

STATE OF SOUTH CAROLINA  
YORK COUNTY

IN THE COURT OF COMMON PLEAS  
2018-CP-46-03714

Cole Creek Homeowners Association, Inc.,

Plaintiff,

v.

Stacey D. Poole,

Defendant.

**ORDER GRANTING PARTIAL  
SUMMARY JUDGMENT**

**RECEIVED**

**Jul 02 2021**

**SC Court of Appeals**

This matter came before me on November 3, 2020, upon Plaintiff's Motion for Summary Judgment. Present at the hearing: David C. Wilson, counsel for Plaintiff, and Brian C. Gambrell, counsel for Defendant. Plaintiff seeks to foreclose a lien recorded on April 19, 2018 in Book of Liens 452 at Page 23. Based on the record presented and the arguments of counsel, I make the following findings and conclusions.

#### **FACTUAL BACKGROUND**

Defendant is the owner of property that is encumbered by the Declaration of Covenants, Conditions & Restrictions for Cole Creek Homeowners Association, Inc. ("Declaration") recorded in Book 6411, Page 220 in the York County Office of the Register of Deeds ("ROD"). (Complaint exhibit 2). On April 19, 2018, Plaintiff recorded with the ROD a "Lien for Unpaid Assessments" ("Lien") in the Book of Liens 452 at Page 23. (Complaint, exhibit 3). The Lien states that it secures various amounts including assessments, interest, late fees, attorney fees or additional sums due to the association.

#### **STANDARD OF REVIEW**

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law." *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); Rule 56(c), SCRPC. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). In ruling on a summary judgment motion, the court should consider the pleadings, depositions, interrogatory

answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct. App. 1994). Summary judgment is a drastic remedy and should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004).

## DISCUSSION

Plaintiff moves for this court to enter judgment against the Defendant, declaring that Defendant's property is subject to an equitable lien which may be foreclosed upon. Defendant opposes the motion, arguing that Plaintiff, as a homeowners' association, has no authority to seek foreclosure of Defendant's property, and is wrongfully pursuing both legal and equitable remedies. I disagree.

The right of a homeowners' association ("HOA") to foreclose property to satisfy unpaid dues has been recognized by our appellate courts. *See Wachesaw Plantation East Community Services Association, Inc., v. Alexander*, 420 S.C. 251, 802 S.E.2d 635 (Ct. App. 2017) (Foreclosure of a lien for unpaid HOA dues is an action in equity); *Winrose Homeowners' Association, Inc., v. Hale*, 428 S.C. 563, 573, 837 S.E.2d 47, 52 (2019) (The HOA had a right to pursue foreclosure of the property to satisfy the debt). Further, Plaintiff is not precluded from asserting breach of contract upon the same debt. *See Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 647 S.E.2d 214 ("A creditor shall not have two satisfactions for the same debt, but there is no inconsistency in his pursuing two remedies.").

Additionally, Plaintiff seeks judgment against the Defendant regarding her counterclaim for breach of contract. Plaintiff argues that by failing to respond to its discovery requests, the matters contained therein should be deemed admitted, and based upon those admissions no genuine issues of material fact exist. In response, Defendant cites *Nexstar Media Group, Inc. v. Davis Roofing Group, LLC*, 431 S.C. 593, 848 S.E.2d 597, holding that a court has the discretion to not deem matters admitted when the "circumstances indicate otherwise."

In this case, Plaintiff served its First Requests for Admission upon Defendant's counsel by both mail and email. Though Defendant's attorney was unable to locate a mailed copy, he confirmed receipt of the requests by email. Nonetheless, Defendant chose not to respond, arguing service was not proper, and Plaintiff did not file a motion to compel. "[T]he crux of the Rule is for the movant to deliver a copy to opposing counsel", thus "[a]ctual and timely service defeats any claim that service was not in accordance with the Rules." *Nexstar, supra*. Having received

the discovery requests, Defendant should have served a response, objection or filed an appropriate motion. The Requests for Admission are deemed admitted. However, I find it would not be appropriate to end the case at this stage, and render judgment without a full presentation or further clarification of the facts regarding Defendant's claim.

**ORDER**

Therefore, based on the findings and conclusions herein, the arguments presented, the exhibits submitted for the Court's consideration, and the applicable law, it is ordered that Plaintiff's is granted judgment as to liability against the Defendant. Further proceeding(s) will be held to establish the debt amount or other damages. Plaintiff's motion for summary judgment against Defendant regarding her counterclaim is denied.

*Judge's Signature Page to Follow*



York Common Pleas

**Case Caption:** Cole Creek Homeowners Association Inc VS Stacey D Poole

**Case Number:** 2018CP4603714

**Type:** Order/Summary Judgment

So Ordered

s/ Teasa K. Weaver 3084