

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-07-01402

RECEIVED

SEP 09 2016
SC Court of Appeals

THOMAS J. O'BRIEN,)

Plaintiff,)

Vs.)

ORDER AND DECREE

HENRY JAMES VAN DAM, THERESA)
D. VAN DAM, CLYDE A. SANDERS,)
JANET S. SANDERS, TIMOTHY D.)
BROUILLETTE, JULIE LYNN)
BROUILLETTE, ROBB R. ALEXANDER,)
BONNIE M. ALEXANDER, FLORIEN)
DAVADI, MARIA OUTEIRAL,)
CATHERINE A. DAVIS, ANTHONY)
R.GOMEZ, III, MARY E. GOMEZ,)
TRAVIS HUTCHINGS, AMY J.)
HUTCHINGS, BRUCK K. PARKER, SR.,)
MARY E. PARKER, ALBERT L. KEETON,)
DONNA S. KEETON, GREG BRANTLEY,)
KENISH D. BRANTLEY, EMERSON)
G. DICKSON, EVELYN DICKSON,)
WILLIAM H. WALKER, JR., DEBORAH)
L. WALKER, LINDA J. GOMEZ,)
CHARLES J. BRACE, MEREDITH N.)
BRACE, CHARLES E. HORTON,)
SHARON J. HORTON, EDWARD)
CANALES, CAROLINE M. CANALES,)
MICHAEL L. SAPP, MARJORIE H. SAPP,)
WILLIAM J. DRAINS, SYMATHA DRAINS,)
GARY W. TAYLOR, JOHN W.)
WESTMORELAND, PHYLLIS)
WESTMORELAND, MIDWEST)
CONCEPTS CORPORATION, BARRY L.)
REESE, GREGORY C. POOK, JUDITH A.)
ATHEY, RICHARD A. GALGANO,)
RAYMOND F. MATHIS, MAXINE L.)
MATHIS, BERNARD MCINTYRE,)
RALPH RAY KEARNS, JR., CHERYL)
LYNN J. KEARNS, GUY SIDNEY)
RICHARDSON, LINDA SUE)
RICHARDSON, DIANNA HUSTON,)

2016 MAY 21 PM 2:15
JESSIE ANN GIBSON
CLERK OF COURT
BEAUFORT COUNTY, S.C.

DANIEL R. MORGAN, MICHELLE J.)
 MORGAN, LARRY G. MARRIFIELD,)
 EILEEN MERRIFIELD, JAMES FARMER,)
 CATHERINE B. FARMER, BRENDA)
 O'SHIELDS, WARREN J. DISBROW,)
 JOHN F. DYKEMAN, CAROL W.)
 DYKEMAN, EVERETT R. LENNEX,)
 ROSITA C. LENNEX, RAUL DENISE)
 DOMINGUEZ, PAULA CHRISTINE)
 WRIGHT, SHIRLEY A. SNYDER,)
 BENJAMIN J. KILEY, JAMES F. BAUER,)
 REVOCABLE TRUST, BENJAMIN KOLB,)
 WILLIAM MARK FRY, ELIZABETH)
 ANN FRY, MARK A. COOK, ROSE M.)
 COOK AND SHAKY POND, LLC.)
)
 Defendants.)
)

The Plaintiff and each of the Defendants hereto are the owners of the lots of Oakmont Subdivision, a subdivision of real property located in Beaufort County, South Carolina. Each of the lots in Oakmont Subdivision are covered by certain "Covenants and Lot Restrictions for Oakmont Subdivision", duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 14, 1978 in Record Book 259 at Page 200, and thereafter amended pursuant to a document recorded on May 12, 1978 in the Register of Deeds for Beaufort County, South Carolina in Record Book 263 at Page 923. A document entitled "Assignment of Interest" regarding these Covenants and Lot Restrictions was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 8, 1980 in Record Book 227 at Page 799

The Covenants and Lot Restrictions for Oakmont Subdivision provide in pertinent part as follows:

19. All covenants and restrictions contained in this declaration shall run with the land and shall be binding on all parties and persons until January 1, 1985; after which time said covenants and restrictions shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been recorded agreeing to change these covenants in whole or in part or to terminate the same.

On April 16, 2014 a document entitled "Agreement To Terminate Covenants" was recorded in the Register of Deeds for Beaufort County, South Carolina in Record Book 3315 at Page 1529.

On June 11, 2014 the Plaintiff filed this action in the Office of the Clerk of Court for Beaufort County, South Carolina. Through this action the Plaintiff seeks an Order from this Court declaring that the "Agreement To Terminate Covenants" is null and void. Plaintiff's Complaint alleges two causes of action: Improper Execution and Fraud In The Inducement. The Defendants were all duly served. Defendants Ralph Ray Kearns, Jr. and Cheryl Lynn J. Kearns subsequently filed and served and Answer, on their behalf and on behalf of all other Defendants like situated, in opposition to Plaintiff's Complaint.

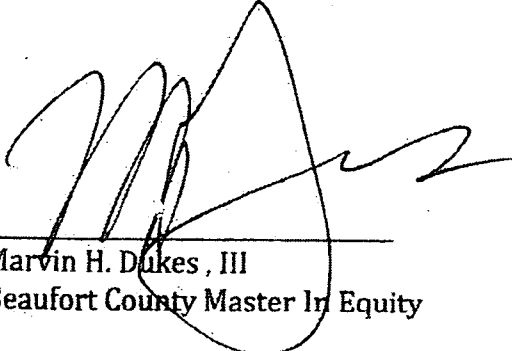
The case came to trial before me on August 4, 2015. Testimony was taken from which I make the following Findings of Fact and Conclusions of Law:

1. This action involves a subdivision of real estate located in Beaufort County, South Carolina and the owners of the individual lots within the subdivision. This Court has personal jurisdiction of all the parties to this action and subject matter jurisdiction over this action.
2. Although the "Agreement To Terminate Covenants" contain some irregularities, I do not believe it is fraudulent and specifically find the "Agreement To Terminate Covenants" not to be fraudulent.

3. I further find that the "Agreement To Terminate Covenants" contain an adequate number of signatures of the then lot owners of Oakmont Subdivision, as set forth in Paragraph 19 of the "Covenants and Lot Restrictions for Oakmont Subdivision", to accomplish its intended purpose of terminating the "Covenants and Lot Restrictions of Oakmont Subdivision".

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the "Agreement To Terminate Covenants" was neither entered into fraudulently nor under fraudulent inducement; and it does contain an adequate number of signatures of the then lot owners of Oakmont Subdivision, i.e. a majority of the then lot owners, to accomplish its intended purpose of terminating the "Covenants an Lot Restrictions of Oakmont Subdivision". The "Agreement To Terminate Covenants" filed in the Register of Deeds for Beaufort County, South Carolina on April 16, 2014 in Record Book 3315 at Page 1529 is hereby confirmed and upheld. ~~The Plaintiff's Complaint is dismissed.~~ I Am for the Defendants. a

AND IT IS SO ORDERED.



Marvin H. Dukes, III
Beaufort County Master In Equity

Beaufort, South Carolina
May, 27 2016.

THOMAS J. O'BRIEN,

HENRY JAMES VAN DAM ET AL,

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 SC Court of Appeals

2016 MAY 27 PM 2:15

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: KENNETH L. TOOTLE, ESQ. BEAUFORT COUNTY, S.C. CLERK OF COURT	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
--	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Defendants	Plaintiff	\$0
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
 TERMINATING HOA COVENANTS OF OAKMONT SUBDIVISION, BEAUFORT COUNTY, SC.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069
 Judge Code

5/27/16
 Date

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 SEP 09 2016
 SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-01402

THOMAS J. O'BRIEN

JAMES VAN DAM, ET AL.

2016 AUG 15 AM 10:17

PLAINTIFF(S)

JERRI ANN ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

THIS CAME BEFORE ME 8/10/2016 ON PLAINTIFF'S MOTION TO ALTER, AMEND OR RECONSIDER, FILED 6/6/2016. AFTER HEARING FROM PARTIES, I HEREBY DENY THE MOTION.

8/24/16

ORDER INFORMATION

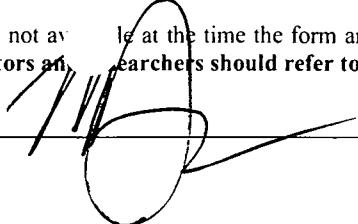
This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge



3069

Judge Code

8/15/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 15 day of 8, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of 8, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

H. FRED KUHN

ATTORNEY(S) FOR THE PLAINTIFF(S)

KENNETH L. TOOTLE, BERNARD MCINTYRE (PRO-SE),
GARY W. TAYLOR (PRO-SE), PAULA C. WRIGHT (PRO-SE),
MICHAEL L. SAPP (PRO-SE), MARJORIE H. SAPP (PRO-SE),
WARREN J. DISBROW (PRO-SE)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT



Court Reporter: N/A