THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas/Master-In-Equity
James O. Spence, Master-In-Equity

Case No. 2011-CP-32-2968

Elizabeth L. Snow (f/k/a Elizabeth S. Bell), Mark S. Campitella, Chrissie E. Campitella, Henry D. Gehlken, Sr., Vivian S. Gehlken, Kenneth W. Kelly, Anita B. Kelly, Stephen F. Linder, Sr., Jackie Bower Linder, and Kathry A. McDaniel ..... Appellants,

v.

Judson P. Smith, Christy Brabham Bell, Charles S. Coleman, Jr., J. Thomas Coleman, Jacob C. Coleman, Valiska C. Freeman, George Arthur Stoudenmire as trustee for the benefit of William E. Stoudenmire, Linda B. Stoudenmire, Stacey S. Dershaw f/k/a Stacey Michelle Stoudenmire and Laura Brittany Stoudenmire, and Trust "B" Created by U. W. Everett L. Stoudenmire and Valiska F. Coleman ..... Respondents.

FINAL BRIEF OF APPELLANTS

Thomas Bailey Smith
Smith Law Office, Inc.
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 531-5396
Attorney for Appellants

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STATUTES

None

OTHER AUTHORITIES

None

I. STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THE EASEMENT OVER THE LAKE ACCESS LOT IS LIMITED ONLY TO INGRESS AND EGRESS OVER THE DRIVEWAY/RAMP?

2. DID THE TRIAL COURT ERR IN FINDING THAT THE RESTRICTIVE COVENANTS DO NOT APPLY TO THE LAKE ACCESS LOT AND, THEREFORE, THE IMPROVEMENTS MAY STAY?

II. STATEMENT OF THE CASE

On August 8, 2011, Appellant lot owners in Hilton Place Subdivision filed this declaratory judgment, equitable and legal action to determine their easement and other rights in the "Lake Access Lot" depicted on their subdivision plat dated September 19, 1983, to enforce the subdivision's restrictive covenants and to find that the Developer-Respondents committed fraud and breached their duties to the Appellants. The Appellants appeal addresses only the equitable claims.

There are two distinct groups of Respondents: those who purchased the subject Lake Access Lot in 2010 and are referred to as the Buyer-Respondents, and those who sold the Lake Access Lot and are referred to as the Developer-Respondents. The Respondents deny that Appellants are entitled to an easement over the entire Lake Access Lot and believe that the Appellants' easement is limited only to the driveway/ramp from the public road to the lake and they claim that the Restrictions do not apply to the Lake Access Lot and that, therefore, the Buyer-Respondents' "improvements" may stay.

This matter was tried without a jury before the Master-In-Equity ("Master") on July 20, 2013, in Lexington County, South Carolina. The Master's Order was filed on November 23, 2013, finding that the Appellants' easement over the Lake Access Lot is limited to ingress and egress over only the driveway/ramp, that the Appellants have no rights in any other part of the Lake Access Lot and that the Restrictions do not apply to the Lake Access Lot and that the improvements do not have to be moved. On November 26, 2013, Respondents' counsel served

this Order on Appellants' counsel. On December 16, 2013, Appellants served their Notice of Appeal.

III. ARGUMENTS AND AUTHORITIES

A. Evidence In The Case.

The subject of this case is the Lake Access Lot, which is depicted on a plat for Hilton Place Subdivision ("Subdivision") filed October 3, 1983 in the RMC office for Lexington County. (Pl. Ex. 3 – Separate Attach.) The plat does not show an easement over the Lake Access Lot and it does not show that there was a driveway or ramp on the land in 1983. (R. p 210 lines 1-5)

The original Restrictions for Hilton Place Subdivision were recorded October 12, 1983, and state:

> It is hereby declared that the Covenants, Conditions and Restrictions herein below set are hereby imposed upon all lots herein designated.
>
> . . .
>
> 2. No building, barn, outbuilding fence, garage or structure of any kind or alterations or additions thereto shall be erected, placed or made on any lot hereby conveyed; . . .
>
> . . .
>
> 4. . . . Nothing shall be done or allowed and no condition or situation shall be permitted on any said lot which shall constitute, cause or become a nuisance or otherwise detract from the desirability of the neighborhood as a residential section.
>
> 5. No trailer, tent, shack or temporary structure shall be erected, kept, had or

allowed at any time or any lot hereby conveyed. . . .

. . .

12. The covenants, conditions and restrictions are hereby imposed upon all those lots shown on a plat prepared by Johnny T. Johnson & Assoc., Inc., dated September 19, 1983, later revised, and recorded in the Office of the RMC for Lexington County in Plat Book 194-G at Page 60.

(R. P. 107 lines 3-11)(R. P. 361) (emphasis added).

Since about 1979, Developer-Respondent Sissy Freeman has worked as the corporate secretary and office manager for the developers. (R. P. 214 lines 9-22) She has also owned a residential lot in the Subdivision since 1988. (R. P. 216 lines 22-25)

In 1990 Appellant Snow purchased her lot in Hilton Place Subdivision from the original developer. (R. P. 103 lines 2-3, R. Pp. 358-9) Her sales contract states, "Lake access lot is available for the purchaser's use at the time of closing." (R. p. 104 lines 3-6, R. Pp. 358-9) Appellant Snow understood this to mean that she would have access to the entire Lake Access Lot at any time. She read these Restrictions when she purchased her lot. (R. p. 104 lines 7-12, R. P. 119 lines 6-13) Appellant Snow's deed states:

Also conveyed herewith is an easement for the use and enjoyment by the lot owner and the lot owners' immediate family to the Lake Access Lot shown on the recorded subdivision lot, said easement to be appurtenant to the land herein conveyed.

(R. P. 105 lines 1-9, R. P. 360) Appellant Snow understood this to mean that she and her immediate family would have use of the entire Lake Access Lot at any time. (R. p. 105 lines 10-

17, R. p. 122 lines 17-20) There is no documentary evidence in this case limiting Appellant Snow's or any other Appellant's rights to only the driveway/ramp portion of the Lake Access Lot (R. P. 105 lines 18-21) and there are no documents that show the scope of the easement to be confined to the driveway/ramp.

Since purchasing her lot, Snow has used the Lake Access Lot for walks (R. P. 111 lines 23-25)

Appellant Linders' lot abuts the Lake Access Lot (R. P. 125 lines 8-10) and their deed references the plat dated September 19, 1983 (R. Pp. 368-9). Appellant Linder's understanding was that his family was entitled to use the entire Lake Access Lot and not only the driveway/ramp portion. Since purchasing their lot in 1999, Appellants Linder have used the entire Lake Access Lot for launching boats and jet skis (40-50 times over the years), fishing, walking and picking black berries. (R. P. 127 lines 8-14)

The Buyer-Respondents' outhouse is located next to Linders' lot (R. P. 128 lines 12-18; R. P. 364) and it negatively impacts Linders' property value. (R. P. 129 lines 5-9, 21-25, R. P. 130 lines 1-3) At times when the Buyer-Respondents throw football game or other parties on the Lake Access Lot, the noise from the parties disturbs the Linders. (R. P. 130 lines 16-25, R. P. 45 lines 1-5)

The McDaniel lot is located adjacent to the Lake Access Lot and her deed references the same plat. (R. Pp. 370-2; R. P. 397) Appellant McDaniel can smell the odor of sewer from the Lake Access Lot and its outhouse 200 feet away, and the outhouse reduces the value of her property. (R. P. 144 lines 1-15, R. P. 145 lines 2-7, R. P. 146 lines 15-24, R. P. 147 lines 1-2)

Before the outhouse was erected, there were no sewer odors – it's been only since there has been "activity" on the Lake Access Lot by Respondents that the odor arose. (R. P. 147 lines 20-25, R. P. 148 lines 11-18)

The Gehlkens' deed contains a reference to the same plat. (R. P. 373-4) They and their children and grandchildren walk around and use the Lake Access Lot to splash around in the water. (R. P. 151 lines 20-25, R. P. 152 lines 1-9) The Gehlkens' property value is diminished by the outhouse. (R. P. 153 lines 24-25, R. P. 154 lines 1-13)

Appellant Kelly's deed contains a reference to the same plat and his lot is across the street from the Lake Access Lot. (R. P. 168 lines 8-15, R. P. 375) The outhouse negatively affects the Kelly's property value. (R. P. 169 lines 24-25, R. P. 170 lines 1-5)

The Campitellas' deed references the 1983 plat. (R. Pp. 393-5) The outhouse also diminishes their property value. (R. P. 264 lines 11-17)

At no time did the Developer-Respondents suggest to the Appellants that they form a home owners' association and there is no master deed requiring any of the lot owners to join a home owners' association. (R. P. 165 lines 11-23; R. p. 176 lines 1-5, R. P. 223 lines 10-15).

In 1992 Appellant Sissy Freeman attended a meeting of a proposed home owners association whose minutes state:

> We will then make plans to improve the area as our resources allow. Members have expressed an interest in improving the area to make it safe for swimming and building a play area and picnic area for the families.

(R. P. 221 lines 17-22; R. Pp. 389-90) The "common area" referred to in these minutes is the

Lake Access Lot. (R. P. 241 lines 21- 25, R. P. 156 lines 1-4, R. Pp. 389-90)

Respondent Sissy Freeman admits that as far back as 1992 it was the original developers' intent to form a homeowners' association and then deed to the homeowner's association the Lake Access Lot. (R. P. 227 lines 6-15) However, the original developer failed to form a home owners' association. (R. P. 228 lines 10-20; R. P. 238 lines 22-25) And when years later Appellant Campitella approached Respondent Sissy Freeman to form a homeowners association, Freeman said she would not help form or join it. (R. P. 274 lines 18-23)

The only reason the Developer-Respondents decided to sell the Lake Access Lot was because they no longer wanted to pay property taxes. (R. P. 230 lines 1-8) The Developer-Respondents did not notify the Appellants that they were going to sell the Lake Access Lot. (R. P. 230 lines 15-19)

The Developer-Respondents' MLS listing states that the Lake Access Lot is "not buildable." (R. P. 396)

Before purchasing the Lake Access Lot in 2010, the Buyer-Respondents purchased a lot in the Subdivision where they now live. (R. P. 164 lines 24-25, R. P. 165 lines 1-3; R. P. 177 lines 21-24, R. P. 377-79) At the time they bought their residence-lot, which was a few years before they bought the Lake Access Lot, the Buyer-Respondents read the Restrictions. (R. P. 181 lines 14-24; R. Pp. 361-63) They also discussed the Restrictions with the Developer-Respondent's agent, Respondent Sissy Freeman, who is a Respondent in this matter. (R. P. 181 lines 19-25, R. P. 182 lines 1-2)

The Buyer-Respondent's sales contract for the Lake Access Lot states:

> Buyer shall have the right to cancel this agreement without penalty (to include return of earnest money) by June 30, 2010, after consultation with buyer's attorney and/or insurance carrier regarding potential liability.

(R. P. 231 lines 10-25, R. P. 232 lines 1-5; R. P. 386) The "potential liability" meant "whether or not other property owners have a legal right to use that Lake Access Lot for other purposes." (R. P. 232 lines 22-25, R. P. 233 lines 1-7)

By 2010, the Developer-Respondents had sold all of their lots except for the Lake Access Lot. (R. P. 216 lines 17-21) Before selling the Lake Access Lot, there was only a wooden deck next to the water off of which lot owners would fish or tie their boats. (R. P. 131 line 25, R. P. 132 lines 1-7, R. P. 182 lines 17-25, R. P. 183 lines 1-3) This is the lot sold to Buyer-Respondents in July 2010. (R. Pp. 380-2)

The Buyer-Respondents' survey dated July 14, 2010, was prepared ten days before they purchased the Lake Access Lot – the survey does not show an easement limited to the driveway/ramp. (R. P. 209 lines 5-25; R. P. 364)

The Buyer-Respondents purchased the Lake Access Lot on July 24, 2010. (R. P. 380-2) Before purchasing the Lake Access Lot, the Buyer-Respondents knew about the original Restrictions. (R. P. 182 lines 3-8) At the closing, the Developer-Respondents informed the Buyer-Respondents that "those restrictions were never enforced and that they really didn't apply" and that the Buyer-Respondents could build structures on the Lake Access Lot. (R. P. 182 lines 3-8, R. P. 233 lines 8-13) The Developer-Respondents now admit that the Restrictions o apply to the Lake Access Lot (R. P. 234 lines 11-16, R. P. 237 lines 15-18). The Buyer-

Respondents' Lake Access Lot deed states, "This conveyance is made subject to the easements, conditions and restrictions of record affecting subject property." (R. P. 380)

After their purchase, the Buyer-Respondents did not inform Appellant Snow or the other Appellants that they intended to build or were beginning to build on the Lake Access Lot or that they were applying for permits. (R. P. 112 lines 13-17, R. P. 128 lines 6-11, R. P. 206 lines 7-10, R. P. 208 lines 18-24)

Since the Buyer-Respondents purchased title to the Lake Access Lot in 2010, they have built an outhouse which can easily be seen from the public roadway (R. P. 108 lines 9-25, R. P. 109 lines 1-2; R. P. 364, 366) and which is adjacent to the driveway/ramp (R. P. 109 lines 12-17, R. P. 365), a gazebo and a fire pit (R. P. 111 lines 7-19, R. Pp. 367, 409-10). There are two television sets which the Buyer-Respondent use when they throw "football" parties (R. P. 184 lines 15-25, R. P. 185 lines 1-9) at which guests drink alcohol. (R. P. 185 lines 16-22)

The Buyer-Respondents refuse to allow Appellants or other lot owners and their families to use the gazebo, the outhouse, the docks or anything other than the driveway/ramp. (R. P. 186 lines 13-14, R. P. 187 lines 19-22, R. P. 188 lines 11-13, R. P. 299 lines 17-25, R. P. 300 lines 1-4, R. P. 398)

There are no other lots in the Subdivision with outhouses or outside bathrooms. (R. P. 189 lines 4-19)

There is no documentary evidence limiting the easement to ingress and egress only over the driveway/ramp. (R. P. 186 lines 18-21)

If the outhouse is allowed to remain, it will negatively affect the Appellants' property

values. (R. P. 112 lines 18-25, R. P. 113 lines 12)

In 1999 the Developer-Respondents filed a Confirmatory Amendment to the Restrictions. (R. P. 411-14) Although it was not mentioned in trial or offered into evidence at trial, the Respondents claim that there is a 2013 modification/waiver of the Restrictions.

B. The Master Erred In Finding That The Easement Is Limited To The Driveway/Ramp.

1. Express Easement.

The Parties agree that Appellants have an easement over the Lake Access Lot; thus the first question is the scope of easement. "[T]he determination of the scope of the easement is a question in equity." Hardy v. Aiken, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006). "On appeal in an action in equity, the appellate court may find facts in accordance with its views of the preponderance of the evidence." Grosshuesch v. Cramer, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). The appellate court may reverse a factual finding by the trial court in such cases where the appellant satisfies the appellate court that the finding is against the greater weight of the evidence. Campbell v. Carr, 361 S.C. 258, 263, 603 S.E.2d 625, 627 (Ct.App. 2004).

The law is well-settled that a grantee can obtain no greater rights in real property than were enjoyed by the grantor. Thus the Buyer-Respondents, Smith and Bell, have no greater rights in the Lake Access Lot than did the Developer-Respondents.

To determine the scope of an easement, there is a very simple legal test:

> [T]he language of an easement determines its extent. Clear and unambiguous language in grants of easement must be construed according to the terms which parties have used, taken, and understood in [the] plain, ordinary, and

popular sense.

Binkley v. Rabon Creek Watershed Conservation Dist. Of Fountain Inn, 348 S.C. 58, 67, 558 S.E.2d 902, 907-08 (Ct.App. 2001) (citation omitted). Thus, if the easement language is not ambiguous, then it must be construed according to its terms and decided as a matter of law.

The first document that refers to the Lake Access Lot is the 1983 plat which states only "LAKE ACCESS" on the platted lot. (Pl. Ex. 3 – Separate Attach.) There is no indication on the plat that the easement is in any way limited to a specific area on the plat and there is no diagram or indication that a road or even a boat ramp existed in 1983. Thus, without more, there is no limitation on the scope of the easement or which lot owners enjoy it according to the plat.

The next document that refers to the scope of the easement is Appellant Snow's deed, which is signed by the original grantor/developer (and includes the grantor's chosen language because it is "his" deed) and in clear and unambiguous terms establishes the Appellants' easement over the entire Lake Access Lot:

> Also conveyed herwith (sic) is an easement for the use and enjoyment by the lot owner and the lot owners (sic) immediate family to the Lake Access Lot shown on the recorded subdivision lot, said easement to be appurtenant to the land herin (sic) conveyed.

(R. P. 360A) It does not mention which lot owners have the easement, it does not limit the easement's scope and it does not mention a driveway or ramp. Combined with the language in Appellant Snow's sales contract which the original developer also signed, "Lake Access Lot is

available for purchaser's use at time of closing," there can be no question but that this language is not ambiguous and that the scope of the easement is the entire Lake Access Lot and not only the driveway/ramp area. (Further, because the other Appellants' deed references this same plat, they all enjoy the scope of this easement. Bennett v. Investor's Title Ins. Co., 370 S.S. 578, 635 S.E.2d 649, 657 (Ct.App. 2006) ("[T]he purchaser of lots with reference to the plat of the subdivision acquires every easement, privilege and advantage shown upon said plat . . . "))

Arguendo, assuming that the language of Appellant Snow's deed is ambiguous, all of the surrounding circumstances show that the scope of the easement was intended to be the entire Lake Access Lot:

-Snow's deed and her sales contract provide an easement for the entire "lot";

-There is no limitation to the scope of the easement in Snow's deed or sales contract or anywhere else;

-The developer made several changes or modifications to the Restrictions over the years but none of them mentioned the scope of the Lake Access Lot's easement;

-Respondent Sissy Freeman – who is the original grantor-developer's daughter and who ran his office for decades – admits in her deposition and at trial that the Lake Access Lot was intended to be used as a common area for swimming and picnicking – which cannot be done on a 15 foot wide roadway;

-There is no document, anywhere, that shows that the driveway/ramp was in existence in 1983 when the original plat and Restrictions were filed;

-The Appellants and their families have since the beginning used the entire Lake Access

Lot for family and recreational purposes with no objections from the Developer-Respondents, and it has remained unimproved until it was sold in 2010;

-There is no document, anywhere, that even mentions the driveway/ramp on the Lake Access Lot until it is drawn on the July 2010 survey for the Buyer-Respondents; and

-Buyer-Respondent's survey does not show that there is an easement limited to the driveway/ramp.

Although the trial court states that the easement in question is created "only by reference in the conveyance to a map," (R. P. 9), the trial court wholly ignores the language in Snow's deed and her sales contract which clearly states that the entire Lake Access Lot is the easement. Thus Appellants need not rely "only" on the plat to establish the scope of their easement because they have both Snow's deed and Snow's sales contract to define its scope.

Where is the language, anywhere, in any document, supporting the trial court's finding that the original grantor-developer intended for the easement to be limited to the driveway/ramp? There is none. Where is the evidence showing that there was even a driveway or a ramp in existence in 1983? There is none.

The trial court discusses "reasonable use" and that the scope of the easement "must be confined strictly to the purposes for which it was granted." (R. P. 8) However, because the easement was intended for the use by all lot owners for swimming, picnicking and other recreational activities as shown in the 1992 minutes by the pre-home owner's association and as admitted in deposition and trial by Developer-Respondent Sissy Freeman, the only avenue by which Appellants can satisfy the purpose of the easement is if it extends over the entire Lot.

Therefore, Appellants request that this Court find that their easement covers then entire Lake Access Lot.

2. Easement By Implication.

"Easements may be implied by necessity, by prior use, from map or boundary references, or from a general plan." Boyd v. Gellsouth Tel. Tel. Co., Inc., 369 S.C. 410, 633 S.E.2d 136, 139 (2006). "The intent of the parties, as shown by all the facts and circumstances under which a conveyance was made, may give rise to an easement by implication." Id. at 139. Here, the evidence reasonable viewed can reach only one conclusion – because there is absolutely no evidence showing that the parties intended that the easement be limited to the driveway/ramp, all of the evidence (above) points to the easement extending over the entire Lake Access Lot.

C. The Master Erred In Finding That The Restrictions Did Not Apply To The Lake Access Lot.

"An action to enforce a restrictive covenant is in equity. As such, this court may view the facts in accordance with our preponderance of the evidence." Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750, 753 (Ct.App. 2005)

There are two sets of Restrictions in this matter that will decide this issue. First, the original 1983 restrictions: the title page states RESTRICTIONS – HILTON PLACE SUBDIVISION, the introductory Paragraph states "the Covenants, Conditions and Restrictions hereinbelow set out are hereby imposed upon all lots" and Paragraph 12 states:

12. The covenants, conditions and restrictions are hereby imposed upon all those lots shown on a plat prepared by Johnny T. Johnson & Assoc., Inc., dated September 19,

1983, later revised, and recorded in the Office of the RMC for Lexington County in Plat Book 194-G at Page 60.

(R. P. 361).

The first rule in construing covenants is to "ascertain and give legal effect to the parties intentions as determined by the contract language . . . Thus, if the contract's language is clear and unambiguous the language alone determines the contract's force and effect.'" Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750, 757 (Ct.App. 2005) In this case, the language of these Restrictions clearly and unmistakably show that they applied to "all lots" shown upon the 1983 plat. Therefore, the trial court erred by finding that "the plain language of the restrictions suggests they were not intended to apply to the Lake Access" because – by the clear and unmistakable language chosen by the original developer-grantor – the Restrictions expressly apply to all of the lots. (R. P. 6)

The Court states that neither Party provided direct authority on this issue. (R. P. 6) However, where the language of the Restrictions are clear and unmistakable and are capable of only one meaning, they speak for themselves: these Restrictions state that they apply to all lots on the plat and the Lake Access Lot was one of the lots on the plat. Thus there is no direct legal authority needed. Further, the trial court's grounds for denying Appellants' position is flawed:

-The trial court states that the lake access lot and the restrictions arose at the same time, but finds that they arose for different purposes; this makes no common sense because the only logical conclusion is that when two items arise at the same time they are related, not unrelated (R. P. 6)

-The trial court states that applying the Restrictions to the Lake Access Lot would defeat "the very purpose of lake access," this is error because prohibiting the building of shacks, barns, etc. on the Lake Access Lot is exactly what was intended (R. Pp. 6-7)

-The trial court states that under ordinary easement law, the owner of the land can "under the proper circumstances" place a gate across the access; however, no evidence of such circumstances exist in this case and the trial court did not refer to any

"The rule of strict construction governing restrictive covenants does not preclude their enforcement. A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose and this rule will not be used to defeat the clear express language of the covenant. This restrictive covenant is a voluntary contract between the parties. Courts shall enforce such covenants unless they are indefinite or contravene public policy." Cedar Cove Homeowners Assoc., Inc. v DePietro, 368 S.C. 254, 628 S.E.2d 284, 292 (Ct.App. 2006) Because the language in the original Restrictions which were drafted and signed by the original developer-grantor clearly apply to the Lake Access Lot, the trial court erred by finding that these Restrictions do not apply to the Lake Access Lot.

To reach its conclusion, the Court next considers the "application of the February 1999 Confirmatory Amendment." (R. P. 7) This is error because this Confirmatory applies only to "other real property owned by Charles S. Coleman and E.L. Stoudenmire which other real property was not and is not a part of Hilton Place Subdivision and which other real property was not divided into 'lots' at the time of the recording of the [original] Restrictions." In other words, the 1999 Amendment in no way affects the original Restrictions applying to the Lake

Access Lot because the Lake Access Lot was part of Hilton Place Subdivision and was platted into a lot.

Finally, the trial court considers "the January 2013 waiver of any restrictions relevant to the Lake Access." (R. Pp. 7-8) This is error. First, because Respondents did not refer to or offer any evidence of a "January 2013 waiver" at trial, this Court cannot consider it. Second, and just as importantly, because the Developer-Respondents sold their last lot in Hilton Place Subdivision in 2010, they had no standing to issue any further modifications to the restrictions and any such January 2013 waiver is invalid as a matter of law. Queens Grant II Horizontal Property Regime v. Greenwood Development Corp., 382 S.C. 342, 628 S.E.2d 902 (Ct.App. 2006) (when a developer is divested of all interest in the subdivision, a reserved right to amend restrictions is extinguished).

Therefore, because the Restrictions apply to the Lake Access Lot, Appellants request that this Court find that the Buyer-Respondents' improvements (outhouse with associated waste water lines, gazebo, fire pit and decking) violate the Restrictions and that they must be removed.

D. The Trial Court Erred In Finding That The Lake Access Lot Has Been Improved.

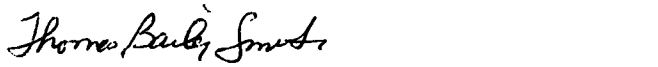
Because there is an outhouse setting by the public road which is located in a nice upper-class neighborhood, the trial court erred in finding that the Lake Access Lot has been generally improved by the outhouse and erred in finding that that the Appellants' property values have not been harmed by the outhouse.

V. CONCLUSION

For these reasons stated above, Appellants request that this Court find that the scope of the easement extends over the entire Lake Access Lot, that the Restrictions apply to the Lake Access Lot and that the Buyer-Respondents must remove the "improvements" to the Lake Access Lot.

Respectfully submitted,

North Charleston, South Carolina



Thomas Bailey Smith
Appellants' Attorney

SMITH LAW OFFICE, INC.
2557 Ashley Phosphate Road
North Charleston, SC 29418
843-531-5396

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ATTORNEY CERTIFICATION

By signing below, I hereby certify that the Final Brief of Appellants' complies with SCRAP Rule 211(b).

April 14, 2014

Thomas Bailey Smith
Smith Law Office, Inc.
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 531-5396
Attorney for Appellants

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Judson P. Smith, et al., ... Respondents.

PROOF OF SERVICE

By signing below, I hereby acknowledge that I have this 14th day of April, 2014, served via regular first class U.S. mail, proper postage prepaid and properly addressed, the Final Brief of Appellants and the Rule 211(b) Attorney Certificate upon the following:

H. Clayton Walker, Jr., Esq.
WALKER REIBOLD
Post Office Box 61140
Columbia, SC 29260

April 14, 2014

Thomas Bailey Smith
Smith Law Office, Inc.
2557 Ashley Phosphate Road
North Charleston, SC 29418
(843) 531-5396
Attorney for Appellants