

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.

SUPPLEMENTAL RECORD ON APPEAL

RECEIVED

JUL 14 2014

SC Court of Appeals

Wm. Byrd Warlick
James S. Murray
Warlick, Tritt, Stebbins & Murray, LLP
Post Office Box 1495
Augusta, Georgia 30903-1495
(706) 722-7543
Counsel for Respondents

Clarke W. McCants, III
Nance, McCants & Massey
Post Office Box 2881
Aiken, South Carolina 29802
(803) 649-6200 x21
Counsel for Appellants

INDEX

Trial Transcript

Testimony of John Garner.....1

Testimony of Laurie Garner.....3

Testimony of Mary Guynn.....10

Hearing

1 A Yes. I am.

2 Q Do you look at them to compare them with Three
3 Runs?

4 A Yes. I do.

5 Q And how do they compare?

6 A They're terrible. They're just in bad, bad shape.

7 Q How do the Three Run sales compare with the sales
8 in the competitive equestrian centers?

9 A Way, way, way above.

10 Q Do you have a idea, as to percentage of gross sales
11 in 2011 or 2012, that Three Runs accounted for?

12 A We accounted for all of -- all the communities that
13 we could find that had lots of four acres or above.

14 That figure was somewhere we had 70 percent of the
15 total sales over a period of time -- from 2003 on.

16 Q Okay. Are you familiar with the Jacobs' property?

17 A Yes. I am.

18 Q How often do you go by and see it?

19 A Almost every time we come out here since 2010.

20 Q How does it appear to you?

21 A It's a pretty piece of property. There's a mowing
22 problem with their property. You can drive along
23 and take a look and everybody else's grass is this
24 height and -- and theirs is higher. And they have
25 a bunch of little scrub trees growing in lots

001

1 a homeowners' association?

2 A No. I don't.

3 Q I mean, they may do a very good job of
4 participating as voting members of a homeowners'
5 association. Is that -- is that possible?

6 A It's possible.

7 Q All right. And if I understand correctly, your
8 understanding is that the residents of Three Runs
9 will not have voting rights in the homeowners'
10 association until 95 percent of the lots within the
11 development itself are sold; is that correct?

12 A That's true.

13 Q All right.

14 A And that's a very common situation with most
15 master-planned communities.

16 Q All right, sir. What I'm going to do is hand to
17 you the covenants, which I think have been marked
18 already.

19 MR. MCCANTS: Do you have them, Byrd?

20 MR. WARLICK: There's a set right here. I
21 think it's 2 or 3.

22 MR. MCCANTS: I don't want to crowd the record
23 with multiple copies of these. So I -- I'm
24 just going to try and go with his, Judge.

25 Bear with me just a second, Mr. Garner.

002

Hearing

1 Q How often do you get to Three Runs?

2 A We are there generally once a month.

3 Q And once a month do you ride throughout the
4 community?

5 A Always, yes.

6 Q Do you look at every -- ride on all the streets?

7 A Yes.

8 Q And, generally, how did the Jacobs' lot look in
9 comparison with all the other lots in Three Runs
10 Plantation?

11 A At the time their property became an issue for the
12 homeowners' association and the development, it was
13 noticeably different from the properties around it
14 -- immediately around it and as you drove through
15 the community, in general. It looked like it was a
16 -- a -- a neglected lot in the middle of cared-for
17 lots is the best way I can describe it.

18 Q Okay. And I'm going to hand you what's been marked
19 "other lots" and what's been marked "Jacobs" and
20 just ask you just quickly to thumb through them.
21 These are Photographs 1 through 15 that are marked
22 "December 2010, Jacobs." Now, I realize there's no
23 house showing in those photographs --

24 A Uh-huh.

25 Q -- but is that similar to the way the Jacobs'

003

1 helpful, and we get a lot of rain and great
2 growing, and it's crazy, and it has to have a -- a
3 second -- or a third mowing. But we try to keep it
4 to two, so.

5 Q Does the homeowners' association cut many
6 nonresidents' lots?

7 A Yes. Yes. There are, I would say, maybe 60
8 percent of the nonresident property owners the HOA
9 is cutting. And the other 40 percent have made
10 arrangements with other folks locally to do the
11 same.

12 Q I'll hand you what's been marked "Photographs 57
13 through 83," and ask you if that generally shows
14 other lots in Three Runs Plantation. And that date
15 is -- I don't have that date.

16 A Yes.

17 Q Have other homeowners in Three Runs complained to
18 you, either the directly or on the telephone or by
19 e-mail about the condition of the Jacobs' lot?

20 MR. MCCANTS: Object to hearsay.

21 MR. WARLICK: It's not for the truth of the
22 matter asserted, but the fact that there were
23 complaints, Your Honor.

24 MR. MCCANTS: Same objection.

25 THE COURT: I'll allow it. Go ahead.

004

1 Q We received -- when I say "we," the HOA received --
2 I have my file here -- maybe a dozen and a half or
3 so e-mails through that whole situation where there
4 were complaints about the Jacobs. And, you know,
5 from time to time, there'll be another property
6 that may get a little behind and may be behind the
7 curve of when the mowing gets done, and the place
8 may stand out. But 100 percent of the time, when
9 we send an e-mail -- I've had to do it recently --
10 send an e-mail, say, "Hey, your property needs
11 mowing again. Here's another reminder. Please let
12 us know your -- your plans." It's -- it's taken
13 care of within a week or so at the outside so --

14 Q Are you familiar with the other equestrian
15 residential communities in Aiken County?

16 A Yes, sir.

17 Q Do you visit them on a regular basis?

18 A We do. I -- I -- I want to say maybe twice a year
19 we try to get to each one. Depending on when we're
20 down for business, we will make up part of the day
21 going and checking the competition. So we try to
22 get to all of them at least a couple of times a
23 year.

24 Q Do you also check the multiple-listing reality
25 records of -- of lot sales in Aiken County?

005

1 A Uh-huh.

2 Q What percentage of those do you think are going to
3 testify they're okay with not having the right to
4 voice an objection -- a meaningful objection to
5 having the dues increased? You think everybody's
6 going to agree on that?

7 A I -- no. My instinct, because we're all human, is
8 nobody wants anything to ever increase.

9 Q Sure.

10 A But, you know, I think it also says in our
11 covenants that the dues can be increased.

12 Q Yeah. It also says that the homeowners'
13 association makes that decision, but --

14 A Right.

15 Q -- then no property owners have any right to say --
16 have any voting rights.

17 A Well, you know, if -- if I have a problem with that
18 kind of structure, then I probably shouldn't buy
19 there or any other master-planned community --

20 Q Okay.

21 A -- because they're all run the same way.

22 Q Have you read the covenants --

23 A Yes, sir.

24 Q -- through?

25 You think they're crystal clear?

006

1 some -- some counsel.

2 Q That's fair.

3 You're not saying Mr. Raiford intentionally
4 drew up --

5 A No.

6 Q -- covenants that weren't clear?

7 A As a matter of fact, these covenants, in part,
8 because of the kind of community it is -- being a
9 more pastoral setting and equestrian-oriented --
10 they're -- they're a lot less restrictive than a
11 lot of covenants that you see in places.

12 Q But they're not clear, are they? Be honest.

13 A They're -- they're as clear as any I've ever read.
14 I don't want to say they're not clear. None of
15 them are ever clear --

16 Q Okay.

17 A -- completely clear.

18 Q All right. Let me shift and talk a little bit
19 about the amenities, if I can. If I understand
20 your testimony correctly, the tennis courts and the
21 fitness center are off the table at Three Runs --

22 A No.

23 Q -- is that correct?

24 A No.

25 Q Is that your understanding?

007

1 Q Yeah.

2 A -- are to put guidelines in place for a -- an area
3 of property that's planned as a community as a
4 whole, to oversee the properties: the types of
5 things that are built in there, the amenities that
6 may be in there and use of those.

7 Q Are -- are potential buyers interested in those
8 covenants?

9 A I -- my experience, once people get to a point
10 where a -- a -- a community is of real interest to
11 them, it's one of the first things they want to see
12 and want to read through.

13 Q And -- and part of what they want to see and read
14 through is not only, "What can I do?" but, "What
15 can my neighbors not do?"

16 A Absolutely. Absolutely. You know, there's --
17 there's lots of places to go buy property where
18 there are no restrictions whatsoever, as we all
19 know. And, when you buy into a master-planned
20 community, you know and the public knows -- they're
21 -- they're very well-educated, particularly in the
22 last 15 years or so with the Internet. They know
23 that a master-planned community is going to have a
24 feel to it, a lifestyle to it. Some communities
25 would even dictate the type of architecture that

008

1 you can build or the color that you can build. And
2 people know that. So, if they're into that kind of
3 lifestyle and that kind of protection, if you will,
4 those are the kinds of communities they buy in.
5 And if they don't want restrictions or they don't
6 care if somebody has a boat in their driveway or a
7 trailer in their driveway or whatever, they buy
8 other places that don't have those restrictions.

9 Q And so the purchasers expect the developer to
10 enforce those restrictions; do they not?

11 A It's one of the key things in protecting the value
12 of the place so we can continue to sell property
13 and people that have bought property can protect
14 their investment. The curb appeal, as a community
15 grows, is the most important element of the
16 property values there. It even becomes more
17 important than the amenities that it has.

18 Q On your occasions, when you went to Mount Vintage
19 [sic], did you ever notice the curb appeal of the
20 Jacobs' property?

21 A I did.

22 Q And what was it?

23 A The first time that it caught my and John's
24 attention, it was -- it was not looking real good.
25 As a matter of fact -- I tried to find it in my

009

1 purchaser if it's in their deed records?

2 A. Yes.

3 Q. Explain to us how that works.

4 A. Any documents that are recorded are deemed to
5 give the purchaser of property record notice. So,
6 even if a purchaser does not make the effort to obtain
7 the restrictions, they are deemed to be put on record
8 notice of those restrictions, and they are contract
9 with the purchaser and the other owners to comply with
10 those covenants.

11 Q. So, if I buy a lot in a subdivision that has
12 restrictive covenants, is that a contract that I have
13 with the seller, to abide by the covenants?

14 A. If your seller is the developer, yes.

15 Q. What about one of the other purchasers in the
16 same subdivision?

17 A. Yes, it is also an agreement between you and
18 those people, as well.

19 Q. Who can enforce a restrictive covenant on
20 real estate?

21 A. In general, anybody that is bound by those
22 restrictive covenants may enforce them, as well as the
23 developer and the homeowners association.

24 Q. If I, for instance, bought into a subdivision
25 and violated the covenants, any other homeowner in the

010

-73-

1 that Three Runs is far and away selling a lot more
2 lots than all of the other equestrian subdivisions
3 combined, and they have been for several years.

4 Q. So, it's been a successful development?

5 A. It's been very successful, yes.

6 Q. How do you determine if a development is
7 successful? What are we talking about?

8 A. There are several factors. One of them would
9 be the rate of sale. But also equally important is
10 the level of satisfaction with the owners in the
11 development.

12 Q. You said Three Runs has been more successful
13 than the other equestrian centers combined?

14 A. Yes.

15 Q. How many other equestrian residential
16 communities are there in Aiken County?

17 A. There are at least 10. There are two -- two
18 or three that have amenities that might be comparable
19 to Three Runs, in terms of the amenities that they
20 offer, because they offer more than just trails. But
21 there are more than 10 equestrian developments in
22 Aiken County.

23 Q. How big is Three Runs -- when you did the
24 covenants -- you amended them, I think you said, nine
25 times?

011

-85-

PAMELA N. POPE, CCR, CVR-M

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable 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.

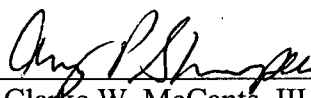
T.R. Sales Plantation, LLC and J. Wayne Raiford,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Supplemental Record on Appeal on counsel for the Respondents, Wm. Byrd Warlick, Esquire and James S. Murray, Esquire by depositing a copy of the documents in the United States Mail, postage prepaid, on June 27, 2014 addressed to Wm. Byrd Warlick, Esquire and James S. Murray, Esquire, Warlick Tritt Stebbins & Murray, LLP, P. O. Box 1495, Augusta, GA 30903.

June 27, 2014


for Clarke W. McCants, III
P. O. Box 2881
Aiken, SC 29802-2881
(803) 649-6200
Attorney for Appellants

RECEIVED
JUN 30 2014
SC Court of Appeals