

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 2017-CP-10-00473

Raven's Run Homeowners Association, Inc.,)

Plaintiff,)

ORDER UPON MOTION FOR RECONSIDERATION

vs.)

Crown Pointe Association, Inc., Lois K.)

Novak as Trustee of the Lois K. Novak)

Living Trust dated 10/14/2013; Laurie T.)

Herron and Mark D. Herron; James B. Kubu)

and Melissa F. Kubu; Leila June Johnson;)

Danny Ta and Anita McCauley; Robert E.)

Luby, Jr., and Barbara Luby; Joshua D.)

Coonce; Lucius Roy Junevicus; Katherine)

Kinlaw; Thomas K. Kuyk and Melissa Ward;)

Roland Franklin Wooten, III, and Teresa Key)

Wooten; Michael P. Horvath; Timothy E.)

Moylan and Karen G. Moylan; Carl A.)

Counasse and Maureen Counasse; David A.)

Frielinghaus and Holly C. Frielinghaus;)

Christopher S. Finley and Holly M. Finley;)

Shirley D. Springer a/k/a Shirley Deanna)

Springer; Deirdre C. Knight; Robert Shane)

Johnson; Eric R. Sigman; Lamar R. Graves,)

Jr. and Terry W. Graves; Mary Elizabeth)

Gladdened; Philip Wallace and Naomi Grad;)

Thomas Edwin Davis and Luis Miguel)

Gonzalez Melchor; John R. Funkhouser and)

Jennifer L. Funkhouser; Gregory S. Cooper)

and Jane B. Cooper; Frank C. Jones, Jr. and)

Elise Ubele Jones; William P. Topping and)

Kris B. Topping; LaRhonda S. Ptichko;)

Kenneth L. Tully and Anna J. Tully;)

Defendants.)

JULIE J. ANTHONY
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SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT on January 8, 2019, for a hearing on the Plaintiff's Motion for Reconsideration filed pursuant to Rule 59(c) SCRCP.

Present at the hearing were G. Hamlin O'Kelley, III, Esq. for the Plaintiff Raven's Run

Homeowners Association, Inc., Harold A. Oberman, Esq. for the Defendant Katherine Kinlaw, Jeffrey T. Spell, Esq. for the Defendant Leila June Johnson, and Edward K. Pritchard, Jr., Esq. attorney for the Defendants James and Melissa Kubu representing the remaining Defendants. The Defendant Crown Pointe Association, Inc. was not present, having settled with the Plaintiff prior to the hearing and no longer being party to the action.

This Motion sought to have the Court reconsider its Order filed November 8, 2018 (“Order”), granting the remaining Defendants summary judgment on the issue as to ownership of certain real property on their individual lots in the Crown Pointe subdivision in Mount Pleasant, South Carolina, and the issue of ownership of the lakes between those lots and the Raven’s Run subdivision. Plaintiffs’ contend the Court failed to consider the 1985 deed and plat from RAC Enterprises to the Raven’s Run Homeowner’s Association.

The Court finds that the Plaintiff’s Motion for Reconsideration in this matter was timely filed within ten (10) days of written receipt of this Court’s Order. The parties submitted written memoranda to the Court regarding the Motion, and the Court conducted a hearing on January 8, 2019. For the reasons set forth herein, the Court partially grants Plaintiff’s Motion to Reconsider.

I. The 1985 Deed, the 1987 Deed and the Crown Pointe Covenants and Restrictions

Plaintiff Raven’s Run Homeowners Association’s claim the Court failed to consider the full record of deeds, plats, and covenants which they contend prohibit Defendants’ usage of the lakes and the property at issue between the lot line and the waterline of the lakes.

Plaintiff argues the 1985 conveyance from RAC Enterprises, Inc., the Raven’s Run developer, to the Raven’s Run Homeowner’s Association, Inc. and the 1987 deed by the same parties (both presented to the Court at the Motion for Summary Judgment hearing on August 28, 2018) transferred “all bodies and water” to the Raven’s Run H.O.A. (Plaintiff’s Motion to

Reconsider p.2) These documents were considered by the Court again at the hearing on January 8, 2019.

a. The 1985 Deed

The deed recorded on December 11, 1985 at Book E150 at Page 875 ("1985 Deed")(F of Plaintiff's Exhibit 1 from Hearing August 17, 2018) referenced a plat dated November 20, 1985, recorded on December 3, 1985 in Book BG at pages 052, 053, 054 ("1985 Plat").

BG 052 shows Raven's Run Subdivision, the numbered lots thereon, the 60' easement, and the Lake. It also vaguely shows a shape of the property which later became Crown Pointe. The 1985 Deed into Raven's Run includes language conveying "[a]ll those certain pieces, parcels or strips of land, bodies of water...below described, all of which are shown on a certain plat [BG 52, 53, 54]" which includes "[a]ll lakes, fingers, coves and other bodies of water..." marked on the plat. Again, Crown Pointe is not shown on the 1985 Plat.

b. The 1987 Deed

Plaintiff's Motion also referenced the 1987 deed of the common areas between RAC Enterprises, Inc. and the Raven's Run Homeowner's Association, Inc. ("1987 Deed") (C of Plaintiff's Exhibit 1 from August 17, 2018) in Book R163 at Page 134, recorded April 1, 1987, using Plat BL 057 ("1987 Plat") (E of Plaintiff's Exhibit 1 from August 17, 2018), recorded December 5, 1986. This 1987 conveyance includes all lakes or bodies of water and grants an ingress-egress easement held in common with lot owners in Raven's Run for drainage purposes. These described parcels and water are shown on Plat BL 057. This plat also shows Raven's Run Subdivision, the numbered lots thereon, the 60' easement, and the Lake but again does not show any portion of Crown Pointe.



c. The Crown Pointe Covenants and Restrictions

The Covenants and Restrictions for Crown Pointe (“Covenants”) (Section 5 of Plaintiff’s Exhibit 1 from August 18, 2018) were recorded on October 17, 1986 in Book O158 at Page 414. Section 26 of the Covenants captioned “Lakes and Bodies of Water” stated the lakes are “solely for the purpose of drainage” and “no owner shall have access to or use of said bodies of water [including boating, swimming and fishing], except for view.” Section 26 states further “No use may be made by any owner of lake systems... of Raven’s Run Subdivision which abut Lots 37E through 66E of Crown Pointe” thereby prohibiting boating, swimming and fishing in those bodies of water by these Crown Pointe landowners.

Based on the language in the 1985 and 1987 deeds, the accompanying plats, and the Covenants, the Court finds the Lake, as labeled, is owned by Ravens Run. Crown Pointe residents are subject to the drainage easement on their lots. Crown Pointe residents cannot use the Lake for swimming, boating, and fishing but the Covenants do allow them to use the Lake for water views.

II. Title to The Irregular Strips of Land

The Court disagrees with the Plaintiff’s assertion that the disputed strip of land behind the remaining Defendants’ lots was conveyed to Raven’s Run by the 1985 Deed. As to that strip of land, the Court’s previous Order remains in full force and effect. The Court confirms its prior ruling that the land behind these Defendants’ Lots, which was not conveyed by deed either to Crown Pointe Association or the three Defendants, and which is burdened by Crown Pointe’s Restrictive Covenants, is burdened by the nonexclusive drainage easement which was dedicated to the public, and on that basis is owned by Crown Pointe. The language “along the southern right-of-way of Rifle Range Road two irregular strips of land situate to the east and west of the intersection of Omni Boulevard and Rifle Range Road” does not refer to the disputed strips of

land. Although the irregular shaped continuous parcel to the West of Omni Boulevard runs continuously south of Rifle Range Road until reaching the border of the Neighboring parcel (the Isle of Palms Connector) the Court has ruled that this parcel stops 238.44 feet West of Omni Boulevard. The Court has also ruled that the remainder of this irregular shaped parcel located on the Raven's Run side of the Crown Pointe subdivision home owners' rear lot lines is not owned by Raven's Run, and must, therefore, be owned by Crown Pointe.

Rather, referring to the 1985 Plat (BG 052), on the southern boundary of Rifle Range Road there are in fact two irregular strips: One on the east 294.46 feet in length and one on the west which extends to 238.44 feet in length, both strips run along Rifle Range Road. They are irregular in shape and do not extend further inland. The Court finds, at most, this is the land conveyed by Paragraph 4 of the 1985 Deed. Therefore, as to this disputed strip, the Court's ruling in its previous Order, relying on the dedication to the public on Plat BK-2, remains in effect and the remaining Defendants, Katherine Kinlaw, Leila June Johnson, and James and Melissa Kubu have fee simple title to their parcels of land all the way to the waterline.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

1. Raven's Run owns the Lake.
2. Defendants Katherine Kinlaw (Lot 45-E), Leila June Johnson (Lot 40-E), and James and Melissa Kubu (Lots 39-E) have fee simple title to the parcels of land they each own up the waterline of the Lake.

IT IS SO ORDERED.

July 9, 2019
Charleston, South Carolina


Honorable Mikell R. Scarborough
Master in Equity for Charleston County