

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2021-CP-07-00526

Moss Creek Owners Association,
Inc.,

Plaintiff,

vs.

AEI Resources, LLC,

Defendant.

**ORDER GRANTING PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT
(PARTIAL)**

RECEIVED

Mar 16 2023

SC Court of Appeals

This matter comes before me for a virtual hearing on November 17, 2022, at 11:30 a.m. pursuant to the Plaintiff’s Motion for Summary Judgment dated December 17, 2021, and supported by the Affidavits of Payman Shamlou, Controller for the Plaintiff, Moss Creek Owners Association, Inc., and Title Abstractor, Roxanne Beverly, both filed December 17, 2021, all filed of record herein. Additionally, Plaintiff’s Motion is supported by the Supplemental Affidavit of Payman Shamlou dated October 24, 2022, and Supplemental Affidavit of Attorney Fees dated October 26, 2022, both filed on October 26, 2022. At the hearing, the Defendant submitted its Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment, but no opposing affidavits were filed or presented. Present were Wm. Weston J. Newton, attorney for the Plaintiff, and Gregory R. Weathers, attorney for the Defendant, AEI Resources, LLC.

The Plaintiff’s Rule 56 motion in this delinquent HOA assessments/ debt enforcement action alleges that there is no genuine issue as to any material fact, thereby entitling the Plaintiff to summary judgment as a matter of law. In considering this matter, the Court has reviewed the pleadings and the moving papers, including the supporting affidavits and notes that no evidentiary material contesting Defendant’s ownership of the property, or the applicability of the Declaration to the Defendant and the subject property, have been submitted by the Defendant in response or opposition.

Based on South Carolina common law, statutes and applicable rules, it appears that the Plaintiff's motion as it relates to the Defendant's obligation, pursuant to the applicable Moss Creek Declaration of Covenants, to pay assessments and other appropriate charges, including the Membership Certificate Fee (as defined in the Declaration) commencing on the date of recording of the Defendant's title to the subject property, is well-founded and appropriate; therefore I find and conclude that there is no genuine issue of material fact with regard to the liability of the Defendant as the record owner of Lot 237 Moss Creek Plantation to pay common expenses, assessments, a Membership Certificate Fee, lot maintenance fees, unimproved lot water access fees and related charges together with interest, late fees and cost of collection and attorney fees in an amount to be determined at a subsequent hearing Englert, Inc. v. LeafGuard USA, Inc. 377 S.C. 129, 659 S.E. 2d 496 (2008); Rule 56(c) SCRPC. Accordingly, I find and conclude as follows:

FINDINGS OF FACT

1. The parcel which is the subject of this dispute is described as follows:

ALL that certain piece, parcel or lot of land, situate, lying and being in Moss Creek Plantation, Beaufort County, South Carolina, and shown and described as Lot #237 on a plat drawn and recorded in Plat Book 24 at Page 121 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more detailed description as to courses, metes and bounds, reference is had to said plat of record.

Subject, however, to all applicable covenants, restrictions and easements of record. This conveyance is further subject to the restrictions that the main residence constructed on the within described lot must contain a minimum enclosed dwelling area of 1,200 square feet and not less than -0- square feet of such enclosed area must be located on the first floor of the residence is a two story building, as such terms and limitations are defined in the covenants applicable to the lot conveyed hereby. The Grantee by acceptance of this deed, hereby agrees to said-provisions and covenants and agrees to observe and comply with said provisions.

This is the same lot of land sold at the delinquent tax sale of October 1, 2018, for delinquent taxes in the name of SHAY STEVEN, and conveyed to the Defendant as the successful Tax Sale Purchaser as reflected in that certain deed recorded January 7, 2020 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 3826 at Page 613.

2. The aforementioned lot 237 is shown and depicted on that certain plat recorded in Plat Book 37 at Page 176.

3. That in accordance with the terms of the Moss Creek Declaration of Covenants recorded in Book 3657 at Page 1029, all lands within Moss Creek including but not limited to the lands shown on the plat recorded in Plat Book 37 at Page 176, should be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the Declaration of Covenants.

4. Lot 237 Moss Creek is subject to the terms of the Moss Creek Declaration of Covenants.

5. As admitted by the Defendant, it is the owner of Lot 237.

6. Defendant, as the record owner of Lot 237, is an Owner as defined within the Moss Creek Declaration of Covenants.

7. Article V, Section 1 of the Moss Creek Covenants, provides that each Owner is deemed to covenant and agree to all of the terms and provisions of the Declaration and to pay the Association: (1) Annual Assessments or charges; (2) Special Assessment or charges and charges and fees due to the Association and/or the Association subsidiaries and affiliates, including but not limited to Water Oak Utility charges and fees. Further, Article VIII, Section 1 of the Declaration entitled "Membership Certificates Section 1. Owners Must Purchase", provides that every purchaser of each lot within Moss Creek shall pay a sum to the Association to be known as the Moss Creek Membership Certificate Fee. The payment of which shall be made at the consummation of closing of each sale.

8. Defendant, AEI Resources has failed and refused to pay as the purchaser and owner the assessments and other charges due Moss Creek (including the Membership Certificate Fee) from the date of recording of Defendant's vesting deed January 7, 2020.

9. That Article V of the Declaration provides that each assessment, charge or fee due Moss Creek together with interest thereon and costs of collection, including but not limited to attorney fees, shall also be the personal obligation of the Owner of such real property at the time when the assessment, charge or fee first become due and payable.

CONCLUSION OF LAW

Based on the record herein I conclude as follows:

1. Any Finding of Fact that should be more properly designated as a Conclusion of Law is so relabeled and any Conclusion of Law that might need to be a Finding of Fact is so amended in order to allow for the efficient implementation of these results.

2. In applying Rule 56, SCRCP, the Court must view the facts and inferences therefrom in the light most favorable to the non-moving party. However, a party opposing a properly supported motion for summary judgment may not rest on the mere allegations or denials of his pleading. “When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011), *quoting*, Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). “In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. ... In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment.” *Id.*, *citing*, Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330-331, 673 S.E.2d 801, 803 (2009). Here, Defendant has admitted its ownership of the subject property and the applicability of the Moss Creek Declaration of Covenants to the property and the Defendant as the owner thereof is uncontroverted. Further, Defendant has submitted no evidentiary material of any kind.

3. “Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document.” Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998), *quoting* Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E. 2d 15 (1985). Restrictive covenants are to be construed most strictly against the grantor and persons seeking to enforce them, and liberally in favor of the grantee, all doubts being resolved in favor of a free use of property and restrictions.” Sprouse v. Winston, 212 S.C. 176, 184, 46 S.E.2d 874, 878 (1948) *citing* C.J.S. Deeds § 163. See also, Sea Pines Plantation

Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 893-894 (1987). “Where a contract is unambiguous, clear and explicit, it must be construed according to the terms which the parties have used, to be taken and understood in their plain, ordinary, and popular sense”. *Warner v. Weader*, 280 S.C. 81, 83, 311 S.E.2d 78,79 (1983). The construction of a clear and unambiguous contract is a question of law for the court to determine. *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997). Based on the plain and ordinary meaning of the relevant language and terms of Article I, V, and VIII of the Declaration, I find the language of the Declaration is clear and unambiguous, the Defendant, as the record Owner of Lot 237, is, and as of January 7, 2020, was, obligated to pay the Plaintiff assessments, special assessments and other appropriate charges and/or fees due Moss Creek specifically, including but not limited to the Membership Certificate Fee, lot maintenance fees and Water Oak Utility charges and fees together with interest thereon, and costs of collection including attorney fees, in an amount to be determined at a subsequent hearing.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

Plaintiff’s Motion for Summary Judgment is granted in part as it relates to Defendant’s liability to pay assessments, including a Membership Certificate Fee. The amount of unpaid assessments, Membership Certificate Fee, interest and cost of collection shall be determined at a subsequent hearing.

Marvin H. Dukes, III
Master-in-Equity for Beaufort County

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-07-000526

Moss Creek Owners Association, Inc.

AEI Resources, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Wm. Weston J. Newton

Attorney for: Plaintiff
 Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. _____
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Moss Creek Owners Association, Inc.	AEI Resources, LLC	\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date



Beaufort Common Pleas

Case Caption: Moss Creek Owners Association Inc VS Aei Resources, Llc

Case Number: 2021CP0700526

Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069