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SC Court of Appeals

ELECTRONICALLY FILED - 2024 Jun 05 8:33 AM - SPARTANBURG - COMMON PLEAS - CASE#2022CP4203405

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

James Eckstein, Winfred Black, Vijay)
Patel, and Kenneth Neet, and on behalf of)
all other similarly situated,)

C.A. No.: 2022CP4203405

Plaintiffs,)

ORDER

(Cross Motions for Summary Judgment)

v.)

Land Partners, LLC, and SK Builders,)
Inc.,)

Defendants.)
_____)

This matter came before the court on March 27, 2024 for a hearing on the cross motions for summary judgment filed by Plaintiffs and Defendant Land Partners, LLC.¹

After having considered the parties’ pleadings, the Affidavit of Scott F. Talley, arguments of counsel, and applicable legal authority there are no genuine issues of material fact and Land Partners, LLC is entitled to judgment as a matter of law.

RELEVANT PROCEDURAL AND FACTUAL BACKGROUND

1. Plaintiffs commenced this action by filing a Summons and Complaint with the Spartanburg County Clerk of Court on September 8, 2022.
2. Land Partners, LLC (“Land Partners”) filed and served its Answer and Counterclaims on November 14, 2022.
3. Plaintiffs subsequently filed a Reply to Land Partners’ Counterclaims on December 5, 2023.
4. On October 27, 2023, Land Partners filed a Motion for Summary Judgment (“Land

¹ Defendant SK Builders, Inc. has not appeared in this action and did not participate in the hearing.

Partners Motion”).

5. On November 9, 2023, Plaintiffs’ Motion for Summary Judgment was filed with the Spartanburg County Clerk of Court (“Plaintiffs Motion”).

6. The claims and counterclaims at issue in this case are related to the Russell Place Subdivision located here in Spartanburg County.

7. Russell Place Subdivision (the “Subdivision”) consists of single-family homes, undeveloped lots, and common areas as depicted in the following plats recorded with the Spartanburg County Register of Deeds (“ROD”): (a) plat entitled “Final Plat Russell Place Phase 1” dated July 11, 2006 – recorded in Plat Book 160 at page 243 (“Phase 1 Plat”),² (b) plat entitled “Final Plat Russell Place Patio Home Subdivision Phase 1” dated July 11, 2006 and revised January 23, 2007 – recorded in Plat Book 161 at page 218 (“Revised Phase 1 Plat”),³ and (c) plat entitled “Final Plat Russell Place Patio Home Subdivision Phase 2” dated November 29, 2006 – recorded in Plat Book 161 at page 219 (“Phase 2 Plat”).⁴

8. Walden Properties, LLC (“Walden”) was initially involved in the development of the Subdivision. Walden acquired the subject property from Arthur State Bank, as Trustee of the Corrye B. Shores Trust as evidenced by the deed recorded in Deed Book 85-H at page 622 (“Walden Deed”).⁵

9. During Walden’s ownership of the subject property, it had the following recorded:

- a. Restrictive Covenants and Easements Russell Place, Phase 1 recorded in Deed Book 87-F at page 588 (“Original Covenants”),⁶

² See EXHIBIT 3 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

³ See EXHIBIT 4 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

⁴ See EXHIBIT 5 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

⁵ See EXHIBIT 2 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

⁶ See EXHIBIT 6 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

- b. Amended Restrictive Covenants and Easements Russell Place recorded in Deed Book 89-U at page 447 (“Walden Amended Covenants”),⁷
- c. Second Amendment to Restrictive Covenants and Easements for Russell Place recorded in Deed Book 99-E at page 420 (“Walden Second Amended Covenants”).⁸

10. Each Plaintiff acquired his interest in his parcel after the Original Covenants were recorded and took subject to said Covenants.⁹

11. Following a foreclosure action commenced against Walden, FBSA 1, LLC (“FBSA”) acquired seventeen (17) lots in the Subdivision as evidenced by the deed from the Master-in-Equity for Spartanburg County - recorded in Deed Book 101-U at page 570 (“FBSA Deed”).¹⁰

12. FBSA conveyed said lots (Lots 1, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25 and 26) to Cypress Cove Properties, LLC (“Cypress”) as evidenced by the deed recorded in Deed Book 104-Q at page 791 (“Cypress Deed”).¹¹

13. On April 20, 2021, Land Partners acquired fifteen (15) lots (Lots 1, 19, 20, 21, 24 Russell Place Phase 1, and Lots 6, 7, 8, 9, 13, 14, 15, 16, 17, 18 Russell Place Phase 2) in the Subdivision from Cypress as evidenced by the deed recorded on April 26, 2021 in Deed Book 131-Y at page 568 (“Land Partners - Cypress Deed”).¹²

14. An Assignment of Rights from Walden and FBSA to Land Partners, LLC dated

⁷ See EXHIBIT 7 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

⁸ See EXHIBIT 8 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

⁹ See EXHIBIT 9 (Eckstein Deed), EXHIBIT 10 (Black Deed), and EXHIBIT 11 (Neet Deed) to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein. See also EXHIBIT A (Patel Deed) to Land Partners Motion.

¹⁰ See EXHIBIT 12 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

¹¹ See EXHIBIT 13 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

¹² See EXHIBIT 16 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

June 3, 2021 was recorded in Deed Book 132-Q at page 276 (“Assignment”).¹³ Based on the clear and unambiguous language of the Assignment, Walden, as Developer,¹⁴ assigned “all rights and obligations reserved unto Developer to property located in the County of Spartanburg, State of South Carolina, being known and *[sic]* Russell Place, as shown upon plat recorded in Plat Book 160, page 243, ROD Office for Spartanburg County, to Land Partners, LLC.” FBSA executed the Assignment “to confirm its assignment of rights, if any, which may have vested with the recorded *[sic]* of Deed Book 101-U, page 570.”¹⁵

15. On June 3, 2021, FBSA 1, LLC executed a Deed conveying Pond A and Pond B in the Subdivision to Land Partners. Said deed was recorded on June 15, 2021 in Deed Book 132-Q at page 265 (“Land Partners – FBSA Deed”).¹⁶

16. On June 7, 2021, Walden executed a Quit Claim Deed conveying Pond B in the Subdivision to Land Partners. Said deed was recorded on June 15, 2021 in Deed Book 132-Q at page 271 (“Quit Claim Deed – Walden”).¹⁷

17. Paragraph 6 of the Walden Second Amended Covenants reads as follows:

6. Amendment of Section 27. Section 27 of the Restrictive Covenants shall be deleted in its entirety and replaced with the following:

All rights reserved unto the Developer herein shall remain with the Developer, or its nominee or its successors or assigns, provided, however, that the Developer may assign and/or delegate all or any part of such reserved rights or obligations to the Russell Place Homeowners Association **or other designee at any time**, and further provided that in the event that the Developer is divested of its ownership interest in the unsold lots by judicial action, the rights reserved unto the Developer herein **may** be assumed by the party acquiring ownership of the unsold lots and/or common areas, in the sole discretion of the acquiring party, and only upon affirmative acceptance of such rights and obligations by the

¹³ See EXHIBIT 18 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

¹⁴ Walden is identified as Developer under the Original Covenants, the Walden Amended Covenants, and the Walden Second Amended Covenants.

¹⁵ See the Affidavit of Scott F. Talley (“Talley Affidavit”), which is identified as EXHIBIT B to Land Partners Motion.

¹⁶ See EXHIBIT 17 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

¹⁷ See EXHIBIT 19 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

acquiring party, as specifically affirmed in any document transferring the interest in the unsold lots to such acquiring party.

(Emphasis added).

18. Paragraph 7 of the Walden Second Amended Covenants reads as follows:

7. Amendment of Section 28. The second sentence of Section 28 of the Restrictive Covenants shall be deleted in its entirety and replaced with the following:

These terms and conditions may be changed upon either (a) the written agreement of two-thirds (2/3) of the then owners of the lots in the development, or **(b) by the Developer, or its successor or assigns, so long as the Developer or its successor or assigns owns at least 10 lots in the development**, and each such change of terms and conditions must be recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina in order to provide public notice of said change or termination.

(Emphasis added).

19. The Restrictive Covenants and Easements Russell Place executed by Land Partners on November 11, 2021 were recorded in Deed Book 134-S at page 69 (“LP Initial Covenants”).¹⁸ It is undisputed that Land Partners was the record owner of fifteen (15) lots in the development on November 11, 2021.

20. The First Amendment to Restrictive Covenants and Easements Russell Place executed by Land Partners on May 31, 2022 were recorded in Deed Book 137-L at page 804 (“LP Amended Covenants”).¹⁹ It is undisputed that Land Partners was the record owner of ten (10) lots in the development on May 31, 2022.

21. The Second Amendment to Restrictive Covenants and Easements Russell Place executed by Land Partners on July 12, 2022 were recorded in Deed Book 138-A at page 570 (“LP Second Amended Covenants”).²⁰ The LP Initial Covenants, LP Amended Covenants, and LP

¹⁸ See EXHIBIT 20 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

¹⁹ See EXHIBIT 21 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

²⁰ See EXHIBIT 22 to the Answer and Counterclaims of Defendant Land Partners, LLC filed herein.

Second Amended Covenants shall be referred to hereinafter collectively as the “LP Covenants.”

SUMMARY JUDGMENT STANDARD

A motion for summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. The purpose of summary judgment is to obviate delay where there is no genuine issue as to any material fact. *See Hammond v. Scott*, 268 S.C. 137, 232 S.E.2d 336 (1977). Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Folkens v. Hunt*, 290 S.C. 194, 348 S.E.2d 839 (Ct.App. 1986); *Citizens and Southern Nat'l Bank of South Carolina v. Lanford*, 313 S.C. 540, 443 S.E.2d 549 (1994) (citations omitted). In determining the existence of a genuine issue of material fact the court must view the evidence and all reasonable inferences that may be derived therefrom in the light most favorable to the non-moving party. The court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. *See Nolte v. Gibbs International, Inc.*, 335 S.C. 72, 515 S.E.2d 101 (Ct.App. 1999). In considering whether to grant summary judgment the court must give every benefit of doubt to the non-moving party. *See Watters v. Terminix Service, Inc.*, 376 S.C. 632, 658 S.E.2d 110 (Ct.App. 2008). Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *See Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 594 S.E.2d 455 (2004); *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct.App. 2004).

ANALYSIS AND FINDINGS

The primary issue in this case is the validity of the amendments to the restrictive covenants

recorded by or on behalf of Land Partners. The dispute arises from the parties' competing interpretations of paragraphs 6 and 7 of the Walden Second Amended Covenants.

The interpretation of paragraph 6 is directly related to each party's position as to the validity of the Assignment and whether Land Partners now possesses the rights reserved to the Developer. Paragraph 6 of the Walden Second Amended Covenants reads as follows:

6. Amendment of Section 27. Section 27 of the Restrictive Covenants shall be deleted in its entirety and replaced with the following:

All rights reserved unto the Developer herein shall remain with the Developer, or its nominee or its successors or assigns, provided, however, that the Developer may assign and/or delegate all or any part of such reserved rights or obligations to the Russell Place Homeowners Association or other designee at any time, and further provided that in the event that the Developer is divested of its ownership interest in the unsold lots by judicial action, the rights reserved unto the Developer herein may be assumed by the party acquiring ownership of the unsold lots and/or common areas, in the sole discretion of the acquiring party, and only upon affirmative acceptance of such rights and obligations by the acquiring party, as specifically affirmed in any document transferring the interest in the unsold lots to such acquiring party.

Plaintiffs argue that the Assignment is invalid and that, following the foreclosure action was commenced against Walden, the only way the rights reserved to the Developer could pass was by affirmative acceptance by FBSA and that said acceptance had to be reflected in the deed from the Master-in-Equity to FBSA. Land Partners argues that the Assignment is valid given that all rights reserved unto the Developer under the Covenants remained with the Developer, or its nominee or its successors or assigns and Walden could assign and/or delegate all or any part of such reserved rights at any time.

Paragraph 7 sets forth the means by which the applicable covenants could be amended.

Paragraph 7 of the Walden Second Amended Covenants reads as follows:

7. Amendment of Section 28. The second sentence of Section 28 of the Restrictive Covenants shall be deleted in its entirety and replaced with the following:

These terms and conditions may be changed upon either (a) the written agreement of two-thirds (2/3) of the then owners of the lots in the development, or (b) by the Developer, or its successor or assigns, so long as the Developer or its successor or assigns owns at least 10 lots in the development, and each such change of terms and conditions must be recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina in order to provide public notice of said change or termination.

Plaintiffs argue that the only way to amend the covenants was by written agreement of two-thirds (2/3) of the lot owners in the Subdivision. Land Partners asserts that it had the authority to amend the covenants as a successor and/or assign of Walden that owned at least ten (10) lots in the Subdivision.

As an initial matter, I find that paragraphs 6 and 7 of the Walden Second Amended Covenants are clear and unambiguous.²¹ I further find that said paragraphs can be read in conjunction with one another. “Where the language used in a restrictive covenant is unambiguous, there is no room for construction and the language must be enforced in accordance with its plain meaning.” *Heape v. Broxton*, 293 S.C. 343, 345, 360 S.E.2d 157, 158 (Ct.App. 1987) (citation omitted). “Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.” *C.A.N. Enters., Inc., v. South Carolina Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (citation omitted).

Pursuant to paragraph 6 of the Walden Second Amended Covenants, all rights reserved unto the Developer under the Covenants “shall remain with the Developer, or its nominee or **its successors or assigns.**” That same paragraph further indicates that “the Developer may assign

²¹ Plaintiffs do not dispute the validity or enforceability of the Walden Second Amended Covenants nor do they dispute that they acquired their lots subject to the same.

and/or delegate all or any part of such reserved rights or obligations to the Russell Place Homeowners Association **or other designee at any time**.”²² The Assignment makes specific reference to paragraph 27 of the Original Covenants and paragraph 6 of the Walden Second Amended Covenants. Pursuant to the Assignment, Walden assigned “all rights and obligations reserved unto Developer to property located in the County of Spartanburg, State of South Carolina, being known and (sic) Russell Place, as shown upon plat recorded in Plat Book 160, page 243, ROD Office for Spartanburg County, to Land Partners, LLC.” The recorded documents clearly establish that Land Partners acquired fifteen (15) of the undeveloped lots and common areas previously owned by Walden and that Land Partners is a successor to Walden and that Walden assigned the rights and obligations reserved by the Developer. The Assignment is valid and enforceable, Land Partners holds the rights and obligations as the developer, and the covenants executed by Land Partners are valid and enforceable.

In addition to the authority conveyed to Land Partners by virtue of the Assignment, Land Partners had the authority to amend the covenants under the terms of the Walden Second Amended Covenants. Paragraph 7 of the Walden Second Amended Covenants, which modified Section 28 of the Original Covenants, specifically provides that the terms and conditions of the covenants may be changed “**by the Developer, or its successor or assigns, so long as the Developer or its successor or assigns owns at least 10 lots in the development**, and each such change of terms and conditions must be recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina in order to provide public notice of said change or termination.”²³ It is undisputed that Land Partners is a successor to Walden and that Land Partners owned fifteen (15) lots in the Subdivision when the LP Initial Covenants were executed and recorded. Based on the foregoing,

²² Emphasis added.

²³ Emphasis added.

Land Partners holds the rights and obligations as the developer, and the covenants executed by Land Partners are valid and enforceable.

CONCLUSION

Plaintiffs' Motion for Summary Judgment is denied.²⁴ Defendant Land Partners is entitled to judgment as a matter of law with regard to all of the claims and counterclaims asserted in this matter; therefore, Land Partners, LLC's Motion for Summary Judgment is granted.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Summary Judgment is denied and Plaintiffs' Complaint is dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED as follows:

- (a) that Land Partners, LLC's Motion for Summary Judgment is granted;
- (b) that the Assignment is declared to be valid and enforceable;
- (c) that Land Partners is declared to be the holder of all rights and obligations reserved unto the Developer of the Subdivision;
- (d) that the LP Covenants are declared to be valid and enforceable; and
- (e) that Land Partners' actions have been consistent with the LP Covenants.

IT IS SO ORDERED.

²⁴ In its Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, Land Partners, argues that Plaintiffs failed to identify any damages in the record to support summary judgment on Plaintiffs' Second Cause of Action (Breach of Contract; Covenant Enforcement) and Third Cause of Action (Permanent Injunction). The Court did not consider the "lack of damages" argument in relation to the denial of Plaintiffs' Motion for summary judgment.



Spartanburg Common Pleas

Case Caption: James Eckstein , plaintiff, et al VS Land Partners, Llc , defendant, et al
Case Number: 2022CP4203405
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IT IS SO ORDERED

s/ J. Mark Hayes, II #2132