

6

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2018-000142

Ronald J. Ferguson, Appellant,

v.

Mill Creek, LP, John Hatcher, Michael Stehney, Rachel Shaluly, James Gilbert, Molly Miller,
individually and as members of the Architectural Committee of Mill Creek Estates, Respondents.

RECORD ON APPEAL

Ronald J. Ferguson
103 Mill Creek Road
Piedmont, South Carolina 29673
(864) 509-0169
Pro-se Appellant

Rodney M. Brown
210 South Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528
Attorney for Respondents

Description	R.	P.
Complaint in Case Number 2013-CP-23-01810	1	1
Complaint in Case Number 2013-CP-23-05102	2	4
Ex parte email between Intervenor and Master-in-Equity dated October 29, 2014	3	9
Judge Verdin Order dated December 16, 2014	4	10
Intervenor's Motion to Dismiss dated December 24, 2014	5	12
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Transcript of Hearing (Maddox)

Specifically referenced within Exhibits, not Brief(s). Transcript was admitted for the criminal investigation and is available pursuant to Rule 212, SCRCF.

Transcript of Hearing (Stilwell)

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

John D. Hatcher, Rachel Shahuly,
James F. Gilbert, Molly A. Miller
and Michael Stehney, individually
and as members of the
Architectural Committee of Mill
Creek Estates,

2013-CP-23-01810

Plaintiffs,

COMPLAINT

vs.

Ron Ferguson,

Defendant.

2013 APR - 1 A 11:11

FILED IN COURT OF COMMON PLEAS
GREENVILLE, SOUTH CAROLINA

WLG

The Plaintiffs would allege unto this Court as follows:

1. The parties are all citizens and residents of the County and State aforesaid.
2. The Plaintiffs are all long time homeowners of Mill Creek Estates and are members of the Architectural Committee appointed pursuant to the Restrictive Covenants of Mill Creek Estates.
3. The Defendant is a citizen and resident of the County and State aforesaid and is presently building a house in Mill Creek Estates.
4. There have been Restrictive Covenants filed which constitute a public record in Deed Book 1002 at Page 75 governing Mill Creek Estates.
5. The Defendant is aware of these Restrictive Covenants and submitted plans according to the Restrictive Covenants for the construction of a house.

6. The Defendant then started construction and is in the process of construction. This house does not conform to the plans and does not conform to the Restrictive Covenants.

7. The Defendant's actions violate the Restrictive Covenants in a number of ways including but not limited to not getting prior approval of the Architectural Committee of the type of house and size of house before constructing it, perpetrating fraud upon the Architectural Committee by submitting one set of plans and then building another house, failing to comply with the terms and conditions of the Restrictive Covenants for size, approval of the exterior of the house, and by failing to comply with prior approval and the same requirements.

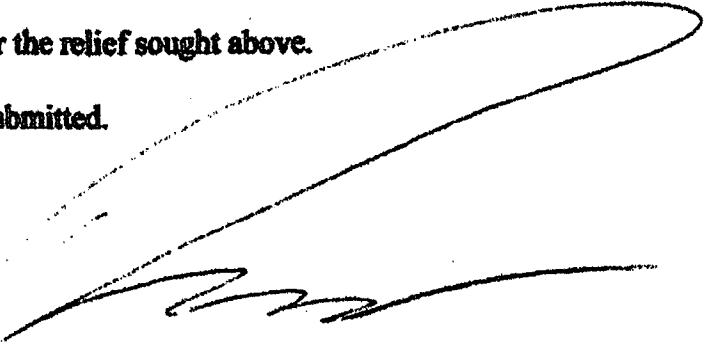
8. The Plaintiffs request that the Defendant be required to strictly comply with the Restrictive Covenants. The Defendant should be required to either construct a new house or make changes and additions to his house to comply with the Restrictive Covenants.

9. The Plaintiffs further ask that the Defendant conform his out building so that it complies with the Restrictive Covenants and is not as unsightly as it is.

10. Finally, the Plaintiffs request reasonable costs and attorney fees for the pursuit of this action together with strict compliance and an Order requiring the Defendant to comply with the Restrictive Covenants.

WHEREFORE, the Plaintiffs pray for the relief sought above.

Respectfully submitted.



**Rodney M. Brown, S.C. Bar #000953
Attorney for Plaintiffs
210 S. Main Street
Fountain Inn, SC 29644
(864) 862-2528**

March 27, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-05102

Ronald J Ferguson
Plaintiff(s),

vs.

COMPLAINT

Mill Creek, LP
Defendant(s).

2013 SEP 20 P 06

FILED-CLEAR OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

COMES NOW, the Plaintiff Ronald J. Ferguson, and for his Complaint against the Defendant(s) Mill Creek, LP, a domestic entity operating in South Carolina, and states as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a resident of Greenville County, South Carolina.
2. Upon information and belief, Defendant Mill Creek, LP, is a domestic entity in good standing operating within Greenville, South Carolina.
3. Upon information and belief, Defendant Mill Creek, LP, was formed in the County of Greenville and under their articles are required to maintain offices within the same geographic location.
4. The events and actions further described herein took place at or within the mets and bounds of the County of Greenville, South Carolina.
5. This court is court has jurisdiction over the parties and subject matter of this action, and venue is proper before this court.

FACTUAL BACKGROUND

6. Plaintiff purchased land and built a residence in Greenville County at PIN / Tax Map #0594030101300, Lot 13, Mill Creek Estates, commonly known as 103 Mill Creek Road.

7. Upon information and belief Mill Creek Estates was originally purchased as raw land on September 10, 1973, by Kasper F. Fulghum, Kasper F. Fulghum, Junior, Robert Rosenthal, Salon Rosenthal, Ira W. Moore and Joe K. Garrison.
8. These individuals are the partners of record who formed Mill Creek, LP and subsequently subdivided and platted the property to become the community known as Mill Creek Estates.
9. Upon information and belief, the partners previously stated, did forthwith enter unto partnership agreement to form Mill Creek, LP, on May 31, 1974, and provide the previously purchased land to this entity.
10. Upon information and belief, Kasper F. Fulghum, acting as "General Partner" for Mill Creek signed Deed Restrictions on May 31, 1974.
11. Upon information and belief, at the time the Deed Restrictions were signed there was not an active entity known as Mill Creek, LP, authorized to operate within the State of South Carolina.
12. Upon information and belief, according to the South Carolina Secretary of State, Mill Creek, LP became an active entity on June 27, 1974.
13. Upon information and belief, Mill Creek, LP, filed the Deed Restrictions for Mill Creek Estates with the County of Greenville, Register of Deeds on June 28, 1974.
14. Upon information and belief, the Deed Restrictions contain language in Article III that appoint the partners to a committee to be known as the Subdivision and Architectural Control Committee.
15. Upon information and belief, the language of Article III permits for the original members of Mill Creek to designate a representative to act on behalf of one or any number of members who have resigned or unable to fulfill their duties.
16. Upon information and belief, no members or partners of Mill Creek, LP, reside or own any property within the development known as Mill Creek Estates.

17. Upon information and belief, the members or partners of Mill Creek, LP, have not filed documentation or notice with the Secretary of State or any other public entity, regarding either the standards, practices, guidelines, or any person or persons authorized to act upon their behalf for maintenance and perpetuation of the Subdivision and Architectural Control Committee.
18. Upon information and belief, as a direct and proximate result of Mill Creek, LP, not owning, managing, maintaining or otherwise participating in the community operations the Deed Restrictions are not being maintained or enforced in a uniform and consistent manner.
19. Upon information and belief, Kasper F. Fulghum had criminal charges and moved out of the State of South Carolina.
20. Upon information and belief, Kasper F. Fulghum, Junior, was convicted of fraud by the State of South Carolina, subsequently losing his license to practice law and moved out of South Carolina.
21. Upon information and belief, Robert Rosenthal and Salon Rosenthal are not resident citizens of South Carolina.

FOR A FIRST CAUSE OF ACTION ABANDONMENT

22. Plaintiff reincorporates all of the allegations set forth above as if restated herein verbatim.
23. Upon information and belief, Defendant Mill Creek, LP, is an entity in good standing operating within the State of South Carolina.
24. Upon information and belief, the general partners of Mill Creek, LP, are not owners of property within or known to the general residents of Mill Creek Estates, nor are they otherwise engaged in the care, control, maintenance, and or other operations and processes for the care and continuity of the development in perpetuity.
25. Upon information and belief, Defendants have no public records or community published documentation of those responsible for the care, maintenance and continuance of the community concept in perpetuity on their behalf.

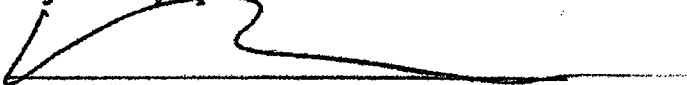
26. Upon information and belief, Plaintiff is entitled to judgment against Defendant in the form of injunctive relief vacating Article III of the Deed Restrictions and all reference to the formation and operation of an Architectural and Community Control Commity.

FOR A SECOND CAUSE OF ACTION
PRE-REGISTRATION CONTRACT

27. Plaintiff reincorporates all of the allegations set forth above as if restated herein verbatim.
28. Upon information and belief, the general partners who combined to form Mill Creek, LP, entered into pre-registration contracts and failed to perform duties for the continued care and maintenance of same.
29. Upon information and belief, Plaintiff is entitled to judgment against Defendant in the form of injunctive relief vacating the Deed Restrictions in their entirety.

WHEREFORE, having set forth their causes of action, Plaintiffs pray for a judgment against Defendants,

For injunctive relief, reasonable attorney's fees and costs related to this action and for such other and further relief as the Court deems just and proper



Ronald Ferguson
103 Mill Creek Road
Piedmont, SC 29673
864-509-0169

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

2013-CP-23-05162

Ronald J Ferguson
Plaintiff(s),

vs.

Mill Creek, LP
Defendant(s).

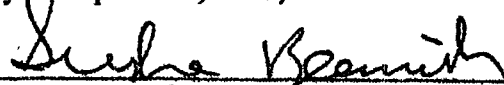
VERIFICATION

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 SEP 20 P 5:06

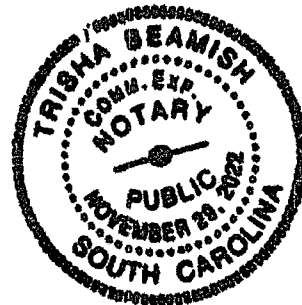
Ronald J. Ferguson, being duly sworn, states: he is the Plaintiff in the foregoing action; that he has read the Summons and Complaint for the aforesaid action and knows the content thereof; the same is true according to his knowledge, except those matters alleged on information and belief; and as for those matters, he believes them to be true.


Ronald J. Ferguson

SWORN to before me this 20th
day of September, 2013,


Notary Public for the State of South Carolina

My Commission expires: November 29, 2022



Ronald J. Ferguson vs. Mill Creek, LP: 2013-CP-23-08102

Monday, October 27, 2014 9:52 AM

From: "Annette Butts" <aprdaisy38@yahoo.com>

To: osimmons@greenvillecounty.org

Cc: jdh_1@att.net

Judge Simmons-

I just wanted to let you know that there is another Ronald Ferguson case that is pending in Greenville County Common Pleas Court. I am not sure there is an actual Defendant or if it has ever been served. However, it was found when one of my clerks were looking at the docket. The case is entitled Ronald J. Ferguson vs. Mill Creek, LP. 2013-CP-23-05102. It is supposedly on the trial roster for the week of November 3rd.

I would ask that this case be joined with the rest of the cases in your Court so you can have all the cases and the total picture of what Mr. Ferguson is attempting to do.

Therefore, I request that this case be joined with the other cases with jurisdiction being in your Court.

I am providing Mr. Ferguson with a copy of this letter and ask that he provide whatever information he has about this case to you.

Your time and consideration is appreciated.

Rodney M. Brown
210 S. Main Street
Fountain Inn, South Carolina 29644
(854) 862-2528

3

10/27/2014 9:50 AM

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2305102

Ronald J Ferguson

FILED IN THE CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENS IMR
Mill Creek LP

2014 DEC 30 PM 2 43

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ 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:

This matter came before the Court on December 16, 2014 for a hearing on Plaintiff's Motion for Summary Judgment. During the hearing, Plaintiff moved for an entry of default against Defendant pursuant to Rule 55, SCRPC.

Defendant has been properly served in this matter. Furthermore, Defendant has failed to appear or otherwise respond to the Complaint, and the time for doing so has elapsed. Therefore, this Court orders that the Clerk of Court enter default against Defendant Mill Creek, LP pursuant to Rule 55(a), SCRPC.

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)

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

2162

Judge Code

12/16/14
Date

For Clerk of Court Office Use Only

This judgment was entered on ^{12/30/14} and a copy mailed first class or placed in the appropriate attorney's box on ^{12/30/14} to attorneys of record or to parties (when appearing pro se) as follows:

Ronald J Ferguson 103 Mill Creek Rd Piedmont, SC 29673

ATTORNEY(S) FOR THE PLAINTIFF(S)

Rodney M Brown

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

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 GREENVILLE)
)
Ronald J. Ferguson,)
)
Plaintiff,)
)
vs.)
)
Mill Creek, LP,)
)
Defendant.)
_____)

IN THE COMMON PLEAS COURT

2013-CP-23-05102

MOTION TO INTERVENE

FILED-CLERK OF COURT
GREENVILLE, SC
PAUL B. WILSON
2014 DEC 24 AM 11 23

This matter is made through Plaintiffs' counsel in a companion lawsuit entitled John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural Committee of Mill Creek Estates vs. Ronald J. Ferguson, Ronald E. Ferguson and Susan M. Ferguson Case Number 2013-CP-23-01810. On behalf of these Plaintiffs, John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural Committee of Mill Creek Estates, they move to join in this case.

While these parties are not any relation to Mill Creek, LP, the parties believe that the allegations raised in the Complaint are allegations that should be made against them. The allegations made against MillCreek Architectural Committee with regard to their Restrictive Covenants have nothing to do with the Defendant in this case being Mill Creek, LP. Mill Creek, LP existed to develop the property and has ceased existing or being used for decades.

There is presently pending the following cases:

Scanned

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1. John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural Committee of Mill Creek Estates vs. Ronald J. Ferguson, Ronald E. Ferguson and Susan M. Ferguson; 2013-CP-23-01810 (presently removed to Federal Court but will be remanded after the first of the year 2015)

2. Michael Stehney, Jr. vs. Ronald E. Ferguson, Ronald J. Ferguson and Susan M. Ferguson; 2013-CP-23-01715

3. Ron Ferguson vs. Greenville County Soil and Conservation District

The above cases and other cases have been filed. The Court of Common Pleas has recently consolidated them all with Judge Simmons heading up the consolidation of all the Ferguson and Mill Creek subdivision lawsuits.

In the case that these Plaintiffs are involved in, it involves the Restrictive Covenants and a violation of the Restrictive Covenants by the Plaintiff in this case by improperly building a house. He submitted plans to build a house to the Architectural Committee which were approved. He subsequently and fraudulently built a different house and an outbuilding which both violate the Restrictive Covenants.

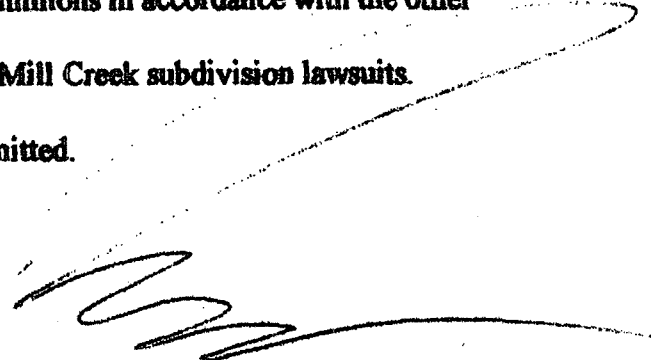
In this lawsuit, he is seeking to determine if the Restrictive Covenants are no longer valid. He brought that against Mill Creek, LP which is not invested with any responsibility with regard to the Restrictive Covenants. If there were to be a compulsory Counterclaim to the lawsuit brought by the Movants herein.

Pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, the moving parties have an interest in the property and transaction and the Defendant is so situated that a disposition of this case would impair and impede their ability to protect their

interest. Furthermore, as previously indicated, if this was a valid claim it should be a compulsory Counterclaim.

The Movants hereby request that they be allowed to intervene in this action and further that this action be transferred to Judge Simmons in accordance with the other Orders providing oversight of all Ferguson and Mill Creek subdivision lawsuits.

Respectfully submitted.



Rodney M. Brown S.C. Bar #000953
Attorney for John D. Hatcher, Rachel Shaluly, James
F. Gilbert, Molly A. Miller and Michael Stehney
as individuals and members of the Architectural
Committee of Mill Creek Estates
210 S. Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

December 22, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COMMON PLEAS COURT

Ronald J. Ferguson,

CASE NO.

Plaintiff,

2013-CP-23-05102

vs.

MOTION INFORMATION FORM
AND COVER SHEET

Mill Creek, LP,

Defendant.

name, S.C. bar no. and address of Plaintiff's attorney
Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673
telephone: fax:
e-mail: other:

Attorney for Mill Creek Architectural Committee
Rodney M. Brown #000953
210 S. Main Street
Fountain Inn, SC 29644
telephone: 862-2528 fax: 862-2500
e-mail: other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Intervene

Estimated Time Needed: 15 minutes Court Reporter Needed: YES

SECTION II: Motion Type

☐ Written Motion attached
☐ Form Motion

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff/Defendant

Date submitted

SECTION III: Motion Fee

☒ Paid - Amount: \$25.00
☐ Exempt:
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status State Agency vs. Indigent Party
☐ Sexually Violent Predator Act Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court, or, reduced to writing from motion
made in open court per judge's instructions
Name of Court Reporter:
Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: DN

DATE FILED

☒ Motion Fee Collected: \$25.00
☐ Contested - Amount Due:

#4030 Rodney M. Brown

2014 DEC 24 AM 11 23

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WILSON, CLERK

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

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2305102

Ronald J Ferguson

2015 FEB 19 PM 4 28

Mill Creek LP

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John D. Hatcher

Attorney for: ☐ Plaintiff ☒ Defendant
☐ 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: John D. Hatcher's motion to intervene is granted.

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)

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

2131

Judge Code

2/12/2015

Date

For Clerk of Court Office Use Only

2/19/15
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Ronald J Ferguson 103 Mill Creek Rd Piedmont, SC 29673

ATTORNEY(S) FOR THE PLAINTIFF(S)

2/19/15
Rodney M. Brown 210 S Main St Fountain Inn, SC 29644

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

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)

IN THE COMMON PLEAS COURT

COUNTY OF GREENVILLE)

2013-CP-23-05102

Ronald J. Ferguson,)

Plaintiff,)

Vs.)

MOTION TO VACATE THE DEFAULT JUDGMENT
PURSUANT TO RULE 55 AND 60

Mill Creek, LP, John Hatcher,)

Michael Stehney, Rachel)

Shaluly, James Gilbert,)

Molly Miller, individually)

and as members of the)

Architectural Committee of)

Mill Creek Estates,)

Defendants.)

The "new Defendants", John Hatcher, Michael Stehney, Rachel Shaluly, James Gilbert and Molly Miller, individually and as members of the Architectural Committee of Millcreek Estates were granted permission to intervene into this action in February 2015. This matter was appealed to the Court of Appeals and remanded back to State Court.

Now these Defendants move to vacate the previously entered default judgment for a number of reasons. First of all, it was obtained against a non-existent Defendant.

While Mill Creek, LP, does exist, it is a corporation that does nothing. It was a corporation that helped develop Mill Creek Estates when it was originally developed and has been non-functioning since then.

The main issue in this case is whether the Restrictive Covenants should be vacated or declared to be invalid. The Plaintiff is attempting to do this without naming any of the proper Defendants.

These Defendants also move pursuant to Rule 19 of the South Carolina Rules of Civil Procedure that the proper Defendants have not been named. The case should either be dismissed or the Plaintiff required to name the necessary parties. The necessary parties to this action regarding Restrictive Covenants would be all property owners of the subdivision in question. They are "persons needed for just adjudication" as required in Rule 19 of the South Carolina Rules of Civil Procedure.

Accordingly, these Defendants request that the Court vacate the default judgment as being improperly granted against an improper Defendant pursuant to Rules 55 and 60 of the South Carolina Rules of Civil Procedure.

Furthermore, these Defendants request that the Court dismiss the action pursuant to Rule 12 of the South Carolina Rules of Civil Procedure or require the joinder of persons needed for just adjudication according to Rule 19 of the South Carolina Rules of Civil Procedure.

Respectfully submitted.

s/Rodney M. Brown

Rodney M. Brown, SC Bar #953
Attorney for Defendants, John Hatcher,
Michael Stehney, Rachel Shaluly, Molly
Miller, James Gilbert, individually and as
members of the Architectural Committee
of Mill Creek Estates
210 S. Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

Date: May 2, 2017

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. NO.: 2013CP2305102

Ronald J Ferguson)
Plaintiff(s),)

vs.)

MOTION TO VACATE ORDER
GRANTING INTERVENTION

Mill Creek, LP, John Hatcher,)
Michael Stehney, Rachel Shaluly,)
James Gilbert, Molly Miller,)
individually, and as members of the)
Architectural Committee of)
Mill Creek Estates,)
Defendant(s).)

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE, CO. SC
2017 MAY 16 PM 3:50

Comes now, Ronald J. Ferguson, pro-se, and moves of this court for relief pursuant to Rule 60(b)(3) & (4), SCRCP, and submits that the motion for intervention filed on or about December 24, 2015, by Rondey M. Brown, purported counsel of record for John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, who is also known as Michael Charles Stehney, Junior and Mike Stehney, individually and as members of the Architectural Committee of Mill Creek Estates, was granted by the Honorable J. Cordell Maddox, Junior, on February , 2016, was based on fraud perpetrated by Brown and error of law.

This movant would show unto the court that Honorable Leticia H. Verdin had scheduled a status hearing in the action on November 3, 2015, and entered an Order of Default against Mill Creek, LP following a hearing on December 16, 2015. The record should reflect that Brown was advised of the November 3, 2015 hearing by John Douglas Hatcher, and Brown subsequently engaged Master-in-Equity Charles B. Simmons, Junior, in ex parte communications on October 27, 2015, trying to have the case transferred to that docket. Subsequent to the Order of Default and during the scheduling for a damages hearing Brown decided to file a Motion to Intervene on December 24, 2015. A hearing was

scheduled before Judge Maddox, Jr., on February 16, 2016, wherein Brown made representations that he represents some kind of architectural committee / homeowner's association and asserted that if not every property owner, then his clients at minimum were entitled to intervene in the matter.

According to Brown, "We're moving to intervene because there was a default judgment granted against them without damages being granted against the LP which we could care less about and I don't represent. (P5, Lines 13-16). "We move to intervene, Your Honor, pursuant to Rule 24. We believe we have intervention as a matter of right or certainly permissive intervention that applies to an applicant whose claims interest in property relating to the transaction or the subject matter of the action..." (P5, Lines 19-20) "We're not a party to this action." (P6, Line 23)

Quoting Brown (P5, L6-9), "Of course, as Your Honor knows restrictive covenants are governed and can only be vacated, changed, or altered in accordance with the terms and conditions in the restrictive covenant." And, "We just want to make sure the Court doesn't do something they don't have jurisdiction to do which is vacating the restrictions." (P9, L7-10).

THE COURT: Let's just say he wanted to bring a suit to change the restrictions, who does he have to sue? (P10, L6-8)

Mr. Brown: I'm not sure he can sue anybody.

THE COURT: I understand the law ---

Mr. Brown: The deed restrictions govern, of course, how the deed restrictions are to be changed, altered or amended.

THE COURT: But what party would he have to sue?

Mr. Brown: All of the homeowners. He would have to have a majority vote to change the restrictive covenant..." (P10, L9-18)

"THE COURT: So the default has been done but not the damages?" (P9, L5-6)

MR. BROWN: Yes. We don't care what damages they get. We just want to make sure the

Court doesn't do something they don't have jurisdiction to do which is vacating the restrictions." (P9, L7-10)

ONE OF THE ERRORS OF LAW

Under South Carolina law, restrictive covenants can be deemed unenforceable where there has been a change of conditions. *Inabinet v. Booe*, 262 S.C. 81, 202 S.E.2d 643 (1974). Restrictive covenants can also be vacated if they are indefinite or contravene public policy. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

ONE OF THE INTENTIONAL ERRORS OF FACT

It was indicated to Maddox, by Brown, that he "represents four or five individuals, individually, and as members of the Architectural Committee of a subdivision known as Mill Creek..."

The only reason the corporation was ever brought into existence to begin with was because it developed the subdivision of Mill Creek back in the 60's I believe it was." (P4, L13-17)

"Mill Creek, LP, again with regard to background, never established the restrictive covenants, so Mill Creek, LP really has nothing to do with why we're here today." (P5, L10-13)

"The relief they're seeking against the defendants that's presently in the case doesn't even exist, doesn't even participate. I can hand up the the restrictive covenants. The LP is not even mentioned in there any way, shape or form." (P8, L7-11).¹

While Judge Maddox did not review the applicable document (P10, L20-22), Judge Verdin

¹As we will be discussing in the separate Motion for Sanctions naming Brown for his baseless Motion to Vacate, he was required to perform some kind of investigation pursuant to the filing he submits pursuant to the Rules of Professional Conduct and not continually be misleading the court with false information or outright lies; 1.1, 3.1 and 3.3. The entity known as Mill Creek, LP was a group of individuals who purchased the land in the mid-1970's for them to develop their own personal residences. Property records indicate that General Partner Kasper F. Fulghum (Sr.) built a residence at Tax Map #0594030100200 on April 13, 1976 and sold that property to Joseph and Rachel Shaluly on September 30, 1985. Another party named in the restrictive covenants is Kasper F. Fulghum, Jr., who owned Tax Map #0594030103000 & 0594030102900 from April 13, 1976 until being sold on December 12, 1983. Yet two others names are Robert Rosenthal and Solon Rosenthal who owned Tax Map # 0594030102600 from April 13, 1976 until being sold on March 3, 1982, along with Tax Map #0594030102500 from April 13, 1976 until it was sold on October 1, 2004. Then we have Ira Moore, yet another name in the covenants, who owned Tax Map #0594030100800 until October 26, 1984. Last name on the list is J. Kent Garrison, also known as Joe K. Garrison, who owned Tax Map #0594030102300 until August 13, 1985.

actually had and examined the Restrictive Covenants, which were filed as part of the case. VOL 1002, PAGE 77 provides in part, "a committee composed of Kasper Fulghum, Kasper Fulghum, Jr., Robert Rosenthal, Solon Rosenthal, I.W. Moore and J. Kent Garrison or by a representative designated by said Committee. Said Committee shall be known as the Subdivision and Architectural Control Committee." VOL 1002, PAGE 78 shows that Mill Creek General Partner Kasper Fulghum signed the Restrictive Covenants with further notary "PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named named partnership by its general partner sign, seal and deliver the foregoing Protective Covenants..."

Looking further into Brown's assertions and examining the record, VOL 1002, PAGE 77, states, "In the event of the death or resignation of any member of said committee, the remaining members shall have full authority to approve or disprove such design and location or to designate a representative with such authority."

RULES OF PROFESSIONAL CONDUCT 3.3 CANDOR TO THE TRIBUNAL

Whether it was the fact that 5102 had been on the docket and available in public court records for over a year, been advertised in the newspaper multiple times, or was scheduled for a status conference on November 3, 2015, Brown knew of the pending matter and instead of choosing to file any type of motion, decided ex parte communications with a circuit judge was appropriate to attempt to have the case moved. Then despite Brown's client appearing at the November 3 and December 16 hearings, they chose not to speak at those proceedings or at two (2) months after it can be shown they had knowledge of the matter -- and after an Order of Default was entered against Mill Creek, LP.

Moreover, it has since come to the movant's knowledge that Master-in-Equity Charles B. Simmons, Junior, engaged in ex parte communications with Brown during September, 2014 wherein

the first known violations of federal statute 28 USC 1446(d) occurred, without authority of office as adjudicated in both the United States and South Carolina Supreme Courts, followed by an void order dated October 29, 2014. Further, it has come to movant's knowledge that Simmons and Brown were part of an ex parte communication involving materials classified as confidential and not subject to civil court proceedings per SC Code 40-1-190, 40-59-190 and subject to criminal prosecution per SC Code 40-59-200. Brown has never disclosed such information or discharged duties required pursuant to the Rules of Professional Conduct. Likewise, Simmons having personal knowledge of such information and addressing written motion for recusal along with other public scrutiny, has never disclosed or otherwise addressed the communications – let alone discharge of his duties pursuant to the judicial cannons, Rules of Professional Conduct, or established law.

The United States Supreme has the precedent on intervention to which both the Fourth Circuit Court of Appeals and Supreme Court of South Carolina have issued similar adjudications. Rule 24, SCRCF, similar to the federal counterpart, requires that a motion for intervention be "timely". *See NAACP v. New York*, 413 U.S. 345, 365-66, 93 S.Ct. 2591, 37 L.Ed.2d 648 (1973); *Houston Gen. Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir.1999). In order to properly determine whether a motion to intervene in a civil action is sufficiently timely, a trial court in this Circuit is obliged to assess three factors: first, how far the underlying suit has progressed; second, the prejudice any resulting delay might cause the other parties; and third, why the movant was tardy in filing its motion. *See Gould*, 883 F.2d at 286. In the instant matter the court had proceeded to hold multiple hearings in giving the Defendant opportunity to appear before finding the law supported an Order of Default and scheduling a hearing for damages. In such circumstances, the court was reasonably reluctant to arrest the momentum of the lawsuit so near to its final resolution. *See Scardelletti v. Debarr*, 265 F.3d 195, 202 (4th Cir.2001) ("The purpose of the [timeliness] requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal."), *rev'd on other grounds, Devlin v. Scardelletti*, 536

U.S. 1, 122 S.Ct. 2005, 153 L.Ed.2d 27 (2002). The second factor — prejudice — also weighs against the intervention request. The party is not the Defendant, admits they do not care about the judgment against that party, nor are intervenors responsible for the drafting, signing or filing of the contract in question.

MOTION TO INTERVENE

Rule 24(c), SCRCp, also requires that “[A] person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.” In this matter the intervenors failed to comply with such requirement.

Moreover, intervention does not permit a party to supplant another named and properly served party. And any action that would divest a party of appellate jurisdiction against a party is deemed an order subject to immediate appeal. (See Section 14-3-330 provides: The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;)

Based on the filing of Intervenor on or about May 5, 2017, and scheduled for hearing on June 14, 2017, we can conclusively identify that they seek to supplant the original Defendant, and are arguing that legal entities judgment should be vacated – though their own filings admits they do not represent that party.

Ultimately, the question comes down to the law related to failing to follow the law and information presented to obtain the grant of intervention as well as tardiness of intervenors filing. In the instant case the intervenors also had knowledge of a pertinent fact they engaged in ex parte communications with the Master-in-Equity in attempt to have the matter transferred some two months

prior to their motion for intervention and appeared at the hearing where default judgment was issued, but willfully chose not to disclose such relevant matters to the court.

Such further items which serve as basis for denial shall be presented at the hearing on the matter.

CONCLUSION

A Motion to Intervene is an established process which must be adhered to. In the instant matter not only did the court fail to follow the proscribed rules, it was deliberately misled by opposing counsel who deliberately misrepresented facts in the matter and we will establish is a pattern of conduct by such party but also misled the judiciary on the applicable case law, both of which counsel is required to know and disclose information -- even though it is damning to the clients cause. As such, the order granting intervention should be vacated.

Respectfully submitted,

May 16th, 2017
Greenville County, SC



Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673
(864) 509-0169

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

2013-CP-23-05102

Ronald J Ferguson
Plaintiff(s),

vs.

Mill Creek, LP, John Hatcher,
Michael Stehney, Rachel Shaluly,
James Gilbert, Molly Miller,
individually, and as members of the
Architectural Committee of
Mill Creek Estates,
Defendant(s).

FILED-CLERK OF COURT
PAUL B. WICKENS
GREENVILLE, SC

2017 MAY 16 PM 3:53

CERTIFICATE OF SERVICE

I certify, that on this date, I served a copy of the Motion to Vacate Order Granting Intervention in this action, dated May 16th, 2017 on Defendants Attorney of record by mailing it to the address indicted by their counsel of record in the Summons as follows:

Rodney M. Brown
210 S. Main Street
Fountain Inn, SC 29644

This the 16th day of May, 2017.



Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673
(864) 509-0169

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2305102

Ronald J Ferguson	2017 JUN 15 PM 4:57 FILED-CLERK OF COURT PAUL B. WICKENS GREENVILLE, SC	Mill Creek LP Michael Stehney Molly Miller Architectural Committee Of Mill Creek Estates	John Hatcher Rachel Shaluly James Gilbert Judge Charles B Simmons Jr.
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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)

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.

Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	6/15/2017 Date
---------------------	------------	-------------------

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2158	6/8/2017
Circuit Court Judge	Judge Code	Date

6-14-17

For Clerk of Court Office Use Only

6-14-17

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

Ronald J Ferguson 103 Mill Creek Rd Piedmont, SC 29673

Rodney M. Brown 210 S Main St Fountain Inn, SC 29644
Boyd Benjamin Nicholson Jr. PO Box 2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk of Court - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.

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.



Greenville Common Pleas

Case Caption: Ronald J Ferguson vs. Mill Creek LP , defendant, et al

Case Number: 2013CP2305102

Type: Order/Form 4

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-06-14 15:39:48 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF GREENVILLE	)	2013-CP-23-05102
	)	
Ronald J. Ferguson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COURT ORDER
	)	
Mill Creek, LP, John Hatcher,	)	
Michael Stehney, Rachel	)	
Shaluly, James Gilbert,	)	
Molly Miller, individually and	)	
as members of the	)	
Architectural Committee of	)	
Mill Creek Estates,	)	
	)	
Defendants.	)	

PRESIDING JUDGE: The Honorable Robin B. Stilwell
 ATTORNEY FOR PLAINTIFF: Pro Se
 ATTORNEY FOR INTERVENERS: Rodney M. Brown
 DATE OF HEARING: June 14, 2017
 COURT REPORTER:

This matter comes before the Court upon a number of motions. First of all with regard to the Plaintiff's Motion to Vacate the Order granting Intervention, the Court finds that should be directed to the Judge who granted that Order, Judge Cordell Maddox, and not this Court.

The Interveners/Defendants also had a Motion to Vacate the Default Judgment which was granted in this case against the original Defendant, Mill Creek, LP. After hearing arguments and reviewing the documents submitted by parties, the Court finds that the motion should be denied because the Interveners/Defendants are separate Defendants from Mill Creek, LP, and their attorney, Rodney M. Brown, does not represent the Defendant, Mill Creek, LP. The Court

also finds that the default judgment granted against Mill Creek, LP does not have any effect on the Interveners/Defendants since the default judgment was only granted against Mill Creek, LP. The default judgment does not affect the Interveners/Defendants.

Accordingly, the Motion to Vacate the Order is continued and the Motion to Vacate the Default is denied.

IT IS SO ORDERED.

The Honorable Robin B. Stilwell

Date: _____

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF GREENVILLE	)	2013-CP-23-05102
	)	
Ronald J. Ferguson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	THE INTERVENERS, JOHN HATCHER, MICHAEL
	)	STEHNEY, RACHEL SHALULY, JAMES GILBERT,
	)	MOLLY MILLER, INDIVIDUALLY AND AS MEMBERS
Mill Creek, LP, John Hatcher,	)	OF THE ARCHITECTURAL COMMITTEE OF MILL
Michael Stehney, Rachel	)	CREEK ESTATES MOTION TO DISMISS OR IN THE
Shaluly, James Gilbert,	)	ALTERNATIVE TO REQUIRE THE PROPER
Molly Miller, individually and	)	PARTIES BE NAMED AS DEFENDANTS
as members of the	)	
Architectural Committee of	)	
Mill Creek Estates,	)	
	)	
Defendants.	)	

The Interveners hereby request the Court to dismiss this action pursuant to Rule 12(b)(8) since there are multiple actions involving the same causes of action and that the real parties in interest have not been named as Defendants. In the alternative the Interveners request that the Plaintiff be required to name all the real parties in interest or necessary parties for a just adjudication in accordance with Rule 19.

This action involves validity of Restrictive Covenants in a subdivision known as Mill Creek subdivision. There is a previous action involving the Defendants and Plaintiff filed in 2013 regarding the Restrictive Covenants. The Plaintiff in this case is a Defendant in that case entitled John Hatcher, Michael Stehney, Rachel Shaluly, James Gilbert, Molly Miller, individually and as members of the Architectural Committee of Mill Creek Estates; 2013-CP-23-01810. The issues raised in this case are compulsory counterclaims in that action. Accordingly, this case

should be dismissed. Secondly, this case should be dismissed pursuant to Rule 12(b)(8) for the multiple actions involving the same cause of action.

In the alternative, the Interveners request that the Plaintiff name all the real persons in interest or all the property owners in the subdivision.

Respectfully submitted.

____s/Rodney M. Brown____
Rodney M. Brown, #953
Attorney for Interveners
210 S. Main Street
Fountain Inn, South Carolina 29644
(864) 862-2528

June 14, 2017

From: Ron or Susan <smfref@aol.com>
To: NJCoord2 <NJCoord2@greenvillecounty.org>
Cc: rod <rod@rodneynbrownlaw.com>; aprdaisy36 <aprdaisy36@yahoo.com>; smfref <smfref@aol.com>
Subject: Re: Ronald J. Ferguson vs. Mill Creek, LP, John Hatcher, et al.; 2013-CP-23-05102
Date: Wed, Nov 15, 2017 3:06 pm

Mr. Lopez,

There was another outstanding motion on the docket from May 16, 2017 (Plt/Motion/Vacate Order Granting Intervention) which Judge Stilwell stated Judge J. Cordell Maddox, Junior, would need to be contacted to have the matter addressed.

Based on my knowledge Judge Maddox was contacted per Judge Stilwell's statement and there has been no response from same. There was response that the administrative judge has the responsibility of rosters. I will have to verify but I believe it was determined this specific matter did not come under the S.C. Supreme Court's 'Simmons' limitations and would be addressed via mandamus. Last check they were awaiting (Judge Simmons) hearing transcript as he declined to hear the motion and stated a specific judge to hear such, but apparently he is (or was) the administrative judge responsible for the roster.

Based on that outstanding motion and Judge Stilwell's prior rulings, I would submit the continuance is appropriate and scheduling of any motions by intervenor premature.

Best regards,

Ronald J. Ferguson

-----Original Message-----

From: NJCoord <NJCoord2@greenvillecounty.org>
To: 'Annette Lay' <aprdaisy36@yahoo.com>
Cc: Ron Or Susan <smfref@aol.com>; Rod Brown <rod@rodneynbrownlaw.com>
Sent: Wed, Nov 15, 2017 11:29 am
Subject: RE: Ronald J. Ferguson vs. Mill Creek, LP, John Hatcher, et al.; 2013-CP-23-05102

Mr. Brown,

Thank you for your e-mail requesting continuance from the Nov 27-Dec 1, 2017 Non-Jury Trial Roster. I will run this request by Judge Stilwell, Chief Administrative Judge for Common Pleas, and let you know what he directs. Of course he will want to hear from the Fergusons as well if they have a position on this request for continuance.

Best regards,
Steve

Stephen Lopez

Non-Jury Coordinator

Greenville County Clerk of Court

ph (864) 467-8546

fax (864) 467-8519

e-mail: njcoord@greenvillecounty.org

From: NJCoord <NJCoord2@greenvillecounty.org>

To: 'Ron or Susan' <smfref@aol.com>; rod <rod@rodnebrownlaw.com>

Cc: aprdaisy36 <aprdaisy36@yahoo.com>

Subject: RE: Ronald J. Ferguson vs. Mill Creek, LP, John Hatcher, et al.; 2013-CP-23-05102

Date: Wed, Nov 15, 2017 3:31 pm

Mr. Ferguson and Mr. Brown,

Judge Stilwell has directed that this case be removed from the Nov 27-Dec 1, 2017 Non-Jury Trial Roster. It has been as directed.

He also directed that Mr. Brown's Motion to Dismiss be scheduled for hearing and the appropriateness of that scheduling may be argued at the hearing. That scheduling has been done as well.

Best regards,
Steve

Stephen Lopez

Non-Jury Coordinator

Greenville County Clerk of Court

ph (864) 467-8546

fax (864) 467-8519

e-mail: njcoord@greenvillecounty.org

From: Ron or Susan [<mailto:smfref@aol.com>]

Sent: Wednesday, November 15, 2017 3:06 PM

To: NJCoord

Cc: rod@rodnebrownlaw.com; aprdaisy36@yahoo.com; smfref@aol.com

Subject: Re: Ronald J. Ferguson vs. Mill Creek, LP, John Hatcher, et al.; 2013-CP-23-05102

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2013-CP-23-05102

Ronald J Ferguson
Plaintiff(s),

vs.

Mill Creek, LP
Defendant(s),

John Hatcher, Michael Stehney, Rachel
Shaluly, James Gilbert, Molly Miller,
individually and as members of the
Architectural Committee of Mill Creek
Estates,
Third-party Intervenor(s).

PLAINTIFF'S MEMORANDUM BRIEF
IN RESPONSE TO INTERVENORS'
MOTION TO DISMISS OR REQUIRE
NAMING ADDITIONAL PARTIES

2013 DEC -4 PM 9:58

Ronald J. Ferguson, pro-se plaintiff, would hereby submit this Plaintiff's
Memorandum Brief in Response to Intervenor's Motion to Dismiss or Require the
Naming of Additional Parties in the above styled case. Plaintiff would introduce unto the
record:

PARTIES

Plaintiff, Ronald J. Ferguson, is co-owner of Lot #13, Millcreek Estates, PIN / Tax Map
#0594030101300, known as 103 Mill Creek Road.

Mill Creek, LP, is a Limited Partnership that registered with the South Carolina
Secretary of State on June 28, 1974 and currently in good standing.

John Hatcher, Intervenor, is listed as owner of real property located at Lot #32,

ENTERED COMPUTER

13

Millcreek Estates, PIN / Tax Map #0594030102600, known as 108 Mill Creek Road.

Michael Stehney, Intervenor, is shown to be owners of Lots 29, 30, & 32, Millcreek Estates, PIN / Tax Map # 0594030102900, 0594030103000, 0594030103200, known as 100 Mill Creek Road.

Rachel Shaluly, Intervenor, is co-owner of property at Lot 2 & 3, Millcreek Estates, PIN / Tax Map #0594030100200 and 0594030100300; and sole owner of Lot 4, Millcreek Estates, PIN / Tax Map #0594030100400, known as 1 Mill Creek Road.

James Gilbert, Intervenor, is co-owner of properties at Lots 18 & 19, Millcreek Estates, PIN / Tax Map #0594030101800 & 0594030101900.

Molly Miller, Intervenor, is owner of property listed at Lot 10, Millcreek Estates, PIN / Tax Map #0594030101000, known as 6 Hackamore Trail.

Architectural Committee of Mill Creek Estates is not an entity lawfully recognized by the South Carolina Secretary of State or any restrictive covenant duly filed within the County of Greenville, South Carolina

STATEMENT OF THE CASE

This case revolves around the member activities of a company known as Mill Creek, LP, and their development of Mill Creek Estates in the mid-1970's. Part of this activity involved member Kasper F. Fulghum, Sernior, signing a document known as the Residential Protective Covenants Mill Creek ("Covenants") on May 31, 1974, in the capacity of "General Partner" for "Mill Creek, LP". A company which was non-existent at the time. The developers, who each owned property within the development and built

personal residences, gave themselves oversight of future lots within the platted development through the "Covenants" creation of a committee known as the "Subdivision and Architectural Control Committee". The "Covenants" further contain a clause that they shall be "automatically extended" sans action to "modify, amend or abandon" such. Over the years the original Mill Creek, LP, members sold their properties and moved away. Leaving chaos in their wake. The litigation brought by Ferguson addresses the foundation of the multiple issues created by the members of Mill Creek, LP, starting back in 1974. Chief among them, the legality of the contract identified as "Residential Protective Covenants Mill Creek" and subject to review pursuant to South Carolina Statute as well as established precedent; The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions. *Berkibile v. Outen*, 311 S.C. 50, 53-54, 426 S.E.2d 760, 762 (1993) (stating "[a]n illegal contract has always been unenforceable"); *Batchelor v. American Health Ins. Co.*, 234 S.C. 103, 107 S.E.2d 36 (1959) (noting that contracts violating public policy as expressed in constitutional provisions, statutes, or judicial decisions are void).

Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of property and against restrictions. This rule, however, obtains only where the parties have failed to express their

meaning with sufficient clarity to enable the court to say that its construction is plain and admits of no doubt; the rule will not be applied to defeat the obvious purpose of the restrictions, nor does it require an unnatural and strained construction of the words used; and before giving effect to the rule the court will have recourse to every aid, rule, or cannon of construction to ascertain the intention of the parties, since it is the duty of the courts to enforce, not to make, contracts. Stanton v. Gulf Oil Corp., 232 S.C. 148, 151, 101 S.E.2d 250, 251 (1957) (citation omitted). Under South Carolina law, restrictive covenants can be deemed unenforceable where there has been a change of conditions. Inabing v. Booe, 262 S.C. 81, 202 S.E.2d 643 (1974). Restrictive covenants can also be vacated if they are indefinite or contravene public policy. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

BACKGROUND

Plaintiff is part owner of a property lying and being situate in the State of South Carolina, County of Greenville, shown as Lot No. 13 on plat of Millcreek, recorded in Plat Book 4-X at pages 87 and 88. Such plat having been created and filed by Mill Creek, LP, along with a subsequent document on June 28, 1974, known as Residential Restrictive Covenants Mill Creek.

Article III of the Residential Protective Covenants Mill Creek provided the original members of Mill Creek Estates means to form a committee to be known the "Subdivision and Architecural Control Committee".

The document in question, Residential Protective Covenants Mill Creek, was signed by Kasper F. Fulghum, General Partner, of Mill Creek, LP, on the 31st Day of May, 1974. The document was thereafter filed on June 28, 1974 – AFTER the legal formation of Mill Creek, LP, on June 27, 1974.

Pursuant to South Carolina law, Plaintiff, who was not named as a party by Brown in Hatcher vs. Ron Ferguson, 2013-CP-23-01810, and was explicitly stated to Judge Hill by Brown in a hearing during May 2013, as not being party, was free to address the legality of the underlying “covenants” and the damages to which he is exposed by such.

The Complaint was filed by Ferguson on September 20, 2013, with the Secretary of State, South Carolina, acknowledging that Mill Creek, LP, was still a legally recognized entity operating within the State of South Carolina, and the Secretary of State was authorized to accept service pursuant to S.C. Code § 33-42-220.

The Secretary of State attempted service based on their file information unsuccessfully. Concurrent to the Complaint being filing and service of process, Mill Creek, LP, member and former attorney Kasper Fulghum, Junior, was routinely going to the County of Greenville Courthouse for personal legal reasons.¹

¹ Mill Creek, LP, Partner Kasper Fulghum, Senior, moved to Georgia following disposition of his charges on cocaine and S.C. Supreme Court revocation of his CWP. Kasper Fulghum, Junior, partner, previously acted as counsel for Mill Creek, LP, but was disbarred as a result of a conviction for fraud. He is also being investigated for his role in the early 1980's development of Lot 32, Mill Creek Estates, a registered wetland easement, and the sale of this same property (owned by Mill Creek, LP) to Michael Stehney, Senior and Eleanore Stehney, parents of Brown client Michael Stehney, (Junior,) who lived with the same, for a below market price of \$3,000 on July 20, 1999. This would be the same property which Stehney counsel Chase Campbell alleges damages and violations of “covenants” in Stehney vs. Ferguson, 2013-CP-23-01710 and Ferguson vs. County of Greenville in U.S. District Court

South Carolina statute for service having been met and filed with the Clerk of the Court, a status hearing was set for June 2014. Judge Stilwell directed that Service by Publication be undertaken within sixty (60) days. Per the Order such activity was completed by the Plaintiff.

Simultaneous activities in other cases found that counsel of record in Ferguson v. Usher (2013-CP-23-03179) and Stehney v. Ferguson (2013-CP-23-01715) consented to transfer to the Master-In-Equity Judge Simmons. Brown refused voluntary transfer of Hatcher v. Ferguson (2013-CP-23-01810) to Judge Simmons court.

Judge Simmons directed Brown to participate in a scheduling hearing and subsequently issued an order requiring Brown to participate in discovery and mediation as part of a universal attempt to settle the multitude of cases.

Brown contacted Judge Simmons in October 2014 stating this case was not being addressed as part of the scheduling and seeking to have public information disclosed.

On October 22, 2014, Hatcher called Plaintiff's residence and was carrying on about an upcoming hearing in this case on November 3, 2014, a judgment would ruin their chances of getting any money in Hatcher v. Ferguson (2013-CP-23-01810) and something needs to be done to stop the proceeding.

Judge Verdin held a status conference on November 3, 2014. At such hearing she was informed that a Motion for Summary Judgment had been filed on October 20, 2014 with a hearing scheduled for December 16, 2014. That date was maintained.

Pursuant to Rule 55 of SCRCF, Chief Judge Leticia Verdin, entered an Order of

Default in this matter on December 16, 2014. Such was filed by the Clerk of the Court on December 30, 2014, with a copy being sent to Brown on or about the same date.

Though the parties seeking to intervene had knowledge of the pending litigation prior to the filing of the Motion for Summary Judgment on October 20, 2014, and John Hatcher was present at the hearing on December 16, 2014, Hatcher, nor Brown or any other party now seeking to intervene chose to speak when the court called the case or seek any type of participation.

On or about December 22, 2014, Rodney M. Brown, S.C. Bar #000953, filed a Motion to Intervene in this case allegedly representing John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly A. Miller and Michael Stehney, individually and as members of the Architectural Committee of Mill Creek Estates. The motion was scheduled that same date for hearing on January 20, 2015.

On or about December 30, 2014, the Clerk of the Court mailed a copy of the Default Judgment (Form 4) to Brown.

BROWN'S MOTION FOR INTERVENTION
DECEMBER - 2015

Despite Intervenor's having knowledge of this action, as evidence by Brown's engaging Master-in-Equity Simmons in ex parte communications in October 2015 wherein it was specifically noted that their awareness of an upcoming hearing in November 2015, and intervenor's presence at the December 16, 2015, hearing wherein they chose not to address the Court when the matter was called, upon learning of the

Judgment entered December 16, 2015 and preparations to proceed with a damages hearing intervenors filed a Motion to Intervene on December 22, 2015.

South Carolina Rules of Civil Procedure, Rule 24 provides:

"(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action. (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action. (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

(c) Procedure; Notice to State When Validity of Statute Questioned. A person desiring

to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

However, a party must have standing to intervene in an action pursuant to Rule 24, SCRPC. *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994). A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a "real party in interest." *Id.* "A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from

one who has only a nominal, formal, or technical interest in, or connection with, the action." *Id.* (citations omitted).

PROCEDURAL DEFICIENCIES

Rule 24(c), SCRCF requires the Intervenor(s) to serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Intervenor(s) filed a three page Motion to Intervene and wholly failed to comply with Rule 24(c) or Rule 5, SCRCF, by providing a pleading setting forth claim(s) or defense(s) for which intervention is sought. Consistent therewith, none of the required pleadings or certificates were filed with the Clerk of Court.

TIMELINESS

South Carolina courts have adopted a four-part test for determining timeliness:

(1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial. *Davis v. Jennings*, 304 S.C. 502, 504 405 S.E.2d 601, 603 (1991). Failure to satisfy any one of the four requirements precludes intervention. *Ex Parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

Respondents were untimely and only seek to frustrate justice.

The tardiness of Respondent's motion is the strongest reason supporting the underlying hearing and order are violations of due process. "[T]imely application" is required for both intervention as of right and permissive intervention. *Gould*, 883 F.2d at 286. When, as in this case, a request for intervention is not timely, a court is authorized,

if not required, to deny it. See *Houston General*, 193 F.3d at 839 (“[T]imeliness is a cardinal consideration of whether to permit intervention.”) (internal quotation marks omitted). The purpose of the timeliness requirement “is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal.” *Scardelletti v. Debarr*, 265 F.3d 195, 202-03 (4th Cir. 2001) (quoting *United States v. South Bend Community Sch. Corp.*, 710 F.2d 394, 396 (7th Cir. 1983)), rev’d on other grounds, 536 U.S. 1 (2002).

As described below, Respondents cannot satisfy this timeliness requirement. To determine whether an application for intervention is timely, courts in this Circuit examine three factors: “[1] how far the suit has progressed, [2] the prejudice that delay might cause other parties, and [3] the reason for the tardiness in moving to intervene.” *Scardelletti*, 265 F.3d at 202-03 (citing *Gould*, 883 F.2d at 286). Here, an examination of all three factors weighs against Respondent’s intervention and in favor of the court’s denial of both intervention as of right and permissive intervention.

Assuming the Intervenors could overcome the initial thresholds of procedural deficiencies and timeliness, Rule 24(c), SCRCF, requires a Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. As previously stated, Judge Verdin granted default Judgment in this case on December 16, 2014, with the Form 4 having been signed the same date and filed by the Clerk of Court on December 30, 2014.

The conclusion remains, Intervenors and their counsel deliberately withheld information from the proceedings before Judge Maddox which established state and

federal precedents deem fatal to the granting of intervention. That being they had knowledge of the case in October, 2015 – more than 45 days prior to the hearing where Default Judgment was entered as well as prior to two hearings to which intervenor(s) could have spoken up when the matter was called.

INTERVENORS' MOTION TO DISMISS – JUNE 2017

Despite the blatant violations of Rules 24(c) and 5 of the South Carolina Rules of Civil Procedure and Plaintiff's [still] pending Motion to Vacate Order Granting Intervention (filed May 16, 2017), Judge Robin B. Stilwell declined to entertain such motion stating he would not review Judge Maddox's Order and it needed to be scheduled before that judiciary, yet decided to entertain the Intervenor's Motion to Vacate Default Judgment entered by Judge Leticia Verdin.

Consistent with precedent on the matter, and based based on the representation by counsel for intervenor(s) that his clients are a self appointed group who are not Mill Creek, LP, nor employees of same, do not represent the community of Millcreek Estates and their counsel would face a conflict of interest if he attempted to represent the community residents of Millcreek Estates, Judge Robin B. Stilwell found on June 12, 2017, that Counselor Brown and his clients lacked standing to Vacate the Judgment against Mill Creek, LP and entered an Order denying such.

INTERVENORS' CURRENT MOTION

Based on the fact Intervenor(s) nor their counsel have complied with Rule 24(c)

or Rule 5, SCRCF, more specifically they have not filed nor served any "*pleading setting forth the claim or defense for which intervention is sought*" and there is an outstanding motion to Vacate the Order Granting Intervention that Judge Robin Stilwell declined to address, directing that Judge Maddox adjudicate, Plaintiff holds that the current motion is among the pleadings that relate to the factors dealing with intervention and not properly before the Court.

JUDGMENT AGAINST MILL CREEK, LP
DIVESTS COURT OF AUTHORITY TO
DISMISS CLAIMS AGAINST MILL CREEK, LP

Pursuant to a hearing held December 16, 2015, the Honorable Leticia Verdin entered a Judgment against Defendant Mill Creek, LP, in this matter on the same date and was to schedule a damages hearing in accordance with the South Carolina Rules of Civil Procedure.

Intervenor(s) own pleadings admit they are not Mill Creek, LP, not liable for any damages that party may be adjudicated to owe and had no part of drafting or implementing the contract from May 31, 1974, in question. A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a "real party in interest." *Id.* "A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." *Id.* (citations omitted). Rule 24, SCRCF. *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994).

Consistent with precedent on the matter, and based based on the representation by counsel for intervenor(s) that his clients are a self appointed group who are not Mill Creek, LP, nor employees of same, do not represent the community of Mill Creek Estates and their counsel would face a conflict of interest if he attempted to represent the community residents of Mill Creek Estates, Judge Robin B. Stilwell found on June 12, 2017, that Counselor Brown and his clients lacked standing to Vacate the Judgment against Mill Creek, LP and entered an Order denying such.

First, as already adjudicated by Judge Stilwell, Intervenor(s) lack standing to challenge the Default Judgment and damages proceedings related to Defendant Mill Creek, LP, which specifically relates to a contract signed by a future member of such entity. Secondly, they were required to file a "*pleading setting forth the claim or defense for which intervention is sought*" pursuant to Rule 24(c) and Rule 5, SCRCP, at the time they filed any Motion to Intervene. They failed to comport with that required of the Rules of Civil Procedure and based on both state and federal precedent, their lack of timeliness is fatal to bringing the motion at this juncture. There is obviously no bar to the Court dismissing Intervenor(s) from the action for failure to comply with Rule 24(c), Rule 5, and failure to state a claim upon which the court has standing to act.

NAMING ADDITIONAL PARTIES

It is well-settled that a Plaintiff has the sole right to determine which party he will sue. A ruling that a Defendant can compel a plaintiff to join other alleged tortfeasors

as defendants in that suit would overturn this firmly entrenched common law principle. Moreover, a concomitant ruling that where these defendants cannot be joined, the action must be dismissed, would thwart our policy favoring the settlement of disputes.

Where, as here, the Plaintiff has sole recourse against Defendant Mill Creek, LP, while Intervenor(s) strictly deny any liability for the actions of Defendant, to direct Plaintiff to name parties who are aware of the litigation and willfully chose not to intervene as Defendants, creates a constitutional quagmire that not only divests Plaintiff of recourse against the party even Intervenor admits would carry liability, but also usurps the established principles of civil procedure.

Notwithstanding the Order Granting Intervention was issued in contravention of the Rules of Civil Procedure and fraud by the Intervenor(s), they seek the Court to direct that Plaintiff name all property owners as parties to the litigation pursuant to Rule 19, SCRCF. Looking at the Motion to Intervene, Intervenor(s) did not even seek to have the co-owners of properties they claim to represent joined to the matter. They have admitted in other pleadings and to Judge Stilwell that they nor their counsel represents the community of Millcreek Estates. Their counsel has indicated it would be a conflict of interest for him to represent the interests of Millcreek Estates over that of his clients.

The South Carolina Supreme Court has interpreted Rule 19, SCRCF to require that a party be a "necessary party" to be joined in an action pursuant to the rule. See *Slatton v. Slatton*, 289 S.C. 128, 130, 345 S.E.2d 248, 249 (1986). "A necessary party is one whose rights must be ascertained and settled before the rights of the parties to the

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2013-CP-23-05102

Ronald J Ferguson
Plaintiff(s),

vs.

Mill Creek, LP
Defendant(s),

John Hatcher, Michael Stehney, Rachel
Shaluly, James Gilbert, Molly Miller,
individually and as members of the
Architectural Committee of Mill Creek
Estates,
Third-party Intervenor(s).

PLAINTIFF'S MEMORANDUM BRIEF
IN RESPONSE TO INTERVENORS'
MOTION TO DISMISS OR REQUIRE
NAMING ADDITIONAL PARTIES

I certify, that on this date, I served a copy of the Reply Brief of Appellant, dated
12/4/2015 on Respondents' Attorney of record by

_____ delivering it to him/her personally; or,

_____ mailing it to him/her, at his/her last known address, by depositing it in the U.S.
Mail, in an envelope with sufficient postage affixed, addressed as follows; or,

☒ mailing it to the address indicted by their counsel of record in the Summons as
follows:

Rodney M. Brown
210 S Main St
Fountain Inn, SC 29644

This the 4th day of December, 2017.


Ronald J. Ferguson

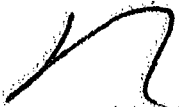
action can be determined." *Id.* We conclude that absent explicit and unmistakable intent to abrogate this well-established right, a joint tortfeasor remains merely a permissive party and joinder under Rule 19 is not required for complete relief to be accorded.

The case at bar actually addresses a contract drafted and signed in 1974 by Kasper F. Fulghum as "General Partner" of Mill Creek, LP, prior to Mill Creek, LP being formed. These actions preceded any property ownership or rights of the parties. Intervenor(s) seek to join to the proceedings. Pursuant to South Carolina statute and Judge Verdin's reading of the pleadings, the Court is vested with authority to address whether a contract is valid and enforceable, contravenes public policy or is ambiguous.

CONCLUSION

Pursuant to Rule 24 and 5, SCRPC, Intervenor(s) Motion to Dismiss or Require Naming of Additional Parties is a pleading that should have been filed with the Motion to Intervene and is not properly before the Court. The failure of Intervenor(s) to comply with Rule 5, SCRPC, subjects their claims to dismissal. The Court should dismiss the intervenors from the action and proceed with the damages hearing against Mill Creek, LP.

December 4, 2017



Ronald J. Ferguson
103 Mill Creek Road
Piedmont, SC 29673
864-509-0169

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF GREENVILLE	)	2013-CP-23-05102
	)	
Ronald J. Ferguson,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COURT ORDER
	)	
Mill Creek, LP, John Hatcher,	)	
Michael Stehney, Rachel	)	
Shaluly, James Gilbert,	)	
Molly Miller, Individually	)	
and as members of the	)	
Architectural Committee of	)	
Mill Creek Estates,	)	
	)	
Defendants.	)	

PRESIDING JUDGE: The Honorable Edward W. Miller
 ATTORNEY FOR PLAINTIFF: Pro Se
 ATTORNEY FOR INTERVENERS: Rodney M. Brown
 DATE OF HEARING: December 7, 2017
 COURT REPORTER:

This matter comes before the Court upon the Interveners/Defendants', John Hatcher, Michael Stehney, Rachel Shaluly, James Gilber, Molly Miller, Individually and as members of the Architectural Committee of Mill Creek Estates, Motion to Dismiss this action.

The Interveners/Defendants and Plaintiff were present at the hearing. The Interveners/Defendants request that the Court dismiss the case pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to join the necessary parties and pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure because the same action is pending in this Court involving the same issues and parties. In the alternative, the

14

Intervenors/Defendants have requested that the Plaintiff be required to join all the necessary parties for complete and just adjudication.

After carefully reviewing the arguments of counsel, the file and the Complaint in the other case involving these Defendants and this Plaintiff being 2013-CP-23-01810, the Court concludes that it would be appropriate pursuant to Rule 12(b)(8) to dismiss this action. The Court believes that action was filed prior to this case, and it involves the same issue regarding the Restrictive Covenants at a subdivision known as Mill Creek Estates. The Plaintiff herein can raise any and all claims, counterclaims against these parties and any other parties which he deems necessary in that case. Accordingly, the Plaintiff herein and Defendant in that case is granted an additional thirty (30) days to file any amended pleadings and counterclaims to add additional causes of actions or parties.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that this action being 2013-CP-23-05102 is dismissed and that Ronald J. Ferguson, the Plaintiff in this case who is the Defendant in case number 2013-CP-23-01810 is granted thirty (30) days to amend his counterclaim in that case.

IT IS SO ORDERED.

The Honorable Edward W. Miller

Date: _____



Greenville Common Pleas

Case Caption: Ronald J Ferguson vs. Mill Creek LP , defendant, et al
Case Number: 2013CP2305102
Type: Order/Dismissal

So Ordered

s/ Edward W. Miller

Electronically signed on 2017-12-21 10:39:38 page 3 of 3

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ronald J. Ferguson, Appellant,

v.

Mill Creek, LP, Respondent.

Appellate Case No. 2015-000593

Appeal From Greenville County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-126
Submitted March 1, 2017 – Filed March 22, 2017

APPEAL DISMISSED

Ronald J. Ferguson, of Piedmont, pro se.

Rodney M. Brown, of Rodney M. Brown, P.A., of
Fountain Inn, for Respondent.

PER CURIAM: Dismissed pursuant to Rule 220(b), SCACR, and the following
authority: *Duncan v. Gov't Employees Ins. Co.*, 331 S.C. 484, 486, 449 S.E.2d
580, 580 (1994) ("[A]n order granting a motion to intervene is not immediately
appealable.").

APPEAL DISMISSED.¹

GEATHERS, MCDONALD, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

John D. Hatcher, Rachel Shaluly, James F. Gilbert, Molly
A. Miller, and Michael Stheney, individually and as
members of the Architectural Committee of Mill Creek
Estates, Respondents,

v.

Ronald J. Ferguson, Appellant.

Appellate Case No. 2013-002360

ORDER

On November 21, 2013, this appeal was dismissed because Appellant filed a notice of appeal from a Form 4 order that indicated a formal order had not yet been filed. Appellant has now filed a letter, which this court construes as a petition to reinstate, and a copy of the circuit court's formal order. Because a formal order has now been filed with this court, this appeal is reinstated.

This court has now reviewed the formal order that was filed. The order of Judge J. Mark Hayes, II grants an amended motion to compel discovery. Because generally an order compelling discovery is not immediately appealable, this appeal is dismissed. *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E.2d 154 (2009).


FOR THE COURT

Columbia, South Carolina

FILED

11/23/13

16

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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APPEAL DISMISSED.¹

GEATHERS, MCDONALD, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

1 THE COURT: I mean, I don't ---

2 MR. BROWN: I don't think I can get the Rule 19
3 motion before Your Honor. And I also think there's a
4 Rule 12(b)(8) motion that you can't have multiple
5 actions with the same cause of action pending in
6 multiple cases, which is a restrict offense. But I
7 don't think I can bring the Rule 12(b)(8) or the Rule 19
8 before the vacate is granted.

9 THE COURT: Okay, good enough. Thank you.

10 Mr. Ferguson?

11 MR. RONALD J. FERGUSON: If we're gonna start
12 discussing the restricted covenants and who brought
13 which case first, that would have been another party
14 that's not present today in 2013-CP-23-01715, which is a
15 client represented by Mr. Brown that's actually
16 represented by another attorney, who was the first one
17 to bring the restricted covenants case.

18 Second to that, we're gonna move that Mr. Brown
19 doesn't have standing to bring the motion today. As he
20 stated, the original motion to intervene was granted by
21 Judge Maddox in, I believe that was in, February of
22 2015. Mr. Brown pointed out the case has come back this
23 year. Under Rule 24, they were required to serve a
24 responsive pleading that had to be filed with the court.
25 As of today they've not filed it, they've not served it.

1 And under Rule 5 it's subject to dismissal.

2 Specifically Rule 24(c), a person desiring to
3 intervene shall serve a motion to intervene upon the
4 parties. As provided in Rule 5, the motion shall state
5 the ground therefore and shall be accompanied by a
6 pleadings stating forth the claim or defense which
7 intervention is sought.

8 Under Rule 5(d), all papers to be served upon a
9 party, except as provided in 26(g)(1) shall be filed
10 with the court within five days after service thereof.
11 The summons and complaint shall be filed before service.
12 Proof of service shall be filed within ten days after
13 service of the summons and complaint. Upon failure to
14 serve summons and complaint, the action may be dismissed
15 by the court on the court's own initiative or upon
16 application of any party.

17 THE COURT: Mr. Brown, have you filed an answer?
18 I know you filed motions in this case and you've made an
19 appearance. Have you filed an answer?

20 MR. BROWN: I have not filed an answer, Your
21 Honor. Now, as far as the motions go to intervene,
22 there was pleadings attached to the motion to intervene
23 when I moved to intervene because they were -- I was
24 supposed to allege to the court why I had grounds to
25 intervene.

1 And with regard to the merits of this, what he's
2 saying is the reason the default judgment needs to be
3 vacated. I mean, the merits need to be heard.

4 THE COURT: I got ya. Let me ask you this. I
5 mean, even if the default judgment isn't vacated against
6 Mill Creek, LP, the merits are gonna be heard anyway. I
7 mean you all are convene some type of hearing of a trial
8 on the merits and the matter's gonna be heard --

9 MR. BROWN: But that ---

10 THE COURT: -- through a trial, a non-jury trial.

11 MR. BROWN: But that could be argued that by the
12 default judgment being granted that their pleadings are
13 -- the relief they requested is granted, which would be
14 abolishing the restrictive covenants.

15 THE COURT: I understand that. I understand that
16 that's the argument they could make, but do you think
17 there's any chance on God's green earth that a court is
18 going to grant them the relief they ask because they got
19 a default judgment against a entity which really is not
20 the real party and interest and you have you and a host
21 of property owners who are standing there asserting
22 their rights? I mean, the chances of that happening
23 are, are probably as remote as me going on the U.S.
24 Supreme Court tomorrow.

25 MR. BROWN: I agree with what you're saying, Your

1 Honor, but you have stood here and been awful surprised
2 by what that person did before.

3 THE COURT: Well, that's true. You got me there.
4 You got me there. You got me there.

5 MR. BROWN: And I just want to avoid any problem
6 with that.

7 THE COURT: I understand. I understand exactly
8 what you're saying. And here's the, here's the other
9 problem that I have, Mr. Brown. Mr. Ferguson, with all
10 due respect to the Fergusons, they make some pretty
11 unintelligible arguments. The one thing that they did
12 say is that you don't have standing to make the argument
13 for Mill Creek, LP. I don't see in the record anywhere,
14 and I've been studying it, where you have made an
15 appearance on behalf of Mill Creek, LP. You've made the
16 motion on behalf of those other defendants.

17 MR. BROWN: Right. That the default judgment be
18 granted because it could be held against my clients.
19 How that -- that default judgment could be held against
20 my clients as res judicata law of the case or any of
21 those kinds of things, collateral estoppel, then I need
22 to try to get that vacated.

23 THE COURT: Yeah, I understand what you're
24 saying. I understand exactly what you're saying. But I
25 don't, again, I don't see how you, who is not

1 for a motion to be made that Mill Creek, LP, is not a
2 real party of interest. I mean, that's probably the
3 appropriate thing to do.

4 And we're getting very hyper technical on this
5 because you all have presented a very hyper technical
6 issue to me. Like I said, I don't, I mean, just
7 fundamental fairness prescribes that, that because of a
8 technical default of a party that's not a real party in
9 interest that an entire group of homeowners would
10 essentially be stripped of their rights. That is their
11 rights to make an appearance. Their rights to assert
12 their relative positions. I don't see that happening.
13 But if we're gonna be hyper technical and if Mr.
14 Ferguson has always brought a salient point that you
15 don't have standing to make that for Mill Creek, LP, I
16 don't know how to get around that.

17 What I don't -- here is what I don't want to do
18 Mr. Brown. The Fergusons have come before the court any
19 number of times and they feel like that the court is
20 making decisions which are inappropriate and enure to
21 the benefit of all of the respective lawyers who appear
22 against them. And they probably have an impression
23 right now that they're not treated fairly.

24 And I just want to make sure if they bring up a
25 valid point about standing that I'll listen to the valid

1 point about standing. It's hyper technical. And like I
2 said, I think we're having an academic discussion that
3 ultimately will have no practical effect on this case.
4 But in as much as the Fergusons need to be treated with
5 the same respect as any other litigant who becomes
6 before the court, if they make that motion and they say,
7 hey, you don't have standing, then I look at that in
8 very -- and they're right, you don't have standing to
9 bring it on behalf of Mill Creek, LP. They don't. You
10 don't.

11 Now, if you make an appearance for Mill Creek,
12 LP, then you can make it. Or if you make a motion that
13 they're not the real party in interest then I think I
14 could rule on that. But I don't think I can rule to
15 vacate a default if you don't, you don't represent Mill
16 Creek, LP. But I agree with your submission.

17 MR. BROWN: I see the point as far as procedural.
18 And this is a quagmire, Your Honor, because I'm just
19 wondering some judge could say from a procedural
20 standpoint once the default judgment's been granted that
21 I can't raise any of those other motions. That I can't
22 raise a 12(b)(8) or a Rule 19 motion because default
23 judgment's already been granted. And that, that's the
24 problem I was thinking I was gonna run into unless if I
25 asked for the default judgment to be vacated first.

1 MR. BROWN: I have no idea. I'm sure it was just
2 a mistake made by somebody. And I can't believe the
3 Secretary of State hasn't thrown it out for not paying
4 their taxes and fees every year, but --

5 THE COURT: Yeah. Yeah.

6 MR. BROWN: -- it's still in existence.

7 THE COURT: Yeah. The remedy is to get rid of
8 Mill Creek, LP, as a defendant. That's the remedy.

9 MR. BROWN: Right.

10 THE COURT: But the problem is if you just vacate
11 it, again, you're not gonna make an appearance for them,
12 nobody is gonna make an appearance, they're gonna go
13 back into default again because we can't waive the Rules
14 of Civil Procedure for the entity. I think the remedy
15 is to get rid of them as a defendant.

16 MR. BROWN: I understand.

17 THE COURT: I think, I think that's what it is.

18 MR. BROWN: And I can go forward, but I just
19 didn't want to make those other motions and then some
20 judge tell me I can't do that because there's a default
21 judgment.

22 THE COURT: Yeah, I'm with you. I understand
23 exactly what you're saying. I do.

24 MR. BROWN: And if Your Honor could address that
25 in the order so that that wouldn't be a problem in the

1 THE COURT: This is Ferguson verses Mill Creek.

2 MR. BROWN: Yes, sir.

3 THE COURT: Okay. What do y'all want to tell me?

4 MR. BROWN: May it please the Court, Your Honor. I
5 represent the Intervenor. This is a motion pursuant to
6 12(b)(7), failure to join the necessary party.
7 12(b)(8), identical actions pending. And in the
8 alternative pursuant to Rule 19, require the Plaintiff
9 to join the necessary parties.

10 If I could give you a little bit of a historical
11 background, Judge, to let you know how we got to where
12 we are. It's kind of similar to that last case. This
13 is an effort and frustration.

14 THE COURT: No, it's not similar to the last case.

15 MR. BROWN: Well, just in that regard, Your Honor.

16 THE COURT: Okay.

17 MR. BROWN: This is only 2013. We don't go back to
18 2008. If I could hand up a Complaint, Your Honor. This
19 is the case that my clients filed in 2013 regarding a
20 violation of restrictive covenant with Mr. Ferguson
21 building his house in that subdivision.

22 Subsequent to that, that Mr. Ferguson transferred an
23 interest in his house to the Plaintiff in this case
24 which is his son Ron Ferguson. Ron Ferguson filed the
25 case that's before you today asking that against the

26

1 only defendant he named was the developer of the
2 subdivision, Mill Creek LP which has long since been
3 dormant and not doing anything asking to terminate and
4 abandon the restrictive covenant.

5 Nobody else was joined in that case. He went and
6 got a default judgement. We found out about it. The
7 Plaintiffs in the case I just handed up about the
8 restrictive covenant, we were granted right to
9 intervene in this case. These cases have been removed
10 to the Federal Court twice. Been to the Fourth Circuit.
11 Been to the Court of Appeals twice. We've gotten
12 nothing done with either one of these cases. We're not
13 even to the discovery stage of either one of these cases
14 just because of all the delay in actions and appeals.

15 These -- both cases deal with the restrictive
16 covenant and with the house. As Your Honor knows, the
17 restrictive covenant, and I have those if you want to
18 hand up, if Mr. Ferguson wants to abandon or have the
19 restrictive covenant terminated, he needs pursuant to
20 Rule 12(b)(7) to join all the occupants and owners --
21 not occupants, but all the owners of the real estate
22 that are subject to the restrictive covenant. It can't
23 go against the developer who is long since gone.

24 The restrictive covenant cover the entire
25 subdivision and all those people are necessary parties.

1 you want to tell me?

2 MR. FERGUSON: Yes, Your Honor. He is correct, I
3 did sue the original developers. It was brought to our
4 attention the original developers signed and created the
5 deed restrictions prior to Mill Creek LP existing, and,
6 therefore, the contract was invalid before it was ever
7 filed with the county. Therefore, our claim is against
8 Mill Creek and the members of Mill Creek LP. It is not
9 against these individuals. Their own pleadings admit
10 that they're not liable for Mill Creek or the partners
11 thereof. They don't represent them.

12 I'm also of the opinion that this is a successive
13 motion. Their original Motion to Intervene should have
14 addressed all this material. It did not comply with
15 Rule 24(c). It did not comply with Rule 8. It did not
16 comply with Rule 5. They also had spoken to Judge
17 Simmons more than 45 days and two hearings prior to the
18 default judgement. So there is an outstanding motion
19 from last May that's still not been heard to address the
20 Rule 60 for fraud on having that set aside.

21 MR. BROWN: If I can interject a little bit more
22 history here, Judge.

23 THE COURT: Okay.

24 MR. BROWN: There are a number of Ferguson lawsuits
25 that have been floating around. They have all been

1 assigned to Judge Simmons. That's the reason he makes
2 reference to Judge Simmons. Judge Simmons is handling
3 the hand full of Ferguson cases that are out there. Two
4 of which are my clients. This case and the other case
5 that I handed up. He has accused Judge Simmons of
6 criminal and civil. He has accused me of sanctions.
7 Everybody's that's been involved in the case has been
8 accused of everything.

9 The issues that he brought up with regard to the
10 intervention have been addressed by the Court of Appeals
11 and been sent back down. I have no idea what this 60(b)
12 motion is that he's addressing. I did bring a 60(b)
13 motion and a Rule 55 motion to have the default
14 judgement vacated in this case if that's what he's
15 referring to.

16 Judge Stilwell ruled that he could not do that
17 because I did not represent Mill Creek LP. I only
18 represented the intervenors. So he said that default
19 judgement against Mill Creek LP has no affect against my
20 clients, but would not vacate the default judgement.
21 And there's an Order in the file from Judge Stilwell
22 doing that.

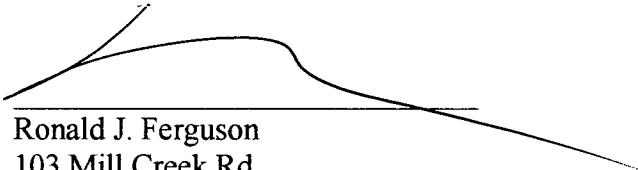
23 THE COURT: And who do you represent, Mr. Brown?

24 MR. BROWN: I represent the interveners in this
25 action and I represent the plaintiffs in the other

CERTIFICATION

I certify that this Record on Appeal contains materials proposed to be included by the parties who participated in briefing and no matter which is irrelevant to this appeal.

October 25, 2018



Ronald J. Ferguson
103 Mill Creek Rd
Piedmont, SC 29673
(864) 509-0169
Appellant pro-se

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