

STATE OF SOUTH CAROLINA )  
COUNT OF SPARTANBURG )  
Katheryna Mulholland-Mertz, )  
Plaintiff, )  
-vs- )  
Corie Crest Homeowners Association of )  
Spartanburg, Inc.; Richard T. Biggs; )  
Kathleen A. Biggs; James Hannah; Elizabeth )  
A. Hannah and Joseph P. Denicola )  
Defendant(s). )

IN THE COURT OF COMMON PLEAS

**ORDER**

Case No.: 2009-CP-42-5129

The Plaintiff herein has file two Notices of Motion and Motion to Amend Findings of Facts Conclusions of Law: Rule 52(b) and Rule 59(e) SCRCF.

The first Motion was filed on September 13, 2013 relating to this Court's Order dated August 26, 2013. Plaintiff filed its Motion to Dismiss the Defendant's Motion for a hearing on the Motion for Award of Attorney's Fees. This Court denied the Plaintiff's Motion to Dismiss.

The second Motion was filed on November 5, 2013 relating to this Court's Order dated October 24, 2013. This Order dated October 24, 2013 was entered after the hearing on the Defendant's Motion for Award of Attorney's Fees which was held on August 29, 2013

This Court entered the Order Granting Defendants' Rule 41(b) Motion to Dismiss on September 9, 2011 after hearing Plaintiff's case on August 24-25, 2011. Following the entry of the Order, the Plaintiff appealed the September 9, 2011 Order to the Court of Appeals. The Court of Appeals on May 22, 2011 filed its Order Affirming this Court's September 9, 2011 Order.

The attorneys for the Plaintiff and the Defendant, in correspondence have notified this Court that neither attorney requires a hearing on the two Motions filed by the attorney for the Plaintiff.

1 RECEIVED  
NOV 25 2013

SC Court of Appeals

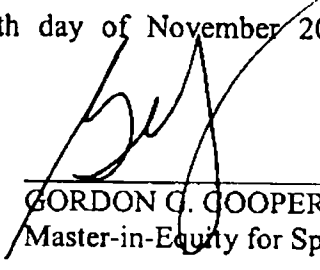
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CLERK OF COURT  
SPARTANBURG COUNTY  
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MICHELE BLAUGLEY

After review of the Motions and the pleadings filed by the attorney for the Plaintiff, along with the Court of Appeals Order filed on May 22, 201, it is;


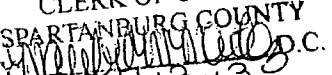
ORDERED AND ADJUDED as follows:

1. The Plaintiff's Motion that was filed on September 13, 2013 relating to this Court's Order dated August 26, 2013, is hereby denied.
2. The Plaintiff's Motion that was filed on November 5, 2013 relating to this Court's Order dated October 24, 2013, is hereby denied.

DONE AND ORDERED this 8th day of November 2013, at Spartanburg, South Carolina.

  
\_\_\_\_\_  
GORDON C. COOPER  
Master-in-Equity for Spartanburg County

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M. HOPE BLACKLEY

A CERTIFIED COPY  
  
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SPARTANBURG COUNTY  
BY  P.C.  
DATED 11-13-13

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FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF SPARTANBURG  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-42-5129

Katheryna Mulholland-Mertz

Corie Crest Homeowners Association of  
 Spartanburg, Inc.; Richard T. Biggs;  
 Kathleen A. Biggs; James Hannah;  
 Elizabeth A. Hannah; Joseph P. Denicola

PLAINTIFF(S)

DEFENDANT(S)

|                     |  |
|---------------------|--|
| Submitted by: Court | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br>or<br><input type="checkbox"/> 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.
- 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
- 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  Statement of Judgment by the Court:

**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. |  |  |
| Judgment in Favor of<br>(List name(s) below)   | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
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| If applicable, describe the property, including tax map information and address, referenced in the order.  |  |  |

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 J. J. CLAYTON

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.

Gordon G. Cooper, Master-in-Equity

3065  
Judge Code

11-08-2013  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 13 day of NOV, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of NOV, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

James D. Calmes, II, Esq.  
P.O. Box 16135  
Greenville, SC 29605

A. Todd Darwin, Esq.  
P.O. Box 1897  
Spartanburg, SC 29304-1897

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)

Y.M. Hope Blawie Mya Bee Mya Bee  
CLERK OF COURT

**Court Reporter:**

**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.

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STATE OF SOUTH CAROLINA )  
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 COUNTY OF SPARTANBURG )  
 )  
 Katheryna Mulholland-Mertz, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Corie Crest Homeowners Association )  
 of Spartanburg, Inc.; Richard T. Biggs; )  
 Kathleen A. Biggs; James Hannah; )  
 and Elizabeth A. Hannah, )  
 )  
 Defendants )  
 )

IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO.: 2009-CP-42-5129

**ORDER**

This matter came before me on August 29, 2013 for a hearing on Defendants' Motion for Attorney's Fees pursuant to the provisions of the *Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision* ("Restrictions"). After reviewing the Affidavit of Attorney's Fees submitted by Mr. Darwin and hearing and considering the arguments of counsel for the parties, I hereby grant the Motion and award fees to Defendants' counsel pursuant to the following reasons:

Plaintiff brought this action seeking to enforce the Restrictions, alleging that Defendants violated the Restrictions by constructing certain structures on their lots. At the conclusion of the Plaintiff's evidence at trial, Defendants moved for a dismissal of the Plaintiff's claims pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure. That motion was granted and an order dismissing the Plaintiff's case was entered on September 9, 2011. The Plaintiff appealed my ruling to the SC Court of Appeals, which upheld the dismissal in an unpublished opinion, and she currently has pending a Writ of Certiorari to the SC Supreme Court. However, Plaintiff's counsel admits that the issue of

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attorneys fees was not raised in the appeal and is not an issue in the pending Writ.

According to Section 42(D) of the Restrictions, "[t]he prevailing party in an action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party." Pursuant to Mr. Darwin's Affidavit, he agreed to represent the Defendants at a rate of \$150.00 per hour, plus costs. The Defendants also agreed to pay his paralegal an hourly rate of \$80.00. Attached to Mr. Darwin's Affidavit were the Holcombe Bomar, P.A. billing ledgers associated with the defense of the Plaintiff's lawsuit. As reflected thereon, the billings and costs in defending this action were Twenty Thousand Two Hundred Forty-Seven and 47/100 Dollars (\$20,247.47), consisting of Eighteen Thousand Nine Hundred Nine and no/100 Dollars (\$18,909.00) in fees and One Thousand Three Hundred thirty-eight and 47/100 Dollars (\$1,338.47) in costs.

I have reviewed the billing ledgers submitted, and after listening to the testimony of Mr. Darwin during the hearing, I find he has supported his claim for attorneys fees consistent with all of the factors set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989), and that the amount of attorney's fees sought is reasonable.

In evaluating the *Baron* factors, I find that this case involved legal issues which are not dealt with by most lawyers on a regular basis. It is not common for disputes over Restrictive Covenants to rise to the level seen in this case. The Plaintiff originally filed an action for a permanent injunction against the Corie Crest Homeowners Association ("HOA") and five (5) individual homeowners seeking removal of structures already approved by the Architectural Review Committee and constructed on their respective properties, a declaratory judgment against all Defendants for breach of the Restrictions, a declaratory judgment against the HOA for failure to enforce the Restrictions, and for attorney's fees and

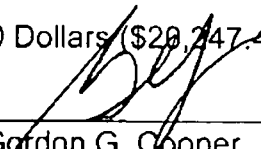
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[Signature]

costs. The Plaintiff later amended her lawsuit to also seek nullification of certain amendments to the Restrictions which were made during the pendency of the action. Both extensive written discovery and depositions were taken in the case, and motions were filed, briefed and argued.


As referenced above, I have reviewed the Affidavit of Attorney's Fees and supporting billings submitted by Mr. Darwin, and I find the time and expenses set forth therein to be reasonable and not duplicative. Furthermore, Plaintiff's counsel stipulated at the hearing that he does not dispute the reasonableness of Mr. Darwin's hourly rate of \$150.00 per hour in this case, and the Court finds this hourly rate to be more than reasonable based on the experience and professional standing of Defendants' counsel, both from the Court's own personal knowledge of Defendants' counsel as well as the reasons contained in his Affidavit. Furthermore, based on my familiarity with fees customarily charged in this legal community for lawyers with similar experience, I find the rate charged by Mr. Darwin in this case to be appropriate. Finally, the beneficial results speak for themselves in this case, as Defendants' counsel was successful in obtaining dismissal of all causes of action brought by the Plaintiff, including her prayer for permanent injunctive relief.

Therefore, it is hereby **ORDERED, ADJUDGED AND DECREED:**

That Defendants are hereby awarded a judgment against the Plaintiff for Twenty Thousand Two Hundred Forty-Seven and 47/100 Dollars (\$20,247.47).

  
Gordon G. Cooper  
Spartanburg County Master-in-Equity

October 24, 2013  
Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA  
 COUNTY OF SPARTANBURG  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-42-5129

Katheryna Mulholland-Mertz,

Corie Crest Homeowners Association of  
 Spartanburg, Inc., et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: A. Todd Darwin

Attorney for :  Plaintiff  Defendant  
 or  
 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
- 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:

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

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 CLERK OF COURT  
 SPARTANBURG COUNTY  
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 A. H. PEEBLES, 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.

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

Circuit Court Judge

Judge Code

Date

*[Handwritten Signature]*      3065      8-26-2013



For Clerk of Court Office Use Only

This judgment was entered on the 29 day of August, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of August, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

James D. Calmes, III  
PQ Box 16135  
Greenville, SC 29606  
ATTORNEY(S) FOR THE PLAINTIFF(S)

A. Todd Darwin  
PO Box 1897  
Spartanburg, SC 29304-1897  
ATTORNEY(S) FOR THE DEFENDANT(S)  
M. Hope Blackley / Marsha King, Jr.  
CLERK OF COURT

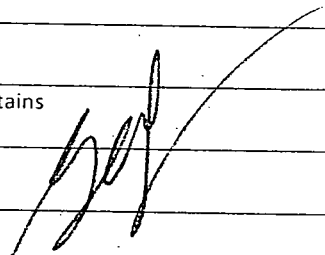
Court Reporter:

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.

Plaintiff's Motion to Dismiss the Defendants' motion for award of attorney's fees is denied.

Although Plaintiff has filed an appeal in this matter which is currently pending with the SC Supreme Court, the issue of attorney's fees was not appealed. Therefore, this court retains jurisdiction over matters not affected by the appeal. Jackson v. Speed, 486 S.E.2d 750, Rule 205, SCACR.



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M. HOPE BLACKLEY