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**May 09 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

THE HONORABLE DEANDREA G. BENJAMIN

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Appellate Case No. 2021-000641

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Stonington Community Association, Inc.,

Respondent,

v.

Carl D. Taylor, Jonathan Stevens, Veronica Stevens, Lena M. Bretous, Vickie M. Wise, Gerald Maynard, Lisa Maynard, Reginald Dalton, Donna Dalton, Thomas Lafayette Brown a/k/a Thomas L. Brown, Sharline Brown, Derrick L. Taylor, Gaye S. Taylor, Syrecea Parker, Carolyn L. Austin, Richea G. House, Sr., Gayle D. House, Larkin Hancock, Jr., Katrina Hancock, Jeffery M. Farmer, Kelly S. Farmer, Anthony T. Reddish, Diann Reddish, Joel H. Daley, Syreta L. Daley, Judy Dove, Henry Faison, Dorothy Brisbon, George L. Lawrence, Annette M. Lawrence, Devinci L. Fulton, and John A Francis,

Defendants,

Of whom Lena M. Bretous, Vickie M. Wise, Gerald Maynard, Lisa Maynard, Derrick L. Taylor, Gaye S. Taylor, Syrecea Parker, Richea G. House, Sr., Gayle D. House, Devinci L. Fulton, and John A. Francis are the Appellants.

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**APPELLANTS' PETITION FOR REHEARING**

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Pursuant to Rule 221(a) of the South Carolina Appellant Court Rules, Appellants hereby file this Petition for Rehearing. Appellants respectfully request a rehearing on Unpublished Opinion No. 2024-UP-087, which was filed on March 20, 2024. The basis for the request for rehearing is that this Court erred in finding that Summary Judgment in favor of Respondent based

on the legal theory of reciprocal negative easements was proper when questions of material fact exist as to the applicability of restrictive covenants to the Appellants' property.

Our case law in South Carolina has long favored the free and unrestricted use of property. For this reason, any doubt or ambiguity in the construction of a restriction is to be resolved in favor of free use and against restrictions. *Spur at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 781 S.E.2d 115 (Ct. App. 2015); *Penny Creek Assocs., LLC v. Fenwick Tarragon Apts., LLC*, 375 S.C. 267, 651 S.E.2d 617 (Ct. App. 2007). Applying a theory of negative reciprocal easement in this case to find that Appellants' property is encumbered by the subject covenants is anathema to the general principle that such restrictions are disfavored. The subject covenants themselves echo this general principle:

In addition to, **no implied reciprocal covenants or obligation to develop shall arise with respect to lands that have been retained by the Developer for future development.** The Developer shall not be bound by any master plan, use or restriction or use shown on any master plan, and may in its sole discretion at any time change or revise said master plan, develop or not develop the remaining undeveloped property or common area or amenities shown on any master plan.

(R. pp. 368-369 (emphasis added)).

At trial and before this Court, Appellants relied on this language to demonstrate that it was not the Developer's intent for the restrictions to apply to any property other than that expressly identified in the Declaration. Our courts view restrictive covenants as contractual in nature. *Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016); *Hanold v. Watson's Orchard Prop. Owners Ass'n*, 412 S.C. 387, 772 S.E.2d 528 (Ct. App. 2015), *aff'd*, 419 S.C. 162, 797 S.E.2d 47 (S.C. 2017); *Highlands Prop. Owners Ass'n v. Shumaker Land, LLC*, 397 S.C. 432, 437, 724 S.E.2d 685, 687 (Ct. App. 2012); *Penny Creek Assocs., LLC v. Fenwick Tarragon Apts., LLC*, 375 S.C. 267, 651 S.E.2d 617 (Ct. App. 2007). Where the plain language of a contract—

here the Declaration—prohibits the implication of restrictions, it is improper for a court to impose restrictions on property outside of that expressly identified in the Declaration.

In reviewing the evidence presented to the trial court, this Court erred in affirming the trial court's finding that there was no genuine issue of material fact as to the applicability of the restrictions. The evidence supporting the existence of a question of fact includes but is not limited to the following. The Developer maintained ownership and control of the subject properties until their transfer pursuant to Foreclosure Deed dated February 10, 2010. (R. pp. 408-410). In the interim between the recording of the Original Declarations and the foreclosure deed, the Developer mortgaged the subject property, (R. pp. 478-499), agreeing not to “permit any change in any license, restrictive covenant, or easement without Lender’s prior written consent” and warranting that the Property is unencumbered, except for encumbrances of record,” which do not include the Amended Covenants. (R. pp. 478-499).

During the same period, while still in complete control of the subject lots, the Developer was involved in multiple lawsuits regarding both the neighborhood management, in which the Developer had notice by way of order of the court that the subject properties in Phase II were **not** subject to the restrictions. (R. pp. 338-342, 157-158).

In addition, for properties outside of Phase I, there is no evidence in the public record that a subsequent purchaser for value would be made aware that specific restrictive covenants run with to the property.

Based upon the foregoing and the record of this appeal, the trial court and this Court erred in granting summary judgment in favor of Respondent. Appellants request that this Court amend its decision and find that summary judgment in favor of Respondent was improper and remand this case to the trial court for further proceedings.

Respectfully submitted,

s/Kathleen McDaniel

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May 9, 2024