

STATE OF SOUTH CAROLINA FILED-RECEIVED  
COUNTY OF YORK 2014 SEP 29 AM 9:12 THE COURT OF COMMON PLEAS

Morningstar Fellowship Church,  
Plaintiff, )  
DAVID HAMILTON  
C.C.R. & GS  
YORK COUNTY, SC )

vs. )

York County, South Carolina, )  
Defendant. )

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ORDER ON MOTION  
TO ALTER OR AMEND  
(RULE 59(e), SCRCP)

SC Court of Appeals

Case No. 2013CP4600246

This matter came before me on September 18, 2014, upon motion of Defendant, York County, pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the ruling in the Court's Order filed July 17, 2014. Representing Plaintiff was Richard B. Fennell, and representing Defendant was Daniel J. Ballou.

The purpose of Rule 59(e), SCRCP, is to request the trial judge to "... reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. *See Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009); *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009).

Upon reviewing the record, particularly the specific deposition testimony and exhibits cited by Plaintiff, and the arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the Order. I further find no basis for reconsideration or amendment of the ruling in the prior Order. However, I make the following comments for clarification. In doing so, I incorporate by reference the entirety of the factual background, discussion and analysis set forth in the prior order.

I reiterate that there is no genuine issue of fact concerning approval of the Morningstar site plan. Further, it is clear that such approval status was understood by Morningstar's agent, namely, its engineer responsible for the project, who is the person to whom the County would normally communicate notice of approval. It also appears that Morningstar's Pat Selvey was aware of approval. Morningstar's reliance on its assertion of an understanding that notice was accomplished, and the critical 180 day time period commenced, only upon receipt of a "stamped"

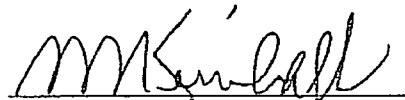
set of plans is misplaced. The language of the parties' agreement imposes no such requirement, and such a requirement is refuted by, and inconsistent with, the deposition testimony of Morningstar's engineers. The engineers anticipated a post-approval, but pre-construction, meeting prior to delivery of "stamped" sets of plans, which did not occur.

I view the only issue to be whether reasonable notice of approval was communicated, and knowledge of such approval was received, by Morningstar, either directly, or its agent. Applying, as is required, the very stringent "scintilla" standard, I do not believe summary judgment is appropriate to remove the issue of sufficiency of notice from consideration by the fact finder. As already stated in my prior order, I do not intend to suggest that the notice given and relied upon by the County was not sufficient, only that the applicable standard of review precludes summary judgment on that issue under the facts of this case.

Therefore, it is ordered that Plaintiff's Motion for Reconsideration (Rule 59(e), SCRCPP) be, and the same hereby is, denied.

AND IT IS SO ORDERED.

September 25, 2014

  
S. Jackson Kimball  
Special Circuit Court Judge  
York County

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