

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS FOR SPARTANBURG COUNTY**

**The Honorable Gordon G. Cooper, Master-in-Equity**

71245

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**CASE NO. 2009-CP-42-5129**

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**KATHERYNA MULHOLLAND-MERTZ..... APPELLANT,**

**v.**

**CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC.,  
RICHARD T. BIGGS, KATHLEEN A. BIGGS, JAMES HANNAH, AND  
ELIZABETH A. HANNAH.....RESPONDENTS.**

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**PETITION FOR WRIT OF SUPERSEDEAS**

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**JAMES D. CALMES, III, SC ID# 1089  
512 EAST NORTH STREET  
POST OFFICE BOX 16135  
GREENVILLE, SOUTH CAROLINA 29606  
TELEPHONE: (864) 233-6224  
ATTORNEY FOR THE APPELLANT**

## **BRIEF STATEMENT OF FACTS**

On September 17, 2009, Plaintiff Katheryna Mulholland-Mertz ("Appellant") brought an action against Defendants Richard T. Biggs, Kathleen A. Biggs, James Hannah, Elizabeth Hannah as property owners within Corie Crest Subdivision and Corie Crest Homeowners' Association, Inc. ("Respondents"), to seek a temporary and permanent injunction to remove certain structures or buildings in violation of the Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision ("Restrictions") and further restrain Respondent Corie Crest Homeowners' Association, Inc. from approving similar structures in the future.

Circuit Judge J. Derham Cole granted the Appellant a temporary restraining order to prevent similar structures from within Corie Crest Subdivision on June 15, 2010. A final hearing was held on August 24 and August 25, 2011 and the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County, issued an order on September 9, 2011 granting Respondents' motion to dismiss Appellant's case pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure (SCRCP). In the Order, the Master stated a subsequent hearing would be scheduled for the Respondents' request for attorney's fees.

Appellant filed post-trial motions with the argument that a hearing for award of legal fees and costs would be premature until full adjudication of the merits. These motions were denied on March 8, 2012.

Respondents' motion for attorney's fees and court costs was heard on March 22, 2012. The Master-in-Equity then declared with no objection from the attorney for

Respondents that he no longer had jurisdiction over the case due to a notice of appeal filed with the Clerk of Court for Spartanburg County and the Court of Appeals for South Carolina.

The Appellant did pursue her appeal to the Court of Appeals and oral arguments were heard on May 6, 2013. On May 22, 2013, the Court of Appeals affirmed the decision of the lower court. Appellant then filed a petition for rehearing with the Court of Appeals which was later denied. Appellant then timely filed her petition for writ of certiorari to the Supreme Court of South Carolina, which is now pending for a grant or denial of her writ.

Respondents then rescheduled a hearing for their motion for award of attorney's fees before the Master-in-Equity. The Appellant then filed a motion to dismiss the Respondents' motion for award of attorney's fees and court costs without prejudice since the writ of certiorari was still pending before the Supreme Court and that any award of legal fees and costs would be premature until final disposition of Appellant's appeal. An order was issued denying Appellant's motion on August 26, 2013.

On August 29, 2013, a hearing on award of attorney's fees was held before the Master-in-Equity. On October 24, 2013, the Master issued an order granting judgment against Appellant in the full amount of twenty thousand two hundred forty-seven dollars and 47/100 (\$20,247.47). [See Exhibit A]. In the judgment decree, the trial court relied upon Section 42(D) of the Restrictions.

D. Enforcement Remedied: In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these

covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) prevent any act, conduct, business or use which is in breach of these covenants; (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. **The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.** [See Exhibit B]. [Emphasis undersigned].

Therefore, since Respondents were considered the "prevailing party" over the central issue of injunctive relief sought by the Appellant and denied by the Respondents, the Respondents were given judgment for attorney's fees and costs as a consequential result from the trial of the case. [Emphasis undersigned].

Appellant timely filed her motions for reconsideration of the order of the Master-in-Equity dated August 26, 2013 and the order of lower court dated October 24, 2013. On November 13, 2013, the Master-in-Equity denied Appellant's motion to reconsider his prior order of the court filed August 29, 2013 and his prior order of the court dated October 24, 2013.

On November 20, 2013, Appellant served her notice of appeal of the October 24, 2013 judgment upon the Respondents.

On October 29, 2013 the Respondents filed through the Clerk of Court of Spartanburg County an Execution Against Property directing the Sheriff of Spartanburg

County to levy and seize sufficient assets of the Appellant to satisfy the October 24, 2013 judgment.

On November 25, 2013, the Sheriff's department returned the Execution Against Property declaring a *Nulla Bona* return. [See Exhibit C]. Subsequently, on December 11, 2013, the Respondents filed further proceedings to the lower court to conduct supplemental proceedings to satisfy the October 24, 2013 judgment.

In response, the Appellant filed her Motion to Stay the Execution of Judgment, pending this appeal, on December 17, 2013. [See Exhibit D]. A hearing on this motion was held on February 3, 2014 before the Master-in-Equity. A subsequent order was issued on February 10, 2014 finding that his Order for Judgment dated October 24, 2013 was a money judgment within the meaning of S.C. Code Ann. §18-9-130(A)(1) and considered an exception to automatic stay. The Master did grant a stay conditional upon posting a bond or surety of guaranteed payment of the judgment of twenty thousand two hundred forty-seven dollars and 47/100 (\$20,247.47) [See Exhibit E].

### **ARGUMENT**

**The Appellant is entitled to an automatic stay upon the service of her notice of appeal and is not required to post a bond or other surety under Rule 241 SCACR when the judgment is an award of attorney's fees arising out of an action for injunctive relief and provided for in the Restrictions.**

Rule 241(a) of the South Carolina Appellate Court Rules states as a general rule that serving a Notice of Appeal automatically stays execution of the relief granted by the judgment. Rule 241(b) lists exceptions to this rule including S.C. Code Ann. § 18-9-130 which deals with money judgments. In Pelzer Manuf'g Co. v. Cely, 40

S.C. 430, 18 S.E. 790 (1894), our Supreme Court stated a money judgment is a judgment obtained on a money demand directing payment from one party to the other party. In Woodside v. Woodside, 290 S.C. 366, 350 S.E.2d 407 (Ct. App. 1986), the Court of Appeals found that “nothing in Rule 241(b) expressly precludes attorney fees from the operation of the general rule” and that historically, in this state, orders for attorney fees are not considered money judgments. The Court in State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000), found that if the payment of money is incidental to the cause of action, then it is a collateral issue and not an exception under Rule 241(b) SCACR, and the filing of the notice of appeal automatically stays the judgment.

In this situation, the Appellant commenced this legal action by seeking a temporary and permanent injunction to remove certain structures or buildings in violation of the Restrictions and further restrain the Respondent Corie Crest Homeowners’ Association, Inc. from approving similar structures in the future. The Appellant was initially granted a temporary injunction, but at the hearing upon the merits, the Respondents made a motion to dismiss pursuant to Rule 41(b) SCRCF which was granted. When the Appellant received this adverse judgment, she timely served the notice of her primary appeal upon the Respondents, which is still pending before the Supreme Court of South Carolina. Additionally, the Appellant also timely appealed the October 24, 2013 judgment for award of attorney’s fees. This ancillary appeal of the October 24, 2013 Order is now before the Court of Appeals. As such, both of these appeals should have automatically stayed the October 24, 2013 judgment under Rule 241(a) SCACR.

As is evidenced by the Appellant’s claim for injunctive relief in her primary case,

she was not seeking a money judgment described in Pelzer, *supra*, as a judgment directing the payment of money from one party to another nor were the Respondents in their answer. Pelzer, 40 S.C. at 430, 18 S.E at 792. The judgment granting attorney's fees was incidental to the denial of Appellant's claim for injunctive relief. In Cooper, *supra*, the court found that matters which are incidental to the case are not traditional judgments in regards to S.C. Code Ann. § 18-9-130 and, thus, do not change the general rule of an automatic stay upon service of the notice of appeal. Cooper, 342 S.C. at 399, 536 S.E.2d at 876. Because neither party was seeking a money judgment, the award of attorney's fees is a collateral issue arising out of that action which is incidental to the focus of the suit.

Additionally, Woodside, *supra*, held that an order for attorney's fees was automatically stayed by an appeal because "nothing in Rule 241(b) expressly precludes attorney fees from the operation of the general rule" and that historically, in this state, orders for attorney fees are not considered money judgments and have not been executed upon until the matter been settled on appeal. Woodside, 290 S.C. at 378, 350 S.E.2d at 414-15. The Respondents in this case were granted an order for attorney's fees while the primary case was still on appeal.

As such, the Appellant believes that upon the filing of her notice of appeal, the judgment for attorney's fees should have been automatically stayed and that she should not be required to post a bond or any other surety until all matters on appeal are settled under Rule 241(a). Furthermore, the Appellant does not have the available assets needed to post a bond or other surety to guarantee payment for the Twenty Thousand Two Hundred Forty-Seven and 47/100 Dollars (\$20,247.47) judgment which is


supported by the Nulla Bona return on the Execution Against Property issued to the Appellant.

**CONCLUSION**

The Appellant's cause of action sought injunctive relief and not a money judgment. The Respondents in their answer sought dismissal of the Appellant's complaint. The award of attorney's fees granted by the Order filed on October 24, 2013 is a collateral or incidental issue and does not fall into the purview of the S.C. Code Ann. § 18-9-130 money judgment exception in Rule 241(b) SCACR. Therefore, for the foregoing reasons, the Appellant requests that her Writ of Supersedeas be granted and that the judgment in the sum of twenty thousand two hundred forty-seven dollars and forty-seven cents (\$20,247.47) reflecting attorney's fees and costs be declared automatically stayed and as such, she should not be required to post a bond or other surety until all matters on appeal are settled.

Respectfully submitted,

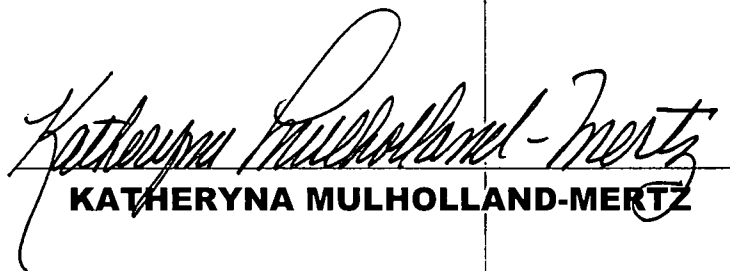
**FEBRUARY 14, 2014**  
**GREENVILLE, SC**

  
\_\_\_\_\_  
**JAMES D. CALMES, III, SC ID# 1089**  
**POST OFFICE BOX 16135**  
**GREENVILLE, SOUTH CAROLINA 29606**  
**TELEPHONE: (864) 233-6224**  
**ATTORNEY FOR THE APPELLANT**

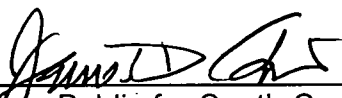
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

**VERIFICATION**

**PERSONALLY** appeared before me **KATHERYNA MULHOLLAND-MERTZ** who, on oath states: That she is the Appellant in the foregoing action; that she has read the allegations in the foregoing Petition for Writ of Supersedeas and the same are true of her own knowledge, except those stated therein to be upon information and belief, and as to those she believes it to be true.

  
**KATHERYNA MULHOLLAND-MERTZ**

**SWORN** to before me this  
14 day of February, 2014

  
Notary Public for South Carolina  
My Commission Expires: 10/27/15

**EXHIBIT A**

**October 24, 2013 Order**

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

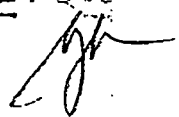
IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO.: 2009-CP-42-5129

**ORDER**

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

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

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 BY: JUDITH M. HUCKLEY



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

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

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

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

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

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

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

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

*[Signature]*  
Gordon G. Cooper  
Spartanburg County Master-in-Equity

October 24, 2013  
Spartanburg, South Carolina

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SPARTANBURG COUNTY  
2013 OCT 25 AM 9:01  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY: *[Signature]* D.C.  
DATED: 10-25-13  
#3  
*[Signature]*

# **EXHIBIT B**

**Declaration of Protective Covenants, Conditions,  
Restrictions and Easements of Corie Crest Subdivision  
Pages 1 and 2, and Section 42(D)**

STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG }

DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF  
CORIE CREST SUBDIVISION

THIS DECLARATION is made this 15<sup>th</sup> of February, 2005, by M Seay, L L C,  
hereinafter "Developer."

WHEREAS, Developer is the owner of certain Lots of land in Spartanburg County,  
South Carolina, shown and upon a plat entitled "Corie Crest Subdivision" made by Shambling Bros.  
Surveying dated 12-20-04, recorded in Plat Book 157 Page 485 ROD Office for  
Spartanburg County, SC, and

WHEREAS, Corie Crest will be a residential community, and the Developer desires to  
provide for the preservation of values and amenities of said community and for the maintenance of  
common facilities and, to this end, desires to subject all of the lots in Corie Crest as shown on the  
above plat to the within Protective Covenants, Conditions, Restrictions, Easements, charges and  
liens (herein referred to as Covenants and/or Restrictions) for the benefit of each and every owner  
in Corie Crest, and

WHEREAS, Developer deems it desirable to create an agency to which should be  
delegated and assigned the powers of maintaining and administering and enforcing the Covenants  
and Restrictions and collecting and disbursing the assessments and charges hereafter created, and  
is incorporating under the laws of the State of South Carolina, as a nonprofit corporation, Corie  
Crest Homeowners Association of Spartanburg, Inc. for exercising the aforesaid functions;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in  
consideration of the mutual benefits and advantages to the Developer and to future property  
owners of lots shown on the above plat, Developer hereby impose upon Corie Crest the following  
covenants, conditions, restrictions, easements, charges and liens, which shall bind the Developer,  
its successors and assigns, and all future owners of said lots, their respective heirs and assigns:

1. **DEFINITIONS:** The following words when used herein (unless the context shall  
require a different meaning) shall have the following meaning:

A. "Association" shall mean and refer to Corie Crest Homeowners  
Association of Spartanburg, Inc.

B. "Corie Crest" shall mean and refer to all of the lots and property shown  
upon a plat of "Corie Crest Subdivision," prepared for the Developer and recorded in the ROD  
Office of Spartanburg County.

C. "Common Properties" shall mean and refer to any and all properties or  
property rights, such as easements or other rights which shall be conveyed by the Developer or  
other grantors to the Association, which property and rights shall be held, managed and



maintained by the Association in accordance with its rules, regulations, and Bylaws.

D. "Developer" shall mean and refer to M Seay, L L C.

E. "Lot" or "lots" shall mean and refer to any numbered parcel of land shown upon a plat of Corie Crest subdivision prepared for the Developer and recorded in the ROD Office for Spartanburg County.

F. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot situated within Corie Crest Subdivision, but notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure.

G. "Member" shall mean and refer to any Owner who is a member of the Association as provided in Paragraph 36 hereof.

2. SINGLE FAMILY RESIDENTIAL USE: No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed two (2) stories in height, and, if approved in advance in writing, a private detached garage. No lot or portion of a lot shall be used either as a road or easement or other means of access to adjoining property without the express written consent of the Developer.

3. SUBDIVISION OF LOTS: Developer or any subsequent owner of a lot, with the prior written consent of Developer or its nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. After Developer has conveyed all the lots, adjoining owners may adjust their boundary lines without additional approval provided that under no circumstances shall a new lot be created by such adjustment.

4. MINIMUM HEATED AREA: Each dwelling shall have at least two (2) bathrooms and no less than sixteen hundred (1600) square feet of heated floor area and a double garage. The heated floor area required by this paragraph shall not include basements, porches, verandahs, breezeways, terraces and garages.

5. BUILDING SETBACK LINES: No building or portion of a building, including stoops, verandahs, steps and porches shall be located on a lot nearer the front property line or nearer the side street property line of a lot than the setback line (s) shown for such lots on the plat referred to in the deed to such lots from Developer, nor nearer than five (5) feet to any side property line. Furthermore, no such above ground improvements shall be built within ten (10)

Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.

C. Against Whom May the Covenants be Enforced: The obligation and benefits prescribed by this Instrument shall run with the property and shall be enforceable against any owner, his heirs, successors and assigns, and any other person whose activities bear a relation to the property, including guest and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate contravene or circumvent the terms hereof.

D. Enforcement Remedied: In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) prevent any act, conduct, business or use which is in breach of these covenants; (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

#### 43. MISCELLANEOUS

A. No Waiver: Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, the Association or any owner shall not be deemed a waiver or estoppel of the right to enforce same at any time thereafter.

B. Captions: The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.

C. Board Authorization: All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with its Bylaws, unless the terms of this instrument provide otherwise.

D. Gender, Tense, Number and Applicability of Definitions: When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender and the singular, the plural and visa versa, and words used in the present tense shall include the future tense.

E. Savings Clause: If any provision or provisions of this instrument are

# **EXHIBIT C**

**Nulla Bona Return on the Execution Against Property**

71525

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

EXECUTION AGAINST PROPERTY  
Case No. 2009-CP-42-5129

TO THE SHERIFF OF SPARTANBURG COUNTY:

WHEREAS, An Order for Judgment was executed on the 24th day of October, 2013 against Plaintiff, Katheryna Mulholland-Mertz, and in favor of said Defendants, Corie Crest Homeowners Association of Spartanburg, Inc.; Richard T. Biggs; Kathleen A. Biggs; James Hannah; and Elizabeth A. Hannah, for the sum of Twenty Thousand Two Hundred Forty Seven and 47/100 Dollars (\$20,247.47), as appears to us by the records filed in the Office of the Clerk of Court for Spartanburg County, South Carolina.

AND, WHEREAS, the said Judgment was docketed in your County on October 25, 2013, and the sum of Twenty Thousand Two Hundred Forty Seven and 47/100 Dollars (\$20,247.47), plus interest thereon from the 24th day of October, 2013, remains due,

THEREFORE, WE COMMAND YOU that you satisfy the said Judgment out of the personal property of the said Judgment Debtor within your County, or if sufficient personal property cannot be found, then out of the real property in your County belonging to such Judgment Debtor on the day when the said Judgment was so docketed in your County or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of Court for Spartanburg County.

WITNESS, M. Hope Blackley, Clerk of said Court, at the Spartanburg Courthouse on the 29 day of October, 2013.

M. Hope Blackley  
CLERK

A. Todd Darwin  
A. TODD DARWIN  
Attorney for Plaintiff

By: Pat Gotsch  
Deputy Clerk

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CLERK OF COURT  
SPARTANBURG COUNTY  
2013 OCT 30 AM 11:10  
M. HOPE BLACKLEY

Nulla Bona and Returned to Clerk's  
Office 11 day of 25 2013

# **EXHIBIT D**

**Notice of Motion and Motion to Stay the Execution of  
Judgment with Appellant's Brief**

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

KATHERYNA MULOHOLLAND-MERTZ,  
and KENNETH J. MERTZ

vs.

CORIE CREST HOMEOWNERS  
ASSOCIATION OF SPARTANBURG, INC.;  
RICHARD T. BIGGS; KATHLEEN A.  
BIGGS, JAMES HANNAH, and  
ELIZABETH A. HANNAH

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-42-5129

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

James D. Calmes III, Bar No. 1089

Address:

512 East North Street, Greenville SC 29601

Phone: 864/233-6224 Fax 864/233-5088

E-mail: jcalmes@calmeslawfirm.com Other: \_\_\_\_\_

Defendant's Attorney:

A. Todd Darwin, Bar No. \_\_\_\_\_

J. Hollis Inabinet, Bar No. \_\_\_\_\_

Address:

100 Dunbar Street, Spartanburg, SC 29306

Phone: 864/594-5300 Fax 864/585-3844

E-mail: \_\_\_\_\_ Other: \_\_\_\_\_

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motin to Stay Execution of Judgment

Estimated Time Needed: 45 minutes

Court Reporter Needed:  YES /  NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for  Plaintiff /  Defendant

December 17, 2013  
Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00

EXEMPT:

(check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status  State Agency v. Indigent Party
- Sexually Violent Predator Act  Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication  Motion for Execution (Rule 69, SCRPC)

Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: \_\_\_\_\_

Other: \_\_\_\_\_

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE CODE \_\_\_\_\_

Date: \_\_\_\_\_

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SPARTANBURG COUNTY  
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M. HOBE BRACKLEY

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

MOTION FEE COLLECTED: \$ \_\_\_\_\_

CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

KATHERYNA MULHOLLAND-MERTZ,

PLAINTIFF,

-VS-

CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC.; RICHARD T. BIGGS; KATHLEEN A. BIGGS; JAMES HANNAH; and ELIZABETH A. HANNAH;

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS ) SEVENTH JUDICIAL CIRCUIT )

) CIVIL ACTION No.: 2009-CP-42-5129 )

) NOTICE OF MOTION AND ) MOTION TO STAY THE ) EXECUTION OF JUDGEMENT )

TO: A. TODD DARWIN, ESQUIRE OF HOLCOMBE BOMAR, P.A. ATTORNEY FOR THE DEFENDANTS CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG INC. RICHARD T. BIGGS, KATHLEEN A. BIGGS, JAMES HANNAH AND ELIZABETH A. HANNAH:

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PLEASE TAKE NOTICE that the Plaintiff through her undersigned attorney shall move before the Presiding Circuit Court Judge for Spartanburg County for an order declaring an automatic stay of the October 24, 2013 Order granting award of attorney's fees and court costs in favor of the Defendants against the Plaintiff in the sum of twenty thousand two hundred forty-seven dollars and forty-seven cents (\$20,247.47).

This Motion is predicated upon the Notice of Appeal that has been filed with the Clerk of Court of Appeals and the Clerk of Court for Spartanburg County on November

21, 2013, to reverse the prior Orders of this Court dated August 26, 2013, October 24, 2013 and November 8, 2013 and in accordance with Rule 241(a), SCACR.

Respectfully submitted,



**JAMES D. CALMES, III, SC ID# 1089**  
**ATTORNEY FOR THE PLAINTIFF**  
**512 EAST NORTH STREET**  
**POST OFFICE BOX 16135**  
**GREENVILLE, SOUTH CAROLINA 29606**  
**TELEPHONE: (864) 233-6224**  
**FACSIMILE: (864) 233-5088**  
**E-MAIL: [jcalmes@calmeslawfirm.com](mailto:jcalmes@calmeslawfirm.com)**

**GREENVILLE, SOUTH CAROLINA**

**DECEMBER 17, 2013**

FILED  
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SPARTANBURG COUNTY  
2013 DEC 17 AM 11:41  
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

KATHERYNA MULHOLLAND-MERTZ,

PLAINTIFF,

-VS-

CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC.; RICHARD T. BIGGS; KATHLEEN A. BIGGS; JAMES HANNAH; ELIZABETH A. HANNAH,

DEFENDANTS.

) IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT

) CIVIL ACTION No.: 2009-CP-42-5129

) BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO STAY THE EXECUTION OF JUDGMENT

ISSUE PRESENTED

Is the Plaintiff entitled to an automatic stay of judgment once she has served notice of appeal under Rule 241 SCACR when the judgment is an award of attorney's fees arising out of an action for injunctive relief?

BRIEF STATEMENT OF FACTS

On September 17, 2009, Katheryna Mulholland-Mertz ("Plaintiff") brought an action against Richard T. Biggs, Kathleen A. Biggs, James Hannah, Elizabeth Hannah as property owners within Corie Crest Subdivision and Corie Crest Homeowners' Association, Inc. ("Defendants"), to seek a temporary and permanent injunction to remove certain structures or buildings in violation of the Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision

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("Restrictions") and further restrain Defendant Corie Crest Homeowners' Association, Inc. from approving similar structures in the future.

Circuit Judge J. Derham Cole granted the Plaintiff a temporary restraining order to prevent similar structures from within Corie Crest Subdivision on June 15, 2010. A final hearing was held on August 24 and August 25, 2011 and the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County, issued an order on September 9, 2011 granting Defendants' motion to dismiss Plaintiff's case pursuant to Rule 41(b) of the South Carolina Rules of Civil Procedure (SCRCP). In the Order, the trial judge stated a subsequent hearing would be scheduled for the Defendants' request for attorney's fees.

Plaintiff filed post-trial motions with the argument that a hearing for award of legal fees and costs would be premature until full adjudication of the merits. These motions were denied on March 8, 2012.

Defendants' motion for attorney's fees and court costs was heard on March 22, 2012. The Master-in-Equity then declared with no objection from the attorney for Defendants that he no longer had jurisdiction over the case due to a notice of appeal filed with the Clerk of Court for Spartanburg County and the Court of Appeals for South Carolina.

The Plaintiff did pursue her appeal to the Court of Appeals and oral arguments were heard on May 6, 2013. On May 22, 2013, the Court of Appeals affirmed the decision of the lower court. Plaintiff then filed a petition for rehearing with the Court of Appeals which was later denied. Plaintiff then timely filed her petition for writ of certiorari

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to the Supreme Court of South Carolina, which is now pending for a grant or denial of her writ.

Defendants then rescheduled a hearing for their motion for award of attorney's fees before the Master-in-Equity. The Plaintiff then filed a motion to dismiss the Defendants' motion for award of attorney's fees and court costs without prejudice since the writ of certiorari was still pending before the Supreme Court and that any award of legal fees and costs would be premature until final disposition of Plaintiff's appeal. An order was issued denying Plaintiff's motion on August 26, 2013.

On August 29, 2013, a hearing on award of attorney's fees was held before the Master-in-Equity. On October 24, 2013, the lower court issued an order granting judgment against Plaintiff in the full amount of twenty thousand two hundred forty-seven dollars and 47/100 (\$20,247.47).

Plaintiff timely filed her motions for reconsideration of the order of the Master-in-Equity dated August 26, 2013 and the order of lower court dated October 25, 2013. On November 13, 2013, the Master-in-Equity denied Plaintiff's motion to reconsider his prior order of the court filed August 29, 2013 and his prior order of the court filed October 25, 2013.

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On November 20, 2013, Plaintiff served her notice of appeal of the October 25, 2013 judgment upon the Defendants.

On October 29, 2013 the Defendants filed through the Clerk of Court of Spartanburg County an Execution Against Property directing the Sheriff of Spartanburg County to levy and seize sufficient assets of the Plaintiff to satisfy the October 25, 2013 judgment.

On November 25, 2013, the Sheriff's department returned the Execution Against Property declaring a *Nulla Bona* return. Subsequently, on December 11, 2013, the Defendants filed an affidavit with a proposed order to this Court to conduct supplemental proceedings to satisfy the October 25, 2013 judgment. Included in the proposed order is a restraining order prohibiting the Plaintiff from changing, altering, destroying, defacing, transferring and disposing of her property.

In response, the Plaintiff filed her Motion to Stay the Execution of Judgment, pending the appeal, on December 17, 2013, which is before this Court for its determination.

### ARGUMENT

**The Plaintiff is entitled to an automatic stay upon the service of her notice of appeal under Rule 241 SCACR when the judgment is an award of attorney's fees arising out of an action for injunctive relief.**

Rule 241(a) of the South Carolina Appellate Court Rules states as a general rule that serving a Notice of Appeal automatically stays execution of the relief granted by the judgment. Rule 241(b) lists exceptions to this rule including C. Code Ann. § 18-9-130 which deals with money judgments. In Pelzer Manuf'g Co. v. Cely, 40 S.C. 430, 18 S.E. 790 (1894), our Supreme Court stated a money judgment is a judgment obtained on a money demand directing payment from one party to the other party. In Woodside v. Woodside, 290 S.C. 366, 350 S.E.2d 407 (Ct. App. 1986), the Court of Appeals found that attorney's fees were historically not considered money judgments. The Court in State v. Cooper, 342 S.C. 389, 536 S.E.2d 870 (2000), found that if the payment of money is incidental to the cause of action, then it is a collateral

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issue and not an exception under Rule 241(b) SCACR, and the filing of the notice of appeal automatically stays the judgment.

In this situation, the Plaintiff commenced this legal action by seeking a temporary and permanent injunction to remove certain structures or buildings in violation of the Restrictions and further restrain the Defendant Corie Crest Homeowners' Association, Inc. from approving similar structures in the future. The Plaintiff was initially granted a temporary injunction, but at the hearing upon the merits, the Defendants made a motion to dismiss pursuant to Rule 41(b) SCRPC which was granted. When the Plaintiff received this adverse judgment, she timely served the notice of her primary appeal upon the Defendants, which is still pending before the Supreme Court of South Carolina. Additionally, the Plaintiff also timely appealed the October 25, 2013 judgment for award of attorney's fees. This ancillary appeal is now before the Court of Appeals. As such, both of these appeals should have automatically stayed the October 25, 2013 judgment under Rule 241(a) SCACR.

As is evidenced by the Plaintiff's claim for injunctive relief in her primary case, she was not seeking a money judgment described in Pelzer, *supra*, as a judgment directing the payment of money from one party to another nor were the defendants their answer. Pelzer, 40 S.C. at 430, 18 S.E. at 792. The judgment granting attorney's fees was incidental to the denial of Plaintiff's claim for injunctive relief. In Cooper, *supra*, the court found that matters which are incidental to the case are not traditional judgments in regards to S.C. Code Ann. § 18-9-130 and, thus, do not change the general rule of an automatic stay upon service of the notice of appeal. Cooper, 342 S.C. at 399, 536 S.E.2d at 876. Because neither party was seeking a money judgment,

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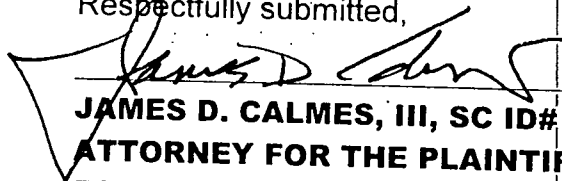
the award of attorney's fees is a collateral issue arising out of that action which is incidental to the focus of the suit.

Furthermore, Woodside, *supra*, held that an order for attorney's fees was automatically stayed by an appeal because, historically, orders of this kind have not been executed upon until the matter been settled on appeal. Woodside, 290 S.C. at 378, 350 S.E.2d at 414-15. The Defendants in this case were granted an order for attorney's fees while the primary case was still on appeal.

### **CONCLUSION**

The Plaintiff's cause of action sought injunctive relief and not a money judgment. The defendants sought dismissal of the Plaintiff's complaint. The award of attorney's fees granted by the Order filed on October 25, 2013 is a collateral issue and does not fall into the purview of the S.C. Code Ann. § 18-9-130 money judgment exception in Rule 241(b) SCACR. Therefore, when the parties received notice of the appeal, the judgment in the sum of twenty thousand two hundred forty-seven dollars and forty seven cents (\$20,247.47) is hereby deemed an automatic stay and cannot be collected until all matters on appeal are settled.

Respectfully submitted,



**JAMES D. CALMES, III, SC ID# 1089  
ATTORNEY FOR THE PLAINTIFF  
512 EAST NORTH STREET  
POST OFFICE BOX 16135  
GREENVILLE, SOUTH CAROLINA 29606  
TELEPHONE: (864) 233-6224  
FACSIMILE: (864) 233-5088  
E-MAIL: [jcalmes@calmeslawfirm.com](mailto:jcalmes@calmeslawfirm.com)**

**GREENVILLE, SOUTH CAROLINA  
JANUARY 03, 2014**

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SPARTANBURG COUNTY  
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H. HOUL BLACKLEY

# **EXHIBIT E**

**February 10, 2014 Order**

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-42-5129

Katheryna Mulholland-Mertz

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

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: A. Todd Darwin, Holcombe Bomar, P. a.	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

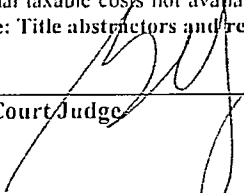
ORDER INFORMATION

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

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 SPARTANBURG COUNTY  
 2014 FEB 11 AM 10:01  
 M. HOPE BLACKLEY

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Defendants	Plaintiff	\$20,247.47
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge  Judge Code 3065 Date 2-10-2014

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of February, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Feb. , 2014 to attorneys of record or to parties (when appearing pro se) as follows:

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

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

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Horizontal lines for additional information.

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

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

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

**ORDER ON PLAINTIFF'S MOTION TO  
 STAY THE EXECUTION OF JUDGMENT**

This matter came before me on February 3, 2014 for a hearing on Plaintiff's Motion to Stay the Execution of Judgment. Present at the call of the case were James D. Carney III, attorney for the Plaintiff, and A. Todd Darwin, attorney for the Defendant. After reviewing the Plaintiff's Motion, the Plaintiff's Memorandum in Support thereof, and considering the legal authorities cited therein, as well the arguments of counsel, hereby grant the Motion on the condition that the Plaintiff post a bond with the Spartanburg County Clerk of Court's office in the amount of Twenty Thousand Two Hundred Forty-Seven and 47/100 Dollars (\$20,247.47) pursuant to SC Code Ann. §18-9-130.

On October 24, 2013, I signed an Order ("the Order") granting Defendants a judgment against the Plaintiff in the amount of Twenty Thousand Two Hundred Forty-Seven and 47/100 Dollars (\$20,247.47), and the Order was filed of record on October 25, 2013. The Plaintiff filed an appeal of the Order, which is currently pending at the South Carolina Court of Appeals. Defendants executed upon their judgment and, after receiving a *Nulla Bona* return to the Execution, scheduled supplemental hearings before me on January 14,

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2014. On December 17, 2013, Plaintiff filed her Motion to Stay.

In her Memorandum, Plaintiff accurately states that Rule 241(a) of the South Carolina Appellate Court Rules states as a general rule that serving a notice of appeal stays execution of the judgment. However, Rule 241(b) lists exceptions to this general rule, including SC Code Ann. §18-9-130. Plaintiff argues that the Order is not a money judgment and therefore the stay is automatic. I disagree. SC Code Ann. §18-9-130(A)(1) states: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment." I find that the Order directed the payment of money from the Plaintiff to the Defendants and is therefore not automatically stayed by the Plaintiff's appeal. However, I am hereby granting a stay of the execution conditioned upon the Plaintiff posting a bond or other surety in the amount of the judgment to guarantee the payment of the judgment pending the appeal.

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SPARTANBURG COUNTY  
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H. HOPE BLACKLEY

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

That Plaintiff's Motion to Stay the Execution of Judgment filed on December 17, 2013 is granted, but only on the condition that Plaintiff posts with the Spartanburg County Clerk of Court a bond or other surety in the amount of Twenty Thousand Two Hundred Forty-Seven and 47/100 Dollars (\$20,247.47) as required by the provisions of SC Code Ann. §18-9-130(A)(1) .

**SIGNATURE APPEARS ON FOLLOWING PAGE**



Gordon G. Cooper  
Spartanburg County Master-in-Equity

February 10, 2014

Spartanburg, South Carolina

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

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**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS FOR SPARTANBURG COUNTY**

**The Honorable Gordon G. Cooper, Master-in-Equity**

**CASE NO. 2009-CP-42-5129**

**CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG,  
INC., RICHARD T. BIGGS, KATHLEEN A. BIGGS, JAMES HANNAH,  
AND ELIZABETH A. HANNAH,..... RESPONDENTS,**

**v.**

**KATHERYNA MULHOLLAND-MERTZ,..... APPELLANT.**

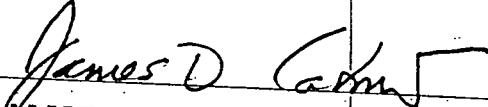
**NOTICE OF APPEAL**

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SPARTANBURG COUNTY  
2013 NOV 21 AM 10:14  
M. HORTON BLANCHET**

Katheryna Mulholland-Mertz appeals the Orders of the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County, dated August 26, 2013, October 24, 2013 and November 8, 2013.

Appellant through her undersigned attorney received written notice of the Order of the Master-in-Equity for Spartanburg County dated, November 8, 2013, denying her Motions to Amend the prior Orders of the lower court dated August 26, 2013 and October 24, 2013 on November 16, 2013.

NOVEMBER 20, 2013

  
JAMES D. CALMES, III, SC ID# 1089  
512 EAST NORTH STREET  
POST OFFICE BOX 16135  
GREENVILLE, SOUTH CAROLINA 29606  
TELEPHONE: (864) 233-6224  
FACSIMILE: (864) 233-5088  
E-MAIL: [jcalmes@calmeslawfirm.com](mailto:jcalmes@calmeslawfirm.com)  
ATTORNEY FOR THE APPELLANT

OTHER COUNSEL OF RECORD:  
A. TODD DARWIN  
JOHN HOLLIS INABINET  
HOLCOMBE BOMAR, P.A.  
POST OFFICE BOX 1897  
SPARTANBURG, SOUTH CAROLINA 29304  
(864) 594-5300  
ATTORNEYS FOR RESPONDENTS

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SPARTANBURG COUNTY  
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M. JEFFRE BLAUGLEY

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS FOR SPARTANBURG COUNTY**

**The Honorable Gordon G. Cooper, Master-in-Equity**

---

**CASE NO. 2009-CP-42-5129**

---

**CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG,  
INC., RICHARD T. BIGGS, KATHLEEN A. BIGGS, JAMES HANNAH,  
AND ELIZABETH A. HANNAH,..... RESPONDENTS,**

**v.**

**KATHERYNA MULHOLLAND-MERTZ,.....APPELLANT.**

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**PROOF OF SERVICE**

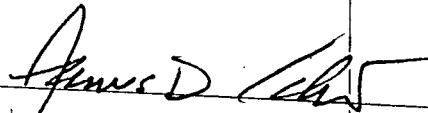
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I certify that I have served the Notice of Appeal on Corie Crest Homeowners Association of Spartanburg, Inc., Richard T. Biggs, Kathleen A. Biggs, James Hannah, and Elizabeth A. Hannah by depositing in the United States Mail, with due and proper postage affixed thereto, on November 20, 2013, copies of the same addressed to their attorneys of record:

A. Todd Darwin, Attorney at Law  
Holcombe Bomar, P.A.  
P.O. Box 1897  
Spartanburg, SC 29304

John Hollis Inabinet, Attorney at Law  
Holcombe Bomar, P.A.  
P.O. Box 1897  
Spartanburg, SC 29304

**NOVEMBER 20, 2013**



**JAMES D. CALMES, III**  
**POST OFFICE BOX 16135**  
**GREENVILLE, SOUTH CAROLINA 29606**  
**TELEPHONE: (864) 233-6224**  
**ATTORNEY FOR THE APPELLANT**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

**APPEAL FROM SPARTANBURG COUNTY  
COURT OF COMMON PLEAS FOR SPARTANBURG COUNTY**

**The Honorable Gordon G. Cooper, Master-in-Equity**

\_\_\_\_\_  
**CASE NO. 2009-CP-42-5129**  
\_\_\_\_\_

**KATHERYNA MULHOLLAND-MERTZ..... APPELLANT,**

**v.**

**CORIE CREST HOMEOWNERS ASSOCIATION OF SPARTANBURG, INC.,  
RICHARD T. BIGGS, KATHLEEN A. BIGGS, JAMES HANNAH, AND  
ELIZABETH A. HANNAH.....RESPONDENTS.**

\_\_\_\_\_  
**CERTIFICATE OF SERVICE**  
\_\_\_\_\_

**JAMES D. CALMES, III, SC ID# 1089  
512 EAST NORTH STREET  
POST OFFICE BOX 16135  
GREENVILLE, SOUTH CAROLINA 29606  
TELEPHONE: (864) 233-6224  
ATTORNEY FOR THE APPELLANT**

**THE UNDERSIGNED, S. Lauren Satterfield, secretary of James D.**

Calmes, III, attorney for the **APPELLANT, KATHERYNA MULHOLLAND-**

**RECEIVED**

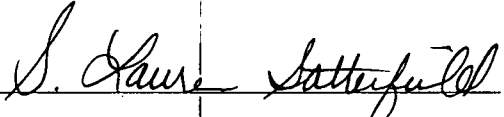
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SC Court of Appeals

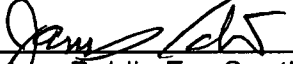
**MERTZ**, certifies that on the 14<sup>th</sup> day of February, 2014, she served the Petition for Writ of Supersedeas in this action by depositing in the United States mail, with due and proper postage affixed thereto, copies of the same addressed to:

Holcombe Bomar, P.A.  
A. Todd Darwin, Attorney at Law  
P.O. Box 1897  
Spartanburg, SC 29304

Holcombe Bomar, P.A.  
John Hollis Inabinet, Attorney at Law  
P.O. Box 1897  
Spartanburg, SC 29304

  
**S. LAUREN SATTERFIELD**

**SWORN** to before me this  
14 day of February, 2014

  
Notary Public For South Carolina  
My Commission Expires: 10/27/15

**JAMES D. CALMES III**  
**Attorney at Law**

512 East North Street  
Post Office Box 16135  
Greenville, South Carolina 29606  
Telephone 864/233-6224  
Facsimile 864/233-5088  
e-mail [jealmes@calmeslawfirm.com](mailto:jealmes@calmeslawfirm.com)

**February 14, 2014**

Holcombe Bomar, P.A.  
Mr. A. Todd Darwin, Attorney at Law  
Mr. John Hollis Inabinet, Attorney at Law  
Post Office Box 1897  
Spartanburg, South Carolina 29304

Re: Katheryna Mulholland-Mertz v. Corie Crest Homeowners' Association  
of Spartanburg, et. al.  
Appellate Case No. 2013-002500

Dear Counsel,

Please find enclosed the Appellant's Petition for Writ of Supersedeas with exhibits and other accompanying documents along with a copy of the Certificate of Service in regards to the above entitled appeal.

Please do not hesitate to contact me should you have any questions.

Respectfully yours,



James D. Calmes, III

Enclosures: 1) Petition for Writ Supersedeas with Exhibits and accompanying documents  
2) Copy of the Certificate of Service

**RECEIVED**

FEB 18 2014

**SC Court of Appeals**

**JAMES D. CALMES III**  
**Attorney at Law**

*512 East North Street*  
*Post Office Box 16135*  
*Greenville, South Carolina 29606*  
*Telephone 864/233-6224*  
*Facsimile 864/233-5088*  
*e-mail [jealmes@calmeslawfirm.com](mailto:jealmes@calmeslawfirm.com)*

**February 14, 2014**

The Honorable Jenny Abbott Kitchings,  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Katheryna Mulholland-Mertz v. Corie Crest Homeowners' Association  
of Spartanburg, et. al.  
Appellate Case No. 2013-002500

Dear Ms. Kitchings,

Please find enclosed one (1) original and six (6) copies of the Appellant's Petition for Writ of Supersedeas with Exhibits and a copy of the Notice of Appeal and Proof of Service in the above entitled case. Also, find enclosed the Certificate of Service.

Please do not hesitate to contact me should you have any questions or need anything further.

Respectfully yours,



James D. Calmes, III

Enclosures: 1) Petition for Writ of Supersedeas with Exhibits  
2) Copy of the Notice of Appeal and Proof of Service  
3) Certificate of Service

**RECEIVED**  
FEB 18 2014  
SC Court of Appeals