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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
DeAndrea Gist Benjamin, Circuit Court Judge
Case No. 2013-CP-400-1643

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MAY 01 2015
SC Court of Appeals

Appellate Case No. 2014-000583

Samuel T. Brick, Appellant

v.

Richland County Planning Commission and Fairways Development, LLC,
Intervenor, Respondents

APPELLANT'S RETURN TO FAIRWAYS DEVELOPMENT, LLC'S
MOTION FOR SUBSTITUTION ON APPEAL

Respondent/Intervenor Fairways Development, LLC requests this Honorable Court for an Order under Rule 265 (c), SCACR "substituting or adding SPPLA, LLC" a North Carolina corporation, as a respondent in this appeal. Rule 265 (c) is only an authority to substitute when approved by the Court.

Intervenor/Respondent's participation in this matter is as a result of its motion to the lower court filed on June 14, 2013, two and a half months after SPPLA, LLC gained ownership of the first phase of the development and six

months after it sold the property to Longcreek Associates, LLC. These property transactions remained hidden by Intervenor/Respondent until May 28, 2014, when it filed with the lower court under Rule 241, SCACR, to lift the stay. The Rule 241, SCACR motion included an affidavit that inferred change of the project property ownership. Property transfers following a county's approval of a project development are prohibited by Section 6-29-1190 of the S.C. Code unless the approved plats are recorded as of the date of the sales. This is a criminal provision. Appellant had no knowledge of any such recording until the Rule 141, SCACR motion. Intervenor/Respondent further did not inform the lower court instead, in its motion to intervene in the circuit court action stated "In this case, Fairways owns the property which is the subject of Brick's appeal and the outcome of the property may affect Fairways ability to develop and use the property." In fact it did not own "the" property but only a portion of it. It also did not reveal that the first phase of the property, the portion that SPPLA,LLC owned, was the only property that was planned at the time for development. In the lower court's Order on Fairways' intervention, filed December 17, 2013, a year after Fairways sold the phase one property to a developer (the sketch plans were prepared for the first purchaser), the Court after setting out guidelines for such intervention stated, "As *the* owner of the property at issue, Fairways has an interest in the property." (Emphasis added). It also stated, "Finally, as the landowner and developer of the property, Fairways' has a different perspective than the Richland County Planning Commission serving as the interpreter of its

ordinances.” Appellant did not object to the intervention, only that the intervention should not be as a necessary party. The Court’s Order was to join Fairways as such a necessary party.

Intervenor/ Respondent Fairways now admits that it never really was owner and developer of the property at least never for the first phase of development, an area that SPPLA, LLC wants to develop as if it were zoned high density rather than under its required district low density zoning limits. The lower court’s decision to dismiss the appeal is based on Appellant not joining Fairways as the project property developer within the period within which he had to appeal. That is one of the issues before this Court. Fairways Development, LLC’s admission in this motion that it is not such a property-owner developer is a major consideration in the appeal. Appellant requests that in any ruling it has on the Motion that Appellant be permitted to amend his briefs to address this added factor, a factor that had the lower court known of it might have come to a different result. Appellant would have addressed this had he been so informed. Fairways’ intent to keep this secret is evidenced in part by it not filing to lift the stay until just after Appellant filed his initial brief. Once filed, he is not allowed to change his brief. Appellant had no reason to believe that SPPLA, LLC was the developer in the matter. It has been a phantom throughout the project review and only became an owner after Appellant filed the appeal with the lower court (March 18, 2013). Appellant consistently has argued that he did not join any party to the appeal because there was no evident party capable of joining who was

the project developer. The hidden property transactions for just this first phase of development substantiate this. An additional issue arises as to the viability of the county's Green Code procedures when one part of the project is owned and being developed based on set asides in other areas of the project owned by other parties. There do not appear to be any Green Code restrictions that subsequent owners to the other Green Code areas are held to the set asides. Aside from this Appellant alleges that the project still has not met the county's Green Code requirements or its relaxed zoning provisions, matters on which it craves the lower court's review. These matters now have been briefed before the Court and are ready for its review pending clarification of an Order regarding an amended record.

SPPLA, LLC's basis for the request is so it can protect and advocate its interest during the pendency of this appeal. Fairways Development, LLC argues that Appellant has no standing and that this Court lacks jurisdiction to hear the appeal. It furthermore alleges Appellant has delayed the proceedings. These issues are before the Court in separate concurrently-filed motions.

Respondent/Intervenor infers that SPPLA, LLC has wanted to develop the property since it bought it. Appellant filed the initial appeal from the Planning Commission's denial of Appellant's appeal to it on March 18, 2013. SPPLA, LLC knew or should have known of the appeal and the issues surrounding it.¹ When it purchased the property it should have known that the Richland County Development Review Team approved a planned project that basically changes the

¹ See *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 714 S.E.2d 869 (2011).

zoning for the lot it purchased without using the legislative zoning procedures required in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (§ 6-29-840 of S.C. Code). SPPLA, LLC knew that the County Planning Director ignored the County's Green Code bonus provisions for set asides and its requirements that mandated 50% pervious surfaces for any Green Code developed areas. It knew that this State's highest court ruled both in 2009 and 2010 that when a local government provided a program for relaxed zoning it had to use it and meet its requirements. ²

SPPLA, LLC has quietly stood by while the issue of project ownership was briefed and argued before the Circuit Court and during the process of compiling a record and briefings in this Court. Intervenor/Respondent already filed its Final Brief and Appellant has filed his Final Brief and a Final Reply Brief.³ Two Records already have been filed and a second amended record is awaiting clarification as to the Court's direction as to among other things whether title to the property should be brought to the attention of the Court. The standing and jurisdiction issues have been briefed by all parties to the proceeding and are briefed in answers to separate concurrently-filed motions. Attorney for Intervenor/Respondent now appears that he wants again to argue the matter on behalf of SPPLA, LLC.

² See *Sinkler v. County of Charleston*, 387 S.C. 67, 690 S.E.2d 777 (1910) and *Mikell v. County of Charleston*, 386 S.C. 153, 687 S.E.2d 326 (2009).

³ These briefs may need to be filed again to comport with an Amended Record currently under review.

Fairways states if SPPLA, LLC is added to the appeal SPPLA, LLC would file with the lower court to lift the automatic appellate stay. Again, Rule 265 (c) does not address adding parties to an appeal. Fairways already has moved two times to lift the stay. On June 13, 2013, it filed such a Motion with the lower court. After briefs were prepared and filed, on August 30, 2013, at the lower court's hearing on the motion, Fairways withdrew it. Again, on May 28, 2014, just a few days after Appellant had filed his initial brief, Fairways filed a Motion under Rule 241, SCACR, for the same relief. Briefs were prepared and filed and the matter was scheduled for a hearing on September 8, 2014. On August 25, 2014, the lower court sent correspondence that "Due to conflicts, it has been necessary to cancel the hearing, listed above. Parties will be notified of the date and time this hearing has been rescheduled." There has been no subsequent rescheduling of a hearing on the motion since the notice eight months ago.

Intervenor/Respondent alleges dilatory tactics by Appellant in extending the appellate process. The respondents however have filed several motions during the appellate process delaying the proceedings. The respondents failed to meet this Court's previous Order to file their briefs within thirty days of Appellant's filing an amended appeal. Appellant filed the Amended Appeal expeditiously rather than taking the entire period within which it was allowed. Appellant has attempted to meet this Court's requirements absorbing additional costs with the need to meet deadlines while waiting actions on motions. Most of the recent litigation has revolved around Respondents' demands for ministerial issues and

additions to the Record in order that this Court can see the changes in ownership. Appellant consistently has prosecuted this action with vigor. He has stated in his pleadings that he does not object to development of the project areas provided they meet the requirements and provisions of the Green Code and applicable county zoning laws.

Appellant objects to this Motion to add or substitute. It is unnecessary as all issues Fairways states have been briefed and the Record is almost complete. The addition of SPPLA, LLC to the matter would only provide Fairways further delay in the matter with additional briefs ostensibly prepared by the same counsel with opportunity for further arguments on the same issues. It is not authorized under the Rules. Substitution of interest would remove a party that has alleged ownership of the property and it had to be joined in the lower court. Instead of substituting the party, Appellant suggests approving Appellant's appeal and sending the matter back to the lower court for its action on Appellant's appeal.

Appellant respectfully requests this Honorable Court deny the motion and allow Appellant to amend his briefs to address the ownership issues.

Very respectfully submitted,



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May 1, 2015
Date

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CERTIFICATE OF SERVICE

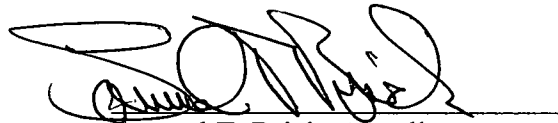
Samuel T. Brick, Appellant pro se hereby certifies that the undersigned Appellant, pro se, served a copy of Appellant's Return to Fairways Development, LLC's Motion for Substitution on Appeal upon the parties to this action by depositing a copy of same, enclosed in a First Class postpaid prepaid envelope addressed to the attorneys of record in a post office or official postal depository

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under the exclusive care and custody of the United States Postal Service, on May
 1 , 2015, addressed in the following manner:

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A handwritten signature in black ink, appearing to read 'Samuel T. Brick', is written over a horizontal line. The signature is stylized and cursive.

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