

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Albert D. Barwick, Ann R. Barwick,)
Gordon G. Holscher, II, Billy R. Jeffcoat,)
Connie M. Jeffcoat, Harriet A. Jones,)
Ernest J. Matheson, Jr., Thomas L.)
Reading, Kenneth W. Pippen, Jr. and)
Ignas K. Skrupskelis,)

CA No. 2019CP0202063

FINAL ORDER

Plaintiffs,)

vs.)

Edisto Lake, Inc., Edisto Lake Ridge, LLC,)
Edisto Lake Property Owner's Association,)
Inc. and Terry M. Hutto, Jr.)

Defendants.)

RECEIVED
May 31 2024
SC Court of Appeals

CASE BACKGROUND

This matter involves the interpretation of certain covenants and restrictions which govern a development in Aiken County known as the Edisto Lake Community. The Plaintiffs are residents of that Community, as well as the Defendant Terry M. Hutto, Jr. and his family.

The Plaintiffs commenced this case alleging, among other things, that the Defendant Hutto had violated those covenants and restrictions, and sought a declaration in those regards.

The trial of this matter began before me in Aiken, South Carolina on March 21, 2022. At that trial S. Jahue Moore, Esquire, of Lexington, South Carolina represented the

Plaintiffs. W. Joseph Moore, Esquire of Columbia, South Carolina appeared for Edwin H. Cooper, Jr. and Clarke W. McCants, III, Esquire of Aiken appeared for the Defendant Hutto.¹

Before the trial in March 2022 began the Defendants jointly presented and argued certain motions. Both Defendants moved to join Edisto Lake, Inc., Edisto Lake Ridge, LLC and the Edisto Lake Property Owner's Association, Inc. (The "POA") as parties in this case. Edisto Lake, Inc. and Edisto Lake Ridge, LLC are two companies which were formed by Mr. Cooper to develop the property and community where Edisto Lake is located. Those companies remain active today. The POA is an entity formed to govern the Edisto Lake Community and is comprised of owners of real property there.

Mr. Cooper also moved to be dismissed from this case, contending that there was no basis to find that he is personally liable with respect to the Plaintiffs' claims and causes of action for this matter. All of the motions presented by the Defendants were taken under advisement by me pending the presentation of testimony and other evidence at the trial for this case.

Several of the Plaintiffs testified at the trial held in March 2022. They related that they were residents of the Edisto Lake Community and brought this action contending that Mr. Hutto was using parts of the Community as a private hunting preserve and in violation of its covenants and restrictions. They testified that they had heard gunshots during certain parts of the day and had found spent shotgun shells on property within the development. Based upon this evidence they asked the Court to issue a declaration that Mr. Hutto was violating those covenants

¹ As set forth later Mr. Cooper was dismissed from this case pursuant to my Order dated October 27, 2022.

and restrictions. They also asked that this Court interpret certain other provisions of those covenants and restrictions.

Mr. Hutto testified at the trial before me. He and his wife currently own property within the Edisto Lake development. He testified that his wife and family reside on a portion of the property owned by them and at no point had they organized or operated any type of hunting or similar preserve, or allowed anyone to hunt or conduct similar activities on property within the development.

Mr. Cooper also testified at the trial of this case and described the history, formation and development of Edisto Lake. He stated that Edisto Lake, Inc., Edisto Lake Ridge, LLC and the POA remain viable corporate entities today, and governance of Edisto Lake is currently the responsibility of the POA.

A number of exhibits were introduced at the trial held before me in March 2022. Those include the covenants and restrictions for the Edisto Lake Community as well as a plat of the development.

Upon the conclusion of the presentation of evidence at the trial in March 2022 the Defendants renewed their pre-trial motions. After consideration of those motions I ruled that Mr. Cooper should be dismissed from this case and Edisto Lake, Inc., Edisto Lake Ridge, LLC, and the POA should be joined as Defendants herein.

After the new Defendants were joined, and an amended complaint was served and answered, the Court reconvened the trial for this matter on November 15, 2023 where Mr. S. Jahue Moore again appeared for the Plaintiffs, Mr. McCants again appeared for the Defendant Hutto,

Mr. W. Joseph Moore appeared for the newly joined Defendants Edisto Lake, Inc. and Edisto Lake Ridge, LLC and Paul K. Simons, Jr., Esquire of Aiken appeared for the POA.

Before the trial began on November 15 I conducted a pre-trial conference with counsel for the parties. At that conference Mr. S. Jahue Moore expressed that the Plaintiffs did not seek to recover monetary damages from the Defendants, and their request for relief in this matter is limited to a declaration setting forth that hunting and the discharge of firearms are prohibited by the terms and provisions of the covenants and restrictions for the Edisto Lake Community. In that regard counsel for the Defendants expressed and agreed that it would also be appropriate for the Court to include in its ruling a finding that all of the Parties in this case, including the Plaintiffs, should comply with the covenants and restrictions governing the Edisto Lake Community, and the Court's Order should further provide that the operation of a hunt club or hunting preserve, or similar business or commercial entity, is prohibited within the Community.

At the pre-trial conference counsel for the Parties also expressed that it was not necessary for the Court to hear further testimony in this matter, or consider any further documentary or similar evidence, and it would be appropriate for the Court to render a decision based upon the existing record. The Court also asked counsel to present memorandums setting forth the positions of their respective clients, which they did and which have been reviewed and considered by me.

**REVIEW OF LEGAL AUTHORITIES AND
RELEVANT TESTIMONY AND OTHER EVIDENCE**

Restrictive covenants governing the use of real property are contracts, and subject to the laws of this State governing the interpretation of contracts. As our Supreme Court has explained:

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. The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written. It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property, subject, however, to the provision that this rule of strict construction should not be applied so as to defeat the plain and obvious purpose of the instrument. It follows, of course, that where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.

S.C. Department of Natural Resources v. The Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001).

It is elementary that one seeking relief due to a breach of a contract must first show that the agreement has, in fact, been breached. Once a breach has been established then that person must demonstrate that they have been damaged or otherwise affected by the breach.

As stated above the Defendants do not disagree that the restrictive covenants for Edisto Lake prohibit the operation of hunting clubs or preserves within the Community. The "Use Restriction" provision set forth in Section 1 of Article VII of the Covenants states that residents of the Community shall use their property for residential purposes only. That section also states that while residents may use their homes for business purposes, no outside traffic may be generated for this purpose and no outward appearance of a business in a home is allowed.

It is clear to this Court, however, that residents of Edisto Lake, are allowed to hunt in certain areas of the Community. The applicable provision of the restrictive covenants in this regard provides:

Section 21. Hunting: No hunting will be permitted on or over Edisto Lake, or on any roads or parkways within the Property.²

There is nothing unclear and ambiguous about this provision - it prohibits hunting in certain areas of the Edisto Lake Community. An equally clear conclusion drawn from this provision is that hunting is allowed in the remaining areas of the Community, along with the discharge of firearms for that purpose. Had the drafter of the covenants and restrictions intended that there be no hunting within the Edisto Lake Community whatsoever, it would have been simple to include that absolute restriction as part of the covenants. As our Supreme Court has also stated:

A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. Hawkins v. Greenwood Development Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997) (citing 17A Am.Jur.2d Contracts § 338, at 345 (1991)). It is a question of law for the court whether the language of a contract is ambiguous. Id. Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. Id. The determination of the parties' intent is then a question of fact. Id. On the other hand, the construction of a clear and unambiguous deed is a question of law for the court.

Gardner v. Mozingo, 293 S.C. 23, 358 S.E.2d 390 (1987).

Which brings the Court to the testimony of the drafter of the covenants and restrictions, Mr. Cooper, who was previously dismissed as a Party in this case. While I have found that the restrictive covenants for the Edisto Lake Community are not ambiguous I also find that it would be beneficial to the Court and the Parties to consider his testimony with respect to determining his intentions when he prepared those covenants.

Mr. Cooper outlined the history of the development of the Edisto Lake Community and the drafting and preparation of the restrictive covenants governing use of the property by

² Edisto Lake is the body of water surrounded by residential lots comprising the Edisto Lake Community.

residents living there. Mr. Cooper told the Court that the covenants were drafted in a fashion to allow residents to hunt within the Community, with the exception no one is allowed to do so across Edisto Lake itself or across roadways located in the Community. He stated that the covenants were not drafted to prohibit hunting outright in the Community. He further testified, however, that the operation of hunt clubs and preserves within Edisto Lake are expressly prohibited. Thus, and while the Covenants are clear standing alone, Mr. Cooper's testimony is helpful in assisting the Court in resolving the issues presented in this case.

CONCLUSION AND ORDER

For the reasons set forth above, this Court finds and concludes, and declares, that the covenants and restrictions for the Edisto Lake Community allow hunting within certain areas of that development. Those covenants and restrictions, however, do not allow hunting on or over Edisto Lake, or on any roads or parkways located within the Property. By implication, the discharge of firearms within the Edisto Lake Community for purposes of hunting is allowed, subject to the remaining provisions of the covenants and restrictions.

This Court further finds and concludes, and declares, as the Parties herein agree, all residents of the Edisto Lake Community are bound to abide by and with the covenants and restrictions governing the Community, and the operation of a hunt club or hunting preserve, or similar business or commercial activities, is prohibited within that development.

SO ORDERED.

THE SIGNATURE OF THE PRESIDING JUDGE AND THE DATE OF
THIS ORDER ARE SET FORTH ON THE LAST PAGE ATTACHED HERETO



Aiken Common Pleas

Case Caption: Timmy Oneal Brazell , plaintiff, et al VS Edwin H Cooper Jr ,
defendant, et al
Case Number: 2019CP0202063
Type: Order/Other

So Ordered

The Honorable Courtney Clyburn Pope