

RECEIVED

JUN 15 2016

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-26-8314
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

CHESTER S. HEJNA AND MARY ANN HENJA, Individually and representing as a class, ALL UNIT OWNERS OF MAGNOLIA NORTH HORIZONTAL REGIME as that class is defined below,

Plaintiffs,

v.

HERITAGE COMMUNITIES, INC.,
HERITAGE MAGNOLIA NORTH, INC. and
BUILDSTAR CORPORATION,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

HORRY COUNTY
2016 MAR 21 PM 2:25
MELANIE CLERK OF COURT

This Summary Judgment Motion filed by Plaintiffs is before me for hearing on this 16th day of February, 2016. Present for Plaintiffs is Philip C. Thompson of Thompson & Henry, P.A., located in Conway, South Carolina. Present for Defendants is Stephen L. Brown of Young Clement Rivers, LLP, located in Charleston, South Carolina. Plaintiffs seek summary judgment holding that the Defendants are collaterally estopped from relitigating various issues that were litigated in a previous case.

This loss-of-use class action arises out of the construction of the Magnolia North Condominium Project in Myrtle Beach, South Carolina. There are twenty-one (21) multistory buildings in the Magnolia North project. This case was originally filed on January 5, 2005, but the case was dismissed under *Rule 40(j), SCRPC* and then stayed until resolution of the companion construction defects case brought by the Magnolia North Property Owners Association, Inc. (hereinafter "POA"). The case was eventually restored by Order of the Court and is under a Scheduling Order dated January 6, 2016.

Originally, this loss-of-use case was a companion case to the POA construction defects case (the "Defects Case"). The Defects Case was brought by the Magnolia North Property Owner's Association, Inc. (POA) which sought damages from the same Defendants in the Class Action for defective construction based on causes of action in negligence, breach of warranty of workmanlike service and breach of fiduciary duty. The POA also sought punitive damages based upon willful, wanton, reckless and/or grossly negligent conduct. The POA action and this class action were consolidated and trial began on May 11, 2009. However, during the Trial, the Court decertified the Class by Order dated September 9, 2009. By Order of this Court dated March 10, 2010, the Class was recertified and a new Class Representative was substituted.

Because of the decertification of the Class, the Class Action was severed from the Defects Case and the Defects Case continued to trial and ended in a verdict for the POA. The Verdict was upheld by the Court of Appeals. The Supreme Court granted Certiorari but dismissed the Petition for Certiorari as improvidently granted. As will be noted by reference to the Verdict Form, the Judge directed a verdict in favor of the Plaintiff POA on the causes of action of negligence and breach of warranty of workmanlike service, and the Jury found for the POA on breach of fiduciary duty. The Jury also found that the actions of the Defendants were willful, wanton, reckless and/or grossly negligent and awarded punitive damages. The Trial Court also found that the Defendants were amalgamated, i.e., one and the same and the Court of Appeals upheld this ruling.

Because the loss-of-use claim is a personal claim of the individual owners of the condominiums, this loss-of-use case was instituted by the Class against the same Defendants sued by the POA that developed, built and sold the condominiums. This loss-of-use class action, as noted, is against the same Defendants as in the POA Defects Case and alleges causes of action

for negligence, breach of warranty of workmanlike service, breach of fiduciary duty and grossly negligent, willful and wanton conduct. The issue of amalgamation of corporate entities was alleged.

This Summary Judgment Motion seeks an Order of the Court prohibiting the Defendants in this case (which were the same Defendants in the POA Defects Case) from relitigating the issues of: negligence; amalgamation; gross negligence, willful or wanton conduct; breach of warranty of workmanlike service; or breach of fiduciary duty, based upon the Doctrine of Collateral Estoppel. The Doctrine of Collateral Estoppel occurs when a party in a second action seeks to preclude a party from relitigating an issue which was decided in a previous action. Catawaba Indian Nation v. State, 407 S.C. 526, 756 S.E.2d 900 (2014). The Doctrine provides that "when an issue of fact or law is actually litigated and determined by a final and valid judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Id.* p. 536 (Quoting Restatement of Judgments §27 (1982)) See also S.C. Prop. & Cas., Inc. Guaranty Ass'n v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991) (the party asserting collateral estoppel must demonstrate that the issues in the present lawsuit were: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.) It does not matter that the parties in the previous action were not identical or in privity as long as the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action. Beal v. Doe, 281 S.C. 363, 315 S.E.2d 186 (1984). Carolina Renewal, Inc. v. S.C. Department of Transportation, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). Graham v. State Farm Fire and Casualty Insurance Company, 277 S.C. 389, 391, 287 S.E.2d 495, 496 (1982).

Each of the issues: negligence; willful, wanton and gross negligence; breach of warranty of workmanlike service; breach of fiduciary duty; and amalgamation were all fully, completely and directly determined in the POA defects action and were necessary to support the general verdict of both actual and punitive damages.

Having reviewed the pleadings, law and memoranda of counsel; and having listened to oral arguments of counsel, the Court finds that the Plaintiffs are entitled to summary judgment on the issue of collateral estoppel as sought in Plaintiffs' Motion.

Therefore, it is Ordered as follows:

- A. The Defendants are estopped from relitigating whether the Defendants' conduct in the construction of the Magnolia North Condominiums constituted negligence; willful, wanton and grossly negligent conduct; breach of warranty of workmanlike services and breach of fiduciary duty; the Court and jury in the prior action having concluded the Defendants' culpability in each of these liability claims;
- B. The Defendants are collaterally estopped from relitigating the issue of amalgamation of the corporate Defendants; the Court in the prior action having determined that the corporate Defendants were amalgamated and would be considered one and the same for purposes of liability;
- C. The above findings do not preclude the requirement of proof of proximate cause for actual damages or proof that Plaintiff is entitled or not entitled to punitive damages.

AND IT IS SO ORDERED.



R. Lawton McIntosh

3-16, 2016
Anderson, S & R