

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Knightsbridge Property Owners Association,
Inc,

Plaintiff,

v.

Paul A. Nadeau,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-46-03819

ORDER FOR JUDGMENT OF
FORECLOSURE AND SALE

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SEP 06 2016

SC Court of Appeals

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DAVID H. BERTON
S.C.C.P. & G.S.
YORK COUNTY, SC

Pursuant to Circuit Court Rule 53(b), SCRCPP, and by Order of Reference dated February 10, 2016, this case was referred to me to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the case. A hearing on the merits was held on January 11, 2016. Plaintiff was represented by Stephanie C. Trotter. Defendant was represented by J. Edwin McDonnell. From the testimony, documents and records received into evidence, I make the following findings and conclusions.

BACKGROUND

This is an action for foreclosure of Plaintiff's lien for homeowners' assessments and charges assessed against Defendant, and due to Plaintiff pursuant to the "Knightsbridge Master Declaration", which are the restrictive covenants encumbering Knightsbridge Subdivision in York County (hereinafter "Declaration"). Defendant answered Plaintiff's Complaint asserting a general denial of Plaintiff's claim. He has asserted no affirmative defense to the claim, but has asserted by way of answer that Plaintiff has failed to name a necessary party as a defendant, namely, the holder of the first mortgage on Defendant's property.

Defendant's basis for denying the claim is that Plaintiff has not followed a mandate of the Declaration in setting the amount of assessments to be paid by property owners. Based on that assertion, Plaintiff asserts that he does not owe assessments, as they have been wrongly promulgated by the Plaintiff's Board of Directors ("Board").

FINDINGS OF FACT

The following are findings of fact, recited in narrative format, which I find based on all the evidence, and after consideration of any applicable burden of proof. I have also considered

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the credibility of the witnesses in reaching these findings.

Article V, Section 1, of the Declaration establishes, in typical fashion, the obligation of any owner of a lot in Knightsbridge to pay assessments to the Knightsbridge Property Owner's Association, Inc. ("Association"). It further establishes a lien in favor of the Association for the collection of such assessments or charges, along with attorneys' fees and costs incurred in the collection process.

Pursuant to Article V, Section 3, of the Declaration, the Board of Directors unilaterally establishes the operating budget for Knightsbridge, so long as the annual budget does not increase more than 10% above the prior year. Only where the Board proposes an increase of more than 10% is the general membership entitled to vote on the budget. Per Article V, Section 5, of the Declaration, once the budget is established the annual assessment is uniformly set for all lots. The Declaration provides that the Board ". . . shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each calendar year."

Minutes of the Board establish that it approved or ratified budgets for 2011 through 2015.¹ The proposed 2013 budget was approved on November 28, 2012. The budgets for the remaining years at issue were approved sometime in December of the preceding year, and thus, the annual assessment was not established at least thirty days in advance of the calendar year for the years in question.

Although not set within the time limitations set by the Declarations, the budgets, and the resulting calculated per-lot assessment amounts, were clearly established in adequate detail, and communicated to lot owners in Knightsbridge in time for the owners to make timely payment of the assessments. Further, it may be reasonably inferred from the testimony and evidence that lot owners paid those assessments as determined, so that the Association could fulfill its obligations to the owners.

At trial, Defendant presented no evidence contesting the amount of assessment based on the budgets, or disputing that these budgets were in fact the operating budgets used by the Association for assessment of each lot. Rather, Defendant's position is that any assessment based on a budget that was not approved by the Board at least thirty days in advance of the next succeeding calendar year was a nullity, and results in Defendant having no obligation to pay.²

¹ Plaintiff is seeking payment for 2012-2015. The 2011 budget was included at trial to establish that the 2012 rate was less than 110% of the 2011 budget and could therefore be set by the Board of Directors without a Member vote.

² By extension of this argument, no lot owner would have an obligation to pay assessments due to the late promulgation of a budget, with the result that the Association could not perform its assigned functions.



From the record presented, it is clear that Defendant knew of the assessments, and the amounts thereof. Further, he was given, and received, notice of his default in payments. In fact, Defendant paid a portion of the assessments in 2011, 2012, and 2014, without complaint regarding the untimely adoption of the budget. Thus, the only legitimate issue presented is whether the delay by the Board in approving budgets and establishing assessments absolves Defendant from his obligation to pay.

Although the Board did not establish budgets and assessments in strict compliance with the Declaration, I conclude that it met its responsibility to approve a budget, and to communicate the amount of annual assessments to the lot owners of Knightsbridge. The noncompliance of the Board in regard to the date specified for formulating the budget and assessments is inconsequential, and no party, including Defendant, has suffered prejudice as a result.

The Association offered evidence at trial of unpaid assessments, interest, late charges, and partial attorneys' fees, totaling \$3016.94 through January, 2016. However, as there is no establishment of late charges in either the Declaration, or the Association's By Laws, those charges are properly deducted from the total due. Additionally, since total attorneys' fees and costs will be determined by subsequent hearing if necessary, those charges are likewise to be deducted. After adjustment the balance of unpaid assessments from May, 2013, through January, 2016, totals \$1,516.94.

CONCLUSIONS OF LAW

Based on the findings of fact above, I make the following conclusions of law.

"Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible." *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011). Courts often use equitable maxims as guidance in balancing equitable considerations. "The principle 'equity regards as done that which ought to be done' applies in cases where the party seeking equitable relief establishes 'a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.'" *Id.*, 394 S.C. at 253, 715 S.E.2d at 354, quoting *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938)).

The notion 'equity looks to substance rather than form' evolved out of judicial regard for that which ought to be done. This maxim applies by 'dispensing with pure formalities which would otherwise defeat the equity. After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity.'" *Id.* (Internal citations omitted.)

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In *Regions Bank*, the court looked at the substance of the agreement between the parties to give an equitable lienholder under a contract of sale priority over the bank's prior recorded mortgage lien. Specifically, the court held that even though the lienholder's contract deposit was not paid until after the bank's mortgage was recorded, the bank knew of the lienholder's pending payment. Rather than establishing priorities strictly based on the timing of the recording and payment, the court found that the equities of the situation favored granting the lienholder priority over the bank's mortgage.

The case at hand is analogous. Defendant was well aware that, as a lot owner, he was responsible for paying assessments to fund the operation the Association, and did not contend otherwise at trial. Nor did he contest the substance of the operating budget or corresponding annual assessments. Defendant's sole argument is that the budgets for the relevant years were not timely approved by the Board in strict compliance with the Declarations. Defendant presented no evidence or argument of how this delay prejudiced him, or otherwise caused him to change his position in regard to payment of assessments.

The Board's failure to meet and approve the annual budget before December 1st of each year in no way deprived Defendant of some right to vote or to contest the assessments levied against his lot. Defendant's remedy against Board for loss suffered due to tardy action would be to recover any damages he suffered as a result the Board's failure act in timely fashion, but that does not invalidate the assessments. Instead of contesting the substance of the Plaintiff's claim, Defendant attacks the budget approval process, which has caused him no harm.³

Thus, I conclude that equity requires that Defendant's obligation to pay properly calculated assessments be enforced. To hold otherwise, would place form over substance and defeat the Association's right in equity to enforce its lien for assessments.

CONCLUSION

Based on the findings and conclusions herein, it is ordered as follows:

1. Plaintiff is granted judgment for foreclosure of its lien for unpaid assessments in the amount of \$1,516.94 through January, 2016, plus attorneys' fees and costs to be determined as set forth below.

³ Defendant's reliance on *Seabrook Island Property Owners Association v. Pelzer*, 292 S.C. 343, 356 S.E.2d 411 (Ct.App.1987) is misplaced. In *Seabrook*, the issue decided by the court was whether the Property Owners Association exceeded its authority by calculating a special assessment in a manner not authorized by the restrictive covenants. In that case, the property owner contested the Association's power to assess his lot in a manner contrary to that of the restrictive covenants, and the court upheld that contest. Here, Defendant does not assert that the calculation of assessments was in violation of the Declaration.

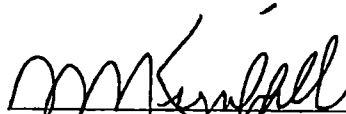
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2. Plaintiff is entitled to go forward with a foreclosure sale of Plaintiff's property in accordance with applicable statute and rule.

3. Plaintiff's counsel shall submit to the court and Defendant's counsel an affidavit of attorneys' fees and costs, together with appropriate documentation. Defendant shall have fifteen days from the date of receipt of such affidavit to raise objection to the charges made. If necessary, the court will hold a separate hearing to determine reasonable fees and costs. If no objection is made, the amount of fees and costs claimed shall be added to the judgment amount stated above, and said amount shall be collectable through sale of the subject property as part of the total amount due.

AND IT IS SO ORDERED.

February 29, 2016


S. Jackson Kimball
Master-in-Equity
York County

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August 31, 2016

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Re: Knightsbridge Property Owners Association, Inc. v Paul Nadeau
2016-001696 (2014-CP-46-03819)

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Dear Clerk:

Enclosed is a complete copy of Judge Kimball's February 29, 2016 order. I apologize for the oversight of missing page 2.

Sincerely Yours,

J. Edwin McDonnell
Managing Attorney
864-699-0303
eddiemcdonnell@sclegal.org





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