

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2014-CP-07-1402

RECEIVED

SEP 30 2016

SC Court of Appeals

THOMAS J. O'BRIEN,

Appellant,

vs.

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, BRUCE 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, DANIEL B. MORGAN, MICHELLE J. MORGAN, LARRY G. MERRIFIELD, 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

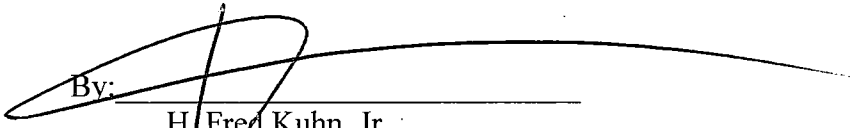
DOMINGUEZ, PAULA CHRISTINE WRIGHT, SHIRLEY A. SNYDER, BENJAMIN J. KILEY, JAMES F. BAUER, REVOCABLE TRUST, BENJAMIN KOLB, WILLIAM MARK FRY, ELIZABETH ANN FRY, MARK A. COOK, ROSE M. COOK AND SHAKY POND, LLC

Respondents.

AMENDED
NOTICE OF APPEAL

The Appellant, Thomas J. O'Brien, hereby appeals the Orders of the Honorable Marvin H. Dukes, III entitled Order and Decree dated May 27, 2016 and the Judgment in a Civil Case (Form 4) dated August 15, 2016 copies of which are attached hereto. Appellant received written notice of the entry of the Judgment in a Civil Case (Form 4) on August 24, 2015.

MOSS, KUHN & FLEMING, P.A.

By: 

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Beaufort, South Carolina
September 28, 2016

Other Counsel of Record:

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APPEAL FROM THE BEAUFORT COUNTY
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THOMAS J. O'BRIEN,

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REVOCABLE TRUST, BENJAMIN KOLB, WILLIAM MARK
FRY, ELIZABETH ANN FRY, MARK A. COOK, ROSE M. COOK
AND SHAKY POND, LLC

Respondents

CERTIFICATE OF SERVICE

Undersigned certifies that the **Amended Notice of Appeal**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
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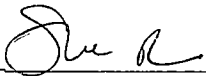
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in a post office or official depository under the exclusive care and custody of the United States

Postal Service, on September 28, 2016.

By: _____
Sue Radford

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-01402

THOMAS J. O'BRIEN,

HENRY JAMES VAN DAM ET AL,

PLAINTIFF(S)

2016 MAY 27 PM 2:16

DEFENDANT(S)

Submitted by: KENNETH L. TOOTLE, ESQ.

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

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

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SC Court of Appeals

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

received
6/8/16

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of May, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of June, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

H. Fred Kuhn
MOSS, KUHN & FLEMING, P.A.
P.O. Drawer 507
Beaufort, SC 29901-0507

KENNETH L. TOOTLE
P. O. BOX 1321
BEAUFORT, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

~~ATTORNEY(S) FOR THE DEFENDANT(S)~~

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

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

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.
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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 27 PM 2:15
JERRI A. ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

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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 an Answer, on their behalf and on behalf of all other Defendants like situated, in opposition to Plaintiff's Complaint.

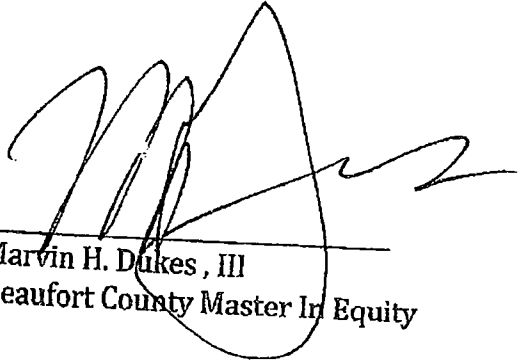
The case came to trial before me on August 4, 2015. Testimony was taken from which I make the following Findings of Fact and Conclusions of Law:

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 and 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.

LAW OFFICES

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H. FRED KUHN, JR.
CORY H. FLEMING*
KIMBERLY L. SMITH

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*ALSO MEMBER OF GA BAR

September 28, 2016

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SEP 30 2016

SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Thomas J. O'Brien v. Henry James Van Dam, et al.
Case No.: 2015-CP-07-1402

Dear Mrs. Kitchings:

In accordance with your letter of September 15, 2016 enclosed please find an Amended Notice of Appeal and Certificate of Service. In addition to the Amended Notice of Appeal, your September 15 letter also requests that I provide attorney information for the Corporate Respondents. Unfortunately, the Corporate Respondents do not have attorneys. They each went into default and never entered an appearance. I have served them with the appeal and if they should attempt to enter an appearance in the appeal I will advise them of their obligation to obtain counsel.

I certainly do appreciate the assistance that you and your office have provided in this matter.

With kindest regards, I am

Very truly yours,

MOSS, KUHN, FLEMING & SMITH, P.A.

H. Fred Kuhn, Jr.

HFKjr:sr

cc: Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court (w/enclosure)
Kenneth L. Tootle, Esquire (w/enclosure)
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
Bruce 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 L. Gomez
Charles J. Brace
Meredith N. Brace
Charles E. Horton
Sharon J. Horton
Edward Canales
Carolina 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 Galgano
Raymond E. Mathis
Maxine L. Mathis
Bernard McIntyre
Guy Sidney Richardson
Linda Sue Richardson
Dianna Huston
Daniel B. Morgan
Michelle L. Morgan
Larry G. Merrifield
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 Dominquez
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. Cock
Shaky Pond, LLC



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SC Court of Appeals

MOSS, KUHN & FLEMING, P.A.

ATTORNEYS AT LAW

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Beaufort, SC 29901-0507

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O'Brien

To:

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Clerk, South Carolina Court of Appeals
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