

FINDINGS OF FACT

1. Defendant Adesso Homeowners' Association ("Association") is a nonprofit corporation organized and existing under the laws of the State of South Carolina, with its principal place of business being in Richland County.

2. Defendant Adesso Horizontal Property Regime ("Regime") is a horizontal property regime organized pursuant to the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et seq.*

3. Defendant Holder Properties, Inc. ("Holder") is a corporation organized and existing under the laws of the State of Georgia and is authorized to conduct business in South Carolina.

4. Defendant Adesso/Columbia, LLC is a limited liability company organized and existing under the laws of the State of Georgia and is authorized to conduct business in South Carolina.

5. Defendant John R. Holder is a citizen and resident of the State of Georgia, and at times relevant hereto, transacted business in Richland County as the sole member of Adesso/Columbia, LLC.

6. The Adesso is a mixed-use development comprising 110 upscale residential condominium units, ground floor commercial units, and associated common and limited common elements.

7. All units, common elements, and limited common elements are housed within one building located at 601 Main Street, Columbia, SC 29201.

8. Holder developed the Adesso. On January 14, 2008, Defendant Adesso/Columbia, LLC established the Regime by recording the Adesso Master Deed in the Office of the Register of Deeds for Richland County, in Book 1392 at Page 855 ("Master Deed"). The Master Deed is

attached as Exhibit 3 to the Adesso Defendants' Memorandum in Support of their Motion for Summary Judgment and is incorporated, in full, in this Order by reference.

9. The Master Deed also created the Association to, among other things, manage the Regime's affairs, prescribe rules for the use of the Regime's General Common Elements, and to "maintain[], repair[], and replace[] all of the General and Limited Common Elements...".

10. Each owner of a unit at the Adesso is a member of the Regime and the Association, and he or she is subject to the Master Deed, Bylaws, and other governing documents of the Association.

11. The Association, acting through its Board of Directors ("Board"), possesses the authority "[t]o make, levy, and collect assessments against members and members' Units to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association."

12. To calculate annual assessments to unit owners, the Master Deed generally requires that each unit owner be assessed an amount for his or her share of the Association's expenses equal to the share of the interest his or her unit bears in relation to the entire undivided interest of the Regime.

13. The Plaintiff's Commercial Units at issue in this case ("Commercial Units") comprise a total 8.54279% interest in the total undivided interest of the Regime.

14. To develop annual assessment budgets for the Adesso, the Master Deed also requires the allocation of residential and commercial assessments as follows:

"[S]eparate budgets for the Commercial Units and Residential Units shall be developed annually and no costs, expenses and budget items specifically attributed to Residential Units shall be included in the budget for Commercial Units and vice versa; likewise, costs, expenses, and budget items which affect Residential and Commercial units shall be appropriately allocated in relation to the use by the Owners of such Units..."

15. The Master Deed identifies certain Limited Common Elements benefitting either Residential and Commercial Units, or solely Commercial Units.

16. Section V(A)(3) of the Master Deed sets forth examples of Limited Common Elements benefitting both Commercial and Residential Units. Such Limited Common elements include, but are not limited to: (1) "Sidewalks, Plantings, and Lighting along Main and Blossom and all appurtenances thereof;" (2) "Trash Chute;" (3) "Trash Compactor;" (4) "Service Elevator;" (5) "Loading Dock and all appurtenances thereof;" (6) Exterior security cameras and all appurtenances thereof;" and (7) "Roof." Additionally, Section V(B) of the Master Deed sets forth examples of General Common Elements benefitting the Adesso as a whole.

17. Further, any budget items for Adesso Common Elements, whether Limited or General, which affect both Residential and Commercial Units are properly chargeable to the owner of the Commercial Units, in proportion to his or her use of such Common Elements.

18. The Adesso budget items for which Plaintiff's Commercial units have been assessed are properly chargeable to Plaintiff's units, and the Adesso Defendants have complied with the terms of the Master Deed in doing so.

19. Pursuant to § V(C)(5) of the Master Deed, "Retail Parking Spaces as identified in Exhibit 'C' [to the Master Deed] shall be Limited Common Elements, limited to the use of the Commercial Unit it/they serve. Such spaces shall be marked with identification information designating the limited use of such...[and]...may not be reassigned and shall remain a Limited Common Element relating to the Commercial Unit."

20. The Fourth Amendment to Master Deed of Adesso Horizontal Property Regime ("Fourth Amendment") was recorded on April 22, 2013 in the Richland County

Register of Deeds Office, in Book 1854 at Page 818. The Fourth Amendment is attached as Exhibit 6 to the Adesso Defendants' Memorandum in Support of their Motion for Summary Judgment and is incorporated in this Order by reference.

21. The Fourth Amendment contravened § V(C)(5) of the Master Deed by reassigning the Retail Parking Spaces—specifically spaces numbered 001-017, 108, 157, and 220-221—either to the use of both Commercial and Residential guests, or as leased spaces to the United States Marine Corps and one Adesso resident.

22. The reassignment of the Retail Parking Spaces also violated the commercial parking requirements established by the governing zoning ordinance, the Adesso Planned Unit Development (“PUD”), as amended by letter of Holder Properties, Inc. dated January 24, 2008 (“January 2008 Amendment”). The January 2008 Amendment is attached as Plaintiff's Exhibit 5 to the Deposition of Rachel Lynn Bailey, City of Columbia Zoning Administrator, and is incorporated in this Order by reference.

23. Per the January 2008 Amendment, the Adesso Commercial Units were required to have a total of at least twenty-six (26) dedicated parking spaces, with nineteen (19) restricted access spaces within the building itself, and seven (7) spaces located along Main and Blossom Streets. The January 2008 Amendment also sets forth a formula to calculate the required number of parking spaces based upon future increases or decreases in the Commercial Units' square footage.

24. The Adesso PUD, as amended, rather than general City of Columbia zoning ordinances, controls the parking requirements for the Adesso.

25. Plaintiff purchased the Adesso Commercial Units on December 5, 2014. He did not purchase the properties from the Adesso Defendants or Holder Defendants; rather, Plaintiff purchased them from Ford Elliott, the current owner at the time.

26. By 2014, Plaintiff—who is a well-educated, board-certified Psychiatrist—possessed significant prior experience with commercial real estate acquisitions, having previously acquired four (4) commercial properties—three of which were acquired for investment purposes.

27. Despite his prior experience, Plaintiff did not personally inspect the Commercial Properties or review any of the recorded documents relating to the Adesso development prior to his purchase. Further, Plaintiff did not actually visit the Adesso Commercial Units until late 2016 or early 2017—between two and three years after his purchase of the units.

28. Neither Plaintiff nor his hired professional communicated with the Adesso Defendants with regard to Plaintiff's acquisition of the Commercial Units, and the Adesso Defendants made no statements or other representations to Plaintiff in connection therewith.

29. On March 4, 2015, Plaintiff was notified by a representative of Holder—which provided property management services to the Association until May, 2016—that a lottery would be held among the Adesso owners to determine leasing rights for three of the Adesso Commercial Parking Spaces. Plaintiff was informed that such rights would be sold to the highest bidder.

30. The Adesso Master Deed specifically prohibits the leasing of the Commercial Parking Spaces in this manner.

31. Around March of 2015, one of Plaintiff's tenants, the United States Marine Corps ("Marines"), notified Plaintiff of insufficient parking and of their intent to vacate their leased recruiting center space in one of Plaintiff's Commercial Units if Plaintiff was not able to secure parking for them.

32. Despite being made aware of the Marines' complaints regarding parking, as well as being required to lease back Commercial Parking Spaces almost immediately after he took ownership of the Commercial Units, Plaintiff took no action to investigate the parking requirements of the Adesso Master Deed or the Adesso PUD until 2017.

33. Further, Plaintiff has paid assessments to the Association since the date he purchased the commercial units, and he took no action to investigate any potential claims relating to the charging of assessments until 2017.

34. In June, 2018, the Adesso Defendants changed the signage for, or otherwise restricted access to, 21 parking spaces within the Adesso, to limit the spaces designated for the use of the Commercial Units to "retail use only," to bring the allocation of Commercial Parking Spaces into compliance with Section V of the Master Deed.

35. In addition to the 21 parking spaces within the Adesso, there is sufficient on-street parking within 400 feet of the Adesso to serve Plaintiff's Commercial Units, such that the parking spaces available for the use of Plaintiff's units also comply with the Adesso PUD, which is the applicable City of Columbia Zoning Ordinance.

36. Plaintiff took no action to investigate his potential claims until 2017.

37. Plaintiff did not file this action until February 14, 2019.

38. Plaintiff has agreed to withdraw his South Carolina Unfair Trade Practices (SCUTP) claim as to the Adesso Defendants.

Based upon the foregoing, the undersigned finds and concludes as follows:

CONCLUSIONS OF LAW

39. This Court has proper jurisdiction over the parties to this action and the claims herein asserted.

40. Venue is proper in Richland County.

41. The Adesso Defendants have not breached the Master Deed.

42. The Adesso Defendants have complied with the provisions of the Adesso Master Deed in charging assessments to Plaintiff's Commercial Units.

43. The allocation of Adesso Retail Parking Spaces limited to the use of Plaintiff's Commercial Units complies with the Master Deed.

44. Further, the allocation of Adesso Retail Parking Spaces available for the use of Plaintiff's Commercial Units complies with the requirements of the Adesso PUD, which is the controlling City of Columbia Zoning Ordinance.

45. By as early as December, 2014, at the time Plaintiff purchased the Commercial Units, Plaintiff knew or should have known of the existence of his claims regarding the allocation of parking spaces at the Adesso and the charging of assessments. At the time of purchase, information regarding parking-related conditions and charging of assessments, about which Plaintiff complains, were matters of public record.

46. Further, by as late as March, 2015, Plaintiff knew or should have known of his parking-related claims because Plaintiff possessed actual knowledge regarding matters of Commercial parking allocation, raised by both Holder and the Marines, which conflicted with Section V of the Master Deed.

47. Plaintiff's claims, if any, regarding the allocation of parking spaces at the Adesso and the charging of assessments to his Commercial Units accrued as early as December, 2014, and by no later than March, 2015.

48. Pursuant to the discovery rule, as articulated by the Court of Appeals in *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (S.C. Ct. App. 1998) and the Supreme Court in *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520, 443 S.E.2d 537 (1994)), the undersigned finds that a person of common knowledge and experience, through the

exercise of reasonable diligence, would have discovered Plaintiff's parking-related claims and assessment claims by as early as December, 2014, and in any event, no later than March, 2015. Prior to and at the time he purchased the Commercial Units, Plaintiff had ample opportunity to investigate the public record—which would have disclosed the state of Commercial parking allocation at the Adesso and the method by which assessments would be charged to Plaintiff's Commercial Units—had he chosen to do so.

49. A person of common knowledge and experience, through the exercise of reasonable diligence under the facts of this case, would have investigated any matters potentially affecting Plaintiff's Commercial Units prior to purchasing them—including the publicly-available: (1) Adesso Master Deed; (2) amendments to the Master Deed; (4) other Adesso governing documents; and (5) Adesso PUD and other City of Columbia Zoning documents.

50. Plaintiff made no attempts to investigate the matters underlying his claims until 2017, and Plaintiff did not file this action February 14, 2019.

51. The doctrines of equitable estoppel and equitable tolling are inapplicable to this case because Plaintiff has failed to produce sufficient evidence that the Adesso Defendants made any false representations to Plaintiff. Further, Plaintiff knew or had the means to know the truth as to the facts in question by no later than March, 2015, and Plaintiff could not have justifiably relied on representations, if any, made by Defendants.

52. Pursuant to S.C. Code Ann. § 15-3-530, Plaintiff was required to bring his claims for Negligence/Gross Negligence, Breach of Master Deed, Declaratory Judgment, Injunctive Relief, Negligent Misrepresentation, and Constructive Fraud by 2018, or his claims were forever barred.

53. Pursuant to S.C. Code Ann. § 39-5-150, Plaintiff was required to bring an action to enforce his Unfair Trade Practices Act claim by 2018, or his claim was forever barred. Additionally, even if such claim were not time-barred, Plaintiff has withdrawn it as to the Adesso Defendants.

54. Therefore, pursuant to Rule 56, SCRCP, and upon consideration of all the evidence and arguments presented by the parties, the undersigned finds there is no genuine issue of material fact that Plaintiff had at least constructive knowledge of the existence of his potential parking-and-assessment-related claims by no later than March, 2015, and further, that Plaintiff failed to bring an action to enforce his claims by 2018. Therefore, the Adesso Defendants are entitled to judgment as a matter of law that Plaintiff's claims are time-barred by the above statutes of limitations.

55. In addition to the grounds set forth in Paragraph 54, the undersigned also finds there is no genuine issue of material fact that: (1) the allocation of Commercial parking spaces at the Adesso complies with both the Master Deed and the Adesso PUD, which is the applicable City of Columbia Zoning ordinance; and (2) the Adesso Defendants have complied with the terms of the Master Deed in charging assessments to Plaintiff's Commercial Units. Further, because the Commercial parking allocation and charging of assessments comply with the Adesso Master Deed and City of Columbia Zoning requirements, Plaintiff has failed to demonstrate facts and circumstances warranting an injunction in this action. *See Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Therefore, the Adesso Defendants are entitled to judgment as a matter of law regarding Plaintiff's claims for Declaratory Judgment, Injunctive Relief, Breach of Master Deed, and Negligence/Gross Negligence.

Therefore, it is ORDERED, ADJUDGED, AND DECREED that:

A. The Adesso Defendants' Motion for Summary Judgment is hereby GRANTED as to all claims asserted in this action by Plaintiff.

B. This action, and all claims asserted herein against the Adesso Defendants, are hereby **dismissed with prejudice**.

IT IS SO ORDERED.

The Honorable DeAndrea G. Benjamin
Fifth Judicial Circuit

[Signature Page to Follow]

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Richland Common Pleas

Case Caption: Emad Tadros , plaintiff, et al vs Holder Properties Inc , defendant, et al
Case Number: 2019CP4000919
Type: Order/Summary Judgment

So Ordered

s/DeAndrea Gist Benjamin, #2161

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