

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS)
)
FIFTEENTH JUDICIAL CIRCUIT)
)
C/A No. 2016-CP-26-6495)

Cornell Patton, Melissa Patton,)
Chad Web and Amy Webb,)
)
Plaintiffs,)

vs.)

**ORDER GRANTING
SUMMARY JUDGMENT**

Prestwick Land Limited Partnership;)
Prestwick Homeowners Association, Inc.;)
Jackson Companies;)
City of Myrtle Beach;)
South Carolina Department of Transportation;)
Horry County;)
Myrtle Beach Air Force Base Redevelopment)
Authority;)
Nelson L. Hardwick & Associates, Inc.;)
Bermuda Gardens Homeowners')
Association d/b/a Homeowners of)
Ocean Walk Property Owners Association;)
Campgrounds, Inc.; and)
Prestwick Property Owners Association,)
Inc.)

Defendants.)

City of Myrtle Beach,)
)
Third-Party Plaintiff,)

vs.)

Phil Eaves and Elizabeth Eaves,)
)
Third-Party Defendants.)
Counterclaimants/Cross-Claimants.)

City of Myrtle Beach,)
)
Third-Party Plaintiff,)

vs.)

Phil Eaves and Elizabeth Eaves,)

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SC Court of Appeals

Third-Party Defendants.)
Counterclaimants/Cross-Claimants.)
_____)

This matter is before me upon Motion for Summary Judgment of the Defendants, Prestwick Land Limited Partnership, LLC, Jackson Companies and Campgrounds, Inc. (hereinafter collectively referred to as “the Prestwick Defendants”). A hearing on this matter was held on February 27, 2019 and present at the hearing were Doug Baxter, Esquire on behalf of these Defendants and Gene Connell, Esquire on behalf of the Plaintiffs and the Third-Party Defendants (hereinafter collectively referred to as “property owners”).

In support of this motion, the Prestwick Defendants submitted a memorandum and an Affidavit of Dennis Wade and request that the Court take judicial notice of pleadings filed in Civil Action Nos. 2000-CP-26-0765 (Pattons) and 2000-CP-26-0780 (Eaves). In opposition to this motion, an attorney for the property owners submitted the 2005 Settlement Agreement, Thomas & Hutton Storm Water Drainage Study, and the deposition transcript of Robert Taylor. Based upon my view of the memorandum, various documents submitted by the parties and arguments presented at the hearing, I find as follows:

Findings of Fact

Prestwick Land Limited Partnership is a South Carolina limited partnership, and it was created on or about February 24, 1993. Prestwick Land Limited Partnership was terminated by agreement on September 30, 2007 and the termination was filed with the Secretary of State on or about October 3, 2007. Campgrounds, Inc. was the managing partner of Prestwick Land Limited Partnership at the time that it was dissolved and it is named as a defendant pursuant to §33-41-370 of the Code of Laws of South Carolina; however, Campgrounds, Inc. did not have any direct involvement with the development of the Prestwick subdivision. Jackson Companies is not a

legal entity and it is merely a general name for several affiliated entities, which included Prestwick Land Limited Partnership.

Prestwick Land Limited Partnership was the developer of the Prestwick subdivision. Construction of the storm water management system for Phase 4-C and Phase 4-D began on or after February 3, 1997, and the work was completed in the fall of 1997. On October 10, 1997, the office of Ocean Coastal Resource Management (SC DHEC) issued final approval for the as-built storm water management system.

Through a series of quitclaims deeds, all of the roads, common areas, open areas and easements for the Prestwick subdivision were conveyed to Prestwick Property Owners Association, Inc., and as of March 24, 2000, Prestwick Land Limited Partnership had relinquished control of the Board of Directors for the Prestwick Property Owners Association. In 2004, Prestwick Land Limited Partnership sold the last residential lot which it owned in the Prestwick subdivision.

On or about July 28, 1998 Prestwick Land Limited Partnership conveyed to Jack Cornell Patton and Melissa Jo Patton that lot 360, Prestwick Phase IV-D. On or about May 28, 1999, Lot 362, Prestwick Phase IV-D was conveyed to Phillip Eaves and Betty Eaves, and on August 16, 2007, the Eaves conveyed the property to Chad Webb and Amy Webb. Both lots are located in Phase IV-D of the Prestwick subdivision.

In 2000, the Pattons (2000-CP-26-0765), Eaves (2000-CP-26-0780) and other property owners filed lawsuits naming various Defendants, including Prestwick Land Limited Partnership and the Jackson Companies alleging flooding problems (hereinafter referred to as "2000 lawsuits"). After a rather protracted litigation, a settlement was reached among the parties, and a Settlement Agreement and Release was executed on or about September 2, 2005. On or about

September 26, 2005, the lawsuits against Prestwick Land Limited Partnership and Jackson Companies were dismissed with prejudice.

FINDINGS OF LAW

Standard of Review

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). Once the moving party carries its initial burden, opposing party must, under Rule 56(e), “do more than simply show that there is some metaphysical doubt as to the material facts” but “must come forward with ‘specific facts showing that there is a genuine issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

Statute of Repose

Section 15-3-640 of the South Carolina Code of Laws, as amended (commonly referred to as the Statute of Repose), provided that an action may not be brought more than 13 years after substantial completion of the improvement; effective July 1, 2005, the statute was amended to provide for an 8 year limitation. In the present case, the storm water management system constructed by Prestwick Land was completed on or before October 2, 1998 which is more than 13 years prior to the commencement of this action.

The property owners raised the provisions of §15-3-670 as a defense to the Statute of Repose; however, they presented no evidence in support of this. In fact, Robert Taylor, the property owners’ engineering expert, testified that he could give no opinion as to whether the

Prestwick storm water management system plans or the as-built condition failed to meet the minimum requirements of the South Carolina Storm Water Management System, and in his testimony he identifies no violation of any law, statute or regulation. Plaintiff's counsel also asserted that evidence may later develop to support the argument; however, a party cannot escape summary judgment on the mere hope that something will develop later at trial or by remaining silent and later claiming additional facts supporting the cause of action. Hammond v. Scott, 268 S.C. 137, 232 S.E.2d 336 (1977). Pursuant to Section 15-3-640, the property owners are barred from recovering damages related to the design and/or construction of the subdivision, including the storm water management system.

Res Judicata

The following elements must be shown in order to establish the defense of *res judicata*:

- 1) The Parties must be the same or their privy;
- 2) The subject matter must be the same; and
- 3) Generally the precise point must be ruled yet where the parties are the same or in

privity the judgement is an absolute bar not only of what was decided but what might have been decided. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986). A dismissal with prejudice indicates an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. Nunnery v. Brantley Construction, 345 S.E.2d 740 (Ct. App. 1986).

When determining whether *res judicata* applies, the identity of the parties in the first lawsuit also includes persons in privity with the named parties. Nelson v. QHG of South Carolina, Inc., 580 S.E.2d 171 (Ct. App. 2003).

The current claims against the Prestwick Defendants are identical to those asserted in the 2000 lawsuits. The Plaintiffs' expert testified that he is unaware of any deficiencies related to the storm water drainage system in the Prestwick subdivision not previously identified in conjunction with his investigation for the 2000 lawsuits. Additionally, the Prestwick Defendants' alleged failure to adequately disclose that the lots were in the flood zone was raised in the 2000 lawsuits. Accordingly, the claims against the Prestwick Defendants are barred by res judicata.

Settlement

In South Carolina jurisprudence, settlement agreements are viewed as contracts. Abel v. SCDHEC, 798 S.E.2d 445 (Ct. App. 2017). The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Id. When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. Id.

As part of the 2000 Settlement Agreement and Release, the "landowners" released all claims which they had, including those "relating to the claims, demands and allegations which were or could have been set forth and asserted in the above-referenced actions or which otherwise arise out of those matters described in the pleadings in the above-referenced actions".

In the 2000 lawsuits, the Plaintiffs asserted:

"That Plaintiffs will continue to suffer flooding; will have ongoing damages, have property damage from the last heavy rain, are unable to sell their property for a fair market price, have a distressed property because of the flooding and will be required to disclose the flooding problem for the remainder of time which Plaintiffs live there. That Plaintiffs will be unable to sell their property at a reasonable price. That the damages sustained are a direct result of the artificial channeling by these Defendants."

Accordingly, per the Settlement Agreement and Release, the “landowners” released not only damages they had already incurred, but also future damages, including diminution in value, and the impact on the sale due to their property’s continued flooding; therefore, the Plaintiffs are precluded from seeking to recover these same damages.

The settlement agreement also provided that the landowners were to disclose the flooding issues to subsequent purchasers. At the time the settlement agreement was signed, Prestwick Defendants had conveyed the common elements to the Homeowners Association and no longer exercised control of the property. The property owners argue that a landowner’s liability for the condition of its property extends indefinitely, even after it relinquishes control of the property; however, the property owners present no law to support this argument.

Based upon the foregoing, all of the claims which could be asserted against the Prestwick Defendants were ended as a result of the settlement agreement. It is therefore

ORDERED, ADJUDGED AND DECREED that Prestwick Land Limited Partnership, Jackson Companies and Campgrounds, Inc.’s Motion for Summary Judgment as to the claims asserted against them in this lawsuit is granted, and they are hereby dismissed from this action with prejudice.

[SIGNATURE PAGE TO FOLLOW]



Horry Common Pleas

Case Caption: Cornell Patton , plaintiff, et al VS Prestwick Land Limited Partnership , defendant, et al

Case Number: 2016CP2606495

Type: Order/Summary Judgment ,

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148