

ELECTRONICALLY FILED - 2018 May 02 11:40 AM - GREENVILLE - COMMON PLEAS - CASE#2013CP2301810

STATE OF SOUTH CAROLINA)	IN THE COMMON PLEAS COURT
)	
COUNTY OF GREENVILLE)	2013-CP-23-01810
)	
John D. Hatcher, Rachel)	
Shaluly, James F. Gilbert,)	
Molly A. Miller and Michael)	
Stehney, individually and as)	
members of the)	
Architectural Committee of)	
Mill Creek Estates,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	
Ron Ferguson and Ronald)	
J. Ferguson,)	
)	
Defendants.)	

This matter was before the Court April 16th, 2018 for a hearing on a number of motions filed by the Plaintiffs and the Defendants. Present at the hearing were three of the Plaintiffs, John D. Hatcher, Michael Stehney and James F. Gilbert. The Defendants Ronald J. Ferguson and Ronald E. Ferguson were both present for these hearings. The Court will address each motion.

Plaintiffs requested the Court to allow an amendment to the Complaint and name Real One, LLC as a Defendant. The Court received a copy of a deed whereby the Defendants, Ronald E. Ferguson and Ronald J. Ferguson, together with Susan M. Ferguson, transferred the real estate which is the subject matter of this lawsuit to Real One, LLC, a New Mexico LLC, on February 15, 2018. The Defendants acknowledged that they transferred the property to this LLC. The Court inquired of the Defendants whether they had any good reason not to have this party named as a defendant, and they did not state any except for an argument regarding

indispensable parties. The Court finds that the motion is well taken and hereby allows the Plaintiffs to amend the Complaint and add Real One, LLC as a Defendant and directs that Plaintiffs' attorney shall promptly serve all pleadings upon the LLC. Further, the Clerk of Court shall note that Real One, LLC is now a party-Defendant.

Next the Court heard arguments on the Plaintiffs' Motion to Compel. This is Plaintiffs' seventh Motion to Compel hearing involving multiple judges and involving substantially the same issues.¹ In the most recent Order in this regard, filed May 4, 2017, the Court found that the Defendants had again willfully failed to comply with Orders requiring them to comply with the discovery requests of the Plaintiffs. In that Order, the Court found that the Defendants did not present a sufficient reason why they had failed again to fully respond or allow the inspection of the residence in question. Despite this history of not complying with Orders, the Court allowed Defendants one last opportunity to fully and completely comply with discovery. The Court stated in the May 4, 2017 Order that should Defendants again fail to allow the inspection within the time period directed, then their Answer and Counterclaim may be stricken entirely.

At the hearing on April 16, 2018 the Court heard arguments from the Defendants about their refusal yet again to allow inspection of their house, even though Plaintiff's attorney had requested the same in the manner as set out in the Order of May, 2017. Defendants' responses were simply not persuasive as to why they would not allow the inspection.

The Court again finds that the Defendants have willfully failed to comply with the numerous Orders requiring them to allow the inspection and complete discovery. The Court

¹ Since 2013, Judges Hill, Stilwell, Hayes, Lee and the undersigned have issued Orders relating to Defendants multiple and their ongoing failures to comply with discovery.

does not take the issue lightly and has an obligation and duty to all parties to fairly and impartially enforce Orders of the court. And, in this regard, this case is almost 5 years old and has been routinely delayed by Defendants through their refusal to comply with Orders, their multiple appeals to the South Carolina Appellate Courts and their multiple times of removing the case to the United States District Court. No court at any point of the proceedings has granted any relief sought by the Defendants.

In light of the exhaustive record before the Court, the Court hereby orders that the Defendants' Answers and Counterclaims be stricken. While such is a drastic remedy, the Court finds it necessary and appropriate under the unique facts of this case. The Plaintiffs may schedule another hearing to determine damages, if any, arising out of their claims. At such hearing Defendants participation shall be limited to the issue of damages sought by Plaintiff.

The Plaintiffs are also seeking attorney fees and costs for bringing of the current Motion to Compel. Using that same analysis as above, the Court finds the request reasonable and awards attorney fees in the amount of \$2,281.74 for the current Motion to Compel. This shall be entered by the Clerk of Court as a judgment against these Defendants since Defendants stated they lacked ability to pay such fees and costs. The Court has, at least up to this point, had a reluctance to order incarceration of Defendants for the repeated violations of Orders. However, the Court places the parties on notice that such is an option should any party not comply with future Orders.

The next matter was the Rule to Show Cause filed on behalf of the Plaintiffs requesting that the Defendants be held in contempt of Court for failure to comply with the May 4, 2017 Order. The Defendants admit that they have failed to pay the \$4,575.00 attorney fees and

costs awarded to the Plaintiffs in that Order. Other than stating an inability to pay, they could not enumerate any justifiable reason for not making the payment. Accordingly, the Court finds that the Defendants have willfully failed to pay the attorney fees and costs due awarded in the May 4, 2017 Court Order. The Court does award additional attorney fees and costs for the pursuit of this Rule to Show Cause and Motion in the amount of \$1,190.00. This is separate and distinct from the \$2281.74 discussed above. Accordingly, the \$1,190.00 and the \$4,575.00 previously ordered shall be entered as judgments against these Defendants for the reasons noted above.

The Defendants have two outstanding motions. The Defendants first motion, filed May 26, 2017, is their Notice and Motion to Vacate Orders issued May 5, 2017 and May 18, 2017. The Court is intimately familiar with the facts and circumstances of this case having had many occasions to review all the pleadings, motions and Orders. The Defendants were not able to provide any convincing argument why the Court should overturn and vacate the previous Court Orders. Accordingly, the Court denies the Defendants' Motion to Vacate the Orders of May 5, 2017 and May 18, 2017.

Finally, the Defendants have a Motion for Summary Judgment that was filed May 26, 2017. The Court finds that it has already stricken the Answers and all Defenses and Counterclaims of all the Defendants. Notwithstanding this, and after reviewing the record, the Court finds that even had their Answers, Defenses and Counterclaims not been stricken, there is no basis or reason to grant the Motion. Thus, the same is denied.

Notwithstanding the above, the Court finds that the Plaintiffs still have a right and a need to inspect the Defendants' house to determine what, if any, violations of the Restrictive

Covenants may exist in the house. This house is a substantive part of the subject and basis of this lawsuit. Mr. Ronald E. Ferguson indicated during the April 16th, 2018 hearing that he now agrees and consents to allow the inspection. Therefore, it is ordered that the Defendants allow the inspection within 45 days of the date of this Order. The Plaintiffs' counsel will notify the Defendants in writing via email when the inspection will occur (with at least a 4 day notice being provided) and if Defendants do not, within 24 hours, notify the Plaintiffs via reply email that they are unable to be at the residence at that time, and provide an alternative date and time within 3 days of the time requested, then the inspection will occur at that time. The Plaintiffs will not participate in the inspection, only their attorney Rodney M. Brown, and an expert he has retained. The Greenville County Sheriff's Office is directed to accompany Rodney M. Brown and his expert to the Defendants' house to oversee the inspection.

At the hearing on April 16, 2018, the Court became aware of the fact that one of the owners of the house, Susan M. Ferguson, had never been named a party. Mrs. Ferguson has appeared at many of the hearings and the Court has routinely invited her to participate, ask questions and state her position on issues. Accordingly, I find that full relief cannot be addressed or granted without her being a named party and, further, that as an owner she has a right to be named as a party since she has actively participated thus far. Accordingly, the Court hereby directs that Susan M. Ferguson be a named a party-Defendant and that the Clerk of Court note the same. See, Rule 19, SCRPC. Further, Plaintiff's counsel shall promptly serve upon Susan M. Ferguson all pleadings and Orders in this case.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Defendants' Answers, Defenses, Counterclaims are stricken in their entirety.

2. The Plaintiffs are awarded additional attorney fees and costs for the current Motion to Compel in the amount of \$2,281.74 and this amount shall be entered as a civil judgment against Ron Ferguson and Ronald J. Ferguson.
3. The Plaintiffs' Motion to Amend the Complaint is granted and they are hereby provided 30 days to amend the Complaint and name the new party, Real One, LLC.
4. The Court finds that the Defendants have violated the May 4, 2017 Order by failing to pay the attorney fees and costs in the amount of \$4,575.00. Further, the Court awards, as noted above, additional attorney fees and costs in the amount of \$2,281.74 and \$1,190.00. These amounts totaling \$8046.74 and shall be entered as a civil judgment against Ron Ferguson and Ronald J. Ferguson. The Court reserves any further sanctions of contempt pending the Defendants' further compliance with the Court Order.
5. The Defendants' Motion for Summary Judgment and to vacate the previous Court Orders are hereby denied.
6. That Susan M. Ferguson be added as a party-Defendant.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW



Greenville Common Pleas

Case Caption: John D Hatcher , plaintiff, et al vs. Ron Ferguson
Case Number: 2013CP2301810
Type: Master/Order/Other

And It Is So Ordered!

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

Electronically signed on 2018-05-02 08:19:41 page 7 of 7

ELECTRONICALLY FILED - 2018 May 02 11:40 AM - GREENVILLE - COMMON PLEAS - CASE#2013CP2301810