

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

Appellate Case No. 2014-002021

John Musick,..... Respondent,

v.

Thomas L. Kicks and Robert E. Dicks, Jr., Petitioners.

**RESPONSE TO PETITION FOR A WRIT
OF CERTIORARI**

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Attorneys for Petitioners

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OCT 20 2014

S.C. SUPREME COURT

Respondent, John Musick, responding to the Petition for Writ of Certiorari filed by the Petitioner, Thomas L. Dicks and Robert E. Dicks, Jr. would show and allege as follows. This matter has been litigated incessantly for ten years. Respondent John Musick instituted this action in Horry County on April 12, 2004 against Petitioners, Thomas Dicks and Robert Dicks, asserting that a re-subdivision plat recorded by Petitioners which purported to subdivide their lot into seven lots violated restrictive covenants governing Long Bay Estates. Petitioners answered and counterclaimed, denying the applicability of restrictive covenants to the subject property and seeking a declaratory judgment that they had not violated any restrictions, covenants, or orders encumbering the property.

A very prominent and fine jurist, Master Judge Stanton Cross, originally ruled with the Longbay property owners. In his Order, dated March 6, 2007, he reviewed the circumstances surrounding the deed restrictions and ruled to enforce the legal work of the late great Franklin Burroughs at Longbay. He upheld the restrictions and ruled in favor of respondents at a motion for summary judgment. Petitioners' post-trial motion to alter or amend the final order was denied by order dated July 19, 2007.

Judge Cross's ruling was appealed to the South Carolina Court of Appeals on September 6, 2007, where the South Carolina Court of Appeals found Judge Cross erred in ruling pursuant to a summary judgment standard; reversed and remanded to the Master in equity of Horry County for a trial on the matter. At the time the case was re-heard, Judge Cross was no longer serving as Master in Equity of Horry County, and it was re-tried before Master Judge Cindy Graham Howe.

Judge Howe had a full hearing, with both sides presenting evidence, arguments, testimony, etc. Significantly, Petitioners' own lawyer and expert (Wayne Mumford, Esquire)

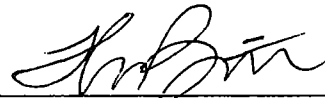
testified that he had found the covenants and was aware that the property was one lot as did the previous owners, as did Attorney Dusenbury (the owner's attorney), all who were fully aware of the circumstances. By order dated July 29, 2011, Judge Howe also ruled that the restrictive covenants in question were valid. Petitioners' post-trial motion to reconsider this decision was denied by order dated July 17, 2012.

This decision was again appealed to the Court of Appeals on August 20, 2012. On July 9, 2014, a three judge panel issued its ruling upholding Judge Howe's ruling with no dissent and now the Petitioners are seeking a ruling from the State's highest court.

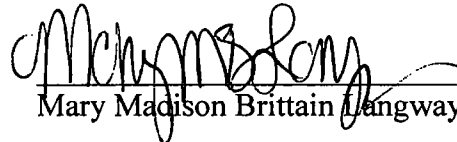
This matter has been fully litigated with evidence and documentation and resolved in the proper fashion. The Supreme Court need not review these matters. Pursuant to Rule 242(b) of the *South Carolina Appellate Court Rules*; (1) there are no novel questions of law, (2) There is no dissent in the decision of the Court of Appeals, (3) the decision of the Court of Appeals is not in conflict with any prior decisions made by the Supreme Court, (4) there are no substantial constitutional issues directly involved, and (5) there are no federal questions included in the decision by the Court of Appeals that conflicts with any decision of the United States Supreme Court. Petitioners have essentially recited and rehashed their appellate brief in an attempt to be granted certiorari by the South Carolina Supreme Court. However, the Court of Appeals heard each of these arguments several times, including, a petition for re-hearing that was denied as well.

Specifically, with respect to the four (4) questions presented by Petitioner, Respondents would show these same four issues were presented to the South Carolina Court of Appeals, and therefore have been thoroughly reviewed and decided by a panel of three judges, who issued a per curium opinion, with no dissent. Petitioner has essentially recited the same brief and

arguments presented to the South Carolina Court of Appeals. As such, Respondents do not believe it is necessary to recite their appellate brief and arguments at this juncture. Based on the forgoing this case does not merit a grant of certiorari by the State's highest Court and Respondents would respectfully request that this Court deny Petitioners' Petition for a Writ of Certiorari.



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October 17, 2014

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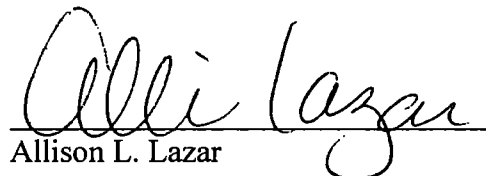
v.

Thomas L. Kicks and Robert E. Dicks, Jr., Petitioners.

CERTIFICATE OF SERVICE

I, Allison L. Lazar, an employee of The Brittain Law Firm, P.A., attorneys for the Respondent, do hereby certify that on October 17, 2014, I caused to be served upon counsel for the Petitioners the **Response to Petition for Writ of Certiorari**, by depositing a copy of the same in the United States Mail, with proper first-class postage affixed thereto, addressed as follows:

Demetri K. Koutrakos, Esquire
Mary Dameron Milliken, Esquire
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Allison L. Lazar

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