

COUNTY OF AIKEN

Dale Theesfeld and Marilyn Theesfeld,

Plaintiff(s)

vs.

Woodside Golf, LLC, d/b/a The Reserve Club at  
Woodside Plantation, and Sidewood Development,  
LLC,

Defendant(s)

Submitted By: William C. Dillard, Jr.

Address: Belser & Belser, P.A., P.O. Box 96, Columbia, SC  
29202

## IN THE COURT OF COMMON PLEAS

## CIVIL ACTION COVERSHEET

2015-CP - 02-01605

SC Bar #: 78986  
 Telephone #: 803-929-0096  
 Fax #: 803-929-0196  
 Other:  
 E-mail: will@belserpa.com

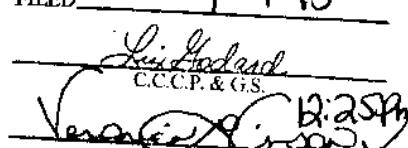
NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

## DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/ Settlement do not complete

JURY TRIAL demanded in complaint.  NON-JURY TRIAL demanded in complaint.  
 This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
 This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
 This case is exempt from ADR. (Proof of ADR/Exemption Attached)

## NATURE OF ACTION (Check One Box Below)

<b>Contracts</b>	<b>Torts - Professional Malpractice</b>	<b>Torts - Personal Injury</b>	<b>Real Property</b>
<input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199)	<input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220)  Previous Notice of Intent Case # 20- <u>-NL-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299)	<input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399)	<input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) Nuisance
<b>Inmate Petitions</b>	<b>Administrative Law/Relief</b>	<b>Judgments/ Settlements</b>	<b>Appeals</b>
<input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599)	<input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899)	<input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)  <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799)	<input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SC DOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991)
<b>Special/Complex /Other</b>			<input type="checkbox"/> Other (999) <u>7.7.15</u>
<input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699)	<input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510)		<input type="checkbox"/> FILED <u>7.7.15</u>
<b>Vehicle damage</b>			 <u>William C. Dillard</u> <u>C.C.C.P. &amp; G.S.</u> <u>Deputy Clerk</u> <u>12:25PM</u>

Submitting Party Signature:

William C. Dillard

Date: July 6, 2015

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) IN THE SECOND JUDICIAL CIRCUIT  
COUNTY OF AIKEN ) Case Number 2015-CP-02- 011605  
  
Dale Theesfeld and Marilyn Theesfeld, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
Woodside Golf, LLC, d/b/a The )  
Reserve Club at Woodside Plantation, )  
and Sidewood Development, LLC, )  
 )  
Defendants. )  
 )

**TO THE DEFENDANTS ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Subscriber at his office, 1901 Main Street, Suite 1550, Columbia, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff herein will apply to the Court for default judgment for the relief demanded in the Complaint.

**BELSER & BELSER, P. A.**

William C. Dill

William C. Dillard, Jr.  
1901 Main St., Suite 1550 (29201)  
Post Office Box 96  
Columbia, South Carolina 29202  
803-929-0096  
*Attorney for the Plaintiff*

## Columbia, South Carolina

July 6, 2015

FILED 7-7-15

Lis Gadea  
CCCP & US

VERIFIED AND SIGNED 12:25 PM  
Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Number 2015-CP-02- <u>01605</u>
Dale Theesfeld and Marilyn Theesfeld,		)
		)
Plaintiffs,		)
		)
v.		)
		)
Woodside Golf, LLC, d/b/a The		)
Reserve Club at Woodside Plantation,		)
and Sidewood Development, LLC,		)
		)
Defendants.		)
		)

**COMPLAINT**  
(Jury Trial Demanded)

The plaintiffs, complaining of the defendants, hereby allege as follows:

1. Plaintiffs Dale and Marilyn Theesfeld own and reside at a home located at 196 Highland Reserve Court in Aiken, South Carolina ("the home").
2. On information and belief, Woodside Golf, LLC ("the Club") is a South Carolina limited liability company doing business under the name of The Reserve Club at Woodside Plantation.
3. On information and belief, the Club owns a tract of real property in Aiken County (Tax Map No. 107-14-11-001) on which it operates a clubhouse, golf course, pool, and various recreational amenities for its members ("the Club property").
4. On information and belief, Sidewood Development, LLC ("the Developer") is a South Carolina limited liability company.
5. On information and belief, the Developer owns a tract of real property in Aiken County (Tax Map No. 107-14-11-002) which serves as common area property for the Woodside Plantation community ("the common area property").
6. On information and belief, the Club property and common area property sit adjacent to one another, and some of the recreational amenities operated by the Club, such as the pool and tennis courts, are located entirely or in part on the common area property.
7. The plaintiffs' home sits on a lot, approximately 0.28 acres in area, just south of the first tee of the golf course on the Club property. Beyond the golf course fairway sits the Club's clubhouse and the aforementioned Club recreational

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*Lia Godard*  
C.C.C.P. & G.S. 12-25am

amenities located on the Club property and common area property.

8. The plaintiffs purchased their newly constructed custom home on January 29, 2008, from Woodside Venture, LLC, a South Carolina limited liability company.
9. On information and belief, Woodside Venture, LLC, the Developer, and the Club are amalgamated in interests so as to blur the distinction between these entities and their activities.
10. At the time the plaintiffs agreed to purchase the home, Woodside Venture, LLC, the Developer, and one or more other amalgamated entities advertised the home and lot in a sales brochure as being in a location where a resident could “[s]ettle in and enjoy the outdoor living area.” The plaintiffs relied on this representation in agreeing to purchase the home.
11. Since purchasing the home, the plaintiffs have gone to considerable efforts to maintain and improve the outdoor areas of the property with flower gardens and other landscaping, benefiting not only themselves but also users of the Club property and common area property.
12. At all times relevant hereto, the plaintiffs have understood that their home is nearby to a clubhouse, a golf course, golf cart paths, tennis courts, a pool, areas used for croquette and bocce ball, and other recreational and social amenities, and have not complained about the reasonable noise levels associated with normal use and maintenance of these amenities.
13. Between January 2008 and December 2014, the plaintiffs enjoyed daily use of the indoor and outdoor living areas of their home. While the plaintiffs made occasional reasonable complaints to the Club about isolated incidents of excessive noise during this period, these issues were always resolved.
14. Between January 2008 and December 2014, the plaintiffs found great peace and relaxation in spending time in their back patio area and back yard, and in fact had purchased the home as a retirement home with this specific purpose in mind.
15. On or about December 18, 2014, the defendants opened up three new recreational courts, immediately south of the existing tennis courts and north of the first tee of the Club’s golf course, to be used for a sport known as pickleball (“the pickleball courts”).
16. On information and belief, the pickleball courts are operated and maintained by the Club and are located in part on the Club property, but are also located in part on the common area property owned by the Developer.
17. On information and belief, pickleball is a sport in which two to four players use solid wood or composite paddles to hit a perforated polymer ball over a net.

18. On information and belief, the sound of a pickleball paddle strike is less like the low-frequency strike of a tennis racket and, instead, more like the high-frequency strike of a ping pong paddle.
19. In December 2014, the paddleball courts were opened for play seven days per week from 10:00am until 10:00pm, and these hours have since been expanded to allow play to begin at 8:00am on Monday and at 9:00am on Tuesday through Sunday. The courts are frequently and consistently used during such hours.
20. During nighttime hours, the pickleball courts are lit with bright lights that also shine light on the plaintiffs' property and home.
21. Unlike typical tennis courts, including the Club tennis courts near the plaintiffs' home, the pickleball courts attract boisterous, noisy crowds of players and spectators.
22. On information and belief, the pickleball courts are approximately 250 feet from the plaintiffs' property.
23. The sound of the abrupt, high-frequency and irritating sound of paddle strikes on the pickleball courts can be heard on the plaintiffs' property both inside and outside of their home.
24. The ongoing use of the pickleball courts has resulted in unreasonable interference with the plaintiffs' use and enjoyment of their property and home, including the irritating noise of paddle strikes, the noise of boisterous players and spectators, and the light emanating from the courts at night.
25. As the use of the pickleball courts has become increasingly popular since December 2014, the occurrences of excessive noise from the courts have become more frequent.
26. In spite of being aware of the disturbance to the plaintiffs' use and enjoyment of the home, the Club has continued to operate the pickleball courts and has actively promoted the increased use of the courts by new players, and the Developer has continued to allow the pickleball courts to operate on its property.
27. As a direct and proximate result of the aforementioned actions and omissions on the part of the defendants, the plaintiffs' property has diminished in value, and the plaintiffs have suffered and continue to suffer the loss of use and enjoyment of their property and home.
28. Accordingly, the plaintiffs are entitled to an award of injunctive relief to the extent the Court deems appropriate, as well as an award of direct, consequential special and punitive damages, costs, expenses and prejudgment interest.

**FOR A FIRST CAUSE OF ACTION**  
**Private Nuisance**

29. The plaintiffs reallege and incorporate by reference the allegations of the above paragraphs.
30. On information and belief, by and through the actions and omissions described hereinabove, the defendants have willfully, wantonly, recklessly and intentionally caused an unreasonable interference with the plaintiffs' use and enjoyment of their property and home.
31. As a direct and proximate result of said interference, the plaintiffs' property has been and continues to be diminished in value, and the plaintiffs have suffered and will continue to suffer the loss of full use and enjoyment of their property and home.
32. On information and belief, there is no adequate remedy at law for the aforementioned unreasonable interference with the plaintiffs' use and enjoyment of their property.
33. Consequently, the defendants' actions constitute a private nuisance, and the plaintiffs are entitled to equitable relief to the extent the Court deems appropriate or, in the alternative, an award of direct, consequential, special and punitive damages in the amount to be determined by the jury, costs, expenses and prejudgment interest.

WHEREFORE, the plaintiffs pray that this Court:

- A. Grant the plaintiffs judgment on their cause of action against the defendants;
- B. Issue preliminary and permanent injunctions prohibiting the defendants from continuing to operate and allow operation of the pickleball courts on their properties;
- C. Grant the plaintiffs an award of direct, consequential, special and punitive damages, prejudgment interest, expenses and costs; and
- D. Grant the plaintiffs such other and further relief as may be proper.

[Attorney signature to follow]

**BELSER & BELSER, P.A.**

William C. Dillard

William C. Dillard, Jr.  
1901 Main Street, Suite 1550 (29201)  
Post Office Box 96  
Columbia, South Carolina 29202  
803-929-0096  
Attorneys for the Plaintiff

Columbia, South Carolina

July 6, 2015

C. HEYWARD BELSER, SR.  
(1918-1994)

CLINCH H. BELSER, JR.

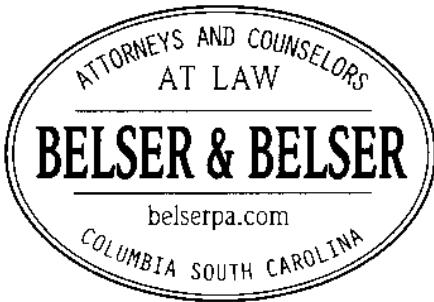
H. FREEMAN BELSER

MICHAEL J. POLK

WILLIAM C. DILLARD, JR.

ROBERT YOUNG, P.A.  
OF COUNSEL

CHARLES L. DIBBLE  
OF COUNSEL



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COLUMBIA, SC 29202

TELEPHONE 803-929-0096  
FACSIMILE 803-929-0196

OFFICE LOCATION  
BANK OF AMERICA PLAZA  
1901 MAIN STREET, SUITE 1550  
COLUMBIA, SC 29201

July 6, 2015

The Honorable Liz Godard  
Aiken County Clerk of Court  
PO Box 583  
Aiken, SC 29802-0583

Re: *Dale Theesfeld and Marilyn Theesfeld v. Woodside Golf, LLC, d/b/a the Reserve Club and Woodside Plantation, and Sidewood Development, LLC (Civil Action No. 2015-CP-02-\_\_\_\_\_)*

Dear Ms. Godard:

Please find enclosed the original and one copy of the following documents in the above referenced matter:

- 1.) Summons;
- 2.) Complaint; and
- 3.) Civil Action Coversheet.

Please file the original and return a clocked copy to me in the enclosed stamped self-addressed envelope. I have also enclosed a check for the \$150 filing fee.

Thank you very much for your assistance with this matter.

Sincerely,

  
William C. Dillard

William C. Dillard, Jr.

WCD/sra  
Enclosures

cc: Dale and Marilyn Theesfeld (via email)  
srdocs/ser/15078/aikencoc 150706

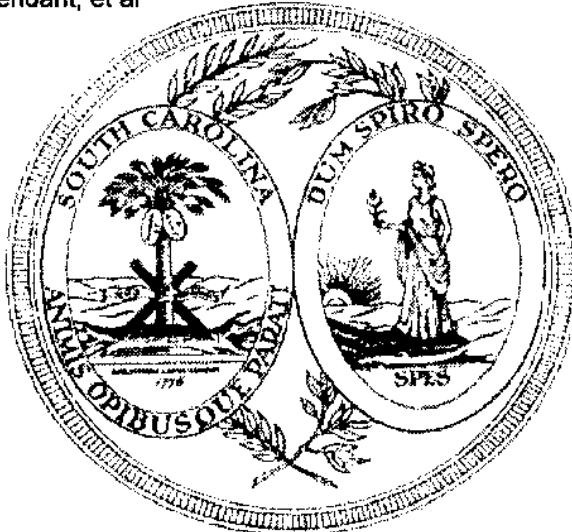
Clerk : Liz Godard  
P O Box 583  
Aiken, SC 29802  
(803) 642-1715

DUPLICATE

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Received From: Dillard, William Clayton Jr. Date: 7/7/2015  
PO Box 96 Receipt #: 46004  
Columbia, SC 29202 Clerk: c02scato  
Paying for: Theesfeld, Dale  
Transaction Type: Payment Reference #: 21995  
Payment Type: Check Comment:  
Total Paid: \$150.00 Non-Refundable

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2015CP0201605	Dale Theesfeld , plaintiff, et al VS Woodside Golf LLC , defendant, et al	\$150.00	\$150.00	\$0.00



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Total Cases: 1	\$150.00	\$150.00	\$0.00
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