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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
EUGENE L. GRIFFIN, JR. and)
BETH KING GRIFFIN,)
)
Plaintiffs,)
)
vs.)
)
ARDEN CHASE HOME OWNERS)
ASSOCIATION, INC.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

Case Number: 2017-CP-04-02632

ORDER

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SC Court of Appeals

Presiding Judge: R. Lawton McIntosh
Hearing Date: November 1, 2018
Plaintiffs' Attorney: Daniel Draisen
Defendant's Attorney: Ernest C. Trammell and J. Franklin McClain

This matter was before me on Plaintiffs' Motion to Reconsider, Alter or Amend Judgment. The Defendant filed a return asking that Plaintiffs' motion be dismissed and requesting the removal of a footnote in the order.

FACTUAL AND PROCEDRUAL

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

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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.

Based upon the above, the court, by order filed August 9, 2018, found that there was no genuine issue of material fact that the Griffins did not comply with Judge Sprouse's unappealed order and constructed the garage without the approval of the ACC and were therefore in violation of the covenants. The Plaintiffs' were ordered to comply with the decision of the Homeowners Association requesting demolition of the garage.

Plaintiffs' submit three questions in their motion to reconsider:

I. Did the Court err in finding that the Griffins did not make a written request for the ACC to reconsider its decision rejecting the Griffins' revised garage plans?

II. Did the Court err in limiting its consideration to only whether the Griffins complied with Judge Sprouse's Order in regard to the originally submitted garage plans, or should the Court have also considered whether the ACC wrongfully disapproved the Griffins *revised* garage plans which

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Plaintiffs assert comply with both Judge Sprouse's Order and the Covenants?

III. Did the Court err in ordering, prior to the complete adjudication of Plaintiffs' claims, that the Defendant is entitled to require the demolition of the garage and may exercise the Right to Abatement if Plaintiffs do not tear down the garage?

Based upon the undisputed facts in the case, I find that there is no question that the Plaintiffs failed to make a written request to the ACC to reconsider its decision. Even if you assume the submission of revised plans constitute such a request, there was no submission from the denial of the ACC on October 30, 2017 until revised plans were submitted on December 12, 2017.

Section 5.03 of the Covenants allows 10 days to request review and provides that the decision "shall be final and binding."

As to Plaintiffs second question, I find that the ACC had the authority and right to disapprove the revised plans which did <u>not</u> comply with Judge Sprouse's Order and the Covenants.

Section 5.05 specifically provides that the submission of plans to the ACC shall include "site plans showing the location of all proposed structures on the Home Site including building setbacks, open space, driveways, walkways, and

parking spaces including the number thereof and all siltation and erosion control measures."

Section 5.07 of the Covenants provides that the ACC shall have the right to disapprove any plans for "the failure to include information in such plans and specifications as may have been reasonably requested."

In supporting their motion, Plaintiffs argue that Judge Sprouse gave them "the opportunity, to either (a) turn the entire building and use the original plans, or (b) to redesign the building and the resubmit the plans to the ACC for approval." This quoted language does not appear in Judge Sprouse's October 13, 2018, Order. In that Order, Judge Sprouse simply stated that the intent of his original order was that the structure as proposed on the plans was allowed on the condition that the entire structure was turned. A modified plan would need to be submitted to the ACC for approval. Judge Sprouse encouraged the parties to resolve the issue prior to any further litigation. However, the Plaintiffs continued construction of the garage without resolving the issue and without the approval of the ACC.

The Plaintiffs have relied heavily on the language in Judge Spouse's original order which stated: "In order to aid the parties with an answer to the declaratory judgment portion of the case, future construction in the subdivision can be compliant regarding this provision if a straight line drawn from the front corners of

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a proposed structure intersects a neighboring lot line, Concord Road, or the outer boundary of the subdivision prior to intersecting Arden Chase Street."

However, the final site plan submitted to the ACC on December 12, 2017 and introduced as an exhibit shows that the straight line from one of the sides containing the garage door intersects Arden Chase Road Right-of-Way prior to intersecting a neighboring lot line, Concord Road, of the outer boundary of the subdivision.

Therefore, the revised plan clearly does not comply with Judge Sprouse's Order and does not comply with the covenants.

It is therefore ordered, adjudged and decreed that the Plaintiffs' Motion to Reconsider, Alter or Amend Judgment is denied, and my Order of August 9, 2018 remains in full force and effect.

IT IS SO ORDERED

R. Lawton McIntosh
Circuit Judge
Tenth Judicial Circuit

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