

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2015-CP-07-2016
(NON-JURY)

DATAW ISLAND OWNERS)
ASSOCIATION, INC.,)
)
Plaintiff,)
)
vs.)
)
SC ASSET MANAGEMENT CO, LLC;)
DATAW ISLAND CLUB, INC.,)
)
Defendants.)

RECEIVED
APR 05 2017
SC Court of Appeals
ORDER DENYING DEFENDANT
SC ASSET MANAGEMENT CO, LLC'S
MOTION TO RECONSIDER
[SCRCP 59(e)]

The Motion to Reconsider dated December 1, 2016, filed pursuant to SCRCP 59(e) by the Defendant SC Asset Management Co, LLC, in regard to the Final Order of Judgment issued by this Court on November 21, 2016, came before me for hearing on February 15, 2017. Present in the courtroom was James A. Grimsley III, Esq., attorney for the Plaintiff Dataw Island Owners Association, Inc., and the Defendant / Cross-Claimant Dataw Island Club, Inc. Spencer Langley, Esq., of the firm of Brumback and Langley, LLC, attorney for the Defendant SC Asset Management Co, LLC, attended the hearing by telephone.

Counsel for all parties were duly heard and, their respective arguments having been duly considered,

IT IS HEREBY ORDERED:

1. That the Motion to Reconsider dated December 1, 2016, and filed by the Defendant SC Asset Management Co, LLC, pursuant to SCRCP 59(e) is hereby denied.

2. That the Final Order of Judgment, to include all Findings of Fact and Conclusions of Law set forth therein, issued by this Court and dated November 21, 2016, is confirmed in every aspect thereof.

3. That the Beaufort County Clerk of Court is directed to release the escrowed funds, to wit: \$106, 892.71, plus accrued interest, if any, in this matter to the attorney for the Plaintiff and Cross-Claimant for further distribution in accordance with the Final Order of Judgment of this Court dated November 21, 2016.

AND IT IS SO ORDERED.

MARVIN H. DUKES III
Master-in-Equity for Beaufort County,
South Carolina

Beaufort, South Carolina
February __, 2017



Beaufort Common Pleas

Case Caption: Dataw Island Owners Association Inc VS S C Asset Management
LLC , defendant, et al
Case Number: 2015CP0702016
Type: Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

DATAW ISLAND OWNERS ASSOCIATION, INC

SC ASSET MANAGEMENT CO., LLC; DATAW ISLAND CLUB, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: JAMES A. GRIMSLEY III	Attorney for : <input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
DATAW ISLAND OWNERS ASSOCIATION, INC.	SC ASSET MANAGEMENT CO., LLC	\$13,654.85
DATAW ISLAND CLUB, INC	SC ASSET MANAGEMENT CO., LLC	\$123,233.16
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

November 22
2016
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2015-CP-07-2016
(NON-JURY)

DATAW ISLAND OWNERS)
ASSOCIATION, INC.,)
)
Plaintiff,)

vs.)

S.C. ASSET MANAGEMENT CO, LLC;)
DATAW ISLAND CLUB, INC.,)
)
Defendants.)

FINAL ORDER OF JUDGMENT

2016 NOV 21 PM 12:14
JERRI ANN ROSEHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter came before me for final hearing on September 28, 2016. Present in the courtroom were James A. Grimsley III, attorney for the Plaintiff Dataw Island Owners Association, Inc., and for the Defendant and Cross-Claimant Dataw Island Club, Inc., and Christopher Brumback, attorney for the Defendant South-Carolina Asset Management Co., LLC. Representatives of each party to this action were also present.

This matter was initiated by the filing of the Summons and Complaint and Lis Pendens by the Plaintiff on August, 21, 2015. An Answer and Crossclaim was filed by Defendant Dataw Island Club, Inc., on September 4, 2015, and Defendant S.C. Asset Management Co., LLC, filed its responsive pleadings to the Summons and Complaint and to the DIC Crossclaim on/about January 6, 2016.

Some months prior to trial, the parties agreed that the real property which is the subject of this action, to-wit: Lot 3015, Phase II, Doe Point, Dataw Island, Beaufort County, South Carolina, could proceed to be sold and title conveyed subject to the terms of a sales contract between the Defendant S.C. Asset Management Co., LLC, and a third party, provided that a

certain sum from the proceeds of sale was deposited with the Beaufort County Clerk of Court, to be held in escrow pending the outcome of this litigation. Accordingly, the sum of \$106,892.71 was duly deposited with the Clerk of Court on July 8, 2016, and is currently held in escrow, to be distributed in accordance with the Final Order and Judgment resulting from this litigation.

This matter was referred to the undersigned by Order of Reference dated June 10, 2016.

The parties advised the Court that mediation had been attempted, but the parties were unable to resolve the issues and the case was not settled.

From the testimony and evidence presented,

I FIND AS MATTERS OF FACT:

1. By deed dated September 12, 2012, and recorded in the Beaufort County ROD Office in Records Book 3175 at Page 1642, S.C. Asset Management Co., LLC, acquired title to certain real property described as Lot 3015, Phase II, Doe Point, Dataw Island, Beaufort County, South Carolina. This deed was issued as a result of a mortgage foreclosure and sale which occurred in September, 2012, at which S.C. Asset Management Co., LLC, was the successful bidder.

2. That at all pertinent times, the said property was subject to the provisions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dataw Island, which instrument is duly recorded in the Beaufort County ROD Office in Records Book 892 at Page 1038, as amended ("Declaration").

3. Pursuant to the Declaration, the Dataw Island Owners Association, Inc. ("Association"), of which each Dataw Island property owner is a Member, has the authority to assess properties subject to the Declaration such amounts, as determined from time-to-time, which are necessary for the upkeep of common areas, and for such other purposes as are set forth

therein. In the event of non-payment of assessments by a property owner, the Declaration provides for specific remedial actions which can be initiated by the Association to collect amounts which are delinquent, due and owing. The Declaration further provides for the assessment of late charges equal to 18% per annum, and recoupment of attorneys fees and costs incurred in collection proceedings.

4. By Amendment Number Three to the Declaration, which was duly recorded on May 18, 2001, in the Beaufort County ROD Office in Records Book 1421 at Page 453, purchasers of property subject to the Declaration are required to be a member of the Dataw Island Club ("Club"), and are thereby subject to the Club's By-Laws, Rules and Regulations, as published from time-to-time. The published Club By-Laws and Rules and Regulations, which were applicable at all pertinent times in this matter, provide that the Club is entitled to assess a late charge equal to four percent (4%) on the then unpaid balance with each monthly statement and, if collection proceedings are initiated, further entitled to recoup attorneys fees and costs/expenses incurred in such proceedings.

5. S.C. Asset Management Co., LLC, ("SC Asset"), by acquiring title to the subject property of this action in September, 2012, was obligated to become a member of the Dataw Island Club effective as of date of acquisition. Such obligation included the payment of an initiation fee, which in September, 2012, was \$15,000.00, and was thereafter responsible for payment of monthly dues and, if applicable, late charges equal to four percent (4%) on the entire unpaid balance from the preceding month.

6. In late September, 2012, shortly after its acquisition of the subject property, Shawn Thomas, the sole member of and registered agent for SC Asset, met with representatives of both the Association and the Club and was personally advised regarding Association

membership and Club membership. In November, 2012, Shawn Thomas of SC Asset formally requested a waiver regarding Club membership and the fees associated therewith. Such waiver was not granted.

7. Beginning in October, 2012, both the Association and the Club initiated their respective billing process to the Defendant SC Asset, with no remittances forthcoming.

8. In December, 2012, title to the subject property was conveyed by the Beaufort County Treasurer to US Bank Cust SASS Muni VI DTR ("US Bank"). This deed is recorded in the Beaufort County ROD Office in Records Book 3198 at Page 2907. The grantee, US Bank, was the successful high bidder on said property at the October 3, 2011, Beaufort County delinquent tax sale, and the subject property was not redeemed from the tax sale.

9. In March, 2013, title to the subject property was conveyed by US Bank Cust SASS Muni VI DTR ("US Bank") to TLR-VI, LLC ("TLR"), this deed being recorded in the Beaufort County ROD Office in Records Book 3224 at Page 1616.

10. In 2013, the Defendant SC Asset, after discovering that its property had been the subject of a tax sale, a tax deed, and thereafter a subsequent deed from the tax sale purchaser to another party, initiated an action in the Beaufort County Court of Common Pleas, filed under Case No. 2013-CP-07-1487, for the purposes of voiding the tax sale, the tax deed to US Bank and the subsequent deed to TLR, and confirming title in its name. By Order dated September 15, 2014, a copy of which is recorded in the Beaufort County ROD Office in Records Book 3352 at Page 1207, the tax sale and the County's tax deed to US Bank, and the subsequent deed to TLR-VI, LLC, were declared void and of no effect, and title to the subject property was confirmed in the name of S.C. Asset Management Co., LLC, *ab initio*.

11. Thereafter, Plaintiff filed this action to collect all sums due and owing to the Association pursuant to the Declaration. Likewise, the Club filed its Cross-Claim against the Defendant SC Asset to collect all sums due and owing to the Club. Both actions were initially styled as lien foreclosure actions. By Order of this Court, on Motion of the Defendant, SC Asset, the subject property was permitted to be sold free and clear of said liens, with a certain sum from the sales proceeds deposited in escrow with the Beaufort County Clerk of Court, to be distributed in accordance with further Order of this Court as to amounts determined to be due and owing.

12. In May, 2016, SC Asset remitted its first partial payments toward the amounts due to the Association and to the Club, and has remitted other periodic partial payments prior to trial.

13. After application of all credits for partial payments received from the Defendant SC Asset up to the date of the trial, the amount remaining as due and owing to the Association from date of SC Asset's acquisition on September 12, 2012, of the subject property is \$7,614.05, per the Association's statement of account. This figure includes unpaid assessments, and applicable late charges. Attorneys fees and litigation costs per Mr. Grimsley's affidavit submitted to the Court total \$6,040.80.

14. After application of all credits for partial payments received from the Defendant SC Asset up to the date of trial, the amount remaining due and owing to the Club from date of SC Asset's acquisition of the subject property on September 12, 2012, is \$117,290.66. The figure includes unpaid fees, dues, applicable late charges, and attorneys fees and litigation costs (totaling \$3,052.50) through August 31, 2016, per the Club's Statement of Account. Attorneys fees and litigation costs accrued since August 31, 2016 total \$5,942.50.

15. The Attorney for the Plaintiff and Cross-Claimant submitted an Affidavit in support of attorneys fees and the costs incurred in the prosecution of the action for both Plaintiff and Cross-Claimant. I find the fees and costs, in both respects, are reasonable and customary.

I CONCLUDE AS MATTERS OF LAW:

1. This Court has jurisdiction of the subject matter and parties to this action.
2. The Defendant, SC Asset, acquired title to certain real property known as Lot 3015, Phase II, Doe Point, Dataw Island, Beaufort County, South Carolina, by deed dated September 12, 2012, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Records Book 3175 at Page 1642.
3. The property acquired by SC Asset was, at time of acquisition, and was at all pertinent times, subject to the provisions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dataw Island recorded in the Beaufort County ROD Office in Records Book 892 at Page 1038, and all amendments thereto which, for purposes of this case, specifically includes Amendment Number Three, duly recorded in the Beaufort County ROD Office in Records Book 1421 at Page 453. Both of said instruments being of record at the time of Defendant's acquisition of the subject property, I find and conclude that the Defendant, SC Asset, is charged with constructive knowledge of same, which includes the matters which constitute the subject matter of this litigation, to wit: the obligations related to Association Membership and Club Membership effective as of the date of acquisition of title to property on Dataw Island. Shawn Thomas, representative of SC Asset, testified that he had no actual knowledge of the obligations as to Association or Club membership prior to purchasing the subject property, but I find and conclude that shortly after SC Asset's acquisition of same he was

provided actual knowledge of said obligations and failed to remit any sums whatsoever toward said obligations until May, 2016.

4. By the entry of the Final Order in Civil Action No. 2013-CP-07-1487, recorded in the Beaufort County ROD Office in Records Book 3352 at Page 1207, resolving the issues regarding the tax sale and tax deed as to the subject property which arose subsequent to Defendant's acquisition of title thereto, the said tax sale, the tax deed, and the subsequent deed from "US Bank" to "TLR" were specifically declared to be of no effect and utterly and completely void thus confirming and vesting SC Asset with title to the subject property, *ab initio*, to-wit: effective with the date of its acquisition, to-wit: the date of its deed, September 12, 2012, and the recording thereof on September 18, 2012.

5. Accordingly, I conclude that the Defendant S.C. Asset Management Co., LLC, is liable for all sums, as set forth herein, due to the Association and to the Club respectively, from the date of its acquisition of the subject property, to-wit: the date of its deed, September 12, 2012, and the recording thereof on September 18, 2012, and the Association and Club, respectively, are entitled to judgments against said Defendant for all amounts due from said date.

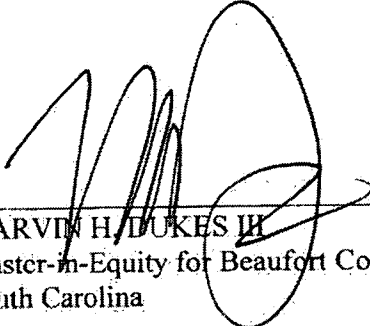
ACCORDINGLY, IT IS HEREBY ORDERED:

1. That Dataw Island Owners Association, Inc., have judgment against S.C. Asset Management Co., Inc., in the amount of \$7,614.05, plus additional accrued and unpaid attorneys fees and costs in the amount of \$6,040.80, for a total of \$13,654.85.

2. That Dataw Island Club, Inc., have judgment against S.C. Asset Management, Co. LLC, in the amount of \$117,290.66, plus additional accrued and unpaid attorneys fees and costs in the amount of \$5,942.50, for a total of \$123,233.16.

3. That the Beaufort County Clerk of Court is directed to release the escrowed funds, to wit: \$106, 892.71, plus accrued interest, if any, in this matter to the attorney for the Plaintiff and Cross-Claimant for further distribution in accordance with this Order.

AND IT IS SO ORDERED.



MARVIN H. DUKES III
Master-in-Equity for Beaufort County,
South Carolina

November 24 2016