

Exhibit 1

Order Regarding Plaintiff's Motion for Summary
Judgment and Defendants' Motions for Summary
Judgment

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Mary Megna,)
)
Plaintiff,)
)
Essex Homes Southeast, Inc. and Town of)
Blythewood,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Case No. 2018-CP-40-05647

ORDER REGARDING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AND DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

RECEIVED

Apr 24 2025

SC Court of Appeals

This matter came before the Court via a Webex hearing on December 19, 2024, pursuant to multiple motions for summary judgement filed by the Parties. Two of the motions for summary judgment are renewed motions filed on behalf of Defendant Essex Homes Southeast Inc. (Essex), and Defendant the Town of Blythewood (Blythewood) respectively. The Plaintiff filed her first motion for summary judgment and seeks summary judgment as to the surviving claims associated with her case.

On July 7, 2022, Judge Alison Lee ruled on the previous motions for summary judgment filed on behalf of Blythewood and Essex. The surviving claims against Defendant Essex are abuse of process, public nuisance, as well as Plaintiff's declaratory judgment claims. *See* Judge Lee's Form 4 regarding Summary Judgment against Essex. Plaintiff's declaratory judgment claim requests this Court to declare the special exception granted to Essex null and void for failure to give proper notice to Plaintiff and other adjacent landowners and that the amendment to the zoning ordinance eliminating the requirement for a special exception cannot be retroactively enforced. Judge Lee also permitted Plaintiff to proceed on her declaratory judgment claims against the Town of Blythewood "relating to the amended ordinance." *See* Judge Lee's Order regarding Blythewood's Summary Judgment Motion. Regarding Plaintiff's declaratory judgment claims

against Essex, Judge Lee ruled “Essex’s motion for summary judgment on the declaratory relief is denied because there is a genuine dispute of a material fact as to whether a justiciable controversy exists between the parties.” *See* Judge Lee’s Form 4 Order filed on July 7, 2022.

After considerable review of the file, submissions by the Parties, arguments on behalf of the attorneys, and the relevant law, the Court believes it is appropriate to dismiss Plaintiff’s declaratory judgment claims against both Defendants for lack of subject matter jurisdiction. Rule 12(h)(3) SCRCF, provides “whenever it appears by suggestion of the parties or otherwise that the court lacks subject matter jurisdiction of the subject matter, the court shall dismiss the action.” Subject matter jurisdiction refers to the power of a court to hear and determine cases of the general class to which the proceedings belong. *Johnson v. South Carolina Dept. of Probation, Parole, and Pardon Services*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007). Subject matter jurisdiction is derived from the appropriate constitutional or statutory authority granting a court the power to adjudicate a case. *Id.*

The South Carolina Legislature has determined that the Circuit Court only has appellate jurisdiction to overturn permits and ordinances issued by the Zoning Board of Appeals. *See* S.C. Code Ann. § 6-29-820. The Legislature has given the Zoning Board of Appeals authority to hear appeals by “any person aggrieved” by a Board decision. *See* S.C. Code Ann. § 6-29-800(B). After hearing an appeal, the Legislature requires the Board to separately state all findings of fact and conclusions of law in final decisions or orders and then deliver the final decision to all parties of interest by certified mail. S.C. Code Ann. § 6-29-800(E).

The proper way to appeal a final decision issued by the Board to the Circuit Court is to file with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision to approve said permit or ordinance is contrary to law. *See* S.C. Code Ann. § 6-29-820.

The appeal must be filed within thirty days after the decision of the board is mailed. *Id.* “A declaratory judgment action is not a substitute for a new trial or an appeal. . . .” *Wessinger v. Rauch*, 288 S.C. 157, 160, 341 S.E.2d 643, 644 (Ct. App. 1986).

In this case, Plaintiff is attempting to use a declaratory judgment action to overturn the Blythewood Zoning Board of Appeal’s decision to grant Defendant Essex Homes a special exception zoning permit and the Town of Blythewood’s decision to amend its zoning ordinance. Plaintiff alleges the Board’s granting of the special exemption zoning permit is “null and void” because the board did not give adequate notice to the Plaintiff to contest the granting of the special exemption permit before the board issued its decision. *See* Plaintiff’s Amended Complaint Pg. 2. Plaintiff also alleges the Defendant Essex provided false and misleading information in its application for the special exception permit and that its application did not comply with local ordinances. *Id.* Furthermore, Plaintiff claims that “in accordance with Section 10.99 of the Town of Blythewood Ordinances, the continued use of the unlawful permit by Defendant Essex Homes is deemed a public nuisance and each day that the condition continues is a new and separate offense.” *Id.* Plaintiff also claims Section 155. 338(B)(1) of the Town of Blythewood Zoning Ordinance, provides “the Zoning Administrator shall revoke” the permit and/or license if it is determined the application knowingly gave false and misleading information in the material submitted to the Zoning Department during the application process. *Id.* at pg. 12.

Plaintiff therefore requests that this Court, pursuant to S.C. Code Ann. § 6-29-950(A), determine that Plaintiff, as a person who has been specially damaged by the violation of the Blythewood Ordinance, is “entitled to institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or correct or abate the violation, or to prevent the occupancy of

this building, structure, or land. . .” *Id* at pg. 20. Plaintiff prays that this Court will issue an order to “prevent the continued unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, and to correct and abate the violations of the Defendants Essex and Town of Blythewood, and to prevent the construction and/or occupancy of the building, structure, or land.” *Id*. Plaintiff believes this Court has jurisdiction to resolve this matter pursuant to S.C. Code Ann. § 1-23-150 which is titled “Appeals contesting *authority* of agency to promulgate regulation.” *Id*. at pg 3.

S.C. Code Ann. § 1-23-150 provides “[a]ny person may petition an agency in writing for a declaratory ruling as to the *applicability* of any regulation of the agency or the *authority* of the agency to promulgate regulation. . .” After petitioning the agency, the agency shall issue a declaratory ruling. *Id*. The Court currently is unaware of any petition by Plaintiff served on the Blythewood Zoning Board of Appeals or any declaratory ruling that has been issued by the Board regarding Plaintiff’s allegations. After complying with the statute, then, the petitioner may petition the Circuit Court for a declaratory judgment and/or injunctive relief if it is alleged that the regulation or its threatened application interferes with. . . the legal rights or privileges of the plaintiff or that the regulation exceeds the regulatory authority of the agency. *Id*. The statute also provides that the agency shall be made a party to the action. *Id*. Currently, the Blythewood Zoning Board of Appeals is not a party to this action.

Regardless, the Court does not believe this statute conveys jurisdiction to the Circuit Court to overturn decisions by the Blythewood Zoning Board of Appeals. The Blythewood Zoning Board of Appeals does not qualify as an “agency” under S.C. Code Ann. § 1-23-10. Moreover, S.C. Code Ann. § 1-23-150 concerns the applicability of a regulation to a Petitioner and the authority of the regulatory body to promulgate said regulation. If the Legislature wished to apply this sort of

remedy to decisions issued by the Blythewood Zoning Board of Appeals, the Court believes the Legislature would have done so in S.C. Code Ann. § 6-29-710 - § 6-29-960, which is titled “Local Planning – Zoning.” Given that the Legislature did not, the Court believes S.C. Code Ann. § 1-23-150 is inapplicable to Plaintiff’s claims.

Therefore, pursuant to S.C. Code Ann. § 6-29-820, this Court does not have the authority to overturn the decision of the Blythewood Zoning Board of Appeals. Plaintiff frames the special exemption permit issued to Essex as “unlawful” and procedurally invalid based on allegations that it was issued in violation of due process and false and misleading information. However, this Court cannot address Plaintiff’s concerns without a full factual record provided to the Court by the Board. As far as this Court is concerned, the special exemption permit issued to Essex to build the “Essex Commercial Entertainment Property,” is a lawful permit, and the Amended Ordinance enacted by the Town of Blythewood is a lawful ordinance that this Court must acknowledge as lawful until they are proven on appeal to be unlawful. Given that this Court does not have the authority to overturn decisions made by the Blythewood Zoning Board of Appeals, unless it is acting in its appellate capacity, this Court does not have subject matter jurisdiction to declare the special exception granted to Essex null and void for failure to give proper notice to Plaintiff and other adjacent landowners. The same rule applies to Plaintiff’s claims that Blythewood’s amendment to the zoning ordinance eliminating the requirement for a special exception cannot be retroactively enforced. Therefore, all Plaintiff’s declaratory judgment claims are hereby dismissed for lack of subject matter jurisdiction.

The Court is aware that a Circuit Court Judge does not have the authority to set aside the order of another. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). It is the opinion of this Court that nothing in this Order reverses or undermines any ruling

in either of Judge Lee's prior Orders on the issue of summary judgment. While it may be true that Judge Lee allowed Plaintiff's declaratory judgment claims to survive after hearing the original motions for summary judgment filed by both Essex and Blythewood, Judge Lee never addressed the issue of subject matter jurisdiction in either of her orders. This Court's ruling is decided on separate grounds that Judge Lee never addressed. A trial court judge may grant summary judgment on different grounds not ruled on by another judge in a prior summary judgment order. *Crosswell Enterprises, Inc. v. Arnold*, 309 S.C. 276, 422 S.E.2d 157 (Ct. App. 1992).

Regarding Plaintiff's Motion for Summary Judgment, based on a review of the file, submissions by the Parties, and oral arguments, Plaintiff's Motion is hereby Denied.

Regarding Defendant Essex's Motion for Summary Judgment, based on a review of the file, submissions by the Parties, and oral arguments, Essex's Motion is hereby Granted as to Plaintiff's declaratory judgment claims based on the Court's lack of subject matter jurisdiction as discussed above. However, Essex's Motion is hereby Denied as to Plaintiff's tort claims for Abuse of Process, and Public Nuisance. Considering that this Court is allowing the Plaintiff to proceed on her Public Nuisance claim and Abney Hills Estates Property Owners Association, Inc., owns the Essex Community Center that is the subject of this litigation and has an interest in the continued use of the community center, the Court believes the POA is an indispensable Party that should be added to this case pursuant to Rule 19, SCRCF.

Regarding the Town of Blythewood's Motion for Summary Judgment, based on a review of the file, submissions by the Parties, and oral arguments, Blythewood's Motion is hereby Granted as to Plaintiff's remaining declaratory judgment claims related to the amended ordinance based on the Court's lack of subject matter jurisdiction as discussed above. Therefore, the Town of Blythewood is hereby dismissed from this action.

Based on this Court's Order, the only surviving claims Plaintiff may continue to pursue are her tort claims against Defendant Essex for Abuse of Process and Public Nuisance. Abney Hills Estates Property Owners Association, Inc. shall be made a party to Plaintiff's Public Nuisance claim.

IT IS SO ORDERED.

February _____, 2025
Greenville, SC

Presiding Circuit Court Judge



Richland Common Pleas

Case Caption: Mary C Megna vs Town Of Blythewood , defendant, et al

Case Number: 2018CP4005647

Type: Order/Other

So Ordered

Patrick C. Fant, III

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