FINAL BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2015-CP-24-00337

Challenge Golf Group of South Carolina, LLC,

Respondent,

V.

B.J. Brandimarte, Appellant

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

THE TRIAL COURT ERRED IN ITS INTERPRETATION OF THE GOVERNING DOCUMENTS

STATEMENT OF THE CASE

On April 13, 2015, the Challenge Golf Group of South Carolina, LLC (CGG) filed a complaint against BJ Brandimarte(Brandimarte), claiming monetary damages related to membership dues and fees in Grand Harbor Golf & Yacht Club (GHGYC). Brandimarte, Pro Se, answered by denying membership in GHGYC and counterclaimed a breach of contract. A nonjury trial was heard on March 21, 2018 and judgment was entered on April 24, 2018 awarding "a judgement for unpaid dues, food and beverage minimum and other related costs associated with Defendant's membership in the Grand Harbor Golf Club" for $29,476.88 to CGG. (R. p. 001, lines 1-3) Brandimarte's counterclaim for non performance of a consideration was dismissed.

On April 27, 2018 Brandimarte filed a notice of appeal on CGG.

STANDARD OF REVIEW

The trial court's interpretation of a contract is a matter of law subject to de novo review. Syvrud v. Today Real Estate, Inc., 858 So.2d 1125 (Fla. 2d DCA 2003). The interpretation and legal effect of written instruments are matters of law. McGinley v. Bank of America, N.A., 279 Kan. 426, 431, 109 P.3d 1146 (2005). Where an action presents a question as to the construction of a written contract and the language of the contract is clear and unambiguous, the question is not one of fact but one of law. J.T.M. Co., Inc. v. Vane, 283 S.C. 512, 323 S.E. (2d) 794 (Ct. App. 1984).

ARGUMENTS

I. THE TRIAL COURT ERRED IN ITS INTERPRETATION OF THE GOVERNING DOCUMENTS

Brandimarte purchased a lot in Grand Harbor from the developer in early 2002. Before closing on his property he was presented with a Declaration of Covenants, Conditions, Restrictions, Easements, Liens and Charges of Grand Harbor (Declarations), dated July 15, 1999. (R. pp. 061-080) These declarations described the Harbor Club Membership requirements under

Article VI, section 1 as "All owners will be required to join the Grand Harbor Club. Each owner shall fulfill this Club membership requirement prior to obtaining the certificate of occupancy of their Unit. A copy of the membership requirements as of the date of this Declaration are attached as Exhibit "D"." (R. pp.082-083) Declarations Exhibit D in section II A.1. detail the membership requirements as "Dues for the Harbor Club facilities will be $600.00 per year and will be paid as follows: $300.00 when the pool, poolside bar and grill, and marina are completed; the remaining $300.00 will be paid when the clubhouse is completed." (R. p 039, line 16- p. 042, line 5); (R. pp. 061-080) Courts must "construe contracts in such a way as to give reasonable meaning to all provisions", rather than dismissing part of the contract. Paladyne Corp. v. Weindruch, 867 So. 2d 630-Fla: Dist. Court of Appeals, 5th Dist. 2004. "'Restrictive covenants are contractual in nature,' so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E.2d 15 (1985).

Amenities in place at the time of purchase in the Harbor Club complex were a pool, whirlpool, poolside bar and grill and a marina. No additional amenities have been added to the Harbor Club Complex and a clubhouse was not built in the Harbor Club Complex. A tennis facility was added at

a separate location with fitness equipment added to the viewing area of the facility. (R. p. 043, line 18-p. 046, line 6) At the time of Brandimarte's purchase there was no golf course or knowledge of a golf course. (R.pp.084-086) However, a golf course and golf clubhouse, called the Patriot, were constructed with no view of the lake. (R. p. 033, line 5-p.037, line 4; R. p.046, line 24-p.048, line 2) Brandimarte was petitioned on several occasions to join the Patriot Golf Club. He declined to join and never signed documentation to join. (R. p.055, line 21 -p.057, line 1); (R. pp. 087-090)

Brandimarte maintains that he is a member of the Harbor Club as described in the Declarations presented to him and therefore Brandimarte's dues are $300 per year for use of the amenities in place at the time of purchase. (R. p.042, line 10- p. 043, line.2) "The fundamental rule in construing covenants and restrictive agreements is that the intention of the parties as shown by the agreement, governs." Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420 (1950). Brandimarte had no intent or desire to join a golf club. His intent was always to enjoy the amenities that were described in the original Declarations. Brandimarte maintains that the focus of the community morphed from a water centric community to a golf centric community. As such, "a court should strive to give effect to the intent of the parties in accord with reason and probability as gleaned

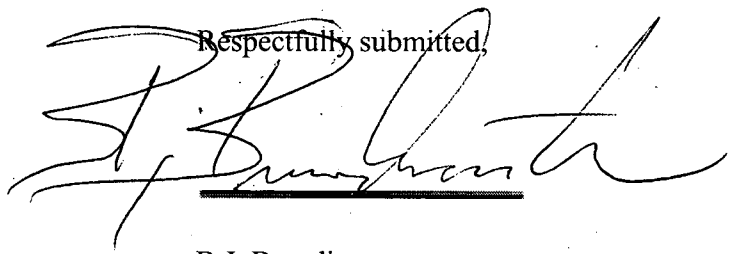
from the whole [membership] agreement and it purpose." Feldkamp v. Long Bay Partners, LLC 773 F. Supp. 2d at *1252 1280-1281(M.D. Fla. 2011) (citation omitted) Reasonable inferences can be drawn from unambiguous contract language to determine the parties intent. Bombardier Capital Inc. v. Progressive Mktg. Grp., Inc., 801 So.2d 131, 134 (Fla. 4th DCA 2001).

"Do by-laws prevail over covenants? While it is not possible to state an absolute rule in response to this question, it is the opinion of this Office for the reasons set out below that a South Carolina court generally would find that restrictive covenants prevail over bylaws adopted pursuant to those covenants if there is a conflict between them. Our Office is not aware of any precedential South Carolina authority which squarely addresses a conflict between restrictive covenants and a bylaw of a homeowners' association. However, as discussed below, both South Carolina law and authority from other jurisdictions point to restrictive covenants as the constitutional document of a homeowners' association ("HOA") which generally takes precedence over any bylaws adopted pursuant to the covenants in the event of a conflict." (SC Attorney General Opinion (2016))

CONCLUSION

Brandimarte respectfully asks that this court reverse the decision of the trial court and vacate the award of damages. Brandimarte submits that he never joined the Patriot Golf Club, Grand Harbor Golf Club or any golf club associated with Grand Harbor. Brandimarte was continuously lead to believe that the contract would be performed by the unambiguous building dates proclaimed for the construction of the Yacht Club House at the Harbor Club Complex. Brandimarte respectfully asks that his counterclaim for compensatory damages of $3752.50, which was for overpayment of dues made in good faith, be awarded. He further prays this court will award punitive damages as the court deems just, for the malicious and wanton disregard for the spirit of the contract. Brandimarte was intentionally mislead.

Respectfully submitted,



March 18, 2019

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CERTIFICATE OF COUNSEL IN FINAL BRIEF

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

March 18, 2019

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