

The Defendants submitted no testimony in support of its cause of action for nuisance, and subsequent to Motion by Counsel for Plaintiff for dismissal of the counterclaim for a nuisance, counsel for Defendants apprised the Court that he had abandoned the cause of action for nuisance. There is no statutory provision for attorney's fees in connection with a cause of action for nuisance, particularly a cause of action which a party abandons at trial.

Counsel for Defendants contends that a contractual obligation exists which obligates Plaintiffs to pay Defendants' attorney's fees in connection with this action emanates from the Restrictive Covenants which govern both Plaintiffs' lots and the other lots within the Windjammer Village Subdivision, and he cites as his authority for such entitlement the introduction of the various Covenants as an exhibit or exhibits into the record at trial.

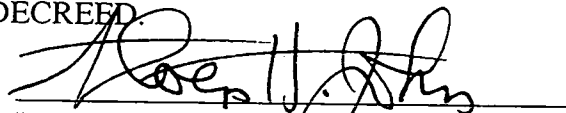
While the Court recognizes that the Restrictive Covenants provide for the Defendant to recovery its attorney's fees in the event that it (the Defendant Association) is forced to hire legal counsel to enforce the Restrictive Covenants (the Court recognizes that Restrictive Covenants are a Contract into which Purchasers within a subdivision enter by virtue of taking title to real estate encumbered by those Covenants), nothing in the Defendant's counterclaims allege, nor was there any proof, that the Restrictive Covenants were violated by the Plaintiffs in any particular.

As to Defendant's Petition for Costs, as prevailing party in this matter, and with regard to Defendant's Motion for Costs and in light of the fact that Defendant prevailed in the litigation, in both South Carolina common law and Rule 54 of the SCRCP provide for a prevailing party to recover taxable costs as defined under Rule 54(e), and based upon the itemized statement of taxable costs attached to Defendant's Motion, it is appropriate that the Defendant recover its taxable costs in the amount of \$1,933.24.

Accordingly,

- a. Defendant's Motion for Attorney's Fees is denied;
- b. Defendant's Motion for Costs is granted and Defendant is awarded costs in this matter in the amount of \$1,933.24.

IT IS SO ORDERED, ADJUDGED AND DECREED.



Honorable Steven H. John
Resident Judge
Fifteenth Judicial Circuit

Conway, South Carolina
February 22, 2012

