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Apr 30 2021

SC Court of Appeals

EXHIBIT 1

ORDER DATED APRIL 15, 2021

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

BULL POINT PLANTATION PROPERTY
OWNERS ASSOCIATION, INC.

Plaintiff,

-vs-

BULL POINT SC, LLC; BULL POINT, LLC;
BULL POINT PLANTATION OWNERS
ASSOCIATION, INC.; WILLIAM E.
GAVIGAN; MICHAEL CAREY;
CHRISTOPHER J. QUICK; JAMES
RIORDAN; RICHARD RINEY,

Defendants

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-07-00817

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

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This matter came before the Court on the Motion for Summary Judgment of Plaintiff Bull Point Plantation Property Owners Association, Inc. (hereinafter the "Association"). Plaintiff seeks to have its common area properties (its roads, its parks, its ponds, its clubhouse and business office, its swimming pool, its tennis courts, its community dock, its community boat landing, etc.) returned to it. This is necessary because on October 4, 2019, Defendants Gavigan and Riney, as purported President and Secretary, respectively, of the Association signed two Quit Claims Deeds (recorded in the Beaufort County Register of Deeds at Book 3802, Pages 185-192 and Book 3802, Pages 195-197) (collectively the "October 4, 2019 Deeds") transferring these properties from the Association to Bull Point, LLC (an entity that Mr. Gavigan owns or controls). Then, on March 6, 2020, Mr. Gavigan signed another Quit Claim Deed (recorded in the Beaufort County Register of Deeds at Book 3844, Pages 2148-2151) (hereinafter the "March 6, 2020 Deed") transferring some of these properties to Bull Point Plantation Owners Association, Inc., an entity that he created in February 2020 and claims is the real property owners' association for Bull Point Plantation. A

virtual hearing was held on March 1, 2021. Dawes Cooke and Jeff Bogdan appeared on behalf of the Association. Ryan Neville appeared on behalf of Defendants William Gavigan, Bull Point SC, LLC, Bull Point, LLC, and Bull Point Plantation Owners Association, Inc. Gene Matthews appeared on behalf of Defendants William Gavigan, Chris Quick, James Riordan, and Richard Riney. After considering the materials submitted by all parties and the arguments made during the hearing, I find that there is no genuine issue of material fact and GRANT Plaintiff's Motion for Summary Judgment.

1. *The October 4, 2019 Deeds and The March 6, 2020 Deed are Void Ab Initio Because Defendants Gavigan and Riney Did Not Have Authority to Sign Those Deeds*

In 2019, in a related lawsuit styled John Attridge et al. v. Bull Point SC, LLC, 2018-CP-07-2345, the plaintiffs therein moved for summary judgment for injunctive relief and a declaratory judgment that Bull Point SC, LLC was not the Declarant of Bull Point Plantation, that it did not have authority to appoint the Association's Board of Directors, and that the Board of Directors appointed by Bull Point SC, LLC (which included Mr. Gavigan and Mr. Riney) were not legally appointed and should be removed. Bull Point SC, LLC cross moved for summary judgment arguing that it was the Declarant and had authority to appoint the Association's Board of Directors (including Mr. Gavigan and Mr. Riney). Judge Mullen granted summary judgment in favor of the plaintiffs. In her November 18, 2019 Order, Judge Mullen found, among other things: (1) that Bull Point SC was never the Declarant of Bull Point Plantation; (2) that the Association's members have the exclusive right to elect its Board of Directors; (3) that Bull Point SC's purported appointment of the Board of Directors was a nullity; (4) that all actions of the illegally appointed Board of Directors were nullities; (5) that all actions Bull Point SC took as the purported Declarant (including appointing members of the Association's Board of Directors) are void; (6) that Gavigan and the other individual Defendants were not members of the Association's Board of Directors;

and (7) that Gavigan and the other individual defendants were enjoined from serving on the Association's Board (unless elected by the membership) and from taking any action in further governance of the Association. This Order is on appeal, but it has not been stayed pending appeal..

Judge Mullen's Order, which was a final judgment, is binding unless and until it is overturned on appeal. Under Rule 241(b), SCRAP, provides several exceptions to the automatic stay of orders while on appeal. These include, among others, orders granting an injunction, judgments directing delivery of documents or personal property, and judgments directing the delivery of possession of real property. Judge Mullen's November 18 Order did all three of these. It granted an injunction ("The Injunction requested in the Plaintiffs' second cause of action is granted. . . . Defendants are enjoined from serving on the POA's Board of Directors (unless elected by the POA members)"). It ordered possession of real property (the Clubhouse and office), documents, and personal property to be delivered ("the Defendants shall turn over possession of: (a) the clubhouse offices and all property records (both physical and electronic) located therein, including but not limited to cellular telephones and keys belonging to the POA; (b) all POA check books, credit card, debit cards, financial records (both physical and electronic)."). Accordingly, the Court finds that Judge Mullen's November 18, 2019 Order remains in full force and effect while the appeal is pending. Arnal v. Fraser, 371 S.C. 512, 519, 641 S.E.2d 419, 422-23 (2007), rehearing denied, certiorari denied 128 S.Ct. 136, 552 U.S. 821, 169 L.Ed.2d 29 (finding that an order that is subject to a Rule 241(b) exception and thus, not automatically stayed, is binding and enforceable in the circuit court while it is on appeal). Thus, the Court's judgment declaring that the Defendants Gavigan and Riney were not authorized to serve on the Board of the Association is final and binding.

It is hornbook law that a signed instrument is not valid if the signatures were not properly authorized. Stott v. White Oak Manor, Inc., 426 S.C. 568, 828 S.E.2d 82, 86 (Ct. App. 2019), reh'g

denied (June 6, 2019), cert. denied (Sept. 25, 2019) (finding that a document signed by someone without authority to sign it is not effective). Because Judge Mullen's November 18, 2019 Order unequivocally found that Mr. Gavigan and Mr. Riney did not have authority to sign the October 4, 2019 deeds on behalf of the Association and also that all actions taken by Mr. Gavigan and Mr. Riney as purported members of the Association's Board of Directors are nullities and void, this Court finds that the October 4, 2019 Deeds are void *ab initio*. Consequently, this Court finds that the March 6, 2020 Deed is also void *ab initio* because the purported grantor therein, Bull Point, LLC, never obtained title to the property it purported to transfer. Accordingly, the Court finds that the October 4, 2019 Deeds and the March 6, 2020 Deeds are void *ab initio*, have no legal effect, are set aside, and that legal title to the properties purportedly transferred therein remains in Bull Point Plantation Property Owners Association, Inc.

2. *The October 4, 2019 Deeds and The March 6, 2020 Deed are Void Ab Initio Because the October 4, 2019 Deeds were Conflict of Interest Transactions*

Alternatively, even if Defendants Gavigan and Riney had authority to sign the October 4, 2019 Deeds, these were conflict of interest transaction and are voidable. The Association is a South Carolina nonprofit corporation and, thus, is governed by the South Carolina Nonprofit Corporation Act, S.C. Code §33-31-101 et seq (hereinafter the "Act"). Section 33-31-810 of the Act is entitled Director Conflict of Interest. It provides, in relevant part:

- a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair to the corporation at the time it was entered into or is approved as provided in subsections (b) or (c).

It follows then that a conflict of interest transaction is voidable and the basis for imposing liability on the director if it was unfair to the corporation at the time it was entered and was not approved

as provided in subsections (b) or (c). Subsection (b) applies to public benefit or religious corporations while subsection (c) applies to mutual benefit corporations. The Association is a mutual benefit corporation, so subsection (c) applies. Under §33-31-810(c):

A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

- (1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or
- (2) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

Here, the October 4, 2019 Deeds transferring the Association's common area properties from the Association to Bull Point, LLC was a conflict of interest transaction because Mr. Gavigan signed them as President of the Association but also purportedly owns the grantee, Bull Point, LLC. Accordingly, Mr. Gavigan had a direct or indirect interest in the transaction, outside of his purported role as President of the Association. The October 4, 2019 Deeds were patently unfair to the Association because they transferred its invaluable properties away from it and to another entity. Additionally, there are more than a million dollars in judgments of record against Bull Point, LLC, so the properties would be impressed with judgment liens if the conveyances were allowed to stand. Accordingly, the deeds are voidable unless they were properly approved under §33-31-810(c). They were not. The Defendants argued that on October 3, 2019, Defendants Gavigan, Quick, and Riney, acting as purported Directors of the Association, approved the transactions by way of an Action by Unanimous Written Consent. However, that consent does not satisfy §33-31-810(c). According to the document Defendants submitted, the reason given for the transfer was that there was a scrivener's error in the Association's name in two of the deeds by

which the Association had received some of the properties. So the purported directors agreed to transfer those properties back to Bull Point, LLC to correct the title defect. The document does not mention Bull Point, LLC or Bull Point Plantation Owners Association, Inc. keeping title to those properties. Further, Mr. Gavigan, through his attorneys, represented to the Court and others that the properties would be transferred back to Bull Point Plantation Property Owners Association, Inc. Accordingly, this Court finds that the Association's putative Board of Directors did not knowingly approve the October 4, 2019 Deeds. As a result, the Court finds that the October 4, 2019 Deeds are void *ab initio* because they were conflict of interest transactions. Therefore, the Court also finds that the March 6, 2020 Deed is void *ab initio* since Bull Point, LLC did not have title to the property it attempted to transfer therein.

3. *Defendants are Estopped From Keeping the Properties at Issue*

Shortly after Defendants Gavigan and Riney signed the October 4, 2019 Deeds, their counsel represented to Judge Mullen in writing: "On the advice of attorney Alysoun M. Eversole, Esq., these quitclaim deeds were made to enable Bull Point, LLC to convey the properties lawfully to Bull Point Plantation Property Owners Association, Inc." The Defendants have now changed course, refusing the transfer the properties back to the Association and instead insisting that they are rightfully owned by Bull Point, LLC and/or Bull Point Plantation Owners Association, Inc. Based on Defendants' counsel's representations to Judge Mullen, this Court finds that the Defendants are estopped from taking any action effecting the title to the properties that are subject of the October 4, 2019 Deeds and March 6, 2020 Deed. See Cothran v. Brown, 592 S.E.2d 629, 357 S.C. 210 (S.C. 2004) ("Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding.").

4. *Bull Point Plantation Property Owners Association, Inc. is the Property Owners Association for Bull Point Plantation and the Rightful Owner of the Common Properties*

The Defendants argue that a genuine issue of material fact exists because the Plaintiff is not the true “Association” and, instead, the “Association” is Bull Point Plantation Owners Association, Inc., the entity that Mr. Gavigan created in February 2020 and the grantee of the March 6, 2020 Deed. The Court rejects this argument. As an initial matter, the Court recognizes that Judge Mullen analyzed this argument in the Attridge Litigation and found in a December 4, 2020 Order that Bull Point Plantation Property Owners Association, Inc. is and has always been the one and only property owners association for Bull Point Plantation. This Court agrees. In addition to the reasons set forth in Judge Mullen’s December 4, 2020 Order, which are incorporated herein by reference, this Court finds that Defendants themselves have admitted that Bull Point Plantation Property Owners Association, Inc. is and was the property owners’ association for Bull Point Plantation. In fact, each of the individual Defendants purported to serve on the Board of Directors of Bull Point Plantation Property Owners Association, Inc. The Action by Unanimous Written Consent document relied on by Defendants to argue that the conflict of interest transactions were approved plainly states that Mr. Gavigan, Mr. Quick, and Mr. Riney were “the duly appointed directors of BULL POINT PLANTATION PROPERTY OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation” In that document, the Defendants even define Bull Point Plantation Property Owners Association, Inc. as the “Association,” not a “developer’s holding company” as they are now arguing. There is no issue of material fact that Bull Point Plantation Property Owners Association, Inc. is and always has been (albeit often by other names that preceded it) the one and only property owners’ association serving Bull Point Plantation.

Finally, even if a question of fact existed as to whether Bull Point Plantation Property Owners Association, Inc. is the rightful property owners' association, this would be immaterial for purposes of the instant motion because Bull Point Plantation Property Owners Association, Inc. was unquestionably the grantor in the two conveyances at issue here and the record title holder of the properties in question. Whether or not the Association should be the owner of Bull Point Plantation's common properties, it is the owner and the Defendants lacked authority to convey the properties to another entity.

RELIEF GRANTED

Based on these findings, the Court makes the following rulings and grants the following relief:

1. Plaintiffs' Motion for Summary Judgment is granted;
2. Plaintiffs' request for Declaratory Judgment in its first cause of action is granted. Defendants Gavigan and Riney did not have authority to sign the October 4, 2019 Deeds (recorded in the Beaufort County Register of Deeds at Book 3802, Pages 185-192 and Book 3802, Pages 195-197) and, therefore, the conveyances are void *ab initio*, of no legal effect, and are set aside. Similarly, the March 6, 2020 Deed recorded in the Beaufort County Register of Deeds at Book 3844, Pages 2148-2151) is void *ab initio*, of no legal effect, and is set aside because Bull Point, LLC did not acquire title to the properties it claimed to transfer therein. It is ordered that possession of all real property transferred by way of the October 4, 2019 Deeds and March 6, 2020 Deed be delivered to the Association within 30 days of the filing of this Order.
3. The Court finds for the Plaintiff as to its Second Cause of Action, that the October 4, 2019 Deeds were conflict of interest transactions and, therefore, are void *ab initio*, of

- no legal effect, and are set aside. Similarly, the March 6, 2020 Deed is void *ab initio*, of no legal effect, and is set aside because Bull Point, LLC did not acquire title to the properties it claimed to transfer therein.
4. The Defendants are estopped and enjoined from taking any action affecting the title to any real property mentioned in the October 4, 2019 Deeds or the March 6, 2020 Deed.

AND IT IS SO ORDERED!

R. Lawton McIntosh
Presiding Judge, Fourteenth Judicial Circuit

April __, 2021



Beaufort Common Pleas

Case Caption: Bull Point Plantation Property Owners Association, Inc. VS Bull Point Sc Llc , defendant, et al

Case Number: 2020CP0700817

Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

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