STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No.: 2022-CP-40-01147
James A. Leonard, III, Sheryl A. Leonard, Merrie P. Grant, G. Duncan Grant, and Pamela K. Smith, Plaintiffs, vs. WildeWood Sections I-IV Homeowners Association, Inc., Defendant.	)	**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court by way of Defendant, WildeWood Sections I-IV Homeowners Association, Inc.'s (the "HOA") Motion for Summary Judgment. Both parties submitted briefing, and the court heard arguments on April 18, 2024. After careful review and consideration, the Court **GRANTS** HOA's Motion.

INTRODUCTION

Plaintiffs James A. Leonard, III, Sheryl A. Leonard, Merrie P. Grant, G. Duncan Grant, and Pamela K. Smith (collectively, "Plaintiffs") brought this declaratory judgment action seeking a declaration from the Court that (1) a January 1998 instrument assigning Wildewood Lot Restrictions, as mentioned in Plaintiffs' deeds and chains of title, to the HOA is invalid, (2) a February 1998 instrument imposing a Declaration of Covenants, Conditions and Restrictions as an amendment to the Wildewood Lot Restrictions is invalid, (3) the HOA does not have the authority to require Plaintiffs to pay a $40 monthly assessment, and (4) the HOA does not have the authority to file a lien against the Leonards for an unpaid assessment, which lien was filed in the Richland

County Register of Deeds Office on February 8, 2021. (Compl. at ¶ 27). As explained below, Plaintiffs' first three claims are time barred by the relevant statute of limitations because Plaintiffs knew these claims existed for well over three (3) years before filing suit. Plaintiffs' final claim, whether Defendant has the power to file a lien against the Leonards' property for an unpaid assessment, is moot. Therefore, the Court determines that summary judgment in the HOA's favor is appropriate.

RELEVANT FACTUAL BACKGROUND

Plaintiffs James and Sheryl Leonard (the "Leonards") own property at 131 Running Fox Road in Richland County (the "Leonard Property"). (Compl. at ¶ 2). Plaintiffs Merrie and Duncan Grant (the "Grants") own property at 55 Running Fox Road in Richland County (the "Grant Property"). (*Id.* at ¶ 8). Plaintiff Pamela Smith (a/k/a Pamela McFadden) owns property at 120 Duck Road in Richland County (the "Smith Property"). (*Id.* at ¶ 13). All three parcels are in the same neighborhood (Wildewood), and were originally owned, together with the rest of the lots in the neighborhood, by Heath Manning and Donnie Boyd (the "Developers"), who subdivided the property and developed each subdivision in turn.

When an original lot purchaser bought their property from the Developers, the deed contained restrictions that run with the land and that reserved for the Developers the right to alter and amend the restrictions. (*Id.* at ¶¶ 5, 7, 11, 17). When development of each subdivision was near completion, the Developers turned over control of the restrictions to a homeowners' association specific to that subdivision. In 1998, the separate homeowners' associations for the first four subdivisions assigned their rights to Wildewood Sections I-IV Homeowners Association, Inc. (the "HOA"), thus creating one homeowners' association for these four subdivisions.

The assignment from the separate homeowners' associations to the HOA was memorialized in a writing, the Assignment of Covenants, Conditions and Restrictions Affecting Lots in Sections I, II, III, and IV of the Wildewood Subdivision, dated January 19, 1998, and recorded in with the Richland County Register of Deeds on January 26, 1998. (*Id.* at ¶ 19).[1] This assignment was proper because it was based on the restrictions and easements contained in each deed from the Developers to the original lot purchasers. Further, the HOA approved a Declaration of Covenants, Conditions and Restrictions as an amendment to the Wildewood Lot Restrictions on February 23, 1998, which was recorded on March 26, 1998, with the Richland County Register of Deeds. (*Id.* at ¶ 21).

In August 1985, the Leonards purchased the Leonard Property subject to conditions and restrictions that are appurtenant to and run with the land and which the Developers reserved the right to alter, amend or release. A copy of the deed for the Leonard Property was attached to the HOA's Motion.

In July 1994, Plaintiff Merrie Grant purchased the Grant Property subject to conditions and restrictions that are appurtenant to and run with the land and which the Developers reserved the right to alter, amend or release. A copy of the 1994 deed for the Grant Property was attached to the HOA's Motion. Subsequently, in June 2013, Plaintiff Merrie Grant conveyed the Grant Property to herself and her husband, Plaintiff Duncan Grant, as joint tenants with a right of survivorship. A copy of the 2013 deed for the Grant Property was attached to the HOA's Motion.

In December 2001, Plaintiff Pamela Smith purchased the Smith Property from LaSalle National Bank via a quit-claim deed, which was made without any conditions, restrictions,

[1] Here, and elsewhere within this Order, the Court references matters of public record. The Court takes judicial notice of these facts. *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (finding courts "may properly take judicial notice of matters of public record").

covenants, or easements. A copy of the quit-claim deed for the Smith Property was attached to the HOA's Motion. However, Plaintiff Smith's chain of title contains the same conditions and restrictions as those in the other Plaintiffs' deeds. In November 2003, Smith conveyed a one-half interest in the Smith Property to Douglas McFadden via a quit-claim deed. A copy of that quit-claim deed was attached to the HOA's Motion. Per a divorce decree, Douglas McFadden conveyed his interest in the Smith Property back to Smith in October 2012 via a quit-claim deed. A copy of the 2012 quit-claim deed for the Smith Property was attached to the HOA's Motion.

In 2018, "The Members Club at Wood Creek and Wildewood, LLC," which owned and operated both the Wood Creek and Wildewood golf courses and related amenities in and around the Wildewood neighborhood, went out of business. First Citizens Bank foreclosed on the properties and offered them for sale to the highest bidder. In an effort to preserve and protect property values and the character of the neighborhood, as well as to prevent the foreclosed properties from failing into abandon or disrepair, a group of Wildewood residents (the "Investor Group") approached the several Wildewood homeowners' associations, including the Defendant HOA, with a proposal to raise sufficient annual capital to support the operation and maintenance of the foreclosed properties should the investor group be successful in purchasing the properties from the bank. (*See* Compl. at ¶¶ 22-23).

The Investor Group's proposal included the Investor Group purchasing, repairing, and operating the foreclosed property as a new private club, with a deed restriction to only operate the property as a private club and not sell or develop it for a minimum of 25 years. Additionally, HOA members would receive limited rights to use some of the new club's amenities (access to club pools, golf, tennis, trails, food and beverage services, and other activities not previously included in HOA membership). In exchange for the new club's deed restriction and for the continued

protection of the HOA members' property values, a $40 per month assessment per HOA member would be implemented, billed, and collected by the HOA and paid to the new club (the "Value Preservation Assessment"). Membership in the new club is voluntary and HOA members are not automatically members; they simply have a contractual right to limited use of certain amenities of the new club, if they chose to do so.

In accordance with the HOA's bylaws, the Investor Group's proposal was duly noticed by the HOA to its members, including these Plaintiffs. (Compl. at ¶ 23). Plaintiffs have each admitted that they each received notice of the special vote on the Investor Group's proposal for the Value Preservations Assessment.[2] On November 27, 2018, the HOA's membership—via with a quorum of HOA members in good standing, present and participating or voting by duly authorized proxy—voted to approve and adopt the Investor Group's proposal. Thereafter, a binding agreement consistent with the November 2018 vote was unanimously approved by the HOA (Sections I-IV) board and filed with both the Richland County Register of Deeds and the South Carolina Secretary of State on January 10, 2019.

Plaintiffs actively participated in the HOA since its inception or since they purchased their respective properties. Plaintiffs either acquiesced to the formation of the HOA or chose to purchase property within the HOA. Plaintiffs have voted in HOA elections, voted on various amendments to the HOA covenants, availed themselves of statutes designed to protect members of homeowners' associations, filed complaints to the HOA, and benefited from the enforcement of the HOA's covenants.

[2] On February 1, 2023, Defendant served its First Set of Requests for Admission on Plaintiffs, which were attached to the HOA's Motion, and Plaintiffs did not to respond. Thus, the Requests are deemed admitted. *See* Rule 36(a), SCRCP (stating that requests for admission that the opposing party does not respond to within thirty days are deemed admitted).

For example, on November 26, 2018, Plaintiff Smith filed a complaint with the South Carolina Department of Consumer Affairs in which she alleged the actions taken by the HOA regarding the special vote on the Investor Group's proposal was noncompliant with the HOA's bylaws. In making this complaint, Plaintiff Smith took advantage of a statute specifically designed for the protection of homeowners' association members. The Leonards, in addition to voting on HOA measures in the past, also voted by proxy on the Investor Group's proposal.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases which do not require a fact finder." *Englert, Inc. v. LeafGuard USA, Inc.*, 377 S.C. 129, 134, 659 S.E.2d 496, 498 (2008) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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), SCRCP. Any disagreements over evidence or its meaning must be material, in addition to being both genuine and concerning an issue of fact. *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) ("Only disputes over facts that might affect the outcome of the suit . . . will properly preclude the entry of summary judgment." (alteration in original) (quoting, in parenthetical, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986))). The Supreme Court has recently clarified the standard of review for summary judgment in *Kitchen Planners, LLC v. Friedman*, Op. No. 28173 (S.C. Sup. Ct. filed Aug. 23, 2023) (Howard Adv. Sh. No. 33 at 17), in which the court stated the "mere scintilla" standard does not apply under Rule 56(c), SCRCP, and stated the proper standard is the "genuine issue of material fact" standard as set forth in the text of

the rule. Material facts are those identified by controlling substantive law as essential elements of claims and defenses. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

As it pertains to the relief requested in the HOA's Motion, none of the material facts with respect Defendant's statute of limitations arguments are in dispute. The relevant three-year statute of limitation is unambiguous. S.C. Code Ann. § 15-3-530. The dates Plaintiffs purchased their properties are not in dispute and neither is the language of the covenants and restrictions in their deeds and chains of title. The HOA's implementation of a $40 monthly assessment due from every HOA member and paid to the new club under the Investor Group's proposal is also undisputed. The purpose and benefits received by Plaintiffs from the $40 monthly assessment is not material to a summary judgment analysis because Plaintiffs contend that they should not have to pay the monthly assessment regardless of what it is for.

ANALYSIS

Section 15-3-530 of the South Carolina Code provides that an action cognizable under this section shall be commenced within three (3) years of the occurrence of the cause of action. The statute of limitations begins to run when a plaintiff knew or should have known a cause of action might exist. *See Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008) ("The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist."). Here, Plaintiffs' claims all arise out of disputes between themselves as homeowners and the HOA; thus, their claims are subject to the three-year statute of limitation.[3]

[3] At the hearing, Plaintiffs' counsel suggested, but did not argue, that the applicable statute of limitation for the issues presented was 20 years, pursuant to S.C. Code Ann. § 15-3-520(b), because the recordation of the assignment to the HOA and restrictive covenants constitute sealed instruments for the purposes of the statute. Plaintiffs are incorrect. Plaintiffs presented no evidence that the documents at issue were sealed, so as to be subject to the 20-year statute of limitation. "A sealed instrument is defined as 'an instrument to

The Leonards purchased their property in 1985. Plaintiff Merrie Grant purchased her property in 1994. Plaintiff Smith purchased her property in 2001. Plaintiff Merrie Grant conveyed her property to herself and her husband, Plaintiff Duncan Grant, in 2013. The Summons and Complaint were filed in 2022, which is more than three years after each Plaintiff knew or should have known about the restrictions in their deeds. Plaintiffs are charged with the knowledge of the restrictions in their deeds and chains of title when they obtained ownership of their properties. *See Harbison Cmty. Ass'n, Inc v. Mueller*, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995) ("A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant."); *id.* ("A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title.").

The Leonards and Merrie Grant knew of the formation of the HOA, and acquiesced to it, through the January 1998 instrument and the February 1998 instrument at the time the instruments were approved, because of their ownership of their properties and their participation in the HOA. Smith and Duncan Grant, at the latest, are charged with the knowledge of the restrictions when they obtained ownership in 2001 and 2013, respectively, which in both cases was after the instruments were approved. Both obtained ownership of their properties knowing of the restrictions on their properties and of the existence of the HOA.

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which the bound party has affixed a personal seal, usually recognized as providing indisputable evidence of the validity of the underlying obligations.'" *Lyons v. Fidelity Nat. Title Ins. Co.*, 415 S.C. 115, 125, 781 S.E.2d 126, 131-32 (Ct. App. 2015) (quoting *Sealed Instrument*, BLACK'S LAW DICTIONARY (9th ed. 2010)) (alterations omitted); *see also Carolina Marine v. Lasch*, 363 S.C. 169, 609 S.E.2d 648 (Ct. App. 2005) (explaining that a "boilerplate attestation clause, by itself," is not enough to establish the intention of the parties to execute an instrument under seal). Notably, even if the documents at issue were considered "sealed instruments," the statute of limitations would have run on challenging the validity of those documents anyway since they were executed on January 19, 1998 and February 23, 1998, respectively, and the running of the statute would have begun on the date of their execution.

Further, Plaintiffs participated in the HOA through voting in elections and on amendments to the covenants. Plaintiffs, who have submitted prior complaints and concerns to the HOA, now question the HOA's existence because they do not want to pay the $40 monthly assessment that was validly implemented. Plaintiffs all knew of their claims concerning the validity of the January 1998 and February 1998 instruments for well over three years before they filed their Summons and Complaint in March 2022. Thus, the Court finds these claims to be time barred.

Additionally, in November 2018, the HOA notified its members, *including Plaintiffs*, of a vote on the Investor Group's proposal, and on November 27, 2018, the members of the HOA voted to amend its bylaws to allow the HOA to impose the Value Preservation Assessment. The HOA's board approved a binding agreement regarding the Value Preservation Assessment. Plaintiffs filed their summons and complaint challenging the Value Preservation Assessment and enforcement of same on March 4, 2022, which is more than three (3) years after Plaintiffs were notified of the vote and were fully aware that their claim existed before November 27, 2018. Therefore, the Plaintiffs' claims regarding the imposition of the Value Preservation Assessment are also time barred. Because Plaintiffs could have brought suit challenging the authority of the HOA to adopt and approve the Value Preservation Assessment on or after November 27, 2018, the date on which the by-laws were approved, the three-year statute of limitations ran on this claim on November 27, 2021. *See* S.C. Code Ann. 27-30-130(B)(1)(a) (providing that the rules, regulations, and amendments to rules and regulations of a homeowners association are effective upon passage or adoption under South Carolina law).

With regards to whether the HOA had the power to file a lien against the Leonards for failure to pay the Value Preservation Assessment, this Court is informed that the lien at issue was filed by the HOA on February 8, 2021 and recorded in the Richland County Register of Deeds

Office in Book 2584 at page 1247. However, information provided by the HOA after the hearing makes clear that a Release of Notice of Delinquent Assessment Lien was filed by the HOA on May 22, 2024 and recorded the Richland County Register of Deeds in Book 2925 at page 1202. Accordingly, Plaintiff's final claim with regards to the HOA's authority to file the lien is now moot.

CONCLUSION

Because Plaintiffs knew of their claims related to the validity of the 1998 assignments, the restrictive covenants, and the Value Preservation Assessment in excess of three (3) years prior to filing their claims, their claims are barred by the statute of limitation. The Leonards' claims with respect to the lien filed for failure to pay the Value Preservation Assessment are now moot, for the reasons stated above. As there are no genuine issues of material fact in this case with respect to the above discussion, the HOA is entitled to judgment as a matter of law. Accordingly, the Court **GRANTS** the Motion for Summary Judgment for the reasons set forth above.

IT IS SO ORDERED.

[JUDICIAL ELECTRONIC SIGNATURE PAGE TO FOLLOW]

Richland Common Pleas

Case Caption: James A Leonard III , plaintiff, et al vs Wildewood Sections I-Iv Homeowners Association Inc

Case Number: 2022CP4001147

Type: Order/Summary Judgment

It is so Ordered

s/Joseph M. Strickland, 3055