

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

FREDERICK E. BROWN, *et al.*,
Plaintiffs,

CIVIL CASE NO. 2018-CP-26-03173

vs.

JEFFERY L. RICHARDSON, *et al.*,
Defendants.

**ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER,
ALTER, OR AMEND**

and

MYRTLE BEACH RESORT
HOMEOWNERS' ASSOCIATION, INC.,
Nominal Defendant.

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Oct 27 2022

SC Court of Appeals

This matter comes before the Court on Plaintiffs' Motion to Reconsider, Alter, or Amend the Court's Order Granting Defendants' Motion for Summary Judgment and Also Denying Plaintiffs' Motions for Summary Judgment filed January 18, 2022.¹ Defendants filed a Memorandum in Opposition on March 17, 2022. Plaintiffs filed a Reply Memorandum on March 21, 2022. Pursuant to the South Carolina Supreme Court's Administrative Order dated January 28, 2022², the undersigned determined that a hearing on the Motion is unnecessary because the Motion may readily be decided without further input from the lawyers. The Motion is now ripe for adjudication.

The Court has considered all of the arguments raised in Plaintiffs' Motion and supporting Memoranda. For the reasons stated herein, the Court denies the Motion.

PROCEDURAL POSTURE

Plaintiffs' Motion to Reconsider dates back to their initial Motion for Summary Judgment filed March 24, 2020. Plaintiffs filed a memorandum in support of their motion

¹ Plaintiffs filed an Amended Motion and Memorandum January 20, 2022.

² Supreme Court Order No. 2022-01-28-01.

on April 30, 2021. Defendants filed their motion for partial summary judgment March 22, 2021, and their memorandum in support on April 28, 2022. The Court conducted a hearing May 4, 2021, and issued a written Order dated January 10, 2022 granting partial summary judgment to Defendants. Plaintiffs filed the instant Motion to Reconsider on January 18, 2022. Plaintiffs filed an amended Motion and Memorandum on January 20, 2022.

This action was previously assigned to the Honorable R. Markley Dennis, Jr. by Order dated April 24, 2020. Judge Dennis heard the original motion for summary judgment and entered the Order to which Plaintiffs' Motion to Reconsider is addressed. By email dated April 6, 2022, Judge Dennis communicated to all counsel of record his decision to deny the Motion to Reconsider. Judge Dennis requested Defendants prepare the Order, and counsel for Defendants submitted the proposed Order to Judge Dennis' chambers by email dated April 7, 2022. Judge Dennis retired without issuing a written Order on the Motion to Reconsider, and Court administration assigned this action to the undersigned by Order dated August 26, 2022 for handling of all matters, including "all pretrial motions and other matters pertaining to this case".

DISCUSSION

1. The Court properly interpreted Section 4.1 of Article IV of the Declaration. Plaintiffs argue the Court erred in interpreting the discretionary powers of Section 4.1. The Court is not persuaded by Plaintiffs' arguments in this regard. The language of Section 4.1 clearly grants the Master Association Board additional powers that it may employ in the management of the Master Association. Article III, Section 3.2 of the Declaration states the Board shall act in accordance with the By-Laws. The language of Article VIII, Section 8(e) of the Amended By-Laws does not require the Board to employ

the powers set forth in Section 4.1. Rather, it requires the Board to exercise its discretion in employing the powers set forth in Section 4.1, which necessarily entails the right not to employ said powers.

2. Article XVIII of the Master Deeds does not persuade the Court to a different conclusion. Plaintiffs argue that Article XVIII of the Master Deeds confirm that the Section 4.1 powers are mandatory. Article XVIII does not reference Section 4.1, but addresses unit owners' obligations to pay certain assessments to the Master Association for "Resort Expenses" "as such exist from time to time."

3. S.C. Code Ann. §§ 27-31-160 and 240 do not mandate a different result. Section 27-31-160 does not mandate an association's board of directors do anything. Rather, that section simply requires the By-Laws to include certain topics. Similarly, section 27-31-240 does not require the board of directors to insure the property. It actually requires the council of co-owners to insure the property. Under the Act, the term "council of co-owners" means all owners who own an apartment in the building. See S.C. Code Ann. § 27-31-20(d) and (e). In fact, the Act does not define, use, or mention the term "board of directors."

4. Sections 6.2 and 6.4 of the Declaration also do not suggest a different result. The Court, in its prior order, harmonized the language of Section 4.1 with the other relevant language of the Declaration.

5. The Court is unpersuaded by Plaintiffs' argument regarding the Court's reconciliation of Section 8(e) of the Amended By-Laws and Section 4.1 of the Declaration. The Court addressed this argument in its Order of January 10, 2022. The language of these two sections is neither contradictory nor repugnant to each other.

6. Even assuming the Board undertook to employ one or more of those powers enumerated in Section 4.1, such assumption does not make those powers mandatory. Rather, the employment of some or all of the powers over time demonstrates the discretionary nature of such powers.

Having addressed all of the arguments posed by Plaintiffs, the Court denies the Motion for Reconsideration. To the extent the Court has not addressed a specific argument raised by Plaintiffs in this Order, the Court rejects each such argument and denies Plaintiffs' Motion to Reconsider.

AND IT IS SO ORDERED.

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Horry Common Pleas

Case Caption: Frederick E Brown , plaintiff, et al VS Jeffery L Richardson ,
defendant, et al
Case Number: 2018CP2603173
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157