

The South Carolina Court of Appeals

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc., Plaintiffs,

v.

South Bay Properties, LLC, Stantec Consulting Services, Inc., f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett, Brenda C. Puckett, Robert Nahama, Jeanne E. Nahama, Thomas Holland , Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewsku, Richard N. Taylor, Robert K. Spillers, (a/k/a Robert Spillers), Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo, Deborah A. DiAngelo, Gary E. Owens, Joyce M. Owens, Fount L. Shults, Lynda M. Shults, Dennis Ridgeway, Teresa Lynn Ridgeway and Georgetown County Forfeited Land Commission, Defendants,

Of whom John Steven Goodwin, Louise C. Goodwin, Gary E. Owens, and Joyce M. Owens, are the Appellants,

and

Bonnie N. Charlton, Ronald L. Charlton, and Bayside Property, Inc., South Bay Properties, LLC, Stantec Consulting Services, Inc., f/k/a Trico Engineering Consultants, Inc., Milone & MacBroom, Inc., Patrick A. DiAngelo, Deborah A. DiAngelo, and Georgetown County Forfeited Land Commission, are the Respondents.

Appellate Case No. 2013-000712

ORDER

In September 2007, Bonnie and Ronald Charlton and Bayside Property, Inc. sold a tract of land on Winyah Bay in the city of Georgetown, South Carolina, to South Bay Properties, LLC for \$20.85 million—\$6.27 million in cash and a \$14.58 million note secured by a mortgage. The mortgage was to be paid in a single installment due September 30, 2008. South Bay—a joint venture of Landquest Development, LLC, C.R. Thompson and Sons, LLC, and Kyle C. Corkum—planned to develop the property into a residential subdivision named the Harbor Club on Winyah Bay. In anticipation of the sale, South Bay obtained a \$7,882,359 subdivision performance bond on July 13, 2007, from Hartford Casualty Insurance Company which allowed South Bay to sell lots prior to construction of the infrastructure. South Bay took advantage of this opportunity and sold fifty-four lots, generating \$14,737,600 in proceeds. Two of those lots were purchased by John and Louise Goodwin and Gary and Joyce Owens.

The subdivision performance bond required South Bay to complete site infrastructure—roads and utilities—within one year. When South Bay failed to do so, a number of the lot owners filed suit ("lot owners' suit") in Georgetown County on July 9, 2009, and recorded a lis pendens on the subdivision land still owned by South Bay.

On June 18, 2010, South Bay filed for bankruptcy in the U.S. Bankruptcy Court for the Eastern District of North Carolina, which automatically stayed all proceedings in which South Bay was involved. On August 12, 2011, the bankruptcy court dismissed South Bay's case, which also had the effect of lifting the automatic stay.

On August 31, 2012, the Charltons and Bayside filed for foreclosure of the mortgage. They named as defendants any party that "may have or claim" an interest or lien on the premises as a defendant to the suit, including the Goodwins and Owenses. At this point in time, the Goodwins and Owenses had not moved to restore their case in the lot owners' suit. The Goodwins and Owenses answered the foreclosure complaint on the 5th and 19th of November 2012, respectively. Their answers contained only a general denial of the allegations in the complaint. Also on November 19, 2012, the Charltons and Bayside filed a motion for an order of reference to the master-in-equity.

On January 22, 2013, the Goodwins and Owenses filed two motions. The first motion was a request to reinstate/restore the lot owners' complaint and lis pendens and to consolidate two cases—the lot owners' suit and the foreclosure suit. The


second motion was to amend the Goodwins' and Owenses' answer in the foreclosure suit.

At the hearing on January 22, 2013, on the motion for an order of reference, the Charltons and Bayside stressed that a referral to a master-in-equity was proper as the Goodwins and Owenses did not request a jury trial. In reply, the Goodwins and Owenses informed the circuit court that their proposed amended answer included claims, counterclaims, and cross-claims against South Bay and others as to which they had a right to trial by jury. At the conclusion of the hearing, the circuit court addressed the two motions—the motion to reinstate/restore and the motion to amend the Goodwins' and Owenses' answers—that the court noted were "just filed this morning," finding "those issues aren't before the Court." Next, the circuit court ordered the referral, noting the "master-in-equity can hear [that] motion[]," referring to the motion to amend. The order of reference was filed on January 28, 2013.

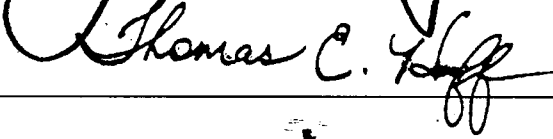
On February 11, 2013, the Goodwins and the Owenses filed a motion to reconsider, and again emphasized their entitlement "to a jury trial on the legal issues asserted in their Counterclaims, Crossclaims and Third Party Complaint." The circuit court denied the motion to reconsider in a Form 4 dated February 22, 2013, noting that "[e]ven though the [Goodwins and Owenses] have a pending Motion to Amend Answer so that they can assert counterclaims, the deadline for requesting a jury trial has expired and, therefore, the defendants have waived their right to a jury trial." On March 7, 2013, the Goodwins and Owenses filed a second motion to reconsider asking the circuit court to reconsider its ruling that the deadline for requesting a jury trial had expired and that their right to a jury trial had been waived. On March 21, 2013, the master issued an order returning the foreclosure suit to the circuit court, finding it had a conflict of interest.

At oral argument before this court, it became clear that the order being appealed was in fact, not appealable. All parties were in agreement that at the time the circuit court ruled to deny reconsideration of the order of reference in the Form 4, the right to a jury trial did not exist, because there were no causes of action at that time for which a jury trial could have been demanded and that the motion to amend—which has yet to be ruled on—if granted, would then allow the Goodwins and Owenses to demand a jury trial. Therefore, we dismiss the appeal. The case is remanded to the circuit court, and no party is prohibited from bringing any position before the circuit court. The case resumes the precise position it occupied on March 21, 2013. For any necessary clarification, the parties and the circuit court should listen to the discussion this court had with counsel at oral argument. The

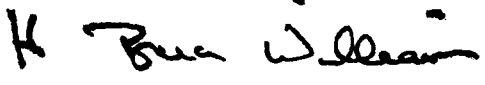
clerk of this court shall transmit an audio recording of oral argument to the circuit court clerk with the remittitur.



C.J.



J.



J.

Columbia, South Carolina

cc:

John M. Leiter, Esquire
K. Douglas Thornton, Esquire
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FILED

August 12, 2015