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**Jan 26 2024**

**SC Court of Appeals**

State of South Carolina	)	
	)	In the Court of Common Pleas
County of McCormick	)	
Plum Branch Yacht Club,	)	
	)	CA No. 2019CP350011
Plaintiff,	)	
	)	<b>DECISION OF SPECIAL REFEREE</b>
vs.	)	
	)	
Forest Asbill and Leonora	)	
Asbill,	)	
	)	
Defendants.	)	
_____	)	

**CASE BACKGROUND**

By order of the Honorable Debra R. McCaslin dated January 12, 2023 I was appointed as a Special Referee to conduct a trial of the issues presented in the above-referenced matter and to rendered and issue a decision in this case with finality.

The Plaintiff in this case is the Plum Branch Yacht Club (the "Yacht Club" or "Club") located along the shores of Lake Thurmond in McCormick County, South Carolina. Lake Thurmond is a manmade freshwater reservoir which, along with certain lands bordering it, is owned by the United States of America and maintained and governed by the United States Army Corps of Engineers.

The Yacht Club itself includes a marina and fifty-five lots of real property which are dedicated and used for recreational purposes. The Club is subject to and operates pursuant the terms and provisions of a "Lease for Commercial Concession Purposes" (the "Lease") it executed with the Corps of Engineers in 1996.

In March of 2002 the Defendants, who are husband and wife, executed a "Non-

Transient Resident Mobile Home Lot License Agreement” (the “License Agreement”) with the Plaintiff, and by which they were allowed to place a mobile home on a lot at the Club designated as 27 Breezy Point.<sup>1</sup> The License Agreement incorporates the terms and provisions of the Lease, making the License Agreement subject to the terms and provisions of the Lease. Since the License Agreement was issued to them the Defendants have used their mobile home periodically and have enjoyed the Yacht Club for recreational purposes. The record for this matter shows that the License Agreement has been extended at least once since 2002.

The License Agreement executed by the Defendants provides that they must submit a written request to the Yacht Club before making any changes or modifications to their mobile home, and must also request permission in writing to place any other structures on their lot. Once a proper request has been presented to the Yacht Club it is required to review the request and determine if it complies with any applicable rules or regulations promulgated by the Corps of Engineers which govern the request. If it does, the Club submits the request to the Corps of Engineers which then either approves or denies the request.

The Plaintiff alleges that over the years the Defendants have asked for permission, and have received such permission, to place a shed on their lot and also to make certain changes to their mobile home. The Plaintiff further alleges, however, that in 2017 the Defendants renovated the mobile home without first submitting a request to the Club and then obtaining permission from the Corps of Engineers to do so, in breach of the terms and provisions of the License Agreement. As a result, the Plaintiff seeks to cancel the Defendants’ License Agreement and also require them to

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<sup>1</sup> Mobile or similar homes placed and located at the Yacht Club are occasionally referred to as “Non-Transient Mobile Homes” in certain documents made part of the record for this case.

remove their mobile home from the Yacht Club along with any other structures.

The Defendants answered the Plaintiff's Complaint and deny that they have breached the terms and provisions of the License Agreement. They also assert that because the Plaintiff is not the actual owner of the lands upon which the Yacht Club is located only the Corps of Engineers possesses the right to evict them from the Club. They further and affirmatively allege that any changes or modifications they have made to their mobile home over the years have been undertaken after they submitted a proper request to the Yacht Club and obtained permission from the Corps of Engineers to make those changes. They further contends that any changes they have made to their mobile home are no different than changes undertaken by many other individuals who hold License Agreements with the Plaintiff. In these regards the Defendants contend that the Plaintiff has treated them differently than other licensees, and has singularly and wrongfully selected them for an alleged violation of License Agreement.

A hearing to consider the Plaintiff's Complaint was held before me on August 31, 2023 in North Augusta, South Carolina. Thomas P. Murphy, Esquire of North Augusta appeared for the Plaintiff. The Defendants were represented by James D. Mosteller, III, Esquire of Aiken.

#### **SUMMARY OF EVIDENCE PRESENTED**

George C. Selfridge, Jr., testified at the hearing held before me on August 31, 2023. Dr. Selfridge is the president of Environmental Land Developers, Inc. which owns and operates the Yacht Club pursuant to its Lease with the Corps of Engineers. That Lease was executed in December 1995 and introduced into evidence as Plaintiff's Exhibit No. 1 at the hearing held before me.

Dr. Selfridge testified that the Club was granted permission under the Lease to use the property where the Yacht Club is located "for the conduct of business in connection with the

recreational development of the Premises for the general use of the public". The Lease further provides that such use is subject to a "Use and Development Plan" promulgated by the Corps of Engineers. In consideration for the rights granted under the Lease the Yacht Club pays to the Corps monthly rent based upon a percentage of the annual gross receipts of the Club.

The Lease further allows the Yacht Club to enter into license agreements with individuals and by which they are allowed to place and use mobile or similar homes and residences on lots within the Yacht Club. Dr. Selfridge testified that this agreement is not a lease of land, in the traditional sense, but is rather a grant of permission to individuals to occupy and use a lot within the Yacht Club, subject to certain rules and regulations.

The License Agreement executed by the Defendants in March of 2002 was introduced as Plaintiff's Exhibit No. 2 at the hearing held before me. Under the terms of that agreement the Defendants were allowed to place on their lot a 1969 Duke Mobile Home, fifty feet long, ten feet wide and with a twelve foot by twenty-two foot wide deck attached to it. Since 2002, and with periodic extensions of the License Agreement, the Defendants have enjoyed the benefits of that agreement with the Yacht Club in consideration of payment of a monthly fee.<sup>2</sup>

The License Agreement contains a number of requirements, conditions and restrictions. Pertinent to this case the agreement provides that the Defendants are required submit a request to the Yacht Club before making any changes or improvements to their mobile home, as well as request permission to place any additional structures on the lot. The License Agreement also requires the Defendants to complete certain forms and checklists detailing the proposed changes to

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<sup>2</sup> Of note, it appears that no extensions of the Lot License have been granted to the Defendants since 2018.

their mobile home, which are then submitted to the Corps of Engineers for approval. In particular the License Agreement provides that:

e. Existing porches with roofs cannot be made into an enclosed room or Florida room. Existing open sided porches cannot be screened, glassed-in, walled, or enclosed in any manner. (Plaintiff's Exhibit No. 2, Page 6, Paragraph 11(c)).

As reflected by testimony presented at the hearing held before me the Corps of Engineers strictly enforces the terms of any License Agreement granted for use of property along the shores of Lake Thurmond. Such enforcement is necessary to ensure that any changes to any mobile homes or structures, or the installation of utilities - such as sewer and waste disposal equipment - are done in such a manner as will not threaten the condition and integrity of the lake and the lands it borders. The License Agreement also states that a failure to abide by its terms and provisions may result in a termination of the rights granted by that agreement .

The evidence submitted at the hearing before me shows that the Defendants understood the terms and provisions of their License Agreement. They have been current with payments due under that agreement and at least once they applied for permission, and received such permission, to place a storage building on their lot. (Plaintiff's Exhibit No. 5). In 2004, however, the Defendants asked for permission to install lattice on the screen affixed to their porch. While the Yacht Club endorsed the Defendants' request it was never approved by the Corps of Engineers. (Plaintiff's Exhibit No. 6).

The series of events which gave rise to this civil action appear to have their origin sometime in 2017. By way of a letter from the Corps of Engineers to Dr. Selfridge dated December 21, 2017 the Corps notified him that it had been informed that the Defendants had built a new bathroom within their mobile home which extended onto their screened porch. (Plaintiff's Exhibit

No. 7). The letter instructed Dr. Selfridge to take appropriate action to “resolve this challenge.” (Id.).

Testimony presented at the hearing indicates that the Defendants were verbally notified of this violation after it was presented by the Corp of Engineers. By way of correspondence to the Defendants dated May 16, 2018 Dr. Selfridge formally instructed the Defendants to correct the violation, and also afforded the Defendants adequate time to do so as well. (Plaintiff’s Exhibit No. 8). It appears, however, that the Defendants did not remedy this violation and, in fact, have not undertaken to do so as of the present day.

In a letter sent to the Defendants dated November 26, 2018 Dr. Selfridge notified the Defendants that their License Agreement was cancelled. (Plaintiff’s Exhibit No. 11). That letter further instructed the Defendants to remove their mobile home and vacate 175 Breezy Point by December 21, 2018.<sup>5</sup>

Both of the Defendants testified at the hearing held before me. The gist of that testimony is that they believe that they have been unfairly treated by the Plaintiff and singularly targeted for violations of their License Agreement. They presented evidence in the form of numerous photographs of other lots and structures located within the Yacht Club. They contend these photographs show that other licensees had violated the terms of their agreements with the Yacht Club over the years and continue to do so.

Of note, Dr. Selfridge corresponded with the Corps of Engineers on December 15, 2018. In that letter he noted that when the Yacht Club began operating in March 1996 the Corps of Engineers attempted to force him to require all existing licensees within the Club property to bring themselves into compliance with the Corps’ rules and regulations. (Defendant’s Exhibit No. 1).

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<sup>5</sup> Prior to the date of this letter the Defendants’ lot was re-designated as 175 Breezy Point.

Through negotiations with the Corps, however, all non-conforming mobile homes and structures were “grandfathered” by the Corps and excused from strict compliance with those rules and regulations. (Defendant’s Exhibit No. 1).

The evidence in this matter is unclear as to whether or not the non-conforming mobile homes and structures owned by other Yacht Club licensees existed in such a state before or after the Yacht Club began operating in March of 2006. Regardless, there is evidence in this case that there are homes and structures located within the Yacht Club which do not comply with the rules and regulations promulgated by the Corps of Engineers.

There appears to be no question in this case, however, that the Defendants agree that they have not complied with the terms and provisions of their Lot License. Both of them testified in these regards. By way of an electronic message from the Defendant Lenora Asbill to United States Senator Lindsay Graham dated January 24, 2019 she candidly admits that “we all know our renos are illegal” but asserts that it is “wrong that [the Yacht Club] has allowed this to happen over such a extended period of time.”

From his testimony it appears that Dr. Selfridge does not deny that a period of time passed between the point in time when the Corps of Engineers notified him of the Defendants’ violation of their License Agreement and the commencement of this civil action. His testimony, and the letters introduced into evidence in this case, however, indicates that he has made several bonafide and reasonable attempts during that time to resolve the issues presented in this case, as well as afford the Defendants opportunities to cure their violation of their License Agreement.<sup>4</sup> For example,

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<sup>4</sup> One aspect of the delay in the proceedings which led to the institution of this case is the fact that the Yacht Club filed an action in the McCormick County Summary Court seeking to end the Defendants’ License Agreement and evict them from the Club. That action was dismissed by the Summary Court apparently because the Magistrate concluded the License Agreement was not a true lease.

the Plaintiff expressed a willingness to work within Mr. Asbill's work schedule to allow him to have time to resolve the issues presented in this case. As Special Referee, I also allowed a period of time to pass before issuing my decision here, and to perhaps give the Defendants a chance to resolve those issues.

In any event, after reviewing the evidence presented in this case, and after listening to and considering the statements and arguments of counsel, I make the following findings of fact and conclusions of law to support my decision in this matter.

### FINDINGS OF FACT

1. In 1996 the Plaintiff and the United States Army Corps of Engineers entered into a written agreement, titled "Lease for Commercial Concession Purposes", (the "Lease"). Pursuant to this agreement the Plaintiff agreed to lease from the United States of America certain real property located on the shores of Lake Thurmond in McCormick County, South Carolina, subject to certain terms and conditions. The property leased by the Plaintiff is known as the Plumb Branch Yacht Club (the "Yacht Club").
2. In 2002 the Plaintiff and the Defendants entered into a written agreement, titled "Non-Transient Resident Mobile Home Lot License Agreement" (the "License Agreement"). Pursuant to this agreement, and the terms and conditions set forth therein, the Defendants were allowed to use a lot designated as 175 Breezy Point, formerly known as 27 Breezy Point, at the Yacht Club.
3. The License Agreement incorporates the terms and provisions of the Lease, making the latter an express part of the terms and conditions of the former.
4. A failure of the Plaintiff to enforce the terms and conditions of the License Agreement constitutes a breach of the Lease it has with the Corps of Engineers.
5. The License Agreement is not a lease of real property as defined by the laws of the State of South Carolina.
6. The License Agreement provides that the Defendants are required to submit a written request to the Plaintiff if they want to change or modify, in any manner, the mobile home located on their lot.
7. The Lease requires the Plaintiff to review any such request made by the Defendants and to ensure that the requested changes comply with the Corps of

Engineer's rules and regulations governing the use of property within the Yacht Club. If the request does comply with such rules and regulations the Plaintiff is required to certify it in those regards and present it to the Corps of Engineers for consideration and its approval.

8. In this respect the Plaintiff is not the party which approves or disapproves a request presented by an individual holding a License Agreement to use a lot within the Yacht Club.

9. While the Plaintiff is required to fairly determine whether or not a request made by the Defendants complies with the Corps of Engineers rules and regulations, there is no allegation in this case that it has not done so.

10. The Defendants are not allowed to make any changes to their mobile home unless the procedures outlined above are followed and the Corps of Engineers issues an approval of the Defendants' request.

11. The requirements mandated by the Lease and the License Agreement are reasonable and necessary in order to ensure that the land upon which the Yacht Club is located is maintained in a safe, sanitary and healthy manner and the condition and integrity of Lake Thurmond is also protected against any unsafe or environmental hazard.

12. In April of 2003 the Defendants submitted a request to the Plaintiff to erect a storage building on their lot at the Yacht Club, the Plaintiff confirmed the request was allowed under applicable rules and regulations and the Corps of Engineers approved the request.

13. In March of 2004 the Defendants submitted a written request to the Plaintiff to install lattice over the screen on their porch of their mobile home at the Yacht Club, the Plaintiff confirmed the request was allowed under applicable rules and regulations, but the Corps of Engineers never approved the request.

14. The Defendants nevertheless installed lattice over the screen on their porch despite not having permission to do so from the Corps of Engineers.

15. Prior to December 2017 the Defendants constructed and installed a new bathroom in the mobile home on their lot at the Yacht Club. This bathroom extends into the area of their screened porch.

16. The Defendants did not submit a written request to the Plaintiff to install this new bathroom, and to allow the Plaintiff to review the request to ensure that it was permissible under applicable rules and regulations.

17. The Corps of Engineers did not approve any request made by the Defendants to

install a new bathroom in their mobile home at the Yacht Club.

18. Installation of the lattice on the screen porch and construction and installation of the new bathroom by the Defendants at their mobile home constitute material breaches by them of the terms, provisions and conditions of their License Agreement with the Plaintiff.

19. The Plaintiff seeks a decision from this Court requiring the Defendants to immediately remove their mobile home and any other structures from their lot at the Yacht Club. This remedy is allowed under the terms and provisions of the License Agreement.

20. There is evidence in the record for this matter showing that other mobile homes and structures currently located on lots within the Yacht Club do not conform with the Corps of Engineers' rules and regulations governing the use of real property located within the Yacht Club. It is not clear, however, as to whether or not such non-conforming uses existed before or after the Plaintiff entered into the Lease with the Corps of Engineers, and whether or not they were allowed to continue to exist, or were "grandfathered", once the Lease was executed.

21. Regardless, the evidence for this matter supports a factual conclusion that the Plaintiff has not waived or excused such non-conforming uses or conditions, or is estopped from enforcing them. The Plaintiff has timely taken those necessary and proper steps under the Lease and License Agreement to enforce the rules and regulations which apply to the use of property within the Yacht Club.

22. Further, the Plaintiffs were aware of the proper procedure to use to request and obtain approval for proposed changes to their mobile home and lot, in that they had previously asked for, and obtained, permission to place a storage building on their lot and had also at least submitted a request to install lattice on the screens on their mobile home porch.

23. To the extent that any equitable claims or defenses apply in this case, there is also evidence to support a conclusion that the Defendants cannot complain of the Plaintiff's failure to evenly apply rules and regulations to others when they have not properly followed such rules and regulations themselves.

24. The United States of America, as well as the Department of the Army's Corps of Engineers are not parties to this civil action.

25. There is no evidence in the record for this matter supporting any conclusion that the Plaintiff is a lawful agent or representative of the United States or the Corps of Engineers.

26. The Plaintiff is a private corporation, and the evidence in this matter does not

support a conclusion that the Defendants are members of a protected class of individuals: as such, any act taken by the Plaintiff with respect to enforcing the terms and conditions of the Lease and License Agreement does not constitute an official act of a governmental entity, such that a Court under the circumstances of this case is not guided by federal or state constitutional provisions prohibiting the unequal or discriminatory application of any governing law.

27. In addition, it is questionable as to whether or not the United States government, including the Corps of Engineers, may be held to have waived the application of any law or may be estopped from enforcing that law.

28. The Plaintiff has acted reasonably given the facts of this case and has afforded the Defendants reasonable opportunities to cure their violation of their License Agreement.

29. No terms or provision in the Lease or the License Agreements allows for recovery of attorney's fees, costs and expenses by any party thereto and in the event of the breach of such agreements by any other party.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this civil action.
2. This Court has personal jurisdiction over the parties to this case.
3. Venue for this matter is proper in McCormick County, South Carolina.
4. The evidence presented at the hearing for this matter, and as outlined by the Findings of Fact set forth above, establishes that the Defendants have breached the terms, provisions and condition of their License Agreement with the Plaintiff and, therefore, also the Lease.
5. The Plaintiff is entitled to those remedies available to it under the terms, provisions and conditions set forth in the Lease and License Agreement.
6. The Plaintiff is entitled to cancel its License Agreement with the Defendants, and require the Defendants to vacate the lot designated and known as 175 Breezy Point at the Plumb Branch Yacht Club in McCormick County, South Carolina.
7. The Plaintiff is also entitled to require that the Defendants remove their mobile home, as well as their storage building, from that lot.
8. In the event of a breach, the Lease and License Agreement do not set forth a time frame within which a lot shall be vacated or property should be removed therefrom.

9. Under the circumstances of this case I find that 45 days is a reasonable period of time within which the Defendants shall be required to vacate the lot and remove their mobile home and the storage shed.

10. Beforehand, however, the Defendants should exercise caution to ensure that no action undertaken by them may serve to cause any damage, or have any effect on the environmental condition of the lot or the surrounding areas of the Yacht Club.

11. Each party in this matter shall bear their own attorney's fees, costs and expenses.

SO DECIDED AND DIRECTED.

s/ Clarke W. McCants, III  
Clarke W. McCants, III  
Special Referee

December 28, 2023