STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No.: 2011-CP-07-2497

QUARTERMASTER AT BROAD CREEK LANDING OWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

BROAD CREEK LANDING HORIZONTAL PROPERTY REGIME,

Defendants.

ORDER

ending case

This case arises out of a dispute surrounding monthly assessments charged to owners of real property at a development known as "Quartermaster" pursuant to a binding contract called the Reciprocal Easement and Amenity Use Agreement ("Agreement"). This matter is presented as a declaratory judgment seeking an Order regarding the "proper monthly fee charged to Quartermaster owners" and an action seeking a refund for any "overcharged assessments and fees charged" under the Agreement.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. Parties to a contract have the right to construct their own contract without interference from courts to rewrite or torture the meaning of the policy to extend coverage. If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. When a contract is unambiguous a court must construe its provisions according to the terms the parties used; understood in their plain, ordinary, and popular sense." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495 (2003) (*internal citations omitted*). It is a question of law for the court whether the language of a contract is ambiguous. McGill v. Moore, 381 S.C. 179, 185 (2009).

1 of 2

The Agreement provides in pertinent part:

> Monthly Assessment for Improved Lots. Each improved lot within the Quartermaster property, shall pay unto the Regime a monthly assessment amount equal to its pro rata share, if such dwelling unit were an "Average Unit" within the Regime provided further that the budgetary line items entitled "Building Maintenance" and "Termite Bond" are subtracted from the monthly regime fee for the "Average Unit" and provided further that, two thirds (2/3) of the "Property Insurance" line item from the "Average Unit" monthly regime fee is subtracted.
>
> Monthly Assessment for Unimproved Lots Owned by Third Party Purchaser from Quartermaster Within Quartermaster Property. Monthly assessment of unimproved lots owned by third party purchaser from Quartermaster within Quartermaster property shall be 25% of the monthly assessment for improved lots.
>
> "Average Unit" is defined in the Agreement as the "total combined assessment for all regime property owners divided by the number of regime property owners."

This matter was tried before me on October 1, 2013. At trial the parties presented testimony as well as other evidence. After consideration of all evidence, I hereby find that the Agreement is valid and binding as well as clear and unambiguous regarding calculation of assessments. Specifically, the Agreement is clear and unambiguous that: a.) "Average Unit" does not include Quartermaster property as by definition it only includes property that is part of the Broad Creek Landing horizontal property regime, and b.) assessments are to be calculated using the same budget as the calculation of the monthly assessment for the "Average Unit."

Further, I find no persuasive evidence that Defendant has at any time miscalculated assessments or inappropriately charged owners of property at Quartermaster under the Agreement.

AND IT IS SO ORDERED.

Marvin H. Dukes, III
Master-In-Equity

Tuesday, September 30, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	Civil Action No.: 2011-CP-07-2497

QUARTERMASTER AT BROAD CREEK LANDING OWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

BROAD CREEK LANDING HORIZONTAL PROPERTY REGIME,

Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR A NEW TRIAL AND/OR AMENDMENT OF JUDGMENT

This matter is before the Court on Plaintiff's Motion for a New Trial and/or Amendment of Judgment filed October 14, 2014. According to the Motion filed by Plaintiff, "The ground for the Motion is that the Lower Court [SIC] failed to rule on certain material issues, all of which were raised in the trial that occurred on October 1, 2013."

In its Order Ending the Case, this court held *inter alia*:

> Specifically, the Agreement is clear and unambiguous that: a.) "Average Unit" dos not include Quartermaster property as by definition it only includes property that is part of the Broad Creek Landing horizontal property regime, and b.) assessments are to be calculated using the same budget as the calculation of the monthly assessment for the "Average Unit." Further, I find no persuasive evidence that Defendant has at any time miscalculated assessments or inappropriately charged owners of property at Quartermaster under the Agreement.

These rulings are dispositive of the issues raised by the pleadings and the specific issues raised by Plaintiff's current motion are moot. The Court has carefully reviewed the evidence and testimony submitted at the trial of this case, and has considered all filings related to this Motion (except new evidence offered after the Court's Order Ending the Case filed September 30, 2014) and finds no reason to reconsider its earlier ruling on the merits for the reasons set forth in its

1/15 A

earlier Order and as further explained herein. Therefore, the Motion for a New Trial and/or Amendment of Judgment must be denied. The Court takes this opportunity, however, to further explain its ruling, and specifically address the issues raised by Plaintiff's Motion.

FINDINGS OF FACTS

1. Broad Creek Landing is a development made up of condominiums as well as fee simple properties known as "Quartermaster."

2. The Plaintiff Quartermaster at Broad Creek Landing Owners Association, Inc. ("Plaintiff or Association") was administratively dissolved on December 28, 1998.

3. The condominiums are organized into a regime known as the Broad Creek Landing Horizontal Property Regime ("Regime" or "Defendant").

4. Owners of the fee simple properties of Quartermaster ("Quartermaster Owners") pay to the Defendant Regime monthly assessments pursuant to an agreement known as the Reciprocal Easement and Amenity Use Agreement ("Reciprocal Agreement").

5. The Reciprocal Agreement (dated December 20, 1990) provides for the calculation of monthly assessments for Quartermaster Owners pursuant to Article IV which states in pertinent part:

   a. Section 4.2 provides "...each owner of a lot within Quartermaster shall pay to the Regime or its authorized agent, a monthly assessment of $100 per each dwelling unit and $25 per each unimproved lot, both expressed in December 1990 Inflation Indexed Dollars...."

   b. Section 4.2(b) provides, "In determining the amount of the monthly assessment payable by a lot owner within Quartermaster to the Regime for any current year,

the Regime may, in its discretion, set an amount different from the immediately preceding year's assessment in accord with the following standards:

1. Monthly Assessments for Improved Lots. Each improved lot within the Quartermaster property, shall pay unto the Regime a monthly assessment amount equal to its prorata share, if such dwelling unit were an "Average Unit" within the Regime provided further that the budgetary line items entitled "Building Maintenance" and "Termite Bond" are subtracted from the monthly regime fee for the "Average Unit" and provided further that two-thirds (2/3) of the "Property Insurance" line item from the "Average Unit" monthly regime fee is subtracted.

2. Monthly Assessment for Unimproved Lots Owned by Third Party Purchaser from Quartermaster. Monthly assessment for unimproved lots owned by third party purchaser from Quartermaster within Quartermaster property shall be 25% of the monthly assessment for improved lots.

6. "Average Unit" is defined in the Agreement as the "total combined assessment for all regime property owners divide by the number of regime property owners."

7. IMC Resort Services ("IMC") is the association manager for the Broad Creek Landing Development and is an expert in the field of Association Management.

8. IMC calculates the assessments for Quartermaster Owners pursuant to the Reciprocal Agreement and has done so for the past seventeen (17) years.

9. Quartermaster Owners have been made aware of how their Quartermaster fees are calculated in writing every year since 1997.

This matter came before the court for trial of the issues raised in Plaintiff's Complaint brought pursuant to the South Carolina Declaratory Judgments Act seeking a judicial interpretation of the Reciprocal Agreement and claiming damages for alleged incorrectly charged assessments.

ANALYSIS

I. The assessments for Quartermaster Owners have been properly calculated pursuant to the Reciprocal Agreement.

The First Cause of Action seeks a declaratory judgment interpreting the Reciprocal Agreement "An action to construe a contract is an action at law." *McGill v. Moore*, 381 S.C. 179, 185 (2009). The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. *Id* at 495, at 134. A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause. Id. It is a question of law for the court whether the language of a contract is ambiguous. *McGill*, at 185.

The Reciprocal Agreement clearly and unambiguously provides that "... each owner of a lot within Quartermaster, shall pay to the Regime or its authorized agent, a monthly assessment of $100 per dwelling unit and $25 per each unimproved lot, both expressed in December 1990 inflation indexed dollars." (Reciprocal Agreement, Section 4.2, Exhibit B). The Reciprocal Agreement further provides that the Regime may in its discretion calculate the assessment for Quartermaster Owners pursuant to the following formula:

> Each improved lot within the Quartermaster property shall pay unto the Regime a monthly assessment amount equal to its prorata share, if such dwelling unit were an "Average Unit" within the Regime provided further that the

budgetary line items entitled "Building Maintenance" and "Termite Bond" are subtracted from the monthly regime fee for the "Average Unit" and provided further that two-thirds (2/3) of the "Property Insurance" line item from the "Average Unit" monthly regime fee is subtracted.

(Reciprocal Agreement, Section 4.2(b)(1)). The assessment for Quartermaster fees has been calculated pursuant to the formulas as set forth in Section 4.2(b)(1) and (2) of the Agreement by IMC Resort Services ("IMC") since at least 1997. There can be no dispute that Quartermaster assessments have been appropriately calculated in the Reciprocal Agreement at all times relevant to this matter based on the formula set forth clearly in the Agreement. The assessments are calculated every year as follows:[1]

How Your Quartermaster fee is calculated
(per reciprocal agreement)
2012-2013 Budget Year

Total budgeted expenses @ Broad Creek Landing	$ 967,920.00
Minus maintenance expense line item	$(106,845.00)
Minus any termite bonds	$(7,700.00)
Minus 2/3 property insurance	$(234,182.00)
	$619,193.00
$619,193.00 divided by 278 unit (# of units in Broad Creek Landing)	$ 2,227.31 avg/unit/year
$2,227.31 divided by 12 months ($70,656.00 annual improved)	$185.61 monthly fee improved
An unimproved pays 25% of $185.61 ($9,384.00 annual unimproved)	$46.40 monthly fee unimproved

[1] This is an example from a document entitled "How your Quartermaster Fees are Calculated" for the 2012 -2013 budget year.

5 of 15 2

It is also clear from the Reciprocal Agreement that rather than basing the monthly assessment on the formula in Section 4.2(b)(1) and (2), the Regime may assess Quartermaster Owners "$100 per each dwelling unit and $25 per each unimproved lot, both expressed in December 1990 inflation indexed dollars." Under this provision (which is not based upon any budgetary calculation), the monthly assessment for 2013 would be $177.91 per dwelling unit as expressed in December 1990 inflation indexed dollars.[2] Using the formula set forth in the Reciprocal Agreement, the assessment for Quartermaster Owners for budget year 2012-2013 is $185.61 per improved lot.

Plaintiff proposes the Court should engage in a re-writing of the Reciprocal Agreement and superimpose Plaintiff' view of the cost to maintain the Common Areas (nowhere set forth in the unambiguous formula contained in the Reciprocal Agreement which is based off the defined term "Average Unit") and suggests that the assessment for 2012- 2013 year should be $60.28, less than 2/3 of the base assessment agreed upon by the parties in 1990. To reach this result would require the Court to completely re-write the contract under consideration (Reciprocal Agreement), which the Court is without authority to do. *Dobyns v. S.C. Dept. Parks Rec. and Tourism*, 325 S.C. 97, 480 S.E.2d 81 (1996) (The judicial function of a court of law is to enforce contracts as made by the parties and not to re-write or distort, under the guise of judicial construction, the terms of an unambiguous contract. Citing *Patterson v. Aetna Life Ins. Co.*, 248 S.C. 374, 149 S.E.2d 915 (1966)).

[2] See, United States Bureau of Labor statistics accessed at http://www.bls.gov/data/inflation_calculator.htm on 5/28/2013.

II. Plaintiff Quartermaster at Broad Creek Landing Owners Association, Inc. has no standing to bring this lawsuit.

Plaintiff Association was administratively dissolved in 1998. Plaintiff filed the present lawsuit in 2011. South Carolina Code § 33-14-210, provides in pertinent part:

> (d) A corporation dissolved administratively continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under Section 33-14-105 and notify claimants under Sections 33-14-106 and 33-14-107.

South Carolina Code Section § 33-14-105 provides in pertinent part: "A dissolved corporation continues its corporate existence but may not carry on any business *except that is appropriate to wind up its affairs . . .*" (emphasis added).

Both the significant time lapse and the substance of this action demonstrate that it is not one that is permissible under South Carolina law. The filing of this lawsuit thirteen (13) years after Plaintiff's dissolution clearly cannot be considered business that is "appropriate to wind up" Plaintiff's affairs. Plaintiff seeks in its First Cause of Action a declaration of rights and in its Second Cause of Action "a refund of all overcharged assessments and fees charged to it under the Agreement" dating back to 1999.[3] As such, all of the Plaintiff's alleged damages were incurred *after* the dissolution, thereby precluding any argument that this lawsuit is in any way "winding up" the affairs of the association. Simply put, the Plaintiff association does not exist and has absolutely no right nor authority whatsoever to bring the present action.[4]

Not only did the Plaintiff Association not exist during the period of time relevant to this lawsuit, it had no board of directors and thus no decision-making body to authorize the bringing of a lawsuit. Accordingly, this suit is an ultra vires action (if same is possible given that the

---

[3] Plaintiff has no standing to assert a claim for damages in this action (see Section III of this Memorandum) and this claim is barred by the statute of limitations (see Section IV of this Memorandum).

[4] Plaintiff filed articles of incorporation on May 16, 2013. This created a new entity and did not have the effect of reinstating the right of the plaintiff to do business.

7 of 15

entity does not exist). It appears a few disgruntled "members" of the non-existent Plaintiff Association are pursuing this action for their own benefit in the name of the non-existent entity.

Plaintiff has no standing and no authority to bring the claims presented in this lawsuit and therefore the claims asserted herein

III. Plaintiff Quartermaster at Broad Creek Landing Owners Association, Inc. has no standing to bring claims for damages.

As noted, Plaintiff Association seeks in its Second Cause of Action damages for allegedly overcharged assessments. The Plaintiff Association does not have standing to bring a claim for damages in this action because the Association has suffered no damages. The Association does not and has never paid assessments to the Defendant Regime. All assessments have been billed to and paid by individual property owners.

Even if the Plaintiff Association existed and had authority to bring an action, cannot bring an action for damages in a representative capacity. The South Carolina Supreme Court and the United States Supreme Court have both adopted the following three part test to determine if an association has standing to bring suit: "An association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Georgetown County League of Women Voters v. Smith Land Company, Inc.*, 393 S.C. 350, 713 S.E.2d 287 (2011), *citing Beaufort Realty*, 346 SC 298, 301 (Ct. App. 2001); *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343, 53 L. Ed. 2d 383, 97 S. Ct. 2434 (1977). "[W]hether an association has standing to invoke the court's remedial powers on behalf of its members depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it

can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. Indeed, in all cases in which we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (U.S. 1977) (*superceded on other grounds)*. Per the United States Supreme Court: "An organization generally lacks standing to sue for money damages on behalf of its members if the damage claims are not common to the entire membership, nor shared equally, so that the fact and extent of injury would require individualized proof." *Warth v. Seldin*, 422 U.S. 490, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975). "Where an association seeks to recover damages on behalf of its members, the extent of injury to individual members and the burden of supervising the distribution of any recovery mitigates against finding standing in the association." *Creek Pointe Homeowner's Ass'n. v. Happ*, 146 N.C. App. 159, 167 (N.C. Ct. App. 2001) (*Creek Pointe Homeowner's Ass'n.* cited by South Carolina Supreme Court in *Georgetown County League of Women Voters*, at 18). "Indeed, damages claims usually require significant individual participation, which fatally undercuts a request for associational standing." *Pennsylvania Psychiatric Society v. Green Spring Health Services, Inc.*, 280 F.3d 278, 284 (2002). The requirement of individual participation has been understood to preclude associational standing when an organization seeks damages on behalf of its members. *United Food & Commer. Workers Union Local 751 v. Brown Group*, 517 U.S. 544 (U.S. 1996). *Creek Pointe Homeowner's Ass'n v. Happ*, 146 N.C. App. 159, 167-168 (N.C. Ct. App. 2001) (finding that plaintiff homeowner's association's pursuit of monetary damages required the participation of individual homeowners, therefore homeowner's association lacked standing to bring suit under *Hunt* test).

The Plaintiff Association seeks monetary damages in form of "a refund of all overcharged assessments and fees charged to it under the Agreement." (Complaint, ¶ 15). The Quartermaster Owners, not the Plaintiff Association, pay assessments to the Regime. Thus, the damage claims are not common to the entire (non-existent) Association, nor shared equally, and the existence and extent of injury requires individualized proof of damage. Alleged damages to an individual Quartermaster Owner would necessarily vary in an infinite number of ways, including but not limited to, how long the individual owner has owned the fee simple property, whether or not the property was improved or unimproved[5], whether the property was owned by one or more individuals and/or entities, whether the property was rented, whether the owner actually paid the assessments due (as opposed to being in arrears), whether the individual owned one or more fee simple properties. The assessments Quartermaster owners pay to the Regime varies from year to year. Based on Plaintiff's record of property transactions, the properties at issue have changed hands nearly 150 times since 1999. Not only do Quartermaster owners change every year, the assessments change every year that the budget changes, which has been at least six times since 1999. Lots may change from unimproved to improved at any time, thereby changing the assessments due mid-year, or even mid-month (assessments are pro-rated from time of groundbreaking). Any award of damages for over-assessments to the Plaintiff's association would not only go toward an association that does not exist, does not and has not paid the assessments complained of, but also whose "membership" is constantly changing, and which would require individualized proof of damages in a multitude of different ways.

[5] The calculation of assessments for improved and unimproved lots varies depending if the lot is improved or unimproved. An improved lot is one with a house on it, while an unimproved lot is just the land with no structure. The assessment for unimproved lots is 25% of the assessment for improved lots (Reciprocal Agreement Section 4.2(b)(2), Exhibit B).

Plaintiff seeks hundreds of thousands of dollars in "damages" for alleged over assessments. Notwithstanding the fact that Plaintiff Association has never paid any assessments, an award of "damages" as sought in this action would necessarily result in a large special assessment to the owners of Broad Creek Landing, potentially force units into foreclosure, and adversely impact the well-being of the entire community, including Quartermaster.

IV. Plaintiff's claims are barred by the statute of limitations.

The statute of limitations for breach of contract is three years. S.C. Code Ann. § 15-3-530 (2005). Under the discovery rule, a breach of contract action accrues on the date the injured party either discovered the breach or should have discovered the breach through the exercise of reasonable diligence. *RWE NuKEM Corp. v. ENSR Corp.*, 373 S.C. 190, 196 (2007). A breach of contract action generally accrues at the time the contract is breached. *Id., citing, State v. McClinton*, 369 S.C. 167, 173, 631 S.E.2d 895, 898 (2006). Accordingly, Plaintiff's claim for declaratory relief is barred, and even if the court were inclined to grant an award of damages, the earliest the Court could consider for the calculation thereof would be three years from the date of filing of the Complaint.

Plaintiff urges the Court to apply a 20 year statute of limitations on the theory that the Reciprocal Agreement is allegedly a "contract under seal." S.C. Code Ann. § 15-3-520(b). An instrument need not have an actual seal affixed to it in order to be considered a sealed instrument. Section 19-1-60 of the South Carolina Code provides:

> Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

Courts in South Carolina construe this statute narrowly. *Orlando Residence, Ltd. v. Hilton Head Hotel Investors, et al.*, 2013 U.S. Dist. LEXIS 36087 (D.S.C. 2014).

The circumstances in which a contract will be considered to be a "sealed instrument" were recently examined by Judge David Norton in the *Orlando Residence* case, supra. Judge Norton explained the status of South Carolina law on this issue as follows:

> Inclusion of standard attestation language, such as "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals," is not enough to indicate the parties' intent to create a sealed instrument. *Lasch, 609 S.E.2d at 551-52.* Rather, courts will find an intent to create a sealed instrument only where the standard attestation language is accompanied by additional indicia. Compare *Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849, 855 (S.C. Ct. App. 1996)* (finding sealed instrument where agreement included standard attestation language plus the language "SIGNED SEALED AND DELIVERED IN THE PRESENCE OF [signatures of parties and witnesses]"), and *S. Carolina Dep't of Soc. Servs. v. Winyah Nursing Homes, Inc., 282 S.C. 556, 320 S.E.2d 464, 467 (S.C. Ct. App. 1984)* (finding sealed instrument where the agreement included standard attestation language plus the notation "L.S.," the abbreviation for *Locus sigilli* or "the place of the seal," by the parties' signatures), with *Clifton, LLC v. Tadlock, No. 11-cv-01234, 2012 U.S. Dist. LEXIS 35659, 2011 WL 909826, at *5 (D.S.C. Mar. 16, 2012)* (finding no sealed instrument where the only indicia of an intent to seal was the phrase "Signed, sealed and delivered" immediately above the parties' signatures and the agreement did ***not*** include standard attestation language), and *Lasch, 609 S.E.2d at 551-52* (finding no sealed instrument where only indicia of intent to seal was standard attestation language).
>
> The settlement agreement in this case includes the following standard attestation language immediately preceding the parties' signatures: "IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of this 1st day of November, 1994." Settlement Agreement 19. This language closely mirrors the language at issue in *Lasch* and, as in *Lasch*, the settlement agreement in this case includes neither the language "SIGNED SEALED AND DELIVERED" nor the abbreviation "L.S." Nelson's confession of judgment similarly contains no language that indicates that it is a sealed instrument. South Carolina judicial precedent dictates that the settlement agreement and confession of judgment cannot be considered sealed instruments, and therefore are not subject to the twenty-year statute of limitations for sealed instruments. To hold otherwise "would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state." *Lasch, 609 S.E.2d at 552.* South Carolina's three-year statute of limitations for contract actions controls in this case.

Id.

This case presents the identical scenario to that examined in Orlando and the cases cited therein. Here, the Reciprocal agreement concludes with the words "IN WITNESS WHEREOF, the parties herby set their hands and seals," but no other indicia that the parties to this action intended the instrument to be sealed. In fact, the "Probate" sections of the document attesting to the signatures of both parties to this action[6] glaringly omit any reference to a seal, and the signatures of the parties are not followed by any indicial such as "L.S." or "Seal" as required by South Carolina precedent. Accordingly, Plaintiff's unsupported assertion that the document was signed "under seal" is rejected, and the three year statute of limitations is applied to this claim.

V. All remaining arguments set forth by Plaintiff are without merit and/or moot.

To the extent not specifically addressed herein, the Court has considered all remaining specific issues identified by Plaintiff in its motion which the Plaintiff contends the Court failed to rule upon in the Order Ending the Case and finds them to be without merit.

Having already ruled that the formula at issue in the Reciprocal Agreement is clear and unambiguous, it would be improper for the court to go beyond the plain language of the agreement to discern the intent of the parties.

> Furthermore, because the covenant is clear and unambiguous, we look only to the language of the covenant and not to extrinsic evidence to determine the intent of the parties. *See C.A.N. Enters., Inc., v. South Carolina Health & Human Servs. Fin. Comm'n,* 296 S.C. 373, 373 S.E.2d 584 (1988) (when a contract is clear and unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms).

[6] Of particular interest and as further evidence these parties did not intend to affix a seal to the instrument, the other signatory to the Reciprocal Agreement, F.J.S.G.P. II (the property developer) contains a Probate that states ""she saw the within named F.J.S.G.P II by its duly authorized representative, sign, seal and as the act and deed of the Partnership, deliver. . . ." The omission of this language from the signatures of the other two signatories, who happen to be the parties to this action, is further evidence that those parties did not intend the instrument to be "sealed."

Moser v. Gosnell, 334 S.C. 425 (S.C. Ct. App. 1999).

The terms the Plaintiff asks the Court to define and interpret are not used in the formula at issue, therefore it would be improper for the Court to attempt to define these terms in an effort to vary the terms of the unambiguous written agreement. *Id.*

As noted above, the formula called for by the Reciprocal Agreement is build off the assessment of an "Average unit," defined as the "total combined assessment for all regime property owners divide by the number of regime property owners." The parties have, therefore, agreed that the budget for the "Average unit" in Broad Creek Landing is the measuring stick for determining the assessment amount for Quartermaster. To find otherwise would be in direct conflict with the unambiguous terms of the agreement. Further, the Court has already specifically ruled that there is "no persuasive evidence that Defendant has at any time miscalculated assessments or inappropriately charged owners of property at Quartermaster under the Agreement." This issue has been dealt with in the original order and Plaintiff's assertions are without merit.

VI. Plaintiff is not entitled to recovery of attorney's fees as a matter of law.

Attorney's fees are not recoverable unless authorized by contract or statute. *Baumann v. Long Cove Club Owners Ass'n*, 380 S.C. 131, 139 (S.C. Ct. App. 2008). Attorney's fees are not authorized by either the Reciprocal Agreement nor any applicable statute. Therefore, the Plaintiff's claim for attorney's fees is denied.

CONCLUSION

Having previously ruled that the contract at issue is clear and unambiguous and that there have been no errors in the calculation of the assessments under the terms of the agreement, and

further having addressed the issues raised by Plaintiff's current motion, the Motion for a New Trial and/or Amendment of Judgment filed October 14, 2014 is hereby denied.

AND IT IS SO ORDERED.

Marvin H. Dukes, III
Master-In-Equity

Beaufort, South Carolina

6/17 2015

15 4/15 2