

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS
FOR THE TENTH JUDICIAL CIRCUIT

Kenneth S. Hoffman, Linda J. Hoffman,
Harold W. Walters, Terrence Whitlock, and
Barrie Whitlock,

Case No.: 2022-CP-04-02009

Plaintiff(s),

vs.

ORDER

Saad Holdings, LLC, and Carl L. Jones, as
Personal Representative of the Estate of
Anne E. Jones, deceased,

RECEIVED
May 15 2024
SC Court of Appeals

Defendant.

This declaratory judgment action was before the Court on April 9, 2024 for a bench trial in Oconee, South Carolina. The case originated in Anderson, SC, and the parties agreed, due to scheduling reasons, to have the case heard in Oconee County. Kenneth S. Hoffman, Linda J. Hoffman, Harold W. Walters, Terrence Whitlock, and Barrie Whitlock (“Plaintiffs”) filed this declaratory judgment action requesting the Court permanently enjoin Saad Holdings, LLC, and Carl L. Jones, as Personal Representative of the Estate of Anne E. Jones, deceased (“Defendants”) from walking across their undeveloped real property. The Defendants filed an Answer and Counterclaim generally denying the Plaintiffs’ requested relief, and asking for reimbursement for their attorney’s fees and costs. Both sides have filed motions for summary judgment.

The case surrounds interpretation of restrictive covenants in the Providence Point subdivision in Anderson County. The Plaintiffs allege that the Defendant’s construction of boat docks at three vacant lots in the subdivision are violative of the restrictive covenants. The Defendant denies those allegations.

The parties stipulated the facts and exhibits. The Court heard arguments from counsel and reviewed the applicable law and exhibits. Accordingly, the Court makes the following findings:

FINDINGS OF FACT

1. The subdivision in question is located in Anderson County, South Carolina. The Court has jurisdiction over the parties and subject matter of the litigation. Venue is proper.

2. The Plaintiffs are residents of the Providence Point subdivision which is situated on Lake Hartwell in Anderson County, South Carolina. The restrictive covenants for the Providence Point subdivision were recorded on July 17, 1968 (Plaintiff's Exhibit 1). The major point of contention in the case surrounds the following provisions in these restrictive covenants:

LAND USE AND BUILDING TYPE:

No lot shall be used for other than residential purposes. No residential building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height and a private garage for not more than two cars.

TEMPORARY STRUCTURES:

No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot, if they are being maintained for any commercial purpose, or for any other purpose.

3. Amended restrictive covenants for Providence Point subdivision were recorded on August 15, 2000 (Defendant's Exhibit 1). These amended restrictive covenants modified the minimum home size from 900 square feet to 1500 square feet. They also added the provision that "no residence shall be constructed closer than twenty (20) feet to the front lot line, front lot line being defined as that line bordering public street, nor nearer than ten (10) feet to any side lot line."

4. The Defendant Saad Holdings, LLC (Saad) purchased three lots from Carl L. Jones in 2021. These lots were originally one lot at the entrance of the subdivision. Labelled "Lot 21," the thin lot's lack of depth made home construction in compliance with the setback lines difficult, if not impossible. The parties could not say with certainty, but doubt that a home could be constructed on any of the three new lots formed from

Lot 21 given the setback lines and square footage requirements. No structures have been built on any of the lots. The Plaintiff put into evidence the deposition of Gregory Saad on December 8, 2023 (Plaintiff's Exhibit 2). He was questioned specifically regarding his intentions for the docks:

“Q. What’s your intended use of the property, as we sit here today? What are you intending to use this property for?

A. To enjoy the lake.

Q. And so what is it you intend to do with the property itself?

A. Walk across it to get to the dock.

Q. So you have no intentions of building on it?

A. Can’t.”

(Deposition of Gregory Saad, pp 46-47).

5. The deed conveying the property to Saad was recorded on September 1, 2021. The deed states that the conveyance:

“...is specifically made subject to those certain restrictions of record in the Office of the Register of Deeds for Anderson County, South Carolina, in Deed Book 15-Q at Page 468, and amended in Book 3847 at Page 285, and is further subject to any and all recorded rights of way, easements, conditions, restrictions, and zoning ordinances pertaining to said premises...”

The parties stipulate that the aforementioned restrictive covenants govern the subject property.

6. After the conveyance, Saad applied for, and was granted, permits to construct boat docks at each lot. It is stipulated by the parties that the U.S. Army Corps of Engineers owns the shoreline of Lake Hartwell and that each entire boat dock is inside that shoreline. Saad uses the lots to access the boat docks. He also has run power and water across his lots to the docks. There is no evidence of Saad renting the boat docks or otherwise engaging in commercial activity which would be a violation of the restrictive covenants.

7. The Plaintiffs allege that Saad accessing the boat docks via his lots is an impermissible use of the property. They allege that recreational use of the lots constitutes violations of the restrictive covenants. Plaintiff Terrence Whitlock expressed fear in his deposition that Saad would have a “marina” in the

subdivision and cause property values to depreciate (Defendant's Exhibit 3, Dep. of Terrence Whitlock p. 10). However, Whitlock also was questioned about Saad walking across his lots.

“Q. So tell me, then, what activities are allowed if you don't have a residence on a property. Is my client allowed to walk on his property?

A. I guess he—he would be able to walk on the property.

(Deposition of Terrence Whitlock p. 14).”

8. The Defendant also submitted the deposition of Plaintiff Kenneth S. Hoffman. Hoffman alleged that Saad had made improvements to the lots but that the improvements are not violations of the restrictive covenants:

“Q. Is there anything in these restrictions that prohibit my client from cutting trees or running electricity or anything like that on the lot?

A .No. There is not.” (Deposition of Kenneth S. Hoffman p. 22).

However, when asked about traversing the lot, Hoffman alleged that Saad was violating the restrictive covenants:

“Q. Can my clients walk on their property without a residence located on it?

A. The clients cannot use is in regards to recreation, like walking dogs or—it has to be for recreational purposes.

Q. Okay. So if my client, for instance, enjoyed watching birds, would he be allowed to watch birds on his property with no structure on it?

A. That would be more for recreational or a hobby, and it's not a residential purpose.

(Deposition of Kenneth Hoffman pp. 26-27)”

9. At the hearing, Plaintiff's counsel took the same position that Hoffman took. He argued that any use of an empty subdivision lot other than maintenance would constitute an impermissible use under the restrictive covenants. Upon questioning from the Court, he argued that a picnic by the Defendant on these lots would be a violation. The Defendant argues that this is an absurd result and violates public policy.

APPLICABLE LAW

“An action seeking an injunction to enforce restrictive covenants sounds in equity.” *Snow v. Smith*, 416 S.C. 72, 90, 784 S.E.2d 242, 251 (Ct. App. 2016); *Santaro v. Schulthess*, 384 S.C. 250, 261, 681 S.E.2d 897, 902 (Ct. App. 2009). When a Court determines that a violation of a restrictive covenant has occurred, “a court may not enforce the restrictive covenant as a matter of law.” *Buffington v. T.O.E. Enters.*, 383 S.C. 388, 394, 680 S.E.2d 289, 292 (2009) (explaining that “the court *must* consider equitable doctrines asserted by a party when deciding whether to enforce the covenant.”) (emphasis added).

South Carolina Courts have, historically, reaffirmed their disfavor of restrictive covenants on the “widely held view that society’s best interests are advanced by encouraging the free and unrestricted use of land.” *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 893-94 (1987); *See, Hamilton v. CCM, Inc.*, 274 S.C. 152, 263 S.E.2d 378 (1980); *Edwards v. Surratt*, 228 S.C. 512, 90 S.E.2d 906 (1956). “[R]estrictions on the use of property must be created in express terms or by plain and unmistakable implication, and restrictions will be strictly construed with all doubts resolved in favor of free use of the property.” *Snow v. Smith*, 416 S.C. at 91, 784 S.E.2d at 251.

“Restrictive covenants are construed like contracts and may give rise to actions for breach of contract.” *Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). “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 by the whole document.” *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863-64 (quoting *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985)). “When the language of a contract is clear, explicit, and unambiguous, the language of the contract

alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning." *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999).

"A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *South Carolina Dept. of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). "When such an ambiguity exists, all doubts are to be 'resolved in favor of free use of the property.'" *Community Services Associates, Inc. v. Wall*, 421 S.C. 575, 808 S.E.2d 831, 836 (Ct. App. 2017) (quoting *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006)). "Common sense and good faith are the leading touchstones of the construction of a contract and contracts are to be so construed as to *avoid an absurd result*." *Floyd v. Dross*, 442 S.C. 79, 88, 897 S.E.2d 191, 196 (Ct. App. 2024) (quoting *Georgetown Mfg. & Warehouse Co. v. S.C. Dep't of Agric.*, 301 S.C. 514, 518, 392 S.E.2d 801, 804 (Ct. App. 1990)).

CONCLUSION

The Court, when applying the facts to the law, concludes:

1. The Court concludes that it has jurisdiction over the parties and subject matter of the litigation.
2. That the Defendant Saad's boat docks are not violations of the Providence Point subdivision restrictive covenants. They are attached to the shoreline, which is owned by the U.S. Army Corps of Engineers.
3. That the Defendant Saad's walking across his lots to access these boat docks is not a violation of the restrictive covenants. Interpreting these restrictive covenants in the manner sought by the Plaintiffs would lead to an absurd result that violates public policy in that it would unreasonably interfere with the free use of property.



Anderson Common Pleas

Case Caption: Kenneth S Hoffman , plaintiff, et al VS Saad Holdings Llc ,
defendant, et al
Case Number: 2022CP0402009
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CIVIL ACTION NO.: 2022CP0402009

Kenneth S. Hoffman, Linda J. Hoffman, Harold W. Walters,
 Terrence Whitlock, and Barrie Whitlock
 PLAINTIFF(S)

Saad Holdings, LLC and Carl L. Jones, as Personal
 Representative of the Estate of Anne E. Jones, deceased
 DEFENDANT(S)

Submitted By: Address:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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. See Page 2 for additional information.
- 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
- 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:

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, Plaintiff's Motion to Reconsider, pursuant to Rule 52, SCRPC, ¹ is DENIED.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC 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)

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 52(c), SCRPC.
 SCRPC Form 4C (03/2013) S2001045/JVS/W004EFL Page 1 of 3

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 for judgment details.

Circuit Court Judge

2752

Judge Code

Date



Anderson Common Pleas

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s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit