

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

MAYBANK 2754, LLC,

Plaintiff,

vs.

EUGENE J. ZURLO, Individually and as
Co-Trustee of the Eugene J. Zurlo Living
Trust Dated December 11, 1997; 1776,
LLC; BEACH FENWICK, LLC; THE BEACH
COMPANY; SEAMON, WHITESIDE &
ASSOCIATES, INC.; PENNY CREEK
ASSOCIATES, LLC; JOHN DOE AND
MARY ROE,

Defendant.

Case No. 2020-CP-10-00209

[PROPOSED] ORDER

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SC Court of Appeals

BRIEF PROCEDURAL HISTORY

This matter came before the Court on June 16 and June 25, 2020 pursuant to certain motions filed by Defendants and a Motion filed on behalf of Plaintiff in this action, including:

- 1) February 17, 2020 – Defendants Beach Fenwick, LLC and The Beach Co.’s (“Beach Entities”) Motion to Dismiss;
- 2) February 17, 2020 – Beach Entities’ Motion to Refer to the Master-In-Equity;
- 3) February 20, 2020 – Defendant Seamon Whiteside Associates, Inc.’s (“Seamon Whiteside”) Motion to Dismiss Civil Conspiracy;
- 4) February 21, 2020 – Defendant 1776, LLC’s (“1776”) Motion to Dismiss;
- 5) February 21, 2020 – 1776’s Motion to Refer to the Master-In-Equity;

- 6) March 10, 2020 – Defendants Eugene J. Zurlo, individually and as co-trustee of Eugene J. Zurlo Living Trust’s (“Zurlo Parties”) Motion to Refer to the Master-In-Equity;
- 7) March 11, 2020 – Plaintiff Maybank 2754’s (“Maybank”) Motion for Temporary Injunction.

Counsel for all parties appeared, via video conference application “Zoom,” and the Court heard oral argument on behalf of all parties.

On June 30, 2020, this Court issued its Form 4 Order, with the following Statement of Judgment:

Plaintiff Maybank 2754 LLC’s Motion/Temporary Injunction is denied. Defendant Beech Company’s Motion to Dismiss and Refer to the Master, along with all outstanding motions to refer to the master, are granted.

The Plaintiff filed a Rule 59 Motion to Reconsider on July 1. That Motion is denied for the reasons set forth below.

PLAINTIFF’S MOTION FOR TEMPORARY INJUNCTION

Plaintiff’s Motion for Temporary Injunction, filed March 11, 2020, seeks to enjoin Beach Fenwick from developing the Subject Property until after a trial on the merits and a judgment is rendered in this matter. In consideration of Plaintiff’s Motion, the Court considered the Beach Entities’ Memorandum of Law in Opposition to Plaintiff’s Motion for Temporary Injunction, filed on June 15, 2020, Plaintiff’s Notice of Filing Order Exhibits in Support of Its Motion for Temporary Injunction, filed June 23, 2020, the testimony of Michel F. Laplante, on behalf of Plaintiff, and the oral argument of Plaintiff’s counsel, and applicable South Carolina authority, based upon which this Court makes the following findings, and denies Plaintiff’s Motion for Temporary Injunction.

A court may issue a temporary injunction “only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). Generally, for a preliminary injunction to be granted, the plaintiff must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Id.*

In consideration of the briefing filed with this Court on behalf of Plaintiff and on behalf of the Beach Entities relative to Plaintiff’s Motion for Temporary Injunction, oral argument of counsel, testimony presented on behalf of Plaintiff, as well as the law of the State of South Carolina, this Court finds and so rules that Plaintiff has failed to demonstrate that it will suffer irreparable harm in the absence of the injunction sought. Plaintiff has failed to establish it will suffer irreparable harm if the injunction is not granted. Further, Plaintiff has failed to establish it will likely succeed on the merits of this litigation and likewise failed to establish it has no adequate remedy at law. Additionally, Plaintiff seeks damages in a Conspiracy Cause of Action in its Complaint, so Plaintiff has a remedy at law.

**DEFENDANTS’ MOTIONS FOR ORDER OF REFERENCE
TO THE MASTER-IN-EQUITY**

All Defendants, except Seamon, Whiteside & Associates, Inc., filed motions for an order of reference of this litigation to the Master-In-Equity, as set forth above. Plaintiff filed its Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on April 6, 2020, following which Plaintiff filed its Amended Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on April 9, 2020. Subsequently, the Zurlo Parties filed their Reply to Plaintiff's Amended Objection and Response in Opposition to Motion for Order of Reference to the Master-In-Equity on April 22, 2020, following which Plaintiff filed its Second Amended Objection and Response in Opposition to the Defendants' Motions for Order of Reference to the Master-In-Equity on May 15, 2020. The Zurlo Parties filed their Brief in Support of Motion to Refer to Master on June 11, 2020. The Beach Entities filed their Memorandum of Law in Support of Their Motion for Order of Reference to Master-In-Equity on June 19, 2020.

The Court heard oral argument on Defendants' Motions to Refer to the Master-In-Equity on June 16, with additional argument on June 25, 2020. Based upon the parties' submissions to this Court, as well as oral argument of counsel and the testimony of Mitch Laplante, on behalf of Plaintiff, this Court finds as follows:

The Master-In-Equity may hear any matter referred to him or her by the Circuit Court. See S.C. Code Ann. § 14-11-10 et seq. and Rule 53 of the South Carolina Rules of Civil Procedure. "Pursuant to Rule 53, SCRCP, a master has no power or authority except that which is given to him by the order of reference." *Bunkum v. Manor Props.*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996). "When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner

as the circuit court, unless the order of reference specifies or limits his powers.” *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993). “To rewrite the terms of sale after the sale would be patently inequitable.” *Ex parte Johnson*, 371 S.C. 614, 618, 640 S.E.2d 887, 889 (Ct. App. 2006). “[I]t is the long established policy in South Carolina that ‘[t]he courts should be particularly jealous of the integrity of judicial sales.’” *Id.* (citing *In re Wilson*, 141 S.C. 60, 63, 139 S.E. 171, 172 (1927)).

THE BEACH ENTITIES’ MOTIONS TO DISMISS

The portion of the Court’s Order of June 30, 2020, indicating the Beach Entities’ Motion to Dismiss is granted is a scrivener’s error; that Motion was not argued, it was reserved for referral to the Master-in-Equity and not considered by this Court, so that Motion will be transferred to the Master-In-Equity.

CONCLUSION AND ORDER

The Plaintiff’s Motion for a Temporary Restraining Order is Denied, the Plaintiff’s Motion to Reconsider is denied, and the entire case and all the pending Motions are referred to the Master-in-Equity, pursuant to and consistent with South Carolina Rules of Civil Procedure, Rule 53. All pre-trial matters, including the parties’ motions, shall be and are hereby referred to the Master-In-Equity, with finality, with appeal directly to the South Carolina Court of Appeals or the South Carolina Supreme Court.

AND IT IS SO ORDERED.

Bentley Price
Presiding Judge-Ninth Judicial Circuit

Charleston, S.C.

July _____, 2020



Charleston Common Pleas

Case Caption: Maybank 2754 Llc VS Eugene J Zurlo , defendant, et al
Case Number: 2020CP1000209
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766