IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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JUN 17 2019

SC Court of Appeals

C.A. No. 2017-CP-04-2632
Appellate Case No. 2018-002028

EUGENE L. GRIFFIN, JR. and BETH KING GRIFFIN .... Appellants,

v.

ARDEN CHASE HOMEOWNERS' ASSOCIATION, INC. .... Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court err in granting summary judgment to the Respondent on the following grounds:

A. That the Appellants' garage, as built, does not comply with Judge Sprouse's unappealed orders and/or the Covenants?

B. That the Appellants constructed their garage without the approval of the ACC as required by the Covenants?

II. Did the Trial Court err in finding that the Respondent is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants?

STATEMENT OF THE CASE

This matter arises from an ongoing dispute between the Appellants and the Arden Chase Homeowner's Association ("HOA") regarding the Appellants' desire and attempts to build a detached garage for their RV in the Arden Chase subdivision in Anderson, South Carolina. On December 11, 2017, Appellants filed this action with the Clerk of Court for the County of Anderson, State of South Carolina. (R. pp. 45-98, Complaint.) [1] The Complaint sought a declaratory judgment as to "whether the 'new' garage plans submitted to the [Architectural Control Committee (the "ACC")] violate any of the Restrictive Covenants for Arden Chase." (R. p. 54, Complaint ¶ 35.)[2] Specifically, the Complaint requested the following:

> that the Court declare the disapproval by the ACC and the HOA improper, unjustifiable, arbitrary, and malicious; and that the Court declare the detached garage structure as constructed and where constructed by the [Appellants] to be in compliance with the Restrictive Covenants, in character with the other structures in the neighborhood, and allowed as a matter of law.

(R. p. 54, Complaint ¶ 35.) The Appellants also alleged abuse of process and malicious prosecution in connection with one of the previous and related lawsuits, *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr. et al.*, C/A

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[1] This is the third of three related lawsuits connected with the dispute over the Appellants' RV garage, the first two lawsuits being styled as *R. Dean Price, et al. vs. Eugene L. Griffin, et al.*, C/A No. 2016-CP-04-2028, and *Arden Chase Homeowners Association, Inc. vs. Eugene L. Griffin, Jr. et al.*, C/A No. 2017-CP-04-1244.

[2] The "Declaration of Covenants, Conditions and Restrictions for Arden Chase" ("Covenants"), which are the subject of this action, can be found at R. pp 300-331.

No. 2017-CP-04-1244, and sought a preliminary and permanent injunction prohibiting the HOA from taking action to abate the Appellants' detached garage. (R. pp. 55-56, Complaint ¶¶ 40, 44.)[3]

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

a. The Appellants 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 Appellants 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 Appellants must comply with the decision of the HOA requiring the demolition of the garage.

d. The Respondent is entitled to exercise the Right of Abatement as set forth in Section 8.02 of the Covenants.

(R. p. 105, Answer and Counterclaim, ¶ 45.)

Both parties filed Motions for Summary Judgment. (R. pp. 107-168, Appellants' Motion for Summary Judgment; R. pp. 169-178, Respondent's Motion for Summary Judgment.) A hearing was held before Circuit Judge R. Lawton

[3] Because the Appellants do not address their malicious prosecution or abuse of process claims in their Brief, and those claims were not presented to or ruled upon by the Trial Court, those causes of action are deemed abandoned and are not addressed herein. *See Equivest Financial, LLC v. Ravenel*, 422 S.C. 499, 812 S.E.2d 438 (Ct.App.2018) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court. Issues not raised and ruled upon in the trial court will not be considered on appeal.")

McIntosh on May 11, 2018. (R. pp. 230-261, Transcript of hearing.) On August 9, 2018, Judge McIntosh filed an Order, granting summary judgment to the Respondent herein, finding that "[t]here is no genuine issue of material fact that the [Appellants] did not comply with Judge Sprouse's unappealed orders," that the Appellants "constructed their garage without the approval of the ACC as required by the Covenants," that the Appellants "must comply with the decision of the [HOA] requiring the demolition of the garage," and that the Respondent "is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants." (R. pp. 29-34, McIntosh Order of 8/9/18.)

Appellants filed a Motion to Reconsider, Alter, or Amend Judgment (R. pp. 206-212), which came before Judge McIntosh for a hearing on November 1, 2018. (R. pp. 262-299, Transcript of hearing.) By Order filed on November 13, 2018, Judge McIntosh denied the Appellants' motion. (R. pp. 38-43, McIntosh Order of 11/13/18.) In that Order, Judge McIntosh found that "there is no question that the [Appellants] failed to make a written request to the ACC to reconsider its decision" rejecting their revised garage plans, that "the ACC had the authority and right to disapprove the revised plans which did not comply with Judge Sprouse's Order and the Covenants," and that his Order of August 9, 2018 "remains in full force and effect."

This appeal followed on March 8, 2019.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENT.

As stated by the Appellants, the "primary allegation in their Complaint is that the ACC wrongfully denied approval of Appellants' revised garage plans that comply with both Judge Sprouse's Order and the Covenants, factual issues exist as to whether the Respondent's decision to deny/reject Appellants' revised garage plans [and thus the Trial Court's grant of summary judgment] ... is in error." (Appellants' Brief, p. 17.) The Trial Court found that the Respondent was entitled to summary judgment on the following grounds: (1) that the Appellants' garage does not comply with Judge Sprouse's Orders or the Covenants; and (2) that the Appellants constructed their garage without the approval of the ACC as required by the Covenants. (R. pp. 29-34 and 38-43, McIntosh Orders of 8/9/18 and 11/13/18.) The Trial Court can and should be affirmed on either or both of these grounds. *See Fuller-Ahrens Partnership v. South Carolina Dept. of Highways and Public Transp.,* 311 S.C. 177, 427 S.E.2d 920 (Ct.App.1993) (citing *Weeks v. McMillan*, 291 S.C. 287, 353 S.E.2d 289 (Ct.App.1987)) (a decision of the trial court based on alternative grounds, either of which independent of the other is sufficient to support the trial court decision, will not be reversed even if one ground is erroneous).

A. As found by the Trial Court, the Appellants' revised Garage does not comply with Judge Sprouse's Orders or the Covenants.

Judge McIntosh specifically found that the Appellants' revised garage, as built, does not comply with the Orders of Judge Sprouse dated March 28, 2017

(R. pp. 3-18) and/or October 13, 2017 (R. pp. 22-24) or the Arden Chase Covenants (R. pp. 300-331).[4] The March 28, 2017 Order ("Original Order") was issued by Judge Sprouse following a non-jury trial, which included extensive testimony, evidence, and a site visit. In the Original Order, Judge Sprouse found, *inter alia*, that Paragraph 6.06 of the Covenants provide that a garage "shall not be allowed to open to the roadway in front of the residence." (R. p. 12, Sprouse Order of 3/28/17 ¶18; R. p. 315, Covenants §6.06.)

Because the Covenants do not define "open to the roadway," Judge Sprouse, after taking testimony and evidence and visiting the site, defined it as "meaning that a straight line drawn from at least one of the front corners of the proposed structure intersects Arden Chase Street prior to intersecting a neighboring lot line, Concord Road, or other outer boundary of the subdivision." (R. p. 17, Sprouse Order of 3/28/17.) Based on this definition, Judge Sprouse found that the Appellant's RV garage, as originally designed, was "open to the roadway in front of the house [Arden Chase], making it in violation of the restrictive covenants." (R. p. 14, Sprouse Order of 3/28/17 ¶ 24; R. p. 70, Original Plan, p. A-2.) Consistent with this definition, the Original Order provided that "[t]he Appellants can bring their proposed garage into compliance by changing its direction so that a straight line from each corner of the side of the garage containing the door intersects Concord Road instead of Arden Chase Street." (R. p. 15, Sprouse Order of 3/28/17 ¶ 25.)

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[4] The parties stipulated and agreed that neither of these Orders were appealed and that the Court's rulings therein were and are *res judicata*.

Unfortunately, Judge Sprouse's Original Order did not resolve the dispute between the parties regarding the Appellants' RV garage, leading to the second lawsuit, 2017-CP-04-1244, and Judge Sprouse's Order of October 13, 2017, wherein he clarified his Original Order as follows:

A. The Intent of the Original Order

> The parties seek guidance from the Court as to how "proposed garage" is defined. In the Original Order, the Court permitted the [Appellants] to "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." **The Court's intent in the previous order was that the structure as indicated on the submitted plans, was allowed on the condition that the entire structure was turned to comply with the restrictive covenants.** The [Appellants'] modified plan, which slightly increases the square footage of the building and changes the configuration of the front of the building so that only one wall is turned, would constitute **a new plan which would require submission to the board**. Modification, however slight, of the building as configured on the plan submitted to the Court in the trial, would be a different plan.

(R. p. 23, Sprouse Order of 10/13/17.) (Emphasis added.)

Despite Judge Sprouse's clear instruction that "the entire structure," "as indicated on the submitted plans," would need to be "turned to comply with the restrictive covenants," the Appellants did not turn the garage but "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." (R. p. 33, McIntosh Order of 8/9/18; R. pp. 67 Revised Plans p. A-2.)[5] Essentially, the

[5] As discussed further hereinbelow in Argument I-B, the Appellants have acknowledged that they were required to get approval of the revised plan and that they chose, at their "own risk," to construct the garage even though they never received such approval. (R. pp. 246-248, Transcript of May 11, 2017 hearing, p. 17, l. 17 – p. 19, l. 9.)

dispute herein is whether the Appellants' revised garage, as built, "open[s] to the roadway," as defined by Judge Sprouse, and therefore violates the Covenants.[6]

The Appellants assert that Judge Sprouse's Orders gave them two (2) options: (1) turn the entire building structure so that the garage door does not face any part of Arden Chase Street or (2) modify the building plan in such a way that "a straight line from each corner of the wall containing the garage door does not intersect any part of Arden Chase street."[7] Even if they were given these two options, the Appellants did not satisfy either. Because the Appellants acknowledge that they did not "turn the entire structure as provided by Judge Sprouse's Order," the issue on appeal is whether the so-called straight line from the garage door first intersects Arden Chase or Concord Road.

Contrary to the Appellants' position, their finished garage does, in fact, "open to the roadway" in front of Appellants' residence (Arden Chase), as defined by Judge Sprouse. Because the garage does "open to the roadway," it violates the Covenants, entitling the Respondent to summary judgment as found by the Trial Court. Appellants' argument is essentially that the garage does not "open to the roadway" because they believe the term "roadway" is limited to the paved portion of the street, as it currently exists, and does not include the entire right-of-way for the street.

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[6] This is assuming that the Appellants properly submitted the revised plans to the ACC and/or HOA, which the Respondent disputes and which is addressed further hereinbelow.
[7] The Respondent disputes that Judge Sprouse gave the Appellants two different options, but instead asserts that the only option given the Appellants was to turn the entire structure, which they admittedly did not do. Regardless, the Appellants failed to satisfy the requirements of either option.

In support of their argument that when a straight line is drawn from each corner of the wall containing the garage door the line intersects Concord Road instead of Arden Chase, the Appellants submitted a survey showing the "sight view" from the Appellants' garage. (R. pp. 191, Survey dated December 1, 2017.) Contrary to the Appellants' argument, the Respondent asserts that the survey shows clearly that the straight lines from the garage doors intersect **with Arden Chase before Concord Road**, in violation of the Covenants. The dispute basically comes down to whether the term "roadway," as used in the Covenants, is limited to the paved portion of Arden Chase, as suggested by the Appellants, or includes all of Arden Chase, including its "right-of-way."

Words of a restrictive covenant are to be given the "common, ordinary meaning attributed to them at the time of their execution." *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d 862 (1998). "The term 'road' ... denotes a public way for the purpose of vehicular travel, including the entire area within the right of way." *Blue Ridge Realty Co., Inc. v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965). To accept that the entire right-of-way for the street through Arden Chase is not included as part of the "roadway" to which the Appellants' garage cannot open, would be to ignore the clear and obvious meaning of the term "roadway" and accept that the street/entranceway cannot be modified or widened in the future to the full limits of its right-of-way ... or that garages can be built that may not technically open to the current boundary of the paved street but would become violative of the covenants if the street is expanded in the future. Such an interpretation is clearly not logical and would not give effect to the clear purpose

of the restriction, which is to limit the visibility of garage doors from the street. *See Taylor v. Lindsey*, *supra*. (Restrictive covenants are contractual in nature, so the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document.) [8] Although property restrictions are to be strictly construed, this rule of strict construction "should not be applied so as to defeat the plain and obvious purpose of the instrument." *Id.* at 864.

Because the evidence, including the survey submitted by the Appellants, conclusively establishes that the Appellant's garage is "open to the roadway" as defined by Judge Sprouse and is, therefore, prohibited by the Covenants, Judge McIntosh correctly found that the Appellants' garage violated the Covenants. Based on the Appellants' violation of Judge Sprouse's Order and the Covenants, the grant of summary judgment to the Respondent should be affirmed.

B. As found by the Trial Court, the Appellants constructed their garage without the approval of the ACC as required by the Covenants.

The Appellants do not dispute that their garage required submission to and approval of the ACC and the HOA, and they do not dispute that they never received such approval. (R. pp 246-248, Transcript of May 11, 2018 hearing, p. 17, l. 17 – p. 19, l. 11; R. pp 266-267, Transcript of November 1, 2018 hearing, p. 5, l. 22 – p. 6, l. 5; R. p. 23, Brief.) The Trial Court found that the Appellants did not make a written request for the ACC to reconsider its denial of their revised

[8] In their Brief, the Appellants assert that Judge McIntosh's reference to the "Arden Chase Road **Right-of-Way**" in his Order of October 13, 2018 (as opposed to Judge Sprouse's reference to "Arden Chase **Street**") was in error. However, this argument fails because there is no practical distinction between the two terms.

plans within ten (10) days of the decision[9] and that, by building the garage without approval, they were in violation of the Covenants.

The evidence clearly supports this finding, as there was admittedly no written request for reconsideration. EVEN IF the submission of revised plans can be seen as requests for reconsideration, as argued by the Appellants, there were no revised plans submitted between the ACC's denial on October 30, 2017[10] and the Appellants' submission of the revised plans on December 12, 2017. Instead, the evidence shows that the Appellants continued with the construction of the garage, at their "own risk," during this time period, despite the fact that it had not been approved by the ACC. (R. pp. 372-373, ACC letter dated December 1, 2017.) The Trial Court was correct in finding that the Appellants did not make a written request for the ACC to reconsider its decision, as required by the Covenants, and that they therefore violated the Covenants by constructing the garage. Based thereon, the Trial Court's grant of summary judgment to the Respondent should be affirmed.

II. THE CIRCUIT COURT DID NOT ERR IN FINDING THAT THE RESPONDENT IS ENTITLED TO EXERCISE THE RIGHT OF ABATEMENT SET FORTH IN SECTION 8.02 OF THE COVENANTS.

Appellants argue that the Trial Court did not consider or rule on the Appellants' claim that the Respondent's wrongfully denied their revised garage plans and, based thereon, erred in finding that the Respondent is entitled to

[9] Section 5.03(b) provides that "[t]he applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC." (R. p. 310, Covenants.)
[10] R. pp. 369-371, ACC letter dated October 30, 2017.

exercise the Right of Abatement set forth in Section 8.02 of the Covenants. (R. pp. 321-322.) However, it is clear that the Trial Court rejected the Appellants' assertions that the denial was wrongful, both directly and indirectly. Clearly, the denial cannot be wrongful (or in the Appellants' words "improper, unjustifiable, arbitrary or malicious") if the plans violated Judge Sprouse's Orders and/or the Covenants, as found by Judge McIntosh. (See Argument I-A hereinabove.) In addition, the Trial Court's Order of November 13, 2017 did specifically address this argument and found that "the ACC had the authority and right to disapprove the revised plans which did not comply with Judge Sprouse's Order and the Covenants." (R. p. 41.) Based thereon, the Trial Court directly and/or indirectly addressed and rejected the Appellants' allegations that the denial was wrongful, and the Trial Court was correct in finding that the Respondent is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants.

CONCLUSION

As addressed hereinabove, the Respondent is entitled to affirmance of the following findings by the Trial Court:

1. The Appellants' garage, as built, does not comply with Judge Sprouse's unappealed orders or the Arden Chase Covenants.
2. The Appellants constructed their garage without the approval of the ACC as required by the Covenants.
3. The Respondent is entitled to exercise the Right of Abatement set forth in Section 8.02 of the Covenants.

Based thereon, there are no genuine issues of material fact, and the Trial Court's Order(s) granting summary judgment to be Respondent should be affirmed.

Respectfully submitted,

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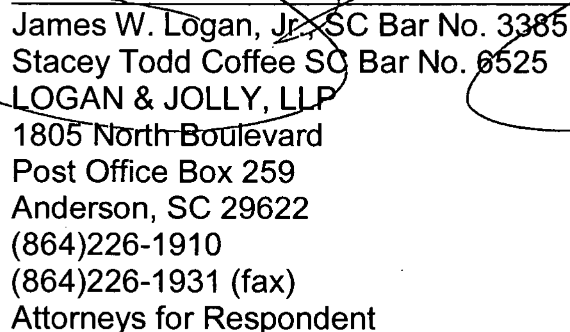
CERTIFICATE OF COUNSEL

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



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