

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jul 05 2024

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Case No. 2018-CP-40-06557
Appellate Case No. 2021-000641

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, Richea G. House, Sr., Gayle D. House, Devinci L. Fulton, and John A. Francis are.....Petitioners.

PETITION FOR A WRIT OF CERTIORARI

Kathleen McDaniel, Esq. (SC Bar No. 74826)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor
PO Box 1929
Columbia, South Carolina 29202
T: 803.904.7913
F: 803.904.7910
KMcDaniel@BurnetteShutt.Law

ATTORNEY FOR PETITIONERS

CERTIFICATE OF COUNSEL

Counsel for the Petitioner hereby certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on June 4, 2024.

Kathleen McDaniel

Kathleen McDaniel
BURNETTE SHUTT & McDANIEL, PA
ATTORNEY FOR PETITIONERS

Columbia, South Carolina
July 5, 2024

QUESTIONS PRESENTED

1. Did the Court of Appeals err in finding restrictive covenants applicable to the Petitioners' properties based on the legal theory of reciprocal negative easements?
2. Did the Court of Appeals err in finding that Petitioners' properties are subject to the Stonington Declaration of Covenants, Conditions, Restrictions, and Easements (Amended)?
3. Did the Court of Appeals err in finding that mandatory monetary assessments can be applicable based on the legal theory of reciprocal negative easements?

STATEMENT OF THE CASE

Respondent Stonington Community Association (“Stonington”) initiated this litigation with a Summons and Complaint filed on December 17, 2018, seeking Declaratory Judgment, Enforcement of Covenants, Specific Performance, and Quantum Meruit related to the Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Stonington. Petitioners, who are all property owners within the Stonington community, timely filed an Answer and Counterclaim to which Stonington timely responded.

Stonington sought partial summary judgment on the applicability of Stonington's restrictive covenants to Petitioners' lots. The trial court issued its Order granting Stonington's motion for partial summary judgment. Petitioners timely appealed the decision to the Court of Appeals. On March 20, 2024, the Court of Appeals issued its opinion denying Petitioners' appeal and finding in favor of Stonington. Petitioners filed a Petition for Rehearing, which the Court of Appeals denied by Order, dated June 4, 2024. Petitioners now request that this Court review the matter and find in Petitioners' favor that the Stonington restrictive covenants are not applicable to Petitioners.

STATEMENT OF THE FACTS

Stonington Development, LLC was organized and purchased approximately 165 acres in Richland County in 2000. On June 4, 2001, the Richland County Planning Commission approved preliminary plans for Phase I of Stonington. On June 10, 2001, Stonington Development, LLC recorded a "Bonded Plat of Stonington - Phase I" ("Phase I Plat") showing a portion of the property subdivided into fifty-five (55) residential lots and the various infrastructure articles necessary to support the lots. On November 5, 2002, Stonington Development, LLC recorded the Stonington Declaration of Covenants, Conditions, Restrictions, and Easements (Amended) (hereafter "original Stonington Declaration") with the Richland County Register of Deeds.

The original Stonington Declaration seeks to outline the various restrictions to which Stonington Development, LLC intended to subject the Property.

On May 26, 2004, Associated E&S, Inc. created Bonded Plat of Stonington - Phase II-A & II-B for Stonington Development, LLC. On September 6, 2005, Stonington Development, LLC recorded Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Stonington (hereafter "Amended and Restated Declaration").

On March 27, 2007, Stonington Development, LLC, and Stephen E. Lipscomb, its sole member, executed a Promissory Note, Mortgage, and two Guaranties in favor of Carolina First Bank. In 2008, Carolina First Bank, Stonington Development LLC's lender, brought a foreclosure action against a portion of the whole property owned by Stonington Development, LLC, which ultimately resulted in the transfer of a portion of the property to Carolina First Bank by way of Foreclosure Deed.

ARGUMENT

The Court of Appeals erred in granting partial summary judgment in favor of Stonington based on the legal theory of reciprocal negative easements where questions of material fact exist as to the applicability of restrictive covenants to the Petitioners' properties.

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 Petitioners' properties are encumbered by the subject covenants is anathema to the general principle that such restrictions are disfavored. The subject covenants themselves echo this general principle stating:

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.

At trial and before the Court of Appeals, Petitioners 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, the Court of Appeals 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.

In the interim between the recording of the Original Declarations and the foreclosure deed, the Developer mortgaged the subject property, 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.

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.

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.

The application of a theory of negative reciprocal easements appears to be a novel question in the context planned subdivision development where such relationships among the developer and subsequent property owners should be interpreted to restrict property by the narrowest means possible.

Accordingly, Petitioners request that this Court find that summary judgment in favor of Stonington was improper and remand this case to the trial court for further proceedings.

CONCLUSION

For the foregoing reasons, Petitioners ask that this Court grant this Petition for a Writ of Certiorari to review the Court of Appeals' decision in this matter. Respectfully submitted,

s/Kathleen McDaniel
Kathleen McDaniel, Esq.
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor
PO Box 1929
Columbia, South Carolina 29202
T: 803.904.7913
F: 803.904.7910
KMcdaniel@BurnetteShutt.Law

ATTORNEY FOR PETITIONERS

Columbia, South Carolina
July 5, 2024