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STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Georgetown County
Honorable John M. Milling, Circuit Judge
Civil Action No. 2006-CP-22-0914
APPEAL NO. 2

AJG Holdings, LLC, Stalvey Holdings, LLC,
David Croyle, Linda Croyle, Jean C. Abbott,
Linda T. Courtney, Sumter L. Langston,
Diane Langston, Carl B. Singleton, Jr.,
Virginia M. Owens, and Stoney Harrelson,

Respondents,

v

Levon Dunn, Pamela S. Dunn, and
Helen Sasser,

Appellants

RECORD ON APPEAL
VOLUME I

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Owens, and Stoney Harrelson*

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CASE NO 2006-CP-22-914

AJG HOLDINGS LLC, STALVEY)
HOLDINGS LLC, DAVID CROYLE,)
LINDA CROYLE, JEAN C ABBOTT,)
LYNDA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
CARL B SINGLETON, JR , VIRGINIA)
M OWENS and STONEY HARRELSON,)

PLAINTIFFS,)

vs)

LEVON DUNN, PAMELA S DUNN, and)
HELEN SASSER,)

DEFENDANTS)

ORDER

FILED
GEORGETOWN COURT, SC
2008 SEP 22 PM 2 27
ALIN, J. HILL
CLERK OF COURT

This matter came to be heard by the Court on the 18th day of August, 2008, in Georgetown, South Carolina As stated in Court's Order, the parties had thoroughly briefed all of the issues and Affidavits, depositions and other evidentiary matters had been previously submitted to the Court The Defendants have now filed a Motion for Reconsideration and to Alter or Amend the Court's Judgment

In their Motion for Reconsideration, the Defendants set forth that at the Summary Judgment hearing, AJG Holdings failed to argue that it was entitled to Summary Judgment on the AJG Holdings principal claims The Court finds that this is not a correct statement of the issues that were presented to the Court and to be ruled on by the Court While the Court may have limited the Plaintiffs in some of their arguments, all of the issues were discussed both by the Plaintiffs and Defendants in their Motions for Summary Judgment The Court further gave the Defendants an opportunity to fully

address matters that the Court indicated were going to be its rulings in the case, after the Court moved directly to its conclusions in the matter based upon the prior submissions. The Court finds that under the circumstances that all issues were properly raised by the Plaintiffs and ruled on by the Court and none were abandoned. It was unnecessary for the Plaintiffs to repeat for the Court the positions set out in its submissions, as the Court understood all submissions had been properly filed.

With respect to the final paragraph of the Court's Order wherein it was stated that "The issue of whether the restrictions are personal or run with the land and all remaining issues are not decided by this Court and are carried over to be decided at the trial of this case", to the extent that the Court was not clear as to the basis of such a ruling, it is because the Court found this issue had been argued both ways, and that it was an issue that needed to be determined by the Trial Court. This was not an issue that the Court felt could properly be disposed of by Summary Judgment.

IT IS, THEREFORE,

ORDERED That the Defendants' Motion for Reconsideration be and the same hereby is denied, and that any question as to the Court's Ruling as to the basis for not specifically stating that the Motion for Summary Judgment was denied as to whether or not the restrictions were personal or ran with the land, the Court clarifies its ruling to indicate that this is a matter to be decided by the jury.

IT IS SO ORDERED

Darlington, South Carolina
September 15, 2008

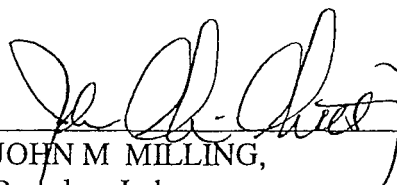

JOHN M. MILLING,
Presiding Judge

Exhibit A

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

) CASE NO 2006-CP 22-915

914

AJG HOLDINGS LLC, STALVEY)
HOLDINGS LLC DAVID CROYLE)
LINDA CROYLE, JEAN C ABBOTT,)
LYNDA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
CARL B SINGLETON, JR , VIRGINIA)
M OWENS and STONEY HARRELSON,)
PLAINTIFFS,)

vs)

LEVON DUNN, PAMELA S DUNN, and)
HELEN SASSER,)
DEFENDANTS)

**ORDER
GRANTING PARTIAL
SUMMARY
JUDGMENT**

FILED
GEORGETOWN CO, SC
2008 SEP -8 AM 11 15
ALLEN WHITE
CLERK OF COURT

TRIAL COURT JUDGE JOHN M MILLING
DATE OF HEARING AUGUST 18 2008
PLACE OF HEARING GEORGETOWN, S C
COURT REPORTER DIXIE EUBANKS
PLAINTIFFS' ATTORNEY JACK M SCOVILLE, JR
DEFENDANTS' ATTORNEY THOMAS TISDALE

Introduction

This matter came before the Court for oral argument August 18, 2008, in Georgetown, S C The parties had made cross motions for summary judgment The issues had been thoroughly briefed by the parties, and all affidavits, depositions, and other evidentiary matters had been previously submitted to this court When the case was called, all parties were

represented at the hearing. The Court heard the arguments of counsel and based on the evidence presented, makes the following ruling

Background

This is an action to enforce restrictive covenants. Plaintiffs are owners of various lots within the Helen Sasser Subdivision of Georgetown County, S C. The following relevant facts are undisputed.

Defendant Helen Sasser (hereinafter "Sasser") acquired the land she subdivided from the partition of a plantation call Woodland Plantation, which was situated along the Pee Dee River in Georgetown County, S C. The property she subdivided was acquired from D W Green and others in 1978. Sasser subdivided and conveyed the lots in the subdivision subject to restrictive covenants. Each conveyance contained the following language regarding the restrictions: "This conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers, their heirs and assigns."

The restrictions that are relevant to this action are as follows:

"1. That the expression "Developer" as used herein shall be construed to mean Helen Sasser, her heirs and assigns.

2. No lot shall be used for commercial purposes without express written consent from the Developer."

In 1991, Sasser executed a deed to M T Coleman, et al, (the

“Coleman deed’) wherein she conveyed various lots, tracts, and parcels of land The consideration was \$92,500 00 That deed contained the following paragraphs

It is the intent of the grantor herein to convey to the grantees *all of her ownership interest* of approximately 18 32 acres, being the remaining portions of the tracts heretofore conveyed to her by D W Green et al by deed dated July 28, 1978 recorded July 31, 1978 in Deed Book 160 at Page 772, Office of Clerk of Court for Georgetown County

It is the intent of the grantor herein to convey *all remaining property* as contained in the deed to the grantor herein by deed of D W Green, et al date July 28, 1978 and recorded July 31, 1978 in Deed Book 160 at Page 772, Office of the Clerk of Court for Georgetown County (emphasis added)

The granting clause of the deed contains the following additional language “Together with all and singular, the Rights, Members, Hereditaments, and Appurtenances to the said premises belonging or in anywise incident or appertaining ” The plaintiffs are the grantees or the successors in interest to the grantees in the 1991 conveyance

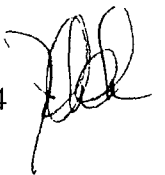
During 2006, the Dunns began operating a commercial bed and breakfast and wedding venue enterprise on their property The Plaintiffs instituted this action to enforce the restrictive covenants, in particular the prohibition against commercial activities

By a document entitled Assignment and Indemnification Agreement, dated September 5, 2006, and recorded in the Office of the Register of

Deeds for Georgetown County in Deed Book 185 at Page 258, Sasser purported to assign to Levon and Pamela S Dunn her rights as Developer under various deeds to the parties or their predecessors in interest, conveying Lots Number 5-E, 5-W, 6, 7, 8, 9, and 10 In the Assignment and Indemnification Agreement, Sasser states that “[Sasser] has full power and authority to make this assignment and owns the Developer rights under the Deeds free and clear of the rights of any third party” By a document entitled Consent to Covenants and Restrictions dated September 6, 2006, and recorded in the Office of the Register of Deeds of Georgetown County in Deed Book 185 at Page 264, Levon Dunn and Pamela S Dunn purported to “consent” to the use of their own property, being Lots 7, 8, 9, and 10, for any and all commercial uses, and to the subdivision of their lots

Summary Judgment

Summary judgment should be granted when no genuine issue as to any material fact exists, and the moving party is entitled to judgment as a matter of law *Middleborough Horizontal Property Regime Council of Co-Owners v Montedison*, 320 S C 470, 465 S E 2d 765 (Ct App 1995) (citing Rule 56, SCRCP) The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder *George v Fabri*, 345 S C 440, 452, 548 S E 2d 868, 874 (2001)



I THE ASSIGNMENT TO THE DUNNS OF THE RIGHT TO WAIVE THE RESTRICTION AGAINST COMMERCIAL USES

The primary issue to be addressed by the parties' motions for summary judgment is the effect of the 1991 conveyance to M T Coleman, et al, on Sasser's right to waive the prohibition against commercial uses. If Sasser had nothing to assign to the Dunns, their attempted waiver of the restriction against commercial uses is a nullity.

Assuming for the sake of this issue alone that Sasser did not convey her right to consent in the 1991 deed to Coleman, the right was extinguished upon Sasser's conveyance of all her property. A consent to a commercial use amends the prohibition against such use. The issue of a developer's right to amend restrictive covenants was addressed in *Queen's Grant II Horizontal Property Regime v Greenwood Development Corp*, 368 S C 342, 628 S E 2d 902 (S C App 2006). In that case, the Court of Appeals held that a developer may reserve to himself, in his sole discretion, the right to amend restrictive covenants running with the land or impose new restrictive covenants running with the land, provided five conditions are met: (1) the right to amend the covenants or impose new covenants must be unambiguously set forth in the original declaration of covenants, (2) the developer, at the time of the amended or new covenants, must possess a

sufficient property interest in the development, (3) the developer must strictly comply with the amendment procedure as set forth in the declaration of covenants, (4) the developer must provide notice of amended or new covenants in strict accordance with the declaration of covenants and as otherwise may be provided by law, and (5) the amended or new covenants must not be unreasonable, indefinite, or contravene public policy. The Court cited *Armstrong v Roberts*, 254 Ga. 15, 325 S.E.2d 769, 770 (1985) for its holding that “when a subdivision developer is divested of all interest in the subdivision, a reserved right to amend restrictive covenants is extinguished.” The reasoning for this rule was explained in *Armstrong*: “So long as the developer owns an interest in the subdivision being developed his own economic interest will tend to cause him to exercise a right to waive restrictions in a manner which takes into account harm done to other lots in the subdivision.” *Id.* There is some economic restraint against arbitrary waiver. After the developer has divested himself of all interest in the subdivision this economic restraint is lacking. A developer of a subdivision who reserved the authority to waive restrictions in covenants running with the land no longer possesses that authority after divesting himself of his interest in the subdivision.

It is incontrovertible that by her deed in 1991 to M T Coleman, et al,



Mrs Sasser conveyed *all* property she had in the subdivision. No evidence was presented that Sasser exercised any rights of ownership or control in the subdivision over the next fifteen years. After this dispute arose, she assigned her rights as developer for fifteen thousand dollars to the Dunns. Interestingly she includes in the assignment an indemnification and hold harmless provision.

Even if Mrs Sasser had explicitly retained the right to amend, modify, or waive the restrictions in the deed to Coleman, such would have been ineffective under *Queen's Grant II Horizontal Property Regime v Greenwood Development Corp*, 368 S C 342, 628 S E 2d 902 (S C App 2006). Therefore, Plaintiffs are entitled to summary judgment on this issue.

The issue of whether the restrictions run with the land or were personal to Sasser presents a jury issue. That matter is not ruled upon by this court and should be decided at the trial of this case.

II DEFENDANTS' COUNTERCLAIMS

Defendants have alleged four counterclaims: (1) tortious interference with prospective business relations, (2) interference with a contractual relationship, (3) civil conspiracy, and (4) intentional infliction of emotional distress. Plaintiffs are entitled to summary judgment on three of

Defendants' counterclaims

a Tortious Interference with Prospective Business Relations

South Carolina recently recognized the tort of intentional interference with prospective contractual relations in *Crandall Corp v Navistar Int'l Transp Corp*, 302 S C 265, 395 S E 2d 179 (1990). The elements of the cause of action are (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff. *Brown v Stewart*, 348 S C 33, 55, 557 S E 2d 676, 688 (Ct App 2001), *Love v Gamble*, 316 S C 203, 214, 448 S E 2d 876, 882 (Ct App 1994). "As an alternative to establishing an improper purpose, the plaintiff may prove the defendant's method of interference was improper under the circumstances." *Crandall*, 302 S C at 266, 395 S E 2d at 180. Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party. *Southern Contracting, Inc v H C Brown Constr Co*, 317 S C 95, 102, 450 S E 2d 602, 606 (Ct App 1994).

A cause of action for intentional interference with prospective contractual relations generally stands following the loss of an identifiable

contract or expectation. The aggrieved party is required to have been unsuccessful in acquiring an expected contract due to a third party's intentional and wrongful actions." *Egrets Pointe Townhouses Prop Owners Ass'n v Fairfield Cmty, Inc*, 870 F Supp 110, 116 (1994). The plaintiff must actually demonstrate, at the outset, that he had a truly prospective (or potential) contract with a third party. This does not require plaintiff to prove the tort in his initial pleadings; rather, the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts. *United Educational Distributors, LLC v Educational Testing Service*, 350 S Ct 7, 564 S E 2d 324 (Ct App 2002).

The Dunns fail to allege a particular prospective customer relationship with which plaintiffs interfered. They have not identified any such potential customer through discovery, in their depositions, or by affidavit. The Plaintiffs are entitled to summary judgment on Defendants' counterclaim for tortious interference with prospective business relations.

b Interference with a Contractual Relationship

To establish a cause of action for tortious interference with contractual relations, a plaintiff must show 1) the existence of a contract, 2) knowledge of the contract, 3) intentional procurement of its breach, 4) the absence of justification, and 5) resulting damages. *Kinard v Crosby*, 315 S Ct 237,



240, 433 S E 2d 835, 837 (1993) Where there is no breach of the contract, there can be no recovery *First Union Mortg Corp v Thomas*, 317 S C 63, 73, 451 S E 2d 907, 913 (Ct App 1994)

In this case, there was enough evidence of the existence of an insurance contract that may have been breached to get past summary judgment Therefore, Plaintiffs' motion for summary judgment on this cause of action is denied

c Civil Conspiracy

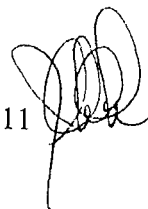
The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages *LaMotte v Punch Line of Columbia, Inc* , 296 S C 66, 370 S E 2d 711 (1988), *Cowburn v Leventis*, 366 S C 20, 49, 619 S E 2d 437, 453 (Ct App 2005), *Ellis v Davidson*, 358 S C 509, 595 S E 2d 817 (Ct App 2004) It is essential that the plaintiff prove all of these elements in order to recover *Lyon v Sinclair Refining Co* , 189 S C 136, 200 S E 78 (1938) The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff" *Lee v Chesterfield General Hosp , Inc* , 289 S C 6, 13, 344 S E 2d 379, 383 (Ct App 1986)



“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise ” *Island Car Wash, Inc v Norris*, 292 S C 595, 601, 358 S E 2d 150, 153 (Ct App 1987)

The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination *per se* *Lee*, 289 S C 6, 344 S E 2d 379 “[A]n unlawful act is not a necessary element of the tort ” *Id* at 11, 344 S E 2d at 382 Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action *Vaught v Waites*, 300 S C 201, 387 S E 2d 91 (Ct App 1989)

The facts simply do not support an action for civil conspiracy According to Mr Dunn, he has lost the quiet use and enjoyment of his property because the neighbors drive by their property on the road and some of the neighbors are no longer friendly to the Dunns, yet he admits this is because the neighbors oppose them using the property for commercial purposes and therefore not because of some conspiracy Defendants’ civil conspiracy claim is merely based on the Plaintiffs’ enforcing their rights under the deed

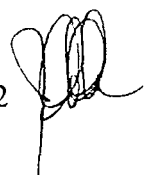


restrictions. Such cannot support a claim of civil conspiracy. Plaintiffs are entitled to summary judgment on this cause of action.

d. Intentional Infliction of Emotional Distress

To recover for the intentional infliction of emotional distress, a plaintiff must establish (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct, (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community, (3) the actions of the defendant caused the plaintiff's emotional distress, and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. *Hansson v Scalise Builders of South Carolina*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007).

The nature and extent of emotional distress suffered necessary to support an action for intentional infliction of emotional distress was extensively discussed in the recent case of *Hansson*, *supra*. In that case the trial judge granted summary judgment to the defendants on the grounds that the plaintiff had failed to establish all required elements of the cause of action, particularly that the emotional distress suffered by the plaintiff was



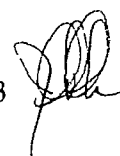
so severe that no person could reasonably be expected to endure it. The Court noted “the widespread reluctance of courts to permit the tort of outrage to become a panacea for wounded feelings rather than reprehensible conduct.” *Id.* 374 S.C. at 357, 650 S.E.2d at 71 (internal citations omitted).

Here, neither Mr. nor Mrs. Dunn has produced any evidence from any medical provider regarding their alleged emotional distress. The symptoms they complain of are high blood pressure, nervousness, and being very upset but not requiring any medical attention. These are simply common problems associated with life, and are certainly to be expected to occur when one is in a dispute with one’s neighbors. Even if taken as true, these damages are insufficient to sustain the Dunn’s claim for intentional infliction of emotional distress. Plaintiffs are entitled to summary judgment on this cause of action also.

CONCLUSION

The Plaintiffs’ motion for summary judgment is granted as follows:

A. The assignment of developer rights from Sasser to the Dunns by the document entitled Assignment and Indemnification Agreement, dated September 5, 2006, and recorded in the Office of the Register of Deeds for Georgetown County in Deed Book 185 at Page 258, is a nullity in so far as it purports to assign to Levon and Pamela S. Dunn rights as Developer under

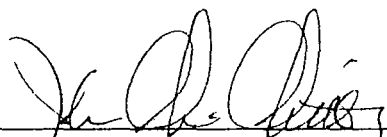


various deeds to the parties or their predecessors in interest, conveying Lots Number 5-E, 5-W, 6, 7, 8, 9, and 10 The document entitled Consent to Covenants and Restrictions dated September 6, 2006, and recorded in the Office of the Register of Deeds of Georgetown County in Deed Book 185 at Page 264, is a nullity in so far as Levon Dunn and Pamela S Dunn purport to "consent" to the use of their own property, being Lots 7, 8, 9, and 10, for any and all commercial uses, and to the subdivision of their lots

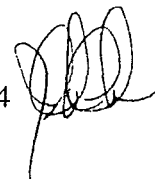
B The Dunns' counterclaims for tortious interference with prospective contractual relationships, civil conspiracy, and intentional infliction of emotional distress are dismissed with prejudice

C The issue of whether the restrictions are personal or run with the land and all remaining issues are not decided by this Court and are carried over to be decided at the trial of this case

AND IT IS SO DONE AND ORDERED THIS ^{September} 2 DAY OF AUGUST, 2008



JOHN M. MILLING
PRESIDING JUDGE



FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

AJG Holdings, et al

Plaintiffs,

v

Levon and Pamela Dunn

Defendants

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

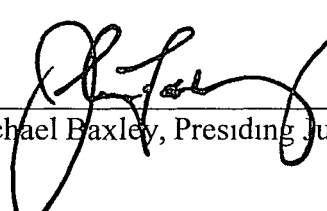
06-CP-22-914

DENIAL OF DEFENDANTS' MOTION
TO RECONSIDER ISSUANCE OF
TEMPORARY INJUNCTION

IT IS ORDERED AND ADJUDGED

Defendants moved to reconsider the issuance of a Temporary Injunction dated May 16, 2007
Defendants' Motion for Reconsideration is denied

IT IS SO ORDERED


J Michael Baxley, Presiding Judge

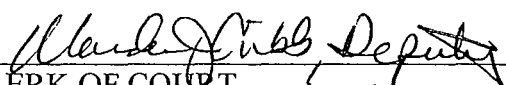
This judgment was entered on the 31st day of October 2007, and a copy mailed first class this 5th
day of November, 2007 to attorneys of record or to parties as follows

Attorney for Plaintiffs

Jack M Scoville, Esquire
Post Office Drawer 1228
Georgetown, SC 29442

Attorney for Defendants

Thomas S Tisdale, Esquire
P O Box 486
Charleston, SC 29402


CLERK OF COURT

FORM 4

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN

FIFTEENTH JUDICIAL CIRCUIT

AJG Holdings, et al

Plaintiffs,

v

C/A No 06-CP-22-528 914 mmw

Levon and Pamela Dunn

Defendants

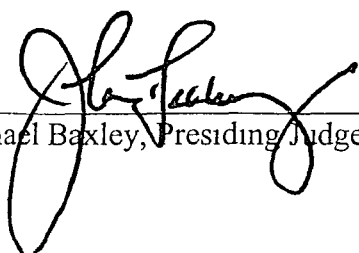
ISSUANCE OF TEMPORARY INJUNCTION

IT IS ORDERED AND ADJUDGED

Plaintiffs moved this Court to issue a Temporary Restraining Order enforcing the restrictive covenants imposed by Helen Sasser at the time she conveyed each of the ten lots that collectively make up the Helen Sasser Subdivision. Plaintiffs, owners of various lots within the subdivision, seek to enforce the prohibition against commercial activities. Plaintiffs claim that Defendants are engaging in commercial use of the property by operating a wedding chapel and carrying on other commercial activities, disrupting Plaintiffs' peaceful use of their own properties. A hearing was held before me on April 18, 2007, in Georgetown. Although Plaintiffs filed this motion in the form of a Temporary Restraining Order, this Court would intend its ruling to effectively issue a Temporary Injunction that shall remain effective until the case is resolved on its merits. In doing so, the Court notes the length of time that this motion has been pending and that a motion for a Temporary Restraining Order typically becomes one for a Temporary Injunction after the appearance of both parties.

Defendants argue that by a document entitled "Assignment and Indemnification Agreement" dated September 5, 2006, Sasser assigned her rights as Developer of the subdivision to the Defendants. Further, Defendants maintain that by a document titled "Consent to Covenants and Restrictions," dated September 6, 2006, they then "consented" to the use of their own property, being Lots 7, 8, 9 and 10, for any and all commercial uses. The Plaintiffs argue that Sasser did not hold any such right or reservation, thus the assignment was not valid and the Dunns' property remains subject to the prohibition against commercial uses. Both sides claim interference with their constitutionally protected real property rights, and further claim that the decision in the underlying case will vindicate their position. This Court is not persuaded by Defendants' arguments at this juncture. Moreover, there is no remedy for the disruption that would be caused by commercial activities on the Defendant's property. Further, the Defendants have agreed not to conduct commercial activities during the pendency of this action. Accordingly, this Court finds that a temporary injunction will avert irreparable harm to the Plaintiffs, and will serve to maintain the status quo in the best interest of all parties until the underlying case is resolved by the Court. Therefore, a temporary injunction is granted in Plaintiffs' favor, and Defendants are restrained from any commercial use of their property until such time as a decision is rendered on the merits of this case.

IT IS SO ORDERED



J. Michael Baxley, Presiding Judge

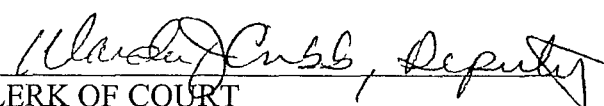
This judgment was entered on the 16 day of May 2007, and a copy mailed first class this 16 day of May, 2007 to attorneys of record or to parties as follows

Attorney for Plaintiffs

Jack M. Scoville, Esquire
Post Office Drawer 1228
Georgetown, SC 29442

Attorney for Defendants

Thomas S. Tisdale, Esquire
P O Box 486
Charleston, SC 29402



CLERK OF COURT

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO 2006-CP-22- 915

3 AJG HOLDINGS LLC, STALVEY)
4 HOLDINGS LLC, DAVID CROYLE,)
5 LINDA CROYLE, JEAN C ABBOTT,)
6 LYNDIA T COURTNEY, SUMTER L)
7 LANGSTON, DIANE LANGSTON,)
8 CARL B SINGLETON, JR , VIRGINIA)
9 M OWENS and STONEY HARRELSON,)

10 PLAINTIFFS,)

11 vs)

12 LEVON DUNN and PAMELA S DUNN,)

13 DEFENDANTS)

COMPLAINT
NON JURY TRIAL DEMANDED
INJUNCTIVE RELIEF
VIOLATION RESTRICTIONS

14 COMES NOW the Plaintiffs, complaining of the Defendants, and would show the Court
15 as follows

16 The Plaintiffs, complaining of the above-named Defendants will respectfully show this
17 honorable Court that

18 1 The Plaintiffs are residents and citizens of the State of South Carolina and own property in
19 a subdivision created by Helen Sasser by the recording of a map prepared by Terry M Watson,
20 R L S , dated October 26, 1982, and recorded November 19, 1982, in Plat Book 2, Page 203 in the
21 Office of the Clerk of Court of Georgetown County, S C

22 2 The Defendant Levon Dunn is the owner of Lots 7, 8, 9, and 10, of said subdivision, situated
23 in Georgetown County, South Carolina, which is the subject of this action The Defendant Pamela
24 S Dunn, along with Levon Dunn, is operating a commercial enterprise on said lots

25 3 The parties' lots are subject to covenants and restrictions which are appurtenant to and run
26 with the premises These covenants and restrictions prohibit commercial activities from being
27 conducted on any lot

28 4 The Plaintiffs are the assigns of Helen Sasser and are therefore the "Developer" as that term
is defined in the restrictions

6 The Defendants are now operating a commercial enterprise on this property, in violation of
the restrictions thereon

7 The violations of said covenants and restrictions, if permitted to continue, will inflict upon all of the lots in the subdivision great and irreparable damage

8 Plaintiffs have no adequate remedy at law and are entitled under the restrictions to sue for abatement of the violation and a permanent injunction prohibiting the Defendant from operating any commercial enterprise on the restricted properties

WHEREFORE, Plaintiffs pray for the following relief

- a The Defendants be ordered to cease any commercial activities on their property,
- b The Defendants be permanently enjoined from violating said restrictions,
- c Plaintiffs receive the costs and expenses incurred herein, and
- d Plaintiffs receive such other and further relief as this Court deems just and proper

Jack M. Scoville, Jr

Attorney for the Plaintiffs

602 Prince Street

Post Office Box 1228

Georgetown, South Carolina 29442

843-546-1130 Phone

843-546-0726 Fax

scorac@aol.com

August 18, 2006

9/15/06

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

AJG HOLDINGS, L L C , STALVEY
HOLDINGS, L L C , DAVID CROYLE,
LINDA CROYLE, JEAN C ABBOTT,
LYNDA T COURTNEY, SUMTER L
LANGSTON, DIANE LANGSTON, CARL B
SINGLETON, JR , VIRGINIA M OWENS
and STONEY HARRELSON,

Case No 2006-CP-22-915

ANSWER

FILED
CLERK OF COURT
SEP 15 AM 9 59

Plaintiffs,

vs

LEVON DUNN and PAMELA S DUNN,

Defendants

Defendants answering Plaintiffs' Complaint allege

1 Defendants deny each and every allegation of Plaintiffs' Complaint not hereinafter specifically admitted

2 Defendants admit, upon information and belief, the allegations of first paragraph of the Complaint

3 Responding to the second paragraph of the Complaint, Defendants admit that Levon Dunn is the owner of Lots 7, 8, 9 and 10 in the subdivision described and shown at Plat Book 2, page 203 in Georgetown County, South Carolina, but Defendants deny that either of them are operating a commercial enterprise on said lots

22

4 In response to the third paragraph of the Complaint, Defendants deny that there is
any restriction on Lots 7, 8, 9 or 10 of said subdivision that prohibits operating a commercial
enterprise on them, although, at this time, no commercial activity is being conducted on said lots

5 Defendants deny the fourth paragraph of the Complaint and allege that Plaintiffs
have no legal right to enforce restrictions and covenants that the developer retained for such
purpose, as they can only be enforced by the developer as defined in the deeds conveying the
property to various owners

6 Defendants deny paragraph six and seven of Plaintiffs' Complaint

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

7 Plaintiffs' Complaint fails to state any cause of action against Defendants and
should be dismissed under the authority of Rule 12, SCRCF

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

8 Plaintiffs have not alleged nor can it establish that they have suffered irreparable
harm by any act of Defendants and, in fact, no irreparable harm has occurred or will occur, and
Plaintiffs are not entitled to an injunction in this matter, and the Complaint should accordingly be
dismissed

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

9 Plaintiffs have no legal right under any authority to enforce the covenants and
restrictions on any property in the subdivision that is the subject of this matter of this action, and
their Complaint should accordingly be dismissed

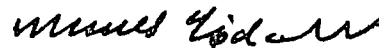
**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

10 Defendants allege that there are no restrictions on Lots 7, 8, 9 and 10 in the subdivision against any commercial enterprise as alleged by Plaintiffs, and the Complaint should accordingly be dismissed

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

11 Defendants allege that this action is a frivolous proceeding as defined by § 15-36-10, S C Code, 1976, as amended, and is subject to the provisions of the South Carolina Frivolous Proceeding Sanctions Act and that they are entitled to all relief provided by said act including attorneys' fee and costs

WHEREFORE, Defendants having fully answered Plaintiff's Complaint pray that it be dismissed and that it be awarded damages for costs, attorneys' fees and any and all relief to which they are entitled, including relief provided by the South Carolina Frivolous Proceeding Act, including attorneys' fees and costs



Thomas S Tisdale, Jr
NEXSEN PRUET ADAMS KLEEMEIER, LLC
205 King Street, Suite 400 (29401)
P O Box 486
Charleston, SC 29402
843 577 9440

Attorneys for Defendants
LEVON DUNN and PAMELA S DUNN

September 13, 2006
Charleston, South Carolina

24

10/17/06

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) CASE NO 2006-CP-22- 915

AJG HOLDINGS LLC, STALVEY)
HOLDINGS LLC, DAVID CROYLE,)
LINDA CROYLE, JEAN C ABBOTT,)
LYNDA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
CARL B SINGLETON, JR , VIRGINIA)
M OWENS and STONEY HARRELSON,)

PLAINTIFFS,)

vs)

LEVON DUNN and PAMELA S DUNN,)

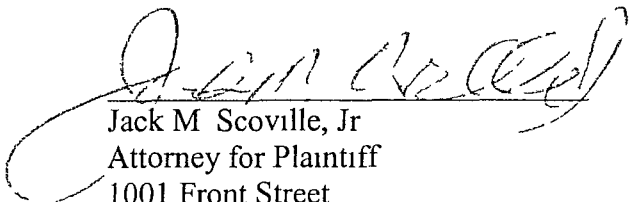
DEFENDANTS)

REPLY

FILED
GEORGETOWN COUNTY SC
2006 OCT 17 P 4 56
CLERK OF COURT

TO Thomas Tisdale, Attorney for the Defendants

NOW COME the Plaintiffs, in Reply to the Answer of the Defendants, and deny
any allegations of said Answer that would entitle Defendants to any affirmative relief


Jack M. Scoville, Jr
Attorney for Plaintiff
1001 Front Street
Post Office Drawer 1228
Georgetown, South Carolina 29442
(843) 546-1130 (telephone)
(843) 546-0726 (facsimile)

October 16, 2006

25

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

AJG HOLDINGS, L L C , STALVEY
HOLDINGS, L L C , DAVID CROYLE,
LINDA CROYLE, JEAN C ABBOTT,
LYNDA T COURTNEY, SUMTER L
LANGSTON, DIANE LANGSTON, CARL B
SINGLETON, JR , VIRGINIA M OWENS
and STONEY HARRELSON,

Plaintiffs,

vs

LEVON DUNN and PAMELA S DUNN,

Defendants

Case No 2006-CP-22-915
9/14

AFFIDAVIT OF LEVON DUNN

FILED
2007 APR 16 PM 4:37
CLERK OF COURT

PERSONALLY APPEARED before me Levon Dunn who, after being duly sworn states

I am the owner of approximately thirteen (13) acres of contiguous land, of which four (4) acres are located within a subdivision that was developed by Helen Sasser and known as Woodland Plantation. These four acres comprise of four lots (Lots 7, 8, 9, and 10) that I acquired beginning in 1983. I acquired the remaining nine (9) acres, abutting Plantersville Road and located to the north and west of the boundary line of the subdivision, in the 1980's

Lots 7 and 8 in the subdivision were purchased by me and my wife, Pamela S Dunn, from Rodney and Carolyn Causey on January 20, 2003 (Book 1347, p 167, RMC Office for Georgetown County). Lot 9 in said subdivision was conveyed to me on September 9, 1994 (Book 594, p 43, RMC Office for Georgetown County). Lot 10 was conveyed to me on September 9, 1994 (Book 594, p 43, RMC Office for Georgetown County). The four lots comprise approximately four (4) acres and front on the Great Pee Dee River

Helen Sasser, the developer of Woodland Plantation, placed covenants and restrictions in the deeds of the four lots I purchased from her, copies of which deed restrictions are attached to this Affidavit as Exhibit "A." The said restrictions prohibited, among other things, commercial use of the four lots without the express written consent of Helen Sasser, her heirs or assigns.

There are not and never have been any restrictions affecting the use of the nine (9) acre tract of land that adjoins Lots 7-10 prohibiting commercial use.

Unaware of the deed restrictions affecting Lots 7-10, my wife and I decided in 2005 to investigate whether it was financially feasible to use a portion of said land for commercial purposes. We planned to use the property for social events such as weddings and wedding receptions, and as a bed and breakfast facility. We renovated a house that was located on Lots 7 and 8 to serve as a guest house and bed and breakfast, after verifying this was a permitted use under Georgetown County's Zoning Ordinance. To effectuate that plan, we advertised the property in various publications and on a website as Dunn Acres Plantation and offered it as a venue for weddings, receptions, and for lodging.

All of the construction activities on the property were approved by Georgetown County, and we abided by all rules and regulations imposed by the County administrative rules. The County made regular inspections of the project and granted us a certificate of occupancy for the structure we planned to use as a bed and breakfast. At no time, however, was a portion of Lots 7-10 used for commercial purposes.

In early 2006, we began receiving complaints from neighbors in the subdivision, in response to our advertisements, about our intended use of the property for commercial purposes. A letter from H. T. Abbott, III, on behalf of himself and other property owners is attached to this affidavit as Exhibit B.

After receiving complaints from our neighbors, we investigated the issue of restrictions on the property and for the first time realized that there were restrictions on the property prohibiting any commercial activity on Lots 7-10. We also confirmed that there are no commercial restrictions at all on the nine acre tract that adjoins Lots 7-10.

We have not conducted any commercial activity on Lots 7-10 at any time before or since we learned of the restrictions prohibiting such use.

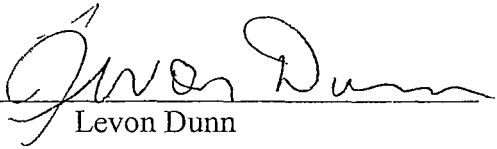
After the construction of the guest house that we planned to use as a bed and breakfast facility, and after learning of the complaints of such use by some of our neighbors, we consulted legal counsel to get advice about the limits on the use of Lots 7-10. As a result of obtaining legal counsel, we decided to contact Helen Sasser, the developer of the subdivision to ask for relief from the restrictions against the commercial use of Lots 7-10. Our discussions with Ms. Sasser led to an agreement by which she granted, by way of an Assignment, to my wife, Pamela S. Dunn, and me all her rights as the Developer of the property. That agreement is in writing and is recorded in Book 185, p. 258 in the RMC Office of Georgetown County, and a copy of such agreement is attached hereto as Exhibit "C."

Although Ms. Sasser had sold all the property, but retained some rights, in the subdivision before entering the aforesaid agreement with us, she specifically reserved certain authority and powers to herself, heirs and assigns in the various deeds to property in the subdivision to control the development of the property. It is those reserved powers that she has assigned to us.

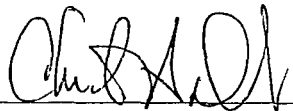
In accord with the rights obtained from Ms. Sasser by the assignment, my wife and I have removed all restrictions on Lots 7-10 that prohibit their use for commercial purposes, and any restrictions that prohibit the further subdivision of said lots (Restrictions two and three of the

Sasser deeds) A document effecting the removal of such restrictions on Lots 7-10 is recorded in Book 185, p 264, RMC Office for Georgetown County, and attached hereto as Exhibit ' D '

In summary, none of the property owned by us is now restricted for commercial use or further subdivision There is, therefore, no legal or equitable ground for the issuance of an injunction to prevent or prohibit such use


Levon Dunn

SWORN and subscribed to before me
this 1st day of February, 2007

 (L S)
Notary Public for South Carolina
My Commission Expires January 27th, 2008

000001278 10 06 37AM
 RECORDED 01/21/2003
 Bk 01347 Pg 00167 Pages 5
 Fee 11 00 State 1014 00
 County 429 00
 Georgetown County, SC
 Register of Deeds



Prepared By and Return To
 N David DuRant
 1801 Glens Bay Road
 Post Office Box 14722
 Surfside Beach SC 29587

Tax Map No # 3 110-009 and 3 110-010

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF GEORGETOWN)

KNOW ALL MEN BY THESE PRESENTS, THAT RODNEY G CAUSEY, in the State aforesaid, for and in consideration of the sum of THREE HUNDRED NINETY THOUSAND AND 00/100 DOLLARS (\$390,000 00) to him in hand paid at and before the sealing of these presents by LEVON DUNN and PAMELA S DUNN, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto said Levon Dunn and Pamela S Dunn, for and during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit

Lot Seven (7)

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Georgetown County, South Carolina, and shown and designated as Lot No Seven (7) on a map of six (6) acres of land in Georgetown County owned by Helen Sasser, said map having been prepared by Terry M Watson, R L S, dated October 26, 1982 and recorded November 19, 1982, in Plat Book 2 at Page 203, records of Georgetown County, reference to which is craved as forming a part of these presents

Said lot is more particularly bounded as follows On the North by Lot No Eight (8), on the East by the Pee Dee River; on the South by Lot No Six (6) and a 30 foot road, and on the West by Lands of Helen Sasser

The conveyance is also includes an easement over and across the existing road which runs from South Carolina Highway No 52 to the above-conveyed lot, as well as an easement over and across the proposed 30 foot road extending across Lots five (5) and six (6) (all of which is shown on the above-referred to Plat) for the purposes of ingress and egress to the property conveyed.

In addition to the property conveyed herein, there is further conveyed all of the right, title and interest of the grantor in the area between the front lot line and Pee Dee River

This conveyance is made subject to Restrictions as set out in Deed Book 207 at Page 751, public records of Georgetown County, South Carolina

This is the identical property conveyed to the Grantors herein by Deed of Betty C Holmes dated January 2, 1991 and recorded January 3, 1991 in Deed Book 410 at Page 179 and by Deed of Betty C Holmes dated December 4, 1990 and recorded December 5, 1990 in Deed Book 405 at Page 279, Horry County records

GEORGETOWN COUNTY PARCEL # 3-110-9410

30

Lot Eight (8)

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate, lying and being in Georgetown County, South Carolina, and shown and designated as Lot No Eight (8) on a map of six (6) acres of land in Georgetown County owned by Helen Sasser, said map having been prepared by Terry M Watson, R.L.S., dated October 26, 1982 and recorded November 19, 1982, in Plat Book 2 at Page 203, records of Georgetown County, reference to which is craved as forming a part of these presents

Said lot is more particularly bounded as follows On the North by Lot No Nine (9), on the East by the Pee Dee River, on the South by Lot No Seven (7) and a 30 foot road, and on the West by lands of Helen Sasser

This conveyance also includes an easement over and across the existing road which runs from South Carolina Highway No 52 to the above-conveyed lot, as well as an easement over and across the proposed 30 foot road extending across Lots five (5), six (6) and seven (7) (all of which is shown on the above-referred to plat) for the purposes of ingress and egress to the property conveyed

In addition to the property conveyed herein, there is further conveyed all of the right, title and interest of the grantor in the area between the front lot line and the Pee Dee River

This conveyance is made subject to restrictions and easements of record

This is the identical property conveyed to the Grantors herein by Deed of Betty Holmes dated January 2, 1991 and recorded January 3, 1991 in Deed Book 410 at Page 181 and by Deed of Betty C Holmes dated December 4, 1990 and recorded December 5, 1990 in Deed Book 405 at Page 281, Horry County records

Tax Map # 3-110-009 and 3-110-010

Grantee(s) Address 185 Frederick Drive
Georgetown, SC 29442

TOGETHER WITH all and singular the rights, members hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said **Levon Dunn and Pamela S Dunn**, for and during their joint lives and upon the death of either of them to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, and he does hereby bind himself and his Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said **Levon Dunn and Pamela S Dunn** as hereinabove provided against himself and his heirs and assigns and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof

31

WITNESS the execution hereof by his hand and seal this 20th day of January in the year of our
Lord Two Thousand Three

Signed, Sealed and Delivered
in the Presence of

Christine L. Dorris
1st Witness

Rodney G. Causey {SEAL}
Rodney G Causey

Samuel Anderson
2nd Witness

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF GEORGETOWN

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that
(s)he saw the within-named Grantor sign, seal, and deliver the within Deed, and that (s)he, with the other
subscribing witness whose signature appears above witnessed the execution thereof

Christine L. Dorris
Witness (Not Notary)

SWORN to before me this 20th day of January,
2003

Samuel Anderson
Notary Public for South Carolina
My Commission Expires 9-14-11

File # 03 12251NDD

9153

BOOK 594 PAGE 43

FILED
 CITY OF WILLIAMS
 CLERK & GS
 94 SEP 29 PM 2 48
 DEPT. OF CLERK
 BOOK 1 PAGE 1

STATE OF SOUTH CAROLINA)
 COUNTY OF GEORGETOWN) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS That Riverside Inc
 in the State aforesaid for and in consideration of the sum of
 FIVE AND NO/100 (\$5 00) DOLLARS to me paid by Levon Dunn
 (the receipt whereof is hereby acknowledge) has granted,
 bargained, sold and released and by these presents does grant
 bargain, sell and release unto the said Levon Dunn his heirs and
 assigns forever all right title and interest in and to the
 following described property to wit

ALL AND SINGULAR, all that certain piece parcel or lot of land
 situate lying and being in Georgetown County South Carolina
 and shown and designated as Lot No Nine (9) on a map of six (6)
 acres of land in Georgetown County owned by Helen Sasser said
 map having been prepared by Terry M Watson, R L S dated October
 26, 1982 and recorded November 19 1982 in Plat Book 2 at Page
 203 Clerk of Court for Georgetown County reference to which is
 craved as forming a part of these presents

Said lot is more particularly bounded as follows on the North
 by Lot No 10 on the East by the Pee Dee River on the South
 by Lot No 8 and a 30 foot road and on the West by lands now or
 formerly of Helen Sasser

This conveyance also includes an easement over and across the
 existing road which runs from South Carolina Highway No 52 to
 the above conveyed lot as well as an easement over and across
 the proposed 30 foot road extended across Lots 5 6 7 and 8 (all
 of which are shown on the above referenced plat) for the purposes
 of ingress and egress to the conveyed property

In addition to the property conveyed herein there is further
 conveyed all of the right, title and interest of the grantor in
 the area between the front lot line and the Pee Dee River

This conveyance is subject to the Restrictions set forth in the
 deed from Helen Sasser to Levon Dunn recorded in Deed Book 207 at
 Page 746 Clerk of Court for Georgetown County S C

This being the identical property conveyed to Riverside Inc by

33

BOOK 594 PAGE 44

deed of Shirley Long Johnson dated January 3 1993 recorded February 17 1993 in Deed Book 559 at Page 102 Clerk of Court for Georgetown County, S C

ALSO ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate lying and being in Georgetown County, South Carolina, and shown and designated as Lot No 10 (10) on a map of six (6) acres of land in Georgetown County owned by Helen Sasser, said map having been prepared by Terry M Watson R L S dated October 26 1982 and recorded November 19, 1982 in Plat Book 2 at Page 203 Clerk of Court for Georgetown County reference to which is craved as forming a part of these presents and for a more accurate and complete description of the premises

Said lot is more particularly bounded as follows on the North by a slew (as shown on said map) and other lands now or formerly of Helen Sasser on the East by the Pee Dee River on the South by Lot No 9 and a proposed 30-foot road and on the West by lands now or formerly of Helen Sasser

This conveyance also includes an easement over and across the existing road which runs from S C Highway No 50 to the above-conveyed lot as well as an easement over and across the proposed thirty (30) foot road shown on the plat and referred to in the above description for the purposes of ingress and egress

This conveyance is subject to the Restrictions set forth in the deed from Carl B Singleton, Sr and Eula V Singleton to Levon Dunn recorded in Deed Book 244 at Page 581 Clerk of Court for Georgetown County S C

This being the identical property conveyed to Riverside, Inc by deed of Shirley Long Johnson dated January 3 1993 recorded February 17 1994 in Deed Book 559 at Page 101 Clerk of Court for Georgetown County S C

ALSO ALL AND SINGULAR that certain piece parcel or tract of land situate lying and being in Georgetown County, S C containing eight and fifteen one-hundredths (8 15) acres as shown on a plat of same prepared for Levon Dunn by Terry M Watson, R L S dated March 2 1985 recorded in Plat Book 5 at Page 400 Clerk of Court of Georgetown County S C reference to which is craved as forming a part hereof and for a more complete accurate description

This being the identical property conveyed to Riverside Inc by deed of Shirley Johnson Long dated January 3 1993 recorded February 17 1994 in Deed Book 559 at Page 101 Clerk of Court for Georgetown County S C

ALSO ALL AND SINGULAR that certain piece parcel or lot of

34

BOOK 594 PAGE 45

land lying, situate and being in Georgetown County S C containing 0.52 acres as shown on a plat by Terry M. Watson R L S dated June 28 1994 and recorded in Plat Book 51153 at Page 9 Clerk of Court for Georgetown County and by reference thereto is incorporated as forming a part and parcel of this description

This property is more particularly bounded as follows on the North by lands of now or formerly of Riverside Inc in part and lands now or formerly of M T Coleman et al in part on the East by lands now or formerly of M T Coleman et al on the South by a thirty (30) foot private road in part and the northern margin of Frederick Drive in part and on the West by lands now or formerly of Riverside, Inc

This conveyance is subject to an easement for purposes of drainage for an existing pond commonly referred to as Sasser Pond"

This is the identical property conveyed to Riverside Inc by deed of M T Coleman et al dated August 25 1994 recorded September 9 1994 in Deed Book 590 at Page 303, Clerk of Court for Georgetown County, S C

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Levon Dunn his heirs and assigns forever

And the said Grantor does hereby bind itself its successors and assigns to warrant and forever defend all and singular the said premises unto the said Levon Dunn his heirs and assigns lawfully claiming or to claim the same or any part thereof

IT WITNESS WHEREOF the Grantor, Riverside Inc, has caused these presents to be signed and sealed this 9th day of

35

BOOK 594 PAGE 46

September in the year of our Lord One Thousand Nine Hundred
Ninety-Four and in the Two Hundred Eighteenth year of the
sovereignty and Independence of the United States of America

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

RIVERSIDE INC

By

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Personally appeared before me the undersigned witness
and made oath that s/he saw the within named Riverside, Inc by
Levon Dunn as Grantor Sign Seal and as its Act and Deed deliver
the within written Deed and that s/he with the other
subscribing witness witnessed the execution thereof

SWORN to before me this

7th day of September 1994

Notary Public for South Carolina

My Commission Expires 10/19/2002

Grantee's address Star Rt 1, Box 676
Georgetown SC 29440

36

1000 H T Abbott, III
PO Box 377
Crawley, SC
29526

FILED
-T.L. WILLIAMS
LCCP & GS
94 SEP 29 PM 2 48

11
Jm 594 inc 115 SC
Wanda J O'Neill
Deputy Corp

Riviera
to

① 10000

Recorded this 3rd day of
October A D 1924
In Book _____ Page _____
Vol. 411 Slack
Auxiliary Georgetown Co, S C

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HILL
P 3-110-13 C

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document 5
TD-3

H T Abbott, III
P O Box 377
Conway, South Carolina 29528
February 28, 2006



Levon and Pam Dunn
Dunn Acres
Plantersville, SC

Dear Levon and Pam

To my surprise, I learned last week, by your announcement in The Georgetown Times, as well as an internet site, of your plans to operate a bed and breakfast next door to our river house in Plantersville

My letter is to let you know of my objection to any commercial activity on the "Woodland Plantation" property. My objection is two-fold

1 This intended action destroys the reason most of the property owners enjoy the area. It is a respite from commercialism and an opportunity to enjoy the natural beauty of a truly unique environment. With most of the surrounding area under conservation easements or in the federal refuge system, it was believed the heritage and habitat of our property to be safeguarded.

2 According to deed restrictions in the common deeds out of Helen Sasser, "any commercial activity is prohibited."

Please be aware of my objection as well as the objection of the undersigned property owners *

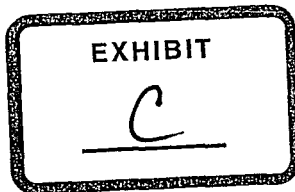
I would appreciate your notifying me in writing of your willingness to abide by these prohibitions by March 17, 2006

Sincerely,

A handwritten signature in cursive script, appearing to read "Tommy Abbott".

Tommy Abbott

* See attachment



Instrument
20060904000170
Page
1 of 28

ASSIGNMENT AND INDEMNIFICATION AGREEMENT

THIS ASSIGNMENT AND INDEMNIFICATION AGREEMENT (the 'Agreement') dated as of September 6, 2006, is made by and between HELEN SASSER ("Assignor") and LEVON DUNN and PAMELA S DUNN (collectively hereinafter the 'Assignee'),

WHEREAS, Assignor sold to Stoney L Harrelson that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Sasser to Stoney L Harrelson dated June 29, 1988, and recorded in the RMC Office for Georgetown County, South Carolina on June 29, 1988, in Book 292, at Page 240 ('Lot 5-E'),

WHEREAS, Assignor sold M T Coleman, Stoney L Harrelson, Creola L Harrelson, David M Croyle, Linda C Croyle, Thomas C Meyer and Marie D Meyer that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor dated September 5, 1991, and recorded in the RMC Office of Georgetown County, South Carolina on September 5, 1991 in Book 441, at Page 14 ('Lot 5-W"),

WHEREAS, Assignor sold Joseph A Holmes that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Joseph A Holmes dated March 17, 1983 and recorded in the RMC Office of Georgetown County South Carolina on March 18 1983 in Book 207, at Page 758 ('Lot 6'),

WHEREAS, Assignor sold to Rodney Causey and Carolyn Causey that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 750 ('Lot 7"),

WHEREAS, Assignor sold to Rodney Causey and Carolyn Causey that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 754 ("Lot 8")

WHEREAS, Assignor sold to Assignee that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to the Assignee dated March 17, 1983, and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983, in Book 207 at Page 746 ('Lot 9'),

WHEREAS, Assignor sold to Carl B Singleton, Sr and Eula V Singleton that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Carl B Singleton, Sr and Eula V Singleton dated December 30 1982, and recorded in the RMC Office for Georgetown County, South Carolina in Book 205 at Page 1567 ('Lot 10"),

WHEREAS, the deeds referenced above (collectively hereinafter the 'Deeds') contain the following restrictions and covenants on the properties more fully described in the Deeds

[t]his conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers their heirs and assigns

1 That the expression 'Developer' as used herein shall be construed to mean Helen Sasser, her heirs and assigns,

2 No lot shall be used for commercial purposes without express written consent from Developer,

3 No lot shall be divided or subdivided without written consent from the Developer,

4 No more than one building shall be erected on any one lot,

5 No building shall be erected or altered on any lot until the building plans or alteration plans, and location on the said lot, shall have been approved by the Developer. There will be no size restrictions on the building. The proposed building must blend with the others in the development and not detract from the value of the lots in the subdivision,

6 The exterior walls of any building on which construction is started must be completed within twelve (12) months,

7 No person shall maintain on any lot a "mobile home or residential trailer"

8 In the event any of the above covenants shall be deemed invalid, then such invalidity shall in no way affect any of the remaining covenants

WHEREAS, Assignor desires to assign its rights as Developer under the Deeds to Assignee,

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows

1 Assignment Assignor hereby assigns to Assignee, absolutely and not as security for the performance of any obligation, all of Assignor's right and interest as Developer under the Deeds and hereby delegates to Assignee all of Assignor's duties under the Deeds

2 Acceptance and Assumption Assignee hereby accepts this assignment, and agrees to assume all of the obligations of the Assignor under the Purchase Agreement

3 Consideration Assignee shall pay to Assignor the sum of Fifteen Thousand and 00/100 (\$15,000) Dollars as consideration of this Agreement. Assignee shall pay Ten Thousand and 00/100 (\$10,000) Dollars upon the execution of this Agreement by wire transfer or other certified funds and shall pay the remaining consideration by giving Assignor a Note in the

principal amount of Five Thousand and 00/100 (\$5,000) Dollars. The unpaid principal amount of the Note shall bear interest at the rate of zero percent (0%) per annum and shall be due and payable on January 10, 2007.

4 Indemnification. Assignee hereby agrees to protect, defend, indemnify and hold Assignor harmless from and against any and all causes of action, claims, losses, costs, damages, demands, liabilities and expenses of any nature whatsoever (including without limitation attorneys' fees) which result from or arise by reason of Assignor's assignment hereof and any action taken by Assignee with respect to the Developer rights after closing. Assignor has full power and authority to make this assignment and owns the Developer rights under the Deeds free and clear of the rights of any third party.

5 Miscellaneous. This Agreement and all of the terms, provisions and covenants contained herein shall apply to, be binding upon, and inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and shall not be varied, amended, or superseded except by written agreement between the parties hereto. This Agreement may be executed in duplicate counterparts (by original or facsimile signature), each of which shall constitute an original and all of which taken together shall constitute a single original agreement. In the event of any dispute hereunder, the prevailing party in any litigation or other proceedings shall be reimbursed by the non-prevailing party, for all costs and expenses, including without limitation, attorneys' fees, whether incurred in connection with trial, administrative, appellate, bankruptcy, or any other form of proceedings. The indemnification obligations set forth herein shall be perpetual and shall survive Closing. The Agreement shall be governed by the laws of the State of South Carolina.

[SEPARATE SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, the parties have executed this Assignment under seal as of the date written above

Witnesses

ASSIGNOR

HELEN SASSER

Craig Pancy
Sam M. J. Verble

Helen Sasser
Date 9/5/06

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 5th day of SEPTEMBER, 2006, by Helen Sasser

Sam M. J. Verble
Notary Public SARIELA J. VERBLE
My Commission Expires 1/28/09

Witnesses

[Signature]
Wm. Ripley

ASSIGNEE

LEVON DUNN

[Signature]
Date September 6, 2006

[Signature]
Wm. Ripley

PAMELA S DUNN

[Signature]
Date September 6, 2006

STATE OF South Carolina)
COUNTY OF Charleston)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 6th day of September 2006, by Lavon Dunn

[Signature]
Notary Public South Carolina
My Commission Expires 8/14/09

STATE OF South Carolina)
COUNTY OF Charleston)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 6th day of September 2006, by Pamela S Dunn

[Signature]
Notary Public South Carolina
My Commission Expires 8/14/09

INSTRUMENT Book Page
2006000191178 185 263

Wanda

4450 Nexsen Pruet LLC

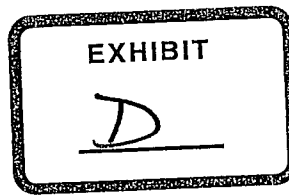
2006000191178
Filed for Record in
GEORGETOWN OF
REGISTER OF DEEDS
06-11-2016 at 01:52 PM
AT IGMENTD 11:00
STATE TX
COUNTY TA
EC 1 15:16-22 200

Wanda Q Overette

44

TS
Nexsen Pruet LLC
205 KING STREET SUITE 400
PO BOX 486
CHARLESTON SC 29402

Dunn 0064



Recd From
1-1-2006

CONSENT TO COVENANTS AND RESTRICTIONS

THIS CONSENT TO COVENANTS AND RESTRICTIONS (hereinafter sometimes referred to as this 'Release') is made as of the 6 day of September, 2006 by Levon Dunn and Pamela S Dunn (collectively hereinafter "Declarant")

Pursuant to (1) a deed by Helen Sasser to Levon Dunn dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 746, (2) a deed by Helen Sasser to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 750, (3) a deed by Helen Sasser to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 754, and (4) a deed by Helen Sasser to Carl B Singleton, Sr and Eula V Singleton dated December 30, 1982 and recorded in the RMC Office for Georgetown County, South Carolina in Book 205 at Page 1567 (collectively hereinafter the 'Deeds') Helen Sasser placed the following restrictions, to run with the land, on the properties more fully described in the Deeds

[t]his conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers, their heirs and assigns

1 That the expression 'Developer' as used herein shall be construed to mean Helen Sasser, her heirs and assigns,

2 No lot shall be used for commercial purposes without express written consent from Developer,

3 No lot shall be divided or subdivided without written consent from the Developer,

4 No more than one building shall be erected on any one lot,

5 No building shall be erected or altered on any lot until the building plans or alteration plans, and location on the said lot, shall have been approved by the Developer. There will be no size restrictions on the building. The proposed building must blend with the others in the development and not detract from the value of the lots in the subdivision,

6 The exterior walls of any building on which construction is started must be completed within twelve (12) months,

7 No person shall maintain on any lot a 'mobile home or residential trailer'

8 In the event any of the above covenants shall be deemed invalid then such invalidity shall in no way affect any of the remaining covenants

45

Pursuant to that certain ASSIGNMENT AND INDEMNIFICATION AGREEMENT between that Helen Sasser and Declarants dated September 6, 2006 ("Assignment Agreement"), Helen Sasser assigned to Declarants all of her right and interest as Developer under the Deeds

Declarants now wish to consent to the use of the property, more fully described in the Deeds, for all commercial uses, as required by the second restriction in the Deeds and repeated herein by execution of this instrument. Further, Declarants now wish to consent to the division and subdivision of the property, more fully described in the Deeds, as required by the third restriction in the Deeds and repeated herein by execution of this instrument. Therefore, pursuant to the Assignment Agreement and this Release, restriction two and three of the Deeds are hereby released as to that property, more fully described in the Deeds, and shall no longer have any force or effect on the property, by execution of this instrument.

[SIGNATURE PAGE ATTACHED]

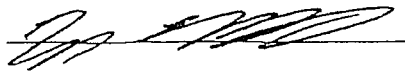
46

IN WITNESS WHEREOF, this Release is duly executed as of the 6th day of September,
2006

DECLARANTS

IN THE PRESENCE OF

Levon Dunn


Witness: Richard

Name Levon Dunn
Date 9/6/2006


Witness: Richard

Pamela S Dunn

Name Pamela S. Dunn
Date 9/6/2006

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Thomas Reidar, a notary public for South Carolina, do hereby certify that Levon Dunn personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand and seal (where an official seal is required by law) official seal this
6 day of September, 2006

Thomas Reidar (SEAL)

Signature of Notary Public

Notary Public for the State of South Carolina

My commission expires 3/16/09

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Thomas Reidar, a notary public for South Carolina, do hereby certify that Pamela S Dunn personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand and seal (where an official seal is required by law) official seal this
6 day of September, 2006

Thomas Reidar (SEAL)

Signature of Notary Public

Notary Public for the State of South Carolina

My commission expires 3/16/09

TS
Nexsen Pruet LLC
205 KING STREET SUITE 400
PO BOX 486
CHARLESTON SC 29402

5

[illegible]

Amur Lip

46450 Newsen Pruet UC
 20000000000000000000
 Filed for use and in
 GEORGETOWN ST
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 09-11-2000 at 11:57
 WEST COVE
 STATE 1A
 COUNTY 1A
 Parcel - 1st Trage
 Wanda J. Newatta

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO 2006-CP-22-915

AJG HOLDINGS LLC, STALVEY)
HOLDINGS LLC, DAVID CROYLE,)
LINDA CROYLE, JEAN C ABBOTT,)
LYNDA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
CARL B SINGLETON, JR , VIRGINIA)
M OWENS and STONEY HARRELSON,)

PLAINTIFFS,)

vs)

MOTION FOR TEMPORARY
RESTRAINING ORDER

LEVON DUNN, PAMELA S DUNN, and)
HELEN SASSER)

DEFENDANTS)

TO THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEY, THOMAS TISDALE
Please take notice that the Plaintiffs, through their undersigned attorney, will move before the
Circuit Court of the Fifteenth Judicial Circuit, **at 11 30 a m , April 16, 2007, in Georgetown,
S C , Georgetown County Courthouse**, for an order prohibiting Defendants from operating any
commercial enterprise on their property during the pendency of this action

The grounds for this motion are

1 The Plaintiffs are residents and citizens of the State of South Carolina and own property
in a subdivision created by Helen Sasser

a by the recording of a map prepared by Terry M Watson, R L S , dated October 26,
1982, and recorded November 19, 1982, in Plat Book 2, Page 203, in the Office of the Clerk of
Court of Georgetown County, S C , and the subsequent conveyance of lots incorporating said
plat

b by the conveying of various lots to Plaintiffs and their predecessors in interest by deed
from Helen Sasser to M T Coleman, et al , dated September 5, 1991, and recorded in the Office
of the Register of Deeds for Georgetown County, S C , on September 5, 1991, in Deed Book 441
at Page 14, which deed incorporated various plats of the subject property

50

2 At the time Plaintiffs purchased their properties, they relied on the oral and written representations of Sasser that the subdivision would remain residential in character, that the deed restrictions were valid and enforceable, that the subdivision was not subject to amendment without the consent of all lot owners, and that the subdivision was subject to the common scheme and plan as represented in the various recorded documents pertaining thereto

3 The Defendant Levon Dunn is the owner of Lots 7, 8, 9, and 10, of said subdivision, situated in Georgetown County, South Carolina, which is the subject of this action

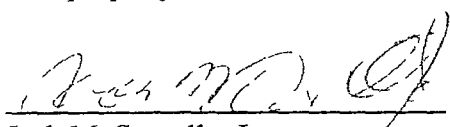
4 The Defendant Pamela S Dunn, along with Levon Dunn, is operating a commercial enterprise on said lots, to wit, a bed and breakfast inn and a wedding/party facility

5 The covenants and restrictions on the Dunns's lots prohibit commercial activities from being conducted on any of them

6 The subdivision created by Sasser is a small residential community located on the bank of the The Pee Dee River. It is a quiet, rural setting. The commercial activities being operated by the Dunns on their property involve loud music, large crowds, and boisterous behavior, typical of a modern wedding. Such activities are extremely disruptive to the peaceful enjoyment of Plaintiffs' properties. The Dunns intend to conduct a wedding or similar function on their property every weekend.

7 If this Court does not grant Plaintiffs a temporary restraining order, prohibiting Defendants from conducting such activities on their properties, pendente lite, Plaintiffs will suffer irreparable damage for which there is no adequate remedy at law.

Plaintiffs are entitled to a temporary restraining order, pendente lite, prohibiting the Dunns from conducting any commercial activity on their property.



Jack M. Scoville, Jr.
Attorney for Plaintiffs
1001 Front Street
Post Office Drawer 1228
Georgetown, South Carolina 29442
(843) 546-1130 (telephone)
(843) 546-0726 (facsimile)

February 26, 2007

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO 2006-CP-22-~~913~~ 914

3
4 AJG HOLDINGS LLC, STALVEY)
HOLDINGS LLC, DAVID CROYLE,)
LINDA CROYLE, JEAN C ABBOTT,)
5 LYNDIA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
6 CARL B SINGLETON, JR , VIRGINIA)
M OWENS and STONEY HARRELSON,)

7 PLAINTIFFS,)

8 vs)

9
10 LEVON DUNN, PAMELA S DUNN, and)
11 HELEN SASSER)

12 DEFENDANTS)

AMENDED
COMPLAINT
JURY TRIAL DEMANDED
INJUNCTIVE RELIEF
VIOLATION RESTRICTIONS
DAMAGES

13
14 COMES NOW the Plaintiffs, complaining of the Defendants, and would show the Court
15 as follows

16 BACKGROUND AND JURISDICTION

17 1 The Plaintiffs are residents and citizens of the State of South Carolina and own property in
18 a subdivision created by Helen Sasser

19 a by the recording of a map prepared by Terry M Watson, R L S , dated October 26, 1982,
20 and recorded November 19, 1982, in Plat Book 2, Page 203, in the Office of the Clerk of Court of
Georgetown County, S C , and the subsequent conveyance of lots incorporating said plat

21 b by the conveying of various lots to Plaintiffs and their predecessors in interest by deed from
22 Helen Sasser to M T Coleman, et al , dated September 5, 1991, and recorded in the Office of the
Register of Deeds for Georgetown County, S C on September 5, 1991, in Deed Book 441 at Page
14, which deed incorporated various plats of the subject property

23 2 This Court has jurisdiction over the subject matter of this action and over the persons of the
24 Defendants

25 3 At the time Plaintiffs purchased their properties, they relied on the oral and written
26 representations of Sasser that the subdivision would remain residential in character, that the deed
27 restrictions were valid and enforceable, that the subdivision was not subject to amendment without
the consent of all lot owners, and that the subdivision was subject to the common scheme and plan

1 as represented in the various recorded documents pertaining thereto

2 4 The Defendant Levon Dunn is the owner of Lots 7, 8, 9, and 10, of said subdivision, situated
3 in Georgetown County, South Carolina, which is the subject of this action

4 5 The Defendant Pamela S Dunn along with Levon Dunn, is operating a commercial
5 enterprise on said lots

6 6 The parties lots share a common grantor, to wit, Helen Sasser Sasser designated the land
7 of the parties to be subject to a general plan and scheme of restrictions, and provided that the
7 restrictions be covenants running with the land in accordance with such plan or scheme

8 7 The parties' lots are subject these covenants and restrictions which are appurtenant to and
9 run with the premises These covenants and restrictions prohibit commercial activities from being
10 conducted on any lot

11 8 The Defendant Sasser acquired all her former interest in the properties involved in this
12 litigation through a deed from D W Green, et al, dated July 28, 1978, and recorded July 31, 1978,
12 in Deed Book 160 at page 772, Office of the Clerk of Court for Georgetown County

13 9 By her deed dated September 5, 1991, and recorded in the Office of the Register of Deeds
14 for Georgetown County in Deed Book 441 at Page 14 on September 5, 1991, for a stated
15 consideration of \$92,500 00, Helen Sasser specifically conveyed 'all remaining property as
15 contained in the deed ' from D W Green recorded in Deed Book 160 at Page 772, to Plaintiffs
16 and their predecessors in interest

17 10 By this conveyance, Sasser conveyed any developer rights she may have retained in the
17 property that is subject to this lawsuit

18 11 In said deed, Sasser warranted to the grantees therein, to forever defend all and singular the
19 premises unto the grantees, their heirs and assigns, against Sasser, her heirs and assigns, and all
20 persons lawfully claiming, or to claim the same or any part thereof

21 12 By a document entitled Assignment and Indemnification Agreement, dated September 5,
22 2006, and recorded in the Office of the Register of Deeds for Georgetown County in Deed Book 185
23 at Page 258, Sasser purported to assign to Levon and Pamela S Dunn her rights as Developer under
23 various deeds to the parties or their predecessors in interest, conveying Lots Number 5-E, 5-W 6,
24 7, 8, 9, and 10

25 13 In the Assignment and Indemnification Agreement Sasser states that "[Sasser] has full power
26 and authority to make this assignment and owns the Developer rights under the Deeds free and clear
26 of the rights of any third party

1 14 By a document entitled Consent to Covenants and Restrictions dated September 6, 2006, and
2 recorded in the Office of the Register of Deeds of Georgetown County in Deed Book 185 at Page
3 264, Levon Dunn and Pamela S Dunn purported to 'consent' to the use of their own property, being
Lots 7, 8, 9, and 10, for any and all commercial uses, and to the subdivision of their lots,

4 15 The Defendants are now operating a commercial enterprise on this property, in violation of
5 the restrictions thereon

6 FOR A FIRST CAUSE OF ACTION
7 VIOLATION OF RESTRICTIVE COVENANTS
(As to Dunns)

8 16 The violations of said covenants and restrictions, if permitted to continue, will inflict upon
9 all of the lots in the subdivision great and irreparable damage

10 17 Plaintiffs have no adequate remedy at law and are entitled under the restrictions to sue for
11 abatement of the violation and a permanent injunction prohibiting the Defendant from operating any
commercial enterprise on the restricted properties

12 18 Plaintiffs are entitled to a temporary injunction prohibiting Defendants from conducting any
13 commercial activities on their property, pendent lite

14
15 FOR A SECOND CAUSE OF ACTION
16 SLANDER OF TITLE
(As to Sasser)

17 Plaintiffs reallege all prior allegations

18
19 19 The assertion by Sasser that she owned the developer rights free and clear and had the
20 authority to convey same constitutes the publication of a false statement that is derogatory to
Plaintiffs' title

21 20 Said statement was made with malice or with a reckless disregard for its truthfulness in that
22 Sasser had conveyed all her interest in the subject property many years earlier

23 21 The statement is derogatory to Plaintiffs' titles and has caused them special damages in that
24 the statement and purported conveyance of developer rights, if true, gives Defendants the right to
waive the restriction on the commercial use of their property making Plaintiffs' properties less
25 valuable in the eyes of third parties. The statement has also caused the Defendant Dunns to operate
26 a commercial venture on their property, which operation has interfered with the peaceful enjoyment
of Plaintiffs' property, has operated as a nuisance and has in fact diminished the value of Plaintiffs
property

1 22 Plaintiffs' are entitled to an award of actual and punitive damages from Sasser under this
2 cause of action in an amount to be determined at trial

3
4
5 FOR A THIRD CAUSE OF ACTION
6 BREACH OF FIDUCIARY DUTY
7 (As to Sasser)

8 Plaintiffs reallege all prior allegations

9 23 As the developer of the subdivision, Sasser owes a fiduciary duty to all lot owners within the
10 subdivision not to take any action that would compromise their property rights

11 24 Sasser sold lots to Plaintiffs and their predecessors in title with the representation that the
12 restrictions would be enforced, that she would not waive the restrictions prohibiting commercial uses
13 or subdivision, and that she would not act contrary to the best interests of her various grantees

14 25 By executing and recording a document that purports to convey developer rights that she no
15 longer had, for the sole purpose of allowing the Dunns to circumvent the deed restrictions she
16 imposed on the subdivision, thereby causing the Plaintiffs damage, Sasser has breached her fiduciary
17 duties as developer

18 26 As the result of said breach, Plaintiffs are entitled to actual and punitive damages under this
19 cause of action

20 FOR A FOURTH CAUSE OF ACTION
21 BREACH OF WARRANTIES
22 (As to Sasser)

23 Plaintiffs reallege all prior allegations

24 27 In her deed to Plaintiffs and their predecessors in interest, Sasser warranted and covenanted

- 25 (A) to warrant and defend the title she conveyed,
26 (B) that she had the good right to convey the property described therein,
27 (C) that the property was free from encumbrances,
28 (D) that Plaintiffs and their predecessors in interest would quietly enjoy the interests
conveyed, and
(E) that she would on demand, perform all acts necessary to provide further assurances
of title and take affirmative steps to cure any defects in the Plaintiffs' title

55

1 28 Sasser, in the Assignment and Indemnification Agreement, asserts that "[Sasser] has full
2 power and authority to make this assignment and owns the Developer rights under the Deeds free
and clear of the rights of any third party

3 29 This statement directly contradicts Sasser's warranties in the deed recorded in Deed Book
4 441 at Page 14

5 30 By her execution and delivery to the Dunns of the Assignment and Indemnification
6 Agreement, has

7 (A) Violated her covenant to warrant and defend the title she conveyed to Plaintiffs and
8 their predecessors in interest,

9 (B) Violated her covenant that she had the right to convey the property described in said
deed,

10 (C) Violated her covenant that she would, on demand, perform all acts necessary to
provide further assurances of title and take affirmative steps to cure any defects in the
11 Plaintiffs' title, and,

12 (D) Caused the Plaintiffs to be in litigation with the Dunns

13 31 Sasser has been duly notified of the claims of the Dunns, but has failed and refused to defend
same

14 32 As a result, Plaintiffs titles are clouded, their ability to sell their lots has been compromised
15 the character of the neighborhood has been compromised, they have to expend substantial sums in
attorney fees and costs in protecting their property rights, and they have suffered other damages to
16 be determined

17 FOR A FIFTH CAUSE OF ACTION
18 BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT
19 (As to Sasser)

20 Plaintiffs reallege all prior allegations

21 33 The conveyances to Plaintiffs and their predecessors in interest, with the accompanying
22 warranties and restrictions, constitute a contract or contracts by Sasser with the Plaintiffs

23 34 Sasser's purported assignment of developer rights to the Dunns constitute a breach of her
contract with Plaintiffs

24 35 Sasser's assertion that she retained any rights whatsoever in the properties of the parties is
25 a false and fraudulent statement and her purported assignment of such rights to the Dunns is a
26 fraudulent act

1 36 Plaintiffs have sustained damages therefrom by virtue of the cloud Sasser's actions have
2 placed on their titles, by having to litigate with the Dunns with resulting attorney fees and costs, and
3 by the resulting interference with the use and enjoyment of their properties

4 37 Plaintiffs are entitled to an award of actual and punitive damages as a result of Sasser's
5 breach of her contract accompanied by these fraudulent acts

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7
8
9 FOR A SIXTH CAUSE OF ACTION
10 NUISANCE
(As to Dunns)

11 Plaintiffs reallege all prior allegations

12 38 The Dunns have repeatedly conducted commercial parties and wedding receptions on their
13 lots in violation of the restrictive covenants

14 39 At all times mentioned, and since about July 1, 2006, the Dunns have conducted their
15 business in such a manner as to constitute a private nuisance, in that the Dunns have caused and
16 permitted such loud music, yelling, and screaming that the noise and vibrations disturb plaintiffs,
17 prevent plaintiffs from sleeping, and prevent the use of plaintiffs' outdoor activities. The Dunns'
18 activities, and their unnecessary, unreasonable, and injurious methods of operation of their business
19 are and have been severely injurious to plaintiffs' health, offensive to the senses, and interfere with
20 plaintiffs' free use of their property, and substantially limit plaintiffs' comfortable enjoyment of life
21 and property

22 40 As a result the Plaintiffs are entitled to actual and punitive damages

23 FOR A SEVENTH CAUSE OF ACTION
24 CIVIL CONSPIRACY
(As to Dunns and Sasser)

25 Plaintiffs reallege all prior allegations

26 41 By executing and recording the Assignment and Indemnification Agreement and the Consent
27 to Covenants and Restrictions, the Dunns and Sasser acted in concert for the purpose of injuring
28 plaintiffs

1 42 The Dunns knew, or in the exercise of reasonable inquiry could have determined, that Sasser
2 did not own any developer or any other rights in the properties of the Dunns and the Plaintiffs

3 43 Sasser knew she had no rights of any kind in the properties of the other parties

4 44 The Assignment and Indemnification Agreement purports to convey developer rights in
5 properties now owned by Plaintiffs, and in which the Dunns have no interest

6 45 The purpose of conveying developer rights in properties owned by Plaintiffs and not the
7 Dunns is purely for creating the appearance that the Dunns have developer rights in the various lots
8 of the Plaintiffs thereby causing Plaintiffs injury by clouding their titles, by forcing the Plaintiffs to
9 litigate to remove such clouds, and by using such purported developer rights in Plaintiffs lots to
10 coerce Plaintiffs in this dispute

11 46 As a result, Plaintiffs are entitled to an award of actual and punitive damages against the
12 Defendants

13 WHEREFORE, Plaintiffs pray for the following relief

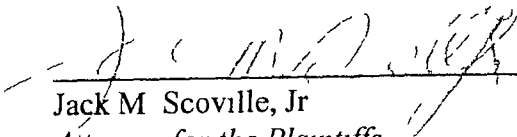
14 a The Defendants be ordered to cease any commercial activities on their property, pendent
15 lite and permanently,

16 b The Defendants be permanently enjoined from violating said restrictions,

17 c The Plaintiffs be awarded their actual and punitive damages in an amount to be determined
18 at trial

19 d Plaintiffs receive the costs and expenses incurred herein, including reasonable attorney fees,
20 and,

21 e Plaintiffs receive such other and further relief as this Court deems just and proper SC Code
22 Ann Section 16-25-70(d)

23 
24 Jack M. Scoville, Jr.

25 Attorney for the Plaintiffs

26 1001 Front Street

27 Post Office Box 1228

28 Georgetown, South Carolina 29442

843-546-1130 Phone

843 546-0726 Fax

scorac@aol.com

February 26 2007

58

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO 2006-CP-22-915

AJG HOLDINGS LLC, STALVEY)
HOLDINGS LLC, DAVID CROYLE,)
LINDA CROYLE, IFAN C ABBOTT,)
LYNDA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
CARL B SINGLETON, JR, VIRGINIA)
M OWENS and STONEY HARRELSON,)

PLAINTIFFS,)

vs)

LEVON DUNN PAMELA S DUNN, and)
HELEN SASSER)

DEFENDANTS)

Affidavit of David Croyle

FILED
GEORGETOWN COUNTY
2007 MAR 26 PM 1 41
ALLIANCE WHITE
CLERK OF COURT

Now comes David Croyle who being duly sworn deposes and says as follows

1 I am David Croyle My wife and I own lots 5 and 6 of the Helen Sasser Subdivision

2 My wife and I purchased this property directly from Helen Sasser along with others in 1991 In that deed, Mrs Sasser conveyed all her interest in this property to us It was my understanding and the intent of the parties to that deed that Mrs Sasser transferred any right, title interest, of any kind, to us Mrs Sasser was very difficult to deal with She tried to renege on the contract of sale, and we had to sue her to enforce the contract We even paid an additional consideration to her to insure that she no longer had any interest in our subdivision

3 The main reason I purchased this property and built was for a retirement and weekend home The area is idyllic, quiet, and a natural environment I and my neighbors wanted a quiet retreat

4 I would not have purchased this property if I had known anyone could operate a commercial enterprise in the neighborhood or that Helen Sasser retained any interest in the subdivision

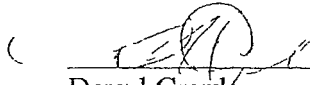
59

5 I have been present on three occasions when the Dunns have held weddings on their property. These events cause a total disruption of the tranquility of the neighborhood. The traffic is greater than the subdivision road can handle.

6 The disruption is not limited to the time of the actual weddings, but vendors, caterers and others involved in the event come and go throughout the week.

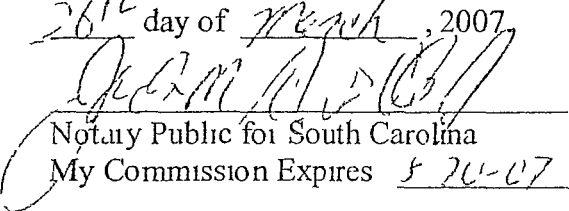
7 During weddings, the noise from the crowd and music overpowers all sound. The traffic clogs the small road, and have on occasion blocked my driveway.

8 My use and enjoyment of my property has been and will be seriously impaired by the Dunns' commercial activities on their property.



David Croyle

Sworn to before me this
26th day of March, 2007



Notary Public for South Carolina

My Commission Expires 5-20-07

60

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
CASE NO 2006-CP-22-91 4

3 AJG HOLDINGS LLC, STALVEY)
4 HOLDINGS LLC, DAVID CROYLE,)
5 LINDA CROYLE, JEAN C ABBOTT,)
6 LYNDIA T COURTNEY, SUMTER L)
7 LANGSTON, DIANE LANGSTON,)
8 CARL B SINGLETON, JR, VIRGINIA)
9 M OWENS and STONEY HARRELSON,)

Affidavit of Lynda T Courtney

PLAINTIFFS,

vs

10 LEVON DUNN, PAMELA S DUNN, and)
11 HELEN SASSER)

DEFENDANTS

12
13 Now comes Lynda T Courtney, who being duly sworn, deposes and says as follows

14 1 I am Lynda T Courtney My husband and I own lots in the Helen Sasser
15 Subdivision

16 2 Traffic from weddings at the Dunns' is a nuisance, especially to those living near
17 the entrance to the Dunns' property Access to property owners has been blocked by parked cars
18 of wedding guests

19 3 Wedding guests have trespassed on the property of plaintiffs

20 4 The Dunns have had security guards at some of their events On occasion, the
21 guard has stopped us who live and own property here This is very intimidating

22 5 This area is very remote, serene and idyllic That is a primary reason we have
23 built here and come here The noise from the weddings is extremely loud, especially the music
24 On one occasion, the band played 'Shout' so loudly that the words were clearly audible 3/4 of a
25 mile away

26 6 My husband and I bought our home on the river to get away from traffic and
27 noise We enjoy and respect the beauty of the water, the land and the wildlife One of our
28 considerations in buying was the fact that commercial activities were barred by the covenants

761

7 If the Dunns are allowed to continue with the commercialization of their property, our use and enjoyment of ours will be ruined

Linda T Courtney

Sworn to before me this

5 27th day of March, 2007

6 Elizabeth D. Hendrick
Notary Public of S C

My Commission Expires 1-23-16

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN) FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER 2006-CP-22-915

AJG HOLDINGS, L L C , STALVEY,)
HOLDINGS, L L C , DAVID CROYLE,)
LINDA CROYLE, JEAN C ABBOTT, LYNDIA)
T COURTNEY, SUMTER L LANGSTON,)
DIANE LANGSTON, CARL B SINGLETON,)
JR , VIRGINIA M OWENS AND STONEY)
H HARRLESON,)
PLAINTIFFS,)
vs)
LEVON DUNN AND PAMELA S DUNN,)
DEFENDANT)

AFFIDAVIT
OF
H T ABBOTT, III

PERSONALLY APPEARED before me, H T Abbott, III, who,
after being duly sworn, states

- 1 I am an attorney and one of the plaintiffs in this
action
- 2 In the late 1970's I represented one of the five
owners of Woodland Plantation in a partition action
The Plantation consisted of approximately 2500 acres
of unimproved and hunting property Ultimately, the
property was divided among the owners As a portion
of her part, Helen Sasser received a parcel of
property behind the Prince Frederick Church The deed
to this property was from D W Green and others, and
was dated July 28, 1973, and recorded in the Office of

1173
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the Clerk of Court for Georgetown County, in Deed Book 160 at page 772. The lots owned by the Plaintiffs and Defendants came out of this parcel.

3 At the present time, Sasser owns no property from the original division of Woodlark Plantation.

4 In 1982, Sasser began selling platting lots to various devisees. Sasser followed a general scheme of development and submitted the lots to restrictive covenants, either in each deed she executed, or by reference to restrictions in previously recorded deeds. The first lots sold were shown on a plat of lots 6-10 (Exhibit #1), next the lots on a plat of lots 1-5 (~~Exhibit #2~~ ¹⁴¹²); and finally, the six lots around the pond (Exhibit # ²~~3~~). Additionally, various other parcels were sold by individual plats.

5 The subdivision has provided all of us, the Plaintiffs, a place to relax and "a get-away." My wife and I purchased our property in 1986. One of the considerations was the restriction against commercial uses on the lots. If I thought there was no protection as to commercial use, I would not have purchased my lot.

6 We first learned of the Dims' plan to operate a Bed and Breakfast/ Wedding Venue from an ad in the local

paper. It was also advertised on the Internet. In fact, Pam Dunn was asked several times by various neighbors about the property being used as a Bed and Breakfast and she denied it each time. The Internet site continued to contain information as to the commercial use after I talked with the firms and was assured it would stop. The property has been used at least three to four times for weddings/receptions with one taking place on the front yard of the property next door to us, approximately twenty-five to thirty feet from my front porch. Contrary to Mr. Dunns' affidavit, this wedding clearly took place on Lot 7.

7 The "pig tails" of lots 7-10 run through the area the Dunns generally use for the receptions. The deed restrictions pertain to the entire lots, not just a portion.

8 Through the years, a number of the property owners have had difficulties with Helen Sasser. The relationship has been acrimonious at best. She cut some dogwoods on my property when it was owned by my predecessor in title. Part of a boat ramp she built on lot 5 was over the property line. In about 1930, she signed a Contract of Sale for most of her remaining property with Cecelia Hazelton and I

Coleman She then refused to close I filed a Specific Performance action for them to force her to sell the land As a settlement of that suit, Sasser agreed to convey all of her remaining interest in all the property for a greater sales price The purchasers wanted her completely out of the subdivision, which is the reason for the language in the deed as to all of remaining interest in the property (Exhibit #³~~4~~)

9 The Defendants have obtained a purported Assignment from Helen Sasser as to what they describe to be "development" rights and then released their property from the restrictions The retention of any rights by Helen Sasser is the gist of one of the causes of action in the Amended Complaint of the Plaintiffs It was the intent of the parties to the deed in 1991 that Sasser have no rights of any kind in any of the property in the subdivision

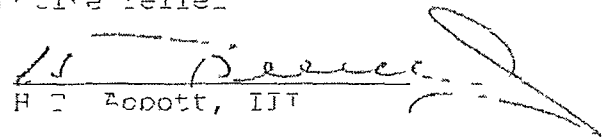
10 The Defendants have continued to use the property for a wedding venue, continued to advertise the wedding venue on the Internet and continue to advertise in a coupon book as a wedding venue, Bed and Breakfast The advertisements contain pictures of

WTH

both houses and grounds as well as a reference to a boat dock

11 It is impossible to adequately describe the impact that a wedding on the Dunns' property has on the neighborhood. The narrow road is clogged with wedding guests whose parking interferes with our use of the road. The noise from the bands and crowd is very loud and gets worse as the guests get drunk. On occasion the Dunns have hired guards to direct traffic. These have stopped property owners to inquire who they are, intimidating them on their own property. It is one thing for a property owner to have an occasional party on their land. The Dunns intend to have a wedding every weekend if possible. The use and enjoyment of our property, especially on the weekends when we are primarily there, has been destroyed and will be completely taken unless the Dunns comply with the restrictions on their property.

12 The continued use by the Defendants leaves the Plaintiffs with no adequate legal remedy, the actions of the Defendants will irreparably harm the Plaintiffs and they are entitled to injunctive relief.


H. T. Abbott, III

WTS

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5

SWORN and subscribed to before me
this 4 day of April, 2007


Notary Public for South Carolina
My Commission Expires 6/29/2016

112+

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[illegible]

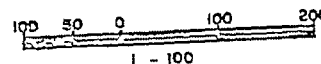
13307 YO JACZD
PL 231 LONCO PL

MAP

HELEN SASSER

RE MAP OF 4 LOTS BY JACK DAVIS FOR HELEN
SASSER AND MAP BY SD COX SURVEYORS, INC DATED
OCTOBER 10, 1978 FOR HELEN SASSER

OCTOBER 26, 1982



TERRELL M. WATSON, R.L.S. LAND SURVEYING INC.
1320 4th Avenue, Cambridge, N.C. 27804

175

[illegible]

3

BOOK 441 PAGE 17

ATTACHMENT A
PROPERTY DESCRIPTION

ALL AND SINGULAR those certain pieces parcels or tracts of land in Georgetown County containing in the aggregate approximately 18 32 acres more or less, and being more particularly described as follows

PARCEL 1

ALL AND SINGULAR, that certain piece, parcel or tract of land in Georgetown County being more particularly described as Lot S-W containing 1 38 acres as is shown on a plat by Wendell C Powers dated May 10 1988 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 2

ALL AND SINGULAR that certain piece parcel or tract of land lying situate and being in Georgetown County containing 1 66 acres as is more particularly shown on a plat by Terry M Watson R L S dated January 23 1984 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 3

ALL AND SINGULAR those certain pieces parcels or tracts in Georgetown County being designated as Lots 1 2 3 4 5 and 6 as is shown on a plat by Wendell C Powers R L S dated August 3 1988 and by reference thereto is incorporated as a part and parcel of this description

PARCEL 4

ALL AND SINGULAR, that certain piece parcel or tract of land being more commonly referred to as the "Sasser Pond" and is collectively shown on the aforesaid plats

It is the intent of the grantor herein to convey to the grantees all of her ownership interest of approximately 18 32 acres being the remaining portions of the tracts heretofore conveyed to her by D W Green et al by deed dated July 28, 1978 recorded July 31 1978 in Deed Book 160 at Page 772, Office of Clerk of Court for Georgetown County

This conveyance is subject to those right-of way easements previously granted by the grantor herein in various deeds of conveyances which are duly recorded in the Office of the Clerk of Court for Georgetown County

77

This conveyance is also subject to the grantor's son Charles Sasser, retaining the right to use the boat ramp on Lot S-W and "Sasser Pond" for and during the period of his natural life

This conveyance is subject to those restrictions of record as contained herein as well as is contained in the deed of Helen Sasser to Joseph Holmes dated March 17 1983 recorded March 18, 1983 in Deed Book 207 at Page 758 Office of the Clerk of Court for Georgetown County

It is the intent of the grantor herein to convey all remaining property as contained in the deed to the grantor herein by deed of D W Green et al dated July 28 1978 and recorded July 31, 1978 in Deed Book 160 at Page 772 Office of the Clerk of Court for Georgetown County

This is a portion of the property conveyed to the grantor herein by deed of D W Green et al dated July 28 1978 and recorded July 31 1978 in Deed book 160 at Page 772 Office of the Clerk of Court for Georgetown County

Restrictions

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

AJG HOLDINGS LLC, STALVEY
HOLDINGS LLC, DAVID CROYLE, LINDA
CROYLE, JEAN C ABBOTT, LYNDIA T
COURTNEY, SUMTER L LANGSTON,
DIANE LANGSTON, CARL B
SINGLETON, JR , VIRGINIA M OWENS
and STONEY HARRELSON,

Plaintiff,

vs

LEVON DUNN and PAMELA S DUNN,
Defendants

CASE NO 2006-CP-22-915

**AFFIDAVIT OF
REECY L WHIPPLE**

PERSONALLY APPEARED before me Reecy L Whipple who, after being duly sworn
states

1 I am Reecy L Whipple and I reside at 236 Frederick Drive, Georgetown, South
Carolina

2 I occupy the house that is the closest in proximity to the site the Dunn's have
chosen for their weddings

3 I have been present for three of the Dunn's weddings and have never witnessed
any behavior unbecoming or distasteful in any way The music at the first two weddings was not
even audible in my house The weddings have been conducted in the middle of the day and
everyone is gone in approximately three hours

72A

4 Officers have always been present to park cars during the weddings and have moved the traffic from a public road onto the Dunns' private property in a reasonable manner. The officers also prevent wedding participants from traveling past our house or onto our property. They have been very sensitive to residents traveling to their properties.

5 The location of my house gives me the opportunity to view any traffic that goes to the Dunns' front property. I have never observed a vendor or caterer traveling on this road in the days before the weddings. The weeks before the weddings have been so quiet that I did not know a wedding was being planned until the day of the wedding.

6 I have always found the Dunns' to be reasonable people and good neighbors.

Reecy L Whipple
Reecy L Whipple

SWORN and subscribed to before me
this 19th day of April, 2007

Chad A. Duke (L S)
Chester A. Duke Jr.
Notary Public for South Carolina
My Commission Expires _____ My Commission Expires
January 27th, 2008

72B

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
CASE NO 2006-CP-22-915
9/14

AJG HOLDINGS, L L C , STALVEY
HOLDINGS, L L C , DAVID CROYLE,
LINDA CROYLE, JEAN C ABBOTT,
LYNDA T COURTNEY, SUMTER L
LANGSTON, DIANE LANGSTON, CARL B
SINGLETON, JR , VIRGINIA M OWENS
and STONEY HARRELSON,

Plaintiffs,

VS

LEVON DUNN, PAMELA S DUNN, and
HELEN SASSER,

Defendants

**DEFENDANTS' ANSWER TO
PLAINTIFFS' AMENDED COMPLAINT
AND COUNTERCLAIMS**

CLERK OF COURT
2007 MAY 29 11 11 35

Defendants answering Plaintiffs' Complaint allege

1 Defendants deny each and every allegation of Plaintiffs' amended complaint not hereinafter specifically admitted

2 Responding to the first paragraph of the complaint, Defendants admit, upon information and belief, that the Plaintiffs are residents and citizens of the state of South Carolina and that they own property in a subdivision created by Helen Sasser By way of further response, Defendants admit to paragraph 1(a), but deny the factual allegations contained in paragraph 1(b) insofar as Defendants are unsure as to Plaintiffs' assertion that the referenced deed incorporated "various plats of the subject property

3 Defendants are without sufficient information to admit or deny the allegations contained in paragraph two and therefore deny same

4 Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph three and therefore deny same

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5 Defendants admit the allegations contained in paragraph four of the amended complaint

6 Defendants deny the allegations contained in paragraph five of the amended complaint

7 By way of response to paragraph six, to the extent "the parties" refers to the Defendants
Levon and Pamela Dunn, Defendants admits that some restrictions were covenants running with
the land granted to them by Defendant Sasser Defendants lack sufficient information regarding
to which restrictions the paragraph refers specifically, and therefore deny same

8 By way of response to paragraph seven, to the extent "the parties" refers to the
Defendants Levon and Pamela Dunn, Defendants deny that there is any restriction on their lots of
said subdivision that prohibits operation of a commercial enterprise, although, at this time, no
commercial activity is being conducted on said lots

9 Defendants admit the allegations contained in paragraph eight of the amended complaint

10 Defendants admit the allegations contained in paragraph nine of the amended complaint

11 Defendants deny the allegations contained in paragraph ten of the amended complaint

12 Defendants admit the allegations contained in paragraph eleven of the amended
complaint

13 Defendants admit the allegations contained in paragraph twelve of the amended
complaint

14 Defendants admit the allegations contained in paragraph thirteen of the amended
complaint

15 Defendants admit the allegations contained in paragraph fourteen of the amended
complaint

16 Defendant denies the allegations contained in paragraph fifteen of the amended
complaint



17 By way of response to paragraph sixteen, Defendants deny any violations of said
covenants and restrictions and therefore deny the remaining allegations of paragraph sixteen

18 Defendants deny the allegations contained in paragraphs seventeen and eighteen of the
amended complaint

19 Defendants deny the allegations contained in paragraphs nineteen through twenty-two of
the amended complaint

20 Defendants deny the allegations contained in paragraph twenty-three of the amended
complaint

21 Defendants deny the allegations contained in paragraph twenty-four of the amended
complaint

22 Defendants deny the allegations contained in paragraph twenty-five of the amended
complaint

23 Defendant Sasser denies that she breached a fiduciary duty, and therefore denies the
remaining allegations of paragraph twenty-six

24 Defendant Sasser admits the allegations contained in paragraphs twenty-seven and
twenty-eight of the amended complaint

25 Defendant Sasser denies the allegations contained in paragraphs twenty-nine through
thirty-two of the amended complaint

26 Defendant Sasser denies the allegations contained in paragraphs thirty-three through
thirty-seven of the amended complaint

27 Defendants Levon and Pamela Dunn deny the allegations contained in paragraphs thirty-
eight through forty of the amended complaint

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28 Defendants deny the allegations contained in paragraphs forty-one through forty-six of the amended complaint

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

29 Plaintiffs' Complaint fails to state any cause of action against Defendants and should be dismissed under the authority of Rule 12, SCRPC

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

30 Plaintiffs have not alleged nor can it establish that they have suffered irreparable harm by any act of Defendants and, in fact, no irreparable harm has occurred or will occur, and Plaintiffs are not entitled to an injunction in this matter, and the Complaint should accordingly be dismissed

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

31 Plaintiffs have no legal right under any authority to enforce the covenants and restrictions on any property in the subdivision that is the subject of this matter of this action, and their Complaint should accordingly be dismissed

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

32 Defendants allege that there are no restrictions on Lots 7, 8, 9 and 10 in the subdivision against any commercial enterprise as alleged by Plaintiffs, and the Complaint should accordingly be dismissed

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

33 Defendants allege that this action is a frivolous proceeding as defined by § 15-36-10, S C Code, 1976, as amended, and is subject to the provisions of the South Carolina Frivolous

Proceeding Sanctions Act and that they are entitled to all relief provided by said act including attorneys' fee and costs

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

34 Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT
AND AS A FURTHER DEFENSE**

35 Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' unlawful conduct, including, but not limited to, its own fraudulent conduct and its unlawful conspiracy

**FURTHER ANSWERING PLAINTIFFS' COMPLAINT AND BY WAY OF
COUNTERCLAIMS BY LEVON DUNN AND PAMELA DUNN
(FACTUAL ALLEGATIONS)**

36 Plaintiffs and Defendants are residents and citizens of South Carolina and this matter is within the jurisdiction of this Court

37 Plaintiff, AJG Holdings, LLC, is a limited liability company organized under the laws of South Carolina, and owns property in the subdivision as described and alleged in paragraph one of plaintiffs' Amended Complaint, and H T Abbott, III is a member of said LLC

38 Stalvey Holdings, LLC is a limited liability company organized under the laws of South Carolina of which Rupert Stalvey is a member

39 Sometime on or about the first week in February 2006, Defendant Sasser received a letter from AJG Holdings which was written by attorney Jack Scoville and which demanded certain actions on her part within five days in regards to the Dunn property lest she be subjected to litigation by AJG Holdings and other owners of property acquired from Sasser Defendant Sasser was shocked and afraid and unsure as to whether she could provide an adequate response within the proposed time frame She immediately contacted the Dunns to inform them of the content of the letter

77

40 There are no restrictions on the Dunn's property in the subdivision that prohibit its use
for commercial purposes

41 Upon information and belief, the Plaintiffs, at the insistence and encouragement of H T
Abbott, III have met on numerous occasions and have taken various actions for the purpose of
planning to wrongfully and unlawfully cause injury to the Dunn Defendants

42 Upon information and belief, the Plaintiffs have gone so far as to draft a document titled
"Declaration of Amended Conditions, Reservations, Covenants and Restrictions" which would
have encumbered and restricted the Defendants' use of their own property Plaintiffs have
attempted to threaten and intimidate the Dunn Defendants into signing the document by various
methods, including but not limited to, informing the Defendants that "all of the neighbors had
signed the document" and further threatening that if the Defendants did not sign the document
they would be sued Such conduct by Plaintiffs amounts to unjustified and unlawful harassment
of the Dunns

43 Upon information and belief, the Plaintiffs have further wrongly conspired against the
Defendants by collectively, at the insistence of H T Abbott, III, attempting to force and coerce
neighbors of the Dunn Defendants to sign various documents in support of a lawsuit against the
Defendants for having a lawful private wedding on their property

44 Upon information and belief, the Plaintiffs have wrongly and falsely informed the Dunn's
neighbors that the Dunns would be bringing in heavy traffic, bright lights and loud music in an
effort to injure the Dunns

45 On March 1, 2006, H T Abbott, III came to the home of Defendants Levon and Pamela
Dunn (the "Dunns") with a petition opposing the Dunns prospective use of their property which
contained the signatures of the Dunns' neighbors regarding the alleged "commercial" use of the
Dunns' property

78

46 On or about March 21, 2006, the Dunns were informed that a stop work order had been placed on the construction of their residence in the subdivision

47 Upon investigation, the Dunns discovered that H T Abbott, III, on behalf of himself, his company, and other property owners visited the Chief Building Inspector of Georgetown County, while wrongly using his authority as a judicial officer of the state to injure the Dunns, announced that he was a judge, and that he wanted work stopped on the Dunn's house in the subdivision stating falsely that the planned use of the completed building was unlawful, and such conduct was an effort to interfere with the Dunn's contractual rights with the County

48 Such action by H T Abbott, III, on behalf of himself and others, was taken as a part of the wrongful conspiracy by Plaintiffs, was a wrongful and tortious interference with the Dunn's contractual relations and has damaged them

49 On or about April 19, 2006, the Dunns were informed by their insurance agency that one Rupert Stalvey, a member of and an agent of Stalvey Holdings, LLC, one of the Plaintiffs herein, had attempted to effect the cancellation of their insurance policy on the subdivision property by contacting the home office of Auto Owners Insurance Company, the Dunn's insurance company, and informing it that the policy on the Dunn's property in the subdivision should be cancelled because the Dunn property was being used for unlawful purposes, i e , commercial use

50 Stalvey's actions on his behalf, on behalf of his company, and on behalf of other Plaintiffs was wrongful and unlawful, and furthered the conspiracy alleged herein, and was an attempt to wrongfully interfere with the Dunns contractual relations, which wrongful actions have harmed and damaged the Dunns

51 On May 18, 2006, the Dunns hosted a wedding for a close friend on their property, for which they received no compensation During the preparation for the wedding ceremony, the



Dunns and one of their guests noticed Plaintiff Sumter Langston driving by their property in a small boat. Upon approaching the Dunn property, Mr. Langston raced his boat engine and sped away in the direction of his home which was located just five houses down from the Dunns. Mr. Langston returned minutes later with a camera and began taking pictures of the Dunn property. Mr. Langston's surveillance and harassment not only embarrassed the Dunns in the presence of their guests, but it caused them to feel threatened and afraid.

52 The longstanding pattern of harassment, tortious conduct, and wrongful conspiracy as described herein is outrageous conduct by Plaintiffs that should not be tolerated in a civilized society.

53 Sometime on or about August 2, 2006, H. T. Abbott, III approached Defendant Sasser and attempted to purchase the developer rights from Defendant Sasser. When Sasser declined to sell Abbott the developer rights, he informed Defendant Sasser's son, Charles Sasser, that he intended to bring a lawsuit to injure and damage Defendants but that he was just "waiting on the right Judge."

54 Sometime on or about September 22, 2006, the Dunn Defendants were contacted by the U.S. Army Corps of Engineers and were informed that they had received a call from Mr. Coleman Owens, a subdivision property owner, that the Dunns were filling in wetlands. Upon information and belief, H. T. Abbott, III contacted Mr. Owens and asked that he and others contact the U.S. Army Corps of Engineers and make such a report and that they continue to make such reports in an effort to stop the Dunns' lawful and quiet use, and enjoyment of their land and to further harass them.

55 Upon information and belief, the Plaintiffs have continuously sent private investigators to conduct surveillance on the Dunn property, to take pictures of the property by water and by land,

and to interrupt the Dunn's use and enjoyment of their land to invade their privacy and to wrongly harass them in furtherance of their unlawful conspiracy

56 Sometime near the end of February, 2007, Defendant Levon Dunn left his home in the early morning for a walk and noticed Plaintiff Linda Croyle parked in the driveway next to H T Abbott's home Upon further inspection, Mr Dunn noticed that Plaintiff Croyle was taking pictures of his grounds and his home

57 All of the efforts by the Plaintiffs to harass, intimidate, threaten, malign, and interfere with their contracts have caused damage to the Defendants, including financial, physical and emotional damage in amount to be proven at trial, and Plaintiffs have joined together and made an agreement to injure and damage the Dunns without any legal basis for such actions, and such behavior is an unlawful conspiracy

58 In bringing this frivolous action, knowing that the Dunn Defendants have never misused their property in violation of any deed restrictions, the Plaintiffs have attempted to intimidate, threaten and cause injury to the Defendants and that injury is continuous and ongoing

**FOR A FIRST COUNTERCLAIM AS TO ALL PLAINTIFFS
(TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS)**

59 Defendants incorporate the allegations set forth in paragraphs 1-57 as if set forth herein verbatim

60 The Plaintiffs' tortious and conspiratorial actions as described hereinabove have been wholesale unjustified attempts to deprive the Defendants Levon and Pamela Dunn of the lawful enjoyment and use of their land, and have so deprived the Defendants of the right to use their property as a commercial enterprise as they are entitled to do by law

61 As a direct and proximate result of the actions of the Plaintiffs, in the interference with the business relations of the Defendants, as described hereinabove, Defendants have suffered damage for which the Plaintiffs are liable

81

**FOR A SECOND COUNTERCLAIM AS TO AJG HOLDINGS, LLC
(INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP)**

62 Defendants incorporate the allegations set forth in paragraphs 1-60 as if set forth herein
verbatim

63 Defendants Levon and Pamela Dunn had a contract with First Southeast Insurance
Company to provide property and casualty insurance for the property that is at issue in this
action

64 Plaintiff Rupert Stalvey was aware of the existence of this contract as he was the
insurance agent for the Defendants Levon and Pamela Dunn

65 Upon information and belief, Plaintiff Rupert Stalvey, after meeting and conspiring with
H T Abbott, III, and other Plaintiffs intentionally and without justification, contacted Auto
Owners Insurance Company and provided false information regarding the use of the property in
an effort to intentionally procure the breach of the insurance contract

66 Plaintiffs wrongly caused a stop work order to be issued by Georgetown County against
the Dunns

67 Defendants Levon and Pamela Dunn were then contacted by First Southeast Insurance
Company and were informed that an inspection had been made of the property and that the
company had been advised that the property was being used for commercial purposes The letter
further informed the Dunn Defendants that their insurance would be cancelled

68 As a direct and proximate result of the actions of the Plaintiffs, in attempting to procure
the breach of the contract for insurance, Defendants have suffered damage for which the
Plaintiffs are liable



**FOR A THIRD COUNTERCLAIM AS TO ALL PLAINTIFFS
(CIVIL CONSPIRACY)**

69 Defendants incorporate the allegations set forth in paragraphs 1-67 as if set forth herein verbatim

70 Plaintiffs, at the insistence of H T Abbott, III, as described hereinabove, have conspired for the purpose of injuring the Dunns and Defendant Sasser and such conspiracy has resulted in special damages, insofar as Plaintiffs have lost the quiet use and enjoyment of their property, have suffered damage to their reputations in the community, as well as other injury in an amount to be proven at trial

**THIRD CAUSE OF ACTION AS TO ALL PLAINTIFFS
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)**

71 Defendants incorporate the allegations set forth in paragraphs 1-69 as if set forth herein verbatim

72 The Plaintiffs have intentionally or recklessly inflicted severe emotional distress or were certain that such distress would result from their conduct

73 The Plaintiffs action was so 'extreme and outrageous' as to exceed all possible bounds of decency and is utterly intolerable in a civilized society

74 The Plaintiffs' actions have caused the Defendants emotional distress and that distress was so severe that no reasonable person should be expected to endure it

WHEREFORE, having fully answered Plaintiffs' Amended Complaint and counterclaimed herein, Defendants pray that the Complaint be dismissed with prejudice, and that judgment be entered in their favor on their counterclaims, for actual damages, including relief

—

83

provided by the South Carolina Frivolous Proceeding Act, punitive damages, and any and all relief to which they are entitled, including attorneys' fees and costs



Thomas S Tisdale, Jr
NEXSEN PRUET ADAMS KLEEMEIER, LLC
205 King Street, Suite 400 (29401)
P O Box 486
Charleston, SC 29402
843 577 9440

Attorneys for Defendants
LEVON DUNN and PAMELA S DUNN

May 23, 2007

Charleston, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) CASE NO 2006-CP-22- 914
)

AJG HOLDINGS I LC, STALVEY)
HOLDINGS LLC, DAVID CROYLE,)
LINDA CROYLE, JEAN C ABBOTT,)
LYNDA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
CARL B SINGLETON, JR , VIRGINIA)
M OWENS and STONEY HARRELSON,)

PLAINTIFFS,)

vs)

LEVON DUNN, PAMELA S DUNN,)
And HELEN SASSER)

DEFENDANTS)

PLAINTIFFS' REPLY TO

DEFENDANTS' COUNTERCLAIMS

TO Thomas Fisdale, Attorney for the Defendants

NOW COME the Plaintiffs, in Reply to the Counterclaims of Defendants; allege
as follows

FOR A FIRST DEFENSE

- 1 Plaintiffs admit the allegations of paragraphs 36, 38, 45, 63, 64
- 2 Plaintiffs deny the allegations of paragraphs 40, 41 43 44, 47, 48 50, 52 53, 55,
57 58, 60, 61, 65 66 68 70, 72, 73 and 74
- 3 As to the allegations of paragraph 37 Plaintiffs admit the allegations of said
paragraph except those that allege H T Abbott III is a member of said LLC
which allegation is denied
- 4 As to the allegations of paragraph 39 the Plaintiffs admit that Mr Scoville wrote

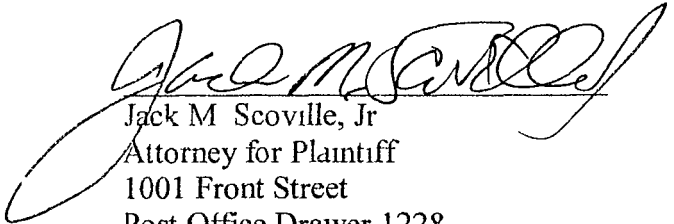
a letter to Defendant Sasser in February 2006, the contents of which speak for themselves. The Plaintiffs are without information that will enable them to admit or deny the remaining allegations of said paragraph and therefore deny same.

- 5 As to the allegations of paragraph 42, the Plaintiffs admit that a document entitled "Declaration of Amended Conditions, Reservations, Covenants and Restrictions" has been prepared but deny the remaining allegations of said paragraph.
- 6 As to the allegations of paragraph 46, these Plaintiffs are without sufficient information to admit or deny the allegations of said paragraph and therefore deny same.
- 7 As to the allegations of paragraph 49, these Plaintiffs are without sufficient information to admit or deny the allegations to said paragraph and, therefore, deny same.
- 8 As to the allegations of paragraph 51, the Plaintiffs admit Mr. Langston took pictures of a wedding from his boat but deny the remaining allegations of said paragraph.
- 9 As to the allegations of paragraph 54, the Plaintiffs are without information regarding any contact the U.S. Army Corps of Engineers may have had with the Dunns. The Plaintiffs deny that Mr. Abbott contacted Mr. Owens to encourage him to contact the Corps of Engineers. The Plaintiffs deny the remaining allegations of said paragraph.
- 10 As to the allegations of paragraph 56, Plaintiffs have no idea what Mr. Dunn may have done or seen on the day in question.

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11 As to the allegations of paragraph 67, the Plaintiffs are without information to admit or deny the allegations of said paragraph and, therefore, deny same
WHEREFORE, having fully answered the Counterclaims of the Defendants, the Plaintiffs pray as follows

- A That the relief sought in their Amended Complaint be granted
- B For reimbursement of the costs incurred in this action
- C For reasonable attorney's fees
- D For such other and further relief as the court deems just and proper


Jack M. Scoville, Jr.
Attorney for Plaintiff
1001 Front Street
Post Office Drawer 1228
Georgetown, South Carolina 29442
(843) 546-1130 (telephone)
(843) 546-0726 (facsimile)

August 1, 2007

81

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 15th JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CASE NO 2006-CP-22-091~~8~~4

AJG HOLDINGS, L L C , STALVEY)
HOLDINGS, L L C , DAVID)
CROYLE, LINDA CROYLE, JEAN)
C ABBOTT, LINDA T COURTNEY,)
SUMTER L LANGSTON, DIANE)
LANGSTON, CARL B SINGLETON,)
JR , VIRGINIA M OWENS, and)
STONE HARRELSON,)

Plaintiffs,)

vs)

LEVON DUNN, PAMELA S DUNN,)
and HELEN SASSER,)

Defendants)

**JOINT MOTION FOR
RECONSIDERATION,
TO AMEND COURT'S
FINDINGS, AND TO
ALTER OR AMEND
COURT'S JUDGMENT
BY DEFENDANTS
LEVON DUNN and
PAMELA S DUNN**

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CLERK OF COURT
JULY 11 2007

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COMES NOW the Defendants, Levon Dunn and Pamela S Dunn (hereinafter referred to as the "Dunns" unless the context requires individual designation), pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, and respectfully requests this Circuit Court to vacate the temporary injunction (hereinafter referred to as the "Injunction") it issued on May 16, 2007¹. The Dunns assert that the Injunction is neither legally nor factually supported by the record.

¹ Counsel for the Dunns was first made aware of the Circuit Court's temporary injunction on September 20, 2007. In addition, the Dunns' counsel

This motion is made upon the following grounds

1 There are no covenants and/or restrictions currently existing upon the Dunns' land which prevents them from using their property in the manner in which it is presently being used

2 Even though this Circuit Court stated that it was issuing the Injunction because it "will serve to maintain the status quo in the best interests of all parties" (*Injunction Order*, p 1), the status quo has not been maintained in that the Dunns have been prohibited from using their property in a manner which is legally permitted. Moreover, the Injunction does not benefit the "best interest of all parties" (*Injunction Order*, p 1) hereto in that the only parties benefited are the Plaintiffs

3 The Plaintiffs have failed to meet the minimum legal standards required to be entitled to an injunction. Under South Carolina law "[f]or a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted (2) it will likely succeed on the merits of the litigation, and (3) there is an inadequate

was first given a written copy of the temporary injunction on September 20, 2007. A copy of the Injunction is attached hereto as **Exhibit "A"** and incorporated herein by reference

2 As noted, neither the Dunns nor their counsel were ever provided a copy of the Injunction once it was issued until September 20, 2007. Consequently, both the Dunns and their counsel had no actual notice of the Injunction's terms and conditions

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remedy at law” Scratch Golf Company v Dunes West Residential Golf Properties, Inc., 361 S C 117, 121-122, 603 S E 2d 905, 907-908 (2004) (citing County of Richland v Simpkins, 348 S C 664, 669, 560 S E 2d 902, 904 (Ct App 2002) (Emphasis added) **3**

- NP
3
- a This Circuit Court issued the Injunction on the sole basis that the Plaintiffs had “no remedy for the disruption that would be caused by the commercial activities on the [Dunns’] property” (*Injunction Order*, p 1)
 - b This Circuit Court failed to address and/or conclude the Plaintiffs’ need to demonstrate there was a likelihood they would prevail on the merits (i.e., “a likelihood of success”)— a necessary element for obtaining the Injunction This is especially true since the evidence showed the Plaintiffs did not have a legal basis to contest the Dunns’ use of their property due to the restrictions in the Plaintiffs’ various deeds and the Assignment and Indemnification Agreement (hereinafter referred to as the “Sasser Assignment”) between the Dunns and the Defendant, Helen Sasser (hereinafter referred to as “Ms Sasser”)

3 The law requires the party seeking the preliminary injunction to demonstrate all three of the stated elements – not just one or two See Scratch Golf Company v Dunes West Residential Golf Properties, Inc., 361 S C 117, 121 122, 603 S E 2d 905, 907 908 (Injunction not warranted even though moving party showed irreparable harm and likelihood of success, but could not demonstrate an inadequate legal remedy)

- c This Circuit Court failed to address and/or conclude the Plaintiffs' need to demonstrate they did not have an adequate remedy at law – a necessary element for obtaining the Injunction. For example, assuming the Plaintiffs are concerned about loud noise and “drunk” wedding and/or reception guests, the Plaintiffs have the legal right to contact local law enforcement personnel and have the offenders ticketed and/or arrested.

4 This Circuit Court apparently based its grant of the Injunction, at least in part, upon the Dunns' alleged “agree[ment] not to conduct commercial activities [on their property] during the pendency of this action” (*Injunction Order*, p 1). The Dunns did not agree to refrain from conducting such commercial activities, merely indicated they had no immediate plans to do so.

5 The Circuit Court violated Rule 65(c) of the South Carolina Rules of Civil Procedure as it failed to require the Plaintiffs to post a bond as a condition of obtaining the Injunction. Rule 65(c), SCRCP, provides that “**no** restraining order or temporary injunction **shall issue except** upon the giving of security by the applicant, in such sum as the court deems proper, for the **payment of such costs and damages as may be incurred or suffered by any party who is found to have been**

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wrongfully enjoined or restrained (Emphasis added) This Circuit Court failed to impose a bond upon the Plaintiffs in any amount, much less an amount which will make the Dunns whole should the injunction be determined to have been wrongfully imposed

Based upon the foregoing arguments, the Defendants, Levon Dunn and Pamela S Dunn, respectfully request this Circuit Court to completely vacate its May 16, 2007, temporary injunction

Respectfully submitted

NEXSEN PRUET, LLC

By

Thomas S Tisdale, Jr , Esquire
Stephen P Groves, Sr , Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone 843 577 9440
Telecopier 843 720 1777
E-Mail ttisdale@nexsenpruet.com
sgroves@nexsenpruet.com

*Attorneys for the Defendants,
Levon Dunn and Pamela s Dunn*

Charleston, South Carolina
September 28, 2007

92

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 15th JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CASE NO 2006-CP-22-09154

AJG HOLDINGS, L L C , STALVEY)
HOLDINGS, L L C , DAVID)
CROYLE, LINDA CROYLE, JEAN)
C ABBOTT, LINDA T COURTNEY,)
SUMTER L LANGSTON, DIANE)
LANGSTON, CARL B SINGLETON,)
JR , VIRGINIA M OWENS, and)
STONEHARRELSON,)

Plaintiffs,)

VS)

LEVON DUNN, PAMELA S DUNN,)
and HELEN SASSER,)

Defendants)

**CERTIFICATE
OF SERVICE FOR**

**JOINT MOTION FOR
RECONSIDERATION
TO AMEND COURT'S
FINDINGS, AND TO
ALTER OR AMEND
COURT'S JUDGMENT
BY DEFENDANTS
LEVON DUNN and
PAMELA S DUNN**

FILED
GEORGETOWN COUNTY SC
2007 OCT 15 AM 10 35
CLERK OF COURT

NP/6
I, Stephen P Groves, Sr , Esquire, hereby certify that on September 28, 2007, I served a copy of the Motion for Reconsideration, To Amend Court's Findings, and To Alter Or Amend Judgment submitted by the Defendants, Levon Dunn and Pamela S Dunn, on both the Trial Judge and counsel for the Plaintiffs via United States Mail, postage pre-paid, and addressed as follows

The Honorable J Michael Baxley
Circuit Court Judge
531 East Carolina Avenue
Hartsville, South Carolina 29550

Jack M Scoville, Jr , Esquire
Post Office Drawer 1228
Georgetown, South Carolina 29442

Attorney for the Plaintiffs

Signed



Stephen P Groves, Sr

Charleston, South Carolina

September 28, 2007

NPCHAR1 380989 1 AR (SPG) 039489 00001



Exh. A

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

AJG Holdings, et al

Plaintiffs,

v

Levon and Pamela Dunn

Defendants

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

C/A No 06-CP-22-528 914 mmw

ISSUANCE OF TEMPORARY INJUNCTION

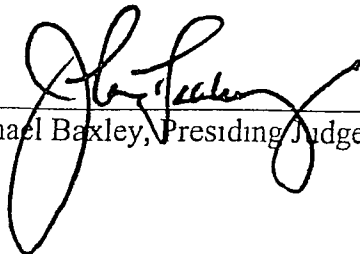
IT IS ORDERED AND ADJUDGED

Plaintiffs moved this Court to issue a Temporary Restraining Order enforcing the restrictive covenants imposed by Helen Sasser at the time she conveyed each of the ten lots that collectively make up the Helen Sasser Subdivision. Plaintiffs, owners of various lots within the subdivision, seek to enforce the prohibition against commercial activities. Plaintiffs claim that Defendants are engaging in commercial use of the property by operating a wedding chapel and carrying on other commercial activities, disrupting Plaintiffs' peaceful use of their own properties. A hearing was held before me on April 18, 2007, in Georgetown. Although Plaintiffs filed this motion in the form of a Temporary Restraining Order, this Court would intend its ruling to effectively issue a Temporary Injunction that shall remain effective until the case is resolved on its merits. In doing so, the Court notes the length of time that this motion has been pending and that a motion for a Temporary Restraining Order typically becomes one for a Temporary Injunction after the appearance of both parties.

Defendants argue that by a document entitled "Assignment and Indemnification Agreement" dated September 5, 2006, Sasser assigned her rights as Developer of the subdivision to the Defendants. Further, Defendants maintain that by a document titled "Consent to Covenants and Restrictions," dated September 6, 2006, they then "consented" to the use of their own property, being Lots 7, 8, 9 and 10, for any and all commercial uses. The Plaintiffs argue that Sasser did not hold any such right or reservation, thus the assignment was not valid and the Dunns' property remains subject to the prohibition against commercial uses. Both sides claim interference with their constitutionally protected real property rights, and further claim that the decision in the underlying case will vindicate their position. This Court is not persuaded by Defendants' arguments at this juncture. Moreover, there is no remedy for the disruption that would be caused by commercial activities on the Defendant's property. Further, the Defendants have agreed not to conduct commercial activities during the pendency of this action. Accordingly, this Court finds that a temporary injunction will avert irreparable harm to the Plaintiffs, and will serve to maintain the status quo in the best interest of all parties until the underlying case is resolved by the Court. Therefore, a temporary injunction is granted in Plaintiffs' favor, and Defendants are restrained from any commercial use of their property until such time as a decision is rendered on the merits of this case.

45

IT IS SO ORDERED



J Michael Baxley, Presiding Judge

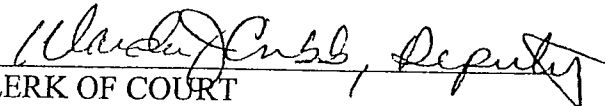
This judgment was entered on the 16 day of May 2007, and a copy mailed first class this 16 day of May, 2007 to attorneys of record or to parties as follows

Attorney for Plaintiffs

Jack M Scoville, Esquire
Post Office Drawer 1228
Georgetown, SC 29442

Attorney for Defendants

Thomas S Tisdale, Esquire
P O Box 486
Charleston, SC 29402



CLERK OF COURT

AFFIDAVIT

8 It was never my intention to relinquish my authority provided by the restrictions in each deed in which they were contained to anyone, including individual lot owners, until I entered into the agreement to do so with the Dunns in 2006

Helen Paisley Sasser
Helen Paisley Sasser

Dated 5-5-08 .

SWORN and subscribed to before me
this 5th day of May, 2008

(L S)

Barbara H Pate
Notary Public for South Carolina
My Commission Expires 1-28-09

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
CASE NO 2006-CP-22-914

AJG HOLDINGS LLC, STALVEY
HOLDINGS LLC, DAVID CROYLE,
LINDA CROYLE, JEAN C ABBOTT,
LYNDA T COURTNEY, SUMTER L
LANGSTON, DIANE LANGSTON,
CARL B SINGLETON, JR , VIRGINIA
M OWENS and STONEY HARRELSON,

PLAINTIFFS,

vs

LEVON DUNN, PAMELA S DUNN, and
HELEN SASSER

DEFENDANTS

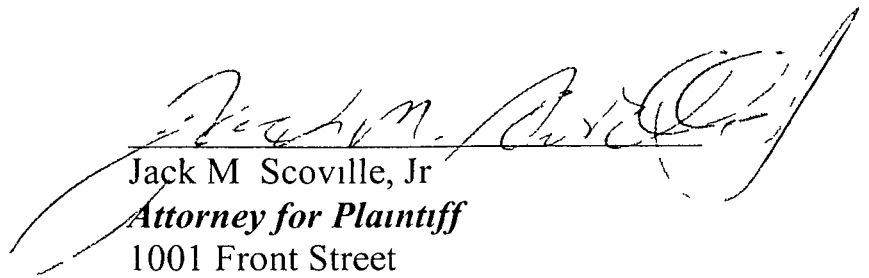
MOTION
FOR SUMMARY
JUDGMENT

TO DEFENDANTS AND THEIR ATTORNEY, THOMAS S TISDALE,
Jr

Plaintiffs, by their undersigned attorney, will move the court pursuant to SCRCP 56(a), ten days after service hereof, or as soon thereafter as counsel may be heard, in Georgetown, S C , for an order directing entry of summary judgment in favor of plaintiffs and against defendants on all causes of action and for the relief sought in plaintiff's complaint and also on all counterclaims of defendants

This motion is made on the ground that no genuine triable issue of material fact exists, and plaintiffs are entitled to judgment as a matter of law

This motion is based on the depositions of the parties, the exhibits attached thereto, any affidavits filed in this case, and on the files and pleadings in this proceeding



Jack M Scoville, Jr
Attorney for Plaintiff

1001 Front Street
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Georgetown, South Carolina 29442
Telephone (843) 546-1130
Facsimile (843) 546-0726
scorac@aol.com

May 6, 2008



STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 15th JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CASE NO 2006-CP-22-0914

AJG HOLDINGS, L L C , STALVEY)
HOLDINGS, L L C , DAVID)
CROYLE, LINDA CROYLE, JEAN)
C ABBOTT, LINDA T COURTNEY,)
SUMTER L LANGSTON, DIANE)
LANGSTON, CARL B SINGLETON,)
JR , VIRGINIA M OWENS, and)
STONEY HARRELSON,)

Plaintiffs,)

VS)

LEVON DUNN, PAMELA S DUNN,)
and HELEN SASSER,)

Defendants)

**DEFENDANTS'
JOINT MOTION FOR
SUMMARY JUDGMENT**

TO JACK M SCOVILLE, JR , ESQUIRE
of Jack M Scoville, Jr , Attorney At Law, P A ,
*Attorney for the Plaintiffs, AJG Holdings, LLC, Stalvey Holdings, LLC,
David Croyle, Linda Croyle, Jean C Abbott, Linda T Courtney,
Sumter L Langston, Diane Langston, Carl B Singleton, Jr , Virginia
M Owens, and Stoney Harrelson*

COMES NOW the Defendants, Levon Dunn and Pamela S Dunn
(collectively the "Dunns"), and Helen Sasser ("Mrs Sasser"), pursuant to
Rule 56(b) of the South Carolina Rules of Civil Procedure, and respectfully
requests this Circuit Court to grant them summary judgment on all of the

claims asserted against them by the Plaintiffs, AJG Holdings, LLC, Stalvey Holdings, LLC, David Croyle, Linda Croyle, Jean C Abbott, Linda T Courtney, Sumter L Langston, Diane Langston, Carl B Singleton, Jr, Virginia M Owens, and Stoney Harrelson (collectively "AJG Holdings") In addition, the Dunns also seek a grant of summary judgment on all of their several counterclaims against AJG Holdings

100/2
This motion is made upon the grounds that the Dunns and Mrs Sasser are entitled to judgment as a matter of law against AJG Holdings both on the main claims and on the Dunns counterclaims Under South Carolina law, either the Covenants and Restrictions attaching to the property at issue in this case were extinguished when Mrs Sasser sold the last remaining parcel to a third-party or, if not extinguished, Mrs Sasser retained her rights under the Covenants and Restrictions and she was permitted to transfer those rights to the Dunns via the Sasser Assignment In any case, regardless of the legal basis, the Dunns' properties along the Great Pee Dee River are not encumbered by the Covenants and Restrictions at issue in this case

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This Motion for Summary Judgment will be supported by the flowing pleadings, affidavits, depositions, etc

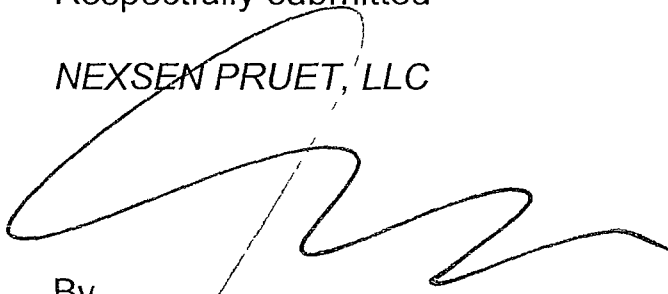
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- (a) **Affidavit of Robert M Wilcox** sworn to on May 16, 2008 (a copy is attached hereto as **Exhibit "A"** and incorporated herein by reference – the original has been contemporaneously filed with this Circuit Court),
 - (b) **Affidavit of Helen Paisley Sasser** sworn to on May 5, 2008 (a copy is attached hereto as **Exhibit "B"** and incorporated herein by reference – the original has been contemporaneously filed with this Circuit Court),
 - (c) **Affidavit of Levon Dunn** sworn to on February 1, 2007 (a copy is attached hereto as **Exhibit "C"** and incorporated herein by reference – the original was previously filed with this Circuit Court on April 16, 2007),
 - (d) Deposition excerpts as may be timely submitted to this Circuit Court from depositions previously taken or from depositions which will be taken and transcribed prior to a hearing of this motion, and
 - (e) Pleadings and submissions previously tendered to this Circuit Court and heretofore contained in the Court File of this case

PLEASE be present to defend if you are so minded

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Respectfully submitted

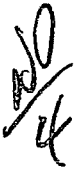
NEXSEN PRUET, LLC



By

Thomas S Tisdale, Jr , Esquire
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205 King Street, Suite 400
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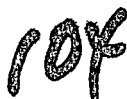
Attorneys for the Defendants



Charleston, South Carolina

May 19, 2008

NPCHAR1 414230 1 MO (SPG) 039489 00001



STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GEORGETOWN	)	IN THE
	)	COURT OF COMMON PLEAS
AJG HOLDINGS, L L C , STALVEY	)	
HOLDINGS, L L C , DAVID CROYLE,	)	Case No 2006-CP-22-915
LINDA CROYLE, JEAN C ABBOTT,	)	
LYNDA T COURTNEY, SUMTER L	)	
LANGSTON, DIANE LANGSTON,	)	
CARL B SINGLETON, JR , VIRGINIA	)	AFFIDAVIT OF
M OWENS and STONEY HARRELSON,	)	ROBERT M WILCOX
	)	
Plaintiffs,	)	
vs	)	
	)	
LEVON DUNN and PAMELA S DUNN,	)	
	)	
Defendants	)	

PERSONALLY APPEARED before me Robert M Wilcox who, being duly sworn, deposes and says that

1 I am a tenured law professor at the University of South Carolina School of Law and have taught property law there since 1986 I received a J D degree from the University of South Carolina in 1981 and am a member of the South Carolina Bar and am an inactive member of the District of Columbia Bar and the State Bar of Georgia

2 I have reviewed deeds from Helen Paisley Sasser to M T Coleman and others, dated September 5, 1991 (Lot 5-W), from Helen Sasser to Rodney and Carolyn Causey, dated March 17, 1983 (Lot 7), from Rodney Causey to Levon and Pamela S Dunn, dated January 20, 2003 (Lots 7 & 8), from Helen Sasser to Levon Dunn, dated March 17, 1983 (Lot 9), and from Riverside, Inc to Levon Dunn, dated September 9, 1994 (Lots 9 & 10) I also have reviewed, for the sole purpose of identifying any indication of an intended scheme of restrictions, various plats dated January 9, 1980, April 12, 1981, January 23, 1983, May 5, 1983, June 23, 1983, September 20, 1983, January 23, 1984, and May 10, 1988 I have reviewed an "Assignment and Indemnification Agreement" between Helen Sasser and Levon and Pamela S Dunn, dated September 6, 2006 I have also reviewed the affidavits of Levon Dunn, dated February 1, 2007, and Helen Sasser, dated May 5, 2008

3 Based upon my review of these documents, I have reached the following factual conclusions and hold the following expert opinions to a reasonable degree of professional certainty

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A Helen Sasser at one time owned a tract of land in Georgetown County known as Woodland Plantation I am not aware of any restrictive covenants limiting the use of this land prior to Helen Sasser's ownership Between 1982 and 1991, Helen Sasser divided the land known as Woodland Plantation and sold it in parts through a series of deeds to separate purchasers Included in the land sold by Helen Sasser were parcels designated as Lots 7, 8, 9, and 10, now owned by Levon Dunn Helen Sasser also sold an adjacent 9 acres of land, now owned by Levon Dunn

B I have reviewed the deeds from Helen Sasser in which she sold Lots 7 and 9 The deeds to each of those lots contain an express restriction that the land cannot be used for commercial purposes "without express written consent from the developer " The deeds defined the developer to mean Helen Sasser, her heirs and assigns It is my understanding that identical language was included by Helen Sasser in the deeds conveying other platted lots in Woodland Plantation The burden of the restriction was expressly intended to run with the conveyed land However, there is no indication in the deeds or plats that the restrictions were intended by Helen Sasser to benefit any other specific parcel of land or anyone other than Ms Sasser, her heirs and assigns

C The benefit of a restriction imposed upon a lot by a developer cannot be enforced at law by later purchasers of other lots from the developer unless the developer intended for the benefit to run with the lots subsequently sold *Chairping v J P Scurry & Co Inc* , 372 S E 2d 120 (S C App 1988) By the terms of the restrictions at issue in this case, Helen Sasser personally retained the sole rights to waive a restriction Helen Sasser's affidavit, dated May 5, 2008, indicates that it was her intention to be the sole beneficiary of the restrictions She states that it was her intention "to control the uses made of the property" and that it "was never my intention to allow or permit any purchaser of any restricted lot to enforce the restrictive covenants as I had reserved that right to myself " In my opinion, the retention of sole authority to waive enforcement is consistent with an intent to create a personal covenant, rather than to create an enforceable benefit that runs with land later sold by the developer to subsequent purchasers

D In addition to the enforcement of covenants at law, South Carolina recognizes that, when land is sold under a common scheme of development in place at the time the land is sold, purchasers of restricted lots within the scheme may have equitable rights to enforce a similar restriction against other lots in the scheme See, e g , *McDonald v Wellborn*, 66 S E 2d 327 (S C 1951) However, in the absence of such a scheme or an express indication of intention that other persons should be able to enforce the benefit of a restrictive covenant, the covenant is merely a personal covenant between the restricted owner and the grantor, and is enforceable only by the grantor *Reynes v J B Stephens*, 347 S E 2d 878 (S C 1986) I am not aware of any master deed or master covenant having been filed that would be evidence of a scheme to restrict the use of the land at issue in this case Ms Sasser's affidavit states that she had "no formal subdivision plan" at the time she sold the parts of Woodland Plantation

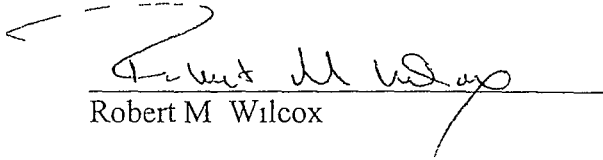
E The uniformity of covenants placed by a common grantor in the deeds to adjacent parcels is not determinative of a scheme if there is other evidence that the grantor had no intent, at the time of the grant, to provide mutuality of enforcement *See Heffner v Litchfield Golf Co Inc*, 189 S E 2d 3 (S C 1972) (where covenants were expressly made to benefit only grantor and grantee and were made subject to change by agreement of the parties, "no enforceable general scheme of development is inferable")

F It is my opinion in this case that, by retaining the exclusive right to waive enforcement of the restriction, Helen Sasser indicated in the deed her intention that only she, or those to whom she assigned the power to grant a waiver, could determine whether to enforce the restriction Her affidavit further supports the conclusion that no scheme with mutually enforceable rights was intended It is my opinion, therefore, that other purchasers of adjacent lots from Helen Sasser acquired no right by law or by equity, at the time of their purchase, to enforce the restrictions imposed upon lots 7 to 10 now owned by defendants

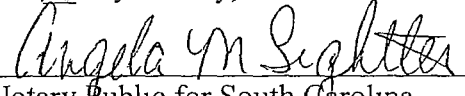
G It is undecided under South Carolina law whether Ms Sasser retained any continuing right, after she sold her last interest in the tract, to waive or enforce the restrictions on the lots she had sold If it is the law of South Carolina that Helen Sasser's right to waive or enforce the restrictions ended upon the sale of her last lot, then it is my opinion that the restrictions on the Dunns' land would have become unenforceable by any person at that time If, under the law of South Carolina, Helen Sasser did retain the right to waive or enforce the restrictions after the sale of her last lot, then her assignment on September 5, 2006, of the right to waive enforcement would have given the Dunns the right to waive enforcement of the restrictions on their own lots In my opinion, in neither circumstance could a new right have vested in the other landowners, allowing them to enforce the restriction against the Dunns

Further the affiant sayeth not

May 16, 2008


Robert M Wilcox

Sworn to and subscribed before me
this 16 day of May, 2008


Notary Public for South Carolina
My Commission Expires June 20 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

Exhibit "B"

PERSONALLY APPEARED Helen Paisley Sasser who after being duly sworn,
says

1 I was the owner of a tract of land at Plantersville in Georgetown County that is known as Woodland Plantation. I acquired the land of approximately 60.53 acres in 1978.

2 In the early 1980's, I decided to divide the Woodland Plantation tract into lots that I planned to offer for sale.

3 The tract I owned was divided into multiple lots and other acreage that were sold individually to various purchasers over a period of years until the last of the property was sold in 1991.

4 There was no formal subdivision plan for the lots sales. I had the land surveyed to show the individual parcels I wished to sell. There was no master deed or master covenants as I planned to make individual lot sales.

5 I, with the assistance of my lawyer, prepared a set of restrictive covenants that were a part of each deed by which I conveyed the lots, and different restrictions were imposed on the acreage I conveyed.

6 I designated myself as "Developer" in the restrictive covenants that accompanied each deal as it was my intention to control the uses made of the property I sold in Woodland Plantation. It was never my intention to allow or permit any purchaser of any restricted lot to enforce the restrictive covenants as I reserved that right to myself.

7 I never relinquished my sole right to control the use of the Woodland Plantation property until September 5, 2006 when I conveyed all such right that I had reserved to myself to control the use of Woodland Plantation property to Levon and Pamela S. Dunn. A copy of that agreement is attached to this affidavit.

8 It was never my intention to relinquish my authority provided by the restrictions in each deed in which they were contained to anyone, including individual lot owners, until I entered into the agreement to do so with the Dunns in 2006

Helen Paisley Sasser
Helen Paisley Sasser

Dated 5-5-08

SWORN and subscribed to before me
this 5th day of May, 2008

(L S)

Barbara H Pate
Notary Public for South Carolina
My Commission Expires 1-28-09

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

AJG HOLDINGS, L L C , STALVEY
HOLDINGS, L L C , DAVID CROYLE,
LINDA CROYLE, JEAN C ABBOTT,
LYNDA T COURTNEY, SUMTER L
LANGSTON, DIANE LANGSTON, CARL B
SINGLETON, JR , VIRGINIA M OWENS
and STONEY HARRELSON,

Plaintiffs,

vs

LEVON DUNN and PAMELA S DUNN,

Defendants

Case No 2006-CP-22-915
9/14

AFFIDAVIT OF LEVON DUNN

2007 APR 16 PM 4:37
CLERK COURT

PERSONALLY APPEARED before me Levon Dunn who, after being duly sworn states

I am the owner of approximately thirteen (13) acres of contiguous land, of which four (4) acres are located within a subdivision that was developed by Helen Sasser and known as Woodland Plantation. These four acres comprise of four lots (Lots 7, 8, 9, and 10) that I acquired beginning in 1983. I acquired the remaining nine (9) acres, abutting Plantersville Road and located to the north and west of the boundary line of the subdivision, in the 1980's

Lots 7 and 8 in the subdivision were purchased by me and my wife, Pamela S. Dunn, from Rodney and Carolyn Causey on January 20, 2003 (Book 1347, p. 167, RMC Office for Georgetown County). Lot 9 in said subdivision was conveyed to me on September 9, 1994 (Book 594, p. 43, RMC Office for Georgetown County). Lot 10 was conveyed to me on September 9, 1994 (Book 594, p. 43, RMC Office for Georgetown County). The four lots comprise approximately four (4) acres and front on the Great Pee Dee River.

Helen Sasser, the developer of Woodland Plantation, placed covenants and restrictions in the deeds of the four lots I purchased from her, copies of which deed restrictions are attached to this Affidavit as Exhibit "A." The said restrictions prohibited, among other things, commercial use of the four lots without the express written consent of Helen Sasser, her heirs or assigns

There are not and never have been any restrictions affecting the use of the nine (9) acre tract of land that adjoins Lots 7-10 prohibiting commercial use

Unaware of the deed restrictions affecting Lots 7-10 my wife and I decided in 2005 to investigate whether it was financially feasible to use a portion of said land for commercial purposes. We planned to use the property for social events such as weddings and wedding receptions, and as a bed and breakfast facility. We renovated a house that was located on Lots 7 and 8 to serve as a guest house and bed and breakfast, after verifying this was a permitted use under Georgetown County's Zoning Ordinance. To effectuate that plan, we advertised the property in various publications and on a website as Dunn Acres Plantation and offered it as a venue for weddings, receptions, and for lodging.

All of the construction activities on the property were approved by Georgetown County, and we abided by all rules and regulations imposed by the County administrative rules. The County made regular inspections of the project and granted us a certificate of occupancy for the structure we planned to use as a bed and breakfast. At no time, however, was a portion of Lots 7-10 used for commercial purposes.

In early 2006, we began receiving complaints from neighbors in the subdivision, in response to our advertisements, about our intended use of the property for commercial purposes. A letter from H. T. Abbott, III, on behalf of himself and other property owners is attached to this affidavit as Exhibit B.

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After receiving complaints from our neighbors, we investigated the issue of restrictions on the property and for the first time realized that there were restrictions on the property prohibiting any commercial activity on Lots 7-10. We also confirmed that there are no commercial restrictions at all on the nine acre tract that adjoins Lots 7-10.

We have not conducted any commercial activity on Lots 7-10 at any time before or since we learned of the restrictions prohibiting such use.

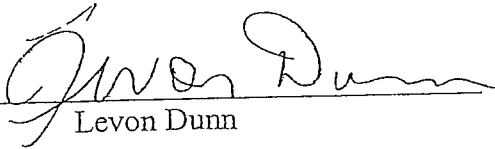
After the construction of the guest house that we planned to use as a bed and breakfast facility, and after learning of the complaints of such use by some of our neighbors, we consulted legal counsel to get advice about the limits on the use of Lots 7-10. As a result of obtaining legal counsel, we decided to contact Helen Sasser, the developer of the subdivision to ask for relief from the restrictions against the commercial use of Lots 7-10. Our discussions with Ms. Sasser led to an agreement by which she granted, by way of an Assignment, to my wife, Pamela S. Dunn, and me all her rights as the Developer of the property. That agreement is in writing and is recorded in Book 185, p. 258 in the RMC Office of Georgetown County, and a copy of such agreement is attached hereto as Exhibit "C."

Although Ms. Sasser had sold all the property, but retained some rights, in the subdivision before entering the aforesaid agreement with us, she specifically reserved certain authority and powers to herself, heirs and assigns in the various deeds to property in the subdivision to control the development of the property. It is those reserved powers that she has assigned to us.

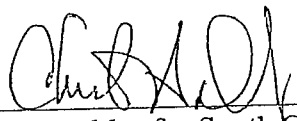
In accord with the rights obtained from Ms. Sasser by the assignment, my wife and I have removed all restrictions on Lots 7-10 that prohibit their use for commercial purposes, and any restrictions that prohibit the further subdivision of said lots (Restrictions two and three of the

Sasser deeds) A document effecting the removal of such restrictions on Lots 7-10 is recorded in Book 185, p 264, RMC Office for Georgetown County, and attached hereto as Exhibit D

In summary, none of the property owned by us is now restricted for commercial use or further subdivision There is, therefore, no legal or equitable ground for the issuance of an injunction to prevent or prohibit such use


Levon Dunn

SWORN and subscribed to before me
this 1st day of February, 2007

 (L S)
Notary Public for South Carolina
My Commission Expires January 27, 2008

WITNESS the execution hereof by his hand and seal this 20th day of January in the year of our
 Lord Two Thousand Three
 Signed, Sealed and Delivered
 in the Presence of

Christine L. Dorris
 1st Witness

Rodney G. Causey {SEAL}
 Rodney G. Causey

Sammy Anderson
 2nd Witness

STATE OF SOUTH CAROLINA
 COUNTY OF GEORGETOWN

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that
 (s)he saw the within-named Grantor sign, seal, and deliver the within Deed, and that (s)he, with the other
 subscribing witness whose signature appears above witnessed the execution thereof

Christine L. Dorris
 Witness (Not Notary)

SWORN to before me this 20th day of January
 2003

Sammy Anderson
 Notary Public for South Carolina
 My Commission Expires 9-14-11

File # 03 12251NDD

Lot Eight (8)

ALL AND SINGULAR, all that certain piece, parcel or lot of land situate lying and being in Georgetown County, South Carolina, and shown and designated as Lot No Eight (8) on a map of six (6) acres of land in Georgetown County owned by Helen Sasser, said map having been prepared by Terry M Watson, R.L.S., dated October 26 1982 and recorded November 19, 1982, in Plat Book 2 at Page 203, records of Georgetown County, reference to which is craved as forming a part of these presents

Said lot is more particularly bounded as follows On the North by Lot No Nine (9), on the East by the Pee Dee River, on the South by Lot No Seven (7) and a 30 foot road, and on the West by lands of Helen Sasser

This conveyance also includes an easement over and across the existing road which runs from South Carolina Highway No 52 to the above conveyed lot, as well as an easement over and across the proposed 30 foot road extending across Lots five (5), six (6) and seven (7) (all of which is shown on the above-referred to plat) for the purposes of ingress and egress to the property conveyed

In addition to the property conveyed herein, there is further conveyed all of the right, title and interest of the grantor in the area between the front lot line and the Pee Dee River

This conveyance is made subject to restrictions and easements of record

This is the identical property conveyed to the Grantors herein by Deed of Betty Holmes dated January 2, 1991 and recorded January 3, 1991 in Deed Book 410 at Page 181 and by Deed of Betty C Holmes dated December 4 1990 and recorded December 5 1990 in Deed Book 405 at Page 281 Horry County records

Tax Map # 3-110-009 and 3-110-010

Grantee(s) Address 185 Frederick Drive
Georgetown, SC 29442

TOGETHER WITH all and singular the rights, members hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said **Levon Dunn and Pamela S Dunn**, for and during their joint lives and upon the death of either of them to the survivor of them, his or her heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, and he does hereby bind himself and his Heirs, Executors and Administrators to warrant and forever defend all and singular the said Premises unto the said **Levon Dunn and Pamela S Dunn** as hereinabove provided against himself and his heirs and assigns and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof

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WITNESS the execution hereof by his hand and seal this 20th day of January in the year of our
Lord Two Thousand Three
Signed Sealed and Delivered
in the Presence of

Christine L. Dorris
1st Witness

Rodney G. Causey {SEAL}
Rodney G. Causey

[Signature]
2nd Witness

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF GEORGETOWN

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that
(s)he saw the within-named Grantor sign, seal, and deliver the within Deed, and that (s)he, with the other
subscribing witness whose signature appears above witnessed the execution thereof

Christine L. Dorris
Witness (Not Notary)

SWORN to before me this 20th day of January
2003

[Signature]
Notary Public for South Carolina
My Commission Expires 9 14-11

File # 03 12251NDD

116

9153

BOOK 594 PAGE 43

FILED
 LITTY WILLIAMS
 CCRP & GS
 94 SEP 29 PM 2 49
 CLU
 BOOK 594 PAGE 43

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
 COUNTY OF GEORGETOWN)

KNOW ALL MEN BY THESE PRESENTS That Riverside, Inc.
 in the State aforesaid for and in consideration of the sum of
 FIVE AND NO/100 (\$5 00) DOLLARS to me paid by Lever Dunn
 (the receipt whereof is hereby acknowledge), has granted,
 bargained sold and released and by these presents does grant
 bargain sell and release unto the said Levon Dunn his heirs and
 assigns forever all right title and interest in and to the
 following described property to wit

ALL AND SINGULAR all that certain piece parcel or lot of land
 situate lying and being in Georgetown County South Carolina
 and shown and designated as Lot No Nine (9) on a map of six (6)
 acres of land in Georgetown County owned by Helen Sasser said
 map having been prepared by Terry M Watson, R L S dated October
 26 1982 and recorded November 19 1982 in Plat Book 2 at Page
 203 Clerk of Court for Georgetown County reference to which is
 craved as forming a part of these presents

Said lot is more particularly bounded as follows on the North
 by Lot No 10 on the East by the Pee Dee River on the South
 by Lot No 8 and a 30 foot road and on the West by lands now or
 formerly of Helen Sasser

This conveyance also includes an easement over and across the
 existing road which runs from South Carolina Highway No 52 to
 the above conveyed lot as well as an easement over and across
 the proposed 30 foot road extended across Lots 5 6 7 and 8 (all
 of which are shown on the above referenced plat) for the purposes
 of ingress and egress to the conveyed property

In addition to the property conveyed herein there is further
 conveyed all of the right title and interest of the grantor in
 the area between the front lot line and the Pee Dee River

This conveyance is subject to the Restrictions set forth in the
 deed from Helen Sasser to Levon Dunn recorded in Deed Book 207 at
 Page 746 Clerk of Court for Georgetown County S C

This being the identical property conveyed to Riverside Inc by

17

BOOK 594 PAGE 44

deed of Shirley Long Johnson dated January 3 1993 recorded February 17 1993 in Deed Book 559 at Page 102 Clerk of Court for Georgetown County S C

ALSO ALL AND SINGULAR all that certain piece, parcel or lot of land, situate lying and being in Georgetown County, South Carolina and shown and designated as Lot No 10 (10) on a map of six (6) acres of land in Georgetown County owned by Helen Sasser said map having been prepared by Terry M Watson R L S dated October 26 1982 and recorded November 19 1982 in Plat Book 2 at Page 203 Clerk of Court for Georgetown County reference to which is craved as forming a part of these presents and for a more accurate and complete description of the premises

Said lot is more particularly bounded as follows on the North by a slew (as shown on said map) and other lands now or formerly of Helen Sasser on the East by the Pee Dee River on the South by Lot No 9 and a proposed 30-foot road and on the West by lands now or formerly of Helen Sasser

This conveyance also includes an easement over and across the existing road which runs from S C Highway No 50 to the above-conveyed lot as well as an easement over and across the proposed thirty (30) foot road shown on the plat and referred to in the above description for the purposes of ingress and egress

This conveyance is subject to the Restrictions set forth in the deed from Carl B Singleton Sr and Eula V Singleton to Levon Dunn recorded in Deed Book 244 at Page 581 Clerk of Court for Georgetown County S C

This being the identical property conveyed to Riverside Inc by deed of Shirley Long Johnson dated January 3 1993 recorded February 17 1994 in Deed Book 559 at Page 101 Clerk of Court for Georgetown County S C

ALSO ALL AND SINGULAR that certain piece parcel or tract of land situate lying and being in Georgetown County, S C containing eight and fifteen one-hundredths (8 15) acres as shown on a plat of same prepared for Levon Dunn by Terry M Watson, R L S dated March 2 1985 recorded in Plat Book 5 at Page 400 Clerk of Court for Georgetown County S C reference to which is craved as forming a part hereof and for a more complete accurate description

This being the identical property conveyed to Riverside Inc by deed of Shirley Johnson Long dated January 3 1993 recorded February 17 1994 in Deed Book 559 at Page 101 Clerk of Court for Georgetown County S C

ALSO ALL AND SINGULAR thta certain piece parcel or lot of

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BOOK 594 PAGE 45

land lying situate and being in Georgetown County S C containing 0.52 acres as shown on a plat by Terry M. Watson R L S dated June 28 1994 and recorded in Plat Book 51153 at Page 9 Clerk of Court for Georgetown County and by reference thereto is incorporated as forming a part and parcel of this description

This property is more particularly bounded as follows on the North by lands of now or formerly of Riverside Inc in part and lands now or formerly of M T Coleman et al in part on the East by lands now or formerly of M T Coleman et al on the South by a thirty (30) foot private road in part and the northern margin of Frederick Drive in part and on the West by lands now or formerly of Riverside, Inc

This conveyance is subject to an easement for purposes of drainage for an existing pond commonly referred to as "Sasser Pond"

This is the identical property conveyed to Riverside Inc by deed of M T Coleman et al dated August 25 1994 recorded September 9 1994 in Deed Book 590 at Page 303 Clerk of Court for Georgetown County S C

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Levon Dunn his heirs and assigns forever

And the said Grantor does hereby bind itself its successors and assigns to warrant and forever defend all and singular the said premises unto the said Levon Dunn his heirs and assigns lawfully claiming or to claim the same or any part thereof

IT WITNESS WHEREOF the Grantor Riverside Inc has caused these presents to be signed and sealed this 9th day of

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BOOK 594 PAGE 46

September 17 the year of our Lord One Thousand Nine Hundred
Ninety-Four and in the Two Hundred Eighteenth year of the
sovereignty and Independence of the United States of America

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

RIVERSIDE INC

By

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Personally appeared before me the undersigned witness
and made oath that s/he saw the within named R_erside Inc by
Levon Dunn as Grantor Sign Seal and as its Act and Deed deliver
the within written Deed and that s/he with the other
subscribing witness witnessed the execution thereof

SWORN to before me this

7th day of September 1994

[Signature]
Notary Public for South Carolina

My Commission Expires 10/19/2002

Grantee's address Star Rt 1, Box 676
Georgetown SC 29440

120

BOOK 594 PAGE 47

1020 H T Abbott, III
PO Box 377
Cruikshank SC
29524

FILED
J. T. WILLIAMS
CLERK & GS
94 SEP 29 PM 2 48

IT 594 PAGE 47 SC
Wanda J. O'Leary
Deputy Clerk

Recorded this 3rd day of
April A.D. 1974
In Book Page
Columbus J. Stevenson
Auditor Georgetown Co. S.C.

THIS WRE 03-110-11
PR 5-110-136

Riverdale Ave
to
Burns Drive

Lot 9 + 10
815 acra
0.52 acra
Barnard's
TD-3

121

H T Abbott, III
P O Box 377
Conway, South Carolina 29528
February 28, 2006



Levon and Pam Dunn
Dunn Acres
Plantersville, SC

Dear Levon and Pam

To my surprise, I learned last week, by your announcement in The Georgetown Times, as well as an internet site, of your plans to operate a bed and breakfast next door to our river house in Plantersville

My letter is to let you know of my objection to any commercial activity on the "Woodland Plantation" property. My objection is two-fold

1 This intended action destroys the reason most of the property owners enjoy the area. It is a respite from commercialism and an opportunity to enjoy the natural beauty of a truly unique environment. With most of the surrounding area under conservation easements or in the federal refuge system, it was believed the heritage and habitat of our property to be safeguarded.

2 According to deed restrictions in the common deeds out of Helen Sasser, "any commercial activity is prohibited."

Please be aware of my objection as well as the objection of the undersigned property owners. *

I would appreciate your notifying me in writing of your willingness to abide by these prohibitions by March 17, 2006.

Sincerely

A handwritten signature in cursive script, appearing to read "Tommy Abbott".

Tommy Abbott

* See attachment



Instrument
201400015070
Page 15 of 15

ASSIGNMENT AND INDEMNIFICATION AGREEMENT

THIS ASSIGNMENT AND INDEMNIFICATION AGREEMENT (the Agreement) dated as of September 4, 2006, is made by and between HELEN SASSER (Assignor) and LEVON DUNN and PAMELA S DUNN (collectively hereinafter the Assignee'),

WHEREAS, Assignor sold to Stoney L Harrelson that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Sasser to Stoney L Harrelson dated June 29, 1988 and recorded in the RMC Office for Georgetown County, South Carolina on June 29, 1988 in Book 292, at Page 240 (Lot 5-E),

WHEREAS Assignor sold M T Coleman Stoney L Harrelson, Creola L Harrelson, David M Croyle Linda C Croyle, Thomas C Meyer and Marie D Meyer that certain property lying and being in Georgetown County South Carolina as more fully described in the deed from Assignor dated September 5, 1991 and recorded in the RMC Office of Georgetown County, South Carolina on September 5, 1991 in Book 441 at Page 14 (Lot 5-W)

WHEREAS Assignor sold Joseph A Holmes that certain property lying and being in Georgetown County South Carolina, as more fully described in the deed from Assignor to Joseph A Holmes dated March 17, 1983 and recorded in the RMC Office of Georgetown County South Carolina on March 18 1983 in Book 207 at Page 758 (Lot 6)

WHEREAS, Assignor sold to Rodney Causey and Carolyn Causey that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Rodney Causey and Carolyn Causey dated March 17 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 750 ("Lot 7"),

WHEREAS, Assignor sold to Rodney Causey and Carolyn Causey that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18 1983 in Book 207 at Page 754 ('Lot 8')

WHEREAS Assignor sold to Assignee that certain property lying and being in Georgetown County, South Carolina, as more fully described in the deed from Assignor to the Assignee dated March 17, 1983, and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983, in Book 207 at Page 746 (Lot 9),

WHEREAS, Assignor sold to Carl B Singleton Sr and Eula V Singleton that certain property lying and being in Georgetown County South Carolina, as more fully described in the deed from Assignor to Carl B Singleton, Sr and Eula V Singleton dated December 30, 1982 and recorded in the RMC Office for Georgetown County South Carolina in Book 205 at Page 1567 (Lot 10')

WHEREAS, the deeds referenced above (collectively hereinafter the Deeds) contain the following restrictions and covenants on the properties more fully described in the Deeds

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[t]his conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers their heirs and assigns

1 That the expression "Developer" as used herein shall be construed to mean Helen Sasser, her heirs and assigns

2 No lot shall be used for commercial purposes without express written consent from Developer,

3 No lot shall be divided or subdivided without written consent from the Developer,

4 No more than one building shall be erected on any one lot,

5 No building shall be erected or altered on any lot until the building plans or alteration plans, and location on the said lot, shall have been approved by the Developer. There will be no size restrictions on the building. The proposed building must blend with the others in the development and not detract from the value of the lots in the subdivision,

6 The exterior walls of any building on which construction is started must be completed within twelve (12) months,

7 No person shall maintain on any lot a "mobile home or residential trailer"

8 In the event any of the above covenants shall be deemed invalid, then such invalidity shall in no way affect any of the remaining covenants

WHEREAS, Assignor desires to assign its rights as Developer under the Deeds to Assignee,

NOW, THEREFORE, in consideration of the foregoing premises the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows

1 Assignment Assignor hereby assigns to Assignee, absolutely and not as security for the performance of any obligation, all of Assignor's right and interest as Developer under the Deeds, and hereby delegates to Assignee all of Assignor's duties under the Deeds

2 Acceptance and Assumption Assignee hereby accepts this assignment, and agrees to assume all of the obligations of the Assignor under the Purchase Agreement

3 Consideration Assignee shall pay to Assignor the sum of Fifteen Thousand and 00/100 (\$15,000) Dollars as consideration of this Agreement. Assignee shall pay Ten Thousand and 00/100 (\$10,000) Dollars upon the execution of this Agreement by wire transfer or other certified funds and shall pay the remaining consideration by giving Assignor a Note in the

- 2 -
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principal amount of Five Thousand and 00/100 (\$5 000) Dollars. The unpaid principal amount of the Note shall bear interest at the rate of zero percent (0%) per annum and shall be due and payable on January 10, 2007.

4 Indemnification. Assignee hereby agrees to protect, defend, indemnify and hold Assignor harmless from and against any and all causes of action, claims, losses, costs, damages, demands, liabilities and expenses of any nature whatsoever (including without limitation attorneys' fees) which result from or arise by reason of Assignor's assignment hereof and any action taken by Assignee with respect to the Developer rights after closing. Assignor has full power and authority to make this assignment and owns the Developer rights under the Deeds free and clear of the rights of any third party.

5 Miscellaneous. This Agreement and all of the terms, provisions and covenants contained herein shall apply to, be binding upon, and inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and shall not be varied, amended or superseded except by written agreement between the parties hereto. This Agreement may be executed in duplicate counterparts (by original or facsimile signature), each of which shall constitute an original and all of which taken together shall constitute a single original agreement. In the event of any dispute hereunder, the prevailing party in any litigation or other proceedings shall be reimbursed by the non-prevailing party for all costs and expenses, including without limitation attorneys' fees, whether incurred in connection with trial, administrative, appellate, bankruptcy, or any other form of proceedings. The indemnification obligations set forth herein shall be perpetual and shall survive Closing. The Agreement shall be governed by the laws of the State of South Carolina.

[SEPARATE SIGNATURE PAGE ATTACHED]

1253-

IN WITNESS WHEREOF, the parties have executed this Assignment under seal as of the date written above

Witnesses

ASSIGNOR

HELEN SASSER

Craig Pancy
Samuel J Verble

Helen Sasser
Date 9/5/06

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 5th day of SEPTEMBER, 2006, by Helen Sasser

Samuel J Verble
Notary Public AMELIA J VERBLE
My Commission Expires 1/28/09

126

Witnesses



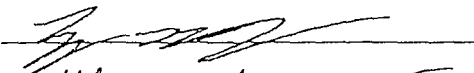
Witness, Levon Dunn

ASSIGNEE

LEVON DUNN

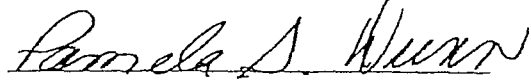


Date September 6, 2006



Witness, Levon Dunn

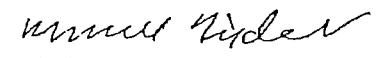
PAMELA S DUNN



Date September 6, 2006

STATE OF South Carolina)
COUNTY OF Charleston)ss

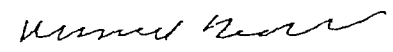
THE FOREGOING INSTRUMENT was acknowledged before me this 6th day of September, 2006, by Lavon Dunn



Notary Public South Carolina
My Commission Expires 8/16/09

STATE OF South Carolina)
COUNTY OF Charleston)ss

THE FOREGOING INSTRUMENT was acknowledged before me this 6th day of September, 2006, by Pamela S. Dunn



Notary Public South Carolina
My Commission Expires 8/16/09

127

TS
Nexsen Pruet LLC
205 KING STREET SUITE 400
PO BOX 486
CHARLESTON SC 29402

128

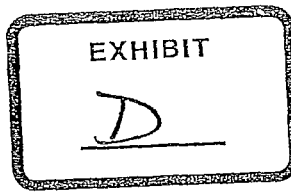
INSTRUMENT 20060000191178 185 262

20060000191178

46450 Nexsen Pruet LLC

20060000191178
Filed for Record in
GEORGETOWN, SC
REGISTER OF DEEDS
10-11-2016 AL 01 SC 14
ASSIGNMENT 11 000
STATE TAX 00
COUNTY TAX 00
Rec'd 10/10/16 2:00 PM

Wanda J. Overatta



CONSENT TO COVENANTS AND RESTRICTIONS

THIS CONSENT TO COVENANTS AND RESTRICTIONS (hereinafter sometimes referred to as this Release) is made as of the 6 day of September, 2006 by Levon Dunn and Pamela S Dunn (collectively hereinafter 'Declarant')

Pursuant to (1) a deed by Helen Sasser to Levon Dunn dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 746 (2) a deed by Helen Sasser to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 750, (3) a deed by Helen Sasser to Rodney Causey and Carolyn Causey dated March 17, 1983 and recorded in the RMC Office for Georgetown County, South Carolina on March 18, 1983 in Book 207 at Page 754, and (4) a deed by Helen Sasser to Carl B Singleton Sr and Eula V Singleton dated December 30, 1982 and recorded in the RMC Office for Georgetown County South Carolina in Book 205 at Page 1567 (collectively hereinafter the "Deeds") Helen Sasser placed the following restrictions, to run with the land, on the properties more fully described in the Deeds

[t]his conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers, their heirs and assigns

1 That the expression "Developer" as used herein shall be construed to mean Helen Sasser, her heirs and assigns,

2 No lot shall be used for commercial purposes without express written consent from Developer

3 No lot shall be divided or subdivided without written consent from the Developer,

4 No more than one building shall be erected on any one lot,

5 No building shall be erected or altered on any lot until the building plans or alteration plans, and location on the said lot, shall have been approved by the Developer Their will be no size restrictions on the building The proposed building must blend with the others in the development and not detract from the value of the lots in the subdivision,

6 The exterior walls of any building on which construction is started must be completed within twelve (12) months,

7 No person shall maintain on any lot a "mobile home or residential trailer "

8 In the event any of the above covenants shall be deemed invalid, then such invalidity shall in no way affect any of the remaining covenants

Pursuant to that certain ASSIGNMENT AND INDEMNIFICATION AGREEMENT between that Helen Sasser and Declarants dated September 6, 2006 (Assignment Agreement) Helen Sasser assigned to Declarants all of her right and interest as Developer under the Deeds

Declarants now wish to consent to the use of the property, more fully described in the Deeds, for all commercial uses, as required by the second restriction in the Deeds and repeated herein by execution of this instrument Further, Declarants now wish to consent to the division and subdivision of the property, more fully described in the Deeds, as required by the third restriction in the Deeds and repeated herein by execution of this instrument Therefore, pursuant to the Assignment Agreement and this Release, restriction two and three of the Deeds are hereby released as to that property, more fully described in the Deeds, and shall no longer have any force or effect on the property, by execution of this instrument

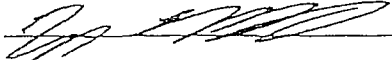
[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF this Release is duly executed as of the 6th day of September,
2006

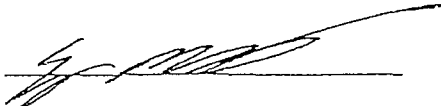
DECLARANTS

IN THE PRESENCE OF

Levon Dunn


Wmuel. Kider

Name Levon Dunn
Date 9/6/2006


Wmuel. Kider

Pamela S Dunn

Name Pamela S. Dunn
Date 9/6/2006

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Thomas W. Widen a notary public for South Carolina, do hereby certify that Levon Dunn personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand and seal (where an official seal is required by law) official seal this
6 day of September, 2006

Thomas W. Widen (SEAL)
Signature of Notary Public
Notary Public for the State of South Carolina
My commission expires 8/16/09

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I, Thomas W. Widen a notary public for South Carolina, do hereby certify that Pamela S Dunn personally appeared before me this day and acknowledged the due execution of the foregoing instrument

Witness my hand and seal (where an official seal is required by law) official seal this
6 day of September, 2006

Thomas W. Widen (SEAL)
Signature of Notary Public
Notary Public for the State of South Carolina
My commission expires 8/16/09

Dunn 0058

TS
Nexsen Pruet LLC
205 KING STREET SUITE 400
PO BOX 486
CHARLESTON SC 29402

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3

10/11/17 12:26

Handlip

40450 Nexsen Pruet LLC
205 KING STREET SUITE 400
PO BOX 486
CHARLESTON SC 29402
09-11-2017 AT 11:57 AM
EST COVE 100000
STATE 10/17
UNIT 133
PLOT 100000
Wanda of Nevada

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

JUDGMENT IN A CIVIL CASE
CASE NO 2006CP2200914

AJG Holdings LLC vs Levon Dunn

FILED
GEORGETOWN COUNTY, SC
2008 AUG 18 AM 11:25
ALLIYA Y WHITE
CLERK OF COURT

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b) SCRPC ☐ Rule 41(a)
SCRPC (Vol Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRPC ☐ Bankruptcy
☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
☐ Other _____

IT IS ORDERED AND ADJUDGED

☐ See attached order

☒ Statement of Judgment by the Court

Motion for Summary Judgment/Scoville - *granted in part & denied in part*

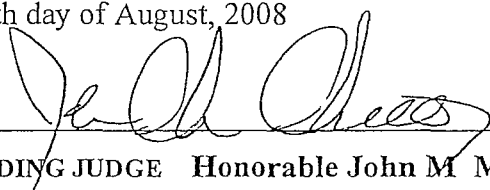
Defendants Joint Motion for Summary Judgment/Groves - *deny*

Motion Protective Order to Quash/Modif Supoena/Garjehsani - *most*

ver Scoville to prepare proposed order.

Dated at Georgetown, South Carolina, this 18th day of August, 2008

Court Reporter *Dixie Eubanks*


PRESIDING JUDGE Honorable John M. Milling

This judgment was entered on the 18th day of August 2008 and a copy mailed first class this 19th day of August 2008 to attorneys of record or to parties (when appearing pro se) as follows

133A

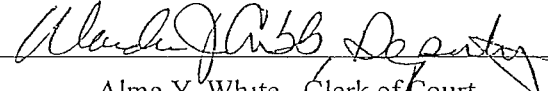
Jack M Scoville ATTORNEY AT LAW P O
DRAWER 1228 GEORGETOWN SC
294420000

ATTORNEY(S) FOR THE PLAINTIFF(S)

SCRCP APP 24/FORM 4

Thomas S Tisdale Jr ATTORNEY AT LAW P
O BOX 486 CHARLESTON SC 294020000
Stephen Peterson Groves Sr Nexsen Pruet
LLC P O Box 486 Charleston SC 29402

ATTORNEY(S) FOR THE DEFENDANT(S)


Alma Y White - Clerk of Court

133B

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 15th JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CASE NO 2006-CP-22-0914

AJG HOLDINGS, L L C , STALVEY)
HOLDINGS, L L C , DAVID)
CROYLE, LINDA CROYLE, JEAN)
C ABBOTT, LINDA T COURTNEY,)
SUMTER L LANGSTON, DIANE)
LANGSTON, CARL B SINGLETON,)
JR , VIRGINIA M OWENS, and)
STONE HARRELSON,)

Plaintiffs,)

vs)

LEVON DUNN, PAMELA S DUNN,)
and HELEN SASSER,)

Defendants)

**DEFENDANTS'
JOINT MOTION FOR
RECONSIDERATION,
TO AMEND COURT'S
FINDINGS, AND TO
ALTER OR AMEND
COURT'S JUDGMENT**

FILED
GEORGETOWN COUNTY SC
2008 SEP 12 PM 2 05
CLERK OF COURT

COMES NOW the Defendants, Levon Dunn, and Pamela S Dunn (the "Dunns"), and Helen Sasser ("Mrs Sasser"), pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, and respectfully requests this Circuit Court to reconsider its Order Granting Partial Summary Judgment (the "Order") issued on September 2, 2008, and filed with the Office of the Georgetown County Clerk of Court on September 8, 2008 (copy attached hereto as Exhibit "A") The Dunns and Mrs Sasser state the Order is based upon improper legal grounds and is not factually supported by the record before this Circuit Court

This motion is made upon the following grounds

1 When the Plaintiffs, AJG Holdings, LLC, Stalvey Holdings, LLC, David Croyle, Linda Croyle, Jean C Abbott, Linda T Courtney, Sumter L Langston, Diane Langston, Carl B Singleton, Jr, Virginia M Owens, and Stoney Harrelson (collectively "AJG Holdings") moved for summary judgment in this matter, they moved on all causes of action asserted by or against them. AJG Holdings briefed those arguments and the Dunns and Mrs Sasser specifically briefed a detailed response, including specifically in response to AJG Holdings' various principal causes of action asserted against the Dunns and Mrs Sasser (the "AJG Holdings Principal Claims"). At the summary judgment hearing, AJG Holdings failed to argue it was entitled to summary judgment on the AJG Holdings Principal Claims. Additionally, AJG Holdings did not withdraw its Motion for Summary Judgment as the AJG Holdings Principal Claims. Moreover, this Circuit Court did not address the aspect of AJG Holdings' Motion for Summary Judgment regarding the AJG Holdings Principal Claims. Since AJG Holdings failed to request

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this Circuit Court to address the AJG Holdings Principal Claims, AJG Holdings must now be deemed to have abandoned the AJG Holdings Principal Claims over and above the limited claims actually addressed by this Circuit Court

2 This Circuit Court's statement in the Order providing Mrs "Sasser divided and conveyed the lots in the [Woodland Plantation] subdivision subject to restrictive covenants" (*Order*, p 2, lines 11-12) is factually misleading since the only evidence in the record demonstrates Mrs Sasser conveyed the various lots in the Woodland Plantation subdivision subject solely to certain restrictive covenants which were specifically personal to her by the very language of the restrictive covenants ¹

3 This Circuit Court's statement in the Order that "[d]uring 2006, the Dunns began operating a commercial bed and breakfast and wedding venue enterprise on their property (*Order*, p 3, lines 20-21) is factually incorrect since the only evidence in the record indicated the Dunns were only contemplating such an operation and not begun operations at

¹ See Sasser Affidavit, paras 6-7, Dunn Affidavit, p 3, Exhibit A, Exhibit C, pp 1-2, Exhibit D, p 1-2, Sasser Depo, p 36, lines 2-7

the time the restrictions were brought to their attention ²
Moreover, the only evidence in the record was any alleged
commercial wedding venue activities took place on the Dunns'
other nine acre property (the "Nine Acre Tract") undisputedly
not encumbered by any restrictions limiting commercial
activities ³

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4 This Circuit Court's statement in the Order that "[b]y
a document entitled Assignment and Indemnification
Agreement [(the "Sasser Assignment")] [Mrs] Sasser
purported to assign to [the Dunns] her rights as Developer
[for] Lots 5-E, 5-W, 6, 7, 8, 9, and 10"⁴ is factually incorrect
since Sasser Assignment did actually transfer Mrs Sasser's
Developer rights to the Dunns, not just purportedly did so
While this Circuit Court has concluded Mrs Sasser did not have
any rights to transfer, the Sasser Assignment would have
legally transferred those rights if this Circuit Court had
determined those rights were in existence

² See Dunn Affidavit, p 2, Abbott Depo., p 40, line 13 – p 41, line 4, Tr 19, lines 1-4

³ Dunn Affidavit, p 2, Abbott Depo., p 20, line 24 – p 21, line 14, p 39, lines 6 22, Tr 20, line 18 – Tr 21, line 4

⁴ See Order, p 3, line 25 – p 4, line 4)

5 This Circuit Court's statement in the Order that "[b]y a document entitled Consent to Covenants and Restrictions [(the "Consent Agreement")] [the Dunns] Sasser purported to 'consent' to the use of their own property, being Lots 7, 8, 9, and 10, for any and to the subdivision of their lots"⁵ is factually incorrect since via the Consent Agreement the Dunns did actually consent to the use of their property for commercial uses and further subdivision, not just purportedly did so While this Circuit Court has concluded Mrs Sasser did not have any rights to transfer to the Dunns, the Consent Agreement would have legally permitted the Dunns to use their property, especially the River Lots, for commercial purposes and further subdivision if this Circuit Court had determined Mrs Sasser's Developer rights still existed with her after she sold her last remaining property in the Woodland Plantation subdivision

6 This Circuit Court incorrectly determined Mrs Sasser did not retain any rights to control commercial development in the Woodland Plantation subdivision after she sold the last remaining property in 1991 to M T Coleman, et al

5 See Order, p 4, lines 7 12)

(the "1991 Coleman Deed") as the law permitted Mrs Sasser to retain such rights as the subdivision's developer because the restrictive covenants involved in the transaction were personal to her and could only be enforced by Mrs Sasser, her heirs, and assigns

7 This Circuit Court incorrectly determined Mrs Sasser did not retain any rights to control commercial development in the Woodland Plantation subdivision after she sold the last remaining property via the 1991 Coleman Deed because the 1991 Coleman Deed contained Mrs Sasser's specific reservation of developer rights by its reference to and inclusion of certain language contained in Mrs Sasser's 1983 deed to Joseph Holmes (the "1983 Holmes Deed") Mrs Sasser reserved to herself and others the right to remain the developer of the Woodland Plantation subdivision, including the rights to restrict commercial use and further property lot subdivision This language clearly demonstrates the restrictive covenants were personal to Mrs Sasser and, in turn, she

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retained such rights over the restrictive covenants even though she had sold all of the property in the subdivision to third-parties

8 This Circuit Court's reliance upon the language contained in the "granting clause" of the 1991 Coleman Deed to justify the transfer to the "developer rights" from Mrs Sasser to AJG Holdings is misplaced in that this printed language is standard in most deeds and certainly standard for the deed form used for the 1991 Coleman Deed. Moreover, the typed language contained in the 1991 Coleman Deed which references the 1983 Holmes Deed supersedes and controls over the printed language in the 1991 Coleman Deed form

9 This Circuit Court's reliance upon Queen's Grant II Horizontal Property Regime v Greenwood Development Corp,⁶ is misplaced since Queen's Grant II Horizontal Property Regime v Greenwood Development Corp does not stand for the proposition that when a developer, such as Mrs Sasser, has imposed restrictive covenants upon a subdivision and, in

⁶ Queen's Grant II Horizontal Property Regime v Greenwood Development Corp, 368 S C 342, 628 S E 2d 902 (Ct App 2006)

turn, sells all of his or her property in the subdivision such sale completely divests the developer of any rights to enforce the restrictive covenants To the contrary, Queen's Grant II Horizontal Property Regime v Greenwood Development Corp actually supports the Dunns and Mrs Sasser since the case specifically provides

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A developer may reserve to himself, in his sole discretion, the right to amend restrictive covenants running with the land or impose new restrictive covenants running with the land, provided five conditions are met (1) the right to amend the covenants or impose new covenants must be unambiguously set forth in the original declaration of covenants, (2) the developer, at the time of the amended or new covenants, must possess a sufficient property interest in the development, (3) the developer must strictly comply with the amendment procedure as set forth in the declaration of covenants, (4) the developer must provide notice of amended or new covenants in strict accordance with the declaration of covenants and as otherwise may be provided by law, and (5) the amended or new covenants must not be unreasonable, indefinite, or contravene public policy ⁷

⁷ Queen's Grant II Horizontal Property Regime v Greenwood Development Corp, 368 S C 342, 350, 628 S E 2d 902, 907

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Mrs Sasser complied with all of the five requirements contained in Queen's Grant II Horizontal Property Regime v Greenwood Development Corp in order to maintain her ability to enforce the restrictive covenants ⁸ For example, when Mrs Sasser sold the property to Mr Holmes via the 1983 Holmes Deed she clearly and explicitly set forth the restrictive covenants and her ability to enforce them Moreover, Mrs Sasser maintained a property interest in the Woodland Plantation subdivision in that when she sold her last remaining property via the 1991 Coleman Deed she still maintained a property interest in the Woodland Plantation subdivision since she was the subdivision's Developer and had the right to enforce the restrictive covenants ⁹ A number of states permit a developer, even though divested of any ownership of real property in the development, to retain the rights to enforce

⁸ Since there were never any amendments to Mrs Sasser's restrictive covenants over the Woodland Plantation subdivision, the majority of the five factors in Queen's Grant II Horizontal Property Regime v Greenwood Development Corp do not come into play in this case

⁹ Restrictive covenants constitute an interest in property in the nature of an easement and persons able to enforce such covenants have a valid property interest in the land See Town of Stamford, Vuono, 108 Conn 359, 143 A 245 (1928)

restrictive covenants in the subdivision¹⁰ As noted by the California Fourth District Court of Appeals, Division 1, in B C E Development, Inc v Smith, "the talisman for enforcement [of the restrictive covenants at issue] is not the rigid requirement of [the original property owner's] retention of an interest in land, but rests instead upon a determination of the *intention* of those creating the covenant "¹¹

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¹⁰ See City of Otsego v Walters, 2007 WL 4125367, filed November 20, 2007 (Mich App 2007) (Not Reported in N E 2d) (*per curiam*), Tri-State Sand & Gravel, LLC v Cox, 871 So 2d 1253, 1257 (La App, 2004) (original subdivider could enforce the covenants even though it no longer held an interest in the benefited land because the agreement reserved the right and the subdivider had a "real and actual" interest in the enforcement of the covenants), B C E Development, Inc v Smith, 215 Cal App 3d 1142, 1147, 264 Cal Rptr 55 (1989) Christiansen v Casey, 613 S W 2d 906, 909-910 (Mo App, 1981) (original grantor could enforce a covenant even after divesting himself of the benefited land as a personal covenant), Restatement 3d, Property (Servitudes), § 8 1 (ownership of land intended to benefit from the servitude is not a prerequisite to enforcement if the person holding the benefit in gross can "establish a legitimate interest in enforcing the covenant ")

¹¹ B C E Development, Inc v Smith, 215 Cal App 3d 1142, 1147, 264 Cal Rptr 55, 58 (Emphasis in original) See also Farber v Bay View Terrace Homeowners' Association, 141 Cal App 4th 1007, 1011, 46 Cal Rptr 3d 425, 428 (4th Dist 2006) ("One who no longer owns land in a development subject to reciprocal restrictions cannot enforce them, absent showing the original covenanting parties intended to allow enforcement by one who is not a landowner ")

10 This Circuit Court's reliance upon Armstrong v Roberts,¹² is misplaced since Armstrong v Roberts only supports AJG Holdings' position if Mrs Sasser had divested herself of all of her interests in the Woodland Plantation subdivision. The evidence, however, to the contrary showed Mrs Sasser specifically retained to herself the authority to enforce the restrictive covenants. Moreover, Armstrong v Roberts adopted the "reasonable rule" enunciated in Richmond v Pennscott Builders, Inc.,¹³ and Fairways of County Lakes v Shenandoah Development Corp.¹⁴ A review of both of those cases show they do not apply to this situation.

In Richmond v Pennscott Builders, Inc., the New York Supreme Court, Queens County, prevented a common grantor who ostensibly retained certain rights to enforce some restrictive covenants to exercise such enforcement.¹⁵ The Court noted the common grantor, when transferring out the

¹² Armstrong v Roberts, 254 Ga 15, 325 S E 2d (1985)

¹³ Richmond v Pennscott Builders, Inc., 43 Misc 2d 602, 251 N Y S 2d 845 (1964)

¹⁴ Fairways of County Lakes v Shenandoah Development Corp., 113 Ill App 3d 932, 69 Ill Dec 680, 447 N E 2d 1367 (Ill App 2 Dist 1983),

¹⁵ Richmond v Pennscott Builders, Inc., 43 Misc 2d 602, 606-609, 251 N Y S 2d 845, 850-852

various property parcels, had created a general development plan or scheme for the subdivision and the enforcement ability had transferred to the grantees ¹⁶ The evidence in the instant showed Mrs Sasser never created a general development plan or scheme for the Woodland Plantation subdivision

In Fairways of County Lakes v Shenandoah Development Corp ¹⁷ the Second District Appellate Court of Illinois, did not address a restrictive covenant per se, but addressed a situation where the developer had reserved the right to bring additional property within the terms of the already existing restrictive covenants ¹⁸ The Court of Appeals noted

This court has considered analogous provisions which provided for the unilateral modification or revocation of restrictive covenants already imposed upon land by a developer In those situations, we held that such reserved powers to modify or revoke restrictive covenants contained in a deed are personal covenants which can be exercised only by the one who imposed the restrictions, particularly where the power can be exercised

¹⁶ Richmond v Pennscott Builders, Inc., 43 Misc 2d 602, 606 607, 251 N Y S 2d 845, 850-851

¹⁷ Fairways of County Lakes v Shenandoah Development Corp., 113 Ill App 3d 932, 69 Ill Dec 680, 447 N E 2d 1367 (Ill App 2 Dist 1983),

¹⁸ Fairways of County Lakes v Shenandoah Development Corp., 113 Ill App 3d 932, 935, 69 Ill Dec 680, 682, 447 N E 2d 1367, 1369

without the consent of the property owner [19] [On the other hand], [i]n these cases it was determined that once the title to the property passed from the hands of the one holding such a reservation of rights, the power can no longer be exercised by him or any other person notwithstanding that the declaration provided that all covenants were to run with the land 20

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In fact, both of the situations addressed in Fairways of County Lakes v Shenandoah Development Corp by the Illinois appellate court (i.e., personal covenant or complete extinguishment of the restrictive covenants by common grantor's sale of all property) support Mrs Sasser's and the Dunns' position. Either the restrictive covenants in this case were personal to Mrs Sasser and could be enforced and/or assigned as she saw fit or, on the other hand, the restrictive

19 Fairways of County Lakes v Shenandoah Development Corp, 113 Ill App 3d 932, 936, 69 Ill Dec 680, 682-683, 447 N E 2d 1367, 1369-1370 (citing Orchard Brook Home Association, Inc v Joseph Keim Land Development Corp, 66 Ill App 3d 227, 231, 22 Ill Dec 428, 431, 382 N E 2d 818, 821 (1978), Fox Lake Hills Property Owners Association v Fox Lake Hills, Inc, 120 Ill App 2d 139, 145, 256 N E 2d 496, 499 (1970))

20 Fairways of County Lakes v Shenandoah Development Corp, 113 Ill App 3d 932, 936, 69 Ill Dec 680, 682-683, 447 N E 2d 1367, 1369-1370 (citing Richmond v Pennscott Builders, Inc, 43 Misc 2d 602, 251 N Y S 2d 845, Packanack Lake Country Club & Community Association v Alexander D. Doig Development Co, 72 N J Super 360, 178 A 2d 243 (1962), Annot, 4 A L R 3d 570 (1965))

covenants were completely extinguished in 1991 when Mrs Sasser sold the last remaining property in the Woodland Plantation subdivision and unenforceable by anyone

11 This Circuit Court incorrectly concluded that “[i]t is incontrovertible that by [the 1991 Coleman Deed] Mrs Sasser conveyed all property she had in the [Woodland Plantation] subdivision”²¹ The only evidence in the record showed this proposition is incorrect since Mrs Sasser specifically contractually retained, in each of her deeds to third-parties, the authority to enforce the restrictive covenants ²²

12 This Circuit Court, in view of AJG Holding’s arguments the restrictive covenants ran with the land, ignored the authority of Charping v J P Scurry & Company,²³ which, “[g]iven the rule in South Carolina of strictly construing restrictive covenants and favoring unrestricted use of land, [undisputedly placed] the burden on [AJG Holdings] to

²¹ See Order, p 6, line 20 – p 7, line 1 (Emphasis in original)

²² See Sasser Affidavit, paras 5 6, Abbott Depo., p 15, line 19 – p 20, line 5, p 17, line 10 – p 20, line 23, p 25, line 25 – p 27, line 5, p 38, line 14 – p 39, line 5, Sasser Depo., p 8, line 24 – p 13, line 23

²³ Charping v J P Scurry & Company, 296 S C 312, 372 S E 2d 120 (Ct App 1988)

prove [Mrs Sasser's] clear intention to create a covenant that would run with the land "24 AJG Holdings did not and could not meet its evidentiary burden in that the only evidence in the record showed the restrictive covenants were personal to Mrs Sasser 25

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13 This Circuit Court incorrectly concluded the fact Mrs Sasser required an indemnification and hold harmless provision in the Sasser Assignment to the Dunns had significant evidentiary effect on the validity of Mrs Sasser's rights to enforce the restrictive covenants The existence of the indemnification and hold harmless provision in the Sasser Assignment was nothing more than Mrs Sasser's understandable attempt to shield herself from any liability for an inevitable claim against her by AJG Holdings Mrs Sasser was aware AJG Holdings had taken issue with the Dunns' contemplation of operating a "bed and breakfast" establishment and suit had been threatened The indemnification and hold

24 Charping v J P Scurry & Company, 296 S C 312, 314, 372 S E 2d 120, 121

25 See Sasser Affidavit, paras 5-6, Abbott Depo, p 15, line 19 – p 20, line 5, p 17, line 10 – p 20, line 23, p 25, line 25 – p 27, line 5, p 38, line 14 – p 39, line 5, Sasser Depo, p 8, line 24 – p 13, line 23

harmless provision in the Sasser Assignment is and was a prudent requirement. It does not negatively reflect on Mrs Sasser's conviction of the validity of her position as the Woodland Plantation subdivision's developer.

14 This Circuit Court incorrectly granted summary judgment to AJG Holdings on the Dunns' counterclaim for tortious interference with prospective business relations since there were disputed issues of material fact.

NP
16

The evidence showed once AJG Holdings became aware the Dunns planned to possibly open a bed and breakfast establishment on the River Lots and conduct weddings and other events, AJG Holdings then banned together to try and prevent this perceived breach of the anti-commercial uses provisions in the Restrictive Covenants. For example, they brought this litigation and obtained a TRO from Judge Baxley stopping the Dunns from operating any type of commercial activity on the River Lots. Rupert Stalvey, a principal in Stalvey Holdings, LLC, worked to have the Dunns' property and liability insurance coverage for the buildings on the River Lots

terminated **26** A report was made to the United States Corps of Engineers about the Dunns allegedly “filling in” some wetlands **27** In addition, Judge Abbott complained to the Georgetown County Building Department and his actions resulted in a “stop work” order being placed on the Dunns’ renovation work for the buildings on the River Lots **28**

15 This Circuit Court incorrectly granted summary judgment to AJG Holdings on the Dunns’ counterclaim for civil conspiracy since there were disputed issues of material fact

The evidence showed once AJG Holdings became aware the Dunns planned to possibly open a bed and breakfast establishment on the River Lots and conduct weddings and other events, AJG Holdings then banned together to try and prevent this perceived breach of the anti-commercial uses provisions in the Restrictive Covenants For example, they

26 Levon Dunn Depo., p 46, line 10 – p 50, line 21, Pam Dunn Depo., p 58, line 20 – p 61, line 19, Stalvey Depo., p 34, line 19 – p 40, line 8, p 44, line 7 – p 56, line 18, p 57, line 18 – p 62, line 13, p 66, line 4 – p 70, line 12

27 Levon Dunn Depo., p 41, line 20 – p 43, line 5, p 115, line 23 – p 117, line 1, Stalvey Depo., p 62, line 23 – p 63, line 22, Courtney Depo., p 48, lines 1–19)

28 Levon Dunn Depo., p 43, line 6 – p 46, line 9, p 115, line 23 – p 117, line 1, Pam Dunn Depo., p 46, line 7 – p 58, line 19)

12/18 brought this litigation and obtained a TRO from Judge Baxley stopping the Dunns from operating any type of commercial activity on the River Lots. Rupert Stalvey, a principal in Stalvey Holdings, LLC, worked to have the Dunns' property and liability insurance coverage for the buildings on the River Lots terminated. **29** A report was made to the United States Corps of Engineers about the Dunns allegedly "filling in" some wetlands. **30** In addition, Judge Abbott complained to the Georgetown County Building Department and his actions resulted in a "stop work" order being placed on the Dunns' renovation work for the buildings on the River Lots. **31**

16 This Circuit Court incorrectly granted summary judgment to AJG Holdings on the Dunns' counterclaim for intentional infliction of emotional distress since there were disputed issues of material fact.

29 Levon Dunn Depo, p 46, line 10 – p 50, line 21, Pam Dunn Depo, p 58, line 20 – p 61, line 19, Stalvey Depo, p 34, line 19 – p 40, line 8, p 44, line 7 – p 56, line 18, p 57, line 18 – p 62, line 13, p 66, line 4 – p 70, line 12

30 Levon Dunn Depo, p 41, line 20 – p 43, line 5, p 115, line 23 – p 117, line 1, Stalvey Depo, p 62, line 23 – p 63, line 22, Courtney Depo, p 48, lines 1–19)

31 Levon Dunn Depo, p 43, line 6 – p 46, line 9, p 115, line 23 – p 117, line 1, Pam Dunn Depo, p 46, line 7 – p 58, line 19)

ND
14

The evidence showed once AJG Holdings became aware the Dunns planned to possibly open a bed and breakfast establishment on the River Lots and conduct weddings and other events, AJG Holdings then banned together to try and prevent this perceived breach of the anti-commercial uses provisions in the Restrictive Covenants. For example, they brought this litigation and obtained a TRO from Judge Baxley stopping the Dunns from operating any type of commercial activity on the River Lots. Rupert Stalvey, a principal in Stalvey Holdings, LLC, worked to have the Dunns' property and liability insurance coverage for the buildings on the River Lots terminated. **32** A report was made to the United States Corps of Engineers about the Dunns allegedly "filling in" some wetlands. **33** In addition, Judge Abbott complained to the

32 Levon Dunn Depo., p 46, line 10 – p 50, line 21, Pam Dunn Depo., p 58, line 20 – p 61, line 19, Stalvey Depo., p 34, line 19 – p 40, line 8, p 44, line 7 – p 56, line 18, p 57, line 18 – p 62, line 13, p 66, line 4 – p 70, line 12

33 Levon Dunn Depo., p 41, line 20 – p 43, line 5, p 115, line 23 – p 117, line 1, Stalvey Depo., p 62, line 23 – p 63, line 22, Courtney Depo., p 48, lines 1–19

Georgetown County Building Department and his actions resulted in a "stop work" order being placed on the Dunns' renovation work for the buildings on the River Lots **34**

17 This Circuit Court incorrectly declined to decide, in line with AJG Holdings' argument, whether the restrictive covenants at issue in this case "ran with the land", but instead concluded there were material issues of fact presenting a jury issue. The only evidence in the record was that the restrictive covenants did not "run with the land" and, in turn, were personal to Mrs. Sasser and did not run with the land **35**. This Circuit Court should take this opportunity to specifically decide this issue once and for all and not leave this matter to be decided by a jury. A restrictive covenant is contractual in nature **36** and, therefore, the determination of the validity and effect of a restrictive covenant is for this Circuit Court to determine, not a jury.

34 Levon Dunn Depo, p 43, line 6 – p 46, line 9, p 115, line 23 – p 117, line 1, Pam Dunn Depo, p 46, line 7 – p 58, line 19

35 Dunn Affidavit, p 2, Exhibit A, Sasser Affidavit, paras 5-6, Abbott Depo, p 15, line 19 – p 20, line 5, p 17, line 10 – p 20, line 23, Sasser Depo, p 26, line 16 – p 28, line 10

36 Hardy v Aiken, 369 S C 160, 166, 631 S E 2d 539, 542 (2002)

18 This Circuit Court incorrectly declined to decide, in line with the Dunns' and Mrs Sasser's argument, whether the restrictive covenants were personal to Mrs Sasser, but instead concluded there were material issues of fact presenting a jury issue. The only evidence in the record was that the restrictive covenants were personal to Mrs Sasser and did not run with the land. ³⁷ This Circuit Court should take this opportunity to specifically decide this issue once and for all and not leave this matter to be decided by a jury. A restrictive covenant is contractual in nature³⁸ and, therefore, the determination of the validity and effect of a restrictive covenant is for this Circuit Court to determine, not a jury.

19 This Circuit Court did not indicate whether it considered the Affidavit of Robert Wilcox in making its decision in this case. Professor Wilcox's affidavit was important to the determination of the case and should have been considered.

³⁷ Dunn Affidavit, p 2, Exhibit A, Sasser Affidavit, paras 5-6, Abbott Depo, p 15, line 19 – p 20, line 5, p 17, line 10 – p 20, line 23, Sasser Depo, p 26, line 16 – p 28, line 10

³⁸ Hardy v Aiken, 369 S C 160, 166, 631 S E 2d 539, 542 (2002)

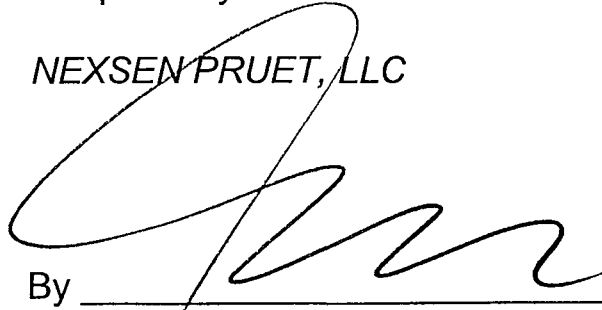
20 This Circuit Court did not indicate whether it considered the Affidavit of Helen Sasser in making its decision in this case Mrs Sasser's affidavit was important to the determination of the case and should have been considered

21 This Circuit Court determined Mrs Sasser lost her rights as the developer to enforce the restrictive covenants, but that the grantees to whom she sold the various lots in the Woodland Plantation subdivision obtained the ability to enforce the restrictive covenants No South Carolina case holds this position in view of Mrs Sasser's specific retention of those enforcement rights This decision was legally incorrect

Based upon the foregoing arguments, the Defendants, Levon Dunn, Pamela S Dunn, and Helen Sasser respectfully request this Circuit Court to reverse its September 2, 2008, Order In the alternative, the Defendants respectfully request this Circuit Court to decide the issue of whether the restrictive covenants "run with the land" or are personal to Mrs , Sasser

Respectfully submitted

NEXSEN PRUET, LLC



By _____

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*Attorneys for the Defendants,
Levon Dunn and Pamela s Dunn*

*ND
23*

Charleston, South Carolina

September 28, 2007

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) CASE NO 2006-CP-22-~~913~~
) 914

AJG HOLDINGS LLC, STALVEY)
HOLDINGS LLC, DAVID CROYLE,)
LINDA CROYLE, JEAN C ABBOTT,)
LYNDA T COURTNEY, SUMTER L)
LANGSTON, DIANE LANGSTON,)
CARL B SINGLETON, JR , VIRGINIA)
M OWENS and STONEY HARRELSON,)
PLAINTIFFS,)
vs)
LEVON DUNN, PAMELA S DUNN, and)
HELEN SASSER,)
DEFENDANTS)

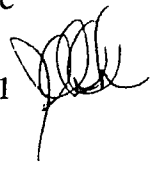
**ORDER
GRANTING PARTIAL
SUMMARY
JUDGMENT**

FILED
GEORGETOWN COUNTY, S C
2008 SEP -8 AM 11 15
ALMA T WHITE
CLERK OF COURT

TRIAL COURT JUDGE JOHN M MILLING
DATE OF HEARING AUGUST 18, 2008
PLACE OF HEARING GEORGETOWN, S C
COURT REPORTER DIXIE EUBANKS
PLAINTIFFS' ATTORNEY JACK M SCOVILLE, JR
DEFENDANTS' ATTORNEY THOMAS TISDALE

Introduction

This matter came before the Court for oral argument August 18, 2008, in Georgetown, S C The parties had made cross motions for summary judgment The issues had been thoroughly briefed by the parties, and all affidavits, depositions, and other evidentiary matters had been previously submitted to this court When the case was called, all parties were

1 

represented at the hearing The Court heard the arguments of counsel and based on the evidence presented, makes the following ruling

Background

This is an action to enforce restrictive covenants Plaintiffs are owners of various lots within the Helen Sasser Subdivision of Georgetown County, S C The following relevant facts are undisputed

Defendant Helen Sasser (hereinafter "Sasser") acquired the land she subdivided from the partition of a plantation call Woodland Plantation, which was situated along the Pee Dee River in Georgetown County, S C The property she subdivided was acquired from D W Green and others in 1978 Sasser subdivided and conveyed the lots in the subdivision subject to restrictive covenants Each conveyance contained the following language regarding the restrictions "This conveyance is made subject to the following restrictive covenants which are deemed to run with the land and are bound on the purchasers, their heirs and assigns "

The restrictions that are relevant to this action are as follows

"1 That the expression "Developer" as used herein shall be construed to mean Helen Sasser, her heirs and assigns

2 No lot shall be used for commercial purposes without express written consent from the Developer "

In 1991, Sasser executed a deed to M T Coleman, et al , (the

"Coleman deed") wherein she conveyed various lots, tracts, and parcels of land The consideration was \$92,500 00 That deed contained the following paragraphs

It is the intent of the grantor herein to convey to the grantees *all of her ownership interest* of approximately 18 32 acres, being the remaining portions of the tracts heretofore conveyed to her by D W Green et al by deed dated July 28, 1978 recorded July 31, 1978 in Deed Book 160 at Page 772, Office of Clerk of Court for Georgetown County

It is the intent of the grantor herein to convey *all remaining property* as contained in the deed to the grantor herein by deed of D W Green, et al date July 28, 1978 and recorded July 31, 1978 in Deed Book 160 at Page 772, Office of the Clerk of Court for Georgetown County (emphasis added)

The granting clause of the deed contains the following additional language "Together with all and singular, the Rights, Members, Hereditaments, and Appurtenances to the said premises belonging or in anywise incident or appertaining " The plaintiffs are the grantees or the successors in interest to the grantees in the 1991 conveyance

During 2006, the Dunns began operating a commercial bed and breakfast and wedding venue enterprise on their property The Plaintiffs instituted this action to enforce the restrictive covenants, in particular the prohibition against commercial activities

By a document entitled Assignment and Indemnification Agreement, dated September 5, 2006, and recorded in the Office of the Register of

Deeds for Georgetown County in Deed Book 185 at Page 258, Sasser purported to assign to Levon and Pamela S Dunn her rights as Developer under various deeds to the parties or their predecessors in interest, conveying Lots Number 5-E, 5-W, 6, 7, 8, 9, and 10 In the Assignment and Indemnification Agreement, Sasser states that “[Sasser] has full power and authority to make this assignment and owns the Developer rights under the Deeds free and clear of the rights of any third party” By a document entitled Consent to Covenants and Restrictions dated September 6, 2006, and recorded in the Office of the Register of Deeds of Georgetown County in Deed Book 185 at Page 264, Levon Dunn and Pamela S Dunn purported to “consent” to the use of their own property, being Lots 7, 8, 9, and 10, for any and all commercial uses, and to the subdivision of their lots

Summary Judgment

Summary judgment should be granted when no genuine issue as to any material fact exists, and the moving party is entitled to judgment as a matter of law *Middleborough Horizontal Property Regime Council of Co-Owners v Montedison*, 320 S C 470, 465 S E 2d 765 (Ct App 1995) (citing Rule 56, SCRCF) The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder *George v Fabri*, 345 S C 440, 452, 548 S E 2d 868, 874 (2001)

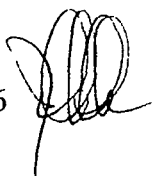
I THE ASSIGNMENT TO THE DUNNS OF THE RIGHT TO WAIVE THE RESTRICTION AGAINST COMMERCIAL USES

The primary issue to be addressed by the parties' motions for summary judgment is the effect of the 1991 conveyance to M T Coleman, et al, on Sasser's right to waive the prohibition against commercial uses. If Sasser had nothing to assign to the Dunns, their attempted waiver of the restriction against commercial uses is a nullity.

Assuming for the sake of this issue alone that Sasser did not convey her right to consent in the 1991 deed to Coleman, the right was extinguished upon Sasser's conveyance of all her property. A consent to a commercial use amends the prohibition against such use. The issue of a developer's right to amend restrictive covenants was addressed in *Queen's Grant II Horizontal Property Regime v Greenwood Development Corp*, 368 S C 342, 628 S E 2d 902 (S C App 2006). In that case, the Court of Appeals held that a developer may reserve to himself, in his sole discretion, the right to amend restrictive covenants running with the land or impose new restrictive covenants running with the land, provided five conditions are met: (1) the right to amend the covenants or impose new covenants must be unambiguously set forth in the original declaration of covenants, (2) the developer, at the time of the amended or new covenants, must possess a

sufficient property interest in the development, (3) the developer must strictly comply with the amendment procedure as set forth in the declaration of covenants, (4) the developer must provide notice of amended or new covenants in strict accordance with the declaration of covenants and as otherwise may be provided by law, and (5) the amended or new covenants must not be unreasonable, indefinite, or contravene public policy. The Court cited *Armstrong v Roberts*, 254 Ga 15, 325 S E 2d 769, 770 (1985) for its holding that “when a subdivision developer is divested of all interest in the subdivision, a reserved right to amend restrictive covenants is extinguished.” The reasoning for this rule was explained in *Armstrong*: “So long as the developer owns an interest in the subdivision being developed his own economic interest will tend to cause him to exercise a right to waive restrictions in a manner which takes into account harm done to other lots in the subdivision.” *Id.* There is some economic restraint against arbitrary waiver. After the developer has divested himself of all interest in the subdivision this economic restraint is lacking. A developer of a subdivision who reserved the authority to waive restrictions in covenants running with the land no longer possesses that authority after divesting himself of his interest in the subdivision.

It is incontrovertible that by her deed in 1991 to M T Coleman, et al,



Mrs Sasser conveyed *all* property she had in the subdivision. No evidence was presented that Sasser exercised any rights of ownership or control in the subdivision over the next fifteen years. After this dispute arose, she assigned her rights as developer for fifteen thousand dollars to the Dunns. Interestingly she includes in the assignment an indemnification and hold harmless provision.

Even if Mrs Sasser had explicitly retained the right to amend, modify, or waive the restrictions in the deed to Coleman, such would have been ineffective under *Queen's Grant II Horizontal Property Regime v Greenwood Development Corp*, 368 S C 342, 628 S E 2d 902 (S C App 2006). Therefore, Plaintiffs are entitled to summary judgment on this issue.

The issue of whether the restrictions run with the land or were personal to Sasser presents a jury issue. That matter is not ruled upon by this court and should be decided at the trial of this case.

II DEFENDANTS' COUNTERCLAIMS

Defendants have alleged four counterclaims: (1) tortious interference with prospective business relations, (2) interference with a contractual relationship, (3) civil conspiracy, and (4) intentional infliction of emotional distress. Plaintiffs are entitled to summary judgment on three of

Defendants' counterclaims

a Tortious Interference with Prospective Business Relations

South Carolina recently recognized the tort of intentional interference with prospective contractual relations in *Crandall Corp v Navistar Int'l Transp Corp*, 302 S C 265, 395 S E 2d 179 (1990). The elements of the cause of action are (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff. *Brown v Stewart*, 348 S C 33, 55, 557 S E 2d 676, 688 (Ct App 2001), *Love v Gamble*, 316 S C 203, 214, 448 S E 2d 876, 882 (Ct App 1994). "As an alternative to establishing an improper purpose, the plaintiff may prove the defendant's method of interference was improper under the circumstances." *Crandall*, 302 S C at 266, 395 S E 2d at 180. Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party. *Southern Contracting, Inc v H C Brown Constr Co*, 317 S C 95, 102, 450 S E 2d 602, 606 (Ct App 1994).

A cause of action for intentional interference with prospective contractual relations generally stands following the loss of an identifiable

contract or expectation. The aggrieved party is required to have been unsuccessful in acquiring an expected contract due to a third party's intentional and wrongful actions." *Egrets Pointe Townhouses Prop Owners Ass'n v Fairfield Cmtys, Inc*, 870 F Supp 110, 116 (1994). The plaintiff must actually demonstrate, at the outset, that he had a truly prospective (or potential) contract with a third party. This does not require plaintiff to prove the tort in his initial pleadings, rather, the allegations must present facts that give rise to some reasonable expectation of benefits from the alleged lost contracts. *United Educational Distributors, LLC v Educational Testing Service*, 350 S Ct 7, 564 S E 2d 324 (Ct App 2002).

The Dunns fail to allege a particular prospective customer relationship with which plaintiffs interfered. They have not identified any such potential customer through discovery, in their depositions, or by affidavit. The Plaintiffs are entitled to summary judgment on Defendants' counterclaim for tortious interference with prospective business relations.

b Interference with a Contractual Relationship

To establish a cause of action for tortious interference with contractual relations, a plaintiff must show 1) the existence of a contract, 2) knowledge of the contract, 3) intentional procurement of its breach, 4) the absence of justification, and 5) resulting damages. *Kinard v Crosby*, 315 S Ct 237,

240, 433 S E 2d 835, 837 (1993) Where there is no breach of the contract, there can be no recovery *First Union Mortg Corp v Thomas*, 317 S C 63, 73, 451 S E 2d 907, 913 (Ct App 1994)

In this case, there was enough evidence of the existence of an insurance contract that may have been breached to get past summary judgment Therefore, Plaintiffs' motion for summary judgment on this cause of action is denied

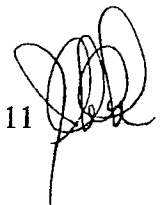
c Civil Conspiracy

The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages *LaMotte v Punch Line of Columbia, Inc* , 296 S C 66, 370 S E 2d 711 (1988), *Cowburn v Leventis*, 366 S C 20, 49, 619 S E 2d 437, 453 (Ct App 2005), *Ellis v Davidson*, 358 S C 509, 595 S E 2d 817 (Ct App 2004) It is essential that the plaintiff prove all of these elements in order to recover *Lyon v Sinclair Refining Co* , 189 S C 136, 200 S E 78 (1938) The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff" *Lee v Chesterfield General Hosp , Inc* , 289 S C 6, 13, 344 S E 2d 379, 383 (Ct App 1986)

“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise” *Island Car Wash, Inc v Norris*, 292 S C 595, 601, 358 S E 2d 150, 153 (Ct App 1987)

The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination *per se* *Lee*, 289 S C 6, 344 S E 2d 379 “[A]n unlawful act is not a necessary element of the tort” *Id* at 11, 344 S E 2d at 382 Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action *Vaught v Waites*, 300 S C 201, 387 S E 2d 91 (Ct App 1989)

The facts simply do not support an action for civil conspiracy According to Mr Dunn, he has lost the quiet use and enjoyment of his property because the neighbors drive by their property on the road and some of the neighbors are no longer friendly to the Dunns, yet he admits this is because the neighbors oppose them using the property for commercial purposes and therefore not because of some conspiracy Defendants’ civil conspiracy claim is merely based on the Plaintiffs’ enforcing their rights under the deed

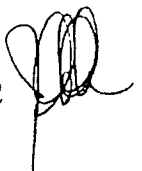


restrictions Such cannot support a claim of civil conspiracy Plaintiffs are entitled to summary judgment on this cause of action

d Intentional Infliction of Emotional Distress

To recover for the intentional infliction of emotional distress, a plaintiff must establish (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct, (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community, (3) the actions of the defendant caused the plaintiff's emotional distress, and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it *Hansson v Scalise Builders of South Carolina*, 374 S C 352, 356, 650 S E 2d 68, 70 (2007)

The nature and extent of emotional distress suffered necessary to support an action for intentional infliction of emotional distress was extensively discussed in the recent case of *Hansson*, *supra* In that case the trial judge granted summary judgment to the defendants on the grounds that the plaintiff had failed to establish all required elements of the cause of action, particularly that the emotional distress suffered by the plaintiff was



so severe that no person could reasonably be expected to endure it The Court noted “the widespread reluctance of courts to permit the tort of outrage to become a panacea for wounded feelings rather than reprehensible conduct ” *Id* 374 S C at 357, 650 S E 2d at 71 (internal citations omitted)

Here, neither Mr nor Mrs Dunn has produced any evidence from any medical provider regarding their alleged emotional distress The symptoms they complain of are high blood pressure, nervousness, and being very upset but not requiring any medical attention These are simply common problems associated with life, and are certainly to be expected to occur when one is in a dispute with one’s neighbors Even if taken as true, these damages are insufficient to sustain the Dunn’s claim for intentional infliction of emotional distress Plaintiffs are entitled to summary judgment on this cause of action also

CONCLUSION

The Plaintiffs’ motion for summary judgment is granted as follows

A The assignment of developer rights from Sasser to the Dunns by the document entitled Assignment and Indemnification Agreement, dated September 5, 2006, and recorded in the Office of the Register of Deeds for Georgetown County in Deed Book 185 at Page 258, is a nullity in so far as it purports to assign to Levon and Pamela S Dunn rights as Developer under

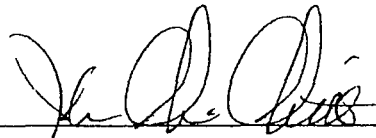


various deeds to the parties or their predecessors in interest, conveying Lots Number 5-E, 5-W, 6, 7, 8, 9, and 10. The document entitled Consent to Covenants and Restrictions dated September 6, 2006, and recorded in the Office of the Register of Deeds of Georgetown County in Deed Book 185 at Page 264, is a nullity in so far as Levon Dunn and Pamela S. Dunn purport to "consent" to the use of their own property, being Lots 7, 8, 9, and 10, for any and all commercial uses, and to the subdivision of their lots.

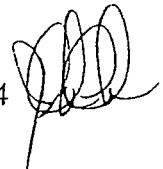
B. The Dunns' counterclaims for tortious interference with prospective contractual relationships, civil conspiracy, and intentional infliction of emotional distress are dismissed with prejudice.

C. The issue of whether the restrictions are personal or run with the land and all remaining issues are not decided by this Court and are carried over to be decided at the trial of this case.

AND IT IS SO DONE AND ORDERED THIS ^{September} 2 DAY OF AUGUST, 2008



JOHN M. MILLING
PRESIDING JUDGE



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

JUDGMENT IN A CIVIL CASE
CASE NO 2006CP2200914

AJG Holdings LLC vs Levon Dunn

FILED
GEORGETOWN COUNTY, SC
2008 AUG 18 AM 11 25
ALMA Y WHITE
CLERK OF COURT

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b) SCRPC ☐ Rule 41(a)
SCRPC (Vol Nonsuit) ☐ Rule 43(k), SCRPC (Settled) ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRPC ☐ Bankruptcy
☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
☐ Other _____

IT IS ORDERED AND ADJUDGED ☐ See attached order ☒ Statement of Judgment by the Court

Motion for Summary Judgment/Scoville - *granted in part & denied in part*

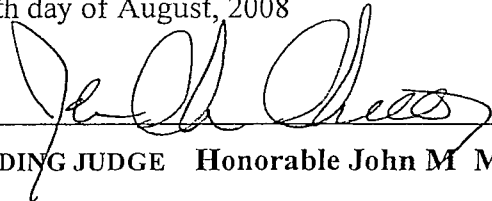
Defendants Joint Motion for Summary Judgment/Groves - *deny*

Motion Protective Order to Quash/Modif Supoena/Garjehsan - *most*

Mr Scoville to prepare proposed order.

Dated at Georgetown, South Carolina, this 18th day of August, 2008

Court Reporter **Dixie Eubanks**


PRESIDING JUDGE **Honorable John M. Milling**

This judgment was entered on the 18th day of August 2008 and a copy mailed first class this 19th day of August 2008 to attorneys of record or to parties (when appearing pro se) as follows

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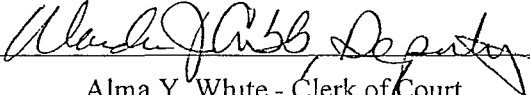
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SCRCP APP 24/FORM 4

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ATTORNEY(S) FOR THE DEFENDANT(S)


Alma Y White - Clerk of Court

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**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Georgetown County
Honorable John M. Milling, Circuit Judge
Civil Action No. 2006-CP-22-0914
APPEAL NO. 2

AJG Holdings, LLC, Stalvey Holdings, LLC,
David Croyle, Linda Croyle, Jean C. Abbott,
Linda T. Courtney, Sumter L. Langston,
Diane Langston, Carl B. Singleton, Jr.,
Virginia M. Owens, and Stoney Harrelson,

Respondents,

v

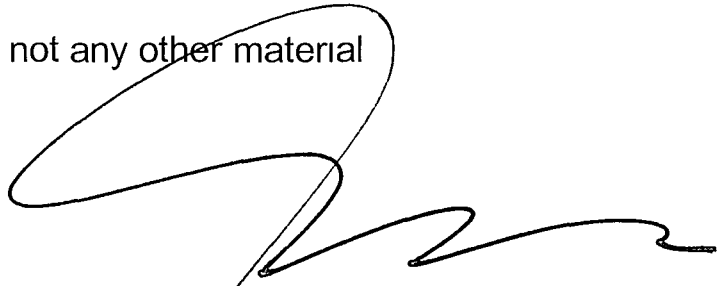
Levon Dunn, Pamela S. Dunn, and
Helen Sasser,

Appellants

**RULE 210(g), SCACR,
CERTIFICATE OF COUNSEL**

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I, Stephen P Groves, Sr , Esquire, hereby certify, pursuant to Rule 210(g), SCACR, that this **Record on Appeal (Volumes I, II, and III)** contains all of the material and documentation proposed to be included by any of the parties and not any other material


Signed _____
Stephen P Groves, Sr , Esquire

Charleston, South Carolina

June 4, 2009

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