

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)
)
 PALMETTO AIR PLANTATION)
 HOMEOWNERS ASSOCIATION, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 KIM E. BEVIER,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE THIRD JUDICIAL CIRCUIT
 CASE NUMBER: 2017-CP-14-00127

FINAL ORDER
RECEIVED
 NOV 01 2024
 SC Court of Appeals

DATE OF HEARING	:	April 1, 2024
PRESIDING JUDGE	:	Kristi Fisher Curtis
ATTORNEY FOR PLAINTIFF	:	Steven S. McKenzie
ATTORNEY FOR DEFENDANT	:	Pro Se
COURT REPORTER	:	

This matter came before the Court pursuant to Plaintiff's request for a Final Hearing. The Court heard the testimony of the parties and witnesses as well as the evidence that was introduced at trial. After the conclusion of the case, the Court took the matter under advisement. After reviewing testimony, evidence submitted and the Court file, the Court would rule as follows regarding the case before it.

PROCEDURAL HISTORY

This action was commenced by the filing of a Summons and Complaint on April 17, 2017. Along with the Complaint, Plaintiff sought injunctive relief by filing a Motion for a Temporary Restraining Order on April 18, 2017. On June 6, 2017, The Honorable R. Ferrell Cothran, Jr. granted Plaintiff's request for a Temporary Restraining Order.

Defendant filed his Answer to the original Complaint on June 16, 2017. By agreement, Plaintiff filed an Amended Summons and Complaint on June 28, 2017.

Defendant filed his Answer to the Amended Summons and Complaint on July 7, 2017. Three months later, Defendant filed a Motion to Amend his Amended Answer. A hearing was held on March 20, 2018, in which the Court granted Defendant's Motion to Amend his Answer. On March 22, 2018, Defendant filed his Second Amended Answer and Counterclaim.

On July 19, 2018, Plaintiff filed a Motion for Partial Summary Judgment. The parties agreed to a stipulation of facts on August 21, 2018, and agreed that the Motion for Partial Summary Judgment would be heard without oral argument (R. pp. 113-115). The Court granted Partial Summary Judgment in favor of Plaintiff. Defendant filed a Motion to Reconsider which was denied by the Court on February 28, 2019. Defendant appealed the ruling to the South Carolina Court of Appeals. The Court of Appeals upheld the Order for Partial Summary Judgment on September 21, 2022.

After the Court of Appeals' decision, Defendant's attorney moved to be relieved as attorney for Defendant, and that Motion was granted by the Court. Defendant has been *pro se* since that Order was filed.

FACTUAL BACKGROUND

On or about July 11, 2001, the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was

alleged and admitted by Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of Defendant dated April 4, 2018). Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants ." Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions, and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

Plaintiff alleged that Defendant, in violation of Article IV Section 4.1 and 4.3 of the Covenants, has been using his home in Palmetto Air Plantation for a commercial endeavor. More specifically, Plaintiff alleged that Defendant had been renting his home/rooms out to overnight guests through Airbnb.

Plaintiff also alleged that Defendant is the owner of large breed dog (bullmastiff). Plaintiff alleged that it received complaints from homeowners within Palmetto Air Plantation that Defendant's dog had been running at large, unrestrained, and excessively barking. Plaintiff alleged that this violates Sections 5.10 and 5.11 of the Covenants.

Plaintiff further alleged that Defendant installed an underground electrical fence in an attempt to restrain the dog. Plaintiff alleged that the installation of the underground fence violated Article V. Section 5.16. of the Covenants.

Plaintiff finally alleged that Defendant was issued a Clarendon County Building Permit for his property on March 30, 2010. Plaintiff alleged that Article IV. Section 4.12 of the Covenants states in pertinent part “....within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plan previously submitted and approved by the Board.” Plaintiff alleged that Defendant submitted a landscaping plan to the Board that was approved, but Defendant has failed to implement the plan.

Plaintiff seeks damages for Defendant’s violation of the Covenants as well as attorney’s fees and costs incurred as a result of the violations of the Covenant by Defendant.

Defendant contends that the Covenants do not apply to him or his property, and he also contends that Plaintiff does not have the legal standing to bring an action against him. Defendant believes that the Covenants do not name Plaintiff as the governing body for enforcement of the Covenants. Defendant’s contention is that the Covenants name Palmetto Air Plantation Property Owner’s Association, Inc. as the name of the homeowner’s association and not the Plaintiff, Palmetto Air Plantation Homeowners Association, Inc.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Court finds that the Covenants at issue in this case are applicable to the Defendant’s property. Judge Cothran ruled on this issue previously, and that ruling was affirmed by the South Carolina Court of Appeals. The South Court of Appeals

stated the following in its opinion:

By their purchases within the subdivision, the [grantees] became parties to the restrictive covenants, and among them and the [grantor] there arose mutuality of covenant and consideration. Bevier's discussion of the restrictive covenants with an attorney prior to his purchase of the lots; the inclusion of the Declaration of Covenants in both the preliminary and final title certificates; the provision in Bevier's contract of sale noting the conveyance was subject to the Declaration of the Covenants; and, Bevier's admission during his deposition that he was aware of the restrictive covenants when he bought his lots and stated his intent of purchasing property in Palmetto Air Subdivision to live on an airport-establish Bevier had actual notice of the restrictive covenants. **Moreover, Bevier had constructive notice of the restrictive covenants because the Declaration of Covenants were properly recorded within his chain of title...Based on the foregoing, we hold the Declaration of Covenants is enforceable against Bevier.... (emphasis added).**

See Palmetto Air v. Bevier, Unpublished Opinion No. 2022-UP-361.

The Court of Appeal's opinion makes any argument by Bevier concerning the applicability and enforceability of the Covenants against his property a moot point and *res judicata*.

After the Court of Appeals ruling, Defendant argued for the first time that the Covenants are not applicable to him because the Plaintiff is not the named homeowner's association as is stated in the Covenants. The Covenants state in Section 1.7 as follows: "Association shall mean the Palmetto Air Plantation Owners Association, Inc." Plaintiff's name is Palmetto Air Plantation Homeowners Association, Inc. The difference in the names is "Owners" in the Covenants versus "Homeowners" in the Plaintiff's name. Having failed to raise this issue previously to the Circuit Court or to the Court of Appeals when arguing against the applicability of the Covenants to his property, the Court finds that Defendant cannot now rely on the difference in the names

as a defense.

The court further finds that Plaintiff has met its' burden of proving by a preponderance of the evidence that Defendant has violated the covenants by operating an Airbnb at the property, in allowing his dog to run at large, and in failing to implement the landscaping plan as approved by the Board.

The Court would find and conclude as follows:

1. Defendant is permanently enjoined from operating any short-term rentals from his property;
2. Defendant must remove the dog from his property or strictly comply with the Covenants. Failure to remove the dog or to restrain him within a fence, enclosure, or to keep him on a leash when outside of the home or fenced enclosure after the date of this Order will subject the Defendant to a \$100.00 per day fine as per the Covenants;
3. Defendant must implement the landscaping plan previously submitted and approved by Plaintiff within 30 days of the date of this Order or be subject to a \$100.00 per day fine as per the Covenants;
4. The Court awards Plaintiff the past due HOA dues and assessments as itemized in Plaintiff's Exhibit 11 in the amount of \$8,615.11;
5. The Court awards the Plaintiff attorney's fees in the amount of \$44,450.00 as itemized in Plaintiff's Exhibit 10. The Court finds that these to be reasonable and appropriate, and thoroughly substantiated.

AND IT IS SO ORDERED.

KRISTI F. CURTIS
PRESIDING JUDGE
THIRD JUDICIAL CIRCUIT

July ____, 2024



Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E
Bevier
Case Number: 2017CP1400127
Type: Order/Judgment For Relief

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762