structures are joined,

I will entertain a motion to rule on whether the construction, in this Court's determination, is such that the Garage no longer has the status of an outbuilding.

9. With regard to the commercial use of the property, Plaintiffs alleged, and Defendants admitted, that Defendants rented two rooms within Defendants' main residence through the Website. Defendant Carre Razzano stated in testimony that she believed that she may make use of the living space in the Garage Residence in the same way, upon its completion. As part of their evidence, Plaintiffs submitted screenshots of the Defendants' listing on the Website, which describes the listing as "Private Room in Bed and Breakfast" and recites various amenities and policies and lists a daily rate.

10. The Plaintiffs demonstrated through testimony and other evidence that the Solitude Bay community is a small, quiet, secluded neighborhood. Reviews from the Airbnb listing demonstrate that the Razzano residence had more than thirty (30) bookings between August 2016 and October 2017. Additionally, the Plaintiffs established through testimony that the customers would, at times, wander the neighborhood, with the result of strangers walking about the neighborhood and sometimes leaving trash. The Plaintiffs established that such activity changed the character of the neighborhood, and that the community would be further impacted if the additional living space in the Garage Residence is rented out in this way.

11. The reference to "tenants" in Section 5 of the Covenants makes clear that there is no restriction on a homeowner renting his or her property. However, I find that the rental of individual rooms as done by the Defendants constitutes "commercial use" in violation of the Covenants. This further applies to the prospective use of the Garage Residence in this way. I therefore grant the Plaintiffs' motion for a directed verdict on this issue and issue a permanent injunction against rental of individual rooms anywhere on the property, including through the

Website or other similar sites, as such action would constitute a “commercial use” in violation of the Covenants.

It is therefore ORDERED THAT:

1. Defendants are permanently enjoined from using the Garage , including the living space above, as a residence, either temporarily or permanently. This Court retains jurisdiction over this matter and, should the Defendants attach the Garage to the main residence, Defendants’ may seek a ruling from this Court on whether the construction is such that, in this Court’s determination, the Garage no longer has the status of an outbuilding.

2. Defendants are permanently enjoined from making commercial use of their property through rental of rooms on the property, including, but not limited to, through the www.airbnb.com website or other similar sites.

3. The bond of Two Thousand Five Hundred Dollars (\$2,500.00) posted by Plaintiffs in relation to the temporary injunction in this matter shall be returned to the Plaintiffs.

IT IS SO ORDERED.

Hon. Gordon G. Cooper
Master-in-Equity
Spartanburg County

March ____, 2020
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Derrick S. Hester , plaintiff, et al VS Mark Razzano , defendant, et al

Case Number: 2018CP4202247

Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2020-04-09 13:24:24 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	C.A. No.: 2018-CP-42-02247
	)	
Derrick S. Hester, Debra S. Hester,	)	
James H. Nicholls, Emma Viola Nicholls,	)	
James E. Gregg, Jr., Paulette J. Gregg,	)	
Michael Ben Coley, Ashley Coley, Grady	)	
L. Barnes, Sr., Julia W. Barnes, Ewen	)	
Lennon and Amy Lennon	)	PETITION FOR POST JUDGEMENT
	)	RELIEF & DECLARATORY
Plaintiffs	)	JUDGMENT
v.	)	
	)	
Mark Razzano and Carre Razzano	)	
	)	
	)	
Defendants	)	

PLEASE TAKE NOTICE, Defendants, Mark Razzano and Carre Razzano (collectively the “Razzanos” or “Defendants”), hereby submit this petition for post judgment relief & declaratory judgment regarding matters this Court retained jurisdiction to reconsider pursuant to Court Order entered April 9, 2020 (the “Order”). The Order is enclosed herewith as **Exhibit A**. This petition is based on the following together with such other evidence, affidavits, or materials which have been or which may hereafter be furnished to the Court:

1. The above-named plaintiffs (collectively “Plaintiffs”) are owners of property in Solitude Bay Community at Lake Bowen in Campobello, South Carolina (the “Community”).
2. Defendants are owners of property located within the Community at the physical address of 149 Whippoorwill Drive, Campobello, SC (the “Subject Property”).
3. The Subject Property is subject to the 1972 Restrictions attached hereto and incorporated herein as **Exhibit B**.
4. Plaintiffs initiated the above-captioned case seeking: (i) a permanent injunction to enjoin the Defendants from making “commercial use” of the Subject Property through the rental of rooms on the Subject Property; and (ii) a permanent injunction to enjoin the Defendants from using a garage with living space above the garage, as a residence, either

temporarily or permanently.

5. Trial of the above-captioned case occurred before the Hon. Gordon G. Cooper on February 25, 2020. The Court entered its final Order in the above-captioned case on April 9, 2020, ordering in relevant part as follows:

- a. “Defendants are permanently enjoined from using the Garage, including the living space above, as a residence, either temporarily or permanently. This Court retains jurisdiction over this matter and, should the Defendants attach the Garage to the main residence, Defendants may seek a ruling from this Court on whether the construction is such that, in this Court’s determination, the Garage no longer has the status of an outbuilding.”
- b. “Defendants are permanently enjoined from making commercial use of their property through rental of rooms on the property, including, but not limited to, through the www.airbnb.com website or other similar sites.”

6. The purpose of this petition is to seek a post judgment ruling and/or declaratory judgment on the sole matter in which this Court reserved jurisdiction, attachment of the garage and living space addition (the “Addition”) to the Defendants’ main residence such that the same may be used as intended by the Defendants.

7. At the trial of this matter, the Court determined that the Addition constructed on the Subject Property by the Defendants constituted an “outbuilding”. (Order ¶¶ 7-8)

8. The Section 6 of the Restrictions the Court referenced in its Order provides, “no trailer, basement, shack, garage, barn or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently...”

9. The Restrictions do not define or expressly indicate what constitutes an “outbuilding”.

10. At the time of trial of this matter, the Defendants construction of the Addition

was incomplete. *See Affidavit of Mark & Carre Razzano, March 7, 2022. See also Affidavit of Stephen M. Poole Builders, Inc., March 7, 2022.*¹

11. Following entry of the Order, Defendants sought guidance from the Court as to what the Court considered was necessary to render the Addition not an “outbuilding”. The Court declined to provide any guidance to the Defendants. See the April 25, 2020 e-mail of the Hon. Gordon G. Cooper attached hereto and incorporated herein as **Exhibit C**.

12. Following entry of the final Order, the Defendants resumed construction of the Addition, continued to spend substantial sums of money, and physically and mechanically attached the Addition to the Defendants’ pre-existing residence and performed further improvements to make the improvements look as though the pre-existing structure and Addition were originally constructed at the same time.

13. Defendants have completed construction on the Subject Property and have attached the Addition such that use of the finished living spaces in the addition are believed to not be in violation of the Order or the Restrictions.

14. The Defendants hereby seek ruling as to whether their completed construction of the Addition is such that the Addition no longer constitutes an “outbuilding” as ordered by this Court prior to completion of construction.

15. Further, the Defendants hereby seek a ruling that they may use the finished living spaces in the Addition as additional personal and family residential space.

16. This is not an attempt to relitigate matters taken up by the Court in the underlying lawsuit and trial thereof; the right to present this motion was expressly reserved in the Order.

17. Based on the foregoing, Defendants, Mark Razzano and Carre Razzano,

¹ The affidavits of Mark & Carre Razzano, Stephen M. Poole Builders, Inc., and Donald Tilmont were filed with this Court on March 7, 2022 and on March 8, 2022. The contents thereof, including exhibits thereto are incorporated herein by reference.

respectfully request the Court issue its findings and/or otherwise make a ruling that: (i) the completed Addition does not constitute an “outbuilding” as intended by the Restrictions; (ii) that the Defendants may use the finished portions of the Addition for personal and family residential use, including for sleeping, bathing, and eating; and (iii) the use of the finished living space of the Addition as intended by Defendants is not in violation of the Restrictions.

This petition may be further supported by the pleadings in the case, transcript of trial, South Carolina Law, and such other memoranda and affidavits submitted in support hereof.

Respectfully submitted this 14th day of March, 2022,

/s/Mark A. Bible, Jr.

John T. Crawford, Jr., Esquire

Mark A. Bible, Jr., Esquire

KENISON, DUDLEY & CRAWFORD, LLC

704 East McBee Ave.

Greenville, South Carolina 29601

Phone: (864) 242-4899

Fax: (864) 242-4844

bible@conlaw.com

crawford@conlaw.com

Attorneys for Defendants

Greenville, SC

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Derrick S. Hester, Debra S. Hester,)
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C.A. No.: 2018-CP-42-02247

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Plaintiffs,)

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. . . . Each lot owner and his tenants, if any, shall make adequate provision for garbage disposal.

. . . . Any person may use one lot and a portion of another lot, or may use two or more lots, placing one residence thereon.

4. Neither J.G. Landrum Compton nor Lillie W. Compton (collectively the "Comptons"), the original authors of the Covenants, were available to offer testimony as to their intent in drafting the Covenants, nor were any other persons formerly associated with the Comptons offered to present testimony or other evidence of the same. Furthermore, the parties in this matter could not agree as to the intent of the Comptons or the meaning of terms set forth in the Covenants. This question is therefore one for the Court.

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8. As the Garage is an "outbuilding," it cannot be used as a residence, temporarily or permanently. I therefore grant the Plaintiffs' motion for a directed verdict on this issue, deny Defendants' motion for a directed verdict, and issue a permanent injunction. Under the terms of the injunction, as long as the Garage remains unattached from the main residence, the Garage, including the living space above, may not be used as a residence, temporarily or permanently. However, I retain jurisdiction over this matter such that, in the event that the structures are joined,

I will entertain a motion to rule on whether the construction, in this Court's determination, is such that the Garage no longer has the status of an outbuilding.

9. With regard to the commercial use of the property, Plaintiffs alleged, and Defendants admitted, that Defendants rented two rooms within Defendants' main residence through the Website. Defendant Carre Razzano stated in testimony that she believed that she may make use of the living space in the Garage Residence in the same way, upon its completion. As part of their evidence, Plaintiffs submitted screenshots of the Defendants' listing on the Website, which describes the listing as "Private Room in Bed and Breakfast" and recites various amenities and policies and lists a daily rate.

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11. The reference to "tenants" in Section 5 of the Covenants makes clear that there is no restriction on a homeowner renting his or her property. However, I find that the rental of individual rooms as done by the Defendants constitutes "commercial use" in violation of the Covenants. This further applies to the prospective use of the Garage Residence in this way. I therefore grant the Plaintiffs' motion for a directed verdict on this issue and issue a permanent injunction against rental of individual rooms anywhere on the property, including through the

Website or other similar sites, as such action would constitute a “commercial use” in violation of the Covenants.

It is therefore ORDERED THAT:

1. Defendants are permanently enjoined from using the Garage , including the living space above, as a residence, either temporarily or permanently. This Court retains jurisdiction over this matter and, should the Defendants attach the Garage to the main residence, Defendants’ may seek a ruling from this Court on whether the construction is such that, in this Court’s determination, the Garage no longer has the status of an outbuilding.

2. Defendants are permanently enjoined from making commercial use of their property through rental of rooms on the property, including, but not limited to, through the www.airbnb.com website or other similar sites.

3. The bond of Two Thousand Five Hundred Dollars (\$2,500.00) posted by Plaintiffs in relation to the temporary injunction in this matter shall be returned to the Plaintiffs.

IT IS SO ORDERED.

Hon. Gordon G. Cooper
Master-in-Equity
Spartanburg County

March ____, 2020
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Derrick S. Hester , plaintiff, et al VS Mark Razzano , defendant, et al
Case Number: 2018CP4202247
Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2020-04-09 13:24:24 page 7 of 7

EXHIBIT B

DEED 39 N PAGE 40

STATE OF SOUTH CAROLINA X
COUNTY OF SPARTANBURG X

RESTRICTIONS

The following RESTRICTIONS shall apply to Lots Nos. 1 through 15 on Plat entitled, "SOLITUDE BAY, J.G. Landrum Compton, Owner", dated April 13, 1972, made by Wolfe & Huskey, Engineers & Surveyors, said Plat being recorded in Plat Book 67, Pages 614-615 :

1. No noxious or offensive activity shall be carried on upon any lot and nothing shall be done on any lot which may be or become a nuisance.
2. No lot shall be used for commercial or industrial uses or purposes
3. No livestock or fowl shall be kept upon any lot.
4. Sanitary facilities must be installed by anyone occupying any lot so as to meet any requirements of State Law and all rules and regulations of the Spartanburg County Health Department and of the South Carolina Health Department.
5. No garbage, trash or rubbish shall be thrown or deposited in the lake upon which any lot abuts. Each lot owner and his tenants, if any, shall make adequate provision for garbage disposal.
6. No trailer, basement, shack, garage, barn or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.
7. No dwelling house shall be erected on any lot with a floor space or living area of less than 900 square feet, exclusive of porches, stoops and attached garages.
8. No lot shall be resubdivided for building; except when owners of the adjoining lots shall jointly purchase said lots and in no event shall the sizes of the lots be reduced. Any person may use one lot and a portion of another lot, or may use two or more lots, placing one residence thereon.
9. For the benefit of all lot owners and all other properties now or hereafter owned by the undersigned, his successors, heirs and assigns, easements are reserved over the 5 feet of each lot nearest the road upon which the same abuts for the installation and maintenance of water lines, sewer lines, telephone lines and any and all other types of utilities. The undersigned, however, assumes no duty or responsibility to install and/or maintain, or to arrange for the installation and/or maintenance of any such water lines, sewer lines, telephone lines or any other type of utility.

RECORDED
1972 JUN - 8 AM 9:45
J.G. LANDRUM COMPTON
SPARTANBURG, S.C.

DEED 39 N PAGE 40

3.00 AM

BOOK 39 N PAGE 401

These RESTRICTIONS shall continue in effect for twenty-one (21) years from the date hereof and thereafter shall be automatically renewed for successive ten-year periods unless modified, changed or cancelled by written instrument duly signed by the owners of a majority of the lots and duly recorded in the R.M.C. Office for Spartanburg County.

If any person shall violate or attempt to violate any of these RESTRICTIONS, the undersigned and/or any person or persons owning any lot covered by these RESTRICTIONS may sue to enforce such RESTRICTIONS and enjoin such violation or attempt to violate and/or for damages.

Invalidation of any of these RESTRICTIONS by judicial proceedings or otherwise shall not affect any of the other provisions which shall remain in full force and effect.

WITNESS Our Hands and Seals this 7th day of June, 1972.

J. G. Landrum Compton (SEAL)
J. G. LANDRUM COMPTON

Lillie W. Compton (SEAL)
LILLIE W. COMPTON

SIGNED, SEALED AND
DELIVERED IN THE
PRESENCE OF:

Mary S. Belue
Judy M. Higgins

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

PROBATE

Personally appeared before me Mary S. Belue and made oath that she saw the within named J. G. LANDRUM COMPTON and LILLIE W. COMPTON each sign, seal and as their act and deed deliver the within written instrument, and that she, with Judy M. Higgins witnessed the execution thereof.

Mary S. Belue

SWORN To before me this
7th day of June, 1972.
[Signature] (SEAL)
Notary Public for S. C.

My Commission Expires:

Jan. 22, 1980

EXHIBIT C

From: [Cooper, Gordon](#)
To: crawford@conlaw.com; bible@conlaw.com; [Jay Anthony](#)
Cc: [Garrett, Sharon](#); [Gibson, Jennifer](#)
Subject: Hester vs Razzano Case No 2018CP420247
Date: Saturday, April 25, 2020 9:15:01 AM

Mr. Crawford: I received a copy of the email from Gail Veith in your office requesting a time for a conference call. The purpose of the conference call would be to seek clarification from me as to construction details that I would deem necessary for the garage to be deemed an attachment. The Order entered on April 1, 2020, states" that I will retain jurisdiction should Defendants attach the garage to the main residence. The Defendants may seek a ruling from the Court on whether the construction in the Court's determination garage has no longer the status of "outbuilding". The purpose of retaining jurisdiction was to determine **after construction of improvements by the Defendants**, that the garage is no longer an outbuilding. This Court will not design the construction for the Defendants, nor will I get into a discussion as to how the improvements are to be built nor a preapproval of the design.

Therefore, there is no need for a conference call when the process is clearing set out in the Order.

Judge Gordon G. Cooper
 Room 901, Spartanburg County Judicial Center
 180 Magnolia Street
 Spartanburg, SC 29306
 Phone (864) 596-2501
 Fax (864) 596-2078
gcooper@spartanburgcounty.org

JUDGE CONTACT GUIDELINES: Please note that ethically a judge can not communicate by phone, letter or email with one party to a law suit nor can a judge give anyone legal advice. Lawsuits must be resolved by our rules of law, court, evidence and civil procedure--not by phone calls, letters, or emails. Please contact a lawyer to advise you of your legal rights.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2018 CP 42 02247
Derrick S. Hester, Debra S. Hester,	)	
James H. Nicholls, Emma Viola Nicholls,	)	
James E. Gregg, Jr., Paulette J. Gregg,	)	
Michael Ben Coley, Ashley Coley, Grady L.	)	
Barnes, Sr., Julia W. Barnes, Ewen Lennon	)	AFFIDAVIT OF STEPHEN M. POOLE
and Amy Lennon	)	BUILDERS, INC.
	)	
Plaintiffs	)	
v.	)	
	)	
Mark Razzano and Carre Razzano	)	
	)	
	)	
Defendants	)	

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Stephen M. Poole, principal of Stephen M. Poole Builders, Inc., who after first being duly sworn, states:

1. My name is Stephen M. Poole and I am a principal of Stephen M. Poole Builders, Inc. ("SMPB"). I am competent in all respects to testify regarding the matters set forth herein.

2. I am the registered residential builders license holder for SMPB. My residential builder license number is 9351.

3. The South Carolina Residential Builder's Board first issued me a license to construct residential structures and home in 1999.

4. Mark and Carre Razzano (the "Razzanos") contracted with SMPB to construct the addition of a two-bedroom garage apartment to their existing home (the "Addition").

5. It is my belief and understanding that my construction commenced on the Razzano's property prior to initiation of the lawsuit against the Razzanos.

6. The permit procured for construction of the Addition identifies the construction that SMPB performed was an addition to the existing single family house (the "Home").

7. During my performance of constructing the Addition to the Razzano's Home, SMPB was asked to temporarily stop construction until resolution of the lawsuit. At the time of SMPB's temporary cessation of work, the Home and the Addition had not been attached or connected.

8. Following resolution of the lawsuit, the Razzano's requested that I complete construction of the Addition and attach the Addition to their Home.

9. As requested, I completed construction of the Addition and physically and mechanically attached the Addition to the Home. Due to the topography of the Razzano's property, the Razzanos and SMPB were limited on how the Addition could be attached to the Home.

10. The Home and the Addition share utilities except for water. The water is not shared between the Home and addition because the Home operates on a well system that would not adequately support the addition.

11. Given the number of years I have been a licensed residential builder and my prior history in working in construction, I would consider the Addition and the pre-existing Home to be attached. Based on my experience in residential construction I would not consider the Home and attached Addition a shed, trailer, basement, shack, barn or other outbuilding. Further, the Addition is not simply a garage and was not constructed with inhabitable space (as for use as a dwelling) within the garage.

12. The Addition has been physically and mechanically attached to the Home with lumber and fasteners commonly used in the construction of residences. I have performed similar work on many occasions.

13. The South Carolina Residential Code R201 applicable at the time of my performance of construction on the Razzano's property defines "Addition" as "an extension of increase in floor area, number of stories or height of a building or structure."

14. The South Carolina Residential Code applicable at the time of my performance of construction on the Razzano's property does not set forth an express definition for "attached", "detached", or "outbuilding".

15. The South Carolina Residential Code applicable at the time of my performance of construction on the Razzano's property defines "dwelling" as "any building that contains one or

two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes." It is my opinion that the Razzano's Home together with the living space of the attached Addition falls within the definition of "dwelling".

16. The South Carolina Residential Code "building" as "any one- or two-family dwelling or portion thereof, including townhouses, used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure." It is my opinion that the Razzano's Home together with the living space of the attached Addition falls within the definition of "building".

17. To my knowledge the Home and attached Addition share the same address.

18. The exterior finishes of the Home and the attached Addition have been completed to compliment each other and to create the appearance that they were constructed together as one residence.

19. It is my opinion that the attached Addition and the Home together serve as one dwelling.

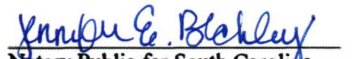
AND FURTHER AFFIANT SAYETH NOT.

Stephen M. Poole Builders, Inc.

By: Stephen M. Poole



SWORN to before me this
7th day of March, 2022


Notary Public for South Carolina
My Commission Expires: 04/18/20

Page 2 of 2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2018 CP 42 02247

Derrick S. Hester, Debra S. Hester,
James H. Nicholls, Emma Viola Nicholls,
James E. Gregg, Jr., Paulette J. Gregg,
Michael Ben Coley, Ashley Coley, Grady
L. Barnes, Sr., Julia W. Barnes, Ewen
Lennon and Amy Lennon

**AFFIDAVIT OF
DONALD TILMONT**

Plaintiffs

v.

Mark Razzano and Carre Razzano

Defendants

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Donald Tilmont, who after first being duly sworn, states:

1. My name is Donald Tilmont and I am competent in all respects to testify regarding the matters set forth herein.

2. I, am the father of Mark Razzano and as such, my wife and I are the immediate family of Mark and Carre Razzano (the "Razzanos").

3. I am currently 88 years of age.

4. Given my age and health conditions, it became unsafe for my wife and I to own and occupy our home.

5. In our time of need, the Razzanos offered for my wife and I live with them so that they could easily assist us as we progressed in age and our need for living assistance became greater.

6. Acknowledging our need for assistance, my wife and I elected to move and live with Mark and Carre.

7. Mark and Carre do not charge us for living with them. We honestly feel that Mark and Carre are caring and compassionate people who simply wanted to assist us and take care of us as we age; they are simply being good stewards to their parents.

8. My wife and I currently occupy and use the living space in the Razzano's attached home addition (the "Addition"). Our driver's licenses reflect the address of 149 Whippoorwill Drive, Campobello, SC 29322 and all of our mail or postage is delivered to that address; the Addition does not have a separate address.

9. This space provides us with an adequate level of autonomy while still remaining close to the Razzanos for them to lend assistance to us when needed.

10. Unlike our prior home, living with our family has certainly benefited my wife and I in our normal day-to-day activities.

11. We are able to move freely, use, and treat the Razzano's entire property as if it were our own and as we would at our prior home.

12. The Razzanos do not treat the attached Addition we occupy as a separate residence and they also move freely, use, and occupy the entire property as a single place of residence.

13. We do not feel that our stay with the Razzanos has caused any change in the community, nor do we feel that we detrimentally impacted the character of the Solitude Bay community.

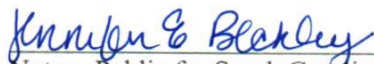
14. No one has ever indicated to us that we were not welcome to reside with the Razzanos or that we were not welcome to stay with our family in the Solitude Bay community; we do not intend to be or cause any disturbance or harm in the Solitude Bay community.

15. If the Razzanos are forced to make us vacate, we will be left without a suitable place to reside.

AND FURTHER AFFIANT SAYETH NOT.


Donald Tilmont

SWORN to before me this
7 day of March, 2022


Notary Public for South Carolina
My Commission Expires: 04/18/28

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2018 CP 42 02247
Derrick S. Hester, Debra S. Hester,	)	
James H. Nicholls, Emma Viola Nicholls,	)	
James E. Gregg, Jr., Paulette J. Gregg,	)	
Michael Ben Coley, Ashley Coley, Grady	)	
L. Barnes, Sr., Julia W. Barnes, Ewen	)	AFFIDAVIT OF MARK & CARRE
Lennon and Amy Lennon	)	RAZZANO
	)	
Plaintiffs	)	
v.	)	
	)	
Mark Razzano and Carre Razzano	)	
	)	
	)	
Defendants	)	

PERSONALLY APPEARED before me, an officer duly authorized by law to administer oaths, Mark Razzano and Carre Razzano, who after first being duly sworn, states:

1. Our names are Mark Razzano and Carre Razzano and we are competent in all respects to testify regarding the matters set forth herein.
2. I, Mark Razzano, am an educator.
3. I, Carre Razzano, am a South Carolina licensed architect.
4. The above-named plaintiffs ("Plaintiffs") are or were, at the time of filing the above captioned lawsuit, owners of properties and residences located in the Solitude Bay subdivision (the "Subdivision").
5. The Subdivision is subject to restrictions (the "Restrictions") recorded in the Register of Deeds Office for Spartanburg County in Deed Book 39-N, Page 40. The Restrictions are attached hereto and incorporated herein as **Exhibit A**.

6. We are the record owners of certain real property and improvements thereon located at Lot 8 of the Subdivision and at the physical address of 149 Whippoorwill Drive, Campobello, South Carolina 29322 (“149 Whippoorwill”); We purchased 149 Whippoorwill on or about June 22, 2006.

7. The Plaintiffs initiated a civil action against us for, among other things, enforcement of the Restrictions and an injunction as it relates to construction of improvements on 149 Whippoorwill, which includes an addition to the pre-existing residence in the form of an attached garage and additional living space above it. As further discussed below and based on the opinions of our contractor, our main residence and the garage with living space above it (the “Addition”) are attached structures. See the affidavit of Stephen M. Poole Builders, Inc.

8. Further, as a licensed architect, I, Carre Razzano, consider our Addition to be attached to our residence; given that our construction was completed after the trial of the above-captioned case, we believe that our home and addition thereto are attached such that use of our addition is permitted by the Restrictions.

9. That at the time of purchasing 149 Whippoorwill, the only improvements existing thereon was a home (the “Home”) consisting of approximately 4,440 square feet of living space, far in excess of the minimum square footage required under Paragraph Seven of the Restrictions; We have used, and continue to use, 149 Whippoorwill and the Home thereon as our primary residence.

10. In accordance with Paragraph Two of the Restrictions, we use 149 Whippoorwill exclusively for residential purposes; no commercial or industrial uses or purposes are carried out

or maintained on 149 Whippoorwill; we do not rent or lease any portion of 149 Whippoorwill, including improvements thereon, nor do we derive any stream of income therefrom.

11. Prior to August 5, 2016, Lot 9 of the Subdivision (“Lot 9”) was a vacant lot with no improvements that separated 149 Whippoorwill from neighboring property located at the physical address of 145 Whippoorwill Drive, Campobello, SC 29322; On or about August 5, 2016, we purchased a portion of Lot 9 consisting of approximately .36 acres and being further designated as Lot 9-A (“Lot 9-A”).

12. That the interior lot line between the 149 Whippoorwill and Lot 9-A; Lot 8 and Lot 9-A currently constitutes the entire portion of real property making up 149 Whippoorwill. Further, 149 Whippoorwill, including Lot 9-A, have been assigned a single parcel identification number, Parcel ID No. 1-28-00-057.00. Spartanburg GIS imagery and tax assessor documents substantiating this fact are attached hereto and incorporated herein as **Exhibit B**.

13. Prior to Plaintiffs’ initiation of the above-captioned lawsuit, we desired to construct the Addition to the Home in the form of an attached three-car garage with finished space above; the additional acreage afforded by virtue of combining Lot 9-A to Lot 8 allowed us sufficient space to construct the Addition. on 149 Whippoorwill. Notably the topography of our property limits how we can construct or add to our Home.

14. The Restrictions do not provide owners with any requirement, mechanism or avenue to apply for approval of construction before commencement thereof. Accordingly, and in good faith, we commenced construction of the Addition on 149 Whippoorwill with the intent that the Addition would eventually be attached to the Home.

15. We, by and through our contractor, applied for and obtained a building permit from Building Codes Department for Spartanburg County for the construction of the Addition. A true and correct copy of the building permit is attached hereto and incorporated herein as **Exhibit C**.

16. That the building permit provides that the location of the construction is at **149 Whippoorwill Drive, Campobello SC 29322** and describes the work as “**addition of 2 BR garage apartment to single family house on new septic.**” (Emphasis added). See **Exhibit C**.

17. At all times throughout planning and constructing the Addition, the Building Codes Department for Spartanburg County was aware that we were constructing living space and sanitary facilities within the Addition.

18. In constructing the Addition, we, together with our contractor, have complied with the requests and directions given by the Building Codes Department for Spartanburg County.

19. Importantly, while we were progressing through the underlying lawsuit, we temporarily halted construction so that we could figure out whether the parties could resolve their disputes and/or whether the Court would provide us with some guidance as to how we may use our property.

20. Following entry of the final order of the Court, we were understood that upon attachment of the Addition, we may be able to use the Addition as intended.

21. Our parents are elderly and are getting to a point where living assistance is needed. Accordingly, it was our intent to be good stewards to our parents and personally take care of them as they age and health declines.

22. It has always been our intent that the Addition would be used to provide us with much needed ordinary garage space and would provide us with the flexibility of autonomously housing our elderly parents; the additional finished space in the Addition would allow space and privacy that our pre-existing home would not.

23. Not to be confused, we recognize and acknowledge that the Restrictions preclude persons from using garages and the like as a residence. No one has ever resided, temporarily or permanently, in our garage.

24. The trial of the above-captioned case occurred before the Honorable Gordon G. Cooper on February 25, 2020. The substance of the trial focused on our construction and what the Plaintiffs believed our use of the Addition would be and the prior use of our Home via the AirBnB platform.

25. Plaintiffs sought a permanent injunction prohibiting us from advertising and/or allowing access to our Home to persons via AirBnB. Further, the Plaintiffs further sought a permanent injunction to prohibit us from using the Addition for additional living space; the Court ruled in favor of the Plaintiffs and granted their permanent injunctions.

26. Importantly, at all times prior to the entry of the Court's Final Order (the "Order"), we had not completed construction of the Addition. Photos reflecting the status of construction of the Addition at the time of entry of the Order are attached hereto and incorporated herein as **Exhibit D**.

27. To our knowledge, because construction of the Addition was incomplete at the time of entering the Order, the Court retained the right to review the condition of the Addition after completion of construction and make a ruling on whether the Addition constitutes an

“outbuilding” as contemplated by the Restrictions or whether the Addition may be used as we intend, for occupancy by our family. Notably, the Restrictions do not define what constitutes an “outbuilding”.

28. Following entry of the Order, we by and through our contractor completed construction of the Addition and physically attached the Addition to our Home. Photos of the completed Addition, and its attachment to our home are attached hereto and incorporated herein as **Exhibit E**.

29. The method of attachment of the Addition to our Home was highly dictated by the pre-existing topography of 149 Whippoorwill, with the Addition being located at a higher elevation than our Home. The Home and Addition are physically attached; the method of attachment has a roof covering.

30. While we envision that the Plaintiffs will never be pleased or satisfied with the construction on our property, we reiterate that the Restrictions do not require us to submit project plans and obtain approval prior to constructing on our property. While the Plaintiffs may not like what has been constructed on our lot, the Restrictions do not preclude us from constructing a garage or our Addition.

31. That at least two other properties in the Subdivision have detached and/or attached garages located on their respective lots. Further, we are upon information and belief that the Lennon’s residence has finished space above their garage; we were shown this space by the prior owners of that property.

32. That the construction of the Addition on 149 Whippoorwill is consistent with the common scheme of development of the Subdivision; construction of additions is not limited or otherwise prohibited by the Restrictions. See **Exhibit A**.

33. The Restrictions do not limit or otherwise prohibit the construction of additions to dwellings located on lots in the Subdivision. See **Exhibit A**.

34. The Restrictions do not specify methods for attaching additions to existing homes in the Subdivision. See **Exhibit A**.

35. It is our belief that the living space of the Addition is not a “trailer”, “basement”, “shack”, “garage”, “barn”, or other “outbuilding”, each being undefined terms of the Restrictions. See **Exhibit A**.

36. It is our belief that the Addition coupled with and physically attached to our Home constitutes one residence that has only been used by our family. Further, it is our intent that the Addition and Home, as they currently exist attached to each other, are exclusively used for our family and for residential purposes.

37. Mark Razzano’s parents, the Tilmonts, given their age and natural declining health and/or physical capabilities, are no longer in a position where occupying their own home is practical and/or safe. Accordingly, we have taken in his parents and have provided them a safe place to reside with our assistance readily available. The Tilmonts are currently residing in the finished space of the Addition and are not occupying the garage space of the Addition as a residence.

38. The Tilmonts are our direct and immediate family.

39. Our family’s occupancy of the finished space of the Addition, is made freely and without charge or admission therefor.

40. No portion of our property or improvements thereon are being rented or used as a boarding house, motel, bed and breakfast, or place of stay for transients; no income is being derived from our family use of any portion of our property.

41. It is our belief that the Plaintiffs desire for us to not allow us to house our aging parents in the Addition.

42. It is our belief that by virtue of the Addition being physically connected and/or otherwise attached to the Home, the Addition is merely an extension of and an addition to the Home, and as such, we are in keeping with the Restrictions in housing our family in the finished space of the Addition.

43. In fact, the Addition falls under one physical address with the Home, 149 Whippoorwill Drive, Campobello, SC 29322. All mail and postage deliveries are received at 149 Whippoorwill.

44. Spartanburg County and other local 911 emergency/community services are being provided exclusively to 149 Whippoorwill; Spartanburg County does not require the Addition to be registered and/or dedicated a separate address for receipt of 911 emergency/community services; the Addition bears the Home's address, 149 Whippoorwill Drive, Campobello, SC 29322.

45. In constructing and using improvements and additions to the Home, such as the living space portion of the Addition, we believe we are within our legal and equitable rights of free unimpeded use and enjoyment of 149 Whippoorwill.

46. Our family will suffer irreparable harm if our parents are forced to relocate from our property and it is our belief that it was never intended that the Restrictions prohibit property

owners the ability to house and take care of immediate and direct family members on their property.

47. We believe we have satisfied the intent of the Restrictions by constructing an attached Addition to our Home, such that the same are collectively one residence on one lot and are not being used for commercial or industrial purposes. Rather, our immediate and direct family, Mark's elderly parents, are occupying the living space of the Addition; the Tilmonts are not making use of the garage portion of the Addition as a residence of a temporary or permanent nature.

48. That it was never our intent or desire to act contrary to any Order of this Court and we honestly believed we were acting in keeping with the Restrictions. We did not believe housing our own family on our property in the attached Addition, would be the source of any complaint or violation of the Order or Restrictions. Notwithstanding the foregoing, we do show contrition to the extent the Court believes we have overstepped our bounds.

49. We hereby request the Court take into consideration, the current condition of the Property, the attachment of the Addition (same having substantially changed since entry of the underlying order), our innocent use thereof, and find that the attached Addition does not constitute an outbuilding such that our family remain able to occupy and use the same.

[SIGNATURE PAGE FOLLOWS]

AND FURTHER AFFIANT SAYETH NOT.


Carrie Razzano

SWORN to before me this
17th day of March, 2022


Jennifer E. Beckley
Notary Public for South Carolina
My Commission Expires: 04/18/28


Mark Razzano

SWORN to before me this
7 day of March, 2022


Jennifer E. Beckley
Notary Public for South Carolina
My Commission Expires: 04/18/28

EXHIBIT A

DEED 39 N PAGE 40

STATE OF SOUTH CAROLINA X
COUNTY OF SPARTANBURG X

RESTRICTIONS

The following RESTRICTIONS shall apply to Lots Nos. 1 through 15 on Plat entitled, "SOLITUDE BAY, J.G. Landrum Compton, Owner", dated April 13, 1972, made by Wolfe & Huskey, Engineers & Surveyors, said Plat being recorded in Plat Book 67, Pages 614-615 :

1. No noxious or offensive activity shall be carried on upon any lot and nothing shall be done on any lot which may be or become a nuisance.
2. No lot shall be used for commercial or industrial uses or purposes
3. No livestock or fowl shall be kept upon any lot.
4. Sanitary facilities must be installed by anyone occupying any lot so as to meet any requirements of State Law and all rules and regulations of the Spartanburg County Health Department and of the South Carolina Health Department.
5. No garbage, trash or rubbish shall be thrown or deposited in the lake upon which any lot abuts. Each lot owner and his tenants, if any, shall make adequate provision for garbage disposal.
6. No trailer, basement, shack, garage, barn or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.
7. No dwelling house shall be erected on any lot with a floor space or living area of less than 900 square feet, exclusive of porches, stoops and attached garages.
8. No lot shall be resubdivided for building; except when owners of the adjoining lots shall jointly purchase said lots and in no event shall the sizes of the lots be reduced. Any person may use one lot and a portion of another lot, or may use two or more lots, placing one residence thereon.
9. For the benefit of all lot owners and all other properties now or hereafter owned by the undersigned, his successors, heirs and assigns, easements are reserved over the 5 feet of each lot nearest the road upon which the same abuts for the installation and maintenance of water lines, sewer lines, telephone lines and any and all other types of utilities. The undersigned, however, assumes no duty or responsibility to install and/or maintain, or to arrange for the installation and/or maintenance of any such water lines, sewer lines, telephone lines or any other type of utility.

RECORDED
1972 JUN - 8 AM 9:45
SPARTANBURG, S.C.

DEED 39 N PAGE 40

3.00 AM

Book 39 N Page 401

These RESTRICTIONS shall continue in effect for twenty-one (21) years from the date hereof and thereafter shall be automatically renewed for successive ten-year periods unless modified, changed or cancelled by written instrument duly signed by the owners of a majority of the lots and duly recorded in the R.M.C. Office for Spartanburg County.

If any person shall violate or attempt to violate any of these RESTRICTIONS, the undersigned and/or any person or persons owning any lot covered by these RESTRICTIONS may sue to enforce such RESTRICTIONS and enjoin such violation or attempt to violate and/or for damages.

Invalidation of any of these RESTRICTIONS by judicial proceedings or otherwise shall not affect any of the other provisions which shall remain in full force and effect.

WITNESS Our Hands and Seals this 7th day of June, 1972.

J. G. Landrum Compton (SEAL)
J. G. LANDRUM COMPTON

Lillie W. Compton (SEAL)
LILLIE W. COMPTON

SIGNED, SEALED AND
DELIVERED IN THE
PRESENCE OF:

Mary S. Belue
Judy M. Higgins

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

PROBATE

Personally appeared before me Mary S. Belue and made oath that she saw the within named J. G. LANDRUM COMPTON and LILLIE W. COMPTON each sign, seal and as their act and deed deliver the within written instrument, and that she, with Judy M. Higgins witnessed the execution thereof.

Mary S. Belue

SWORN To before me this
7th day of June, 1972.

[Signature] (SEAL)
Notary Public for S. C.

My Commission Expires:

Jan. 22, 1980

EXHIBIT B

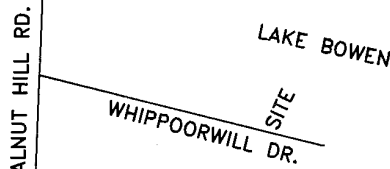
LEGEND:

- DENOTES 1/2" IRON PIN SET.
- DENOTES 1/2" IRON PIN FOUND, UNLESS OTHERWISE NOTED.
- ▲ DENOTES NAIL FOUND
- △ DENOTES P.K.NAIL SET
- ▨ = CONCRETE
- x - = FENCE
- ⊕ = POWER POLE
- - - = SET BACK LINE

GRAMLING

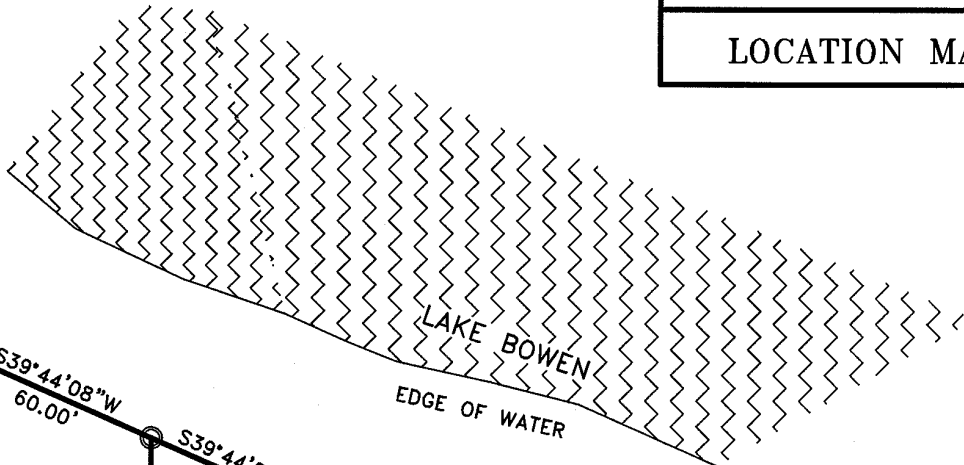
BROS. SURVEYING

TELE: (864) 472-2157 INC.
FAX: (864) 472-5937



LOCATION MAP N.T.S.

67/614



LOT 9-B TO BE COMBINED WITH LOT 10

LOT 9-A TO BE COMBINED WITH LOT 8

REFERENCE:

PLAT BOOK 67 PAGE 614-615.
PLAT BOOK 96 PAGE 205. (GOOCH PLAT)
DEED BOOK 52B PAGE 118.
DEED BOOK 67X PAGE 588.
DEED BOOK 66E PAGE 125.

NOTES:

SURVEY IS VALID ONLY IF PRINT HAS ORIGINAL SEAL AND SIGNATURE OF OF SURVEYOR.

EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS THAT WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND-USE REGULATIONS, AND ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

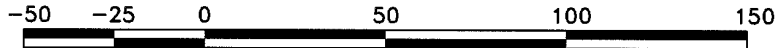
THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY SURVEYOR.

THE SURVEY SHOWN HEREON REFLECTS THE ABOVE RECORDED REFERENCES.

EXEMPT

Plat as shown is exempt from the subdivision approval process pursuant to the SC Code of Laws, Section 6-29-1110 (4). It does not guarantee the right of future permits or future subdivision. All requirements of Spartanburg County's land development and ordinances of date must be met in order to develop the property.

SCALE: 1" = 50'



SURVEY FOR:

CARRE RAZZANO

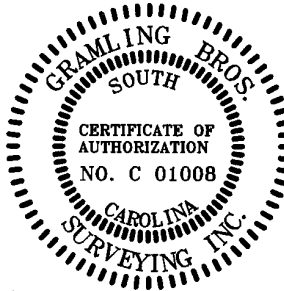
THIS BEING LOT 9 OF SOLITUDE BAY SUBD.

I HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN. THE EASEMENTS SHOWN ARE THOSE THAT ARE OBVIOUS AND APPARENT AND THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN HEREON. ALL NECESSARY MONUMENTS HAVE BEEN INSTALLED AND THE AREA HAS BEEN DETERMINED BY THE COORDINATE METHOD.

LOCATION: WHIPPOORWILL DRIVE
BLOCK MAP NO. : 1-28-00-059.01
DATE: 1 AUGUST 2016
JOB NO. 07-2798-1
COUNTY/STATE SPARTANBURG, S.C.
FIELD BY: JASON HALTIWANGER
DRAWN BY: LENA MCCALL

MARION R. GRAMLING, JR. PLS
S.C. REG. NO. 16118

GRAMLING BROTHERS SURVEYING, INC.
TELE: (864) 472-2157 P.O. BOX 389
FAX: (864) 472-5937 GRAMLING, SC 29348





Spartanburg County, SC
Summary

Parcel ID 1-28-00-057.00
Account # 8632
MillageGroup 1J00 - 1IWCBF - SD1/INMAN CAMPOBELLO WATER/CAMPOBEL COMMUNITY FIRE
Land Size 0 AC
Utilities ,WELL,SEPTIC
Fire District CBF
Site PAVED
Conditions
Location 149 WHIPPOORWILL DR
Address CAMPOBELLO 29322
Legal LOT 8 SOLITUDE BAY SUBDIVISION & LOT 9A CARRE RAZZANO SURVEY PB 67-614-
Description 615 PB 96-205 PB 171-455 DB 112Y-981
 (Note: Not to be used on legal documents)
Neighborhood 0916
Property Qualified Owner Occupied Residential Improved (4OOR)
Usage

**Owners**

RAZZANO MARK A &
 149 WHIPPOORWILL DR
 CAMPOBELLO SC 29322

RAZZANO CARRE F
 149 WHIPPOORWILL DR
 CAMPOBELLO SC 29322

Valuations

	2021	2020	2019	2018
Market Land Value	\$129,100	\$142,800	\$142,800	\$142,800
+ Market Improvement Value	\$457,100	\$268,800	\$268,800	\$268,800
+ Market Misc Value	\$0	\$0	\$0	\$0
= Total Market Value	\$586,200	\$411,600	\$411,600	\$411,600
Taxable Land Value	\$124,355	\$141,653	\$141,653	\$141,653
+ Taxable Improvement Value	\$461,238	\$266,640	\$266,640	\$266,640
+ Taxable Misc Value	\$0	\$0	\$0	\$0
- Ag Credit Value	\$0	\$0	\$0	\$0
= Total Taxable Value	*\$585,593	*\$408,293	*\$408,293	*\$408,293
Assessed Land Value	\$6,017	\$5,666	\$5,666	\$5,666
+ Assessed Improvement Value	\$22,996	\$10,666	\$10,666	\$10,666
+ Assessed Misc Value	\$0	\$0	\$0	\$0
= Total Assessed Value	\$29,013	\$16,332	\$16,332	\$16,332

*This parcel is subject to the value cap

Fees

Assessment	Units	Amount
Land Fill Yes	2	\$128.00

Land

Land Use	Number of Units	Unit Type	Land Type	Frontage	Depth
6% RES IMPV (6RGR)	51.00	Front Feet	FR FT	0	0
4% OO RES IMP (4OOR)	111.00	Front Feet	FR FT	0	0

Buildings

Building ID 8883
Style Single Family / 1
Gross Sq Ft 4,840
Finished Sq Ft 3,872
Stories 1 Story
Condition Good
Interior Walls DRYWALL
Exterior Walls BRICK with 50% WOOD
Year Built 1977
Garage
Porch Porch Open
Effective Year Built 1977
Foundation BRICK
Roof Type GABLE
Roof Coverage COMP SHINGLE
Flooring Type CARPET

Heating Type CENTRAL HEAT with 100% AIR CONDITIONING
 Full Bathrooms 4
 Half Bathrooms 0
 3/4 Bathrooms 0
 Grade B
 Grade Description B
 Number of Fire Pl 1

Code	Description	Sketch Area	Finished Area	Perimeter
AD	Addition	770	770	156
DF	Deck Wood	490	0	158
FU90	Floor Up 90	1,885	1,697	246
MN	Main Living	1,305	1,305	148
OH	Overhang	100	100	50
PT	Patio	190	0	58
PO	Porch Open	100	0	50
TOTAL		4,840	3,872	866

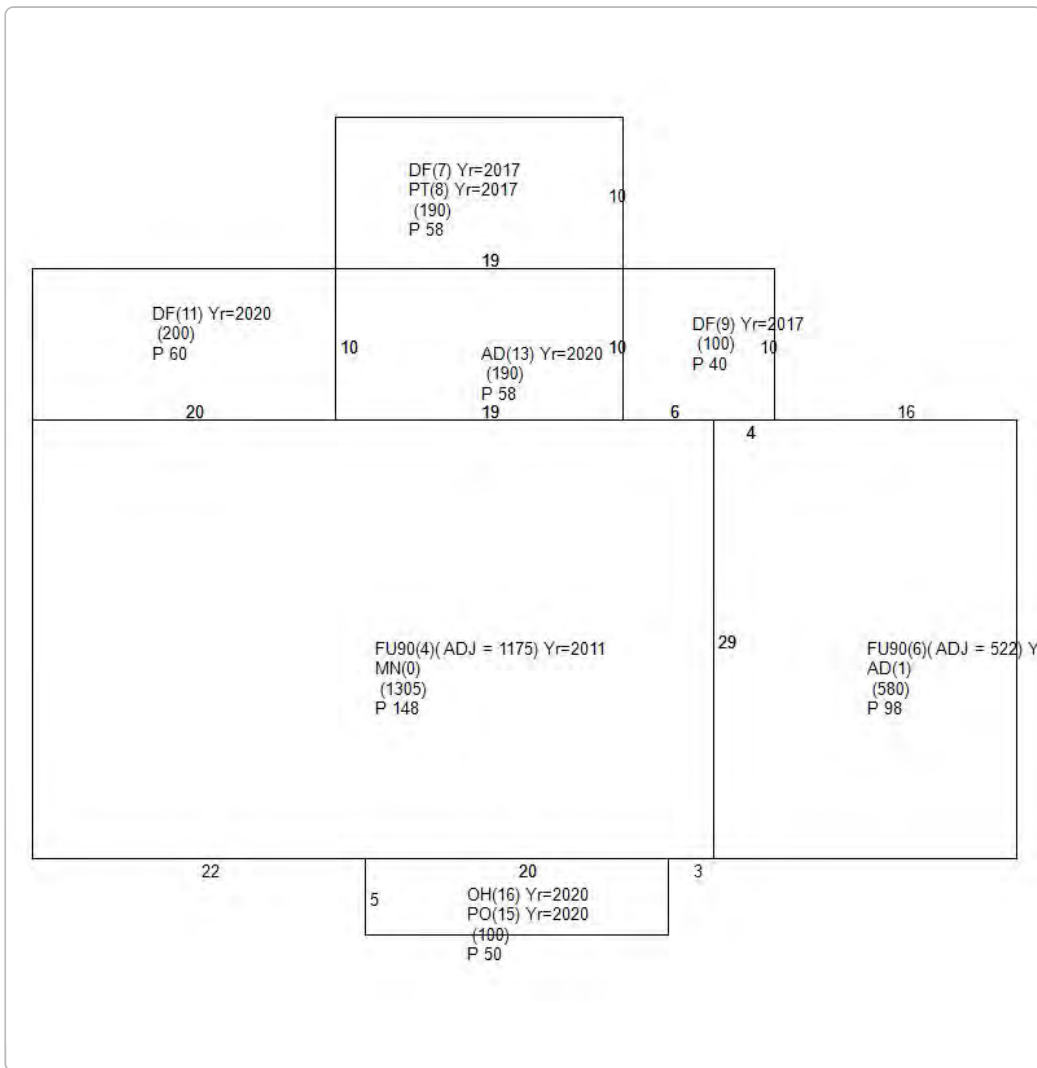
Building ID 220773
 Style Single Family / 1
 Gross Sq Ft 3,100
 Finished Sq Ft 1,350
 Stories 1 Story
 Condition Good
 Interior Walls DRYWALL
 Exterior Walls HARDY PLANK
 Year Built 2020
 Garage
 Porch Porch Open
 Effective Year Built 2020
 Foundation BLOCK
 Roof Type GABLE
 Roof Coverage COMP SHINGLE
 Flooring Type CARPET with 25% TILE
 Heating Type HEAT PUMP with 100% AIR CONDITIONING
 Full Bathrooms 2
 Half Bathrooms 0
 3/4 Bathrooms 0
 Grade C+
 Grade Description C+
 Number of Fire Pl 0

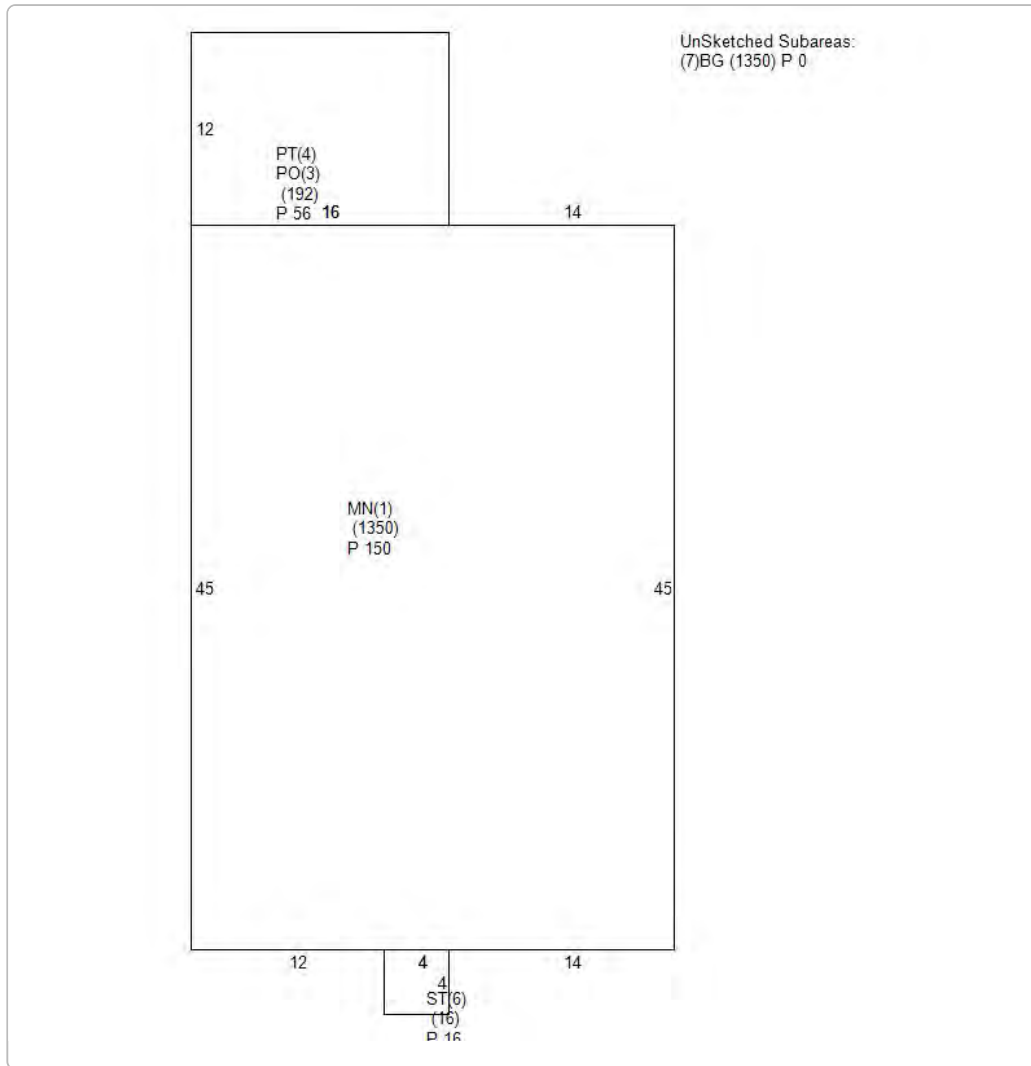
Code	Description	Sketch Area	Finished Area	Perimeter
BG	Basement Gar	1,350	0	0
MN	Main Living	1,350	1,350	150
PT	Patio	192	0	56
PO	Porch Open	192	0	56
ST	Stoop	16	0	16
TOTAL		3,100	1,350	278

Sales

Sale Date	Sale Price	Instrument	Instrument Number	Deed Book	Deed Page	Sale Qualification	Vacant or Improved	Grantor	Grantee
6/1/2006	\$232,500		DEE-2006-33546	86B	105	Qualified	Improved	AGNEW JAMES G	
5/1/1998	\$1		DEE-1998-6059	67X	588	Unqualified - PARTIAL INTEREST	Improved	AGNEW JAMES G/JANET	
9/1/1997	\$1		DEE-1997-7966	66E	125	Unqualified - PARTIAL INTEREST	Improved	AGNEW JAMES G/JANET	
3/1/1996	\$1		DEE-1996-2896	63Z	270	Unqualified - PARTIAL INTEREST	Improved		

Sketches





Photos





No data available for the following modules: Exemptions, Commercial Buildings, Mobile Home Buildings, Yard Items.

Spartanburg County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

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[Last Data Upload: 3/8/2022, 9:17:28 AM](#)

Developed by
 Schneider
 GEOSPATIAL

Version 2.3.177

EXHIBIT C

Building Codes Room 500
366 N. Church Street
Spartanburg, SC 29303

Spartanburg County

1-28-00-057.00

Phone Numbers:
864-596-2727 ... Office
864-596-2194 ... Fax
864-596-3160 ... Inspection

ELECTRONICALLY FILED - 2022 Mar 08 10:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4202247

Parcel ID Number	Permit #	Date	Permit Type	Permit Valuation	Applied
1-28-00-057.00	18-02718	03/30/2018	BLDG-RES	\$ 162000.00	ANSLI

Location: **149 Whippoorwill Dr Campobello, SC 29322**

Valuation: 162000.00

Subdivision: **SOLITUDE BAY**

Fees Due:

Fees Paid: 769.50

Lot: 8

Check/Card #: 8752

Owner: **MARK A/CARRE F RAZZANO**

Owner or
Contractor: **STEPHEN M POOLE BUILDERS
INC/STEPHEN M POOLE
BUILDERS INC
PO Box 5611**

149 Whippoorwill Dr
Campobello, 29322
864 680 3555

Spartanburg, 29304
864 303 1663

License:

SELECTED CHARACTERISTICS OF WORK

DESCRIPTION OF WORK:

**ADDITION OF 2 BR GARAGE APARTMENT TO
SINGLE FAMILY HOUSE ON NEW SEPTIC**

Foundation: **SLAB**

Type Frame: **WOOD**

Roofing: **SHINGLES**

Heating: **ELECTRIC**

Exterior: **HARDI**

Basement:

Stories: **2**

Bathrooms: **2.0**

Bedrooms: **2**

Fireplaces: **0 /**

Air/Cond: **HVAC**

Driveway Pipe Size:
Other = **NO PIPE
NEEDED, T JENNINGS;**

Any question about
driveway pipe should be
address to name shown
above. 864-595-5320

Occupancy: **R-3 and IRC Residential, one and two
family**

Const. Type: **VB**

Sep. Occupancies: **0**

Square Feet: **1350**

Basement: **0**

Accessory Unheated: **1350**

Accessory Heated: **0**

Gas/Propane Co.: **Unknown**

Electric Co.: **Duke Power**

Sewer/Septic: **Septic**

AFFIDAVIT OF APPLICANT

Directions: TAKE I-26 TO HWY 11 EXIT. TURN LEFT ACROSS BRIDGE ON TOMPTON BRIDGE RD THEN RIGHT ONTO WALNUT HILL CHURCH RD. TURN LEFT ONTO WALNUT HILL RD THEN LEFT ON WHIPPOORWILL DR. HOUSE ON THE LEFT.

*****OWNER/AGENTS/CONTRACTOR ARE RESPONSIBLE FOR CHECKING ANY DEED
RESTRICTIONS AND COVENANTS*****

It is the Owner/Agents/Contractor responsibility to check with the Planning Dept (864)596-3570, for ALL SETBACKS prior to starting the project.

The Applicant/Permit Holder hereby certifies and agrees as follows: 1.) that he/she is authorized to make this application; 2.) that he/she has read the above information and it is true and correct; 3.) that he/she will comply with all county ordinances, laws, and regulations, all federal, and state laws related to the use of land and structures and the construction of structures; 4.) that he/she grants right of entry to the property to the building official and his employees for the purpose of inspections and posting of notices. If any of the information supplied by the owner/owners agent is incorrect then this permit may be revoked.

Persons signing this permit agrees to post same on front of lot visible from road or street.

This permit expires 6 months from date of issuance or inactivity. All Landuse and Stormwater Requirements are to be completed prior to final Building inspection and Occupancy.

ANSLI

Issued by:

Signature of Applicant: **STEPHEN M POOLE
BUILDERS INC**

Date: **03/30/2018**

11/16/11 mnt

EXHIBIT D







ELECTRONICALLY FILED - 2022 Mar 08 10:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4202247

EXHIBIT E



ELECTRONICALLY FILED - 2022 Mar 08 10:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2011



ELECTRONICALLY FILED - 2022 Mar 08 10:28 AM - SPARTANBURG - COMMON PLEAS - CASE#2011



ELECTRONICALLY FILED - 2022 Mar 08 10:28 AM - SPARTANBURG - COMMON PLEAS - CASE#201







1 STATE OF SOUTH CAROLINA)

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG)

4 Derrick S. Hester, Debra S. Hester,)
James H. Nicholls, Emma Viola Nicholls,)
5 James E. Gregg, Jr., Paulette J. Gregg,)
Michael Ben Coley, Ashley Coley, Grady)
6 L. Barnes, Sr., Julia W. Barnes, Ewen)
Lennon and Amy Lennon,)

TRANSCRIPT OF RECORD

7)
8 Plaintiffs,)

(2018CP42-02247)

9 V.)

Spartanburg, South Carolina

10 Mark Razzano and Carre Razzano,)
11 Defendants.)
12)
13)

14 REFERENCE HELD: MAY 19, 2022.

15 B E F O R E: HONORABLE **SHANNON M. PHILLIPS**,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

16
17 **THE ANTHONY LAW FIRM, LLC.**
18 BY: **K. JAY ANTHONY**, ESQUIRE,
and **KENNETH ANTHONY**, ESQUIRE,
Attorneys for the Plaintiffs.

19
20 **KENISON, DUDLEY & CRAWFORD, LLC.**
BY: **JOHN T. CRAWFORD, JR.**, ESQUIRE,
and **MARK A. BIBLE, JR.**, ESQUIRE,
Attorneys for the Defendants.

22

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Sarah Hollis, Court Reporter

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WITNESS INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
STEPHEN M. POOLE				
(Mr. Bible)	8		39, 42	
(Mr. Ken Anthony)		32		42
CARRE FROST RAZZANO				
(Mr. Bible)	43			
(Mr. Jay Anthony)		52		

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
DEFENDANTS EXHIBITS. (5-19-2022)		
Def. Ex. 1 (5-19-2022)	Copy of Agreement, Razzano 133.	16
Def. Ex. 2 (5-19-2022)	Copy of County Building Permit.	19
Def. Ex. 3 (5-19-2022)	Four (4) Photographs.	23
Def. Ex. 4 (5-19-2022)	Six (6) Photographs.	27
Def. Ex. 5 (5-19-2022)	Copy of Restrictions.	41

1 THE COURT: Good afternoon. Please raise your hand if you can hear me. Mrs. Razzano can
2 you hear me? I am sending Mrs. Razzano a message asking her to confirm that her speaker is on
3 and up.

4 MRS. RAZZANO: I can hear you. Can you hear me?

5 THE COURT: Yes, I can hear you.

6 MRS. RAZZANO: Thank you.

7 THE COURT: Okay. It is May 19, 2022 at 3:03 p.m. This is Case Number 2018CP42-00247.
8 Hester, et al., versus Mark and Carre Razzano. And this is before the Court on Defendant's
9 Petition. Mr. Bible whenever you are ready.

10 MR. BIBLE: Thank you, Your Honor. May it please the Court. Yes, Your Honor this is a
11 Petition and candidly, Your Honor, we weren't really sure how to coin or name this particular
12 Petition giving the circumstances that surround it. It is not a normal motion that we see
13 frequently but ultimately, Your Honor, this is a follow up motion that is subsequent to the trial of
14 the above captioned case that occurred in February of 2020. The court had issued an Order in
15 April of 2020, reserving certain jurisdictions. So that is the purpose of this motion before you.
16 The Razzanos just to give the Court some color to this as you, Your Honor, did not preside over
17 the trial. The Razzanos own property located at 147 Whippoorwill Drive, Campobello, South
18 Carolina. It is within a small community called Solitude Bay. It is the matter currently before
19 you today, Your Honor, it is dealing with the construction of an additional on the Razzanos
20 property located within the subdivision. The trial of the case generally dealt with the Razzanos
21 prior use of their property for certain types of rentals and vacation rentals with Airbnb. That the
22 Court found was improper and the Razzanos since the date of that trial have not done any of that
23 activity and that is not currently what we are here about. Furthermore, Your Honor, at the trial
24 the Court made a decision that the addition which is called the garage in the order was
25 constituting an outbuilding such that the finished portions above the garage could not be used as a

1 residence, either temporarily or permanently. The bullet points of the important provisions of the
2 Court's Order, paragraph 5 of that order says, 'that at the time of trial, the garage was not
3 connected to the main residence and a contract with the builder was signed February 23, 2018.
4 Paragraph 7 of the Order implies that, I find that the garage is an outbuilding within the language
5 of Section 6 of the Covenants, which provides that 'no trailer, basement, shack, garage, barn or
6 other outbuilding erected on any lot shall at any time be used as a residence temporarily or
7 permanently, nor shall any residence of temporary character be permitted. Paragraph 8 of that
8 same Order indicates that as the garage is an outbuilding it can not be used as a residence
9 temporarily or permanently. Under the terms of the injunction as long as the garage remains
10 unattached from the main residence, the garage including the living space above, may not be used
11 as a residence, temporarily or permanently. However, I retain jurisdiction over this matter such
12 that, in the event that the structures are joined, I will entertain a motion to rule on whether the
13 construction, in this Court's determination, is such that the garage no longer has the status of an
14 outbuilding. That is precisely what we are intending to have taken up before you today, Your
15 Honor. Importantly, in spite of, the evidence provided at trial referencing how the Razzanos
16 intended to eventually finish construction and attach the preexisting residence to the adjacent
17 structure as the Court properly has pointed out in the Order. That construction was incomplete at
18 the time, so we really did not in substance get entirely too much into the reads on whether at the
19 time of filing whether the structures were attached because they were obviously not. Today, we
20 believe that they are. We are not here to try to relay any past order, what we are trying to do is to
21 show to this Court what we believe is an adequate attachment of two structures such that the new
22 addition is not an outbuilding. And we have got Mr. Poole on this webex hearing. Mr. Poole
23 was the contractor for the Razzanos that constructed the addition and, of course, we have Mrs.
24 Razzano here today. One last thing to close the opening, notably, Your Honor, in the restrictions
25 the Section 6 is what we are focusing on here today. And as I read off, it was included in the

1 Order that includes the word "outbuilding." That is what the Court had found the Razzano's
2 construction constituted. And they said that it was an outbuilding. But an outbuilding is not a
3 defined word within the covenants and restriction and we believe that word itself is capable of
4 more than one reasonable interpretation and therefore could be construed or should be construed
5 in favor of the free use of the property. And that is in *Taylor v. Lindsey*, *DNR v. Town of*
6 *McClellanville*, and *Wallace v. The State*. Subject to that Your Honor, I am happy to present my
7 witnesses at this time but I don't know if you would like to have Mr. Anthony present any
8 opening statements or remarks before I do so.

9 THE COURT: Mr. Anthony. Would you care to present an opening statement?

10 MR. JAY ANTHONY: Yes, Your Honor. Thank you. I am sorry, I was trying to get my
11 technology working. I don't have a whole lot to add to what Mr. Bible said. I probably could to
12 the extent that we are giving some kind of opening here, I believe I can add a little bit of
13 background as well. This is a small community called Solitude Bay.

14 THE COURT: Mr. Anthony.

15 MR. JAY ANTHONY: I am sorry, go ahead.

16 THE COURT: Mr. Anthony would you speak up for us so that we can hear you better. And Mr.
17 Poole would you mute yourself. Well let me see if I can do it. Okay. I think that I can do it.
18 Go ahead Mr. Anthony.

19 MR. JAY ANTHONY: Okay. Your Honor, is that any better?

20 THE COURT: Yes, that is much better. Thank you.

21 MR. ANTHONY: Perfect. I think the microphone is on my other camera here. To the extent
22 that we are giving something of an opening here I guess I have a little bit of background. The
23 folks who are represented by my father and I are residents in this community called Solitude Bay
24 out on Lake Bowen. It is about eleven (11) home and it is down a single street. And they
25 noticed this construction beginning to occur in 2017 and reached out to these folks and I sent a

1 letter before Mr. Poole was involved in doing any construction. That did not have any impact
2 and they went ahead and constructed this garage as a three (3) car garage as we will get into, with
3 a thirteen hundred fifty (1350) square foot living space on top. And we will go through the
4 details of that as we get into it. I differ a little bit when Mr. Bible was saying that the trial focus
5 primarily on the Airbnb rental of them renting out rooms in their house, well potentially in this
6 garage apartment. That was a big part of it, but we spent quite a bit of time on the issue that we
7 are here before you on today which is providing whether that living space over there constituted a
8 violation of the restrictive covenants which stated there can only be one residence on a lot and that
9 no garage or outbuilding can be used as a residence. As Mr. Bible noted and I will also add that I
10 disagree with the statement that we didn't get into the reads too much on attachments and as we
11 discussed a rendering of this trellis was actually presented at that trial, which was ultimately
12 constructed. At the end of that, Judge Cooper did find that it was an outbuilding and he did leave
13 room in his order that he retained jurisdiction such that, if it is attached at some point then he
14 would consider whether that attachment is sufficient such that it is no longer an outbuilding. And
15 so that, I believe, is the question that we are here on today, whether the trellis that they have added
16 constitutes sufficient attachment such that it is no longer an outbuilding. I do want to be careful
17 and I think that we need to stay within the bounds of that and Mr. Bible and Mr. Crawford made
18 that clear in their petition and in their discovery responses and I agree with that. The issues that
19 we litigated below in terms of well any extinguish issues really don't have anything to do with
20 what we are about today. We are here on the narrow issue of whether that trellis constitutes an
21 attachment such that it is no longer an outbuilding.

22 THE COURT: Thank you. Mr. Bible?

23 MR. BIBLE: Yes, Your Honor. I would like to first call Mr. Stephen Poole.

24 THE COURT: Mr. Poole if you will un-mute yourself and raise your right hand for me.

25 MR. POOLE: Yes, Your Honor.

1 THE COURT: Thank you.

2

STEPHEN M. POOLE, BEING DULY

3 **SWORN, TESTIFIES AS FOLLOWS:**

4 THE COURT: Thank you. And please state your full name for the record.

5 A. Stephen M. Poole.

6 THE COURT: Thank you.

7 **DIRECT EXAMINATION BY MR. BIBLE.**

8 Q. Mr. Poole essentially what this hearing is about today - - I am going to ask you just a few
9 questions related to your background first. Did you obtain a high school degree?

10 A. I did.

11 Q. Okay. Where from?

12 A. Spartanburg High School.

13 Q. Okay. And when was that?

14 A. That was in 1974.

15 Q. And did you attend any institutions of higher learning following that?

16 A. I did.

17 Q. Okay. Where did you go?

18 A. I attended Wofford College for two (2) years and then I transferred to the University of
19 Georgia and graduated from the University of Georgia.

20 Q. Okay. And with what degree did you graduate from the University of Georgia with?

21 A. Economics.

22 Q. And did following your schooling and you obtaining a degree from the University of
23 Georgia, did you attend any other educational institutions?

24 A. I did not.

25 Q. What did you do following obtaining your degree from the University of Georgia?

1 A. I went to work for a couple of companies and I ultimately went to work for a residential
2 contractor in 1988 and worked there until I opened my own company in 1999.

3 Q. And what was the name of that residential contractor that you worked for in 1988 through
4 1999?

5 A. Steve Hammett.

6 Q. And you indicated that you worked for a residential construction company?

7 A. That is correct.

8 Q. Okay. And what types of roles did you serve within that company?

9 A. I was the foreman, supervisor. I just pretty much handled the day to day operations of
10 building residential structures.

11 Q. And at any time did you serve as the license holder for that company?

12 A. I do not.

13 Q. And you mentioned earlier that you no longer worked there beginning around 1999, is that
14 right?

15 A. Yes. October of 1999, I started Stephen M. Poole Builders.

16 Q. All right. And that company is still in existence today?

17 A. It is. It is.

18 Q. And do you possess any state certifications or licenses as it relates to residential
19 construction?

20 A. I have got a residential builders license.

21 Q. And do you hold that license for Stephen M. Poole Builders?

22 A. I do.

23 Q. And what type of work - - well as far as dating as far back as 1999, what type of work
24 were you performing as Stephen M. Poole Builders?

25 A. We would do new homes, additions, remodeling, anything to do with residential

1 construction.

2 Q. Over the course of, what is that, twenty-three (23) years now, how many new homes
3 would you say that you have constructed?

4 A. Fifty (50).

5 Q. And how about remodels. How many remodels would you say that you have done?

6 A. That is hard to say, hundreds.

7 Q. Hundreds. And have you maintained your status as a licensed residential builder
8 consistently across those twenty three (23) years?

9 A. I have.

10 Q. And as a licensed residential builder in the State of South Carolina, have you learned
11 knowledge regarding the building codes that are applicable to residential construction in
12 South Carolina?

13 A. I have.

14 Q. And do you routinely apply building codes in your day to day work as a residential builder
15 in South Carolina?

16 A. In every job,

17 Q. Okay. And Mr. Poole you were the contractor for Mark and Carre Razzano on their
18 property at 149 Whippoorwill, were you not?

19 A. I was.

20 Q. Okay. What would you say over the course of the twenty three (23) years that you have
21 owned your company, what is the general value of the new homes that you have built?

22 A. The average value.

23 Q. Yes sir?

24 A. I would say a half a million or about.

25 Q. And that is custom residential construction?

1 A. Custom, yes.

2 Q. And in your day to day operations as the license holder for Stephen Poole Builders, would
3 you communicate with County building officials with regards to holdings and operations
4 of your company?

5 A. Yes. Well we have to get all of the work inspected.

6 Q. Okay. And would you apply for permitting to construct residences?

7 A. Yes.

8 Q. And remodeling—

9 A. Yes.

10 THE COURT: Mr. Poole if you don't mind for purposes of the record if you will just let Mr.
11 Bible finish his sentence and pause just a second before you begin speaking. Sometimes with
12 these Webex hearings we have a little bit of a delay. So I encourage everybody to embrace the
13 award pause and let others finish speaking so that we are not speaking over one another for the
14 record. Okay, thank you sir.

15 MR. BIBLE: My apologies about the noise in the record, Your Honor. Your Honor at this time I
16 move to qualify Stephen Poole as an expert in the field of residential construction given his
17 education, experience and knowledge in these fields.

18 THE COURT: Mr. Anthony?

19 MR. KEN ANTHONY: Your Honor, Ken Anthony. I am also representing the Plaintiffs. We
20 would stipulate that he is a licensed residential contractor but beyond that we would not stipulate.

21 THE COURT: Mr. Bible are you interested in this stipulation?

22 MR. BIBLE: No, Your Honor. I would like to have him qualified as an expert in the field of
23 residential construction?

24 THE COURT: It appears to the Court that he is qualified.

25 MR. BIBLE: Thank you, Your Honor.

1 Q. Mr. Poole how did you first become involved with Mark and Carre Razzano?
2 A. They called me to go over some plans that they had and to give them a quote.
3 Q. And roughly when was that?
4 A. That was back in October of 2020 or maybe a little before then. No, I am sorry. It was
5 2018.
6 Q. Okay?
7 A. It was 2018.
8 Q. All right?
9 A. And that was not October it was around May.
10 Q. Okay.
11 MR. BIBLE: Mr. Poole and Your Honor, I am going to share my screen. Just a second.
12 Q. All right. Mr. Poole this is what I understand to be an agreement from your company. Do
13 you see that on your screen?
14 A. I do, yes.
15 Q. Okay. And are you familiar with this document?
16 A. I am.
17 Q. Okay. And is this in fact an agreement that you prepared?
18 A. It is.
19 Q. All right sir. I am going to stroll down to the bottom of the page here. Now this is what
20 I understand to be a page of the document and it indicates under the builder, it says
21 Stephen Poole. Is that your signature?
22 A. It is, yes.
23 Q. All right. And next to it there it says Carre Razzano. Do you understand this to be the
24 construction agreement between yourself and the Razzanos?
25 A. Yes.

1 Q. All right. And it is dated - - well in this first sentence here it says February 23, 2018. Do
2 you see that?

3 A. I do.

4 Q. Okay. Does that refresh your recollection as to when you were first consulting with the
5 Razzanos?

6 A. Yes.

7 THE COURT: Mr. Bible.

8 MR. BIBLE: Yes.

9 THE COURT: Will you point the Court to this document in the record?

10 MR. BIBLE: It hasn't been entered into the record yet, Your Honor.

11 THE COURT: Okay. Does everyone have a copy that they can review?

12 MR. BIBLE: Yes, it is in our discovery file, Your Honor.

13 MR. JAY ANTHONY: Mark can you tell me the base number on that please?

14 MR. BIBLE: It is 133, Razzano 133.

15 MR. JAY ANTHONY: So that was produced in the underlying action?

16 MR. BIBLE: Yes. And referenced in my supplemental discovery that I sent you a couple of
17 weeks ago.

18 THE COURT: Mr. Bible is there any way to make this larger so that I can read it?

19 MR. BIBLE: Yes ma'am. I apologize. How is that?

20 THE COURT: That is better.

21 MR. BIBLE: Okay. Is everybody good?

22 Q. Mr. Poole was this the agreement that you entered into with the Razzanos for the purposes
23 of constructing a three (3) car garage with finished space above it on the Razzano's
24 property at 149 Whippoorwill Drive?

25 A. It is.

1 Q. Okay. All right.

2 MR. BIBLE: Your Honor, I would move to introduce this as Defendant's Exhibit 11.

3 THE COURT: Any objections?

4 MR. KEN ANTHONY: Your Honor, I am still trying to read it.

5 THE COURT: Okay. Take your time.

6 MR. KEN ANTHONY: Well it is not working on my screen here. I can't scroll it.

7 MR. BIBLE: You want to scroll down Mr. Anthony?

8 MR. KEN ANTHONY: I am trying.

9 MR. JAY ANTHONY: Mark, I am trying to find it. It is not in the trial notebook that you guys

10 brought to the hearing, right?

11 MR. BIBLE: I don't have that in front of me Jay. I couldn't tell you.

12 MR. KEN ANTHONY: Can I go to the top of this document?

13 MR. BIBLE: Yes sir.

14 MR. KEN ANTHONY: Thank you.

15 MR. BIBLE: I am happy to send it to you in an email real quick, if that would help.

16 MR. JAY ANTHONY: Yes, if you don't mind that would be great.

17 MR. BIBLE: All right.

18 THE COURT: I would like a copy as well.

19 MR. BIBLE: Yes, Your Honor.

20 MR. KEN ANTHONY: I would too. I can't get it.

21 MR. BIBLE: Hold on one second. All right. This is what I am sending everybody. I have

22 complied documents that I may or may not reference today into one document. I have got them

23 pre-marked but that is not to say that I would introduce them how I have them pre-marked. But it

24 will have all of the documents that I should reference today.

25 THE COURT: All right.

1 MR. BIBLE: They should be in your inbox.

2 MR. JAY ANTHONY: I am sorry Mark. Bear with us a second. I think we have got them.

3 MR. BIBLE: I apologize.

4 THE COURT: Mr. Bible, I have not received it.

5 MR. BIBLE: I sent a copy to everybody at the same time including Ms. Trejo.

6 THE COURT: Okay. Give me just one moment.

7 MR. BIBLE: Did you receive the link, Your Honor?

8 THE COURT: Not yet.

9 MR. BIBLE: Jay did you all get it?

10 MR. JAY ANTHONY: We did, yes. We have it.

11 MR. KEN ANTHONY: Well we got something. I haven't found that document yet.

12 MR. BIBLE: That would be on page - - well you should have received two (2) documents.

13 There are sixty (60) pages, total.

14 THE COURT: I have received the link.

15 MR. BIBLE: Okay.

16 MR. JAY ANTHONY: I am sorry Mark, which page did you say that it was?

17 MR. BIBLE: Forty-five (45). It is forty five (45) out of sixty (60) pages.

18 MR. KEN ANTHONY: Okay. If I am reading this correctly it says, the scope of work defined

19 in the attached document. Is that attached document apart of this?

20 MR. BIBLE: It is not. But candidly, I don't have it. I figured that Mr. Poole was the creator of

21 that document and he could testify as to what his scope of work was.

22 MR. KEN ANTHONY: But we don't have the attachment?

23 MR. BIBLE: I don't have the attachment.

24 A. I think it was just a copy of that plan, the floor plan.

25 MR. KEN ANTHONY: Okay. I guess I will not object to it for whatever it is worth.

1 MR. BIBLE: Okay.

2 THE COURT: Mr. Anthony did you say that you will not object to it?

3 MR. KEN ANTHONY: I will not object to his putting the document in but I am not quite sure
4 what it tells us. But I will not object.

5 THE COURT: Okay. It will be admitted.

6 MR. KEN ANTHONY: Okay.

7 **MR. BIBLE INTRODUCES INTO EVIDENCE A DOCUMENT REFERRED TO AS**
8 **AGREEMENT WITH THE RAZZANOS, WITHOUT OBJECTIONS, AS DEFENDANT'S**
9 **EXHIBIT NUMBER 1, 5/19/2022..**

10 THE COURT: Mr. Bible.

11 MR. BIBLE: Thank you, Your Honor. And Mr. Anthony was getting to the point that I was just
12 getting to.

13 Q. Mr. Poole on your screen you can see where it says scope of work and the contract. And
14 that paragraph seems to me to be just really non-descriptive. It really doesn't tell us what
15 you did for the Razzanos. So if you would sir under - - while you were engaged by the
16 Razzanos under this contract what scope of work did you perform for them on their
17 property?

18 A. We were doing an addition to include a three (3) car garage and an apartment above the
19 garage. A two bedroom, two bath apartment above the garage, living space.

20 Q. And is that what you contracted to perform?

21 A. Yes.

22 Q. And was that actually what you constructed on the property?

23 A. Yes.

24 Q. Do you recall when you commenced construction on this project?

25 A. I believe it was May. Sometime in May. I know our first invoice to them was sometime

1 in May so we had already begun by then.

2 Q. Okay. And did you procure a building permit for this construction?

3 A. I did.

4 Q. All right. Can you see this document?

5 A. Yes.

6 Q. Okay. What is this document?

7 A. It is a building permit in Spartanburg County.

8 Q. Okay. And what is it a permit for?

9 A. For an addition of a two bedroom garage apartment to a single family house on this site.

10 Q. Okay. And at what location?

11 A. At 149 Whippoorwill Drive, Campobello, South Carolina.

12 Q. Okay. And the date on this permit?

13 A. The date is - - I don't see, it is 3-30-2018.

14 Q. Okay. And down at the bottom of the page the signature on that for Stephen M. Poole

15 Builders, Inc. Do you see that?

16 A. I do.

17 Q. Okay. And is that your signature above it?

18 A. Yes, it is.

19 Q. All right. Mr. Poole when you procured this permit did you procure it from the

20 Spartanburg County Building Codes?

21 A. Yes.

22 Q. All right. Tell me when you procure a building permit whether it is a new residential

23 construction or renovation work, does that building permit have tied to it certain

24 inspections from County officials?

25 A. That is correct.

1 Q. Were there any inspections involved by County officials with respect to your construction
2 on the Razzanos property?
3 A. Yes.
4 Q. Okay. Did a County official perform those?
5 A. Yes.
6 Q. Okay. Were you ever informed during or as a result of any of those inspections that what
7 you had constructed did not conform, to this permit?
8 MR. KEN ANTHONY: We object to this line of questioning as hearsay. Those people are not
9 present to testify and so this witness should not be allowed to testify as to what those people did
10 or did not say.
11 MR. BIBLE: Your Honor, I am not asking him to recite a statement of what somebody said. I
12 am asking Mr. Poole to recite what his recollection is of ever being informed that what he did was
13 not in compliance with this permit.
14 THE COURT: Well how about that.
15 MR. KEN ANTHONY: That is my objection.
16 THE COURT: Go ahead Mr. Anthony. I am sorry.
17 MR. KEN ANTHONY: That is my objection. That is exactly what they are trying to do.
18 THE COURT: All right. Mr. Bible why don't you rephrase your question.
19 Q. Mr. Poole as far as what you constructed on this property does it meet the description of
20 what you constructed as a reflected in this permit?
21 A. Yes.
22 Q. Do you have any reason to believe that it did not?
23 A. No.
24 Q. All right.
25 MR. BIBLE: Your Honor, I would move to admit the permit as Defendant's Exhibit Number 2.

1 MR. KEN ANTHONY: No objections.

2 THE COURT: It is admitted as Exhibit 2.

3 **MR. BIBLE INTRODUCES INTO EVIDENCE, A SPARTANBURG COUNTY**
4 **BUILDING PERMIT DATED APRIL 7, 2017, PERMIT # 17 - 03543, AS DEFENDANT'S**
5 **EXHIBIT NUMBER 2, 5-19-2022.**

6 THE COURT: Can you tell me what page that would be on in the link that I have?

7 MR. BIBLE: Yes, Your Honor. Out of the sixty (60) pages that were sent it would be Page 19.

8 THE COURT: Thank you.

9 Q. Mr. Poole does any where on this permit that is sent is the word outbuilding reflected?

10 A. Not that I know of.

11 Q. Well I mean you can read it.

12 A. Yes.

13 Q. I mean you are welcome to read it.

14 A. There is not.

15 Q. All right. At the time of entering into the construction contract with the Razzanos was it
16 your understanding that you would be constructing an outbuilding?

17 A. I was constructing a garage and two bedrooms above and two baths.

18 Q. Okay.

19 MR. KEN ANTHONY: Your Honor, I have to object at this point. We have tried to allow
20 leeway but these issues were all presented, well these documents were presented to Judge Cooper.
21 Judge Cooper has already ruled that this is an outbuilding. That is the Order of Judge Cooper
22 which has not been appealed. And so for Mr. Poole to come in and then try to say that it is not an
23 outbuilding that is simply contradicting the Court order. Up to now, that is not an issue before
24 the Court. The question before the Court now is limited to the exception that Judge Cooper said
25 you can come back when everything is finished and I will look at it but this issue has already been

1 litigated and decided by this Court and I objected to this person giving opinions as an expert
2 beyond whether he is a licensed contractor or not and I still renew that objection. But this is just
3 the same attempt that was made at the last hearing before Your Honor to try to re-litigate the
4 underlying case and that case is done.

5 MR. BIBLE: Your Honor, if I may.

6 THE COURT: Yes.

7 MR. BIBLE: Your Honor, I am laying some foundation here with respect to what is an
8 outbuilding versus what is not an outbuilding through the testimony of Mr. Poole. And that is
9 because at the time that the Court's order was issued it was determined that the structures, which
10 were unattached at the time, was an outbuilding. So I am getting to the point where we are going
11 to discuss the method of attachment and what was used or employed y Mr. Poole and his
12 Company to attach the two (2) structures. But I think it is relevant and germane to have the
13 builder's perspective in this with respect to what was once a structure that stands alone but now is
14 attached. And I have to explain that and I am doing that through my questions to Mr. Poole. I
15 am not trying to belabor the point and I am definitely not trying to re-litigate anything.

16 THE COURT: Mr. Anthony anything in reply?

17 MR. KEN ANTHONY: I am just not buying it. Again this issue has already been litigated and
18 while I will stipulate that Mr. Poole is a licensed contractor he is not an logistic expert or he is not
19 authorized as an expert to come in and basically say what the Judge decided was wrong.

20 THE COURT: I agree with Mr. Anthony. There is an order dated April 9, 2020, that found that
21 this building at that time was not an outbuilding. So lets try to focus on what has happened since
22 that date and whether or not - - -

23 MR. KEN ANTHONY: I am sorry, Your Honor. Your Honor, I think that there was a not in
24 there that is not correct. It was judged by Judge Cooper that it was an outbuilding.

25 THE COURT: Oh, I am sorry. I am sorry. I misspoke.

1 MR. KEN ANTHONY: Right.

2 THE COURT: That in the April 9, 2020 Order that this Court found that the building at that time
3 was an outbuilding. Thank you, Mr. Anthony. So lets focus on what has happened since that
4 time which my have changed the status.

5 MR. BIBLE: Yes, Your Honor. And again Mr. Anthony I wasn't trying to belabor anything. I
6 was getting there. I apologize if I was taking too long.

7 Q. Mr. Poole you are aware that the Razzanos were eventually brought into a litigation
8 regarding at least in part some of the construction that you were performing on their
9 property, were you not?

10 A. Yes.

11 Q. Okay. And did you ever stop construction during that litigation process?

12 A. Yes.

13 Q. And were you ever made aware of the Court's order that we have all discussed here today
14 that was issued in April of 2020?

15 A. I was.

16 Q. And after the issuance of that order were you asked to come back onto the property and
17 finish your construction?

18 A. Yes, I was.

19 Q. Okay. And what did you do from that point?

20 A. We came back in and finished up the structure, the interior. We finished everything up
21 and we added the attachment.

22 Q. Okay. Describe for me the methods, the construction methods that you used to attach the
23 two (2), well the preexisting home and the addition that you added?

24 A. We connected the two with a coverage trellis.

25 Q. Mr. Poole, I am showing you a photograph. Please let me know if you can see it on the

1 screen?

2 A. I can see it, yes.

3 Q. Okay.

4 MR. BIBLE: For everybody's purposes in the link that I circulated this is Page 22 of the 60.

5 Q. Mr. Poole is this the Razzano property?

6 A. Yes, it is.

7 Q. And the structure to the right that is I guess green and blue, do you see that?

8 A. I do.

9 Q. Okay. Is that the pre-existing home of the Razzanos?

10 A. That is the existing home, yes.

11 Q. All right. And the building that was constructed well it looks to be under construction on

12 that. Is that what you were building?

13 A. Yes, it is.

14 Q. All right. And in this photograph is the construction completed as reflected in this

15 photograph?

16 A. No, it is not.

17 Q. Okay. And at the time of you stopping work and the trial of this case transpiring, was this

18 generally reflective of the status of the construction?

19 A. I would say that looks about like it. I can't see the inside of it but you know from the

20 exterior, yes.

21 Q. Okay. And I am going to scroll down sir to a subsequent picture. This is the same time

22 frame just a different angle. Do you see that?

23 A. Yes, I do.

24 MR. KEN ANTHONY: Could you identify these photographs as you go just so the record is

25 clear as to what we are looking at.

1 MR. BIBLE: Yes. The first photograph that I showed Mr. Poole it is Bates Number Razzano
2 199. The second photograph is Razzano 200. The third photograph that I am showing now is
3 Razzano 201. And then the next one does not have a Bates Number but it was filed on March 8.
4 It has got a court filing date and time of March 8, at 10:28 a.m.

5 Q. Mr. Poole as I scroll through these documents I know that there may be a line on your end,
6 so just let me know if there is any trouble seeing them. But generally what I just showed
7 you appear to be photographs that were pre-completion of the construction, is that right?

8 A. That is correct.

9 Q. And so you did want to complete that project, didn't you?

10 A. Yes, I did.

11 Q. Okay. Do you recall when or about you were asked to come back out to the Razzanos
12 property to conclude the construction of the project?

13 A. I don't recall exactly when it was but it was sometime in 2020. I would say maybe
14 August, possibly.

15 Q. Okay.

16 MR. BIBLE: Your Honor, I move to introduce these photographs into evidence. Again it was
17 four photographs, pages 22, 23, 24 and 25 of the loan documents that I submitted.

18 MR. KEN ANTHONY: There is no objections.

19 THE COURT: Without objections those will be entered.

20 MR. BIBLE: That is Number 3, I believe.

21 THE COURT: Yes.

22 **MR. BIBLE INTRODUCES INTO EVIDENCE FOUR (4) PHOTOGRAPHS, PAGES 22,**
23 **23, 24 AND 25, AS DEFENDANT'S EXHIBIT 3, 5-19-2022.**

24 THE COURT: All right.

25 Q. All right Mr. Poole. So you went back out to the property in late 2020, right?

1 A. Okay.

2 Q. And now I am going to show some photographs to you. All right, let me know if you can
3 see that on your end. The first document here is Bates Number Razzano 181?

4 A. I can see that.

5 Q. Okay.

6 MR. BIBLE: And for the purpose of the folk that I sent the link to it is Page 28 of the 60.

7 Q. Mr. Poole what does this photograph portray?

8 A. I can't tell if we are finished but it looks close to being finished with the connection and
9 the trellis and the covered roofing on the trellis.

10 Q. Okay. Describe for me what type of materials were used in this type of construction?

11 A. This is all treated lumber fastened to the house and fastened to the garage. It has got a
12 covered area that is a clear covering so you can get from the house to the garage if it is
13 raining and stay dry.

14 Q. Okay. And where is that? Is that covering on the roof?

15 A. Yes, it is on the top of the trellis. Attached to the top of the trellis.

16 Q. Okay. And this trellis it appears to have varying levels on it. Is that entire system
17 attached to itself? In other words, is that entire walkway that is being covered is that
18 lumber all attached to each other all the way to the ground?

19 A. It is. They are connected completely. It is all – event though it is a 3 tier or 3 roof levels
20 it is all one piece because where the roof level connects with the next roof level the six by
21 six members are adjoining. They are for both levels of the roof.

22 Q. And what type of fasteners did you use to secure the proper materials to themselves?

23 A. Screws.

24 Q. Okay. And how about, what type of fasteners did you use to secure that to the pre-
25 existing residence and tie it into the garage addition?

1 A. They are screws also.

2 Q. All right.

3 MR. BIB LE: I am going to continue this scroll through some subsequent photographs and I

4 going to identify those as we go through it. The next one is Razzano 182, Page 29 of the 60.

5 Q. Mr. Poole does this appear to be a photograph of basically the same thing just a different

6 angel?

7 A. It is.

8 MR. BIBLE: And the next one is Razzano 183, Page 30 of the 60.

9 Q. All right. Mr. Poole what does this show?

10 A. It is the same thing. It is basically - - it looks like it is the finished product there.

11 Q. Okay. And where the white columns are on the right side of this photograph, does this

12 photograph show that the trellis is attached to the home in any way?

13 A. It is attached to the ceilings system on the front porch right above the columns there.

14 Q. Okay. And would you say that this is the mechanical attachment?

15 A. It is the mechanical attachment. Lumber with screws to the existing house.

16 Q. Would you contend that the structures are permanently attached to one another?

17 A. Yes.

18 Q. Okay. All right, lets scroll down.

19 MR. BIBLE: This is Razzano 184, Page 31 of the 60.

20 Q. Is this a continuation of the photograph above?

21 A. It is. It is just continued from the porch through the walkway going up the steps to the

22 garage.

23 Q. And there is a retaining wall there, right?

24 A. That is correct.

25 Q. And that brings up a point. What was the topography of the Razzanos' property?

1 A. It is very steep from the road down to the lake.
2 Q. Okay. And the road would be the front side of their property?
3 A. The front side, the road side, yes. I would say that is the front side, yes.
4 Q. Okay. And did the topography of the lot have any bearing on how the two structures were
5 attached?
6 A. That made it challenging because they were not on the same level.
7 Q. All right. Did you consider alternative means of attachment for the two structures?
8 A. No.
9 Q. And after looking at this photograph of the dimensional lumber or the vertical supports
10 here, I can't tell - - are those six by sixes?
11 A. They may be eight by eights.
12 Q. Okay. Are they just buried or are they in concrete? How are they - -
13 A. They are in concrete.
14 Q. All right.
15 MR. BIBLE: The next photograph is Razzano 185 and it is Page 32 of the 60.
16 Q. Mr. Poole what do we see here?
17 A. This is where it is attached to the garage.
18 Q. And when you say attached to the garage how is that?
19 A. With lumber and screws.
20 Q. And that is a mechanical connection?
21 A. Mechanical connection, yes.
22 MR. BIBLE: Next, Razzano 186 and Page 33 of the 60.
23 Q. Mr. Poole what are we seeing here?
24 A. That is where it is attached to the stairs. It is apart of the garage in going up to the house,
25 to the part above.

1 Q. All right.

2 MR. BIBLE: Your Honor at this time I would move to introduce these photographs into
3 evidence as Defendant's Exhibit 4. And I will give the recap. This is Pages 28, 29, 30, 31, 32
4 and 33 of the batch.

5 THE COURT: Mr. Anthony?

6 MR. KEN ANTHONY: No objections.

7 THE COURT: Without objections those will be admitted as Exhibit 4.

8 **MR. BIBLE INTRODUCES INTO EVIDENCE FROM RAZZANO BATES NUMBER 186,**
9 **PAGES 28, 29, 30, 31, 32 AND 33, AS DEFENDANT'S EXHIBIT NUMBER 4, 5-19-2022.**

10 THE COURT: All right.

11 Q. Thank you, Mr. Poole. Mr. Poole we briefly mentioned this earlier. Did you refer to any
12 building codes when you constructed the attachment of the two structures?

13 A. There is really no definition that I can find to what constitutes an attachment.

14 Q. And when you say that are you indicating that out of your review of the building codes?

15 A. Yes.

16 Q. Is it fair to say that to your recollection and knowledge the residential building code is not
17 prescribed or expressly definable as to what constitutes an attachment or what does not?

18 A. That is correct.

19 Q. Okay. To your knowledge and recollection does the residential building code applicable
20 to your construction define what an outbuilding is?

21 A. Does it define what an outbuilding is.

22 Q. Yes sir?

23 A. I am not sure if it defines what an outbuilding is or not.

24 Q. During your construction process did you have to seek any approval from the community
25 itself with regards to what you were constructing?

1 A. No.

2 Q. To your knowledge does the property have more than one address? Do either of these
3 structures have more than one address?

4 A. It is one address.

5 Q. And is that 149 Whippoorwill Drive?

6 A. It is 149 Whippoorwill.

7 Q. Okay. Is it your opinion that the addition as constructed today with the attachments is
8 known as one residence?

9 MR. KEN ANTHONY: Your Honor - - -

10 A. I would say yes.

11 MR. KEN ANTHONY: Your Honor before that answer this goes back to my very first
12 objection. This witness is attempting to give an opinion. He is not licensed to give an opinion
13 about whether this is an outbuilding or an attachment. Of course, he has just admitted that he
14 doesn't know. That there is no definition. But I say he is a licensed contractor, as far as I know
15 he is a good one. I know he is a good person but he is not qualified as an expert to give an
16 opinion about whether this is an outbuilding or an attachment and, in fact, he can not because that
17 issue has already adjudicated.

18 THE COURT: Mr. Bible.

19 MR. BIBLE: Yes, Your Honor. We adjudicated the issue of incomplete construction and at the
20 time of incomplete construction it was determined that one structure was considered an
21 outbuilding. Now that I have presented some testimony through Mr. Poole and shown some
22 photographs of what is existing today which we contend did not exist at the time of trial I am
23 gathering Mr. Poole's opinion as to whether it is his belief and opinion that the structures are
24 attached and that they serve as one dwelling or residence.

25 MR. KEN ANTHONY: And all I can say is the two points that I just made. First of all, he is not

1 licensed to give that opinion. He is not qualified to give that opinion. And even if he were, he
2 has just admitted that there is no definition that he has found in the building codes as to either one
3 of them, for an outbuilding or an attachment.

4 THE COURT: I agree with Mr. Anthony based on the witness's testimony that there is no
5 definition for these terms in the building code or otherwise. I don't know how he could be an
6 expert witness as to whether they qualify or not and I will remind you all that is the ultimate issue
7 before the Court today. So he can testify as to what he has done and whether or not that meets
8 certain codes but he says that is not in the codes I don't know how he can testify that it meets the
9 code. I am sorry, somebody is - I got little bit of feedback there. Was someone trying to say
10 something.

11 MR. BIBLE: Your Honor, it might have been me. To clarify I wasn't asking Mr. Poole whether
12 it met the code. I was asking him given his nearly thirty five (35) years of experience in
13 construction, in residential construction, I would believe that he would have enough experience
14 and as a qualified expert here today to testify in his opinion whether the structures are attached .
15 And in his opinion given the attachments that the structures together constitutes one dwelling.

16 MR. KEN ANTHONY: Well Your Honor and I feel like I maybe belaboring it at this point but
17 I want to go back and state I don't even think that is a topic that is subject to an expert witness's
18 testimony. The difference between an outbuilding and an attachment, those are common terms,
19 everybody that speaks English knows the meaning of those words. So it does not, it is not one of
20 those matters that is beyond the knowledge of the jury or a judge to decide and in fact that is the
21 ultimate issue that the Court is being asked to decide, which is essentially a legal question in this
22 case. This is not a builder's question. So I don't think an expert knowing is needed on that issue.
23 They can present facts and he can as he has just testified this is what I did, this is the materials
24 that I used. This is how I went about my work but it is not something that requires expert
25 testimony. A layman can decipher and tell based on facts whether this is an outbuilding or an

1 attachment. I don't think we will even get to the point of needing expert testimony, but if we do,
2 we will have it.

3 MR. CRAWFORD: Your Honor, if I may.

4 THE COURT: Yes and you are?

5 MR. CRAWFORD: John Crawford and I am Mark Bible's partner, representing the Razzanos as
6 well, Your Honor.

7 THE COURT: And would you state your name again. You cut out for a brief moment.

8 MR. CRAWFORD: I apologize, Your Honor. John Crawford and I am Mark Bible's partner
9 representing Mark and Carree Razzano. Your Honor, I would strictly disagree with Mr. Anthony
10 as it relates to what the issue is before the Court. The issue before the Court is whether the
11 construction, whether the attachment or whether the buildings now as constructed were
12 considered as one individual building and therefore not an outbuilding any more. So how that
13 construction took place, Mr. Poole's experience and expertise related to attachment of structures
14 and how he has had to conform with these type of requirements in the past are relevant to this
15 issue other than forming just a lay person's testimony. I think that it becomes important that his
16 opinion as a contractor having thirty some years of experience should be able to testify on whether
17 the construction was made to the methods that he utilized to attach these buildings of whether in
18 his past experience based on his experience whether this type of attachment would be considered
19 one building or one unit. That is based on his construction experience, Your Honor. And I think
20 that is relevant and the knowledge of the person. And that is the issue before the Court.

21 THE COURT: I am going to sustain the objection. Okay, Mr. Poole can testify as to what work
22 he performed and whether or not it was in code within the code. If he testifies that he does not
23 have knowledge of a particular code provision I don't see how he could testify as an expert that
24 his work meets that code provision. So if he wants to testify as a lay person as to his personal
25 opinion as to whether or not that would create one residence he can do that. All right. So Mr.

1 Bible if you want to move forward?

2 MR. BIBLE: Thank you, Your Honor.

3 Q. Mr. Poole have you run across any similar issues like what we are talking about today
4 where we are talking about the attachment of structures together in your experience as a
5 residential builder in the Upstate South Carolina?

6 A. Yes, in the City of Spartanburg we had one about a year ago and it required an attachment
7 in the Converse Heights area. It was a garage with an apartment overhead and we did a
8 breeze way similar to what we did up there. Well not considered a trellis but a breeze
9 way with a roof, covered roof, also. And that was accepted by the City of Spartanburg.

10 MR. KEN ANTHONY: That goes back to my hearsay objection now. The City of Spartanburg
11 is not here and they are not testifying. We don't have the facts of that case. We don't have any
12 pictures of that structure. But again that ship has sailed. This is an outbuilding, this particular
13 building, in the Court's eye what makes it an attachment or otherwise it is still an outbuilding as
14 Judge Cooper ruled and Judge Cooper decided that without – he didn't feel the need to have
15 expert testimony on this. He decided that it was an outbuilding. So if they want to present to the
16 Court something that now convinces the Court that there has been a change that renders it an
17 attachment rather than an outbuilding they can attempt to do that. But that is all that we are here
18 about.

19 MRS. RAZZANO: Your Honor - - -

20 MR. KEN ANTHONY: The other situations don't apply.

21 MRS. RAZZANO: Your Honor, may I offer some contents?

22 THE COURT: No, you may not. I apologize. You may when it is your turn. So let me
23 explain that. So, I am going to sustain the objection. That it is hearsay what the County did on
24 some other project and it is not relevant. And so lets talk about what happened with this structure
25 since the Order of April 9, 2020.

1 MR. CRAWFORD: Your Honor, before Mr. Bible responds and just so we can have the record
2 clear. Mr. Anthony and I understand, well I would just ask the Court to reconsider Mr.
3 Anthony's objection. Mr. Anthony has the ability to cross examine. Mr. Poole is a licensed
4 contractor who is experienced on what happened on that project. Mr. Poole is not indicating
5 what he was told by someone as it relates to that project. He is only giving his experience of a
6 similar situation and how he was able to address that situation. To the extent that Mr. Anthony
7 must ask him the specifics of that case he is certainly able to do that and I would not and Mr.
8 Bible respectfully would not object because he is only talking about his experience.

9 THE COURT: Thank you, Mr. Crawford. I have ruled on the objection And I will not
10 reconsider it. So let us move forward. Mr. Bible.

11 MR. BIBLE: Yes, Your Honor. Thank you, Your Honor.

12 Q. Mr. Poole since you stopped work at the time and you revisited the property, did you
13 attach the two structures together?

14 A. Yes.

15 Q. As it sits here today to your knowledge are the structures attached to one another?

16 A. Yes.

17 Q. Describe for the Court one last time how they are attached to one another?

18 A. They are mechanically attached by lumber and screws, permanently.

19 Q. All right. Mr. Poole at this time we have no further questions.

20 A. Pardon me.

21 Q. I have no further questions of you. Mr. Anthony may ask you some questions.

22 THE COURT: Mr. Anthony.

23 MR. KEN ANTHONY: Thank you, Your Honor.

24 **CROSS EXAMINATION BY MR. KEN ANTHONY.**

25 Q. Mr. Poole where is the attachment that was attached to your agreement showing the sketch

1 of the wall?

2 A. It is just a plan, if I remember right Ken, it is just a plan that we used to go build the
3 building by.

4 Q. Well where is it?

5 A. I don't have a copy of the plans.

6 Q. And it was a plan for this three car garage and living space?

7 A. Correct.

8 Q. But you don't have it any more?

9 A. I don't have a copy of the plan, no.

10 Q. You don't have a copy of what was attached to that agreement? I want to see the attached
11 copy to the agreement but it is not attached so I can't see it.?

12 A. Okay. I don't have a copy of the plans which was the attachment.

13 Q. You talked a lot about building codes here and there is no doubt that you are familiar with
14 the building codes because that is what you do every day. Are you familiar with the
15 restrictions that apply to this property, the subdivision restrictions?

16 A. I am now.

17 Q. All right. But when you contracted to build this garage did you consult with the
18 restrictions?

19 A. I think that we had a copy of the restrictions. I am not positive.

20 Q. All right. Well you would agree with me that building codes and subdivision restrictions
21 are two different animals?

22 A. Yes.

23 Q. I mean there can be things and they frequently are in subdivision restrictions they are more
24 as the word implies, restrictive, than building codes?

25 A. I would agree with that.

1 Q. Okay. And that is often the purpose of restrictions. It is to impose conditions that may
2 not even be covered by the building codes?
3 A. I agree.
4 Q. Now we are on square footage and things like that. It is not necessarily covered by the
5 building code, right?
6 A. Correct.
7 Q. All right. So subject to my objections about your qualifications to testify as a expert,
8 which I hope you don't take offense, you are not here to try to give an opinion about
9 whether this structure complies with the subdivision restrictions?
10 A. No. I am here to answer questions and if you ask my opinion I will give you my opinion.
11 Q. But I am not asking your opinion because I have objected to that. But assuming that it
12 complies with the building code that doesn't mean that it necessarily complies with these
13 restrictions does it?
14 A. No.
15 Q. All right. You mentioned that the building codes don't address or define outbuilding
16 versus attached. I am correct about that, right?
17 A. Well they don't have a complete, a definition of what constitutes an attachment.
18 Q. But there are some places that one can look to see what these terms mean is there not, and
19 I am thinking particularly about what is called the NEC, the National Electric Code.
20 MR. BIBLE: I object Your Honor. That calls for a speculation.
21 THE COURT: I think he can testify - - -
22 MR. KEN ANTHONY: I am asking - - -
23 THE COURT: Go ahead Mr. Anthony.
24 MR. KEN ANTHONY: No, I agree. I mean I am just asking the question which I think that
25 they stipulated that I have the right to do on cross examination.

1 THE COURT: I don't think that it calls for speculation. I will overrule the objection.

2 Q. Are you familiar with the National Electric Code that talks about the distinction between
3 an outbuilding and an attached addition?

4 A. I am not familiar with the exact codes. I don't know the codes - - that is why we have the
5 code book and that is why we have officials to enforce those codes. You know, we are
6 not here to memorize the code book or ABC or anything like that.

7 Q. No. I wouldn't expect you to. In your work as a contractor you have to deal with Duke
8 Energy from time to time, don't you?

9 A. I do.

10 Q. And this garage building is metered separately from the residence, the pre-existing
11 residence isn't it?

12 A. It does have a separate meter.

13 Q. Yes and in fact Duke Power will - -if Duke Power considers this all to be one dwelling
14 they will only issue one meter won't they?

15 A. I am not positive.

16 MR. CRAWFORD:: Your Honor, we object. This seems to be the same path that Mr. Anthony
17 had an issue with when Mr. Bible was examining him on whether it is a single building or
18 separate and as he indicated we are only before the Court for that decision. Mr. Bible attempted
19 to ask questions based on some of the same facts that Mr. Anthony is raising now. If Mr.
20 Anthony wants to talk about the attachment which is what I thought that he indicated that we were
21 limited to with Mr. Poole. But he seems to be going outside and treading that same perimeter
22 that he said was improper for Mr. Bible to address.

23 THE COURT: Mr. Anthony?

24 MR. KEN ANTHONY: Your Honor, I stipulated that he is a licensed building contractor and he
25 has testified that he is familiar with Duke Energy and its requirements. I am just asking him

1 based on his experience. I think he is qualified to talk about that.

2 THE COURT: All right. He can testify about his prior experience with one or multiple meters.

3 To the extent that you are trying to get him to testify as to whether this is an attachment or an

4 outbuilding. I agree that what is good for the goose is good for the gander and if he is not an

5 expert on that then lets stick to the ultimate points.

6 MR. KEN ANTHONY: Thank you, Your Honor.

7 Q. Mr. Poole you referred to this as a quote, "covered trellis," right?

8 A. Okay.

9 Q. Is that correct?

10 A. I believe so. It is covered. It has got a roof on it.

11 Q. I am looking at photographs that have been supplied by the Razzanos and for instances the

12 192 shows a portion, a very small portion, of the trellis being covered but that is all?

13 A. It is covered all the way to the garage.

14 Q. It sure doesn't look like it in a lot of these photographs here does it?

15 A. It is.

16 Q. I mean generally an attached addition would be expected to share a wall and open directly

17 into the other unit, would it not?

18 A. That is not defined any where.

19 Q. All right. Wouldn't that be common knowledge that if you attach something to the

20 building they ought to share a wall?

21 A. No.

22 Q. There is no - - the only possible connection between these two structures is just lumber

23 and some screws, right?

24 A. Lumber and screws. Mechanically attached.

25 Q. Right. But there is no - - the electrical doesn't go from one structure to the other, does it?

1 A. No.

2 Q. The plumbing doesn't go from one structure to the other, does it?

3 A. No.

4 Q. The HVAC doesn't go from one structure to the other, does it?

5 A. No.

6 Q. And this trellis doesn't have any walls on it, right?

7 A. No.

8 Q. And so we just talked about the fact that they have got separate meters. So they don't

9 share any electrical connections between them, right?

10 A. No. When you have a connection like that typically you would have two meters.

11 Q. When they are not connected?

12 A. No, when they are connected..

13 Q. When they are connected you would have two meters?

14 A. Absolutely.

15 Q. Why would you have two meters if all of your electrical is connected?

16 A. Your electrical is not connected that is why you have to have two meters but your

17 buildings are connected mechanically.

18 Q. Well by a wooden trellis with screws?

19 A. By a wooden trellis with screws.

20 Q. All right. And if you go outside in the rain, if it is a light rain and it is falling straight

21 down you might not get wet walking from one to the other, but if it is anything else you

22 are going to get wet aren't you?

23 A. As in any breeze way.

24 Q. Yes. I know you understand. I mean this is a self contained structure. Somebody could

25 live there who had no relation and didn't even like speak to the people in the other

1 building. They could live there on their own without any other services, right? They
2 have got electrical, they have got heat, they got water. They have got whatever they need.
3 It is completely separated?
4 A. As you could in any - - -
5 MR. BIBLE: Objection, Your Honor. That calls for speculation.
6 THE COURT: And you all I do need for you to wait until one person finishes speaking before
7 you speak so that the record is clear. Okay. So Mr. Poole would you repeat what you said.
8 MR. BIBLE: Your Honor, I was presenting an objection as Mr. Poole was speaking.
9 THE COURT: Okay. Then Mr. Bible please proceed.
10 MR. BIBLE: Yes, Your Honor. Thank you. The question that Mr. Anthony just asked certainly
11 called for speculation. He was asking if somebody could do this under several variety of
12 circumstances in addition to it calling for speculation it is a compound question.
13 THE COURT: All right. Mr. Anthony would you care to rephrase your question. Break it
14 down for us.
15 MR. KEN ANTHONY: If I can. I sometimes confuse myself, Your Honor. But let me just try
16 it. Let me just try to start over here.
17 Q. Mr. Poole, if anybody wanted to, they could go out there with a good size power screw
18 driver and take this trellis off and these two buildings would function just fine on their
19 own, wouldn't they?
20 A. You could dismantle it, I am sure. You can dismantle anything.
21 Q. Yes. Well Russia has been proven in that lately. But that is not what we are going to do
22 here. You say this is a garage with living space above it and is completely self sufficient
23 isn't it?
24 A. It is.
25 MR. KEN ANTHONY: I am sorry, Your Honor. Could I have just one minute?

1 THE COURT: Take your time.

2 Q. Mr. Poole if the Razzanos own the plans that you referred to, which we don't have. If any
3 of those had asked you to actually physically connect these buildings by electrical, the
4 plumbing, HVAC, well in other words you could have done that, couldn't you?

5 A. I don't think the existing meter had enough capacity for the new structure.

6 Q. But the occupant ----

7 A. So the answer is no. There would have to be another meter.

8 Q. But my point is you could have cut an actual hallway, a covered interior space from one
9 building to the other building with doors on each end to where somebody from one
10 building could open the door or go through a hallway and come out in the other building
11 without ever going outside and without ever going through an unheated or non-cooled
12 space that had lights and had plumbing fixtures. You could have done that. You are
13 licensed to do that and you have done it many times I bet. You could have done that
14 couldn't you?

15 A. Sure that could have been done but that wasn't the plan. That wasn't in the plans.

16 Q. Right. You did what you were asked to do?

17 A. Correct.

18 Q. All right. I think that is all I have. Thank you so very much for answering my questions.

19 THE COURT: All right. Mr. Bible any redirect?

20 MR. BIBLE: Yes, briefly Your Honor.

21 **REDIRECT EXAMINATION BY MR. BIBLE.**

22 Q. Mr. Poole a couple of questions on what Mr. Anthony was asking you. I believe you
23 indicated that what has been constructed by you on the Razzano property connecting the
24 two buildings together is akin to a breeze way, is that right?

25 A. Correct.

1 Q. Okay. Is there really any discernable difference other than the aesthetic appearance of
2 what has been constructed out there compared to what is commonly known as a breeze
3 way?
4 A. No difference.
5 Q. Okay. And you mentioned at the close of Mr. Anthony's statements that the pre-existing
6 meter on the property servicing the home was inadequate to handle it and a new meter was
7 installed as a result of that?
8 A. Yes.
9 Q. Mr. Anthony asked you a question of whether you could have installed a hallway or
10 something to that effect to connect the two structures together. Do you recall that line of
11 questioning?
12 A. Yes.
13 Q. Wouldn't topography have any impact on that type of construction?
14 A. Yes, we couldn't have done it with the topography, where the two buildings are located.
15 We couldn't have done that.
16 Q. All right. Mr. Poole, I want to share the screen right quick. Can you see the document in
17 front of you?
18 A. I do.
19 Q. Okay.
20 MR. BIBLE: I hope that we can agree on one thing today. That these are the restrictions of
21 Solitude Bay and I believe Mr. Anthony that you wouldn't object to me going ahead and
22 introducing those into the record, would you?
23 MR. KEN ANTHONY: I think that they are already in the record, but no. I don't object.
24 MR. BIBLE: Okay.
25 THE COURT: Without objections, they will be admitted as Exhibit 5.

1 MR. BIBLE: Thank you, Your Honor. This is Bates 10 of the link that I sent everybody.

2 THE COURT: All right.

3 **MR. BIBLE INTRODUCES INTO EVIDENCE A COPY OF THE RESTRICTIONS FOR**
4 **SOLITUDE BAY, AS DEFENDANT'S EXHIBIT 5, 5-19-2022.**

5 Q. Mr. Poole, I am going to give you a moment to allow you to read through these yourself
6 and just let me know when you want me to slow down and I will be happy to do so. And
7 just let me know if you can't read it. I am happy to zoom in as well?

8 A. Okay. I need you to scroll down.

9 Q. Okay. Mr. Poole, I will scroll back up here. Mr. Anthony was asking you a series of
10 questions with comparing building codes to provisions that the restrictive covenants may
11 have and I believe that you indicated that restrictive covenants may contain language that
12 is more restrictive than what the building code provides. Do you recall that?

13 A. I do.

14 Q. Okay. And in particular here we are focused on paragraph 6. I will call your attention to
15 that and we are specifically focused on the outbuilding in questions. Again do you recall
16 given the method of attachment that you used to tie these two structures together, do you
17 see any where in that paragraph where it describes or limits how we were to attach them?

18 A. No.

19 Q. In fact, you just provided the opportunity to brief those entire restrictive covenants. Do
20 you see any where in the restrictive covenants where it defines or prescribes specific
21 methods and means that you would use as a contractor in connecting structures together?

22 A. No.

23 Q. Thank you, Mr. Poole.

24 MR. BIBLE: One moment, Your Honor.

25 THE COURT: Yes.

1 MR. BIBLE: Mr. Poole, I have no further questions.

2 THE COURT: Mr. Anthony.

3 MR. KEN ANTHONY: Just very briefly.

4 **RECROSS EXAMINATION BY MR. KENNETH ANTHONY.**

5 Q. Mr. Poole you were told where to put this garage, weren't you?

6 A. Yes.

7 Q. And you could have put it right up next to the house, well tied into the house where you
8 could have opened the door after you get out of your car you close the door on your car
9 and open the door and go into the house?

10 A. I guess a completely different plan could have been done that way. It would have been
11 tough with the way the lay of the land is to do it that way but nothing is impossible.

12 Q. But like I said earlier. That wasn't what you were asked to do. You were asked to put
13 it right where it is?

14 A. I was.

15 Q. Okay. Thank you.

16 THE COURT: All right. Mr. Bible?

17 MR. BIBLE: Yes, Your Honor.

18 **REDIRECT EXAMINATION BY MR. BIBLE.**

19 Q. One last thing, Mr. Poole. As Mr. Anthony was just discussing on the location of the
20 garage, when you said a completely different plan could have been attached. Was that
21 with sharing a common wall to the home? Is that what you are describing?

22 A. Yes. It would have been difficult to do that with the lay of the land but again anything is
23 possible.

24 Q. Could it have been - - -

25 A. It would probably have been a lot more costly to do it that way due to the fact that we

1 already had a lot of retaining walls involved and that expense and other things. Well it
2 would have been a lot more expensive to do it that way and that is not what they were
3 after.

4 Q. Okay. And was the construction that you performed out there cheap, was it cheap to
5 begin with?

6 A. Not at all. Very expensive.

7 Q. And what type of expenses are we talking about with the construction of that facility?

8 A. With the - -

9 MR. KEN ANTHONY: Objection, Your Honor. Objection to the relevancy, Your Honor. I am
10 sorry. I know that I am talking over. But I object to the relevancy.

11 THE COURT: And Mr. Bible at this point we have had direct, cross, redirect, recross, and now
12 we are on our third round here and I think we are outside the scope. So can we - - and I do
13 believe that he has covered this. So do you have anything else that relates to Mr. Anthony's
14 recross?

15 MR. BIBLE: No, Your Honor. We are good. That is it.

16 THE COURT: Thank you. All right, do you have another witness, Mr. Bible?

17 MR. BIBLE: Yes. And I would ask that unless Mr. Poole wants to hang out that he be excused.

18 MR. KEN ANTHONY: No objections to that.

19 THE COURT: All right. Mr. Poole thank you so much.

20 A. Thank you very much. I appreciate it.

21 MR. BIBLE: Your Honor, I now call Carree Razzano.

22 **CARRE FROST RAZZANO, BEING**

23 **DULY SWORN, TESTIFIES AS FOLLOWS:**

24 THE COURT: And would you state your full name for the record?

25 A. My name is Carre Frost Razzano.

1 THE COURT: Mr. Bible.

2 **DIRECT EXAMINATION BY MR. BIBLE.**

3 Q. Mrs. Razzano thank you for being here today and I hope we will not take too long with
4 you but I know a little while ago you were going to interject and provide some color as to
5 why the structures were joined as they were. Can you provide some color to the Court for
6 that?

7 A. Because we were actually starting with this prior to even permitting a general contractor to
8 look at it. I just wanted everyone to know that I sat with the building official through
9 Spartanburg County and we reviewed these plans - - -

10 MR. JAY ANTHONY: Your Honor, I object to hearsay.

11 THE COURT: All right. Mr. Bible a response.

12 MR. BIBLE: Yes, Your Honor. As long as Mrs. Razzano, so long as she is not indicating
13 precisely what somebody has told her or said that is unavailable to testify, I believe that she can
14 testify as to her experiences in certain circumstances without having to show the truth of the
15 matter being asserted.

16 MR. JAY ANTHONY: Your Honor, I guess I don't mind seeing where it goes. But the point is
17 that Spartanburg County governing official acting in some way or didn't object to something like
18 that but I don't see how that is not hearsay.

19 THE COURT: I am going to overrule it for now but you can raise it as her testimony continues,
20 okay.

21 MR. BIBLE: Thank you, Your Honor.

22 THE COURT: Mr. Bible would you like to ask the question again?

23 Q. Mrs. Razzano could you indicate to the Court the history to your knowledge of why the
24 two structures were constructed as they were and then eventually attached by what has
25 been called a covered trellis? And when you do that please ma'am you are not to testify as

1 to what somebody told you.

2 A. Sure. Okay. So just to finish what I was saying. Having reviewed my plans with the
3 building official there were stipulations for it being considered for the addition as it goes
4 to a similar building. If you review the building permit you will see that it says the
5 addition, because the plans that I showed the inspector was those plans that you have
6 copies of, or if not, they were what I showed him. So that is just Number 1. And
7 Number 2, the way that it was laid out was due in part to the topography and the way that
8 the hill falls very steeply. Secondly, we were trying not to kill any trees. We were trying
9 to leave as much you know - - well as many trees as possible and so the new residence is
10 on a hill and so we had utilities, underground utilities to deal with. And this was the, let
11 me see, most feasible way to lay out a garage with the house and with the space above it.
12 When we went to Court this was work in progress. I understand that the Judge made
13 whatever ruling he did but in construction you really can't rule on something until it is
14 actually finished. I think the other thing that the Court needs to know, Your Honor, there
15 has already been a precedent set in this neighborhood for someone else who has already
16 built a garage that has a living space above it but is attached - - -

17 MR. JAY ANTHONY: Your Honor, I would object. Your Honor, that is something that the
18 defense raised with Judge Cooper and we addressed that then and I can address these other homes
19 in the neighborhood, they not being anything like this. But that is just not relevant to what we are
20 talking about today. That has already been raised. We are here to talk about Judge Cooper's
21 order and whether they attached it sufficient that it no longer constitutes an outbuilding.

22 A. You can not - - -

23 THE COURT: Mrs. Razzano —

24 MR. BIBLE: Sorry, Your Honor. Mrs. Razzano stop, please.

25 THE COURT: We need to allow the attorneys to make their objections and responses for the

1 record. Mr. Bible do you have a response?

2 MR. BIBLE: Yes, Your Honor. I think it really is relevant to how or why the structures were
3 attached in the way that they were attached. So I believe that Mrs. Razzano could give that color
4 to the Court as to the reasons why such construction methods and means were used to attach the
5 two structures on their property. Which again did not exist at the time of the trial of this case.

6 THE COURT: You are saying that the other structures did not exist at the time of the trial of this
7 case?

8 MR. BIBLE: No, Your Honor. What I am indicating is that the attachment of the Razzanos
9 buildings did not exist at the time of the trial of this case. So the Court is being provided color by
10 Mrs. Razzano as to the presence, the existence of other structures within the community that now
11 have a garage attached to a home by a breeze way which I believe is relevant to say that the
12 method of attachment that was used by the Razzanos was adequate.

13 THE COURT: Mr. Anthony, briefly.

14 MR. JAY ANTHONY: Your Honor, I still disagree. That is going back to what Judge Cooper
15 has already decided. They argued to Judge Cooper that there are these other homes in the
16 neighborhood that have similar things and so the restrictions ought to be interpreted such and such
17 a way, but Judge Cooper decided looking at this particular house that it is not attached and it
18 constitutes an outbuilding. And the only thing that he reserved jurisdiction on and the Razzanos
19 have made this very clear in all of their filings in looking at it as attached and is that sufficient
20 such that it does not constitute an outbuilding within the meaning of those restrictions. So
21 whatever anything else is in that neighborhood it is not here today.

22 THE COURT: I am going to overrule the objection and allow Mrs. Razzano to testify about
23 similar structures that are subject to these covenants and why she has constructed this trellis the
24 way that she has. Okay. Please proceed Mr. Bible.

25 Q. Mrs. Razzano, I think that you were continuing your explanation as to the other existing

1 structure in the community that is attached by a breeze way?

2 A. Correct. And I made that statement and it is true and that has set a precedence in this
3 neighborhood. I also want the Court to understand that very often there are - - you can
4 build a house with a garage that has a separate meter and that is done for various reasons
5 sometimes, like people have a workshop, or whatever, but that is not an unusual situation
6 to have two meters at your home. Lets see, the other thing is that in that set of covenants
7 it says that you are not supposed to live in the garage and nobody has lived in the garage so
8 that is a clarification as well. And then I guess - - I don't know that I have anything else
9 to say other than that was a work in progress where we live and there is a precedent in the
10 neighborhood already for a very similar construction and the only thing that we did was - -
11 the thing that we did was not to harm anybody or anything. In fact, we do have pictures of
12 the house when we first bought it. We have done nothing but increase the value of this
13 neighborhood and we have lived here for fifteen (15) years. We have never had any
14 problems. We have built the additional living space for our parents. We have given this
15 testimony previously. We have three sets of aging parents and we want them to live near
16 us in a fashion that is respectable and autonomous as possible and it is just very hurtful
17 that the people on the street can't understand that is what we are doing. This is not an
18 Airbnb. We do not rent it. Our family lives here with us now. Their driver's licenses
19 also is 149 and their vehicles are registered to our address and I don't think that I have
20 anything else I would like to say.

21 Q. All right. Mrs. Razzano just a couple of points of clarification. Describe for me your
22 work background and your educational background? What does that involve?

23 A. I am an architect. I am a registered architect in New York and South Carolina.

24 Q. Okay. And have you been involved in residential architectural at all in your career?

25 A. Yes, I have.

1 Q. All right. And to what extent?

2 A. Specifically, I have worked for a company called Steve Goggans in Pawleys Island.

3 Where we did high end residential construction.

4 Q. And you received a degree, a college degree in architectural, did you not?

5 A. Yes sir.

6 Q. And where from?

7 A. Cornell University.

8 Q. And you maintain an active architectural license in the State of South Carolina?

9 A. Yes, I do.

10 Q. Are you familiar with residential building designing?

11 A. Yes sir.

12 Q. In fact, did your expertise in being an architect influence how you elected to cause the

13 attachment of these two structures?

14 A. Yes.

15 Q. All right. And your household?

16 A. I wanted it to be - - as you can see from the pictures, the architectural style is you know, is

17 uniform across the motifs and the trellis. The uniform landscaping and everything was an

18 opportunity to create a trellis that was first hand, it is called Calama across the top of it

19 which is see through and very clear and that is in white. And that was all apart of the

20 design to keep it light and airy.

21 Q. All right. And that Calama, I believe Mr. Poole was trying to indicate that - - it blocks rain

22 from touching it as you walk between the outer door into another one?

23 A. It does.

24 Q. All right. And in addition, and I don't believe that Mr. Poole spoke on this, but in

25 addition to causing the construction and completing the construction following the trial in

1 this case, other than the attachment what else did you do? Did you make the two
2 buildings look as they were one, tie them together that way?

3 A. I think anyone that saw the pictures of what it looked like previously and what it looks like
4 today would say that it is completely different for the two buildings.

5 Q. And now I will share my screen with you. And this was in I believe Defendant's Exhibit
6 Number 3, this is Razzano 190, a photograph. And the reason that I am showing this in
7 this fashion Mrs. Razzano is it gives you a perspective of both buildings. They didn't
8 originally look the same color or any of that did they?

9 A. They did not.

10 Q. Okay. And did you intentionally try to create an appearance that would make the new
11 addition and the preexisting home belong together?

12 A. Yes. A cohesive design, if you will.

13 Q. And to your knowledge the wooden trellis, the covered trellis, that we see there to your
14 knowledge is it physically and mechanically attached to your home?

15 A. It is.

16 Q. Okay. And is it physically and mechanically attached to the addition?

17 A. It is.

18 Q. Okay. And do you treat the building as a whole as your one home?

19 A. We do.

20 Q. Is it intended by you that the addition, wholly and independent of, and used wholly and
21 independent of your preexisting residence?

22 A. It is all one residence. Is that the question.

23 Q. That is fine. At the time of the trial in this case Mrs. Razzano what was the status of the
24 construction if you recall?

25 A. The main structure was not this color. I am not even sure whether, well I am not even

1 sure - - it did not have the walkway constructed and we didn't have the trellis and we
2 didn't have it connected at the time of trial but it was a work in progress, we were working
3 on it.
4 Q. All right.
5 MR. BIBLE: Bear with me one moment.
6 THE COURT: Take your time. I would ask you all to consider how much longer we may need
7 on this matter. This may be a good time for a break, Mr. Bible?
8 MR. BIBLE: Your Honor, I think that I am done with my direct of Mrs. Razzano at this point.
9 THE COURT: All right. How much longer do you think that you are going to need for your
10 case, Mr. Bible?
11 MR. BIBLE: Mrs. Razzano and Mr. Poole are our only witnesses.
12 THE COURT: All right. Thank you. And Mr. Anthony how long do you think that you will
13 need?
14 MR. JAY ANTHONY: We don't plan to present any witnesses, Your Honor.
15 THE COURT: All right. Well then lets push forward. Mr. Bible did you say that you had
16 additional questions for Mrs. Razzano?
17 MR. BIBLE: I have got several subdivision questions, Your Honor. I am just pulling out the
18 document right now and then Mr. Anthony will have at it.
19 Q. Mrs. Razzano is your screen up yet. Can you see what is before you Mrs. Razzano is the
20 restrictions?
21 A. Yes.
22 Q. Okay. And these are the restriction for the Solitude Bay Community?
23 A. Correct.
24 Q. Okay. And that is where your property is, right?
25 A. Yes.

1 Q. Okay. To your knowledge - - are you familiar with this document?
2 A. Yes.
3 Q. Okay. Have you read it previously?
4 A. Yes.
5 Q. Okay. Are you aware of any descriptions in this document of how structures must be
6 attached?
7 A. There is nothing that says how it has to be attached.
8 Q. When you constructed the addition and then you used the method of attachment that you
9 used, was it your intention to be in compliance with all provisions of this document?
10 A. Yes, it was.
11 Q. And specifically using the method of attachment that you employed, was it your intention
12 to create a situation, a scenario where the new addition would not be considered an
13 outbuilding?
14 MR. JAY ANTHONY: Your Honor, I have let a few questions go but I think that they are
15 leading questions at this point.
16 THE COURT: I am going to sustain that objection. You can rephrase your question, Mr. Bible.
17 Q. Mrs. Razzano in paragraph 6 of the restrictions was there anything in particular in
18 paragraph 6 that you were looking to avoid in using the attachment methods that you used?
19 A. I am not sure. But with this particular reference this was not designed as a temporary
20 residence. It was not designed as an outbuilding. Again, we would like to state that it is
21 an addition to our home.
22 Q. Okay. Mrs. Razzano I have no further questions. Thank you.
23 THE COURT: All right. Mr. Anthony.
24 MR. JAY ANTHONY: I could start with that but you had mentioned a break earlier and I don't
25 mind taking one Your Honor if you prefer.

1 THE COURT: Lets get started. Go ahead.

2 MR. JAY ANTHONY: That sounds good. Thank you.

3 THE COURT: Go ahead.

4 **CROSS EXAMINATION BY MR. JAY ANTHONY.**

5 Q. Good afternoon or evening, Mrs. Razzano. You and I met before, I am Jay Anthony and I
6 am representing these homeowners along with my father and I don't have a whole lot but a
7 few questions for you. I want to touch on something that you were just mentioning in
8 direct in terms of always intending to have your family live in this garage residence. Isn't
9 it true that for a time you talked about having a Clemson student live there?

10 A. That reference was in this context. It was we have a niece, that niece would be my
11 husband's brother daughter. She was talking about maybe going and attending Clemson
12 University and she is out of state and she would have to come and live with us. Which
13 again we would anticipate having family share our home.

14 Q. All right. But before the Order in this case you all discussed the idea of renting the garage
15 apartment out on Airbnb, correct?

16 A. We had already done Airbnb with our other house and then you guys asked us to stop and
17 then we did. And so when we did this it was for our family.

18 Q. Okay. Would you agree that the restrictive covenants say there is to be one residence per
19 lot, correct?

20 MR. BIBLE: We have an objection, Your Honor. We are exceeding the scope of what we are
21 here to talk about. Mr. Anthony and his father have been consistent in objecting and saying that
22 we are only here to focus on whether there is an attachment of an outbuilding and I specifically
23 was referencing paragraph 6 of the covenants and restrictions. Mr. Anthony is trying to back load
24 into saying that there is now two residencies on one lot and bring into the Court's opinion, well
25 bring into the Court's preview whether now there are two residences on the lot which is in

1 violation of the covenants and restrictions.

2 THE COURT: Mr. Anthony.

3 MR. JAY ANTHONY: Your Honor, I don't know how you read one condition without the other.

4 I mean the point of Section 6 that deals with the same, but it is not to be a residence and an

5 outbuilding relates to the other provision that says that there is only to be one residence per lot.

6 So it is hard for me to figure out how to address one without the other.

7 THE COURT: I will allow it.

8 MR. JAY ANTHONY: Thank you, Your Honor.

9 Q. Mrs. Razzano you would agree that the restrictive covenant says there is to be one

10 residence per lot, correct?

11 A. Correct.

12 Q. And Judge Cooper issued an injunction with his Order because he found that the garage

13 residence was an outbuilding being used as a residence, right?

14 A. He made that determination while this was still in progress. So I don't think that is a fair

15 assessment.

16 Q. The answer to my question is yes, right. That is what Judge Cooper found?

17 A. I am not sure because the way you guy wrote this stuff. So we are not a hundred percent

18 sure.

19 Q. All right. Well lets talk about the garage residence- - -

20 A. It is not a garage residence. It is a garage with living space above it.

21 THE COURT: And Mrs. Razzano - - -

22 Q. All right. Lets talk about - - -

23 THE COURT: Mrs. Razzano and Mr. Anthony please let the other finish before you begin. Just

24 for purposes of keeping the record clear, okay.

25 A. Yes.

1 THE COURT: Mr. Anthony.
2 MR. JAY ANTHONY: I will, Your Honor. Thank you.
3 Q. All right. Well lets talk about the garage living space then. It is a three (3) car garage
4 with living space above it?
5 A. Yes.
6 Q. And the living space is one thousand three hundred fifty (1,350) square feet, right?
7 A. Yes.
8 Q. And it is two (2) bedrooms and two (2) bathrooms?
9 A. Yes.
10 Q. All right. And it has a full kitchen, correct?
11 A. Yes.
12 MR. BIBLE: Your Honor, I am going to have to object to Mr. Anthony's line of questioning.
13 Again he is not - - we are not talking about the makeup of what the other building is or may have
14 been, it is now or was at the time of trial, what we are talking about is connection with two (2)
15 buildings. And Mr. Anthony is going into trying to establish, well it appears to me, he is trying to
16 establish that there are two residences now as opposed to focusing on the matter at hand, which is
17 whether the two (2) structures are attached such that one (1) is no longer consider an outbuilding.
18 MR. JAY ANTHONY: Your Honor- - -
19 THE COURT: Well what I arm going to do - - -
20 MR. JAY ANTHONY: Your Honor- - -
21 THE COURT: Yes, Mr. Anthony. I am sorry, I didn't mean to cut you off.
22 MR. JAY ANTHONY: I am sorry. No, I am doing the same. I was just going to say that there
23 was testimony on that and Mr. Bible has made a point of trying to say this was an addition. So I
24 think that I have an opportunity to address that.
25 THE COURT: I agree with both of you. I agreed that this is the issue whether these buildings

1 have been sufficiently connected to become one building but lets focus on that. Lets focus on the
2 connection and to see whether this building is still an outbuilding or whether it is sufficiently
3 connected to become apart of the residence, okay.

4 MR. JAY ANTHONY: Thank you, Your Honor.

5 THE COURT: All right. Please continue.

6 Q. To that point, Mrs. Razzano. Lets talk about the connections. So these buildings, the
7 two structures; the garage, the living space and the main residence. They are not
8 connected by a water supply, right?

9 A. No, they are not.

10 Q. And they are not connected by any duct system, right?

11 A. No.

12 Q. And they are not connected by a power supply, right?

13 A. No.

14 Q. And they are not connect by sewer or septic. The garage living space has a separate septic
15 system right?

16 A. Correct and there are reasons for that by DHEC.

17 Q. Okay. And they do not share an entrance, correct?

18 A. They do not.

19 Q. All right.

20 A. Unless, you count the trellis entrance.

21 Q. All right. But the garage living space has a separate front door doesn't it?

22 A. It does.

23 Q. All right. So that is a separate residence isn't it?

24 A. No. It is a very nice addition but it is an addition to the house.

25 Q. All right but it is being used as a separate residence, isn't it?

1 A. No.

2 Q. Isn't it the Tilmonts residence?

3 A. No, our parents live with us. It is not the Tilmont residence. It is 149 Whippoorwill

4 Drive. The home of Carre and Mark Razzano. And our parents do live with us.

5 Q. Is there a sign above the front door to the garage living space?

6 A. Sure. And I would put that there to allowing people who age gracefully and do not harm,

7 they are trying to be friendly with the people and present themselves as apart of the

8 community.

9 Q. What does that sign above the front door to the garage living space say?

10 A. It says Tilmont's.

11 Q. It says The Tilmont's right, with an apostrophe?

12 A. Yes.

13 Q. Okay. For the last, well at least few months, someone has been living in that garage

14 apartment other than your immediate family, right?

15 A. No. No.

16 Q. All right. Outside of your husband and your children?

17 A. My daughter is viewed as immediate family.

18 Q. All right. Well let me ask it this way. In the last few months someone has been living in

19 that garage living space other than you, your husband and your children?

20 A. My parents have been living in that space.

21 Q. So yes, right?

22 A. Sure.

23 Q. All right. When we had this trial before Judge Cooper and you understand he determined

24 that building to be an outbuilding. So let me ask you this. Why is it that it was an

25 outbuilding then but it is not now? What has changed to make it so that it is no longer

1 an outbuilding?

2 A. When we went to trial this was not a completed construction. If you look at the drawings
3 there has always been an attachment from day one, from our main residence to this
4 structure.

5 Q. All right. So the difference is that it has been attached to a wooden trellis, correct?

6 A. The difference is it has been attached by a walkway and a covered trellis. A covered
7 walkway. It has a path upwards, the stairs are all connect and it is covered.

8 Q. Is the key that the two are attached, is that what you believe makes it such that the garage
9 living space is no longer an outbuilding?

10 A. Well I think that there are several variables. Again it was designed as an addition to the
11 home to be used by our family. It has the same architectural style across the board and it
12 represents itself very well as one residence. It looks large and that is what people are
13 upset about. But it is very nice and it is one residence and one address. I don't know
14 what else to tell you.

15 Q. All right. So you are saying I believe that the difference is not only the attachment but you
16 have to look at other factors such as the garage living space itself, right?

17 A. What I am saying cohesively it is one residence. It is one residence, that is how I see it.
18 That is how it is used.

19 Q. All right. But another family, even if not related to you, could live in that garage living
20 space and function independently if they wanted to, right?

21 A. No.

22 MR. BIBLE: Objection Your Honor, that calls for speculation.

23 THE COURT: Mr. Anthony rephrase the question.

24 MR. JAY ANTHONY: Thank you.

25 THE COURT: Lets go off the record for one minute.

1 (Off the record)
2 (Back on the record).
3 THE COURT: Mr. Anthony, you may continue.
4 MR. ANTHONY: Okay. Thank you.
5 Q. Mrs. Razzano let me ask you while we are at a break point here about the comment that
6 you made earlier that I objected to about similar residences in the neighborhood?
7 A. All right.
8 Q. Are you telling me that there is another structure that is a garage that has a living space
9 above it that is only connected by a breeze way?
10 A. Yes, I am.
11 Q. Okay. Did you bring evidence of that at the underlying hearing?
12 A. I believe that we talked about it. I believe Mr. Lennon gave testimony about it. I can tell
13 you that before Mr. Lennon bought that property from the Romines, I actually helped them
14 with their house designs and we were looking at some things that when they had finished it
15 I actually stood in that space above the garage where Mrs. Romine told me that they had
16 planned to use that space for a guest.
17 Q. All right. So you are referring to the Lennon residence when you say this?
18 A. Yes.
19 Q. All right. Also, I have been over there and stood in the Lennon—
20 MR. BIBLE: I object. He is testifying. Jay is testifying.
21 THE COURT: Sustained.
22 MR. JAY ANTHONY: Your Honor, I have got to be able to ask her - - -
23 THE COURT: Well you can ask her but don't testify.
24 MR. JAY ANTHONY: All right.
25 Q. Have you been up there and seen it utilized - - well finished off as a living space?

1 A. I saw it with Mrs. Romine, yes.

2 Q. Did you go up there above the Lennon's garage and see that as living space?

3 A. I did.

4 Q. You did?

5 A. Yes.

6 Q. Did it have drywall?

7 A. (THE WITNESS SHOOK HER HEAD).

8 THE COURT: I am sorry. For the record Mrs. Razzano for the record please answer with a yes
9 or a no.

10 A. Yes. Yes, I stood up there. Do I remember if it had - - if it was completely finished, I
11 don't remember but I do know that she showed me that it had air conditioning and things
12 like that. We were discussing that.

13 Q. All right. But I want to be clear about this. You are saying that the Lennons used that
14 space as living space?

15 A. I did not say that.

16 Q. All right.

17 A. I said that the Romines said that they were going to use it for - - well regardless of how
18 Mr. Lennon uses it, it is condition living space above a garage connected by a breeze way
19 which is exactly what I have.

20 Q. Okay. So you are not suggesting that?

21 A. Yes. Yes, I stood up there. Do I remember if it was completely finished, I don't
22 remember but I do know that she showed me that it had air conditioning and things like
23 that. We were discussing that.

24 Q. All right. But I want to be clear about this. You are saying that the Lennons used that
25 space as living space?

1 A. I did not say that.

2 Q. Okay.

3 A. I said that the Romines said that they were going to use it for - - I am interested in how
4 Mr. Lennon used it in his condition a living space above a garage.

5 Q. All right. I want to be clear about this. You are saying that the Lennon are using space
6 above their garage as a living space in violation of the restrictive covenants, right?

7 A. I have no idea what they are doing.

8 Q. All right. Well that is my point. You don't have knowledge or evidence to show that any
9 other person in this neighborhood is using space above a detached garage as living space.
10 You are just speculating on that?

11 A. No. I have seen it. It is there regardless of how he choose to use it. It is his garage.
12 But it is there. It is living space above a garage.

13 Q. Well Mrs. Razzano that is a big difference in terms of what we are here talking about
14 today isn't it? Whether it is used as living space - - -

15 A. No.

16 Q. - -- which is in violation of the covenants?

17 A. No. No, because if he goes to sell that residence it will be listed as conditioned living
18 space regardless of how he uses it.

19 Q. Okay. I will move on from this but I just wanted to be clear. You have not been up there
20 and seen that the Lennons are using the space above their garage as living space, correct?

21 A. I stood in that space with Mrs. Romine who told me that it was going to be used for guest
22 and it was designed for that purpose. I do not know how they are using their space. And
23 who is going to check it.

24 Q. All right. I think that you have answered my question.

25 MR. JAY ANTHONY: Your Honor, I do have a handful or more questions. I guess I am at a

1 stopping point if you want to stop at 5:15 and if we are going to reconvene maybe I just need to
2 reserve.

3 THE COURT: Well, I think that we need to do that so that you all have sufficient time to ask all
4 of your questions and to get everything into the record that you need to. So we will circle back
5 around with you all unless everyone is free some time tomorrow. I usually keep Fridays open to
6 wrap things up. Would that work for you - - Mr. Bible you are nodding yes.

7 MR. BIBLE: I will make it happen, Your Honor.

8 THE COURT: Mr. Razzano, you may un-mute yourself.

9 MR. RAZZANO: Thank you, I get to speak. My son has an awards day tomorrow and he is the
10 Valedictorian of his class and he graduates on Saturday and we will not be able to miss that. So it
11 would have to work around that. That is in the morning, tomorrow starting at like 10:00 a.m.
12 And that is not negotiable. We can not miss that.

13 THE COURT: I understand that. So we can talk with you all tomorrow, Mr. Bible, Mr.
14 Crawford and Mr. Anthony about when a good time would be. I do consider given these
15 proceedings about how much time you would anticipate. I would think that it would need to be at
16 least an hour and would prefer if you would block it off for two just in case. And I do apologize
17 to you all that I am the one that has to end this but apparently there are small people waiting on
18 me.

19 MR. BIBLE: Your Honor, no apology needed. I apologize that we under estimated how long
20 attorneys can be. So I understand.

21 THE COURT: You are not the first. Okay. All right. We are off the record and we will reach
22 out to the attorneys tomorrow and reschedule this to be continued. Thank you.

23 HEARING ENDED.

24 ----- REFERENCE TO BE CONTINUED -----
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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS

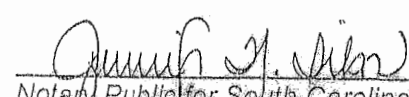
CERTIFICATE

I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate Transcript of Testimony of the proceedings had at the hearing of the captioned case, before the Honorable Shannon M. Phillips, Master-In-Equity for Spartanburg County, South Carolina, on the 19th, day of May, 2022..

I do further certify that I am neither of kin, counsel nor interest to any party hereto.


Sarah Hollis
Court Reporter

SWORN to before me this
1st day of September, 2022.


Notary Public for South Carolina
My Commission expires: January 2, 2025

1	STATE OF SOUTH CAROLINA	)	
		)	
2	COUNTY OF SPARTANBURG	)	COURT OF COMMON PLEAS
			2018-CP-42-02247
3	Derrick S. Hester, Debra S. Hester,	)	
	James H. Nicholls, Emma Viola	)	
4	Nicholls, James E. Gregg, Jr.,	)	
	Paulette J. Gregg, Michael Ben	)	
5	Coley, Ashley Coley, Grady L.	)	
	Barnes, Sr., Julia W. Barnes, Ewen	)	
6	Lennon, and Amy Lennon,	)	
		)	
7		)	
	Plaintiffs,	)	
8	vs.	)	TRANSCRIPT OF RECORD
		)	VIRTUAL - VIA WEBEX
9	Mark Razzano and Carre Razzano,	)	
		)	
10		)	June 28, 2022
	Defendants,	)	Spartanburg, South Carolina
11		)	
12	BEFORE:		
13	HONORABLE SHANNON M. PHILLIPS, Master-in-Equity		
14	APPEARANCES:		
15	K. JAY ANTHONY, ESQUIRE		
	ATTORNEY AT LAW		
16	650 East Washington Street		
	Greenville, South Carolina 29601		
17	Attorneys for Plaintiffs		
18			
19	MARK A. BIBLE, ESQUIRE		
	KENISON, DUDLEY & CRAWFORD, LLC		
20	704 East McBee Avenue		
	Greenville, South Carolina 29601		
21	Attorney for Defendants		
22			
23			
24			DOROTHY HUNTSINGER
25			Court Reporter

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INDEX

WITNESS

DIRECT CROSS REDIRECT RECROSS

Carre Razzano

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1 (ON THE RECORD 3:03:37 PM)

2 THE COURT: Good afternoon.

3 MR. ANTHONY: Good afternoon, Judge.

4 THE COURT: Can everyone see and hear me?

5 MR. ANTHONY: I can, Your Honor.

6 MR. BIBLE: I can, yes.

7 MS. RAZZANO: I don't hear anybody yet. I had this problem last time.

8 THE COURT: Ms. Razzano, can you turn your speakers up? I guess she can't hear
9 me. Let me try to use the chat function.

10 MS. RAZZANO: Somebody speak, please.

11 MR. BIBLE: Ms. Razzano?

12 THE COURT: Are we waiting on anyone to join us, or is everyone here that we
13 need? Mr. Anthony?

14 MR. ANTHONY: Everyone is here on our end, Your Honor.

15 THE COURT: Mr. Bible?

16 MR. BIBLE: I believe so, Your Honor.

17 THE COURT: You believe we are ready to proceed?

18 MR. BIBLE: So long as Ms. Razzano can hear us.

19 MS. RAZZANO: Here we go. I can hear now. Thank you. I had this problem last
20 time. Thank you.

21 THE COURT: Okay. I have this as case number 2018-CP-42-02247, Hester versus
22 Razzano. This is a continuation of a hearing and I believe we left off on Ms. Razzano was
23 testifying and Mr. Bible have you completed your examination of her?

24 MR. BIBLE: Yes, Your Honor. In fact, Mr. Anthony was in the process of cross
25 examining Ms. Razzano at the time of the previous hearing.

1 THE COURT: Thank you. Mr. Anthony, are you ready to proceed with your
2 questions?

3 MR. ANTHONY: I am, Your Honor. I don't have a whole lot left.

4 THE COURT: Alright. Well, whenever you are ready.

5 MR. ANTHONY: Alright. Thank you, Your Honor.

6 **CARRE RAZZANO,**

7 **HAVING BEEN DULY SWORN AT THE PRIOR HEARING**

8 **AND REMAINING UNDER OATH, TESTIFIED AS FOLLOWS:**

9 **CROSS EXAMINATION RESUMED BY MR. ANTHONY:**

10 Q. Good afternoon, again, Ms. Razzano. I hear a little bit of feedback, but (WebEx
11 cut out) may do okay if you can. I'd like to I guess just summarize since we are
12 in the continuation of a prior hearing. It has been some weeks now. So, just with
13 regard to the garage and then I want to get into a couple of specific topics and then
14 I will be finished. We are talking about this (WebEx cut out) You've got a three
15 car garage with a living space; correct? I'm sorry, I can't hear you. You may be
16 muted.

17 A. Yeah, you're breaking up on me. I'm not getting complete sentences.

18 MR. ANTHONY: Is anybody else having that problem?

19 MR. BIBLE: Yes, Jay.

20 MR. ANTHONY: Yes, okay. Bear with me just one moment. I'm sorry for the
21 technical difficulties.

22 **CROSS EXAMINATION RESUMED BY MR. ANTHONY:**

23 Q. I'm trying my father's computer. Is this any better, Ms. Razzano?

24 A. At the moment, yes.

25 Q. Okay. If it becomes a problem, certainly let me know. Again, just sort of

1 summarizing so I can jump into the next line of questions here. We were
2 discussing a three car garage with a living space above it on your property; correct?

3 A. Correct.

4 Q. Alright. And that's about 1,350 square feet; right?

5 A. Yes.

6 Q. Okay. And it is two bedrooms and two baths with a full kitchen?

7 A. Yes.

8 Q. And it has a stove, a dishwasher and a full size refrigerator; right?

9 A. Yes.

10 Q. And it has its own porch, it has its own septic system?

11 A. Yes.

12 Q. And it has its own water supply; right?

13 A. Yes.

14 Q. It has its own water heater.

15 A. Yes.

16 Q. It has a separate power meter.

17 A. Yes.

18 Q. And it has a separate -- its own entrance; right?

19 A. Yes.

20 Q. And if I remember, there is a sign above the door that says The Tilmonts; correct?

21 A. Yes. That's my family.

22 Q. Right. And it has a parking pad next to it; right?

23 A. No. I told you guys last time it's a -- if you'll look, it's a basketball court for my
24 son.

25 Q. Okay. Has a concrete pad next to it. You could park a car there if you wanted to,

1 I suppose, but it could be used for basketball.

2 A. No. There is no pad next to it for a car. If you look at the pictures, there is a
3 retaining wall there.

4 Q. Okay. Alright. So, you all take the position--- Well, Judge Cooper, in the initial
5 hearing, ruled that that was not part of the main residence, that that was an
6 outbuilding and you all now take the position that it's no longer an outbuilding and
7 the reason for that is that it's connected by a trellis; right, and a walkway?

8 A. We take the position because the trial was heard before the work was finished so
9 it was work in progress. It had always intended to be connected. Yes, it is
10 connected by a covered trellis at this time. It is structurally bound together.

11 Q. Alright. So, your position is it's no longer an outbuilding because you all
12 connected it to the main residence by a trellis.

13 A. Connected by a covered walkway, yes.

14 Q. Okay. And about how long is that trellis?

15 A. Fifteen feet, maybe. Twelve to fifteen feet.

16 Q. Okay. So, we discussed this some at the initial hearing before Judge Cooper. If
17 you all wanted to construct a second garage with living space above it, you can
18 connect that to the house with a trellis as well; correct?

19 MR. BIBLE: Objection, Your Honor. Calls for speculation.

20 MR. ANTHONY: I mean, Your Honor, I think this goes to the question of slippery
21 slope here.

22 MS. RAZZANO: I don't know where you could put it.

23 MR. ANTHONY: This testimony came in before Judge Cooper so I think he found
24 it relevant. If a trellis was sufficient to create a single structure to keep that from being
25 an outbuilding then I think we ought to ask the question what can happen from there.

1 THE COURT: Okay. Tell me your question again. You asked whether a second
2 trellis system could attach the building in a different place?

3 MR. ANTHONY: If a second--- If the Razzanos constructed a--- If a trellis is
4 sufficient to create one residence, could they construct a second garage with another
5 living space and connect those with a trellis, would that be considered part of the same
6 building as well?

7 THE COURT: Okay. I'm going to sustain the objection.

8 **CROSS EXAMINATION RESUMED BY MR. ANTHONY:**

9 Q. Ms. Razzano, if--- You currently have family members living in the garage
10 apartment; correct?

11 A. Yes.

12 Q. If this is one structure and the family members moved out, could you move other
13 people into that space?

14 MR. BIBLE: Objection, Your Honor. Still calls for speculation.

15 THE COURT: That one I am going to overrule. Ms. Razzano, please answer.

16 MS. RAZZANO: The intention of the added space was solely to provide, you
17 know, understanding that we had three sets of aging parents, that was most likely going
18 to happen. If for some reason our parents weren't there, there's two other sets of parents
19 that would be coming. You have to understand that we have a son in college. This is
20 completely for family. It is not -- it was not built to rent out. It was not built to be
21 anything but property for our family to enjoy and take care of each other.

22 **CROSS EXAMINATION RESUMED BY MR. ANTHONY:**

23 Q. But that's not what you said at the trial in front of Judge Cooper; right? You said
24 that you could rent that thing out on Airbnb just the same way you have been
25 renting your main residence out on Airbnb.

- 1 A. The people on the street have asked us not to do Airbnb. I did Airbnb before we
2 were adding an apartment to our garage and they asked us not to do it and so we
3 quit. We don't do Airbnb.. We have no intention of doing it. It makes them
4 unhappy, so that's not in the picture.
- 5 Q. Ms. Razzano you quit because you got a Temporary Injunction that said you
6 couldn't do it anymore; right?
- 7 A. I quit because they didn't want us to do it, so that's why we did it.
- 8 Q. Is there anything new today and at this last -- the first part of this hearing that you
9 all presented that you didn't present to Judge Cooper?
- 10 A. Judge Cooper wasn't--- Judge Cooper was not able to see the finished product.
11 He does not see it as a cohesive design. He does not see that it is occupied in the
12 manner for which we designed it for and it is now completed. So I would say that
13 Judge Cooper did not get to see the final outbuilding.
- 14 Q. But you all actually brought a large rendering showing exactly this, this trellis
15 connecting the two structures, and showed that to Judge Cooper; right?
- 16 A. Again, I think there is more content that would have been provided had he been
17 here today.
- 18 Q. You constructed just the same thing that you showed him in that rendering; right?
- 19 A. We had to construct what--- We've gone over this. We had to construct it that
20 way due to the large grading differential between this side and that side where we
21 built the garage. There was no other way to build it on the other side.
- 22 Q. It's not connected with a breeze way or a hallway. You just connected it with a
23 trellis.
- 24 A. It's connected by a covered walkway.
- 25 Q. The trellis has no walls; right?

1 A. The trellis has no walls.

2 Q. The trellis does not have walls, a covering, or a roof over it; does it?

3 A. Yes, it does.

4 Q. Is it continuous? It goes from one end all the way to the other end?

5 A. Yes, it does. It's transparent. It's translucent for a reason. It's lovely. I get
6 compliments on it all the time. But it's covered.

7 Q. Bear with me just one moment, please. Alright, Ms. Razzano, the last thing I want
8 to ask you about is the current status of this building. You eventually had this trial
9 before Judge Cooper and he issued an injunction against anyone living in that
10 space above the garage; correct?

11 A. Yes.

12 Q. Alright. You all chose to move someone into that space anyway; right?

13 A. This is what we did. We had an emergency situation and there was really nothing
14 I could do. What my parents do is they spend some time up there but they would
15 come down and live here when it is possible. My father-in-law, since we've
16 actually moved them here, has been to the Emergency Room three times and has
17 undergone emergency surgery and, you know, this is why we moved them here so
18 we can take care of them. Had they been where they were previously, up on the
19 mountain, there was a request from their doctor that they move here sooner than
20 we were anticipating. There wasn't anything else we could do. Otherwise this
21 would be an even worse situation for my parents.

22 Q. Okay. They could have moved into the main residence with you; right?

23 A. They would come and stay at night during that time just to appease the people on
24 the street. They're not doing anything. They're just making their life much more
25 miserable. Mr. Anthony, I mean, I wish that everybody including yourself and

1 maybe the people in the room would try to understand that all we did was try to
2 provide a type of living space that was autonomous for them. I try to put myself
3 in their position and try to look at it from the way that they are able to do some of
4 the stuff that they want to do on their own with us watching them without them
5 feeling like they are imposing on us. We don't want them to feel that way. I think
6 that was a strategic way to do it and it was the right thing to do and I'm happy that
7 I did it. I'm sorry that the timing and stuff didn't work out and you know, Covid
8 and everything. This trial has gone on ridiculously long. There is nothing else I
9 can do about that.

10 Q. So, autonomous living and they could certainly do that; right? They have lived in
11 that apartment separate from you guys in their own living space. They don't have
12 to see you day to day.

13 A. They see us everyday. They see us everyday. We---

14 Q. But, your words, you just said you wanted them to live autonomously.

15 A. You understood what I am getting ---

16 THE COURT: Let me interrupt you all. For purposes of the record, we need for
17 one person to finish their thought and their sentence before the other begins. You all are
18 beginning to talk over one another a good bit which will impact the record. So, Mr.
19 Anthony and Ms. Razzano, if you would give each other a little bit of space to conclude
20 their sentence before the other begins speaking. Thank you. Ms. Razzano, if you would
21 repeat what you were saying.

22 MS. RAZZANO: Okay. You are taking my words and trying to make it something
23 that it's not. I think you would fully understand that what I am trying to do is be
24 respectful of our parents and allowing them to live in a way that they don't feel they are
25 a burden to us. We want to be able to take care of them every single day. I work from

1 home. I am there when they get in their car. I know where they are supposed to be. I
2 know when they have doctor's appointments, all of those things.

3 **CROSS EXAMINATION RESUMED BY MR. ANTHONY:**

4 Q. Alright. Let me ask this. There was a Court Order saying you couldn't have
5 people living in that space. You agree with that; right?

6 A. Yes.

7 Q. You could have moved your parents into the main residence with you where you
8 had previously rented out rooms on Airbnb; right?

9 A. Yes.

10 Q. But you all chose instead of moving them into the main residence with you, you
11 chose to put them into the garage apartment, knowing that was in violation of the
12 Court Order?

13 A. We allowed them to put all their stuff in there and get settled and have all of their
14 stuff together and then come down and spend the night and spend time in our house
15 and spend evenings in our house. Now, when that became a problem because the
16 man can't walk, I don't have a choice.

17 Q. Okay. You all could have come back to the Court. Judge Cooper allowed,
18 retained jurisdiction, to allow you all to come back to the Court and ask him to
19 alter that Order, but instead of doing that, you all just decided to violate it; right?

20 A. No, sir. It wasn't an intentional violation. Going to Court and all of these things
21 is not something that I know of, so if I did something wrong, then I did something
22 wrong. Not intentionally.

23 Q. You all had lawyers at that time. You could have asked them; right?

24 A. Sir, again, this is not my forte here.

25 Q. Alright. So, you understand that my clients filed a Rule to Show Cause and had a

1 hearing with Judge Phillips about that and you understand---

2 A. I don't know about that.

3 MR. BIBLE: Objection, Your Honor. This is exceeding the scope of direct
4 testimony. Mr. Anthony is going on basically now a rehashing of the Rule to Show Cause
5 hearing which we already had before you.

6 THE COURT: Sustained. Mr. Anthony, please remember what we are here for
7 today. Thank you.

8 **CROSS EXAMINATION RESUMED BY MR. ANTHONY:**

9 Q. You bought in this subdivision knowing there were Restrictive Covenants; correct?

10 A. Yes.

11 Q. You could have bought in a different subdivision that didn't have Restrictive
12 Covenants; right? Is that correct?

13 A. Yes.

14 Q. Those are all of my questions. Thank you.

15 THE COURT: Mr. Bible?

16 MR. BIBLE: Yes, Your Honor. May it please the Court. Thank you. I hope to
17 keep this relatively brief.

18 **REDIRECT EXAMINATION BY MR. BIBLE:**

19 Q. Mr. Anthony was asking you several questions about what is included inside the
20 addition, as I'll call it, and we were talking about plumbing, electrical and what
21 not. I believe, and correct me if I'm wrong. Well, let me say it like this. Does the
22 addition in your -- in the preexisting structure, the primary residence, maintain the
23 same address?

24 A. Yes.

25 Q. Okay. Are you aware of any other circumstances in the community where a

1 resident may have used or did use a garage for living space?

2 A. I am.

3 Q. Okay. Tell me about it.

4 MR. ANTHONY: Your Honor, beyond cross examination.

5 THE COURT: Sustained.

6 MR. BIBLE: Your Honor, I would contend that I am able to rehabilitate the witness
7 based on direct examination. Mr. Anthony did discuss with Ms. Razzano, prior to the
8 conclusion of the last hearing, her understanding of a garage in the community having
9 been used as living space.

10 THE COURT: The objection is sustained.

11 **REDIRECT EXAMINATION RESUMED BY MR. BIBLE:**

12 Q. Ms. Razzano, are you aware of any enforcement actions being taken by your
13 neighbors against other homeowners or residents of the community with regard to
14 the construction of improvements on their property?

15 MR. ANTHONY: Again, outside of cross examination, outside of the scope of this
16 hearing.

17 THE COURT: Sustained.

18 **REDIRECT EXAMINATION RESUMED BY MR. BIBLE:**

19 Q. Ms. Razzano, does the Building Permit for the addition, does it indicate to your
20 knowledge that the structures are detached?

21 A. It does not say detached. It says addition, a two car garage and apartment.

22 Q. Okay. Do you know why it says that?

23 A. I sat with the Building Permit Office about my building permit and due to the size
24 and how it was presented, he determined that it was an addition to the home.

25 MR. ANTHONY: Your Honor, I object again, being outside of the scope of cross

1 and also based on hearsay.

2 MS. RAZZANO: It's not hearsay. It's on the permit.

3 THE COURT: Mr. Bible?

4 MR. BIBLE: Yes, Your Honor. I will present, and I presented this during the last
5 part of the hearing. Again, I am going to share my screen.

6 **REDIRECT EXAMINATION RESUMED BY MR. BIBLE:**

7 Q. Ms. Razzano, you see what I am showing you? Hopefully it is broadcasting on
8 your screen at this time.

9 A. Yes sir. I can see it.

10 Q. Okay. And what is this to your recollection?

11 A. That is the Building Permit.

12 Q. Okay. And you indicated that it said addition; is that right?

13 A. It does.

14 Q. Okay. And is that here in the description of the work?

15 A. Yes.

16 MR. ANTHONY: Your Honor, I again object to this being outside the scope of
17 cross examination.

18 THE COURT: Sustained.

19 MR. BIBLE: Your Honor, I am disagreeing with that. I mean, we are talking about
20 the whole point of Mr. Anthony's cross examination is to indicate to the Court that the two
21 structures are not attached to one another, or one still constitutes an outbuilding, and I
22 believe this goes directly to that issue.

23 THE COURT: Well, I don't recall him discussing this document with her. Mr.
24 Anthony, you can correct me if I'm wrong on that. I do recall seeing that document in
25 the previous portion of this hearing, Mr. Bible, and I remember the testimony about that.

1 MR. BIBLE: Okay.

2 **REDIRECT EXAMINATION RESUMED BY MR. BIBLE:**

3 Q. Ms. Razzano, are there any plans other than to move anybody into the--- To the
4 extent the Court allows it, are there any plans to move anybody into the space
5 above the garage other than the immediate family members?

6 A. No, and I am hoping that they live here a really long time.

7 Q. Yes, ma'am. Ms. Razzano, I have no further questions.

8 MR. BIBLE: Your Honor, from the Razzanos' standpoint, we have no further
9 witnesses, so it just depends on whether Mr. Anthony is going to present anybody else.

10 THE COURT: Mr. Anthony, did you have any questions for Ms. Razzano limited
11 to the questions that Mr. Bible just asked her?

12 MR. ANTHONY: Your Honor, I have one more questions just based on the last
13 that Mr. Bible asked.

14 THE COURT: Okay.

15 **RECROSS EXAMINATION BY MR. ANTHONY:**

16 Q. Ms. Razzano, the Restrictive Covenants do not say anything about the fact you
17 can't have family members or non-family members living in that space. There
18 would be nothing to prevent you from moving non-family members into it; would
19 there?

20 A. I'm sorry. Can you say that again?

21 Q. Is there anything in the Restrictive Covenants that would prevent you from moving
22 non-family members into that space if you wanted to?

23 A. I guess not.

24 Q. Okay.

25 MR. ANTHONY: Those are all of my questions, Your Honor.

1 THE COURT: Thank you. And Mr. Bible, you don't have any other witnesses to
2 call? Is that still correct?

3 MR. BIBLE: That is correct.

4 THE COURT: Okay. Mr. Anthony, do you have a witness to call?

5 MR. ANTHONY: Your Honor, I believe we probably will not at this point based
6 on the testimony.

7 THE COURT: Alright. So, that concludes this hearing. Is that correct, Mr. Bible?

8 MR. BIBLE: That is correct, Your Honor.

9 THE COURT: And Mr. Anthony?

10 MR. ANTHONY: It does, Your Honor, with the only exception that we would ask
11 if the Court would address the Rule to Show Cause that -- understanding that's not what
12 we were just discussing, but your Order that you issued asking them to move those folks
13 out of there within fifteen days has still not been followed.

14 THE COURT: I don't believe that we are here today on the Rule to Show Cause;
15 are we? This was a continuation of Mr. Bible's hearing; correct?

16 MR. BIBLE: That is correct, Your Honor.

17 THE COURT: Okay. So, I don't believe that is properly before the Court, Mr.
18 Anthony, today. So, I encourage you all to file what you need to file, request the hearings
19 that you need. As always, set sufficient time. I encourage you all to set this matter for a
20 morning hearing and to set sufficient time for the number of witnesses you intend to call
21 on that.

22 MR. ANTHONY: Thank you, Your Honor.

23 THE COURT: Thank you. Is there anything further, Mr. Anthony?

24 MR. ANTHONY: No, Your Honor.

25 THE COURT: Mr. Bible?

1 MR. BIBLE: No, Your Honor. The only thing that I would like to say, you know,
2 to the extent the Court is inclined, is to give just a brief synopsis or closing, if you will,
3 to kind of round things out. If the Court is inclined to let me do that.

4 THE COURT: I am. It appears that Mr. Razzano wants to say something. Mr.
5 Razzano, you are represented by Counsel and so you should speak through your Counsel.
6 I am going to allow a five minute recess so that you can have an opportunity to speak with
7 your Counsel before he makes his opening statement. Alright. So, we will go off the
8 record.

9 (OFF THE RECORD 3:30:46 PM)

10 (BACK ON THE RECORD 3:36:22 PM)

11 THE COURT: We will go back on the record. Mr. Bible, if you would like to
12 make any closing statement.

13 MR. BIBLE: Thank you, Your Honor. May it please the Court? Your Honor,
14 probably in both respects or at least I will speak for myself that there was a couple
15 instances at least with the prior hearing that we might have gone astray or run afoul. That
16 was not my -- afoul of what we were trying to accomplish and present to the Court for the
17 purposes of this hearing. That was certainly not my intent. But, kind of a way to round
18 things out, I just wanted to make statements to the Court that we are here obviously based
19 on Judge Cooper's Order and Judge Cooper's Order made certain findings of fact that I
20 think are material and right for the Court's consideration in this hearing and that is in
21 Paragraph 5 of the Findings of Fact. At the time of the trial, the garage was not connected
22 to the main residence although the contract with the builder was signed February 23,
23 2018. That is the acknowledgment of the Court from the trial of this case that
24 construction had not been concluded at the time that that trial had concluded. The Court
25 also found in Paragraph 7, I find that the garage is an outbuilding within the language of

1 Section 6 of the Covenants which provides that no trailer, basement, shack, garage, barn
2 or other outbuilding erected on any lot shall at anytime be used as a residence temporarily
3 or permanently. Nor shall any residence of a temporary character be permitted. And Your
4 Honor, the Court, prior Court indicated specifically that at the current stage of
5 construction the two structures were not attached and that he found the building, the
6 addition, to be an outbuilding. And hopefully, Your Honor, we've presented witness
7 testimony and then also furnished the Court with Affidavits from not only the petitioners,
8 the Razzanos in this case, but also a competent, professional engaged in the field of
9 residential construction who not only testified in the Affidavit, but at the last hearing in
10 person testified that the two buildings that were at the time of trial detached are in fact
11 fastened together and attached mechanically with lumber and then also with a covered
12 walkway and that Mr. Poole also indicates that he believes in his professional opinion that
13 the two structures, now that they are attached, constitutes one residence. And so for those
14 reasons, Your Honor, we would believe that given that the Covenants and Restrictions for
15 this community have no provisions for architectural review or any guidelines with respect
16 to how things must be constructed, they have no clear definition of what is an outbuilding
17 and what is not an outbuilding. And then we have the testimony of a competent building
18 professional and all the testimony from Mr. Razzano that now would lead the Court to
19 believe that the completed product is no longer an outbuilding and that the Razzanos are
20 now free to use that completed product as designed and intended so that their family can
21 occupy same without charge, without paying rent, without, in any other way, being in
22 violation of the Court's Order from trial. And with that said, Your Honor, I will leave the
23 rest to Mr. Anthony.

24 THE COURT: Mr. Anthony?

25 MR. ANTHONY: Thank you, Your Honor. The Defendants brought this motion,

1 of course, as they were required to under Judge Cooper's Order because he heard pretty
2 much all the evidence that you've heard. Most everything that has been presented to you
3 was presented to Judge Cooper. He, of course, found that this structure is an outbuilding.
4 That ruling was not appealed. That is the law of the case. And so, the only question is
5 what has changed, what is new, and the only thing that has changed is that -- well,
6 essentially two things. One is that a trellis was built to connect those two structures. The
7 other is that a family moved in there and used it as a separate residence and even put a
8 sign above the front door that said, The Tilmonts, showing it as a separate residence. That
9 is all the new evidence essentially. Mr. Bible referenced expert testimony. We, of course,
10 objected to any qualification of Mr. Poole being qualified as an expert because he speaks
11 just as a general contractor and fact witness essentially and he is certainly not giving
12 opinions as to legal opinions or should not be able to. But all of his testimony I think just
13 established this as a separate residence and I will not go through the list again because I
14 know you are tired of hearing it, but you know the long list of all the different things that
15 this structure has that are the same things that any residence has. We could be comparing
16 my house to yours or Mr. Bible's. And so, have they met the burden to show that this has
17 been connected in such a way that it's no longer an outbuilding? That is the question.
18 That is what Judge Cooper said. He did not say connected, period. He said if you connect
19 them, then you can come back and I will determine whether that is sufficient so that it no
20 longer has the status of an outbuilding. And I think it is clear based on the testimony that
21 they have not met that burden. Everything that we are asking you to consider here is their
22 evidence which is the same as before Judge Cooper. We had moved for directed verdict
23 after the Plaintiff's case. That is essentially what the situation is here today as well.
24 Based on all the evidence presented by the Plaintiffs, this building is still an outbuilding
25 and this small, quiet community which is actually called Solitude Bay, just wants their

1 Restrictive Covenants abided by. As I mentioned, they tried before the first spade of dirt
2 was turned over, they tried to talk to the Razzanos about this and it was ignored. It was
3 ignored through our letters before construction started and it was ignored throughout the
4 construction and it was ignored right up to today. And so we are asking the Court to
5 uphold Judge Cooper's Order. If the Razzanos wish to attach this in a meaningful way
6 and come back to the Court at some future date, then they could certainly have the right
7 to do that. But this structure just does not meet the standards. It is a separate building
8 which is why it is being used today as a separate residence. I appreciate all your time and
9 thank you for hearing me out.

10 THE COURT: Alright. Well, thank you all for coming back and I will let your
11 attorneys know something by e-mail by the conclusion of this week. Alright. Any
12 questions, Mr. Bible?

13 MR. BIBLE: No, Your Honor, and thank you.

14 THE COURT: Thank you. Any questions, Mr. Anthony?

15 MR. ANTHONY: No, Your Honor.

16 THE COURT: Thank you. Alright. Well, you all have a good afternoon and you
17 will be hearing from me shortly.

18 MR. BIBLE: Thank you.

19 MR. ANTHONY: Thank you.

20 --- END OF RECORD ---

21 (OFF THE RECORD 2:56:34 PM)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) C E R T I F I C A T E

3
4 I, the undersigned Dorothy Huntsinger, Court Reporter for the Office of the
5 Master-in-Equity for the County of Spartanburg, State of South Carolina, do
6 hereby certify that the foregoing is a true, accurate and complete transcript of
7 testimony of the proceedings had and evidence introduced at the hearing of the
8 captioned case, before Honorable Shannon M. Phillips, Master-in-Equity for
9 Spartanburg County, South Carolina, on the 28th day of June, 2022.

10 I do further certify that I am neither of kin, counsel nor interest to any party
11 hereto.

12 
13 DOROTHY HUNTSINGER
14 COURT REPORTER

15 August 19, 2022
16 Spartanburg, South Carolina
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25



Stephen M. Poole Builders, Inc.

P.O. Box 5611

Spartanburg, SC 29304

AGREEMENT

State of South Carolina

City of Spartanburg

This agreement is made and entered into by and between Stephen M. Poole Builders, Inc. "Builder" and Carre Razzano "Owner" this 23rd day of February 2018.

WITNESSETH

That for and in consideration of the promises, covenants and conditions hereinafter provided for, the parties mutually agree as follows:

SCOPE OF WORK

The scope of work is defined in the attached document. All work shall be performed in good and workmanlike manner consistent with industry standards and Builder shall utilize its best skills, efforts and judgements to further the interest of Owner. Builder shall be responsible for the compliance with all applicable building codes and shall be responsible for all construction means, methods, techniques, sequences and procedures.

CONTRACTUAL UNDERSTANDING

This agreement represents the entire agreement between Builder and Owner and supersedes all prior negotiations, representations or assignments.

REPRESENTATIVES

Owner agrees that Steve Poole may issue instructions, directives and agree to changes, additions or deletions to the work and that all costs associated with such changes, additions or deletions will be added to or deducted from the price stipulated in this agreement.

SCHEDULE

The project start date will be by March 15, 2018 and the Builder will endeavor to substantially complete the work within 150 calendar days. Owner recognizes and agrees construction involves work that may impact schedule and that Builder cannot be held responsible for schedule deviations as long as Builder demonstrates good faith in completing the work.

RAZZANO_133

ASSIGNMENTS

This agreement may not be assigned in whole or in part by either of the parties hereto without consent by the other party.

LICENSE

Builder warrants and represents to Owner that Builder is licensed and duly authorized to perform the Scope of Work in the state of South Carolina and Builder and shall remain licensed during the term of this agreement.

MATERIALS

All materials used shall be new and of good quality, free from faults and defects and in accordance with the Scope of work.

INSURANCE

Builder to maintain sufficient insurance for the benefit of both Owner and Builder to cover any work related insurance claims.

HOUSEKEEPING

Builder will maintain the area of work in a neat and orderly condition. Builder shall not be responsible for dust or dirt that may occur or accumulate in other areas if the building due to the construction activities. Owner recognizes that dirt and dust are part of renovations, repair and remodeling.

SUBCONTRACTORS

Nothing in this agreement shall create a contractual relationship between Owner and any subcontractors or sub-subcontractors.

LEINS

As long as Owner is not in default under this agreement, under no circumstance shall Builder permit any mechanic's liens to be filed against Owner's property. Builder shall promptly pay all subcontractors and material providers.

CONTRACT SUM

The contract will be a cost plus 20%

PAYMENT

Deposit of \$10,000.00 prior to starting work. Builder shall invoice Bi-weekly.

ADDITIONAL WORK

Additional work, as directed by the Owner and agreed to by the Builder, which is not defined in the Scope of work will be performed at a rate of cost plus 20%. Builder will invoice Owner upon completion of the additional work or incrementally if the time associated with the additional work exceeds 30 calendar days and Owner will pay invoice upon receipt.

RAZZANO_134

CHANGE ORDERS

A written change order signed by Builder and Owner is required for all changes that affect the contract price. Owner should recognize that any delay in returning a completed change order could adversely affect the schedule of the project.

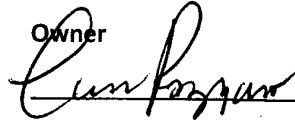
This agreement entered into this day and year first written above.

Builder

A handwritten signature in black ink, appearing to be 'SP' followed by 'M' and 'OE', written over a horizontal line.

Stephen Poole

Owner

A handwritten signature in black ink, appearing to be 'Carre Razzono', written over a horizontal line.

Carre Razzono

RAZZANO_135

Building Codes Room 500
366 N. Church Street
Spartanburg, SC 29303

Spartanburg County

1-28-00-057.00

Phone Numbers:
864-596-2727 ... Office
864-596-2194 ... Fax
864-596-3160 ... Inspection

Parcel ID Number	Permit #	Date	Permit Type	Permit Valuation	Applied
1-28-00-057.00	18-02718	03/30/2018	BLDG-RES	\$ 162000.00	ANSLI

Location: **149 Whippoorwill Dr Campobello, SC 29322**

Valuation: 162000.00

Subdivision: **SOLITUDE BAY**

Fees Due:

Fees Paid: 769.50

Lot: 8

Check/Card #: 8752

Owner: **MARK A/CARRE F RAZZANO**

Owner or Contractor: **STEPHEN M POOLE BUILDERS
INC/STEPHEN M POOLE
BUILDERS INC
PO Box 5611**

149 Whippoorwill Dr
Campobello, 29322
864 680 3555

Spartanburg, 29304
864 303 1663

License:

SELECTED CHARACTERISTICS OF WORK

DESCRIPTION OF WORK:

**ADDITION OF 2 BR GARAGE APARTMENT TO
SINGLE FAMILY HOUSE ON NEW SEPTIC**

Foundation: **SLAB**

Type Frame: **WOOD**

Roofing: **SHINGLES**

Heating: **ELECTRIC**

Exterior: **HARDI**

Basement:

Stories: **2**

Air/Cond: **HVAC**

Bathrooms: **2.0**

Bedrooms: **2**

Fireplaces: **0 /**

Driveway Pipe Size:
Other = **NO PIPE
NEEDED, T JENNINGS;**

Occupancy: **R-3 and IRC Residential, one and two
family**

Const. Type: **VB**

Sep. Occupancies: **0**

Square Feet: **1350**

Basement: **0**

Accessory Unheated: **1350**

Accessory Heated: **0**

Gas/Propane Co.: **Unknown**

Electric Co.: **Duke Power**

Sewer/Septic: **Septic**

Any question about
driveway pipe should be
address to name shown
above. 864-595-5320

AFFIDAVIT OF APPLICANT

Directions: TAKE I-26 TO HWY 11 EXIT. TURN LEFT ACROSS BRIDGE ON TOMPTON BRIDGE RD THEN RIGHT ONTO WALNUT HILL CHURCH RD. TURN LEFT ONTO WALNUT HILL RD THEN LEFT ON WHIPPOORWILL DR. HOUSE ON THE LEFT.

*****OWNER/AGENTS/CONTRACTOR ARE RESPONSIBLE FOR CHECKING ANY DEED
RESTRICTIONS AND COVENANTS*****

It is the Owner/Agents/Contractor responsibility to check with the Planning Dept (864)596-3570, for ALL SETBACKS prior to starting the project.

The Applicant/Permit Holder hereby certifies and agrees as follows: 1.) that he/she is authorized to make this application; 2.) that he/she has read the above information and it is true and correct; 3.) that he/she will comply with all county ordinances, laws, and regulations, all federal, and state laws related to the use of land and structures and the construction of structures; 4.) that he/she grants right of entry to the property to the building official and his employees for the purpose of inspections and posting of notices. If any of the information supplied by the owner/owners agent is incorrect then this permit may be revoked.

Persons signing this permit agrees to post same on front of lot visible from road or street.

This permit expires 6 months from date of issuance or inactivity. All Landuse and Stormwater Requirements are to be completed prior to final Building inspection and Occupancy.

ANSLI

Issued by:

Signature of Applicant: **STEPHEN M POOLE**

BUILDERS INC

Date: **03/30/2018**

**DEFENDANT'S
EXHIBIT**

2

11/16/11 mnt

Razzano_000175



**DEFENDANT'S
EXHIBIT**

3

Razzano_000199



Razzano_000200



Razzano_000201





**DEFENDANT'S
EXHIBIT**

4

Razzano_000181



Razzano_000182



Razzano_000183



Razzano_000184



Razzano_000185



Razzano_000186

DEED 39 N PAGE 40

STATE OF SOUTH CAROLINA X
COUNTY OF SPARTANBURG X

RESTRICTIONS

The following RESTRICTIONS shall apply to Lots Nos. 1 through 15 on Plat entitled, "SOLITUDE BAY, J.G. Landrum Compton, Owner", dated April 13, 1972, made by Wolfe & Huskey, Engineers & Surveyors, said Plat being recorded in Plat Book 67, Pages 614-615 :

1. No noxious or offensive activity shall be carried on upon any lot and nothing shall be done on any lot which may be or become a nuisance.
2. No lot shall be used for commercial or industrial uses or purposes
3. No livestock or fowl shall be kept upon any lot.
4. Sanitary facilities must be installed by anyone occupying any lot so as to meet any requirements of State Law and all rules and regulations of the Spartanburg County Health Department and of the South Carolina Health Department.
5. No garbage, trash or rubbish shall be thrown or deposited in the lake upon which any lot abuts. Each lot owner and his tenants, if any, shall make adequate provision for garbage disposal.
6. No trailer, basement, shack, garage, barn or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.
7. No dwelling house shall be erected on any lot with a floor space or living area of less than 900 square feet, exclusive of porches, stoops and attached garages.
8. No lot shall be resubdivided for building; except when owners of the adjoining lots shall jointly purchase said lots and in no event shall the sizes of the lots be reduced. Any person may use one lot and a portion of another lot, or may use two or more lots, placing one residence thereon.
9. For the benefit of all lot owners and all other properties now or hereafter owned by the undersigned, his successors, heirs and assigns, easements are reserved over the 5 feet of each lot nearest the road upon which the same abuts for the installation and maintenance of water lines, sewer lines, telephone lines and any and all other types of utilities. The undersigned, however, assumes no duty or responsibility to install and/or maintain, or to arrange for the installation and/or maintenance of any such water lines, sewer lines, telephone lines or any other type of utility.

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1972 JUN -8 AM 9:45
Spartanburg, S.C.

HIS 032

3.00 AD

DEFENDANT'S
EXHIBIT

5

DEED 39-N PAGE 401

These RESTRICTIONS shall continue in effect for twenty-one (21) years from the date hereof and thereafter shall be automatically renewed for successive ten-year periods unless modified, changed or cancelled by written instrument duly signed by the owners of a majority of the lots and duly recorded in the R.M.C. Office for Spartanburg County.

If any person shall violate or attempt to violate any of these RESTRICTIONS, the undersigned and/or any person or persons owning any lot covered by these RESTRICTIONS may sue to enforce such RESTRICTIONS and enjoin such violation or attempt to violate and/or for damages.

Invalidation of any of these RESTRICTIONS by judicial proceedings or otherwise shall not affect any of the other provisions which shall remain in full force and effect.

WITNESS Our Hands and Seals this 7th day of June, 1972.

J. G. Landrum Compton (SEAL)
J. G. LANDRUM COMPTON
Lillie W. Compton (SEAL)
LILLIE W. COMPTON

SIGNED, SEALED AND
DELIVERED IN THE
PRESENCE OF:

Mary S. Belue
Judy M. Higgins

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

PROBATE

Personally appeared before me Mary S. Belue and made oath that she saw the within named J. G. LANDRUM COMPTON and LILLIE W. COMPTON each sign, seal and as their act and deed deliver the within written instrument, and that she, with Judy M. Higgins witnessed the execution thereof.

Mary S. Belue

SWORN To before me this
7th day of June, 1972.
Mary S. Belue (SEAL)
Notary Public for S. C.
My Commission Expires:
Jan. 22, 1980

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Derrick S. Hester, Debra S. Hester,) C.A. No.: 2018-CP-42-02247
James H. Nicholls, Emma Viola)
Nicholls, James E. Gregg, Jr.,)
Paulette J. Gregg, Michael Ben)
Coley, Ashley Coley, Grady L.)
Barnes, Sr., Julia W. Barnes, Ewen)
Lennon, and Amy Lennon,)
Plaintiffs,)
v.)
Mark Razzano and Carre Razzano,)
Defendants.)

ORDER

This matter came before me for a hearing on May 19 and June 28, 2022. The hearing was held virtually and present at the hearing were K. Jay Anthony and Kenneth C. Anthony, Jr., counsel for Plaintiffs, as well as John T. Crawford, Jr. and Mark A. Bible, Jr., counsel for Defendants. The parties were also in attendance.

This matter centers on Defendants' construction of a garage structure containing living space above the garage bays (hereinafter the "Garage") on their property within the Solitude Bay neighborhood on Lake Bowen. Plaintiffs sought a permanent injunction prohibiting Defendants from use of the living space in the Garage as a residence temporarily or permanently, alleging that such use violated the applicable Restrictive Covenants.

This matter came before the Hon. Gordon G. Cooper for trial on February 25, 2020. Following the trial, Judge Cooper issued an order (the "Order") which included a finding that the Garage constituted an "outbuilding" under the Restrictive Covenants. The Court therefore issued a permanent injunction enjoining Defendants from using the Garage, including the living space

above, as a residence, either temporarily or permanently. The Court retained jurisdiction over this matter and allowed that, should the Defendants attach the Garage to the Defendants' main residence (the "Main Residence"), they may seek a ruling from the Court on whether the construction is such that, in the Court's determination, the Garage no longer has the status of an outbuilding and does not violate the Covenants. Defendants' Motion for Reconsideration was denied and no appeal was taken.

On March 14, 2022, Defendants filed a Petition for Post Judgment Relief & Declaratory Judgment (the "Petition"). The stated purpose of the Petition was to seek a post-judgment ruling and/or declaratory judgment from this Court on the issue of whether the Garage had been sufficiently attached to the Defendants' Main Residence such that the former no longer held the status of "outbuilding" and that the injunction as to the use of the Garage should therefore be lifted.

LAW

"An action to enforce restrictive covenants by injunction is in equity." See S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). The grant of an injunction lies within the sound discretion of the trial court. See City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 581, 520-21 (2000). To enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by plain unmistakable implication. See Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270-71, 363 S.E.2d 891, 894 (1987). A Court shall enforce restrictive covenants unless they are indefinite or contravene public policy. See id. Restrictive covenants are contractual in nature, and thus, the language used in restrictive covenants is to be construed according to its plain and ordinary meaning. See Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). "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. See Taylor v. Lindsey, 332 S.C. 1, 4, 5, 498 S.E.2d 862, 863.

FINDINGS OF FACT & CONCLUSIONS OF LAW

As this matter concerns the sole issue of attachment sufficient to warrant lifting of the injunction under the prior Order, I rely on the findings of the Order. After considering the testimony and evidence presented, I make the following additional Findings of Fact and Conclusions of Law:

1. I find that the photographs of the finished property are the most compelling evidence in this case.

2. I find that the Defendants have constructed a series of trellises or pergolas which have been attached at one end to the Main Residence and at the other end to the Garage by screws.

3. The Defendants argue that the two buildings are now sufficiently joined such that the Garage is no longer an “outbuilding” as referenced by the applicable Restrictive Covenants.

4. While there does not seem to be a case in South Carolina directly on point, cases from other jurisdictions provide compelling instruction. See, e.g., Barna v. Langendoerfer, 246 A.3d 343, 347 (Pa. Super. Ct. 2021) (finding a failure to comply with restrictive covenant requiring garage to be attached to house when garage was connected to house by pergola breezeway and did not share a wall); Scherer v. Antiquers Aerodome, Inc., 546 So. 2d 103, 104 (Fla. Dist. Ct. App. 1989) (finding two hangars connected by a breezeway did not comply with a restrictive covenant limiting owner to one hangar).

5. I find the Main Residence and Garage do not share a wall or any interior space, such that one must go outside of the Main Residence to enter the Garage. I find that Garage has

not been sufficiently joined to the Main Residence to form one residence building and the Garage remains an “outbuilding.”

It is therefore ORDERED THAT the injunction previously entered by this Court remains in effect.

It is further ORDERED THAT this court retains jurisdiction over this matter and, should the Defendants attach the Garage to the Main Residence, Defendants may seek a ruling from this Court on whether the construction is such that, in this Court’s determination, the Garage no longer has the status of an outbuilding and such that the living space therein may be used as a residence.

IT IS SO ORDERED.

Hon. Shannon M. Phillips
Master-in-Equity
Spartanburg County

July _____, 2022
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Derrick S. Hester , plaintiff, et al VS Mark Razzano , defendant, et al
Case Number: 2018CP4202247
Type: Order/Rule To Show Cause

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

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RECEIVED

Feb 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Master-in-Equity

Hon. Shannon M. Phillips, Master-in-Equity

Case No.: 2022-001149

Derrick S. Hester, Debra S. Hester, James H. Nicholls, Emma Viola Nicholls,
James E. Gregg, Jr., Paulette J. Gregg, Michael Ben Coley, Ashley Coley,
Grady L. Barnes, Sr., Julia W. Barnes, Ewen Lennon, and Amy Lennon, ...Respondents.

v.

Mark Razzano and Carre Razzano.....Appellants,

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCAR, the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by Appellants and not any other material.

/s/Mark A. Bible Jr.

Mark A. Bible, Jr. (S.C. Bar # 101624)

John T. Crawford, Jr. (S.C. Bar # 69682)

Kenison, Dudley & Crawford, LLC

704 East McBee Avenue

Greenville, SC 29601

(864) 242-4899

crawford@conlaw.com

bible@conlaw.com

Attorneys for Appellants

Greenville, South Carolina
February 27, 2023

RECEIVED

Feb 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Master-in-Equity

Hon. Shannon M. Phillips, Master-in-Equity

Case No.: 2022-001149

Derrick S. Hester, Debra S. Hester, James H. Nicholls, Emma Viola Nicholls,
James E. Gregg, Jr., Paulette J. Gregg, Michael Ben Coley, Ashley Coley,
Grady L. Barnes, Sr., Julia W. Barnes, Ewen Lennon, and Amy Lennon, ...Respondents.

v.

Mark Razzano and Carre Razzano.....Appellants,

PROOF OF SERVICE

I, Mark A. Bible, Jr., Counsel for the Appellants, certify that on February 27, 2023, I have served the Record on Appeal on counsel for the Respondents via e-mail and United States Mail-Postage Prepaid, addressed as follows:

K. Jay Anthony (S.C. Bar # 77433)
The Anthony Law Firm, P.A.
650 E. Washington Street
Greenville, South Carolina 29601
Telephone: (864) 582-2355
E-mail: janthony@anthonylaw.com
Attorney for Respondents

Kenneth C. Anthony, Jr. (S.C. Bar # 0404)
The Anthony Law Firm, P.A.
250 Magnolia Street (29306)
P.O. Box 3565 (29304)
Spartanburg, S.C.
Telephone: (864) 582.2355
E-mail: kanthony@anthonylaw.com
Attorney for Respondents

/s/Mark A. Bible Jr.

Mark A. Bible, Jr. (S.C. Bar # 101624)
John T. Crawford, Jr. (S.C. Bar # 69682)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
crawford@conlaw.com
bible@conlaw.com
Attorneys for Appellants

Greenville, South Carolina
February 27, 2023