

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 RAVEN'S RUN HOMEOWNERS )  
 ASSOCIATION, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CROWN POINTE ASSOCIATION, INC., )  
 ET AL., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 2017-CP-10-0473

**ORDER**

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 FILED  
 JUDGE: G. J. ...

DATE OF HEARING: August 28, 2018  
 TRIAL JUDGE: The Honorable Mikell R. Scarborough  
 PLAINTIFF'S ATTORNEY: G. Hamlin O'Kelley, III of Buist Byars & Taylor, LLC  
 DEFENDANTS' ATTORNEYS: Harold A. Oberman of Oberman & Oberman, LLC for  
 Katherine Kinlaw  
 Jeffrey T. Spell, Esquire for Leila June Johnson  
 Edward K. Pritchard, Jr., Esquire for James and Melissa Kubu

This matter came before me on August 28, 2018. The matter was set for a two-day trial. Prior to trial, I heard cross-motions for summary judgment. In this case, Raven's Run Homeowners Association, Inc. ("Raven's Run") sued Crown Pointe Association, Inc. ("Crown Pointe") and individual lot owners in Crown Pointe claiming ownership of all property up to the individual lot lines of the lot owners. This includes a lake or drainage easement that is located between the two neighborhoods and land located on the Crown Pointe side of this body of water. As shown on the various plats discussed below, Crown Pointe lies to the northwest of this body of water and Raven's Run to the southeast.

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Raven's Run commenced this action on January 31, 2017. Raven's Run subsequently filed an Amended Complaint on March 9, 2018, in which they sued the defendants seeking a declaratory judgment, an injunction, damages in trespass and nuisance. Raven's Run claimed ownership of all the land up to the lot lines of the individual lot owners of Crown Pointe, including a strip of land and bodies of water. Central to this dispute is Raven's Run's right to restrict the property owners of Crown Pointe from maintaining and cutting on the strip of land between their lot property line and the body of water. Raven's Run sued the individual property owners for damages because they ventured onto this strip, removed vegetation, and allegedly created an eyesore.

Defendants disputed this. Defendants answered and disputed Raven's Run ownership of the disputed lands, sought proof of Raven's Run ownership, and sought a clarification as to the respective rights of the parties. Defendants also counterclaimed in abuse of process.

Immediately prior to the motions, Crown Pointe and Raven's Run reached a settlement agreement, leaving only the dispute between Raven's Run and the remaining individual lot owners of Crown Pointe. The remaining individual lot owner represented by counsel are Katherine Kinlaw (represented by Harold A. Oberman), who owns Lot 45-E, Leila June Johnson (represented by Jeffrey T. Spell) who owns Lot 40-E, and James and Melissa Kubu, (represented by Edward K. Pritchard, Jr.) who own Lot 39-E.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The documents are dispositive in this case.

**A. Plat BK-2**

Plat BK-2 was recorded on August 21, 1986. It is a plat entitled "Plat Showing Crown Pointe Subdivision Lots 25E-49E, Lots 67E-79E." On this plat, lakes and drainage easement are shown

immediately to the east of the lots in question. The 60 foot drainage easement extends 20 feet onto the lot owners property and 40 feet into the lake.

RAC Enterprises Inc., the common owner of the two subdivisions, makes the following dedication:

By the recording of this plat, the green areas and lakes shown hereon are dedicated to the use of the East Crossing Subdivision and the Crown Point Subdivision Homeowners Association forever.

It further states, "By recording this plat, the easements and rights-of ways shown hereon are dedicated to the use of the public forever."

RAC subsequently deeded the properties on this plat to Spectra Development, Inc. by deed O161-258 dated January 14, 1987, and recorded January 26, 1987, with reference to this plat.

**B. Deed into Raven's Run and Plat**

Raven's Run claims ownership to the disputed property by deed R163-134 dated January 5, 1987 and recorded April 1, 1987. This is a deed from RAC Enterprises, Inc., the common owner, to Raven's Run Homeowners Association, Inc. This deed references Plat Book BL57. The Plat is entitled "Raven's Run" and "Plat Showing Lots 19-31, Block 'D' and Lots 1-5, Block 'F' and Lots 14-35, Block 'E.' Acreage Shown Hereon 44.507 Acres."

The plat shows no land in Crown Pointe Subdivision, and neither the deed nor the plat references Crown Pointe Subdivision, its lands, lakes, or easements. The documents neither implicitly nor explicitly convey the disputed property.

**C. Quit Claim Deeds of 2001**

On December 18, 2001, two quit-claim deeds were executed. The first, recorded at C392, page 756 conveyed certain property from RAC Enterprises, by Robert A. Causey, as Liquidating Trustee, to East Crossing-Crown Pointe Association, Inc. Robert Causey had previously signed the deeds out of RAC discussed above as its President/Secretary. The deed conveyed, in pertinent part:

ALL that certain common area, including any "lake" and "green area", located in Crown Point Subdivision, Christ Church Parish, Charleston County, S.C., as shown on that certain plat entitled "Plat Showing Crown Pointe Subdivision, Lots 25E - 49-E and Lots 67-E - 79-E, Portion of a 52.98 Acre Tract, Owned by RAC Enterprises, Inc., Christ Church Parish, Charleston, S.C.", dated August 3, 1986, and recorded in the RMC Office for Charleston County on August 21, 1986 in Book BK at Page 2. Such common area having such size, shape, dimensions, buttings and boundings as will by reference to such plat more fully appear. (Abstractor's Note: It the intention of this deed to convey all property set forth on the aforementioned plat, saving and excepting all platted lots and public rights of way depicted thereon).

Subsequently, by deed at H394, page 181 and re-recorded at T398, page 815, the same pertinent property was deeded from East Crossing-Crown Pointe Association, Inc. to Crown Pointe Association, Inc. with similar language:

ALL that certain common area, including any "lake" and "green area", located in Crown Point Subdivision, Christ Church Parish, Charleston County, S.C., as shown on that certain plat entitled "Plat Showing Crown Pointe Subdivision, Lots 1E-24E & Lots 50E-66E and Lots 25E-49E & Lots 67-E - 79-E, Portion of a 52.98 Acre Tract Owned by RAC Enterprises, Inc., Christ Church Parish, Charleston, S.C.", dated August 3, 1986, and recorded in the RMC Office for Charleston County on August 21, 1986 in Book BK at Pages 1 and 2. Such common area having such size, shape, dimensions, buttings and boundings as will by reference to such plat more fully appear.

(Abstractor's Note: It the intention of this deed to convey all property set forth on the aforementioned plat pages, saving and excepting all platted lots and public rights of way depicted thereon).

Both these deeds explicitly convey any lake or green area as shown on the plat. The abstractors' note explicitly states the intention of the deed:

Abstractor's Note: It the intention of this deed to convey all property set forth plat pages, saving and excepting all platted lots and public rights of way depicted thereon." Deed H394, page 181

**D. Plat BP 160-161**

Spectra Development, who was deeded the property by RAC, made the following dedication on Plat BP 160-161:

By the recording of this plat, the green areas and lakes shown hereon are dedicated to the use of the Crown Point Subdivision Homeowners Association forever.

The easement and road right-of-ways were dedicated to the use of the public forever.

The lakes and drainage easements on BP 161 are the same as on BK 2.

This plat was recorded December 18, 1987.

**E. Plat BP 163**

After BP 160-161 was recorded, a plat of Raven's Run was recorded by RAC. RAC dedicates the easements shown on the plat to the Raven's Run Homeowner's Association. The lakes are not referenced. Crown Pointe is not shown.

**F. Plat of Seabrook**

The unrecorded Plat of Seabrook dated December 1, 2016 depicts the 60 foot drainage easement shown on the plat of Crown Pointe at BP 161. It also depicts the 60 foot drainage easement shown on the plat of Raven's Run at BP 163. On the plat of Seabrook, those easements do not overlap.

**G. Restrictive Covenants and Tax Map Information**

Raven's Run points to the Restrictive Covenants of Crown Point Subdivision recorded October 17, 1986.

The covenants state in pertinent part:

No use may be made by any owner, family member or invitee of lake systems of Raven's Run Subdivision which abut Lots 37E through 66E of Crown Pointe; this total prohibition of use shall specifically include boating, swimming and fishing. The portion of land between the rear lot lines of such lots and the water line of the Raven's Run lakes is owned by the Raven's Run Homeowners Association, Inc.

The covenants can only be enforced by the developer or lot owners of Crown Pointe.

Paragraph 7 states:

Enforcement shall be by proceedings at law or in equity by the Developer and/or any persons owning a lot shown on the hereinbefore mentioned Plat, either to restrain violation and/or to recover damages, in law or in equity.

Additionally, the covenants may be freely amended by the owners of the lots of Crown Pointe under paragraph 6 of the covenants.

Raven's Run additionally points to the tax maps of Charleston County. All of the extensive common areas of Raven's Run are within the tax map number relied on by Plaintiff including carports, dwellings, health clubs, sheds, hot tubs, tennis courts, pools and the like. Raven's Run pays property taxes for these common areas. The tax map document has a disclaimer that states:

The layers contained in the map service are for information purposes only. The Charleston County makes no warranty, express or implied, nor any guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the information provided. The County explicitly disclaims all representations and warranties. The reader agrees to hold harmless the Charleston County for any cause of action and costs associated with any causes of action which may arise as a consequence of the County providing this information.

LAW

Summary judgment is appropriate when "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), SCRPC; see also *Tupper v. Dorchester County*, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997); *Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct.App.1998). Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct.App.2001). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a

genuine issue for trial: Rule 56(c), SCRPC; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct.App.1999). "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." *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998). Defendants set forth evidence that showed Raven's Run did not own the disputed property. In order to prevail on their causes of action, Raven's Run must prove that they own the disputed property. Because they could not prove they owned the property with the documents they presented, summary judgment is appropriate. The deed and plat Raven's Run relies on do not show they own the disputed property.

RAC dedicated the lakes and green areas on Plat BK-2 recorded August 21, 1986 to Crown Pointe. This dedication predates the conveyance into the deed into Raven's Run relied on by Raven's Run. As between the private parties, this dedication is complete when made. See e.g. *Outlaw v. Moise*, 222 S.C. 24, 71 S.E.2d 509 (1952). This dedication effectively conveys the portion of Plat BK-2 that shows the 60 foot drainage easement on the lot lines to Crown Pointe. This land extends 20 feet onto the lot owners property and 40 feet into the lake. The dedication on a plat and the subsequent conveyance conveys to Crown Pointe as a non-exclusive easement.

Further, the deeds into Raven's Run, R163, page 34 and the referenced plat BL-57 do not attempt to convey any part of Crown Pointe. Crown Pointe, the disputed property and its bordering easement are neither described nor platted. Raven's Run is bound by that Plat. *Germany v. Kelley*, 96 S.E. 959 (S.C. 1918).

Additionally, the subsequent quit claim deeds of 2001 shows the intent of RAC to convey everything on the plat pages of BK-2 to Crown Pointe. This undoubtedly includes the portion of the 60 foot easement that extends 40 feet into the lake. The language is clear and unmistakable. This intent is further confirmed by Plat BP 160-161, which follows BK-2.

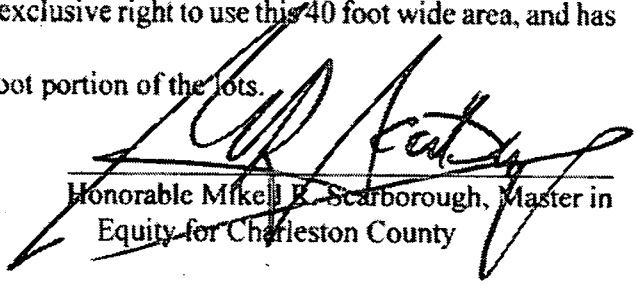
Restrictive Covenants are strictly construed, with all doubts resolved in favor of the free use of property. Hardy v. Aiken, 369 S.C. 160, 631 S.E.2d. 539 (2006). Therefore, read as a whole, the Restrictive Covenants of Crown Pointe are insufficient to convey title to Raven's Run. As noted above, if they have not already done so, Crown Pointe can amend the Restrictive Covenants at any time. Furthermore, Raven's Run has no right to enforce the covenants. These covenants must be construed in favor of the lot owners of Crown Pointe's free use of the property from their lot line to the water and as set forth on Plat BK-2.

Therefore, I find that Raven's Run does not own all property up to the individual lot lines of the Crown Pointe owners. Raven's Run does not own the disputed property immediately to the east of the lots in question: the portion of land and water depicted as the 60 foot drainage easement that extends 20 feet onto the lot owners property and 40 feet into the lake. I find that Crown Pointe has ownership and a non-exclusive right to use this 40 foot wide area as depicted on Plat BK-2, and has a non-exclusive drainage easement of 20 feet.

WHEREFORE, it is ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiff's causes of action are dismissed.
2. Raven's Run does not own the disputed property in this lawsuit.
3. Crown Pointe has ownership of the portion of land and water depicted as the 40 foot portion of the 60 foot drainage easement to the east of the lots in question. Crown

Pointe has ownership and a non-exclusive right to use this 40 foot wide area, and has a drainage easement on the 20 foot portion of the lots.



Honorable Mikell R. Scarborough, Master in Equity for Charleston County

Charleston, South Carolina

10/31, 2018.

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