

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-26-05411

Oak Forest Homeowners Association,  
Inc.,

Plaintiff,

vs.

Paul M. Dennison, Mortgage Electronic  
Registration Systems, Inc., solely as  
nominee for Branch Banking and Trust  
Company, LLC and South Carolina State  
Housing Finance and Development  
Authority,

Defendants.

ORDER OF JUDGMENT  
FOR DEFENDANTS

**RECEIVED**  
May 23 2022  
SC Court of Appeals

The above-captioned action is before me pursuant to an order of reference signed by the Horry County Clerk of Court and filed on October 17, 2016. This action was tried before the undersigned master-in-equity on March 16, 2017, at which time Defendant Paul Dennison was proceeding *pro se*, and Angela Harrison, Esquire represented Oak Forest Homeowner Association, Inc. The court received testimony and documentary evidence from Oak Forest and from Dennison at trial. The court took this case under advisement.

As many HOA cases do, this case had a sordid past. A companion case involving Dennison and several of his co-homeowners in the subdivision had settled earlier, but Dennison was not involved in the settlement. See, Oak Forest Homeowners Association, Inc. v. David Earley, Paul M. Dennison, Jeffrey Thomas, Lorinda Thomas, Kevin R. Lundgren, Ryan M. Lundgren, Stephen H. Peck, and Community Management Group, LLC, 2014-CP-26-5247. That case involved defamation, all stemming from whether certain lots and homes in the subdivision were part of the Oak Forest HOA. Flyers had been posted by all sides and letters had been sent among homeowners spouting all opinions, with rhetoric becoming heated. Dennison's case had been dismissed without

prejudice. Thereafter, Dennison did not pay homeowner's assessments as he contended that he was not a member of the HOA. This case thereafter followed.

This case is a homeowners' association ("HOA") lien foreclosure action in which the HOA claims to be owed money under the terms of real property covenants to which it claims Dennison is a party. The lien amount was \$2743.92 against Dennison when the suit was filed. Dennison owns and lives at 2436 Morlynn Drive, Myrtle Beach, South Carolina, which is in the Oak Forest subdivision. Dennison answered the complaint in a 16-page document, denying that he was a member of the HOA, denying that he owed the HOA any money, denying that the Plaintiff actually held a lien on his property, and denying that his property was actually subject to covenants obligating its owner to be a member of the HOA or to pay the HOA anything. Dennison's answer refers to several exhibits which were introduced at trial.

After taking this matter under advisement and reviewing the testimony and evidence, the court finds that the HOA has failed to prove that Dennison is a member of the HOA and therefore owes assessments, as is more particularly set out below.

#### **FINDINGS OF FACT**

The Plaintiff HOA is a South Carolina nonprofit corporation that acts as an HOA. The covenant documents that the HOA seeks to enforce against Dennison were received into evidence. The terms of those covenants provide that all owners of property subject to the covenants are members of the HOA described in the covenants. The HOA also offered, and the court received into evidence, notice of lien documents that the HOA has recorded in the Horry County land records. These notice of lien documents state the HOA holds a lien or liens on the subject real property.

The court received numerous exhibits and testimony from Dennison, which are essentially the same as the content of and exhibits referred to in his answer in this case. The testimony and exhibits reveal that the area of which Dennison's subject property is a part has a different chain of title than some of Dennison's neighbor's adjoining land that is encumbered by the covenants. Dennison adamantly denied that he is a member of the HOA, and the record lacks evidence that indicates to the court that he has joined the HOA. No evidence was adduced to the effect that the HOA would have a lien against Dennison for any reason other than membership in the HOA.

The court determines that these facts are dispositive of the HOA's claim and are, thus, the only facts that matter to the outcome of the case. Dennison contends that the Plaintiff HOA is not the same HOA as that subject of the covenants, but the court does not need to determine that issue because other facts dispose of the case.

#### **CONCLUSIONS OF LAW**

Any factual findings in this order that are more properly characterized as conclusions of law are so deemed, and vice-versa.

The HOA has failed to prove that Dennison is a member of the HOA and failed to prove that the covenants at issue apply to Dennison's property.

Restrictive covenants are contractual in nature. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987); Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014); Queen's Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902, 913 (Ct. App. 2006); Houck v. Rivers, 316 S.C. 414, 418, 450 S.E.2d 106, 109 (Ct. App. 1994). A claim that a party has violated a restrictive covenant is a claim that the party has breached the contract embodied in the covenants. See Kinard, 754 S.E.2d at 893; Queen's Grant, 628 S.E.2d at 913.

To recover for breach of contract, a plaintiff must prove that there was a binding contract entered into by the parties, the defendant breached the contract, and damage as a proximate result. See Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962). In the somewhat analogous context of a mortgage foreclosure action, our Court of Appeals has said that a plaintiff has the burden of establishing the existence of a debt owed to it, its ownership of the mortgage securing that debt, and the debtor's default of the debt obligation. U.S. Bank Natl. Trust Assn. v. Bell, 385 S.C. 364, 684 S.E.2d 199, 205 (Ct. App. 2009). Whether it is called "breach," "default," "violation," "non-compliance," or something else, what the law makes plain is that a party, who seeks to recover against another party for violating a restrictive covenant, must prove, among other things and above all else, that both the claiming party and the defending party are parties to the covenant. Fuller, 124 S.E.2d at 610; see Kinard, 754 S.E.2d at 893; U.S. Bank, 684 S.E.2d at 205; Queen's Grant, 628 S.E.2d at 913.

Here, the burden was on the HOA to prove both that the covenants apply to the subject property and that Dennison is a member of the HOA. At S.C. Code Ann. § 33-31-601, the South Carolina Nonprofit Corporation Act provides that a nonprofit corporation's "articles or bylaws may establish criteria or procedures for the admission of members" and that "[n]o person may be admitted as a member without his consent." The evidence adduced does not establish that Dennison ever became a member of the HOA or became bound by the covenants. The evidence does not indicate that Dennison ever consented to becoming a member of the HOA and, indeed, indicates that he has protested for years against the HOA's attempts to treat him as a member.

The HOA's failure to prove that Dennison is a party to the covenants at issue or a member of the HOA is a failure to prove an element essential to the HOA's claim. Accordingly, the court finds for Dennison.

**CONCLUSION**

Accordingly, IT IS THEREFORE HEREBY ORDERED that:

- 1) The court finds against the Plaintiff and for Defendant Dennison on the Plaintiff's claim; and
- 2) The Plaintiff is enjoined and directed to record cancellations of all notice of lien documents that the Plaintiff has recorded in the Horry County Office of the Register of Deeds that purport that Defendant Dennison owes the Plaintiff money and/or that the Plaintiff has a lien upon the real property subject of this action .

And IT IS SO ORDERED.

The Honorable Cynthia Graham Howe  
Special Master-in-Equity for Horry County

Conway, South Carolina

RECEIVED

May 23 2022

SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-26-05411

OAK FOREST HOMEOWNERS
ASSOCIATION, IN.,

PAUL M. DENNISON MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., solely as nominee
for BRANCH BANKING and TRUST
COMPANY, LLC and SOUTH
CAROLINA STATE HOUSING
FINANCE and DEVELOPMENT
AUTHORITY,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Andrew S. Radeker

Attorney for : [ ] Plaintiff [x] Defendant
or
[ ] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- [ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
[x] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. [ ] See Page 2 for additional information.
[ ] ACTION DISMISSED (CHECK REASON): [ ] Rule 12(b), SCRPC; [ ] Rule 41(a), SCRPC (Vol. Nonsuit); [ ] Rule 43(k), SCRPC (Settled); [ ] Other
[ ] ACTION STRICKEN (CHECK REASON): [ ] Rule 40(j), SCRPC; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other
[ ] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): [ ] Affirmed; [ ] Reversed; [ ] Remanded; [ ] Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: [x] See attached order [ ] Statement of Judgment by the Court:

ORDER INFORMATION

This order X ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Row 1: Paul M. Dennison, Oak Forest Homeowners Association, Inc., \$N/A. Row 2: \$

ELECTRONICALLY FILED - 2022 Apr 22 4:54 PM - HORRY - COMMON PLEAS - CASE#2016CP2605411





Horry Common Pleas

**Case Caption:** Oak Forest Homeowners Association Inc VS Paul M Dennison ,  
defendant, et al  
**Case Number:** 2016CP2605411  
**Type:** Master/Order/Other

So Ordered

s/Cynthia Graham Howe, Special Master in Equity  
for Horry County, 3073