STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF OCONEE)	TENTH JUDICIAL CIRCUIT
)	
Roger B. Thomas and Diane M. Thomas,)	C.A. No. 2019-CP-37-00143
)	
Plaintiffs,)	**ORDER AND JUDGMENT**
)	
vs.)	
)	
Camala Hinkle f/k/a Camala H. Houck, Individually and as Trustee of the R. Larry Hinkle Revocable Trust dated July 10, 2014 and as Trustee of the Mary Hinkle Revocable Trust dated July 10, 2014, Benjamin E. Ferguson, Cheryl Ann Ward, Morgan Greer, Brady G. Ward, Daniel C. Polstra, and Karen L. Polstra,)	
)	
Defendants.)	
_____)	

Date of Non-Jury Trial:	October 15, 2024
Judge:	The Honorable Steven C. Kirven
Attorney for Plaintiff:	Samuel F. Albergotti, Esq.
Attorney for Hinkle and Polstra Defendants:	Paul S. Landis, Esq.
Attorney for Ferguson, Ward, Greer, and Ward Defendants:	Larry C. Brandt, Esq.[1]

Statement of Case

The above-captioned case was instituted by Plaintiffs Roger B. Thomas and Diane M. Thomas (collectively, "Thomas" or "Thomases") for the purpose of enforcing restrictive covenants for Foster Vaughn Subdivision. Plaintiffs allege certain provisions of the restrictive covenants

[1] Mr. Brandt represented Defendants Ferguson, Ward, Greer, and Ward at trial but recently retired from the practice of law. Mr. Landis substituted as counsel for said Defendants by Order dated July 2, 2025, so Mr. Landis now represents all Defendants.

were violated by Defendant Hinkle, Defendant Ferguson, and David Ward, who was formerly a named defendant but who died during the pendency of this action.[2]

The real property which is at the center of this litigation and prior litigation between certain parties consists of the following located on Lake Jocassee in Oconee County:

A. The Foster Vaughn Subdivision, consisting of six (6) lots (hereinafter the "Subdivision);

B. Vaughan Road, which runs through, and is part of, the Subdivision;[3]

C. A parcel of land adjoining the Subdivision, commonly referred to as "the Hinkle Property;" and

D. A lakefront parcel in the Subdivision commonly owned by the lot owners and the owner of the Hinkle Property, but not a true common area (nevertheless, it is typically referred to by the Parties and referred to herein as the "Common Area"). The Common Area has a boat dock attached to it and also includes a boat ramp.

The original plat of the Subdivision is recorded in the ROD Office for Oconee County, South Carolina, in Plat Book A394, Page 3.

The property within the Subdivision is subject to the following restrictive covenants:

A. Declaration of Covenants, Conditions & Restrictions for Foster Vaughn Subdivision, dated February 5, 2007, and recorded in the ROD Office for Oconee County, S.C., on February 8, 2007, in Deed Book 1567, beginning at Page 199 (hereinafter referred to as "Original Covenants"); and

B. First Amendment to the Declaration of Covenants, Conditions & Restrictions for Foster Vaughn Subdivision, recorded in the ROD Office for Oconee County, S.C., on October 9, 2014, in Book 2058, beginning at Page 154 (hereinafter referred to as "First Amendment").

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[2] Plaintiffs do not allege that Defendants Cheryl Ann Ward, Morgan Greer, Brady G. Ward, Daniel C. Polstra, or Karen L. Polstra violated the applicable covenants. They are included in this action as interested parties by virtue of their ownership of lots within Foster Vaughn Subdivision. Defendants Cheryl Ann Ward, Morgan Greer, and Brady G. Ward are relatives of and successors in title to David Ward who died on December 22, 2023 during the pendency of this action.

[3] For reasons unknown to the Court and the Parties, "Vaughn" Subdivision and "Vaughan" Road. are spelled differently.

The above-referenced restrictive covenants are collectively referred to hereinafter as the "Covenants," unless indicated otherwise.

Four primary issues were litigated in the trial of this case: (1) rights to a dock attached to the "Common Area;" (2) the enlargement of Lot 4, which was sold by Defendant Hinkle to Benjamin Ferguson and David Ward; (3) access created by Mr. Ferguson and Mr. Ward from their Lot 15 in Jocassee Acres to their Lot 4 in Foster Vaughn Subdivision;[4] and (4) attorneys' fees. Plaintiffs also sought to have Defendant Hinkle and Defendants Ferguson and Ward restore certain landscaping, trees, and conditions that allegedly existed prior to Defendants Ferguson and Ward purchasing Lot 4.

Factual Background

This case involves a tract of land containing slightly less than 12 acres located on Lake Jocassee in Oconee County. It is the remaining portion of a 60-acre tract owned by members of the Vaughan family (referred to in a collective sense herein as "Vaughan") after approximately 48 acres was acquired by Duke Energy through its subsidiary Crescent Land and Timber (Duke and Crescent will be referred to collectively as "Duke/Crescent"). The approximately 12-acre tract is bounded on the northwest by lands of Duke/Crescent, on the south by a larger tract of about 36 acres which was at one time owned by Galloway, then Evins (sometimes referred to herein as the Evins Tract) and which ultimately was subdivided into what is now known as Jocassee Acres which consists of 30 lots, and also on the south by lands of Duke/Crescent and on the east by Lake Jocassee.

Access to both the Evins tract and the 12 acres Vaughn tract was provided by a 30-foot easement granted from Duke/Crescent over the adjacent Duke/Crescent property which easement

[4] Jocassee Acres is a subdivision that abuts Foster Vaughn Subdivision.

originates from an existing road near the Mt. Carmel Church and runs in a north/northeast direction across a corner of the Evins Tract and then to the Vaughn tract.

In 1990, Defendant Camala Hinkle's father, R. Larry Hinkle, purchased a parcel of land within the 12-acre tract from Foster Vaughn as evidenced by deed recorded in the ROD Office for Oconee County, S.C., on January 9, 1990, in Book 602, Page 182. Vaughn also conveyed to Mr. Hinkle an easement over what became known as Vaughan Road for ingress and egress. (All of the Hinkle family members and various trusts created by the Hinkles are, for convenience, referred to herein individually and collectively as "Hinkle" unless stated otherwise).

Subsequently, Vaughn subdivided the remaining portion of the 12-acre tract into six lots and an area with lake frontage designated as "Common Area," which included a boat ramp and sufficient lake frontage for one dock. Although it was designated "Common Area," it was to be owned by the six lot owners and the Hinkle Lot owner, with each having a one-seventh (1/7) interest. Also included in the Vaughn subdivision was a 30-foot easement which began at the southwestern corner of the tract and wound through the subdivision terminating at Lot 6. The 30-foot easement was also to be owned by the six lot owners and the Hinkle Lot owner, one-seventh each.

There are four properties which adjoin Vaughn Subdivision to the south, three of which are lots from the Evins tract, now known as Jocassee Acres (Lots 7, 15 and 16), and then a large tract owned by Duke/Crescent. Members of the Addington family own Lot 7 in Jocassee Acres. Ferguson/Ward/Greer/Ward own Lot 15, and Shadwick at Jocassee, LLC owns Lot 16. The 30-foot easement across the Duke/Crescent land which provides access to the former Evins Tract and Vaughn Subdivision crosses over what is now Lot 7 of Jocassee Acres now owned by Addington.

Long ago, Duke/Crescent installed a gate on its property across the 30-foot easement to the former Evins Tract and the former Vaughn tract which must be navigated in order to proceed to the Addington property and then the Vaughn Subdivision using the 30 foot easement. Addington also has access to Lot 7 via Pinnacle Circle, which is located within Jocassee Acres subdivision. There is not a continuous fence or other barrier around the perimeter of Vaughn Subdivision as one might find in some gated communities.

In 1994, Vaughn sold and conveyed Lot 1 to Plaintiffs Roger Thomas and Diane Thomas. Included in that transaction was use of Vaughan Road and the promise of a "water boat dock on the common area and one slip assigned to [Thomas]." (See, Ex 7). The conveyance included a 1/7 interest in both Vaughan Road and the Common Area.

Ultimately there were Covenants/Restrictions for Vaughn Subdivision, although they were not recorded until 2007. (Ex 101). A First Amendment to those Covenants/Restrictions was recorded in 2014 (Ex 102). It is clear that the Hinkle Property was never considered to be within the Vaughn Subdivision even though its owner was provided with certain rights that the six subdivision lot owners would also possess such as ownership and use of the 30-foot easement (Vaughan Road) and the Common Area.

Over time, Vaughn conveyed to Hinkle Lots 2, 3, 4, 5, and 6 of the Vaughn Subdivision. Of the six subdivision lots, only Lots 4 and 6 have lake frontage. Lots 1, 2, 3 and 5 do not. In 2017, Hinkle enlarged Lot 4 by taking small portions of Lots 2, 3, 5, and 6 and adding those portions to Lot 4. Defendant Hinkle conveyed the resulting Lot 4, along with a 1/7 interest in Vaughan Road and the Common Area, to Ferguson and Ward by virtue of a deed recorded in the ROD Office for Oconee County, S.C., on November 3, 2017, in Book 2312, Page 183. A survey depicting the property purchased was recorded in the ROD Office for Oconee County, S.C. on

November 3, 2017, in Plat Book B613, Page 1.[5] In 2022, Hinkle sold and conveyed Lot 6 of Foster Vaughn Subdivision to Defendants Daniel and Karen Polstra ("Polstra") by Deed recorded on April 4, 2022 at Deed Book 2798, Page 58.

Accordingly, the seven parcels are now owned as follows: Lot 1 by Thomas; Lots 2, 3, 5 and the Hinkle Property by Hinkle; Lot 4 (as enlarged) by Ferguson, Cheryl Ann Ward, Morgan Greer, and Brady Ward; and Lot 6 by Polstra. Currently, the Common Area and Vaughan Road are owned 1/7 by Thomas, 1/7 by the owners of Lot 4 (Ferguson, Ward, Greer, Ward), 1/7 by Polstra, and 4/7 by Hinkle.

On March 7, 2007, Duke Energy Lake Services approved an application for the installation of a dock to be located on Lake Jocassee and attached to the Common Area. This dock replaced an existing dock and is discussed in much greater detail below.

Issues and Discussion

The following primary issues were presented at trial: (1) respective rights of lot owners and the owner of the Hinkle Property to the dock attached to the Common Area; (2) enlargement of Lot 4; (3) access from Lot 15 of Jocassee Subdivision to Lot 4 and related driveway work; and (4) attorneys' fees and costs. These are each addressed below.

I. Rules of Construction

The principles of law which apply to this case are well-established. "Restrictive covenants upon real estate are contractual in nature and bind the parties thereto just like any other contract. Restrictive covenants are construed like contracts, and may give rise to actions for their breach. If a contract's language is clear and capable of legal construction, this Court's function is to interpret

[5] As noted above, Cheryl Ann Ward, Morgan Greer, and Brady G. Ward now own the remaining 1/2 interest in Lot 15 of Jocassee Acres and Lot 4 of Vaughn Subdivision which they acquired as beneficiaries of the estate plan of David Ward.

its lawful meaning and the intent of the parties as found in the agreement. A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense." Hynes Family Tr. v. Spitz, 384 S.C. 625, 629, 682 S.E.2d 831, 833 (Ct. App. 2009) (citations and quotations omitted).

"When interpreting a contract, a court must ascertain and give effect to the intention of the parties. To determine the intention of the parties, the court must first look at the language of the contract. When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. Interpretation of a contract is governed by the objective manifestation of the parties' assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it. A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Whether an ambiguity exists in the language of a contract is also a question of law. A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement; and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business. Once the court decides that the language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties' intent is then a question of fact." Laser Supply & Servs. v. Orchard Park Assocs., 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009) (citations and quotations omitted).

II. Dock

The boat dock attached to the Common Area has been a central focus of this litigation. To resolve the issues about the dock, it is necessary to review the history and evolution leading to the

current situation. Extensive testimony and exhibits were introduced regarding the dock, and the Court's findings of fact on this issue are as follows:

A. Prior to the placement of the current dock attached to the Common Area, there was a dock that the original developer, Foster B. Vaughan III, had installed and attached to the Common Area. Said dock was accessible to all lot owners and the owners of the Hinkle Property. Said dock had a wet slip assigned to Plaintiffs pursuant to the 1994 contract of sale for Lot 1 between Plaintiffs and Foster Vaughan.

B. In litigation commenced in 2004, Foster Vaughn filed a complaint alleging Plaintiffs violated certain provisions of a Declaration of Covenants, Conditions and Restrictions for Foster Vaughn Subdivision, which had not been recorded at that time.

C. The rights of lot owners to use the dock installed by Foster Vaughn was not included in the Declaration of Covenants that Mr. Vaughn attached to the complaint he filed in the 2004 litigation.

D. In the 2004 litigation, Plaintiffs filed a counterclaim, alleging that pursuant to the terms of an Addendum to Contract of Sale, the developer "was obligated to provide a water boat dock with one slip assigned to the Thomases within a period of one year from the date of the sale" and that the developer failed to provide "a water boat dock with one slip assigned to the Thomases."

E. In May 2004, while the 2004 litigation was pending, Plaintiff Roger Thomas submitted a permit for a dock.

F. In July 2006, while the 2004 litigation was pending, Larry Hinkle, in response to Plaintiffs' permit application, wrote the permitting authority and noted the existence of a current dock for the use of all, and stated that he did not oppose a permit being issued for the Plaintiffs,

leaving it "to the discretion of DHEC and Duke Power if they so choose to add another dock "with private slip", so long as "[i]f another dock is to be added, both Mr. Vaughn and Mr. Hinkle should also have access to it."

G. In a letter dated August 28, 2006, Larry and Mary Hinkle advised the permitting authority that they now "support the application of Diane and Roger Thomas…to build a boat dock" and further stated "we confirm that we hereby withdraw any objections or concerns we may have expressed in previous correspondence or conversations."

H. In a letter dated August 28, 2006, Foster Vaughn advised the permitting authority that he was the developer of the Subdivision and confirmed that "I support the application of Diane and Roger Thomas…to build a boat dock" and further stated "I confirm that I hereby withdraw any objections or concerns I may have expressed in previous correspondence or conversations."

I. The 2004 litigation was settled by way of Consent Order which read in relevant part that Plaintiffs "shall build a dock attached to the common area. The boat dock may have a wet slip which will be exclusive to the Thomases. The other three (3) non-lakefront subdivision lot owners shall have tie up rights to this dock." In addition, the Thomases agreed to pay Foster Vaughn the sum of $15,000.00, perform certain repairs in the Subdivision, and execute recordable restrictions for the Subdivision.

J. Duke Energy issued a letter to Roger Thomas dated March 1, 2007, providing that his dock permit was approved under the Duke Energy Lake Services "Private Facilities Program," and the permit approval expressly states that the dock "shall be for private access of the owner(s) of the project front lot. Any use of the facility for anything other than private use shall render this approval void … This is a common use dock."

K. In or around May 2007, Plaintiffs installed a dock and attached it to the Common Area.

L. A corporate designee from Duke Energy, Brett Garrison, testified at trial that Duke Energy approved the dock for the private use of the lot owners of the Common Area. Mr. Garrison also testified that Duke Energy does not prohibit agreements among the lot owners regarding usage of the dock.

M. Plaintiffs paid for the purchase and installation of the dock and paid all, or nearly all, expenses associated with the dock pursuant to the 2006 Order. Plaintiffs have paid property taxes that are allocated to the boat dock.[6] The dock is attached to the Common Area with cables and a winch system and has a ramp that connects the floating dock to land. The cables are connected to steel pipes that are buried in holes filled with concrete on the Common Area. The floating portion of the dock is roughly in the shape of a "U" and has an interior wet slip that is covered by a roof. There is room to tie up one boat on either side of the dock.

N. Subsequent to the installation of the dock, Defendant Camala Hinkle installed concrete steps leading from the Common Area to the ramp for the boat dock.

O. The parties agree that Plaintiffs are entitled to exclusive use of the covered wet slip, and there is no evidence that anyone has interfered with Plaintiffs' use of the wet slip.

P. It is also undisputed that Lots 2, 3, and 5 have tie-up rights to the dock.

Q. In 2008, Plaintiffs filed suit alleging, in relevant part, that the "Thomases boat dock, gangway and stairs are for the exclusive use of the owners of the Thomas Lot and their guests and no other Subdivision Lots have tie-up rights to the dock."

[6] The undisputed evidence is that a small portion of the annual property tax bill for the Common Area is allocated to the boat dock and that Plaintiffs pay the same.

R. The 2008 litigation was resolved by way of written Settlement Agreement, which was essentially embodied in the First Amendment of the Covenants/Restrictions recorded in July 2014. Section 1 of the First Amendment to the Covenants reads in relevant part:

> DOCK. The owners of Lot 1 are entitled to install and maintain one private boat dock attached to the Common Area, with a wet slip for their exclusive use, provided that the owners of the three (3) other non-lakefront Subdivision lots shall have tie-up rights to the dock.

S. The dock regularly needs to be adjusted as the lake levels change, which the Thomases either do personally or hire contractors to perform that work at their own expense.

T. The First Amendment to the Covenants also states the dock owners shall maintain liability insurance on the dock with policy limits of at least $1,000,000, and the Plaintiffs maintain such coverage. Defendant Benjamin Ferguson testified that he and his co-owners of Lot 4 also maintain liability coverage on the dock attached to the common area.

U. No other lot owner has ever reimbursed the Thomases for any expense the Thomases have incurred for the dock, including the purchase, installation, maintenance, insurance and taxes.

V. There exists a boat ramp within the boundaries of the Common Area which is owned by the 6 lot owners plus the owner of the Hinkle Property, with each having a 1/7 interest in the same. All owners have equal ownership of and equal rights to use the boat ramp.

W. The aforementioned boat ramp is the only ramp providing all owners in the Subdivision with boat ingress and egress to/from the waters of Lake Jocassee.

X. No documents have ever expressly limited the use of the dock by the owners of Lots 2, 3, 4, 5, or 6 or the Hinkle Property except with respect to Plaintiff's exclusive use of the wet slip.

Y. It is undisputed that the owners of Lots 1-6 and the Hinkle Property have full, equal rights to use the boat ramp on the Common Area.

Z. The dock attached to the Common Area is a short distance from the boat ramp on the Common Area, and evidence was presented that the dock is useful in providing a place to tie-up boats when they are being launched and when being taken out of Lake Jocassee. The dock attached to Lot 4 and the dock attached to the Hinkle Property are a significantly greater distance from the boat ramp than the dock attached to the Common Area. Furthermore, no one other than the owners of Lot 4 and the owners of the Hinkle Property have rights to use their respective docks attached to those parcels.

AA. Evidence was presented that, during the pendency of the 2004 litigation, Plaintiffs desired a newer dock with a covered wet slip instead of the older, "unsightly" one that had been attached to the Common Area by Foster Vaughan. By virtue of the settlement, the Plaintiffs obtained the right to place a newer dock in order to obtain a covered wet slip in a new dock, but they had to pay for it. Hence, the Thomases bargained for a trade-off: They obtained a covered wet slip for their exclusive use within a new dock, but they had to bear the expenses associated with the same.

BB. Evidence was presented that exclusive use of the wet slip has significant value compared to the right to tie-up boats on the exterior portions of the dock. In the dock that is the subject of this dispute, the wet slip provides the only covered area for docking a boat. The owners of Lot 1 (Plaintiffs) are also able to keep a boat lift in the wet slip whereas that option is not available for the exterior portions of the dock. Furthermore, in addition to being covered, the wet slip is the only slip that allows the boat to be tied up on both sides to protect it from weather, waves, and boat wakes. Furthermore, the owners of Lot 1 do not have any limitation on the

duration of time they can have a boat in the wet slip. In contrast, the tie-up rights for Lots 2, 3, and 5 are limited to tying up a boat for one week at a time without use, and they do not possess the other desirable features of the interior wet slip that are described above.

CC. Foster Vaughan testified (by way of deposition pursuant to Rule 32(a)(5), SCRCP) that it was his intention with the 2006 Consent Order that Lot 1/Plaintiffs would receive exclusive use of the wet slip but the dock would be for the common use and enjoyment of all lot owners. His testimony was that he would not have settled the case if Plaintiffs received exclusive use of the dock.

DD. Roger Thomas testified that he always "assumed" that Plaintiffs owned the dock and the supervision of the dock.

EE. Camala Hinkle testified that she always understood the dock was for the use and enjoyment of all lot owners, subject to the exclusive use of the wet slip and priority tie-up rights for the non-lakefront lot owners (Lots 2, 3, and 5). With respect to the Settlement Agreement and First Amendment, Camala Hinkle testified that she would not have agreed to the same if it authorized the Plaintiffs to have exclusive use of the dock.

FF. For the Court to adopt the interpretation of the Settlement Agreement and First Amendment that is advocated by Plaintiffs, it would require the Court to modify the language "exclusive use of the wet slip" to "exclusive use of the dock" (with the exception of tie-up rights as provided in the documents).

GG. With regard to the use of the dock by the owners of Lots 4 and 6 and the Hinkle Property, the Court finds that a complete prohibition from having use of the dock would also impair, to some degree, the utility of the boat ramp in which all lot owners and the owners of the Hinkle Property indisputably have the same interest.

HH. The 1994 Contract of Sale was entered into freely and voluntarily by Plaintiffs. The 2006 Consent Order, 2013 Settlement Agreement, and 2014 First Amendment were entered into freely and voluntarily by Plaintiffs and while represented by counsel.

II. The First Amendment provides that the dock rights expressed in the First Amendment are appurtenant to Lot 1 and the non-lakefront lot owners "and shall be automatically deemed to be conveyed with the conveyance of any of those lots." Furthermore, evidence was presented that access to the lake, via use of a dock, is important to the value of properties without lake frontage.

JJ. Over time, the dispute as to dock usage continued and there were occasions of confrontation when Thomas objected to others being present on the dock.

In this litigation, Thomas apparently takes the position that since he provided the dock it is exclusively his, subject only to tie-up rights for the three non-lakefront lot owners. This contrasted with the view of the other lot owners who have maintained that since the dock is a common use dock all lot owners have the right to utilize the dock as originally envisioned with the wet slip being the only exclusive domain of Thomas. In other words, all of the lot owners other than Thomas argue they can utilize the dock portions other than the Thomas wet slip for normal purposes which could include use during launching or trailering a boat at the Common Area ramp, boarding and off-boarding boat passengers, swimming, fishing, or just standing or sitting. In addition, the three non-lakefront lot owners (Lots 2, 3, and 5) have the right to tie up to the dock for periods of no more than a week at a time without use. This divergence of view became a primary issue in the current litigation.

After careful consideration and a thorough review of the evidence presented through witnesses and exhibits, this court concludes that the view of the Defendants with regard to their

rights to the dock is the correct one. Any other view would render the Common Area essentially worthless to the other lot owners. Plaintiffs' position also ignores the presence of the boat ramp and its purpose which normally utilizes the close proximity of a dock when launching or trailering a boat and boarding and off-boarding boat passengers. As things currently stand, this issue is more of form over substance since the current owner of all three non-lakefront lots is Hinkle who also own the Hinkle Lot which has its own dock. The other two lake front lots (Ferguson et al. on Lot 4 and Polstra on Lot 6) also have their own docks. Accordingly, the use of the subject dock by the other 6 lot owners is likely to be minimal, and even if the three non-lakefront lots are eventually sold to new owners their use of the dock would be benign and would not unduly interfere with Thomas's use and enjoyment of the dock and his exclusive wet slip.

The following summarizes what was envisioned from the outset: Mr. Thomas simply wanted a dock in the Common Area with a wet slip assigned to Lot 1/Thomas. Through negotiation and settlement, Thomas was able to install a dock which met his desires for a covered wet slip and the others gave up any ability to install another dock at the Common Area. The other owners did not, however, give up their rights to use the dock installed by Thomas (except for the wet slip which is exclusively for the use of Lot 1/Thomas). In short, while the dock is owned by the Thomases, their ownership is subject to the described use rights of the other owners of the Common Area.

Accordingly, the Court finds in favor of Defendants on this issue.

III. Enlargement of Lot 4

Plaintiffs complain that the creation of "Parcel A" and "Parcel B" within the revised Lot 4 and the conveyance of the same to Ferguson and Ward was for the improper purpose of creating a "land bridge" from Lot 15 of Jocassee Acres to Lot 4 of Vaughn Subdivision. Accordingly,

Plaintiffs allege that the creation of said parcels was in violation of the Original Covenants. The Court's findings of fact and discussion on this issue are as follows:

A. The Original Covenants provide, in pertinent part, as follows:

> 3. No Subdivision of Lots. No lot may be subdivided or boundary lines within the property changed, without the prior written consent of the Declarant, except that two or more contiguous lots may be merged into a single lot. ***Further, any lot may be subdivided for the purpose of enlarging adjoining lots.*** (emphasis added).

B. In 2017, relatively small portions of original Lots 2, 3, 5 and 6 were cut off by Hinkle and added to Lot 4 as part of the sale of Lot 4 to Ferguson. The new, enlarged Lot 4 was designated on a resulting plat as Parcels A, B, and C. Parcel B (subdivided from Lot 3) adjoins the property line of original Lot 4 (same as property line of Parcel C), and Parcel A (subdivided from Lot 2) adjoins Parcel B. Accordingly, Parcels A, B, and C are contiguous. The above-emphasized portion of the Covenants expressly authorizes the subdivisions of Lots 2 and 3 for the purpose of enlarging Lot 4.

C. The testimony of Camala Hinkle and Benjamin Ferguson establish that Parcels A and B were created and combined with Lot 4 due to concerns regarding water and septic access for Lot 4. There was no discussion between Ms. Hinkle, on one hand, and Ferguson and Ward, on the other hand, about creating a "land bridge" prior to the conveyance of the enlarged Lot 4 to Ferguson and Ward.

D. The Original Covenants do not place restrictions on the size or shape of a subdivided parcel that is added to enlarge another lot within Vaughn Subdivision.

E. There is no competent evidence that establishes the enlargement of Lot 4 violates the restrictive covenants of Vaughn Subdivision.

Thomas has objected to this largely based on an argument that the motive for doing so was improper. The Covenants are unambiguous in this regard when it is stated in Paragraph 3 that "any lot may be subdivided for the purpose of enlarging adjoining lots." It is beyond question that the portions of Lots 2, 3, 5, and 6 which were added to Lot 4 served to enlarge original Lot 4. The Court finds no provision which defines a motive for doing so other than the clear language of the Covenants, which is to enlarge an adjoining lot. Parcel B was already subject to an easement serving Lot 4 and was adjacent to Lot 4. Parcel A was adjacent to Parcel B. The other added portions from Lots 5 and 6 (about which no complaint is made) were also adjacent to Lot 4. There is no provision as to sequence or timing of such enlargement additions, so ultimately all small parcels added are contiguous or adjacent to Lot 4. Accordingly, the Court finds in favor of Defendants on this issue.

IV. Driveway from Lot 4 to Vaughan Road

Plaintiffs complain that Defendants Ferguson and Ward performed work on "Parcel A" which included, among other things, installation of access to Lot 4 from their adjoining property outside of the Subdivision. The following findings of fact apply to this issue:

A. It is undisputed that Defendants Ferguson and Ward have access through the gate on Vaughan Road to access Lot 4 which is owned by them. Furthermore, it is undisputed that Lot 15 of Jocassee Acres is contiguous to Lot 4 of Vaughn Subdivision.

B. It is undisputed that Lot 15 would not be entitled to direct access to Lot 4 or Vaughan Road without ownership of Lot 4, unless some other right of access for Lot 15 were established.[7]

[7] Such other means of access was not pled in this action, and the record in this case is not sufficient to establish (or deny) such access. Nothing herein should be construed as a decision or finding regarding such access.

C. Plaintiffs complain that access to/from Lot 15 of Jocassee Acres violates the single-family use restriction in the Original Covenants for Vaughn Subdivision dated February 5, 2007. Specifically, the Original Covenants provide, in pertinent part, as follows:

> "1. Use Restrictions. No lot or other portion of the property shall be used for any purpose other than single family residential purposes, and no commercial activity or business shall be located or conducted on any portion of the property. No duplex residence, garage apartment, apartment house or multi-family housing shall be erected or permitted to remain on any lot, and no structure at any time thereon shall be converted into a duplex residence, garage apartment, apartment house or multi-family housing."

D. In this case, there have not been any uses of property within Vaughn Subdivision that would violate the above-cited provision of the Covenants. The work performed by Mr. Ferguson and Mr. Ward does not implicate or run afoul of said provision.

E. Plaintiffs complain that Ferguson and Ward using Vaughan Road for the purpose of accessing Lot 15 overburdens an easement along Vaughan Road for Lot 4 of Vaughn Subdivision. In other words, Plaintiffs contend that Ferguson and Ward can use Vaughan Road for the purpose of accessing Lot 4 but not for the purpose of accessing Lot 15 of Jocassee Acres. The Court finds that because Ferguson and Ward have unfettered access to Vaughan Road for the purpose of accessing Lot 4, it would be impracticable to glean their intent each time they access Vaughan Road through the gate that precedes Lot 7 of Jocassee Acres (the "Addington Property") and to restrict their access only to Lot 4.

F. The Addington Property within Jocassee Acres has direct access from Vaughan Road beyond the gate that is utilized by the lot owners with Vaughn Subdivision. The Addington Property also has direct access to Pinnacle Circle. The owner of the Hinkle Property, which is not part of Vaughn Subdivison, also has access through the gate on Vaughan Road and a 1/7 interest in Vaughan Road within the boundaries of Vaughn Subdivision. Accordingly, there are at least

two lots that are not part of Vaughn Subdivision which have access through the gate on Vaughan Road. The rights of the owner(s) of the Addington Property and the owner(s) of the Hinkle Property to utilize the gate to access their respective properties are undisputed.

G. Ferguson and Ward performed minimal work to provide a driveway from Lot 15 of Jocassee Acres to Vaughan Road. This work consisted of minor growth clearing and a small culvert along the Vaughan Road easement covered by soil and gravel.

Thomas objects based on two arguments: first, the effect of the driveway is to extend the easement of Vaughan Road to Lot 15 of Jocassee Acres which is also owned by Ferguson/Ward; and second, the work done was not properly approved by the Architectural Control Committee ("ACC") and perhaps violates provisions of the Covenants dealing with landscaping.

The Vaughan Road easement has not been extended at all. Ferguson/Ward, as owners of Lot 4, have every right to utilize Vaughan Road to access their lot just as Thomas does for his lot. The testimony established that there was not interference with the use of Vaughan Road by the driveway from Lot 4, and the burden on Vaughan Road has not been increased at all. Even though Ferguson/Ward own Lot 15, no additional use of Vaughan Road is required by that fact. Ferguson already has that right. (As a caveat, this court can envision potential factual changes which could arise and possibly raise concerns. For example, if owners of Lot 15 conveyed the property to another party who does not own Lot 4 and attempted to provide access from Lot 15 across Lot 4 to Vaughan Road or the possibility that Lot 4 is transferred to a corporate entity which also happens to acquire the Duke/Crescent tract adjacent to a portion of Lot 4. While such developments could present different issues as to the use of Vaughan Road, the Court cannot decide the present case based on such possibilities). See Booth v. Grissom, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975)

(recognizing "[i]t is elementary that the courts of this State have no jurisdiction to issue advisory opinions").

Furthermore, the driveway from Lot 4 to Vaughan Road is not much different from the driveways constructed by Thomas from his house on Lot 1 and his storage building on Lot 1 across Vaughan Road from his house.[8] If anything, the Lot 4 driveway is much less of an imposition on the natural setting since Thomas's driveways are paved whereas Ferguson's is much more natural in terms of the surrounding area. In addition, the Ferguson driveway from Lot 4 to Vaughan Road is very similar to, but on a much smaller scale, than the driveway from the Addington property to Vaughan Road. There is no clear evidence that any large trees were removed by Ferguson/Ward.

As for the approval argument, it fails in that the ACC did in fact approve the work verbally and then again by way of ratification or confirmation in minutes of a later ACC meeting. Objections to the composition of the committee or meeting notice seem moot since the ACC was essentially majority controlled by Hinkle and any efforts by Thomas to out vote them would have been futile. In addition, and more importantly, this type of work done simply does not fall within the type intended to be subject to ACC approval. Accordingly, the Court finds in favor of the Defendants on this issue.

V. Attorneys' Fees

As it pertains to the issue of attorney's fees and costs, the operative provision is contained in Section 7 of the First Amendment and provides, in pertinent part, as follows:

> 7. Enforcement. A lot owner may enforce these Restrictive Covenants through litigation (in which case all parties consent to the exclusive jurisdiction of the Master in Equity by a consent order of reference) or, if agreed to by all of the

[8] The evidence shows that, in May 2019 (after the filing of this lawsuit), Plaintiffs installed a pipe and concrete apron which connected their storage building to Vaughan Road and did so without notifying anyone or seeking the approval of the Vaughn Subdivision Architectural Control Committee.

> parties, binding arbitration. In either case, attorneys' fees will be determined in the same manner as in a SC mechanics lien action.

S.C. Code Ann. § 29-5-10 governs mechanics liens and provides, in pertinent part, as follows: "The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party."

"The determination of the amount of attorney fees that should be awarded under the mechanic's lien statute is addressed to the sound discretion of the trial court. The court's decision will not be disturbed on appeal absent an abuse of discretion. The court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." EFCO Corp. v. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 621, 635 S.E.2d 922, 926 (Ct. App. 2006).

The Covenants provide for attorneys' fees in actions to enforce the Covenants. It seems clear that the award of attorneys' fees was intended. The reference to the Mechanic's Lien statute complicates the issue to some degree. While the Court can envision some circumstances in which monetary damages would be involved, such is not the case here. In short, the Mechanics Lien statute provides that the prevailing party is entitled to reasonable attorneys' fees and costs. It also provides a mechanism for determining the prevailing party via offers of settlement. It also limits the amount of attorneys' fees to the amount of the lien claimed.

In this case there is no lien nor monetary damages sought. Therefore, the pre-trial offer of settlement and the limitation of amount provisions simply do not apply to this case. We are left with the fairly traditional standard that the prevailing party is entitled to reasonable attorneys' fees and costs. The Defendants were the prevailing parties and are thus entitled to reasonable attorneys'

fees and costs. No question has been raised by Plaintiffs as to the reasonableness of the amounts sought by Defendants. Although significantly large in amount, it appears that the amounts sought are reasonable in light of the pertinent factors which must be considered.

The Court has carefully considered the factors applicable to an award of attorneys' fees. The professional standing of Defendants' attorneys is without question. The hourly rates are consistent with the prevailing market. The results obtained were excellent from Defendants' perspective. Defendants prevailed on all issues presented at trial. The case involved complex issues and the detail involved was significant. Much of the time and effort required were attributable to Plaintiffs in the prosecution of their case.

In summary, the Court's review of the First Amendment, Mechanics Lien statutes, and all of the factors to be considered under the applicable case law fully justify the award of attorneys' fees and costs to the Defendants' counsel in the amounts requested.

Furthermore, Plaintiffs knew fully that attorneys' fees were at stake since the Plaintiffs actually sought to obtain the same if Plaintiffs had been the prevailing party. In fact, all parties sought attorney's fees and costs in their respective pleadings, pursuant to the language contained in the Covenants (See Par. 94-95, Plaintiff's Complaint filed March 11, 2019; Par. 120, Hinkle Defendant's Answer and Counterclaims filed May 31, 2019; Par. 73, Ferguson and Ward Defendants' Answer and Counterclaims filed June 5, 2019; Par. 122, Hinkle Defendant's Amended and Supplemental Answer and Counterclaims filed September 6, 2020; Par. 99-100 and Par. 5 of Prayer for Relief, Plaintiffs' Amended Complaint filed October 25, 2022; Par. 55 and Par. b. of Prayer for Relief, Ferguson and Ward Defendants' Answer to Amended Complaint and Counterclaims filed December 12, 2022; Par. 85, Hinkle Defendant's Answer to Amended Complaint and Counterclaims filed December 14, 2022).

For the reasons set forth herein, Defendant Camala Hinkle, Individually and as Trustee of the R. Larry Hinkle Revocable Trust dated July 10, 2014 is entitled to an award of attorney's fees in the amount of $193,552.50 plus costs of $7,107.65, for a total of $200,660.15. Defendants Benjamin Ferguson, Cheryl Ward, Morgan Greer, and Brady Ward are collectively entitled to reimbursement of attorneys' fees in the amount of $114,229.50 plus costs in the amount of $4,959.61, for a total of $119,189.11.[9]

These awards of attorneys' fees and costs shall be entered as a judgment against Plaintiffs Roger Thomas and Diane Thomas, jointly and severally.

VI. Remaining Claims

Plaintiffs also asserted claims that trees and vegetation were removed within Parcel B and that Defendants Hinkle, Ferguson, and Ward should be required to restore the "screening of the view between Parcel B and the Jocassee Acres subdivision." (Par. 64(d) of Plaintiffs' Amended Complaint). However, Plaintiffs failed to prove what trees and vegetation were removed, the condition of Parcel B prior to the work being done, what would need to be done to restore it to such condition, or that such work violated the Covenants. Furthermore, on September 20, 2021, the Architectural Control Committee of Vaughn Subdivision, which was comprised of Camala Hinkle, Benjamin Ferguson, and David Ward passed resolutions approving the work done to Parcels A, B, and C. Accordingly, the Court finds in favor of Defendants on this issue.

Additionally, Plaintiffs complained at trial about certain stormwater drainage work that was installed by Hinkle on a portion of the Common Area near the boat ramp without approval. It does not appear this claim was pled by Plaintiffs. Nevertheless, the Court will address it because

[9] Nothing in this Order is to be construed as determining how such fees and costs are to be allocated among these Defendants.

it was raised at trial. Recorded plats provide for drainage easements along interior lot lines. Plaintiffs did not establish that the work performed by the Hinkle Defendants is located outside the boundaries of the drainage easements. Furthermore, there was no evidence presented that the aforementioned drainage work was detrimental. Camala Hinkle and Benjamin Ferguson testified that the drainage work was beneficial and was not detrimental to anyone. They further testified that the work was paid for by Hinkle and that they have not sought to collect any costs associated with the work from any other lot owners. At the time of the drainage work, the Hinkle Defendants owned 5/7 of the Common Area and Ferguson and Ward owned 1/7 of the Common Area. On September 20, 2021, the ACC passed a resolution approving the drainage work. Accordingly, the Court finds in favor of Defendants on this issue.

Any remaining claims not addressed herein, including certain counterclaims raised by Defendants which did not pertain to dock rights and attorneys' fees, were withdrawn prior to trial. Accordingly, those claims are dismissed without prejudice. Certain counterclaims asserted by Defendants relate to dock rights and attorneys' fees, and those are previously addressed in this Order.

Conclusion

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Dock Issue: All lot owners and the owner of the Hinkle Property have equal rights to use the dock attached to the Common Area (with the exception of the wet slip that is for the exclusive use of Lot 1/Thomas and specified tie-up rights of Lots 2, 3, and 5) for normal purposes which could include, but are not limited to, use during launching or trailering a boat at the Common Area ramp, boarding and off-boarding boat passengers, swimming, fishing, or just standing or sitting.

2. Access from Lot 15 Jocassee Acres: The owners of Lot 15 (Ferguson, Ward, Greer, and Ward) have not violated the Covenants by creating and using a driveway access from Lot 15 to Vaughan Road and Lot 4 within Vaughn Subdivision.

3. Enlargement of Lot 4: The enlargement of Lot 4 as described in detail above does not violate the Covenants.

4. Attorneys' Fees and Costs: Judgment is entered for Attorneys' Fees and costs as follows:

a. Judgment against Plaintiffs Roger B. Thomas and Diane M. Thomas, jointly and severally, and in favor of Defendant Hinkle in the amount of Two Hundred Thousand, Six Hundred Sixty and 15/100 Dollars ($200,660.15).

b. Judgment against Plaintiffs, jointly and severally, and in favor of Defendants Benjamin Ferguson, Cheryl Ward, Morgan Greer, and Brady Ward, collectively, in the amount of One Hundred Nineteen Thousand, One Hundred Eighty-Nine and 11/100 Dollars ($119,189.11).

c. Said Judgments shall draw interest at the rate applicable to judgments.

5. Nothing herein shall be construed to modify the language set forth in Paragraphs 1 or its subparts (a) – (f) of the First Amendment or to otherwise amend the Original Covenants or First Amendment.

6. Defendants' counterclaims which did not pertain to dock rights and attorneys' fees and which were withdrawn prior to trial are dismissed without prejudice.

7. This is a final Order and Judgment that ends the case.

IT IS SO ORDERED.

_____
The Hon. Steven C. Kirven
Master-In-Equity for Oconee County

This ____ day of _____, 2025

Oconee Common Pleas

Case Caption: Roger B. Thomas , plaintiff, et al VS Camala Hinkle , defendant, et al

Case Number: 2019CP3700143

Type: Master/Order/Other

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081