

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CLARENDON )  
 )  
PALMETTO AIR PLANTATION )  
HOMEOWNERS ASSOCIATION, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
KIM E. BEVIER, )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
OF THE THIRD JUDICIAL CIRCUIT  
CASE NUMBER: 2017-CP-14-00127

ORDER FOR PARTIAL  
SUMMARY JUDGMENT.

**RECEIVED**  
MAR 27 2019  
SC Court of Appeals

This matter came before the Court pursuant to Plaintiff's motion for partial summary judgment. The parties submitted memorandums in support of their positions and stipulated that the matter be heard without oral argument. After reviewing the memorandums, deposition testimony and the Court file, the Court would rule as follows regarding the Plaintiff's motion for partial summary judgment.

**STANDARD OF REVIEW**

Rule 56(c), SCRCP, provides that a trial court may grant a motion for 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." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt, Co., Inc.*, 381 S.C. 326, 329-30, 673 S.B.2d 801, 802 (2009). "At the summary judgment stage of

litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." S.C. *Prop. & Gas. Guar Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct App. 2001). "The purpose of summary judgment is to expedite the disposition of cases *Long Grove at Seaside Farms, LLC v. Long Grove...*, 2012 WL 10890587 ... © 2018 Thomson Reuters. No claim to original U.S. Government Works. 3 which do not require the services of a fact finder." *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548,558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Id.* Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

#### **FACTUAL BACKGROUND**

On or about July 11, 2001, the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of the Defendant dated April 4, 2018). The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said

lots are subject to the aforementioned Covenants ." The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";

At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following:

"Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018).

On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

During the April 4, 2018 deposition of the Defendant, the following exchange took place between the Plaintiff's attorney and the Defendant:

Q. All right. So, let 's go back to your contention that the Covenants-I want to get a clear understanding from you why the Covenants don't----aren't applicable to you."

A. Because they never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. okay. My lay understanding of this is that any Restrictive Covenants need to be either stipulated in a conveyance or referenced in a conveyance if recorded elsewhere. None of those things happened when Joe sold all the land as Mid Eastern Truck Wash sold all land to Palmetto Air Plantation, LLC. Okay?

A. All right. Joe at that point in time, lost his rights as Declarant because more than twenty-five(25) - he retained zero percent of the lots at that time. He can't act as a declarant after he sold all of the property. (See April 4, 2018 deposition of the

Defendant page 53, lines 5-25).

A. So you ask---why I don't believe the covenants apply to my land---that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed: Okay? Not subject---! guess it's subject to restrictions, zoning, easements and all that jazz that apply, but it did again, it did not bind the covenants to my property and, indeed I don't think they could unless they refiled themselves . (See April 4, 2018 deposition of the Defendant page 54, lines 13-25).

#### **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

The Plaintiff seeks partial summary judgment regarding the Defendant's contention that the Covenants filed on July 11, 2001 **do not run** with his property.

Restrictive covenants differ from contracts in that they "run with the land," meaning that they are enforceable by and against later grantees. 17 S.C. Jur. *Covenants* § 18 (2005). Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which "touch and concern" land, and therefore, run with the land. *Epting v. Lexington Water Power Co.*, 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jur. *Covenants* §§ 18 and 19.

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development. 17 S.C. Jur. *Covenants* § 60. The initial restrictive covenants applicable to the Defendant were created by the Declaration of Covenants when MidEastern Truck Wash, Inc. (Declarant) executed and recorded the

Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina recorded at Deed Book A435 at page 223 on or about July 11, 2001. See *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct.App.1994); 17 S.C. Jur. *Covenants* § 8. Restrictive covenants will be enforced unless they are indefinite or contravene public policy. See *Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

The Covenants here were filed in the Clarendon County RMC Office in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

This exact issue (e.g. whether or not restrictive covenants were binding on a purchaser regardless of whether or not the covenants were actually noticed in the deed) was before the Court of Appeals in *Harbison Community Ass'n, Inc. v. Mueller* 459 S.E.2d 860 (Ct. App. 1995). In that case the Court Appeals stated the following:

The circuit court also reversed the magistrate because the Declaration's fee assessment provisions were not recited in the Muellers' deed, and therefore the Muellers were not bound by them. **This was an error. A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 26 (1965). A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title. Carolina Land Co. v. Bland, 265 S.C. 98,217 5.E.2d 16 (1975). The Declaration was recorded and noted in the J.C. Roy Company deed, within the Muellers' chain of title. Thus, the Muellers had constructive notice of the Declaration. Moreover, Mr. Mueller testified he had actual notice of the**

**Declaration. Accordingly, the Muellers are bound by the terms of the Declaration, and the circuit court erred, as a matter of law, in finding the Muellers not bound by the covenant because it was not in their deed (emphasis added).**

In this case, the Defendant had constructive notice of the Covenants by virtue of the fact that the Covenants were filed before the purchase of the Defendant's lots in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed and See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

The Defendant also had actual notice of the Covenants by virtue of the following: On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

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The Court would find that the Defendant had actual and constructive knowledge of the Covenants. Therefore this Court grants partial summary judgment to the Plaintiff regarding the Defendant's contention and defense that the Covenants herein do not "run" with the lots he purchased from the Plaintiff because the Covenants were not recited in his deed when he purchased the property from Palmetto Air Plantation, LLC. As a result, the Covenants referenced herein are enforceable against the Defendant and the Defendant's contention that they are unenforceable against him is without merit.

For the aforementioned reasons, partial summary judgment is granted in favor of the Plaintiff.

**AND IT IS SO ORDERED.**

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R. FERRELL COTHRAN, JR.  
PRESIDING JUDGE  
THIRD JUDICIAL CIRCUIT

December \_\_\_\_\_, 2018



Clarendon Common Pleas

**Case Caption:** Palmetto Air Plantation Homeowners Associations, Inc VS Kim E  
Bevier  
**Case Number:** 2017CP1400127  
**Type:** Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144