

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Derrick S. Hester, Debra S. Hester,)
James H. Nicholls, Emma Viola)
Nicholls, James E. Gregg, Jr.,)
Paulette J. Gregg, Michael Ben)
Coley, Ashley Coley, Grady L.)
Barnes, Sr., Julia W. Barnes, Ewen)
Lennon, and Amy Lennon,)

C.A. No.: 2018-CP-42-02247

ORDER

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SC Court of Appeals

Plaintiffs,)

v.)

Mark Razzano and Carre Razzano,)

Defendants.)

This matter came before the Court for trial on February 25, 2020. Present at the trial were K. Jay Anthony and Kenneth C. Anthony, Jr., counsel for Plaintiffs, as well as John T. Crawford, Jr. and Mark A. Bible, Jr., counsel for Defendants. The parties were also in attendance.

The basis for Plaintiffs' Complaint is: (i) Defendants' construction of a garage structure containing living space above the garage bays (hereinafter the "Garage") on their property within the Solitude Bay neighborhood on Lake Bowen; and (ii) Defendants' use of their main residence for rental of individual rooms, including through the website www.airbnb.com. Plaintiffs sought a permanent injunction prohibiting the Defendants from making commercial use of their property and further prohibiting Defendants from making residential use of the living space in the Garage, alleging that both acts violated the applicable Restrictive Covenants.

Following the conclusion of the Plaintiffs' case, both Plaintiffs and Defendants moved for a directed verdict. For the reasons stated below, I grant the Plaintiffs' motion for directed verdict and deny Defendants' motion for the same. Further, by virtue of granting the Plaintiffs' motion for

directed verdict, the Court did not find it necessary for the Defendants to call their witnesses and present their case. However, the Court heard from Defendant Carre Razzano, who was called as the first witness by Plaintiffs and was cross-examined by Defendants' counsel. Additionally, Defendants admitted numerous exhibits prior to the commencement of the trial, with the consent of Plaintiffs' counsel, and made reference to those exhibits during the Plaintiffs' presentation of the case.

LAW

“An action to enforce restrictive covenants by injunction is in equity.” See S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001). The grant of an injunction lies within the sound discretion of the trial court. See City of Columbia v. Pic-A-Flick Video, Inc., 340 S.C. 278, 282, 531 S.E.2d 581, 520-21 (2000). To enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by plain unmistakable implication. See Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 270-71, 363 S.E.2d 891, 894 (1987). A Court shall enforce restrictive covenants unless they are indefinite or contravene public policy. See id. Restrictive covenants are contractual in nature, and thus, the language used in restrictive covenants is to be construed according to its plain and ordinary meaning. See Hardy v. Aiken, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). “A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property. See Taylor v. Lindsey, 332 S.C. 1, 4, 5, 498 S.E.2d 862, 863.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After considering the testimony and evidence presented, as well as facts admitted by both parties, I make the following Findings of Fact and Conclusions of Law:

1. This matter came before me pursuant to the Order of Reference dated January 3, 2020.

2. The pleadings of the parties, as well as the testimony at trial, demonstrate that the Restrictive Covenants found at Book 39-N, Page 400-401 (hereinafter the "Covenants") in the Offices of the Spartanburg County Register of Deeds apply to the properties at issue.

3. The Covenants provide, in relevant part:

No lot shall be used for commercial . . . uses or purposes.

No . . . garage . . . or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted.

. . . . Each lot owner and his tenants, if any, shall make adequate provision for garbage disposal.

. . . . Any person may use one lot and a portion of another lot, or may use two or more lots, placing one residence thereon.

4. Neither J.G. Landrum Compton nor Lillie W. Compton (collectively the "Comptons"), the original authors of the Covenants, were available to offer testimony as to their intent in drafting the Covenants, nor were any other persons formerly associated with the Comptons offered to present testimony or other evidence of the same. Furthermore, the parties in this matter could not agree as to the intent of the Comptons or the meaning of terms set forth in the Covenants. This question is therefore one for the Court.

5. As part of the Plaintiffs' case, Plaintiffs called Defendant Carre Razzano and introduced various exhibits. Through this testimony, it was established that a number of facts in

this matter are undisputed by the parties, including the following: (i) The Garage includes 1,350 square feet of living space, with two bedrooms, two bathrooms, a full kitchen, a separate power meter, and a dedicated septic system; (ii) At the time of the trial, the Garage was not connected to the main residence, though the contract with the builder was signed February 23, 2018; (iii) It is the Defendants' plan to connect the Garage and main residence with a trellis and walkway, which would include some translucent enclosure; (iv) Until the temporary injunction in this matter, the Defendants rented two individual rooms within their main residence out on the website www.airbnb.com (hereinafter the "Website"); and (v) Mrs. Razzano admitted the authenticity of the screenshots of the listing of the property on the Website.

6. Both parties moved for a directed verdict at the conclusion of Plaintiffs' case. Based on the testimony, other evidence, and facts admitted by both parties, I determined that only questions of law remained for the Court, and a directed verdict was appropriate, pursuant to Rule 50(a), SCRPC.

7. I find that the Garage is an "outbuilding" within the language of Section 6 of the Covenants, which provides that "[n]o trailer, basement, shack, garage, barn or other outbuilding erected on any lot shall, at any time, be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted."

8. As the Garage is an "outbuilding," it cannot be used as a residence, temporarily or permanently. I therefore grant the Plaintiffs' motion for a directed verdict on this issue, deny Defendants' motion for a directed verdict, and issue a permanent injunction. Under the terms of the injunction, as long as the Garage remains unattached from the main residence, the Garage, including the living space above, may not be used as a residence, temporarily or permanently. However, I retain jurisdiction over this matter such that, in the event that the structures are joined,

I will entertain a motion to rule on whether the construction, in this Court's determination, is such that the Garage no longer has the status of an outbuilding.

9. With regard to the commercial use of the property, Plaintiffs alleged, and Defendants admitted, that Defendants rented two rooms within Defendants' main residence through the Website. Defendant Carre Razzano stated in testimony that she believed that she may make use of the living space in the Garage Residence in the same way, upon its completion. As part of their evidence, Plaintiffs submitted screenshots of the Defendants' listing on the Website, which describes the listing as "Private Room in Bed and Breakfast" and recites various amenities and policies and lists a daily rate.

10. The Plaintiffs demonstrated through testimony and other evidence that the Solitude Bay community is a small, quiet, secluded neighborhood. Reviews from the Airbnb listing demonstrate that the Razzano residence had more than thirty (30) bookings between August 2016 and October 2017. Additionally, the Plaintiffs established through testimony that the customers would, at times, wander the neighborhood, with the result of strangers walking about the neighborhood and sometimes leaving trash. The Plaintiffs established that such activity changed the character of the neighborhood, and that the community would be further impacted if the additional living space in the Garage Residence is rented out in this way.

11. The reference to "tenants" in Section 5 of the Covenants makes clear that there is no restriction on a homeowner renting his or her property. However, I find that the rental of individual rooms as done by the Defendants constitutes "commercial use" in violation of the Covenants. This further applies to the prospective use of the Garage Residence in this way. I therefore grant the Plaintiffs' motion for a directed verdict on this issue and issue a permanent injunction against rental of individual rooms anywhere on the property, including through the

Website or other similar sites, as such action would constitute a “commercial use” in violation of the Covenants.

It is therefore ORDERED THAT:

1. Defendants are permanently enjoined from using the Garage , including the living space above, as a residence, either temporarily or permanently. This Court retains jurisdiction over this matter and, should the Defendants attach the Garage to the main residence, Defendants’ may seek a ruling from this Court on whether the construction is such that, in this Court’s determination, the Garage no longer has the status of an outbuilding.

2. Defendants are permanently enjoined from making commercial use of their property through rental of rooms on the property, including, but not limited to, through the www.airbnb.com website or other similar sites.

3. The bond of Two Thousand Five Hundred Dollars (\$2,500.00) posted by Plaintiffs in relation to the temporary injunction in this matter shall be returned to the Plaintiffs.

IT IS SO ORDERED.

Hon. Gordon G. Cooper
Master-in-Equity
Spartanburg County

March ____, 2020
Spartanburg, South Carolina



Spartanburg Common Pleas

Case Caption: Derrick S. Hester , plaintiff, et al VS Mark Razzano , defendant, et al
Case Number: 2018CP4202247
Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065