



STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO.: 2014-CP-08-2501

HOWARD M. JACKSON, JR.,

Plaintiff,

v.

STEPHEN KYLE DOWTY,

Defendant.

FINAL ORDER

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SC Court of Appeals

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CLERK OF COURT  
BERKELEY COUNTY, S.C.

The above-captioned matter came before the Court on July 11, 2016 based on the Complaint filed in this matter on November 12, 2014, wherein the Plaintiff seeks to enforce the terms of the Restrictive Covenants of the College Park Subdivision as set forth in the Restrictive Covenants and Easements recorded with the Berkeley County Register of Deeds Office on May 21, 1974 in Book C108 at Page 78, and in the amendment thereto entitled Amendment to Restrictive Covenants recorded with the Berkeley County Register of Deeds Office in Book C109 at Page 5 on August 8, 1974. Both the Plaintiff and the Defendant live in the College Park Subdivision in Berkeley County, South Carolina, where the property in question is located. The Defendant was duly served with the Complaint and on May 18, 2015 filed an Answer denying the relief requested by Plaintiff.

Pursuant to Rule 53, SCRPC, the above-captioned matter was referred to the <sup>Dorchester</sup> ~~Berkeley~~

County Master-in-Equity to make appropriate findings of fact and conclusions of law with

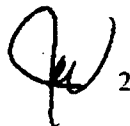
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authority to enter judgment in this action, with any appeal therefrom to the Supreme Court of South Carolina. *See, e.g., Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993). This case was transferred to the undersigned Master-in-Equity for Dorchester County with the consent of all parties, as the Master-in-Equity for Berkeley County recused himself due to prior business contacts with the Plaintiff. *See Ness v. Eckerd Corp.*, 350 S.C. 399, 403-04, 566 S.E.2d 193, 196 (Ct. App. 2002) (trial judge has broad discretion to recuse himself or herself due to a perceived conflict).

Present and appearing at the final hearing were the Plaintiff and his counsel, John B. Williams, and the Defendant, Stephen Kyle Dowty, appearing pro se. The Court advised the Defendant that he would be bound by all rules of procedure during the hearing, the Defendant acknowledged same, and the hearing proceeded with the Defendant appearing pro se.

The Court heard testimony from the Defendant, the Plaintiff, and their respective witnesses. From the hearing of testimony and statements made by the Plaintiff's counsel and by the Defendant, along with a review of the documents and pleadings contained in the Court's file, I find, conclude, and order as follows:

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## FINDINGS OF FACT

1. The Defendant is the owner of 124 Columbia Drive in Ladson, South Carolina, that is particularly described as Lot 63, Block 17, Berkeley County TMS Number 233-15-01-012.

2. The Defendant purchased this property on March 18, 2011, subject to the Covenants and Restrictions as set forth in the Restrictive Covenants and Easements recorded with the Berkeley County Register of Deeds Office on May 21, 1974 in Book C108 at Page 78 and in the amendment thereto entitled Amendment to Restrictive Covenants recorded with the Berkeley County Register of Deeds Office in Book C109 at Page 5 on August 8, 1974; said Covenants were attached to the Complaint filed in this action as Exhibits C and D (the "Restrictive Covenants").

3. The Restrictive Covenants have not been repealed and therefore remain binding on the Defendant.

4. Item II of the Restrictive Covenants specifically states as follows: "No building or fence, other than a coping not over twelve (12) inches high shall be placed on the part of lot between the sidewalk and the front line of the house, excluding porches."

5. The Defendant's construction of a picket and wire fence in excess of 12 inches in height around the front boundary of his property <sup>violates</sup> ~~is contrary to~~ the above-quoted provision of the Restrictive Covenants.

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6. The Restrictive Covenants further state as follows: "If the parties hereto, or any of them, or their heirs or assigns shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning real property situated in said development or subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from doing or to recover damages or other dues for such violation."

7. The Plaintiff commenced the instant lawsuit against the Defendant based on the above-quoted provision of the Restrictive Covenants.

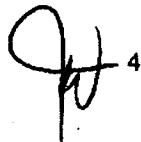
8. The Defendant knew or should have known of the Restrictive Covenants and any amendments thereto, including the fencing provision quoted hereinabove.

9. Nevertheless, the Defendant proceeded to erect the fence, even after being notified by the Plaintiff of the prohibition of the fence. Furthermore, after being served with the Complaint filed in this action, the Defendant continued to construct and erect the fence that is the subject of this action.

10. The Plaintiff has retained the legal services of John B. Williams to pursue the instant matter and has incurred liability to Williams & Hulst, LLC, for such services. *See* Am. Aff. of Attorney Fees and Costs, dated Sept. 8, 2016.

#### CONCLUSIONS OF LAW

1. As summarized by the Court of Appeals of South Carolina:

A handwritten signature in black ink, appearing to be "J. Williams", followed by a small number "4".

Restrictive covenants . . . are agreements "to do, or refrain from doing, certain things with respect to real property." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006) (citation and quotation marks omitted).

Therefore, covenants, in a sense are contractual in nature and bind the parties thereto in the same manner as would any other contract. . . . However, restrictive covenants affecting real property cannot be properly and fully understood without resort to property law.

Restrictive covenants differ from contracts in that they run with the land, meaning that they are enforceable by and against later grantees.

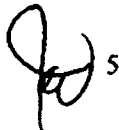
*Id.* (citations and quotation marks omitted).

*Kinard v. Richardson*, 407 S.C. 247, 257, 754 S.E.2d 888, 893 (Ct. App. 2014).

2. In the instant case, the Defendant acquired his property subject to the recorded Restrictive Covenants, and, thus, the Defendant is bound thereby. *See supra* Findings of Fact ¶¶ 1-3.

3. "Restrictive covenants are construed like contracts[.]" *Kinard*, 407 S.C. at 257, 754 S.E.2d at 893 (quoting *Queen's Grant II*, 368 S.C. at 361, 628 S.E.2d at 913).

"Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* at 4, 498 S.E.2d at 863-64 (quotation marks omitted). When "the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning." *Shipyards Prop. Owners' Ass'n v. Mangiaracina*, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992). "A restriction on the use of property must be created in express terms or by plain and unmistakable

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implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Taylor*, 332 S.C. at 5, 498 S.E.2d at 864 (citation and quotation marks omitted). However, this rule of strict construction "should not be applied so as to defeat the plain and obvious purpose of the instrument." [*S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001)] (quoting *Taylor*, 332 S.C. at 4-5, 498 S.E.2d at 863-64).

*Id.* at 257-58, 754 S.E.2d at 893-94.

4. Here, the Restrictive Covenants clearly and unambiguously prohibit any fencing higher than 12 inches in the front yard, which the Defendant clearly violated. *See supra* Findings of Fact ¶¶ 4-5. Therefore, the Defendant has violated the Restrictive Covenants.

5. Furthermore, the Restrictive Covenants clearly and unambiguously provide that each property owner shall have the authority to enforce the terms of the Restrictive Covenants, which the Plaintiff did by filing the instant lawsuit. *See supra* Findings of Fact ¶¶ 6-7.

6. "[C]ourts should consider equitable doctrines when determining whether to enforce a restrictive covenant and enjoin a landowner from using their land in a manner that violates the covenant." *Buffington v. T.O.E. Enters.*, 383 S.C. 388, 393, 680 S.E.2d 289, 291 (2009).

7. In the instant case, the Defendant knew or should have known of the Restrictive Covenants before commencing construction of the subject fence, and certainly should have known after the Plaintiff notified the Defendant thereof. *See supra* Findings of

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Fact ¶¶ 8-9. Therefore, it is equitable for the Defendant to be restrained and enjoined from violating the Restrictive Covenants.

8. "Restrictive covenants . . . may give rise to actions for breach of contract." *Kinard*, 407 S.C. at 257, 754 S.E.2d at 893 (quoting *Queen's Grant II*, 368 S.C. at 361, 628 S.E.2d at 913).

"This being an action for the breach of contract, the burden was upon the [plaintiff] to prove the contract, its breach, and the damages caused by such breach." *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *Id.* "The purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been in if the contract had been performed." *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996). "The proper measure of compensation is the loss actually suffered by the plaintiff as a result of the breach." *Id.*

*Maro v. Lewis*, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010).

9. In the instant case, a party bringing suit for a violation of the Restrictive Covenants can obtain "damages or other dues for such violation." *See supra* Findings of Fact ¶ 6. The Restrictions do not define that phrase or any part of that phrase, and, thus, the plain and ordinary meaning applies. *See Anderson v. Buonforte*, 365 S.C. 482, 490, 617 S.E.2d 750, 754 (Ct. App. 2005) ("When a term is not defined within a contract, evidence of its usual and customary meaning is competent to aid in determining its meaning.").

10. The word "damages" is generally understood to be "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury." *Damages, Black's Law*

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*Dictionary* (9th ed. 2009); *see also Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 638, 594 S.E.2d 455, 458 (2004) ("The plain, ordinary meaning of 'damages' is monies paid [for a] loss . . . [and] is not a legalistic one dependent on whether the damages are classified as legal versus equitable.").

11. Although the word "dues" is arguably merely a synonym for "damages," *see Dues, Random House Dictionary* (2016) ("something that is . . . owed"), *available at [www.dictionary.com](http://www.dictionary.com)*, because the word "dues" is modified by the word "other" in the Restrictive Covenants something more than just the aforementioned "damages" was likely intended, *see id. Other* ("additional or further").

12. In any event, the Plaintiff has suffered such damages by way of attorney's fees and costs paid in an effort to enforce the Restrictive Covenants. *See supra* Findings of Fact ¶ 10. Therefore, the Plaintiff should be made whole as if the breach never occurred by having reimbursement for such expenses as are outlined in the Affidavit of Attorney Fees and Costs submitted by Plaintiff's attorney in this action. *See id.*

## CONCLUSION

WHEREFORE, the Plaintiff is entitled to have judgment for the relief requested in his Complaint, and it is therefore

ORDERED, ADJUDGED, and DECREED that the Restrictive Covenants of the College Park Subdivision as set forth in the Restrictive Covenants and Easements recorded

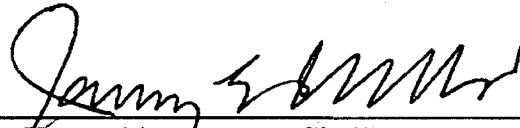
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with the Berkeley County Register of Deeds Office on May 21, 1974 in Book C108 at Page 78 and in the amendment thereto entitled Amendment to Restrictive Covenants recorded with the Berkeley County Register of Deeds Office in Book C109 at Page 5 on August 8, 1974 are in full force and effect and the Defendant shall comply therewith;

It is further ORDERED, ADJUDGED, and DECREED that the Defendant shall remove any fencing extending past the front line of his home within thirty (30) days of the date of this Order;

It is further ORDERED, ADJUDGED and DECREED that the Defendant shall reimburse the Plaintiff all attorney's fees and costs associated with the enforcement of the Restrictive Covenants (as set forth in the Affidavit referred to in paragraph 10 of the above-stated Findings of Fact) within Sixty (60) days of the date of this Order.

IT IS SO ORDERED.

  
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The Honorable James E. Chellis  
Dorchester County Master-In-Equity

Dated: December 22, 2016

