STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT** **TURNER'S MARINA LLC,** **Plaintiff,** **vs.** **R.V. RESORT AND YACHT CLUB OWNERS' ASSOCIATION, INC.,** **Defendant.**	)	**IN THE COURT OF COMMON PLEAS** **FOURTEENTH JUDICIAL CIRCUIT** **Case No. 2020-CP-07-0989** **FINAL ORDER**

This declaratory judgment action seeking the enforcement of recorded Covenants, was initiated on May 1, 2020, by Turner's Marina LLC, the successor-in-interest and successor-in-title to the original Developer of a 200-lot campground located on the north end of Hilton Head Island known as the "Outdoor Resorts R.V. Resort and Yacht Club." The campground was developed in the early 1980s, and the original Developer, Outdoor Resorts, R.V. Resort and Yacht Club, a South Carolina General Partnership, submitted the property to a recorded "Declaration of Covenants and Restrictions For Outdoor Resorts, R.V. Resort and Yacht Club" on June 12, 1981. A true and correct copy of the Covenants was admitted as Plaintiff's Exhibit 1 at trial. Those 1981 Covenants were affirmed as controlling on this campground property by the Supreme Court in 2010. *See* RV Resort & Yacht Club Owners Association Inc. v. Billybob's Marina, Inc, 386 S.C. 313, 688 S.E.2d 555 (2010).

Turner's Marina's Complaint seeks a declaration of rights and responsibilities under the Covenants and a permanent injunction prohibiting the Defendant from interfering in Turner's Marina's Covenant-based lot rental program at the campground. The Defendant Association answered and filed various counterclaims, including claims for breach of fiduciary duty, abuse of process and violation of South Carolina's Unfair Trade Practices Act. This Case was referred to the Master in Equity with finality on August 19, 2021.

EXHIBIT 1

Trial of the matter began on April 27, 2022, and extended over the course of nine days in succeeding months, with the final day of trial being November 8, 2022. .[1]

Over the course of those seven months, the Court received testimony from numerous witnesses and admitted dozens of exhibits. The transcript of the trial consists of 1711 pages. After the close of evidence on November 8, 2022, the Court entered its Order Granting the Plaintiff's Motion To Alter or Amend and Amended Order for Summary Judgment dated November 8, 2022, which held that Turner's Marina LLC is the valid and lawful owner of the original Developer's "Declarant Rights" under the Covenants, and that Turner's Marina LLC is the valid owner of all existing "rights of first refusal" as to all lots or parcels at the campground. Thus, those issues have been decided.

At the close of the Defendant's case on August 24, 2022, the Plaintiff moved for Directed Verdicts as to certain of the issues alleged in the Defendant's counterclaims. The Court granted the Plaintiff's Motions for Directed Verdicts as to:

a. The Twelfth Defense and Counterclaim found at paragraph 47 (e) of the Defendant's Answer to the Third Amended Complaint, which alleged the Plaintiff had "breached the contract" (the Covenants) "by operating a real estate business that has imposed improper and illegal conditions on Buyers of property," and,

b. The Thirteenth Defense and Counterclaim found at paragraphs 53-55 of the Defendant's Answer asserting that the Plaintiff "planned on taking over the entire Resort and is trying to devalue owners' property to accomplish same" and that the alleged scheme amounted to "a breach of contract accompanied by a fraudulent act or acts."

Thus, those issues have been decided.

In addition, on August 24, 2022, the Plaintiff moved for a Directed Verdict on the requested declaration that "That the Plaintiff as the successor Declarant, has the exclusive right to operate the rental program at the R.V. Resort property pursuant to Article VII of the Declaration of

[1] Just prior to trial, the Plaintiff moved to amend its Third Amended Complaint, to include a prayer that the Court issue an additional declaration "That the Plaintiff as the successor Declarant, has the exclusive right to operate the rental program at the R.V. Resort property pursuant to Article VII of the Declaration of Covenants, including the right to register and approve guests of Owners. The motion was granted. *See* page 11 of the Trial Transcript.

Covenants, including the right to register and approve guests of Owners." The Court partially granted the Directed Verdict motion at that time, ruling that the Plaintiff does have the exclusive right to operate the rental program at the campground, while taking under advisement the issue of whether that exclusive right extends to "the right to register and approve guests of [the] Owners." Transcript of trial day 7, pp. 37-44.

PLAINTIFF'S CLAIMS

Thus, currently pending before the Court for resolution are the Plaintiff's prayers for the following declarations:

a. That the Plaintiff is legally entitled to enforce the Covenants pursuant to its ownership interests in the tangible and intangible property.

b. That the Defendant R.V. Resort and Yacht Club Owners' Association, Inc. (hereinafter sometimes referred to as the "YCOA") is prohibited from conducting its business in derogation of the Covenants and must enforce the written terms and conditions of the Covenants uniformly and consistently.

c. That those travel trailers commonly known as "5th wheels" are in fact "travel trailers" as defined in the Covenants, and subject to the requirements and restrictions of Section 8.1(b) of the Covenants.

d. That the YCOA must adhere to the terms of the Beaufort County (S.C.) Municipal Code Section 78-68 (c), which requires all travel trailers to be on site less than 180 days and be fully licensed and ready for highway use at all times.

e. That the YCOA must adhere to the terms of the Beaufort County (S.C.) Municipal Code Section 4.1.190 C 1, limiting all camping units to a 60 days in a 90-day period length of stay.

f. That it is a violation of the Covenants to utilize any structure or vehicle on a lot at the Property, as permanent living quarters.

g. That the obligations of the Developer (now passed to and imposed on the Plaintiff) under Section 7 (VII) of the Covenants are that the Plaintiff shall render fifty (50%) percent of all gross rentals to the appropriate lot owner and maintain an advertising program to promote the rental of lots at the property.

h. That all recreational vehicles on any lot on the Property must always be capable of being immediately moved either under the vehicle's own power or by a towing vehicle that must remain with the recreational vehicle at all times on the lot.

i. That all recreational vehicles on any lot on the Property must be intended for temporary stays and be readily moveable.

j. That any Rules and Regulations promulgated by the Defendant YCOA regarding the Property, are subject to the Plaintiff's rights to approve same as the assignee of the Developer under Section 8.9 of the Covenants.

k. That the Plaintiff, as the assignee of the Developer's rights, has the right to approve or disapprove any rule or regulation promulgated by the Plaintiff regarding either the operation, use, maintenance, management and control of the Common Properties or governing and restricting the use and maintenance of the lots on the Property.

l. That the Plaintiff, as the assignee of the Developer's rights, has the right to insist that no Rules nor Regulations adopted by the Defendant are in contravention of the Declaration of Covenants, including (but not limited to) those purportedly adopted pursuant to Section 8.11 of the Covenants.

m. That the Plaintiff as the successor Declarant, has as a part of its exclusive right to operate the rental program at the R.V. Resort, the exclusive right to register and approve guests of Owners.

Also for this Court's resolution is the Plaintiff's Second Cause of Action, seeking a permanent injunction barring the Defendant Association from denying the Plaintiff the opportunity to rent lots that should be available under the Covenants, but that are in fact being used as permanent residences.

In addition to these requested declarations and the permanent injunction, the Plaintiff also seeks recovery of its costs and attorney's fees as allowed by the Covenants. Pursuant to agreement of counsel and the Court, the parties stipulated an outstanding Motion To Compel filed by the Defendants regarding the discovery of financial records of the Plaintiff, as well as evidence regarding damages and attorneys' fees, would be held in abeyance until the Court made a decision on the Plaintiff's Complaint and the Defendant's Counterclaims. The parties further stipulated that in the event the Court ruled in favor of the Defendants and that damages could be awarded, then the Court would set a hearing on the Motion to Compel, followed by a bifurcated hearing regarding damages and attorneys' fees.

DEFENDANTS COUNTERCLAIMS

In response to the Third Amended Complaint, the Defendant filed its Amended Answer to Third Amended Complaint and Counterclaim, asserting various defenses and counterclaims, that may be summarized as follows:

a. For its first Counterclaim, the Defendant argues that pursuant to Article X of the Covenants, enforcement of Covenants is subject to authorization from the Board of Directors.

b. For its second Counterclaim, the Defendant argues that the Plaintiff, by and through its owner, has allegedly caused process to be issued by way of "No Trespassing Notices" served upon owners by the Beaufort County Sherriff's Department. These Trespassing notices were allegedly issued for an unlawful purpose to gain a collateral advantage over Defendant. Further, Plaintiff has allegedly accused the Board members of the Defendant with "converting" a wooden swing and allegedly issued process on the alleged "conversion." The Defendant contends that "intentional conduct" is an abuse of process and seeks actual and consequential damages and punitive damages.

c. For its third counterclaim, the Defendant alleges that the Plaintiff owes the Defendant a strict fiduciary duty that extends to the Defendant and all members of the Association. The Defendant alleges the Plaintiff has "continually breached" that Fiduciary Duty, has taken "unilateral actions contrary to the well-being of the resort in violation of the Covenants and previous ruling of Courts" and "has caused actual and consequential damages to Defendant." The Defendant further alleges that the Plaintiff has attempted to impose upon the owners and the Association "a rental program that violates the Association's and owners' rights to use the property," which was allegedly designed to reduce lot value and rentals, thereby damaging the Association and all owners.

d. For its fourth counterclaim, the Defendant seeks a "temporary injunction" to "maintain the status quo, rescind current Trespass Notices and the rental program and restrain any future violations," and alleges it is entitled to reasonable attorney fees and costs associated with defending this action and asserting the counterclaim.

e. For its fifth counterclaim, the Defendant alleges the Plaintiff has breached the Covenants in the following particulars:

1. By unilaterally implementing a rental program that interferes with the owners' rights to use or rent their property;
2. By wrongfully refusing to agree to a covenant amendment after Plaintiff allegedly requested the same and the owners of the Association allegedly approved;
3. By interfering with easements of the Association and owners;
4. By operating multiple businesses out of the property and allowing those business invitees to utilize Association and Resort property that they have no right to use or occupy;
5. By interfering with and harassing Association agents and owners;
6. By instructing Plaintiff's employees to make materially false and untrue statements to potential guests at the Resort;

7. By having materially false, untrue, and improper language on Plaintiff's website;
8. By trying to assert control over property that Plaintiff allegedly does not lease or own;
9. By claiming the Resort is a campground under County ordinances; and,
10. "By other actions that will be proven at trial."

f. For its sixth counterclaim, the Defendant seeks a declaratory judgment "that only Turner's Marina, LLC marina slip customers are entitled to use of those common elements afforded by the lease between the Defendant and the Developer."

g. For its seventh counterclaim, the Defendant alleged violations of the S.C. Unfair Trade Practices Act by the earlier alleged "misconduct" of the Plaintiff and by the Plaintiff allegedly posting "deliberate and false claims and representations" on its website.

BRIEF SUMMARY OF APPLICABLE LAW

The following findings of fact are based upon a preponderance of the evidence. The findings of fact were supported by the greater "weight, amount, credibility or truth" as was reflected by the whole of the evidence presented to the Court. Frazier v. Frazier, 228 S.C. 149, 89 S.E.2d 225, 235 (1955); Nettles v. Nettles, 138 S.C. 318, 136 S.E. 297 (1927).

The Defendant R.V. Resort and Yacht Club, Owner's Association, Inc., exists for the sole purpose of administering the resort and enforcing the resort's Master Deed or Declaration of Covenants and Bylaws. See, *e.g.*, Spur At Williams Brice Owners Association, Inc. v. Lalla, 415 S.C. 72, 781 S.E.2d 115 (2015).

Restrictive covenants, sometimes referred to as "real covenants," are agreements "to do, or refrain from doing, certain things with respect to real property." Kinard v. Richardson, 407 S.C. 247, 257, 754 S.E.2d 888, 893 (Ct.App. 2014). "Restrictive covenants are contractual in nature, and thus, the language used in the restrictive covenant is to be construed according to its plain and ordinary meaning." Penny Creek Assocs., LLC v. Fenwick Tarragon Apartments, LLC, 375 S.C. 267, 271, 651 S.E.2d 617, 620 (Ct. App. 2007). And while restrictions on the use of property are historically disfavored, Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270, 363 S.E.2d 891, 893 (1987), they are and should be enforced when they are created in express terms or by plain and unmistakable implication. *See* Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). Construing of a restrictive covenant "is only done where the contract is ambiguous or there

is doubt as the intended meaning of the contract." Circle Square Co. v. Atlantis Development Co., 267 S.C. 618, 230 S.E.2d 704 (1976).

The law governing the enforceability of covenants restricting the use of real property is well-established in South Carolina. "A restriction on the use of property must be created in express terms or by the plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." Buffington v. T.O.E. Enters., 383 S.C. 388, 392, 680 S.E.2d 289,291 (2009). In order to enforce a restrictive covenant, "a party must show that the restriction applies to the property either by the covenant's express language or by a plain and unmistakable implication." *Id. See also* Sea Pine Plantation Co., 294 S.C. at 269, 363 S.E.2d at 894 ("A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant.") When someone purchases a lot with a set of recorded restrictive covenants on it, they voluntarily and intentionally bind themselves by the restrictive covenants. *See* Spur at Williams Brice Owner's Association, *id.*

Upon a showing that a restrictive covenant is binding upon a lot and owner, the owner bears the burden of asserting affirmative defenses to the restrictive covenant's enforceability. *See* Circle Square Co. v. Atlantis Dev. Co., 267 S.C. 618, 628, 230 S.E.2d 704, 708 (1976). Under South Carolina law, a party may bring a declaratory judgment action to invalidate a restrictive covenant based on a change of conditions. Menne v. Keowee Key Prop. Owners' Ass'n, Inc., 368 S.C. 557, 564, 629 S.E.2d 690, 694 (Ct. App. 2006). "Affirmative relief may be granted against a restrictive covenant where there is such a change in the character of the neighborhood as to render the enforcement of the covenant valueless to the covenantee and oppressive and unreasonable as to the covenantor." *Id.* However, South Carolina courts have resisted termination of a restrictive covenant on the basis of change in conditions. *Id.* Shipyard Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308-09, 414 S.E. 2d 795, 801 (Ct. App. 1992). "A party seeking to annul a restrictive covenant must show the change of conditions represented so radical a change that the original purpose of the restrictive covenant can no longer be realized." Menne, 368 S.C. at 564, 629 S.E.2d at 694. And notwithstanding the changed character (if actually proven), when one protected by a covenant seeks enforcement thereof, our courts have not endorsed the change while the purpose of the covenant may still be accomplished. *See* Circle Square Co., 267 S.C. at 631, 230 S.E.2d at 709.

When someone challenges the enforcement of a restrictive covenant based upon an argument that they will incur a financial loss by its enforcement, South Carolina courts have repeatedly rejected those challenges because the owner was on notice of the recorded covenant's plain language when they purchased. Buffington, *id.* at 393, 680 S.E.2d at 291. As the Supreme Court noted in Spur, when a unit owner sought to avoid the enforceability of a restrictive covenant prohibiting rental of the condos to college students, "The units' decrease in value due to the declining real estate market and economy had no effect on the Association's need to minimize the risk that The Spur might develop a dormitory-like atmosphere." Spur, *id.* 415 S.C. at 91. "Like the dealership operators in Buffington, when the Lallas purchased their unit, there were on notice (by way of the Master Deed) of the restrictive covenant prohibiting the rental of any unit to college students unrelated to the unit's owner. Accordingly, we agree with the circuit court that the economic change in conditions alleged by the Lallas fails to support the discharge of the restrictive covenant." *Id.*

If there has been unreasonable delay in asserting a claim, or if, knowing his rights, a party does not seasonably seek to avail himself of the means at hand for their enforcement, but suffers has adversary to incur expense or enter into obligations or otherwise change his position, then equity will ordinarily refuse to enforce those rights, especially if an injunction is asked. Archambault v. Sprouse, 215 S.C. 336, 55 S.E. 2d 70, 12 A.L.R. (3d) 388 (1949). Whether the Plaintiff is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party. Privette v. Garrison, 235 S.C. 119, 110 S.E.2d 17 (1959). The Doctrine of Laches is an equitable doctrine defined as neglect for an unreasonable and unexplained length of time under circumstances affording opportunities for diligence to do what in law should have been done. Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E. 2d 525, 527 (1988). In order to establish Laches, defense a Defendant must show that the complaining party unreasonably delayed its assertion of a right resulting in prejudice to the Defendant. Kelly v. Kelly, 368 S.C. 602, 606, 629 S.E.2d 383, 391 (Ct.App. 2006).

APPLICATION OF LAW TO EVIDENCE PRESENTED AT TRIAL

With the benefit of a transcript of record of the nine-day trial, the preponderance of the evidence presented at trial showed as follows:

1. That the Plaintiff is legally entitled to independently enforce the Covenants pursuant to its ownership interests in the tangible and intangible property.

This Court has already ruled, by summary judgment of November 8, 2022, that the Plaintiff Turner's Marina is the valid and lawful owner of the original Developer's "Declarant Rights" under the Covenants.

Based upon the clear preponderance of the evidence, the Court declares that the Plaintiff is legally entitled to independently enforce the Covenants pursuant to its ownership interests in the tangible and intangible property without the approval of the Board of Directors of the Association.

2. That the Defendant is prohibited from conducting its business in derogation of the Covenants and must enforce the written terms and conditions of the Covenants uniformly and consistently, except as to any portions of the Covenants that is judicially declared abandoned.

The major dispute between the parties in this case is whether the owners of the 200 lots in the campground, may reside continuously on the lots. Turner's Marina, which owns the exclusive rental rights on the 200 lots when they are not being used by the Lot Owners, maintains that the Defendant YCOA has failed to enforce those provisions of the Covenants that specifically prohibit any person from using any vehicle or structure as permanent living quarters. The preponderance of the evidence adduced at trial proves that indeed many lot owners are using their RVs as permanent living quarters, which is damaging Turner's Marina's ability to rent lots.

Article VII of the Covenants "Rental of Lots." Provides in pertinent part:

> **"The Association and Owners further recognize that the intention of this Declaration is to create and maintain a luxury recreation vehicle resort in which there are not permanent or semipermanent structures on Lots and in which the Lots, in the absence of use by the Owner or his designated and approval guest, are to be made available for rental by the Developer as set forth above."**

Article 8.1 of the recorded Covenants provides that:

> **It is the specific intent of this Declaration to create and maintain a luzury [sic] resort for recreation vehicles and to prohibit permanent or semi-permanent structures as well as any structure or vehicle which is used as, or**

designed for use as, permanent living quarters on any Lot. In that regard, all Lots which are designated on Exhibit "A" shall be reserved and restricted for recreation campsites and camping vehicles, including within such category, tent-type folding trailers, pickup campers, modern travel trailers, motor homes and other similar types of camping trailers and equipment that are mobile. Not included within such classification shall be folding tents not mounted on wheels, and park model travel trailers. Lot Owners, their guests, successors and assigns are prohibited from erecting or placing on any Lot any permanent or semi-permanent structure or any vehicle which is designed as permanent living quarters, which prohibited structures include, without limitation, the following: (a) screen rooms, carport, metal awnings or any type of permanent extended overhang; (b) travel trailers longer than thirty five (35) feet or wider than eight (8) feet in their fully installed condition (which eight (8) feet includes tipouts or slideouts) or which are not self-contained (permissible structures must include own water supply, holding tank) notwithstanding that any county, state or federal government or agency identifies or licenses such trailer prohibited hereunder as "recreation vehicles"; (c) mobile homes; (d) any structure which cannot be transported within the pulling vehicle or the vehicle installed on the Lot itself; (e) any structure placed on the Lot on blocks, or other supports which are permanent or semi-permanent in nature or any structure with removed hitches; (f) any structure not intended to be temporary, that is, any structure intended not to be readily moveable; and (g) any structure designed, intended or used as permanent living quarters. [Emphasis added.]
Provided, this paragraph is not intended to prohibit or limit the utilization of otherwise permissible recreation vehicles as described above which might also ancillary have to utilize sewer and water facilities provided at the Lots. It is the declared intent of the Developer to exclude mobile homes from being placed on any Lot, and to create and maintain an area designated for maximum beauty and benefit of campers. Provided, further, that tables, benches, fireplaces and grills may may be erected, but no personal property except as provided immediately above, shall be permitted to remain where it can be seen by other Lot owners or visitors to the area, except when the Lot is actually in use; provided further, however, that the foregoing shall not apply to any permissible vehicle or trailer which may be allowed to remain on the Lot even though not in use. There is prohibited the construction and maintenance of fences and radio and TV antennas on the Lots. Only one (1) permissible camping vehicle may be located or maintained on each Lot. Storage structures as approved by the Developer in writing may be placed on each Lot.

Article 14 of the recorded Covenants provides:

The Association, Lot Owners and Developer specifically acknowledge hereby the intent of this Declaration to include the creation and maintenance of a luxury resort for the camping public, pursuant to the provisions of this Declaration. Accordingly, the Association hereby acknowledges and agrees to assume and carry out its affirmative duty, both now and after control of the Association has been turned over from the Developer to the Lot Owner, to maintain the integrity of the Property including enforcement of the Developer's rental rights and occupancy

> restrictions including the prohibition against the erection or placing on any Lot of any structure or vehicle designed or used as permanent living quarters.

Notwithstanding the above-cited provisions of the recorded Covenants that evidence a clear intent by the Developer to create a transient campground resort where no one would set up permanent living quarters, I am compelled to acknowledge that in 2008, the Court of Appeals in an unpublished opinion (Unpublished Opinion No. 2008-UP-332), BillyBob's Marina, Inc. d/b/a Outdoor Resort and Yacht Club v. Blakeslee, held that although "we agree with the trial court that the covenant [8.1 cited above] is intended to exclude mobile homes and permanent structures so as to prevent the resort from becoming a mobile home park," if owners have recreational vehicles "that are not restricted by the Covenants," then there is no limit on the amount of time owners may use or occupy their lots. "We do not read the language prohibiting 'permanent living quarters' as restricting an owner's use of their lot to a certain period of time when they are using an otherwise acceptable vehicle on the lot." Pursuant to S.C.A.C.R. 268(d)(2), unpublished opinions have no precedential value "except in proceedings in which they are directly involved." I find that this unpublished opinion is instructive in this case, because the 2008 decision speaks directly to the issue of whether a Lot Owner who is in a Recreational Vehicle that is not restricted by the Covenants, may use their lot continuously as long as they do not convert the lot into permanent living quarters. I acknowledge that decision and hold that if a Lot Owner is staying in a Recreational Vehicle that is no more than thirty five (35) feet long and not wider than eight (8) feet including tipouts or slideouts, and adheres to the other restrictions in Section 8.1, then in those instances, the Lot Owner is not constrained by the recorded Covenants from staying in a Recreational Vehicle on their lot continuously as long as they do not convert the RV into permanent living quarters. In keeping with that decision, I hold that the recorded Covenants are controlling as written, and that those Covenants specifically prohibit any Recreational Vehicles exceeding thirty-five feet in length or eight feet in width including tipouts or slideouts.

In response to Turner's Marina's evidence produced at trial that showed that many, if not most, of the travel trailers currently being used by Owners on their Lots exceed the Article 8.1 specific size restrictions affirmed by the 2008 BillyBob's decision cited above (as well another affirmation of the recorded Covenants in RV Resort and Yacht Club Owners Association, Inc. v. BillyBob's Marina, Inc, 386 S.C. 313, 688 S.E.2d 555 (2010)), the Defendant YCOA asserts that those specific size restrictions have been "waived" or "abandoned" by alleged non-enforcement,

and are asking this Court to find the size restrictions in the Covenants "abandoned." Although the YCOA never raised "waiver" or "abandonment" as an actual defense in its Answer, I find that the issue was raised at trail by the testimony of several YCOA witnesses, including its President Chris Sibley and it is thus appropriate to be considered by this Court.

Trial testimony put forth by the Defendant asserted that the section of the Covenants containing the restriction on length and width had been "abandoned" because Turner's Marina's predecessor Billybob's had not barred travel trailers (or 5th wheels) exceeding this length and width while it held the Declarant Rights and that the Plaintiff had also allowed such nonconforming vehicles from the time he took ownership in December 2017 until September of 2020. The Defendant also set forth that a "fifth-wheel" travel trailer is not actually a travel trailer because they are defined differently under South Carolina municipal codes as well as in various industry publications. For the reasons discussed below, I find that the length and width restrictions on travel trailers specified within the Covenants have been abandoned. I also find that those travel trailers that are commonly described as "fifth wheels" are, in fact and legally, travel trailers.

The Defendant YCOA is asking this Court to exercise its equitable jurisdiction and decline the Plaintiff's request for an injunction enforcing the size restrictions based upon an argument of laches. *See* Defendant's Closing Arguments Memo filed March 31, 2023, p.2. The YCOA presented testimony from John Bentley, who formerly worked for the Plaintiff's predecessor Billybob's Marina, that Billybob's did not enforce the size restrictions from 2006 until 2017, when Turner's Marina bought the Declarant Rights. The Plaintiff presented testimony that showed Neil Turner, President of Turner's Marina, began asking the Board of Directors of the Association to strictly enforce the Covenants within six months of Turner's Marina's purchase of the Declarant Rights (on May 1, 2018), and Turner's Marina began to fully enforce the size restrictions set forth in the Covenants on September 1, 2020.

I find the Defendant's argument that the size restrictions of Article 8.1 were not enforced by Billybob's between 2006 and 2017 persuasive and hold that laches prevents me from issuing a permanent injunction requiring the Defendant to enforce the size restrictions found therein despite the fact that these recorded Covenants are valid and binding. In reaching this conclusion and entering this Order, I am exercising the equitable authority vested in this Court, and I realize that

my application of such equitable principles is entirely fact dependent and relies upon the fairness and justice of an issue as I see it. The *sine qua non* of equity is judicial discretion. *See* Chisolm v. Pryor, 207 S.C. 54, 60, 35 S.E.2d 21, 24 (1945)("The assumption of jurisdiction by the court of equity is largely dependent upon the chancellor's discretion."); *see also* Straight v. Goss, 383 S.C. 180, 207, 278 S.E.2d 443, 458 (Ct.App. 2009)(decision to grant equitable relief is in the discretion of the trial judge.) This stems from the underlying principle that courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. Ex Parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct.App. 1983).

Sitting in equity, this court must weigh and balance the fairness and equities of both sides under the circumstances to determine what, if any, relief to give. Straight v. Goss, *id.* And where, as here, equitable jurisdiction exists for any purpose, "it [the Court] may grant all the relief, either legal or equitable, to which any of the parties show themselves entitled, in the subject matter of the controversy." Bramlett v. Young, 229 S.C. 519, 535, 93 S.E.2d 873, 881 (1956)("Where a court of equity has assumed jurisdiction of a cause it will retain such jurisdiction to dispose of all issues within the scope of the pleadings, including the granting of whatever relief may be required to render the judgment of the court effective." *See also* Parker Peanut Co. v. Felder, 207 S.C. 63, 34 S.E.2d 488, 490 (1945)(a court of equity, once jurisdiction is obtained, may administer complete relief including purely legal issues); Morison v. Rawlinson, 193 S.C. 25, 35, 7 S.E.2d 635, 640; Heyward v. Long, 178 S.C. 351, 183 S.E. 145, 153(1935)(when a court of equity obtains jurisdiction, it may "properly adjudicate all cognate questions and settle the whole controversy.")

The Covenants are clear in showing that the intention of the original Developer in creating the R.V. Resort 200 lot campground, was to create and maintain a transient, luxury resort for the camping public, and that the Developer intended to preserve its exclusive rental rights over the 200 lots when the Owners were not using them. The Developer and the Covenants intended for the prohibition against any structure or vehicle being used as permanent living quarters to be enforced.

Weighing and balancing the equities as I am required to do in exercising my equitable jurisdiction to construe these forty four year old, oft-conflicting Covenants to embrace today's modern world and provide a workable framework for the operation in 2025 of the transient

campground resort envisioned by the Developer, while protecting the rights of Lot owners who bought their property in fee simple ownership controlled by recorded Covenants, I begin with the conclusion that the resort and the Lots thereon, shall not be used as permanent living quarters. The very essence of the repeated mantra of the Covenants, is that the resort is to serve transient campers and Lot owners and their guests for temporary stays. When the Lots are not being used by the Lot owners or their registered guests, the Lots may be rented by Turner's Marina through the exclusive rental program set forth in the Covenants. In order to effect this Order, I therefore must define what "use" is of a Lot.

I find that a Lot is in "use" by a Lot owner or a Lot owner's registered guests, when the recreational vehicle located on the Lot is being used for regular overnight accommodations by the Lot owner or the guest. Recognizing that there may be times when someone arrives in a recreational vehicle, places it upon a Lot for overnight accommodations, and then needs or desires to temporarily leave the resort while leaving the recreational vehicle in place on the Lot, I hold that the recreational vehicle is still in "use" by the Lot owner or registered guest, as long as the Lot owner or approved guest, returns to the recreational vehicle and resumes regular overnight accommodations within it, within ten (10) days. No recreational vehicle shall be left upon any Lot for more than ten (10) days without being used for regular overnight accommodations. The resort is not a storage facility, and storage of unused recreational vehicles on Lots blocks those Lots from being used in the rental program—which benefits Lot owners and Turner's Marina. This ruling also applies to the requirement within the Covenants that any recreational vehicle in the resort be capable of being moved upon reasonable notice, such as an impending strong storm. I believe these rulings adhere to many equitable principles of fairness:

a. Equity is not concerned with what could be done, only what *ought* to be done. Joseph Story, Commentaries on Equity Jurisprudence as Administered in England and America, Section 64(g)(Melville M. Bigelow, ed., 13th Ed., 1886, reprinted 2000 Beard Books.

b. He who seeks equity must do equity. Provident Life & Accid. Ins. Co. v. Driver, 317 S.C.471, 479, 451 S.E.2d 924, 929 (1994). As Professor Pomeroy explained, "the court will give the plaintiff the relief to which he is entitled, only upon condition he has given, or consents to give, the defendant such corresponding rights as he also may be entitled to in respect of the subject-matter of the suit." John N. Pomeroy, A Treatise on Equity Jurisprudence, Section 386 (Spencer Symons, ed., 5th Ed., 1941, reprinted 2002, The Lawbook Exchange, Ltd.)

c. Equity will not suffer a wrong without a remedy. Equity fashions a remedy for a wrong when justice demands it. State ex. Rel. Daniels v. Strong, 185 S.C. 27, 192 S.E.671 (1937). The equitable rules a court employs are not "cast iron rules"; rather, the rules exist to do fairness and are flexible so that relief is granted when denying the relief would cause one party to suffer a gross wrong at the hands of another. Hooper v. Ebenezer Senior Services & Rehab. Ctr., 386 S.C. 108, 116-17, 687 S.E.2d 29, 33 (2009).

Therefore, exercising the equitable jurisdiction of this Court and in fairness and equity, I Order as follows:

1. The length and width restrictions on travel trailers (including 5th wheels) in Article 8.1 of the recorded Covenants are unenforceable because of laches, and, is judicially declared an abandoned provision of the Covenants.

2. In order to ensure that the intention of the Developer to maintain this property as a luxury resort for the camping public as is set forth in the Declaration of Covenants, is achieved, and to preserve the integrity of the rental program, each Lot must be cleared of the Owner or his/her guest's Recreational Vehicle (and any other items as provided in Article VIII of the Covenants) and be available for rental by Turner's Marina or its successor, for at least forty-eight (48) consecutive hours, a least one time every 180 days. During that 48 hour period, the Recreational Vehicle must be physically removed from the RV Resort for that time period. The Owner must give Turner's Marina or its successor at least 48-hours' notice prior to this 48-hour period as to allow the Plaintiff to include the lot in its rental pool. The owner may not use this period to have the lot not available for rental by designating it as a maintenance period.

3. As is set forth above in detail, the Lots may not be used for storage of a recreational vehicle and any recreational vehicle that requires a towing vehicle for movement must have a towing vehicle reasonably accessible, as set forth herein above.

3. That those travel trailers commonly known as "5th wheels" are in fact and legally, "travel trailers" as described in the Covenants.

The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution. Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998).

According to testimony, a fifth wheel is a hitch attachment that can be added to the bed of a truck, tractor or similar vehicle. You connect cargo to the U-shaped hitch, which then distributes

the weight over the truck or tractor. The name "5th wheel" actually comes from the company that first utilized the hitch in the early 1900s, the Martin's Fifth Wheel Company, that named their device after the round shape of the hitch. Hence, the hitch itself is the "fifth wheel." As testimony at trial revealed, those travel trailers that utilize the hitch attachment are commonly called "5th" wheels," but they are nothing but a type of travel trailer, as the various laws in our state have shown over the years. Just as every square is a type of rectangle but not every rectangle is a type of square, every fifth wheel is a type of travel trailer but not every travel trailer is a fifth wheel.

From 1985 through 2017, a travel trailer was defined by all statutes of the State of South Carolina to mean every vehicle designed without motor power to be towed by a motor vehicle and of such size and weight as not to require a special highway moving permit, designed to provide temporary living quarters for recreational, camping, and travel use and designed not to require permanent on-site utilities, including, but not limited to, tent campers, park models, park trailers, motor homes, and fifth wheels.

In 2017, the Legislature further defined recreational vehicles and still included the definition of travel trailer in the Fifth Wheel definition verbatim. In addition, "RVIA," which both parties agree is the "gold standard" for RV regulations across the nation, listed 5th wheels as "5th wheel travel trailers." In one of their informational brochures, it lists 5th wheel trailer, which shows that the industry considers them interchangeable terms. See Plaintiffs Exhibit 10, second page, and Defendant's exhibit 3, second page.

A "fifth wheel" is a travel trailer subject to the recorded Covenants.

4. That the Beaufort County (S.C.) Municipal Code Section 78-68 (c), which requires all Recreational Vehicles to be on site less than 180 days and be fully licensed and ready for highway use at all times, is enforceable at the R.V. Resort.

A plain reading of Beaufort County Municipal Ordinance Section 78-68 (Plaintiff's Exhibit 4) shows that subsection (c) is specifically applicable to the RV Resort campground. "A recreation vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by quick-disconnect type utilities and security devices and has no permanently attached additions. Recreational vehicles placed on any sites shall either be on site for fewer than 180 consecutive

days and be fully licensed and ready for highway use or meet the requirements of subsections (a) and (b) of this section." There is no grandfathering provision set forth within the statute.

This was confirmed by the County in a 2009 letter that stated the ordinance did apply to the Property and that they are required to adhere to it. That letter, admitted a trial, explains that if an owner chooses to claim "road readiness" to stay in excess of the 180 days, then they must provide proof of same to Beaufort County. See Defendant's Exhibit 34. This ordinance is in place to ensure that when hurricanes come, people are able to remove their mobile property from the land and not increase wind and flood damage, as has happened at this property during the last four mandatory evacuations. See Plaintiff's exhibit 11.

I further hold that while the Defendant YCOA is not obligated to enforce this ordinance because that is a County function, nothing herein abrogates the obligation of each Lot owner to comply with the ordinance. That said, having set an equitable requirement that an Owner must remove their Recreational Vehicle from the lot for 48-hours once every 180 days, adherence to the county ordinance will be met by all lot Owners and thus this issue is satisfied equitably.

5. *That the terms of the Beaufort County (S.C.) Municipal Code Section 4.1. 190 C 1, limiting all camping units to a 60-day stay in a 90-day period, are not applicable to the R.V. Resort campground.*

Having set an equitable requirement that every Lot be cleared and rentable for at least forty-eight (48) consecutive hours at least once every 180 days, I further find that equity requires that I hold this Beaufort County Municipal Code section inapplicable to the R.V. Resort Property. This Court's attempt to fashion an equitable remedy that will work best for all parties and ensure the long-term viability of the resort Property, the Plaintiff successor to the Developer, and the Lot owners, leads me to hold this ordinance non-binding. In reaching this conclusion, I am persuaded by the County Zoning Director Robert Merchant's testimony that the Lots would be most likely grandfathered under the ordinance.

6. *That it is a violation of the Covenants to utilize any structure, such as a recreational vehicle, as permanent living quarters under the 2008 Court of Appeals decision discussed above.*

My above rulings address the use of recreational vehicles (including "fifth wheels") within the Resort and set an equitable time limit. The restriction against using those recreational vehicles and any other structure on a Lot as permanent living quarters is a part of the recorded Covenants and continues to be prohibited under this Order.

7. *That the obligations of the Developer (now passed to and imposed on the Plaintiff) under Section 7 (VII) of the Covenants, are that the Plaintiff shall render fifty (50%) percent of all gross rentals to the appropriate lot owner and maintain an advertising program to promote the rental of lots at the property.*

A plain reading of the obligations of the Developer and Turner's Marina now under section 7 is to render 50 percent of all gross rental amounts to Lot Owners and as additional consideration for the retention of the Rental Rights, the Developer shall undertake an advertising program to promote the rental of those lots. These are the only obligations set forth in the recorded Covenants, although as I find below, the Developer and its successors do have a fiduciary duty in performing these actions.

8. *That all recreational vehicles on any lot on the Property must always be capable of being easily moved, either under the vehicle's own power or by a towing vehicle that is not required to remain on the Lot at all times.*

Restrictions on the use of property are strictly construed with all doubts resolved in favor of the free use of property. I find that the Covenants explicitly provide in Article VIII section 8.1 that the Recreational Vehicle can remain on the lot even when it is it not in use: "*Provided, further that tables, benches, fireplaces and grills may be erected, but no personal property except as provided immediately above shall be permitted to remain where it can be seen by other lot Owners or visitors to the area, except when the Lot is actually in use; provided further, however,* ***that the foregoing shall not apply to any permissible vehicle or trailer which***

may be allowed to remain on the Lot even though not in use."

I find that any recreational vehicle placed on a lot must be able to be easily moved, but the Covenants do not require that a towing vehicle must remain on the lot with the recreational vehicle at all times.

9. *For the reasons set forth above, I affirm and hold that all recreational vehicles on any lot on the Property must be intended for temporary stays and be readily moveable.*

10. *That any Rules and Regulations promulgated by the YCOA regarding the Common Properties of the Resort, are subject to the Plaintiff's right to approve same as the assignee of the Developer under Section 8.9 of the Covenants.*

The recorded Covenants provide at Section 8.9 that "No person shall use the Common Elements or part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be promulgated by the association, subject to the right of the Developer to approve such rules and regulations." Thus, I grant the requested declaration. Any change to a rule, regulation or By-Law pertaining to use of the Common Elements must be approved by the Developer.

11. *That the Plaintiff, as the assignee of the Developer's rights, has the right to approve or disapprove any rule or regulation promulgated by the YCOA regarding the operation, use, maintenance, management and/or control of the Common Properties.*

See my ruling numbered 10 above and section 8.9 of the recorded Covenants, as well as the By-laws, and Article 16 of the Rules and Regulations. For these reasons, I grant the requested declaration.

12. That the Plaintiff, as the assignee of the Developer's rights, has the authority under the recorded Covenants to enforce those Covenants, and the YCOA may not adopt Rules nor Regulations in contravention of the Declaration of Covenants.

I have already ruled in this Order that the Plaintiff has the authority under the recorded Covenants to enforce those covenants, and for the reasons discussed above, I hold that the Defendant may not adopt Rules in contravention of those Covenants.

13. That the Plaintiff, as an integral part of its exclusive right to operate the rental program at the R.V. Resort campground, has the right to register the approved guests of Owners who are using the Owners' Lots.

The Declarant originally retained the exclusive right of rental for the 200 Lots within the campground when they are not being occupied by the Owners or their guests. "The Association and Owners further recognize that the intention of this Declaration is to create and maintain a luxury recreation vehicle resort in which there are not permanent or semi-permanent structures on Lots and in which the Lots, in the absence of use by the Owner or his registered and approved guests, are to be made available for rental by the Developer as set forth above." Article 7. Although the Lots are owned in "fee simple," the recorded Covenants specifically set forth the Declarant's retention of this exclusive rental right—which is described as "the essence of the agreement." Article 7 of the Covenants specifically states the rights of rental are exclusively the Developer's. See Page 927, third paragraph: "The Developer shall have for a period of ninety-nine (99) years from the date of this Declaration the exclusive right... to rent Lots which are part of the Declaration at scheduled rates promulgated from time to time by the Developer." Page 928 states "The Association and Lot Owners recognize and hereby specifically agree to the rights granted to the Developer herein, which rights being exclusive in nature essential to the preservation of the integrity of the overall rental program administrated by the Developer." Testimony at trial showed that unless there is a mandatory process followed whereby the Owners' approved guests must "sign in" with Turner's Marina and affirm that they are in fact "non-paying" guests of a specific Owner, then the rental program cannot properly function.

The only portion of the recorded Covenants that addresses the intent of the Developer regarding what would be required to confirm a "registered and approved guest's" right to use an

Owner's lot, is in Article 7 and provides: "A Person cannot qualify as a guest of the Lot Owner if he pays any charge or fee to the Lot Owner, directly or indirectly, for the privilege of Occupying the Lot. Any such charge or fee constitutes prohibited rental no matter if the same should be called a 'contribution,' 'voluntary gift', 'reimbursement for lot expenses', or the like, and would be in violation of this paragraph." I find that each Owner has the exclusive right to approve the guests that shall use their Lot. However, unless all guests register with the Plaintiff and affirmatively state that they are a specific Lot owner's guest(s) paying no rent or gratuity, the rental rights of the Plaintiff will undoubtedly continue to be impacted negatively.

I therefore hold as follows: The operation of the rental program at the Resort is the exclusive province of the Developer or his assignee, which at this moment is Turner's Marina, LLC. The program is currently operating, and shall continue to operate into the foreseeable future, in the following manner: Each Lot is available for rent by the independent selection of the guest(s) coming to at the RV Resort. A guest chooses a site that is specific as to their needs and desires. This decision is personal to the guests and not directed by Turner's Marina's staff. Once the guest chooses his/her site, a reservation is made for that Lot and placed in the "on line" system for any Lot Owner to see and understand. The reservation is "locked in" with a deposit and a portion of that deposit is non-refundable at a certain time point prior to arrival as determined by Turner's Marina. When the reservation on the Lot is non-refundable and the Lot is committed to the guest for a specific rental period, any cancellation fees earned thereafter are split with the Owner of the Lot. The current policy for the rental program is that any Lot owner may claim the use of their Lot, despite an existing reservation, up until **forty-eigth(48) hours** prior to the guest's arrival, unless the RV Resort is sold out for the rental time period. The "lock in" period when a reservation may not be "bumped" by a Lot owner shall not be less than **forty-eight (48) hours**.

As to an Owner's guests using his/her Lot, I reiterate that the Owner alone has the right to approve what persons shall be classified as his/her guests, but every such guest is required to register with the Developer/Turner's Marina prior to or at their entry to the campground, and affirmatively state that he/she is not paying any money or other renumeration of any type to the Owner for the guest's stay.

As to the counterclaims remaining by the YCOA in response to the Third Amended Complaint for Declaratory Relief and Injunctive Relief, after due and serious consideration of the counterclaims and the evidence produced at trial and exhibits admitted therein, I find and rule as follows:

1. In its first counterclaim, the Defendant argues that pursuant to Article X of the Covenants, enforcement of Covenants is subject to authorization from the Board of Directors and that no such authorization has allegedly been given to the Plaintiff by the Board in this case. As discussed above, I disagree. The recorded Covenants specifically grant the Developer and its successors—now Turner's Marina LLC—the right to enforce the Covenants to protect its investment interest in the Property. Counterclaim 1 is denied.
2. In its second Counterclaim, the Defendant asserted that the Plaintiff caused process to be issued by way of "No Trespassing Notices" served upon Lot owners by the Beaufort County Sherriff's Department. Such "trespassing notices" were allegedly issued for an unlawful purpose to gain a collateral advantage over the Defendant. The Defendant contends those actions amounted to an abuse of process. I find this counterclaim fails from a lack of evidence, in that there was no testimony submitted from any individual who had allegedly received such a "no trespassing notice" nor was there any testimony from any Beaufort County Sheriff Office deputies that any such notices were ever issued.
3. In its third counterclaim, the Defendant alleges that the Plaintiff owes to the Defendant a strict fiduciary duty that extends to Defendant and all members of the Association. The Defendant goes on to allege that the Plaintiff has "continually breached" its Fiduciary Duty, has taken "unilateral actions contrary to the well-being of the resort in violation of the Covenants and previous ruling of Courts" and "has caused actual and consequential damages to Defendant." The Defendant further alleges that the Plaintiff has attempted to impose upon the owners and the Association "a rental program that violates the Association's and owners' rights to use the property," which is supposedly designed to drive down lot value and rentals, thereby damaging the Association and all owners.

In general, a fiduciary relationship cannot be created unilaterally, but requires that the fiduciary must have actually accepted or induced the confidence placed in him or her. Steele v. Victory Savings Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988). While these recorded Covenants from 1980 are exceptionally confusing and can be arguably construed in many ways, I have searched them and find no provisions that create a fiduciary relationship between the Defendant Association and the Developer's successor Plaintiff. The Plaintiff's exclusive rental program does not apply to any property owned by the Association.

However, the Covenants do create a fiduciary duty between the Developer's successor/assignee and the individual Lot owners through the exclusive rental program requirements that retained for the Developer the exclusive right to rent each Lot when it is not being used by the Owner or his/her registered and approved guests. Turner's Marina, LLC and any successor thereto, thus owes to each Lot Owner, a fiduciary duty relating to Turner's Marina's rental of his/her Lot, the handling of rental monies relating to such rentals, and the conducting of an advertising program for the rental program. The courts of South Carolina have said that a fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and due regard to the interests of one reposing the confidence. SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). Turner's Marina, LLC and any successor thereto, owes this duty to each Lot Owner regarding the operation of the exclusive rental program, the handling of monies generated by each Lot in that program, and the advertising program.

I further find that there was insufficient evidence produced at trial to support any finding of a breach of this fiduciary duty by Turner's Marina, LLC to any Lot owner.

The Defendant Association asserted at trial that any "cancellation fees" that are collected by Turner's Marina in the rental program should be split between Turner's Marina and the Lot owner where there was a reservation on that Lot that generated a "cancellation fee." Turner's Marina contends these "cancellation fees" derive from its administration of the rental program and are not "rental fees" paid and thus are not appropriately split with the Owners. While there is no guidance in the old Covenants as to this point, I find that such cancellation fees are to be considered as a portion of the rental fees in the future, and split with the Owner of the Lot upon which the reservation was made (and cancelled).

Concerning the further allegations of the third counterclaim that the Plaintiff attempted to impose "on the owners" a rental program that "violates" the owners' and the Association's "rights to use the property," there was insufficient evidence presented to support that assertion Turner's Marina has expended substantial time and money in efforts to modernize the reservation system for the rental program that is the exclusive province of Turner's Marina as the successor Declarant for 99 years from the original Declaration—or until 2080.

The Rental program that is currently in place is designed to allow the most efficient use of each lot for each Owner and the best outcome for Turner's Marina to maintain profits, which increases every Owner's individual profit. It does not violate any owner's rights or the Association's rights to use the property. The rental program is designed to allow the owners to make their own personal reservations, and then Turner's Marina makes its rental program bookings around the owner's scheduled presence at the Resort. The argument that an Owner should be entitled to show up last minute/unannounced and insist upon access to his/her Lot violates not only the plain reading of the Covenants (that allows Turner's Marina the authority to rent the lots in the absence of use by the Owner or his registered and approved guest), but also violates the clear intent of the Covenants to vest with the Declarant, the exclusive authority to set up and manage a fair rental program. In point of fact, in the strongest possible language, the Covenants call out this exclusive rental program vested in Turner's Marina, to be "the essence of the Developer's agreement with the Association" and "essential to the preservation of the integrity of the overall rental program administered by the Developer." Please see Defendants Exhibit 8.

Searching the four corners of the Covenants as this Court is required to do in order to ascertain the intent of the original agreement if there is ambiguity on any subject, the Court cannot find anything that was of more import in 1981 than the recognition of the importance of the integrity and exclusivity of the rental program: "The Association and Owners being cognizant of the need for consistent administration and uniform promotion and maintenance of the Developer's image as a leader in the recreation vehicle industry, hereby acknowledge the right of the Developer set forth in this Paragraph constitutes the essence of the Developer's agreement with the Association...." See Plaintiff's Exhibit 1, Section VII.

If this Court were to hold that an Owner may unilaterally ignore the right of rental and the modern need of the traveling and vacationing public to make advance reservations, and show up unannounced to claim use of his/her Lot at any time, it would effectively nullify any rental capability. Under that scenario, Turner's Marina could not rent out Lots and utilize the right of rental without the fear of an owner coming in at 10:00 p.m. any night and demanding that the guest be moved. Under that type of system, Turner's Marina could not enter any rental contracts at all. In fact, the rental system would have to go to a first come, first served, "good luck on

having a reserved Lot available when you arrive" basis—the antithesis of the Developer's clear original intent.

The testimony showed that Turner's Marina has always allowed the Owners the first right to use their Lots. See exhibit D-8, second paragraph. Turner's Marina gave all Owners a month to schedule their use, before opening reservations up to the public to book, and then within that time frame, the owners once again have the opportunity to book first before the Developer makes a rental. Turner's Marina has balanced the rights granted to each party to the best of its ability. But the Court must realize in making this decision, that the world of electronic, on-line reservations that we live in today—44 years after the Covenants were originally written and recorded—is the economic reality of life for Turner's Marina and the Owners. Unless Turner's Marina is confirmed as the only entity that may operate and run a rental reservation system at the resort, then the Court is dooming the reservation system and the economically beneficial relationship between Turner's Marina and the Lot owners, to a slow death. Only by embracing the technology of on-line advanced reservations with fair notice and opportunity to the Lot owners to claim use of their Lots unless the resort is sold out (as Turner's Marina is operating), will the RV Resort's owners and Turner's Marina thrive. I find that the rental system being operated by Turner's Marina during the trial of this case, was appropriate and order that Turner's Marina LLC as the successor to the Declarant, has the exclusive right to continue to operate the rental reservation system until the end of the 99 years set forth in the Covenants.

4. For its fourth counterclaim, the Defendant seeks a "temporary injunction" to "maintain the status quo, rescind current Trespass Notices and the rental program and restrain any future violations" and alleges it is entitled to reasonable attorney fees and costs "associated with defending this action and asserting the counterclaim." In that it requested a temporary injunction during the pendency of this action, this counterclaim is now moot. I will deal with both parties' request for costs and attorney's fee below.

5. For its fifth counterclaim, the Defendant alleges the Plaintiff has "breached" the Covenants in the following particulars:

    1. by unilaterally implementing a rental program that interferes with the owners' rights to use or rent their property;

2. by wrongfully refusing to agree to a covenant amendment after Plaintiff requested the same and the owners of the Association approved with a positive vote;

3. by interfering with easements of the Association and owners;

4. by operating multiple businesses out of the property and allowing those business invitees to utilize Association and Resort property that they have no right to use or occupy;

5. by interfering with and harassing Association agents and owners;

6. by instructing Plaintiff's employees to make materially false and untrue statements to potential guests at the Resort;

7. by having materially false, untrue, and improper language on Plaintiff's website;

8. by trying to assert control over property that Plaintiff does not lease or own;

9. by claiming the Resort is a campground under County ordinances; and

10. "by other actions that will be proven at trial."

Further under this counterclaim, the Defendant also seeks a declaratory judgment "that only Turner's Marina, LLC marina slip customers are entitled to use of those common elements afforded by the lease between the Defendant and the Developer." (See paragraph 51 of the Answer)

As noted above, I find that Turner's Marina's rental program, for purposes of this Counterclaim, consistent with the above provisions of this Order, is appropriate and deny that portion of this counterclaim alleging Turner's Marina breached the Covenants by "unilaterally implementing" a rental program that allegedly interfered with the owner's rights to use or rent their property. I further find that Turner's Marina did not wrongfully refuse to agree to a covenant amendment. Turner's Marina had the right under the recorded Covenants to decline such approval

These same parties (and others) are addressing the Association's counterclaims set forth in subparagraphs "c" (interfering with easements of the Association and owners); "d" (by operating multiple businesses out of the property and allowing those business invitees to utilize Association and Resort property that they have no right to use of occupy); "e" (by interfering with and harassing

Association agents and owners); and "h" (by trying to assert control over property that Plaintiff does not lease or own) in a separate case, known by all as the Lease Case (2022-CP-07-01085) and thus those counterclaims are denied herein without prejudice. I believe that case also addresses any dispute over whether marina slip customers are entitled to use of any of the Common Elements, and I will not further address that herein.

As to the YCOA's further allegations in its fifth counterclaim that Turner's Marina had instructed its employees to make "materially false and untrue statements to potential guests at the Resort" and that Turner's Marina had "materially false, untrue and improper language" on its website, I find insufficient evidence to support those counterclaims. As to the portion of this counterclaim alleging that Turner's Marina violated the Covenants "by claiming the Resort is a campground under County ordinances," I deny that counterclaim because the R.V. Resort is a campground as defined under at least one Beaufort County ordinance as discussed above. And as to that portion of this counterclaim alleging that Turner's Marina violated the Covenants "by other actions that will be proven at trial," I am aware of no other such actions proven and hence deny same.

6. For its seventh counterclaim, the Defendant alleged violations of the S.C. Unfair Trade Practices Act by the alleged "misconduct" of the Plaintiff and by the Plaintiff allegedly posting "deliberate and false claims and representations" on its website.

There was insufficient evidence in the record that would support the finding of a violation by Turner's Marina of the S.C. Unfair Trade Practices Act, S.C. Code Annot. Section 39-5-10 et. seq. That code provision states that: "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another of an unfair or deceptive method, act or practice declared unlawful [by the Act] may bring an action individually, but not in a representative capacity, to recover actual damages."

The UTPA established a private right of action for persons damaged by acts or practices declared unlawful by Section 39-5-20. It is limited to those unfair or deceptive acts or practices that affect the public interest. The act is not available to redress a private wrong when the public interest is unaffected. Drs. Stever and Latham, P.A. v. Nat'l Medical Enterprises, Inc., 672 F.Supp. 1489, 1521 (D.S.C. 1987.)

This is a counterclaim by a condominium owner's association; UTPA may only be raised individually and not in a representative capacity. There are no allegations of violations of practices declared unlawful by the UTPA statute. There is no public interest affected. There is no allegation that Turner's Marina engaged in unfair or deceptive conduct. And finally, the Association does not allege that it has an "ascertainable loss" of money or property as is required for UTPA. Wogan v. Kunze, 366 S.C. 583, 623 S.E.2d 107 (Ct. App. 2005.) The counterclaim alleging violations of the UTPA is denied.

Any requests for declarations, claims or counterclaims made in this matter, not hereinabove specifically addressed, are denied.

Having dealt with all requests for declarations, claims and counterclaims, I now turn my attention to both parties' requests for attorney's fees and costs. This was a difficult, complex case, based upon a very confusing set of recorded Covenants, litigated between passionate parties. I cannot fault either side for resorting to litigation given the confusing wording of the old Covenants and the changes in technology and the recreational vehicle industry that have occurred in the last 44 years that specifically impact several important issues in this case. I find that both sides made reasonable claims, defenses and arguments.

Under the recorded Covenants at paragraph 8.10, if any person violates the Covenants, the Association or the Developer may bring any proceeding at law or at equity against the entity violating the Covenants and seek its costs and reasonable attorney's fees. As are evident from my rulings set forth above, I have found that both Turner's Marina and the Defendant Association have prevailed on certain of their claims and thus find that equitably both sides should absorb their own attorney's fees and costs.

Due to the complexity and numerous issues in this case, the fact that both parties have indicated that they plan to file 59(e) motions, and the difficulty and time associated with the implementation of the order, this Court stays said implementation pending further Order of this Court or a ruling on the 59(e) motions. Either party may move for modification of the stay.

AND IT IS SO ORDERED this _____day of _____, 2025.

_____
Marvin H. Dukes, III
Circuit Court Judge

Beaufort Common Pleas

Case Caption: Turners Marina Llc VS R V Resort And Yacht Club Owners Association Inc

Case Number: 2020CP0700989

Type: Order/Other

So Ordered

s/Marvin H. Dukes III #2785