STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF OCONEE	**CASE NO.: 2020-CP-37-00765**
The Estate of David Greene, Plaintiff, v. MT Investments, LLC, Lakewood Capital Group, LLC, Marina Bay Property Owners Association, Inc., and John Doe(s), Members of MT Investments, LLC, Defendants.	**ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF MT INVESTMENTS, LLC, LAKEWOOD CAPITAL GROUP, LLC AND JOHN DOE(S) MEMBERS OF MT INVESTMENTS, LLC**

This matter came before the Court on the motion of Defendants MT Investments, LLC, Lakewood Capital Group, LLC, and John Doe(s) Member of MT Investments, LLC (the "MT Defendants") for summary judgment. Having considered the pleadings, memoranda, evidentiary submissions of the parties and the arguments of counsel, for the reasons set forth below, the MT Defendants' motion for summary judgment is granted.

FACTS

The undisputed facts are as follows: On or about September 9, 2016, David Greene bought a lakefront lot, Lot 14, at Marina Bay Subdivision on Lake Keowee from MT Investments, LLC. The purchase price was $224,900.00. The Marina Bay Property Report (the "Property Report"), which Mr. Greene had in his possession at the time of his death, indicated that his lot could have a dock subject to approval by Duke Energy Land Management ("Duke"). Further, the Declaration of Covenants, Restrictions, Property Owners Association and Limitations Running with the Land

for Marina Bay Subdivision (the "Declaration") specifically noted that some lots were not dockable, but Lot 14 was not included among those lots.

Mr. Greene built a house on the lot, but not a dock. On May 19, 2018, Mr. Greene passed away. The property then devolved to his heirs.

On or about, September 22, 2020, Mr. Greene's heirs sold the property for $690,000.00. However, in the process of selling the property, the heirs discovered that the lot could not have a U-shaped dock without getting the neighbors' permission. While the property was eventually approved for an L-shaped dock, the Estate of David Greene brought this action contending that the ability to have a U-Shaped dock would have made the property more valuable, and, therefore, the Estate was alleged to have been damaged.[1]

Plaintiff has set forth claims against the MT Defendants for breach of contract, negligent misrepresentation, and negligence. The claims for breach of contract and negligent misrepresentation are based upon Plaintiff's allegation that that the property Mr. Greene purchased had been advertised as being dockable, and that there were no restrictions shown in any materials he was provided as to the type of dock that he could have. The materials upon which Plaintiff claims Mr. Greene relied are the Property Report and the Declaration. Plaintiff's claim of negligence is that that the MT Defendants owed a duty to Mr. Greene to design the subdivision so that his lot could have a dock not subject to restrictions as to size.

Standard for Summary Judgment

Under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v.*

[1] The action was originally brought in the name of Adam Greene; however, the Estate of David Greene was later substituted as the proper party plaintiff.

Rose, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002); *Baril v. Aiken Reg'l Med. Ctrs.,* 352 S.C. 271, 280, 573 S.E.2d 830, 835 (Ct.App.2002). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Russell v. Wachovia Bank, N.A.,* 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003); *Smith v. South Carolina Ins. Co.,* 350 S.C. 82, 85 564 S.E.2d 358, 360 (Ct.App. 2002). In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Cunningham v. Helping Hands, Inc.,* 352 S.C. 485, 491, 575 S.E.2d 549, 552 (2003); *Faile v. South Carolina Dep't of Juvenile Justice,* 350 S.C. 315, 324, 566 S.E.2d 536 540 (2002); *McNair v. Rainsford,* 330 S.C. 332, 340, 499 S.E.2d 488, 493 (Ct.App.1998).

DISCUSSION

Plaintiff argues that the statements in the Property Report and in the Declaration imply that there were no restrictions as to the type of dock that Lot 14 could have and that those documents are part of the contract between Mr. Greene and MT Investments, LLC.

Although the Property Report states, *inter alia,* that there are "no established sizes or designs required [for docks] according to Shoreline Management Guidelines." The Marina Bay Property Report also states:

> This property report contains important information regarding responsibilities associated with future development of this property. The following information has been obtained from sources deemed reliable. No representation or guarantee to the accuracy thereof is made and such information is subject to change without notice.

The Property Report also discloses that all matters concerning docks are under the control of Duke.

Furthermore, the contract of sale signed by Mr. Greene states, in part, at Paragraph VI:

> Purchaser acknowledges and agrees that Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind, character, or nature whatsoever, whether express or implied, oral or written, past, present, or future, of, as to, concerning or, with respect to the Property. Purchaser has had the opportunity to inspect the Property to the greatest extent that Purchaser desires, and Purchaser has not relied and is not relying upon any representations, warranties, promises, covenants, agreements or guarantees of any kind whatsoever by Seller or their representatives.

The contract of sale also includes a merger clause stating, in part:

> Purchaser and Seller agree that this agreement, including all referenced addenda, is the only agreement between them and that no representations, oral or written, have been made or relied on which are not set out herein.

Any statements in the Property Report are excluded from the contract under the Parol Evidence Rule. *Gilliland v. Elmwood Properties,* 301 S.C. 295, 302, 391 S.E.2d 577, 581 (1990) ("None of the alleged breaches of contract can be evidenced by express contractual provisions. The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to the execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument.")

Further, because this transaction involves a deed, the doctrine of merger prevents the plaintiff from offering evidence contrary to or in addition to the terms of the deed. *Hughes v. Greenville Country Club*, 283 S.C. 447, 450-51, 322 S.E.2d 827, 828 (Ct. App. 1984). The deed to Lot 14 does refer to the Declaration. However, the Declaration provides that docks must be approved by Duke and does not state what types of docks are available to be built on any lot.

Therefore, the Plaintiff cannot prevail on its claim for breach of contract, and the MT Defendants are entitled to summary judgment as to that claim.

Negligent Misrepresentation

To prove negligent misrepresentation, "[T]he plaintiff must allege and prove the following essential elements to establish liability for negligent misrepresentation: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement;(3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992).

As an initial matter, no evidence presented to the Court indicates that the MT Defendants represented to decedent that Lot 14 could definitely have a U-shaped dock. The Property Report states that it contains information from sources deemed reliable, that that information is not guaranteed as to its accuracy and that it is subject to change. The Declaration makes no representation about the size or shape of the dock that a particular lot could have – other than identifying those which could not have docks at all.

As noted above, Paragraph VI of the contract of sale specifically provides that the Buyer had the opportunity to inspect the property and has not relied and is not relying on any representations of Seller with respect to the property. In *Slack v. James*, 364 S.C. 609, 617-18, 614 S.E.2d 636, 640-41 (2005), the South Carolina Supreme Court, citing *Redwend v. Ltd Partnership v. Edwards,* 354 S.C. 459, 469-71, 581 S.E.2d 496, 502 (Ct. App. 2003), held that for

a non-reliance clause to be able to defeat a claim for negligent misrepresentation, the clause must use the word "rely" or "reliance" and must be set apart from a merger clause. *Id.*

The clause at issue in this case meets both of those criteria. The non-reliance clause is in a paragraph separate from the merger clause and is entitled *Inspection*. It uses the terms "rely" and "relying." It deals with the buyer's right to inspect the property and disclaims any representations about it. Further, the terms of non-reliance are very specific and relate to representations about the property. Therefore, this is a valid non-reliance clause.

Also, there is no evidence as to what the decedent did or did not rely upon in purchasing Lot 14. No evidence has been presented as to Mr. Greene's knowledge about the dockability of the lot prior to purchasing it, such as whether he spoke with someone at Duke about the matter. Finally, there is no specific representation made in any document as to what type of dock could be placed on the property. Therefore, Plaintiff's cause of action for negligent misrepresentation cannot withstand summary judgment.

Negligence

"To prevail in an action founded in negligence, the plaintiff must establish three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty." *Vinson v. Hartley,* 324 S.C. 389, 399, 477 S.E.2d 715, 720 (Ct.App. 1996). The premise of Plaintiff's claim for negligence is that the MT Defendants owed Plaintiff a duty to develop the property so that Plaintiff's lot was not subject to restrictions on the type, size and design of the dock permitted to be installed on the property. However, in response to the MT Defendants' motion, Plaintiff has not presented any authority indicating that the MT Defendants owed such a duty to Plaintiff. As discussed above, MT Investments made clear at all times that whether and

when a property is dockable is totally up to Duke. Without a duty, the MT Defendants cannot be liable in negligence.

Conclusion

WHEREFORE, viewing the evidence in the light most favorable to Plaintiff, the Court finds that there is no genuine issue as to a material fact sufficient to avoid summary judgment in this matter. Therefore, the motion for summary judgment of Defendants MT Investments, LLC, Lakewood Capital Group, LLC, and John Doe(s) Member of MT Investments, LLC is GRANTED as to all claims.

IT IS SO ORDERED.

R. Lawton McIntosh
Circuit Judge

Oconee Common Pleas

Case Caption: Adam Greene , plaintiff, et al VS Mt Investments Llc , defendant, et al

Case Number: 2020CP3700765

Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH