

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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AUG 12 2014

**SC Court of Appeals**

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APPEAL FROM HORRY COUNTY

Court of Common Pleas

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Case No.: 2004-CP-2075  
Appellate Case No.: 2012-212773

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John Musick, ..... Respondent

v.

Thomas L. Dicks and Robert E. Dicks, Jr., ..... Appellants.

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PETITION IN OPPOSITION OF REHEARING

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Respondent, John Musick, by and through his undersigned counsel, hereby opposes Appellant’s Petition for Rehearing in this matter. This opposition is based on the grounds that the Court’s findings were proper and must be affirmed. Based on the reasons set forth below, Respondent respectfully requests that the Court deny Appellant’s Petition for Rehearing and in doing so affirm the Opinion Number 2014-UP-284 (hereinafter the “Opinion”) and the Master’s orders.

In its most recent Opinion, the Court most accurately and sufficiently determined all issues of fact. Neither oversight nor misapprehension occurred in its conclusion. It is apparent that all necessary and appropriate avenues of legal remedies have been exhausted to the fullest extent of the law.

Respondent John Musick instituted this action in Horry County on April 12, 2004 against Appellants, Thomas Dicks and Robert Dicks, asserting that a re-subdivision plat recorded by Appellants which purported to subdivide their lot into seven lots violated restrictive covenants governing Long Bay Estates.

Appellant answered and counterclaimed by denying the applicability of restrictive covenants to the subject property and sought a declaratory judgment that they had not violated restrictions, covenants, or orders encumbering the property. Cross-motions for summary judgment were heard by the Honorable J. Stanton Cross, Jr., Master-in-Equity for Horry County, on August 16, 2006. By Order dated March 6, 2007, Judge Cross granted Respondent's motion for summary judgment, finding that the restrictive covenants applied to Appellants' property and that, therefore, Appellants were required to return the property to its original condition as one lot and were prohibited from subdividing the property.

Appellants' post-trial motion to alter or amend the final order was denied by order dated July 19, 2007. Appellants filed notice of appeal on September 6, 2007.

The Court of Appeals heard the case and remanded it for a full hearing, over-ruling the decision by Master-in-Equity, Judge Cross, finding that in the light most favorable to the Dicks, the case should be tried.

In April 2011, the trial was held and all evidence from both parties was presented and entered into the record. Significantly, the Appellant's counsel and expert testified that he had found the covenants and was aware that the property was one lot as did the previous owners, as did Attorney Dusenbury, as well as Attorney Mumford, all who were fully aware of the circumstances. Thereafter, Judge Howe ruled at the fourth hearing concerning these restrictive covenants that they were valid.

In sum: Judge Winston Vaught in 1972, Judge Stan Cross in 1998, Judge Stan Cross in 2004, Judge Cynthia Graham Howe in 2011, and the Court of Appeals in 2014 have all consistently held that the 1958 Restrictive Covenants are valid and applicable to Appellants' lots.

**CONCLUSION**

WHEREFORE, the Respondent respectfully requests the Court to affirm the in favor of the Respondent.

Respectfully submitted,



Thomas C. Brittain



Mary Madison Brittain Langway

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Myrtle Beach, SC  
August 8, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

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Case No. 2004-CP-26-2075  
Appellate Case No. 2012-212773

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John Musick,.....Respondent,

v.

Thomas L. Dicks and Robert E. Dicks, Jr.,.....Appellants.

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**CERTIFICATE OF MAILING**

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Allison L. Lazar certifies that she is an employee of The Brittain Law Firm, P.A., attorneys for the Respondent and that she has placed in the U.S. mail the documents listed below in the above entitled action to the addressees below on August 8, 2014.

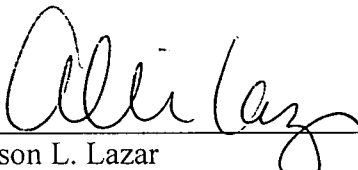
DOCUMENTS:      Petition in Opposition of Rehearing

ADDRESSEE:      Demetri K. Koutrakos, Esquire  
                         Callison Tighe & Robinson, LLC  
                         P. O. Box 1390  
                         Columbia, South Carolina 29202

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**SC Court of Appeals**

  
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Allison L. Lazar

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August 8, 2014

The Honorable Jenny Abbot Kitchings  
Clerk of Court  
SC Court of Appeals  
1015 Sumter Street  
Columbia, SC 29211

Re: John Musick vs. Thomas L. Dicks, *et al.*  
Case No. 2004-CP-26-2075  
Appellate Case No. 2012-212773

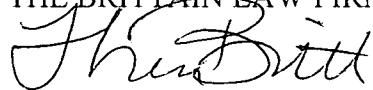
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent's Petition in Opposition of Rehearing.

I would greatly appreciate your returning one (1) clocked copy of this Petition to our office in the enclosed self-addressed stamped envelope. Please do not hesitate to contact my office if you have any questions.

With warm regards, I am  
Yours truly,

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain  
Mary Madison Brittain Langway  
TCB/all

cc: Demetri K. Koutrakos, Esquire

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