

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

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JUL 01 2019

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

SC Court of Appeals

Case No.2019-000516

Palmetto Air Plantation Homeowners Association, Inc.Respondent,

v.

Kim E. Bevier.....Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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INITIAL REPLY TO RESPONDENT'S ARGUMENT THAT BECAUSE
APPELLANT HAD NOTICE OF THE DECLARATION OF
COVENANTS HIS PROPERTY WAS BOUND THEREBY.

Respondent asserts that the covenants were created when recorded by the Register of Deeds. Appellant's Brief contains its argument that the recordation of the Declaration of Covenants did not create covenants and that they were never created because they were never included in an instrument effecting title.

The case of *Harbison Cmty. Ass'n, Inc. v. Mueller*, 319 S.C. 99, 459 S.E.2d 860, (Ct. App. 1995) is mentioned in the order of the lower court (Order pp. 6-7) as authority for its ruling and quoted by Respondent in its brief. While that case does indeed discuss the binding effect of actual and constructive notice of matters within a grantee's chain of title, it does not address the issue advanced by Appellant as to whether covenants were created. Significant in the ruling was the fact that a deed in *Mueller's* chain of title specifically referenced the covenants, precisely what Appellant asserts is missing in the case at hand and the basis for Appellant's position that the covenants were never created.

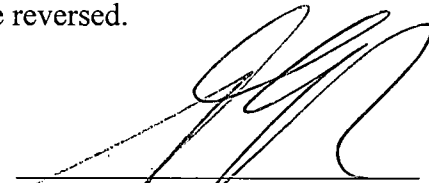
The deed to the J.C. Roy Company was filed in April of 1986, and contained a provision stating the conveyance was subject to the 1975 Declaration, as amended, and subject to a lien for annual assessments levied by the Association pursuant to the Declaration. The Muellers purchased a single family residence in the Harbison Subdivision from the J.C. Roy Company and received a deed filed July 10, 1986 with the Lexington County RMC.

Harbison Cmty. Ass'n, Inc. v. Mueller, 319 S.C. 99, 101, 459 S.E.2d 860, 862 (Ct. App. 1995)

CONCLUSION

Because Bevier's property was never burdened by the restrictive covenants the order granting partial summary judgment should be reversed.

June 28, 2019



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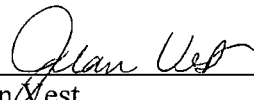
Palmetto Air Plantation Homeowners Association, Inc.....Respondent,

vs.

Kim E. Bevier.....Appellant.

PROOF OF SERVICE

I, the undersigned employee of Player & McMillan, LLC, attorneys for the Appellant, hereby certify that I have this 28th day of June 2019, served the Initial Reply Brief of Appellant in the above captioned matter, on Palmetto Air Plantation Homeowners Association, Inc., by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorney of record, Steven S. McKenzie, Esquire at 2 North Brooks Street, Manning, South Carolina, 29102.



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SC Court of Appeals

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South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Palmetto Air Plantation Association, Inc. v. Kim E. Bevier
Appellate Case No.: 2019-000516

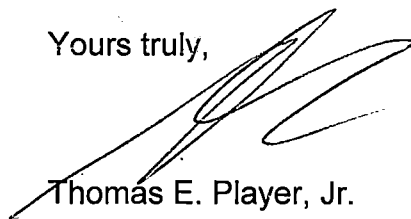
Dear Ms. Allen:

I am enclosing the following:

1. Initial Reply Brief of Appellant;
2. Proof of Service of Initial Reply Brief of Appellant;

Best regards.

Yours truly,



Thomas E. Player, Jr.

TEP, Jr./jv
Enclosures
Cc: Mr. Steven S. McKenzie, Esquire



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