STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2017-CP-10-3672
CHRISTIE MacCONNELL,)	
)	
Plaintiff,)	
)	**Order Granting Summary Judgment in Favor of Frances C. Welch and Denying Christie MacConnell's Motion for Summary Judgment**
vs.)	
)	
FRANCES C. WELCH,)	
)	
Defendant.)	

This matter came before the Court for a hearing on January 11, 2018 for consideration of cross motions for summary judgment filed by the respective parties. Christie MacConnell ("MacConnell") was represented by counsel in M. Richardson Hyman, Jr., Esq., and Frances C. Welch ("Welch") was represented by James E. Reeves, Esq., and Christopher M. Ramsey, Esq. The Court has received and considered memoranda, affidavits, and other documents in support of each party's position, and the same are incorporated into the record and made a part hereof. For the following reasons, the Court denies MacConnell's Motion for Summary Judgment and grants Welch's Motion for Summary Judgment.

Factual and Procedural Background

Plaintiff is the owner of a condominium designated as Unit 405 which is part of the Albemarle Horizontal Property Regime (the "Regime"). Complaint ¶ 15. Ms. Welch also owns a condominium located in the Regime at Unit 404. The instant lawsuit involves a dispute over the exclusive right to use a Regime parking space designated as Space 38.

Riverview Condominium Associates, LLC (the "Developer") created the Regime by filing a Master Deed on August 12, 2004 with the RMC Office for Charleston County at Book V506, Page

237.[1] Section 6 of the Master Deed provides that "[t]he limited common elements appurtenant to the Residences are...One parking space for each one (1) and two (2) bedroom Residence." Unit 405 is a 2-bedroom residence and thus has one appurtenant parking space.

Section 24 of the Master Deed governs parking spaces. It reiterates that "[e]ach one-bedroom and two-bedroom Residence shall have one (1) parking space designated as a Limited Common Element." The next provision is critical:

> [i]f an Owner has been assigned an additional parking space in addition to the spaces provided above, he shall at the time of the closing of the purchase of his Residence elect to have that space designated as a Limited Common Element for his Residence, or have it remain as a GCE/Assignable Space as hereinafter defined. **If such Owner elects to have the additional space designated as a Limited Common Element for his Residence, the Master Deed shall be amended by the Association to reflect such election**.

(emphasis added). The section goes on to explain the distinction between a General Common Element ("GCE")/Assignable Space and a Limited Common Element.

> A GCE/Assignable Space is a space that is a General Common Element that has been initially assigned or is to be assigned by Developer to a specific Owner for his/her exclusive use and is in addition to the parking space(s) designated as Limited Common Element(s) for specific Residences. Such space may be assigned by the Owner thereof to any other Owner of a Residence upon providing the Association with written notice of such assignment. In the event that the Assignee of a GCE/Assignable Space has not assigned such space to another Owner of a Residence at the time such Owner transfers his interest in his Residence, then such space shall no longer be a GCE/Assignable Space and shall revert to being a non-assignable General Common Element space controlled by the Association.

A plat attached to the Master Deed includes a table titled "The Albemarle Parking Space Assignments." Space 38 is designated as a General Common Element – Assignable. Unit 405 is assigned Space 14 as its Limited Common Element.

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[1] The Master Deed was subsequently amended on December 1, 2004 at Book R517, Page 469, on December 28, 2004 at Book J520, Page 680, and on July 16, 2014 at Book 0417, Page 060. No changes were made concerning the parking spaces.

On January 24, 2005, the Developer conveyed Unit 405 to William and Ann M. Maier. The deed also conveyed to the Maiers the exclusive right to use Space 38. The specific language in the deed states that Developer

> does grant, bargain, sell and release unto the said Grantee as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns forever, the following described real property, to wit: [Unit 405] TOGETHER WITH THE EXCLUSIVE RIGHTS of Grantee to the use of an additional parking space designated as space number 38 which shall run with title to the said Unit Number 405 in the Albemarle Horizontal Property Regime and shall inure to the benefit of Grantee, his heirs and assigns and shall be binding on Riverview Condominium Associates, LLC, its successors and assigns.

MacConnell has presented no evidence that the Maiers ever elected to have the additional parking space (Space Number 38) designated as a Limited Common Element for their Residence, nor was the Master Deed amended to reflect such an election as required by Section 24 of the Master Deed.

On November 30, 2011, the Maiers executed an Assignment of GCE/Assignable Space for Space 38 in favor of Frances Welch. The Assignment cites to Section 24 of the Master Deed that "any parking space not designated as a limited common element shall become a GCE/Assignable Space, which may be assigned by the owner thereof." The Assignment was recorded in the RMC Office at Book 0227, Page 138, on January 10, 2012.

Also on November 30, 2011, the Maiers executed a Title to Real Estate in favor of MacConnell for Unit 405. The deed does not mention parking spaces or Space 38. This deed was recorded in the RMC Office at Book 0252, Page 073 on May 16, 2012.

Shortly after Welch purchased Space 38 on November 30, 2011, MacConnell states that she first became aware that Welch was parking in the space. There is no written record of MacConnell making any objection to Welch using Space 38 until the filing of this lawsuit in July 2017. In fact, MacConnell admits that neither she nor any guest of hers has ever parked in the parking space at issue in this case.

MacConnell filed this lawsuit on July 19, 2017 seeking quiet title to Space 38. Welch denied the allegations in the Complaint and asserted a Counterclaim for the same relief. Both parties have filed motions for summary judgment.

Standard of Review

Rule 56(c), SCRCP, provides that the Court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Analysis

The Horizontal Property Act provides that "[e]ach co-owner shall comply strictly with the bylaws...and with the covenants, conditions and restrictions set forth in the master deed." S.C. Code § 27-31-170. In this case, the Master Deed sets forth specific steps which must be taken in the event a co-owner wishes to convert a General Common Element/Assignable space into a Limited Common Element space. First, the co-owner must elect to designate the space as a Limited Common Element at the time of closing. Second, the Master Deed must be amended to reflect the new designation. Neither of these conditions were met to make Space 38 a Limited Common Element of Unit 405, and thus the Maiers were free to assign Space 38 to Welch.

1. The Maiers Did Not Elect to Designate Space 38 as a Limited Common Element

MacConnell has presented no evidence that the Maiers elected to designate Space 38 as a Limited Common Element at the time of closing. In the deed from the Developer to the Maiers, the term "Limited Common Element" is never used to describe the "additional parking space" being conveyed. Plaintiff relies upon the Developer's phrase "which shall run with the title" and "shall inure to the benefit of Grantee, his heirs and assigns" in support of her position. MacConnell argues that it is the grantor's intent that is determinative of the issue. However, according to the Master Deed, it

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is the Owner who elects whether to convert the assignable space into a Limited Common Element attached to the unit. Plaintiff has failed to show that the Maiers made this election. In fact, the Maiers' subsequent conduct is emphatic evidence that they did not elect to convert Space 38 into a Limited Common Element of Unit 405. The Maiers negotiated and sold the rights to Space 38 to Ms. Welch, and executed an Assignment consistent therewith. Presumably the Maiers would not have done this if they reasonably believed they had elected to make Space 38 a Limited Common Element. This is further evidenced by the deed from the Maiers to MacConnell, which conspicuously omits any reference to Space 38 or any parking spaces at all.

2. The Association Did Not Amend the Master Deed to Record Space 38 as a Limited Common Element of Unit 405

Even if one assumes that the language contained in the deed from the Developer to the Maiers is sufficient to show that the Maiers elected to convert Space 38 into a Limited Common Element of Unit 405, the alleged conversion was still ineffective because the Association did not amend the Master Deed to reflect this alleged change in status. At the time of the deed to the Maiers, the Master Deed included a table showing that Space 38 is a GCE-A or General Common Elements – Assignable space.

3. The Maiers Assigned Space 38 to Frances Welch

The Maiers never elected to make Space 38 a Limited Common Element of Unit 405, and the Master Deed was not amended to reflect this change in status. Therefore, the Maiers were free to assign their rights to Space 38 to another co-owner. This is exactly what they did on November 30, 2011 when they executed an Assignment of GCE/Assignable Space to Frances Welch. The Assignment was filed with the Charleston RMC Office and thus served as notice to the world that Welch claimed the exclusive rights to Space 38 by virtue of the Assignment. Thus, the Court finds that Space 38 is a General Common Element – Assignable under the Master Deed, and that it was properly assigned by the Maiers to Welch.

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4. Laches

As a separate and independent basis for relief, Welch is entitled to summary judgment by application of the doctrine of laches. Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. Jones v. Leagan, 384 S.C. 1, 19 (Ct.App. 2009). The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198 (1988). Under the doctrine of laches, if a party, knowing her rights, does not seasonably assert them, but by unreasonable delay causes her adversary to incur expenses or enter into obligations or otherwise detrimentally change her position, then equity will ordinarily refuse to enforce those rights. Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421 (1993). A party seeking to establish laches must show (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Robinson v. Estate of Harris, 388 S.C. 616, 627 (2010).

MacConnell stated that she first became aware that Welch was parking in "her" space shortly after November 30, 2011. Notwithstanding this clear violation of her alleged rights to Space 38, MacConnell has made the Court aware of no correspondence or other documentation between her and Welch warning or alerting that she considered the space to be reserved for her, until this lawsuit was filed over five (5) years later. In fact, MacConnell admits that neither she nor any of her guests has ever parked in Space 38 since Welch purchased the space from the Maiers. When one considers that MacConnell and Welch have been neighbors since about November 30, 2011, MacConnell's failure to take any action to enforce her alleged rights to Space 38 rises to a level of willful neglect. A delay of over 5 years is unreasonable under the circumstances.

The Court finds that Welch has been prejudiced by the delay. Had MacConnell objected to the Assignment in a timely manner, Welch could have rescinded the Assignment and recovered her

purchase price. Welch reasonably relied upon having access to Parking Space 38 which she paid for, and with the passage of time it would be more difficult for her to find a replacement parking space. So, even if MacConnell would otherwise prevail on her claim, the doctrine of laches bars her claim to Parking Space 38 at this late hour.

Conclusion

Based on the foregoing, IT IS THEREFORE ORDERED that MacConnell's Motion for Summary Judgment is DENIED. It is FURTHER ORDERED that Welch's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

Honorable R. Markley Dennis, Judge
Ninth Judicial Circuit

Date: 1/26/18

Charleston, South Carolina