

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity for Aiken County

Case Number 2011-CP-02-00548

Three Runs Plantation Homeowners Association, Inc.,

Respondent,

vs.

Jay J. Jacobs and Judith B. Jacobs,

Appellants,

vs.

T.R. Sales Plantation, LLC and J. Wayne Raiford,

Respondents.

INITIAL REPLY BRIEF OF APPELLANTS

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May 22, 2014

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Reply Arguments

I. THE TRIAL COURT ERRED IN FINDING AS A FACT AND IN CONCLUDING AS A MATTER OF LAW THAT THE JACOBS VIOLATED ARTICLE III, PARAGRAPH 12 OF THE PROTECTIVE COVENANTS BECAUSE THIS PROVISION IS AMBIGUOUS AND UNENFORCEABLE.

The Respondents argue that Article III, Paragraph 12 of the Protective Covenants is not ambiguous. To support their argument the Respondents rely upon the testimony of several witnesses called by them to testify at the trial of this matter.

As set forth in their Brief for this matter the Jacobs submit that none of these witnesses are able to clearly outline a definite standard which would guide Three Runs Plantation property owners in attempting to comply with Article III, Paragraph 12 of the Protective Covenants. Granted, they testified that the Jacobs maintained their property in a fashion different from their own. They were, however, unable to state how such actions violated the written Protective Covenants.

Further, the recurring theme of such testimony is that the Jacobs fail to maintain their property in a "pasture-like setting". The Jacobs again suggest that there is nothing in the Protective Covenants for Three Runs which remotely imposes such a requirement.

The Jacobs again respectfully submit that Article III, Paragraph 12 of the Protective Covenants is, in fact, is ambiguous and cannot be enforced.

II. THE TRIAL COURT ERRED BY NOT ENTERING JUDGMENT AGAINST THE HOMEOWNERS ASSOCIATION FOR ITS FAILURE TO ABIDE BY AND EVENLY ENFORCE THE PROTECTIVE COVENANTS.

The Respondents do not dispute that Judge Griffith concluded that the Homeowners Association failed to abide by and enforce certain provisions of the Protective Covenants applicable to Three Runs Plantation. They argue, however, that the Jacobs have not sustained any damages as a result of such failures.

The Jacobs respectfully argue that there is no requirement that they establish any

particular damages in order to obtain a declaration that the Homeowners Association is not complying with the Protective Covenants. Such a declaration is certainly allowable under applicable law and without regard to whether or not the Jacobs have sustained any specific damages. Kinard v. Richardson, ___ S.C. ___, 754 S.E.2d 888 (Ct.App. 2014); Cullen v. McNeal, 390 S.C. 470, 702 S.E. 2d 378 (Ct. App. 2010). As such the Jacobs respectfully submit that the Court should enter judgment in their favor and with respect to this issue.

III. THE TRIAL COURT DID NOT ERR BY ALTERING ITS ORIGINAL ORDER BY DELETING CERTAIN LANGUAGE FROM ITS ORDER APPEARING AS THE LAST PARAGRAPH ON PAGE 17 OF THE ORDER DATED JULY 1, 2013 IN ITS ORDER DATED SEPTEMBER 20, 2013.

After Judge Griffith filed his initial Order for this case the Jacobs filed a Motion to Alter or Amend. (Notice of Motion and Motion to Alter or Amend). Judge Griffith granted that Motion in part, deleting any findings or conclusions with respect to the maintenance of an equestrian easement on the Jacobs' property.

The Respondents did not appeal Judge Griffith's decision in that regard. The Jacobs respectfully submit that this issue, therefore, is not before the Court. Johnson v. Lloyd, ___ S.C. ___, ___ S.E.2d ___ (Opinion No. 27383 Supreme Ct., 4/23/2014).

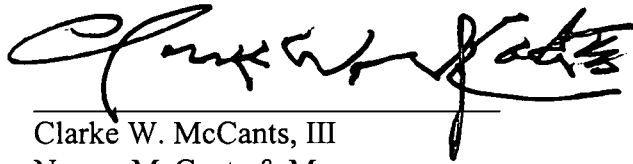
If this Court does entertain the Respondents request for review of this issue, the Jacobs respectfully submit that Judge Griffith correctly modified his initial ruling for this case. It is clear that the Homeowners Association has not complained nor sought relief with respect to the maintenance of the equestrian easement in question.

CONCLUSION

For the reasons stated above the Jacobs respectfully submit that the Trial Judge's Orders should be reversed to the extent that he found and concluded that Article III, Paragraph 12 of the Protective Covenants is enforceable and should be interpreted to give Mr. Raiford sole discretion to determine whether a violation of that provision has occurred. The Trial Judge's Order should further be reversed to the extent he found and concluded that the Jacobs have not complied with Article III, Paragraph 12 of the Protective Covenants. Finally, the Jacobs submit that the Trial Judge's Orders should be modified and judgment in their favor should be entered, in that the Trial Judge found and concluded that the Homeowners Association failed to comply with and enforce the Protective Covenants of Three Runs Plantation.

Respectfully Submitted,

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