THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Appellate Case No. 2013-002727
Case No. 2011-CP-32-2968

Elizabeth L. Snow (f/k/a Elizabeth S. Bell), Mark S. Campitella, Chrissie E. Campitella, Henry D. Gehlken, Sr., Vivian S. Gehlken, Kenneth W. Kelly and Anita B. Kelly, Stephen F. Linder, Sr. and Jackie Bower Linder, and Kathryn A. McDaniel ..... Appellants,

v.

Judson P. Smith, Christy Brabham Bell, Charles S. Coleman, Jr., J. Thomas Coleman, Jacob C. Coleman, Valiska C. Freeman, George Arthur Stoudenmire, George Arthur Stoudenmire as trustee for the benefit of William E. Stoudenmire, Linda B. Stoudenmire, Stacey S. Dershaw f/k/a Stacey Michell Stoudenmire and Laura Brittany Stoudenmire, and Trust "B" created by U/W Everett L. Stoudenmire and Valiska F. Coleman ....Respondents.

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page:

Other Authorities:

COUNTER STATEMENT OF ISSUES ON APPEAL

I. DID THE MASTER-IN-EQUITY CORRECTLY FIND THE SCOPE OF AN EASEMENT IS LIMITED TO A USE THAT IS REASONABLY NECESSARY, CONVENIENT AND AS LITTLE BURDENSOME TO THE SERVIENT ESTATE AS POSSIBLE?

II. DID THE MASTER-IN-EQUITY CORRECTLY RULE THE RESTRICTIVE COVENANTS DID NOT APPLY TO THE LAKE ACCESS?

III. DID THE MASTER-IN-EQUITY CORRECTLY RULE THE LAKE ACCESS HAS BEEN IMPROVED?

IV. HAVE APPELLANTS ABANDONED ANY ARGUMENTS RELATED TO RESPONDENT-SELLERS?

COUNTER STATEMENT OF THE CASE

On August 8, 2011, Appellants filed an action to determine the scope of an easement and other rights relative to a lake access that exists in their neighborhood and for certain legal relief. The matter was tried without a jury before the Master-in-Equity on July 20, 2013. On November 23, 2013, the Master-in-Equity filed a written order finding for the Respondent. Specifically, the Master-in-Equity found the Appellants' easement over the Lake Access is limited to ingress and egress over the driveway and ramp, and that restrictive covenants related to the subdivision's numbered lots do not apply to the Lake Access.

Appellant filed a Notice of Appeal to the Court of Appeals on December 16, 2013.

FACTS

This case involves lake property developed by Charles Coleman and E.L. Stoudenmire. A plat dated September 19, 1983 shows numerous numbered lots in a subdivision named Hilton Place as well as a piece of property entitled "Lake Access". *See* Plaintiffs' Ex. 3.[1] Some of the lots front on the lake, and many do not. *Id.*

[1] Oversized plat, filed with the Court pursuant to Rule 210(f), SC Rules of Appellate Procedure.

The Lake Access is an irregularly shaped piece of property containing 0.461 acres (R. p. 397). One side of the property fronts Killian Point Circle and the other side fronts approximately 84 feet of Lake Murray. *Id.* At the time of its purchase by Respondents Smith and Bell ("Respondent-Purchasers"), the property contained a gravel driveway running into a concrete boat ramp. *Id.*; (R. p. 380) (deed); *see also* (R. p. 409-410); (R. p. 365-367). Appellants agree the property was overgrown before Respondent-Purchasers cleaned up the property and generally improved it. (R. p. 118, lines 4-10) (testimony of E. Snow); (R. p. 162, lines 10-18) (testimony of V. Gehlken); *see also* (R. p. 197, line 23-p. 198, line 21) (testimony of C. Bell); (R. p. 283, line 4-p. 285, line 11) (testimony of J. Smith). The Lake Access was so overgrown at the time of purchase that it was impossible to actually launch a boat because there were too many trees in the way. (R. p. 284, lines 1-12)

In October 1983, restrictions were filed related to Hilton Place subdivision. (R. p. 361-363). These restrictions are simple and straightforward. They state the restrictions are "imposed upon all lots hereinafter designated" and later say they apply to "all those lots shown on [the] plat". *Id.* at Preamble and ¶ 12. Additionally, the restrictions specify "they are for the benefit of the Grantors who may change or modify the terms contained herein at any time". *Id.* at ¶ 11. As is typical, the restrictions were from time to time modified. (R. p. 3) (referring to modifications allowing: a) a residence within utility easement; b) a storage building otherwise in a setback; and c) construction otherwise in a setback).

A Confirmatory Amendment to Restrictions on Hilton Place Subdivision was filed on February 5, 1999. (R. p. 415-416). This confirmatory amendment notes the restrictions were intended to be imposed on the numbered lots shown on the initial plat and specified those as Lots 1-16 of Block A, Lots 1-9 of Block B, Lots of 1-6 Block C, and Lots of 1-2 Block D and restates

that the restrictions only apply to those numbered lots. It also states "Nothing contained herein shall be construed to impose any covenants, conditions or restrictions on any other property shown on the aforesaid plat." This modification was signed by Charles Coleman's wife, as Mr. Coleman was then deceased. It was also signed by Everette L. Stoudenmire Jr, and Ernestine K. Stoudenmire as Co-Trustees of a Trust created by Everette L. Stoudenmire.

In July 2010, the Lake Access was deeded to Judson P. Smith and Christy Brabham Bell by a deed signed by Charles S. Coleman; Thomas Coleman; Jacob C. Coleman; Valiska C. Freeman; George A. Stoudenmire, individually and as Trustee for William W. Stoudenmire; and, Linda B. Stoudenmire, individually and as Attorney in Fact for Stacey S. Dershaw f/k/a Stacey Michelle Stoudenmire and Laura Brittany Stoudenmire. (R. p. 380-382). The Coleman and Freeman grantors held one-half of the property by virtue of a deed of distribution from the Estate of Valiska F. Coleman. The Stoudenmire grantors held one-half of the property by virtue of a deed from the Trust of Everette L. Stoudenmire and a deed of distribution from the Estate of Everette L. Stoudenmire Jr. Respondent-Purchasers bought the Lake Access for $25,000.00. The deed stated "[t]his conveyance is made subject to easements, conditions and restrictions of record affecting subject property."

After purchase of the Lake Access, Respondents Smith and Bell had to clear an extensive amount of overgrowth and construction debris from the property, and brought in approximately 10 to 20 tons of fill dirt. (R. p. 197, line 23-p. 198, line 21); (R. p. 283, line 4-p. 285, line 11). They then built a fire pit, dock, gazebo, and storage building with a bathroom. (R. p. 285, line 12-p. 286, line 14); (R. p. 398-405) and (R. p. 364-367). They also widened and lengthened the existing boat ramp so that it could accommodate larger boats. (R. p. 285, line 23-p. 286, line 8).

This suit has been brought by owners of lots 7, 8, 9, and 10 of Block A; lots 2 and 4 of

Block B; and, lots 5 and 6 of Block C. Appellants' Complaint alleged any improvements made by Respondent-Purchasers violate the subdivision's restrictions, that the Lake Access had been dedicated to public use, and raised claims for fraud and breach of fiduciary duty. (R. pp. 21-25). Appellants also argue they should have unfettered access to every square inch of the Lake Access at any time. *See* Appellants' Brief p. 12; (R. p. 104 & 115) (E. Snow saying she should be able to use every inch of the Lake Access 24 hours a day, 7 days a week), (R. p. 274, lines 8-13); (R. p. 96 & 115) (opening and closing argument by counsel for Appellant).

The case was tried before the Master-in-Equity without a jury on July 20, 2013. At trial, Appellants admitted there is no permanent, physical impediment to their use of the Lake Access to reach the lake and that no one has ever denied them use of the property for lake access. (R. p. 116, line 12-p. 117, line 2); (R. p. 134, lines 9-18); (R. p. 162, lines 2-7); (R. p. 172, line 6-p. 173, line 22); (R. p. 269, line 7-p. 270, line 2). Respondent Smith also testified the Lake Access has been available for use as access to Lake Murray since his purchase of the property, with the exception of limited and temporary times during the construction of improvements on the property. (R. p. 278-279).

The Master entered an order finding that Appellants' right to the Lake Access is limited to ingress and egress over the gravel driveway and use of the boat ramp, that the restrictions do not apply to the Lake Access, and that Appellants' failed to prove breach of fiduciary duty, fraud, and nuisance.

STANDARD OF REVIEW

The determination of the scope of the easement is a question in equity. *Rhett v. Gray*, 401 S.C. 478, 489, 736 S.E.2d 873, 879 (Ct. App. 2012). Additionally, where an owner seeks the enforcement of his subdivision's restrictive covenants, the action to enforce restrictive

covenants sounds in equity. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001).

On appeal in an action in equity, the appellate court may find facts in accordance with its views of the preponderance of the evidence. *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). This broad scope of review does not require the appellate court to disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000). Furthermore, an appellant is not relieved of the burden of convincing this court the trial court committed error in its findings. *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001).

ARGUMENT

I. THE MASTER-IN-EQUITY CORRECTLY RULED THAT THE SCOPE OF AN EASEMENT IS LIMITED TO A USE THAT IS REASONABLY NECESSARY, CONVENIENT AND AS LITTLE BURDENSOME TO THE SERVIENT ESTATE AS POSSIBLE.

Appellants argue the Master-in-Equity erred when it ruled the scope of the easement is limited to the driveway and ramp. *See* Appellants' Brief pp. 10-14. Appellants appear to principally argue that a lack of limitation in Appellant Snow's deed grants the Appellants' the right to use every inch of the parcel for access to the lake. *Id.* at pp. 11-12. In fact, Appellants have consistently argued that they all have a right to unfettered access over every inch of the Lake Access and that Respondents have no right to make any improvement. *See* Appellants' Brief p. 12; (R. p. 18 lines 7-12) (E. Snow saying she should be able to use every inch of the Lake Access 24 hours a day, 7 days a week); (R. p. 274, lines 8-13); (R. p. 96 lines 3-7 & 115 lines 8-13).

"Ordinarily, a grant or reservation of a right of way 'over' a particular area, strip, or parcel of ground is *not* to be construed as providing for a way as broad as the ground referred to." 25 Am.Jur.2d, *Easements* § 77 (emphasis added). *See also Andersen v. Edwards*, 625 P.2d 282, 286 (Alaska 1981) ("To sustain (a) contention (that an easement grants the right to use any and all of a strip of land), the plaintiff must point to language in the deed which clearly and definitely fixes the width of the right of way."); *Barton's Motel, Inc. v. Saymore Trophy Co.*, 113 N.H. 333, 306 A.2d 774, 775 (N.H. 1973) ("A grant or reservation of a right of way 'over' a particular area, strip, or parcel of ground is not ordinarily to be construed as providing for a way as broad as the ground referred to.").

General principles related to easements also say the "use of an easement claimed must be confined strictly to the purposes for which it was granted". 25 Am.Jur.2d *Easements* § 82. "Where the grant of an easement such as a way does not definitely locate it, a reasonable and convenient way for all parties is thereby implied, in view of all the circumstances. The location of an undefined right of way must be reasonable to both the dominant and servient estates, considering the condition of the place, the purpose for which it was intended, and the acts of the grantee." 25 Am.Jur.2d, *Easements* § 64. "It is often said that the parties are to be presumed to have contemplated such a scope for the created easement as would reasonably serve the purposes of the grant." Richard R. Powell, 3 *Powell on Real Property* § 34-140 (Rev. ed. 1979). "When the easement has been created only by a reference in the conveyance to a map ..., the scope of the intended easement rests on inference from the circumstances." *Id.*

Finally, South Carolina case law says "[w]here language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted." *Tupper v. Dorchester County*, 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997). The

state Supreme Court has also said in reference to the restriction of use on property and creation of an easement "that in the interpretation of maps and plats intention will not be inferred from symbols of uncertain meaning". *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980).

Additionally, an easement is limited to a use which is reasonably necessary and convenient *and as little burdensome to the servient estate as possible. See generally Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 28 S.E.2d 545 (1943) (emphasis added). In *Clemson University v. First Provident Corp.*, 260 S.C. 640, 651, 197 S.E.2d 914, 919 (1973), the state Supreme Court said, "the rights of the easement owner and of the landowner are not absolute, irrelative, and uncontrolled, but are so limited, each by the other, *that there may be a due and reasonable enjoyment of both the easement and the servient tenement.* The owner of an easement is said to have all rights incident or necessary to its proper enjoyment, but nothing more." (emphasis added).

Here, the evidence and testimony demonstrate the scope of the easement should be limited to the driveway and boat ramp. First, the plat designates the property as a "Lake Access" and not as a park or common area. "Access" has been defined as "[a]n opportunity or ability to enter, approach, pass to and from, or communicate with." *See* Black's Law Dictionary 14 (8th ed., 2004).[2] If this definition of "access" is modified by "lake", then the only permissible interpretation can be that the easement allows someone to enter into, approach, or pass to and from the lake. The clear intent of the words "Lake Access" has to be to provide a way of ingress and egress to the lake through the property. This interpretation is consistent with Valiska Freeman's understanding of the original developers' intent. (R. p. 239, line 20-p. 240, line 5).

[2] "Access easement" is also defined as "An easement allowing one or more persons to travel across another's land to get to a nearby location, such as a road." Black's Law Dictionary 548 (8th ed., 2004).

This interpretation is the least restrictive and burdensome reading of the easement. This interpretation also preserves Appellants' access to the lake, which is consistent with the plain meaning of the plat.

Second, the request for unfettered access to each and every inch of the Lake Access ignores the property rights of Respondent-Purchasers as well as established case law that states an easement's scope is to be limited to that which is reasonably necessary and as little burdensome to the servient estate as possible. *See generally Hill v. Carolina Power & Light Co.*, 204 S.C. 83, 28 S.E.2d 545 (1943). An interpretation of the easement as granting to Appellants a right to use the driveway and boat ramp to access Lake Murray serves the purpose of providing the Appellants with lake access, which is consistent with the intent to provide "lake access." This combined with case law calling for the least restrictive construction of an easement compels a finding that the Lake Access only grants reasonable access to and from Lake Murray.

Hill v. Beach Co., 279 S.C. 313, 306 S.E.2d 604 (1984), involved an easement to access the beach through private property. The Supreme Court upheld the provision of pathways across private land to the beach. Similarly, here the Respondents do not dispute Appellants have the right to enter from the street and use the driveway and boat ramp on the Lake Access as a pathway to and from Lake Murray.

Additionally, Appellants' argument that Respondents have no right to make any improvements to the Lake Access would have the effect of abolishing any of the rights that accompany a servient estate. *See generally Clemson University v. First Provident Corp.*, 260 S.C. 640, 651, 197 S.E.2d 914, 919 (1973).

Appellants seek to use minutes of 1992 homeowner's meeting to allege a broader scope of the easement. *See* Appellants' Brief pp., 6-7; (R. p. 389-391). However, the original grantors

of the easement were not at the meeting. Appellants are attempting to manufacturer their own evidence of a broader scope. The homeowner's meeting does not prove or suggest anything about the intent of the original grantors of the easement.

Finally, Appellants seeks to rely on Appellant Snow's deed language to expand the scope of the easement. *See* Appellants' Brief pp. 11-12. The deed conveyed to Appellant Snow states: "Also conveyed herwith is an easement for the use and enjoyment by the lot owner and the lot owner's immediate family to the Lake Access Lot shown on the recorded subdivision lot, said easement to be appurtenant to the land herin conveyed." (R. p. 360-360A). Appellants argue no limitation on the easement is set forth in the deed and thus the scope of the easement should not be limited. *See* Appellants' Brief pp. 11-12. This argument ignores the fact that a servient estate holder can use the property if the use is not in contravention of the easement holder's use. *Clemson University v. First Provident Corp.*, 260 S.C. 640, 651, 197 S.E.2d 914, 919 (1973), (saying "the rights of the easement owned and of the landowner are not absolute, irrelative, and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both the easement and the servient tenement."). Appellants' argument also ignores case law supporting the least restrictive construction of an easement. *See generally Tupper v. Dorchester County*, 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997). Most importantly, the deed's language allowing use and enjoyment of an easement over the Lake Access does not transform the use of the Lake Access into anything beyond the ability to access the lake through the property. The deed's language certainly does not transform an easement over the Lake Access into a right to possess without limitation the entire property.

Appellants also argue that "noise from the parties disturbs the Lindlers". *See* Appellants' Brief p. 5. Importantly, the testimony does not support this conclusion. Instead, the testimony is

that Linder occasionally hears noise. (R. p. 130, line 22-p. 131, line 5). Lindler said the noise was comparable to an outdoor party at his place. (R. p. 138, lines 10-16). There is no indication in the testimony that the noise is disturbing. Additionally, Respondent Bell has testified the noise is related to cheering while watching University of South Carolina football games on television and the cheering is consistent with the noise of other neighbors also watching the game outside. (R. p. 204, lines 9-22).

II. THE MASTER-IN-EQUITY CORRECTLY RULED THE RESTRICTIVE COVENANTS DO NOT APPLY TO THE LAKE ACCESS.

a. The Restrictions do not apply to the Lake Access.

Appellants argue the Master-in-Equity erred when it found the restrictive covenants did not apply to the Lake Access. *See* Appellants' Brief pp. 14-17. Appellant appears to principally argue the language in the original restrictive covenants clearly applies to the Lake Access. *Id.* at 15.

It is well settled in South Carolina that restrictions can be created by deed, declaration, or implication, as through filing of a plat. *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 362, 628 S.E.2d 902, 913 (Ct. App. 2006). Regarding the interpretation of restrictions, restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property. *Seabrook Island Property Owners Ass'n v. Marshland Trust, Inc.*, 358 S.C. 655, 662, 596 S.E.2d 380, 383 (Ct. App. 2004); *Tupper v. Dorchester County*, 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997).

Furthermore, the state Supreme Court has said in reference to the restriction of use of property and creation of an easement "that in the interpretation of maps and plats intention will not be inferred from symbols of uncertain meaning". *Hamilton v. CCM*, Inc., 274 S.C. 152, 157,

263 S.E.2d 378, 380 (1980). Finally, "Covenants in deeds impose restrictions on specific lots or parcels of property, rather than covenants which apply to an entire subdivision." *See* Randolph R. Lowell et al., *South Carolina Equity: A Practitioner's Guide* 132-133 (2010).

The Master-in-Equity found and the Respondents assert that the plain language of the restrictions suggests they were not intended to apply to the Lake Access. Simply put, the restrictions relate to residential lots and do not apply to a parcel of land whose purpose is to allow lake access.

Applying the restrictions to the Lake Access would defeat the purpose of the Lake Access. For instance, Restriction number one states "No lot or property conveyed hereunder shall be used for any other than private residential purposes." (R. p. 361-363). Restriction number two requires a residence to be at least 1,200 square feet and prohibits construction of basements. *Id.* If these restrictions were applied, they would call for the access lot to be used only as a private residence and require the construction of a larger residence. Both of these outcomes would prevent and impair the use of the Lake Access by the Appellants to access the lake.

Additionally, a fair reading of other restrictions demonstrates they do not apply to the Lake Access. For instance, restriction five regards appearance of a private residence and states that "[a]ll rubbish, garbage and trash shall be kept in closed cans ... behind the *house*". (R. p. 361-363). (emphasis added). The general scheme and specific language of the restrictions suggests they are related to the residential lots in the development. Thus, the restrictions simply do not apply to the Lake Access.

b. Interpretation of the restrictions should be resolved in favor of the free use of land.

If the Court were to find an ambiguity in the language and application of the restrictions, existing case law compels a finding that interpretation of the restrictions should be resolved in favor of the free use of the land. *See generally Seabrook Island Property Owners Ass'n v. Marshland Trust, Inc.*, 358 S.C. 655, 662, 596 S.E.2d 380, 383 (Ct. App. 2004) (restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property); *Tupper v. Dorchester County*, 326 S.C. 318, 326, 487 S.E.2d 187, 191 (1997).

The overwhelming weight of the evidence is that the Lake Access has been improved and is in a better condition than it was in previous years. The Lake Access had been sparingly used by the prior owners, but is now used by the new owners; (R. p. 159, lines 1-8) (Gelhken saying she occasionally took her grandchildren to and walked on the property but not within a year); (R. p. 168, lines 15-18) (Kelly stating he used "very minimally"); (R. p. 203, lines 14-23) (Campitella saying her family snow skied on the property once and she put her feet in the water a couple times). Thus the property is used more now than it had been. Additionally, the new owners' improvements to the Lake Access have made the property more beneficial to the easement holders, in that the gravel driveway and boat ramp have been improved. (R. p. 284, lines 1-12); (R. p. 285, line 23-p. 286, line 8) (testimony of J. Smith).

The Court should strictly construe the restrictive covenants with any doubt resolved in favor of free use. Because of the arguments that the terms of the restrictions simply do not apply to the Lake Access by their own terms, as discussed above, and the fact the property's use and utility has been increased, the Court should strictly construe the restrictions and resolve any doubt in favor of free use. Thus, the Court should find the restrictions simply do not apply to the Lake Access.

c. *The Confirmatory Amendment to the Restrictions Clarifies the Restrictions Do Not Apply to the Lake Access.*

The Court should also consider the February 1999 Confirmatory Amendment to the restrictions and determine the restrictions do not apply to the Lake Access.

Current South Carolina law allows modification of restrictions if five factors are met. *AJG Holdings LLC v. Dunn*, 391 S.C. 463, 706 S.E.2d 23 (Ct. App. 2011). These factors are (1) the right to amend the covenants must be unambiguously set forth in the original declaration of covenants; (2) the developer, at the time of the amended 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 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. *Id.*

The Confirmatory Amendment meets these five factors. The right to amend is unambiguously set forth in the covenants. (R. p. 361-363). The developer retained property in the development at the time of the 1999 modification as they did not sell the Lake Access until 2010. The covenants do not contain any amendment procedure or requirement to give notice, besides unequivocally retaining the right to alter the restrictions at any time. (R. p. 3) (saying "they are for the benefit of the Grantors who may change or modify the terms contained herein at any time"). Finally, the modifications are not unreasonable, indefinite, or in contravention of public policy. In fact, they are in favor of the policy of free use of land. The modification merely confirm the original purpose and plain meaning of the parcel shown on the 1983

subdivision plat—that the restrictions were imposed on the numbered lots and not the area marked "Lake Access". Additionally, the modifications are not indefinite, but easily understood.

Appellants also argue the February 1999 Confirmatory Amendment To Restrictions Hilton Place Subdivision does not apply to the Lake Access. *See* Appellants' Brief 15-16. Appellant argues the Confirmatory Amendment only applied to other real property owned by the developers. *See* Appellants' Brief 15. However, Appellants fails to fully read the Confirmatory Amendment. (R. p. 370-372). Paragraph seven clearly states the intent is to clarify that the "Restrictions were only to apply to the individually platted and numbered lots shown thereon (i.e., Lots 1-16 Block "A"; Lots 1-9 Block "B"; Lots 1-6 Block "C"" and Lots 1-2 Block "D") and not to any other property shown on the aforementioned plat." Thus, the plain language of the Confirmatory Amendments states the restrictions do not apply to any non-numbered lots on the plat. The Lake Access was shown on the plat, but was not numbered.

III. THE MASTER-IN-EQUITY CORRECTLY RULED THE LAKE ACCESS HAS BEEN IMPROVED.

Appellants asserts the Master-in-Equity erred when it found the Lake Access has been improved and advances as support the fact that an outhouse has been "located in a nice upper-class neighborhood". *See* Appellants' Brief p. 17-18.

The Court should find this argument has been abandoned. Appellants' entire argument on this issue is one sentence, which contains no citation to authority or even the record. The Court should find this issue is abandoned as Appellants only provided a short conclusory statement without any legal support or citation to the record. *See generally Arnal v. Arnal*, 363 S.C. 268, 609 S.E.2d 821 (Ct. App. 2005) (the appellant "makes no argument regarding this issue and cites no authority. Therefore, we find the issue is abandoned on appeal."); *Bryson v. Bryson*,

378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485 (Ct. App. 2004) ("Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal."); *Glasscock, Inc. v. U.S. Fidelity & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

Alternatively, the Court should uphold the Master-in-Equity's findings. The Master-in-Equity considered the various improvements, viewed the pictures, and heard testimony of improvements and the alleged dimunition of value. (R. pp. 13-14).

Despite the fact that on appeal the court can find facts in accordance with its view of the preponderance of the evidence, *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005), Appellant is not relieved of the burden of convincing this court the trial court committed error in its findings. *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001).

The Master-in-Equity recited evidence of the work performed on the Lake Access: (1) multiple truckloads of debris were removed, (R. p. 197, line 23-p. 198, line 21); (R. p. 283, line 4-p. 285, line 11); (2) approximately 10 to 20 loads of dirt were brought in, (R. p. 285, lines 5-11); (3) a gazebo and fire pit were constructed, (R. p. 286, lines 9-17); (4) the dock was improved, (R. p. 286, lines 9-17); (5) the boat ramp was improved, (R. p. 285, line 23-p. 286, line 8); (6) a sewer l. was fixed, (R. p. 287, line 15-p. 289, line 7); and (7) an outbuilding with bathroom was constructed. (R. p. 295, lines 2-5). He also heard evidence that the current owners of the Lake Access had recently obtained an equity line loan and the appraised value of

their home had increased by approximately $15,000.00. (R. p. 14); (R. p. 295, lines 5-12 (testimony of J. Smith)).

The Master-n-Equity also found the Appellants' testimony that the storage building with bathhouse had reduced their property value to be unpersuasive. (R. p. 13-14). Simply put, this testimony was unsupported assertions that are not backed by any explanation, information regarding comparable sales, or expert testimony. (R. p. 273, line 15-p. 274, line 7). 7 (Campitella admitting she made up the amount she assigned to a decrease in value). Certain of these witnesses also admitted the downturn in the economy might have impacted their property's value. (R. p. 13-14); (R. p. 113, lines 14-18) and (R. p. 120, lines 1-20) (testimony of Snow). Appellant McDaniel also asserted a diminution in value related to the smell from the outhouse (R. p. 147, lines 13-19), but then admitted she only was aware of any smell on weekend. (R. p. 148, lines 16-22). When compared to the specific testimony of improvements to the Lake Access and the admission by some the property is actually better maintained, the testimony of the Appellants lacks any support or credibility.

Appellants bear the burden of convincing the court the Master-in-Equity committed error, and by failing to refer to any citations in the record or authority in support of their position they simply have failed to meet this burden.

IV. APPELLANTS HAVE ABANDONED ANY ARGUMENT AGAINST RESPONDENT-SELLERS.

Appellants' appeal specifically addresses only the equitable claims. (Initial Brief 2). Furthermore, Appellants only request relief from the Court relative to the scope of the easement, application of the restrictive covenants, and existence of the improvements on the Lake Access. *See* Appellants' Brief 18.

The Respondents include two classes of litigants: those that came to possess the Lake Access as heirs to the original developers [hereinafter "Respondent-Sellers"] and those that purchased the Lake Access from said heirs, the "Respondent-Purchasers". Appellants do not seek any relief from or relative to the Respondent-Sellers. These Respondents-Sellers are Charles S. Coleman, Jr., J. Thomas Coleman, Jacob C. Coleman, Valiska C. Freeman, George Arthur Stoudenmire, George Arthur Stoudenmire as trustee for the benefit of William E. Stoudenmire, Linda B. Stoudenmire, Stacey S. Dershaw f/k/a Stacey Michell Stoudenmire and Laura Brittany Stoudenmire, and Trust "B" created by U/W Everett L. Stoudenmire and Valiska F. Coleman. Therefore, the Court should rule that any issue related to any attempt to seek relief from the Respondent-Sellers has been abandoned by the Appellants.

Rule 208(b)(1)(B), SCACR, addresses a party's failure to argue an issue. It states, "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."

In *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005), the Court of Appeals noted "Appellants only address the breach of contract claim in their discussion of evidence of damages. Accordingly, we find they have abandoned their other counterclaims against Collins." Similarly, in *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992), the appellant excepted to the master's ruling on the admissability of evidence, but failed to argue the issue in his brief and therefore was deemed to abandon it. There, the Court found the unappealed ruling was the law of the case.

Likewise, the Appellants here only address issues related to Respondent-Purchasers. Therefore, any arguments on issues related to the Respondent-Sellers should be deemed abandoned on appeal.

CONCLUSION

For the foregoing reasons, the Court should affirm the ruling of the Master-in-Equity.

Respectfully submitted,

April 7, 2014

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

Appellate Case No. 2013-002727
Case No. 2011-CP-32-2968

Elizabeth L. Snow (f/k/a Elizabeth S. Bell), Mark S. Campitella, Chrissie E. Campitella, Henry D. Gehlken, Sr., Vivian S. Gehlken, Kenneth W. Kelly and Anita B. Kelly, Stephen F. Linder, Sr. and Jackie Bower Linder, and Kathryn A. McDaniel ..... Appellants,

v.

Judson P. Smith, Christy Brabham Bell, Charles S. Coleman, Jr., J. Thomas Coleman, Jacob C. Coleman, Valiska C. Freeman, George Arthur Stoudenmire, George Arthur Stoudenmire as trustee for the benefit of William E. Stoudenmire, Linda B. Stoudenmire, Stacey S. Dershaw f/k/a Stacey Michell Stoudenmire and Laura Brittany Stoudenmire, and Trust "B" created by U/W Everett L. Stoudenmire and Valiska F. Coleman ....Respondents.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

I certify that Respondent's Final Brief complies with SC Rule of Appellate Procedure, Rule 211(b).

April 7, 2014

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