

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Chandelle Property Owners Association,

Plaintiff,

vs.

James Douglas Armstrong, Jane Armstrong, Kenneth L. Galloway, Molly C. Galloway, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006, and also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein,

Defendants.

James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as Trustee of the Greer R.G. Irrevocable Property Trust dated October 25, 2006

Third-Party Plaintiffs,

v.

Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third-Party Defendants

Kenneth L. Galloway & Molly C. Galloway

Third Party Plaintiffs,

vs.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
C/A No: 2016-CP-42-01854

**ORDER GRANTING PLAINTIFF'S
MOTION
FOR PARTIAL SUMMARY JUDGMENT
AGAINST JAMES DOUGLAS
ARMSTRONG, JANE ARMSTRONG,
WARREN JOHNSON, RHONDA
JOHNSON, JOHN K. PAYNE, RUTH G.
PAYNE, AND JANE VAN WIEREN AS
TRUSTEE OF THE GREER R.G.
IRREVOCABLE PROPERTY TRUST,
DATED OCTOBER 25, 2006**

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SC Court of Appeals

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Billy J. Israel, Bruce R. Goldberg, Cindy R. Goldberg and George Lynn Fleming in their personal and official capacities,

Third-Party Defendants

This matter came before me on Plaintiff's Motion for Partial Summary Judgment against James Douglas Armstrong, Jane Armstrong, Warren Johnson, Rhonda Johnson, John K. Payne, Ruth G. Payne, and Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (collectively, the "**Subject Defendants**"), which was filed on August 19, 2022. A hearing on this motion was held before me on September 13, 2022. At the hearing, attorneys Ely O. Grote, D. Ryan McCabe, and John D. Harjehausen appeared on behalf of Plaintiff, and attorney Wendell L. Hawkins appeared on behalf of the Subject Defendants. After hearing oral argument, reviewing the memoranda and related documentation submitted by the parties, and after fully considering the facts and circumstances, I GRANT partial summary judgment to Plaintiff as follows and I find and order as follows.

FACTUAL BACKGROUND/FINDINGS OF FACT

1. *Development Background*

CSC Developers, LLC was the primary developer of Chandelle Subdivision. In February of 1997, CSC Developers, LLC entered into an agreement with James P. Brockman, Sr. to include approximately thirteen (13) acres of Mr. Brockman's land in the Chandelle Subdivision that was going to be developed.

In connection with the development of Chandelle Subdivision, CSC Developers, LLC recorded a Declaration of Covenants, Conditions and Restrictions for Chandelle Subdivision on December 16, 1997, in the Office of the Register of Deeds for Spartanburg County in Deed

Book 67-A at Page 0583 (the “**Original Declaration**”). The Original Declaration, as amended and supplemented, shall hereinafter be referred to as the “**Declaration**”.

The Original Declaration originally specified that Lots 1 through 26 were subject to and bound by the Declaration. Specifically, the Original Declaration provided on the first page thereof as follows:

NOW, THEREFORE, Declarant, by this DECLARATION of Covenants, Conditions and Restrictions does hereby declare that all the property described herein and shown as lots 1 through 26 on the Chandelle Subdivision plat dated September 24, 1997 by Huskey & Huskey, Inc. for Spartanburg County, South Carolina is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure for the benefit of each owner thereof.

The plat referenced above in the Original Declaration shall hereinafter be referred to as the “**Section 1 Plat**”. The land owned by James Brockman, Sr. included on the Section 1 Plat encompassed roughly Lots 1-10. Uncontroverted evidence was submitted that Mr. Brockman was provided with a copy of the Section 1 Plat and was aware that his lands were included on the plat. Although the Section 1 plat was approved for recording, according to CSC Developers, LLC, the Section 1 Plat was just kept on file with the Spartanburg County Planning Commission and the lots in Section 1 of Chandelle Subdivision were sold by reference to individual lot surveys in order to save on taxes.

It is uncontroverted that CSC Developers, LLC intended all of the property shown on the Section 1 Plat to be part of the Chandelle Subdivision and bound by the Declaration, specifically including Lots 1-10. Out of Lots 1-10, Lots 1, 5, 7, 8, 9, and 10 have been sold thus far, and all of the deeds from Mr. Brockman, Sr. to the initial purchasers of these Lots specifically reference the property as being subject to the Declaration.

Further, the Declaration envisions and authorizes additional property being subjected to the Declaration and added to Chandelle Subdivision.¹ After the Original Declaration was recorded, CSC Developers, LLC did in fact continue to expand Chandelle Subdivision. After the Original Declaration was recorded, the following plats of additional sections of Chandelle Subdivision were recorded:

- Chandelle Section 1-A, recorded on September 1, 1998 in Plat Book 142, Pg. 376
 - Depicting roads and Lots 13 and 22.
- Chandelle Section 2A, recorded November 8, 2000 in Plat Book 149, Pg. 64
 - Depicting Lots 50, 51, 52, 53, and 54
- Chandelle Section 3-A, recorded September 26, 2002 in Plat Book 153, Pg. 97
 - Depicting Lot 39
- Chandelle Section 3, recorded November 5, 2004 in Plat Book 156, Pg. 982
 - Depicting Lots 39A, 40, 41, 42, 43, 44, 45, 46, and 47, and additional land.

Thereafter, CSC Developers, LLC recorded an instrument on December 28, 2004 in Deed Book 81-Y, Pg. 823 to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Chandelle Section 1A; Lot 39 (Section 3A); Lots 39a and 40-47 (Section 3). It is uncontroverted that CSC Developers, LLC believed that it had the authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration. It is also uncontroverted that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

¹ See e.g., recitals and Sections 1.1, 1.2, 1.14, 1.15, 1.24, 12.2, 16.1, and 16.2.

- Chandelle Section 4, recorded November 1, 2005 in Plat Book 158, Pg. 840
 - Depicting Lots 33 and 37
- Chandelle Section 7, recorded December 6, 2005 in Plat Book 159, Pg. 9
 - Depicting Lots 27 and 28
- Chandelle Section 6, recorded December 14, 2006 in Plat Book 160, Pg. 852
 - Depicting Lots 29, 30 and 34

Thereafter, CSC Developers, LLC recorded an instrument on April 17, 2007 in Deed Book 88-H, Pg. 448, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 33 and 37 (Section 4); Lots 29, 30, and 34 (Section 6); Lots 27 and 28 (Section 7). Again, it is uncontroverted that CSC Developers, LLC believed that it had the right and authority to do this, and by this instrument intended to include these lots in Chandelle Subdivision and subject them to the Declaration. Further, it is uncontroverted that CSC Developers, LLC intended these lots to be part of Chandelle Subdivision and bound by the Declaration.

Subsequently, the following plats of additional sections of Chandelle Subdivision were then recorded:

- Chandelle Section 4A, recorded January 8, 2009 in Plat Book 163, Pg. 885
 - Depicting Lots 32 and 36
- Chandelle Section 5, recorded November 20, 2009 in Plat Book 164, Pg. 709
 - Depicting Lots 31 and 35
- Chandelle Section 8, recorded October 21, 2011 in Plat Book 166, Pg. 249
 - Depicting Lots 55, 56, and 57

Thereafter, an instrument was recorded on November 2, 2011 in Deed Book 99-L, Pg. 999, to annex the following lots into Chandelle Subdivision and subject them to the Declaration: Lots 32

and 36 (Section 4A); Lots 31 and 35 (Section 5); and Lots 55, 56, and 57 (Section 8). While this instrument was signed by two Board members for Plaintiff rather than CSC Developers, LLC, evidence was submitted to the Court that: (1) everyone involved, including CSC Developers, LLC, thought that this was the proper way to do it now that homeowners had been appointed to the Board of Directors for Plaintiff; (2) CSC Developers, LLC was in agreement with the Board members signing the instrument and CSC Developers, LLC knew it was being done; CSC Developers, LLC intended these lots be bound by the Declaration and intended that this instrument bind them; and (4) the Board members thought they were simply certifying the instrument as being proper pursuant to CSC Developers, LLC's authority. Further, it is uncontroverted that CSC Developers, LLC intended that these lots be part of Chandelle Subdivision and bound by the Declaration, and that is what CSC Developers, LLC intended to do by this instrument.

Additionally, CSC Developers, LLC recorded a revised plat for Chandelle, Section 8, on December 13, 2016 in Plat Book 171, Pg. 927, depicting Lots 55, 56, and revised Lot 57.

While Section 16.2 of the Declaration recorded with the Register of Deeds contained a purported annexation deadline of December 31, 2001, this purported deadline had been removed from the copy of the restrictive covenants distributed by CSC Developers, LLC to purchasers and prospective purchasers. Therefore, what was provided to purchasers and prospective purchasers didn't include any purported annexation deadline. Further, it is unrefuted that CSC Developers, LLC intended all of the foregoing annexations to be binding and proper.

2. John K. Payne and Ruth G. Payne – Lot 1

John K. Payne and Ruth G. Payne (the “Paynes”) are the owners of Lot 1 in Chandelle Subdivision. The Paynes are also the Owners of Lot 51; however, Lot 51 was not included in Plaintiff's motion and is not part of this Order. Lot 1 is more particularly described in the deeds

set forth hereinbelow, and currently is assigned Spartanburg County TMS # 4-01-00-005.05. As set forth above, Lot 1 was included in the land originally described in the Original Declaration as being bound by the Declaration.

Lot 1 was originally conveyed by James P. Brockman, Sr. to Larry Dee Davis and Angela Davis by deed recorded on December 19, 1997 in Deed Book 67-A, Pg. 958. This deed specifically provided that “This conveyance is specifically made subject to those certain Protective Covenants recorded in Book 67-A at Page 583” (i.e., the Declaration). Lot 1 was subsequently conveyed by Larry Dee Davis and Angela Davis to John K. Payne and Ruth G. Payne by deed recorded on June 2, 2000, in Deed Book 72-C, Pg. 145. This deed again specifically provided that “THIS CONVEYANCE is being made subject to Protective Covenants as recorded in Deed Book 67-A at Page 583 in the Office of the Register of Deeds for Spartanburg County” (i.e., the Declaration). The Paynes then deeded Lot 1 to themselves as joint tenants by deed recorded on March 7, 2006 in Deed Book 85-F, Pg. 538. The legal descriptions in the aforementioned deeds describe the property as “Lot No. 1, Chandelle Estates” and the plat referenced in the legal descriptions does reference “Chandelle Est.”

Further, the Paynes executed a mortgage with respect to Lot 1, which was recorded on June 20, 2000 in Book 2352, Pg. 420, and which contained a Planned Unit Development Rider. The Planned Unit Development Rider states that the property is part of a planned unit development (“PUD”) and the property includes the Borrower’s interest in the homeowners association. The PUD Rider also provides that the Borrower is required to perform all of the Borrower’s obligations under the PUD’s Constituent Documents, including the Declaration, and bylaws or rules and regulations of the Owners Association. The PUD rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents.

Also, during the pendency of this lawsuit, the Paynes executed another mortgage with respect to Lot 1, which was recorded on January 6, 2020 in Book 5736, Pg. 666, and which also contained a PUD Rider. The PUD Rider provides that the property is part of a planned unit development known as Chandelle, and again specifies that the Borrower must perform their obligations under the Constituent Documents and must pay all dues and assessments imposed pursuant to the Constituent Documents.

Further, there is undisputed evidence that Mr. Payne had some involvement with the development of Chandelle Subdivision, including helping with drafting the Declaration, helping manage the neighborhood early on, and serving on the architectural control committee for approximately fifteen (15) years. Further, there is undisputed evidence that the Paynes have engaged in certain additional actions in conformity with them/Lot 1 being part of Chandelle Subdivision and subject to the Declaration, including: (1) at least one of the Paynes attending at least one meeting of Plaintiff; (2) seeking approval to remove a tree per the requirements of the Declaration; and (3) payment of some assessments under the Declaration with respect to Lot 1, at least historically. Further, in his deposition, Mr. Payne specifically admitted that Lot 1 is subject to the Declaration.

3. Warren Johnson and Rhonda Johnson – Lots 28, 29, 30 and 34

Warren Johnson and Rhonda Johnson (the “**Johnsons**”) are the owners of Lots 28, 29, 30 and 34 in Chandelle Subdivision. Lots 28, 29, 30 and 34 are more particularly described in the deeds set forth hereinbelow, and are currently collectively assigned Spartanburg County TMS # 4-05-00-038.54. As set forth above, Lot 28 was platted by CSC Developers, LLC as part of Chandelle Section 7, and Lots 29, 30, and 34 were platted by CSC Developers, LLC as Chandelle

Section 6. Further, as set forth above, Lots 28, 29, 30, and 34 were all included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448.

Lots 28 and 29 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on June 24, 2009 in Plat Book 164, Pg. 328. The notes to this closing survey specifically state: "BEING LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND LOT 29 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1 2006." Lots 28 and 29 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on June 24, 2009, in Deed Book 94-A, Pg. 978. The legal description in the deed references the closing survey and specifically refers to the property as "LOT NO. 28 AND LOT NO. 29 OF CHANDELLE SUBDIVISION, SECTION 7."

Subsequent to the recording of the Chandelle Section 7 plat noted above, Lots 30 and 34 were later shown as combined on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson recorded on February 17, 2016 in Plat Book 170, Pg. 822. The notes to this closing survey specifically state: "BEING LOTS 30 AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006." Lots 30 and 34 were conveyed to Warren G. Johnson and Rhonda B. Johnson by CSC Developers, LLC by deed recorded on April 19, 2016 in Deed Book 111-X, Pg. 568. The legal description in the deed references the closing survey and specifically refers to the property as: "Lot No. 30 and Lot No. 34 of Chandelle Subdivision, Section 6."

Subsequently, Lots 28, 29, 30, and 34 were shown as all being combined into a single parcel on a Closing Survey for Warren G. Johnson and Rhonda B. Johnson, recorded on February 2, 2018, in Plat Book 173, Pg. 674. The notes to this closing survey specifically state: "BEING LOT 28 OF CHANDELLE SEC. 7 AS SHOWN ON OUR PLAT DATED NOV. 28, 2005 AND

LOTS 29, 30, AND 34 OF CHANDELLE SEC. 6 AS SHOWN ON OUR PLAT DATED AUG. 1, 2006.” This closing survey was recorded during the pendency of this litigation.

Further, there is undisputed evidence that the Johnsons have engaged in further actions and conduct in conformity with them/their lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking approval from the Architectural Control Committee under the Declaration to build a residence on Lots 28 and 29;² (2) lack of any assertion that they were not subject to the Declaration in response to communications from Plaintiff and/or the Architectural Control Committee pertaining to failure to adhere to the requirements of the Declaration, including with respect to continuity of construction and barking dogs; (3) seeking and receiving approval from the Architectural Review Committee under the Declaration for the erection of fencing on their lots; (4) seeking and receiving approval from the Architectural Control Committee under the Declaration to add a concrete extension to their existing hangar ramp pad on their property; (5) seeking and obtaining approval of CSC Developers, LLC, as the Declarant under the Declaration, to combine Lots 28, 29, 30, and 34 into a single lot for purposes of the assessments under the Declaration as required by the Declaration;³ (6) payment of some assessments under the Declaration, at least historically; and (7) attendance at meetings of Plaintiff.

4. Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 – Lots 31, 32, 33, 35, 36, and 37

Jane Van Wieren as trustee of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006 (“**Van Wieren**”) is the owner of Lots 31, 32, 33, 35, 36, and 37 in Chandelle Subdivision.

² In connection therewith, Warren Johnson executed a Chandelle Private Aviation Estates Building Construction Form, which specifically included a certification that stated in part: “I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions. (emphasis added)

³ Article IV, Section 4.2 of the Declaration requires written approval of the “Declarant” to combine Lots under the Declaration.

Lots 31, 32, 33, 35, 36, and 37 are more particularly described in the deeds set forth hereinbelow. Lots 32, 33, 36, and 37 are currently collectively assigned Spartanburg County TMS # 4-05-00-038.44. Lots 31 and 35 are currently collectively assigned Spartanburg County TMS # 4-05-00-038.58.

As set forth above, Lots 33 and 37 were platted by CSC Developers, LLC as Chandelle Section 4. As set forth above, Lots 33 and 37 were included in the annexation instrument recorded on April 17, 2007 in Deed Book 88-H, Pg. 448. Additionally, as set forth above, Lots 32 and 36 were platted by CSC Developers, LLC as Chandelle Section 4A, and Lots 31 and 35 were platted by CSC Developers, LLC as Chandelle Section 5. Further, as set forth above, Lots 31, 32, 35, and 36 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

On September 24, 2005, Robin Graham, acting on behalf of his mother, Ruth Graham, entered into a Contract of Sale on behalf of Ruth Graham for the purchase of Lot 33 in Chandelle Subdivision from CSC Developers, LLC. This Contract of Sale specifically stated that “Purchaser agrees to abide by the Chandelle Covenants, Conditions and Restrictions and Revisions recorded at the ROD Office of Spartanburg County” and that “Purchaser also understands that the minimum home heated square foot requirements are in the process of being changed from 2000 to 2600 square feet.” Lot 33 was conveyed to Ruth Graham by CSC Developers, LLC by deed recorded on December 9, 2005 in Deed Book 84-P, Pg. 931. This deed specifically provided that Lot 33 was being conveyed subject to the Declaration and specifically stated, in part:

THIS conveyance is subject to all rights-of-way, easements, and protective covenants affecting the same appearing upon the public records of Spartanburg County, including, but not limited to those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583.

(emphasis in original). Further, the legal description in the deed describes the property as Lot No. 33 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Phase IV. Lot 33 was then subsequently quitclaimed from Ruth Graham to Van Wieren by deed recorded on February 12, 2007, in Deed Book 87-V, Pg. 167. This deed also again specifically stated that the conveyance was subject to “those restrictive covenants entitled The Chandelle Covenants, Conditions & Restrictions that are recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 67-A, Page 583” (i.e., the Declaration).

Lot 37 was conveyed to The Greer RG Irrevocable Property Trust by CSC Developers, LLC by deed recorded on October 23, 2007 in Deed Book 89-V, Pg. 897. The legal description in the deed refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.” Lot 37 was subsequently quitclaimed from The Greer RG Irrevocable Property Trust to Van Wieren by deed recorded on May 25, 2011 in Deed Book 98-M, Pg. 700. The legal description in this deed again refers to the property as “Lot No. 37 as shown on a subdivision plat of Chandelle Private Aviation Estates subdivision, Section IV.”

Lots 32 and 36 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 632. The legal description in this deed refers to the property as “Lot 32 and Lot 36 on a plat entitled ‘Chandelle, Section 4A’”.

Subsequently, Lots 32, 33, 36, and 37 were all shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 4 and 4A Lots 32, 33, 36, and 37”, which was recorded on December 6, 2017 in Plat Book 173, Pg. 419.

Lots 31 and 35 were conveyed to Van Wieren by CSC Developers, LLC by deed recorded on April 24, 2017 in Deed Book 115-N, Pg. 628. The legal description in this deed refers to the

property as “Lot 31 and Lot 35 on a plat entitled ‘Chandelle, Section 5’”. Lots 31 and 35 were subsequently shown as being combined into a single parcel on a survey entitled “Combination Survey for Jane Van Wieren, Trustee of the Greer RG Irrevocable Property Trust Chandelle, Sec. 5 Lots 31 and 35.”, which was recorded on December 12, 2017, in Plat Book 173, Pg. 448.

Based on the evidence presented to the Court, it appears to be undisputed that Robin Graham purported to act on behalf of the trust for most matters involving the Chandelle Subdivision. Mr. Graham’s deposition testimony provided to the Court indicates that he had been provided a copy of the Declaration prior to him/the trust purchasing any property within Chandelle Subdivision. Further, there is undisputed evidence that representative(s) of Ruth Graham and the relevant trust(s) have engaged in further actions and conduct in conformity with them/the relevant trust(s)/the foregoing lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking architectural approval to build a house on Lot 33;⁴ (2) lack of any assertion of not being subject to the Declaration in response to notices of violation under the Declaration in 2010 and 2012; (3) seeking approval from the Chandelle Architectural Control Committee to build a hangar on Lots 32 and 33 and compliance with the Chandelle Architectural Control Committee’s requests in connection with the same; (4) payment of some assessments under the Declaration, at least historically; (5) attendance at meetings of Plaintiff; and (6) seeking approval from the Declarant, CSC Developers, LLC, as required by the Declaration, to combine Lots 32, 33, 36, and 37, and to also combine Lots 31 and 35.⁵

5. James Douglas Armstrong and Jane Armstrong – Lots 55, 56, and 57

⁴ It is noted that in connection therewith, Robin Graham signed a Chandelle Private Aviation Estates Building Construction Form that stated in part: “I (we) certify that the above information constitutes a description of the proposed building and accessory construction and of the location and the site of all items of construction and the same will be in accordance with the Chandelle Covenants and Restrictions.”

⁵ It is noted that all of these lot combinations occurred in 2017, during the pendency of this lawsuit.

James Douglas Armstrong and Jane Armstrong (the “**Armstrongs**”) are the owners of Lots 55, 56, and 57 in Chandelle Subdivision. Lots 55, 56, and 57 are more particularly described in the deeds set forth hereinbelow. Lots 55 and 56 are currently collectively assigned Spartanburg County TMS # 4-05-00-039.04. Lot 57 is currently assigned Spartanburg County TMS # 4-05-00-039.15. As set forth above, Lots 55, 56, and 57 were platted by CSC Developers, LLC as Chandelle, Section 8. Further, as set forth above, Lots 55, 56, and 57 were included in the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999.

By deed recorded on November 3, 2011, in Deed Book 99-M, Pg. 48, Lot 55 was conveyed to Joseph G. Kohn and Dale D. Kohn. This deed specifically provided that “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” The legal description in this deed also referred to the property as “Lot No. 55 of Chandelle, Section 8.” By deed recorded on June 21, 2012, in Deed Book 100-Z, Pg. 363, Lot 56 was conveyed to Joseph G. Kohn and Dale D. Kohn. This deed also specifically provided that: “THIS PROPERTY IS SPECIFICALLY SUBJECT TO THE RESTRICTIVE COVENANTS OF CHANDELLE SUBDIVISION AS RECORDED IN DEED BOOK 67-A AT PAGE 583, DEED BOOK 72-G AT PAGE 843 AND DEED BOOK 88-H AT PAGE 448.” Further, the legal description in this deed refers to the property as “Lot No. 56 of Chandelle, Section 8.” Lots 55 and 56 were then subsequently conveyed to the Armstrongs by Joseph and Dale Kohn by deed recorded on December 16, 2014 in Deed Book 107-U, Pg. 361. The legal description in this deed again refers to the lots as “Lot Nos. 55 and 56 of Chandelle, Section 8.” A house had already been built on Lots 55 and 56 by the time the Armstrongs purchased Lots 55 and 56. In connection with the construction of the house and hangar on Lots

55 and 56, Joseph and Dale Kohn did seek and obtain approval of the Chandelle Architectural Committee under the Declaration. Further, the Armstrongs executed a mortgage with respect to Lots 55 and 56, which was recorded on December 16, 2014 in Book 4923, Pg. 812, and which contained a PUD Rider. The PUD Rider provides that the Borrower is required to perform all of the Borrowers obligations under the PUD's Constituent Documents. The PUD Rider also provides that the Borrower shall promptly pay all dues and assessments imposed pursuant to the Constituent Documents. Further, the Declaration was listed as an exception to the Armstrongs' title insurance policy with respect to Lots 55 and 56. Additionally, in connection with the closing on Lots 55 and 56, the Armstrongs executed a document entitled "HOMEOWNERS ASSOCIATION INFO" acknowledging that they had received a copy of the Declaration and all documents related to Chandelle, and that they had been advised regarding the upcoming homeowners association dues and it was their responsibility to pay the same.

Lot 57 was conveyed to James Douglas Armstrong and Jane G. Armstrong by deed recorded on January 30, 2017 in Deed Book 114-Q, pg. 424. The legal description in the deed refers to the property as lot number 57 of Chandelle, Section 8. Further, the Declaration was listed as an exception to the Armstrong's title insurance commitment/policy for Lot 57.

Further, there is undisputed evidence that the Armstrongs have engaged in further actions and conduct in conformity with them/their lots being part of Chandelle Subdivision and subject to the Declaration, including: (1) seeking architectural approval for some landscaping work on their property; (2) payment of some assessments under the Declaration, at least historically; (3) attendance at meetings of Plaintiff; and (4) the deposition testimony of the Armstrongs provided to the Court indicates that they thought they were members of Plaintiff, at least until around the time that this lawsuit was instituted.

LAW/ANALYSIS

1. Summary Judgment Standard

Pursuant to Rule 56, SCRPC, a moving party is entitled to summary judgment “if 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.” “In order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial.” Skywaves I Corp. v. Branch Banking & Tr. Co., 423 S.C. 432, 453, 814 S.E.2d 643, 654 (Ct. App. 2018) (quoting NationsBank v. Scott Farm, 320 S.C. 299, 303, 465 S.E.2d 98, 100 (Ct. App. 1995). “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.” Id.

2. The Subject Defendants’ Properties Described Herein Are Subject to and Bound By the Declaration

There is no dispute that the Subject Defendants own their respective properties described herein. As set forth above, the properties described herein are Lots 1, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57, and for ease of reference, these lots will be hereinafter referred to as the “**Subject Lots**”.

Restrictive covenants are contractual in nature and are construed like contracts, and may give rise to actions for breach of contract. Kinard v. Richardson, 407 S.C. 247, 257, 754 S.E.2d 888, 893 (Ct. App. 2014).

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development.

Id. Restrictive covenants on the use of property must be created in express terms or by plain and unmistakable implication. Bomar v. Echols, 270 S.C. 676, 679, 244 S.E.2d 308, 310 (1978); Kinard, 407 S.C. at 257-258, 754 S.E.2d at 894.

Where they arise by implication and subdivided land is involved, the restrictions are said to create a reciprocal negative easement. *Bomar*, 244 S.E.2d at 310. Ordinarily, four elements must be established to show a reciprocal negative easement. There must be: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme. *Id.*; see also *Shipyards Property Owners Ass'n v. Mangiaracina*, 307 S.C. 299, 414 S.E.2d 795 (Ct.App.1992).

In the various grants of the lots, there must have been included some restriction for the benefit of the land retained, evidencing a scheme or intent that the entire tract shall be similarly treated, so that once the plan has been effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained. 20 Am.Jur.2d *Covenants, Conditions, Etc.* § 173 (1965). In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. *Nance v. Waldrop*, 258 S.C. 69, 187 S.E.2d 226 (1972). Generally, the developer must establish the general scheme of development before any lots are sold. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. *Shipyards Property Owners Ass'n*, 414 S.E.2d at 802. All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction. *Bomar*, 244 S.E.2d at 310.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994). Further, in the case of Easterly v. Hall, the South Carolina Supreme Court noted:

This court has held that restrictive covenants imposed upon some lots, but not upon others, in the same subdivision were enforceable among all where it was clear from the inception of the subdivision that there had been a general plan for its residential development and such plan had been adhered to without material departure therefrom, and if it has been understood and relied upon by those concerned, it is binding and enforceable *Inter sese*. *Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538. We also held in the *Pitts* case that neither the restricting of every lot within the area covered nor absolute identity of restrictions upon different lots is essential to the existence of a neighborhood scheme.

Easterly v. Hall, 256 S.C. 336, 343, 182 S.E.2d 671, 674 (1971).

Further, where “a deed describes land as is shown on a certain plat, such plat becomes a part of the deed.” Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118, 145 S.E.2d 922, 924 (1965). “The law imputes to a purchaser who proposes to acquire title to real estate notice of the recitals contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired.” Carolina Land Co. v. Bland, 265 S.C., 98, 107, 217 S.E.2d 16, 20 (1975). A plat constitutes a link in the chain of title for property. See, id.

Based on all of the foregoing, I find that the Subject Lots are expressly bound by the Declaration. Lot 1 was specifically listed as part of the property bound in the Original Declaration. Further, the deeds in the chain of title for Lot 1 specifically state that Lot 1 is subject to the Declaration, and these deeds predate any purported annexation deadline contained in the Declaration. John K. Payne also specifically admitted in his deposition that Lot 1 is subject to the Declaration, and I further find that the Paynes are bound by such admission. All of the rest of the lots that are the subject of this Order (i.e., Lots 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 55, 56, and 57) were all identified in recorded instruments supplementing or amending the Declaration to annex such lots and to subject them to the Declaration. In addition, the chains of title for Lots 33, 55, and 56 each contain a deed or deeds specifically stating that such lots are subject to the Declaration. As set forth above, Lot 33 has now been combined with Lots 32, 36, and 37.

Further, although I find that the Subject Lots are expressly bound by the Declaration, I also additionally and/or alternatively find that the Subject Lots are subject to and bound by the Declaration by plain and unmistakable implication. As set forth above, CSC Developers, LLC, was the primary developer of Chandelle Subdivision, and acted in concert with and as part of a joint venture with James Brockman, Sr. and/or others to develop Chandelle Subdivision and to

convey lots to purchasers. Further, as set forth above, there was a designation of land subject to the restrictions and a general plan or scheme of restrictions and development. In particular, as set forth more fully above:

- CSC Developers, LLC recorded the Declaration at the outset of development.
- Numerous phases/sections of Chandelle Subdivision have been platted as part of a common scheme of development. Per these plats, there is a common scheme of lot numbering. See Kinard, 407 S.C. at 260, 754 S.E.2d at 996 (noting that consecutive lettering/numbering of parcels is evidence of a single scheme of development).
- All of the Subject Lots have been platted as Lots in Chandelle Subdivision.
- All of the Subject Lots were either identified as being bound by the Declaration in the Declaration as originally recorded, or in subsequently recorded instruments supplementing or amending the Declaration.
- The deeds in the chain of title for some of the Subject Lots specifically reference the property being subject to the Declaration. Further, all of the lots conveyed by James Brockman, Sr. specifically referenced such lots as being subject to the Declaration.
- The legal descriptions in the deeds refer to the Subject Lots as lots in Chandelle Subdivision.
- CSC Developers, LLC intended that all of the Subject Lots to be part of Chandelle Subdivision and subject to and bound by the Declaration.
- Some of the Subject Defendants have executed mortgages with Planned Unit Development riders, acknowledging that the property is part of a planned unit development, and specifying that that they must comply with all of the community's "constituent documents".

- Some of the Subject Defendants have executed other documents expressly or implicitly acknowledging that their respective properties are part of Chandelle Subdivision and subject to the Declaration.
- Chandelle Subdivision was marketed as a covenant restricted, master planned community, and all of the Subject Lots were marketed as being part of Chandelle Subdivision.
- Further, the Subject Defendants have taken actions and have engaged in a course of conduct in conformity with them/the Subject Lots being part of Chandelle Subdivision and being subject to and bound by the Declaration, and have consequently either expressly or implicitly admitted to, accepted, and/or acquiesced to the same, including membership in Plaintiff. Such conduct and actions include, without limitation: (1) attending membership meetings of Plaintiff; (2) payment of assessments to Plaintiff under the Declaration, including some of the Subject Defendants paying a special assessment to Plaintiff in 2021 during the pendency of this lawsuit; (3) seeking architectural approval under the Declaration; (4) seeking Declarant approval to combine Lots under the Declaration; and (5) other correspondence and/or conduct in conformity with being part of Chandelle Subdivision, subject to the Declaration, and a member of Plaintiff, as set forth more fully above.

Further, the Declaration runs with the land. Specifically, the recitals to the Declaration provide that the provisions of the Declaration “shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.” Additionally, Section 12.1 of the Declaration provides that the terms of the Declaration “shall run with and bind the Property....”

Although I have found that the Subject Lots are expressly bound by the Declaration, based on the foregoing, I also additionally and/or alternatively find that the Subject Lots are subject to and bound by the Declaration by plain and unmistakable implication. Further, by their course of conduct as set forth above, which has been relied upon by Plaintiff and others in the community, the Subject Defendants have either expressly or implicitly admitted to, accepted, and/or acquiesced to being part of Chandelle Subdivision, including being subject to the Declaration and being members of Plaintiff, and have either waived any objection to or are otherwise estopped from denying the same now.

Further, in addition to all of the foregoing, “[c]ourts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). Additionally, equity looks at substance over form and the principle applies by dispensing with pure formalities which would otherwise defeat the equity. Id. at 253, 715 S.E.2d at 354. When applying such principle, the courts “look to the substance and intent of the parties, and give a construction consistent with such intent.” Id. at 253, 715 S.E.2d at 355. Such equitable maxims can allow a court to relieve a party from the consequences of accident, mistake, and fraud. See id. at 254, 715 S.E.2d at 355. Therefore, in addition to all of the foregoing grounds, the Court further exercises its inherent equitable powers to give effect to the substance and intent of the developer and the parties, and further declares that the Subject Lots are subject to the Declaration on this basis as well.

In sum, for all of the foregoing reasons, I find that the Subject Lots are subject to and bound by the Declaration, and have been subject to and bound by the Declaration prior to and during the

entirety of the Subject Defendants' ownership of the same, regardless of whether expressly or implicitly bound. The Declaration binds the land and runs with the land.

3. *The Subject Defendants Are Members of Plaintiff, Chandelle Property Owners Association*

Article II, Section 2.3 of the Declaration provides that all Lot Owners shall be members of Plaintiff, Chandelle Property Owners Association. Likewise, Section 4.1 of the Bylaws of Chandelle Property Owners Association also establishes mandatory membership for Lot Owners. Therefore, the Subject Defendants, by virtue of their ownership of Lots subject to the Declaration, are mandatory members of Plaintiff.

4. *The Subject Defendants Owe Plaintiff Assessments*

Section 11.1 of the Declaration provides that the Owner of each Lot is deemed to covenant and agreed to pay Plaintiff assessments, including annual, special, and default assessments. Further, Section 7.5 of the Declaration authorizes Plaintiff to suspend rights to use the runway and to charge individual assessments for use of the runway with respect to an Owner who is in default in the payment of assessments. Additionally, monetary fines are considered default assessments under the Declaration. Further, the Declaration provides that assessments, together with interest, costs, and reasonable attorney's fees are the personal obligation of the Owner of the Lot. Further, Section 11.7 of the Declaration provides:

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or

other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Because the Subject Lots are subject to the Declaration as set forth above, the Subject Defendants and the Subject Lots are subject to assessments under the Declaration and Bylaws of Plaintiff. In connection with its motion, Plaintiff submitted an affidavit of Billy J. Israel, Jr. setting forth the amounts alleged to be owed by the Subject Defendants to Plaintiff. I find that there is no genuine issue of material fact as to the amount of the assessments owed by the Subject Defendants, but I find that there is a genuine issue of material fact as to the amount of the interest and/or late charges, if any, that may be owed by the Subject Defendants.

I find that, as of September 1, 2022, the Subject Defendants owe Plaintiff the following amounts for assessments only, exclusive of late charges, interest, and attorney's fees, and grant judgment in favor of Plaintiff against the Subject Defendants respectively as follows:

- Paynes: \$22,000.00
- Johnsons: \$24,000.00
- Van Wieren: \$55,250.00
- Armstrongs: \$44,000.00

The Subject Defendants also assert that the Plaintiff, by and through its Board, violated Section 8.2(i) of the Bylaws of Plaintiff by allegedly borrowing more than \$50,000.00 or incurring more than \$50,000.00 in debt without a vote of its members. While I don't reach the merits of whether there has been any violation of Section 8.2(i) of the Bylaws, I find that even assuming *arguendo* that a violation has occurred, it does not relieve the Subject Defendants of their obligation to pay assessments. Whether a debt was properly incurred is independent of the Subject Defendants' obligation to pay assessments. Even if a debt was improperly incurred by Plaintiff,

that debt is still an obligation of the Plaintiff that Plaintiff is liable for. Like most homeowners associations, Plaintiff's primary means of funding its obligations is through assessments levied against its members. If the Court were to accept the Subject Defendants' argument, it would mean for example that if the Plaintiff were to borrow more than \$50,000 without member approval, then Plaintiff could never assess its members to pay off that loan, forcing the Plaintiff to default on the loan and suffer the adverse consequences of a default. I find that such a position cannot be sustained. Rather, if there has been any violation of Section 8.2(i) of the Bylaws,⁶ I find that it does not obviate the Subject Defendants' obligation to pay assessments, without prejudice to whatever rights the Subject Defendants may have, if any, to pursue claims against the Plaintiff or its directors, individually or derivatively, arising out of the alleged violation.

While I grant summary judgment to Plaintiff as to the principal amount of the assessments, I find that there is a question of fact as to the amount of the late charges and interest claimed by Plaintiff, and therefore deny summary judgment at this time as to late charges and interest. Likewise, I find that a determination of whether Plaintiff is entitled to an award of attorney's fees should be held in abeyance at this time for determination at a later date.

5. Attorney's Fees and Costs – Rule 37(c), SCRCP

Plaintiff's motion also sought an award of attorney's fees and costs under Rule 37(c), SCRCP on the basis of the Subject Defendants' failure to admit certain matters. I find that this issue should be held in abeyance at this time for a determination at a later date.

⁶ The merits of any alleged violation of Section 8.2(i) of the Bylaws is not reached in this Order and no ruling or opinion is expressed as to whether there has in fact been a violation thereof.

ORDERS

Based on the foregoing, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Subject Lots are subject to and bound by the Declaration, and have been subject to and bound by the Declaration prior to and during the entirety of the Subject Defendants' ownership of the same. The Declaration and the annexation instrument recorded on November 2, 2011 in Deed Book 99-L, Pg. 999 are reformed as set forth hereinabove.

2. The Subject Defendants are members of Plaintiff by virtue of their ownership of the Subject Lots.

3. Judgment is granted in favor of Plaintiff against the Subject Defendants for past due assessments (as of September 1, 2022), exclusive of interest, late charges, and attorney's fees, respectively as follows:

- Paynes: \$22,000.00
- Johnsons: \$24,000.00
- Van Wieren: \$55,250.00
- Armstrongs: \$44,000.00

Summary judgment is denied as to interest and late charges. Further, a determination of whether Plaintiff is entitled to an award of attorney's fees is held in abeyance at this time for determination at a later date.

4. A determination as to Plaintiff's claim for attorney's fees and costs under Rule 37(c), SCRPC is held in abeyance at this time for a determination at a later date.

5. The Register of Deeds for Spartanburg County is ordered to record a copy of this Order in its office and to properly index this Order in the chain of title for the Subject Lots under the following party names:

- Chandelle Property Owners Association
- John K. Payne
- Ruth G. Payne
- Warren G. Johnson
- Rhonda B. Johnson
- Jane Van Wieren, trustee, or her successor in trust, of the Greer R.G. Irrevocable Property Trust, dated October 25, 2006
- James Douglas Armstrong
- Jane G. Armstrong

6. This Order shall bind the land, shall run with the land, shall be binding upon and inure to the benefit of Chandelle Property Association and the Subject Defendants, their heirs, successors, successors in title, and assigns, and shall be binding upon and inure to the benefit of all persons or entities having any right, title, or interest in the Subject Lots or any part thereof, their heirs, successors and assigns.

IT IS SO ORDERED.



Spartanburg Common Pleas

Case Caption: Chandelle Property Owners Association , plaintiff, et al VS Csc
Developers Llc , defendant, et al
Case Number: 2016CP4201854
Type: Order/Summary Judgment

It is so Ordered.

s/ R. Keith Kelly - 2165