

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
William M. Ross and Kelli S. Ross,)
)
Plaintiffs,)
)
v.)
)
The Preserve II at Fenwick Hall Property)
Owners Association, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2022-CP-10-02345

**ORDER GRANTING DEFENDANT’S
MOTION FOR PRELIMINARY
INJUNCTION**

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SC Court of Appeals

THIS MATTER came before the court on September 7, 2022 for a hearing on Defendant’s Motion for Preliminary Injunction pursuant to Rule 65, SCRCP, filed on June 30, 2022 requesting the court enjoin Plaintiffs from further breach of the ARB covenants, rules, and regulations for The Preserve II at Fenwick Hall Property Owners Association, Inc. (“Preserve II POA”) until a full merits hearing. Appearing for Plaintiffs was Eric Laquiere, Esq. Appearing for Defendant was Kevin W. Mims, Esq. For the reasons discussed below, the court **GRANTS** the motion.

Generally, for a preliminary injunction to be granted, the [party] must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Scratch Golf Co., 361 S.C. at 121, 603 S.E.2d at 908. Here, based on the pleadings, exhibits, and affidavits of Dennis Curtin, Nancy Batchelder, and Cheryl Bailey filed with Defendant’s motion and photographs submitted, the court finds these three elements are satisfied. Specifically, Plaintiffs have admitted in their pleadings that they are, at the very least, subject to the ARB covenants, rules, and regulations for The Preserve at Fenwick Hall Property Owners Association, Inc. (“Preserve I POA”). It also appears that by way of special meeting and merger held on December 12, 2019 Preserve I POA

merged into The Preserve II POA. Plaintiffs' lot 58 was represented by proxy at the December 12, 2019 meeting and voted in the affirmative for the merger. See Curtin Affidavit and Exhibits. Articles of Merger were inadvertently not filed at the time the merger was approved by the owners of Preserve I POA, but were filed with the South Carolina Secretary of State on or about June 13, 2022. Id. The affidavits submitted herewith support that Plaintiffs have failed to submit a complete and proper application to Preserve II POA, have never filed an application with Preserve I POA, and have been engaged in construction of a single-family home to include clearing the lot and cutting specimen trees, which is prohibited absent prior approval. In South Carolina, tree mutilation has been found to be grounds for injunctive relief. See generally Crawford v. Atlantic Coast Lumber Corp., 77 S.C. 81 (1907) (stating "destruction of the timber and trees on plaintiff's land . . . falls within the class of injuries generally deemed in equity to be irreparable.").

Based on the foregoing, the specific terms of the injunction are that the named Plaintiffs, and those persons in active concert and participation with them who receive actual notice of this order, **be prohibited from any further destruction of the specimen trees on Plaintiffs' lot as defined in the POA at issue.**

AND IT IS SO ORDERED.

The Honorable Jennifer B. McCoy

September _____, 2022



Charleston Common Pleas

Case Caption: William M Ross , plaintiff, et al VS Preserve Ii At Fenwick Hall
Property Owners Association Inc

Case Number: 2022CP1002345

Type: Order/Permanent Injunction

So Ordered

s/Jennifer B. McCoy #2764