

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
)
Westbury Park Residential Association, Inc.,)
)
Plaintiff(s),)
)
vs.)
)
Estate at Westbury Owners Association, Inc.,)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO: 2020-CP-07-00158

ORDER DENYING INJUNCTION AND
GRANTING IN PART AND DENYING
IN PART MOTION FOR PARTIAL
SUMMARY JUDGMENT

RECEIVED

Sep 22 2020

SC Court of Appeals

This Plaintiff’s motion for temporary injunction and Defendant’s motion for partial summary judgment came before me in a live hearing on September 16, 2020.

Defendant Property Owner’s Association (Estate) asserts that it holds an easement across the property of the Plaintiff Property Owner’s Association (Park). Park seeks relief related to the conduct of certain individuals using that easement (believed to be residents of Estate)¹. Park further challenges the nature of the easement and seeks to be paid certain use and maintenance assessments which are the subject of dispute. Estate seeks to confirm its easement as perpetual and appurtenant and to establish that the term of payment has expired.

I find that the Temporary Injunction should be denied, as it does not meet the requirement for irreparable harm and additionally that it seeks relief which compels non-parties to act or abstain from activities.

With regard to Estate’s Motion for partial summary judgment:

I find that the easement is an express appurtenant Easement and that the renewal of the term was intended to be unilateral under 9.01. I find that the term was properly extended by the filing of the extension as contemplated under 9.01. I do not see a conflict between 9.01 and 9.02. 9.01 deals with term and 9.02 deals with “...this Declaration, or any provision hereof, or any covenant, condition or restriction contained herein...”

Further, the assessment provision (8.02) of the Declaration agreement (as further modified by paragraph 4 of the 2005 amendment), calls for a sum certain in payments. The obligation of the Estate is to pay the contracted sum and the obligation of Park is to maintain the easement. Had the proportional maintenance cost exceeded the actual revenue received under the assessment provision, Park would have suffered a loss. Estate has no right of accounting and there is no right by Estate to direct how the funds are used. So long as the easement is in good condition and available for the reasonable, contracted and anticipated use of Estate residents, Park has complied with its contractual obligations.

I therefore:

- 1) Deny Defendant's summary judgment motion on Plaintiff's second cause of action (declaratory judgment).
- 2) Deny Defendant's summary judgment motion on Plaintiff's third cause of action (termination by breach)
- 3) Grant Defendant's summary judgment motion on Plaintiff's fourth cause of action regarding the type of easement.
- 4) Grant Defendant's summary judgment motion on Plaintiff's fifth cause of action (declaratory judgment on alternative access)
- 5) Deny Defendant's summary judgment motion on Plaintiff's sixth cause of action. (unjust enrichment)
- 6) Deny Defendant's summary judgment motion on Plaintiff's seventh cause of action (changed conditions).
- 7) Grant Defendant's summary judgment motion on Defendant's fourth counterclaim (type of easement)
- 8) Deny Defendant's summary judgment motion on Defendant's fifth counterclaim (easement by necessity).
- 9) Deny Defendant's summary judgment motion on Defendant's eighth counterclaim (accounting).

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

September _____, 2020
Beaufort, South Carolina

ⁱ Park offered video showing motorists entering through the exit gate. While I am tempted to call this maneuver a "raspberry beret", Prince lyrical references have no place in the body of this Order.



Beaufort Common Pleas

Case Caption: Westbury Park Residential Association, Inc. VS Estate At Westbury Owners Association, Inc.

Case Number: 2020CP0700158

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069