

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**  
OCT 22 2024  
SC Court of Appeals

\_\_\_\_\_  
APPEAL FROM AIKEN COUNTY  
CIRCUIT COURT

Judge William Keesley

\_\_\_\_\_  
Case No. 2018-CP-02-2208  
\_\_\_\_\_

Richard Viviano and Johnette Gunter, Plaintiffs,

Of whom Richard Viviano is the Appellant,

v.

Fulton Jeffers and Braeloch I Association, Inc. d/b/a Braeloch Homeowner's Association, Sandy Carroll individually and in her capacity as a member of the Board of the Braeloch Homeowner's Association, and Derrick Boddy individually and in his capacity as a member of the Board of the Braeloch Homeowner's Association, Respondents

**FINAL REPLY BRIEF OF APPELLANT**

John W. Harte SC Bar 2773  
John Harte Law  
Po Box 7215  
Aiken, SC 29804  
803-226-0755  
john@jwhartelaw.com  
Attorney for Appellants

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM AIKEN COUNTY  
CIRCUIT COURT

Judge William Keesley

---

Case No. 2018-CP-02-2208

---

Richard Viviano and Johnette Gunter, Plaintiffs,

Of whom Richard Viviano is the Appellant,

v.

Fulton Jeffers and Braeloch I Association, Inc. d/b/a Braeloch Homeowner's Association, Sandy Carroll individually and in her capacity as a member of the Board of the Braeloch Homeowner's Association, and Derrick Boddy individually and in his capacity as a member of the Board of the Braeloch Homeowner's Association, Respondents

**FINAL REPLY BRIEF OF APPELLANT**

John W. Harte SC Bar 2773  
John Harte Law  
Po Box 7215  
Aiken, SC 29804  
803-226-0755  
john@jwhartelaw.com  
Attorney for Appellants

**TABLE OF CONTENTS**

ARGUMENT..... 1

CONCLUSION..... 2

## ARGUMENT

The Appellant by way of reply to the Respondent's Initial Brief respectfully submits the following:

This case involves a simple question of fact which the lower court overlooked. Specifically, unless Lot 51 was properly admitted to Braeloch, there was no reason for there to be a Memorandum of Understanding at all nor would there have been. Respondents would have the court treat the admission of Lot 51 as an unimportant irrelevant matter when, in fact, that is the only reason for the dispute between the parties.

Simply put, if Lot 51 was not properly and legally admitted to Braeloch, then the Memorandum of Understanding was based on a false premise. And, because the Respondents had actual knowledge that Lot 51 had not been properly and legally admitted and because they concealed that fact, they engaged in a fraudulent concealment of material facts. Without that concealment, the Appellants would never have entered into the Memorandum of Understanding. And, because the foundation of the Memorandum of Understanding is the admission of Lot 51 into Braeloch, and because that foundation is false, there is no legal basis for enforcing the Memorandum of Understanding.

The Respondents noted the issue in passing by making the following statement: "Assuming arguendo that there was some defect in the original admission of Lot 51 to Braeloch in 2002, the MOU remains valid and enforceable." That statement is illogical and inaccurate at best. The only reason for the Memorandum of Understanding was the false representation that Lot 51 had become a part of Braeloch. Given the fact that the evidence clearly shows that Lot 51 was not properly admitted and given the fact that in their own emails the Respondents admit that

it was not properly admitted, then the entire basis for the Memorandum ceases to exist. Put simply, the Respondents obtained an agreement by fraudulently concealing the material fact that Lot 51 was not actually or legally admitted to the subdivision.

The Respondents succeeded in obscuring the facts from the lower court. Presumably that will not happen at the appellate level. Either Lot 51 was lawfully admitted, or it was not admitted at all. Since the Respondents knew at the time they were negotiating the Memorandum of Understanding that Lot 51 was not legally a part of the subdivision and because they concealed that fact, the entire Memorandum of Understanding fails and is invalid and should not have been enforced by the lower court.

### **CONCLUSION**

The Orders entered by the Honorable William Keesley in which the Memorandum of Understanding was declared valid and enforceable should be reversed and the Memorandum of Understanding should be declared void because Lot 51 was not properly admitted and because the fact that Lot 51 was not lawfully admitted was concealed by the Respondents. It is also worth noting that, because Lot 51 was not properly admitted, nothing the Respondents can do will confer upon Lot 51 the rights which lawfully belong to lots which are legally part of the Braeloch subdivision. To the extent that the Memorandum of Understanding would have that effect, it is of no force and effect because it is not possible for a lot to be admitted by a Memorandum of Understanding. Entry into the subdivision requires the consent of the required number of owners of the lots in the subdivision. The Memorandum of Understanding does not have the effect of amending the covenants governing the subdivision and that Memorandum of Understanding cannot be used as a substitute for the required signatures. Lot 51 was not lawfully

admitted into Braeloch. Lot 51 is not a part of Braeloch. The facts concerning the failure to admit Lot 51 were concealed and that is fraud.

RESPECTFULLY SUBMITTED

s/John W. Harte  
Attorney for Appellant  
SC Bar No. 2773

john@jwhartelaw.com

803 226 0755

October 9, 2024

Physical Address  
702 Chaffee Lane  
Aiken, S.C., 29801

Mailing Address  
PO Box 7215  
Aiken, S.C., 29804

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY  
CIRCUIT COURT

Judge William Keesley

Case No. 2018-CP-02-2208

2024-000147

**RECEIVED**  
OCT 22 2024  
SC Court of Appeals

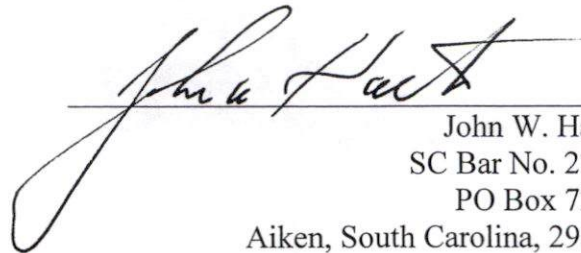
Richard Viviano and Johnette Gunter, Plaintiffs,  
Of whom Richard Viviano is the Appellant,

v.

Fulton Jeffers and Braeloch I Association, Inc. d/b/a Braeloch Homeowner's  
Association, Sandy Carroll individually and in her capacity as a member of the  
Board of the Braeloch Homeowner's Association, and Derrick Boddy individually  
and in his capacity as a member of the Board of the Braeloch Homeowner's  
Association, Respondents.

**CERTIFICATION OF COUNSEL**

I certify that the appellants final reply brief(s) complies with Rule 211 SCACR.



John W. Harte  
SC Bar No. 2773  
PO Box 7215  
Aiken, South Carolina, 29804  
Attorney for Appellant  
[john@jwhartelaw.com](mailto:john@jwhartelaw.com)  
8032260755