

STATE OF SOUTH CAROLINA)
 :
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
C.A. NO.: 2012-CP-18-2583

LIVE OAK VILLAGE HOMEOWNERS)
ASSOCIATION, INC.; JENNIFER)
McFARLAND; CARLTON HOLCOMBE)
and UTE HOLCOMBE,)

Plaintiffs,)

-versus-)

THOMAS MORRIS; DAVID)
HANNEMANN; SOFIA MAZELL and)
MICHAEL MAZELL,)

Defendants.)

SOFIA MAZELL and MICHAEL)
MAZELL,)

Third-Party Plaintiffs)

-versus-)

WILLIAM McFARLAND,)

Third-Party Defendant)

**ORDER GRANTING, IN PART,
MORRIS' AND HANNEMANN'S
AMENDED MOTION FOR SUMMARY
JUDGMENT**

RECEIVED
MAR 20 2015
SC Court of Appeals
2015 MAR 13 9:26
FILED-RECORDED
CLERK OF COURT
DORCHESTER COUNTY

On January 29, 2015, Defendants Thomas Morris and David Hannemann (collectively referred to as "Defendants") came before the Court on their Amended Motion for Summary Judgment as to all of the Plaintiffs' claims pursuant to South Carolina Rules of Civil Procedure Rule 56. After considering oral arguments and written briefs, the Court grants Defendants' Amended Motion for Summary Judgment in part based on the following findings:

1. Ute Holcombe lacks injuries and damages to support her claims.

2. The HOA failed to follow conditions precedent before filing suit and therefore lacks standing to bring this claim.
3. Plaintiffs Jennifer McFarland and Carlton Holcombe lack standing to bring their claims pursuant to the Uniform Declaratory Judgments Act.

BACKGROUND AND RELEVANT FACTS

This action arises out of disputes between homeowners of the Live Oak Village subdivision located in Summerville, South Carolina. The common areas, which include the entrance, cul-de-sac, and two driveway easements, are maintained and owned by the Live Oak Village Homeowners Association, Inc. ("HOA"). The documents governing the HOA and its actions include: the Declaration of Covenants and Restrictions for Live Oak Village, Summerville, South Carolina, which incorporates the By-Laws of Live Oak Village Homeowners Association, Inc., and the Amendments to the Declaration of Covenants And Restrictions for Live Oak Village, Summerville, South Carolina.

The HOA is governed by the Board of Directors ("BOD"), which is comprised of three, elected directors. A majority of the number of directors, or two directors, constitutes a "quorum." Any action taken by the BOD requires a majority vote, or a vote of at least two directors, at a meeting in which a quorum is present. The BOD may take action without a meeting; however, such actions require written approval of all three BOD directors.

The HOA is responsible for "tak[ing] any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the [HOA] in any covenants or restrictions applicable to the Subdivision." In order to bring suit against any party, the By-laws of the Live Oak Village Homeowners Association requires that a majority vote, or the vote of two (2) of the three (3) directors, to bring

suit. The By-laws create a condition precedent before any act is an official or authorized act of the HOA.

William McFarland, purportedly on behalf of the HOA, and three individual homeowners, Jennifer McFarland, Carlton Holcombe, and Ute Holcombe, brought this action against the Defendants for a declaratory judgment and on allegations of conspiracy. Although this suit was brought by the HOA, neither the HOA nor the BOD followed the By-laws and voted to bring suit. Further, Plaintiffs have not produced any evidence that the three BOD directors gave written approval outside the context of a meeting to bring this suit.

In their declaratory judgment claim, the Plaintiffs seek to enjoin and prohibit “Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority” as board members. The Plaintiffs claim that they “will suffer irreparable damage to their ability to reside at their property” if the Defendants are not enjoined. Outside of damages associated with their ability to reside at their property, Plaintiffs claimed no other injury or damages under their declaratory judgment claim. All three individual Plaintiffs admitted that they still have full and uninterrupted access to the common elements and to their property. Further, the individual Plaintiffs testified they all still reside in their Live Oak Village residences.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” Etheredge v. Richland School Dist. One, 534 S.E.2d 275, 277 (S.C. 2000). “In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the nonmoving party.” Id. “When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be

granted.” Singleton v. Sherer, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008). “The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Richardson v. The State Record Co., Inc., 499 S.E.2d 824-25 (S.C. Ct. App. 1998). “

LAW AND ANALYSIS

1. Ute Holcombe lack damages to support her claims.

In her deposition, Mrs. Holcombe testified that she had no independent knowledge regarding either of her claims and that she was not seeking any independent injury or damages related to her claims. As Mrs. Holcombe has no independent knowledge of the allegations regarding her claims and is not seeking or alleging any injury or damages related to her claims, the Court holds that Mrs. Holcombe’s claims cannot succeed. ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008); Benedict Coll. v. Nat’l Credit Sys., Inc., 400 S.C. 538, 545, 735 S.E.2d 518, 521 (Ct. App. 2012). Therefore, the Court grants Defendants’ Motion for Summary Judgment as to all of Ute Holcombe’s claims and dismiss Ute Holcombe as a party Plaintiff.

2. The HOA failed to follow the requirements as set forth in the By-Laws and therefore, the HOA lacks standing to bring suit against Defendants.

“A condition precedent entails something that is essential to a right of action, as opposed to a condition subsequent, which is something relied upon to modify or defeat the action.” Worley v. Yarborough Ford, Inc., 317 S.C. 206, 210, 452 S.E.2d 622, 624 (Ct.App.1994) (citing 4 S.C. JURIS. Actions § 25 (1991)). A right of action does not arise until such conditions precedents are met. Id.; see also Metal Serv. Corp. v. Indus. Elec. Co., 253 S.C. 507, 510, 171 S.E.2d 703, 704 (1970); Floyd v. St. Paul Fire & Marine Ins. Co., 285 S.C. 148, 149, 328 S.E.2d 132, 132 (Ct. App. 1985). The HOA failed to follow its own By-Laws and condition precedents

before instituting this suit. Any official action by the HOA requires a majority vote, or the vote of two (2) of the three (3) directors. (Ex. C §5(C)) Mr. McFarland, as the 30(b)(6) deponent for the HOA, testified that no such discussion or vote occurred prior to bringing suit. As no such vote occurred, the conditions precedent set out in the By-Laws were not met and the HOA's right of action did not arise. Therefore, the Court holds that the HOA lacked standing to bring this lawsuit and dismisses the HOA as a Plaintiff. Worley, at 210, 452 S.E.2d at 624.

3. Jennifer McFarland and Carlton Holcombe lack standing to bring their declaratory judgment claim as they have not suffered an injury in fact and lack a justiciable controversy

a. Plaintiffs have not suffered and "injury in fact"

The Supreme Court has provided a three-part test to establish constitutional standing:

First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

ATC S., Inc. v. Charleston Cnty., 380 S.C. 191, 195-96, 669 S.E.2d 337, 339 (2008) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130 (1992)). The Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe fail to satisfy the three part test for standing.

First, Mrs. McFarland and Mr. Holcombe claim that they "will suffer irreparable damage to their ability to reside at their property" unless the Court "enjoins and prohibits Defendants Thomas Morris and David Hannemann from continuing to act outside their scope of authority." In fact, both Mrs. McFarland and Mr. Holcombe testified that the only injury they were claiming related to the declaratory judgment action was their the ability to reside at their residences:

Q. And as part of that cause of action, it says: The Plaintiffs will suffer irreparable damage to their ability to reside at their property. Is that the – is that the only injury that you are claiming in this case?

A. With reference to Hannemann and Morris?

Q. For the declaratory judgment action, yes ma'am.

A. Yes I believe so.

J. McFarland dep. 25:6 – 15.

Q. But my question to you is: Is there any other – the only injury that's been alleged is that the plaintiffs have suffered irreparable damage to their ability to reside at their property. Is there any other injury that you are claiming as a result of these actions?

A. Not at this time.

C. Holcombe Dep. 44:7- 13. However, both Plaintiffs still have full and uninterrupted access to the common elements and to their property and continue to reside in their homes at Live Oak Village. Thus, the Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe have not suffered an "injury in fact" but instead allude to a conjectural or hypothetical injury.

As to the second requirement, Plaintiffs Mrs. McFarland and Mr. Holcombe failed to allege how Defendants' actions hinder Mrs. McFarland and Mr. Holcombe's ability to reside at their property. With no traceable or alleged connection between actions of the Defendants and the alleged injury, the Court finds that Plaintiffs Mrs. McFarland and Mr. Holcombe fail to meet the second element required for standing. ATC S., at 195-96, 669 S.E.2d at 339.

Lastly, a declaration by the Court regarding whether or not the Defendants are acting outside the scope of their authority will not change or redress Plaintiffs' ability to reside at their residence as they are all currently residing, unimpeded at their residence.

As Plaintiffs Mrs. McFarland and Mr. Holcombe fail to satisfy all three prongs of the test to establish standing, this Court finds that Mrs. McFarland and Mr. Holcombe have not suffered an injury in fact, so they lack standing to bring the declaratory judgment claim in their individual capacities. ATC S., at 195-96, 669 S.E.2d at 339.

b. Plaintiffs lack a justiciable controversy

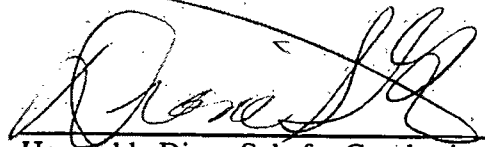
“Before a court may render a declaratory judgment, an actual, justiciable controversy must exist. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.” Carolina Alliance for Fair Employment v. S. Carolina Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 488, 523 S.E.2d 795, 801 (Ct. App. 1999). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party. Graham v. State Farm Mut. Auto. Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing Power, at 153-54, 177 S.E.2d at 553). “An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act.” Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004) (citing Power, at 154, 177 S.E.2d at 553).

A declaratory judgment action does not require financial damages; but it does require a justiciable controversy. Plaintiffs Mrs. McFarland and Mr. Holcombe claim that unless the Court “enjoins and prohibits [Defendants] from continuing to act outside their scope of authority,” Plaintiffs “will suffer irreparable damage to their ability to reside at their property” Yet Plaintiffs Mrs. McFarland and Mr. Holcombe’s access to their property has not been impeded and they both continue to reside at their residences. Plaintiffs Mrs. McFarland and Mr. Holcombe also fail to state how their rights have been impacted as they testified that their right to reside at their residences has not been hindered, threatened, or impeded. Thus, any declaration by the Court would only be advisory in nature and is beyond the intended purpose and scope of the Uniform Declaratory Judgments Act. Sunset Cay, at 423, 593 S.E.2d at 466. As such, the

Court finds no justiciable controversy exists, and grants Defendants' Motion as to Plaintiffs Mrs. McFarland and Carlton Holcombe's declaratory judgment claim.

THEREFORE, the Court finds that Ute Holcombe has neither suffered nor pled any injury or damages to support her claims and therefore she cannot maintain any of her claims. The Court grants summary judgment as to all of Ute Holcombe claims and she is dismissed as a party Plaintiff. The Court finds that the HOA failed to follow conditions precedent to bring any claims and as such lacked standing to bring this suit. The Court grants summary judgment as to all of the HOA claims and the HOA is dismissed as a party Plaintiff. Lastly, the Court finds that Jennifer McFarland and Carlton Holcombe lack standing to bring a declaratory judgment action, as they have not suffered an injury in fact and any declaration would only be advisory. The Court grants summary judgment for all of the declaratory judgment actions. As such, the only remaining claim against Mr. Morris and Mr. Hannemann is a claim for conspiracy asserted by Mrs. McFarland and Mr. Holcombe.

IT IS THEREFORE ORDERED that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants Thomas Morris and David Hannemann's Amended Motion for Summary Judgment is GRANTED in part.



Honorable Diane Schafer Goodstein
First Judicial Circuit

St. George, South Carolina
This 12 day of March, 2015

For Clerk of Court Office Use Only

This judgment was entered on **3/13/2015**, and a copy mailed first class or placed in the appropriate attorney's box on **3/13/2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Peter Brandt Shelbourne 131 E. Richardson Ave.
Summerville, SC 29483
Jason Alan Daigle 25 Calhoun Street Suite 400 Charleston,
SC 29401

William B. Jung 1156 Bowman Rd. Ste. 200 Mt. Pleasant,
SC 29464
**Lydia Pruitt Davidson/Lydia Pruitt Brooks/Leonard
Krawcheck** 9 State Street Charleston, SC 29401
**Morgan S. Templeton/William ("Trey") Wharton Watkins
Jr./Katherine Anne Stanton** PO Box 1200 Charleston, SC
29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

***A filed copy of attached order was also emailed to all counsel
on 3/13/2015**

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
