RECEIVED
May 11 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Deandrea Gist Benjamin, Circuit Court Judge

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 Carl D. Taylor, 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……………………………………………..….Appellants

---

FINAL REPLY BRIEF OF APPELLANTS

Jonathan D. Waller
SC Bar No.: 76290
Angell Molony, LLC
210 Newberry Street NW
Aiken, South Carolina 29801
jonathan@angellmolony.com
Phone: 803-335-1449

ATTORNEY FOR APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES………………………………………………………… iii

ARGUMENTS……………………………………………………………….…… 4

I. The Respondent's Brief is duplicitous in its treatment of the importance of Steven Lipscomb, the Developer, and his rights under the Orignial Covenants and the Amended and Restated Covenants....…………………...…………….………………………………4

II. Respondent's settlement of the underlying action with other defendants, and the manner of settlement, absolutely matters to whether a theory of reciprocal negative easement applies………………………………………6

III. Respondent's arguments regarding judicial estoppel are misleading……...8

IV. Respondent's argument that Appellants' failed to appeal the granting of summary judgment dismissing their counterclaims is factually incorrect..8

CONCLUSION………………………………………………………………....9

CERTIFICATE OF COUNSEL…………………………………………………………10

TABLE OF AUTHORITIES

Cases

Kinard v. Richardson 6

ARGUMENTS

The Respondent has filed it's brief arguing that the trial court's grant Summary Judgment in favor of Respondent for both its prayer for declaratory judgment as well as Appellants' counterclaims against Respondent was not in error. The Respondent's brief makes arguments to which a reply on behaf of Appellants is necessary and follows.

I. **The Respondent's Brief is duplicitous in its treatment of the importance of Steven Lipscomb, the Developer, and his rights under the Orignial Declarations and the Amended Declarations.**

The Respondent, as interpreted by its Brief, has curious and conflicted relationship with the Developer and its principal, Steven Lipscomb, downplaying his actions, while simultaneously touting his intent and the rights and protections afforded to him by position as Developer under the collective covenants.

First and foremost, Responent's continues to try and force the notion that Appellants' rely on Article I, Section 1(R) as one of, if not their most relied upon, defenses. Respondent continues to argue that Appellants rely on the language that "no implied reciprocal covenants or obligation to develop shall arise with respect to lands that have been retained by the Devloper for future development." While that language, taken in the greater context of the entire document is helpful to Appellants' position, Appellants would point to the provisions allowing the Developer to NOT be bound by the Declarations with respect to lands, owned by Developer, scheduled for future development. The ability to "**at any time change or revise said master plan, develop or not develop the remainin undeveloped property or common area or amenities shown on any master plan**" required the court to analyze those actions or

inactions of the Developer prior to determining his intent. (R. pp. 368-369) (emphasis in original). Appellants are in agreement with Respondent that the provision is to protect the Devloper and provide it with discretion and ability to change plans if it so chooses. The fact that he has done so by adding a fourth phase (R. pp. 338-342, 478-499), mortgaging land in lands originally designated as Phase II and Phase IV (R. pp. 478-499), encumbering Phase III following a lawsuit (R. pp. 338-342), and encumbering a single lot (R. pp. 411-414) is all evidence, despite Respondent's assertion, that the applicability of a theory of reciprocal negative easement is not a review that can look to the original plans and schemes, without any of the intervening events, and make a determination that there is no question of material fact. Such action or inaction is especially probative when Respondent has previously relied so heavily on Kinard v. Richardson[1], (R. pp. 142-144). The homeowners' argument in Kinard is factually different from the case at hand though in that Appellants concede that any document contemplated by the Amended Declarations would be sufficient to bind additional property outside of those lands contained in Exhibit A. The ease with which such a thing could have been done, but wasn't, is yet another act of Stephen Lipscomp that Respondent chooses to downplay.

Respondent further references provisions of the Amended Declarations which it claims "conclusively establish the Developer's intent" that the Declarations "run with the land." (Respondent's Brief at 14). However, the Respondent attempts to ignore the language of the provisions which it chose not to enbolden. Each provision cited by Respondent also contains the language that only the "real property described in Exhibit A" and any subsequently annexed real property are subject to the Declarations or that such "real property described in

---

[1] Kinard v. Richardson, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014)

Exhibit A" is the only property which is designated to "run with the title to the Property." (Id.)

Respondent cites an affidavit of Mr. Lipscomb and goes to great lengths to make the court aware of the number of depositions taken on behalf of Appellants throughtout the course of this litigation, arguing that it "defies credulity" that Appellants argue the importance of Mr. Lipscomb's testimony. As the court and Respondent are certainly aware, depsitions are but one of the available discovery tools that have been utilized in this matter. While the Respodent was in the midst of taking 34 depositions, it did not make time for a 35th, or to obtain the affidavit it now cites, prior to filing its motion for summary judgment on August 27, 2020. In fact, Mr. Lipscomb's affidavit (R. pp. 437) was signed on March 6, 2021, more than six (6) months after the motion for summary judgment and was accompanied by a letter cancelling his scheduled deposition for a matter of days later. Ironically, Respondent has unsuccessfully moved this court to strike a promissory note and mortgage, executed by Mr. Lipscomb after the recording of the Amended Declaration, as untimely filed. (20220104 - Respondent's Motion to Strike Matters from Appellants' Designation of Matter to be included in Record on Appeal).

II. Respondent's settlement of the underlying action with other defendants, and the manner of settlement, absolutely matters to whether a theory of reciprocal negative easement applies.

Respondent argues that its settlement with certain defendants has no bearing on the applicability of the court's ruling on the applicability of reciprocal negative easements, however the terms of settlement as they relate to the real property certainly bears weight. As Respondent has consistently argued, and as is required for the equitable theory of reciprocal negative easements to apply, the properties at issue have to all be developed under a common plan and scheme; from a restrictions standpoint, they have to all be the same. The problem in

which Respondent now finds itself is that it states "Stonington's argument is and has always been that all of the restrictive covenants contained in the Declarations apply to all Stonington subdivision property." Respondent has consistently pointed to the language of the Declarations to show that membership was mandatory by virtue of lot ownership as to both restrictions and assessments. By allowing settlement with any property owner that allows the property to NOT be encumbered until the sale or transfer by that owner, Respondent has added an element of discretion where none exists. (R. pp. 419-422) Further, if some lots, similarly situated, are treated differently than others, the theory of reciprocal negative easement cannot apply as the whole point of the theory would be in jeopardy. Respondent chose to allow for certain defendants lots to not be encumbered, and by doing so brought the issue of mandatory membership into question. As Respondent argues in it's brief, "a trial can and should be had on the equitable issues to be considered in the *enforcement* of the restrictive covenants against Homeowners personally." (Respondent's Brief at 23). Settlement to include immediate encumbrance but limiting enforcement of the restrictive covenants through course of dealing would change the analysis. To resolve disputes through settlement is always preferable, but to argue that equity demands that all property owners in a planned neighborhood be treated the same, while voluntarily settling a co-defendant's case using polar opposite means, flies in the face of such equity.

III. **Respondent's arguments regarding judicial estoppel are misleading.**

The trial court incorrectly held that each of the Appellants are judicially estopped from arguing that they, and their lots, are not subject to the restrictive covenants because of homeowners involvement in prior lawsuits. Respondent takes this incorrect ruling one step farther and now alleges that by hiring the same counsel and filing identical motions or pleadings to their individual cases, that the Appellants and other defendants have created

privity, not only with their fellow co-defendants, but with parties to a suit on different subject matter almost a decade ago where no common party exists. Respondent attempts to bury the actual parties to this appeal who participated in both the previous 2009 lawsuit and 2015 lawsuit in a footnote, instead referring to the larger class of participants as "defendants in the trial court action." (Respondent's Brief at 20.)

Respondent further attempts to argue to the court that Appellants make a "hyper-technical" argument that the issue pled in the present action is not the issue pled in Respondent's complaint and therefore was not properly before the trial court. (Respondent's Brief at 21). Given what is at stake, "hyper-technical" compliance with the established law is paramount, which makes the unsupported in the record claim of "under oath" allegations attributed to "certain Homeowners" all the more troubling. (Id.)

IV. **Respondent's argument that Appellants' failed to appeal the granting of summary judgment dismissing their counterclaims is factually incorrect.**

Respondent argues that Appellants failed to appeal the Order granting dismissal of Appellants' counterclaims and therefore the arguments and subsequent ruling becomes the law of the case and are therefore barred. Appellants contend that such an argument is factually and chronologically incorrect. Appellants made arguments in its 59(e), SCRCP motion filed April 12, 2021 regarding the court's ruling on Appellants' counterclaims and appealed the Amended Order issued by the court on May 28, 2021. Appellants again find the irony in Respondent citing four (4) separate trial court orders to bolster it's position after having unsuccessfully moved that two (2) of those orders, issued after the trial court was divested of jurisdiction, be stricken from the designation of matter.

CONCLUSION

For the reasons set forth herein as well as in Appellants' Final Brief, this Court should reverse the ruling of the trial court.

s/ Jonathan D. Waller
Jonathan D. Waller
SC Bar No.: 76290
Angell Molony, LLC
210 Newberry Street NW
Aiken, South Carolina 29801
jonathan@angellmolony.com
Phone: 803-335-1449

ATTORNEY FOR APPELLANTS

May 10, 2022
Aiken, S.C.

RECEIVED
May 11 2022
SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANTS

Counsel for appellant certifies that this Final Reply Brief of Appellants complies to the best of my ability with Rule 211(b) and the South Carolina Court of Appeals letter dated March 16, 2022.

Respectfully submitted,

s/ Jonathan D. Waller

Jonathan D. Waller
SC Bar No.: 76290
Angell Molony, LLC
210 Newberry Street NW
Aiken, South Carolina 29801

ATTORNEY FOR APPELLANT

May 10, 2022

Aiken, South Carolina