STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2014-CP-07-2438
Community Services Associates, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Stephen H. Wall and Maria P. Snyder Wall,	)	
	)	
Defendants.	)	

Plaintiff seeks an injunction prohibiting the Defendants from renting their residence short-term while they simultaneously reside in second floor room and bath that has separate access by an outside stairway. Pursuant to Order of Reference, I held a hearing on April 21, 2015. All parties and counsel were present.

Defendants' home is located at 48 Planters Wood Drive, Hilton Head Island, South Carolina. The parties agreed to the following stipulations:

1. The property is subject to the Restrictive Covenants dated April 1, 1970 Applicable to All Class "A" Residential Areas in Sea Pines Plantation as described in the Complaint.

2. The property includes a 2-story detached residential dwelling unit. The second story heated space has a separate entrance and is not accessible from the first floor.

3. Certain property is rented by the Defendants to 3rd parties through an internet rental site.

4. The rented property consists of the entire first floor of the dwelling unit, save & except for one locked closet.

5. The second floor of the dwelling unit is off-limits to the renters and is occupied exclusively by the Defendants.

There was un-contradicted testimony that the dwelling has only one kitchen, which located on the first floor. The Defendants have a portable toaster oven, an induction-style hot plate, and a dorm-style refrigerator in the second floor space.

Short-term rentals are not prohibited under the covenants.

Plaintiff contends that rental of less than an entire dwelling is prohibited by paragraphs 5 and 6 of the Covenants, which state:

> "5. All lots in said Residential Areas shall be used for residential purposes exclusively. No structure, except as hereinafter provided shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height and one small one-story accessory building which may include a detached private garage and/or servant's quarters, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building.
>
> 6. A guest suite or like facility without a kitchen may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such guest suite would not result in over-crowding the site."

The Parties both contend that the applicable Covenants are unambiguous; however, they interpret them differently. Defendants contend that although the Covenants include a specific restriction against renting guest suites without kitchens except as part of the entire premises, there is no restriction against owners remaining in such a guest suite while they rent the rest of the premises. Defendants contend that such a restriction cannot be created by inference or implication. Plaintiff contends that the unambiguous language of the covenants expressly prohibits what it contends is a joint occupancy in a single dwelling.

"[A] restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Hardy v. Aiken,* 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006), quoting *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). "The Court is to construe any ambiguity in favor of limited duration and against restricting property. Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property, although the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants." *Id.* "The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution." *Id.* "[T]he paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863-64 (1998). "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect . . ." *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999) (citation omitted).

To that end, when the language creating restrictions on the use of property is unambiguous, the restrictions will be enforced according to their plain and obvious meaning. *Shipyard Prop. Owners' Ass'n v. Mangiaracina,* 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992).

Applying these principals to the express language of paragraphs 5 and 6 of the Covenants, I find and conclude:

1. It is undisputed that short-term rentals are common in Sea Pines and do not violate the provision of paragraph 5 that all lots shall be used for residential purposes.

2. It is undisputed that the improvements on Defendants' lot consist of one (1) two-story single family dwelling. There is no accessory building. There is no claim that the structure has not received all architectural and plans approvals required by the Covenants.

3. It is undisputed that the site is not overcrowded.

4. The Defendants' property has only one kitchen which is located on the first floor. Defendants' use of several dormitory-style portable appliances to store and prepare foods on the second floor does not create a kitchen, as the term is commonly used. A guest suite without a kitchen is specifically permitted. The existence of a kitchen-less guest suite does not convert the single family dwelling into a duplex (or more specifically: "from" a single family residential dwelling to something else) under the Covenants.

5. The Covenants allow guest suites or similar facility without a kitchen, but such guest suites shall not be rented or leased except as part of the entire premises, including the main dwelling.

6. There is no language in the Covenants that would prohibit the rental or leasing of the main dwelling without including the kitchen-less guest suite or like facility.

7. Defendants do not rent individual rooms. They rent the entire first floor to single rental parties.

It would have been a simple matter for the developer to include a sentence that properties in Class "A" residential areas with an accessory suite, or any such property, may only be rented in its entirety and as a whole. It did not.

The Plaintiff seeks to have me interpret the Covenants in such a way as to infer that the developer intended to prevent an owner from remaining in a guest suite while renting the main dwelling. I think that such an interpretation requires me to ignore the plain meaning of the covenants and to add a restriction which currently does not exist. See, e.g., *Taylor v. Lindsey,*

supra, where the South Carolina Supreme Court refused to enlarge a restriction by construction or implication beyond the clear meaning of its terms to include a restriction on mobile homes. Accordingly, I find that the Covenants do not prohibit Defendants from occupying the kitchen-less guest suite on the second story of their home while they rent the first floor.

Plaintiff expresses the legitimate concern that an expansion of the Defendants' use to the rest of the Plantation will detrimentally affect the quality of life in Sea Pines. In this very fact-specific case, however, it appears to me that such a use (owner on-site) actually minimizes the possibility of loud or destructive tenants in what all agree is an area with numerous resort rentals.

Based on the foregoing, Plaintiff's request for an injunction is denied, and the Complaint is dismissed. No attorney's fees are claimed and none are awarded. Each party shall bear their own fees and costs.

AND IT IS SO ORDERED.

Marvin H. Dukes, III
Master-In-Equity and Special Circuit Judge
for Beaufort County

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Date: 5/7/15

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