

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 TURNER’S MARINA LLC,)
)
 Plaintiff,)
)
 vs.)
)
 R.V. RESORT AND YACHT CLUB)
 OWNERS’ ASSOCIATION, INC.,)
 SECURITAS SERVICES, INC.,)
 MIKE MORALES, and SUNSET, INC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2021-CP-07-01085

**ORDER GRANTING DEFENDANTS’
 MOTION TO ENFORCE SETTLEMENT
 AS TO AMENDED EASEMENT**

RECEIVED
May 23 2025
 SC Court of Appeals

This matter comes before me upon Plaintiff’s Motion to Enforce Mediation Settlement Agreement, dated February 23, 2024, supported by the Affidavit of Neil Turner, dated April 2, 2023 (collectively “Plaintiff’s Motion”) and Defendants’ Motion to Enforce Settlement, dated March 4, 2024, supported by the Affidavit of Christopher Sibley, dated April 8, 2024 (collectively “Defendants’ Motion”).

A hearing was held in my chambers at the Beaufort County Courthouse on April 11, 2024 at which time the Court heard and considered arguments from all counsel. As is set forth in the parties’ Motions, a dispute has arisen as to the documentation required as to the Settlement Agreement, dated December 13, 2023, reached in mediation (“Settlement Agreement”). The Defendants have asserted that as a result of the Settlement Agreement, one or all the parties must sign in recordable form three (3) documents; (1) Amended and Restated Easement; (2) Second Amendment to Lease; and (3) Agreement as to Gates and Security Guards. The Plaintiff agrees an Amended Easement and an amendment to the Lease in

recordable form is necessary, but disagrees with the language suggested by the Defendants, and further asserts no further documentation is needed as to agreement concerning armed guards and gates.

This Order only deals with the parties' dispute as to the Amended Easement Agreement. The other two (2) issues will be subject to a separate Order by the Court.

A. Proposed Amended Easement Agreement

Section 9 of the Settlement Agreement reads as follows:

“9. The 1984 easement recorded at Book 397 at Page 1612 will be updated to include granting access to the Association, Owners of the Property, and each of their guests, lessees, invitees and licensees to Parcel “B”. The Parties agree that Parcel B is referenced in Plat Book 148 at Page 60.”

This Court has reviewed the 1984 Easement recorded at Book 397 at Page 612 and the referenced Plat Book 148 at Page 160 (“Parcel B Plat”). Defendants submitted to Plaintiff on January 31, 2024 a proposed Amended and Restated Easement Agreement with language virtually identical to the above when describing the easement rights granted. (Exhibit 1 attached hereto).

It is this Court’s opinion the language of Section 9 of the Settlement Agreement is clear and unambiguous. The agreed-upon language clearly provides an express easement to the Association (defined in the Settlement Agreement as the Defendant R.V. Resort and Yacht Club Owners Association, Inc.), Owners of the Property, and each of their guests, lessees, invitees and licensees over Parcel “B”, as set forth on Plat Book 148 P 60. All of the terms and conditions of this easement are carefully and fully defined pursuant to the referenced recorded documents.

Plaintiff, relying on the Affidavit of Neil Turner, dated April 2, 2023, states it was the intent of the Plaintiff and/or the parties to only grant an easement over the roadways or paved roads on Parcel B, not Parcel B in its entirety. In the Amended Easement proposed by the Plaintiff, dated January 3, 2024, the easement to the Association is stated as “a permanent, non-exclusive right-of-way, on, over, and across the paved roads . . .” located on Exhibit 1 attached thereto, which is a marked-up survey of the Parcel B Plat (emphasis added).

This Court does not adopt the position of the Plaintiff since there is no language in Section 9 of the Settlement Agreement restricting or limiting the easement to “roads” or “paved roads” as Plaintiff now asserts.

The rules concerning the Court’s role in construing contracts, like the subject Settlement Agreement, are well recognized in South Carolina. The Court in *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 497-498, 649 S.E.2d 494, 501-502 (2007) sets forth an excellent summary of said rules, as follows:

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties.” *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 8081, 562 S.E.2d 482, 484 – 4855 (Ct.App. 2005) . . . (cites omitted). Contracts should be liberally construed so as to give them effect and carry out the intention of the parties. *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47(1958)

The parties’ intention must, in the first instance, be derived from the language of the contract. *Schulmeyer v. State Farm Fire & Cas.*, 10, 353 S.C. 491, 495, 579 S.E.2d 132,134 (2003) (cites omitted) . To discover the intention of a contract, the court must first look to its language – if the language is perfectly plain and capable of legal construction, it alone determines the document’s force and effect. *Superior Auto. Inc. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions. *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct.App. 2004); *accord Kable v. Simmons*, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

* * *

If a contract's language is plain, unambiguous, and capable to only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. *Jordan v. Security Group, Inc.* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley* at 72, 221 S.E.2d at 769¹. "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie* at 93, 594 S.E.2d at 493 (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App. 2001)). However, where an agreement is ambiguous, the court should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E. 2d 271, 274 (Ct.App. 2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 185, 187 (Ct.App. 1998).

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Ellie* at 94, 594 S.E.2d at 493; *accord Bruce* at 160, 127 S.E.2d at 441; *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App. 1997). "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." *Carolina Ceramics, Inc. v. Carolina Pipeline Co.*, 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968) (citation omitted).

"Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, the court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

As stated above, this Court finds § 9 of the Settlement Agreement is clear, direct, specific and unambiguous. There is no need to refer or rely upon the Affidavits of Neil Turner, Christopher Sibley or any testimony. If the Court were to adopt Plaintiff's position, the Court would be required to insert the words "road" or "paved road" into the Settlement Agreement, terms not used by the parties. This Court refuses to make said changes under the authorities cited above.

This Court finds and concludes the Amended and Restated Easement prepared by Defendants, attached hereto as Exhibit 1, is consistent with the stated intention of the parties under §9 of the Settlement Agreement. Within ten (10) days of the issuance of this Order the Plaintiff is directed to execute same before two (2) witnesses, one of which is a notary, and deliver the original to defense counsel for the Association for recording.

AND IT IS SO ORDERED.

Marvin H. Dukes

Beaufort, South Carolina
_____, 2024



Beaufort Common Pleas

Case Caption: Turners Marina Llc VS R V Resort And Yacht Club Owners Association Inc , defendant, et al
Case Number: 2021CP0701085
Type: Master/Order/Other

So Ordered

s/Marvin H. Dukes III #2785

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

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AMENDED AND RESTATED EASEMENT

THIS AMENDED AND RESTATED EASEMENT ("Amended Easement") is executed this ____ day of ____ 2024, by Turner's Marina LLC, ("Grantor") and RV Resort and Yacht Club Owners' Association, Inc. ("Grantee" or "POA").

WHEREAS Outdoor Resorts RV Resort and Yacht Club, a South Carolina joint venture, consisting of ORA of Carolina, Inc. and Six Ess Corporation ("Developer"), granted to the POA on the 1st day of January, 1984, an Easement, as recorded in the Beaufort County Register of Deeds ("ROD") in Deed Book 397 at page 1611 ("Original Easement").

WHEREAS, as a result of the Mediated Settlement Agreement And Dismissal Of All Claims And Counterclaims With Prejudice, reached and executed in C. A. 2021-CP-O7-01085 pending in the Beaufort County Court of Common Pleas on December 13, 2023 ("2023 Settlement"), Grantor, as the successor-in-interest or assignee to the Developer, and the POA agreed to amend, replace and supersede the Original Easement pursuant to the terms and conditions of this Amended Easement:

NOW, THEREFORE, in consideration of the execution of the 2023 Settlement and the sum of Ten and 00/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Whereas Provisions-** The above Whereas provisions are incorporated as if completely set forth herein. Said provisions are material and important terms of this Amended

EXHIBIT 1

Easement.

2. Grant of Easement

(a) Grantor does hereby grant, bargain, sell and convey to Grantee, a permanent, perpetual, non-exclusive right-of-way on, over, and across that certain property owned by Grantor as more particularly depicted as "Parcel B" on that certain plat or survey entitled "Boundary & As-Built Survey of Parcel "B", a portion of Hilton Head Marina & Outdoor Resorts", dated July 24, 2017 and recorded in the ROD in Plat Book 148 at Page 160, as prepared by Terry G. Hatchell, a South Carolina Registered Land Surveyor (SC Reg. No. 11059) ("2017 Survey").

(b) This Amended Easement is granted for use by the POA, owners of the two-hundred (200) individual RV lots at the RV Resort, and their collective guests, lessees, invitees, successors, successors in title, agents, employees, servants, contractors, administrators, mortgagees, and licensees.

(c) This Amended Easement is for the benefit of and is appurtenant to all those certain pieces, parcels or tracts of land lying, situate and being on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 200 RV Lots (1 - 200), the roadways, tennis court(s), pool(s), building(s), parking, open spaces, and the well site, all as shown on that certain plat or survey entitled "R.V. Resort & Yacht Club, Hilton Head Island, South Carolina Plot Plan" dated September 7, 1981, and last revised July 26, 1983, recorded in the ROD in Plat Book 29 at Page 184, as prepared by Forrest F. Baughman, a South Carolina Registered Land Surveyor (S.C. Reg. No. 4922) **and** that certain property owned by Grantee as more particularly depicted as "Parcel A" on the 2017 Survey.

3. **Running with Land** - This Amended Easement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and all persons or entities aforementioned.

4. **Assignment-** Grantee shall have the right to assign its rights and obligations, if any, under this Amended Easement, in whole or in part.

5. **Modification of Roadways-** Grantor may, at its option, change the location of the paved roadways from time-to-time, as depicted on the 2017 Survey, provided that Grantor shall always provide to Grantee sufficient and reasonable ingress and egress access for motor vehicles, recreational vehicles, pedestrians, golf carts, and bicycles.

6. **Replacement of Original Easement** - This Amended Easement is specifically intended by the Grantor and Grantee to replace and supersede that Original Easement. Further, this Amended Easement is subject to all matters of record in Beaufort County, South Carolina.

7. **Non-Exclusive** - This Amended Easement is non-exclusive and is further subject to the right of Grantor and all persons acting on Grantor's behalf to have access on, over, or across the Amended Easement granted herein to Parcel B shown on the 2017 Survey owned by Grantor.

8. **Purchaser(s) of Parcel B Bound-** Each party agrees that upon any conveyance or transfer of all or any part of Parcel B on the 2017 Survey, said purchaser or transferee by accepting such conveyance will thereby be bound by this Amended Easement.

9. **Modifications-** This Amended Easement may be amended, modified, or terminated only by recorded written instrument duly executed and acknowledged by Grantee and Grantor, or their respective successors, successors-in-title and assigns.

10. **Choice of Law-** This Amended Easement will be construed in accordance with the laws of the State of South Carolina.

11. **Rights to Public-** Nothing contained in this Amended Easement will be deemed to constitute a gift, grant, or dedication to the general public.

12. **Authority-** Each individual executing this Amended Easement on behalf of Grantee and Grantor, respectively, represents and warrants that he or she is duly authorized to execute and deliver this Amended Easement in accordance with duly adopted resolutions and approvals or in accordance with organizational or incorporation documents, and that this Amended Easement is binding upon Grantee and Grantor in accordance with its terms.

13. **Severability** = If any provision of this Amended Easement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Amended Easement (or the application of such provision to persons or circumstances other than those in respect to which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Amended Easement will be valid and enforceable to the fullest extent permitted by law.

14. **Drafting Agreement -** The parties acknowledge and agree that each was actively involved with the negotiation and drafting of this Amended Easement. Further, each party's legal counsel reviewed, or had the opportunity to review the Amended Easement prior to its execution. The parties agree that any Court, arbitrator or mediator which may hereinafter interpret this

Amended Easement will not construe the Amended Easement against any particular party which may have originated, typed or prepared any particular provision.

15. **Attorney Fees-** In any legal action to enforce the terms and provisions of this Amended Easement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

16. **Entire Agreement** - This Amended Easement constitutes the entire agreement among the parties hereto and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, among the parties hereto relating to the transactions contemplated hereby or the subject matter herein.

17. **Counterparts-** This Amended Easement may be executed in one or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Amended Easement or its terms to produce or account for more than one of such counterparts.

18. **Lease Signed Per Court Order** - This Amended Easement is not voluntarily executed by Turner's Marina, LLC. It is being executed pursuant to that Court Order of Circuit Judge Marvin Dukes, III dated _____, 2024, directing the Plaintiff to execute this document. It is signed under protest, but in compliance with Judge Dukes' Order.

IN WITNESS WHEREOF, Turner's Marina LLC, a South Carolina limited liability company has caused this Amended Easement to be signed and sealed on _____, ____, 2024.

SIGNED, SEALED, AND
DELIVERED IN THE PRESENCE
OF:

Turner's Marina LLC, a South
Carolina limited liability company

By: _____ (L.S.)
Neil Turner, Manager

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Neil Turner personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal on __ , __ , 2024.

_____(SEAL)
Notary Public for South Carolina
My Commission Expires: _____
Name of Notary: _____

IN WITNESS WHEREOF, the R.V. Resort And Yacht Club Owners' Association, Inc., a South Carolina nonprofit corporation has caused this Amended Easement to be signed and sealed on __ , __ , 2024

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

R.V. Resort And Yacht Club Owners' Association, Inc., a South Carolina nonprofit corporation

By: _____(L.S.)
Christopher Sibley,
President

STATE OF _____)
COUNTY OF _____,

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Christopher Sibley personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal on __ , __ , 2024.

_____(SEAL)
Notary Public for _____
My Commission Expires: _____
Name of Notary: _____