THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes III, Master in Equity & Special Circuit Court Judge

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Appeal Case No. 2021-000434
Circuit Court Case No. 2019CP0702178

JOSEPH CHAKYING SUN, Individually and JOSEPH CHAKYING SUN, as Trustee of The 2009 Sun's Family Trust in South Carolina, USA ..... **Appellant**

v.

BLUFFTON PARK COMMUNITY OWNERS' ASSOCIATION, INC. ..... **Respondent**

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES

1. There was no lawful or legitimate reason for the Plaintiff-Respondent to obtain an Order of Publication to serve Appellant-Defendant in this case because Respondent counsel already knew or should have known Appellant's alternate address in Ridgeland where Appellant could be served the process personally at his home in Jasper County. Service by Publication should not be used by the respondent-plaintiff unnecessarily for its convenience.

2. As record of the Beaufort County Public Index can show that the Order of Publication was inexcusably obtained with a perjured affidavit. Appellant's Motion for Permanent Injunction and/or Temporary Restraining Order, and Motion to Open and Set Aside Default based on Respondent's false testimony should have been heard in a hearing and be granted and the default in this case should have been vacated and set aside.

3. It is error and abuse of discretion of the Master in Equity, to allow Plaintiff-Respondent to rely

on the default signed by the Clerk of Circuit Court and bypass the default judgment to hold a foreclosure hearing on Appellant-Defendant's house on July 16, 2020 and ignore *SCRCP, Rule 55(b)(2)* without filing a motion or notice of hearing for a default judgment or allow a trial by jury. There should not have been a foreclosure hearing and the Master's Decree of Foreclosure, Sale and Judgment should not have been issued by the court therefore it must be vacated and set aside.

4. It is error of the Master in Equity and abuse of his discretion to deprive Appellant-Defendants their rights to due process of the law by awarding foreclosure of their house to the Respondent-Plaintiff without first allowing Appellant any discovery or the right to a jury trial, or any determination on the damages claimed by the Plaintiff-Respondent pursuant to *Rule 71(a), SCRCP.*

5. It is error and abuse of discretion of the Master in Equity, to allow Plaintiff-Respondent to include the sale of Appellant's house in the Master's Decree of Foreclosure, Sale and judgment without first requiring an undertaking or bond to the Appellant, with two good sureties, in double the amount of the judgment of $21,115.47 pursuant to *South Carolina Code §18-9-130(A)(2).*

STATEMENT OF THE CASE

The within appeal is filed by Appellants Joseph Sun (hereinafter Sun) and The 2009 Suns Family Trust in South Carolina, USA (hereinafter the Trust). All other parties named in the original civil case by the Respondent are not parties in this appeal. The purpose of their inclusion in the suit is unknown and unexplained by the Respondent-Plaintiff. Appellants Sun and the Trust rely and cite various documents recorded in the Beaufort County Public Index, copies of which are made parts of the Designation of Matter to be Included in the Record on Appeal.

On October 1, 2019 Respondent Bluffton Park Community Association (hereinafter Bluffton

Park) filed a foreclosure action at the Beaufort County Court of Common Pleas against Appellants Sun and The Trust. After failure of service of the process on the Appellant-Defendants at a wrong address falsely assumed by the Respondent counsel, he hastily obtained an Order of Publication using false testimony in his affidavit.

On about June 18, 2020, Respondent-Plaintiff filed a notice of foreclosure hearing scheduled for July 16, 2020. Appellant received notice the notice of the hearing and was aware of the foreclosure action for the first time. Appellant was never allowed discovery, trial on respondent's claim of damages. Appellants filed their Answer, Counterclaim and Crossclaim prior to the scheduled foreclosure hearing but was disallowed by the Master at the hearing.

The Master instructed respondent to prepare a Decree of Foreclosure, Sale and Judgment and signed it on January 13, 2021. Appellant had already filed two motions to open and set aside default and injunction against respondent's foreclosure, both were denied. Appellant also filed his objection to respondent's proposed Master's Decree which was ignored by the Master.

Appellant timely filed a motion to reconsider stating all the aforesaid grounds listed in his statement of the issues: to wit, that respondent used a false affidavit that Appellant could not be found, then Respondent skipped the requirement pursuant to *Rule 55(b)* to file a motion for default judgment but improperly used a default signed by the clerk to schedule a foreclosure hearing, that Appellant was deprived of a trial on respondent's damages, that Respondent erroneously used his allegations as proof of damages and that the master in equity erroneously allowed the respondent to include the denial of all motions filed by Appellant in the Final Decree without a hearing.

Appellant's motion to reconsider was denied in a Form 4 Order without a hearing. Thereafter, Appellant timely filed a Notice of Appeal to the South Carolina Supreme Court because he had already filed a petition for writ of mandamus earlier at the Supreme Court. The Supreme

Court immediately forwarded the Notice of Appeal to the South Carolina Court of Appeal.

STATEMENT OF FACTS

After filing the within foreclosure action, Respondent counsel claimed that he could not serve Appellant Sun at the address of the property which was vacant at the time, and arbitrarily and falsely claimed that Appellant was avoiding service. But according to documents filed in Beaufort county Public Index, Respondent counsel already had Appellant's alternate address in Ridgeland, South Carolina in December 2019 when the case was filed. Counsel chose to ignore the alternate address he already had but use a wrong address by his own assumption or fabrication, in forming a false excuse to obtain an Order of Publication unnecessarily.[1] Based on the perjured affidavit[2] signed and filed by Plaintiff-Respondent counsel, Appellant Sun had no knowledge of the publication therefore did not serve an answer in time as no documents in the case was served on him. Record in the Beaufort County Public Index shows Respondent counsel hastily obtained a default signed by the clerk of court. Without seeking a Default Judgment by motion as required by *Rule 55(b)*, Respondent counsel immediately scheduled a foreclosure hearing on July 16, 2020.

Based on the false testimony, Counsel on January 24, 2020 obtained an Order for Publication signed by the Clerk of Court. According to the Beaufort County Public Index, on June 5, 2020, Respondent Counsel Wild obtained the Order of Default and Reference stamped by the

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[1] According to the Beaufort County Public Index, Counsel filed the affidavit of publication on January 24, 2020 and obtained the Order of Publication on January 31, 2020. Then he obtained the affidavit of publication from a newspaper on March 18, 2020. On June 5, 2020, Counsel Wild filed his affidavit of default against Appellant Sun claiming service by publication was perfected on Appellant Sun in February and March 2020 when there was a total state lock down due to the pandemic, claiming Sun was in default. But no default judgment was ever obtained.

[2] Perjury shown later with affidavit filed by counsel himself in the Beaufort County Public Index.

Clerk of Court. On June 17, 2020, Respondent Counsel Wild bypassed the requirement of a motion pursuant to *Rule 55(b), SCRCP*, scheduled a foreclosure hearing on July 16, 2020 and served the notice of hearing filed on June 18, 2020 on Appellants Sun and the Trust.[3] Appellant's daughter was home from University in Virginia for the summer therefore received the mails. That was the first time, Appellants Sun and the Trust had knowledge of the foreclosure action. Respondent deceptively claimed that as "constructive notice" of the case in its proposed Master's Decree of Foreclosure, Sale and Judgment, to substitute a lawful service of the process.[4]

After Appellant received a copy of the Notice of the Foreclosure Hearing, he retrieved a copy of the Summons and Complaint from the Beaufort County Public Index and filed an answer, Counterclaim and Crossclaim and mailed to the court for filing before the foreclosure hearing. At the WebEx hearing on July 16, 2020, Master in Equity immediately announced that he was not allowing any answer and counterclaim in the case and would not allow Appellant Sun to ask any question on Respondent's claim of damages. Appellant demanded a jury trial in his answer, but Appellants were not allowed any trial in the case. Item 1 of Designation of Matter, Beaufort County Public Index shows there was no trial in the case. A followup hearing was scheduled on August 4, 2020 to allow Appellant to ask Respondent representative regarding the payment of all assessment fees through all the years Appellant had owned the property.

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[3] Record shows that Respondent counsel had complained that mails sent to property address had been unclaimed or returned to him, and yet he continued to use the property address for mailing and claim that Appellant was avoiding service of process, after Respondent had been informed that Appellant did not live there and the subject property was vacant except when Appellant's daughter was home from her university in Virginia.

Beaufort County Public Index shows that after the Notice of Foreclosure Hearing filed on June 18, 2020 and scheduled for July 16, 2020, there was no allowance for a period of discovery, and there was no trial conducted pursuant to Rule 71, SCRCP.

[4] Neither Respondent nor the court could cite any case law explaining Respondent's "constructive notice" of the within action.

Appellant showed in the hearing that all assessment fees had been paid (See Affidavit of Joseph Sun filed on 12/16/2020 as Item 9, Designation of Matter). Therefore, Appellant did not owe Respondent any money except all the illegal and impermissible penalties, late fees.

On August 7, 2020 Appellant filed a Motion to Open and Set Aside Default (Item 11, Designation of Matter) on the ground that Respondent Counsel bypassed the requirement of *Rule 55(b)(1)* and used the Default signed by the clerk of court as a default judgment to obtain a foreclosure of Appellant's house, and most of all as shown and alleged in the Supplement to Motion to Open and Set Aside Default (Item 10, Designation of Matter filed on December 14, 2020) that Respondent Counsel is guilty of perjury to get the order of publication in that he testified under oath that he "exercised due diligence but was unable to locate a valid alternate address for Joseph Sun within or without the state of South Carolina" for the service of the process when he filed an exhibited investigative report on the same date showing he had Sun's address at 43 Broadview Drive, Ridgeland, SC 29936 where Joseph Sun resided and could be served with the process. Counsel had served Sun legal papers in Ridgeland home therefore he knew he testified falsely.

Record shows that respondent and the court have served Appellant on multiple occasions at his Ridgeland address therefore service by publication should not have been allowed and must be nullified and vacated. Based on the same grounds and evidence as stated in the motion to open and set aside default, Appellants filed their motion for permanent injunction and/or temporary restraining order against the foreclosure. Master in Equity did not act on all pending motions or hold any hearing but instructed respondent counsel to include all motions in his proposed Master's Decree/Foreclosure, Sale & Judgment for his signature, in essence allowing Respondent counsel to rule on and deny Appellants motions.

Appellants filed their Objection to Plaintiff-Respondent's proposed decree and judgment and

submitted their version of a proposed order. The Master in Equity signed respondent's proposed Master Decree and a Form 4 Order on January 13, 2021. Upon receipt of the decree, Appellants timely filed their Motion to Reconsider on January 25, 2021 on the grounds that they had been deprived of the due process of a trial on damages claimed to have suffered by the respondent, that respondent had not obtained a default judgement and other denial of due process, and most of all, that the respondent obtained the Order of Publication by fraud using a perjured affidavit.

The Master denied Appellants' motion to reconsider in a Form 4 Order on April 7, 2021 and this appeal followed.

ARGUMENT

1. Appellant should have been served with the process at his home at the alternate address in Ridgeland, which was already known by the respondent counsel. (See P.2 of Amended Affidavit filed by counsel on January 24, 2020 in Designation of Matter.) There was no need for an Order of Publication during a period of pandemic except to coverup the service of process, making it less noticeable. The respondent should not be allowed to choose the service by publication over the regular personal service of the process when the latter was available.

Because respondent's affidavit of publication contains perjured testimony as alleged in Appellant's Motion to Open and Set Aside Default and its supplement, and Motion to Reconsider, the service by publication and default (without the judgment) should have been vacated and set aside as Appellant was found and known by respondent counsel to be residing in South Carolina. The Order of Publication was a fraudulent application by the respondent counsel of *South Carolina Code §15-9-710(3).*

As a restatement of facts, counsel's affidavit in a sworn statement falsely claiming that he had "after due diligence, been unable to locate a valid and reliable alternate physical address for Joseph Sun within or without the State of South Carolina" when Appellant's current residence at 43 Broadview Drive in Ridgeland, SC 29936 was already listed in an exhibit filed by counsel who intentionally ignored it. Appellant could and should have been personally served without publication. Appellant would have the opportunity to timely filed his answer.

Respondent counsel intentionally falsely claimed that Appellant resided at the property address without complying with the requirement of due diligence in his search for Appellant in the service of the process. The affidavit must show that the steps taken were the steps "a reasonable person who truly desired to give notice would have taken under the circumstances." *[Donel, Inc. v. Badalian (1978) 87 CA3d 327]*[5] An honest attempt must be made to find the defendant before service of publication. *Belle Hall Plantation Homeowners' Association, Inc. v. Murray, 419 S.C. 605, 799 S.E.2d 310 (2017).* This would include speaking with relatives to determine if they are aware of the location of the defendant as well as searching telephone directories in the area that the defendant is believed to be located. But Respondent counsel only continued to enjoy the fruits of his fraudulent service by publication and refused to spend money for personal service of process.

The service by publication in this case should be declared null and void and be vacated and set aside. Therefore, there should be no default in this case because there was no service of process.

2. Appellants' original motion to Open and Set Aside the Default has not artfully alleged the false affidavit and fraud committed by the Respondent counsel in falsely claiming Appellant Sun could not be found within or without the state of South Carolina. As a pro se party, Appellant alleged

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[5] In the within case, the respondent already had the address of Appellant's actual residence in Ridgeland but chose to ignore it to use service by publication.

some matters that are irrelevant to the issue. However, his allegations and the record in the Beaufort County Public Index are clear that Respondent counsel has falsely testified in getting the Order of Publication, and has not obtained a default judgment by motion and allowed Appellants the day in court on the issue of default, and there was no trial to determine the amount of damages actually suffered by the respondent.

Appellants clarified their motion in their supplement (Item 11 Designation of Matter) on respondent counsel's false claim in his affidavit that at an early stage of the case, before he signed and filed his affidavit of publication, he already used an online service and obtained Appellant's residence address in Ridgeland where the appellant could personally be served with the process.

Master in Equity in his Decree of Foreclosure, Sale and Judgment prepared by respondent counsel on Page 15 of 18 is an error and abuse of discretion where the Master did not rule on any issues raised by the Appellants. The Master states in Page 15 of 18: (Item 8, desig. of matter)

> "The Sun Defendants' Motion to Open and Set Aside Default - This motion was filed after the hearings: August 7, 2020. I declined to hear the motion at the July 17, 2020 foreclosure hearing as notice of it was untimely and it was not reflected in the records before me at the time of the hearing. Regardless, I deny the motion on the grounds that Mr. Sun, in his and the Suns Family Trust's Answer, in the instant motion (¶6), and at the July 17, 2020 trial of this matter, admitted to have at least constructive notice of this action in March 2020; further, service by publication appears from the record to have been properly conducted; further still, the facts or statements of law about the running of published summons or the illegality of service of process during the COVID-19 lockdown do not excuse Defendants' failure to timely answer, are unfounded and do not constitute a legal justification for the Sun defendant's failure to answer. Therefore, the motion is denied."

The aforesaid paragraph in the Master Decree is totally incomprehensible and a pure fabrication by respondent counsel. Its first reference of July 17, 2020 was a foreclosure hearing and the order misstated it as notice of it was untimely. But according to the Beaufort Public Index (Item 1, Designation of Matter) there was no hearing scheduled on that date therefore, nothing could be

untimely. Then the second reference of July 17, 2020 according to the same page in the Master's Decree, the Master's Decree falsely claim that "at the July 17, 202 trial of this matter, Appellant admitted to having at least constructive notice of this action in March 2020 ....." Everything in the master's decree regarding the service by publication and the amount of money awarded to the respondent himself on previous pages (Page 9 - 12 of 18) are fabrication by the Respondent counsel and signed by the Master without reading or verification for the truthfulness.

Appellant noticed this pattern of behavior of the Master at an early stage of the case therefore filed a motion to recuse Judge Marvin Duke on August 19, 2020. At the Recusal Hearing on November 17, 2020, Judge Marvin Duke heard the motion himself and denied Appellant's motion to recuse him allowing respondent counsel to go on his defense.

Appellant raised the issues of deprivation of due process of a trial and respondent's use of false testimony in his affidavit for publication, and asked to set aside the default pursuant to *Rule 55©* and *Rule 60(b)*. Since Master in Equity has not ruled on issues raised by Appellants, this court should reverse the denial and remand for a ruling by a different judge on Appellants' motion to set aside and vacate the default as the record is clear on the errors committed.

The denial of Appellants' motion for permanent injunction and/or temporary retraining order should also be reversed based on the reversal of motion to vacate and set aside default.

3. It is an error and abuse of discretion for the Master in Equity to allow the Respondent to skip the due process of Rule 55(b), SCRCP in requiring Respondent to file a motion for default judgment and served Appellants with the notice of motion. Respondent's motion hearing should be held and Appellant must be allowed the right to be heard prior to issuing a Default Judgment. The entire Beaufort County Public Index (Item 1, Desig. Matter) does not show any hearing or trial. There was no entry of a Default Judgment.

In *Beckham v. Durant, 300 S.C. 329, 331 n.2, 387 S.E.2d 701, 703 (Ct.App. 1989)* South Carolina Supreme Court clarified that, "The entry of default is an official recognition of the failure to appear or otherwise respond, but is not a judgment by default. Judgment by default is not properly entered until damages are determined." Furthermore, Plaintiff in this case cannot deny defendants' right to discovery. Rule 26 does not distinguish between parties in default and those not in default. Rather, it provides for discovery by "parties". In the case at bar, the default judgment must be vacated and set aside.

Regardless of whether defendant is in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on sufficient proof. *Lewis v. Congree of Racial Equality and/or C.O.R.E., Inc., 275 S.C.556, 274 S.E.2d 287 (1981).* The prayer in an action may not serve as a substitute for proof. *Id.* A Plaintiff must prove by complete evidence the amount of her damages. *Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978).* Respondent-Plaintiff here erroneously believed that its "Verified Statement and Affidavit of Debt"[6] **alone** was all the proof it needed. The Defendants in this case must be allowed to conduct full discovery and cross examination on Plaintiff's "Verified Statement" so that they may protect their right to contest the appropriateness of the damages claimed by Plaintiff.

Appellants should be allowed discovery and a trial by jury on the damages which respondent claims to have suffered prior to a foreclosure hearing. But instead, the first hearing in the case was the foreclosure hearing on July 16, 2020 when Appellant was informed there was a foreclosure on his house. The Master in Equity has deprived Appellants' right to due process of the law, therefore, the Master Decree of Foreclosure, Sale and Judgment must be vacated and set aside.

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[6] Which was never served on the Appellant.

4. It is error and abuse of the master's discretion to deprive the Appellants the due process as set forth in *Rule 71, SCRCP* on proceedings on Foreclosure and Partition.

Rule 71, SCRCP, provides certain proceedings for foreclosure.

> "(a) Actions to foreclose liens or obtain partition of real property shall be tried by the court and referred to a master pursuant to Rule 53. In foreclosure actions the judge or master shall compute the amounts due the plaintiff ... which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due on default ..... In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due. Prior to the filing of the master's report or final order of judgment, the judge or master shall assure that the plaintiff and all claimants have complied with the statute pertaining to the filing of noticed of lis pendens. In all actions a record of hearings shall be made and preserved in the case file in the office of the clerk of court."

Reviewing the Beaufort County Public Index the first document in the Designation of Matter attached as Exhibit Item 1, it is clear that nothing in the aforesaid paragraph has been complied with. Record shows that not only defendants had not been served with any notice of hearing on any proceedings, the first hearing was the foreclosure hearing where Appellant was forbidden to ask any question and was told that his house was already being foreclosed with no question allowed.

Subsequent Webex hearing Appellant was given certain statement and affidavits of debt, without the opportunity of cross examination. Everything submitted by the Respondent-Plaintiff was taken by the Master in Equity as truth in full amount. As shown in his Affidavit and Exhibits filed on December 14, 2020 (Item 10 of Designation of Matter attached) Appellant has shown that all library and government offices were closed from January through June of 2020 during the period of the Pandemic therefore Respondent's publication could not be seen by Appellant. That alone was a denial of due process. Sun's aforesaid affidavit and attachments also shows that all assessments fees owed the Respondent had been paid in full. Therefore, Appellant did not owe the respondent any money except some violations, penalties and late fees which Respondent illegally claimed as

explained in the following paragraph.

Due to the fact that there was no trial allowed prior to the issuance of the Master's Decree of Foreclosure, Sale and Judgment, the Master of Equity erroneously and impermissibly allowed the Respondent to include numerous unknown and illegal fines and penalties for, such as parking Appellant's private vehicles on his yard and failure to cut grass in his yard, numerous late fees and interests because Appellant refused to pay as he believed those penalties were illegal. The Respondent included numerous fabricated amounts in the Master's Decree and the Master signed it with no questions asked after Appellants were deprived their rights to be heard and cross examine.

Respondent's fraudulent service by publication is a denial of Appellant's right to due process of the South Carolina Rules of Civil Procedure. Respondent used the fraudulently obtained default so it can collect illegal fees and fabricated fines from the Appellant should not be allowed. There was no actual trial in the within foreclosure case. The Master allowed Respondent to violate Rule 71(a)[7] in obtaining the Master's Decree of Foreclosure and Judgment which therefore must be vacated and set aside based on *Rule 60(b)(3)*. Record in the Beaufort County Public Index (Item 1, Designation of Matter) can show the Master has not made any determination of the amount of debt respondent claimed as there was no trial for respondent to prove anything. The Master simply signed the proposed Decree full of fabrication made by the Respondent who has not shown any amount of money they claim was legal or even real, owed by Appellants or whether it was legitimate charges allowable by law or the covenant. The Master simply allowed everything Respondent claims that Appellant owed even though they were illegal or fabricated or impermissible based on purported

[7] Rule 71(a) .... in Foreclosure action, the Master shall compute the amounts due the plaintiff which when determined shall be the total debt due to respondent. ..... In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due. Prior to the filing of the master's report, the master shall assure that plaintiff has complied with the statutes pertaining to the filing of notices of lis pendens.

violations, late fees and attorneys fees. Appellant has shown that he has paid all subdivision assessments and owed nothing.

In the Master's Decree of Foreclosure, Sale and Judgment, prepared by Respondent counsel and later signed by Master without hearing or cross examination allowed, there are several pages of amounts claimed to be awarded to the Respondent Association (Pages 9 through 11 of 18). Those charges were fabricated by the Respondent and first time seen by Appellant in the Master's Decree. Appellant is unable to dispute Respondent's fabrications because Beaufort County Public Index can show Appellant was never given a forum or a trial to be heard even though on Page 11 of the Decree prepared by Respondent counsel briefly mentioned Rule 71 regarding surplus funds which is irrelevant. Respondent then bypassed the remainder of Rule 71 required in a foreclosure action.

Record in the Beaufort County Index shows respondent impermissibly tried to charge numerous penalties and late fees when fines were not paid.

Restrictive covenants are contractual in nature. *Hardy v. Aiken, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006)* A restriction on the use of the property must be created in express terms or by plain and unmistakable implication. *Id.* Restrictions on the use of property will be **strictly construed with all doubts resolved in favor of free use of the property**; however the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants. *Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998).* The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution. *Id.* Where as here, there was nothing in the covenant showing respondent could lawfully impose any fines for parking personal cars and boats on homeowners property or failure to cut the grass or pressure wash the house. Appellant's request for discovery was denied.

A restrictive covenant is ambiguous when its terms are reasonably susceptible of more

than one interpretation. *S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001).* It is a question of law for the court whether the language of a restrictive covenant is ambiguous. *Id. at 623, 550 S.E.2d at 302-03.* Once the court decides the language is ambiguous, evidence may be admitted to show the parties' intent. *Id. at 623, 550 S.E.2d at 303.* The determination of intent is then a question of fact. *Id.*

In the within case, there is no question of ambiguity. By order of the Master, Respondent sent Appellant hundreds of pages of subdivision bylaws and restrictive covenants with many revisions. There was no specific description or rules that prohibit the parking of cars, cutting grass or cleaning the house exterior, therefore, all penalties imposed by the respondent on the appellant were impermissible and must be removed. Appellant has shown that he owes respondent nothing regardless of the fraudulent service by publication. The respondent cannot charge or fine that homeowners of certain activities the director did not like when the so-claimed violation were not specifically documented. The burden is on the Respondent to show.

In the case of *Rawlinson Road Homeowners Association, Inc. v. Ronald D. Jackson, 395 S.C. 25, 716 S.E.2d 337 (2011)*, there was a dispute between Mr. Jackson and Rawlinson Homeowners Association on the matter of whether Jackson had violated the restrictive covenant prohibiting the parking of a boat and trailer within the subdivision. Mr. Jackson was fined but he refused to pay the fine or the subsequent fines of $25 per week thereafter.

The Association recorded a Notice of Lien against Jackson's property for unpaid fines. The next year, the Association filed suit against Jackson and his mortgage lender, seeking to enforce the "no boats" rule and to foreclose on its purported lien against the property. The Association also sought to sell Jackson's property and an order empowering the Sheriff to place the purchaser at said foreclosure sale in possession of the property.

The difference in Jackson's case versus this case in Beaufort county is that, The Master in Jackson's case denied the Association's motion for an injunction and granted summary judgment to Jackson. In his order, the master found the restrictive covenants in place when Jackson purchased his property neither expressed nor implied a prohibition against boats or authorization for the Association to impose fines. The Master declared the restrictive covenants did not authorize the Association "to adopt rules and regulations relating to conduct on an individual lot." Finally, he declared the By-laws and Rules "null and void as they relate to the impositions of fines or assessments upon individual[395 S.C. 32] lot owners based on the use of their respective lots" and vacated the Association's lien against Jackson's property. The Association filed a motion to reconsider, which, after a hearing, the master denied in a Form 4 order.

The South Carolina Court of Appeals affirmed the Master's rulings. *Rawlinson, 395 S.C. at 25, 716 S.E.2d at 337.* The Court of Appeals agreed with the fact that no covenant restricted the presence of a boat or trailer on private property at the time of purchase. *Id. at 34.*

Where as here, respondent has not shown any specific violation in the documented restricted covenant which it claims Appellant is guilty of. Aforesaid case law has prohibited penalizing homeowners arbitrarily for keeping a boat or parking a car on his own yard.

5. The Master's Decree of Foreclosure and Judgment has made no provision of surety required on the Respondent after Notice of Appeal is filed. *South Carolina Code Section 18-9-130(A)(2)* provides that "(2) A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed." Respondent should be required to post the required surety prior to sale of Appellant's home.

CONCLUSION

Based on the numerous pages of the entire content of the recorded Bluffton Park Restrictive Covenant recently served on the Defendants by email, nothing can support Respondent-Plaintiff's claim, and the entire record in the case all recorded in the Beaufort County Public Index, and that Plaintiff Bluffton Park and the Master in Equity have committed numerous denial of due process and violations of the South Carolina Rules of Civil Procedure in this entire case which have been overlooked by the Master in Equity resulting in the signing and issuing of the Master's Decree of Foreclosure, Sale, and Judgment ($21,115.47), therefore, the aforesaid Decree and Judgment must be vacated and set aside. Circuit court's judgment should be reversed.

All other documents filed by Respondent-Plaintiff, including but not limited to, service by publication, any liens, lis pendens and notice of levy and other court documents, unserved on and/or unknown by, the appellant relating to this case on appeal, should also all be vacated and set aside.

Appellants should be reimbursed all expenses and costs in this appeal and at the circuit court.

Respectfully submitted,

This 18th day of June, 2021

JOSEPH C. SUN, pro se
P. O. Box 2543
Bluffton, SC 29910
843-226-8788

PROOF OF SERVICE

I certify that I have this date served the Appellant's Initial Brief and Designation of Matters on Respondents' counsel by depositing a copy of same in the U.S. Mail postage prepaid to:

Scott M. Wild, Esq.
P. O. Box 6867
Hilton Head Island, SC 29938
email: scott@wildlawfirm.com

This 22nd day of June, 2021

JOSEPH SUN, pro se
P.O. Box 2543
Bluffton, SC 29910

P. O. Box 2543
Bluffton, SC 29910
June 22, 2021

Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Appeal Case 2021-000434
Circuit Court Case 2019CP0702178

Gentlemen:

Please accept the enclosed Initial Brief of the Appellant for filing. I am proceeding in the case without counsel and I am 74 years old retired with only a small social security income every month. I ask the court to accept one copy of my initial brief and also only one copy of my final brief and record on appeal to be filed later time.

Furthermore, I ask the court to take this letter as my motion to file the appeal without ordering the transcript because I really cannot afford to pay for it. Besides, all hearings were conducted online, some were recorded by a court reporter but most were not. Please see email by court reporter attached.

I have referenced the entire appeal with documents filed in the case as shown in the Designation of Matter filed with the appeal and will do same in the Record of Appeal filed with the Final Brief of Appellant. There was really no arguments on the merits made in the several WebEx hearings and no exhibits.

I am sending copy of this letter to the Respondent counsel to ask for an agreement to my request in this letter of not ordering the transcript. He should see there is no advantage to him to get the transcript. The loser on appeal will have to pay for the entire transcript pursuant to rule 207(a)(1), SCACR.

Thank you for your attention and assistance.

Sincerely,

JOSEPH C. SUN

cc: Scott M. Wild, Esq., Respondent counsel

Enclosure: Initial Brief of the Appellant
Email from Court Reporter

From: Thomas, Deborah S. <dsthomas@bcgov.net>
Sent: Thursday, May 13, 2021 8:35 AM
To: jossunn1095@yahoo.com
Cc: McLeod, Heather <hmcleod@bcgov.net>
Subject: RE: Beaufort County Civil Case 2019CP0702178

5/14/2021 Yahoo Mail - RE: Beaufort County Civil Case 2019CP0702178

Mr. Sun
As I indicated in my previous email:

"I was in the office and available for the hearings held on 7/16/20. The above case was scheduled for a foreclosure hearing. I do not know the circumstances or outcome of your case. There was no record."

I will Cc **Heather McLeod**, Judge Duke's Admin, on this email. She **may** know if the 7/16 hearing was postponed or continued to 8/4 which would be another reason there is no record.

Deborah S. Thomas, CVRM

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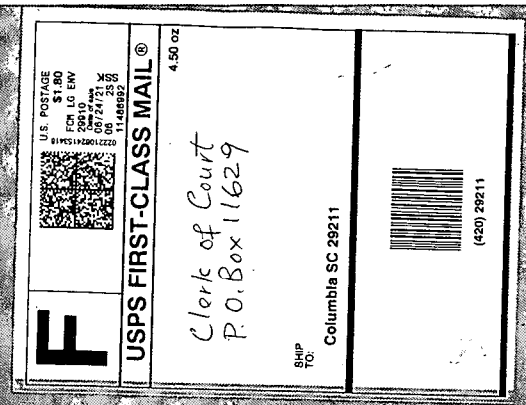

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211