STATE OF SOUTH CAROLINA) COUNTY OF LEXINGTON)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Lisa Cruz,)	Case No.: 2019-CP-32-03305
Plaintiff,)	
vs.)	**ORDER**
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 Boulnights' 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. 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*.

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 that 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, ls 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

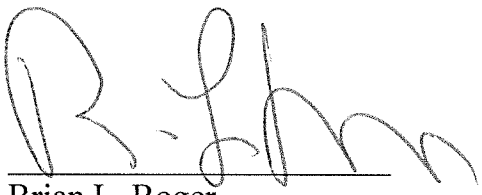
did not impose such a radical change in the area that the object and purpose of a semi residential area buffer zone had been destroyed); *McDonald v. Welborn*, 220 S.C. 10, 66 S.E.2d 327 (S.C. 1951) (acquiescence in minor violations of building restrictions by some lot owners in a subdivision did not 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