

February 21, 2020.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Harris v. Anderson Cty. Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423 (2009). An easement may be established by express grant or by express reservation in a deed or other instrument. Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 143 S.E.2d 803 (1965). A reservation of an easement in a deed by which lands are conveyed is equivalent for purpose of creation of easement to express grant of easement by grantee of lands. Id.

The Plaintiff owns the real property located on Wallace School Road in Charleston County, South Carolina (TMS# 351-10-00-099) on a plat referred to as "Lot B-2," and Defendant owns three neighboring lots (TMS # 351-10-00-039; TMS # 351-10-00-066; and TMS # 351-10-00-093) pursuant to a Master Deed conveying title to various parcels of real estate on October 30, 1996 and which created the Horizontal Property Regime known as Westgate Office Park Horizontal Property Regime. Defendant rerecorded the Master Deed on July 29, 1997. Neither the original Master Deed nor the re-recorded deed constitutes a conveyance of land or an interest in land to Defendant. Likewise, the plat referencing easements on Lot B-2 did not convey an interest in Lot B-2 to Defendant.

The First Amendment to the Master Deed filed on June 3, 2005 explicitly states the Master Deed is amended "to exclude from the Westgate Office Park Horizontal Property Regime the out parcel designated as Lot B-2...". However, in another paragraph of the Amendment, Defendant attempts to reserve rights for condominium owners in the Regime to use Lot B-2 for various easements, parking and ingress/egress access. The attempt to reserve rights in Lot B-2 as

expressed in the First Amendment to the Master Deed is not a conveyance but an invalid attempt by Defendant to create rights in property it has never owned. Plaintiff is entitled to judgment on the claims alleged in the Complaint as a matter of law.

The legal authority cited in Defendant's motion for reconsideration does not compel a different result. In Hoyer v. Slate the Court of Appeals held that "[w]here a deed describes land as it is shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed." Hoyer v. Slate, 428 S.C. 279, 290, 833 S.E.2d 845, 851 (Ct. App. 2019). The case relied on by Defendant stands for the proposition that land can be described by a plat for the purposes of showing boundaries, metes, courses and distances of the property conveyed by deed. However, that case does not provide that a plat itself can create or convey an interest in real estate. In other words, just because Lot B-2 is shown on a plat does not mean a deed conveying other neighboring lots is sufficient to convey rights to Defendant in Lot B-2.

Now therefore, IT IS ORDERED that the Plaintiff's motion for summary judgment is **GRANTED** and the Defendant's motion to reconsider is **DENIED**.

AND IT IS SO ORDERED.

This ____ day of August, 2020.

Ninth Judicial Circuit

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Bay Light Llc VS Westgate Office Park Landowners Maintenance Association Inc

Case Number: 2019CP1006058

Type: Order/Summary Judgment

IT IS SO ORDERED!

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