

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

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

Case No. 2019-000516

RECEIVED
AUG 14 2019
SC Court of Appeals

Palmetto Air Plantation Homeowners Association, Inc.Respondent,

vs.

Kim E. BevierAppellant.

REPLY BRIEF OF APPELLANT

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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 affecting 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 (R. pp. 8-9) as authority for its ruling and cited 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.

August 13, 2019



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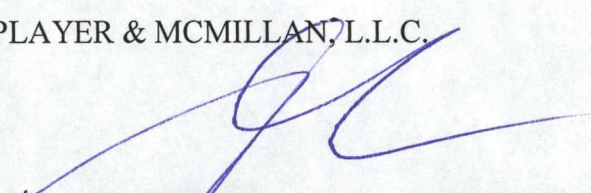
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I hereby certify, pursuant to SCACR 211(b), that the Brief of Appellant and the Reply Brief of Appellant have not been altered from their initial form except for those changes specifically referenced in SCACR 211(b).

RESPECTFULLY SUBMITTED.

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