

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
IN THE FIFTEENTH JUDICIAL CIRCUIT
Case No. 2015-CP-26-03173

Condo-World Development, LLC and
Heron Point Golf Club Limited
Partnership,

Plaintiffs,

vs.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Defendant.

Myrtle Beach Golf & Yacht Club
Association, Inc.,

Third-Party Plaintiff,

vs.

South State Bank,

Third-Party Defendant.

CONSENT ORDER
**(Making Findings of Fact
& Conclusions of Law)**
(Ending Action)

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SC Court of Appeals

This matter is before me on the motion of Plaintiff Condo-World Development, LLC (“Condo-World”) and Plaintiff Heron Point Golf Club Limited Partnership (“Heron Point”) (collectively “Plaintiffs”), by and with the consent of Defendant/Third-Party Plaintiff Myrtle Beach Golf & Yacht Club (the “Association”) and Third-Party Defendant South State Bank, N.A., formerly known as CenterState Bank, N.A., as successor in interest by merger to South State Bank and s/h/a South State Bank (“South State”), through their respective counsel, for the entry of an order making various findings and rulings as described herein and with those findings and rulings preserved, dismissing this action with prejudice.

As requested by the parties, the Court makes the following findings of fact and conclusions

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of law:

FINDINGS OF FACT

1. Pursuant to that Deed from Peoples Federal Savings and Loan Association dated April 15, 1992, and recorded April 15, 1992, in the office of the Register of Deeds for Horry County in Deed Book 1540 at Page 482 ("1992 Deed"), Heron Point is the owner of the Heron Point Golf Course, which is more particularly described as follows:

PARCEL ONE

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township in the County of Horry, State of South Carolina, containing in the aggregate 164.221 acres, more or less, being shown and designated as:

- Parcel C, containing 0.077 acre; more or less;
- Parcel L, containing 13.345 acres, more or less;
- Parcel M, containing 14.522 acres, more or less;
- Parcel N, containing 3.527 acres, more or less;
- Parcel N-1, containing 7.987 acres, more or less;
- Parcel O, containing 5.614 acres, more or less;
- Parcel Q, containing 27.088 acres, more or less;
- Parcel T, containing 34.843 acres, more or less;
- Parcel U, containing 4.219 acres, more or less;
- Parcel V, containing 9.884 acres, more or less;
- Parcel Z, containing 1.019 acres, more or less;
- Parcel AA, containing 10.535 acres, more or less;
- Parcel AB, containing 11.924 acres, more or less; and
- Osprey Lake, containing 19.637 acres, more or less;

on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Real Estate Plat Book 119 at pages 100.

AND ALSO:

PARCEL TWO

All and singular, those certain parcels of land, situate, lying and being in Socastee Township, Horry County, South Carolina, containing a total of 5.349 acres, as shown on that survey of Heron Point Golf Club, formerly Myrtle Beach Golf and

Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Plat Book 119 at pages 100, and being more particularly shown and designated as:

Parcel S, containing 0.039 acre, more or less;
Parcel OA, containing 0.029 acre, more or less;
Parcel P, containing 0.154 acre, more or less;
Parcel X, containing 0.091 acre, more or less;
Parcel AE, containing 0.140 acre, more or less;
Parcel AF, containing 0.040 acre, more or less;
Parcel AC, containing 4.636 acres, more or less; and
Parcel AD, containing 0.220 acre, more or less.

AND ALSO:

PARCEL THREE

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township, County of Horry, State of South Carolina, and being shown as Tract II-C (0.453 acre, more or less) and Tract II-D (0.454 acre, more or less) on survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Plat Book 119 at pages 100, which plat is incorporated herein and made a part hereof by reference.

2. Heron Point conveyed parts of certain parcels of land described within the 1992 Deed to Enterprise Road Development, to Rivers Reach Development, and to the Association as follows:

A.: That property deeded from Heron Point to Enterprise Road Development by that deed dated March 17, 2005, and recorded on May 5, 2005, in Deed Book 2905 at Page 0577 in the office of the Register of Deeds of Horry County with property description:

Parcel I:

ALL AND SINGULAR, that certain piece, parcel or tract of land situate, lying and being in Socastee Township, Horry County, South Carolina, containing 5.09 Acres, more or less, and being more particularly shown and described on that certain Plat prepared by DDC Engineers, Inc. dated November 8, 2004, and recorded March 16, 2005, in Plat Book 204, at Page 3, in the office of the Register of Deeds for Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

Less and Excepting From the Aforesaid Parcel:

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 132 of Cypress River Plantation, as shown on that certain plat prepared by DDC Engineers, Inc., dated April 21, 2004, revised May 24, 2004 and recorded June 2, 2004 in Plat Book 197 at Pages 206, 206A and 206B, records of Horry County, South Carolina, reference to which is hereby made for a more complete description.

TMS No. 184-00-01-072 (retired)

Parcel II:

ALL AND SINGULAR, that certain piece, parcel or tract of land containing 2.51 Acres, more or less, and being more particularly shown and designated on that certain Plat prepared by DDC Engineers, Inc., dated November 8, 2004, and recorded March 16, 2005, in Plat Book 204, at Page 2, in the office of the Register of Deeds for Horry County, South Carolina, reference to which is craved as forming a part and parcel of these presents.

Less and Excepting Therefrom:

Any portion of the lot described as ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 335 of Cypress River Plantation, as shown on plat entitled Cypress River Plantation Phase 2C prepared by DDC Engineers, Inc. dated June 24, 2004, and revised July 23, 2004, recorded August 16, 2004, in Plat Book 199, at Page 79, records of Horry County, South Carolina, reference to which is hereby made for a more complete description, which may be contained within the foregoing property.

Also Less and Excepting Therefrom:

Any portion of the lot described as ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, designated as Lot 336 of Cypress River Plantation, as shown on that certain plat prepared by DDC Engineers, Inc., dated September 20, 2004 and recorded October 25, 2004 in Plat Book 200 at Page 180, records of Horry County, South Carolina, reference to which is hereby made for a more complete description, which may be contained in the foregoing property.

TMS No. 184-00-01-071 (retired)

B.: That property deeded from Heron Point to Rivers Reach Development, LLC by that deed dated October 30, 2006, and recorded on October 31, 2006, in Deed Book 3182 at Page 0348 in the office of the Register of Deeds of Horry County with property description:

ALL AND SINGULAR, all that certain piece, parcel or tract of land situated and lying being designate on a Plat of a Portion of TMS 184-00-01-024, being 3.43 acres of land, located in Socastee Township, Horry County, South Carolina prepared for McGalliard Enterprises, Inc. by Culler Land Surveying, Co., Inc. dated July 6th, 2006 and recorded October 20th, 2006 in Plat Book 218 at Page 33 in Horry County Register of Deeds.

TMS No. 184-00-01-078 (retired)

C.: That property deeded from Heron Point to the Association by that deed dated June 20, 2014, and recorded on July 23, 2014, in Deed Book 3750 at Page 20 in the office of the Register of Deeds of Horry County with property description:

All those certain pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being in Socastee Township, Horry County, South Carolina, and being shown as Tract II-C (0.453 acre, more or less) and Tract II-D (0.454 acre, more or less) on that survey of Heron Point Golf Club, formerly Myrtle Beach Golf and Yacht Club Golf Course, prepared by Engineering and Technical Services, Inc. by Frederick L. Harris, R.L.S., dated April 6, 1992, and recorded in Plat Book 119 at Page 100, which plat is incorporated herein and made a part hereof by reference.

TMS No. 184-17-01-042 and 184-17-04-063

3. The property that is currently owned by Heron Point Golf Course, LP, pursuant to the 1992 Deed, less and excepting the conveyances to Enterprise Road Development, to Rivers Reach Development and to the Association, is hereinafter called the "Golf Course Property".

4. Condo-World holds a mortgage lien on the Golf Course Property pursuant to that First Mortgage and Security Agreement given by Heron Point to Peoples Federal Savings and Loan Association, dated April 15, 1992, and recorded April 15, 1992, in the office of the Register of Deeds for Horry County in Mortgage Book 1669 at Page 301 ("Mortgage"), which Mortgage was assigned by First Federal Savings and Loan Association of Charleston, the successor by merger to Peoples Federal Savings and Loan Association, to VFC Partners 15, LLC, by Assignment of Mortgage and Collateral Documents recorded April 3, 2012, in the office of the Register of Deeds for Horry County in Mortgage Book 5391 at Page 1268, which Mortgage was

subsequently assigned by VFC Partners 15, LLC to Condo World by Assignment and Assumption of Mortgage and Loan Documents recorded May 18, 2012, in the office of the Register of Deeds for Horry County in Mortgage Book 5402 at Page 2786. The Mortgage provides in part that "Mortgagor shall not remove, demolish, materially alter or materially change the use of the golf course or any building, structure or other improvement presently or hereafter on the Land without the prior written consent of Mortgagee."

5. The Association is charged with the administration, operation, and maintenance of the Myrtle Beach Golf and Yacht Club subdivision pursuant to the Amended and Restated Declaration of Covenants and Restrictions for Myrtle Beach Golf & Yacht Club Subdivision recorded January 29, 1985, in the office of the Register of Deeds for Horry County in Deed Book 981 at Page 563 and amendments thereto ("Covenants").

6. The 1992 Deed purported to impose the following use restrictions on the Golf Course Property ("1992 Restrictions"):

The property conveyed herein shall be subject to the following covenants:

- (a) The only permitted use of this property is as a golf course, country club, or other ancillary use relating to golf course or country club use;
- (b) Grantee, its Successors and Assigns, agree to offer memberships to members of Myrtle Beach Golf and Yacht Club Association, Inc., its successors and assigns on the same basis that it offers memberships to the public at large, provided, however, that there shall be no requirement to offer memberships.

7. The 1992 Deed also conveyed the Golf Course Property subject to the following use restrictions:

- (f) restrictions, covenants and conditions contained in a Deed from James H. Dusenbury, as Nominee to Myrtle Beach Golf & Yacht Club, a General Partnership, dated February 29, 1984, and recorded March 13, 1984, in the office of the Register of Deeds for

Horry County in Deed Book 855 at Page 769 (the "1984 Deed"). ;
and

(g) restrictions, covenants and conditions contained in a Deed from James H. Dusenbury, as Nominee to Heron Point Golf Club, Inc., dated April 25, 1989, and recorded May 2, 1989, in the office of the Register of Deeds for Horry County in Deed Book 1306 at Page 642 (the "1989 Deed").

(The restrictions set forth in the 1984 Deed and the 1989 Deed and quoted above are collectively referred to as the "Dusenbury Restrictions").

The relevant use restrictions in the 1984 Deed provide: "The Property shall be used for a residential community (composed of single-family and multi-family residences), an associated golf course, open areas, parks, lakes, and various other recreational amenities and retail shops;" and "The maximum density of dwelling units on the property shall be in accordance with Grantee's development plan as approved by the Grantor." The relevant use restrictions in the 1989 Deed provide: "The Property shall be used for a residential community, composed of single family and multi-family residences, an associated golf course, open areas, park, lakes and various other recreational amenities and retail shops, utilities, provisions, administrative complex, storage of boats and related trailers and the like"; and "The maximum density of dwelling units on the property shall be in accordance with Grantee's development plan as approved by the Grantor."

8. Plaintiffs filed the above-captioned action ("this Action") seeking an order declaring the Golf Course Property is not restricted in its use and more particularly that the Golf Course Property can be used for residential development. The Association denied the material allegations of Plaintiffs' complaint and asserted counterclaims seeking an order declaring the Golf Course Property is restricted by various documents including, but not limited to, the 1992 Restrictions and the Dusenbury Restrictions. The Association also alleged the Golf Course Property is subject to an implied reciprocal negative easement. In addition, the Association claimed

the Golf Course Property was restricted by (a) an Option Agreement dated February 29, 1984, between James H. Dusenbury and Justice Inc., recorded March 6, 1984, in the office of the Register of Deeds for Horry County in Deed Book 854 at Page 321 (“Option Agreement”); and (b) an unrecorded Settlement Agreement dated July 25, 1988, between Myrtle Beach Golf & Yacht Club, Inc., Peoples Federal Savings and Loan Association, Property Consultants, Inc., and the Association (“1988 Settlement Agreement”), whereby Peoples Federal Savings and Loan Association agreed to cause the following deed use restrictions to be placed on the Golf Course Property: “The only permitted use of this property is a golf course, country club, or other ancillary use relating to golf course or country club use” and “...agree to offer memberships to members of the POA on the same basis that it offers memberships to the public at large, provided, however, that there shall be no requirement to offer memberships.”

9. The Association asserted a Third-Party Complaint against South State, as the successor to Peoples Federal Savings and Loan Association, asserting various tort claims and claims for injunctive relief related to the 1988 Settlement Agreement. By Order, filed on July 26, 2017, The Honorable Larry B. Hyman dismissed the tort claims, but did not dismiss the claim for permanent injunction. The Association appealed the dismissal of those claims to the South Carolina Court of Appeals, Case No. 2017-002196. This appeal is pending and is to be dismissed upon the completion of the settlement of this Action as set forth below.

10. The parties to this Action have reached a settlement. Under the terms of this settlement, *inter alia*, Heron Point will sell and convey a portion of the Golf Course Property, containing approximately 62.54 acres, to the Association. Notwithstanding the foregoing, as to the Golf Course Property being retained by Heron Point (the “Retained Property”), one section of the Golf Course Property (near the old Heron Point clubhouse) and a second section between

Wisteria Lane and Bay Road shall be restricted in its use to single-family detached homes, as more particularly set forth and described in a separately recorded restriction, which restriction shall run with the land, and bind Heron Point's successors, assigns, successors-in-title, burden the Golf Course Property, and inure to the benefit of the Association.

11. The Court finds that the Golf Course Property is free and clear of any and all development or use restrictions at law or implied by equity and that Heron Point owns the Golf Course Property free and clear of any right, title, claim, lien, or interest of the Association, the Association's members, or South State, their heirs, successors, and assigns, but otherwise subject to the terms, conditions, and restrictions set forth in documents to be recorded with the Horry County Register of Deeds pursuant to the Parties' settlement. Furthermore, no easements or density restrictions or requirements (whether or not of record) including any shown on any recorded plat or deed, shall prohibit or interfere with the future development of the Retained Property by Heron Point, its successors and assigns, including to the extent inconsistent with the Development Plan previously approved by the Horry County Planning Department and/or as amended in the future. If any easement is necessary for the use and enjoyment of any property belonging to the Association or its members, then Heron Point, its successor and assigns, shall have the affirmative right to relocate said easement so that the future development of the Retained Property will not be impaired.

12. Pursuant to S.C. Code Ann. § 33-31-302, unless its Articles of Incorporation provide otherwise, a non-profit corporate entity possesses:

[T]he same powers as an individual to do all things necessary or convenient to carry out its affairs including without limitation, power: (1) to sue and be sued, complain and defend in its corporate name; ... (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever

located;...(7) to make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income; [and] ... (18) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

13. The Association's Articles of Incorporation, Bylaws, and Covenants do not require or compel a member vote for the approval of litigation settlements or the acquisition of additional common properties. Therefore, the Board is empowered to take such action.

CONCLUSIONS OF LAW

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

A. All purported or alleged use restrictions, express or implied, that relate to or concern the use of the Golf Course Property, including, but not limited to, the 1992 Restrictions and the Dusenbury Restrictions and any use restrictions claimed to exist pursuant to the Option Agreement or the 1988 Settlement Agreement, are personal covenants that do not run with the land. All such restrictions are terminated and rendered inoperative.

B. All purported easements or density restrictions or requirements (whether or not of record) including any shown on any recorded plat or deed shall not prohibit or interfere with the future development of the Retained Property by Heron Point, its successors and assigns, including to the extent inconsistent with the Development Plan previously approved by the Horry County Planning Department and/or as amended in the future. If any easement is necessary for the use and enjoyment of any property belonging to the Association or its members, then Heron Point, its successor and assigns, shall have the affirmative right to relocate said easement so that the future development of the Retained Property will not be impaired.

C. Heron Point owns the Golf Course Property free and clear of any right, title, claim, lien, or interest of the Association, the Association's members, or South State, and their heirs, successors, and assigns.

D. Heron Point owns the Golf Course Property free and clear of any use restrictions or covenants, including but not limited to the 1992 Restrictions, the Dusenbury Restrictions, the restrictions set forth in the Mortgage, the Covenants to the extent they purport in any manner whatsoever to restrict or affect the use of the Golf Course Property, any implied reciprocal negative easement, and any restrictions that are either set forth in, or claimed to exist as a result of, the Option Agreement and/or the 1988 Settlement Agreement.

E. Other than terminating purported or claimed restrictions as to the use of the Golf Course Property, nothing contained in this Order terminates the Covenants or renders the Covenants inoperative.

F. Notwithstanding the foregoing, one section of the Golf Course Property (near the old Heron Point clubhouse) and a second section between Wisteria Lane and Bay Road not being conveyed to the Association shall be used solely for single-family detached homes as more particularly set forth and described in a separately recorded restriction, which restriction shall run with the land, and bind Heron Point's successors, assigns, successors-in-title, burden the Golf Course Property, and inure to the benefit of the Association.

G. Notwithstanding the foregoing, Heron Point and Condo-World and the Association have entered into various agreements that will affect the Retained Property and the property to be conveyed to the Association, which agreements will be reflected in documents recorded with the Horry County Register of Deeds subsequent to the entry of this Order.

H. The Board of Directors of the Association has the authority to enter into a settlement of this action, including the purchase of the Golf Course Property, and the execution of all ancillary and related documents.

I. Preserving the findings and judgment issued herein, this case is concluded and ended and all claims that were asserted or that could have been asserted by the parties in this Action, including the Third-Party Complaint, are hereby dismissed with prejudice and forever ended, with each party being responsible for the payment of their own attorney's fees and costs.

J. A copy of this Consent Order shall be recorded with the Horry County Register of Deeds in the grantor index and the grantee index under the names of all parties to this Action.

AND IT IS SO ORDERED.

[signatures of counsel and the judge's signature follows]

WE SO MOVE:

s/ Howell V. Bellamy, III

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CONSENT ORDER
(Making Findings of Fact & Conclusions of Law)
(Ending Action)
Case No. 2015-CP-26-03173

WE CONSENT:

s/ Kerry K. Jardine

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South State Bank, N.A., formerly known as CenterState Bank, N.A., as successor in interest by
merger to South State Bank (s/h/a South State Bank)

The E-Filer of this Consent Order, Demetri K. Koutrakos, has obtained the required written consent of other counsel.



Horry Common Pleas

Case Caption: Condo World Development LLC , plaintiff, et al VS Myrtle Beach
Golf & Yacht Club Association Inc , defendant, et al
Case Number: 2015CP2603173
Type: Order/Consent Order

So Ordered

s/Carmen T Mullen 2142