THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2014-CP-07-2438
Appellate Case No. 2015-0001795

Community Services Associates, Inc., ... Appellant,

v.

Stephen H. Wall and Maria P. Snyder Wall, ... Respondents.

INITIAL BRIEF OF RESPONDENTS

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I. This Court should not consider evidence excluded by the Master.

Appellant's Brief includes a description of documents from the files of Sea Pines Architectural Review Board concerning an application by a former owner of Respondents' home for approval to add the second floor area some 17 years before Respondents bought the home. [Initial Brief of Appellant pp. 5 – 7] This evidence was excluded by the Master. [Tr. p. 54, lines 23 - 24] Appellant has not raised or argued an issue concerning the Master's exclusion of this material, therefore no such issue is preserved for appeal, and the excluded evidence should be disregarded. SCACR 208(b)(1)(B); *Ahrens v. State*, 392 S.C. 340, 709 S.E.2d 54 (2011); *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994); *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563 (Ct.App.2001).

II. Respondents' home fully complies with the Covenants.

The Covenants allow one detached single family dwelling not to exceed two stories in height and one small one-story accessory building which may include a detached private garage and/or servant's quarters. A guest suite or like facility without a kitchen is allowed, but may not be rented except as part of the entire premises. [Plaintiff's Exhibit 2]

Appellant's President conceded that the structures on Respondents' property conform to covenants in all respects:

Q: Is there on this property a detached single family dwelling?

A: Yes.

Q: Are there any structures on the property that violate the covenants?

A: I don't believe so.

[Tr. p 32, line 24 thru p. 33, line 4]

This admission disposes of any argument that that Respondents' home has more than one kitchen or that Respondents' use of their home occasionally converts it into a multi-family dwelling. Unless otherwise defined, the terms "single-family" and "multi-family" are generally used to refer to types of buildings that can be constructed on the property. *See Sissel v. Smith,* 242 Ga. 595, 250 S.E.2d 463 (1978). Respondents' home is a single family dwelling. It was approved as built and fully complies with the Covenants. It has not been modified. [Tr. p. 85, line 20 thru p. 86, line 2] The home has one kitchen, which is located on the first floor. [Tr. p. 84, line 17 thru p. 85, line 19]. There is no guest suite or like facility with a kitchen. As the Master correctly found, the presence of a portable hot plate, toaster oven or mini refrigerator such as one might find in any number of college dorm rooms and which could be very easily removed, does not make a kitchen.

Appellant has received no complaints that the Walls' use of their home is overcrowding the property. [Tr. p. 33, lines 5 - 9]

III. The Covenants do not prohibit owners from remaining in their home when they rent to a third party.

In the event, the issue in this case is Appellant's claim that the Covenants do not allow Respondents to stay in their home when they rent it to an unrelated party. [Tr. p. 26, line 18 thru p. 27, line 2]

The Covenants' sole reference to rentals is its statement that "a guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented except as part of the entire premises including the main dwelling". [Plaintiff's Exhibit 2] Appellant was unable to offer any evidence that Respondents are, in fact, renting a guest suite or like facility without a kitchen. [Tr. p. 34, line 22 thru p. 35, line 1]. Respondents do not rent rooms, they rent to one rental party at a time, and the rental party has the use of the entire home, except for the space on the second floor. [Tr. p. 10, lines 10 - 24; p. 73, lines 3 - 8]

IV. The Covenants do not require that homes be rented "in [their] entirety and as a whole".

In the end, Appellant asks that this Court find that the restriction on renting guest suites without kitchens implies broader and often vague restrictions on home rentals and living arrangements. This Court should decline the invitation.

As the Master correctly observed, if it was the intent of the Covenants to prohibit owners from sharing their home with a renter or to require that homes may only be rented in their entirety and as a whole, it would have been a simple matter to say so. [Order of 5/7/15, p. 3] Appellant asks this Court to simply assume this to have been an oversight or poor drafting, but there is no basis for either conclusion. The Court should not imply a restriction on the use of Respondents' home that could have been easily stated had that been the intent of the Covenants.

As the Court said in *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998):

> "The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later

> developed been foreseen by them at the time when the restriction was written." *Forest Land Co. v. Black,* 216 S.C. 255, 57 S.E.2d 420, 424 (1950). It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property, subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. It follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property. *McDonald v. Welborn,* 220 S.C. 10, 66 S.E.2d 327 (1951). "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Hamilton v. CCM, Inc.,* 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980).

The Court is to construe any ambiguity against restricting property. *Hardy v. Aiken,* 369 S.C. 160, 166, 631, S.E.2d 539, 542 (2006). A restrictive covenant is ambiguous when its terms are reasonably susceptible of more than one interpretation. *South Carolina Dep't of Natural Resources v. Town of McClellanville,* 345 S.C. 617, 550 S.E.2d 299 (2001).

Appellant's attempts to distinguish between permissible and impermissible living arrangements illustrate one reason why the Court should not stray beyond the clear language of the Covenants. There is simply nothing in the Covenants that dictates who may or may not reside in a home based on the personal or contractual relationships of the parties involved.

For example, Appellant concedes that the Covenants allow short term rentals, but asserts that, by implication, they necessarily limit rentals to a "single interest that may have multiple family members or multiple friends of family .... under one lease agreement". [Tr. p. 28, lines 4 - 11] Roommates or other persons may or may not be

allowed, "dependent upon the relationships and the monetary contract." [Tr. p. 29, lines 17 – 22]

Similarly, although the Covenants expressly allow servant's quarters and Appellant's President initially testified that owners can have servants residing on their property [Tr. p. 29, lines 9 - 16], he subsequently testified that servants may or may not be permissible, "dependent upon if that service was staying overnight and they are unrelated". [Tr. p. 39, line 25 thru p 41, line 5]

Nothing in the clear language of the Covenants implies such vague restrictions on the Respondents' use of their property.

V. The Master's denial of Appellant's request to open the judgment to take testimony concerning a "Letter to the Editor" written by Mrs. Wall was a proper exercise of his discretion.

The Master's denial of a new trial or hearing to consider a "Letter to the Editor" to the Island Packet newspaper after the trial was not based upon an error of law. Nothing in the Master's email suggests that he did not believe he could not open the judgment and take additional testimony. To the contrary, the Master's email makes it clear that he simply denied the request in the exercise of his discretion. A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *South Carolina State Highway Department v. Clarkson,* 267 S.C. 121, 226 S.E.2d 696 (1976).

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CONCLUSION

For the foregoing reasons, this Court should affirm the Master's Order.

Respectfully Submitted,

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