

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Tomislav and Julie Todorovic in their
Individual capacity and as trustee of the
Todorovic Family Trust dated June 1, 2021
Plaintiff(s)

2020-CP-02-00420

ORDER

RECEIVED

Oct 23 2026

SC Court of Appeals

vs.

Cedar Meadows Property Owners Association
Defendant(s)

Plaintiff's Attorney: Charles A. Krawczyk (SC Bar No.:16832)

Defendants Attorney: John Harte (SC Bar No.: 2773)

Cedar Meadows Property Owners Association (hereinafter "POA") is responsible for maintaining amenities and administering and enforcing the Covenants and Access Agreements to the Cedar Meadows Subdivision situated in Aiken County. Plaintiffs are owners of a lot and home in the Cedar Meadows subdivision and are considered a member of the Defendant's Property Owners Association. This Court has jurisdiction over the parties and venue is proper pursuant to S.C. Code 15-7-30.

The Plaintiffs' first cause of action was for breach of contract, alleging the Defendant POA had breached its contractual obligation by failing to recognize and enforce the easements contained in the covenants. The second cause of action was for declaratory judgment alleging that Cedar Meadows Equestrian Subdivision Phase II has maintained the easements located on the four exterior boundaries of Lots 1 through 8 and Lots 14 through 24 used by all members of the POA. As such, Plaintiffs requested the declaratory relief from the court that the Defendant's POA is required to enforce the easements in the protective covenants for the subdivision. The third cause of action was again for declaratory judgment on the issue of when changes could be made to alter the covenants and the limitation of the Property Owners Association on its authority to alter easements outside of the timeframe allowed in the covenants.

The Answer and Counterclaim filed on April 29, 2024, alleges affirmative defenses for, lack of standing, waiver, equitable estoppel, laches, statute of limitations, and general denials as to each cause of action. The first counterclaim is based on the allegation that the Plaintiffs have violated the covenants and their actions resulted in harassment, nuisance, and embarrassment. This counterclaim also includes a request for injunctive relief. The second counterclaim is for attorney's fees and cost.

STATEMENT OF FACTS

Plaintiff presented testimony of Jason Wise who was hired by the Plaintiffs to survey portions of the horse trail in the subdivision. He noted that the trails were staked with yellow markers. Mr. Wise was not present when the markers were set. The second witness presented was Wayne Raiford, who is a subdivision developer who has developed numerous equestrian subdivisions in Aiken County including Cedar Meadows, Three Runs, and others. He was involved in both phases of Cedar Meadows subdivision. Riding trails and a horse training/show ring were added to Phase I. He referred to Article IV, Reservation of Easements, of the applicable covenants and this was marked as Plaintiffs' Exhibit 1. Plaintiffs' Exhibit 2 was a plat. Returning to the restrictive covenants/reservation of easements, Mr. Raiford stated that Cedar Meadows was his first subdivision development. He believes the easements were created in Article IV and were 20' feet in width and continued along the outer borders of the subdivision. In addition, there were 20' foot easements along Cedar Meadows Road, and the Banks Mill Road, and other areas. Plaintiffs' Exhibit 2 was a blown-up view of a plat. The 20' foot easement on Banks Mill Road was not shown and the 20' foot easement on Cedar Road and Equestrian Court was not shown in the entirety of the plat.

Mr. Raiford stated that he enforced the easements in Phase I of Cedar Meadows and had no issues. In Phase II he referenced the second paragraph Article IV, on page 10 of the document. This discusses the 20' foot easement parallel to lots 1 – 8, and lots 14 – 20. Plaintiffs' Exhibit 4 was a plat of Phase II. Mr. Raiford controlled the Property Owners Association during this time and each property owner had setback fences of 10' feet on their property on lots 1 – 8, and lots 14 – 20. On the plat, Lots 1 – 6 show no easements, even though the covenants stated easements existed on lots 1 – 8. He did recall telling the Plaintiffs that they would be able to use the trails. He

read into the record the first paragraph of Article IV on page 10. This includes the maintenance and utility easement. He also discussed easements that were not shown on the recorded plat. He agreed there were restrictions in the covenants that were not shown on the plat. The restrictive covenants were in place when he turned the subdivision over to the Property Owners Association. He again stated that although easements on all sides of the lots were discussed in the covenants, they were not shown on the plat.

Mr. Raiford is also the developer of Bridal Creek and discussed his relationship with Cedar Meadows. He stated that the riding trails between those two subdivisions did merge even though there is no agreement between the two subdivisions about those trails. After the Phase II covenants were recorded for Cedar Meadows, the developer began selling lots. When he was in charge of the Property Owners Association, side, front and rear easements were used as horse trails.

On cross-examination, Mr. Raiford testified that he did not believe purchasers relied on the plat for the easements. Reviewing Plaintiffs' Exhibit 4, he noted the 20' foot equestrian easements on lot 14 and that the eastern boundary showed a 20' foot equestrian easement. He also referenced an access easement on lot 17 and a 20' foot equestrian easement on the southwest side of the property.

The next witness called was Julie Todorovic, who testified that she and her husband saw information about Cedar Meadows subdivision when they were searching for equestrian property in Aiken, South Carolina. After visiting in 2004, they purchased the property. Phase I was developed and Phase II was being developed. Plaintiffs' Exhibit 5, is a series of photographs. The photographs purported to show the side equestrian easements and the location of the fences when they purchased the property. Their home is located on lot 10 and lot 12, Phase II. The riding trails is one of the reasons they were attracted to this area. She testified she reviewed the covenants prior to purchasing their property. Although there were no easements on the plats, she did review the Phase II covenants, Article IV. On the eastern lots, she saw front, back and side easements in place. She used existing trails to access the exterior trails and ring until 2021. She had been using the trail since 2005 on front, side and rear easements. Before 2016, there were no issues. In 2016 – 2017 she discussed the border between Cedar Meadows and Bridal Creek. She and her husband observed that stakes had been placed in the ground. She was concerned about the limits that may be imposed on the riding trails. She contacted the Property Owners Association on August 6, 2018, and sent

an email to the President of the association. She testified that some of the lots were not in compliance with the covenants. She was concerned there was no 20' foot easement available to some lots or that they were not properly cleared.

The POA took no action and advised her there was enough room within the easement for equestrian activities. In April, 2018, a covenants review commission was created by the Property Owners Association's President and the list of suggestions were formed and emailed on October 28, 2018. This was marked as Plaintiffs' Exhibit 20 and Plaintiffs' Exhibit 6. Her husband exchanged emails with the President of the association. She does not believe the covenants need any clarification. The easements in Phase II, were the utility easements, drainage easements along the 10' feet at the rear of each lot, and 5' feet on the side of the lots. Mr. Todorovic attended Association meetings where the trail clearance was an issue. Plaintiffs' Exhibit 7 are minutes from a meeting held on August 26, 2018. She testified that the Property Owners Association did perform maintenance for easements of Phase II and mowed the front and side easements for Phase I and Phase II. Plaintiffs' Exhibit 8 is an email concerning the August 26, 2018 meeting. Discussing the vote on mowing for properties in Phase I and Phase II, a covenant review was scheduled in 2020. Mrs. Todorovic stated that it was added as a late item on the agenda. Her husband attended the meeting on January 11, 2020.

The covenants for Phase II, Article IX, has an effective date of January 1, 2005 for 10 years and then successive periods for 15 years unless, by vote, owners voted and over 50% of those voting decided to change the covenants within the time presented. Under the covenants, the covenants could be amended within six months of the change date if approved by over 50% of the homeowners. She does not believe there were any votes on the final changes. There were no signature sheets for any changes for people to register any vote. After January 1, 2020, she does not believe the Articles could be changed for 15 years. Based on the language of the covenants, she believes that January 1, 2035 would be the next possible change date for the covenants. In reviewing Plaintiffs' Exhibit 10, she noted an email on February 2020 announcing a Property Owners Association board meeting. There were amendments to the protective covenants of Phase I on February 12, 2020 (see Plaintiffs' Exhibit 11). She did not believe the homeowners voted on that issue and there was no discussion at the meeting or notice about any amendments to the covenants. Cedar Meadows, Phase I and Phase II have one Property Owners Association. She

testified there were no separate votes between Phase I and Phase II in the meetings held and were attended by owners in both phases. She also attended the board meeting where the equestrian easements had been changed outside of the timeframe of the covenants. No vote was noticed concerning the upcoming meeting. She reviewed the records of the Aiken County RMC Office and did not see any document with the signatures from the Property Owners Association about any changes. Further, there is no discussion of Phase II at the January 1, 2020 meeting. Plaintiffs' Exhibit 11 are POA minutes from a meeting held on August 26, 2018. She referenced an email she received already marked as Plaintiffs' Exhibit 7 from the POA on October 28, 2018. This involved the discussion to consolidate the covenants and to consolidate Phase I and Phase II.

She stated the Plaintiffs filed a lawsuit because she felt the covenants were being amended outside of the time allowed and no vote was taken. In January, 2021, the board notified the homeowners and she noted that the no trespassing signs were posted on side and front easements. While the matter was in litigation, the Plaintiffs continued to ride the trails. In March 2020, the Aiken County Sheriff's Department was contacted and the witness advised the officer that the matter was in litigation. No citations were issued for any trespass. On April 11, 2021, an Aiken County deputy came to her home. She provided the previous information and explained about civil litigation. Despite that, she stated that the deputy issued eight trespass citations for the Plaintiffs and told her she could be incarcerated. After the citations were issued, she stayed off of the trails. She noted that the Plaintiffs filed for preliminary injunction and that information was introduced as Plaintiffs' Exhibit 13. After receiving that order, the Plaintiffs received an email from the Defendant's attorney to the Plaintiffs' attorney and after reviewing that material, the Plaintiffs, have not been back on the trails. This was marked as Plaintiffs' Exhibit 14. She testified the Plaintiffs have no access to the trails for Phase II and they have to ride on asphalt roads in Phase I of Cedar Meadows. This requires them to ride approximately one-half mile on paved streets. She noted that they had access to Phase II lots 1 – 8 and 14 – 20 from her lot. After receiving the trespass warnings, the Plaintiffs questioned police officers about teenagers riding in a motorized vehicle in the subdivision. She stated that they were able to get videos and pictures of the activity.

Concerning the current ownership status, Mrs. Todorovic testified the property was purchased in both individual's names. The real estate was transferred later to a trust due to their

experience as nurses during the Covid Pandemic. Plaintiff had no ill will and was not making any attempts to mislead the court. The trustees are each other's beneficiary.

Article VII of the restrictive covenants allows for the recovery of reasonable attorney's fees and costs to the prevailing party. She believes the Plaintiffs should be awarded their attorney's fees and costs pursuant to this provision. She is also requesting the court to determine the existence of the easements and any damage which may have been incurred. She believes the Property Owners Association has damaged the Plaintiffs due to the effect of value to their property if there are no easements. She placed a value of her property between 1.2 million to \$1.3 million. She believes they would suffer a fifty (50%) percent loss of that value. Her belief was that the Phase II easements do exist pursuant to the arguments and documents and she is requesting an order from the court which would require the Property Owners Association to enforce the covenants. This includes easements on lots 1 – 8 and lots 14 – 20 on all sides, for the clearing of the back trails which should be 20' feet in width.

On cross-examination, she was asked about the width of the roads with right of ways in Cedar Meadows. The witness was then presented with Defendant's Exhibit 2, which is a plat showing the width of the road and right-of-way and 60' feet which would include a 20' foot driving service area and an additional 20' feet on right-of-way which is not paved. Mrs. Todorovic believes the Plaintiffs could not ride on the right-of-way since that is prohibited. The witness was then presented with Plaintiffs' Exhibit 13, which is a preliminary injunction which enjoins the Defendant from interfering with the Plaintiffs. A Form 4 Order was then published. Jurisdiction in this matter was with the Circuit Court and an order was issued against the Defendant. In reviewing Plaintiffs' Exhibit 14, the court order applies to the Property Owners Association, but private landowners were not named.

The Plaintiffs' fence is two hundred feet from her property line but she admitted she has not measured the fence line to the boundary of the property line. Her lots are not lots 1 – 8 or 14 – 20 so her side right-of-way are 5' feet in width. She believes her lots comply with Article IV of the restrictive covenants. When asked about the commission formed to study the covenants, she stated no changes were approved on the 2018 agenda. The commission did not take any action concerning Phase II. The witness was then asked about Defendant's Exhibit 2 and it was pointed out that the yellow highlighted areas were outside of the riding easements. She believes the

easement was available when she purchased her property. Currently, she states the trees have grown in the easement but she does not know of any other changes. She admits there is a riding trail and that she could continue to ride on the trail after the injunction order. She has never asked for permission from anyone to ride across a neighbor's property.

When asked about the girls riding in the golf carts, the concern appeared to be underage drivers. She admitted she had filmed the girls driving but did not recall how many times that had occurred. She agrees all lots are owned by individual landowners and that the Property Owners Association does not have an ownership interest in those properties. The restrictive covenants provide the Property Owners Association authority to enforce the covenants and the individual landowners as noted in Article VII. It was pointed out that the particular language concerning the POA says that the association shall have the right to enforce but does not say that the association must enforce the covenants. The witness indicated she believed that the term "must" applied.

On redirect examination the witness was again asked to review Defendant's Exhibit 2 and in particular viewed numbers 1, 2, 3, 4, 5, and confirmed that the horse trail is shown, that other riders/owners ride those trails and she testified about areas not shown on the plat, but do exist. She has to travel on other property but cannot go on lots 6 and 7. Plaintiffs' Exhibit 15 (five emails included in the exhibit) discusses riding on the Douglas' property behind lots 6 and 7 and maybe a portion of Lot 5. Her understanding is that concerning the Douglas' property, the owners want to dissolve the easement and obtain a waiver with conditions. She was referred to a Board of Directors email dated February 29, 2024 and she also reviewed Plaintiffs' Exhibit 16 which identified the terms of use and liability, as well as, the waiver portion of the trail. She agreed that the restrictive covenants were filed in Aiken County for Cedar Meadows and they do contain information concerning the easements. She believes the easements in Cedar Meadows outlined by the restrictive covenants are binding.

The second day of the trial was held on October 29, 2024. Tom Todorovic is a resident in the subdivision and owner of lots 10 and 12 in Cedar Meadows Phase II. These lots were originally purchased in the individual names of Mr. and Mrs. Todorovic but were later placed into a trust. The witness testified there was no intent to deceive any party by placing the property into the trust.

The witness was presented with Plaintiffs' Exhibit 3 and directed to Article IV, Equestrian/Pedestrian easements in the Phase II covenants. He reviewed Plaintiffs' Exhibit 1, the

protective covenants for Phase I and Article IV contains the same language. He confirmed he is a lot owner in the subdivision. He was then presented with Plaintiffs' Exhibit 3 which are the protective covenants for phase II, Article IV and noted that lots 1 – 8 are identified on a plat. It was noted that lots 1 – 6 did not show any equestrian easements on the plat but they are listed in the covenants. He confirmed that the trail does exist behind lots 1-6. He also noted several internal trails that are shown on the plat. He believes the equestrian trails should surround each lot being 1 – 8 and 14 – 20. There is a 66' foot access easement on the plat but not listed in the easements. He also noted that in the first paragraph of Article IV, there is language concerning the utility easements but the utility easements are not shown on the plat.

Returning to Plaintiffs' Exhibit 1, the Phase I restrictive covenants, Article IV, Mr. Todorovic noted the 20' foot width on the easements. He then examined Plaintiffs' Exhibit 2 which is the plat of Phase I. He believes this is the exterior boundary of Phase I. He noted the utility language for the easements in the first paragraph of Article IV but those are not shown on the plat that is referenced. Mr. Todorovic was aware of the restrictive covenants being recorded when he purchased the lots. In May to June 2017, he noticed the survey or stakes in certain areas. The Property Owners Association then advised him they wanted to schedule a meeting to discuss the issue. Plaintiffs' Exhibit 17 was then introduced, which is an email chain between representatives of the subdivision and the witness. The first email on the email chain is dated June 2, 2017 from Mr. Todorovic to Mrs. Konopinski concerning the sale of 1.3 acres. He received a response on June 3, 2017 about the equestrian trails, the riding ring and the use of some of the funds. He believes the Bridal Creek trail encroaches on their subdivisions trail system. He then identified page 2 of an email dated February 18, 2019 to Mrs. Konopinski which contained a proposed covenant change to Article IV. There was some confusion over the proposed changes. These included wording to change lots 1 – 8 and 14 – 20 from equestrian easements to utility easements. Other emails discuss covenant changes for individual property owners responsible for clearing easement areas.

The witness was then presented with Plaintiffs' Exhibit 18 which is seven photographs taken by the witness in 2020. They show easement areas on Lot 16, 15, between lots number 14 and 8, as well as, between lots 7 and 8 on the rear. The final two photographs show the easement areas between lots 15 and 16 and between lots 4 and 5. Plaintiffs' Exhibit 19, which are seven

photographs he took near the rear of Phase II. They show the rear portion of Lot 16, 8 and 14. Mr. Todorovic hired a surveyor to stake the property lines. He observed the stakes along the rear boundary of the lot in relation to the easement. Photographs were taken immediately after the stakes were placed. This included the rear of Lot 16. He measured between the brush in the staked area and found that 6'3" area was clear. He stated that most areas were in the five-to-six-foot range with some being smaller and some being approximately 20' feet.

Plaintiffs' Exhibit 20 was an email chain introduced and dated November 11, 2024 where Mr. Parker, President of the Property Owners Association is discussing dissolving use of an easement. Apparently, this would be in lots 3, 4, 5, 6, and 7 on the perimeter trails and behind Lot 6 and part of Lot 7. It was discussed that behind Lot 6 was not clear and an option was discussed to shift trail and clear some of the easements. Mr. Todorovic testified that no votes were taken by the Property Owners Association on these issues and the conditions still exist at the time of trial. A request has been made by Mr. Todorovic for the Property Owners Association to bring the easements into compliance with the covenants. Plaintiffs' Exhibit 21, dated August 6, 2019 was introduced where he requested the Property Owners Association bring Lot 7 and Lot 8 in compliance. He wants the court to order the Property Owners Association to enforce the equestrian easements, including all exterior trails and all exterior boundaries should be easements in phase II. Concerning his damages, he requested attorney's fees and the loss of value to his property if relief is not obtained. He agrees with his wife's testimony concerning the value.

On cross-examination, Mr. Todorovic reviewed Defendant's Exhibit 17 and admitted that his deeds referred to a master plan. The deed for Lot 10 refers to a plat recorded in Book 48 at Page 59 in the deed for Lot 12 refers to a plat recorded in book 51 at page 32. The Property Owners Association does not own the lots where he seeks equestrian easements. It is not disputed that the owners of those lots are not named parties, even though their property can be affected. The witness then discussed the 20' foot equestrian easements marked on the plat but not shown on lots 1 – 7. The 60' foot right-of-way was also discussed and the witness estimated 22' feet of the paved road is in the right-of-way. He was then asked if the easements could be reached by access on the paved road and Mr. Todorovic testified, he did not want to ride his horse on a paved road for safety reasons.

In reviewing the covenants on cross-examination, Plaintiffs' Exhibit 3, the witness reviewed the Phase II covenants. It is undisputed that homeowners are governed by the covenants. Utility easements are referenced as 10' foot in the rear 5' foot on side lot lines equestrian easements shown as 20' feet in dimension and runs parallel and contiguous to lots 1 – 8 and the words "rear" and "side" are not used. It's noted that the Phase II language is different from the Phase I language. He agrees the Association covenants do not say the Association "must" enforce the covenants. Article VII, Remedies for Violations, allows the lot owners to individually or jointly have a right to proceed to compel compliance.

On redirect, the witness stated that he has used the trails in the subdivision in Phase II for 17 years. He saw no damage to the grass or other property of the owners. He further testified that the covenants do not refer to a road right-of-way, but has always used the term "easements." He testified that the detention pond shown on some areas is not on subdivision property and no easements were shown. He testified the Plaintiffs cannot access the equestrian trails from their interior lot. Further, he believes the definition of exterior, per the covenants, is all boundaries to a lot.

The Plaintiffs' next witness was Jeff Barnes, who is a Property Owners Association representative. He is a Phase I Cedar Meadows resident and he provides testimony for the Property Owners Association in litigated matters. He testified that the Association enforces the covenants and he is currently the Vice President of the Association. Phase I of Cedar Meadows was the first subdivision completed and Wayne Raiford was the developer. He controlled the architectural committee and the Property Owners Association for a period of time. He was then shown Plaintiffs' Exhibit 3, the covenants to Phase II for Cedar Meadows. In Article IV, Reservation of Easements, the first sentence in the second paragraph, states: that the equestrian easements are for all lot owners in the subdivision. He testified that Phase I is in the subdivision and he has the benefit of the Phase II easements due to the language. The easements were to be 20' feet in width on all exterior lot lines. Lots 1 – 8 easements are described in the covenants as 20' foot parallel and contiguous to the exterior boundaries. He testified that the term exterior boundary is the exterior boundary. No easement is shown on the plat for lots 1 – 7. There is a 60' foot access easement shown. The Property Owners Association believes the plat establishes the 20' foot easement. Although the plat does not show any interior easements, he believes there are several

interior trails that the covenants do describe. He also pointed out that the covenants say, “as depicted or shown on the plat,” he believes the language “as depicted on the plat” applies to lots 1 – 8 and 14 – 20. In reviewing Plaintiffs’ Exhibit 3, the witness reviewed Article IV, the first sentence describing utility and drainage easements as 10’ foot along back and 5’ foot along the side, no utility easements being shown on the plat. The Property Owners Association’s position is there are no easement trails on Lots 1 - 8, in Phase II and that the trail/easements are on the private owners’ lots. On lot 7 and lot 3, he knows there are equestrian easements but those belong to private owners and not the subdivision. He then reviewed Plaintiffs’ Exhibit 1, Covenants for Phase I, Article IV, second paragraph, first sentence, which states, “all lot owners in the subdivision” and he believes Phase II owners have access to those easements. He agrees the Property Owners Association’s duty to enforce the covenants in reviewing the second paragraph, second sentence which notes that the exterior boundaries of subdivision in the Phase II covenants concerns the exterior of the lot. The plat does not show easements on the perimeter in some areas. No trails in those areas are shown on the plat. He then reviewed Plaintiffs’ Exhibit 2 concerning any interior easements that did not exist in the covenants. The easement to the covered bridge is not described in the covenants between lots 7 and 5. He also pointed out a 20’ foot easement that is shown on the plat and the interior easements shown on plat, but not stated in the covenants. In reviewing Plaintiffs’ Exhibit 1, Bank’s Mill Road is discussed in the covenants, but not shown on the plat but there is a physical trail that is maintained by the Property Owners Association. He also discussed a 20’ foot area on both sides of Cedar Meadows Road and the Equestrian Court which is an equestrian easement on the side of the road. Those easements are not shown on the plat. He believed there were easements shown on the side roads listed in Phase I but is not shown on the subdivision plat. The Phase I plat does not show those easements but he believes those exist per the covenants. He agreed the Cedar Meadows subdivision plat is referenced in the covenants.

The witness then discussed the minutes of the annual meeting held on August 26, 2018. He believes the homeowners voted on the maintenance of the easements but he was not sure if that entry concerns Phase II. He does not believe there are any easements on the side of the lots in Phase II, and none are shown on the plat. Although he was Vice President at the time he testified, he stated he was not aware of any vote to file a counterclaim in the current litigation. He agrees the Property Owners Association cannot represent an individual owner on a cause of action. The witness was then shown Defendant’s Exhibit 3, which are the bylaws of the Property Owners

Association. Subsection D, discusses the Property Owners Association and property owners for the enforcement of the covenants as applied by majority vote. As owners, the Plaintiffs have rights to easements in Phase I. There were amendments to the protective covenants for Phase I recorded on February 12, 2020 and those documents were signed by the President and Secretary of the Property Owners Association.

To amend the covenants, the witness referred to Article XI to modify covenants in Phase 1. Any change or expiration of the written agreement would be executed and voted for by over fifty percent (50%) of the owners. Plaintiffs' Exhibit 22 is a document that was filed on February 20, 2020 and the witness that was on the board does not remember voting on the 20' foot equestrian easement concerning lot 11.

On cross-examination, the witness reviewed the plat marked as Defendant's Exhibit 18 and 4, Phase I and Phase II combined plat, and testified that it was the correct layout of each phase. The equestrian trails used prior to litigation have been used for more than 20 years. The witness then reviewed Defendant's Exhibit 19, which is not a survey but simply a depiction of the highlighted portion of the 50-acre tradable. The Plaintiffs had rejected an offer communicated to them by the Property Owners Association for the Plaintiffs to be provided with contact information of people who would give Plaintiffs permission to ride.

The first witness presented by the Defendants on September 24, 2025, was Kim Konopinsky, who has lived in Cedar Meadows for approximately 10 years. She is familiar with the plat and reviewed Plaintiffs' Exhibit 4, which is a plat of Phase II and referred to lot 8. She noted a 20' foot equestrian easement on the back of her property. This easement circles the subdivision except by the creek close to Banks Mills Road. She believes the conditions have remained the same for the past 10 years with no obstructions and referenced the access points by the retention pond. She testified there are no easements between the properties for equestrian use, only utility easements. She did agree that other than the utility use on those easements, some people ride horses and walk dogs between the lots with the permission of the property owners and not based on any covenant or platted easement.

The witness is familiar with the Plaintiffs and stated that she has had personal disagreements with them. She was aware of the Plaintiffs' letter to the Property Owners Association, requesting that the equestrian easements be brought into compliance. Mrs.

Konopinsky provided her survey to the board to establish the locations of the easement. In examining Defendant's Exhibit 2, the witness noted that her lot (lot 8) and the plat show locations of the equestrian easements. She believes the Plaintiffs are incorrect based on the surveys and public records. In 2015, the Plaintiffs requested permission to use the Defendant's property or access. That permission was later withdrawn. The only exception would be that area provided as a platted easement.

On cross-examination, the witness testified that she purchased her lot in 2013 and the Property Owners Association was controlled by the developer at that time. She does not agree that the developer told them that the setbacks could be used as equestrian easements. In referencing Plaintiffs' Exhibit 23, she noted this was a covenant review commission concerning possible consolidation of Phase I and II to clarify the riding areas. She did contact the police to report trespass by the Plaintiffs on areas of her property that were not equestrian easements.

The next witness presented was Bradley Pemberton whose address is in Phase I of Cedar Meadows. He is familiar with the equestrian trails and he prepared some drone video footage to show the conditions of the trails. He has reviewed the video and believes it is accurate as to the condition of the trail. This would have been taken after the litigation had been filed. Reference is made to Plaintiffs' Exhibit 4, which is the retention pond access. His testimony is that Aiken County owns the retention pond but the witness was unsure about ownership of the land in that area. The entrance is not marked on the plat. On Defendant's Exhibit 2, he referred to the notes to the plat that listed no restrictions for equestrian use. Phase I and Phase II are joined in the area around the pond and used for access to the trail. He noted the video showed Phase II and that there were no obstructions. Defendant's Exhibit 3 is a thumb drive showing the drone footage of the trail.

The witness testified he did have some interactions with Plaintiffs. The Plaintiffs began video-taping his children. His daughters were 16 and 14 at the time. The witness reviewed copies of the police report. Incident dates of April 5, 2021 and April 11, 2021 were noted. He stated Plaintiff did not have permission to videotape his daughters and testified that he eventually had to move their horse. He further testified that Mrs. Todorovic had been taping the witness over the past two months in the right-of-way area of Cedar Meadows. He noted that the Property Owners Associations had to expend money for attorneys due to this action.

At this point, both sides rested the presentation of any further evidence and a timeline was developed for the attorneys to submit written closing arguments.

CONCLUSIONS OF LAW

Any finding of fact stated above that is also a conclusion of law is incorporated herein by reference. This matter is properly before the Court. Notice of the Hearing was properly given to all Defendants, and the Court has personal jurisdiction over all Defendants. Further, this matter is within the subject matter jurisdiction of this Court, having been properly referred for the purpose of taking testimony, receiving evidence, and making findings of fact and conclusions of law with respect to all issues with the authority and power to enter a final judgment in this cause, with any appeal to the Court of Appeals of South Carolina.

RESTRICTIVE OR PROTECTIVE COVENANTS

Covenants are normally negative easements; South Carolina Courts have also recognized restrictions that create an affirmative obligation. *Manning v. City of Columbia*, 297 SC 451, 377 S.E.2d 335 (1989), *South Carolina Juris Prudence*. Restrictive Covenants can be created by recording a declaration of restrictive covenants. *Sprouse v. Winston*, 212 SC 176, 46 S.E.2d 874 (1948). The failure to mention restrictive covenants and deeds may be of no legal significance if the restrictions are recorded. *Flinkingshelt v. Johnson*, 258 SC 77, 187 S.E.2d 233 (1972) *SC Juris Prudence* Covenants Section 63.

Minor deviations from the Restrictive Covenants on some lots does not destroy the scheme or the integrity of the scheme of the development. *Pitts v. Brown*, 215 SC 122, 54 S.E.2d 538 (1949) also *Easterly v. Hall*, 256 SC 336, 182 S.E.2d 671 (1971). The parties claiming that the deviation of the restrictive covenants are so significant that the covenants have been abandoned or destroyed, the party must show that the omissions are “extensive” as oppose to “negligible”. *McDonald v. Welborn*, 220 SC 10, 66 S.E.2d 327 (1951) also *Abbott v. Arthur*, 61 SC 31, 198 S.E.2d 261 (1973). The burden of proof is on the party asserting the existence of restriction.

“Protective covenants are contractual in nature and bind the parties thereto in the same manner as any other contract.” *Plametto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct.App.1985), *Seabrook Island Pro ert Owner’s Ass’n v. Ber er*, 365 S.C. 234, 616 S.E. 431 (Ct.App.2005). Historically, courts do not favor protective covenants based on the belief that

society's best interest encourage unrestricted use of land. *Edward v. Surratt*, 228 S.C. 894, 90 S.E.2d 906 (1956), *Sea Pines Plantation Company v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (S.C. 1987). Although protective covenants are strictly interpreted and any doubts or ambiguities are resolved in favor of free use of the land, the covenant will be enforced if it expresses the party's intent or purpose, the party seeking to enforce the protective covenant must show the restriction applies by the express language of the covenant or by plain and unmistakable implication. *Id.*

Actual notice has been defined as a person knowing of the existence of the particular facts or "is conscious of having the means of knowing it, even though such means may not be employed by him." *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). Constructive Notice is "notice imputed to the person whose knowledge of facts is sufficient to put him on inquiry: if these facts were pursued with due diligence, they would lead to other undisclosed facts." *Id.* *Anderson v. Buonforte* 365 S.C. 482, 617 S.E.2d 750 (S.C. App. 2005). If the restriction is properly recorded in the chain of title, the homeowner had constructive notice. *Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (S.C.App.2005) (quoting from *Harbison Comm. Ass'n Inc. v. Mueller*, 319 S.C. 99, 459 S.E.2d 860 (Ct.App.1995).

"Restrictive covenants are contractual in nature, and thus, the language used in the restrictive covenant is to be construed according to its plain and ordinary meaning." *Penny Creek Assocs., LLC v. Fenwick Tarragon Apartments, LLC*, 375 S.C. 267, 271, 651 S.E.2d 617, 620 (Ct. App. 2007). However, because restrictions on the use of property are historically disfavored in South Carolina, courts tend to strictly interpret restrictive covenants and resolve any ambiguities in favor of the free use of the property. See *Sea Pines*, 294 S.C. at 270, 363 S.E.2d at 893 ("The historical disfavor of restrictive covenants by the law emanates from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land."); see also *Penny Creek*, 375 S.C. at 272, 651 S.E.2d at 620 ("Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property." (quoting *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). Crucially, "[t]he rule of strict construction governing restrictive covenants does not preclude their enforcement." *Sea Pines*, 294 S.C. at 270, 363 S.E.2d at 894. Rather, "[a] restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant." *Id.*

"Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Kinard*, 407 S.C. at 257, 754 S.E.2d at 893 (quoting *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998)). "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* (quoting *Taylor*, 332 S.C. at 4, 498 S.E.2d at 863–64 (alteration in original)). "When 'the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning.'" *Id.* at 257, 754 S.E.2d at 894 (quoting *Shipyard Prop. Owners' Ass'n v. Mangiaracina*, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992)). A covenant "is ambiguous when the terms . . . are reasonably susceptible of more than one interpretation." *Town of McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302. "A covenant must express the purpose of the parties thereto to be valid and enforceable [,] and it must not be too indefinite or against public policy." *Vickery v. Powell*, 267 S.C. 23, 28, 225 S.E.2d 856, 858 (1976).

In closing argument, the Plaintiffs relied on the recorded documents when they purchased the lot in Cedar Meadows Equestrian Subdivision Phase II in 2005. As avid equestrians, the Plaintiffs were attracted to the subdivision by the riding trails located within the subdivision. They noted the trails in Cedar Meadows Phase II included trails that surrounded all of the lots. They reviewed the covenants which provided equestrian and pedestrian easements on the perimeter of lots 1 through 8 and 14 through 20. They believe those setbacks were provided by the developer with the understanding that the easements were valid and enforceable. There is testimony supporting the Plaintiffs using the trails uninterrupted for over 17 years. Wayne Raiford, the original developer, testified that this was his first equestrian subdivision. He also testified that Phase II was created and that there were equestrian/pedestrian easements on the front, sides, and rear of the lots in Phase II. The Phase I easements were different than Phase II. He created more riding trails in Phase II and that change was noted in the restrictive covenants. By example, he stated Phase I only had equestrian/pedestrian easements along the streets, meaning the front of the lots and along the perimeter of the subdivision along the rear of the lots. The language between Phase I and Phase II covenants is different.

Plaintiffs testified that when Mrs. Konopinski moved into the neighborhood, she was elected as a board member and this is when the questions concerning the existence of the easements in Phase II became an issue. According to the Plaintiffs' testimony, she raised the issue about the

existence of the easements because they did not appear on the plat which was referenced. Emails with Mrs. Konopinski were provided as exhibits. The Plaintiffs believe the plain ordinary meaning of the words used are clear and unambiguous. The language states, “the exterior boundary of lots 1 through 8 and lots 14 through 20.” Plaintiffs believe that phrase shows that the easements mean on all sides of those lots. They also rely on Aiken County Municipal Code which defines a lot line as, “the boundary line of the lot; a line bounding the lot which divides one (1) lot from another or from a street or any other public or private space.” Aiken, S.C. Code of Ordinances chp. 24, art. XI (2024). Plaintiffs believe using that definition and the wording contained in the documents of the subdivision establish that the boundary clearly means all sides of the lots in Phase II. Photographs, such as Plaintiffs’ Exhibit 6, show the access trails used since they have owned their lot and are as described by the developer.

Compared to Phase I of the subdivision, the Plaintiffs rely on the different wording in the protective covenants concerning the easements and that the language in Phase I of the, “exterior boundary of the subdivision,” is exactly where those easements exist. They are not aware of any historical use of the sides of those lots as easements in Phase I. This is also supported by the testimony of Wayne Raiford as the developer. Plaintiffs also rely on an email from Mrs. Konopinski which indicate the sides of the lots “were originally represented as an equestrian easement by the Developer”.

The Plaintiffs also argue that the Property Owners Association put forth the testimony of Jeff Barnes. This witness acknowledged the historical use of the properties by the Plaintiffs’ and others. He also acknowledged the minutes of meetings of the Property Owners Association had historically referred to the front, back and side easements in Phase II. Mr. Barnes also referred to the plat of the subdivision and indicated that because the easements created in the covenants on the lots did not appear on the plat, the Property Owners Association, questioned the validity of that language. Mr. Barnes was then asked about easement being created, which was 20’ feet in width along both sides of Cedar Meadows Road and Equestrian Court in Phase I, which the POA has recognized and maintain but which does not exist on the plat. Mr. Barnes admitted that the POA recognizes those type of easements. Despite this, Mr. Barnes indicated the Association did not believe that equestrian easements existed on the rear of all the lots. In particular, lots 1 through 5 and lot 6 and 7 did not have easements recognized by the Property Owners Association, even

though it was created by the covenants. When asked about this issue, Mr. Barnes again relied on those easements not being shown on the plat.

This issue led to a discussion about lots 6 and 7 and the location of the easements. Both Plaintiffs and Mr. Barnes acknowledged that there are issues with that location since that was an existing trail being shown on a third-party property. Those individuals have apparently revoked their permission for others to use that trail. It seems clear that those easements would not be necessary if easements existed on the rear of lots 6 and 7 within Cedar Meadows, Phase II. There was also testimony provided concerning the use of an easement at the end of the road by the retention pond. However, it seems undisputed that property was sold and the Property Owners Association can no longer grant access over that property. The pond itself is currently owned by Aiken County and there is no known legal easement on that property. This would require the Plaintiffs to ride their horses on the street to reach Phase I in order to gain access to the riding trails. They would exit in the same manner. The Plaintiffs believe that without access to those equestrian trails, the value of their property is greatly diminished and they believe they will lose an immense amount of value in their home if they were to lose.

The Defendant' closing argument stated that in 2002, Cedar Meadows Subdivision Property Owners Association was founded to enforce the protective covenants of Phase I. In 2004, separate covenants were developed and filed concerning Phase II of Cedar Meadows' Subdivision. The language in the protective covenants for Phase II describes 20' foot equestrian easements around the exterior boundaries of lots 1 through 8 and lots 14 through 20. The language also states there are several interior trails as shown and designated on subdivision plats.

Defendant emphasizes Plaintiffs' burden of proving the equestrian easement applies to the lines between the individual lots. Defendant relies on caselaw, as stated above, that the rules of construction for protective covenants is to ascertain and give effect to the intent of the parties as determined by the whole document. Language in protective covenants is to be given their plain, ordinary meaning at the time the documents were executed.

Defendant's argument relies on language stating that equestrian/pedestrian easements are "parallel and contiguous with each exterior boundary of lots 1 through 8 and lots 14 through 20. Defendants believe the term, "exterior boundary" refers to the outer boundary of the subdivision. If the language is ambiguous, it believes any dispute should be resolved in favor of the free use of

the property. Defendants believe the language in the covenants would require the court to enlarge the scope of the covenants beyond the terms, contrary to the plain and ordinary meaning. By example, Defendants do not believe the term “exterior boundaries” is specific enough to include property lines between individual lots. Defendants rely on *Sprouse v Winston*, 212 SC 176, 46 S.E.2d 874 (1948), concerning interior and exterior lot lines and in that case, an outside lot line from an inside lot line. Another case discusses the general scheme of improvement in the subdivision. In that matter, Defendants believe the case stands for the proposition that lines between lots in the subdivision are interior lot lines. Defendants position is that the term, “exterior lot lines”, are boundary lines along the outer limits of the subdivision, separating it from adjacent properties or public areas.

The next issue argued by the Defendants is pedestrians or individuals riding horses being allowed to use the unpaved portion of the road right-of-way. See *Crosby v Chester*, 197 S.C. 66, *Livingston v South Carolina State Highway Department*, 178 S.C. 323, and also *Bunton v South Carolina State Highway Department*, 186 S.C. 463. The closing argument also addresses the issue of the condition of the equestrian trail. Citing *Harvey v Mars Hawk Plantation* and *Pines Plantation Co. v Wells*, 294 S.C. 266.

As to moving or altering easements outside of the timeframe described in the protective covenants, Defendants argue an individual owner and the Property Owners Association can agree to moving easements if the plat shows the easement to the middle of a lot and the intent was for the easement to run along the side of the lot. *Shepherd v Justin Enters*, 373 S.C. 518 and *Goodwin v Johnson*, 357 S.C. 49.

DISCUSSION

The recorded plat of Cedar Meadows Equestrian Phase II, appears to show a 20’foot equestrian easement around the outer or rear lot lines on lots 7 and 8, as well as, lots 14 through 20. The document introduced has handwritten arrows between lots 7 and 8, as well as, lots 8 and 14 along the sides of those lots to allow access to the 20’ foot equestrian easements described above. There is also a tract of land of 2.655 acres with a retention pond and adjacent to Lot 20 which has an equestrian easement shown on the plat.

There is a specific designation that equestrian/pedestrian easements “shall be 20’feet in width and shall be parallel with and contiguous to each exterior boundary of Lots 1 through 8 and Lots 14 through 20 of the subdivision with several interior trails as shown and designated on subdivision plat.” The paragraph specifies the exterior Lots 1 through 8 and 14 through 20. The same paragraph describes, “several interior trails as shown and designated on subdivision plat.” In comparing the language in Article IV and the recorded plat, the plat does not show 20’foot equestrian easements on exterior borders for lots 1 through 6, even though those easements are described in the covenants. The interior trails are not marked by the survey or on the recorded plat.

Wayne Raiford was the Developer of Phase I and Phase II of this subdivision. As such, he controlled the Property Owners Association and testified as to each property owner’s setback defenses 10’ feet on the property on lots 1 through 8 and 14 through 20. He agreed the recorded plat did not reflect the language in the covenants. He specifically remembers telling the Plaintiffs they would be able to use the equestrian trails. The restrictive covenants were in place when he, as the Developer, turned over control to the owners of the Property Owners Association. The easements on all sides of the lots were not shown on the plat, but Mr. Raiford testified there were easements along the side, front and rear which were used for access to the equestrian easements. This is also supported by the Plaintiffs’ testimony concerning their use of the easements for approximately 17 years before a dispute arose with one of the other owners.

In reviewing the deeds to Lots 1 through 8 and 14 through 20, some contain language about the recorded covenants and plats, while others do not. There is no dispute that the covenants were recorded in Miscellaneous Volume 1287, Page 172 on June 29, 2024 and is a part of the public record. The plat for Phase II was recorded on July 28, 2004 in Plat Book 48, Page 59. If the restriction is properly recorded in the chain of title, the homeowner had constructive notice. *Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (S.C.App.2005) (quoting from *Harbison Comm. Ass’n Inc. v. Mueller*, 319 S.C. 99, 459 S.E.2d 860 (Ct.App.1995).

Based on the recorded documents, the testimony and the exhibits, there is no dispute that a 20’foot equestrian easement exists around the exterior lot lines (exterior boundary in the covenants), of lots 1 through 8 and 14 through 20. This is strictly based on the language of the second paragraph of Article IV in the covenants. The use of the terms, “parallel with and contiguous to each exterior boundary,” also provides guidance to the location of these easements.

Parallel is defined as, “extending in the same direction, or having parallel sides, *Miriam – Webster.com*. The use of these terms supports the interpretation of the language to mean the exterior boundary or exterior lot lines would include the parallel sidelines on each lot described in the covenants. The same paragraph describes several interior trails as shown and designated on the subdivision plat. No explanation was provided about why no interior trails were shown on the plat or why a corrected plat was not recorded. "Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Kinard*, 407 S.C. at 257, 754 S.E.2d at 893 (quoting *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). Although protective covenants are strictly interpreted and any doubts or ambiguities are resolved in favor of free use of the land, the covenant will be enforced if it expresses the party’s intent or purpose. The party seeking to enforce the protective covenant must show the restriction applies by the express language of the covenant or by plain and unmistakable implication, *Sea Pines Plantation Company v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (S.C. 1987).

The court has reviewed the following in addition to the arguments of each party:

- a) The language of the restrictive covenants, which has been discussed above;
- b) The testimony of the Developer about the intent of the language and how the easements were structured and used while he was the Developer;
- c) Testimony of the Plaintiffs concerning their use of the easements, including the side, parallel easements of the side lot line’s for approximately 17 years prior to an issue developing with a current owner;
- d) The photographs introduced, in particular, Plaintiffs’ Exhibit 6, showing the fences of the adjoining lots separated to allow use of the 20’ foot equestrian easements;
- e) The testimony of Jeff Barnes, as a representative of the POA, in particular his testimony and cross-examination, where he agreed the equestrian trails, prior to litigation had been used for more than 20 years;
- f) Email of Kim Konopinski, dated February 19, 2019, concerning her attempts to outline the “grandfathered equestrian easements, grandfathered differences in setbacks...”;

g) A comparison of the recorded plat of Cedar Meadows Equestrian Subdivision, Phase II and the language in the restrictive covenants.

Reviewing the testimony, exhibits, case law, and reviewing the submitted written arguments, the court finds that while the Defendant is correct that the area is marked on the plat do not all correspond with the language in the covenants. However, the other items considered all support a finding that this subdivision scheme supports the use of equestrian easements and the language of Article IV. When considering the terms, “parallel and contiguous to exterior boundaries,” along with the supporting testimony and photographs, it supports a decision by the court to find that the equestrian easements exist not only on the rear portion of the lots discussed in Article IV but also along the boundaries on the side of those lots. To the extent the front of the lots, facing the paved streets would also be an exterior boundary, those would also be included in the definition. The court does find support for the Defendant’s argument that individuals can use the public right-of-way on roads as provided in the South Carolina statutes.

The next issue would be to address the concern of the authority of the Defendant to change or alter the recorded restrictive covenants. Many of the issues raised concerning the power of the Cedar Meadows Property Owners Association to make changes or concerning its responsibility to enforce the covenants. Any authority is created through the Protective Covenants of Cedar Meadows Equestrian Subdivision Phase II. Article XI provides the effective time limits of the recorded Covenants. The document became effective at the time it was recorded on June 29, 2004 in Book 1287, Page 172, at the Aiken County RMC Office. By the language of the covenants, these were effective until January 1, 2005. At that point, the covenants automatically continued for 15 years or until January 1, 2020, at which time, the covenants, as written, were extended again until January 1, 2035. The document uses the phrase, “without limitation.” There was testimony and exhibits of minutes from meetings and emails prior to the 2020 effective date but there is no record of a fully executed document being recorded following a vote by the owners of not less than (50%) fifty percent.

While the court cannot rule on the rights of specific individuals who are not parties to this case, any recording filed by officeholders of the Property Owners Association, without a vote by the owners as described, would be improper. Also, an individual lot owner attempting to file a document to alter the restrictive covenants is not proper based on the language of the documents

recorded prior to owners purchasing property in the subdivision. Any changes which were made without following the proper procedure and without the covenants being changed according to the language of the recorded documents would be null and void.

As to the issue of the POA's responsibility to enforce the covenants, Article VII, states that, "the owners of the lots in Cedar Meadows Phase II or the Association or the ACC or any of them jointly or severally shall have the right to proceed at law or in equity compel the compliance..." The court does not find the term "shall" means that the POA must take action when an owner believes a violation has occurred. If that was the purpose or intent, the language of Article VII could assign that responsibility to only the POA. The current language allows one of three groups to make its own interpretation as to whether a violation has occurred and provides the authority to take action if the party believes that is necessary. In its plain and ordinary meaning, the term "shall" only apply to the right to take action and not a requirement for the POA.

The Plaintiffs also claim the Defendant has failed to maintain the equestrian easements. The evidence submitted dealt with the condition of the equestrian easements and in particular any trees which had grown in the area. Despite the alleged condition, the Plaintiffs indicated that they, could and have in the past used, the equestrian trails on a regular basis. Other witnesses who testified all seem to support that the equestrian trails were used and believe were safe for use. While they may be trees in some of those areas, it seems the issue would be whether it is an area that is safe and secure for the individuals using those easements. Article IV states that, "The owners of lots which the equestrian easement is located on shall erect no improvements and allow no obstructions within the easement area. Lot owners shall have the right to clear vegetation and obstructions from the equestrian/pedestrian easements in order to provide convenient access for ridding and walking." Although the Plaintiffs establish that there are some trees in a 20'foot easement, the court does not find that the existence of those trees to be a violation of the provision of Article IV and relies on the testimony of various witnesses and photographs that there was still convenient access for ridding and walking in those areas.

"Laches is an equitable doctrine defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.'" *Strickland v. Strickland*, 375 S.C. 76, 83, 650 S.E.2d 465, 469 (2007) (quoting *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988)). A Defendant raising a laches

defense "must show that the complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the defendant." *Id.* The issues raised by the Plaintiffs have been an ongoing issue. Even when the initial protest was raised concerning the use of the equestrian easements on the side boundary of certain properties, the Plaintiffs continued to use the access until prevented from being able to do so by law enforcement. There also appears to be attempts to resolve the matter through work with the Association. The Court does not find that there was any neglect or unreasonable delay in the action commenced by the Plaintiffs. For the same reasons, the equitable defense of waiver would not apply. Waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Historic Charleston Holdings, LLC v Mallon*, 381 S. C. 417, 673 S.E.2d 448 (2009). Equitable estoppel may apply if a person, by their action, conduct, words, or silence which amounts to a representation, or a concealment of material facts, causes another to alter their position that cause the parties, prejudice or injury. *Rushing v McKinney*, 370 S.C. 280, 633 S.E. 2d 917 (Ct. App. 2006). The court finds the Defendants did not establish the affirmative defense of equitable estoppel and, although pled, there is no finding for an affirmative defense of statute of limitations.

Concerning the Defendant's counterclaim, the court does not find that the Defendants established the elements for a nuisance claim concerning the videotaping of underage drivers on public roads or there are any damages as a result of that action.

As for the claims of parties for attorney fees and costs, if either the Plaintiffs or Defendant believe they are the prevailing party, that party should file affidavit for the attorney's fees and cost within 10 days from the date of this Order.

IT IS SO ORDERED

Aiken County Master In Equity/M. Anderson Griffith



Aiken Common Pleas

Case Caption: Tomisaly Todorovic , plaintiff, et al VS Cedar Meadows Property Owners Association
Case Number: 2020CP0200420
Type: Master/Order/Other

AND IT IS SO ORDERED

s/M Anderson Griffith-3076