

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS FOR
) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2024-CP-10-01489

Michael D. Royal,

Plaintiff,

v.

Ashley House Council of Co-Owners, Inc.,

Defendant.

**ORDER DENYING
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND TEMPORARY/PRELIMINARY
INJUNCTION**

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SC Court of Appeals

This matter came before the Court for a hearing on March 28, 2024, on Plaintiff's Motion for a Temporary Restraining Order (TRO) and Temporary Injunction. Plaintiff asked this Court to enjoin Defendant from holding its Annual Meeting on March 25, 2024, and any future meetings of the Co-Owners until after the Defendant circulated Plaintiff's 2023 Resolution, which, in essence, was a motion Plaintiff brought at the 2023 Annual Meeting of Ashley House to permit virtual attendance and participation at future Co-Owners meetings. Plaintiff also asserted he could not attend the March 25, 2024 Annual Meeting in person. Plaintiff asserted that, unless the 2023 Resolution was circulated for a vote, all actions of the Ashley House Council of Co-Owners at future meetings could be illegitimate and void. After considering the memoranda filed by both parties, and arguments at the hearing, this Court DENIES Plaintiff's motion and makes the following findings of fact and conclusions of law pursuant to Rule 52, SCRPC.

Findings of Fact

Ashley House is a condominium located at 14 Lockwood Drive and is governed by a Council of Co-Owners pursuant to a Master Deed and Bylaws. It is a thirteen-story building with 147 apartments. **Master Deed, Art. V, Sec. 5.1; Master Deed Ex. C.** Each Co-Owner of an apartment is automatically a member of the Association. **Master Deed, Art. XI, Sec. 11.1(b).**

Its Annual Meeting is required to be held on the fourth Monday of March each year, unless the Board passes a resolution stating otherwise. **Bylaws, Art. III, Sec. 3.1.** The annual meeting notice must be sent to all Co-Owners at least 7 days before the meeting, and must describe the purpose of the meeting, its time, and location. **Bylaws, Art. III, Sec. 3.4.** In order to have a quorum at the Annual Meeting, there must be “a majority of the Co-Owners present in person or by proxy.” **Bylaws, Art. III, Sec. 3.8.** Each Co-Owner’s vote is weighted based on the Co-Owner’s ownership interest, which then must meet the 51% requirement for a quorum. **Master Deed, Art. II, Sec. 2.1(q).** The vote of a majority of the Co-Owners at a meeting with a quorum is binding upon all Co-Owners, unless a higher percentage is otherwise required. **Bylaws, Art. III, Sec. 3.9.** It takes a 66 and 2/3% majority vote of the Co-Owners to amend the Bylaws. **Bylaws, Art. XV, Sec. 15.1.**

In March 2023, the Defendant held its in-person Annual Meeting. At this meeting, Plaintiff made a motion (2023 Resolution) requesting in general that the Co-Owners vote to permit virtual attendance and participation at future meetings of the Co-Owners. Plaintiff made this resolution at the meeting, without prior notice to all Co-Owners or the Board. A voice vote was taken but the vote was unclear. The Board at the time indicated it would permit an email ballot, and Plaintiff insisted on an email ballot for the 2023 Resolution after the meeting. The email ballot was not sent out. Plaintiff continued insisting the email ballot on his 2023 Resolution be sent and that, if it was not sent and voted on prior to the 2024 Annual Meeting, the 2024 Annual Meeting could not be held. Plaintiff also asserted he was unable to attend the 2024 Annual Meeting in person.

The 2024 Annual Meeting notice was sent on February 23, 2024. The notice explained that the purpose of the meeting would include nominating and electing three Directors to the Board, and set the location and time for the meeting. Because Defendant planned to move forward with

the 2024 Annual Meeting, Plaintiff filed a lawsuit against Defendant and the present Motion for a TRO and Temporary Injunction on March 20, 2024. Defendant responded to the motion and filed a memorandum the same day. Plaintiff filed a supplemental memorandum the following day. Before the Court could schedule a hearing, the 2024 Annual Meeting went forward on March 25, 2024. The Court was informed at the hearing that a Co-Owner suffered a medical emergency during the 2024 Annual Meeting, which had to be suspended to a later date. The Court heard Plaintiff's motion on March 28, 2024, and, as of that date, the 2024 Annual Meeting had not been set to reconvene on a specific date.

Conclusions of Law

TROs and temporary injunctions are drastic remedies to be applied with caution in the Court's discretion only when reasonably necessary to protect a plaintiff's rights and prevent irreparable injury while litigation is pending. *See* Rule 65, SCRPC; *see also Strategic Resources Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *Scratch Golf Co. v. Dunes West Residential Golf Prop., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004); *Thornton v. Alford*, 274 S.C. 1, 260 S.E.2d 179 (1979). For a preliminary injunction to issue, a plaintiff must establish "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 908. The Court must also balance the equities of the parties in deciding whether to grant or deny the injunction. *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689; *see* S.C. Jur. *Equity* § 19. Whether "a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law, are questions that are not decided by narrow and artificial rules." *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 36 (Ct. App. 2005). Generally, if a plaintiff has an ability to challenge actions or

proceedings after the fact, then the plaintiff has an adequate remedy at law and an injunction should not issue. *See Strategic Resources Co.*, 367 S.C. at 545, 637 S.E.2d at 689.

This Court finds Plaintiff has failed to meet his burden justifying granting the drastic remedy of an injunction. The primary focus of Plaintiff's Motion was to stop the 2024 Annual Meeting because he could not attend in person, but the Annual Meeting already occurred before the Court held a hearing on the Motion. The Court understands the 2024 Annual Meeting must be reconvened because a Co-Owner's medical emergency that occurred during the meeting. However, the 2024 Annual Meeting has not been rescheduled and there are currently no scheduled meetings of the Co-Owners. Without a scheduled meeting and allegations Plaintiff cannot attend future meetings, there is no real, imminent, and irreparable harm Plaintiff will suffer if the injunction is not issued.

Furthermore, Plaintiff has not met his burden to establish a likelihood of success on the merits in the underlying litigation, which involves the interpretation of Defendant's Master Deed and Bylaws. Restrictive covenants are voluntary contracts, subject to the rules of contractual interpretation, and a court must enforce covenants as written unless they are indefinite or contravene public policy. *See Pines Plantation Co. v. Wells*, 294 S.C. 266, 269, 363 S.E.2d 891, 894 (1987); *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 363, 365 (1974). In the underlying litigation, Plaintiff asserts that the actions of Co-Owners at future meetings could be illegitimate and void because of the failure to circulate the 2023 Resolution for a vote by email.

The language in the Master Deed and Bylaws generally require prior notice to all Co-Owners in order for the Co-Owners to conduct business at an annual meeting. In addition, Plaintiff's 2023 Resolution likely would have required an amendment to the Bylaws because the quorum provision to conduct business requires a majority "present in person or by proxy" which

conflicts with a request for virtual participation. According to the Bylaws, amendments require a 66 2/3% majority at a meeting called for the purpose of amending the Bylaws. Plaintiff did not establish he provided notice to all Co-Owners in line with the Bylaws for his 2023 Resolution. Further, Plaintiff has not shown where the Bylaws or the Nonprofit Code permit a single Co-Owner to raise an issue for a vote by the Co-Owners at an Annual Meeting without prior notice. Also, Plaintiff has not convinced this Court that, under the Bylaws, the failure to circulate his 2023 Resolution would render illegitimate or void all actions at future meetings of the Counsel of Co-Owners. Therefore, Plaintiff has not met his burden of establishing a likelihood of success on the merits.

Finally, Plaintiff has not met his burden to show lack of an adequate remedy at law. Plaintiff alleges that if the 2023 Resolution is not circulated for a vote, there is a potential that the actions of the Co-Owners at future meetings could be considered illegitimate or void. Plaintiff has not supported that position. But even if he could, Plaintiff can bring a lawsuit to challenge the legitimacy of any action taken at Co-Owner meetings after the meetings. In fact, Plaintiff is actively pursuing that cause. Because Plaintiff is pursuing an action at law to challenge actions of the Co-Owners taken at meetings, he has an adequate remedy at law.

Considering the above, the balance of equities favor denying the injunction because Plaintiff will not suffer any real, imminent, and irreparable harm if the injunction is not issued but, if the injunction is issued, Defendant would not be able to conduct any business requiring a meeting of the Co-Owners and voting. Plaintiff's Motion for TRO and Temporary Injunction is **DENIED**.

[SIGNATURE PAGE TO FOLLOW]

***Order Denying Plaintiff's Motion for Temporary Restraining Order and
Temporary/Preliminary Injunction
Case No.: 2024-CP-10-01489***

March _____, 2024.

The Honorable Bentley Price
Ninth Judicial Circuit

Charleston, South Carolina.



Charleston Common Pleas

Case Caption: Michael D Royal VS Ashley House Council of Home Owners

Case Number: 2024CP1001489

Type: Order/Temporary Restraining Order

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766