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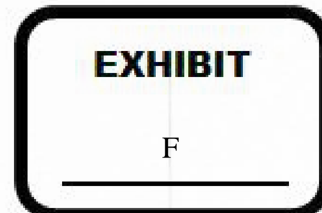
SC Court of Appeals

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
POLY-MED, INC.; TECHNOLOGY DRIVE 51, LLC; TECHNOLOGY DRIVE 52, LLC; and PMI PROPERTIES, LLC,	)	C.A. No.: 2021-CP-04-01349
Plaintiffs / Counterclaim Defendants,	)	
vs.	)	**ORDER ON OUTSTANDING MOTIONS REGARDING CONVERSION & INJUNCTIVE RELIEF**
RESEARCH PARK, LLC,	)	
Defendant / Counterclaim Plaintiff.	)	

THIS MATTER came before the Court in connection with two issues that remain post-trial; specifically, the issues regarding the disposition of Plaintiffs' claim for conversion, as well as whether and to what extent the Court may establish dates certain by which Plaintiffs must remove temporary trailers from their premises at the Clemson Research Park. A hearing on these and related matters was held on July 24, 2024. Plaintiffs were represented by Marwan Zubi and William Coates; Defendant was represented by Steven Edward Buckingham. By Form 4 entered August 27, 2024, the Court indicated its decision as to the matters presented in this order, and has entered this order to explain the bases for its decision.

As to Plaintiffs' cause of action for conversion, one of the issues raised in Defendant's post-trial motions is that Plaintiffs could not have prevailed on their action for conversion as a matter of law, and that therefore, to the extent the Court's written decision of February 23, 2024 held otherwise, the decision should be reversed and corrected. Upon due consideration of the facts and pertinent legal authorities, Defendant's motion is granted.



In the initial written decision regarding this dispute, this Court held that, under the pertinent covenants, "Defendant had the unambiguous right to charge the prescribed amounts in the covenants, which was $300 per acre compounded 10% annually" going back to 1986. The undisputed evidence at trial was that, for the duration of Defendant's ownership of the Clemson Research Park, Defendant had charged property owners $600 per year per acre owned, and that this was substantially less than the amount authorized by the covenants, which is a mathematical fact. Accordingly, the Court held that the amount Defendant had charged property owners under the covenants was consistent with the covenants, while also holding that Defendant's use of funds collected from property owners for anything other than "maintenance and upkeep," as that term is defined in this Court's prior decision, was inconsistent with the covenants.

Plaintiffs' interpretation of the covenants appears to conflate two issues: collection of maintenance fees and their expenditure. It appears to be Plaintiffs' contention that, under the covenants, Defendant may only collect maintenance fees from property owners necessary to cover "maintenance and upkeep;" that the collection of any amount of maintenance fee in excess of what is necessary for "maintenance and upkeep" constitutes conversion.

To reach this construction, however, the Court would have to disregard the plain language of the covenants, which establish the method by which annual maintenance fees are calculated, and which further establish that each property owner's obligation is to pay the maintenance fees as calculated. And, while the covenants do give Defendant the authority to reduce the amount of the maintenance fee in any given year according to its discretion, the covenants do not establish an obligation to do so. Therefore, if the Court were to adopt Plaintiffs' construction of the covenants, the Court would also be required to create a new term in the covenants—one providing an alternative method of calculating the maintenance fee—even

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though the covenants already establish the method by which the fee is calculated. Consistent with well-established precedent, the Court declines the invitation to create a new contractual obligation.

The question of whether Defendant's collection of maintenance fees remains distinct from the question of how the maintenance fees are spent. And the immediate issue before the Court—with respect to Plaintiffs' conversion action—relates solely to collection.

Conversion is the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. See, e.g., SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). An action for conversion "cannot arise from the exercise of a legal right" of ownership over the property allegedly converted. Kirby v. Horne Motor Co., 295 S.C. 7, 11, 366 S.E.2d 259, 261-62 (Ct. App. 1988) (citation omitted).

In the instant case, and consistent with the foregoing discussion, Defendant's collection of the maintenance fee does not constitute conversion. As long as Defendant charges Clemson Research Park property owners an amount no greater than $300 per acre compounded by 10% annually, going back to 1986, Defendant's imposition of such charges is permissible under the covenants. And, since the covenants establish that each property owner's obligation is to pay the maintenance fee, Defendant has the right to collect such fee from each property owner. Accordingly, when a property owner tenders the maintenance fee to Defendant, it is doing so expressly pursuant to its contractual obligations. Plaintiffs' payment of their contractual obligations does not constitute a conversion, see, e.g., Owens v. Zippy Mart of S.C. Inc., 268 S.C. 383, 234 S.E.2d 217 (1977), and that is separate and apart from the real matter in dispute, which is how the funds collected were spent.

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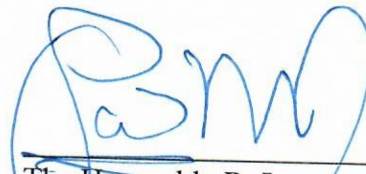
For these reasons, Defendant's motion for reconsideration as to the issue of conversion is granted. As a matter of law, Plaintiffs have failed to state a legally cognizable cause of action for conversion, and judgment on Plaintiffs' conversion action is hereby directed in Defendant's favor.

The final matter to address in this decision pertains to Defendant's action against Plaintiffs for breach of the covenants, specifically regarding the continued presence of "temporary" office trailers that were installed on Plaintiffs' premises and have remained there for a number of years. The Court has previously held that Plaintiffs must remove the trailers from their premises, but invited supplemental briefing from the parties as to the amount of time that Plaintiffs should be allowed to accomplish such removal. Upon due consideration of the parties' submissions, the Court has elected to suspend the imposition of a date certain by which removal must be accomplished. Instead, from time to time and only upon the request of Defendant's counsel, the Court may require Plaintiffs to provide information by which the Court may evaluate Plaintiffs' advances in the removal of such trailers and/or their replacement with permanent structures. If, upon such review, the Court finds that Plaintiffs' progress has been inadequate, the Court reserves the right to order a specific time frame, or date certain, by which the removal of the temporary trailers must be accomplished.

It is **SO ORDERED**.



The Honorable R. Lawton McIntosh
Judge, Tenth Judicial Circuit

Entered this 25 Day of September, 2024
Anderson, South Carolina

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