

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Grand Oaks Boulevard Association, Inc.,)
Plaintiff,)
vs.)
Proximity Neighborhoods Master)
Association, Inc.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2023-CP-10-02281

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF’S MOTION
AND AMENDED MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER came before this Court on June 17, 2025, upon the Motion for Summary Judgment filed by Plaintiff on November 2, 2023, Amended Motion for Summary Judgment filed by Plaintiff on May 9, 2025, and Motion for Summary Judgment filed by Defendant on February 13, 2025. John J. Dodds, III, Esq. appeared on behalf of Plaintiff. Douglas W. MacKelcan, Esq. and Taylor L. Cary, Esq. appeared on behalf of Defendant. After carefully considering the evidence presented at the hearing on this matter, arguments of counsel, the briefs, affidavits, and exhibits submitted and filed by Plaintiff and Defendant, as well as the applicable law, the Court GRANTS Defendant’s Motion for Summary Judgment and DENIES Plaintiff’s Motion for Summary Judgment.

FINDINGS OF FACT AND LEGAL ANALYSIS

Plaintiff is responsible for administering and enforcing the Declaration of Covenants and Restrictions of Grand Oaks Plantation (the “Grand Oaks Declaration”) as recorded in the Register of Deeds Office for Charleston County (“ROD”) on October 28, 1998, in Book P-313, Page 895, as amended. The Declaration’s primary purpose is to maintain the entranceway signs, appearance, and the landscaping along the right-of-way of the Grand Oaks Boulevard and Ashley Gardens Boulevard in West Ashley off Bees Ferry Road, which is the entrance of Grand Oaks Plantation.

Defendant is responsible for the enforcement of the Declaration of Covenants, Conditions, and Restrictions for The Proximity Neighborhoods Master Association, Inc. (the “Proximity Declaration”), as recorded in the ROD on November 10, 2014 in Book 0439, Page 959, as amended. The property that Proximity manages and operates is off Bees Ferry Road located next to the Grand Oaks Plantation, a portion of which includes the property at issue in this case designated as “TRACT D-2 310.669 ACRES TOTAL 97.424 ACRES WETLANDS 213.245 ACRES HIGHLAND” on certain Plat recorded in the ROD on October 15, 2004, in Plat Book EH, at Page 427 (the “Property”).

On November 15, 2004, Grand Bees Development, LLC (“Grand Bees”) purchased the Property from Bees Resources, LP (“Bees Resources”) pursuant to a Limited Warranty Deed filed in the ROD on November 16, 2004 at Book T523, Page 116. The Limited Warranty Deed stated that the Property was being conveyed subject to the Grand Oaks Declaration. However, before the development of the Property and filing of the Proximity Declaration, Bees Resources, as Grantor, and Grand Bees, as Grantee, filed with the ROD a Corrective Limited Warranty Deed, dated July 16, 2012, at Book 0266, Page 615. The Corrective Limited Warranty Deed was made effective to the original closing date of November 15, 2024, as evidenced by the Affidavit of H. Brown Hamrick sworn to on July 16, 2012, attached thereto. The Corrective Limited Warranty Deed provides that the parties inadvertently conveyed the Property subject to the Grand Oaks Declaration in the Limited Warranty Deed, and that they were amending the Limited Warranty Deed to correct the error and convey the Property **free and clear of the Grand Oaks Declaration, as amended (emphasis added)**.

Pursuant to the Grand Oaks Declaration, “the premises conveyed shall be limited to two points of vehicle access to Grant Oaks Boulevard and Ashley Gardens Boulevard.” *See* Grand

Oaks Declaration at § 4. The Grand Oaks Declaration provides that the owner of each tract “bordering upon or having as its access on Grand Oaks Boulevard or Ashley Gardens Boulevard” is “to pay an annual assessment for the creation and continuance of the Grand Oaks Maintenance Fund” as set forth in the Grand Oaks Declaration. *See id.* at § 6(a). The Grand Oaks Maintenance Fund is to be used “solely for maintaining entrance signs and landscaping and beautification of Grand Oaks Boulevard and Ashley Gardens Boulevard.” *Id.* Thus, “[o]nly owners of tracts which border Grand Oaks Boulevard and Ashley Gardens Boulevard or use the Boulevards for the **principal access** from Bees Ferry Road to their property shall have this covenant imposed upon their property.” *Id.* (emphasis added).

Since 2022, Plaintiff has imposed the following assessments on Plaintiff pursuant to the Grand Oaks Declaration:

- 2022 assessment in the sum of \$18,759.00;
- 2023 assessment in the sum of \$20,718.00; and
- 2024 assessment in the sum of \$32,644.00.

After the filing of the Corrective Limited Warranty Deed, the Property was developed to consist of single-family residences. The development of the community included the development of Proximity Drive, allowing Defendant’s residents to gain direct access to their homes from Bees Ferry Road, rather than having to take Grand Oaks Boulevard to Ashley Gardens Boulevard to Proximity Drive. Various entities acting as the “Declarant” under the Proximity Declaration managed the Property during its development. In or around 2020, the Property was managed by Lennar Carolinas, LLC as “Declarant” until the Property became owner managed, through Defendant. It was in or around that time that Defendant questioned the assessments imposed upon it by Plaintiff pursuant to the Grand Oaks Declaration and, as a result, Defendant ceased payments of the assessments to Plaintiff in 2022.

Based upon the foregoing, the Court makes the following findings and rulings:

- i. The Court concludes the Corrective Limited Warranty Deed is clear and unambiguous and therefore a question of law for the Court. *See Gardner v. Mozingo*, 293 S.C. 23, 358 S.E.2d 390 (1987). Pursuant to the Corrective Limited Warranty Deed, the Property was inadvertently conveyed subject to the Grand Oaks Declaration, and the Corrective Limited Warranty Deed amended and corrected this error to convey the Property free and clear of the Grand Oaks Declaration. Accordingly, the Property is not subject to the Grand Oaks Declaration, Defendant is not required to pay assessment(s) under the Grand Oaks Declaration, Plaintiff should not have charged and collected assessments from Defendant before and through 2021, and Defendant is not liable to Plaintiff for the annual assessments imposed upon it by Plaintiff since 2022.
- ii. Furthermore, the Court finds that the principal access to Defendant's community is across Proximity Drive, which did not exist until after 2012 and is of consequence. Thus, the principal access for Defendant's community is not from Grand Oaks Boulevard and Ashley Gardens Boulevard. For this additional reason, the Property is not subject to the provisions of the Grand Oaks Declaration and the Defendant is not required to pay assessment(s) under the Grand Oaks Declaration.
- iii. In addition, Defendant ceased paying Plaintiff assessments around the time that the declarant/developer Lennar Carolinas, LLC conveyed the authority over the Defendant to the homeowners.
- iv. Moreover, the Court finds that equitable estoppel does not apply. *See Rodarte v. University of South Carolina*, 419 S.C. 592, 799 S.E.2d 912 (2017). Accordingly, for this additional reason, Defendant did not breach the Grand Oaks Declaration by not paying the 2022, 2023, 2024, and 2025 assessments imposed upon it by Plaintiff, and is not liable to Plaintiff for the annual assessments imposed upon it by Plaintiff since 2022.

CONCLUSIONS OF LAW

The Court finds the Corrective Limited Warranty Deed is clear and unambiguous. *See Gardner v. Mozingo*, 293 S.C. 23, 358 S.E.2d 390 (1987). Accordingly, no genuine issue of material fact exists. *See Kitchen Planners LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023); Rule 56 (c), SCRPC.

WHEREFORE, it is hereby ORDERED that Defendant's Motion for Summary Judgment is GRANTED and Plaintiff's Motion and Amended Motion for Summary Judgment are DENIED.

IT is SO ORDERED!

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Charleston Common Pleas

Case Caption: Grand Oaks Boulevard Association Inc VS Proximity Neighborhoods
Master Association Inc
Case Number: 2023CP1002281
Type: Order/Summary Judgment

So Ordered

s/Mikell R. Scarborough 3062