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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Brian L. Boger, Special Referee

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Appellate Case No. 2022-000947

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Lisa Cruz,.....Respondent,

v.

Heyward Bouknicht and Kathy Bouknicht.....Appellants.

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RECORD ON APPEAL

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|-------------------------------|-----------------------------------|
| STATE OF SOUTH CAROLINA )     | IN THE COURT OF COMMON PLEAS      |
| COUNTY OF LEXINGTON )         | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| )                             |                                   |
| )                             |                                   |
| Lisa Cruz, )                  | Case No.: 2019-CP-32-03305        |
| )                             |                                   |
| Plaintiff, )                  |                                   |
| )                             |                                   |
| vs. )                         | <b>ORDER</b>                      |
| )                             |                                   |
| Heyward Bouknight and Kathy ) |                                   |
| Bouknight, )                  |                                   |
| )                             |                                   |
| Defendants. )                 |                                   |

This matter having been heard on June 3, 2020, and based on deposition and hearing transcripts, the pleadings, oral arguments and written briefs of the parties, and the rest of the record before this Court, summary judgment is hereby granted in favor of Plaintiff Lisa Cruz and against Defendants Heyward Bouknight and Kathy Bouknight, there being no issue of material fact in this case.

### THE CASE

Plaintiff Lisa Cruz ("Ms. Cruz") filed an Amended Summons and Complaint against Defendants Heyward Bouknight and Kathy Bouknight ("the Bouknights") on August 28, 2019, seeking to enforce and enjoin the Bouknights from violating a subdivision restrictive covenant that burdens the Bouknights' and every other lot in Brookgreen Terrace subdivision in Lexington, South Carolina. The covenant in question prohibits the use of a 'trailer' on any lot in Brookgreen Terrace. Ms. Cruz and the Bouknights both own lots in

Block A of the Brookgreen Terrace development.

The Bouknights filed an Answer to Ms. Cruz's Complaint on September 11, 2019, asserting alternatively that their 'manufactured home' is not a 'trailer' and that even if it is a 'trailer', Ms. Cruz and/or the Brookgreen Terrace Homeowners' Association (the "Association") are barred from enforcing the covenant against trailers under equitable theories of abandonment, acquiescence, estoppel, waiver, and so forth.

The Brookgreen Terrace restrictive covenants that prohibits the use of a 'trailer' on any lot in the subdivision provide in pertinent part as follows:

(1) No *trailer*, basement, tent shack, garage, or barn shall at any time be used as a residence either temporary or permanent.

\* \* \*

(3) Dwelling erected shall be of modern design and construction and shall have curtain walls of masonry or brick underneath the building on all sides.

(4) Dwellings shall have not less than five (5) average size rooms exclusive of bathrooms, porches, and terraces, or the equivalent floor space of five average size rooms exclusive of bathroom, porches, and terraces, and shall have a value not less than \$7,000 based on 1954 values.

(5) No noxious or offensive trade, business, or vocation shall be operated or practices on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become an annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.

Brookgreen Terrace Declaration of Covenants & Restrictions Art. \_\_, ¶¶ 1, 3, 4, 5).

The subject of this action concerns a prefabricated house was delivered by tractor-trailer, truck-bed or similar over-the-road vehicle to the Bouknights' lot in Brookgreen Terrace in July or August of 2019. The home was purchased from and delivered by Oakwood Homes, a well-known manufacturer of prefabricated homes that are delivered and transported from Oakwood's manufacturing facilities to the end-buyers' lots or acreage via roadways.

Defendant Kathy Bouknight described the house as being a "manufactured home". (Kathy Bouknight Dep. 10:13 March 19, 2020). Ms. Bouknight testified that the couple selected the a "manufactured" home because it cost approximately \$100,000.00 less than a "modular home". (*Id.* 11: 22-25, 12:1-4). The home had already been manufactured by Oakwood and was sitting on the Oakwood Homes dealership's property at the time that the Bouknights bought it. (*Id.* 10:19-25). According to Ms. Bouknight, the home was transported to the Defendants' lot by means of a "truck bed". (*Id.* 11:1-7). The Bouknights use the home as their current principal residence.

Ms. Bouknight admitted that she was aware of the no-trailer restrictive covenant at the times that she completed the purchase transaction and submitted the required Mobile Home Affidavit to Lexington County, South Carolina. (Kathy Bouknight Dep. 27:23-25). Ms. Bouknight acknowledged that other lot and homeowners in Brookgreen Terrace expressed disagreement with the manufactured home prior to its placement on the Bouknights' lot. (*Id.* 26:9-20). As to whether the manufactured home was subject to recorded covenants contrary to the structure being placed, Defendant checked the box

answering "no" when she filled out the Lexington County Mobile Home Affidavit. (*Id.* 27:11-22).

Plaintiff Cruz asserts that the Bouknights' manufactured home violates the Brookgreen Terrace restrictive covenant that prohibits 'trailers', which covenant was recorded along with the deed to the development lots, including the deed to lot on which the Bouknights placed their manufactured home.

Ms. Cruz is concerned that the Bouknights' manufactured home or trailer has adversely affected the value of her own lot and improvements, as well as the values of other neighboring lots and improvements in Brookgreen Terrace, all of which are subject to the same no-trailer restrictive covenant. Ms. Cruz believes that the Brookgreen Terrace restrictive covenants, taken as a whole, plus the no-trailer ban, in particular, seek to preserve and protect property values, ensure comparability with the surrounding structures, and protect the general integrity and consistency of the Brookgreen Terrace development. The covenants themselves would be rendered meaningless should individual landowners violate them without consequence.

The Bouknights take the position that their Oakwood Homes manufactured home is not a 'trailer' under the Brookgreen Terrace restrictive covenants. The Bouknights also argue that even if their house is a 'trailer' and violates the covenants in question, Ms. Cruz and Brookgreen Terrace are equitably barred from enforcing the covenant against trailers because other restrictive covenants have not been strictly enforced, such as covenants regarding siding and color. (Kathy Bouknight Dep. 28:19-25; 29:1-25). Ms. Bouknight

gave hearsay testimony that her mother told her that at least one other home in Brookgreen Terrace was delivered to a neighboring lot in "portions" or "sections", but did not say or prove that the neighboring house in question happens to be a 'manufactured home' or 'trailer'. (*Id.* 28:24-25; 29:1-11).

## THE LAW

### I. Does the Bouknights' Manufactured Home Violate the Restrictive Covenant that Prohibits the Use of 'Trailers' On Any Lot in the Subdivision?

The South Carolina Motor Vehicle Code defines a “house trailer” as “a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and is *equipped for use as a conveyance on streets and highways . . .*” S.C. Code Ann. § 56-19-10(10) (Westlaw current through 2020 Act No. 115, subject to technical revisions by the Code Commissioner as authorized by law before official publication) (emphasis added). The provisions of the South Carolina Code that govern "manufactured housing" say that "[m]anufactured home" means a structure, *transportable in one or more sections* which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in it." S.C. Code § 40-29-20(9) (emphasis added). The

provisions of the South Carolina Code that govern the licensing of mobile homes and house trailers say that " '[m]obile home' as used in this article shall have the meaning assigned in § 31-17-20." *Id.* § 31-17-310. "A 'manufactured home' is a 'mobile home'." *Action Mortg. Corp. v. Van Deusen*, 291 S.C. 208, 352 S.E.2d 711 (Ct. App. 1987) (citing S.C. Code § 31-17-20(a)). It should be noted that former S.C. Code § 31-17-20(a), which defined a 'manufactured home' as a 'mobile home', was repealed by 1989 Act No. 128, § 6.

In a case involving residential subdivision restrictive covenants that barred the 'use' of a 'trailer' on a subdivision lot, the Court of Appeals of South Carolina ruled that a double-wide 'manufactured' or 'mobile' home constituted a 'trailer' that the covenant in question clearly 'intended' to prohibit:

On November 13, 1980, Broxton, the developer of Deloss Subdivision, recorded restrictive covenants governing the use of all lots within the subdivision. One such covenant provides that "[n]o structure of a temporary character, trailer, tent, shack, garage, or other out building shall be used on any lot at any time as a residence, either tempora[r]ily or permanently."

Broxton purchased a double-wide "manufactured home" from Mid-State Mobile Homes in Orangeburg on July 25, 1985. The manufacturer's statement of origin states that its floor size is 24 feet by 66 feet and that it has 12 wheels. The purchase agreement states that its "hitch size" is 70 feet by 24 feet.

\* \* \*

Where the language used in a restrictive covenant is unambiguous, there is no room for construction and the language must be enforced in accordance with its plain meaning. *Donald E. Baltz, Inc. v. R.V. Chandler & Co.*, 248 S.C. 484, 151 S.E.2d 441 (1966).

The term "trailer" is not ambiguous. A "trailer" is a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile. *Jones v.*

*Beiber*, 251 Iowa 969, 103 N.W.2d 364 (1960); *City of Astoria v. Nothwang*, 221 Or. 452, 351 P.2d 688 (1960). The term clearly includes a "mobile home" within its meaning. *Van Poole v. Messer*, 19 N.C. App. 70, 198 S.E.2d 106 (1973), *appeal after remand*, 25 N.C. App. 203, 212 S.E.2d 548 (1975).

\* \* \*

Our opinion that a mobile home is a trailer is not changed by the fact that the wheels and the tongue were removed from each section, that the two sections were joined together and placed on a permanent foundation, and that the connected sections were attached to a septic tank and to water and power lines. The structure is still a trailer, its basic characteristics having not been changed by these actions. *Carter v. Conroy*, 25 Ariz. App. 434, 544 P.2d 258 (1976); *McBride v. Behrman*, 28 Ohio Misc. 47, 57 Ohio Op.2d 77, 272 N.E.2d 181 (1971); *see Brasher v. Grove*, 551 S.W.2d 302, note 4 at 305 (Mo. App. 1977) (listing of cases from other jurisdictions that deal with mobile homes and trailers insofar as they are governed by restrictive covenants or zoning regulations and that hold that a structure, originally a trailer, remained a trailer despite the permanent nature of its installation and the removal of wheels, axles, and other portions of the undercarriage). The evidence suggests that it could be separated and moved again. *See Billings v. Shrewsbury*, 294 S.E.2d 267 (W. Va. 1982) (holding that a double-wide mobile trailer's essential character was not changed by mooring the structure to a cement block foundation since the structure was designed to be separated again for repeated moves).

Our opinion is likewise unaffected by the fact that Broxton's mobile home is double-wide and not single-wide. *See Gigowski v. Russell*, 718 S.W.2d 16 (Tex. Ct. App. 1986) (wherein the court held that a double-wide manufactured home was a "mobile home" within the meaning of a restrictive covenant prohibiting "any type mobile home."); *Billings v. Shrewsbury, supra*. The statutory definition of the term "mobile home" that was in effect when the restrictive covenant here was adopted in 1980 clearly contemplated that a mobile home could be multisectional.

\* \* \*

An obvious objective of a restrictive covenant prohibiting trailers and other structures within a residential subdivision is to regulate the appearance of the subdivision. *Carter v. Conroy, supra*. Such a restrictive covenant forbids trailers from being used as residences within the subdivision because,

irrespective of whether trailers are called mobile homes or something else, whether trailers are attached to the land or not, and whether trailers are multi-sectional or not, they, as the photographs prove, still look like trailers.

Mobile homes, including double-wide ones, have their place, of course; but not in Deloss Subdivision.

We therefore hold that the plain language of the restrictive covenant at issue prohibits the use of a double-wide mobile home as a residence on any lot within Deloss Subdivision at any time, irrespective of whether it remains immediately portable. *Timmerman v. Gabriel*, *supra*.

*Heape v. Broxton*, 293 S.C. 343, 345-47, 360 S.E.2d 157, 158-161 (Ct. App. 1987).

In reaching its decision, the *Heape* court noted that " '[m]anufactured home' or 'mobile home' means a structure transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or forty body feet or more in length ... and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities . . . " 293 S.C. at 345, 360 S.E.2d at 158, n.2 (quoting former S.C. Code § 31-17-20(a) (Supp. 1986)).

For South Carolina sales and use tax purposes, "[i]t is the opinion of the [D]epartment [of Revenue] that:

(A) a factory-fabricated home built on a permanent chassis is a modular home for purposes of the sales and use tax if the structure is:

1. designed to be used as a single family dwelling; and
2. more than eight feet in width or thirty-five feet or more in length.

(B) a factory-fabricated home built on a permanent chassis is a manufactured home for purposes of the sales and use tax if the structure is:

1. designed to be used as a dwelling; and
2. eight or more feet in width or forty feet or more in length or three hundred and twenty or more square feet.

(C) a factory-fabricated home built on a permanent chassis meeting both the requirements in (A) and (B) above is a manufactured home for purposes of the sales and use tax.

(D) a factory-fabricated home built on a permanent chassis that does not meet either of the requirements in (A) or (B) above is neither a modular home nor a manufactured home for purposes of the sales and use tax.

S.C. Revenue Advisory Bulletin No. 2000-02, 2000 WL 33941879, at \*1 ((S.C. Tax. Com. March 27, 2000).

For real property tax purposes. "[a] travel trailer that is used as the year-round residence is a *mobile home* for purposes of property taxation and is to be taxed as real property." 1979 S.C. Op. Atty. Gen. No. 79-124, 1979 WL 29126, at \*2 (Nov. 1, 1979) (emphasis added).

Courts in other jurisdictions have ruled that manufactured or prefabricated houses that are delivered and transported to and placed upon the end-users' home sites are 'trailers', for purposes of homeowner association or subdivision restrictive covenants that prohibit the use of trailers: *Bare v. King*, 842 So.2d 416 (La. Ct. App. 3rd Cir. 2003) (in light of, *inter alia*, photographs that depicted the defendants' mobile home being wheeled around, the installation of the 'immobilized' mobile home on a lot violated a restrictive covenant that barred 'trailers' because it clearly violated the trailer ban), *rehearing denied* (April 30,

2003), writ denied, 855 So.2d 311 (La. 2003); *Beacon Hills Homeowners Ass'n, Inc. v. Palmer Properties, Inc.*, 911 S.W.2d 736 (Tenn. Ct. App. 1995) (a proposed manufactured home was a 'trailer' that was prohibited by a subdivision's restrictive covenants because the structure consisted of two units that were pulled by a tractor-truck over public highways to the defendants' lots and then attached together and secured to an existing foundation), *appeal denied* (Nov. 27, 1995); *LuMac Dev. Corp. v. Buck Point Ltd. Partnership*, 61 Ohio App.3d 558, 573 N.E.2d 681 (6th Dist. 1988) (even though the nomenclature for such vehicles has changed, a restrictive covenant that barred 'trailers' or 'trailer courts' on property operated to prohibit 'manufactured homes' and 'manufactured home parks' on the subject realty because the covenants were intended to prevent property owners from placing vehicles that are designed to be used as dwelling places on their lands); *Barber v. Dixon*, 62 N.C. App. 455, 302 S.E.2d 915 (1983) (defendants' 'prefabricated modular unit' was a 'trailer' and 'temporary structure' within the meaning of a restrictive covenant's that prohibited such structures), *review denied*, 309 N.C. 191, 305 S.E.2d 732 (1983); *White v. McGowen*, 364 Ark. 520, 222 S.W.3d 187 (2006) (a 'manufactured home' that was placed upon lot was a 'trailer' under a subdivision's restrictive covenants because the home was transported to the owners' lot on its own wheels and axles, which were later removed, the chassis was constructed to support transport rather than simply as support beams on foundation or footings, and the intent of the restrictive covenant was that all homes meet certain standards of quality and construction); *Renfro v. McGuyer*, 799 N.E.2d 544 (Ind. Ct. App. 2003) (A structure on a subdivision lot was a prohibited 'manufactured home' even

though it was joined and finished on site, placed on a permanent foundation, and was not designed to be moved. The structure was constructed off-site and transported to the owner's lot in two sections. The lot owner admitted that the home was called a manufactured home. The subdivision's covenants restricted the use of 'trailers'.), *transfer denied*, 812 N.E.2d 801 (Ind. 2004); *Wilmoth v. Wilcox*, 734 S.W.2d 656 (Tex. 1987) (subdivision restrictive covenants that prohibited house trailers also prohibited mobile homes and manufactured homes).

The South Carolina statutes, S.C. Code §§ 31-17-20(a) (repealed), 31-17-310, 56-19-10(10), 40-29-20(9), and cases that are cited above suggest that the terms 'manufactured home', 'mobile home', 'house trailer' and 'trailer' are used and treated interchangeably. Moreover, the two common denominators between S.C. Code §§ 56-19-10(10) and 40-29-20(9), in particular, are that 'house trailers' and 'manufactured homes' are 'dwellings' that are 'conveyable' or 'transportable', rather than stick-built. In other words, the essential characteristics of a mobile home, trailer, and manufactured home are the same, as is evident from the prior as well as current statutory definitions.

Whether a manufactured home, mobile home, or trailer is built on a permanent chassis, is designed to be used as a dwelling (with or without a permanent foundation), and whether the structure is transportable in one or more sections, are all key characteristics of these types of prefabricated dwellings. But, it is clear that the South Carolina Legislature and courts in South Carolina and elsewhere do not offer any material distinction between 'manufactured homes', mobile homes, and 'trailers', such that a 'manufactured home' would

escape coverage of a subdivision restrictive covenant that bans 'trailers'. If the State Legislature had intended to make fine distinctions between manufactured homes, mobile homes and trailers, they could and would have done so by including plain language in the definitional statutes that are cited above to that effect or by enacting specific statutes that clearly distinguishes between each type of prefabricated dwelling, for restrictive covenant, licensing or tax purposes. To date, the South Carolina Legislature has chosen only to distinguish between 'manufactured' or 'mobile' homes and 'modular' homes, which must meet much stricter Building Code standards than manufactured or mobile homes, for sales and use tax measurement purposes. The intent of the Legislature, in defining 'manufactured' or 'mobile' homes interchangeably, for various purposes, has been to establish regulations and licensing requirements for prefabricated dwellings that are assembly-line produced and readily conveyable or transportable over roadways.

The South Carolina and out-of-state court decisions that are cited above clearly, plainly and unmistakably hold that manufactured homes, mobile homes, and trailers are interchangeable and synonymous, for purposes of applying and enforcing subdivision restrictive covenants that ban 'trailers'.

There can be no question that when the Brookgreen Terrace subdivision restrictive covenants were authored, the developer intended that the term 'trailer' would cover other types of synonymous prefabricated housing, such as manufactured or mobile homes, like the Oakwood Homes manufactured home that the Bouknights chose to place on their lot, knowing full well that the subdivision restrictive covenants banned 'trailers'. These types

of restrictive covenants are intended to assure aesthetic consistency and protect property values, for the benefit of all persons who invest and reside in Brookgreen Terrace, including Ms. Cruz and the Bouknights. For money-saving purposes, the Bouknights unilaterally decided that the no-trailers ban did not apply to them or their manufactured home and went ahead and bought their prefabricated home and placed it on their lot in Brookgreen Terrace.

In sum, the statutory and case law is clear – a manufactured or mobile home is a 'trailer' and vice-versa, for various purposes, including the ban on trailers in Brookgreen Terrace subdivision. To rule otherwise would penalize all lot owners who have respected the no-trailers restrictive covenant and purchased more expensive housing and invested in Brookgreen Terrace subdivision.

## **II. Do the Bouknights' Equitable Defenses of Abandonment or Waiver Bar Ms. Cruz's Suit to Enforce the 'No-Trailers' Restrictive Covenant?**

Since it is clear that the 'manufactured home' that the Bouknights placed upon their lot in Brookgreen Terrace falls within the scope of the intent and coverage of the Brookgreen Terrace subdivision's restrictive covenant that bars the use of 'trailers' on subdivision lots, the Bouknights are in violation of the no-trailers restrictive covenant unless they can show that: (1) there is "no discernible purpose or scheme" of or for the restrictive covenant (2) "the residential plan" of banning trailers has not been maintained; or (3) there has been long-term and substantial "acquiescence by all in [the] common

scheme" for improvements in the subdivision. *Vickery v. Powell*, 267 S.C. 23, 27-28, 225 S.E.2d 856, 858 (S.C. 1976). In other words, the evidence in this case must show that "the restrictions at issue do not embody a general plan of development giving rise to negative equitable easements or covenants enforceable [i]nter sese." *Id.* 267 S.C. at 28, 225 S.E.2d at 858. The Bouknights could also show that their house is a "certified modular home" that strictly meets all applicable building codes for homes other than trailers, mobile homes, and similar structures, i.e., 'stick-built' homes. *Henry v. Chambron*, 304 S.C. 351, 404 S.E.2d 518 (Ct. App. 1991), *appeal after remand*, 317 S.C. 43, 451 S.E.2d 410 (Ct. App. 1994).

"An obvious objective of a restrictive covenant prohibiting trailers and other structures within a residential subdivision is to regulate the appearance of the subdivision. *Carter v. Conroy*, 25 Ariz. App. 434, 544 P.2d 258 (1976). Such a restrictive covenant forbids trailers from being used as residences within the subdivision because, irrespective of whether trailers are called mobile homes or something else, whether trailers are attached to the land or not, and whether trailers are multi-sectional or not, they, as the photographs prove, still look like trailers." *Heape*, 293 S.C. at 347, 360 S.E.2d at 160.

It is clear from the Brookhaven Terrace covenants that one purpose or scheme therein is to make sure that lot owners do not install or place structures that are 'trailers', i.e., structures that are 'transportable' to the subdivision. If a common grantor opens a tract to be sold in lots and inaugurates a general plan or scheme of improvement and thereafter sells each lot subject to the plan or scheme, such acts create a mutuality of consideration,

covenant and interest among the lot purchasers in the negative equitable easement that has been created. *Williams v. Cone*, 249 S.C. 374, 154 S.E.2d 682 (S.C. 1967). Therefore, unless there is evidence that the subdivision plan or scheme of improvement never existed or has been abandoned, a South Carolina court will recognize and give effect to the plan or scheme of improvements even if some restrictions were omitted from conveyances and there may be some variations in the restrictions, although extensive omissions tend to show either that no such scheme exists or that it has been abandoned. *Id.* 249 S.C. at 380-81, 154 S.E.2d at 684-85.

Although it is true that evidence that a homeowners' association has been inconsistent in requiring lot owners to comply with restrictive covenant can support the equitable defenses of abandonment, acquiescence, estoppel or waiver by a lot owner in response to a suit against him or her by the association to enforce a subdivision restrictive covenant, *Arcadian Shores Single Family Homeowners Ass'n, Inc. v. Cromer*, 373 S.C. 292, 644 S.E.2d 778 (Ct. App. 2007), *rehearing denied* (May 17, 2007), the fact that an owners' association has not always been vigilant in enforcing a restriction does not automatically or necessarily preclude the association from enforcing the restriction against a particular resident or lot owner. *SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla, Is of South Carolina*, 415 S.C. 72, 781 S.E.2d 115 (2015), *rehearing denied* (Jan. 21, 2016). Moreover, a failure to or waiver of the right to object to minor violations of a covenant does not result in a waiver of the right to object to subsequent and more substantial violations thereof. *Kneale v. Bonds*, 317 S.C. 262, 452 S.E.2d 840 (Ct. App. 1994),

*rehearing denied* (Feb. 9, 1995); *Abbott v. Arthur*, 261 S.C. 31, 198 S.E.2d 261 (S.C. 1973) (one is not estopped from enforcing restrictions just because he or she previously allowed minor deviations therefrom by another or himself or herself as long as he or she is willing to cease his or her own violations of the restriction); *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993) (neighbors' alleged waiver of the right to object to the operation of a blueberry farm and construction of a temporary shed on property in violation of subdivision covenants did not amount to the neighbors' waiver of the right to enforce covenants to prevent operation of an automobile repair business on the property and making the temporary shed a permanent one; neighbors were not estopped from enforcing subdivision covenants to prevent operation of automobile repair business on the defendant's property because the neighbors made it clear that they intended to enforce the covenants and there was no acquiescence that could be relied upon); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (S.C. 1987) (the presence of flagpoles and satellite dishes on other property within a subdivision did not estop the subdivision developer from enforcing restrictive covenant against one property owner's flagpole, satellite dish and Jacuzzi, which he had placed on his roof without prior approval of the subdivision's architectural review board); *Circle Square Co. v. Atlantis Development Co.*, 267 S.C. 618, 230 S.E.2d 704 (S.C. 1976) (under the circumstances of the case, the plaintiffs, who had overlooked other violations of restrictive covenants, were not barred by laches, waiver, or estoppel from seeking to enforce restrictive covenants so as to prevent construction of shopping center in a semi residential area because the overlooked violations

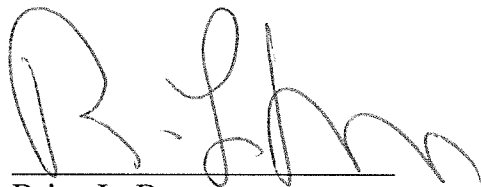
did not impose such a radical change in the area that the object and purpose of a semi residential area buffer zone had been destroyed); *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (S.C. 1951) (acquiescence in minor violations of building restrictions by some lot owners in a subdivision did not estop other lot owners from complaining of violation of restrictions by the defendants, who also owning lots in the subdivision). The burden of proving equitable defenses to a suit to prevent or remedy a violation of a subdivision restrictive covenant lies with the party who asserts such defenses, not with party who is trying to enforce the covenant. *Circle Square Co.*, 267 S.C. at 628, 230 S.E.2d at 708.

In this case, there is no evidence in the record that the no-trailers ban in Brookgreen Terrace has ever been abandoned or waived by the developer or the residents of the subdivision. While it may be true that either the developer or the residents of Brookgreen Terrace have, at time overlooked other relatively minor and less substantial restrictive covenants regarding siding on or exterior color of improvements on lots in the subdivision, there is no proof in the record, except for vague hearsay deposition testimony by Ms. Bouknight that a weather-damaged house on a neighboring lot may have been repaired or replaced by way of a dwelling or parts thereof that were delivered in 'portions' or 'sections', that the developer or residents of Brookgreen Terrace have ever abandoned or waived the no-trailer ban or an equally substantial restrictive covenant relating to the quality or type of improvement that can be made to a lot in the subdivision. Therefore, the Bouknights' equitable defenses of abandonment and waiver cannot be sustained.

## CONCLUSION

Based on the foregoing, since there is no genuine issue of material fact in this case as to whether the Bouknights' manufactured home was intended to be and is covered by the Brookgreen Terrace subdivision's ban on using 'trailers' on lots in the subdivision, summary judgment in favor of Plaintiff Lisa Cruz and against Defendants Heyward Bouknight and Kathy Bouknight is hereby granted, with directions to the Defendants to, at their own expense and within 60 days of issuance of this Order, to remove their manufactured home or trailer from their lot in the Brookgreen Terrace subdivision.

AND IT IS SO ORDERED.



Brian L. Boger  
Special Referee  
Lexington, South Carolina

January 25, 2022

FILED

STATE OF SOUTH CAROLINA 2022 JUN 23 PM 12:44 IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

LISA M. COMER  
CLERK OF COURT  
LEXINGTON SC

CA# 2019-CP-32-03305

Lisa Cruz,

Plaintiff,

vs.

Heyward and Kathy Bouknight,

Defendants.

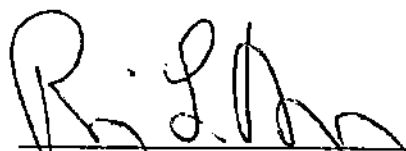
ORDER DENYING DEFENDANT'S  
MOTION TO RECONSIDER

THIS MATTER came to be heard after proper notice, on March 9, 2022, upon Defendant's Motion to Reconsider, Alter, Amend and/or Clarify the Order filed January 27, 2022, pursuant to Rules 52 and 59, SCRPC filed by the Defendants.

Having carefully considered the arguments submitted and applicable law, the Court finds the Motion to Reconsider should be DENIED.

IT IS THEREFORE ORDERED that the Defendant's Motion to Reconsider, Alter, Amend and/or Clarify the Order filed January 27, 2022, pursuant to Rules 52 and 59, SCRPC Filed by the Plaintiff's is hereby denied.

AND IT IS SO ORDERED.

  
Brian L. Boger, Special Referee

June 15, 2022

Lexington, South Carolina

|                             |   |                                   |
|-----------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS      |
|                             | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON         | ) |                                   |
| Lisa Cruz,                  | ) |                                   |
|                             | ) | Case No.: 2019-CP-32-03305        |
| Plaintiff,                  | ) |                                   |
|                             | ) |                                   |
| Vs.                         | ) |                                   |
|                             | ) | <b>ORDER FOR REFERENCE</b>        |
| Heyward Bouknight and Kathy | ) |                                   |
| Bouknight,                  | ) |                                   |
|                             | ) |                                   |
| Defendants.                 | ) |                                   |
| _____                       | ) |                                   |

Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-referenced case is an action for equitable relief involving real estate and may be referred to a Master in Equity or Special Referee for the County of Lexington by order of a circuit court judge or the clerk of court. It appears that all parties to this action are hereby consenting to such a referral.

IT IS HEREBY ORDERED, that this action is referred to The Honorable James O. Spence, as Master In Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Master In Equity shall retain jurisdiction to perform all necessary acts incident to this enforcement action including issuance of a writ of assistance or issuance of any rule to show cause why a party should not be bound by his judgment or ruling. Further, the Master In Equity, shall retain jurisdiction to hear any motions pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b). Appeals, if any, shall be taken to the South Carolina Court of Appeals.

The hearing shall be held in the Office of the Honorable James O. Spence, Master In Equity for Lexington County, located at 205 East Main Street, Lexington, South Carolina 29072.

And the final order by the Master In Equity shall be filed with the Clerk of Court for Lexington County not later than sixty (60) days after the date of the hearing.

\_\_\_\_\_, 2019

\_\_\_\_\_  
Presiding Judge / Clerk of Court

I SO MOVE:

I CONSENT:

s/James R. Snell, Jr.  
James R. Snell, Jr., Bar No.: 72663  
Attorney for the Plaintiff  
123 Harmon Street  
Lexington, South Carolina 29072  
(803) 359-3301  
jamesnell@snelllaw.com

s/Andrew S. Radeker  
Andrew S. Radeker, Bar No.: 73743  
Attorney for the Defendants  
923 Calhoun Street  
Columbia, South Carolina 29201  
(803) 779-2211  
Drew@harrisonfirm.com



## Lexington Common Pleas

**Case Caption:** Lisa Cruz VS Heyward Bouknight , defendant, et al

**Case Number:** 2019CP3203305

**Type:** Order/Referred to Master or Special Referee

So Ordered

s/ Mona Huggins Deputy Clerk Common Pleas for  
Lisa M Comer Lexington County Clerk of Court

Electronically signed on 2019-11-18 13:20:42 page 3 of 3

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2019CP3203305**

|                  |  |                          |                        |
|------------------|--|--------------------------|------------------------|
| <b>Lisa Cruz</b> |  | <b>Heyward Bouknight</b> | <b>Kathy Bouknight</b> |
|------------------|--|--------------------------|------------------------|

**PLAINTIFF(S)**

**DEFENDANT(S)**

**Submitted by:**

**Attorney for:** ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

**I hereby recuse myself from hearing or determining any matter in the above-entitled action due to the fact that I have a conflict.**

**ORDER INFORMATION**

**This order** ☐ ends ☒ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

**Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**

| <b>Judgment in Favor of<br/>(List name(s) below)</b> | <b>Judgment Against<br/>(List name(s) below)</b> | <b>Judgment Amount To be Enrolled<br/>(List amount(s) below)</b> |
|------------------------------------------------------|--------------------------------------------------|------------------------------------------------------------------|
|                                                      |                                                  |                                                                  |
|                                                      |                                                  |                                                                  |
|                                                      |                                                  |                                                                  |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

3068

12/10/2019

**James O. Spence, Master In Equity****Judge Code****Date****For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

**James Ross Snell Jr.** 123 Harmon Street Lexington, SC 29072**Andrew Sims Radeker** PO Box 50143 Columbia, SC 29250\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**\_\_\_\_\_  
**Court Reporter**\_\_\_\_\_  
**Lisa M. Comer - Clerk of Court****Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Lexington Common Pleas

**Case Caption:** Lisa Cruz VS Heyward Bouknight , defendant, et al

**Case Number:** 2019CP3203305

**Type:** Order/Other

AND IT IS SO ORDERED.

S/JUDGE JAMES O. SPENCE-3068

Electronically signed on 2019-12-10 12:05:00 page 3 of 3

|                             |   |                                   |
|-----------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS      |
|                             | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON         | ) |                                   |
| Lisa Cruz,                  | ) |                                   |
|                             | ) | Case No.: 2019-CP-32-03305        |
| Plaintiff,                  | ) |                                   |
|                             | ) |                                   |
| Vs.                         | ) |                                   |
|                             | ) | <b>ORDER FOR REFERENCE TO</b>     |
| Heyward Bouknight and Kathy | ) | <b>SPECIAL REFEREE</b>            |
| Bouknight,                  | ) |                                   |
|                             | ) |                                   |
| Defendants.                 | ) |                                   |
| _____                       | ) |                                   |

Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-referenced case is an action for equitable relief involving real estate and may be referred to a Master in Equity or Special Referee for the County of Lexington by order of a circuit court judge or the clerk of court. It appears that all parties to this action are hereby consenting to such a referral. This action was previously referred by consent to the Honorable James O. Spence, Master-in-Equity for Lexington County; however, Judge Spence *sua sponte* recused himself from presiding in this case. Accordingly, the parties request that the court appoint a special referee to hear the case.

IT IS HEREBY ORDERED, that this action is referred to Brian L. Boger, Esquire, as Special Referee, for him to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCF, and to hear all matters arising from or reasonably related to such action, including motions before or after judgment. The Special Referee shall retain jurisdiction to perform all necessary acts incident to this enforcement action including issuance of a writ of assistance or issuance of any rule to show cause why a party should not be bound by his judgment or ruling. Further, the Special Referee, shall retain

jurisdiction to hear any motions pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b). Appeals, if any, shall be taken to the South Carolina Court of Appeals.

AND IT IS SO ORDERED!

\_\_\_\_\_, 2020

\_\_\_\_\_  
Presiding Judge / Clerk of Court

I SO MOVE:

I CONSENT:

s/James R. Snell, Jr.  
James R. Snell, Jr., Bar No.: 72663  
Attorney for the Plaintiff  
123 Harmon Street  
Lexington, South Carolina 29072  
(803) 359-3301  
jamesnell@snelllaw.com

s/Andrew Radeker  
Andrew S. Radeker, Bar No.: 73743  
Attorney for the Defendants  
923 Calhoun Street  
Columbia, South Carolina 29201  
(803) 779-2211  
Drew@harrisonfirm.com

I CONSENT:

s/Brian Boger  
Brian L. Boger, Bar No.: 752  
Post Office Box 65  
Columbia, South Carolina 29202  
(803) 252-2880  
brian@bogerlaw.com



Lexington Common Pleas

**Case Caption:** Lisa Cruz VS Heyward Bouknight , defendant, et al

**Case Number:** 2019CP3203305

**Type:** Order/Referred to Master or Special Referee

So Ordered

s/ Mona Huggins Deputy Clerk Common Pleas for  
Lisa M Comer Lexington County Clerk of Court

Electronically signed on 2020-02-25 14:52:12 page 3 of 3

|                              |   |                                           |
|------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA,     | ) | IN THE COURT OF COMMON PLEAS              |
|                              | ) | FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON          | ) |                                           |
|                              | ) |                                           |
| Lisa Cruz,                   | ) | <b>SUMMONS</b>                            |
|                              | ) |                                           |
| Plaintiff,                   | ) |                                           |
|                              | ) |                                           |
| v.                           | ) |                                           |
|                              | ) |                                           |
| Heyward and Kathy Bouknight, | ) |                                           |
| Defendant.                   | ) |                                           |

TO THE DEFENDANT ABOVE NAMED,

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the plaintiffs or their attorney(s), THE LAW OFFICE OF JAMES R. SNELL, JR., LLC, at their office at 123 Harmon Street, Lexington, South Carolina, 29072, within thirty (30) days after service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated at LEXINGTON, South Carolina, on the 15th day of August, 2019.

s/James R. Snell, Jr.  
 James R. Snell Jr. SC Bar No.: 72663  
 Law Office of James R. Snell Jr., LLC  
 123 Harmon Street  
 Lexington, South Carolina 29072  
 (803) 359-3301  
 (800) 567-6249 (facsimile)  
*Attorney for the Plaintiff*

|                              |   |                                           |
|------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA,     | ) | IN THE COURT OF COMMON PLEAS              |
|                              | ) | FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON          | ) |                                           |
|                              | ) |                                           |
| Lisa Cruz,                   | ) | <b>COMPLAINT</b>                          |
|                              | ) |                                           |
| Plaintiff,                   | ) |                                           |
|                              | ) |                                           |
| v.                           | ) |                                           |
|                              | ) |                                           |
| Heyward and Kathy Bouknight, | ) |                                           |
| Defendant.                   | ) |                                           |

The Plaintiff will show unto this Honorable Court as follows:

1. That the Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina residing at 101 Wessinger Drive, Lexington, South Carolina. This is lots 1 and 2 of Block B of the Brookgreen Terrace development.
2. That the Defendants are citizen and resident of the County of Lexington, State of South Carolina who own 110 Wessinger Drive, Lexington, South Carolina. This is lots 5 and 6 of Block A of the Brookstream Terrace development.
3. That this action concerns the enforcement of covenants and restrictions for lots in Brookstream Terrace, County of Lexington, State of South Carolina. Venue is appropriate in Lexington County pursuant to S.C. Code § 15-7-30.
4. That the Defendant's property and other lots in the development were deeded pursuant to a Protective Covenants recorded on October 1, 1954 @ 1:12 P.M. in the Lexington County Office of the Register of Deeds in Book 7-O page 59. A copy is attached hereto as Exhibit "A".
5. That the Protective Covenants includes, among other terms, the following conditions:

(1)

"No trailer, basement, tent shack, garage or barn shall at any time be used as a residence either temporary or permanent."

(3)

"Dwelling erected shall be of modern design and construction and shall have curtain walls of masonry or brick underneath the building on all sides."

(4)

"Dwellings shall have not less than five (5) average size rooms exclusive of bathrooms, porches, and terraces, or the equivalent floor space of five average size rooms exclusive of bathroom, porches, and terraces, and shall have a value not less than \$7,000 based on 1954 values."

(5)

"No noxious or offensive trade; business, or vocation shall be operated or practices on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become an annoyance to the neighborhood, or may injure the value of any other lot or lots in the area."

6. That the Defendants have already advised Lexington County of their intention to utilize the hose trailer as their residence.
7. That the Plaintiff is informed and believes that the Defendants are in violation of these protective covenants by the recent delivery and of a house trailer on the lot.
8. That the Plaintiff is informed and believes that the Defendants' conduct is specifically in violation of the protective covenants, and that this affects the value of her property and adjoining properties in the development.

9. That the Plaintiff is informed and believes that the purpose of the Protective Covenants is the protect property values, ensure comp ability in the surrounding structures, and protect the general integrity of the development.
10. That the Plaintiff can see the Defendants property and it negatively affects both her personally and her property.
11. That the Plaintiff is informed and believes that she is entitled to an Order of the Court enjoining the Defendant from maintaining a mobile home, trailer, or similar structure which violates the protective covenants.
12. That the Plaintiff is informed and believes that she is entitled to an Order of the Court enjoining the Defendants from placing a trailer, mobile home, or other form of delivered building.
13. That the Plaintiff is informed and believes that she is entitled to an award of attorney's fees and costs incurred in this action, as well as all other relief which is just and proper.

WHEREFORE, the Plaintiff prays for an order:

- A) Finding the Defendants to be in violation of the Protective Covenants;
- B) Ordering the Defendants to remove any non-compliant structure and to bring and maintain their property into compliance with the Protective Covenants.
- C) Attorney's fees and costs of this action;
- D) All other relief which is just and proper.

August 15, 2019  
Lexington, South Carolina

s/James R. Snell, Jr.  
James R. Snell Jr. SC Bar No.: 72663  
Law Office of James R. Snell, Jr., LLC  
123 Harmon Street  
Lexington, South Carolina 29072  
(803) 359-3301  
(800) 567-6249 (facsimile)  
*Attorney for the Plaintiff*

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

PROTECTIVE COVENANTS

The lands hereinafter described as now owned by H. E. Wessinger and J. G. Bond, Jr. hereinafter referred to as Owners shall be used for residential purposes only and no business structure shall be erected or maintained thereon and said lands shall be further subject to the following protective covenants, to wit:

1. No trailer, buscock, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent.
2. No building shall be erected on any lot nearer than twenty-five (25') feet to the front line, nor nearer than seven and five-tenths (7.5') feet to the side line of any adjacent lot, nor nearer than fifteen (15') feet to any side street line, provided, however, that the side line restriction to an adjacent lot line shall not apply to a garage located on the rear quarter of the lot which shall not be constructed nearer than three (3') feet of the rear line of the lot. Covenants contained in this paragraph above shall be construed to be for the benefit of the Owners only who reserve the right to modify the same at will so long as said modification does not vary the distances more than thirty (30%) percent.
3. Dwellings erected shall be of modern design and construction and shall have curtain walls of masonry or brick underneath the building on all sides.
4. Dwellings shall have not less than five (5) average size rooms exclusive of bathroom, porch, and terraces, or the equivalent floor space of five average size rooms exclusive of bathroom, porch, and terraces, and shall have a value of not less than \$7,000.00 based on 1954 values.
5. No noxious or offensive trade, business, or vocation shall be operated or practiced on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become an annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.
6. All fences erected on the front of any lot and to half the depth thereof shall be of ornamental type and shall be not more than four (4') feet in height.
7. All sewage and wells (if wells are used) shall be placed so as to conform to recommendations of the Board of Health.

The lands above referred to and subject to the above protective covenants are described as follows:

The following lots as shown and delineated on a plat of HOOKERKEN EXHIBIT made by Barber, Hooks & Associates, dated March 30, 1953, and recorded in the Office of Clerk of Court of Lexington County, South Carolina, in Plat Book 30-0, at page 12: Lots 14, 15, and 17 in Block "B"; Lots 1 through 9 inclusive in Block "B"; Lots 1 through 11 inclusive in Block "A" except Lot 2 which has heretofore been conveyed.

Also: A lot described as follows: Commencing at a point One Hundred Ten (110') feet, more or less, East of the Northeast corner of intersection of Road Aramis and Northwood Road, and running in an Eastward direction from said point along the Northern edge of Northwood Road, for a distance of Two Hundred Fifty-five (255') feet, more or less, to a point; thence turning at a right angle and running in a Northern direction for a distance of One Hundred Fifty (150') feet, more or less, to a point; thence turning and running in a Southerly direction for a distance of Two Hundred Fifty-five (255') feet, more or less, to a point and thence turning and running in a Southerly direction One Hundred Fifty (150') feet to the point of commencement.

Recorded October 1, 1954, 1:12 P.M.  
Holmes C. Spalmer  
Clerk

Invalidation of any of the provisions hereof by judgment or Court Order shall in no wise affect any of the other provisions, but they shall remain in full force and effect.

These covenants shall run with the land, shall constitute limitations on the use thereof and shall be binding upon the undersigned, their heirs and assigns and all persons claiming under them unless, after a period of ten (10) years from the date hereof changed or modified by written agreement executed by the majority of the then owners of the lots subject thereto, and shall run until January 1, 1975, and shall as then in force continue until changed, modified or extinguished, in whole or in part, by written agreement executed by the majority of the owners of the lots subject thereto.

Witness our hands and seals this 30<sup>th</sup> day of September, 1974

H. E. Fessinger (SEAL)  
H. E. Fessinger

J. O. Hood, Jr. (SEAL)  
J. O. Hood, Jr.

WITNESSES:

Frederic E. Cargle  
J. H. Paul, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Personally appeared before me Frederic E. Cargle and made oath that he saw the within-signed H. E. Fessinger and J. O. Hood, Jr. sign, seal and as, their act and deed, deliver the within-written Protective Covenants for the uses and purposes therein mentioned, and that he, with J. H. Paul, Jr. witnessed the execution thereof.

Frederic E. Cargle

Subscribed to before me this

30<sup>th</sup> day of September, 1974

J. H. Paul, Jr.  
Notary Public for South Carolina

|                              |   |                                           |
|------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA,     | ) | IN THE COURT OF COMMON PLEAS              |
|                              | ) | FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON          | ) |                                           |
|                              | ) |                                           |
| Lisa Cruz,                   | ) | <b>SUMMONS</b>                            |
|                              | ) |                                           |
| Plaintiff,                   | ) |                                           |
|                              | ) |                                           |
| v.                           | ) |                                           |
|                              | ) |                                           |
| Heyward and Kathy Bouknight, | ) |                                           |
| Defendant.                   | ) |                                           |

TO THE DEFENDANT ABOVE NAMED,

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the plaintiffs or their attorney(s), THE LAW OFFICE OF JAMES R. SNELL, JR., LLC, at their office at 123 Harmon Street, Lexington, South Carolina, 29072, within thirty (30) days after service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Dated at Lexington, South Carolina, on the 28th day of August, 2019.

s/ James R. Snell, Jr.  
 James R. Snell Jr., Bar No.: 72663  
 Law Office of James R. Snell Jr., LLC  
 123 Harmon Street  
 Lexington, South Carolina 29072  
 (803) 359-3301  
 (800) 567-6249 (facsimile)  
*Attorney for the Plaintiff*

|                              |   |                                           |
|------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA,     | ) | IN THE COURT OF COMMON PLEAS              |
|                              | ) | FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON          | ) |                                           |
|                              | ) |                                           |
| Lisa Cruz,                   | ) | <b>COMPLAINT</b>                          |
|                              | ) |                                           |
| Plaintiff,                   | ) |                                           |
|                              | ) |                                           |
| v.                           | ) |                                           |
|                              | ) |                                           |
| Heyward and Kathy Bouknight, | ) |                                           |
| Defendant.                   | ) |                                           |

The Plaintiff will show unto this Honorable Court as follows:

1. That the Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina residing at 101 Wessinger Drive, Lexington, South Carolina. This is lots 1 and 2 of Block B of the Brookgreen Terrace development.
2. That the Defendants are citizen and resident of the County of Lexington, State of South Carolina who own 110 Wessinger Drive, Lexington, South Carolina. This is lots 5 and 6 of Block A of the Brookgreen Terrace development.
3. That this action concerns the enforcement of covenants and restrictions for lots in Brookstream Terrace, County of Lexington, State of South Carolina. Venue is appropriate in Lexington County pursuant to S.C. Code § 15-7-30.
4. That the Defendant's property and other lots in the development were deeded pursuant to a Protective Covenants recorded on October 1, 1954 @ 1:12 P.M. in the Lexington County Office of the Register of Deeds in Book 7-O page 59. A copy is attached hereto as Exhibit "A".
5. That the Protective Covenants includes, among other terms, the following conditions:

(1)

“No trailer, basement, tent shack, garage or barn shall at any time be used as a residence either temporary or permanent.”

(3)

“Dwelling erected shall be of modern design and construction and shall have curtain walls of masonry or brick underneath the building on all sides.”

(4)

“Dwellings shall have not less than five (5) average size rooms exclusive of bathrooms, porches, and terraces, or the equivalent floor space of five average size rooms exclusive of bathroom, porches, and terraces, and shall have a value not less than \$7,000 based on 1954 values.”

(5)

“No noxious or offensive trade; business, or vocation shall be operated or practices on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become an annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.”

6. That the Defendants have already advised Lexington County of their intention to utilize the hose trailer as their residence.
7. That the Plaintiff is informed and believes that the Defendants are in violation of these protective covenants by the recent delivery and of a house trailer on the lot.
8. That the Plaintiff is informed and believes that the Defendants’ conduct is specifically in violation of the protective covenants, and that this affects the value of her property and adjoining properties in the development.

9. That the Plaintiff is informed and believes that the purpose of the Protective Covenants is the protect property values, ensure comp ability in the surrounding structures, and protect the general integrity of the development.
10. That the Plaintiff can see the Defendants property and it negatively affects both her personally and her property.
11. That the Plaintiff is informed and believes that she is entitled to an Order of the Court enjoining the Defendant from maintaining a mobile home, trailer, or similar structure which violates the protective covenants.
12. That the Plaintiff is informed and believes that she is entitled to an Order of the Court enjoining the Defendants from placing a trailer, mobile home, or other form of delivered building.
13. That the Plaintiff is informed and believes that she is entitled to an award of attorney's fees and costs incurred in this action, as well as all other relief which is just and proper.

WHEREFORE, the Plaintiff prays for an order:

- A) Finding the Defendants to be in violation of the Protective Covenants;
- B) Ordering the Defendants to remove any non-compliant structure and to bring and maintain their property into compliance with the Protective Covenants.
- C) Attorney's fees and costs of this action;
- D) All other relief which is just and proper.

August 28, 2019  
Lexington, South Carolina

s/ James R. Snell, Jr.  
James R. Snell Jr., Bar No.: 72663  
Law Office of James R. Snell, Jr., LLC  
123 Harmon Street  
Lexington, South Carolina 29072  
(803) 359-3301  
(800) 567-6249 (facsimile)  
*Attorney for the Plaintiff*

**STATE OF SOUTH CAROLINA**  
**COUNTY OF LEXINGTON**

**IN THE COURT OF COMMON PLEAS**

**Case No. 2019-CP-32-03305**

**Lisa Cruz,**

**Plaintiff,**

**vs.**

**Heyward and Kathy Bouknight,**

**Defendants.**

**ANSWER**

The Defendants, in answer to the Plaintiff's amended complaint, answer and allege as follows:

**FOR A FIRST DEFENSE**

1. Any allegation of the amended complaint not herein admitted, qualified, or explained is denied. Any allegations of the amended complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the amended complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the amended complaint, the Defendants admit the same upon information and belief.

3. Answering the allegations of paragraphs 2 and 3 of the amended complaint, the Defendants admit the same.

4. Answering the allegations of paragraph 4 of the amended complaint, the Defendants admit the same to the extent they accurately reflect the content of the public record.

5. Answering the allegations of paragraph 5 of the amended complaint, the Defendants admit the same to the extent they accurately reflect the content of the public record.

6. Answering the allegations of paragraph 6 of the amended complaint, the Defendants deny the same.

7. Answering the allegations of paragraph 7 of the amended complaint, the Defendants deny the same.

8. Answering the allegations of paragraph 8 of the amended complaint, the Defendants deny the same.

9. Answering the allegations of paragraph 9 of the amended complaint, the Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the same.

10. Answering the allegations of paragraph 10 of the amended complaint, the Defendants lack sufficient knowledge or information to form a belief as to the truth or falsity of the same.

11. Answering the allegations of paragraph 11 of the amended complaint, the Defendants deny the same.

12. Answering the allegations of paragraph 12 of the amended complaint, the Defendants deny the same.

13. Answering the allegations of paragraph 9 of the amended complaint, the Defendants deny the same.

14. No answer to the prayer in the amended complaint is required.

**FOR A SECOND DEFENSE**  
**(Abandonment)**

15. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

16. The Plaintiff and others have permitted numerous activities to occur in the area subject of the covenants, sometimes going on for years, that would violate the terms of the covenants the Plaintiff seeks to enforce.

17. Neither the Plaintiff nor others have taken any action about the said activities other than to let them go on.

18. The circumstances surrounding the same indicate that the covenants at issue in this case have been abandoned.

**FOR A THIRD DEFENSE**  
**(Waiver)**

19. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

20. The circumstances surrounding the Plaintiff and others permitting the numerous violations of the covenants mentioned above demonstrate a knowing and voluntary relinquishment of their rights under the covenants.

21. Accordingly, the covenants have been waived.

**WHEREFORE**, the Defendants pray for the court to:

- (a) Issue an order dismissing the amended complaint with prejudice;
- (b) Deny the Plaintiff the relief she seeks in this action; and
- (c) Grant them such other and further relief as the court deems just and proper.

Respectfully submitted,

/s/ Andrew S. Radeker  
Andrew S. Radeker  
S.C. Bar No. 73743  
HARRISON, RADEKER & SMITH, P.A.  
Post Office Box 50143  
Columbia, South Carolina 29250  
(803) 779-2211  
(803) 779-6700 (facsimile)  
drew@harrisonfirm.com (email)  
ATTORNEY FOR DEFENDANTS

Columbia, South Carolina  
September 11, 2019

**STATE OF SOUTH CAROLINA**  
**COUNTY OF LEXINGTON**

**IN THE COURT OF COMMON PLEAS**

**Case No. 2019-CP-32-03305**

**Lisa Cruz,**

**Plaintiff,**

**vs.**

**Heyward and Kathy Bouknight,**

**Defendants.**

**DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that the Defendants hereby move, pursuant to Rule 56, SCRPC, and as well as pursuant to all other applicable law, for an order granting them summary judgment in the above-captioned action.

The Defendants make this motion on the following grounds:

1. This is an action concerning real property covenants. Materially to this case, the covenants provide that “[n]o trailer, basement, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent[,]” at property subject of the covenants.
2. The Plaintiff seeks an order “enjoining the Defendant from maintaining a mobile home, trailer, or similar structure which violates the protective covenants” and “enjoining the Defendants from placing a trailer, mobile home, or other form of delivered building.”
3. The Defendants have a manufactured home at their property. They do not have a “trailer, basement, tent shack, garage, or barn” at their property.
4. The Defendants are not in violation of the covenants at issue. The Plaintiff seeks relief to which she is not entitled.

5. Upon motion, summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56, SCRPC.
6. There is no evidence to the effect that the Defendants violated the subject covenants.
7. With factual support for this necessary element of the Plaintiff’s claim missing, it is impossible for the Plaintiff to prevail on her claim.
8. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

As this is a motion for summary judgment, no consultation with opposing counsel in advance of making this motion is required.

Respectfully submitted,

/s/ Andrew S. Radeker  
Andrew S. Radeker  
S.C. Bar No. 73743  
HARRISON, RADEKER & SMITH, P.A.  
Post Office Box 50143  
Columbia, South Carolina 29250  
(803) 779-2211  
drew@harrisonfirm.com (email)  
ATTORNEY FOR DEFENDANTS

Columbia, South Carolina  
April 6, 2020

STATE OF SOUTH CAROLINA }  
COUNTY OF LEXINGTON }

PROTECTIVE COVENANTS

The lands hereinafter described as now owned by H. E. Mossinger and J. O. Road, Jr. hereinafter referred to as Owners shall be used for residential purposes only and no business structure shall be erected or maintained thereon and said lands shall be further subject to the following protective covenants, to wit:

1. No trailer, basement, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent.
2. No building shall be erected on any lot nearer than twenty-five (25') feet to the front line, nor nearer than seven and five-tenths (7.5') feet to the side line of any adjacent lot, nor nearer than fifteen (15') feet to any side street line, provided, however, that the side line restriction to an adjacent lot line shall not apply to a garage located on the rear quarter of the lot which shall not be constructed nearer than three (3') feet of the rear line of the lot. Covenants contained in this paragraph above shall be construed to be for the benefit of the Owners only who reserve the right to modify the same at will so long as said modification does not vary the distances more than thirty (30%) percent.
3. Dwellings erected shall be of modern design and construction and shall have certain walls of masonry or brick underneath the building on all sides.
4. Dwellings shall have not less than five (5) average size rooms exclusive of bathroom, porches, and terraces, or the equivalent floor space of five average size rooms exclusive of bathroom, porches, and terraces, and shall have a value of not less than \$7,000.00 based on 1954 values.
5. No noxious or offensive trade, business, or vocation shall be operated or practiced on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become an annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.
6. All fences erected on the front of any lot and to half the depth thereof shall be of ornamental type and shall be not more than four (4') feet in height.
7. All sewage and wells (if wells are used) shall be placed so as to conform to recommendations of the Board of Health.

The lands above referred to and subject to the above protective covenants are described as follows:

The following lots as shown and delineated on a plat of BROOKGREEN ESTATE made by Barber, Kucis & Associates, dated March 30, 1953, and recorded in the Office of Clerk of Court of Lexington County, South Carolina, in Plat Book 30-0, at page 12: Lots 14, 15, and 17 in Block "B"; Lots 1 through 9 inclusive in Block "B"; Lots 1 through 11 inclusive in Block "A" except Lot 2 which has heretofore been conveyed.

ALSO: A lot described as follows: Commencing at a point One Hundred Ten (110') feet, more or less, East of the Northeast corner of intersection of Road Avenue and Northwood Road, and running in an Eastward direction from said point along the Northern edge of Northwood Road, for a distance of Two Hundred Fifty-five (255') feet, more or less, to a point; thence turning at a right angle and running in a Northern direction for a distance of One Hundred Fifty (150') feet, more or less, to a point; thence turning and running in a Westerly direction for a distance of Two Hundred Fifty-five (255') feet, more or less, to a point and thence turning and running in a Southerly direction One Hundred Fifty (150') feet to the point of commencement.

Recorded October 1, 1954, 1:12 P.M.  
Holmes C. Graham  
clerk

Invalidation of any of the provisions hereof by judgment or Court Order shall in no wise affect any of the other provisions, but they shall remain in full force and effect.

These covenants shall run with the land, shall constitute limitations on the use thereof and shall be binding upon the undersigned, their heirs and assigns and all persons claiming under them unless, after a period of ten (10) years from the date hereof changed or modified by written agreement executed by the majority of the then owners of the lots subject thereto, and shall run until January 1, 1975, and shall as then in force continue until changed, modified or extinguished, in whole or in part, by written agreement executed by the majority of the owners of the lots subject thereto.

Witness our hands and seals this 30<sup>th</sup> day of September, 1974

H. E. Hossinger (SEAL)  
H. E. Hossinger

J. O. Rood, Sr. (SEAL)  
J. O. Rood, Sr.

WITNESSES:

Freeda E. Cargle  
J. H. Raul Jr.

STATE OF SOUTH CAROLINA }

COUNTY OF LEXINGTON }

Personally appeared before me Freeda E. Cargle and made oath that she saw the within-named H. E. Hossinger and J. O. Rood, Sr. sign, seal and as, their act and deed, deliver the within-written Protective Covenants for the uses and purposes therein mentioned, and that she, with J. H. Raul Jr. witnessed the execution thereof.

Freeda E. Cargle

Subscribed to before me this

30<sup>th</sup> day of September, 1974

J. H. Raul Jr.  
Notary Public for South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

) COURT OF COMMON PLEAS  
) C/A #: 2019-CP-32-03305

Lisa Cruz,

Plaintiff,

v.

Kathy Bouknight and  
Heyward Bouknight,

Defendants.

-----

**DEPOSITION OF  
KATHY BOUKNIGHT**

\*\*\*\*\*

**Thursday, March 19, 2020**  
9:06 a.m. - 9:50 a.m.



The deposition of Kathy Bouknight, taken on behalf of the Plaintiff at the Law Office of James R. Snell, Jr., 123 Harmon Street, Lexington, South Carolina, 29072, on the 19th day of March, 2020 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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**APPEARANCES****James R. Snell, Jr., Esquire**

LAW OFFICE OF JAMES R. SNELL, Jr., LLC  
 123 Harmon Street  
 Lexington, South Carolina 29072  
 Attorney for the Plaintiff

**Andrew S. Radeker, Esquire**

HARRISON, RADEKER & SMITH, P.A.  
 Post Office Box 50143  
 Columbia, South Carolina 29250  
 Attorney for the Defendants

**Also Present:**

Heyward Bouknight, husband

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| MR. RADEKER . . . . . EXAMINATION . . . . .  | 31                 |
| MR. SNELL . . . . . RE-EXAMINATION . . . . . | 35                 |
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**EXHIBITS**

|                                               |           |
|-----------------------------------------------|-----------|
| <b>Plaintiff's Exhibit Number 1 . . . . .</b> | <b>25</b> |
| (Certified Letter dated July 30, 2019)        |           |
| <b>Plaintiff's Exhibit Number 2 . . . . .</b> | <b>26</b> |
| (Mobile Home Affidavit)                       |           |
| <b>Defendant's Exhibit Number 1 . . . . .</b> | <b>33</b> |
| (Inflation Calculator pages)                  |           |

**STIPULATIONS**

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



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1     **KATHY BOUKNIGHT**, having been duly sworn, deposes and  
2         testifies as follows:

3     **MS. BOUKNIGHT - EXAMINATION BY MR. SNELL:**

4     Q:     All right.    Good morning, ma'am.    My name is  
5         Jim Snell and I'm a lawyer who represents Lisa  
6         Cruz.

7     A:     Okay.

8     Q:     And I'll thank you for coming today for your  
9         deposition.    Prior to getting started I just to  
10        review a few kind of ground rules with you.  
11        First rule of course is you've been sworn in  
12        and your testimony today is sworn testimony  
13        just like you were in court.    Second rule is  
14        whenever I ask you a question you have to give  
15        an audible answer which means you have to say  
16        yes, no or speak because the court reporter has  
17        to be able to take it down.    Do you understand?

18    A:     Yes, sir.

19    Q:     Okay.    Now if you forget and slip up which is  
20        easy to happen, okay, one of us will prompt  
21        you, okay?

22    A:     Okay.

23    Q:     And it's not a -- not that you're in trouble  
24        but it's real easy to forget, okay?    Is there  
25        any reason today that you're not able to



KATHY BOUKNIGHT

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1 understand questions and give truthful answers?

2 A: No reason.

3 Q: Now if you need -- any time as we go through  
4 these questions I don't think this will take --  
5 hopefully this doesn't take too long but if you  
6 ever do need a break or to stop for any reason  
7 just let me know. We get to a stopping point  
8 we'll stop, okay?

9 A: Okay.

10 Q: Now all I'm asking is if when we get to the --  
11 if we do take a break you're not to speak to  
12 anybody else about the subject of the case.

13 A: Sure.

14 Q: And if I ask you a question and you don't  
15 understand the question, you're not sure what  
16 it means, you'll need to let me know so I can  
17 rephrase it or ask it a different way, okay?

18 A: Okay.

19 Q: 'Cause the idea's is when the court reporter  
20 takes down what's said and what your answers  
21 are, it's assumed that you understood the  
22 question you're answering. Okay?

23 A: Okay.

24 Q: All right. So first of all give us your full  
25 name.



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KATHY BOUKNIGHT

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1 A: Katherine Lenora Derrick Bouknight.

2 Q: And what's your current address?

3 A: 108 Wessinger Drive, Lexington, South Carolina  
4 29072.

5 Q: And are you currently employed?

6 A: At Lexington School District Two at Airport  
7 High School.

8 Q: And what do you do there?

9 A: Right now I'm more of a teacher assistant  
10 position.

11 Q: All right. Now are you familiar with the -- I  
12 guess you're aware of the lawsuit that Ms. Cruz  
13 has brought?

14 A: Yes, sir.

15 Q: And I guess in your own words can you tell me  
16 what the lawsuit is about?

17 A: From what my understanding is, is that they  
18 want to call my home a trailer and it is not;  
19 it is a manufactured home on a permanent  
20 foundation. That's what I understand.

21 Q: And what's the address for the property that  
22 that structure is on?

23 A: Oh, 110 Wessinger Driver.

24 Q: Okay. And is that immediately next door ---

25 A: It is.



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1 Q: --- to the -- and tell me this -- do you own  
2 other property in the vicinity other than those  
3 two pieces?

4 A: No, I do not.

5 Q: And -- I'll ask you this, was the 108 property,  
6 is that the one in the foreclosure?

7 A: Yes, it is.

8 Q: Okay. And what's the status of that today?

9 A: It has been completed as of yesterday.

10 Q: So the court granted the foreclosure?

11 A: Yes, it did.

12 Q: Okay. All right. You -- so the plaintiff in  
13 this case is Lisa Cruz?

14 A: Yes, sir.

15 Q: Do you know her?

16 A: Yes, sir.

17 Q: Okay. Tell me how you know her?

18 A: We grew up together. She lived on the corner  
19 of where she lives at now.

20 Q: Right.

21 A: And I grew up in the house -- we were like the  
22 first two homes on the street.

23 Q: Okay. Do you have any -- do you have any  
24 reason that she would have any kind of  
25 animosity or ill will towards you?



1 A: The reason, I do not know.

2 Q: Okay. And do you have any -- I guess other  
3 than filing this lawsuit do you have any other  
4 reason to have any other reason to have any  
5 kind of animosity or ill will towards her?

6 A: No, I do not.

7 Q: And so really up until this lawsuit was filed  
8 I mean there was no reason either one of y'all  
9 had to be unhappy with the other?

10 A: Not that I know of.

11 Q: I want to ask you about some of the other  
12 people I understand live on the street just ask  
13 you the same thing. Does anybody that you'd  
14 have a -- you believe would have a reason to  
15 have any kind of personal animosity against  
16 you, okay? Ben and Katherine Alverson?

17 A: They're across the street and no, have not done  
18 anything. They grew up, they're my parents'  
19 age and they've been across the street from me  
20 since I was a little older than five when they  
21 moved over there.

22 Q: Any -- are you aware of any kind of bad  
23 feelings or ill will they would have against  
24 you?

25 A: No. In fact she said that she hoped that we



1           kept our home the other week.

2       Q:     Sure.   Same question for Joyce Hipp?

3       A:     I do not know who that is.   We have a lot of  
4           people that's rented and bought houses on that  
5           street.

6       Q:     Jeffrey Harrell?

7       A:     I believe that's the one that just bought the  
8           house that were retired people and went to a  
9           retirement home bought right next store to me.

10      Q:     Do you know Mr. Harrell?

11      A:     I -- he's introduced himself.

12      Q:     Other than just to make your acquaintance.

13      A:     Other than that, no.

14      Q:     Jane Shealy or Estelle Morgan?

15      A:     Estelle Morgan was a friend of my mom's at  
16           church, and Jane Morgan and I both went to  
17           Lexington Baptist Church together.   We didn't  
18           really hang around each other but I do know who  
19           that is.

20      Q:     Any reason she'd have against you ---

21      A:     Not that I know of.

22      Q:     --- against you?   Okay.   Richard Thayne?

23      A:     I don't know who that is.

24      Q:     Elaine Dooley?

25      A:     She is Elaine Richardson and she grew up in the



KATHY BOUKNIGHT

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1 house that she now has taken over since. It's  
2 the -- her -- just like me her mom was a friend  
3 of my mom's and her dad was a friend of my  
4 dad's and we grew up together around the corner  
5 from each other so she's taken over her mom and  
6 dad -- her mom's house. Her dad died a long  
7 time ago. But there's no reason -- she even  
8 brought me my dog that escaped from the yard a  
9 couple weeks ago.

10 Q: All right. Arnell Bl- -- Coker.

11 A: I don't know who that is.

12 Q: Okay. Sandra Moody or George High.

13 A: I do not know those people.

14 Q: Okay. And I guess is there anybody kind of in  
15 the development including on Wessinger Drive  
16 that you think would have any personal  
17 animosity or issue against you?

18 A: Other than -- I just work -- we work -- live --  
19 you know.

20 Q: Okay. So going to the property at 110, and  
21 that's the subject of the lawsuit, right?

22 A: Right. Yes, sir.

23 Q: What -- tell me what are your -- I guess this  
24 a structure has been placed there.

25 A: Yes, sir.



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KATHY BOUKNIGHT

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1 Q: And tell us about that? About the structure?

2 A: Can you narrow that down for me?

3 Q: Sure. So there's a -- the current structure  
4 that's there, right ---

5 A: Uh-huh.

6 Q: --- I understand it's ---

7 A: Sir?

8 Q: How long has it been there?

9 A: July, August.

10 Q: 2019?

11 A: Yes; yes, sir.

12 Q: Okay. And I guess will you describe it for us?

13 A: It is a manufactured home. It is -- has a  
14 crawl space, mason brick with air ducts and  
15 exactly how many square feet it is, over --  
16 it's over a thousand, eleven hundred, something  
17 like that maybe. I'm just guessing. But it is  
18 vinyl siding and shingle roof.

19 Q: Where did it come from?

20 A: Oakwood. It's on 378.

21 Q: Okay. Was that -- was it something that was  
22 sitting on the lot at the -- at the Oakwood  
23 store or was it something they had to  
24 manufacture and -- and ---

25 A: It was sitting on the lot.



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KATHY BOUKNIGHT

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1 Q: And how did it get from the Oakwood lot to  
2 Wessinger Drive?

3 A: They brought it on a bed.

4 Q: Would you ---

5 A: A truck bed.

6 Q: So they brought it on a truck?

7 A: Yes, sir.

8 Q: And -- all right. How much did it cost?

9 A: Well it ended up costing more than we thought  
10 because we had to put a septic tank in and et  
11 cetera, expenses, but it was around one hundred  
12 thousand.

13 Q: And who's idea was it to, I guess, to purchase  
14 or acquire it?

15 A: Well we went looking to see what they had  
16 knowingly, at that time back in June, July,  
17 August whichever, that we were told for  
18 settlement that we were going to now lose the  
19 108. So we were looking for something to do,  
20 and I would rather had stayed on my own  
21 property that my parents' owned, at least one  
22 of them. And due to the Quicken Loans and  
23 ruining our credit for ten years, we were  
24 financially, you know, with a, you know a low  
25 credit rating. So anyway, a modular home is



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1           like one hundred thousand more than a  
2           manufactured home. So literally, you know, we  
3           saw one that -- a manufactured home that we  
4           liked, and didn't expect to be able to get it.  
5           And back -- I called Lexington, the Town of  
6           Lexington and a lady that they said I had to  
7           talk to to see if it's approved or not for me  
8           to put a manufactured home on that particular  
9           property put me on hold for a minute and came  
10          back and said I could. And I clarified that  
11          you do mean this is a manufactured and not  
12          modular, you do understand that? And she said,  
13          yes. And even Gary Atkinson at Oakwood even  
14          called the next day to clarify, before goin'  
15          ahead with the sale, that they did mean the  
16          Town of Lexington and Lexington County that it  
17          would be permitted to put a manufactured home  
18          on that property.

19       Q:   Now were you aware -- I guess first of all is  
20           110 Wessinger Drive in the Town of Lexington?

21       A:   Actually the lady that I'm speakin' of exact  
22           said that we could put it there. She said that  
23           we needed to sign this petition 'cause it's  
24           been forever since my parents passed away.  
25           That's -- town line is at our back fence and



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KATHY BOUKNIGHT

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1 the daycare is right behind that and then the  
2 BI-LO was, you know, on the main road, Columbia  
3 Avenue, on the other side of that, daycare, so.  
4 So the daycare center is right behind 108 and  
5 110.

6 Q: So 110 is not in the Town of Lexington.

7 A: No, that line is the buffer zone right there  
8 between the nursery and my property.

9 Q: Okay. And I was going to ask you -- so you  
10 checked with the Town of Lexington and they  
11 said you could have it, the manufactured home,  
12 right?

13 A: Yes, sir.

14 Q: And at the time you spoke to them did you know  
15 that the property wasn't even in the Town of  
16 Lexington?

17 A: I knew it was not in the Town of Lexington.  
18 The lady said that they wanted us to both sign  
19 this petition to be put in the Town of  
20 Lexington, but then the meeting was supposed to  
21 have happened and then I had to go ask her what  
22 happened to that, you know, what happened, and  
23 she said it didn't get voted into the town and  
24 that was about it.

25 Q: Did -- to the best of your knowledge, did



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1           anyone else check to see if legally or it was  
2           permissible to put this manufactured home or  
3           structure at 110 Wessinger?

4       A:   Well the people at the Town of Lexington, the  
5           Lexington -- I did most of the leg work for the  
6           permit. There's a checkoff list.

7       Q:   Right.

8       A:   And I had to do most of that for some reason.  
9           And so Oakwood -- and so it was just permit --  
10          you know, permits gettin' issued for everything  
11          and there was no problem because it had to be  
12          -- it had to be with, you know, made to be a  
13          permanent structure. That was -- we knew that  
14          -- and it had to be over 800 square feet and  
15          then we had to put a septic tank because they  
16          were not, we checked again, gonna put a sewer  
17          line down. So we just went by the rules and  
18          went by what they said I could do and not do.

19      Q:   Were you aware about the restrictive covenants?

20      A:   I've had this -- I've seen that all my life and  
21          had all the paperwork from my parents since  
22          they passed away.

23      Q:   So you knew what the restrictive covenants  
24          said?

25      A:   Yes, sir.



1 Q: Okay. And well let me ask you this, what was  
2 your parents' names?

3 A: Eulace Clifford and Betty Joe Corley Derrick.

4 Q: Now are you aware of any prior litigation  
5 involving this same property?

6 A: Yes. Uh-huh. Back in -- when we had our  
7 children, and was around ten or 11 years old,  
8 we had gotten a double wide and we had put it  
9 at I believe Railroad Avenue in Pete Mills  
10 Mobile Home Park. And that was because the  
11 Alverson's went around and got a petition. But  
12 we were told if we got a petition from Brook  
13 Green Terrace, you know, saying that it was  
14 okay, which we did -- and my mom worked for the  
15 Randy Davis and George Nicholson law firm for  
16 47 years right before she passed away in 2003,  
17 so we knew all the legalities to do. So, went  
18 around -- it's just that the Alverson's went  
19 and we heard through neighbors that they went  
20 around and said we were just gonna through a  
21 trailer behind my parents' house and that's why  
22 they didn't want -- they said that they didn't  
23 want -- and joined in -- want a trailer thrown  
24 into the neighborhood.

25 Q: And so you're aware back in the -- I guess you



1           were aware that there was a court case  
2           involving this?

3       A:    Well, they did do legal work that was served to  
4           my parents.

5       Q:    And you're aware I guess that the court back in  
6           -- at that time had issued an order that they  
7           couldn't place what they were asking to place  
8           there?

9       A:    That's correct.

10      Q:    And tell me, in your own words I guess, what is  
11           different with what you've asked to do now than  
12           what was -- than was back then?

13      A:    Well for one thing, they do not make -- this is  
14           not a trailer. It's not even what they call --  
15           what do you call it? A double wide. It is a  
16           manufactured home. And the difference is, is  
17           that HUD has actually changed the rules, they  
18           made them come up to better specs now than they  
19           did have back at that time, to be just as -- if  
20           not better than the homes that are there now,  
21           more valuable than. The market value is more  
22           so on my home than some of the homes on the  
23           street.

24      Q:    Did you have a -- I guess did you take out a  
25           mortgage or a loan to get the structure?



1 A: (No response.)

2 Q: Like the -- what you bought from Oakwood? Did  
3 you have to get a loan, either like a personal  
4 loan or a loan on it or a mortgage to get the  
5 money to buy it?

6 A: Of course. Yes. Yes, sir.

7 Q: Okay. Did you get a mortgage?

8 A: Yes, sir.

9 Q: Okay. Did you have a -- I guess a closing with  
10 a lawyer?

11 A: Yes, sir.

12 Q: Okay. And what lawyer was that?

13 A: Moran

14 Q: Moran?

15 A: M-O-R-A-N.

16 Q: And where -- do you know his first name?

17 **MR. RADEKER:** I know it.

18 Q: If you don't know, yeah.

19 **MR. RADEKER:** Yeah.

20 Q: Yeah, we can -- I'll ---

21 **MR. BOUKNIGHT:** Paul.

22 **MR. RADEKER:** You can't answer for her.

23 **MR. BOUKNIGHT:** Oh, yeah.

24 **MR. SNELL:** I'll follow up. Okay.

25 Q: And, okay. And so I want to make sure I



1           understand. So the -- at 110 you've installed  
2           the septic tank?

3       A:     Yes, sir.

4       Q:     Okay. And there's brick.

5       A:     Yes, sir.

6       Q:     Kind of making a crawl space underneath?

7       A:     It is the regular brick that every home has  
8           that has to have a crawl space, and I believe  
9           it's in the specs t that you have to have in  
10          that subdivision: a crawl space. I'm not sure.

11      Q:     And then you have a -- is there a front porch  
12           or a back porch?

13      A:     We were going to do that but we had to use that  
14           money for an attorney.

15      Q:     And then the -- so the structure you bought is  
16           -- I guess placed on the brick foundation, or  
17           placed ---

18      A:     It is.

19      Q:     --- on a crawl space. And is there anyone  
20           living in it currently?

21      A:     We are kind of moving in between both until we  
22           get this finalized.

23      Q:     And is it your intent that that become your  
24           primary residence?

25      A:     Yes, sir.



KATHY BOUKNIGHT

19

1 Q: Okay. All right. All right. Let me -- and do  
2 you -- I guess do you believe that what you --  
3 what you're trying to do, do you believe that  
4 complies with or doesn't comply with the  
5 recorded restrictions?

6 A: Oh it definitely applies to it. I did not  
7 include a porch with the mortgage payment  
8 because I wanted to keep it as low as possible  
9 and just put the front porch on after we had  
10 it.

11 Q: Yeah.

12 A: And a deck and all that.

13 Q: So it's your understanding what you're doing  
14 complies with the restrictions?

15 A: Yes, sir.

16 Q: Okay. Now do you believe that -- first of all,  
17 is there anyone else in the development or on  
18 the street -- has -- are there anyone else with  
19 a manufactured home?

20 A: Right around on the corner especially across  
21 from Lisa Cruz there is a single wide mobile  
22 home that was put there many years ago that  
23 I've never paid attention to 'til now, 'til  
24 this came up. And it is owned by Siller  
25 Anderson, but she is -- actually I know her

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1 sort of from her son, but a friend of ours has  
2 spoken with her. She is a retired sergeant I  
3 believe. But she bought the home already --  
4 mobile home already there years ago. I don't  
5 know what year. And they had added a porch and  
6 a room on the back, but you can tell from the  
7 side that it is a single wide mobile home that  
8 you can see from Ms. Cruz's backyard.

9 Q: And so that's -- but that's not actually in the  
10 same development with the same restrictions  
11 that your property has, correct?

12 A: I do not know.

13 Q: Okay. So you don't -- so as far as any  
14 property with the same restrictions that your's  
15 has ---

16 A: It's still in Brook Green Terrace.

17 Q: Okay. And so as far as whether or not the  
18 restrictions apply, you don't know?

19 A: As far as I'm concerned Brook Green Terrace  
20 should be Brook Green Terrace and all the  
21 covenants should be in close with that, but if  
22 there's any difference I do not know of it.

23 Q: Okay. And do you believe that that -- whatever  
24 that -- if it was -- if the restrictive  
25 covenants apply, do you believe that that



1 property is in compliance or out of compliance?

2 A: Well they put a porch on it, they put a back  
3 room on it, and apparently no one has seen a  
4 problem with it, and I certainly didn't go  
5 around to see a problem with it. So, unless  
6 you're trying to literally stare at it and see  
7 that it is a single wide you wouldn't know  
8 unless you went down across the street and  
9 looked at it from the side.

10 Q: So does that -- I'm going to answer for you,  
11 but I guess as far as the restrictions -- the  
12 recorded -- are you familiar with the recorded  
13 restrictions ---

14 A: Yes, sir.

15 Q: --- on property? Would that property be in  
16 compliance with your recorded restrictions to  
17 the best of your understanding?

18 A: Yes, I think so.

19 Q: Okay. Are there other properties in the  
20 development that are out of compliance with the  
21 restrictions?

22 A: I really haven't had time to go look at other  
23 people's homes ---

24 Q: Okay.

25 A: --- to see if they're in compliance or not.



1           That's not been a concern of mine.

2       Q:     Okay.  So are you -- are you aware of any other  
3           properties that would violate the terms of the  
4           covenants that this case is about?

5       A:     No, sir.

6       Q:     And are you aware of any circumstances where  
7           the covenants just should no longer apply or  
8           shouldn't be applicable to anyone's property  
9           anymore?

10      A:     Well my father bought this Lot 7 and 8 in the  
11           '70's, and things that's in that covenant don't  
12           apply to this day and age.  My father was still  
13           there but we had to open it open to get our  
14           shed in there so we haven't known 'til this is  
15           done, you know, we hadn't done any landscaping  
16           and whatnot yet, so.  But my dad put a regular  
17           chainlink fence across the front.  So to me the  
18           covenant says ornamental fence across the front  
19           is only permitted.  Today's would be -- it  
20           would have to be iron works to be ornamental,  
21           not a chainlink fence that's rusted.  So, that  
22           covenant is outdated.  So, that's about all I  
23           can say about that.  It's just -- it's just  
24           like a manufactured home, per HUD, has upgraded  
25           manufactured homes to be their standards, up to



1           their standards -- new standards. And so that  
2           does not apply to the old covenant.

3       Q:     Okay. And so -- but -- I just to make sure  
4           I've got it right. So to the best of your  
5           understanding there's no other property --  
6           there's no property on Wessinger Drive or in  
7           the development that is currently in violation  
8           of the covenants?

9       A:     Not in my loop.

10      Q:     And has there ---

11      A:     Brook Green Terrace goes back, far back, and I  
12           haven't looked.

13      Q:     And are you aware of any specific instances in  
14           the past where property was allowed to violate  
15           the covenants?

16      A:     Not that I'm aware of.

17      Q:     All right. And jumping back, you purchased  
18           this from the Oakwood dealership you said on  
19           378?

20      A:     Yes, sir.

21      Q:     Can you tell me what that -- what else would be  
22           close to that dealership or that store?

23      A:     Hudson's Barbeque is across the street.

24      Q:     So that's 378 like Sunset Boulevard?

25      A:     Yes, sir.



1 Q: Okay. And who was the salesperson?

2 A: Gary Atkins.

3 Q: Okay.

4 A: Mr. Atkins or Atkinson. I forgot. I think it  
5 was Atkins.

6 Q: And who is Gail Packard?

7 A: I do not know.

8 Q: Okay. And that's somebody perhaps involved in  
9 permitting for the house?

10 A: Probably so. There's so many different people.

11 Q: Do you know who Rosemary Nuzzo is?

12 A: That's the person that told me that I was  
13 allowed to put a manufactured home on that  
14 property.

15 Q: And that's from -- well who does she work for?

16 A: She's at the Town of Lexington.

17 Q: And tell me about what did Chris Harmon do  
18 regarding this permit?

19 A: I know he works there and he actually -- when  
20 this was goin' on gave me the -- just answered  
21 the questions for me and didn't -- just getting  
22 market values of the homes on the street, on  
23 the loop, for me, and didn't see where there  
24 was a problem and that they permitted it to be  
25 there and if there was a problem it should go



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1 back to their office because they would have  
2 said that was allowed for us to put a  
3 manufactured home on their property.

4 Q: All right. When was the first time you learned  
5 that somebody or anybody didn't like this?

6 A: Probably from your paperwork that was sent.

7 Q: Well let me ask you ---

8 **MR. SNELL:** Actually I'm going to ask if I could  
9 have this marked.

10 A: Oh, you mean -- excuse me. If you can rephrase  
11 that and I can answer you again.

12 **(Plaintiff's Exhibit Number 1 was marked for**  
13 **identification purposes.)**

14 Q: Well let me -- yeah, we'll go back. The first  
15 thing I'm going to show you something marked as  
16 a -- marked as Exhibit 1, and that's a letter.

17 A: Yes, I'm remember reading that. I do have  
18 fibromyalgia but I'm remembering now.

19 Q: And I guess would you agree that's a letter  
20 sent certified mail dated July 30th to you by  
21 a lawyer named Joe North?

22 A: Yes, I remember that piece of paper.

23 Q: And did ---

24 A: And it was from the man next door that moved  
25 into the Wingard residence right next doorh to



1 108.

2 Q: And would you have I guess received this  
3 shortly after July 30th of 2019?

4 A: Whenever the date was. I'm not gonna remember.

5 Q: Okay.

6 A: Dates.

7 Q: Okay.

8 A: Exactly.

9 Q: Had anyone -- have you spoken to anybody else  
10 or had anybody else express I guess objections  
11 or disagreement with the structure prior to  
12 this letter?

13 A: Just the Alverson woman across the street which  
14 turned around and changed her mind a few weeks  
15 ago to say, hey, I hope you win. And then, you  
16 know, right when the home was brought in on the  
17 bed, the neighbor next door that used to work,  
18 attorney or whatever his name is, came to  
19 flicker the covenant at my husband through our  
20 car door.

21 **(Plaintiff's Exhibit Number 2 was marked for**  
22 **identification purposes.)**

23 Q: I want to show what's marked as Exhibit 2 and  
24 ask if you could tell us what that is?

25 A: Let's see, mobile home affidavit. And this is



1           who, Packard signed. Let's see, is the tract  
2           or parcel land restricted by any recorded  
3           covenant that is contrary to or conflicts with  
4           or prohibits the present activities; so no, so  
5           that was correct. I do not currently reside at  
6           this location, which to me was meant to be the  
7           110. This is to confirm that there is or are  
8           currently no existing mobile homes on the above  
9           referenced parcel. So, not a mobile home, it's  
10          a manufactured home.

11       Q:     So is this the -- so this is the mobile home  
12              affidavit that you filled out to give to  
13              Lexington County?

14       A:     Well whatever paperwork I was sent back and  
15              forth to get signed, yes.

16       Q:     Okay. So this has your signature on it?

17       A:     That is definitely my signature. Uh-huh.

18       Q:     And I guess -- and you spoke before about  
19              checking the box no regarding any recorded  
20              covenants that is contrary to or conflicts with  
21              or prohibits the proposed activity.

22       A:     Right.

23       Q:     Now at the time you completed the form you knew  
24              about the covenants, correct?

25       A:     Yes, sir.



1 Q: But you don't believe they are contrary to what  
2 you're trying to ---

3 A: It says no trailer.

4 Q: Okay.

5 A: I'm not livin' in a horse trailer. Not livin'  
6 there yet at all, but all the way. But I do  
7 not live in a trailer. I did not purchase a  
8 trailer.

9 Q: And are there -- and the -- I guess the  
10 structure is vinyl siding on all sides,  
11 correct?

12 A: Yes, sir.

13 Q: And it's kind of -- it's -- I don't want to  
14 mistake the name and the color but is it kind  
15 of a beige or a tan?

16 A: Kind of like light yellow.

17 Q: And, I mean, would you ---

18 A: With brown shutters.

19 Q: And now the other houses on the street are  
20 primarily predominantly brick, correct?

21 A: The one across the street is half and half  
22 because the tornado came through and actually  
23 totaled that home and they had to rebuild it.  
24 So, my mom told me those homes were brought in  
25 in portions when they were first brought in



1           too. But when that first -- forced to put the  
2           home next door, as you brought up earlier, my  
3           mom, who worked for the law firm, said that she  
4           saw those houses right across the street from  
5           me and on down be brought into as sections,  
6           already pre-built and brought in. But as far  
7           as you're talkin' about all brick, they have  
8           porches that are built on the back that are  
9           vinyl, screened. And then, like I said, the  
10          one right across the street from me is like --  
11          it was probably used to be a car port. I'm not  
12          sure. I don't remember as a child, but for  
13          that tornado, but it is vinyl now, half brick,  
14          half vinyl across the street from me.

15       Q:     And the remaining -- I guess -- and they're --  
16             and I know some of the houses have what I would  
17             call vinyl accents or accents under the windows  
18             on the houses.

19       A:     Excuse me?

20       Q:     I think some of the houses have little bits of  
21             white colored, if it's vinyl or some material,  
22             underneath the windows or as accent pieces ---

23       A:     Oh, of course.

24       Q:     --- right? And -- but, I mean, 'cause you'd  
25             agree with me that the structure you brought



1 out is different than everything else on the  
2 street currently?

3 A: I mean ...

4 Q: Does it look like the other properties there?

5 A: It will once we put a porch on it.

6 Q: Okay. So the yellow kind of vinyl structure  
7 you've got is going to look like the other ---

8 A: Yes, it will.

9 Q: --- brick -- predominantly brick structures?

10 A: It'll probably look better.

11 Q: Okay. So basically you think it's the same as  
12 what's already there with the other houses?

13 A: Nicer once we get through.

14 Q: Okay. But, I mean, you think it'll look the  
15 same?

16 A: As I said, better.

17 Q: Okay. When you say better you mean it'll look  
18 different?

19 A: Yes, it will.

20 Q: Okay. And let's -- what you -- what do you  
21 hope to see at the end of this lawsuit?

22 A: That we finally have a home and I have a yard  
23 that I can take care of and work in. That's  
24 why I didn't want to rent a place. I wanted a  
25 place that nobody could -- you know, so I have



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1 my own piece of dirt and I could have a yard.  
2 And everywhere -- anywhere before you get to  
3 Gaston is over a thousand dollars to rent, and  
4 if I'm payin' a thousand dollars why can't I  
5 pay it for a place that's mine.

6 Q: All right. Thank you very much. I don't think  
7 I have any other questions for you.

8 A: Okay. Thank you.

9 **MS. BOUKNIGHT - EXAMINATION BY MR. RADEKER:**

10 Q: I've got just a few follow-ups. This was  
11 pretty brief and I'll probably be even briefer.  
12 All right. Tell me, Kathy, what is the kind of  
13 house that's at 110 Wessinger Driver?

14 A: It is a manufactured home on a permanent  
15 foundation.

16 Q: Okay. Does it have any wheels on it?

17 A: It does not.

18 Q: To your knowledge has it ever had any wheels on  
19 it?

20 A: Not to my knowledge. It was brought in on a  
21 bed, flat bed.

22 Q: All right. Is it capable of being easily  
23 pulled behind something?

24 A: There's no tongs whatsoever and it's under --  
25 it has \$6,000 worth of masonry brick underneath



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1 it.

2 Q: Okay. All right. At 110 Wessinger Drive, do  
3 you and your husband have a trailer there?

4 A: Where?

5 Q: At 110 Wessinger Drive do you and your husband  
6 have a trailer there?

7 A: No.

8 Q: Do you have a basement there?

9 A: No.

10 Q: Do you have a tent shack there?

11 A: No.

12 Q: Do you have a garage there?

13 A: No.

14 Q: Do you have a barn there?

15 A: No.

16 Q: Is the dwelling that you've got at 110  
17 Wessinger Drive, is it of modern design and  
18 construction?

19 A: Yes, it is. It even fits the -- better for the  
20 safety codes and the -- you know, of course  
21 with HUD, better safety codes than the houses  
22 there do not have, my old house does not have.  
23 And the electricity is actually up to better  
24 than anyone has because it's a -- set with the  
25 thermostat and the heat and air unit is set



1           where you can actually set it for different  
2           times of the day, blah, blah, blah, so.

3       Q:     Okay. Does it have curtain walls of masonry or  
4           brick underneath the building on all sides?

5       A:     Masonry. And it has the duct work.

6       Q:     Okay. So, yes?

7       A:     The air ducts, yes.

8       Q:     Okay. And it goes around the entire structure  
9           on all sides?

10      A:     The complete structure, yes.

11      Q:     Okay. All right. Let's talk about the size of  
12           it. Excluding bathrooms and porches -- which  
13           you said you don't have -- terraces -- have it  
14           got five average size room or the equivalent of  
15           five average size rooms?

16      A:     Yes, it does.

17      Q:     All right. Does it have a value not less than  
18           \$7,000 dollars that is greater than \$7,000  
19           dollars based on 1954 values?

20      A:     Oh my, yes.

21      Q:     All right. I want to show you this and ask  
22           that this be marked as Defendant's Exhibit 1.

23           **(Defendant's Exhibit Number 1 was marked for**  
24           **identification purposes.)**

25      Q:     Take a look at that for me. Is that a -- from



1 an inflation calculator website?

2 A: Okay, yes.

3 Q: Okay. And what does it give as the comparative  
4 value in 2019 of what \$7,000 dollars was in  
5 1954?

6 A: Probably.

7 Q: What does it give for that?

8 A: I mean, it says \$7,000 dollars in 1954 is  
9 compared to \$66,765 in 2019.

10 Q: Did y'all pay any more for the manufactured  
11 home that's it's 110 Wessinger Driver than  
12 that?

13 A: Just for the manufactured home itself  
14 structure, what, the edifice?

15 Q: Uh-huh.

16 A: It was around that amount that they said the  
17 sales price was.

18 Q: Okay. And so -- but that doesn't count any  
19 money to pay toward to that to get the dirt,  
20 the lot that's it's on, right?

21 A: Oh, no.

22 Q: 'Cause you already had that?

23 A: I inherited that.

24 Q: Okay. About how much would you say that lot  
25 would be worth if ---



1 A: That was already paid during the years when we  
2 didn't have an economy, about 45,000.

3 Q: Okay. All right. I'm trying to think if I  
4 have any further questions for you. I don't.

5 A: Okay.

6 Q: If he has nothing else for you that's it.

7 A: Do you get this back or what?

8 Q: This man (indicating).

9 A: Oh, I'm sorry.

10 Q: Do you have any follow-ups?

11 **MS. BOUKNIGHT - RE-EXAMINATION BY MR. SNELL:**

12 Q: Briefly. You said it was brought out on a bed  
13 of a truck; is that correct?

14 A: That's what I remember.

15 Q: And the truck had wheels?

16 A: The truck with the bed -- the bed of the truck  
17 -- the cab of the truck had wheels.

18 Q: Nothing further.

19 **(There being no further questions, the deposition**  
20 **concluded at 9:50 a.m.)**

21

22

23

24

25



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Record on Appeal p. 082

**CERTIFIED MAIL ~ RETURN RECEIPT REQUESTED  
& REGULAR US MAIL**

**Parcel # 7015 3430 0000 7512 9278**

July 30, 2019

Mr. Heyward W. Bouknight  
Mrs. Kathryn D. Bouknight  
108 Wessinger Drive  
Lexington, South Carolina 29072

**RE: 110 Wessinger Drive  
Lexington, SC 29072**

Dear Mr. & Mrs. Bouknight:

I have been contacted by several residents of the Brookgreen Terrace Subdivision regarding the double-wide mobile home which was placed on the property owned by you located at 110 Wessinger Drive. The Declaration of Restrictions which are in effect in Brookgreen Terrace prohibit mobile homes in the subdivision. This letter is to put you on notice that the mobile home located on the property at 110 Wessinger Drive is in clear violation of the restrictive covenants in effect for this property.

If the mobile home is not removed within thirty (30) days of the date of this letter, legal action will be taken to have the mobile home removed and other necessary legal relief granted for the violation of the restrictive covenants.

Sincerely,

Joe R. North

JRN/rbm





# COUNTY OF LEXINGTON

## COMMUNITY DEVELOPMENT DEPARTMENT

212 South Lake Drive, Suite 401, Lexington SC 29072 Phone: (803)785-8121 Fax: (803)785-5186  
DEVELOPMENT SERVICES DIVISION

### MOBILE HOME AFFIDAVIT

TMS# 004317-01-011

APPLICANT'S NAME(S) Kathryn D. and/or Hayward W. Bauknight

APPLICANT'S ADDRESS 108 Wessinger Dr Lex 29072

PROPERTY OWNER'S NAME(S) S.A.A.

PROPERTY OWNER'S ADDRESS \_\_\_\_\_

(if different from applicant's address)

- This is to confirm that there is/are currently 0 existing mobile home(s) on the above referenced TMS parcel. (Do not count the mobile home pertaining to this request.)
- I do Not currently reside at this location.  
(do/do not)
- If you do not currently reside at this property location, will this location become your new legal residence? X Yes      No
- I (by sole or co-ownership) have 0 additional mobile homes or mobile home spaces at other locations in Lexington County:

I understand that a mobile home park is defined as: Three or more mobile homes or mobile home spaces, exclusive of a mobile home occupied by the property owner as a legal residence, that are located within the vicinity of one another and operated in any coordinated manner. The park may be located on a single parcel or multiple parcels in the same or different ownership. I also understand that this affidavit in no way constitutes approval by any other regulatory agency or authority.

I also understand that if a new parcel is to be subdivided out of the existing parent parcel, it must meet the requirements of the Lexington County Subdivision Regulations and the requirements of the Lexington County Planning Commission Access Policy. Therefore, neither this affidavit nor the Mobile Home Approval Checklist constitutes approval to subdivide property; such subdivision of property must be approved by the appropriate County staff.

Is the tract or parcel of land restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the proposed activity? ☐ Yes ☒ No

Date 6/4/19

Applicant(s) Signature Kathryn Bauknight

Daytime Phone # 803 9201097

Applicant(s) Name (Print) Kathryn Bauknight

Verification Date 06-04-2019

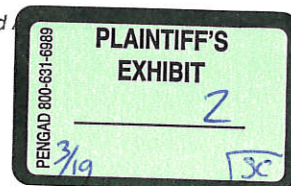
Staff Signature Carol Pickett

I hereby acknowledge that I have received the following publication(s): (Please initial for each received)

KDB Installation Guidelines for Manufactured Housing.

KDB Septic Tank Permit Procedures w/ Application for Permit to Construct an Individual Sewage Treatment and Disposal System.

(Version 2.0 Revised)



## ★ CPI Inflation Calculator

**\$7,000 in 1954 → \$66,765.69 in 2019**

Today's Refinance Rate

**2.75%**

APR 15 Year Fixed

Select Loan Amount

\$

**\$225,000**

lendingtree

No SSN required

Calculate Payment

Terms & Conditions apply. [View Terms](#)

## Inflation Calculator

Amount

\$ 7000

Start year

1954

End year

2019

Calculate

Quick links:

[\\$7,000 in 1955 → 2019](#)[\\$7,000 in 1950 → 2019](#)[Inflation rate in 2019](#)[Future inflation calculator](#)

## U.S. Inflation Rate, \$7,000 in 1954 to 2019

According to the Bureau of Labor Statistics consumer price index, today's prices in 2019 are 853.80% higher than average prices throughout 1954. The dollar experienced an average inflation rate of 3.53% per year during this period, meaning the real value of a dollar decreased.

In other words, \$7,000 in 1954 is equivalent in purchasing power to about \$66,765.69 in 2019, a difference of \$59,765.69 over 65 years.

The 1954 inflation rate was 0.75%. The current inflation rate (2018 to 2019) is now 1.81%<sup>1</sup>. If this number holds, \$7,000 today will be equivalent in buying power to \$7,126.80 next year. The [current inflation rate page](#) gives more detail on the latest official inflation rates.

### Contents

1. Overview
2. Buying Power of \$7,000
3. Inflation by City / Country
4. Inflation by Spending Category
5. Formulas & How to Calculate
6. Comparison to S&P 500 Index
7. Data Source



2.75%

APR 15, 2019



\$225,000

lendingtree

No SSN required

Calculate Payment

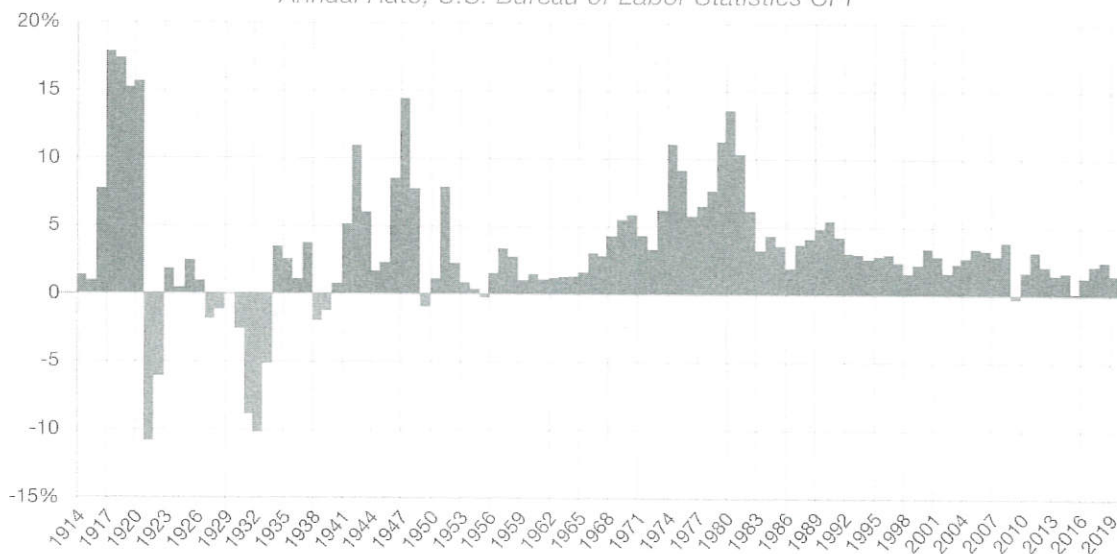
Financing fees and charges apply. Terms and conditions apply.

## Inflation from 1954 to 2019

|                         |             |
|-------------------------|-------------|
| Cumulative price change | 853.80%     |
| Average inflation rate  | 3.53%       |
| Converted amount        | \$66,765.69 |
| Price difference        | \$59,765.69 |
| CPI in 1954             | 26.900      |
| CPI in 2019             | 256.571     |
| Inflation in 1954       | 0.75%       |
| Inflation in 2019       | 1.81%       |

## USD Inflation since 1913

Annual Rate, U.S. Bureau of Labor Statistics CPI





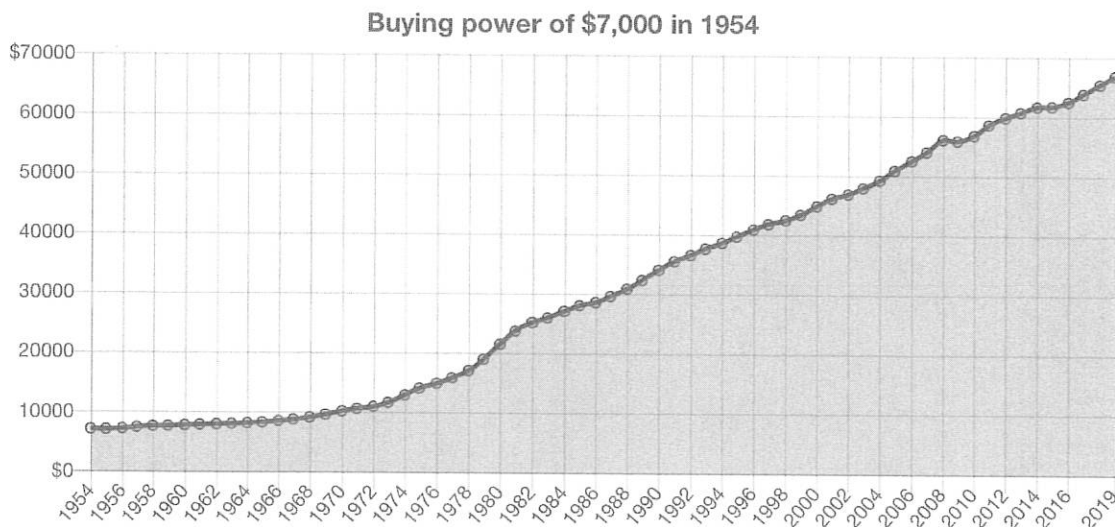
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Ad [socksoothers.com](http://socksoothers.com)

[Learn more](#)

## Buying power of \$7,000 in 1954

This chart shows calculation of buying power equivalence, often referred to as "the value of a dollar" over time for \$7,000 in 1954 (price index tracking began in 1635).

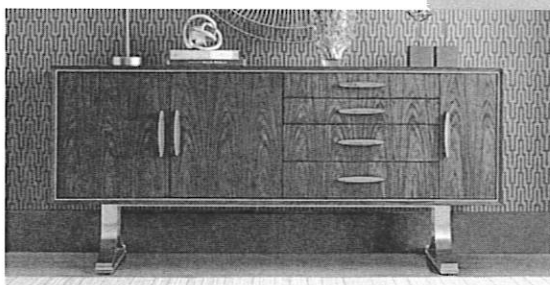


According to the Bureau of Labor Statistics, each of these USD amounts below is equal in terms of what it could buy at the time:

| Year | Dollar Value | Inflation Rate |
|------|--------------|----------------|
| 1954 | \$7,000.00   | 0.75%          |
| 1955 | \$6,973.98   | -0.37%         |
| 1956 | \$7,078.07   | 1.49%          |
| 1957 | \$7,312.27   | 3.31%          |
| 1958 | \$7,520.45   | 2.85%          |
| 1959 | \$7,572.49   | 0.69%          |

Click to show 59 more rows

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## Inflation by City

Inflation can vary widely by city, even within the United States. Here's how some cities fared in 1954 to 2019 (figures shown are purchasing power equivalents of \$7,000):

- **San Francisco, California:** 3.85% average rate, \$7,000 → \$81,757.91, cumulative change of 1,067.97%
- **Seattle, Washington:** 3.71% average rate, \$7,000 → \$74,934.93, cumulative change of 970.50%
- **Boston, Massachusetts:** 3.71% average rate, \$7,000 → \$74,797.14, cumulative change of 968.53%
- **New York:** 3.64% average rate, \$7,000 → \$71,326.13, cumulative change of 918.94%
- **Philadelphia, Pennsylvania:** 3.46% average rate, \$7,000 → \$63,890.37, cumulative change of 812.72%
- **Atlanta, Georgia:** 3.41% average rate, \$7,000 → \$61,962.76, cumulative change of 785.18%
- **Houston, Texas:** 3.41% average rate, \$7,000 → \$61,780.78, cumulative change of 782.58%
- **Chicago, Illinois:** 3.40% average rate, \$7,000 → \$61,473.55, cumulative change of 778.19%
- **Detroit, Michigan:** 3.33% average rate, \$7,000 → \$58,900.70, cumulative change of 741.44%

San Francisco, California experienced the highest rate of inflation during the 65 years between 1954 and 2019 (3.85%).

Detroit, Michigan experienced the lowest rate of inflation during the 65 years between 1954 and 2019 (3.33%).

Note that some locations showing 0% inflation may have not yet reported latest data.

## Inflation by Country

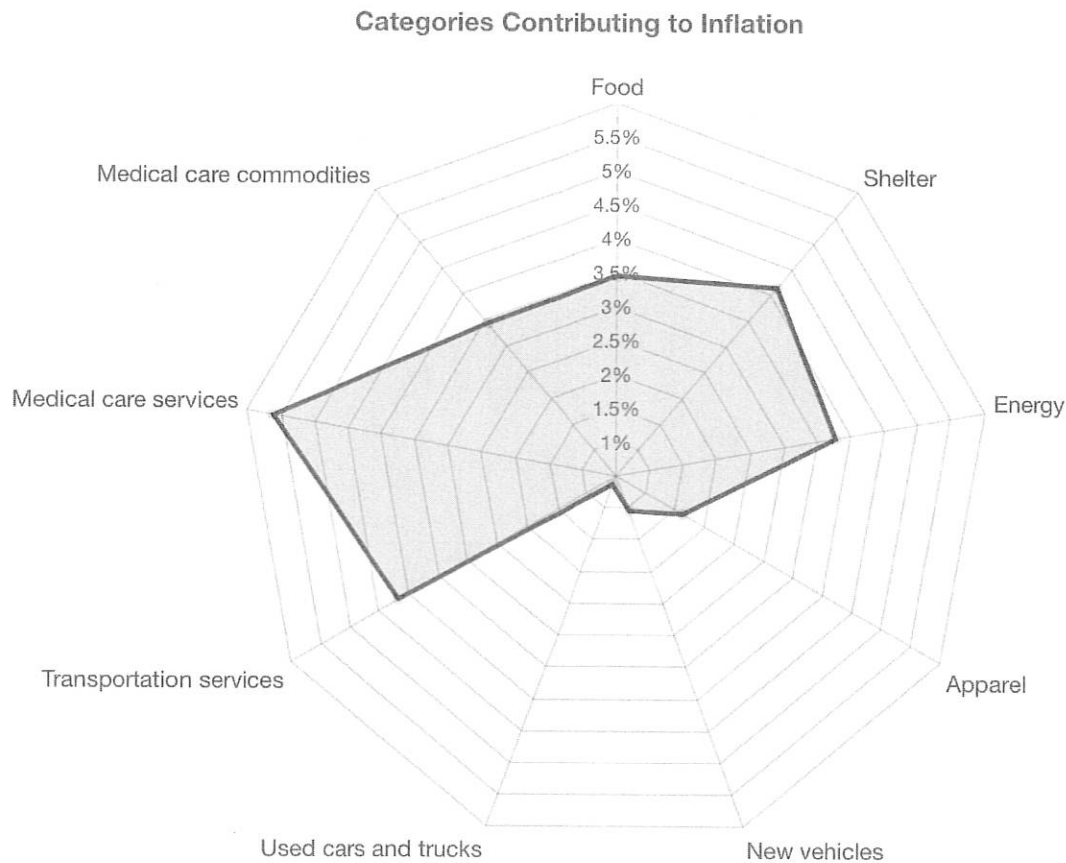
Inflation can also vary widely by country. For comparison, in the UK £7,000.00 in 1954 would be equivalent to £190,071.53 in 2019, an absolute change of £183,071.53 and a cumulative change of 2,615.31%.

In Canada, CA\$7,000.00 in 1954 would be equivalent to CA\$66,226.95 in 2019, an absolute change of CA\$59,226.95 and a cumulative change of 846.10%.

Compare these numbers to the US's overall absolute change of \$59,765.69 and total percent change of 853.80%.

## Inflation by Spending Category

CPI is the weighted combination of many categories of spending that are tracked by the government. This chart shows the average rate of inflation for select CPI categories between 1954 and 2019.



Compare these values to the overall average of 3.53% per year:

| Category                | Avg Inflation (%) | Total Inflation (%) | \$7,000 in 1954 → 2019 |
|-------------------------|-------------------|---------------------|------------------------|
| Food                    | 3.46              | 812.39              | 63,867.47              |
| Shelter                 | <b>4.15</b>       | <b>1,305.79</b>     | 98,404.97              |
| Energy                  | <b>3.78</b>       | <b>1,017.94</b>     | 78,255.65              |
| Apparel                 | 1.64              | 188.79              | 20,215.17              |
| New vehicles            | 1.04              | 96.11               | 13,727.57              |
| Used cars and trucks    | 0.62              | 49.70               | 10,478.78              |
| Transportation services | <b>4.18</b>       | <b>1,333.02</b>     | 100,311.39             |
| Medical care services   | <b>5.61</b>       | <b>3,369.86</b>     | 242,890.31             |

It's important to note that not all categories may be tracked since 1954. This table and visualization use the earliest available data for each category.

### Inflation rates of specific categories

Medical Care · Housing · Rent · Food · *More*

### Inflation-adjusted measures

S&P 500 price · S&P 500 earnings · Shiller P/E

## How to Calculate Inflation Rate for \$7,000 since 1954

This inflation calculator uses the following inflation rate formula:

$$\frac{\text{CPI in 2019}}{\text{CPI in 1954}} \times 1954 \text{ USD value} = 2019 \text{ USD value}$$

Then plug in historical CPI values. The U.S. CPI was 26.9 in the year 1954 and 256.571 in 2019:

$$\frac{256.571}{26.9} \times \$7,000 = \$66,765.69$$

\$7,000 in 1954 has the same "purchasing power" or "buying power" as \$66,765.69 in 2019.

To get the total inflation rate for the 65 years between 1954 and 2019, we use the following formula:

$$\frac{\text{CPI in 2019} - \text{CPI in 1954}}{\text{CPI in 1954}} \times 100 = \text{Cumulative inflation rate (65 years)}$$

Plugging in the values to this equation, we get:

$$\frac{256.571 - 26.9}{26.9} \times 100 = 854\%$$

## Comparison to S&P 500 Index

The average inflation rate of 3.53% has a compounding effect between 1954 and 2019. As noted above, this yearly inflation rate compounds to produce an overall price difference of 853.80% over 65 years.

To help put this inflation into perspective, if we had invested \$7,000 in the S&P 500 index in 1954, our investment would be *nominally* worth approximately \$5,686,034.18 in 2019. This is a return on investment of 81,129.06%, with an absolute return of \$5,679,034.18.

These numbers are not inflation adjusted, so they are considered *nominal*. In order to evaluate the *real* return on our investment, we must calculate the return with inflation taken into account.

The compounding effect of inflation would account for 89.52% of returns (\$5,083,619.97) during this period. This means the inflation-adjusted *real* return of our \$7,000 investment is \$595,414.21.

Investment in S&P 500 Index, 1954-2019

|                    | Original Amount | Final Amount   | Change     |
|--------------------|-----------------|----------------|------------|
| <b>Nominal</b>     | \$7,000         | \$5,686,034.18 | 81,129.06% |
| <b>Real</b>        | \$7,000         | \$595,414.21   | 8,505.92%  |
| Inflation Adjusted |                 |                |            |

## News headlines from 1954

Politics and news often influence economic performance. Here's what was happening at the time:

- IBM gives the first public demonstration of a machine translation system in their New York, head

- office.
- Colonel Gamal Abdal Nasser becomes Prime Minister of Egypt.
- 7 years of fighting ends in Indochina after a formal peace agreement is made between the French and the Communist Viet Minh.

## Data Source & Citation

Raw data for these calculations comes from the Bureau of Labor Statistics' Consumer Price Index (CPI), established in 1913. Inflation data from 1665 to 1912 is sourced from a historical study conducted by political science professor Robert Sahr at Oregon State University.

You may use the following MLA citation for this page: "\$7,000 in 1954 → 2019 | Inflation Calculator." U.S. Official Inflation Data, Alioth Finance, 24 Aug. 2019, <https://www.officialdata.org/us/inflation/1954?amount=7000>.

Special thanks to QuickChart for providing downloadable chart images.

in2013dollars.com is a reference website maintained by the Official Data Foundation.

» Read more about inflation and investment.

### Other resources:

- U.S. Economy
- Canada Inflation
- U.K. Inflation
- Australia Inflation
- Euro Inflation
- Venezuela Inflation





STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

) COURT OF COMMON PLEAS  
) C/A #: 2019-CP-32-03305

Lisa Cruz,

Plaintiff,

v.

Kathy Bouknight and  
Heyward Bouknight,

Defendants.

-----



**DEPOSITION OF  
HEYWARD BOUKNIGHT**

\*\*\*\*\*

**Thursday, March 19, 2020**  
10:03 a.m. - 10:20 a.m.

The deposition of Heyward Bouknight, taken on behalf of the Plaintiff at the Law Office of James R. Snell, Jr., 123 Harmon Street, Lexington, South Carolina, 29072, on the 19th day of March, 2020 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.



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Record on Appeal p. 095

**APPEARANCES****James R. Snell, Jr., Esquire**

LAW OFFICE OF JAMES R. SNELL, Jr., LLC  
 123 Harmon Street  
 Lexington, South Carolina 29072  
 Attorney for the Plaintiff

**Andrew S. Radeker, Esquire**

HARRISON, RADEKER & SMITH, P.A.  
 Post Office Box 50143  
 Columbia, South Carolina 29250  
 Attorney for the Defendants

**Also Present:**

Kathy Bouknight, wife

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**EXHIBITS**

|                                               |           |
|-----------------------------------------------|-----------|
| <b>Plaintiff's Exhibit Number 1 . . . . .</b> | <b>12</b> |
| (Certified Letter dated July 30, 2019)        |           |

**STIPULATIONS**

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby waived.



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Record on Appeal p. 096

1     **HEYWARD BOUKNIGHT**, having been duly sworn, deposes  
2             and testifies as follows:

3     **MR. BOUKNIGHT - EXAMINATION BY MR. SNELL:**

4     Q:     And, sir, my name is Jim Snell, and I'm a  
5             lawyer for Lisa Cruz. And I know you've been  
6             sitting here during the previous deposition, is  
7             that correct?

8     A:     Yes, I have.

9     Q:     And was that your wife?

10    A:     Yes, it was.

11    Q:     All right. And I had initially reviewed some  
12            initial rules with her so I'm going to go  
13            through the same thing with you now. Okay,  
14            sir?

15    A:     Okay.

16    Q:     First thing is your testimony here today is  
17            sworn just like it would be in court. Do you  
18            understand?

19    A:     Yes, I do.

20    Q:     All right. And is there any reason today that  
21            you wouldn't be able to understand questions or  
22            give truthful answers.

23    A:     No, there's not.

24    Q:     Now if I ask you a question and for any reason  
25            you don't understand it, doesn't make sense or



## HEYWARD BOUKNIGHT

4

1           you're not sure what it means, will you please  
2           ask me to repeat or rephrase it?

3       A:     Yes, I will.

4       Q:     And of course if at any time you need a break  
5           just let me know and we'll stop, okay ---

6       A:     Okay.

7       Q:     --- at the next stopping point. First thing is  
8           I guess can you give me your full name?

9       A:     Heyward Wesley Bouknight.

10      Q:     And Mr. Bouknight, where do you reside?

11      A:     108 Wessinger Drive.

12      Q:     Okay. And are you employed?

13      A:     Yes, I am.

14      Q:     And what kind of work do you do?

15      A:     I'm an instructional assistant at Lexington  
16           High School.

17      Q:     And what -- what do you do as an instructional  
18           assistant?

19      A:     I help with the special ed kids and make sure  
20           that they're doing what they need to do, help  
21           them with the bathrooms, getting to the right  
22           place, getting meals, during school helping  
23           instruction, and help them understand what  
24           they're reading, the math problems, whatever  
25           the teacher needs me to do.



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## HEYWARD BOUKNIGHT

5

1 Q: How long have you lived on Wessinger Drive?

2 A: Since 2005 I think.

3 Q: How long ---

4 A: I'm not for sure.

5 Q: How long have y'all been married?

6 A: It'll be 44 years in June.

7 Q: All right. Well first let me ask you this: did  
8 you have a chance to hear the questions that I  
9 asked Mrs. Bouknight?

10 A: Yes, I did.

11 Q: And did you have a chance to hear her answers?

12 A: Yes, I did.

13 Q: Okay. Is there anything that any -- were there  
14 any of her answers that you disagreed with?

15 A: No.

16 Q: Were there any of her answers to any of my  
17 questions that you thought were incomplete,  
18 like she didn't give a full complete answer?

19 A: No.

20 Q: Is there anything that you would have to add to  
21 any of those questions? Or is there anything  
22 you would have to add to any of her answers?

23 A: Not that I can think of.

24 Q: And is there any part of her answers that you  
25 would change or modify in anyway?



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## HEYWARD BOUKNIGHT

6

1 A: I'll have to think about everything she said.

2 Q: Well, that's okay. And what I -- I just want  
3 -- I just want to ---

4 A: No. No.

5 Q: Okay. I'm going to -- I am going to go through  
6 and ask a few other questions that'll be  
7 individually specific to you.

8 A: Okay.

9 Q: Okay. And I guess the first thing is, in your  
10 own words can you tell me what you think this  
11 lawsuit is about?

12 A: The people on the -- in Brook Green just want  
13 -- does not want a what they consider our  
14 manufactured home to be, a trailer, on the lot.

15 Q: And -- and I guess when you say manufactured  
16 home, that would be a house that's manufactured  
17 in a -- like a factory or plant?

18 A: Yes, sir.

19 Q: It's not constructed on the site.

20 A: No, sir.

21 Q: Now do you own any other property in the  
22 vicinity?

23 A: No, sir.

24 Q: And of course is your -- is your -- is it your  
25 wife owns the piece next door or is it that you



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## HEYWARD BOUKNIGHT

7

1           and your wife together own the piece next door?

2       A:     Me and my wife own it.

3       Q:     But other than that you don't any other  
4           property in the area?

5       A:     No, sir.

6       Q:     Okay. Have you had any kind of prior dealings  
7           with Lisa Cruz personally?

8       A:     I've known her since she was in high school  
9           through my wife.

10      Q:     But is there any reason that you're aware of  
11           she would have any kind of personal animosity  
12           or ill will toward you?

13      A:     No, sir.

14      Q:     Okay. And I -- and I can -- I asked your wife  
15           about a series of names. I think these are all  
16           neighbors. And I'm just going to read the --  
17           read all the names and I'll ask you if there's  
18           any -- any of those people would have any kind  
19           of bias or animosity or reason they wouldn't  
20           like you or be against you.

21      A:     Okay.

22      Q:     And that was Ben and Katherine Alverson?

23      A:     No, sir.

24      Q:     Joyce Hipp?

25      A:     No; no, sir.



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## HEYWARD BOUKNIGHT

8

1 Q: Jeffrey Harrell?

2 A: No, sir.

3 Q: Jane Shealy or Estelle Morgan?

4 A: No, sir.

5 Q: Richard Thayne?

6 A: No, sir.

7 Q: Elaine Dooley?

8 A: No, sir.

9 Q: Arnell Coker?

10 A: No, sir.

11 Q: Sandra Moody or George High?

12 A: No, sir.

13 Q: Okay. Are you aware of anyone else on this  
14 street or in the development that has an  
15 opinion one way or the other about the  
16 structure or this lawsuit?

17 A: No, sir.

18 Q: Okay. Did you, yourself, do any kind of  
19 research on any covenants or restrictions prior  
20 to purchasing the structure?

21 A: No, sir; I did not.

22 Q: Were you aware of the restrictions or the  
23 covenants in place?

24 A: The only thing I knew of was there was not  
25 supposed to be a trailer put there, from back



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1 in 1994 or '93; '93 or '94.

2 Q: And you recall I asked your wife a series of  
3 questions about the prior litigation back in  
4 the early '80s?

5 A: Was it that early? Okay.

6 Q: Okay. Well, let me ask you this, are you aware  
7 of a prior lawsuit involving a mobile home on  
8 the same property?

9 A: Yes.

10 Q: Okay. Were you aware at the time you purchased  
11 this structure about the prior litigation?

12 A: Yes, I was.

13 Q: And is it your -- your intent to live in the  
14 structure, I guess, and make it your primary  
15 residence?

16 A: Could you repeat that?

17 Q: All right. Are you planning on living at 110  
18 Wessinger ---

19 A: Yes, sir.

20 Q: --- as your -- and using it as your primary  
21 residence?

22 A: Yes, sir.

23 Q: Okay. And do you have a date at this point --  
24 well first, you're currently living at 108  
25 Wessinger?



1 A: Yes, sir.

2 Q: Do you have a date when you have to be leaving  
3 or vacating?

4 A: They said the place was for -- would be put up  
5 for sale, Judicial Sale, somewhere around June  
6 4th. And so -- but we'll probably be out by  
7 the -- we will not be living there by 3/31  
8 because we have all the power and water cut off  
9 there.

10 Q: And are -- are you personally aware of any  
11 other property in the development or any  
12 property in the development that's violating  
13 either the restrictions or the covenants?

14 A: Not that I know of that I can think of, unless,  
15 you know, that one across from Lisa's.

16 Q: And are you aware of any reason or  
17 circumstances that the covenants or  
18 restrictions should no longer apply or be  
19 applicable?

20 A: Only because it's a mobile -- it's a  
21 manufactured home and not a mobile home.

22 Q: Now as far as the -- so your understanding was  
23 what you purchased and ha- -- purchased and had  
24 placed on the property, your understanding is  
25 that it doesn't violate the covenants or



1 restrictions?

2 A: That's what we're figuring out, right? I mean,  
3 that's what we're here to dis- -- figure out.

4 Q: Well, that's right. Your position is it  
5 doesn't violate.

6 A: My position -- yes. My position is it doesn't  
7 violate the covenant ---

8 Q: Do you ---

9 A: --- because it's not a -- it's a manufactured  
10 home instead of a trailer.

11 Q: All right. Are you aware of any reason though  
12 that the covenants or restrictions, like,  
13 should no longer exist or no longer be valid?

14 A: Only thing I could say with length of time.

15 Q: They're too old?

16 A: Sir?

17 Q: Like they're -- just simply they're too old?

18 A: Yes.

19 Q: Okay. But other than that length of time, that  
20 would be the only reason you think they would  
21 no longer be applicable or valid?

22 A: Yes.

23 Q: Okay. And I guess would you then agree that  
24 there's no other property or building on the  
25 street that looks like the structure you've



1 placed there?

2 A: Most of them are brick with some siding on the  
3 s- -- side.

4 Q: And I guess you'd agree this one -- would you  
5 -- what's on 110 Wessinger is different than  
6 the other buildings or properties?

7 A: Yes, it is.

8 Q: Okay. And when was the first time -- I guess  
9 when did ---

10 **MR. SNELL:** Let me have this marked as 1.

11 **(Plaintiff's Exhibit Number 1 was marked for**  
12 **identification purposes.)**

13 Q: I'm going to show you what's been marked as  
14 Exhibit 1, it's the same letter that's marked  
15 Exhibit 1 in your wife's deposition, and ask if  
16 you're familiar with it.

17 A: Yes, I am.

18 Q: And is that letter from a lawyer named Joe  
19 North that was sent to you?

20 A: From who?

21 Q: Joe North.

22 A: Yes.

23 Q: And did you receive that I guess sometime on or  
24 shortly after July 30th of 2019?

25 A: Yes, I did.



## HEYWARD BOUKNIGHT

13

1 Q: Okay. And I guess were you surprised that  
2 anyone objected to the structure that was  
3 placed at 110?

4 A: Yes.

5 Q: I mean -- let me say this: you didn't  
6 anticipate this case?

7 A: No.

8 Q: Okay.

9 A: Well, I mean, just the way people are, that's  
10 ...

11 Q: Tell me more.

12 A: Just different people see things in different  
13 ways. That's all. It's they see -- some  
14 people see those houses as trailers, some  
15 people see them as manufactured homes, some see  
16 them as a house. Which is what we do, it's a  
17 house, it's our house, or will be our house.

18 Q: And I guess -- but you understood people --  
19 some people view them differently or have  
20 different opinions regarding them?

21 A: Yes.

22 Q: Okay. And so were you, I mean, surprised that  
23 on your street there would be one or more  
24 neighbors that wouldn't like it?

25 A: Yes.



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Record on Appeal p. 107

## HEYWARD BOUKNIGHT

14

1 Q: You were surprised -- were you surprised by  
2 that or not surprised?

3 A: Yes, I was surprised.

4 Q: And why did that surprise you?

5 A: Because I -- it wasn't a trailer, it was a  
6 manufactured home.

7 Q: Well, and let's dig in. So as far as -- I  
8 asked you a few minutes ago if there was  
9 anything that you would have to add or subtract  
10 or change from what your wife, her answers  
11 were; is there anything you would add, subtract  
12 or change from your wife's answers?

13 A: No.

14 Q: Okay. And is there anything else about the  
15 purchase of the mobile home that you think is  
16 relevant to the litigation that we haven't  
17 already heard about?

18 A: No.

19 Q: And is there anything regarding the  
20 manufacturing process of the mobile home -- or  
21 the manufacturing process of this structure  
22 that we haven't already heard about?

23 A: Just that it's up to Federal Code as in like a  
24 house, that it has the R-5 rating or whatever  
25 they call it for your heating and air that most



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Record on Appeal p. 108

1           houses have, and the underpinning flooring for  
2           dampness and -- that was built, put underneath  
3           when it was put on the lot.

4       Q:    And let me ask you this: so you were aware of  
5           the covenants prior to agreeing to purchase it  
6           from Oakwood, is that correct?

7       A:    Yes.

8       Q:    And did you tell Oakwood about the covenants  
9           prior to purchasing it from them?

10      A:    No, I did not, but my wife did.

11      Q:    And so she told Oakwood, prior to actually  
12           buying it, about the covenants?

13      A:    Repeat that.

14      Q:    Yeah, so I want to make sure of this. Your  
15           wife told the Oakwood dealership in Lexington  
16           about the covenants prior to y'all agreeing to  
17           purchase it?

18      A:    I do not know.

19      Q:    Okay.

20      A:    I do know that Gary said that he checked into  
21           all the -- to make sure that it was legal to  
22           put it there because he does that for, he said  
23           he did that for every place that he put a  
24           manufactured home or modular home so that they  
25           were not going through lawsuits or summary



1           judgements or whatever.

2       Q:     And I know you had a lawyer that helped with  
3           the closing, so I don't want to ask you about  
4           anything about what the lawyer told you or  
5           conversation with the lawyer, okay?

6       A:     Okay.

7       Q:     Other than Gary, though, was there anyone else  
8           that you talk to about the covenants or whether  
9           or not this was specifically allowed?

10      A:     No, sir.

11      Q:     Okay. Thank you, no other questions.

12      **(There being no further questions, the deposition**  
13      **concluded at 10:20 a.m.)**

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Record on Appeal p. 110

|                             |   |                                   |
|-----------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS      |
|                             | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON         | ) |                                   |
| Lisa Cruz,                  | ) | Case No.: 2019-CP-32-03305        |
|                             | ) |                                   |
| Plaintiff,                  | ) |                                   |
|                             | ) |                                   |
| vs.                         | ) | <b>PLAINTIFF'S MOTION FOR</b>     |
|                             | ) | <b>SUMMARY JUDGMENT</b>           |
| Heyward Bouknight and Kathy | ) |                                   |
| Bouknight,                  | ) |                                   |
|                             | ) |                                   |
| Defendants.                 | ) |                                   |

TO: ANDREW S. RADEKER, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff Lisa Cruz, by and through her undersigned counsel of record, will move before the Presiding Judge of the Court of Common Pleas for the County of Lexington at the Lexington County Courthouse, upon ten (10) days' notice hereof or as soon as after may be heard, for an Order granting the Plaintiff Summary Judgment pursuant to Rule 56, SCRPC. In support of this Motion, Plaintiff directs the Court to the Plaintiff's Memorandum in Support of Summary Judgment, as well as Exhibits thereto, filed contemporaneously herewith, and will submit that no genuine issues of material fact exist such that the Plaintiff is entitled to judgment as a matter of law. This motion will further be supplemented by such other argument, evidence or memorandum as may be appropriate.

**Law Office of James R. Snell, Jr., LLC**

/s/ James R. Snell, Jr.  
James R. Snell, Jr.  
SC BAR No.: 72663  
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May 19, 2020  
Lexington, South Carolina

|                             |   |                                          |
|-----------------------------|---|------------------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS             |
|                             | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT        |
| COUNTY OF LEXINGTON         | ) |                                          |
| Lisa Cruz,                  | ) | Case No.: 2019-CP-32-03305               |
|                             | ) |                                          |
| Plaintiff,                  | ) |                                          |
|                             | ) |                                          |
| vs.                         | ) | <b>PLAINTIFF’S MEMORANDUM IN SUPPORT</b> |
|                             | ) | <b>OF MOTION FOR SUMMARY JUDGMENT</b>    |
| Heyward Bouknight and Kathy | ) |                                          |
| Bouknight,                  | ) |                                          |
|                             | ) |                                          |
| Defendants.                 | ) |                                          |

The Plaintiff, by and through her undersigned counsel, hereby submits this Memorandum in Support of Plaintiff’s Motion for Summary Judgment in this case. Based on the testimony provided in the deposition transcripts, as well as the available record, Plaintiff submits that there is no issue of material fact in this case and that summary judgment in favor of Plaintiff should be granted as a matter of law.

Plaintiff filed an Amended Summons and Complaint on August 28, 2019. The Defendants filed an Answer on September 11, 2019. Plaintiff filed this action seeking to enforce restrictive covenants against Defendants’ property, which Defendants have violated and continue to violate. Plaintiff’s Complaint sought equitable relief in the form of an injunction to prohibit Defendants from placing the structure on their lot; Defendants have since placed the manufactured home onto their lot. The Defendants’ property is located in “Block A” of the Brookgreen Terrace development; Plaintiff’s property is located in “Block A” of the Brookgreen Terrace development.

The restrictive covenant at issue provides that:

(1) “No trailer, basement, tent shack, garage, or barn shall at any time be used as a residence either temporary or permanent.”

(3) “Dwelling erected shall be of modern design and construction and shall have curtain walls of masonry or brick underneath the building on all sides.”

(4) “Dwellings shall have not less than five (5) average size rooms exclusive of bathrooms, porches, and terraces, or the equivalent floor space of five average size rooms exclusive of bathroom, porches, and terraces, and shall have a value not less than \$7,000 based on 1954 values.”

(5) “No noxious or offensive trade; business, or vocation shall be operated or practices on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become an annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.

The subject of this action concerns a house trailer or manufactured home which Defendants had delivered onto their lot and have since continued to occupy and use as their residence. Defendant Kathy Bouknight admitted in her deposition that the structure is a “manufactured home”. **(Exhibit A – p.10, Line 13)**. Defendant testified they selected the manufactured home since it cost approximately \$100,000.00 less than a modular home. **(Exhibit A – p. 11, lines 22-25, p. 12, lines 1-4)**. When asked where the structure came from, Defendant responded that it was purchased from Oakwood Homes, and was previously sitting on the seller’s lot prior to purchase. **(Exhibit A – p.10, Lines 19-25)**. The structure was transported to the Defendants’ lot by means of a truck bed. **(Exhibit A – p.11, Lines 1-7)**. Defendant admitted that other persons had expressed disagreement with the structure prior to its placement on their property. **(Exhibit A – p.26, Lines 9-20)**. Defendant also admitted that she was aware of the covenants at the time she completed the transaction and submitted the Mobile Home Affidavit to Lexington County. **(Exhibit A – p.27, Lines 23-25)**. Regarding whether the structure was subject to recorded covenants

contrary to the structure being placed, Defendant checked the box answering “no” when she filled out the Mobile Home Affidavit. **(Exhibit A – p.27, Lines 11-22; Exhibit D).**

Plaintiff believes that the manufactured home in question violates the restrictive covenants which were recorded along with the deed to the development lots; this includes the lot where Defendants placed their manufactured home. The covenants specifically prohibit any “trailer” from being erected onto the property, to which Plaintiff contends that the manufactured home, in its plain and ordinary meaning, falls within that prohibition. Plaintiff is concerned that this trailer has already affected her own property value and the values of neighboring properties, all subject to the same restrictive covenants. Plaintiff believes the restrictive covenants seek to preserve and protect property values, as well as ensure comparability with the surrounding structures, and protect the general integrity of the development. The covenants themselves would be rendered meaningless should individual landowners violate them without consequence.

Defendants take the position that the manufactured home is not a “trailer” for purposes of the covenants. However, this position is contrary to well-established definitions of the term “trailer,” which is synonymous with “mobile home” and like structures. South Carolina, like many other jurisdictions, has long recognized manufactured homes as “mobile homes” or “trailers,” subject to restrictive covenants. Plaintiff’s position is further supported by case law in South Carolina as well as other jurisdictions. Defendants cannot seek to exclude themselves from the restrictive covenants to which their land is subject through resorting to nomenclature. Indeed, even if the Court grants deference to Defendants and accepts the term “manufactured home,” the precedent in this state and many other states offers no distinction between that and a “trailer”.

Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987) applies to this case and is determinative on the issue. In that case, the defendant appealed a judgment ordering him to remove the double-wide mobile home from his land that was subject to a restrictive covenant. The Court of Appeals affirmed. The defendant's argument in Heape consisted of distinguishing his "double-wide mobile home" from the language in the covenant, which prohibited "trailers" from being erected on the property (whether temporarily or permanently). In distinguishing between the physical characteristics and attributes between a "mobile home" and "trailer," the Court of Appeals determined that:

"Our opinion that a mobile home is a trailer is not changed by the fact that the wheels and the tongue were removed from each section, that the two sections were joined together and placed on a permanent foundation, and that the connected sections were attached to a septic tank and to water and power lines. The structure is still a trailer, and its basic characteristics having not been changed by these actions." Heape, 293 S.C.at 346, 360 S.E.2d at 159.

Plaintiff believes the same application is appropriate here, where Defendants attempt to distinguish their home from a mobile home or trailer by referring to the structure as a "manufactured home." The underlying characteristics of Defendants' home and the structure in Heape are essentially the same.

By comparison of the covenants in Heape as well as the instant case, it is evident that the restrictive language is strikingly similar. The covenant at issue in Heape provided that "No structure of a temporary character, *trailer, tent, shack*, garage, or other out building shall be used on any lot at any time as a residence, *either temporarily or*

*permanently.*” The covenant in the instant case provides that “No *trailer*, basement, *tent shack*, garage, or barn shall at any time be used as a residence *either temporary or permanent.*” For purposes of this motion, Plaintiff will rely on the term “trailer” when comparing Defendants’ structure, since that term has been applied in prior case law and is identified in nearly all restrictive covenants.

Furthermore, the Court of Appeals determined that the term “trailer” (and as used in the restrictive covenant) was itself not ambiguous. *Id.* at 293 S.C. at 345, 360 S.E.2d at 159. “Where the language used in a restrictive covenant is unambiguous, there is no room for construction and the language must be enforced in accordance with its plain meaning.” *Id.* at 293 S.C. at 345, 360 S.E.2d at 158. Upon a review of the relevant case law, it is apparent that “manufactured home” should bear no separate distinction from “trailer,” and that the result is the same – the restrictive covenant shall apply to the Defendants’ structure.

In Heape, the Court of Appeals mentions the term “manufactured home” five times (twice in Footnotes 1 and 2, which cite the South Carolina Code). The Court refers to “manufactured home” when describing the structure at issue in the case (see page 1 of the opinion: “Broxton purchased a double-wide ‘manufactured home’ from Mid-State Mobile Homes....”). Notably, the Court used the term “manufactured home” interchangeably with “double-wide” and “trailer” throughout the opinion (despite the fact that the defendant in Heape preferred the term “double-wide mobile home”). See Heape, 293 S.C. at 344, 360 S.E.2d at 158.

In order to accept Defendants’ argument, one would need to distinguish “trailer” from “manufactured home,” in direct contravention of established precedent. Additionally, the covenants in the instant case (as well as in Heape) fail to even mention the term “mobile

home”; yet that did not prevent the Court of Appeals from finding that mobile homes and manufactured homes are still “trailers” as the covenants intended. To focus on a mere omission of the term would be to negate the clear and unambiguous meaning of the restrictive covenants. Presumably, the parties here would not contend that a “mobile home” could be erected on the subject property by mere omission from the language of the covenants. This is because it is inherently understood, as its plain and ordinary meaning, that “mobile home” is also a “trailer.” This fact (a mobile home is a trailer) is also not disputed by the Defendants; rather, they seek to advance their position by claiming their “manufactured home” is not a “trailer” subject to the covenants. Defendants are asking this Court to engage in circular reasoning which is unsupported by the facts or precedent in this state.

“Manufactured home” is also mentioned in Heape when citing both the 1976 South Carolina Code as well as the 1986 amendment (note: the relevant provisions have since been repealed, see discussion below). Footnote 1 provides that:

"Mobile home' means a manufactured single family dwelling or an integral part over thirty-five feet in length, or over eight feet in width, so constructed that it may be transported from one site to another, temporarily or permanently affixed to real estate, made up of one or more components, and constructed with the same or similar electrical, plumbing, heating and sanitary facilities as on-site constructed housing."

South Carolina Code § 31-17-20(a) (1976). Footnote 2 provides that:

"Manufactured home' or 'mobile home' means a structure transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or forty body feet or more in length ... and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities...."

South Carolina Code § 31-17-20(a) (Supp. 1986). (Noting that both prior versions of the South Carolina Code refer to “manufactured home” and “mobile home” interchangeably.)

The above-referenced provisions of the code have since been repealed, and new definitions are provided in § 31-17-310 (“mobile home”) and § 40-29-20 (“manufactured home”). § 31-17-310 “Mobile home” defined, provides that: "Mobile home" as used in this article shall have the meaning assigned in Section 31-17-20. The Editor’s Note, however, mentions that § 31-17-20(a) was repealed by 1989 Act No. 128, Sec. 6, and directs to § 40-29-20 “[f]or a definition of ‘manufactured home’ somewhat analogous to the repealed provision.” Chapter 29 of Title 40 provides the Uniform Standards Code for Manufactured Housing. The definition of “manufactured home” provides:

**§ 40-29-20 (9)** "Manufactured home" means a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in it.

The essential characteristics of a mobile home, trailer, and manufactured home are the same, as is evident from the prior as well as current statutory definitions. Whether the structure is built on a permanent chassis, is designed to be used as a dwelling (with or without a permanent foundation), and whether the structure is *transportable* in one or more sections, are all key characteristics of these structures. It is clear that the legislature did not intend to offer any material distinction between “manufactured homes” such that their name would absolve them of enforcement pursuant to restrictive covenants. If it did, the legislature would have done so in plain language or in a separate section of the code. The intent of the legislature, in defining “manufactured home,” was to establish regulations and licensing requirements for these structures which are mass-produced and readily transportable. The same reasoning applies for “mobile homes” under Title 31, Chapter 17, which also sets forth licensing requirements like those for manufactured homes.

As the Court of Appeals has held: “An obvious objective of a restrictive covenant prohibiting trailers and other structures within a residential subdivision is to regulate the appearance of the subdivision. Carter v. Conroy, 25 Ariz.App. 434, 544 P.2d 258 (1976). Such a restrictive covenant forbids trailers from being used as residences within the subdivision because, irrespective of whether trailers are called mobile homes or something else, whether trailers are attached to the land or not, and whether trailers are multi-sectional or not, they, as the photographs prove, still look like trailers.” Heape, at 293 S.C. at 347, 360 S.E.2d at 160.

Manufactured homes, mobile homes, and trailers are synonymous under South Carolina law for purposes of applying and enforcing restrictive covenants. Precedent has already established that “mobile homes” are also considered “trailers.” Precedent has likewise equated the term “manufactured home” with “mobile home”:

“Our opinion is likewise unaffected by the fact that Broxton’s mobile home is double-wide and not single-wide. See Gigowski v. Russell, 718 S.W.2d 16 (Tex.Ct.App. 1986)(wherein the court held that a double-wide manufactured home was a ‘mobile home’ within the meaning of a restrictive covenant prohibiting ‘any type mobile home’).” Heape, 293 S.C. at 347, 360 S.E.2d at 159.

Plaintiff has attached the following Exhibits in support of her Motion for Summary Judgment: Defendant Kathy Bouknight Deposition excerpts (**Exhibit A**); Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987) (**Exhibit B**); Restrictive Covenants (**Exhibit C**); Mobile Home Affidavit (**Exhibit D**); and Letter Dated July 30, 2019 (**Exhibit E**).

Based on the foregoing, Plaintiff submits that there is no genuine issue of material fact in this case to exclude the Defendants from enforcement of the covenants against them. Therefore, Plaintiff asks this Court to grant Summary Judgment as a matter of law, and for all other relief which is just and proper.

Respectfully submitted,

/s/ James R. Snell, Jr., \_\_\_\_\_  
 James R. Snell, Jr.  
 SC BAR No.: 72663  
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 123 Harmon Street  
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 (803) 359-3301  
 (800) 567-6249 (facsimile)

May 19, 2020  
 Lexington, South Carolina

## **EXHIBIT A**

KATHY BOUKNIGHT

10

1 Q: And tell us about that? About the structure?

2 A: Can you narrow that down for me?

3 Q: Sure. So there's a -- the current structure  
4 that's there, right ---

5 A: Uh-huh.

6 Q: --- I understand it's ---

7 A: Sir?

8 Q: How long has it been there?

9 A: July, August.

10 Q: 2019?

11 A: Yes; yes, sir.

12 Q: Okay. And I guess will you describe it for us?

13 A: It is a manufactured home. It is -- has a  
14 crawl space, mason brick with air ducts and  
15 exactly how many square feet it is, over --  
16 it's over a thousand, eleven hundred, something  
17 like that maybe. I'm just guessing. But it is  
18 vinyl siding and shingle roof.

19 Q: Where did it come from?

20 A: Oakwood. It's on 378.

21 Q: Okay. Was that -- was it something that was  
22 sitting on the lot at the -- at the Oakwood  
23 store or was it something they had to  
24 manufacture and -- and ---

25 A: It was sitting on the lot.



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KATHY BOUKNIGHT

11

1 Q: And how did it get from the Oakwood lot to  
2 Wessinger Drive?

3 A: They brought it on a bed.

4 Q: Would you ---

5 A: A truck bed.

6 Q: So they brought it on a truck?

7 A: Yes, sir.

8 Q: And -- all right. How much did it cost?

9 A: Well it ended up costing more than we thought  
10 because we had to put a septic tank in and et  
11 cetera, expenses, but it was around one hundred  
12 thousand.

13 Q: And who's idea was it to, I guess, to purchase  
14 or acquire it?

15 A: Well we went looking to see what they had  
16 knowingly, at that time back in June, July,  
17 August whichever, that we were told for  
18 settlement that we were going to now lose the  
19 108. So we were looking for something to do,  
20 and I would rather had stayed on my own  
21 property that my parents' owned, at least one  
22 of them. And due to the Quicken Loans and  
23 ruining our credit for ten years, we were  
24 financially, you know, with a, you know a low  
25 credit rating. So anyway, a modular home is



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1 108.

2 Q: And would you have I guess received this  
3 shortly after July 30th of 2019?

4 A: Whenever the date was. I'm not gonna remember.

5 Q: Okay.

6 A: Dates.

7 Q: Okay.

8 A: Exactly.

9 Q: Had anyone -- have you spoken to anybody else  
10 or had anybody else express I guess objections  
11 or disagreement with the structure prior to  
12 this letter?

13 A: Just the Alverson woman across the street which  
14 turned around and changed her mind a few weeks  
15 ago to say, hey, I hope you win. And then, you  
16 know, right when the home was brought in on the  
17 bed, the neighbor next door that used to work,  
18 attorney or whatever his name is, came to  
19 flicker the covenant at my husband through our  
20 car door.

21 (Plaintiff's Exhibit Number 2 was marked for  
22 identification purposes.)

23 Q: I want to show what's marked as Exhibit 2 and  
24 ask if you could tell us what that is?

25 A: Let's see, mobile home affidavit. And this is



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KATHY BOUKNIGHT

27

1           who, Packard signed. Let's see, is the tract  
2           or parcel land restricted by any recorded  
3           covenant that is contrary to or conflicts with  
4           or prohibits the present activities; so no, so  
5           that was correct. I do not currently reside at  
6           this location, which to me was meant to be the  
7           110. This is to confirm that there is or are  
8           currently no existing mobile homes on the above  
9           referenced parcel. So, not a mobile home, it's  
10          a manufactured home.

11       Q:    So is this the -- so this is the mobile home  
12           affidavit that you filled out to give to  
13           Lexington County?

14       A:    Well whatever paperwork I was sent back and  
15           forth to get signed, yes.

16       Q:    Okay. So this has your signature on it?

17       A:    That is definitely my signature. Uh-huh.

18       Q:    And I guess -- and you spoke before about  
19           checking the box no regarding any recorded  
20           covenants that is contrary to or conflicts with  
21           or prohibits the proposed activity.

22       A:    Right.

23       Q:    Now at the time you completed the form you knew  
24           about the covenants, correct?

25       A:    Yes, sir.



**CREEL COURT REPORTING, INC.**  
1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

## **EXHIBIT B**

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**360 S.E.2d 157  
293 S.C. 343**

**David HEAPE, Jr., J.R. Horton and  
Polly Ann Horton, Clarence  
M. McMillan, Sr., and Laura McMillan,  
Clarence M.  
McMillan, Jr., and Martha McMillan,  
T.D.  
Peoples Construction Company,  
Inc., Respondents,  
v.  
Charles E. BROXTON, Appellant.  
No. 1004.  
Court of Appeals of South Carolina.  
Submitted June 24, 1987.  
Decided Aug. 3, 1987.**

Gary D. Brown, Ridgeland and James B. Richardson, Jr., of Richardson & Smith, Columbia, for appellant.

Joseph K. Qualey, of Qualey & Qualey, Hilton Head Island, for respondents.

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Amicus Curiae: D. Cravens Ravenel and S. Markey Stubbs, both of Belser, Baker, Barwick, Ravenel, Toal & Bender, Columbia, for Manufacturedhousing Institute of South Carolina, Inc.

GOOLSBY, Judge.

The respondents, David Heape, J.R. Horton, Polly Ann Horton, Clarence McMillan, Sr., Laura McMillan, Clarence M. McMillan, Jr., Martha McMillan, and T.D. Peoples Construction Company, Inc., who are owners of property in the [293 S.C. 344] Deloss Subdivision in Jasper County, brought this action to enjoin the appellant, Charles E. Broxton, from refusing to remove a double-wide mobile home from his lot in the subdivision. The trial court granted the respondents the relief that they sought. Broxton appeals. His appeal raises the issue of

whether a double-wide mobile home that is not readily moveable is a "trailer" within the meaning of a restrictive covenant applicable to the subdivision. We affirm.

On November 13, 1980, Broxton, the developer of Deloss Subdivision, recorded restrictive covenants governing the use of all lots within the subdivision. One such covenant provides that "[n]o structure of a temporary character, trailer, tent, shack, garage, or other out building shall be used on any lot at any time as a residence, either tempora[r]ily or permanently."

Broxton purchased a double-wide "manufactured home" from Mid-State Mobile Homes in Orangeburg on July 25, 1985. The manufacturer's statement of origin states that its floor size is 24 feet by 66 feet and that it has 12 wheels. The purchase agreement states that its "hitch size" is 70 feet by 24 feet.

Broxton immediately obtained from the South Carolina Department of Highways and Public Transportation a title certificate reflecting his ownership of the manufactured home. Two weeks later he applied for a building permit, describing the work for which he sought the permit simply as "mobile home." Broxton also applied for and obtained from the Jasper County Assessor a mobile home license.

Mid-State thereafter towed the structure in two sections by truck to Broxton's lot in the subdivision. Each section, equipped with a chassis, a tongue, axles, and wheels, was set on concrete block pillars and concrete footings and joined together. The structure was connected to a water line, an electrical line, and a septic tank and its wheels and tongues were removed. Broxton, who intends to use the structure as his permanent residence, landscaped the lot.

This action followed.

[293 S.C. 345] Although Broxton denied in his answer that the structure purchased by

him is a "mobile home," it clearly is one under both the former and current statutory definitions of the term "mobile home." S.C.Code of Laws § 31-17-20(a) (1976); <sup>1</sup> Id. § 31-17-20(a) (Supp.1986). <sup>2</sup> In fact, Broxton's own brief recognizes that the structure is "[c]ommonly known as a 'double-wide mobile home.' "

Broxton contends, however, that the restrictive covenant prohibiting "trailers" does not prohibit "mobile homes," especially those that are double-wide and have been permanently affixed to the land.

Where the language used in a restrictive covenant is unambiguous, there is no room for construction and the language must be enforced in accordance with its plain meaning. *Donald E. Baltz, Inc. v. R.V. Chandler & Co.*, 248 S.C. 484, 151 S.E.2d 441 (1966).

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The term "trailer" is not ambiguous. A "trailer" is a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile. *Jones v. Beiber*, 251 Iowa 969, 103 N.W.2d 364 (1960); *City of Astoria v. Nothwang*, 221 Or. 452, 351 P.2d 688 (1960). The term clearly includes a "mobile home" within its meaning. *Van Poole v. Messer*, 19 N.C.App. 70, 198 S.E.2d 106 (1973), appeal after remand, 25 N.C.App. 203, 212 S.E.2d 548 (1975). A "mobile home" is a "trailer," as the latter term was commonly understood when Broxton recorded the restrictive covenant in question. See WEBSTER'S NEW COLLEGIATE DICTIONARY at 738 (1973) (defining the term "mobile home" to mean "a trailer that is used as a permanent dwelling, is usu[ally] connected to utilities, and is designed without a permanent foundation"); see also *Lassiter v. Bliss*, 559 S.W.2d 353, 355 and [293 S.C. 346] 357 (Tex.1977) (wherein the court held that a "mobile home was a trailer within the meaning of [a] restrictive covenant" that provided that "[n]o trailer, basement, tent, shack, garage, barn or other outbuildings

erected in this subdivision shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence."); cf. THE AMERICAN HERITAGE DICTIONARY at 805 (2d ed. 1985) (defining the term "mobile home" to mean "a house trailer that is used as a permanent home and is usually hooked up to utilities."); WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY at 1154 (2d ed. 1983) ("mobile home; a large trailer outfitted as a home meant to be parked more or less permanently at a location."). Calling a trailer a "mobile home" does not make it any less a "trailer." See Annot., 96 A.L.R.2d 232 § 1 at 234 (1964) ("The term 'trailer' is understood in its usual meaning regardless of whether it is referred to or described as house trailer, mobile home, trailer coach, or some such term."). Indeed, the term "mobile home" is simply an advertising euphemism for the term "house trailer." *Timmerman v. Gabriel*, 155 Mont. 294, 470 P.2d 528 (1970).

Our opinion that a mobile home is a trailer is not changed by the fact that the wheels and the tongue were removed from each section, that the two sections were joined together and placed on a permanent foundation, and that the connected sections were attached to a septic tank and to water and power lines. The structure is still a trailer, its basic characteristics having not been changed by these actions. *Carter v. Conroy*, 25 Ariz.App. 434, 544 P.2d 258 (1976); *McBride v. Behrman*, 28 Ohio Misc. 47, 57 Ohio Op.2d 77, 272 N.E.2d 181 (1971); see *Brasher v. Grove*, 551 S.W.2d 302, note 4 at 305 (Mo.App.1977) (listing of cases from other jurisdictions that deal with mobile homes and trailers insofar as they are governed by restrictive covenants or zoning regulations and that hold that a structure, originally a trailer, remained a trailer despite the permanent nature of its installation and the removal of wheels, axles, and other portions of the undercarriage). The evidence suggests that it could be separated and moved again. See *Billings v. Shrewsbury*,

294 S.E.2d 267 (W.Va.1982) [293 S.C. 347] (holding that a double-wide mobile trailer's essential character was not changed by mooring the structure to a cement block foundation since the structure was designed to be separated again for repeated moves).

Our opinion is likewise unaffected by the fact that Broxton's mobile home is double-wide and not single-wide. See *Gigowski v. Russell*, 718 S.W.2d 16 (Tex.Ct.App.1986) (wherein the court held that a double-wide manufactured home was a "mobile home" within the meaning of a restrictive covenant prohibiting "any type mobile home."); *Billings v. Shrewsbury*, supra. The statutory definition of the term "mobile home" that was in effect when the restrictive covenant here was adopted in 1980<sup>3</sup> clearly contemplated that a mobile home could be multisectional.

If anyone doubts that Broxton's dwelling is a "mobile home," and thus a "trailer," he or she needs only to glance at the photographs admitted in evidence. They do not show a home that has the appearance of a

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conventional, single-family dwelling and a home that compares favorably to other dwellings in the neighborhood. Cf., e.g., Defendant's Exhibit No. 7 and Plaintiffs' Nos. 2 and 9 reproduced below. Rather, the photographs show a double-wide trailer, a sight familiar to virtually every South Carolinian.

NOTE: OPINION CONTAINS TABLE OR OTHER DATA THAT IS NOT VIEWABLE

DEFENDANT'S EXHIBIT #7

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NOTE: OPINION CONTAINS TABLE OR OTHER DATA THAT IS NOT VIEWABLE

PLAINTIFF'S EXHIBIT #2

NOTE: OPINION CONTAINS TABLE OR OTHER DATA THAT IS NOT VIEWABLE

PLAINTIFF'S EXHIBIT #9

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An obvious objective of a restrictive covenant prohibiting trailers and other structures within a residential subdivision is to regulate the appearance of the subdivision. *Carter v. Conrov*, supra. Such a restrictive covenant forbids trailers from being used as residences within the subdivision because, irrespective of whether trailers are called mobile homes or something else, whether trailers are attached to the land or not, and whether trailers are multi-sectional or not, they, as the photographs prove, still look like trailers.

Mobile homes, including double-wide ones, have their place, of course; but not in Deloss Subdivision.

We therefore hold that the plain language of the restrictive covenant at issue prohibits the use of a double-wide mobile home as a residence on any lot within Deloss Subdivision at any time, irrespective of whether it remains immediately portable. *Timmerman v. Gabriel*, supra.

AFFIRMED.

SANDERS, C.J., and BELL, J., concur.

-----  
1 "'Mobile home' means a manufactured single family dwelling or an integral part over thirty-five feet in length, or over eight feet in width, so constructed that it may be transported from one site to another, temporarily or permanently affixed to real estate, made up of one or more components, and constructed with the same or similar electrical, plumbing, heating and sanitary facilities as on-site constructed housing."



2 " 'Manufactured home' or 'mobile home' means a structure transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or forty body feet or more in length ... and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities...."

3 See note 1, supra.

## **EXHIBIT C**

STATE OF SOUTH CAROLINA }  
COUNTY OF LEXINGTON }

PROTECTIVE COVENANTS

The lands hereinafter described as now owned by H. E. Bessinger and J. C. Reed, Sr. hereinafter referred to as Owners shall be used for residential purposes only and no business structure shall be erected or maintained thereon and said lands shall be further subject to the following protective covenants, to wit:

1. No trailer, basement, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent.
2. No building shall be erected on any lot nearer than twenty-five (25') feet to the front line, nor nearer than seven and five-tenths (7.5') feet to the side line of any adjacent lot, nor nearer than fifteen (15') feet to any side street line, provided, however, that the side line restriction to an adjacent lot line shall not apply to a garage located on the rear quarter of the lot which shall not be constructed nearer than three (3') feet of the rear line of the lot. Covenants contained in this paragraph above shall be construed to be for the benefit of the Owners only who reserve the right to modify the same at will so long as said modification does not vary the distances more than thirty (30%) percent.
3. Dwellings erected shall be of modern design and construction and shall have curtain walls of masonry or brick underneath the building on all sides.
4. Dwellings shall have not less than five (5) average size rooms exclusive of bathroom, porches, and terraces, or the equivalent floor space of five average size rooms exclusive of bathroom, porches, and terraces, and shall have a value of not less than \$7,000.00 based on 1954 values.
5. No noxious or offensive trade, business, or vocation shall be operated or practiced on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become an annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.
6. All fences erected on the front of any lot and to half the depth thereof shall be of ornamental type and shall be not more than four (4') feet in height.
7. All sewage and wells (if wells are used) shall be placed so as to conform to recommendations of the Board of Health.

The lands above referred to and subject to the above protective covenants are described as follows:

The following lots as shown and delineated on a plat of BROOKGREEN ESTATE made by Barber, Kools & Associates, dated March 30, 1953, and recorded in the Office of Clerk of Court of Lexington County, South Carolina, in Plat Book: 30-0, at page 12: Lots 14, 15, and 17 in Block "B"; Lots 1 through 9 inclusive in Block "B"; Lots 1 through 11 inclusive in Block "A" except Lot 2 which has heretofore been conveyed.

ALSO: A lot described as follows: Commencing at a point One Hundred Ten (110') feet, more or less, East of the Northeast corner of intersection of Reed Avenue and Northwood Road, and running in an Eastward direction from said point along the Northern edge of Northwood Road, for a distance of Two Hundred Fifty-five (255') feet, more or less, to a point; thence turning at a right angle and running in a Northern direction for a distance of One Hundred Fifty (150') feet, more or less, to a point; thence turning and running in a Westerly direction for a distance of Two Hundred Fifty-five (255') feet, more or less, to a point and thence turning and running in a Southerly direction One Hundred Fifty (150') feet to the point of commencement.

*Recorded October 1, 1954, 1:12 P.M.  
Holmes C. Graham  
ccp*

Invalidation of any of the provisions hereof by judgement or Court Order shall in no wise affect any of the other provisions, but they shall remain in full force and effect.

These covenants shall run with the land, shall constitute limitations on the use thereof and shall be binding upon the undersigned, their heirs and assigns and all persons claiming under them unless, after a period of ten (10) years from the date hereof changed or modified by written agreement executed by the majority of the then owners of the lots subject thereto, and shall run until January 1, 1975, and shall as then in force continue until changed, modified or extinguished, in whole or in part, by written agreement executed by the majority of the owners of the lots subject thereto.

Witness our hands and seals this 30<sup>th</sup> day of September, 1974

H. E. Jossinger (SEAL)  
H. E. Jossinger

J. O. Rood, Sr. (SEAL)  
J. O. Rood, Sr.

WITNESSES:

Freeda E. Cargle  
J. H. Raul Jr.

STATE OF SOUTH CAROLINA }

COUNTY OF LEXINGTON }

Personally appeared before me Freeda E. Cargle and made oath that she saw the within-named H. E. Jossinger and J. O. Rood, Sr. sign, seal and as, their act and deed, deliver the within-written Protective Covenants for the uses and purposes therein mentioned, and that she, with J. H. Raul Jr. witnessed the execution thereof.

Freeda E. Cargle

SEEN to before me this

30<sup>th</sup> day of September, 1974

J. H. Raul Jr. (Seal)  
Notary Public for South Carolina

## **EXHIBIT D**



# COUNTY OF LEXINGTON

## COMMUNITY DEVELOPMENT DEPARTMENT

212 South Lake Drive, Suite 401, Lexington SC 29072 Phone: (803)785-8121 Fax: (803)785-5186  
DEVELOPMENT SERVICES DIVISION

### MOBILE HOME AFFIDAVIT

TMS# 004317-01-011

APPLICANT'S NAME(S) Kathryn D. and/or Hayward W. Bouknight

APPLICANT'S ADDRESS 108 Wessinger Dr Lexington 29072

PROPERTY OWNER'S NAME(S) S.A.A.

PROPERTY OWNER'S ADDRESS \_\_\_\_\_

(if different from applicant's address)

- This is to confirm that there is/are currently 0 existing mobile home(s) on the above referenced TMS parcel. (Do not count the mobile home pertaining to this request.)
- I do Not currently reside at this location.  
(do/do not)
- If you do not currently reside at this property location, will this location become your new legal residence? X Yes      No
- I (by sole or co-ownership) have 0 additional mobile homes or mobile home spaces at other locations in Lexington County:

I understand that a mobile home park is defined as: Three or more mobile homes or mobile home spaces, exclusive of a mobile home occupied by the property owner as a legal residence, that are located within the vicinity of one another and operated in any coordinated manner. The park may be located on a single parcel or multiple parcels in the same or different ownership. I also understand that this affidavit in no way constitutes approval by any other regulatory agency or authority.

I also understand that if a new parcel is to be subdivided out of the existing parent parcel, it must meet the requirements of the Lexington County Subdivision Regulations and the requirements of the Lexington County Planning Commission Access Policy. Therefore, neither this affidavit nor the Mobile Home Approval Checklist constitutes approval to subdivide property; such subdivision of property must be approved by the appropriate County staff.

Is the tract or parcel of land restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the proposed activity? ☐ Yes ☒ No

Date 6/4/19 Applicant(s) Signature Kathryn Bouknight

Daytime Phone # 803 9201097 Applicant(s) Name (Print) Kathryn Bouknight

Verification Date 06-04-2019 Staff Signature Carol Pickett

I hereby acknowledge that I have received the following publication(s): (Please initial for each received)

KDB Installation Guidelines for Manufactured Housing.

KDB Septic Tank Permit Procedures w/ Application for Permit to Construct an Individual Sewage Treatment and Disposal System.

(Version 2.0 Revised)



## **EXHIBIT E**

**CERTIFIED MAIL ~ RETURN RECEIPT REQUESTED  
& REGULAR US MAIL**

**Parcel # 7015 3430 0000 7512 9278**

July 30, 2019

Mr. Heyward W. Bouknight  
Mrs. Kathryn D. Bouknight  
108 Wessinger Drive  
Lexington, South Carolina 29072

**RE: 110 Wessinger Drive  
Lexington, SC 29072**

Dear Mr. & Mrs. Bouknight:

I have been contacted by several residents of the Brookgreen Terrace Subdivision regarding the double-wide mobile home which was placed on the property owned by you located at 110 Wessinger Drive. The Declaration of Restrictions which are in effect in Brookgreen Terrace prohibit mobile homes in the subdivision. This letter is to put you on notice that the mobile home located on the property at 110 Wessinger Drive is in clear violation of the restrictive covenants in effect for this property.

If the mobile home is not removed within thirty (30) days of the date of this letter, legal action will be taken to have the mobile home removed and other necessary legal relief granted for the violation of the restrictive covenants.

Sincerely,

Joe R. North

JRN/rbm



**STATE OF SOUTH CAROLINA**  
**COUNTY OF LEXINGTON**

**IN THE COURT OF COMMON PLEAS**  
**CASE NO. 2019-CP-32-03305**

**Lisa Cruz,**

**PLAINTIFF,**

**vs.**

**Heyward Bouknight and Kathy  
Bouknight,**

**DEFENDANT.**

**MOTION TO RECONSIDER**

YOU WILL PLEASE TAKE NOTICE, that the Defendants move before this court pursuant to Rules 52 and 59, SCRCP, for an order reconsidering, altering, amending, and/or clarifying the order filed January 27, 2022, in the above-captioned action.

The Defendants so move on the following grounds:

1. The Defendants incorporate into this motion as if here set forth verbatim all of their previous filings and arguments made in this action, along with their proposed order (a copy of which is submitted as an exhibit to this motion) on the summary judgment motions in this action, as well as all authorities cited therein.
2. The order, in violation of law requiring real property covenants to be construed narrowly and in favor of the free use of land, has stretched to bring the Defendants' prefabricated dwelling house within the definition of "trailer."
3. "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." Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (citations omitted).

“Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of the property and against restrictions.” Stanton v. Gulf Oil Corp., 232 S.C. 148, 151, 101 S.E.2d 250, 251 (1957) (internal quotation marks omitted). “It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property.” Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998).

4. Defendants’ prefabricated dwelling house is not and never has met any legally recognized definition of trailer.
5. Defendants’ prefabricated dwelling house is not and never has been equipped for use as a conveyance on streets or highways. The record is totally devoid of any evidence to the contrary.
6. The court’s findings about the intentions of the covenants and their drafter are pure conjecture, wholly unsupported by evidence. Further, they are at odds with the principle that the words of covenants determine their meaning, and only in cases of ambiguity would a resort to attempts to divine intention be allowed.
7. The court’s order seems to be predicated on the non-evidenced assumption that the term “trailer” somehow just *must* include prefabricated dwellings like the Defendants’. This is an impermissible basis on which to make a decision such as the court made in this case.
8. “The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the

clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.” Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420, 424 (1950). This court’s decision has done what is prohibited. Id. This court has decided that, if prefabricated dwellings like the Defendants’ had been around when the covenants were drafted, the drafter surely would have prohibited them; thus, this court has reasoned, the term “trailer” was somehow “meant” to include them – even though these dwellings are not within any definition of “trailer.”

9. In fact, the Defendants’ prefabricated dwelling house fails to meet *every* definition of “trailer” given by any party or the court in this case.
10. The court has expressly based its decision on a statute, former S.C. Code Ann. § 31-17-20(a), that was repealed in 1989, well before the events at issue in this case.
11. The court appears to be basing its decision on non-law authority, as in the “S.C. Revenue Advisory Bulletin” cited on page 9 of the order, treating it as though it were legal authority.
12. In South Carolina law, the terms *manufactured home*, *mobile home*, *house trailer*, and *trailer* are **not** used and treated interchangeably. They have *different* definitions, not the same definition. There are indeed material distinctions in the law between the meanings of these terms. The General Assembly *did* make important distinctions in the meanings of these words.
13. There are at least factual issues here that precluded summary judgment in the Plaintiff’s favor.

14. The order assesses some deposition testimony as hearsay without any explanation for why this testimony is hearsay, and it is not.
15. The court has chosen to broaden the definition of “trailer” to make the Defendants’ house fit it, when the law required the court to construe the definition of “trailer” narrowly. Applying the correct construction would have produced a different result.
16. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRCP, the undersigned certifies that there would have been no useful purpose in consultation with opposing counsel in an attempt to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker

S.C. Bar No. 73743

HARRISON, RADEKER & SMITH, P.A.

Post Office Box 50143

Columbia, South Carolina 29250

(803) 779-2211

drew@harrisonfirm.com (email)

ATTORNEY FOR DEFENDANTS

Columbia, South Carolina  
February 7, 2022

**STATE OF SOUTH CAROLINA**  
**COUNTY OF LEXINGTON**

**IN THE COURT OF COMMON PLEAS**

**Case No. 2019-CP-32-03305**

**Lisa Cruz,**

**Plaintiff,**

**vs.**

**Heyward and Kathy Bouknight,**

**Defendants.**

**ORDER GRANTING DEFENDANTS'  
MOTION FOR  
SUMMARY JUDGMENT**

This matter came before me at a hearing on June 3, 2020, conducted remotely through videoconferencing by the consent of the court and counsel, on motions of the Defendants and of the Plaintiff, both seeking summary judgment in the above-captioned action. This case was originally referred to the Honorable James O. Spence, Master-in-Equity for Lexington County, who recused himself *sua sponte* shortly after reference to him. It was then referred to the undersigned as special referee by consent order filed February 25, 2020.

**FINDINGS OF FACT**

This action seeks injunctive relief requiring the Defendants to remove their home from their property, with the Plaintiff contending that the Defendants are violating restrictive covenants through their use of their house, a manufactured home, as a residence. The covenants, executed and recorded in 1954, state that “[n]o trailer, basement, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent[,]” at property subject of the covenants. The covenants also contain the following provision:

No noxious or offensive trade, business, or vocation shall be operated or practiced on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become any annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.

It is undisputed that the Defendants in 2020 purchased and placed a manufactured home on their property on a permanent foundation. The home was built off-site and brought to the Defendants' property on the bed of a truck. (Tr. of depo. of Kathy Bouknight p. 31 ln. 12 through p. 32 ln. 7.) There is no evidence in the record to the effect that the home has ever had wheels or otherwise been equipped to be hauled on streets or highways. In connection with placement of the manufactured home, the Defendants signed a County of Lexington document entitled "mobile home affidavit." Despite its title, that document contains no statement to the effect that the structure at issue is a mobile home. The Plaintiff submitted a number of identical affidavits of some neighbors to the effect that they believe that the Defendants' home violates the covenants and that they believe the Defendants' home has brought down their property values. With the permission of counsel, the undersigned also visually observed the home at the subject property following the motions hearing.

#### STANDARD

The standard on a motion for summary judgment is that "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986). "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Englert, Inc. v. LeafGuard USA, Inc., 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008).

Nonetheless, "cross motions for summary judgment do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the

parties.” Mead v. Beaufort Cnty. Assessor, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016). “Where cross motions for summary judgment are filed, the parties concede the issue . . . should be decided as a matter of law.” Id.

Where the nonmoving party bears the burden of proof on a claim in the case, that party must provide the court with admissible evidence showing that there is a genuine issue of material fact with regard to each of the elements of his claim. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68 (2007). Rule 56, SCRPC, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” Hansson, 374 S.C. at 357 (internal quotation marks omitted, ellipsis in original). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Baughman v. AT&T, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991).

#### CONCLUSIONS OF LAW

“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.” Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (citations omitted). “Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of the property and against restrictions.” Stanton v. Gulf Oil Corp., 232 S.C. 148, 151, 101 S.E.2d 250, 251 (1957) (internal quotation marks omitted). “It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property.” Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998).

Our Supreme Court has noted that “[i]t follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.” Id. When more than one logical interpretation of a restriction is possible, a court must adopt the interpretation that is the least restrictive. Id.; see Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750, 758 (Ct. App. 2005).

“The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.” Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420, 424 (1950).

Applying these principles to the instant case, the court concludes that the Defendants’ manufactured home is not prohibited by the covenants.

The covenants prohibit use of a “trailer” as a residence. The Merriam-Webster dictionary defines “trailer” as follows:

1 : a nonautomotive vehicle designed to be hauled by road: such as

a : a vehicle for transporting something, a boat trailer  
especially : semi-trailer sense 1

b : a vehicle designed to serve wherever parked as a  
temporary dwelling or place of business

c : mobile home

2a: a selected group of scenes that are shown to advertise a movie :  
preview sense 3 a theatrical trailer

b: a short blank strip of film attached to the end of a reel

3 : one that trails

4 : a trailing plant

(Emphasis added.)

Under South Carolina statutory law, “[t]railer” means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.” S.C. Code Ann. § 56-19-10(34) (emphasis added).

“House trailer” means:

(a) a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets and highways; or

(b) a trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subitem (a) of this item, but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for another commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

S.C. Code Ann. § 56-19-10(10) (emphasis added).

The Plaintiff has argued that the Defendants’ home is, or effectively is, a mobile home. Accordingly, the court examines the statutory definitions of “mobile home” and “manufactured home.”

“Mobile home” means every vehicle which is designed, constructed, and equipped principally as a permanent dwelling place and is equipped to be moved on streets and highways, but which exceeds the size limitations prescribed in Section 56-3-710 and which cannot be licensed and registered by the Department of Motor Vehicles as a “house trailer.”

S.C. Code Ann. § 56-19-10(39) (emphasis added).

A manufactured home has a different statutory definition:

“Manufactured home” means a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in it.

S.C. Code Ann. § 40-29-20(9). That definition contains nothing about being equipped to be moved on streets and highways. Id.

Former S.C. Code § 31-17-20(a), which defined a “manufactured home” as a “mobile home,” was repealed by 1989 Act No. 128, § 6, well before the manufacture and placement of the Defendants’ home.

All of the evidence in the record is to the effect that the Defendants’ home has never been designed or equipped to carry persons and property or to be pulled behind another vehicle on streets and highways. The differences between the definitions of “trailer” and “manufactured home,” in light of the evidence in the record to the effect that the manufactured home was not and is not “designed for carrying persons or property and for being drawn by a motor vehicle” would lead the court to conclude that the Defendant’s home is not a trailer. S.C. Code Ann. § 56-19-10(34).

The Plaintiff relies on the Court of Appeals’ opinion in Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987), contending that Heape is dispositive of this case and requires a judgment in her favor. Heape dealt with a covenant provision that prohibited a “trailer,” a term which the Court of Appeals held embraced the double-wide mobile home at issue in that case. Id. at 344-45. The Court of Appeals in Heape concluded that a mobile home met the definition of trailer, which the court defined as “a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile.” Heape, 293 S.C. at 345. The definition of a mobile home is

consistent with this definition of trailer. Id. at 345-46; see S.C. Code Ann. § 56-19-10(39). A mobile home is, by definition, a “vehicle which . . . is equipped to be moved on streets and highways.” S.C. Code Ann. § 56-19-10(39).

The Defendants distinguish Heape, pointing out that Heape concerned a mobile home, not a manufactured home and that mobile homes and manufactured homes have different definitions. S.C. Code Ann. §§ 40-29-20(9), 56-19-10(39). The court thus examines whether these differences are material and whether Heape remains good law.

Jurisdictions across the country are split on whether they treat manufactured homes (or, for that matter, mobile homes) as “trailers” with regard to covenants prohibiting trailers. “What Is ‘Mobile Home,’ ‘House Trailer,’ ‘Trailer House,’ or ‘Trailer’ Within Meaning of Restrictive Covenant” 83 A.L.R.5th 651 (2000 & Supp.). This split appears fairly even among the states. See id. Some jurisdictions interpret “trailer” broadly, and some do not adopt a broad interpretation that would put a manufactured home within the scope of what a “trailer” is. Id. The Plaintiff provided the court with examples of cases from other jurisdictions interpreting the term “trailer” broadly enough to embrace a manufactured home. E.g., White v. McGowen, 364 Ark. 520, 222 S.W.3d 187 (2006); Beacon Hills Homeowners Ass’n, Inc. v. Palmer Properties, Inc., 911 S.W.2d 736 (Tenn. Ct. App. 1995). The Defendants have provided examples of such cases taking the contrary view, that a manufactured home is not a trailer. E.g., Hutchison v. Hill, 3 P.3d 242 (Wyo. 2000); Howell v. Hawk, 750 N.E.2d 452 (Ind. Ct. App. 2001).

Given the split of authority, examination of how other jurisdictions treat this issue is of limited assistance. There is, however, analytically helpful South Carolina authority more recent than Heape.

Four years after Heape, the Court of Appeals decided the case of Henry v. Chambron, in which it reversed the trial court's decision that a modular home ran afoul of covenants that prohibited the use of a "mobile home" or a "trailer" as a residence. 304 S.C. 351, 354 n. 1, 404 S.E.2d 518, 520 n. 1 (Ct. App. 1991). The Henry plaintiffs, citing Heape as their authority, argued "that the structure has the appearance of a mobile home and that the restrictions were designed to prevent structures with such an appearance in the subdivision." Henry, 304 S.C. at 353. The Court of Appeals declined to interpret Heape so broadly, reasoning as follows:

Even if his home were to resemble a mobile home, a structure having the mere appearance of a mobile home is not necessarily prohibited by a general restriction against mobile homes. Instead, 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.

...

The restriction could have prohibited modular homes by a simple expression of the intent to do so. . . . Even if modular homes were not contemplated at the time the restriction was filed, there is no evidence in the record that the property owners were prevented from amending the restriction to include modular homes at a later date.

Id. at 353, 354, 355 (internal citations and quotation marks omitted).

The Court of Appeals in Henry appears to have accepted without question that a modular home is not a trailer, seeing no need to analyze that issue. Id. at 353-55. The Henry court was also deliberate in applying the principles of South Carolina law that "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." Id. at 353. In accordance with these principles, the court not to expand the words of the covenant to bring an unmentioned type of housing within the ambit of the covenant language,

even if the covenants might have been written to prohibit that kind of housing had they been written more recently. Id. at 353, 354, 355. To the extent that Heape had departed from these bedrock principles of South Carolina covenant law, the Court of Appeals reined in its jurisprudence in Henry, perhaps functionally overruling Heape to the extent that Heape went as far as the Henry plaintiffs or the instant Plaintiff contend it did.

This court does not, however, need to overrule Heape in order to find for the Defendants here. The Heape court defined “trailer” as “a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile.” 293 S.C. at 345. Unlike the mobile home at issue in Heape, the Defendants’ manufactured home does not meet that definition of trailer. Accordingly, there is nothing inconsistent between Heape and a ruling in the Defendants’ favor in this case.

Even if one could reasonably, construe the term “trailer” in these 1954 covenants to embrace the more modern idea of a manufactured home, which is unlikely, one could also reasonably construe the term trailer *not* to include a manufactured home. That, under the “settled rule” in South Carolina, means that the court must adopt the construction “which least restricts the use of the property.” Taylor, 332 S.C. at 4. Older jurisprudence in our state also advocates for a narrow construction of the term “trailer.” The Supreme Court has upheld a ruling that a structure that was purposefully designed to look like a mobile home was neither a mobile home nor a trailer and was thus not prohibited by covenants that prevented trailer homes and mobile homes. Vickery v. Powell, 267 S.C. 23, 225 S.E.2d 856 (1976).

Indeed, the restrictions at issue do not mention manufactured homes. A restrictive covenant may not “be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was

written.” Forest Land, 57 S.E.2d at 424. Similarly to the situation addressed by the Court of Appeals in Henry, here, “[t]he restriction could have prohibited [manufactured] homes by a simple expression of the intent to do so[,]” and, “[e]ven if [manufactured] homes were not contemplated at the time the restriction was filed” – as, in 1954, they were not – “there is no evidence in the record that the property owners were prevented from amending the restriction to include [manufactured] homes at a later date.” Henry, 304 S.C. at 354, 355. They did not so amend, and nothing in the covenants prohibits a dwelling such as the Defendants’.

To find for the Plaintiff would require the court to stretch the definition of “trailer” and to adopt a broad construction of the term when a narrower, reasonable one is available that is less restrictive of the use of the property. To do either of those things would violate South Carolina covenant law. Taylor, 332 S.C. at 4. This the court is not permitted to do.

The covenants at issue contain the following provision:

No noxious or offensive trade, business, or vocation shall be operated or practiced on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become any annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.

The court now turns to whether the Defendants have violated the covenant provision prohibiting the doing of “anything whatsoever . . . on the premises which may be or may become any annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.” This covenant provision is too vague and indefinite to be enforced.

“Covenants purporting to impose affirmative obligations on the grantee are to be strictly construed and not enforced unless the obligation is imposed in clear and unambiguous language which is sufficiently definite to guide the courts in its application.” Lovering v. Seabrook Island Property Owners Ass’n, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986) A restrictive

covenant, “to be valid and enforceable . . . must not be too indefinite[.]” Vickery v. Powell, 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976); accord Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987) (“[c]ourts shall enforce such covenants unless they are indefinite”). “A standard such as ‘any other thing necessary or desirable in the opinion of the Board of Directors’ is too vague to be enforceable.” Lovering, 289 S.C. at 83.

Like the example given in Lovering, the covenant provision here is too vague and indefinite to be enforced. Annoyance is a subjective concept; what annoys one person may not annoy another. Anything that “may injure the value of any other lot or lots in the area” is markedly indefinite. This covenant provision does not meet the enforceability requirement of being “imposed in clear and unambiguous language which is sufficiently definite to guide the courts in its application.” Id. at 82. One could not objectively test whether any contemplated activity would run afoul of this provision.

Construing the covenants in accordance with the requirements of South Carolina law, there is no evidence before the court to the effect that the Defendants violated the covenants. That the Defendants violated the covenants is an essential element of the Plaintiff’s case. Rule 56, SCRCPP, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” Hansson, 374 S.C. at 357 (internal quotation marks omitted, ellipsis in original).

### RESULT

Accordingly, it is therefore hereby ORDERED that:

- 1) The Defendants’ motion for summary judgment is granted;
- 2) The Plaintiff’s motion for summary judgment is denied; and

3) There being no more claims at issue in this case, this case is hereby ended.

And IT IS SO ORDERED.

\_\_\_\_\_  
Brian L. Boger, Special Referee for Lexington County

July \_\_\_\_\_, 2020

Defendants' proposed order

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

) EDEKENEH COMMONPLEASCUIT  
) C/A No. 2019-CP-32-03305

Lisa Cruz,

Plaintiff,

v.

Heyward Bouknight and  
Kathy Bouknight,

Defendants.

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**VIRTUAL  
HEARING**

\*\*\*\*\*

**Wednesday, June 3, 2020**  
10:03 a.m. - 10:28 a.m.

The hearing before the Honorable Brian L. Boger, Special Referee for Lexington County, conducted virtually on the 3rd day of June, 2020 before Katherine M. Boone, Court Reporter and Notary Public in and for the State of South Carolina.



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**Also Present:**

Lisa Cruz, Plaintiff  
Rhonda S. Schaub, paralegal

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**EXHIBITS**

(No exhibits were marked during the hearing.)



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1     **CALL TO ORDER:**

2     **THE COURT:**   This is Brian Boger.   I am the special  
3                   referee in this matter, Civil Action Number  
4                   2019-CP-32-3305.   It's Cruz vs. Bouknight, and  
5                   the issue before the Court are two motions for  
6                   summary judgement, one by the Plaintiff, one by  
7                   the Defendant.   For the litigants' information  
8                   and for the lawyers, I have read everything.  
9                   I've read the depositions of the Bouknights,  
10                  the memorandums of law that you both prepared,  
11                  the pleadings, and reviewed all of the  
12                  exhibits.   I have (technical break in audio)  
13                  law for myself before this hearing, and have  
14                  done some other things, including looking at  
15                  the tax map, looking at the taxes for Lexington  
16                  county to see what the status is of this  
17                  property, and it looks like this is taxed as a  
18                  mobile home, taxed separately by the county.  
19                  I also have some questions before we go on the  
20                  record with the arguments, and that is do you  
21                  have any objection to the Court (technical  
22                  break in audio)?   Mr. Radeker, did you, did you  
23                  not hear my question?

24     **MR. RADEKER:**   No.   You had just said if I want to  
25                   know if anyone has any objection, and then



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1           that's, unfortunately, when it cut out for me.

2       **THE COURT:** Oh, that's fine, I'll repeat it. Do you  
3           have any objection to me driving by the  
4           property, either, either one of you?

5       **MR. RADEKER:** No.

6       **MR. SNELL:** None from the Plaintiff.

7       **THE COURT:** Okay. (Technical break in audio)  
8           Bouknights living there?

9       **MR. RADEKER:** Your Honor, you're cutting out a  
10           little bit again. I apologize. It may be a  
11           connection on my end. But I think you were  
12           asking if the Bouknights are living there.  
13           It's my understanding that they are, yes.

14       **THE COURT:** Okay. The final thing, I want to just  
15           let you know that I, I saw the email this  
16           morning from Mr. Snell sending 22 more pages of  
17           documents, and I saw Mr. Radeker's objection.  
18           And since those documents were not sent two  
19           days ago, I'm going to sustain Mr. Radeker's  
20           objection, and I'm not going to look at those  
21           documents, and I have not looked at them. We  
22           can, we can figure something out perhaps later  
23           at the Court's discretion, but I have not  
24           reviewed those documents, and I once again  
25           sustain Mr. Radeker's objection.



1     **MR. RADEKER:** Thank you, Your Honor.

2     **THE COURT:** Now, having said that, I'm ready to hear  
3           from, from you, and I, quite frankly I can't  
4           remember which motion was filed first, but  
5           they're cross motions, and I think for  
6           (technical break in audio).

7     **MR. RADEKER:** Judge, we didn't hear what you just  
8           said.

9     **THE COURT:** Okay. I'm going to let Mr. Snell argue  
10          first. Could you hear that?

11    **MR. SNELL:** I did. Yes, Your Honor.

12    **THE COURT:** Okay. So Mr. Snell, you go ahead.

13    **PLAINTIFF'S POSITION STATEMENT:**

14    **MR. SNELL:** Thank you very much. And again, I  
15          represent the Plaintiff, Lisa Cruz, who has  
16          filed this action, you know, essentially  
17          seeking to stop the Defendant Bouknights from  
18          having the structure that they placed on the  
19          property and to have it removed. Ms. Cruz is  
20          a, is a neighbor and a homeowner in the -- on  
21          the same street. There's a set of restrictive  
22          covenants which apply to her property and the  
23          Bouknight property that's the basis for her  
24          request. And those are the restrictions  
25          referred to in the complaint and are -- and



1           also provided to Your Honor. I believe those  
2           were recorded in 1954, prohibiting several  
3           types of items, including trailer, basement,  
4           tent, shack, garage, or barn. And referring to  
5           -- dwellings erected shall be a modern design  
6           of construction. Some specifications about the  
7           dwellings as well as limiting noxious,  
8           offensive traits or anything that might be an  
9           annoyance to the neighborhood or limiting to  
10          the value of other lots in the area. And I  
11          think what this has -- I think the question is  
12          is what the Bouknights have placed on the  
13          property, is that prohibited by the  
14          restrictions? And the restrictions from 1954  
15          use the term trailer. We have -- there is a  
16          case we provided and referred to in our  
17          memorandum ---

18       **THE COURT:** That's the Heape case?

19       **MR. SNELL:** The Heape case, which refers to a  
20          manufactured home, in quotation marks, by the  
21          court, finding that that was a trailer under  
22          South Carolina law. The specific -- we wanted,  
23          we did some additional research and kind of  
24          found a case illustrative of what appears to be  
25          the national kind of standard or the general



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1 rule applicable to this question, which was an  
2 Arkansas case we provided this morning and  
3 included, and that was the -- that's the White  
4 versus McGowen case from 222 S.W. 3d 187, but  
5 basically holding that even, even something  
6 categorized as a manufactured home is a trailer  
7 would be defined. And again, we have law in  
8 South Carolina holding from the Heape case  
9 referring to that as either mobile home or, in  
10 quotation, manufactured home, as being a  
11 trailer. The property in, the item in question  
12 is certainly not in accordance with the  
13 characteristics of the street or other homes in  
14 the neighborhood. It looks different, and I  
15 think that's uncontroverted based on the  
16 testimony from the Bouknights at their  
17 deposition. It looks different. The law in  
18 South Carolina, including the statutory scheme,  
19 differentiates between mobile homes,  
20 manufactured homes, and modular homes. And  
21 there seems to be a difference perhaps dealing  
22 with the application of a restrictive covenant  
23 like this and a modular home. That was  
24 referred to in the -- I had a printer error  
25 right before I came in here. But that was



1       referred to in the Henry case, I think  
2       referenced by the Defendants, which ultimately  
3       ended up dealing with the modular home. That's  
4       actually a separate statutory scheme for  
5       modular homes under 23-43-20. The Defendants,  
6       in their deposition, testified that, you know,  
7       they categorized what they purchased as a  
8       manufactured home. I think there was some  
9       testimony that it was \$100,000 less, or cost  
10      100,000 less than a modular home. So it's  
11      clearly less than that. And just, Your Honor,  
12      based on the dwelling being something that was  
13      not erected on-site, was delivered on a truck  
14      on wheels, situated, just basically delivered,  
15      and something that was designed to be  
16      transported and moves on highways, I think it's  
17      also uncontroverted that this was brought out  
18      on, you know, wheels and down the road. It's  
19      additionally, it's, as Your Honor referred to,  
20      it's taxed as a mobile home, there were mobile  
21      home applications, it's got a DMV -- it's got  
22      a VIN number with the DMV. It is -- we believe  
23      it's clear that it falls under the restrictive  
24      covenants, and I would ask for those to be  
25      enforced.       Additionally, Your Honor, the



1 restrictions, you know, provide that things  
2 can't be done that are an annoyance to the  
3 neighbors, and I think Ms. Cruz doesn't like  
4 it, and I don't think anybody -- I'm not aware  
5 of anyone on the street, but we certainly, I  
6 think, provided, Ms. Cruz provided some other  
7 affidavits from neighbors that also don't like  
8 it. So that's all at this time.

9 **THE COURT:** Okay. Let me get some understanding.  
10 The 22 pages that you sent this morning, Mr.  
11 Snell, was that law that you sent?

12 **MR. SNELL:** No, Your Honor. It was the, it was the  
13 -- when we, when we were doing discovery, and  
14 I'll say to Mr. Radeker, I thought sure as the  
15 world we'd sent that to Mr. Radeker when we  
16 received the documents. That was the -- when  
17 we got the, initially got discovery, we didn't  
18 get any of the sales contracts, any of the  
19 paperwork from the, the store where they bought  
20 it. None of the sales, just -- we didn't get  
21 any of the sales contracts or any of that  
22 stuff. So I talked to Mr. Radeker about it.  
23 We sent a subpoena out to the Oakwood Home  
24 Store in Lexington, close to Hudson Barbecue.  
25 And those documents are just the sales



1 contracts and the paperwork that the Bouknights  
2 had with the dealership when they bought it.

3 **THE COURT:** Okay.

4 **MR. SNELL:** It was just, it's just their documents,  
5 and frankly they were -- what I say to Mr.  
6 Radeker, those are things that we should have  
7 gotten in discovery, but I understand that they  
8 were lost or misplaced or I don't know. But it  
9 wouldn't have been anything new or novel to  
10 them.

11 **THE COURT:** I will ---

12 **MR. RADEKER:** I would just say if we had had them,  
13 we would have produced them. The prejudice to  
14 me about them being considered today is that I  
15 really haven't had any time to go through them  
16 to see whether there's anything hurtful,  
17 helpful, or if they're just indifferent. I  
18 mean I just -- I don't know what's in them.  
19 And so that was why we were asking that they  
20 not be considered on the basis of they weren't  
21 timely provided under the rules.

22 **THE COURT:** Okay. Let's, let's do this. I have  
23 already ruled that I'm not going to consider  
24 them. And obviously I haven't. If, if Mr.  
25 Radeker, if you want to look at those documents



1 later, that you agree that I can look at them,  
2 then I will, I will change my ruling. But if  
3 you object to that then I'll stand by my  
4 ruling. I think that's fair to both parties.

5 **MR. RADEKER:** Thank you. I understand. I think ---

6 **THE COURT:** Let me interrupt you for a second.

7 **MR. RADEKER:** Sure.

8 **THE COURT:** What I was really looking for in my  
9 question to Mr. Snell was if he was going to  
10 say that those 22 pages was law then certainly  
11 I would consider that because I can consider  
12 law but not facts. So that being said, if you  
13 gentleman and I -- at the end of this ruling  
14 I'm going to suggest that you send me more law  
15 if you believe it's necessary, and I will  
16 certainly look at that. Could you all hear me?

17 **MR. SNELL:** Yes.

18 **MR. RADEKER:** Yes.

19 **THE COURT:** Okay. So I'm ready to hear from Mr.  
20 Radeker.

21 **DEFENDANTS' POSITION STATEMENT:**

22 **MR. RADEKER:** Thank you, Your Honor. Drew Radeker  
23 for the Bouknights. The problem with the  
24 Plaintiff's motion, and really with the  
25 Plaintiff's case, is that the Plaintiff's case



1 hinges upon the dwelling that's on my clients'  
2 property being a trailer. And we put in the  
3 memorandum that we sent to Your Honor various  
4 definitions of trailer and other kind of  
5 related concepts from the dictionary, from  
6 statutes that define what a trailer is in South  
7 Carolina, and there's also a definition of the  
8 word trailer that is, ironically for the  
9 Plaintiff, given in the Heape case that is  
10 really dispositive of their case, if you apply  
11 that definition. The Heape case defines  
12 trailer as a non-automotive highway vehicle  
13 designed to be hauled by a tractor, truck, or  
14 automobile. Mr. Snell said earlier that the  
15 manufactured home was brought to the property  
16 on wheels. But what he didn't mention is that  
17 it was brought to the property the same way  
18 anything else on the bed of a truck would be  
19 brought on. It was brought on the bed of a  
20 truck. It doesn't have it's own wheels. And  
21 there's no evidence in the record that it ever  
22 did. This item has never been built or  
23 designed to be hauled on its own, anymore than  
24 a bunch of boards that you'd build a house out  
25 of would be. Just 'cause it can be placed on



1 the bed of a truck and moved doesn't mean that  
2 it meets the definition of being equipped to be  
3 moved on streets or highways, designed to be  
4 hauled, or anything like that. And that's  
5 really dispositive of the whole case. The  
6 Bouknights' house is a manufactured home. A  
7 manufactured home is not a mobile home. The  
8 Heape case might be citable for the proposition  
9 that a mobile home is a trailer, but that's  
10 because of the definitions of mobile home and  
11 trailer, as the Heape case makes clear in its  
12 analysis. A manufactured home, which is what  
13 this is, has a very different definition of  
14 what it is. And that definition does not  
15 include being equipped to be moved on streets  
16 and highways. And so it doesn't fall within  
17 the term trailer. Look how far afield the  
18 Court would have to get from what a trailer is  
19 to decide that this falls within this  
20 definition. To look at what's a trailer, and  
21 then you'd have to say well, maybe all mobile  
22 homes are trailers. And then maybe this  
23 manufactured home, because it kind of looks  
24 like some mobile homes, that it's a trailer.  
25 It's not a trailer. It doesn't meet the



1        requisites of what a trailer is. As far as the  
2        argument that well, this must have been  
3        intended to be covered by this, that argument's  
4        been rejected in a couple of cases, in the  
5        Vickery case, in the Henry versus Chambron case  
6        that we cite. The court of appeals rejected  
7        arguments that -- or the Supreme Court and the  
8        court of appeals, respectively, rejected  
9        arguments that things that look like mobile  
10       homes were to be treated as mobile homes. In  
11       one of those cases there was a covenant that  
12       prohibited both trailers and mobile homes. And  
13       they said it's not enough for it to look like  
14       it. And all of that has to do really with the  
15       way that a court treats restrictive covenants,  
16       is they're to be strictly construed against the  
17       amount of restriction, and liberally in favor  
18       of the free use of the property. So, in other  
19       words, as a matter of law, if Your Honor sees  
20       this -- and I don't, but if Your Honor sees  
21       this as being, this word trailer as being  
22       susceptible of two different interpretations,  
23       one of which would allow this manufactured home  
24       to be there, and one of which would not, as a  
25       matter of law, the Court must adopt the



1 interpretation that permits the manufactured  
2 home to be there. I guess I would say that the  
3 -- I'm hearing now kind of for the first time,  
4 now I'm kind of starting to get why maybe these  
5 affidavits of the neighbors were put into the  
6 record, something about an annoyance to the  
7 neighbors. If I offer any more law to the  
8 Court it's probably going to be about that. To  
9 the extent that they're relying on that, that  
10 covenant about what is noxious, what is  
11 annoying, it's too vague to be enforced. And  
12 there are cases that say that. There's no  
13 objective way to determine whether something is  
14 annoying or noxious. And for that reason,  
15 courts have declined to enforce evidence like  
16 that. That wasn't even what I understood their  
17 argument to be until this hearing started. And  
18 so we would just note that there's no evidence  
19 in the record that this structure, which is the  
20 Bouknights' dwelling, has met any of the  
21 definitions -- trailer, mobile home, or  
22 anything like that that are in the record that,  
23 that we cited in the memorandum. Those are the  
24 ones that I know of that exist. And so absent  
25 that essential element of the Plaintiff's case,



1 Plaintiff can't win the case, even if you view  
2 the facts in the light most favorable to her.  
3 Thus, we are entitled to summary. Thank you.

4 **THE COURT:** Anything in response, Mr. Snell?

5 **MR. RADEKER:** Jim, you may be on mute.

6 **THE COURT:** Yeah, I'm not hearing anything.

7 **MR. SNELL:** Am I audible?

8 **MR. RADEKER:** Yes.

9 **MR. SNELL:** Okay.

10 **THE COURT:** There we go. I'm hearing you now. Just  
11 start over. I'm sorry.

12 **MR. SNELL:** No, no, thank Mr. Radeker for telling  
13 me.

14 **RESPONSE BY MR. SNELL:**

15 **MR. SNELL:** So I just briefly wanted to  
16 differentiate the, some of the cases we've  
17 discussed. The Defense cited the Vickery case,  
18 and I believe that case refers to, I think I'm  
19 quoting it, a property that was built from the  
20 ground up that was a site-built home. And so  
21 that's not a, any kind of manufactured or  
22 anything other than a site-built home. The  
23 Henry case, again I think dealt with the  
24 modular, which I think we're all in agreement  
25 this is not, and modular is different from



1           manufactured home. There's a distinction. And  
2           again, the Heape case, applying the same  
3           language in the covenants of a trailer, applied  
4           it to what they refer to in quotations as a  
5           manufactured home. And I just again would  
6           point out, I think that the clearest cases on  
7           point deal with manufactured homes versus  
8           covenants for trailer. You know, every case  
9           we've seen out of state, and I cited one that  
10          includes other example cases, says that what a  
11          manufactured home counts as a trailer for the  
12          purpose of these restrictions. And nothing  
13          further.

14       **THE COURT:** Mr. Radeker, anything else in response?

15       **REPLY BY MR. RADEKER:**

16       **MR. RADEKER:** Just briefly. South Carolina law is  
17          the law that is applicable to this case. South  
18          Carolina law construes the restrictions and  
19          restrictive covenants quite strictly. Any  
20          attempt to stretch a definition of a  
21          prohibitive act in a restrictive covenant is --  
22          that doesn't comport with South Carolina law.  
23          And that's what the Court would have to do in  
24          order to rule for the Plaintiff.

25       **DECISION OF THE COURT:**



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Record on Appeal p. 170

1     **THE COURT:** Okay. Here's what I'm thinking, and you  
2           lawyers help me. I would like to give you 30  
3           days to come up with any additional law that I  
4           need to look at. And you both know me, I  
5           generally don't do proposed orders, but in this  
6           case I'm gonna do proposed orders from both of  
7           you. So in your proposed orders, find me some  
8           law. Quite frankly, I am looking for law since  
9           Heape. Heape is 1987, and that was now going  
10          on 40 years ago, certainly 35, it doesn't  
11          matter. I'm looking for something besides  
12          Heape in South Carolina. And if there's not  
13          any, I understand. And, and once again, I want  
14          to, I want to make sure that you have no  
15          objection to me looking at the property. We  
16          covered that. I want to make sure. I wasn't  
17          sure if you both agreed.

18     **MR. RADEKER:** Your Honor, I think we all might have  
19           been cutting out a little bit. I said no, I  
20           don't have any objection to it.

21     **THE COURT:** Okay.

22     **MR. RADEKER:** All I would, I would note the cases  
23           that we do have in South Carolina that say that  
24           essentially what the, what the structure looks  
25           like really doesn't have much to do with it.



1           So -- and I think both the Henry case and the  
2           Vickery case indicate that like looking like a  
3           structure that might be prohibited, that's,  
4           that's not a violation.

5       **MR. SNELL:**   And no objection from the Plaintiff.

6       **THE COURT:**   Okay.   All right.

7       **(There being nothing further, the virtual hearing**  
8       **concluded at 10:28 a.m.)**

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STATE OF SOUTH CAROLINA                     )  
COUNTY OF LEXINGTON                     )   IN THE COURT OF COMMON PLEAS  
C/A NO.: 2019-CP-32-03305

Lisa Cruz,                                     )  
                                                  )  
                                          Plaintiff,                     )  
vs.                                             )  
                                                  )  
Heyward and Kathy Bouknight,            )  
                                                  )  
                                                  )  
                                          Defendants.                 )  
\_\_\_\_\_                                     )

MOTION TO RECONSIDER

HEARING

Wednesday, March 9, 2022

The hearing before Special Referee Brian L. Boger was taken on Wednesday, March 9, 2022, by Robin K. Reibold, CVR, Notary Public in and for the State of South Carolina, at the offices of Boger Law Firm, 1331 Elmwood Avenue, Suite 210, Columbia, South Carolina.

## CRUZ V. BOUKNIGHT 3/9/2022

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## CRUZ V. BOUKNIGHT 3/9/2022

1 THE COURT: Okay. This is the matter of Lisa Cruz v.  
2 Heyward and Kathy Bouknight. The docket number is  
3 2019-CP-32-3305. This is a matter involving a  
4 piece of real estate in Lexington County. I have  
5 signed an order in favor of the plaintiff, who's  
6 asking the property be -- the home to be removed,  
7 and Mr. Radeker has filed a motion for  
8 reconsideration. It was timely filed. And this  
9 is the motion for reconsideration hearing. And  
10 with that being said, Mr. Radeker, it's your  
11 motion.

12 MR. RADEKER: Thank you, Your Honor. Drew Radeker here  
13 for the defendants. First of all, just as a  
14 housekeeping matter, there's been extensive  
15 writing and filing -- or previous argument on  
16 this, and so we just incorporate all of that to  
17 what we're here to talk about today so I can just  
18 hit the high points.

19 One thing, before I get into talking about  
20 what the definition of "trailer" is, which is  
21 essentially much of what the underlying decision  
22 hinges on, I want to talk about the relief that's  
23 ordered for a second. I went back in, looked at  
24 the order and looked at the covenants. And what  
25 the covenants say is that no trailer, and these

## CRUZ V. BOUKNIGHT 3/9/2022

1 other things, can be used as a residence on the  
2 property. But what the order directs is for this  
3 to be removed from there. The covenants don't  
4 prohibit trailers from being on the subject  
5 property; they prohibit them from being used as a  
6 residence. So if the Court has concluded that  
7 this is a trailer, then the thing to do to find in  
8 favor of the plaintiff would be to order the  
9 defendants to stop using it as a residence, not  
10 for them to take it off of the property, because  
11 nothing prevents trailers from being on the  
12 property, that are in the covenants.

13 But to talk about the heart of the matter and  
14 the substantive issue of why it is that we see the  
15 Court's ruling as incorrect is basically is that  
16 this is not a trailer. It's never fit the  
17 definition of "trailer" under any of the  
18 definitions of "trailer" that anybody offered in  
19 the entire case. And Jim Snell and I and the  
20 Court, together I think, found just about every  
21 possible definition of "trailer" that could  
22 possibly exist and laid them all out there. But,  
23 in essence, what they all have in common about  
24 what a trailer is, is it's something that's  
25 equipped to function itself as a conveyance. I

## CRUZ V. BOUKNIGHT 3/9/2022

1 think the -- there's a quote from the Heape case -  
2 - and Heape has got some interpretive problems  
3 with it, but this is accurate in here. And it  
4 says what a trailer is, and that a trailer is a  
5 non-automotive highway vehicle designed to be  
6 hauled by a tractor, truck, or automobile. So  
7 ordinarily that would mean it has wheels. There  
8 is no evidence to the effect that in this case,  
9 this structure, whether you call it a manufactured  
10 home or a pre-fabricated home, has ever been  
11 something that fits that definition, that it's  
12 ever been equipped to be a conveyance, that it's  
13 ever been equipped to be hauled. Indeed, the  
14 Court focused in the order apparently on the fact  
15 that Ms. Bouknight testified as to how it got to  
16 the property, that it was brought there on a truck  
17 bed. It doesn't have wheels. It couldn't have  
18 been hauled behind the truck. If that had  
19 happened, it would have just dragged on the  
20 ground, throwing sparks everywhere, because it's  
21 not equipped to serve as a conveyance.

22 If we look at the definition in South  
23 Carolina Code Section 56-19-10(10) -- and that  
24 whole section is just a long list of definitions  
25 of a house trailer. It says, among other things,

## CRUZ V. BOUKNIGHT 3/9/2022

1           that a house trailer is equipped for use as a  
2           conveyance on streets and highways. Not designed  
3           to be put on a conveyance and moved, but that it  
4           is a conveyance itself. If we look at -- and this  
5           is cited in the Court's order on page 5. If we  
6           look at the definition of "trailer" in 56-19-  
7           10(34) -- I'm sorry, it's not cited. It's cited  
8           in our proposed order on page 5. That a trailer  
9           is, among other things -- "'trailer' means every  
10          vehicle, with or without motive power, other than  
11          a pole trailer, designed for carrying persons or  
12          property and for being drawn by a motor vehicle."  
13          That's what the word that's at issue here means.  
14          It's designed to be drawn by a motor vehicle.  
15          That's what a trailer is. This has never been  
16          that. No matter what else it's been, it's never  
17          been that. And that goes to kind of the way that  
18          the analysis came down here.

19                 It seems that the Court looked to, well,  
20          what's the intention here, you know, and if  
21          structures like this had been around in 1954, when  
22          these covenants were done, would they have been  
23          contemplated as being included here? But there's  
24          no need to do that. Only if there's ambiguity  
25          about what is meant does a court then look outside

## CRUZ V. BOUKNIGHT 3/9/2022

1 the document for evidence of what was intended  
2 here. Only then does intent even matter. If the  
3 words say what the covenants say, then we look to  
4 the words in the analysis. And under any  
5 definition of "trailer," this doesn't fit.  
6 "Trailer" is a defined term. All of those  
7 definitions have in common that it's something  
8 designed to be drawn by something, by a motor  
9 vehicle. And this doesn't fit that.

10 The Court noted that a manufactured home is  
11 something that's defined as being transportable by  
12 statute, but it's not something that's equipped as  
13 a conveyance, like a house trailer is. So it  
14 doesn't fit the definition of -- the statutory  
15 definition of "trailer," any of the dictionary  
16 definitions of "trailer." Transportability is not  
17 the defining characteristic of a trailer. It's  
18 the ability to be -- it's that it's designed to be  
19 drawn behind a vehicle, and that it is a non-  
20 automotive vehicle that doesn't operate on its own  
21 power. That's what makes a trailer a trailer.

22 The Action Mortgage Corporation that the  
23 Court cites says that a manufactured home is a  
24 mobile home. And then the Court looks at the  
25 Heape case. It says, well, a mobile home is a

## CRUZ V. BOUKNIGHT 3/9/2022

1 trailer under the covenants that were at issue  
2 there. Well, Action Mortgage Corporation takes  
3 that definition from Section 31-17-20(a), which  
4 was repealed in 1986, long before the events at  
5 issue in this case. The decision seems to be  
6 grounded upon something that the Court has  
7 acknowledged is not the law, that that is not the  
8 law applicable to this case. That definition has  
9 never been the definition at issue here.

10 I'd also note that the Heape case never said  
11 that manufactured homes were trailers. And  
12 there's something in the Court's order where it --  
13 that says that that's what the Heape case says,  
14 but it's not what the Heape case says. The Heape  
15 case, at its most plaintiff -- in this case --  
16 friendly interpretation, says that mobile homes  
17 are trailers. "Mobile homes" has a different  
18 definition.

19 The Court's order in this case says there's  
20 no important distinction between trailer, a  
21 manufactured home, and a mobile home. But I'd  
22 note that there is. The Legislature has given  
23 these terms different definitions. And our law  
24 presumes that the Legislature does not intend to  
25 do a futile act when it creates a statute. The

## CRUZ V. BOUKNIGHT 3/9/2022

1           Legislature meant for these things to be  
2           determined to be different things. And they are  
3           different things.

4           It's, I think, a stretch and a bridge too far  
5           for the Court to say, well, in 1954 this or that  
6           was the intent of the drafter of these covenants.  
7           As I discussed earlier, there's no reason to go to  
8           what the intent was. But further, there's no  
9           evidence of what the intent of the drafter was  
10          other than what the words are here. Also, that in  
11          1954 -- the idea that in 1954 "a trailer" was  
12          intended to cover a dwelling like what the  
13          Bouknights have in this case, I think that's too  
14          much of a stretch. That doesn't fit. Because  
15          dwellings like what the Bouknights had in this  
16          case didn't exist in 1954.

17          The Court notes that if the Bouknights were  
18          to -- and I don't agree with this analysis. But  
19          the Court says that if the Bouknights were to show  
20          that their house was a "certified modular home,"  
21          that that would mean that it doesn't apply, but  
22          the Court has never given the Bouknights a chance  
23          to show whether their house is a certified modular  
24          home. And the plaintiffs haven't proven that it's  
25          not.

## CRUZ V. BOUKNIGHT 3/9/2022

1           We just note that this isn't a trailer. It's  
2           never fit any definition of what a trailer is.  
3           And the Court has abandoned bedrock principles of  
4           how covenants are to be construed. And that is  
5           that they're to be construed narrowly, in favor of  
6           the free use of the property, that no expansion of  
7           them is to be implied to attempt to divine what it  
8           is that the Court thinks that the author of them  
9           may have meant at the time. But the Court has  
10          construed them broadly and attempted to bring this  
11          structure within the ambit of a word that doesn't  
12          describe what it is. If the correct analysis is  
13          applied -- the correct analysis is what -- as our  
14          appellate courts have stated that it is, is  
15          applied here, is this is no trailer and it doesn't  
16          violate these covenants. "Trailer" has got to be  
17          construed narrowly. We look at all the  
18          definitions of "trailer," this doesn't fit.

19                 And at the risk of beating this dead horse  
20                 further, I'll call it a day on the argument and  
21                 rest on what it is I've already filed. Thank you.

22         THE COURT: Yes, ma'am.

23         MS. KIRKLAND: I will just try to quickly make my point.

24                 That was a lot of information. Firstly, the  
25                 county of Lexington, regardless of statutory

## CRUZ V. BOUKNIGHT 3/9/2022

1 definitions, case law, anything else, Lexington  
2 clearly defines this as a mobile home. It is --  
3 has a county mobile home permit with the county of  
4 Lexington. It has a vehicle ID number and is  
5 registered with the DMV. It is taxed as a trailer  
6 by Lexington County. So clearly, under whatever  
7 definitions of this state may or may not apply,  
8 under the Lexington County, where it resides, it  
9 is a trailer.

10 And, let's see -- as far as the Heape  
11 argument, that it was designed to be hauled by a  
12 tractor, and you stated that therefore it must  
13 have wheels, there's nothing specifically in that  
14 case law that says that to be hauled by a tractor  
15 it has to have wheels. It doesn't specify how it  
16 is to be hauled. Being put on a flatbed hauled by  
17 a motor vehicle I would argue is being pulled by a  
18 tractor; therefore, meets the definition of a  
19 trailer. Under 56-19-10, it states that it must  
20 be drawn by a motor vehicle. Again, it does not  
21 specify how. Being put on a flatbed and relocated  
22 to the property is being drawn by a motor vehicle.

23 He also states that a lot of these case laws  
24 and statutes, that both we cited in our motions  
25 and the defense cited in their motions, none of

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1           these were written at the time of the covenant.  
2           Or a great many of them. So I do believe that it  
3           is very valuable to look at the intent of the  
4           covenant. Defense states that there's nothing  
5           else in the covenant to suggest what the intent of  
6           the ban on the trailers was, but the rest of the  
7           covenant specifically states how the homes must  
8           look -- the exterior, the interior, the number of  
9           rooms. The clear intent of the covenant in its  
10          entirety is uniformity of the neighborhood. And  
11          clearly, this home is not in keeping with that  
12          covenant and the uniformity of the neighborhood.

13                 And my last point would be about it being a  
14          certified modular home. The defense stated that,  
15          you know, the plaintiff hasn't been able to show  
16          that they don't have that. I would argue it is  
17          not on the plaintiff to prove that or disprove it  
18          whatsoever. It isn't what I would consider an  
19          affirmative defense. And since it was stated in  
20          your order, which was filed several months ago,  
21          before this motion to reconsider was filed, they  
22          had plenty of time to do so and did not. I will  
23          keep it short and sweet.

24          THE COURT: Thank you.

25          MR. RADEKER: Very briefly, three things.

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1 THE COURT: Of course.

2 MR. RADEKER: One, the mobile home affidavit that  
3 Lexington County had the Bouknights sign, it might  
4 be titled "Mobile Home Affidavit," but it never  
5 actually states that the object in question is a  
6 mobile home. So it's not like there's been some  
7 admission by them that it is. That's just how  
8 that document is titled.

9 Any object could be put on a flatbed and  
10 hauled. This table's not a trailer, but it could  
11 be put on a flatbed and hauled.

12 Also, it's the plaintiff's burden, you know,  
13 on the certified mobile home question, it's the  
14 plaintiff's burden to show everything. And at the  
15 summary judgment stage that this was, we're  
16 talking about the grant of the plaintiff's motion,  
17 so all ambiguities, inferences in the record, and  
18 everything are to be construed in favor of the  
19 Bouknights.

20 Summary judgment is not proper here. I mean,  
21 I think we were entitled to get our summary  
22 judgment motion granted. But that aside, the  
23 plaintiff certainly wasn't entitled to get theirs  
24 granted. Like, if Your Honor disagreed with our  
25 position, that only meant that there are fact

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1 issues for trial, not that the plaintiff is  
2 entitled to win the case. And that's what I have.  
3 Thank you.

4 THE COURT: Okay. Let me -- just for clarity, I  
5 remember that counsel for both sides indicated  
6 that what I was given was all of the evidence that  
7 was needed for a trial. So we don't have a  
8 questions of fact here, do we, other than what  
9 I've already looked at?

10 MS. KIRKLAND: No.

11 THE COURT: And what I've heard. Is that correct?

12 MR. RADEKER: I cannot remember whether anybody said  
13 anything to that effect, but --

14 THE COURT: Okay.

15 MR. RADEKER: -- I don't have any knowledge that what  
16 you're saying is wrong.

17 THE COURT: Okay. Okay. Another, just -- I was looking  
18 just a minute ago, I've seen pictures of the home,  
19 but I don't -- are they part of the record?

20 MR. RADEKER: I don't think so.

21 THE COURT: If they're not, then I want to -- I want  
22 someone to make them part of the record.

23 MS. KIRKLAND: I am happy to.

24 THE COURT: Okay.

25 MS. KIRKLAND: I have photos of the home in question,

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1           and then two other homes in the neighborhood just  
2           to show that it's not in conformity with the rest  
3           of the neighborhood.

4           THE COURT: Okay. If you could get the court reporter  
5           to mark those.

6           (Plaintiff's Exhibit 1 was marked for identification and  
7           entered into the record.)

8           MS. KIRKLAND: Absolutely. Do you want to look at these  
9           first?

10          MR. RADEKER: I don't have any objection to their  
11          admission because, as we noted at the previous  
12          hearing, motion of summary judgment, it doesn't  
13          matter what the structure looks like; it matters  
14          what it is.

15          THE COURT: Well, I'm concerned that there would be  
16          three fine people that may be looking over my  
17          shoulder at some point in time, and pictures  
18          aren't part of the record so I want to put them in  
19          the record.

20                 I had some other notes. And maybe this is  
21          not in the record. What was the cost of the home  
22          that was put on this lot?

23          MR. RADEKER: I think it was in the record, but I'd have  
24          to look at the -- I think it's in Ms. Bouknight's  
25          deposition.

## CRUZ V. BOUKNIGHT 3/9/2022

1 THE COURT: Okay.

2 MR. RADEKER: I'd have to -- I mean, I can't remember  
3 off the top of my head. I'd have to look at the -  
4 -

5 THE COURT: Oh, that's fine. I just wanted to make  
6 sure. And I'll look at her deposition again and  
7 make sure that it's --

8 MR. RADEKER: But if I remember right, she -- she was  
9 asked that and testified to how much it was.

10 THE COURT: I thought so.

11 MR. RADEKER: Yeah.

12 MS. KIRKLAND: I don't remember specifically what it is  
13 off the top of my head. I think I know what it  
14 is, but I don't want to misspeak and put something  
15 incorrect on the record.

16 THE COURT: Okay. No, I'm going to take this under  
17 advisement. And I promise you I won't take very  
18 long to rule. I know this needs to move on. I  
19 appreciate y'all being here.

20 MR. RADEKER: Given that there's a time frame for  
21 compliance in the order, kind of what are we to do  
22 about that while we await Your Honor's ruling?

23 THE COURT: I think we -- we can wait until my ruling.

24 MR. RADEKER: Okay.

25 THE COURT: I'm not going to hold that time compliance -

## CRUZ V. BOUKNIGHT 3/9/2022

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MR. RADEKER: Okay.

THE COURT: -- until I rule.

MR. RADEKER: I just wanted to be sure I get that.

MR. RADEKER: That's a good question. A proper good  
question. Anything else?

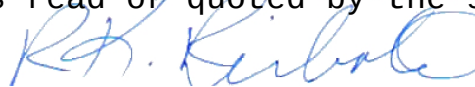
MS. KIRKLAND: No, nothing from me.

MR. RADEKER: No, Your Honor.

THE COURT: Thank y'all. I think we're adjourned.

(Whereupon, the hearing in the above-entitled matter was  
concluded.)

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## CRUZ V. BOUKNIGHT 3/9/2022

## CERTIFICATE

I certify that the foregoing transcript, consisting of 17 pages, is, to the best of my ability, a true, accurate and complete transcript of the hearing taken by myself, Robin K. Reibold, the undersigned court reporter, before Special Referee Brian L. Boger, 1331 Elmwood Avenue, Suite 210, Columbia, South Carolina, on March 9, 2022, in the within-captioned case.

Said hearing was reported using the method of Stenomask with backup and was transcribed by me.

Witness my hand and seal this 5th day of August, 2022.

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Robin K. Reibold, CVR  
Notary Public for South Carolina  
My Commission Expires: 04/22/2031

**STATE OF SOUTH CAROLINA**  
**COUNTY OF LEXINGTON**

**IN THE COURT OF COMMON PLEAS**

**Case No. 2019-CP-32-03305**

**Lisa Cruz,**

**Plaintiff,**

**vs.**

**Heyward and Kathy Bouknight,**

**Defendants.**

**DEFENDANTS' MEMORANDUM  
 CONCERNING MOTIONS FOR  
 SUMMARY JUDGMENT**

The Defendants hereby submit this memorandum concerning the motions for summary judgment this court is set to hear on June 3, 2020, in the above-captioned action.

This action seeks injunctive relief requiring the Defendants to remove their home from their property, with the Plaintiff contending that the Defendants' use of their house as a residence violates restrictive covenants. The Plaintiff bases her case on the provision in the covenants that "[n]o trailer, basement, tent shack, garage, or barn shall at any time be used as a residence, either temporary or permanent[.]" at property subject of the covenants.

The Defendants' home on the subject property is a manufactured home. The Plaintiff contends that it is a "trailer[.]" It is not.

**DICTIONARY AND STATUTORY DEFINITIONS**

This case appears to turn largely on the meaning of the word "trailer," since the prohibition against using a trailer as a residence is the only thing the Plaintiff argues that the Defendants have done to violate the covenants. An examination of various definitions of "trailer," "house trailer," and "mobile home" reveal that they all have in common one thing, their *sine qua non* – that they are equipped to be hauled as a vehicle on streets and highways, being constructed such that they may be towed on the road.

The Merriam-Webster dictionary defines “trailer” as follows:

1 : a nonautomotive vehicle designed to be hauled by road: such as

a : a vehicle for transporting something, a boat trailer  
especially : semi-trailer sense 1

b : a vehicle designed to serve wherever parked as a  
temporary dwelling or place of business

c : mobile home

2a: a selected group of scenes that are shown to advertise a movie :  
preview sense 3 a theatrical trailer

b: a short blank strip of film attached to the end of a reel

3 : one that trails

4 : a trailing plant

(Emphasis added.) Under this definition, if even a “mobile home” is not designed to be hauled by road, it is not a trailer.

This understanding, that a *trailer* is something that is equipped to be hauled, rolling behind a towing vehicle, is borne out by a number of statutory definitions from the South Carolina Code, too. “‘Trailer’ means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.” S.C. Code Ann. § 56-19-10(34) (emphasis added).

“House trailer” means:

(a) a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets and highways; or

(b) a trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in

subitem (a) of this item, but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for another commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

S.C. Code Ann. § 56-19-10(10) (emphasis added).

The Plaintiff seems to contend that a mobile home is a trailer and that the Defendants' house is a mobile home. Accordingly, it may be useful to examine the statutory definitions of "mobile home" and "manufactured home."

"Mobile home" means every vehicle which is designed, constructed, and equipped principally as a permanent dwelling place and is equipped to be moved on streets and highways, but which exceeds the size limitations prescribed in Section 56-3-710 and which cannot be licensed and registered by the Department of Motor Vehicles as a "house trailer."

S.C. Code Ann. § 56-19-10(39) (emphasis added).

A manufactured home, which is what the Defendants have, has a very different definition.

"Manufactured home" means a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in it.

S.C. Code Ann. § 40-29-20(9). That definition contains nothing about being equipped to be moved on streets and highways. Id.

### **PRINCIPLES OF RESTRICTIVE COVENANTS**

"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." Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263

S.E.2d 378, 380 (1980) (citations omitted). “Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of the property and against restrictions.” Stanton v. Gulf Oil Corp., 232 S.C. 148, 151, 101 S.E.2d 250, 251 (1957) (internal quotation marks omitted). “It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property.” Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998).

Our Supreme Court has noted that “[i]t follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.” Id. When more than one logical interpretation of a restriction is possible, a court must adopt the interpretation that is the least restrictive. Id.; see Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750, 758 (Ct. App. 2005).

“The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.” Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420, 424 (1950).

### **THERE IS NO EVIDENCE THAT THE HOUSE IS A TRAILER**

The Plaintiff relies on the Court of Appeals’ opinion in Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987), contending that Heape is dispositive of this case and requires a judgment in her favor. Heape, however, is inapplicable to this case. Heape dealt with a covenant provision that prohibited a “trailer,” a term which the Court of Appeals held embraced the double-wide mobile home at issue in that case. Id. at 344-45. Heape was about a mobile home, not a

manufactured home – and, as discussed above, those things have different definitions. S.C. Code Ann. §§ 40-29-20(9), 56-19-10(39).

In addition to the dictionary and statutory definitions of “trailer,” Heape also contains a definition of this word. “The term ‘trailer’ is not ambiguous. A ‘trailer’ is a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile.” Heape, 293 S.C. at 345. Heape was decided the way it was decided because a mobile home is consistent with this definition of trailer. Id. at 345-46; see S.C. Code Ann. § 56-19-10(39). A mobile home is, by definition, a “vehicle which . . . is equipped to be moved on streets and highways.” S.C. Code Ann. § 56-19-10(39).

The Defendants’ house, however, is not consistent with any of the actual definitions of trailer. The record is devoid of any evidence to the effect that the Defendants’ manufactured home is or ever was “a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile.” Heape, 293 S.C. at 345. Indeed, the only evidence in the record is that, rather than being equipped to be moved on streets or highways, the Defendants’ manufactured home had to be brought to their property on the bed of a truck. (Tr. of depo. of Kathy Bouknight p. 31 ln. 12 through p. 32 ln. 7.) Perhaps the Plaintiff will argue that the signing of the County of Lexington document entitled “mobile home affidavit” is some evidence that the manufactured home is really a mobile home, but reading that document reveals that it actually contains no statement to the effect that the structure at issue is a mobile home.

The Plaintiff seems to argue (backed up, it appears, by the affidavits of some neighbors<sup>1</sup>) that the manufactured home looks enough like a trailer to be prohibited by the covenants anyway. This argument has been tried before, and it has failed in both the Supreme Court and Court of

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<sup>1</sup> These affidavits are irrelevant. They set forth those neighbors’ beliefs and desires, but those things have nothing to do with the issue before this court.

Appeals of this state. The Supreme Court has upheld a ruling that a structure that was purposefully designed to look like a mobile home was neither a mobile home nor a trailer and was thus not prohibited by covenants that prevented trailer homes and mobile homes. Vickery v. Powell, 225 S.E.2d 856, 267 S.C. 23 (1976). In Henry v. Chambron, the Court of Appeals reversed the trial court's decision that a modular home ran afoul of covenants that prohibited the use of a "mobile home" or a "trailer" as a residence. 304 S.C. 351, 354 n. 1, 404 S.E.2d 518, 520 n. 1 (Ct. App. 1991). The plaintiffs, citing Heape as their authority, had as their theory "that the structure has the appearance of a mobile home and that the restrictions were designed to prevent structures with such an appearance in the subdivision." Henry, 304 S.C. at 353. Rejecting this argument, the Court of Appeals had this to say:

Even if his home were to resemble a mobile home, a structure having the mere appearance of a mobile home is not necessarily prohibited by a general restriction against mobile homes. Instead, 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.

Id. (internal citations and quotation marks omitted).

The Plaintiff seeks to have this court order the Defendants to take down their house and become homeless, all on the grounds that their house is ostensibly a trailer. It is not. It is a manufactured home, not a trailer. The record is devoid of any evidence that the Defendants' house is or has ever been "a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile." Heape, 293 S.C. at 345.

### **CONCLUSION**

That the Defendants' house violates the covenants is an essential element of the Plaintiff's case. Where the nonmoving party bears the burden of proof on a claim in the case, that party must

provide the court with admissible evidence showing that there is a genuine issue of material fact with regard to each of the elements of his claim. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68 (2007). Rule 56, SCRCPP, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” Hansson, 374 S.C. at 357 (internal quotation marks omitted, ellipsis in original). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Baughman v. AT&T, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991).

The Defendants are entitled to summary judgment. The Plaintiff is not.

Respectfully submitted,

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 May 31, 2020

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-32-03305

Lisa Cruz,

Plaintiff,

vs.

Heyward and Kathy Bouknight,

Defendants.

**DEFENDANTS' SUPPLEMENTAL  
MEMORANDUM CONCERNING  
MOTIONS FOR  
SUMMARY JUDGMENT**

The Defendants hereby submit this supplemental memorandum concerning the motions for summary judgment this court heard on June 3, 2020, in the above-captioned action. This memorandum focuses on the development of the law concerning covenants prohibiting “trailers,” especially since the opinion in Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987), was rendered. It also addresses other issues brought up during the motions hearing.

**CASES FROM OTHER JURISDICTIONS**

Jurisdictions across the country are split on whether they treat manufactured homes (or, for that matter, mobile homes) as “trailers” with regard to covenants prohibiting trailers. 83 A.L.R.5th 651 (2000 & Supp.). While the undersigned has not tallied up where every jurisdiction falls, this split appears fairly even among the states. See id. Some jurisdictions interpret “trailer” broadly, as the Plaintiff would have this court do; however, a large number do not adopt a broad interpretation that would put a manufactured home within the scope of what a “trailer” is. Id.

Some examples follow. In Hutchison v. Hill, 3 P.3d 242 (Wyo. 2000), the Supreme Court of Wyoming affirmed a trial court decision that the Hills’ manufactured home was not a “trailer house” prohibited by the covenants at issue. Id. at 244, 247. Focusing on whether the manufactured home, as set up for habitation on the homesite, met the definition of “trailer,” the

court concluded it did not, as “the Hills’ home is not a temporary and transient structure whose main characteristic is mobility and, therefore, is not a house trailer stored or parked within the subdivision and prohibited by the restrictive covenants.” Id. at 247.

In Brasher v. Grove, 551 S.W.2d 302 (Mo. Ct. App. 1977), the Missouri Court of Appeals held that units manufactured for a motel that a landowner moved to his property by means of a special rig and which were connected to sewer, water, and electric facilities were not “trailers” within the meaning of restrictive covenants. Analyzing various definitions of “trailer,” the court found that the word “vehicle” was common. The court determined that the units were not vehicles, as they were not designed to be hauled. The units were constructed off-site and were transported to the landowner’s property, but that transportation was incidental and played no part in their design. The court held that the units were not trailers at the time they were manufactured, nor had they undergone any changes that made them trailers. The court reversed the trial court’s order that had granted an injunction requiring the removal of the units.

The Colorado Court of Appeals in Tucker v. Wolfe, 968 P.2d 179 (Colo. Ct. App. 1998), where the issue was whether the term “trailer house” in covenants embraced mobiles homes and manufactured homes, determined it did not. The court reasoned that the primary function of a trailer house is its mobility and that its function as a dwelling was secondary to its ability to be moved from place to place with ease. The court contrasted this with both double-wide mobile homes and manufactured housing, as their primary function is to provide a permanent dwelling place and their pre-installation mobility is only a secondary characteristic. The court rejected the idea that the fact that they may be moved from their place of manufacture to their place of installation.

In Daniel v. Galloway, 861 S.W.2d 759 (Mo. Ct. App. S.D. 1993), the court held that a manufactured home did not violate a 1959 covenant prohibiting “house trailers.” The court observed that house trailers in 1959 were typically highly mobile, built with and usually retaining axles, wheels, tires, and hitches. The manufactured home at issue did not have the mobility of house trailers of the 1950s. The manufactured home did not have axles, wheels, tires or hitches, and it was rare for such homes to be moved after being installed. The court concluded that the restrictions themselves did not establish unambiguously that their purpose was to prohibit structures such as the manufactured home at issue. The court noted that, if the intent of the covenant drafter was to ensure “conventional-type” housing, that could easily have been accomplished in the wording of the restriction.

In an action to enforce a restrictive covenant against the placement of trailer homes on certain lots, the court in Crawford v. Boyd, 453 S.W.2d 232 (Tex. Civ. App. Fort Worth 1970), held that a structure, built by a mobile home manufacturing company with a wooden frame and aluminum exterior siding that did not have axles or wheels and which was tied to the ground with cables and connected to a septic tank, was not a “trailer home” under the restrictive covenants. The court observed that, while the structure looked much like a mobile home, it did not have wheels or an axle and was never intended to be used as a trailer or other vehicle.

In Frander & Frander, Inc. v. Griffen, 457 So. 2d 375 (Ala. 1984), the Alabama Supreme Court held that a premanufactured home was not a “trailer” as meant in a restrictive covenant providing that “[n]o structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.” The court noted, among other things, evidence that the home met the definition of a manufactured home, was financed with 30-year financing, and would be no easier to move once it was anchored

than most conventional “stick-built” homes, finding these things demonstrated that the home was not a “trailer” within the meaning of the covenants.

In Howell v. Hawk, 750 N.E.2d 452 (Ind. Ct. App. 2001), the Indiana Court of Appeals held that a structure was a manufactured home, rather than a “mobile home” as prohibited by the covenants at issue. The court noted the split in authority nationwide concerning how expansively to interpret covenant prohibitions concerning “mobile homes,” “trailers,” “trailer homes,” and “house trailers.” The court looked to statutory definitions under state law concerning “mobile home” and “manufactured home.”

Perhaps most importantly to the instant case, the Howell court noted that some courts had concluded that a dwelling (other than a single-wide mobile home) that was manufactured without axles or wheels and had been installed on real property constituted a “mobile home” within the meaning of a restrictive covenant provision, but not a “trailer.” Id. at 458-59.

In the vein of this observation by the Howell court is the New Mexico Court of Appeals’ decision in Baker v. Bennie J. Aday and Dixie J. Aday Revocable Trust, 128 N.M. 250, 1999 - NMCA- 123, 991 P.2d 994 (Ct. App. 1999). The court held that manufactured or multi-sectional homes were not “trailers” within the meaning of a restrictive covenant that prohibited the use of a trailer as a residence. The court observed that, while applicable precedent in New Mexico indicated that “mobile homes” fell within the scope of covenantal language prohibiting “trailers,” whether installed on a foundation or not, no precedent addressed whether a covenant prohibiting “trailers” likewise prohibited manufactured homes. The court disagreed with the trial court’s conclusion that manufactured housing differs only in nomenclature from a trailer. The court concluded that the manufactured home was something different from a trailer. The covenant in Baker was drafted in 1965, and it did not mention “manufactured housing.” The manufactured home was to sit on a

permanent foundation and consist of over 1,500 square feet of living space, including three bedrooms, two bathrooms, a living room, dining room, utility room, and den, as well as a 322–square–foot porch or patio. The home would have been anchored at the site by ribbon footings, piers, a block wall, and a retaining wall. Once the permanent installation of the home was completed, the owners’ intention was to build a brick skirting around the home and construct a driveway. Utilities would have been installed as they would have been in any site–built home. The New Mexico Court of Appeals concluded that it was highly improbable that such a structure would have been considered a “trailer” in 1965. The home was structurally integrated to the site and was so dissimilar to a mobile home or trailer of the 1960s that it could not fit within any plain definition of those terms, especially as they were likely understood in 1965.

#### **SOUTH CAROLINA CASE LAW AFTER HEAPE**

As discussed in the Defendants’ initial memorandum, after the Court of Appeals issued its opinion in Heape v. Broxton, 293 S.C. 343, 360 S.E.2d 157 (Ct. App. 1987), it decided the case of Henry v. Chambron, in which it reversed the trial court’s decision that a modular home ran afoul of covenants that prohibited the use of a “mobile home” or a “trailer” as a residence. 304 S.C. 351, 354 n. 1, 404 S.E.2d 518, 520 n. 1 (Ct. App. 1991). The Henry plaintiffs, citing Heape as their authority, argued “that the structure has the appearance of a mobile home and that the restrictions were designed to prevent structures with such an appearance in the subdivision.” Henry, 304 S.C. at 353. The Court of Appeals rejected this contention, reasoning as follows:

Even if his home were to resemble a mobile home, a structure having the mere appearance of a mobile home is not necessarily prohibited by a general restriction against mobile homes. Instead, 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.

...

The restriction could have prohibited modular homes by a simple expression of the intent to do so. . . . Even if modular homes were not contemplated at the time the restriction was filed, there is no evidence in the record that the property owners were prevented from amending the restriction to include modular homes at a later date.

Id. at 353, 354, 355 (internal citations and quotation marks omitted).

Of note is that the Court of Appeals in Henry appears to have accepted without question that a modular home is not a trailer, seeing no need to analyze that issue. Id. at 353-55. The Henry court was also deliberate in its analysis to apply the principles of South Carolina law that “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.” Id. at 353. Applying these fundamental precepts, the court was bound not to expand the words of the covenant to bring an unmentioned type of housing within the ambit of the covenant language, even if the covenants might have been written to prohibit that kind of housing had they been written more recently. Id. at 353, 354, 355. To the extent that Heape had departed from these bedrock principles of South Carolina covenant law, the Court of Appeals reined in its jurisprudence in Henry, functionally overruling Heape to that extent.

**“ANNOYANCE” COVENANT PROVISION TOO VAGUE TO BE ENFORCEABLE**

The covenants at issue contain the following provision:

No noxious or offensive trade, business, or vocation shall be operated or practiced on any of said lots, nor shall anything whatsoever be done on the premises which may be or may become any annoyance to the neighborhood, or may injure the value of any other lot or lots in the area.

The closest the record comes to evidence of a violation of this provision are the identical affidavits of some neighbors to the effect that they think the Defendants' home has brought down their property values. Regardless, however, this covenant provision is too vague to be enforced.

“Covenants purporting to impose affirmative obligations on the grantee are to be strictly construed and not enforced unless the obligation is imposed in clear and unambiguous language which is sufficiently definite to guide the courts in its application.” Lovering v. Seabrook Island Property Owners Ass'n, 289 S.C. 77, 82, 344 S.E.2d 862, 865 (Ct. App. 1986) A restrictive covenant, “to be valid and enforceable . . . must not be too indefinite[.]” Vickery v. Powell, 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976); accord Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987) (“[c]ourts shall enforce such covenants unless they are indefinite”). “A standard such as ‘any other thing necessary or desirable in the opinion of the Board of Directors’ is too vague to be enforceable.” Lovering, 289 S.C. at 83.

Here, this covenant provision is too vague to be enforced. Annoyance is a subjective concept; what annoys one person may not annoy another. Anything that “may injure the value of any other lot or lots in the area” is markedly indefinite. This covenant provision does not meet the enforceability requirement of being “imposed in clear and unambiguous language which is sufficiently definite to guide the courts in its application.” Id. at 82. This is illustrated by asking how one would objectively test whether any contemplated activity would run afoul of this provision. Quite simply, one could not do so.

**TO RULE FOR THE PLAINTIFF**  
**WOULD VIOLATE SOUTH CAROLINA COVENANT PRINCIPLES**

In essence, the Plaintiff's argument is that Heape says that a mobile home is a trailer, and, while the Defendant's manufactured home is not exactly a mobile home, it is close enough that

should be considered a trailer anyway. To conclude that is correct would contravene fundamental principles of South Carolina covenant law.

Covenantal “restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.” Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980) (citations omitted). “Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of the property and against restrictions.” Stanton v. Gulf Oil Corp., 232 S.C. 148, 151, 101 S.E.2d 250, 251 (1957) (internal quotation marks omitted). Under this “settled rule[,] . . . [i]t follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.” Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998).

A manufactured home is not a trailer. S.C. Code Ann. § 40-29-20(9) (definition of manufactured home); S.C. Code Ann. § 56-19-10(10) (definition of trailer). It is not “a nonautomotive highway vehicle designed to be hauled by a tractor, truck, or automobile.” Heape, 293 S.C. at 345. But even if one *could* construe the term “trailer” in these 1954 covenants to embrace a manufactured home, one could also reasonably construe the term trailer *not* to include a manufactured home. That, under the “settled rule” in South Carolina, means that the court must adopt the construction “which least restricts the use of the property.” Taylor, 332 S.C. at 4.

A restrictive covenant may not “be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.” Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420, 424 (1950). Similarly to the situation addressed by the Court of Appeals in Henry, here, “[t]he restriction could

have prohibited [manufactured] homes by a simple expression of the intent to do so[,]” and, “[e]ven if [manufactured] homes were not contemplated at the time the restriction was filed” – as, in 1954, they were not – “there is no evidence in the record that the property owners were prevented from amending the restriction to include [manufactured] homes at a later date.” Henry, 304 S.C. at 354, 355. They did not so amend, and nothing in the covenants prohibits a dwelling such as the Defendants’.

To find for the Plaintiff would require the court to stretch the definition of “trailer” and to adopt a broad construction of the term when a narrower, reasonable one is available that is less restrictive of the use of the property. To do either of those things would violate South Carolina covenant law. Taylor, 332 S.C. at 4.

### **CONCLUSION**

Construing the covenants in accordance with the requirements of South Carolina law, there is no evidence before the court to the effect that the Defendants violated the covenants. That the Defendants violated the covenants is an essential element of the Plaintiff’s case. Rule 56, SCRPC, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” Hansson v. Scalise Builders of S.C., 374 S.C. 352, 357, 650 S.E.2d 68 (2007) (internal quotation marks omitted, ellipsis in original).

The Defendants are entitled to summary judgment in their favor.

Respectfully submitted,

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July 3, 2020

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Brian L. Boger, Special Referee

Appellate Case No. 2022-000947

Lisa Cruz,.....Respondent,

v.

Heyward Bouknight and Kathy Bouknight.....Appellants.

CERTIFICATE OF COUNSEL

I certify that the record on appeal contains all material proposed to be included  
by any of the parties and not any other material.

Respectfully submitted,

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