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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
CIRCUIT COURT

Judge William Keesley

Case No. 2018-CP-02-2208

Richard Viviano and Johnette Gunter, Plaintiffs,

Of whom Richard Viviano is the Appellant,

v.

Fulton Jeffers and Braeloch I Association, Inc. d/b/a Braeloch Homeowner's Association, Sandy Carroll individually and in her capacity as a member of the Board of the Braeloch Homeowner's Association, and Derrick Boddy individually and in his capacity as a member of the Board of the Braeloch Homeowner's Association, Respondents

REPLY BRIEF OF APPELLANT

September 5, 2024

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ARGUMENT

The Appellant by way of reply to the Respondent's Initial Brief respectfully submits the following:

This case involves a simple question of fact which the lower court overlooked. Specifically, unless Lot 51 was properly admitted to Braeloch, there was no reason for there to be a Memorandum of Understanding at all nor would there have been. Respondents would have the court treat the admission of Lot 51 as an unimportant irrelevant matter when, in fact, that is the only reason for the dispute between the parties.

Simply put, if Lot 51 was not properly and legally admitted to Braeloch, then the Memorandum of Understanding was based on a false premise. And, because the Respondents had actual knowledge that Lot 51 had not been properly and legally admitted and because they concealed that fact, they engaged in a fraudulent concealment of material facts. Without that concealment, the Appellants would never have entered into the Memorandum of Understanding. And, because the foundation of the Memorandum of Understanding is the admission of Lot 51 into Braeloch, and because that foundation is false, there is no legal basis for enforcing the Memorandum of Understanding.

The Respondents noted the issue in passing by making the following statement: "Assuming arguendo that there was some defect in the original admission of Lot 51 to Braeloch in 2002, the MOU remains valid and enforceable." That statement is illogical and inaccurate at best. The only reason for the Memorandum of Understanding was the false representation that Lot 51 had become a part of Braeloch. Given the fact that the evidence clearly shows that Lot 51 was not properly admitted and given the fact that in their own emails the Respondents admit that

it was not properly admitted, then the entire basis for the Memorandum ceases to exist. Put simply, the Respondents obtained an agreement by fraudulently concealing the material fact that Lot 51 was not actually or legally admitted to the subdivision.

The Respondents succeeded in obscuring the facts from the lower court. Presumably that will not happen at the appellate level. Either Lot 51 was lawfully admitted, or it was not admitted at all. Since the Respondents knew at the time they were negotiating the Memorandum of Understanding that Lot 51 was not legally a part of the subdivision and because they concealed that fact, the entire Memorandum of Understanding fails and is invalid and should not have been enforced by the lower court.

CONCLUSION

The Orders entered by the Honorable William Keesley in which the Memorandum of Understanding was declared valid and enforceable should be reversed and the Memorandum of Understanding should be declared void because Lot 51 was not properly admitted and because the fact that Lot 51 was not lawfully admitted was concealed by the Respondents. It is also worth noting that, because Lot 51 was not properly admitted, nothing the Respondents can do will confer upon Lot 51 the rights which lawfully belong to lots which are legally part of the Braeloch subdivision. To the extent that the Memorandum of Understanding would have that effect, it is of no force and effect because it is not possible for a lot to be admitted by a Memorandum of Understanding. Entry into the subdivision requires the consent of the required number of owners of the lots in the subdivision. The Memorandum of Understanding does not have the effect of amending the covenants governing the subdivision and that Memorandum of Understanding cannot be used as a substitute for the required signatures. Lot 51 was not lawfully

admitted into Braeloch. Lot 51 is not a part of Braeloch. The facts concerning the failure to admit Lot 51 were concealed and that is fraud.

RESPECTFULLY SUBMITTED

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PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellant on Paul Knapp Simons, Clarke McCants III, Clarke McCants IV, and Mary Lafave by email to the below listed addresses.

September 5, 2024

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To: Counsel of Record for the Respondents:

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I have attached and serve upon you the Appellant's Reply Brief

Best Regards

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