

Catwalk, LLC, *et al.* v. Sea Pines South Beach Property Owners' Association, Inc.

Case 2014-Cp-07-1435

Order of Hon. Marvin H. Dukes, III, dated January 22, 2016

**RECEIVED**

MAR 25 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CATWALK, LLC, MOONDOG, LLC, LET,  
LLC, LOST PARROT, LLC, VACATION  
INN, LLC, SBM, LLC, AND SOUTH  
BEACH SWIMMING POOL, INC.,

Case No. 2014-CP-07-01435

Plaintiffs,

**ORDER ON PLAINTIFFS' MOTION AND  
DEFENDANT'S CROSS MOTION FOR  
SUMMARY JUDGMENT**

vs.

SEA PINES SOUTH BEACH OWNERS'  
ASSOCIATION, INC.,

Defendant.

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SC Court of Appeals

The dispositive question before the Court, raised by the parties in the Motion and Cross Motion for Summary Judgment, is whether Commercial Use Covenants recorded in 1973 exempt Plaintiffs' properties from the obligations of 1970 Covenants for South Beach, Sea Pines Plantation, Hilton Head Island, South Carolina. The Court finds Plaintiffs properties are encumbered by and subject to the 1970 Covenants and the 1973 Commercial Use Covenants. The Court grants Defendant's Cross Motion for Summary Judgment and denies Plaintiffs' Motion for Summary Judgment.

**THE PARTIES:**

Plaintiffs Catwalk, LLC, Moondog, LLC, LET, LLC, Lost Parrot, LLC, Vacation Inn, LLC, SBM, LLC, and South Beach Swimming Pool, Inc. (hereafter "Plaintiffs") are South Carolina corporations which own real property in South Beach, Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina. Defendant Sea Pines South Beach Owners Association, Inc. ("the Association") is a South Carolina corporation chartered in 1969 to

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maintain and administer the common properties in South Beach, enforce the covenants and restrictions governing real property in South Beach, and collect and disburse necessary assessments and charges.

**PROCEDURAL HISTORY:**

Plaintiffs filed their lawsuit on June 17, 2014 seeking a declaration that their properties are not encumbered by the 1970 Covenants, that Plaintiffs are not members of the Association, and that Plaintiffs have no liability for assessments made or imposed by the Association. Defendant answered and counterclaimed alleging Plaintiffs' properties are encumbered by the 1970 Covenants and Plaintiffs are members of the Association subject to the rights and obligations of South Beach property owners. Plaintiffs subsequently filed a Motion for Reference pursuant to Rule 53(b), SCRPC. On February 18, 2014 an Order was entered referring this matter to the Master in Equity.

Plaintiffs filed their Motion for Summary Judgment on June 15, 2015. Defendant filed its Combined Response to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment on August 7, 2015. The Court received and reviewed the parties' briefs and supporting affidavits, examined relevant covenants filed of record in Beaufort County, heard oral arguments on August 19, 2015, and received and reviewed letter briefs following oral arguments.

**STANDARD OF REVIEW:**

Plaintiffs and Defendant filed Motions for Summary Judgment. A party seeking summary judgment in its favor must show there is no genuine issue of material fact. Rule 56(c), SCRPC. As stated in *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607,610, 230 S.E. 2<sup>nd</sup> 447,448 (1976), this requires "plain, palpable and indisputable facts... on which reasonable minds cannot differ." If the non-moving party presents evidentiary facts from which the Court

may conclude or infer that a dispute exists, the motion must be denied. See, e.g. *Mikell v. County of Charleston*, 375 S.C. 552, 654 S.E. 2<sup>nd</sup> 92 (S.C. App. 2007). Such facts may be shown by the answer, discovery, and affidavits. See Rule 56(c), SCRPC.

As the non-moving parties in the others' motions, Plaintiffs and Defendant are entitled to have facts viewed in the light most favorable to each.

**UNDISPUTED FACTS:**

In this matter relevant facts are not in dispute. These are:

1. South Beach is a 102.63 acre planned unit development community in Sea Pines Plantation, Hilton Head Island, South Carolina.
2. Two covenants are at issue: (1) the *Covenants and Restrictions for South Beach and Provisions for the South Beach Owners' Association, Inc.* dated June 25, 1970 recorded by Lighthouse Beach Company in Book 176 at Page 203 in the Office of the Register of Deeds for Beaufort County, as amended from time to time ("the 1970 Covenants") and (2) the *Commercial Use Covenants* dated January 25, 1973 recorded by Lighthouse Beach Company in Book 206 at Page 1143 in the aforesaid Office (the 1973 Commercial Covenants').
3. The real property subject to the 1970 Covenants is that 102.63 acre parcel or property described in Exhibit A to the 1970 Covenants as the parcel of land shown as South Beach on a Plat Recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 18 at Page 126.
4. Plaintiffs' properties are within the 102.63 acre South Beach parcel.
5. The Commercial Use Covenants recorded in 1973 apply to all property owned by Lighthouse Beach Company on Hilton Head Island designated for commercial use.

This includes commercial property in the South Beach parcel.

6. Plaintiffs' properties are subject to the 1973 Commercial Covenants.
7. Plaintiffs' titles, with the exception of Plaintiff South Beach Swimming Pool, Inc., trace back to a Deed between the Sea Pines Plantation Company and South Beach Marina Village, a Partnership, dated January 3, 1984 and recorded in Deed Book 385 at Page 1224. Between 1984 and 2008 Plaintiffs or their predecessors acquired title to properties originally conveyed in the January 3, 1984 deed
8. The January 3, 1984 deed states that the properties are conveyed subject to the 1970 Covenants recorded in Book 176 at Page 203 and the 1973 Commercial Covenants recorded in Book 206 at Page 1143.
9. The title to the property now owned by Plaintiff South Beach Swimming Pool, Inc. arose from a 1987 Deed of the Trustee of the Hilton Head Liquidation Company. The Trustee conveyed this property as part of the plan of reorganization of Sea Pines Plantation and other properties approved by the United States Bankruptcy Court.
10. The property now owned by South Beach Swimming Pool, Inc. was also conveyed subject to the 1970 Covenants and 1973 Commercial Covenants. Deed Book 1198 at Page 450.
11. The 1970 Covenants contain a non-waiver provision: "...failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter."

**PARTIES ARGUMENTS:**

**Plaintiffs' Argument for Summary Judgment**

Plaintiffs argue their properties are subject to the 1973 Commercial Covenants, but not the 1970 Covenants. As such, they contend they are not members of the Association and not subject to Annual Assessments and Special Assessments by the Association. Plaintiffs point to one sentence in the 1973 Commercial Covenants as the basis of their argument. That sentence, from the recitations of the 1973 Commercial Covenants, states:

It being the true intent and purpose of this declaration that the commercial land use covenants contained herein shall be the sole applicable covenants restricting and affecting commercial properties conveyed by Lighthouse Beach Company, subsequent to the recording of this Declaration, and such other property as may be deeded subject to the covenants herein by reference to individual deeds, or by subsequent declarations; and further, it is the true intent and purpose of Lighthouse Beach Company, that to the extent that there is a conflict between these restrictions and covenants previously recorded, as set forth above, and those of the instant declaration, the provisions of the instant Declaration shall govern and restrict commercial properties hereafter conveyed in deeds making reference to this Declaration.

Plaintiffs argue that a portion of the above statement, that these are the "sole applicable covenants", means their properties are not subject to the 1970 Covenants, also recorded by Lighthouse Beach Company.

**Defendant's Response:**

Defendant raises three legal responses to Plaintiffs' argument:

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- (1) The 1973 Commercial Covenants state, in the sentence before the quotation above:  
“The Company reserves in each instance the right to add, in Deeds of Conveyance, additional covenants in respect to said properties so conveyed by such Deed....”  
Plaintiffs’ acquired their property starting in 1984, and in each instance the 1970 Covenants and 1973 Commercial Covenants were added to the Deeds of Conveyance, precisely as permitted by the quoted language.
- (2) The sentence Plaintiffs rely upon expressly recognizes that commercial property may be subject to additional covenants by stating that a conflict between the 1973 Commercial Covenants and other covenants may exist.
- (3) The 1973 Commercial Use Covenants address design, aesthetic, and environmental considerations and are intended to be the applicable covenants and restrictions for those issues only.

#### **Defendant’s Argument for Summary Judgment**

Defendant argues it is entitled to summary judgment:

- (1) There is no dispute that Plaintiffs’ properties are within the parcel encumbered by the 1970 Covenants;
- (2) Plaintiffs’ title documents state the properties are encumbered by the 1970 Covenants and the 1973 Commercial Covenants; and
- (3) The language of the 1973 Commercial Covenants shows that they overlay, not supplant, the 1970 Covenants.

#### **LEGAL ANALYSIS AND CONCLUSIONS**

It is well-settled law that restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent as determined from the

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entire document. *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E. 2<sup>nd</sup> 862 (1998); *RV Resort and Yacht Club Owners Ass'n v. BillyBob's* 386 S.C. 313, 688 S.E.2<sup>nd</sup> 555 (2010). Wording will be given its common and ordinary meaning. *Taylor*, *id.* Restrictive covenants differ from contracts in that they run with the land, meaning they are enforceable by and against later grantees. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S. C. 342, 628 S. E. 2<sup>nd</sup> 902 (Ct. App. 2006).

Neither Plaintiffs nor Defendant argue that the covenants are voidable, unenforceable, or ambiguous. "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Pres. Capital Consultants, LLC v. First Am. Title Ins. Co.*, 406 S.C. 309, 316, 751 S.E. 2<sup>nd</sup> 256, 259 (2013). See also *Hanold v. Watson's Orchard Prop. Owners Ass'n, Inc.* 412 S.C. 387, 772 S.E. 2<sup>nd</sup> 528 (Ct. App. 2015) *reh'g denied* June 19, 2015). "The court is required to give effect to the plain meaning of the words in an unambiguous contract." *Schulmeyer v. State Farm Fire & Cas. Co.* 353 S.C. 491, 497, 579 S.E. 2<sup>nd</sup> 132, 135 (2003

The 1970 Covenants recorded by Lighthouse Beach Company create a planned unit development community known as South Beach. They provide for the creation of the Association and grant the Association the authority to maintain and administer common properties, enforce covenants, and collect and disburse necessary assessments and charges. The 1970 Covenants encumber all real property within the 102.63 acre South Beach parcel. Plaintiffs' properties lie within that parcel. The 1970 Covenants state that each owner of real property within the South Beach parcel shall be a member of the Defendant Association.

The 1973 Commercial Covenants state: "Lighthouse Beach Company recognizes that said properties are situate in an environmentally sensitive area and that any development of said

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property is a matter of concern to both the developing party and the Community-at-large” and memorialize a desire by Lighthouse Beach Company to develop its property, wherever situated, “...pursuant to an orderly plan which contemplates the environmental impact on the Community-at-Large.” The 1973 Covenants provide that Lighthouse Beach Company may add additional covenants to Deeds of Conveyance and recognize that commercial property may be subject to other covenants and restrictions.

By its plain meaning, the 1970 Covenants create a planned unit development community and give authority to the Association to maintain and administer the community. The 1973 Commercial Covenants set forth design, environmental and other standards and requirements to assure that commercial property is in keeping with stated environmental and aesthetic goals.

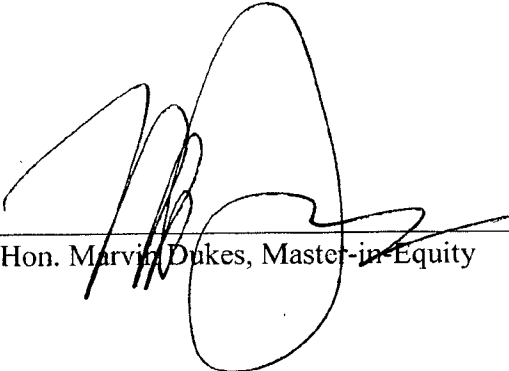
To the extent a property in South Beach is commercial in nature, the 1973 Commercial Covenants complement rather than conflict with other community restrictions. The Court finds that as a matter of law Plaintiffs’ properties are subject to and encumbered by the 1970 Covenants and the 1973 Commercial Covenants. Accordingly, Plaintiffs are members of the Association, with all rights and obligations of membership.

Plaintiffs’ Motion for Summary Judgment seeks a ruling that the Association is barred by S. C. Code Ann. §15-3-380. Section 380 is the limitations period for an action for possession of real property. An action for possession is brought pursuant to S. C. Code Ann. §15-67-10. No such action or claim was plead by Defendant. That issue is denied.

Plaintiffs’ also seek summary judgment claiming waiver, abandonment, or estoppel. The 1970 Covenants contain an unambiguous non-waiver provision. Moreover, Plaintiffs made no showing of prejudice or reliance, nor that the Association intended to relinquish a known right. See, e.g. *Strickland v. Strickland*, 375 S.C. 76, 650 S.E.2<sup>nd</sup> 465 (2007). That issue is also denied.

The Court DENIES Plaintiffs' Motion for Summary Judgment.

The Court GRANTS Defendant's Cross Motion for Summary Judgment. Final Judgment is hereby entered in favor of Defendant on all Counts in Plaintiffs' Complaint. Final judgment is also entered in favor of Defendant on its Counterclaim by the Court's finding that Plaintiffs' properties are subject to and encumbered by the 1970 Covenants and the 1973 Commercial Covenants, and Plaintiffs are members of Defendant Association.

  
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Hon. Marvin Dukes, Master-in-Equity

January 11 2016  
Beaufort, South Carolina

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