

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

MAC Coastal Properties, Inc.

Plaintiff,

vs.

Shoestring Retreat, LLC

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2020-CP-22-00072

FINAL ORDER

RECEIVED

Apr 26 2022

SC Court of Appeals

This matter came before me pursuant to a consent order of reference for a non-jury trial on April 20 and 21, 2021. Present at the hearing representing the Plaintiffs¹ were Willard D. Hanna, Jr., Esq. and Jonathan Patrick Hanna, Esq. of the Hanna Law, P.A. Present at the hearing representing the Defendants was R. Bruce Wallace, Esq. of Nexsen Pruet, LLC.

After carefully considering all the testimony, the pleadings on file, the exhibits offered and the arguments of counsel, the court makes the following findings of fact and conclusions of law²:

FINDINGS OF FACT

THE BOYLE TRUST

1. On or about December 4, 1952, Gene Boyle Brading, William B. Boyle, Edwin Boyle, Jr., Ann Boyle Pruet, Thomas B. Boyle, Jr., and E. C. McGregor Boyle, transferred 334.25 acres in Georgetown County to William B. Boyle And Thomas B. Boyle, Jr. as Trustees for the Boyle Trust (hereinafter the "Trustees").

¹ Yancey A. McLeod, III and Georgetown County were previously dismissed by stipulation.

² To the extent a finding of fact is a conclusion of law it shall also be deemed such and to the extent a conclusion of law is also finding of fact, it shall be deemed such.

2. Among the specific powers provided in the Deed of Trust were the powers of the Trustees to manage the property for sale; and record such restrictions and/or restrictive covenants relating to the said property as they may deem necessary and proper to maintain, preserve and protect the value of the said property (P.3)
3. Pursuant to their powers, the Trustees had the property surveyed, subdivided the land into blocks and lots, and recorded plats showing the roads and lots in the subdivision known as “Retreat Beach”. (P.30-34).
4. The Trustees sold lots in the subdivision including the lot which is now owned by the Defendant Shoestring Retreat, LLC (“Shoestring”).
5. This case concerns portions of lots 2 and 3 located in Block 2-S as shown on the plats. (P.30-34, 38).

THE RESTRICTIVE COVENANTS

6. As explained credible testimony of Plaintiff’s expert, James B. Moore, Jr., at the time the Trustees started conveying lots, the standard practice to adopt restrictive covenants was by use of “Indenture Deeds” placing the restrictions in the actual deeds as opposed to the practice today to record a set of restrictive covenants binding property before it is conveyed. (I. 138-139³) (Stacy II. 82)
7. By indentured deed dated April 2, 1953, and recorded in Deed Book A-4 at Page 107, the Trustees conveyed Lot 3, Bock 2-S to Kate Wallace. (P.4)
8. The deed to Kate Wallace from the Trustees contained the following language in all caps:

³ References to the trial transcript are by volume I for Day 1 (4-20-2021) and II for Day 2 (4-21-21) and then page numbers.

THIS CONVEYANCE IS MADE SUBJECT TO THE FOLLOWING CONDITIONS, COVENANTS AND RESTRICTIONS, WHICH SHALL BE BINDING ON THE GRANTEE, her HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS

9. The deed into Kate Wallace from the Trustees enumerates specific restrictive covenants on the property which are common to other properties in the development, and which Plaintiff claims are applicable to Defendant Shoestring's development plans. (P.4).

- a. Restriction 1 prohibits subdividing the lot;
- b. Restriction 2 prohibits building more than one single family dwelling;
- c. Restriction 12 prohibits building in the Sand Dunes Restricted area; and
- d. There also various setback and other restrictions in the deeds.

10. The Trustees as Grantors reserved unto themselves, their heirs and assigns the right to enforce the Covenants. The Covenants provided, "in the event of violation of any of said covenants, conditions, or restrictions by grantee, her heirs or assigns, the grantors shall have the right of abatement and the right to enforce compliance by injunction or any other appropriate legal or equitable action."

11. By deed dated October 27, 1953 and recorded in Deed Book 4 at page 68 in the Register of Deeds for Georgetown County, the Trustees conveyed a portion of Lot 2 to Kate Wallace which was combined with Lot 3 previously conveyed. (P.5) The Deed further provided that these two lots shall be considered as one for the purposes of the restrictions.

12. The Trustees conveyed a total of 36 deeds out from the Boyle Trust before conveying its remaining property to North Litchfield Beach, Inc. (P.13)

13. By deed dated June 1, 1959 and recorded in Deed Book 33 at Page 283, the Trustees, Thomas B. Boyle and Boyle Construction Company conveyed their remaining property in North Litchfield Beach to the North Litchfield Beach Company, Inc. (P.14). (D.29) This was the first of many transfers which purports to culminate with the enforcement rights assigned to MAC.

14. Excepted from this transfer were the deeds previously conveyed by the Trustees (including the Kate Wallace deeds) and “any area of land between the Said Lots on Front Beach and the Atlantic Ocean, it being specifically agreed, however, by and between the Grantors and the Grantee that the area of land between the lots shown on said plat and the Atlantic Ocean shall never be used for the purpose of erecting any building or structure by the Grantors or the Grantee herein, their heirs or assigns or successors.”

15. This is the same land identified under Restriction No. 12, under the Wallace deeds as “the strip of land presently measuring sixty (60') feet, more or-less, in width, shown on the aforementioned plat, which runs along the Atlantic Ocean and is bounded on the East by the high water mark.” (hereinafter referenced in this order as “Dunes Restricted Area” as it is called on the plats).

16. By deed dated June 2, 1964, and recorded in Deed Book 60 at Page 379, the Trustees deeded the Dunes Restricted area to Wallace thus extending the Wallace deeds to the high water mark of the Atlantic Ocean; however, this transfer was limited by the following, “The area of land conveyed hereby, by agreement between Grantors and North Litchfield Beach, Inc., cannot be used for the purpose of erecting any building or structure.” (P. 14)

17. Kate H. Wallace died in 1969, and Lot 3, a portion of Lot 2, and the Dunes Restricted parcel were conveyed to Kathryn Wallace Salley in 1974 as part of the division of her estate property. (P.8)

18. In 1963, the Trustees conveyed the remaining portion of Lot 2 to Edwin Boyle, Jr., Thomas B. Boyle, Jr., and E.C. McGregor Boyle, who conveyed it to Thomas B. Boyle (individually), who then conveyed it to Kathryn Wallace Salley in 1972.

19. In 1972, the Trustees recorded a document entitled *Release of Reverter, Release of Right of Re-Entry and Modification of Covenants, Conditions and Restrictions*. In this document, the Trustees did essentially three things: (1) they released the possibility of reverter from their deeds out of the Trust; (2) they modified the covenants and restrictions so they could reconfigure lots 4, 5, and 6 (Plat D. 21) and (3) stated, “In all other respects all deeds from the undersigned, or any of them, and the restrictions, covenants and conditions contained therein shall be and remain as set forth of record heretofore.” (D. 2)

20. In 1978, the Trustees recorded a *Modification of Covenants, Conditions and Restrictions* to allow Kathryn Salley to redivide Lots 2 and 3 reserving a 30 foot wide strip along the Northeast border of the lots to permit direct access to the Atlantic Ocean from Lot 1 and to allow the house to face the Atlantic Ocean instead of Third Street South (now Parker Avenue). The Trustees again included, “In all other respects all deeds from the undersigned, or any of them, and the restrictions, covenants and conditions contained therein shall be and remain as set forth of record heretofore.” (D.3)(Salley Plat, P.38)

21. In 1978, Kathryn Wallace Salley conveyed Lot 3, Block 2-S, the Eastern 20 feet of Lot 2, Block 2-S, and the adjacent sand dunes area, excepting the northeastern most 30 feet from each, to Louis and Katharine Haun. (“Haun Deed”) (P.9) (Haun Plat, P.37) It is the proposed future development of this lot by Defendant Shoestring Retreat, LLC which is the subject of this litigation. (hereinafter referred to as “the Property”)

22. The 1978 Haun Deed included the covenant, “The area of land conveyed hereby, by agreement between Grantor’s predecessor in title and North Litchfield Beach, Inc., cannot be used for the purpose of erecting any building or structure.

23. Louis Haun quitclaimed his interest in said property to Katharine Haun in 2004. (P.10)

24. The McManus's/Shoestring executed a contract to purchase the tract from Ms. Katherine Haun on February 23, 2019.
25. Buyers then engaged Gregory Cunningham of Parker Land Surveying to prepare a plat of the Haun lot being purchased. (P.36).
26. Cunningham prepared and sealed a plat for the property on February 26, 2019. This plat showed and marked the existence of a 60' Sand Dune Restricted Area. It also identified setbacks requirements shown in the recorded Deed Restrictions.
27. Cunningham testified McManus contacted Cunningham and asked him to remove the reference to the 60' Sand Dune Restricted Area from the plat and when he refused, McManus moved on to another surveyor. (II. pp. 47-48)
28. McManus disclosed to Haun that he planned to try and subdivide the property, despite knowing of the restrictions which he believed unenforceable, and that if he was successful, there would be a favorable price upward adjustment at closing. (II. 49-50, P.17)
29. McManus contracted with a different surveyor, Kenneth Crawford with GB Surveying to prepare a subdivision plat, which he did on June 6, 2019. This plat did not show the Dunes Restricted Area and did not contain any references, subdivision restrictions or the setback requirements shown in the recorded deed restrictions. (P.1)
30. On or about July 2, 2019, Haun applied for a subdivision plat approval with Georgetown County Planning Division pursuant to the procedures of Appendix B, Article 2, Section 4.1 of the Georgetown County Ordinances. The application was prepared by McManus who is listed as the contact person in the application. (P.2). McManus provided the June 6, 2019 plat from GB surveying with the application.

31. The sale from Haun to Shoestring Retreat, LLC closed and recorded on September 16, 2019. This deed does not include any mention of the restrictive covenants, setbacks, subdivision restrictions, nor does it contain the language referencing the deed restrictions prohibiting building in the Dunes Restricted Area contained in the Salley deed or the recorded indenture deeds.

32. Upon receiving title to the property, Shoestring applied for and received a building permit. Shoestring then demolished the Haun house and graded the property to the OCRM line demolishing the existing sand dunes in the process.

33. Upon receiving a complaint for a violation of the Georgetown County Sand Dunes ordinance, Georgetown County issued a stop work order.

34. The Plaintiff MAC Coastal Properties, Inc. ("MAC") is the successor in interest and title to the property owned by previously Kathryn Salley.

35. MAC's property is immediately adjacent and behind (landward) the northern corner of the Shoestring property and also shares the northeastern border to the Shoestring property all the way to the Atlantic Ocean. Thus, Mac's property borders Shoestring's property on two sides. (Shoestring Plat, P.1, MAC plat, P.41).

36. As the first of a long series of transactions, North Litchfield Beach, Inc. & Litchfield Realty Company merged into Litchfield Beach, Inc. as the surviving corporation pursuant to Articles of Merger dated November 6, 1965, recorded November 9, 1965 in the Office of the Secretary of State for South Carolina and recorded November 15, 1965 in the Office of the Clerk of Court for Georgetown County in Charter Book 3 at page 150. 29. These transactions culminated in Litchfield Crossing Development Co., LLC, as the successor in interest to the aforementioned entities and assigning its right of abatement and its right to enforce compliance by injunction or any other appropriate legal action in the Dunes Restricted Area referred to above to MAC (P. 6)

37. MAC brought the present action seeking declaratory and injunctive relief against Shoestring declaring that Shoestring's property is subject to the covenants which, among other restrictions, prohibits the lot from being subdivided, more than one single family dwelling constructed, from building in the Dunes Restricted Area, and building in setback areas set forth in the restrictions.

38. The case was referred to this court for a decision by a Consent Order of Reference filed on March 5, 2020.

**DISCUSSION AND
CONCLUSIONS OF LAW**

Having set for the relevant facts, the court now turns its attention the various issues in this case and the applicable law and concludes as follows:

STANDING

39. As a preliminary matter, the court must determine if MAC has standing to bring these claims and enforce the restrictive covenants and deed restrictions.

40. MAC has a personal stake in this lawsuit and is a real party in interest as a predecessor in interest, its property borders Shoestring's property on two sides and MAC also owns property in the Dunes Restricted Area. This Court concludes that MAC has standing.

**ENFORCEABLE AS GRANTEE OF
COVENANTS RUNNING WITH THE LAND**

41. The question remains whether MAC can enforce the restrictive deed restrictions in this case. This Court concludes that MAC can enforce the restrictions contained in the private deeds on several legal and equitable grounds. However, MAC does not have the ability to enforce the restrictive covenants as a successor in interest of the Trustees.

42. It is undisputed in the record that Shoestring and its members had both actual and constructive notice of the restrictions prior to purchasing the land. Indeed, the record shows that McManus requested that references to the restrictions be removed from his plat.

43. This Court holds that the restrictive covenants in the deed to Wallace run with the land and are binding on Shoestring and enforceable by MAC through the Salley Deed.

**ENFORCEABLE AS
COVENANT IN SALLEY-HAUN DEED**

44. Kathryn Salley in her deed to the Hauns specifically stated the Hauns could not build in the Dune Restricted Area of Parcel No. 2. (P. 9)

45. Generally, "restrictive covenants fall into three classes: (1) mutual covenants in deeds exchanged by adjoining landowners; (2) uniform covenants contained in deeds executed by the owner of property who is dividing his property into building lots under a general development scheme; and (3) covenants exacted by a grantor from his grantee presumptively or actually for the benefit and protection of his adjoining land which he retains." (Internal quotation marks omitted.) *Bueno v. Firgeleski*, 180 Conn. App. 384, 393–94, 183 A.3d 1176 (2018).

46. At the time of conveyance from Salley to the Hauns, Salley retained title to the northeastern most thirty feet of Parcel. No. 1 and 2, and exacted this restriction for the benefit and protection of that land. This restriction is binding on the Hauns and their successor, Shoestring. (P. 9)

47. Not only does MAC own the thirty feet that Salley retained title to, but Salley has also validly assigned her right to enforce the covenant on the property from Shoestring to MAC.

**ENFORCEABLE AS MUTUAL COVENANT
BY GRANTEE IN A
COMMON PLAN OR SCHEME**

48. It is well settled in this state that where the owner of a tract of land subdivides it and sells the distinct parcels thereof to separate grantees, imposing restrictions on its use pursuant to a general plan of development or improvement, such restrictions may be enforced **by any grantee against any other grantee**, either on the theory that there is a mutuality of covenant and consideration, or on the ground that mutual negative equitable easements are created. *McDonald v. Welborn*, 220 S.C. 10, 18-19, 66 S.E.2d 327, 331 (1951) (citing *Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538; 26 C. J. S., *Deeds*, § 167, Page 542).

49. The rule that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of the free use of property, should not be applied in such a way as to defeat the plain and obvious purpose of a contractual instrument of restriction. (emphasis added) *McDonald v. Welborn*, 220 S.C. 10, 19, 66 S.E.2d 327, 331 (1951) 14 Am. Jur., Sec. 212, Page 621; *Sprouse v. Winston*, 212 S.C. 176, 46 S.E.2d 874; *Archambault v. Sprouse*, 215 S.C. 336, 55 S.E.2d 70, 12 A. L. R. (2d) 388.

50. Subsequent cases have identified the following four elements needed to establish mutual negative equitable easements: Ordinarily, four elements must be established to show a reciprocal negative easement: (1) There must be a common grantor; (2) There must be a designation of the land or tract subject to restrictions; (3) There must be a general plan or scheme of restriction in existence for the designated land or tract.; and (4) The restrictive covenants must run with the land. If the above elements are satisfied, the restrictions are enforceable against the grantor and subsequent grantees of lots in the restricted area who take with actual or constructive notice of the restrictions. *Bomar v. Echols*, 270 S.C. 676, 679-80, 244 S.E.2d 308, 310 (1978) (emphasis added); *McDonald v. Welborn*, supra; 20 Am. Jur. (2d), supra.

51. In this case, each of these elements are satisfied: (1) Salley is a common grantor; (2) Salley specifically identified the land subject to the restriction.

52. The Court agrees that it was not essential to establish a common plan or scheme that all the restrictions be identical. “There are cases from multiple jurisdictions which hold that they don't have to be identical, but it is important that they be relatively uniform, and the deeds at North Litchfield -- I think Mr. Wallace has referred to this, that there are a couple of different sets, but they're almost identical.” (I. 139-140).

53. Moore further specifically testified in his professional opinion that there was a common scheme of development, and that the Plaintiff had the right to enforce the restrictions. I. 138-141. However, the Court finds the rights of the Trustees to enforce the covenants extinguished with the Trust.

54. Shoestring makes several arguments against enforcement as common plan or scheme, but the primary argument is that there cannot be a common plan or scheme when the grantors (the Boyle Trustees) reserved to themselves the right to release or modify the restrictive covenants..

55. If the Trustees had still owned Shoestring's lot and decided to subdivide the lot, they could have done so over the objections of MAC. The Court agrees with this point but it does not alter the determination that the Trust is defunct and MAC cannot enforce the Covenants as a Trustee. The now extinguished power of the Trust to make changes is not fatal to the existence of a common plan or scheme of development.

56. This raises another important point: the remedy of mutual reciprocal negative easements is equitable and was created to protect the expectation and reliance interests of purchasers in a subdivision or common plan. Therefore, the focus should be on the equitable rights and remedies of the purchasers and not a developer (or in this case trustees who conveyed away all property

interest.) *See McLeod v. Baptiste*, 315 S.C. 246, 247, 433 S.E.2d 834, 835 (1993)(Developer grantor can no longer enforce covenants once developer no longer owns any property benefited by the covenant.⁴)

57. The court finds that the grantors intended the restrictions to benefit their grantees as part of a common plan or scheme.

ENFORCEABLE BY EXPRESS GRANT

58. The Court also notes that MAC is the successor by express, recorded assignment to any interests retained or held by Kathryn Salley.

59. The Plaintiff's expert James B. Moore, Jr. testified that MAC received by assignment the right to enforce the restrictive covenants that North Litchfield, Inc. possessed and that it was enforceable by MAC. (I. 156-162)(P.25-26). However, the Court is not persuaded the assignment was effective and that MAC is too remote to the Trustees to have the ability to enforce a restrictive covenant as an assignee.

NO SUCCESSOR TRUSTEES

60. Shoestring argues that the covenants are not enforceable through the Trust assignments because the Trust terminated by its terms and there are no successor Trustees. This Court agrees for reasons stated earlier.

DUNES RESTRICTED AREA

61. As part of their development of Retreat Beach, the Trustees created a strip of land labeled as "Dunes Restricted". This strip is shown on several early plats. P. 30, dated Dec. 12, 1952; P. 31, August 15, 1956; P. 32, October 1956. The strip is shown on all the plats as running 60 feet

⁴ This was one of the issues in the Richmond case where the developer was in effect selling waivers of restrictions after it had sold all the property.

from the eastern border of the lots adjacent to the Atlantic Ocean. On the December 13, 1952 plat (P.30), the eastern border of the strip coincides with the “Mean High Water Mark.”

62. In the initial conveyance of Lot 3 to Kate Wallace, the Trustees included among the restrictive covenants that “If the lot hereinabove described borders on the strip of land presently measuring sixty (60') feet, more or-less, in width, shown on the aforementioned plat, which run along the Atlantic Ocean and is bounded on the East by the high water mark, the grantee, her heirs and assigns, herein shall have, and is/are hereby granted, the right and privilege, appurtenant to the lot hereby conveyed, to cross over said strip of land for the purpose of ingress, and egress to the ocean for swimming, sunbathing and fishing, subject to the following conditions...” (P.4 emphasis added) The conditions restricted from building any structure on the strip and from doing any act or thing “which shall or may tend to change the contour, height or width of said strip of land or of the sand dunes thereon.” Id. The Plaintiff’s expert James B. Moore, Jr. opined and the court agrees that this created a new obligation (independent of the covenant with North Litchfield Beach, Inc.) that runs with the land. (Moore I. 174-175).

63. After agreeing to limit construction on the land between the front ocean lots and the Atlantic Ocean, the Trustee’s thereafter conveyed the Dunes Restricted property to Wallace as follows:

All that certain piece, parcel or lot of, land situate, lying and being in the County of Georgetown, State of South Carolina, in Township No. 7, and being shown and delineated on plat of property of William B. Boyle and Thomas B. Boyle, Jr., dated August 15, 1956, and recorded in the Office of the Clerk of Court for Georgetown County, South Carolina, in Plat Book L, at page 29, as that portion of the area marked "Dunes Restricted" on said plat between the northern and southern side lines of Lot 3, Block 2S, as shown on said plat, extended to the Atlantic Ocean, said piece of property being bounded and measuring as follows: on the northerly side by a portion of the property marked "Dunes Restricted" on said plat, and measuring therein, along the northern side line of Lot 3, Block 2S extended to the Atlantic Ocean, a distance of Sixty (60') Feet, more or less; on the easterly side by the Atlantic Ocean and measuring thereon One Hundred Seventy (170') Feet, more or less; on the southerly side by a portion of the property marked Dunes Restricted on said plat, and measuring thereon, along the southerly side of Lot 3, Block 2S, extended to the Atlantic Ocean, a distance of Sixty (60') Feet, more or less; and on the west by Lot 3, Block 2S, and measuring thereon One Hundred Seventy (170') Feet, more or less; it being the intention of the Grantors to convey by this deed all of the property from the easterly side of Lot 3, Block 2S, to the Atlantic Ocean between the northerly and southerly side lines of Lot 3, Block 2S, extended.

The area of land conveyed hereby, by agreement between Grantors and North Litchfield Beach, Inc., cannot be used for the purpose of erecting any building or structure. (P. 6, emphasis added).

64. This Restriction was adopted by the Salley deed which restricted construction from the easternmost property boundary line and simply expanded with the high-water mark. In other words, the accretion became part of the Dunes Restricted Area. This view is consistent with the intent of the Trustees and Salley to protect and preserve the dunes aesthetically and as protection from hurricanes and storms. Also, this is consistent with Trustees and Salley's intent to protect property values by preventing a somebody from building out in front of his neighbor and blocking the view." (Moore I. 147-148).

65. "Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *DNR v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (S.C. 2001). "The paramount and cardinal rule of construction of a deed is to ascertain the intention of the grantor as expressed by

him in the deed and then to give effect to that intention if it can be done without violating an established rule of law." *Phipps v. Hardwick*, 253 S.E.2d 506, 273 S.C. 17 (S.C. 1979).

66. Here the language in the Salley deed supports the construction that the restriction goes to the high water mark of the Atlantic Ocean. As indicated in the highlighted language above, the original deed to Kate Wallace refers to the strip being bounded on the East by the high water mark. The covenant with North Litchfield, Inc. by the Trustees refers to the "land between the lots and the Atlantic Ocean."

67. This view is also consistent with the rule of construction that a natural boundary takes precedence over course and distance. "In locating lands, the following rules are resorted to, and generally in the order stated. (1.) Natural boundaries; (2.) Artificial marks; (3.) Adjacent boundaries; (4.) Course and distance. *Smith vs. Durant*, 236 S.C. 80 (1960).

68. For all these reasons, this Court concludes that the Trustee and Salley, independent of other outside deed restrictions, intended to and did restrict the property from the eastern lot lines to the Atlantic Ocean and that building in this Dunes Restricted area then and now is prohibited.

SHOESTRINGS CLAIMS AND DEFENSES

RELEASE

69. Shoestring relies upon two documents recorded by the Trustees, one in 1972 and one in 1978 to argue that the restrictions were released. This Court disagrees.

70. The 1972 document is entitled, "Release of Reverter, Release of Right of Re-Entry and Modification of Covenants, Conditions and Restrictions." The title shows what was released (reverter and right of re-entry) and the narrow the areas modified (covenants) (D.2)

71. The Trustees were modifying and amending as necessary the restrictions so as to permit very specific changes to Lots 4, 5, and 6 which they approved. This was not a blanket release of the covenants against subdivision. It simply does not do what the Defendant asserts.

72. This court concludes that the covenants were not released but only modified as necessary to effect the specific changes mentioned in the documents.

CHANGED CONDITIONS

73. Shoestring has argued that changed conditions in the area over the years preclude the enforcement of the covenants by MAC. "To defeat enforcement of covenants restricting the use of land, changed conditions must be so radical as to practically destroy the essential objects and purposes of the covenants. *Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538 (1949)..." *Shipyard Property Owners' Ass'n v. Mangiaracina*, 414 S.E.2d 795, 307 S.C. 299 (S.C. App. 1991).

74. In this case, the conditions which existed at the time of the conveyance to the Huans continue to exist. There has been accretion in front of the lots but that does not rise to the level of a radical change.

OTHER EQUITABLE DEFENSES

75. It is undisputed that Shoestring and McManus had knowledge of the restrictive covenants, deed restriction and Dunes Restricted Area prior to the purchase of the property and application for subdivision of the lot with Haun. The deed to Shoestring explicitly mentioned a "Dunes Restricted" area related to Parcel 1 and Parcel 2 in the "Saving and Excepting" paragraphs of the deed to Shoestring.

76. One who seeks equity must do equity and this court concludes that Shoestring cannot claim any equitable defenses.

77. However, even if Shoestring could claim equitable defenses, the Court finds and concludes they lack merit.

DECLARATORY RELIEF

78. The covenants and restrictions in the deed from the Trustees to Wallace (P.4) were valid and enforceable covenants running with the land and would be binding on Shoestring if MAC was a legitimate assignee of the Trustees. However, all Trustees are deceased and those restrictions terminated with the passing of the last Trustee.

79. However, the covenants and restrictions affecting the Dunes Area are part of common plan or scheme by the grantors (Hauns and Salleys) and were intended for the ultimate benefit of the grantee lot owners as mutual covenants enforceable by and against subsequent grantees.

80. MAC has the authority to enforce the deed restriction on building in the Dunes Restricted Area against Shoestring building in the Dunes Restricted Area pursuant to the Salley deed.

81. The lot owned by Shoestring is subject to the deed restriction that no building or any structure shall be erected in the Dunes Restricted Area and extended to the Atlantic Ocean.

82. Shoestring cannot build or erect any structure in the Dunes Restricted Area other than a boardwalk or walkway similar to those already construed in the area as they are not considered a violation.

83. The Dunes Restricted Area extends from the easternmost boundary of Shoestring's lot to the Atlantic Ocean high water mark.

84. Shoestring violated the deed restrictions demolishing the sand dunes in the Dunes Restricted Area to prepare for building.

INJUNCTIVE RELIEF

85. Shoestring shall take immediate action to remediate its violation of the Dunes Restricted Area by restoring the sand dunes to as close to its former state as possible.

86. Shoestring is enjoined from further violation of the deed restriction and shall comply with the setback requirements of Georgetown County.

87. This court shall retain jurisdiction for the purpose of enforcing the terms of this order.

IT IS SO ORDERED.

Joe M. Crosby
Master-in-Equity
Georgetown County

March ____, 2022
Georgetown, South Carolina



Georgetown Common Pleas

Case Caption: Mac Coastal Properties Inc , plaintiff, et al VS Georgetown County ,
defendant, et al
Case Number: 2020CP2200072
Type: Master/Order/Other

So Ordered

s/ Joe M. Crosby 3072