

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 TURNER’S MARINA LLC,)
)
 Plaintiff,)
)
 vs.)
)
 PAIGE N. LORBERBAUM,)
 JEFFREY A. KLAPPER and)
 DIANE L. KLAPPER,)
)
 Defendants.)
 _____)

**IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT**

Case No. 2020-CP-07-1064

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SC Court of Appeals

ORDER

This case was initiated by the Plaintiff on May 13, 2020, seeking damages for breach of contract or specific performance over the Defendants’ alleged failure to honor the Plaintiff’s Right of Repurchase found in the Declaration of Covenants of the R.V. Resort and Yacht Club on Hilton Head Island, South Carolina, as originally recorded on June 18, 1981.

Answers were filed by all Defendants in a timely manner, and on April 26, 2022, a Consent Order was entered providing that, to the extend the Court were to award the Plaintiff specific performance, the Plaintiff shall pay off and satisfy the mortgage held by Defendant Coastal States Bank from the purchase proceeds. The case was called for trial before the undersigned on June 30, 2022 and the Plaintiff’s earlier request for a jury trial waived.

Based upon the evidence adduced at trial, the testimony given, the pleadings of record and the argument of counsel, I hereby make and enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The property commonly known as the Hilton Head RV Resort consists of approximately 17 acres that was originally sold by the Hilton Head Company, Inc. to Roger D. Shay in 1977 by deed recorded in Deed Book 245 at Page 1052, which deed included a set of Protective Covenants under which the Hilton Head Company reserved a right of repurchase (sometimes known as the “HHC Co. Right of Repurchase”).
2. The 17 acres were then sold several times, culminating with a conveyance to the Outdoor Resorts, R.V. Resort and Yacht Club by way of deed recorded at Deed Book 325 at Page 915.
3. On June 12, 1981, a Declaration of Condominium entitled “Declaration of Covenants and Restrictions for Outdoor Resorts RV Resort and Yacht Club and Provisions for the RV Resort and Yacht Club Owner’s Association, Inc.” (hereinafter sometimes referred to as the “R.V. Resort Covenants”) was executed by the Outdoor Resorts, R.V. Resort and Yacht Club and was subsequently recorded in the Office of the Beaufort County Register of Mesne Conveyances at Book 325, Page 920 on June 18, 1981.
4. The R.V. Resort Covenants are also applicable to the property, which as of 1981 consisted of approximately 200 individually owned lots and certain common areas and amenities as are more fully described in Deed Book 325 at Page 939 in the Office of the Clerk of Court for Beaufort County (hereinafter sometimes referred to as the “Property”). The R.V. Resort Covenants

contain restrictions, easements, affirmative obligations, charges, liens, leases, and a Right of Repurchase (the “R.V. Resort Covenants Right Of Repurchase”) affecting the Property. One of the individually owned lots located in the Property is legally described as Lot 158 Outdoor Resorts, R.V. Resorts & Yacht Club, as described on a plat entitled “R.V. Resorts and Yacht Club” dated September 7, 1981 and prepared by Forrest F. Baughman, South Carolina Registered Land Surveyor (S.C. Reg. No. 4922), said plat being recorded in the Office of the ROD of Beaufort County, South Carolina in Plat Book 29 at Page 184.

5. The R.V. Resort Covenants at page 18, specifically Paragraph 12.9, contain a Right of Repurchase to the Developer, which specifically provides:

12.9 In the event the Unit Owner desires to sell his Lot, then said Lot shall be offered for sale to the Developer at the same price at which the property is about to be sold, and the said Developer shall have thirty (30) days within which to exercise its option to purchase said property; and should the Developer fail or refuse (within thirty (30) days after the receipt of notice of the price and terms) to exercise its option to purchase said property at the price at which it is about to be sold, then the Owner of said property shall have the right to sell said property subject to all covenants and limitations herein contained.

As noted above, this right of repurchase is sometimes known as the “R.V. Resort Covenants Right Of Repurchase.”

6. The original Developer of the Property was O.R.A. of Carolina, Inc.
7. The entity known as Billybob’s Marinas, Inc., a South Carolina corporation, validly acquired all of the “Declarant” or “Developer” rights under the R.V. Resort Covenants, including specifically the aforementioned R.V. Resort Covenants Right of Repurchase set forth at Article 12.9 of the Covenants.

8. On or about December 21, 2017, Billybob's Marinas, Inc., for the consideration of \$4,600,000, conveyed to the Plaintiff Turner's Marina, all of its right, title, and interest to the afore-described tangible and intangible property. Said conveyance also included the conveyance by Billybob's Marinas, Inc. to Turner's Marina, of all of Billybob's Marinas, Inc.'s right and interest in all documents recorded in the Office of the Register of Deeds for Beaufort County, South Carolina providing for a "right of repurchase" as to any lots or parcels located at the Property emanating from the Covenants.
9. Since December 21, 2017, the Plaintiff Turner's Marina has been and is the valid owner of all currently existing "Developer" or "Declarant" rights as are set forth in the R.V. Resort Covenants and Turner's Marina has been and is the valid owner of all currently existing recorded rights of first repurchase emanating from the R.V. Resort Covenants as to any lots or parcels located at the Property, including Lot 158.
10. By virtue of the Absolute Assignment executed between Billybob's Marina's Inc. and Turner's Marina LLC on December 21, 2017, Turner's Marina came to own both the R.V. Resort Covenants Right of Repurchase and the HHCo. Right of Repurchase. However, Billybob's Marina's Inc. retained the right to exercise the HHCo. Right of Repurchase under the Seller financing agreement, until that loan is repaid.
11. On or about May 18, 2007, the Defendant Klappers purchased Lot 158.
12. At all times the Klappers owned Lot 158, it remained subject to the recorded covenants, including both rights of repurchase identified above.

13. On or about April 2, 2019, Darrell Thomas Johnson, the Klappers' and Defendant Lorberbaum's attorney, notified an authorized representative of Plaintiff Turner's Marina of a proposed sale of Lot 158 to Defendant Lorberbaum for \$54,500, thereby triggering the Plaintiff's R.V. Resort Covenants Right of Repurchase period, to be exercised anytime within the thirty (30) period between April 2, 2019 and May 1, 2019.
14. Mr. Johnson, operating as the attorney for the Klappers and Defendant Lorberbaum, sought and secured a Waiver of the HHCo. Right of Repurchase from Billybob's Marinas, Inc. prior to April 22, 2019, and recorded same, thereby satisfying the HHCo. Right of Repurchase regarding the sale of Lot 158, but that Waiver from Billybob's did not satisfy the R.V. Resort Covenants Right of Repurchase owned by Turner's Marina.
15. On or about April 19, 2019, Chester C. Williams, legal counsel for Turner's Marina, notified Mr. Johnson, as legal counsel for the Klappers and Defendant Lorberbaum, that Turner's Marina had elected to exercise its Right of Repurchase to purchase Lot 158 from the Klappers for \$54,500.
16. Prior to April 19, 2022, Defendants Lorberbaum and the Klappers had actual and constructive knowledge of the existence of the R.V. Resort Covenants' Right of Repurchase, of Turner's Marina's ownership of that Right of Repurchase, and of Turner's Marina's notice to them of Turner's Marina's intent to exercise that Right of Repurchase.
17. Despite actual knowledge of the Plaintiff Turner's Marina's exercise of its R.V. Resort Covenants Right of Repurchase on April 19, 2019, the Klapper Defendants moved forward with the sale of Lot 158 to Defendant Lorberbaum on or about April 22, 2019.

18. From April 19, 2019 through May 1, 2019, the Plaintiff Turner's Marina stood ready, willing, and able to tender the \$54,500 to purchase Lot 158 from the Klappers pursuant to the Right Of Repurchase.

19. At no time between April 2, 2019 and May 1, 2019, did any representative of Turner's Marina waive its R.V. Resort Covenants Right of Repurchase to purchase Lot 158.

CONCLUSIONS OF LAW

1. The failure of the Klappers and Defendant Lorberbaum to allow Turner's Marina to purchase Lot 158 was a material breach of R.V. Resort Covenants, specifically paragraph 12.9.
2. Given the Findings of Fact as set forth above, Turner's Marina is entitled to the equitable remedy of an Order of Specific Performance requiring that Lot 158 be conveyed by Defendant Lorberbaum to Plaintiff Turner's Marina within ninety (90) days of the entry of this Order by General Warranty Deed, for the consideration of Fifty-four thousand Five Hundred (\$54,500) dollars.
3. There shall be no reduction in the \$54,500 price to be paid by the Plaintiff based upon a claimed loss of rental revenues over the period since the conveyance to Defendant Lorberbaum, because the Plaintiff failed to prove those damages with specificity.
4. Because Billybob's Marinas, Inc. earlier waived its HHC Co. Right of Repurchase as to Lot 158, no further waiver from Billybob's is necessary nor required at the conveyance to Turner's Marina.

5. From the consideration to be paid by Turner's Marina for the conveyance of Lot 158, the existing mortgage of Defendant Lorberbaum to former Defendant Coastal States Bank shall be paid off, with the balance of the proceeds after normal closing expenses allocated to the purchaser and seller, paid over to Defendant Lorberbaum.
6. Although there is a provision within the R.V. Resort Covenants providing for attorney's fees in certain situations to prevailing litigants, there was no specific proof offered during trial as to the amount of attorney's fees expended by the Plaintiff, and thus I award no attorney's fees to the Plaintiff.
7. I have carefully considered and rejected Defendant Lorberbaum's arguments relative to the Rule Against Perpetuities, the wording of the various deeds, Jus Tertii, Developer's lack on an interest, and efficiency of a corrective deed in the chain of title. I do not believe sufficient evidence was presented.

AND IT IS SO ORDERED this ____ day of August, 2022.

s/_____
Donald B. Hocker
Circuit Court Judge



Beaufort Common Pleas

Case Caption: Turners Marina Llc VS Paige N Lorberbaum , defendant, et al

Case Number: 2020CP0701064

Type: Order/Damages

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167