

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

vs.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP46-01446

**ORDER GRANTING
SUMMARY JUDGMENT**

RECEIVED

SEP 29 2021

SC Court of Appeals

This matter came before me for a hearing upon motion by Defendants Täschner Textiles Industries, LLC ("TTI") and James C. Rhea, III ("Rhea") for summary judgment and also upon a renewed motion by Defendant City Electric Supply Company ("CES") for summary judgment. Attending by Webex: J. Nathaniel Pierce, attorney for TTI; Daniel J. Ballou, attorney for Rhea; Michael K. Hatch, attorney for CES; and J. Martin Foster, attorney for Plaintiff.

CES previously filed a motion for summary judgment on August 28, 2019. The matter was considered by the circuit court, and taken under advisement by order filed on October 2, 2019. No further order has been issued. Until a final ruling has been filed, I defer ruling upon CES's renewed motion. Therefore, any further reference to Defendants in this order include only Rhea and TTI.

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). Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

FACTUAL BACKGROUND

Plaintiff brings this action seeking reimbursement for the costs associated with repaving a private road, known as Rental Court. Rental Court is owned by the Plaintiff and is bounded by several commercial lots. (Def. Exhibit A). Each Defendant owns at least one commercial lot, and all have been granted an easement to use Rental Court as ingress and egress to their property.

TTI received title to Lot 3 in December 2017 from J.D. Properties of the Carolinas (“JDP”). (Def. Exhibit E). JDP received title to Lot 3 from the Plaintiff in November 2008. (Def. Exhibit D). A portion of the deed conveying Lot 3 from the Plaintiff to JDP reads as follows:

Said easement shall benefit the Property, the Grantee, its licensees, agents, lessees, and successors, and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land... Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement. (emphasis added).

In addition to the above referenced deed, Plaintiff and JDP executed an agreement titled “Grant of Easement and Right of Way”, dated November 6, 2008, and recorded in January 2009. (Def. Exhibit H). Relevant portions of the agreement (“ROW Agreement”) are as follows:

Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, shall not be the responsibility of Robert H. Sam, his heirs and or assigns, including, but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, LLC, its successors or assigns.

This agreement shall bind and pass to the successors and/or assigns of J.D. Properties of the Carolinas, LLC. Furthermore, this agreement shall bind and pass to the successors and assigns of Robert H. Sarn.

By signing this Agreement, Robert H. Sarn his heirs and/or assigns, hereby agrees to be fully responsible for the total cost for the upkeep and maintenance of said private road. (emphasis added).

Rhea received title to Lot 1 from Plaintiff in October 2000. (Def. Exhibit C). This deed contains no agreement regarding the upkeep or repair of Rental Court.

In July 2018, Plaintiff conveyed two lots to GR Properties of Fort Mill, LLC (“GRP”). (Def. Exhibit I). Along with the deed, Plaintiff and GRP executed an agreement titled “Escrow Agreement for Repairs/Up-Fitting”. (Def. Exhibit G). This escrow agreement (“Repair Agreement”) included provisions regarding resurfacing Rental Court. According to the agreement, \$49,314.00 in sale proceeds would be held in escrow to pay the costs of repaving. Plaintiff agreed to this repair in order to convince GRP to move forward with the sale. (Pl. Dep. 30:25-31:9). At the time Plaintiff was negotiating the sale with GRP, Plaintiff did not discuss with the Defendants paying a pro rata share of the repair. (Pl. Dep. 35:20-24). The resurfacing was completed and the costs paid out of the proceeds of the sale of the property.

DISCUSSION

The main authority supplied by Plaintiff in support of his claim for contribution is based upon *Hayes v. Tompkins*, 287 S.C. 289, 337 S.E.2d 888 (Ct. App. 1985). The Court in *Hayes* held that, “in the absence of an agreement”, the duty to maintain an easement falls upon the dominant tenant, and any costs associated with its upkeep could be apportioned between those tenants who use it (including the servient). This case differs from *Hayes* in that it involves several agreements regarding the upkeep and repair of the easement.

First, Plaintiff is not entitled to contribution from TTI because he agreed otherwise as shown by the JDP Deed and ROW Agreement. A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. *Binkley v. Rabon Creek Watershed Conversation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). When interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties’ intentions, as long as those intentions do not contravene the law or public policy. *See Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). The intention

of the grantor must be found within the four corners of the deed. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009) (citing *Gardner v. Mazingo*, 293 S.C. 23, 358 S.E.2d 390 (1987)).

When read together, the JPD Deed and ROW Agreement, clearly and unequivocally show that it was the intent of the parties that Plaintiff maintain Rental Court until such time as the road was dedicated for public use. “The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together.” *Klutts Resort Realty, Inc. v. Down’Round Development Corp.*, 268 S.C. 80, 232 S.E.2d 20 (1977).

Plaintiff argues it was his intention to rescind the ROW agreement. Nonetheless, without the agreement, the JPD Deed is clear and unambiguous on its own, and shows Plaintiff and JDP intended for the Plaintiff to be responsible for the easement’s upkeep and repair as long as it was a private road. Plaintiff confirmed this in his deposition. (Pl. Dep. 50:23-51:1.).

Plaintiff also suggests that though he agreed to maintain the road, he did not release his right to contribution. I disagree. The Court in *Hayes* found that it was equitable to apportion costs between a servient and dominant tenant who had no agreement otherwise. Plaintiff agreed to keep the easement in repair, and this obligation carries with it all costs associated with such care.

Second, this case does not warrant equitable contribution from either TTI or Rhea based upon the Repair Agreement and sale of the property to GRP. As previously discussed, the Court in *Hayes* found, absent an agreement, it was equitable to apportion the costs of repair between the tenants that use the easement. Again, in this case, there is an agreement. Plaintiff, as servient tenant, agreed to repair the road, using sale proceeds as payment. Also, it is unclear what burden was taken on by the Plaintiff. *See Harris v. Ferguson*, 18 S.C.L. (2 Bail.) 397 (1831) (Contribution was founded upon equality of burden and benefit). Plaintiff used the repair as a means to convince GRP to purchase the property, and Plaintiff did so because it benefited him to sale the property.

Last, Plaintiff seeks to continue this motion for further discovery. Since Plaintiff has denied the existence of any other agreements regarding this easement, I see no reason to delay this motion for the parties to conduct further discovery. *See Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). (The opposing party must show that continued discovery will uncover additional relevant evidence).

Based on the foregoing, Defendants TTI and Rhea are granted summary judgment. The renewed motion filed on behalf of CES is deferred until after a ruling has been issued by the circuit court on the previous motion summary judgment.

Judge's Signature Page to Follow