

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

EUGENE L. GRIFFIN, JR. AND)
BETH KING GRIFFIN,)

C/A No. 2017-CP-04-2632

Plaintiffs,)

ORDER

vs.)

ARDEN CHASE HOME)
OWNERS' ASSOCIATION, INC.,)

Defendant.)

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SC Court of Appeals

PRESIDING JUDGE: R. Lawton McIntosh
HEARING DATE: May 11, 2018
PLAINTIFF'S ATTORNEY: Daniel Draisen
DEFENDANT'S ATTORNEY: J. Franklin McClain
COURT REPORTER: Diane Marcengill

This matter was before me on the parties' cross motions for Summary Judgment. The issues are the same: whether or not the Plaintiffs' (Griffins') constructed R.V. garage complied with the Defendant's Restrictive Covenants for the subdivision or the orders of Judge R. Scott Sprouse from the trial of a related matter in *R. Dean Price, et al v. Eugene L. Griffin, et al*, Case No. 2016-CP-04-02028.

This action was filed by the Griffins on December 11, 2017. The Complaint requests that the Court declare the disapproval by the Architectural Control Committee (ACC) and Home Owners Association (HOA) improper, unjustifiable,

arbitrary and malicious; and that the Court declare the detached garage to be in compliance with the Restrictive Covenants, in character with the other structures in the neighborhood, and allowed as a matter of law. The Griffins also seek damages from the HOA for abuse of process and malicious prosecution and a preliminary and permanent injunction prohibiting the HOA from taking action to abate the detached garage.

The HOA filed an Answer and Counterclaim requesting a declaration from the Court that:

- a. The Plaintiffs have constructed their garage in violation of the Order of Judge Sprouse, dated March 28, 2017 and clarified by Order dated October 13, 2017.
- b. The Plaintiffs have constructed their garage without the approval of the ACC as required by the Covenants and are therefore in violation of the Covenants.
- c. The Plaintiffs must comply with the decision of the Homeowners Association requiring the demolition of the garage.
- d. The Defendant is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants.

Both parties have filed Motions for Summary Judgment and have asserted that there is no genuine issue as to any material fact.

**FACTUAL AND PROCEDURAL
BACKGROUND**

In the case of *R Dean Price, et al vs. Eugene Griffin, et al* (Case Number 2016-CP-04-02028) some members of the Arden Chase Subdivision brought an action to enjoin the construction of the Griffins' detached garage.

Judge Sprouse issued his Order dated March 28, 2017, granting the injunction and providing that the "Defendants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the wall containing the garage door intersects Concord Road instead of Arden Chase Street".

Both parties stipulated that the Court's ruling is res judicata.

In June, 2017, the Griffins informed the Architectural Control Committee (ACC) that they were proceeding with construction with some modifications. The attorneys for the HOA notified the Griffins by letter that the ACC believed Judge Sprouse intended that the entire garage be turned and that any altered plans should be submitted to the ACC. The Griffins refused to submit plans to the ACC.

The HOA filed suit seeking an injunction on June 14, 2017. Judge Lawton McIntosh denied the request and granted Summary Judgment in favor of the Griffins without prejudice to either party to have Judge Sprouse clarify his order.

By Order filed October 13, 2017, Judge Sprouse clarified that his intent was that the entire structure would need to be turned in order to comply with the

covenants and that a modified plan would require submission to the ACC. This order is also res judicata.

The Griffins submitted several revised plans to the ACC. These plans were not approved by the ACC. The ACC notified the Griffins of the denial and stated their reasons for the denial. The Griffins did not make a written request for the ACC to reconsider its decision.

The Griffins were notified by letter on December 5, 2017 that the HOA had agreed with the ACC that the building was in violation of the covenants and Judge Sprouse's Order.

FINDINGS AND CONCLUSIONS

The Restrictive Covenants provide as follows:

Section 5.05 Submission of Plans and Specifications: No structure shall be commenced, erected, placed, or permitted to remain on any home site nor shall any existing structure upon any home site be altered in any way which materially changes the exterior appearance of the structure of the home site unless plans and specifications therefor shall have been submitted to and approved in writing by the ACC.

Therefore, the issues before this court on cross motions for summary judgment can be more particularly set forth as:

- (1) Whether the Griffins complied with Judge Sprouse's Order?

(2) Whether the Griffins complied with Section 5.05 of the restrictive covenants particularly, or restrictive covenants generally in constructing the detached R. V. Garage?¹

Neither party appealed either of Judge Sprouse's Orders. Accordingly the orders constitute the law of the case. The Griffins did not attempt to turn the entire structure as provided by Judge Sprouse's Order. They simply modified the existing corner walls in an attempt to angle them away from Arden Chase Street and towards Concord Road, resulting in a six-sided structure.

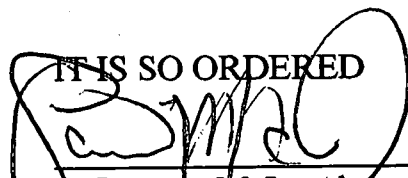
The Griffins did attempt to comply with Judge Sprouse's October 13, 2017 Order by submitting several revised plans to Arden Chase's Architectural Control Committee (ACC). Ultimately, the Griffins' plans were not approved by the ACC. The Arden Chase Home Owner's Association agreed with the ACC's decision. The Griffins were properly notified of these decisions. Notwithstanding the above, the Griffins completed the construction of the R.V. detached garage. There is no genuine issue of material fact that the Griffins did not comply with the approval requirements of Arden Chase's recorded, restricted covenants by obtaining approval before constructing the present structure. There is also no genuine issue of material fact that the Griffins did not comply with Judge Sprouse's unappealed orders. Accordingly, Arden Chase shall be and here by is granted Summary

¹ Nothing contained in this Order is intended to address whether the Arden Chase Architectural Control Committee (ACC) or the Home Owner's Association's conduct in this matter is actionable.

Judgment. The Griffins are bound by the law of the case in this matter.

It is therefore Ordered, Adjudged and Decreed that:

- a. The Plaintiffs have constructed their garage in violation of the Order of Judge Sprouse, dated March 28, 2017 and clarified by Order dated October 13, 2017.
- b. The Plaintiffs have constructed their garage without the approval of the ACC as required by the Covenants and are therefore in violation of the Covenants.
- c. The Plaintiffs must comply with the decision of the Homeowners Association requiring the demolition of the garage.
- d. The Defendant is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants.

IT IS SO ORDERED

R. Lawton McIntosh
Circuit Judge
Tenth Judicial Circuit