

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

**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.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-26-05411

**ORDER DISPOSING OF
PLAINTIFF'S POST TRIAL
MOTION**

RECEIVED

May 23 2022

SC Court of Appeals

TRIAL JUDGE: CYNTHIA GRAHAM HOWE
PLAINTIFF'S ATTORNEY: ANGELA HARRISON
DEFENDANT'S ATTORNEY: DREW RADEKER
DATE OF HEARING: MAY 10, 2022

On April 22, 2022, this Court issued its Order of Judgment for Defendants in this matter. The Horry County Clerk of Court gave notice of the order to all pertinent parties pursuant to the Electronic Filing System, also on April 22, 2022. Plaintiff Oak Forest Homeowners Association, Inc. (Oak Forest) filed and served its Motion to Reconsider, Alter or Amend Judgment or for a New Trial on May 3, 2022.

The Court heard arguments on Oak Forest's post trial motion on May 10, 2022, by zoom. At the outset, I conclude that Oak Forest's motion is untimely. A motion for a new trial in a non-jury matter shall be served not later than 10 days after receipt of written notice of the entry of the judgment or of the filing of an order disposing of the action. Rule 59(b), SCRPC. A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRPC.

Moreover, in this case, all documents were filed and served electronically on Oak Forest and on Defendant Paul Dennison once he was represented by counsel. (Dennison represented himself for much of the earlier proceedings but subsequently retained counsel. The Electronic Filing Policies require that self-represented litigants be served and noticed traditionally, not electronically.)

Transmission of the Notice of Electronic Filing (NEF) constitutes the notice required under Rule 77(d), SCRPC, for all parties who are proceeding in the E-Filing System. Section 6(c), SCEF. An Authorized E-Filer has receipt of written notice of the entry of a judgment or the filing of an order upon receipt of the emailed NEF. It shall be the responsibility of an Authorized E-Filer to review the content of the E-Filed order to determine its force and effect; however, any delay in accessing the E-Filing System to review the order does not affect the time of receipt. Section 6(d), SCEF.

Here, the Clerk filed the Order of Judgment for Defendants in this matter and issued the NEF on April 22, 2022. Accordingly, all parties, including Oak Forest, received written notice of the entry of the order on April 22, 2022. The tenth day thereafter, Oak Forest's last day to serve its post-trial motion under Rule 59, SCRPC, was May 2, 2022. Consequently, Oak Forest's service of its post-trial motion on May 3, 2022 was untimely. The established case law is that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. *In re Beard*, 597 S.E.2d 835, cert denied (Ct.App.2006). This Court must dismiss Oak Forest's post trial motion as untimely.

However, even if I had not determined that its motion was untimely, I would deny Oak Forest's motion on the merits. I have reviewed the matter in its entirety including all exhibits, my trial notes, those of my law clerk, the trial transcript, the memoranda submitted by Oak Forest's counsel, as well as arguments of counsel at the motion hearing. I have concluded that the Court has not overlooked any issues presented necessary for the ruling nor made any errors. Moreover,

for the first time post judgment, Oak Forest has raised the issue that the undersigned was biased or prejudiced, allegedly because her prior law partner/law firm had been involved in a lawsuit with the developer of the original Oak Forest development in the late 1980's.

The undersigned concludes that it certainly was not biased or prejudiced against Oak Forest in any way, and certainly not because her law partner was involved in a lawsuit more than 30 years prior dealing with the original developer of Oak Forest, not the Oak Forest HOA. That lawsuit dealt with the old Air Force base and the real estate upon which the Oak Forest development is built. Moreover, the issue of any bias was never presented to the trial court so that if there may have been such, the undersigned trial judge could have made such a determination and recused herself before a final order was issued.

A party cannot use a motion to alter or amend a judgment to present to the trial court an issue that the party could have raised prior to a judgment but did not. *Gartside v. Gartside*, 677 S.E.2d 621 (Ct.App.2009).

Therefore, having carefully considered Oak Forest's motion and its circumstances,

IT IS HEREBY ORDERED that Oak Forest's Motion to Amend/Alter the Judgment is dismissed as untimely.

ALTERNATIVELY, IT IS HEREBY ORDERED that Oak Forest's Motion to Amend/Alter the Judgment is denied.

AND IT IS SO ORDERED.

Cynthia Graham Howe,
Special Master-in-Equity for Horry County

Conway, South Carolina

RECEIVED

May 23 2022

SC Court of Appeals

FORM 4

JUDGMENT IN A CIVIL CASE

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

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: the Court

Attorney for : Plaintiff 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.
- 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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: See attached order Statement of Judgment by the Court:

ORDER INFORMATION

This order ends X does not end the case.

Additional Information for the Clerk : Plaintiff's Motion to Amend/Alter the Judgment is denied.

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.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Paul M. Dennison	Oak Forest Homeowners Association, Inc.	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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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