

Oct 27 2022

SC Court of Appeals

ELECTRONICALLY FILED - 2022 Jan 10 4:26 PM - HORRY - COMMON PLEAS - CASE#2018CP2603173

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 GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

and

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

This matter comes before the Court on the Motion for Summary Judgment filed by Defendants Jeffery L. Richardson, Nancy L. Moore, Peter A. Grusauskas, and Jim Perkins ("Defendants"), as well as Plaintiffs' Motion for Summary Judgment. Defendants request summary judgment on Plaintiffs' Third Cause of Action for Declaratory Judgment. Plaintiffs' Third Cause of Action seeks a judgment of this Court declaring the language of Section 4.1, Article IV of the Declaration of Covenants, Conditions and Restrictions for the Myrtle Beach Resort Homeowners' Association, Inc. (hereafter, the "Declaration") grants additional mandatory powers to the Board of Directors for the Myrtle Beach Resort Homeowners' Association, Inc. (hereafter, the "Master Association", "Association", or the "Board"). The undersigned heard the Motion for Summary Judgment on May 4, 2021. Charles Jordan and Howell Bellamy appeared for the Plaintiffs, and Bruce Wallace and Clay Turner appeared for the Defendants. Nick Rivera and Robert Lee appeared for the nominal Defendant Association. For the reasons set forth below, the Court grants

summary judgment in favor of Defendants and declares that Section 4.1, Article IV merely grants additional powers to the Board, but does not mandate their use by the Board.

Standard of Review

Both Plaintiffs and Defendants agree the third cause of action involves the interpretation of a contract and, as such, constitutes an action at law. See *Jacobs v. Service Merchandise Co.*, 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). A trial court may determine summary judgment is appropriate "when 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." Rule 56(c), SCRPC. "[T]o resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial. Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party's case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings." *Nationsbank v. Scott Farm*, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995).

Discussion

The parties agree that the language of Section 4.1 of Article IV of the Declaration is clear and unambiguous. Section 4.1, Article IV of the Declaration states in relevant part:

4.1 The Association, acting through the Board of Directors, shall also have the power to: (a) maintain all streets and roads within the Property, including cleaning and periodic resurfacing; (b) provide for all refuse collection (c) obtain, for the benefit of the Property, by purchase, lease or otherwise, as deemed proper by the Board of Directors, cable or master

television service and telephone service; (d) maintain the oceanfront area; (e) grant easements, rights-of way or strips of land, where necessary, for utilities, and sewer facilities and other services over the Common Areas to service the Property; (f) maintain such policy or policies of liability and fire insurance with respect to property owned by the Association; (g) employ or contract with a management company to perform all or any part of the duties and responsibilities of the Association, including further duties and responsibilities which may be delegated to the Association by the Individual Condominium Associations and to equitably apportion assessments of same; (h) install and maintain security devices, detectors and communication facilities and contract for employment of security services, guards and watchmen for the project; (i) take such other reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.

The parties also agree that the rules of construction for contracts apply to the resolution of this Motion. “The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties.” *Chan v. Thompson*, 302 S.C. 285, 289, 395 S.E.2d 731, 734 (Ct.App.1990). “In determining the intention of the parties, a court first looks to the language of the contract and if the language is clear and unambiguous, the language alone determines the contract's force and effect.” *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146-47, 538 S.E.2d 672, 675 (Ct. App. 2000). “The intention of the parties is to be gathered from the whole scope and effect of the language used.” *Id.*, 343 S.C. at 147, 538 S.E.2d at 675, see *Greenwood Mfg. Co. v. Worley*, 222 S.C. 156, 71 S.E.2d 889 (1952). The Court will interpret documents to give effect to all of their provisions, if practical. *Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997).

The parties posit the question as follows – does the language of Section 4.1 of Article IV create mandatory obligations for the Board to follow unerringly or merely grant additional powers that the Board may exercise in their discretion? For the reasons set

forth in the Defendants' Memorandum of Law, and as explained below, the Court concludes that the powers set forth in Section 4.1 are not mandatory obligations and constitute only an additional grant of discretionary authority.

Under South Carolina law, “[c]ontract interpretation begins with the plain language of the agreement.” *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 756 S.E.2d 148, 152 (2014) (citation omitted) (internal quotation marks omitted). Where the contract's language is clear and unambiguous, the language alone determines its effect. *Schulmeyer v. State Farm Fire & Casualty Ins. Co.*, 353 S.C. 491, 579 S.E.2d 132, 134 (2003). Section 4.1 starts with “[t]he Association, acting through the Board of Directors, shall also have the power to ...” Thereafter, Section 4.1 enumerates several powers of the Board. Plaintiffs ask the Court to ignore the words “also have to power to” and determine that Section 4.1 mandates the Board exercise each of the enumerated powers, without discretion or consideration. Defendants ask the Court to read the phrase “also have the power to” in conjunction with the Declaration's use of similar phrases to determine Section 4.1 merely grants additional powers, which are discretionary in nature.

Other sections of the Declaration use similar but not identical language. Specifically, Section 3.2 of Article III, which appears immediately before section 4.1 in the Declaration, states “[t]his Board of Directors shall act in accordance with the By-Laws which are attached hereto as Exhibit B.” Section 3.2 lacks the phrase “ha[s] the power to”, demonstrating the Declarant's intention to differentiate between mandatory and discretionary authority for the Board. Similarly, Section 2.1 of Article II of the Declaration states the Association has “**the power to** grant and accept easements to and from any private and public authority...”, which easements “**may be** granted or accepted by the

Association...” (emphasis added). The language in Section 2.1 tracks the language of Section 4.1(e), again indicating the Declarant’s intent to create discretionary powers for the Board. The Court cannot interpret the language in 4.1 as mandatory where Section 2.1 clearly grants discretion in the use of one of those powers. To do as Plaintiffs’ contend would ignore the language of section 2.1 completely. Moreover, Plaintiffs’ interpretation ignores the phrase “shall also have the power to” in Section 4.1.

The By-Laws reinforce the Court’s conclusion. Section 8 of the By-Laws states in relevant part:

Consistent with these By-Laws and applicable Declarations, the Board shall: (a) transact all Association business ...; (b) annually set a budget for the Association; (c) fix, impose, and remit penalties for violations of these By-Laws and the rules and regulations of the Association; (d) elect from the Board... the President, Vice-President, Secretary and Treasurer; (e) carry out all other duties and obligations imposed and exercise all rights granted it by these By-Laws, the Declaration, and the Act.

Both parties agree that section 3.2 of Article III of the Declaration and Section 8 of the By-Laws mandate certain Board actions. Conspicuously missing from both these sections, however, is the phrase “also have the power to” as seen in Section 4.1, Article IV of the Declaration.

Plaintiffs’ citation to subsection 8(e) of the By-Laws does not move the Court to a different conclusion. That subsection states the Board “shall ... exercise all rights granted it by these By-Laws, the Declaration and the Act.” Plaintiffs argue that “rights” are equivalent to “powers”, such that the Board must exercise the powers set forth in Section 4.1. The Court concludes that subsection 8(e), read in conjunction with the By-Laws and the Declaration as a whole, corroborates the discretion granted to Board in Section 4.1. Again, when compared with other language in the Declaration and the By-Laws, the Court

cannot reconcile the documents other than to conclude Section 4.1 grants additional discretionary powers. Any other interpretation eviscerates Section 4.1(i) of Article IV of the Declaration, which grants the Board the power to “take other such reasonable action as the Board shall deem advisable with respect to the Myrtle Beach Resort for the benefit of the overall Property.” And no interpretation advanced by the Plaintiffs reconciles this broad grant of discretionary power with a mandate that takes that discretion away.

Conclusion

For these reasons, the Court declares the language of Section 4.1 of Article IV of the Declaration grants additional powers or authority to the Board, but the Board is not required to exercise those powers. In so declaring, the Court hereby GRANTS Defendants’ Motion for Summary Judgment as to Plaintiff’s Third Cause of Action.

For the reasons set forth in the record of the hearing May 4, 2021, the Court DENIES Plaintiffs’ Motion for Summary Judgment.

AND IT IS SO ORDERED.

Electronic signature on next page
R. MARKLEY DENNIS, Judge



Horry Common Pleas

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

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060