69134
RECEIVED
JUL 18 2013
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No. 07-CP-40-8107

Place on the Greene Homeowners Assoc., Inc. . . . Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, ... Appellants.

PETITION FOR REHEARING

Respondent respectfully petitions for a rehearing on the following grounds:

1. The Court failed to identify the scope of its review of the circuit court's decision and thereby overlooked or misapprehended the fact that review is limited to the question of whether the circuit court abused its discretion in rejecting the defense of laches. Having failed to identify its limited scope of review, the Court then substituted its judgment for that of the circuit court on the question of whether the defense of laches was proven. The issue before the Court was not whether the Court would sustain the defense of laches if the Court were to try the case *de novo.* The issue was whether the circuit court abused its discretion in rejecting the defense, an entirely different question.

2. The Court overlooked the fact that the covenants provide as follows:

> No waiver by Association. The failure of Association or of the owner of a unit to enforce any right, provision, covenant or condition which may be granted by this Master Deed or other above-mentioned documents shall not constitute a waiver of the right of the Association or of the owner of a unit to enforce such right, provision, covenant or condition in the future.

Master Deed, Art. XIX § 4, p. 23, R. 265. Having overlooked this provision of the Master Deed, the Court failed to analyze its application to the facts of the case and failed to conclude that this no-waiver provision precluded the defense of laches.

3. The Court misapprehended the evidence on the question of detrimental reliance and overlooked the fact that no such evidence was presented. The Court found that the appellants "entered into obligations they would not have otherwise if the HOA had timely enforced the restrictive covenants." There is no testimony or other evidence that the appellants entered into any obligations of any kind. The only conduct which could possibly constitute detrimental reliance was the appellants' purchase of their respective units in the first place. None of the appellants testified that they would not have purchased their units if the covenants had been enforced earlier.

There was no expert or lay testimony that the appellants or any of them paid more than fair market value for their units. Fair market value is always based upon the assumption that any and all applicable restrictions will be enforced in the future. In particular, the appellant W.G.R.Q. purchased its three units as a small part of a purchase of numerous pieces of property for an undifferentiated lump sum. No value was assigned to the purchase price of the three units.

The only detriment claimed by the appellant Kinney was that he would suffer financial loss if his bar were to be closed. This is simply another way of saying that future violation of the restriction is expected to be as profitable as past violation. This does not constitute detrimental reliance upon past failure to enforce the restriction.

In finding that the appellants would suffer financial losses if the restriction is enforced, the Court overlooked the fact that there is no expert or lay testimony of how much, if any, the fair market value of the appellants' units might be reduced if the restrictions were enforced. For example, the appellant Easy Coin claimed that it would lose a"verbal contract" for the sale of its unit if the restriction were enforced. This appellant failed to present any evidence that the "verbal contract" sales price exceeded

fair market value, or even the amount of the alleged sales price.

There is no evidence of how much the appellants profited from the failure to enforce the covenants earlier. If the appellants' violation of the covenants did in fact increase the purchase price of their units and render them more valuable, then the continued violation of the covenants resulted in greater ongoing profits from the rent derived from the units. So far from being the victims of detrimental reliance, the appellants have profited unfairly from the unlawful operation of businesses in their units for the entire time that the covenants were not enforced.

Detrimental reliance requires *reliance.* Reliance requires knowledge. The Court overlooked the absence of any evidence that the appellants W.G.R.Q., LLC, Easy Coin Laundry, Inc., or Kenney knew of the restrictions, in which case they could not possibly have relied upon the Association's failure to enforce them earlier. The appellant Berry did have actual knowledge of the restrictions and gambled that neither the Association nor another apartment owner would seek to enforce the restrictions thereafter. This was not detrimental reliance but a calculated risk.

4. The Court overlooked the fact that each day that the restrictive covenant is violated is a separate and continuing violation of State law. It is the public policy of this State, adopted by the General Assembly, that condominium covenant restrictions be *strictly complied with.*

> Each co-owner shall comply strictly . . . with the covenants, conditions and restrictions set forth in the Master Deed . . . . Failure to comply with any of the same shall be grounds for . . . injunctive relief . . . .

S.C. Code Ann. § 27-31-170. As was the case in *Kneale v. Bonds,* 317 S.C. 262, 452 S.E.2d 840 (Ct. App. 1994):

> Both the [condominium] By-Laws and the Horizontal Property Act provide that the Master Deed should be strictly enforced.

Id. at 267, 452 S.E.2d at 842. This is not a case of a structure built in violation of a restriction, with no further violations. This is a case of ongoing, fresh violations of State

law each day that these bars and restaurants operate.

For these reasons the respondent petitions the Court to rehear the case and to find that the circuit court did not abuse its discretion in rejecting the defense of laches.

Respectfully submitted,

William M. Spillane
P. O. Box 23037
Columbia, SC 29224
(803) 699-0901

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

by: James B. Richardson, Jr.
Attorneys for Respondent.

July 18, 2013.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No. 07-CP-40-8107
Case No. 07-CP-40-8108
Case No. 07-CP-40-8109
Case No. 07-CP-40-8110

Place on the Greene Homeowners Assoc., Inc. . . . Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, ... Appellants.

CERTIFICATE OF SERVICE

I certify that I served a copy of respondent's petition for rehearing by first class mail, postage prepaid, addressed to appellants' attorneys at their respective addresses of record, namely:

Blake A. Hewitt, Esq.
Bluestein Nichols Thompson Delgado
P. O. Box 7965
Columbia, SC 29202

Brian L. Boger, Esq.
Attorney at Law
P. O. 65
Columbia, SC 29202

Jamie M. Best, III, Esq.
Allen, Gantt & Best
P. O. Box 9507
Columbia, SC 29290-0507

on July 18, 2013.

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Attorney for Respondent.

July 18, 2013.

Law Office of
James B. Richardson, Jr.

1229 LINCOLN STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803/799-9412
FAX 803/799-9628

July 17, 2013

Honorable Jenny A. Kitchings
Clerk of the S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Place on the Greene v. W.G.R.Q., et al.
2011197186

Dear Ms. Kitchings:

Enclosed for filing is respondent's petition for rehearing.

Thanking you, I remain

Yours very truly,

James B. Richardson, Jr.

cc: Blake A. Hewitt, Esq.
Brian Boger, Esq.
Jamie M. Best, III, Esq.
William M. Spillane, Esq.