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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MIKELL R. SCARBOROUGH, Master in Equity

Appellate Case No. 2019-001289

**RECEIVED**  
SEP 05 2019  
SC Court of Appeals

Raven's Run Homeowners Association, Inc., Appellant/Respondent,

v.

Crown Pointe Association, Inc., Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013, Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevicius, Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Springer a/k/a Shirly Deanna Springer, Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr. and Terry W. Graves; Mary Elizabeth Gladdedn; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr. and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully; Defendants,

Of Whom James B. Kubu and Melissa F. Kubu, and Leila June Johnson are the Respondents

And Katherine Kinlaw is the Respondent/Appellant.

APPELLANT/RESPONDENT'S MOTION FOR LEAVE TO FILE  
AMENDED NOTICE OF APPEAL

Appellant/Respondent Raven's Run Homeowners Association, Inc. ("Raven's Run"), pursuant to Rule 240, SCACR, respectfully moves for leave to file an amended notice of appeal. In support of this motion, Raven's Run would show as follows:

### BACKGROUND

1. This appeal arises from an action in the Charleston County Court of Common Pleas. As initially pleaded, the action involved the Crown Pointe Association, Inc., and multiple individuals as defendants. While the case was pending in the circuit court, the Crown Pointe Association and most of the individuals reached settlements with Raven's Run.

2. At the conclusion of the proceedings in the circuit court, the only remaining defendants were James B. and Melissa F. Kubu, Leila June Johnson, and Katherine Kinlaw.

3. The notice of appeal filed by Raven's Run on August 1, 2019, should have named the Kubus, Ms. Johnson, and Ms. Kinlaw as Respondents. Instead, the notice of appeal erroneously named the Crown Pointe Association as Respondent, and did not name the Kubus, Ms. Johnson, or Ms. Kinlaw.

4. Although they were not named as respondents, the notice of appeal was served on counsel for the Kubus, Ms. Johnson, and Ms. Kinlaw.

5. Ms. Kinlaw filed a notice of cross-appeal on August 6, 2019.

6. By letter dated August 14, 2019, the Court amended the title of the case to reflect that Raven's Run is the Appellant/Respondent; Crown Pointe Association, Inc. is the Respondent; and Katherine Kinlaw is the Respondent/ Appellant.

7. Crown Pointe Association, Inc. reached a settlement with Raven's Run and was dismissed from further involvement in the case. It is not a party to the appeal and should not be identified as the Respondent.

8. Rather, the case caption should reflect that Raven's Run is the Appellant/Respondent, James B. and Melissa F. Kubu and Leila June Johnson are the Respondents, and Katherine Kinlaw is the Respondent/ Appellant. This alignment of the parties is reflected on the proposed amended notice of appeal, attached hereto as **Exhibit A**.

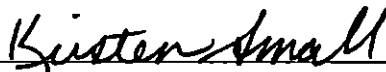
#### ARGUMENT

As a result of the error in the notice of appeal filed by Raven's Run on August 1, 2019, the case title adopted by the Court in its correspondence of August 14, 2019, does not accurately reflect the parties to the appeal. Accordingly, Raven's Run respectfully requests leave to file an amended notice of appeal that correctly identifies the parties to the appeal. The proposed amended notice of appeal is attached hereto as **Exhibit A**.

#### CONCLUSION

For the reasons set forth herein, Raven's Run requests leave to file an amended notice of appeal.

Respectfully submitted,



William W. Wilkins (S.C. Bar No. 6112)

Kirsten E. Small (S.C. Bar No. 75681)

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*Attorneys for Appellant/Respondent*

*Raven's Run Homeowners Association, Inc.*

August 30, 2019

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MIKELL R. SCARBOROUGH, Master in Equity

---

Case No. 2017-CP-10-00473  
Appellate Case No. 2019-001289

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**RECEIVED**  
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Raven's Run Homeowners Association, Inc., Appellant/Respondent,

v.

Crown Pointe Association, Inc., Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013, Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevicius, Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Springer a/k/a Shirley Deanna Springer, Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr. and Terry W. Graves; Mary Elizabeth Gladdened; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr. and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully; Defendants,

Of Whom James B. and Melissa F. Kubu and Leila June Johnson are the Respondents

And Katherine Kinlaw is the Respondent/Appellant.

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**AMENDED NOTICE OF APPEAL**

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Raven's Run Homeowners Association, Inc. appeals the Order of the Honorable Mikell R. Scarborough dated October 31, 2018, written notice of which was received by Appellant on November 19, 2018, and the Order of the Honorable Mikell R. Scarborough

dated July 9, 2019, written notice of which was received by Appellant on July 15, 2019.

Copies of both orders are attached hereto.

August \_\_, 2019  
Greenville, South Carolina

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Attorney for Respondents James and Melissa Kubu

Jeffrey T. Spell  
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Charleston, SC 29407  
Attorney for Respondent Leila June Johnson

## CERTIFICATE OF SERVICE

I certify that I have served the foregoing Amended Notice of Appeal on Respondents and on Respondent/Appellant by depositing a copy of it in the United States Mail, postage prepaid on August \_\_\_\_\_, 2019, addressed to their counsel of record, as shown below:

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RAVEN'S RUN HOMEOWNERS )  
 ASSOCIATION, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CROWN POINTE ASSOCIATION, INC., )  
 ET AL., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 2017-CP-10-0473

**ORDER**

2018 NOV -8 PM 2:07  
 JUDGE: G. J. J. J.  
 CLERK: G. J. J. J.

DATE OF HEARING: August 28, 2018.  
 TRIAL JUDGE: The Honorable Mikell R. Scarborough  
 PLAINTIFF'S ATTORNEY: G. Hamlin O'Kelley, III of Buist Byars & Taylor, LLC  
 DEFENDANTS' ATTORNEYS: Harold A. Oberman of Oberman & Oberman, LLC for  
 Katherine Kinlaw  
 Jeffrey T. Spell, Esquire for Leila June Johnson  
 Edward K. Pritchard, Jr., Esquire for James and Melissa Kubu

This matter came before me on August 28, 2018. The matter was set for a two-day trial. Prior to trial, I heard cross-motions for summary judgment. In this case, Raven's Run Homeowners Association, Inc. ("Raven's Run") sued Crown Pointe Association, Inc. ("Crown Pointe") and individual lot owners in Crown Pointe claiming ownership of all property up to the individual lot lines of the lot owners. This includes a lake or drainage easement that is located between the two neighborhoods and land located on the Crown Pointe side of this body of water. As shown on the various plats discussed below, Crown Pointe lies to the northwest of this body of water and Raven's Run to the southeast.

Raven's Run commenced this action on January 31, 2017. Raven's Run subsequently filed an Amended Complaint on March 9, 2018, in which they sued the defendants seeking a declaratory judgment, an injunction, damages in trespass and nuisance. Raven's Run claimed ownership of all the land up to the lot lines of the individual lot owners of Crown Pointe, including a strip of land and bodies of water. Central to this dispute is Raven's Run's right to restrict the property owners of Crown Pointe from maintaining and cutting on the strip of land between their lot property line and the body of water. Raven's Run sued the individual property owners for damages because they ventured onto this strip, removed vegetation, and allegedly created an eyesore.

Defendants disputed this. Defendants answered and disputed Raven's Run ownership of the disputed lands, sought proof of Raven's Run ownership, and sought a clarification as to the respective rights of the parties. Defendants also counterclaimed in abuse of process.

Immediately prior to the motions, Crown Pointe and Raven's Run reached a settlement agreement, leaving only the dispute between Raven's Run and the remaining individual lot owners of Crown Pointe. The remaining individual lot owner represented by counsel are Katherine Kinlaw (represented by Harold A. Oberman), who owns Lot 45-E, Leila June Johnson (represented by Jeffrey T. Spell) who owns Lot 40-E, and James and Melissa Kubu,(represented by Edward K. Pritchard, Jr.) who own Lot 39-E.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The documents are dispositive in this case.

##### **A. Plat BK-2**

Plat BK-2 was recorded on August 21, 1986. It is a plat entitled "Plat Showing Crown Pointe Subdivision Lots 25E-49E, Lots 67E-79E." On this plat, lakes and drainage easement are shown

immediately to the east of the lots in question. The 60 foot drainage easement extends 20 feet onto the lot owners property and 40 feet into the lake.

RAC Enterprises Inc., the common owner of the two subdivisions, makes the following dedication:

By the recording of this plat, the green areas and lakes shown hereon are dedicated to the use of the East Crossing Subdivision and the Crown Point Subdivision Homeowners Association forever.

It further states, "By recording this plat, the easements and rights-of ways shown hereon are dedicated to the use of the public forever."

RAC subsequently deeded the properties on this plat to Spectra Development, Inc. by deed O161-258 dated January 14, 1987, and recorded January 26, 1987, with reference to this plat.

**B. Deed into Raven's Run and Plat**

Raven's Run claims ownership to the disputed property by deed R163-134 dated January 5, 1987 and recorded April 1, 1987. This is a deed from RAC Enterprises, Inc., the common owner, to Raven's Run Homeowners Association, Inc. This deed references Plat Book BL57. The Plat is entitled "Raven's Run" and "Plat Showing Lots 19-31, Block 'D' and Lots 1-5, Block 'F' and Lots 14-35, Block 'E.' Acreage Shown Hereon 44.507 Acres."

The plat shows no land in Crown Pointe Subdivision, and neither the deed nor the plat references Crown Pointe Subdivision, its lands, lakes, or easements. The documents neither implicitly nor explicitly convey the disputed property.

**C. Quit Claim Deeds of 2001**

On December 18, 2001, two quit-claim deeds were executed. The first, recorded at C392, page 756 conveyed certain property from RAC Enterprises, by Robert A. Causey, as Liquidating Trustee, to East Crossing-Crown Pointe Association, Inc. Robert Causey had previously signed the deeds out of RAC discussed above as its President/Secretary. The deed conveyed, in pertinent part:

ALL that certain common area, including any "lake" and "green area", located in Crown Point Subdivision, Christ Church Parish, Charleston County, S.C., as shown on that certain plat entitled "Plat Showing Crown Pointe Subdivision, Lots 25E - 49-E and Lots 67-E - 79-E, Portion of a 52.98 Acre Tract, Owned by RAC Enterprises, Inc., Christ Church Parish, Charleston, S.C.", dated August 3, 1986, and recorded in the RMC Office for Charleston County on August 21, 1986 in Book BK at Page 2. Such common area having such size, shape, dimensions, buttings and boundings as will by reference to such plat more fully appear. (Abstractor's Note: It the intention of this deed to convey all property set forth on the aforementioned plat, saving and excepting all platted lots and public rights of way depicted thereon).

Subsequently, by deed at H394, page 181 and re-recorded at T398, page 815, the same pertinent property was deeded from East Crossing-Crown Pointe Association, Inc. to Crown Pointe Association, Inc. with similar language:

ALL that certain common area, including any "lake" and "green area", located in Crown Point Subdivision, Christ Church Parish, Charleston County, S.C., as shown on that certain plat entitled "Plat Showing Crown Pointe Subdivision, Lots 1E-24E & Lots 50E-66E and Lots 25E-49E & Lots 67-E - 79-E, Portion of a 52.98 Acre Tract Owned by RAC Enterprises, Inc., Christ Church Parish, Charleston, S.C.", dated August 3, 1986, and recorded in the RMC Office for Charleston County on August 21, 1986 in Book BK at Pages 1 and 2. Such common area having such size, shape, dimensions, buttings and boundings as will by reference to such plat more fully appear.

(Abstractor's Note: It the intention of this deed to convey all property set forth on the aforementioned plat pages, saving and excepting all platted lots and public rights of way depicted thereon).

Both these deeds explicitly convey any lake or green area as shown on the plat. The abstractors' note explicitly states the intention of the deed:

Abstractor's Note: It the intention of this deed to convey all property set forth plat pages, saving and excepting all platted lots and public rights of way depicted thereon." Deed H394, page 181

**D. Plat BP 160-161**

Spectra Development, who was deeded the property by RAC, made the following dedication on Plat BP 160-161:

By the recording of this plat, the green areas and lakes shown hereon are dedicated to the use of the Crown Point Subdivision Homeowners Association forever.

The easement and road right-of-ways were dedicated to the use of the public forever.

The lakes and drainage easements on BP 161 are the same as on BK 2.

This plat was recorded December 18, 1987.

**E. Plat BP 163**

After BP 160-161 was recorded, a plat of Raven's Run was recorded by RAC. RAC dedicates the easements shown on the plat to the Raven's Run Homeowner's Association. The lakes are not referenced. Crown Pointe is not shown.

**F. Plat of Seabrook**

The unrecorded Plat of Seabrook dated December 1, 2016 depicts the 60 foot drainage easement shown on the plat of Crown Pointe at BP 161. It also depicts the 60 foot drainage easement shown on the plat of Raven's Run at BP 163. On the plat of Seabrook, those easements do not overlap.

**G. Restrictive Covenants and Tax Map Information**

Raven's Run points to the Restrictive Covenants of Crown Point Subdivision recorded October 17, 1986.

The covenants state in pertinent part:

No use may be made by any owner, family member or invitee of lake systems of Raven's Run Subdivision which abut Lots 37E through 66E of Crown Pointe; this total prohibition of use shall specifically include boating, swimming and fishing. The portion of land between the rear lot lines of such lots and the water line of the Raven's Run lakes is owned by the Raven's Run Homeowners Association, Inc.

The covenants can only be enforced by the developer or lot owners of Crown Pointe.

Paragraph 7 states:

Enforcement shall be by proceedings at law or in equity by the Developer and/or any persons owning a lot shown on the hereinbefore mentioned Plat, either to restrain violation and/or to recover damages, in law or in equity.

Additionally, the covenants may be freely amended by the owners of the lots of Crown Pointe under paragraph 6 of the covenants.

Raven's Run additionally points to the tax maps of Charleston County. All of the extensive common areas of Raven's Run are within the tax map number relied on by Plaintiff including carports, dwellings, health clubs, sheds, hot tubs, tennis courts, pools and the like. Raven's Run pays property taxes for these common areas. The tax map document has a disclaimer that states:

The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

#### LAW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; see also *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct.App.1998). Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a

genuine issue for trial: Rule 56(c), SCRCP; SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); Peterson v. W. Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct.App.1999). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). Defendants set forth evidence that showed Raven's Run did not own the disputed property. In order to prevail on their causes of action, Raven's Run must prove that they own the disputed property. Because they could not prove they owned the property with the documents they presented, summary judgment is appropriate. The deed and plat Raven's Run relies on do not show they own the disputed property.

RAC dedicated the lakes and green areas on Plat BK-2 recorded August 21, 1986 to Crown Pointe. This dedication predates the conveyance into the deed into Raven's Run relied on by Raven's Run. As between the private parties, this dedication is complete when made. See e.g. Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952). This dedication effectively conveys the portion of Plat BK-2 that shows the 60 foot drainage easement on the lot lines to Crown Pointe. This land extends 20 feet onto the lot owners property and 40 feet into the lake. The dedication on a plat and the subsequent conveyance conveys to Crown Pointe as a non-exclusive easement.

Further, the deeds into Raven's Run, R163, page 34 and the referenced plat BL-57 do not attempt to convey any part of Crown Pointe. Crown Pointe, the disputed property and its bordering easement are neither described nor platted. Raven's Run is bound by that Plat. Germany v. Kelley, 96 S.E. 959 (S.C. 1918).

Additionally, the subsequent quit claim deeds of 2001 shows the intent of RAC to convey everything on the plat pages of BK-2 to Crown Pointe. This undoubtedly includes the portion of the 60 foot easement that extends 40 feet into the lake. The language is clear and unmistakable. This intent is further confirmed by Plat BP 160-161, which follows BK-2.

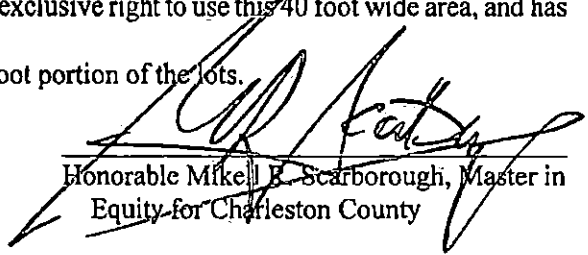
Restrictive Covenants are strictly construed, with all doubts resolved in favor of the free use of property. Hardy v. Aiken, 369 S.C. 160, 631 S.E.2d. 539 (2006). Therefore, read as a whole, the Restrictive Covenants of Crown Pointe are insufficient to convey title to Raven's Run. As noted above, if they have not already done so, Crown Pointe can amend the Restrictive Covenants at any time. Furthermore, Raven's Run has no right to enforce the covenants. These covenants must be construed in favor of the lot owners of Crown Pointe's free use of the property from their lot line to the water and as set forth on Plat BK-2.

Therefore, I find that Raven's Run does not own all property up to the individual lot lines of the Crown Pointe owners. Raven's Run does not own the disputed property immediately to the east of the lots in question: the portion of land and water depicted as the 60 foot drainage easement that extends 20 feet onto the lot owners property and 40 feet into the lake. I find that Crown Pointe has ownership and a non-exclusive right to use this 40 foot wide area as depicted on Plat BK-2, and has a non-exclusive drainage easement of 20 feet.

WHEREFORE, it is ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiff's causes of action are dismissed.
2. Raven's Run does not own the disputed property in this lawsuit.
3. Crown Pointe has ownership of the portion of land and water depicted as the 40 foot portion of the 60 foot drainage easement to the east of the lots in question. Crown

Pointe has ownership and a non-exclusive right to use this 40 foot wide area, and has a drainage easement on the 20 foot portion of the lots.



Honorable Mikell E. Scarborough, Master in Equity for Charleston County

Charleston, South Carolina

10/31, 2018.

f:\ob\kinlaw\1019\pleadings\order

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
Raven's Run Homeowners Association, Inc., )

Plaintiff, )

vs. )

Crown Pointe Association, Inc., Lois K. )  
Novak as Trustee of the Lois K. Novak )  
Living Trust dated 10/14/2013; Laurie T. )  
Herron and Mark D. Herron; James B. Kubu )  
and Melissa F. Kubu; Leila June Johnson; )  
Danny Ta and Anita McCauley; Robert E. )  
Luby, Jr., and Barbara Luby; Joshua D. )  
Coonce; Lucius Roy Junevicius; Katherine )  
Kinlaw; Thomas K. Kuyk and Melissa Ward; )  
Roland Franklin Wooten, III, and Teresa Key )  
Wooten; Michael P. Horvath; Timothy E. )  
Moylan and Karen G. Moylan; Carl A. )  
Counasse and Maureen Counasse; David A. )  
Frielinghaus and Holly C. Frielinghaus; )  
Christopher S. Finley and Holly M. Finley; )  
Shirley D. Springer a/k/a Shirly Deanna )  
Springer; Deirdre C. Knight; Robert Shane )  
Johnson; Eric R. Sigman; Lamar R. Graves, )  
Jr. and Terry W. Graves; Mary Elizabeth )  
Gladdedn; Philip Wallace and Naomi Grad; )  
Thomas Edwin Davis and Luis Miguel )  
Gonzalez Melchor; John R. Funkhouser and )  
Jennifer L. Funkhouser; Gregory S. Cooper )  
and Jane B. Cooper; Frank C. Jones, Jr. and )  
Elise Ubele Jones; William P. Topping and )  
Kris B. Topping; LaRhonda S. Ptichko; )  
Kenneth L. Tully and Anna J. Tully; )  
Defendants. )

IN THE COURT OF COMMON PLEAS )  
CASE NO. 2017-CP-10-00473 )


**ORDER UPON MOTION FOR )  
RECONSIDERATION )**

JULIE J. ARMSTRONG  
CLERK OF COURT  
2019 JUL 10 PM 3:27

FILED

THIS MATTER CAME BEFORE THE COURT on January 8, 2019, for a hearing on the Plaintiff's Motion for Reconsideration filed pursuant to Rule 59(e) SCRPC.

Present at the hearing were G. Hamlin O'Kelley, III, Esq. for the Plaintiff Raven's Run



Homeowners Association, Inc., Harold A. Oberman, Esq. for the Defendant Katherine Kinlaw, Jeffrey T. Spell, Esq. for the Defendant Leila June Johnson, and Edward K. Pritchard, Jr., Esq. attorney for the Defendants James and Melissa Kubu representing the remaining Defendants. The Defendant Crown Pointe Association, Inc. was not present, having settled with the Plaintiff prior to the hearing and no longer being party to the action.

This Motion sought to have the Court reconsider its Order filed November 8, 2018 ("Order"), granting the remaining Defendants summary judgment on the issue as to ownership of certain real property on their individual lots in the Crown Pointe subdivision in Mount Pleasant, South Carolina, and the issue of ownership of the lakes between those lots and the Raven's Run subdivision. Plaintiffs' contend the Court failed to consider the 1985 deed and plat from RAC Enterprises to the Raven's Run Homeowner's Association.

The Court finds that the Plaintiff's Motion for Reconsideration in this matter was timely filed within ten (10) days of written receipt of this Court's Order. The parties submitted written memoranda to the Court regarding the Motion, and the Court conducted a hearing on January 8, 2019. For the reasons set forth herein, the Court partially grants Plaintiff's Motion to Reconsider.

**I. The 1985 Deed, the 1987 Deed and the Crown Pointe Covenants and Restrictions**

Plaintiff Raven's Run Homeowners Association's claim the Court failed to consider the full record of deeds, plats, and covenants which they contend prohibit Defendants' usage of the lakes and the property at issue between the lot line and the waterline of the lakes.

Plaintiff argues the 1985 conveyance from RAC Enterprises, Inc., the Raven's Run developer, to the Raven's Run Homeowner's Association, Inc. and the 1987 deed by the same parties (both presented to the Court at the Motion for Summary Judgment hearing on August 28, 2018) transferred "all bodies and water" to the Raven's Run H.O.A. (Plaintiff's Motion to

Reconsider p.2) These documents were considered by the Court again at the hearing on January 8, 2019.

**a. The 1985 Deed**

The deed recorded on December 11, 1985 at Book E150 at Page 875 ("1985 Deed") (F of Plaintiff's Exhibit 1 from Hearing August 17, 2018) referenced a plat dated November 20, 1985, recorded on December 3, 1985 in Book BG at pages 052, 053, 054 ("1985 Plat").

BG 052 shows Raven's Run Subdivision, the numbered lots thereon, the 60' easement, and the Lake. It also vaguely shows a shape of the property which later became Crown Pointe. The 1985 Deed into Raven's Run includes language conveying "[a]ll those certain pieces, parcels or strips of land, bodies of water...below described, all of which are shown on a certain plat [BG 52, 53, 54]" which includes "[a]ll lakes, fingers, coves and other bodies of water..." marked on the plat. Again, Crown Pointe is not shown on the 1985 Plat.

**b. The 1987 Deed**

Plaintiff's Motion also referenced the 1987 deed of the common areas between RAC Enterprises, Inc. and the Raven's Run Homeowner's Association, Inc. ("1987 Deed") (C of Plaintiff's Exhibit 1 from August 17, 2018) in Book R163 at Page 134, recorded April 1, 1987, using Plat BL 057 ("1987 Plat") (E of Plaintiff's Exhibit 1 from August 17, 2018), recorded December 5, 1986. This 1987 conveyance includes all lakes or bodies of water and grants an ingress-egress easement held in common with lot owners in Raven's Run for drainage purposes. These described parcels and water are shown on Plat BL 057. This plat also shows Raven's Run Subdivision, the numbered lots thereon, the 60' easement, and the Lake but again does not show any portion of Crown Pointe.

**c. The Crown Pointe Covenants and Restrictions**

The Covenants and Restrictions for Crown Pointe ("Covenants") (Section 5 of Plaintiff's Exhibit 1 from August 18, 2018) were recorded on October 17, 1986 in Book O158 at Page 414. Section 26 of the Covenants captioned "Lakes and Bodies of Water" stated the lakes are "solely for the purpose of drainage" and "no owner shall have access to or use of said bodies of water [including boating, swimming and fishing], except for view." Section 26 states further "No use may be made by any owner of lake systems... of Raven's Run Subdivision which abut Lots 37E through 66E of Crown Pointe" thereby prohibiting boating, swimming and fishing in those bodies of water by these Crown Pointe landowners.

Based on the language in the 1985 and 1987 deeds, the accompanying plats, and the Covenants, the Court finds the Lake, as labeled, is owned by Ravens Run. Crown Pointe residents are subject to the drainage easement on their lots. Crown Pointe residents cannot use the Lake for swimming, boating, and fishing but the Covenants do allow them to use the Lake for water views.

**II. Title to The Irregular Strips of Land**

The Court disagrees with the Plaintiff's assertion that the disputed strip of land behind the remaining Defendants' lots was conveyed to Raven's Run by the 1985 Deed. As to that strip of land, the Court's previous Order remains in full force and effect. The Court confirms its prior ruling that the land behind these Defendants' Lots, which was not conveyed by deed either to Crown Pointe Association or the three Defendants, and which is burdened by Crown Pointe's Restrictive Covenants, is burdened by the nonexclusive drainage easement which was dedicated to the public, and on that basis is owned by Crown Pointe. The language "along the southern right-of-way of Rifle Range Road two irregular strips of land situate to the east and west of the intersection of Omni Boulevard and Rifle Range Road" does not refer to the disputed strips of

land. Although the irregular shaped continuous parcel to the West of Omni Boulevard runs continuously south of Rifle Range Road until reaching the border of the Neighboring parcel (the Isle of Palms Connector) the Court has ruled that this parcel stops 238.44 feet West of Omni Boulevard. The Court has also ruled that the remainder of this irregular shaped parcel located on the Raven's Run side of the Crown Pointe subdivision home owners' rear lot lines is not owned by Raven's Run, and must, therefore, be owned by Crown Pointe.

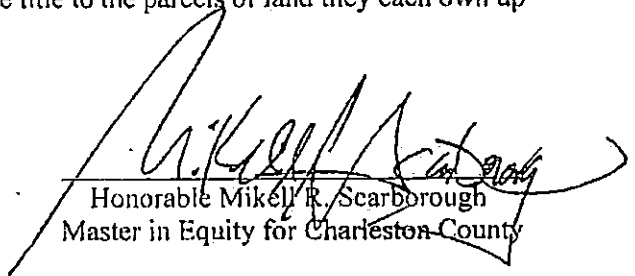
Rather, referring to the 1985 Plat (BG 052), on the southern boundary of Rifle Range Road there are in fact two irregular strips: One on the east 294.46 feet in length and one on the west which extends to 238.44 feet in length, both strips run along Rifle Range Road. They are irregular in shape and do not extend further inland. The Court finds, at most, this is the land conveyed by Paragraph 4 of the 1985 Deed. Therefore, as to this disputed strip, the Court's ruling in its previous Order, relying on the dedication to the public on Plat BK-2, remains in effect and the remaining Defendants, Katherine Kinlaw, Leila June Johnson, and James and Melissa Kubu have fee simple title to their parcels of land all the way to the waterline.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:**

1. Raven's Run owns the Lake.
2. Defendants Katherine Kinlaw (Lot 45-E), Leila June Johnson (Lot 40-E), and James and Melissa Kubu (Lots 39-E) have fee simple title to the parcels of land they each own up the waterline of the Lake.

**IT IS SO ORDERED.**

July 9, 2019  
Charleston, South Carolina

  
Honorable Mikell R. Scarborough  
Master in Equity for Charleston County

**CERTIFICATE OF SERVICE**

I certify that I have served the foregoing **Appellant/Respondent's Motion for Extension of Time to File Initial Brief and Designation of Matter to the Record on Appeal** on Respondents and on Respondent/ Appellant by depositing a copy of it in the United States Mail, postage prepaid on August 30, 2019, addressed to their counsel of record, as shown below:

Edward K. Pritchard, Jr.  
LAW OFFICES OF EDWARD K. PRITCHARD, JR.  
P.O. Box 639  
Sullivan's Island, SC 29482

*Counsel of Record for Respondents James and  
Melissa Kubu*

Jeffrey T. Spell  
LAW OFFICE OF JEFFREY T. SPELL  
1721 Ashley River Road  
Charleston, SC 29407

*Counsel of Record for Respondent Leila June  
Johnson*

Harold A. Oberman  
OBERMAN & OBERMAN, LLC  
60 Markfield Drive, Suite 2  
Charleston, SC 29407

*Counsel of Record for  
Respondent/Appellant Katherine Kinlaw*

**RECEIVED**

SEP 05 2019

**SC Court of Appeals**

  
\_\_\_\_\_  
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Kirsten E. Small  
Member  
Admitted in SC, NC, MD

August 30, 2019

Hon. Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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SEP 05 2019

SC Court of Appeals

Re: *Raven's Run Homeowners Association, Inc., Appellant/Respondent v. James B. and Meliss F. Kubu, Leila June Johnson, Respondents, and Katherine Kinlaw, Respondent/Appellant*  
Appellate Case No. 2019-001289

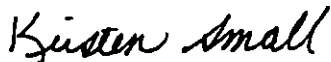
Dear Ms. Kitchings:

Regarding the above-referenced case, enclosed please find the original and 7 copies of (1) Appellant/Respondent's Motion for Leave to File Amended Notice of Appeal, and (2) Appellant/Respondent's Motion for Extension of Time to file Initial Brief and Designation of Matter to the Record on Appeal. Also enclosed are two checks for \$50.00, representing the filing fees for these motions. Please file the original and 6 copies, and return one, file-stamped copy in the enclosed, postage-paid envelope.

By copy of this letter, I have served counsel for Respondents and for Respondent/Appellant, as indicated in the Certificates of Service accompanying each motion.

Additionally, please note that all necessary transcripts were prepared while the case was pending in the circuit court. Consequently, there was no need to order any transcript after the filing of the notice of appeal.

Very truly yours,



Kirsten E. Small

cc: Counsel of Record

- Charleston
- Charlotte
- Columbia
- Greensboro
- Greenville**
- Hilton Head
- Myrtle Beach
- Raleigh

Haster  
08/30/2019  
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Hon. Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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