THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas

Clifton Newman Presiding Judge

2013-001479

The SPUR at Williams Brice Owners Association, Inc., ... Respondent,

v.

Sunil V. Lalla and Sharon W. Lalla, ... Appellants.

APPELLANTS' INITIAL BRIEF

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B. DID THE TRIAL COURT ERR IN FAILING TO HOLD THE HOA RESTRICTIONS NULL AND VOID DUE TO THEIR UNREASONABLENESS AND CHANGE OF ECONOMIC CIRCUMSTANCES.

STATEMENT OF THE CASE

This is an appeal from an Order of the Honorable Clifton Newman, Presiding Judge of the Fifth Judicial Circuit dated May 23, 2012, and filed June 19, 2003. Judge Newman's Order found and ruled that Article XIV of the Master Deed and Restrictive Covenant prohibiting renting of a condominium unit at The Spur at Williams Brice to a tenant who is currently enrolled in a two (2) or four (4) year college, institute or university, and further prohibiting any tenant from having any roommate who is enrolled in a two (2) or four (4) year college, institute, or university, was valid and enforceable. Judge Newman's Order also enjoined Appellants Sunil V. Lalla and Sharon W. Lalla from renting or continuing to rent to any tenant who is a student currently enrolled in a two (2) year or four (4) year college, institute, or university or any tenant who has a roommate who is enrolled in a two (2) or four (4) year college institute or university. (Order of the Honorable Clifton Newman dated May 23, 2013; R. _____).

Respondents commenced this action to enforce its Restrictive Covenant against Appellants on or about October 10, 2011, (Summons and Complaint dated October 10, 2011; R. _____). Respondent's Complaint sought a determination of the construction of

the Master Deed pertaining to student rentals and also sought a declaratory judgment finding Appellants in violation of said deed (Summons and Complaint dated October 10, 2011; R. _____). Appellants filed their Answer and Counterclaim on or about November 11, 2011, asking the Court to declare the restrictions null and void due to changed circumstances. (Answer and Counterclaim of Appellants dated November 11, 2011; R. _____). The parties agreed to have the Court rule on the outstanding issues after submission of Briefs and Affidavits (Plaintiff's Brief dated January 15, 2013, with Attachments; R. _____) (Affidavit of Kelly Barnhill in Support of Plaintiff's Brief; R. _____) (Deposition of Ted O. McGee furnished to the Court on January 10, 2013; R. _____) (Affidavit of Sunil V. Lalla dated January 22, 2013, with Attachments; R. _____).

Judge Newman issued his Order on or about May 23, 2013, granting relief requested by Respondents (Order of the Honorable Clifton Newman, dated May 23, 2013, and entered on June 20, 2013; R. _____). This appeal timely followed (Notice of Appeal dated June 25, 2013; R. _____).

STATEMENT OF FACTS

Appellants Sunil V. Lalla and Sharon W. Lalla are longtime supporters of the University of South Carolina ("USC"). Because of their love for the University, they purchased a condo at the SPUR in 2007 for Four Hundred Seventy Thousand and no/100 ($470,000.00) dollars. At the time of their purchase, the average price for like condos was in the range of Four Hundred Fifty Thousand and no/100 ($450,000.00) dollars to Six Hundred Thousand and no/100 ($600,000.00) dollars (Affidavit of Sunil V. Lalla; R. _____). Based upon the representations of their sale's representative, the Appellants

believed the condo would increase in value and be an excellent long term investment. (Affidavit of Sunil V. Lalla; R. _____).

At the time they purchased the condominium, the Lallas had a daughter who was considering attending USC. It was their intention that during the time she was a student at USC, their daughter would be occupying the condo with two roommates. It was the Appellants' intention to receive rent from their daughter's roommates during the time she was at USC and living in the condo. It was Appellants' understanding that this arrangement would be allowed by the Homeowner's Association ("HOA"). Appellants would not have purchased the condo if their daughter and her roommates could not have rented the condo or they could not rent the condo to other students. (Affidavit of Sunil V. Lalla; R. _____).

In 2008, after their purchase, the bottom dropped out of the real estate market and through no fault of their own, their condo substantially decreased in value. (Affidavit of Sunil V. Lalla; R. ___) Appellants attempted to sell the condo but could find no buyers. They listed the condo for over a year and a half. Several times they took the condo off the market and put it back on in an effort to generate interest. Appellants did not receive a single written or verbal offer for their condo during the time it was listed on the market. At the time of the merits hearing in this matter, the condo had been on market for approximately four years. (Affidavit of Sunil V. Lalla, R. _____).

Selling the condo at a loss was not an option and in an effort to recoup their losses, the Appellants began renting their condo to college students in 2010. Appellants were aware that other units at the Spur were and had been rented to college students. (Affidavit of Sunil V. Lalla; R. _____). Appellants presented evidence to the Court that

they were facing the option of either renting to students or allowing the unit to go into foreclosure. Appellants notified the HOA of their decision to rent their unit to college students (Affidavit of Sunil V. Lalla; R. _____).

Their renters are exemplary tenants. Each renter has a separate bedroom. One of the tenants is a former Miss Teen South Carolina. They are all over twenty-one (21) years of age (Affidavit of Sunil V. Lalla; R. _____). They are good neighbors and properly maintain the condo. They have complied with all HOA rules. (Affidavit of Sunil V. Lalla; R. ___). There is no evidence in the record that the HOA received any complaints of any type regarding the Appellants' tenants. This condo rental meant one less vacant unit, slowing further property value losses. The rental income also provided maintenance funds. Had Dr. and Mrs. Lalla been forced to sell the condo at a fraction of its purchase price, the fair market value of the remaining units would have suffered.

This Homeowners Association (HOA) commenced this action against Dr. and Mrs. Lalla to evict their tenants, because the tenants are enrolled in college. The HOA restriction in dispute states:

> The rental of any unit to any student currently enrolled in a two (2) or four (4) year college, institute, or university is strictly prohibited.

It should be noted that the HOA prohibition against college students is not universal. The HOA does allow units to be rented to college students as long as those students are a child or grandchild of an owner. Further, this college student may have an unrelated roommate who is a college student. (Affidavit of Sunil V. Lalla, Exhibit 10; R. _____). The Appellant presented expert testimony that these restrictions which distinguished between students was unreasonable and invalid. (Deposition of Ted O. McGee, Jr.; R.

_____). Further, Appellant presented evidence that units have been, at all times, rented out to colleges students. (Affidavit of Sunil V. Lalla; R. ____).

The HOA made no claims for damages. Their only claim is the violation of the written restriction by Appellants (Complaint; R. _____).

STANDARD OF REVIEW

An action to enforce a restrictive covenant is in equity. *South Carolina Dep't of Natural Res. v. Town of McClellanville,* 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). As such, this court may view the facts in accordance with our preponderance of the evidence.

ARGUMENT

I. THE TRIAL COURT ERRED IN DETERMINING THE RESTRICTIVE COVENANT TO BE ENFORCABLE.

A. THE RESTRICTIONS ARE UNREASONABLE.

The Trial Court erred in determining that the Appellants failed to meet their burden to establish that the Restrictive Covenant at issue in this case is unreasonable and unenforceable. A restriction though it clearly applies to the property and is unambiguous, will not be enforced if it is unreasonable or if it serves no legitimate purpose. "These rules are enforceable... so long as they are reasonable." 4 S.C. Juris. Condominiums § 25. Appellants submit that the restrictive covenants that prohibit rental of their unit to college students are clearly unreasonable and unenforceable and the Court erred in ruling otherwise.

This is an issue of first impression in South Carolina regarding unreasonable condo restrictions. The Ohio Court of Appeals previously addressed this issue regarding

reasonable restrictions. They followed a three part reasonableness test which included the following:

> The first question in applying the test of reasonableness is whether the decision or rule was arbitrary or capricious. This requires... that there be some rational relationship of the decision or rule to the safety and enjoyment of the condominium...
>
> The second question is whether the decision or rule is discriminatory or evenhanded... we believe it protects against the imposition by a majority of a rule or decision reasonable on its face, in a way that is unreasonable and unfair to the minority because its effect is to isolate and discriminate against the minority. It provides a safeguard against a tyranny of the majority.
>
> The third question is whether the decision or rule was made in good faith for the common welfare of the owners and occupants of the condominium... We believe good faith is an essential ingredient of a reasonable decision or rule.

Worthinglen Condominium Unit Owners' Ass'n v. Brown, 566 N.E.2d 1275, 1277-78 (10th Dist. Franklin County 1989). New Jersey has also required reasonableness in resolving condo disputes. "That is to say, the test of reasonableness is whether the interest of the unit owners as a whole are served, advanced, or protected by the board's action." *Billig v. Buckingham Towers Condominium Ass'n I, Inc.*, 671 A.2d 623, 629 (App. Div. 1996). Tennessee has also addressed a companion issue of consent of property owners to unreasonable restrictions.

> When a person purchases a condominium unit they consent to having restrictions placed upon the use and improvement of their property for the benefit of the condominium as a whole. But no owner is assumed to consent to arbitrary and capricious restrictions which achieve no positive benefits.

Association of Owners of Regency Park Condominiums v. Thomasson, 878 S.W.2d 560, 563 (Tenn. Ct. App. 1994).

The current prohibition against students at issue before this Court is clearly unreasonable in prohibiting college students from renting units for any reason under any circumstances while allowing college students who are children and grandchildren of owners or their roommates to occupy units.

There is no rational basis for this restriction. It does not provide for the safety or enjoyment of other condominium owners, because some students are allowed to occupy units under certain circumstances.

What this HOA has done is paint all students, no matter what age, with a broad brush. The Trial Court's Order accepted and approved this flawed reasoning when it held these restrictions are "rationally related to its purpose because it bars from the possible pool of renters a population the [Respondent] alleges has a tendency to engage in certain behaviors that are damaging to themselves and disruptive to those around them." This flawed reasoning labels all college students are hoodlums, irresponsible, and vandals according to the HOA and the Trial Court, *except* those who are children, grandchildren, and roommates of owners. A high school graduate who is employed fulltime could rent a condo, as could a high school dropout. The HOA cannot prove this restriction is reasonable because no proof exists. Enforcing the HOA's prejudice through the court is not a legitimate purpose. This rule has no rational basis, is discriminatory, is not made in good faith, and is therefore unreasonable. The Court erred in determining that the Appellants failed to meet their burden in establishing the covenant as valid and enforceable because it is unreasonable in its face. The Trial Court erred in failing to find and rule that as a mater of law the HOA restrictions in this case are unreasonable and unenforceable.

B. THE RESTRICTIONS ARE DISCRIMINATORY.

The Trial Court erred in determining that the restrictions at issue in this case were not discriminatory. It is the policy of this state that the use of property should be non discriminatory. S.C. Code § 31-21-20.

The Legislature further codified this position in § 31-21-40(1).

> It is unlawful:
> (1) To refuse to... rent after the making of a bona fide offer, to refuse to negotiate for the... rental of, or otherwise to make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin...

The U.S. Supreme Court long ago addressed the question of private restrictions infringing on constitutional rights in *Shelly v. Kraemer*, 334 U.S. 1 (1948). The Court stated:

> That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. *Id.* at 14.
>
> These cases demonstrate also, the early recognition by this Court that state action in violation of the Fourteenth Amendment is equally repugnant to the constitutional commands whether directed by state statute or taken by a judicial official in absence of statute... *Id.* at 16.
>
> We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand. We have noted that freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the Framers of the Fourteenth Amendment. *Id.* at 20.
>
> The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. *Id.* at 22.
>
> The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals. And it would appear beyond question that the power of the

> State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment. *Id.*

More recently in 2012, the Supreme Court of Wisconsin followed *Shelley v. Kraemer* stating: "With the extra step of judicial intervention, the Supreme Court concluded that judicial intervention constituted state action." *DeBruin v. St. Patrick Congregation*, 816 N.W.2d 878, 885 (2012). Accordingly, *Shelley* concluded that when constitutionally protected rights were at issue and a contravention of those rights could not be accomplished without state action, court enforcement constituted state action of the type that was proscribed by the Fourteenth Amendment. *Shelly* at 97-98.

In 1976, the South Carolina Supreme Court explained equal protection in the context of a subclass within a class that was treated unequally pursuant to the Uniform Alcoholism and Intoxication Treatment Act. Portions of the Act were held unconstitutional as a result.

> 'Equal protection of the laws,' as referred to in both constitutions, is difficult to define and not susceptible of exact delimitation, nor can the boundaries of the protection afforded be automatically or rigidly fixed.
>
> 'The guiding principle most often stated by the courts is that the constitutional guaranty of equal protection of the laws requires that **all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed** (emphasis added). In some cases the principle is stated a little more fully so as to include also within its purview of equality exemptions from liabilities. The equal protection guaranty is intended to secure equality of protection not only for all, but against all similarly situated. Protection is not protection unless it accomplishes this. Immunity granted to a class however limited, having the effect to deprive another class, however limited, of a personal or property right is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted to be worked against a larger class.' (Emphasis Added)

Thompson v. South Carolina Commission on Alcohol and Drug Abuse, 267 S.C. 463, 472, 229 S.E.2d 718, 722 (1976). The Court again in 1992 affirmed that all similarly situated property owners must be treated the same.

> The record reflects, when viewed as a whole and in the proper posture, that there is substantial evidence that the circumstances surrounding the application of the respondent and the other three individuals granted permits are similar, and that the existence of respondent's dock would create no effect distinguishable from that occasioned by the other three existing docks. While the three permits issued during the period immediately preceding respondent's application may have been granted in error, absent a showing in the record that Council had taken appropriate remedial action and given due notice thereof, the respondent was entitled to be treated in the same manner as other applicants. We conclude that Council violated the equal protection and due process provisions of the state and federal constitutions in treating the respondent in a manner different from Beckmann, Cope and Crowley, thereby denying her a benefit granted to others similarly situated.

Weaver v. South Carolina Coastal Council, 309 S.C. 368, 375, 423 S.E.2d 340, 344 (1992).

The Trial Court erred by enforcing property rights that violated constitutional rights. The restriction upheld by the Trial Court is unreasonable, discriminatory, and seeks to prohibit an ordinary class of people from housing accommodations. This class of currently enrolled college students is indistinguishable from college students who are children and grandchildren of owners or their roommates. This class is indistinguishable from college students who are condo owners. The restriction seeks to discriminate against individuals based only upon their educational status while allowing those with the same educational status to occupy units.

There is no rational or reasonable basis for this discrimination. Respondent provided no evidence beyond allegation and insinuation in support of this discrimination. A drug dealer, high school dropout, or thief could rent a unit while an engineering

student, student teacher, and pharmacy student could not. An unemployed twin could rent a unit while his student sibling could not. An older individual returning to school to pursue a lifelong dream of obtaining a college degree would also be discriminated against. A student enrolled from Oregon could not rent a unit, nor could a student taking college classes over the internet, further implicating interstate commerce and the Commerce Clause.

Owners of each condo are treated differently under this restriction. Certain condo owners are allowed to lease their condo to their children and grandchildren who are students while other owners may not lease their condo to unrelated family members who are students. This is patently unfair and denies equal protection to those similarly situated.

A court may not enforce this restriction which violates the state and federal constitutional rights to housing accommodations. Further, a student from a statutorily protected class, i.e., race, color, religion, sex, familial status, or national origin, would be prohibited from renting a condo unit making this rule discriminatory on its face and unenforceable by the court. Disabled students, a further statutorily protected class, would also be denied access to this housing.

This restriction is simply a pretext to keep unwanted individuals and those the HOA finds objectionable out of the complex. The Court erred in determining that they were not discriminatory and in enforcing them.

C. THE RESTRICTIONS VIOLATE PUBLIC POLICY.

Appellants submit it is a well known public policy of this State to encourage the education of its citizens. Denying students the right to housing because of their

educational status would have a chilling effect on this policy by potentially preventing some students from attending college. Affordable, convenient housing is necessary for all students.

The Lallas' tenants will be forced to obtain new housing in order to continue to attend college if the restriction is enforced. It may not be possible for these students to find adequate housing at a reasonable price resulting in their non attendance and inability to continue their education programs.

This restriction is blatantly arbitrary, capricious, and discriminates against college students of any age by denying them the right to choose where they will live simply because they are enrolled in college. It is unenforceable. The Trial Court's Order enforcing this restriction should be reversed by this Court.

II. THE TRIAL COURT ERRED IN DETERMINING RESPONDENTS MET THEIR BURDEN OF PROOF THAT THE RESTRICTIONS ARE ENFORCEABLE BY THE COURT.

Restrictive covenants will not be enforced according to their terms if they contravene public policy and are to be strictly construed against the persons seeking to enforce them. *Sea Pines Plantation Co. v. Wells,* 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987); *Craig v. Bossenbery,* 351 N.W.2d 596, 599 (1984); *Vickery v. Powell,* 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976).

The HOA has the burden of proving this restriction is worthy of enforcement by a state court by proving a rational and reasonable basis. The HOA must also prove its actions are non discriminatory and do not contravene public policy. The HOA has no such proof and this restriction was simply enacted to discriminate against college students the HOA found objectionable.

In a dispute regarding restrictions, a court does not automatically issue a mandatory injunction if it finds a restrictive covenant has been violated. The court must balance the equities between the parties; and if the harm to the defendant outweighs the plaintiff's benefit, no relief should be granted. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 274, 363 S.E.2d 891, 896 (1987); *Hunnicutt v. Rickenbaker*, 268 S.C. 511,515-16, 234 S.E.2d 887, 889 (1977).

The Lallas presented ample evidence of their inability to sell their condo and that they would suffer great harm if they are required to evict their tenants. (Affidavit of Sunil V. Lalla, R _____). Respondent failed to establish any harm to the other property owners would result if the tenants are allowed to stay. Property values would benefit by having an occupied condo. The loss of rental income would prohibit the Lallas from maintaining the condo and making repairs. It is impossible to know how long it would take the Lallas to find suitable non student tenants. It is also inequitable to require these students find other housing. They have done nothing wrong requiring them to vacate the premises. Respondent failed to present any evidence of any complaints made against the Appellants' tenants.

Property owners are currently protected by other restrictions prohibiting offensive behaviors. All property owners have recourse through law enforcement and the courts to stop any offensive behavior, making this restriction unnecessary and unreasonable. The Trial Court erred in finding and ruling that Respondent met their burden with respect to the enforceability of these restrictions.

III. THE TRIAL COURT ERRED BY FAILING TO CONSIDER THE CHANGE OF ECONOMIC CIRCUMSTANCES.

Since 2008, the U.S. economy has suffered the greatest recession since the Great Depression resulting in decreased property values, foreclosures, and job losses. When the Lallas purchased their condo, no one could have predicted the downturn in the economy and property value losses that were to occur (Affidavit of Sunil V. Lalla; R. _____). Had they known that their condo would decrease substantially in value, they would have chosen not to purchase it at the inflated price (Affidavit of Sunil V. Lalla; R. _____).

Renting to college students has allowed the Lallas to maintain their condo. These renters have also helped to stem the property value losses from vacant units. The HOA has benefited from having students occupy this unit.

Requiring the students vacate the unit at this time could leave it empty for a substantial period of time. This could result in potential loss of property value due to this vacant unit.

It is inequitable to require that the Lallas forfeit this rental income and suffer the losses that will result from this vacancy. The HOA has no provision to provide the Lallas with reimbursement for their income loss if the restriction is enforced. South Carolina has recognized that a change in circumstances in the surrounding neighborhood will effect the enforceability of a restrictive covenant. (See cases cited in Order of the Honorable Clifton Newman, page 9; R. _____). There is no hard and fast rule as to when changed circumstances may have defeated the purpose of a covenant. *Inabinet v. Boone,* 262 S.C. 81, 84, 202 S.E.2d 643, 645 (1974). Each case must turn on the facts and equities as they are presented. *Double Diamond Props, LLC v. BP Prods. NA*, 277 F.

App'x 312, 318 (4th Cir. 2008). The Trial Court's Order recognizes whether or not a change in market conditions will affect or alter the enforceability of a restrictive covenant is a question of first impression in South Carolina. (Order of the Honorable Clifton Newman; R. _____). Courts of other jurisdictions have held that a change in market circumstances may invalidate a restrictive covenant. *See In re TOUSA, Inc.*, 393 B.R.920, 923-24 (S.D. Fla. 2008).

In the case before the Court, the value of the Appellants condo has plummeted due to the economy. Appellants have not been able to sell their unit. The only way they can hold their own is to rent to college students. The equities of this situation favor an order holding the restrictions invalid. The Court erred in ruling otherwise.

IV. THE TRIAL COURT ERRED IN FAILING TO FIND AND RULE THAT RESPONDENTS WAIVED THEIR ENFORCEMENT RIGHTS.

The HOA failed to monitor the rental of units by college students and therefore has waived any objections it may have to these students. The HOA Board's own minutes indicate that:

> Management brought to the attention of the Board a comment form completed by an owner. The commend card stated that the Association is allowing the condominium to turn into a dormitory. The card also recommended that the Board contact USC and sale [sic] the property to USC for its students. After discussing the comment card to [sic] the Board a motion was made to consult with drafters of the Master Deeds as it pertains to rentals. The motion was made to clarify the parameters of student rentals with the attorney- find out if a moratorium for students to rent can be placed immediately; motion was carried unanimously. The SPUR HOA Board Minutes, June 3, 2010. (Affidavit of Sunil V. Lalla; R. _____).

After failing to originally enforce the student restrictions, the Board contacted Attorney Trey Harrell regarding the student restriction. (Board Minutes, June 22, 2010; R. _____).

Subsequently, other homeowners have contested the rental requirements along with the Lallas: "A letter was presented to the Board from an attorney on behalf of unit #111 contesting the Associations [sic] Master Deed of enforcing rental requirements." (Board Minutes, February 11, 2011; R. _____). On March 24, 2011, the Board agreed to authorize attorney Ralph Robinson to proceed with rental investigation (R. _____).

The Board took no affirmative action to evict students as evidenced by the Board Minutes for April 10, 2011: "Student Rentals—A concern with regard to student rentals was addressed by several owners. The Board informed the membership that concern will be evaluated." (R. _____). Again the Board addressed rentals at their July 14, 2011 board meeting:

> Two largest issues are identifying renters who are attending a 2 or 4 year school and then how to proceed after they have been identified. To identify renter who are [sic] attending a 2 or 4 year school, all owner [sic] must have potential renters complete a Spur application and forward that application to the board for approval. The board will look at these applications once a month... The Board will also **start** (emphasis added) enforcing the Rules and Regulations concerning renting units.
>
> At the November 26, 2011, board meeting, the Lallas' rental was discussed.
>
> Board discussed the response sent from the Lalla's [sic] owners of 101. Mr. Williams will send a response to Lalla's [sic] counterclaim and prepare any paperwork to move forward with the judgment (R. _____).

The Board has singled out the Lallas for student rental rather than suing all owners who rent to students. Because the Board failed to previously enforce the restriction, the Board has waived its right to current enforcement of only a selected group of condo owners.

Waiver is the intentional relinquishment of a known right. *Bonnette v. State*, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981). It may be express or implied.

Larimore v. Am. Health & Life Ins. Co. 276 S.C. 112, 118, 276 S.E.2d 296, 299 (1981). An implied waiver is one that draws from "...conduct of the party against whom the doctrine is involved from which voluntary relinquishment of his known right is reasonably inferable." *Pitts v. New York Life Ins. Co.* 247 S.C. 545, 552, 148 S.E.2d 369, 371 (1996).

The Trial Courts order ignores the evidence in the record that Respondent has allowed students to live in the Spur. Further, the evidence demonstrates that Respondent was at best selective in its enforcement of the restrictions. The Respondent has waived their right to enforce these restrictions and the Trial Court erred by failing to find and rule that Respondents waived their right to enforce the restrictions against Appellants.

CONCLUSION

Based on the foregoing, there is no way for this HOA to justify this blatant discrimination against both Appellants and college students. This restriction is unreasonable and violates public policy. The Plaintiff's request cannot be granted nor can the court intervene through state action to enforce a private restriction that violates both the state and federal constitutional equal protection clauses.

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September 16, 2013

THE STATE OF SOUTH CAROLINA
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2013-001479

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellants Sunil V. Lalla and Sharon W. Lalla to the parties to the appeal by depositing a copy of it in the United States Mail, postage prepaid, on September 16, 2013, addressed to attorneys of record as follows:

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September 16, 2013

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Case No. 2011-CP-40-6704

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APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellants propose the following to be included in the Record on Appeal:

1. Order of May 23, 2013 (filed June 5, 2013);
2. Complaint (with attachments);
3. Answer and Counterclaim;
4. Defendants' Brief (with attachments) dated November 26, 2012;
5. Ted O. McGee Jr.'s Deposition filed with the Court January 10, 2013;
6. Plaintiff's Brief (with attachments) dated January 15, 2013;
7. Affidavit of Sunil V. Lalla dated January 22, 2013;
8. Affidavit of Kelly Barnhill dated February 7, 2013; and
9. Notice of Appeal dated July 2, 2013

I certify that this designation includes no matter which is irrelevant to this appeal.

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September 13, 2013

THE STATE OF SOUTH CAROLINA
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Clifton Newman Presiding Judge

Case No. 2011-CP-40-6704

The SPUR at Williams Brice Owners Association, Inc., ... Respondent,

v.

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PROOF OF SERVICE

I certify that I have served the Appellants' Designation of Matter to be Included in the Record on Appeal by mail, to D. Reece Williams, III, Esquire, Callison Tighe, Post Office Box 1390, Columbia, South Carolina 29201, on September 16, 2013.

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