

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-23-06923

Deborah L. Boies,
Plaintiff,

RECEIVED

Order

v.

DEC 18 2017

Jacqueline J. Lanier,
Defendant.

SC Court of Appeals

This is a civil action to enforce restrictive covenants on real estate. This matter came before the Court for nonjury trial on October 4, 2017. In its Order filed October 19, 2017, the Court ruled that Plaintiff was entitled to enforce the covenants.

On October 30, 2017, the Plaintiff filed, under SCRCP 59(e), a Motion to Reconsider the above Order. On November 14, 2017, the Court held a telephone conference call with counsel for both parties to address the issues raised by the Motion to Reconsider. Those issues included the following:

1. First, the Defendant argued that the second set of restrictive covenants applied only to Defendant's deeds and, as such, was unenforceable. Defendant argued that because the second set of restrictive covenants was not on file at the Register of Deeds Office, they did not apply to anyone's property except the Defendant's, and in light of this, it would be unfair and unenforceable to apply them solely to Defendant's property and no others. Plaintiff contended that Defendant was on actual notice of the second set of restrictions because they were attached to her deeds. Plaintiff also argued that she had testified that she had delivered copies of the same second set of restrictive covenants to all the other persons whose property was affected by the first set of restrictive covenants. The Court notes that a neighbor to both the Plaintiff and Defendant testified at trial that she had been provided both sets of covenants by

Plaintiff and that she was of the opinion that both sets of the covenants were applicable to her property, as well as all of the properties covered by the first set of covenants. The Court finds that the Defendant was on actual notice of the second set of restrictive covenants and that they governed use of her property. Further, and to the extent that Defendant has standing to assert the alleged lack of notice to any other landowners, the Court finds that the testimony established that all property owners were on actual notice of both sets of restrictive covenants. Accordingly, the Motion to Reconsider on this basis is denied.

2. Second, Defendant argued that the restrictive covenants in the case at bar did not meet the standard approved in *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985). Defendant argued that Plaintiff had reserved the right to reject a proposed change “for any reason” and that this is so broad as to be unenforceable. Plaintiff argues, in contrast, that under the restrictive covenants, her decision as Grantor was required to be based on aesthetics, the surrounding topography, and considerations of suitability and harmony, that it was not an arbitrary standard, and that such consent could not be withheld for “any reason,” as the Defendant contends. The Covenants give the Grantor (the Plaintiff herein) “the right to refuse . . . plans **which are not suitable or desirable**, . . . for any reason, including purely **aesthetic** reasons.” Covenants, section 2.8 (emphasis added). Under the rationale of *Palmetto Dunes*, this standard is valid and enforceable. Accordingly, the Motion to Reconsider on this basis is denied.
3. Third, the Defendant argued that after the Defendant had torn out the rails of the fence, and while the posts were still standing, Plaintiff told Defendant could do what

she wanted, based on Defendant's ownership of the land. Defendant argued that such a remark should "estop" Plaintiff from insisting that the fence be rebuilt. Plaintiff contends that the alleged remark, if it happened at all, happened during the first telephone call, while Plaintiff was out of town, and when Plaintiff had just been given notice that Defendant had torn the rails out of the fence, without prior written permission, as required by the covenants. Thereafter, Plaintiff testified that she reviewed the covenants and concluded that Defendant had no right to remove the fence without prior written consent of the grantor. Plaintiff immediately filed suit, served the Defendant, and sought an injunction preventing the Defendant from removing the fence posts. While Plaintiff was attempting to get a hearing on her motion for temporary injunctive relief, Defendant finished removing the fence posts. Finally, during the cross-examination at trial, Defendant admitted that removing the fence was a "modification" or an "alteration" of a structure on the property (which includes fences), which, under the Section 2.8 of the Covenants, required prior written consent, which she did not seek or obtain. For these reasons, and considering the totality of the evidence, the Motion to Reconsider on this basis is denied.

4. Finally, Defendant argued that language from Section 1.4 of the restrictive covenants states that any fence must be "comparable" to the fence which is already there, but that Plaintiff testified that the standard was that the fence must be a white vinyl fence. Defendant, in effect, argued that Plaintiff had verbally changed the standard from "comparable" to the existing fence, to exactly like the existing fence. The Court finds that the standard under the restrictive covenants is that the fence be "comparable in style and constructed material to a fence presently located on the boundary of the

Real Property (white vinyl fencing).” See, Restrictive Covenants, section 1.4. The Court finds that Plaintiff’s testimony was consistent with the written standard of the restrictive covenants. Thus, under the plain language of the covenants, the standard is “comparable” and not “exactly”. Accordingly, the Motion to Reconsider on this basis is denied.

CONCLUSION

The Court, having considered the arguments of counsel and the evidence presented in support of the Motion to Reconsider, finds that there is no basis to reconsider, or alter or amend the Order as entered by this Court on October 19, 2017. Accordingly, the Defendant’s Motion to Reconsider is denied.

JUDGE’S ELECTRONIC SIGNATURE ON FOLLOWING PAGE



Greenville Common Pleas

Case Caption: Deborah L Boies vs. Jacqueline J Lanier

Case Number: 2016CP2306923

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)