

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Derrick S. Hester, Debra S. Hester,)
James H. Nicholls, Emma Viola)
Nicholls, James E. Gregg, Jr.,)
Paulette J. Gregg, Michael Ben)
Coley, Ashley Coley, Grady L.)
Barnes, Sr., Julia W. Barnes, Ewen)
Lennon, and Amy Lennon,)

C.A. No.: 2018-CP-42-02247

ORDER

RECEIVED
Aug 16 2022
SC Court of Appeals

Plaintiffs,)

v.)

Mark Razzano and Carre Razzano,)

Defendants.)

This matter came before me for a hearing on May 19 and June 28, 2022. The hearing was held virtually and present at the hearing were K. Jay Anthony and Kenneth C. Anthony, Jr., counsel for Plaintiffs, as well as John T. Crawford, Jr. and Mark A. Bible, Jr., counsel for Defendants. The parties were also in attendance.

This matter centers on Defendants’ construction of a garage structure containing living space above the garage bays (hereinafter the “Garage”) on their property within the Solitude Bay neighborhood on Lake Bowen. Plaintiffs sought a permanent injunction prohibiting Defendants from use of the living space in the Garage as a residence temporarily or permanently, alleging that such use violated the applicable Restrictive Covenants.

This matter came before the Hon. Gordon G. Cooper for trial on February 25, 2020. Following the trial, Judge Cooper issued an order (the “Order”) which included a finding that the Garage constituted an “outbuilding” under the Restrictive Covenants. The Court therefore issued a permanent injunction enjoining Defendants from using the Garage, including the living space



above, as a residence, either temporarily or permanently. The Court retained jurisdiction over this matter and allowed that, should the Defendants attach the Garage to the Defendants' main residence (the "Main Residence"), they may seek a ruling from the Court on whether the construction is such that, in the Court's determination, the Garage no longer has the status of an outbuilding and does not violate the Covenants. Defendants' Motion for Reconsideration was denied and no appeal was taken.

On March 14, 2022, Defendants filed a Petition for Post Judgment Relief & Declaratory Judgment (the "Petition"). The stated purpose of the Petition was to seek a post-judgment ruling and/or declaratory judgment from this Court on the issue of whether the Garage had been sufficiently attached to the Defendants' Main Residence such that the former no longer held the status of "outbuilding" and that the injunction as to the use of the Garage should therefore be lifted.

LAW

"An action to enforce restrictive covenants by injunction is in equity." See S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). The grant of an injunction lies within the sound discretion of the trial court. See City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 581, 520-21 (2000). To enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by plain unmistakable implication. See Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270-71, 363 S.E.2d 891, 894 (1987). A Court shall enforce restrictive covenants unless they are indefinite or contravene public policy. See id. Restrictive covenants are contractual in nature, and thus, the language used in restrictive covenants is to be construed according to its plain and ordinary meaning. See Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). "A restriction on the use of property must be created in express terms or by plain

and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. See Taylor v. Lindsey, 332 S.C. 1, 4, 5, 498 S.E.2d 862, 863.

FINDINGS OF FACT & CONCLUSIONS OF LAW

As this matter concerns the sole issue of attachment sufficient to warrant lifting of the injunction under the prior Order, I rely on the findings of the Order. After considering the testimony and evidence presented, I make the following additional Findings of Fact and Conclusions of Law:

1. I find that the photographs of the finished property are the most compelling evidence in this case.

2. I find that the Defendants have constructed a series of trellises or pergolas which have been attached at one end to the Main Residence and at the other end to the Garage by screws.

3. The Defendants argue that the two buildings are now sufficiently joined such that the Garage is no longer an “outbuilding” as referenced by the applicable Restrictive Covenants.

4. While there does not seem to be a case in South Carolina directly on point, cases from other jurisdictions provide compelling instruction. See, e.g., Barna v. Langendoerfer, 246 A.3d 343, 347 (Pa. Super. Ct. 2021) (finding a failure to comply with restrictive covenant requiring garage to be attached to house when garage was connected to house by pergola breezeway and did not share a wall); Scherer v. Antiquers Aerodome, Inc., 546 So. 2d 103, 104 (Fla. Dist. Ct. App. 1989) (finding two hangars connected by a breezeway did not comply with a restrictive covenant limiting owner to one hangar).

5. I find the Main Residence and Garage do not share a wall or any interior space, such that one must go outside of the Main Residence to enter the Garage. I find that Garage has

not been sufficiently joined to the Main Residence to form one residence building and the Garage remains an “outbuilding.”

It is therefore ORDERED THAT the injunction previously entered by this Court remains in effect.

It is further ORDERED THAT this court retains jurisdiction over this matter and, should the Defendants attach the Garage to the Main Residence, Defendants may seek a ruling from this Court on whether the construction is such that, in this Court’s determination, the Garage no longer has the status of an outbuilding and such that the living space therein may be used as a residence.

IT IS SO ORDERED.

Hon. Shannon M. Phillips
Master-in-Equity
Spartanburg County

July _____, 2022
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Derrick S. Hester , plaintiff, et al VS Mark Razzano , defendant, et al

Case Number: 2018CP4202247

Type: Order/Rule To Show Cause

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087