

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Case No. 2009-CP-42-5129  
Appellate Case No. 2013-002500

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.

RETURN TO PETITION FOR WRIT OF SUPERSEDEAS

A. Todd Darwin  
J. Hollis Inabinet  
Holcombe Bomar, P.A.  
P.O. Box 1897  
Spartanburg, SC 29302  
(864) 594-5300

RECEIVED

FEB 26 2014

SC Court of Appeals

## STATEMENT OF FACTS

On September 17, 2009, Plaintiff Katheryna Mulholland-Mertz ("Appellant") brought an action against Defendants Corie Crest Homeowners' Association, Inc., Richard T. Biggs, Kathleen A. Biggs, James Hannah, and Elizabeth Hannah ("Respondents") seeking a temporary and permanent injunction to remove certain structures she alleged to be 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. [Exhibits A and B, Amended Pleadings]. In their pleadings, both parties also sought attorney's fees. *Id.*

On June 15, 2010, circuit Judge J. Derham Cole initially granted the Appellant a temporary restraining order to prevent similar structures from being constructed within Corie Crest Subdivision. 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. This ruling was subsequently affirmed on appeal to this court. 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 arguing 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. At that time, the master decided he no longer had jurisdiction over the case due to a notice of appeal filed by Appellant with the Clerk of Court for Spartanburg County and the Court of Appeals for South Carolina.

Following briefing, oral arguments were heard on May 6, 2013 before a panel of the Court of Appeals. On May 22, 2013, the Court of Appeals affirmed the decision of the lower court in a Rule 220-style opinion. Appellant filed a petition for rehearing with the Court of Appeals, which was denied. Appellant timely filed her petition for writ of certiorari to the Supreme Court of South Carolina, which is currently pending.

Respondents then scheduled a hearing before the master for their motion for an award of attorney's fees. The Appellant filed a motion to dismiss the Respondents' motion for award of attorney's fees and court costs without prejudice because the writ of certiorari was still pending before the supreme court, arguing 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 attorney's fees was held before the master. On October 24, 2013, the master issued an order granting judgment against Appellant in the amount of twenty thousand two hundred forty-seven dollars and 47/100 (\$20,247.47). [Exhibit C, October 24, 2013 Order].

Appellant timely filed her motions for reconsideration of the orders of the master dated August 26, 2013 and October 24, 2013. On November 13, 2013, the master denied Appellant's motion to reconsider both of these orders.

On November 20, 2013, Appellant served her notice of appeal of the October 24, 2013 judgment granting attorney's fees to the Respondents.

On October 29, 2013, the Respondents filed 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. Subsequently, on December 11, 2013, Respondents sought to conduct supplemental proceedings to satisfy the October 24, 2013 judgment.

On December 17, 2013, the Appellant filed her Motion to Stay the Execution of Judgment, pending the underlying appeal of the attorney's fees order. A hearing on this motion was held on February 3, 2014. Subsequently, an order was issued on February 10, 2014 finding the October 24, 2013 judgment awarding attorney's fee was a money judgment within the meaning of S.C. Code Ann. §18-9-130(A)(1) and constituted an exception to automatic stay. Ultimately, the master did grant a stay conditioned upon the posting of a bond or surety guaranteeing payment of the judgment of twenty thousand two hundred forty-seven dollars and 47/100 (\$20,247.47) [See Exhibit D, February 10, 2014 Order].

### **ARGUMENT**

**Appellant is not entitled to an automatic stay because the attorney's fee award is a money judgment as envisioned by South Carolina Code section 18-9-130.**

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree.” Rule 225, SCACR.

Exceptions to this general rule are found in statutes, court rules, and case law and a nonexclusive list appears within Rule 225, SCACR. Id. Section 18-9-130 of the South Carolina Code provides that a notice of appeal does not act as a stay of a judgment directing the payment of money unless the presiding judge before whom the judgment was obtained grants a stay of execution. S.C. Code Ann. § 18-9-130. The term "judgment" used in the statute and rule connotes a final decision of the court that addresses the merits of the cause of action and disposes of the cause as to all. Link v. School Dist. of Pickens, 302 S.C. 1, 393 S.E.2d 176 (1990)."

"[T]he purpose of a supersedeas is to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him." Graham v. Graham, 301 S.C. 128, 130 390 S.E.2d 469, 470 (Ct. App. 1990) (citations omitted). "In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR.

Here, Appellant's petition for a writ of supersedeas should be denied because there are absolutely no implications regarding the continuing jurisdiction of the Court of Appeals over the underlying appeal and none of the contested issues are in danger of becoming moot. Appellant makes no such contentions in his petition. Additionally, the Master granted Appellant a stay on the attorney's fees judgment and in his discretion, conditioned that stay on the Appellant obtaining a bond in the amount of the judgment.

Appellant cites Woodside v. Woodside, 290 SC 366, 350 S.E.2d 407 (Ct. App. 1986) for the proposition that attorney's fees awards have traditionally not been executed upon pending the outcome of the appeal. Woodside is distinguishable from the case at hand and does not extensively deal with the specific issue before the court.

In applicable part, the Woodside court stated: "Arguably, however, attorney fees are money judgments and are excepted under provisions of [Rule 241, SCACR]. Historically, in this state an order for attorney fees has not been treated as a judgment that can be executed upon until it has at least been settled on appeal." Woodside, 290 S.C. 366, 378-79, 350 S.E.2d 407, 415. The Woodside court does not cite to any authority for this proposition and merely observes that traditionally (at least thirty years ago) attorney's fees have not been treated as money judgments. The court goes on to specifically hold "that attorney fees awarded in domestic actions are subject to the automatic supersedeas provision . . . ." Id. at 379, 350 S.E.2d at 415. In coming to this conclusion, the court cites its review of numerous domestic statutes related to suit costs and attorney's fees. Id. The court chose to specifically hold that attorney's fees *awarded in domestic actions* are automatically stayed. The action here was not a domestic action and Woodside is not controlling.

Appellant relies primarily on State v. Cooper to argue that the attorney fees are collateral to the case and are not exempted from the automatic stay as money judgments. 342 S.C. 389, 536 S.E.2d 870 (2000). In Cooper, which arose out of a Sexually Violent Predator commitment action, the circuit court ordered the fees of a psychotherapist paid by the State. Id. Ultimately, the supreme court ruled that the fees were not money judgments within the contemplation of SC Code 18-90-130 and were

incidental payments collateral to the case, which were automatically stayed. Id., 342 S.C. at 399, 536 S.E.2d at 876.

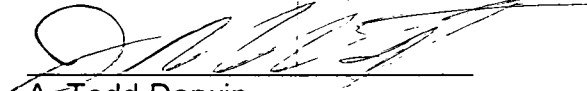
Despite Appellant's contentions, the current issue is very distinguishable from Cooper and attorney's fees in this case are not incidental or collateral. In ruling that the payment of fees to an expert was not a "money judgment" within the contemplation of section 18-9-130, the Cooper court cited Pelzer Mfg. Co. v. Cely, 40 S.C. 430, 18 S.E. 790 (1894), and emphasized in the explanatory parenthetical that section 18-9-130 applies to judgments directing money be paid by one *party* to another *party*. 342 S.C. at 399, 536 S.E.2d at 876 (emphasis in original). In Cooper, the fees were ordered to be paid by the State *to a mental health expert* who examined the individual at issue. Here, the master ordered the fees paid by Appellant to Respondents. See Prevatte v. Asbury Arms, 302 S.C. 413, 418, 396 S.E.2d 642, 645 (Ct. App. 1990) ("The fee award is made to the party, not to his lawyer."). Additionally, and in spite of Appellant's careful wording, both parties to this action requested attorney's fees as relief in both the original and amended pleadings. [Exhibits A and B, Amended Pleadings]. In sum, the situation here is very different than that in Cooper, the fees were requested by both parties and were ordered to be paid by Appellant to Respondents. Accordingly, Appellant's argument that the attorney's fees award was collateral to the case and not a money judgment as envisioned by section 18-9-130 is unconvincing.

### **CONCLUSION**

In conclusion, the attorney's fees award is a money judgment and qualifies as an exception to the automatic stay. Additionally, the master has already granted Appellant a stay conditioned on the posting of a bond. Appellant has shown no reason why this

court should further supersede the master's order. The master correctly determined that the attorney's fees award in this instance was a money judgment within the meaning of section 18-9-130 in that it directs payment of funds from one party to another party, money that was requested by both parties in their pleadings. Finally, if this court does decide to grant Appellant's petition, Respondent's request that it be secured by a bond in the amount of twenty thousand two hundred forty-seven dollars and 47/100 (\$20,247.47), the amount of attorney's fee judgment granted by the master, as described in Rule 241(c)(3), SCACR.

**HOLCOMBE BOMAR, P.A.**



A. Todd Darwin  
J. Hollis Inabinet  
Post Office Drawer 1897  
Spartanburg, SC 29304  
(864) 594-5300

Attorneys for Respondents

February 24, 2014

# **EXHIBIT A**

**STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )**

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

**KATHERYNA MULHOLLAND-MERTZ, )  
 )  
Plaintiff, )**

**)CASE NUMBER: 2009-CP-42-5129**


**vs. )**

**) AMENDED  
) SUMMONS AND NOTICE**

**)  
)  
CORIE CREST HOMEOWNERS )  
ASSOCIATION OF SPARTANBURG, INC) )  
RICHARD T. BIGGS, )  
KATHLEEN A. BIGGS, )  
JAMES HANNAH )  
ELIZABETH A. HANNAH and )  
JOSEPH P. DENICOLA, )  
 )  
Defendants )**

**TO THE DEFENDANTS NAMED ABOVE:**

You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Amended Answer to the Amended Complaint upon the undersigned at: 512 East North Street, Greenville, South Carolina 29601 within thirty (30) days after service. If you fail to answer the Amended Complaint within that time, the Plaintiff will apply to the Court for the Relief demanded in the Amended Complaint.

  
**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  
[jcalmes@charterinternet.com](mailto:jcalmes@charterinternet.com)**

**GREENVILLE, SOUTH CAROLINA**

**JANUARY 12, 2011**

**STATE OF SOUTH CAROLINA** )  
 )  
**COUNTY OF SPARTANBURG** )  
 )

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

**KATHERYNA MULHOLLAND-MERTZ,** )

**PLAINTIFF,** )

**CASE NUMBER: 2009-CP-42-5129**

**vs.** )

**AMENDED  
COMPLAINT**

**CORIE CREST HOMEOWNERS  
ASSOCIATION OF SPARTANBURG, INC)** )

**RICHARD T. BIGGS,** )

**KATHLEEN A. BIGGS,** )

**JAMES HANNAH** )

**ELIZABETH A. HANNAH and** )

**JOSEPH P. DENICOLA,** )

**Defendants** )

**PLAINTIFF, COMPLAINING OF DEFENDANTS,** shall respectfully

show into this Court the following:

**FOR A FIRST CAUSE OF ACTION**

1. Plaintiff is a citizen and resident of Spartanburg County, South Carolina and owner of property in Corie Crest Subdivision (the "Subdivision")
2. Defendant Corie Crest Homeowners Association (the "Association") is a non-profit South Carolina corporation with its principal office and agents in Spartanburg County, South Carolina.

*Handwritten signature/initials*  
PI

3. Defendants Richard Biggs, Kathleen Biggs, James Hanna, Elizabeth Hannah, and Joseph Denicola are citizens and residents of Spartanburg County, South Carolina and are the owners of property in the Subdivision.
4. The Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision (the "Restrictions") is dated February 15, 2005, and is recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina in Deed Book 82-H at Pages 773-786, inclusive.
5. The authority of the Plaintiff to bring this action and to recover associated costs and attorney's fees is found in Sections 42(B) and (D) of the Restrictions.
6. Section 2 of the Restrictions states, in part, that "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."
7. Section 18 of the Restrictions states that "Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot unless approved by Developer or Association."

JMS  
P2

8. Defendants Richard and Kathleen Biggs and Joseph Denicola have constructed storage buildings on their lots in violation of the Restrictions.
9. Defendants James and Elizabeth Hannah have constructed a "lean-to" building on their lot in violation of the Restrictions.
10. Defendant Association has failed to perform its duties, has failed to record its By-Laws, and otherwise has failed to protect the interests of the property owners by failing to enforce the Restrictions as required by the Restrictions.

**FOR A SECOND CAUSE OF ACTION**

1. Plaintiff, **KATHERYNA MULHOLLAND-MERTZ**, incorporates the First Cause of action into this Cause of Action and makes it a part of the same, not inconsistent herein.
2. Plaintiff shall show on June 15, 2010, that this court issued a temporary restraining order to prohibit further construction of any portable buildings, storage buildings, or other similar off-site constructed storage buildings until a final hearing could be had on the merits of this captioned case.
3. Subsequent to the temporary restraining order issued on June 15, 2010, the Defendant Corie Crest Subdivision Homeowners Association of Spartanburg, Inc., (Association) without the knowledge

PH  
P3

and/or consent of Plaintiff, amended the Restrictions that deleted Section 2, Section 7, and Section 8, of the Restrictions and inserted language that provided authority to construct storage buildings, portable buildings or other similar off-site constructed storage buildings.

4. Plaintiff alleges she was notified that said Amended Restrictions were made on August 25, 2010, and recorded in the Register of Deeds for Spartanburg County on August 26, 2010 in Deed Book 96-V, Pages 965-968 until after August 26, 2010.
5. Plaintiff alleges that said Amendments to Restrictions do not include the necessary two-thirds (2/3) of the owners' written consent to amend said Restrictions as shown in the Register of Deeds for Spartanburg County.
6. Plaintiff further alleges and states that no meeting or notice of meeting was given to all owners of Corie Crest Subdivision that a proposal to amend the Restrictions would be submitted for approval of two-thirds (2/3) of the members.
7. Plaintiff furthermore alleges that this improper action of Defendant Association after the issuance of the temporary restraining order violates Section 41 of the Restrictions. Section 41 states in summary, "No amendments can be made until October 1, 2040."

*[Handwritten signature]*  
PH

8. Plaintiff has formerly demanded that the Defendant Association immediately rescind the Amended Restrictions but it has failed and refused to do so.
9. Due to the acts complained of, Plaintiff seeks a restraining order enjoining and prohibiting the implementation of the Amended Restrictions dated August 25, 2010.
10. Plaintiff further seeks an injunctive relief to declare the Amended Restrictions null and void, being violative of the original Restrictions.
11. Plaintiff furthermore seeks an award of attorney's fees and court costs against all Defendants in commencement and prosecution of the above causes of action.

**WHEREFORE**, Plaintiff prays for judgment as follows:

1. **THAT** the Court issue a Declaratory Judgment finding the Defendants in breach of the Restrictions.
2. **THAT** the Court issue a Declaratory Judgment finding the Association has breached its duty to enforce the Restrictions and protect the interests of the Plaintiff and other owners.
3. **THAT** the Court issue its order prohibiting the enforcement of the Amended Restrictions.
4. **THAT** the Court issue its order declaring the Amended Restrictions "Null and Void".

*PS*

5. **THAT** the Court enjoin and permanently restrain the Defendants from violating the Restrictions and order the removal of such buildings and structures that are in violation of the Restrictions.
6. **THAT** the Court grant the Plaintiff attorney's fees, costs, and disbursements for the First and Second Cause of Action; and
7. **THAT** the Court grant such additional relief as it may deem just and proper under the circumstances of this case.

Respectfully submitted,



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

**GREENVILLE, SOUTH CAROLINA**

**JANUARY 12, 2011**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF  
COMMON PLEAS  
SEVENTH JUDICIAL CIRCUIT

KATHERYNA MULHOLLAND-MERTZ, )  
Plaintiff, )

CASE NUMBER: 2009-CP-42-5129

vs. )

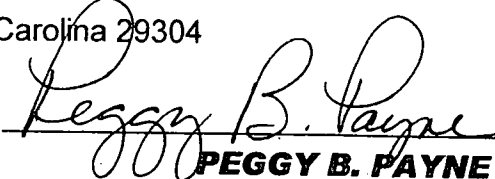
CERTIFICATE OF SERVICE  
BY MAILING

CORIE CREST HOMEOWNERS )  
ASSOCIATION OF SPARTANBURG, INC) )  
RICHARD T. BIGGS, )  
KATHLEEN A. BIGGS, )  
JAMES HANNAH )  
ELIZABETH A. HANNAH and )  
JOSEPH P. DENICOLA, )  
Defendants )

THE UNDERSIGNED, Peggy B. Payne, secretary of James D. Calmes, III, attorney for the PLAINTIFF, KATHERYNA MULHOLLAND-MERTZ, certifies that on the 14<sup>TH</sup> day of January, 2011, she served NOTICE OF MOTION AND MOTION TO AMEND, AMENDED SUMMONS AND NOTICE, and AMENDED COMPLAINT on DEFENDANTS, CORIE CREST HOMEOWNERS, ET. AL, by depositing in the United States mail, with due and proper postage affixed thereto, copies of the same addressed to:

A. Todd Darwin, Esquire  
Holcombe Bomar, P.A.  
100 Dunbar Street  
Post Office Box 1897  
Spartanburg, South Carolina 29304

SWORN to before me this  
14<sup>th</sup> day of January, 2011

  
PEGGY B. PAYNE

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My commission expires: October 27, 2015

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

Katheryna Mulholland-Mertz )

Plaintiff, )

vs. )

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

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@charterinternet.com Other: \_\_\_\_\_

Defendant's Attorney:  
A. Todd Darwin, Bar No. \_\_\_\_\_  
Address:  
PO Box 1897, Spartanburg, SC 29304  
Phone: 864/594-5300 Fax 864/585-3844  
E-mail: tdarwin@holcombebomar.com 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: Motion to Amend

Estimated Time Needed: \_\_\_\_\_

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.

*James D. Calmes III*  
Signature of Attorney for  Plaintiff /  Defendant

January 12, 2011  
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, SCRCP)
  - 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: \_\_\_\_\_

**CLERK'S VERIFICATION**

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

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

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

**EXHIBIT B**

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

**DEFENDANTS' ANSWER TO  
 PLAINTIFF'S AMENDED COMPLAINT**

The Defendants, answering Plaintiff's Amended Complaint, hereby allege the following:

**FIRST DEFENSE**

1. All allegations of the Complaint which are not hereinafter admitted, qualified or explained are denied.
2. The allegations of paragraph 1 are admitted.
3. The allegations of paragraph 2 are admitted.
4. The allegations of paragraph 3 are admitted. In further answering this paragraph, the Defendants would point out that Joseph P. Denicola was dismissed from this action by prior Stipulation of Dismissal with Prejudice filed of record on February 15, 2011.
5. The allegations of paragraph 4 are admitted and the Defendants crave reference to the entire *Declaration of Protective Covenants, Conditions, Restrictions and Easements of Corie Crest Subdivision* ("Restrictions") as filed of record.

M. HOPE BLACKLEY  
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 CLERK OF COURT  
 SPARTANBURG COUNTY

6. In responding to the allegations of paragraph 5, it is admitted that the Plaintiffs are attempting to find authority for their lawsuit in the quoted sections of the Restrictions. However, Defendants deny any violations have occurred. In further responding to said paragraph, Defendants would agree that the prevailing party in this litigation shall be entitled to recover their reasonable attorneys fees against the losing party as set forth in Section 42 D. of the Restrictions.

7. The Defendants admit that the language quoted in paragraph 6 of the Complaint was a part of Section 2 of the Restrictions prior to their amendment filed of record on August 26, 2010 at Deed Book 96 at Pages 965-968.

8. The Defendants admit that the Plaintiffs accurately quoted Section 18 of the Restrictions in paragraph 7 of the Complaint. In further responding to the allegations of said paragraph, Defendants would assert that all of the buildings in question were approved by either the Developer or the Association prior to being placed on the respective properties.

9. In responding to the allegations of paragraph 8, it is admitted that Defendants Richard and Kathleen Biggs have, after first receiving proper approval from the Developer and/or the Subdivision's Architectural Review Committee, constructed a storage building on their lot. The Defendants deny that their building is in violation of the Restrictions.

10. The allegations of paragraph 9 are denied. While the Hannah's have constructed buildings on their property after first receiving proper approval from the Subdivision's Architectural Review Committee, neither of these buildings are characterized as a "lean-to."

11. In responding to the allegations of paragraph 10, Defendants deny that the Corie Crest Homeowners Association of Spartanburg, Inc. has failed to perform its duties

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SPARTANBURG COUNTY

or otherwise failed to protect the interests of the property owners by failing to enforce the Restrictions. It is admitted that the By-Laws have not been recorded.

12. The Defendants admit so much of paragraph 1 of the Plaintiff's Second Cause of Action as previously admitted, and deny or qualify so much of said paragraph as previously denied or qualified.

13. In responding to the allegations of paragraph 2 of the Plaintiff's Second Cause of Action, it is admitted that Judge Cole issued an order on June 15, 2010, and the Defendants would crave reference to that order in further responding to said allegations.

14. In responding to the allegations of paragraph 3 of the Plaintiff's Second Cause of Action, the Defendants admit only so much of said paragraph as alleged that the Restrictions were amended and that Plaintiff did not consent in writing to the amendment. The Defendants are unaware of what knowledge the Plaintiff may or may not have had regarding the amendment. Nor did the amendment insert "language that provided authority to construct storage buildings, portable buildings or other similar off-site constructed storage buildings" since this authority was already set forth in the original Restrictions.

15. In responding to the allegations of paragraph 4 of the Plaintiff's Second Cause of Action, it is admitted that Plaintiff alleges when she was notified of the amendment.

16. The allegations of paragraph 5 of the Plaintiff's Second Cause of Action are denied.

17. In responding to the allegations of paragraph 6 of the Plaintiff's Second Cause of Action, it is admitted that no meeting or notice of meeting was given to all owners of Corie Crest Subdivision in relation to the amendment. In further responding to said paragraph, the Defendants assert the Restrictions were appropriately followed when the

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SHERMAN COUNTY

amendment was undertaken and finalized.

18. The allegations of paragraph 7 of the Plaintiff's Second Cause of Action are denied.

19. The allegations of paragraph 8 of the Plaintiff's Second Cause of Action are admitted upon information and belief.

20. In responding to the allegations of paragraphs 9 and 10 of the Plaintiff's Second Cause of Action, it is admitted that Plaintiff is seeking a restraining order and injunctive relief with regards to the amendment, but it is denied that she is entitled to such relief.

21. In responding to the allegations of paragraph 11 of the Plaintiff's Second Cause of Action, it is admitted that Plaintiff is seeking an award of attorney's fees and costs just as the Defendants are seeking an award of their attorneys fees and costs against the Plaintiff for bringing this frivolous and unwarranted lawsuit.

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SOUTH CAROLINA  
HOFER BUCKLEY

### SECOND DEFENSE

22. The allegations of the previous defense are realleged to the extent they are consistent with this defense.

23. Plaintiff's Complaint fails to state any cause of action against the Defendants and should therefore be dismissed pursuant to Rule 12(b)(6), SCRPC.

**WHEREFORE**, having fully answered Plaintiff's Amended Complaint, Defendants pray that the Complaint be dismissed with prejudice, that they be awarded the costs of this action, including their reasonable attorney's fees, and for such other and further relief as this court deems just and proper.

HOLCOMBE, BOMAR, P.A.

*A. Todd Darwin*

A. Todd Darwin  
Post Office Box 1897  
Spartanburg, South Carolina 29304  
(864) 594-5300

Attorneys for Defendants

April 25, 2011

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SPARTANBURG COUNTY  
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )  
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 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


**CERTIFICATE OF SERVICE**

I, the undersigned paralegal in the Law Offices of Holcombe Bomar, P. A., Attorneys  
 for the above named Defendants, do hereby certify that I have placed in the U.S. Mail a  
 copy of the hereinbelow listed pleadings to the below listed parties in this matter, on the  
28<sup>th</sup> day of April, 2011, as follows:

FILED  
 COURT OF COMMON PLEAS  
 SPARTANBURG COUNTY  
 APR 28 2011  
 M. HOPE LACKLEY  
 PH 3:22

PLEADINGS: Answer to Amended Complaint  
 Responses to Plaintiff's Second Set of Interrogatories  
 Responses to Plaintiff's Second Set of Request for Production

PARTY SERVED: James D. Calmes, III  
 Attorney at Law  
 PO Box 16135  
 Greenville, C 29606

By:   
 Rhonda S. Mitchell, Paralegal

# **EXHIBIT C**

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

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

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.

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 Writs of Certiorari to the SC Supreme Court. However, Plaintiff's counsel admits that the issue of

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

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

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

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

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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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BY *[Signature]* D.C.  
DATED 10-25-13  
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*[Signature]*

**EXHIBIT D**

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), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  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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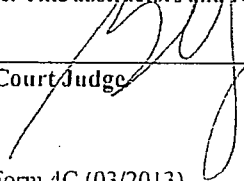
INFORMATION FOR THE JUDGMENT INDEX

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 Loney 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.

Lined area for additional information regarding the decision.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

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

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. )

**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. Cane III, attorney for the Plaintiff, and A. Todd Darwin, attorney for the Defendants. 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.

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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,

#1  
[Handwritten signature]

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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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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