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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM NEWBERRY COUNTY
COURT OF COMMON PLEAS
THE HONORABLE FRANK R. ADDY, JR., CIRCUIT COURT JUDGE

CASE NO. 2022-CP-36-00392
APPELLATE CASE NO.: 2025-001400

The Pointes of Plantation Pointe Owners Association, Inc.,

Appellant,

v.

Michael D. Lucas and Angelita R. Lucas,

Respondents.

FINAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

Table of Authorities3

Statement of Issues on Appeal.....4

Standard of Review.....5

Statement of the Case5

Arguments.....8

Conclusion.....10

TABLE OF AUTHORITIES

Cases

Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007).10

Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).5

Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).5

NationsBank v. Scott Farm, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (Ct. App. 1995).5

Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006).....9

Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).....9

Statutes

S.C. Code Ann. § 27-30-130(2).10

Rules

Rule 56, SCRCP.....5

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in finding that Appellant failed to plead any covenant violated by Respondents?

- II. Did the trial court err in finding that the concrete slab is not a structure?

STANDARD OF REVIEW

“When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRPC.” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). “In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial.” *NationsBank v. Scott Farm*, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (Ct. App. 1995).

STATEMENT OF THE CASE

This appeal concerns real property owned by Respondents and located at 1023 Peninsula Drive, Prosperity, South Carolina 29127. This property is located within the Pointes of Plantation Pointe neighborhood. At issue in this case is whether a concrete slab installed by Respondents on their property violates certain restrictive covenants of the Pointes of Plantation Pointe neighborhood.

In 2009, the Respondents requested permission to install a concrete slab in the location of an approved jungle gym. Tom Brown, the chairman of the

Architectural Review Committee, responded that the request was approved. **(R. p. 36, Email chain dated January 28, 2009.)** On May 17, 2012, the Plantation Pointe board meeting minutes state that the Respondents' request to install "playground equipment" in their yard was approved. **(R. p. 38, Minutes from May 17, 2012 board meeting.)** Respondents installed. There is no dispute that Respondents installed the jungle gym in 2012, and that in June 2022 Respondents installed the concrete slab in the same location as the jungle gym. There concrete pad does not extend over the property line. **(R. p. 41, Black and white photograph of survey line.)**

On July 20, 2022, the Board sent Respondents a letter alleging that the concrete slab was not approved for installation. Respondents disputed the alleged violation and did not remove the concrete slab. This litigation ensued.

Appellant filed its Complaint on September 30, 2022. Appellant's Complaint asserts two causes of action. The first cause of action is for Breach of Restrictive Covenants. Appellant's Complaint identifies six specific documents as the "Restrictive Covenants" violated by the existence of the concrete slab:

- Restrictive Covenants recorded in Book 298 at Page 233, on March 10, 1989;
- First Amendment recorded in Book 308 at Page 188, on September 8, 1989;
- Second Amendment recorded in Book 311 at Page 89, on November 2, 1989;

- Third Amendment recorded in Book 328 at Page 196 on October 15, 1990;
- Fourth Amendment recorded in Book 330 at Page 165, on November 26, 1990; and
- First Revision recorded in Book 521 at Page 60, on October 19, 1999.

(R. pp. 9, Complaint.)

Respondents filed their Motion for Summary Judgment on December 18, 2024. Respondents' first ground for seeking summary judgment was that the Complaint failed to identify any particular provision of the Restrictive Covenants violated by Respondents. **(R. p. 30, Motion for Summary Judgment.)**

In response, Appellants filed a memorandum opposing the motion for summary judgment. **(R. p. 55, Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants.)** In that memorandum, Appellants attempted to argue that it was not the Restrictive Covenants pled in the Complaint that Respondents had violated but instead was provisions in some regulation alleged to govern the neighborhood. (*Id.*) Appellant attached two documents to its memorandum. The first purports to be an excerpt from "Regulation No. 1," effective July 15, 2008. **(R. p. 58, Memorandum Opposing Summary Judgment, Ex. A.)** The second purports to be an excerpt from "Architectural Guidelines," effective June 20, 2007. **(R. p. 59, Memorandum Opposing Summary Judgment, Ex. B.)** There is no recording information on either document nor is there any other information indicating that the documents were recorded with the Newberry County Register of Deeds.

Appellant also submitted an Affidavit of Dougal Kear in opposition to Respondents' motion for summary judgment. **(R. p. 60, Aff. of Dougal Kear.)** In his affidavit, Kear states that there are guidelines about structures that had been in place since 2007. (*Id.*) Kear does not provide a copy of these guidelines. Instead he provides a statement of the contents of the guidelines. (*Id.*) Kear's affidavit does not contain any statement that these "guidelines" were ever actually approved by the neighborhood or recorded with the Newberry County Register of Deeds. (*Id.*)

Respondents also sought summary judgment on the basis that the concrete slab is not a structure. Here again, it was not the Restrictive Covenants contained in the Complaint where Appellants found their definition of structure. Instead, Appellants claimed that definition of structure was to be found in excerpts of unrecorded documents.

The motion for summary judgment was heard on April 21, 2025, and the court's Order Granting Summary Judgment issued on May 28, 2025. **(R. p. 4, Order Granting Summary Judgment.)** Appellants initiated this appeal.

ARGUMENT

I. **Did the trial court err in finding that Appellant failed to plead any covenant violated by Respondents?**

The trial court was correct in finding that Appellant failed to plead the violation of any enforceable covenant. "Restrictive covenants are construed like contracts and may give rise to actions for breach of contract." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). But, Appellant does not say what provision in

any of those six Restrictive Covenants that were actually pled is the one violated by the Respondents' concrete slab.

In a breach of contract cause of action, a plaintiff must prove the contract, its breach, and damages caused by the breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). The specific term of the contract alleged to have been breached is logically necessary to proving the existence of a contract and its breach. A party cannot sustain a breach of contract action without pleading the specific term of the contract alleged to have been breached. Nowhere in the Complaint is any statement of what provision in the six Restrictive Covenants was breached by Respondents. Appellants cannot claim regulations/guidelines/policies not actually pled in their Complaint as the basis for their breach of covenant claim.

Furthermore, there is nothing in the record indicating the 2008 Regulation No.1, 2007 Architectural Guidelines, or the undated guidelines summarized in Kear's Affidavit were ever recorded. In order to be enforceable against a homeowner, a covenant, rule, regulation, guideline, or policy must be recorded with the Register of Deeds. S.C. Code Ann. § 27-30-130(2). The only covenants that Respondents provide any recording information for are the six Restrictive Covenants specifically identified in the Complaint.

Because Appellants failed to plead the existence of any enforceable covenant terms in their Complaint that were breached by Respondents, the trial court was correct in granting summary judgment in favor of Respondents.

II. The Trial Court Correctly Concluded the Concrete Pad Was Not a Structure.

To the extent there was any basis for the trial court to consider whether the concrete slab was a structure, the trial court did not err in finding that the concrete slab was not a structure.

The definition of “structure” as used in Regulation No. 1 must be determined from the surrounding language. “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.” *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007).

Within Regulation No. 1, Section 1.1 concerns “houses and other structures” and “single-family dwelling and detached or attached garage of similar design and such structure.” Here structure is used synonymously with building. A concrete slab is not a building; therefore, it is not a structure within the meaning of Section 1.1. Because Respondent’s concrete slab is not structure, it does not violate any covenants, regulations, policies, or guidelines of the Plantation Point neighborhood. Accordingly, the trial court did not err in granting summary judgment in favor of Respondents.

CONCLUSION

Based upon the foregoing, Respondents request that this Court AFFIRM the trial court’s grant of summary judgment in favor of Respondents. Because the trial court found that there was no breach of covenant, it did not err in refusing to

grant Appellant injunctive relief, and such determination should also be
AFFIRMED by this Court.

Respectfully submitted.

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