

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-In-Equity

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OCT 27 2014

S.C. Supreme Court

Opinion No. 2014-UP-284 (S.C. Ct. App. Filed July 9, 2014)
Appellate Case No. 2014-002021

John Musick, Respondent,

v.

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

**REPLY TO RESPONDENT'S RESPONSE TO
PETITION FOR A WRIT OF CERTIORARI**

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ATTORNEYS FOR PETITIONERS

OTHER COUNSEL OF RECORD:

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ATTORNEYS FOR RESPONDENT

Petitioners respectfully submit the following in reply to the Response to Petition for a Writ of Certiorari filed by Respondent.

Petitioners do not dispute the Master is a very prominent and excellent jurist, nor do Petitioners question the quality of legal work of Franklin Burroughs, who signed the 1972 Order. In fact, Petitioners seek to uphold and honor the 1972 Order, and the restrictions contained therein, in accordance with its carefully chosen terms. Contrary to Respondent's assertion that the trial court and the Court of Appeals have "enforced" and "upheld" the restrictions in question, the trial court and the Court of Appeals have instead completely disregarded and ignored the plain meaning and language of the 1972 Order and have read provisions into the 1972 Order which simply do not exist. In doing so, both the trial court and the Court of Appeals have failed to adhere to and apply the interpretive standards to which courts must adhere in interpreting restrictions. This departure is in direct conflict with numerous prior decisions of this Court.

Respondent appears to agree the restrictions in the 1972 Order are intended to benefit the Long Bay Estates Subdivision. However, Respondent insinuates the Court of Appeals' interpretation of these restrictions is consistent with preserving the character and nature of the Long Bay Estates subdivision. This is not the case. The Respondent himself, and a neighbor who testified on Respondent's behalf, testified the Property being used as seven lots is entirely consistent with the overall character of the neighborhood. (R. p. 273, l. 20 – p. 274, l. 2, p. 319, l. 23 – p. 320, l. 1, p. 320, ll. 3-4, p. 334, ll. 3-4). Respondent further insinuates that numerous Long Bay Estates property owners were involved in the underlying lawsuit¹ when in actuality Respondent is the only party who has challenged Petitioners' arrangement of the lots as shown on their 2003 Plat. Again,

¹ Respondent states Judge Cross "originally ruled with the Longbay property owners."

the Court of Appeals' (and the trial court's) refusal to apply the plain meaning of the restrictions in the 1972 Order has resulted in an application of these restrictions that is not only in conflict with prior decisions of this Court, but is also inconsistent with the overall neighborhood scheme for Long Bay Estates.

The 1972 Order is clear that any owner of the Property has the right to revise the lot arrangement. Both the 1955 Plat and the map attached to the 1972 Order show the Property as containing seven lots, Respondent admitted the Property contained seven lots, and the Court of Appeals previously held the Property consisted of seven lots. The Dicks have arranged these seven lots consistent with the 1955 Plat and the map attached to the 1972 Order, keeping the Property as seven lots. This is authorized by the 1972 Order, and the trial court and the Court of Appeals should have so held. Any contrary interpretation is in direct conflict with the plain and obvious meaning of the 1972 Order, and represents a complete departure from the interpretive standards the trial court and the Court of Appeals were bound to apply in construing the 1972 Order.

Finally, Respondent once again misinterprets the notice requirements of the Shelter Rule.² Any purported knowledge acquired by any person or party *after* the Meeses acquired the Property is irrelevant to the application of the Shelter Rule. The only knowledge relevant to the application of the Shelter Rule is the knowledge of *the Meeses (not the Petitioners) at the time the Meeses' purchased the Property (not after)*. See Goodwin v. Harrison, 231 S.C. 243, 98 S.E.2d 255, 258 (1957) (After property has

² Respondent states James F. Dusenbury, who represented the Meeses in their purchase of the Property, and Wayne Mumford, who represented Petitioners in their subsequent purchase of the Property from the Meeses, were both aware of the 1972 Order and its restrictions. Mr. Dusenbury, however, unequivocally testified that any knowledge he had of the 1972 Order and its restrictions was attained *after* the Meeses' purchase of the Property, and Mr. Dusenbury issued a title policy insuring the Meeses' title the Property without any exception for the 1972 Order. (R. p. 361, lines 7-9). Wayne Mumford only represented the Respondents in their later acquisition of the Property from the Meeses, so any knowledge he could have had would necessarily have been after the Meeses' acquisition of the Property. (R. p. 404, lines 1-22).

passed into the hands of a bona fide purchaser, *every subsequent purchaser* stands in the shoes of such bona fide purchaser and is entitled to the same protection as the bona fide purchaser, *irrespective of notice*. . .).

Any actual notice acquired by any person or party after the Meeses acquired the Property is irrelevant. See Spence v. Spence, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006) (“The bona fide purchaser must show all three conditions - actual payment, acquiring of legal title, and bona fide purchase - occurred *before he had notice* of a title defect or other adverse claim”); see also Knox v. Gruhlkey, 192 S.W. 334, 337 (Tex. Civ. App. 1917) (“notice after the purchase cannot act retroactively, so as to defeat an already vested title acquired by a bona fide purchaser”).

For the reasons stated, Petitioners again request this Court grant the petition for a writ of certiorari.

Respectfully submitted,



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1020.276\2012Appeal\Certiorari-Reply

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CERTIFICATE OF SERVICE

I, Kathleen S. Romero, an employee of Callison Tighe & Robinson LLC, Attorneys for the Petitioners, do hereby certify that, on this date, I caused to be served the foregoing **Reply to Respondent's Response to Petition for a Writ of Certiorari** upon Respondent's counsel, by depositing a copy of the same in the United States mail, with proper first-class postage affixed thereon, addressed as follows:

Thomas C. Brittain, Esquire
Mary Madison Brittain Langway, Esquire
The Brittain Law Firm, PA
4614 Oleander Drive
Myrtle Beach, SC 29577


KATHLEEN S. ROMERO

October 27, 2014

1020.276\2012Appeal\Certiorari\COS-Reply

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October 27, 2014

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
SC Supreme Court
1231 Gervais Street
Columbia, SC 29210

RE: John Musick vs. Thomas L. Dicks and Robert E. Dicks, Jr.
Appellate Case No. 2014-002021

Dear Mr. Shearouse:

Enclosed herewith please find an original and seven (7) copies of the Reply to Respondent's Response to Petition for a Writ of Certiorari in the above-referenced matter. Kindly file the same and return a clocked-in copy to the courier.


By copy of this letter, the enclosed Reply is being served upon Respondent's counsel.

Please feel free to contact my office with any questions.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Demetri "Jim" K. Koutrakos

DKK:ksr

Enclosures

cc (w/enc.): Thomas C. Brittain, Esquire
Mary Madison B. Langway, Esquire
Mr. Thomas L. Dicks
Mr. Robert E. Dicks, Jr.

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