

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT

TODD E. TAYLOR,

CASE NO. 2020-CP-07-_____

Plaintiff,

SUMMONS
(Jury Trial Demanded)

vs.

AMAR AND KENNIE GILL LIVING
TRUST DATED MARCH 15, 2019,
KENNIE LEE MILLER GILL,
TRUSTEE OF THE AMAR AND
KENNIE GILL LIVING TRUST
DATED MARCH 15, 2019, KENNETH
V.L. MILLER and ANNA M. MILLER,

RECEIVED
May 09 2022
SC Court of Appeals

Defendants.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the Complaint to Plaintiff's attorney, CoffeyKubec, LLP, at 1 Corpus Christi Place, Ste. 105, Hilton Head Island, South Carolina, 29928, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

COFFEYKUBEC, LLP

By: /s/ Edward M. Kubec
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Hilton Head Island, South Carolina
July 31, 2020

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT

TODD E. TAYLOR,
Plaintiff,

CASE NO. 2020-CP-07-_____

vs.

COMPLAINT
(Jury Trial Demanded)

AMAR AND KENNIE GILL LIVING
TRUST DATED MARCH 15, 2019,
KENNIE LEE MILLER GILL,
TRUSTEE OF THE AMAR AND
KENNIE GILL LIVING TRUST
DATED MARCH 15, 2019, KENNETH
V.L. MILLER and ANNA M. MILLER,

Defendants.

The Plaintiff, Todd E. Taylor, complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Todd E. Taylor (“Plaintiff”) is a citizen and resident of the State of Oklahoma, and an owner of certain real property, as described in more detail below, located in Beaufort County, South Carolina.
2. Defendant Amar and Kennie Gill Living Trust dated March 15, 2019 (“Trust”) is, upon information and belief, an owner of certain real property (the “Property”), as described in more detail below, located in Beaufort County, South Carolina.
3. Defendant Kennie Lee Miller Gill is, upon information and belief, a resident of the Commonwealth of Virginia and is the trustee of the Trust.
4. Defendant Kenneth V. L. Miller is, upon information and belief, a resident of the State of Kentucky and is an owner of the Property.
5. Defendant Anna M. Miller is, upon information and belief, a resident of the State of Kentucky and is an owner of the Property.

6. This Court has jurisdiction over the subject matter and the parties to this action and venue is proper in Beaufort County, South Carolina.

FACTUAL ALLEGATIONS

7. This action concerns an encroachment by the Property into the common elements of the South Beach Lagoon Villas Phase II Horizontal Property Regime LVII (“Regime”) on Hilton Head Island, Beaufort County, South Carolina.

8. The Regime and the properties situation therein are governed by and in accordance with the Master Deed establishing the Regime, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 215 at Page 1092, and the By-Laws contained therein, all amendments thereto and all rules and regulations promulgated thereafter (collectively the “Covenants”).

9. Plaintiff is the owner of residential real property in the Regime located at 226 Sea Pines Dr., Apt., 1596, Hilton Head Island, Beaufort County, South Carolina.

10. The Defendants are the record owners of the subject residential real Property in the Regime, which adjoins the Plaintiff’s property, and is more particularly described as follows:

ALL that certain Apartment, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina and being known as APARTMENT #1595 of SOUTH BEACH LAGOON VILLAS PHASE II HORIZONTAL PROPERTY REGIME LVII, and being more particularly shown and described by reference to the Master Deed of Sea Pines Plantation Company establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of October 1973 and being recorded in the office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 215 at Page 1092, said Master Deed being specifically incorporated herein by reference.

ALSO, TOGETHER WITH AND INCLUDING, all the rights, privileges and common elements appertaining to the above described Apartment as set forth in the Master Deed and By-Laws of the South Beach Lagoon Villas Phase II Horizontal Property Regime LVII.

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11. The subject Property is subject to all provisions, restrictions, covenants, conditions, and affirmative obligations contained in the Covenants, and any amendments thereto, which have been in full force and effect at all times herein.

12. Upon the purchase of the subject Property, pursuant to the Covenants and applicable state law, the Defendants became obligated to pay all assessments imposed by the Regime according to the value of the dwelling unit owned.

13. The Covenants define common elements of the Regime to include all property of the Regime, excluding limited common elements and dwelling units, all roads, walkways, paths, trees, shrubs, yards and gardens located on Regime property and all other elements of Regime property, constructed or to be constructed, rationally of common use or necessary or convenient to the existence, upkeep, and safety of the Regime property, and, in general, all other devices or installations existing for common use (the “Common Elements”).

14. Pursuant to the Covenants and applicable law, each property owner in the Regime has an undivided interest in the Common Elements entitling each owner to use of the Common Elements, provided such use does not hinder or encroach upon the lawful rights of the other co-owners.

15. Subsequent to their purchase of the Property, the Defendants expanded the size of the Property by constructing certain additions to the building structure. The building expansion resulted in an encroachment over Common Elements of approximately 170 square feet (the “Encroachment”).

16. Plaintiff has repeatedly objected to the Encroachment and demanded that the Defendants remove the Encroachment and to restore the area to its original appearance and condition. The Defendants have failed and refuse to comply with Plaintiff’s demands.

17. Upon the purchase of the subject Property, pursuant to the Covenants and applicable state law, the Defendants became obligated to pay all assessments imposed by the Regime, including assessments for maintenance and repair of the Common Elements, according to the value of the dwelling unit owned.

18. Plaintiff has further demanded that the Defendants pay an increased assessment to the Regime, and Plaintiff’s assessment accordingly reduced, to reflect the Defendants’ improper Encroachment upon the Common Elements, the Plaintiff’s resulting loss of use of the Common

Elements and the corresponding reduction in value of Plaintiff's property. The Defendants have failed and refuse to comply with Plaintiff's demands.

FIRST CAUSE OF ACTION

(Breach of Contract)

19. Each and every allegation set forth above is incorporated here.

20. Defendants agreed to comply with the terms and conditions of the Covenants pursuant to both the Covenants and applicable law, including the South Carolina Horizontal Property Act (the "Act").

21. This agreement is enforceable by Plaintiff and the Act authorizes Plaintiff to bring a civil action to recover sums due for damages or injunctive relief, or both.

22. Defendants materially breached the Covenants by constructing and maintaining the Encroachment on Common Elements.

23. Plaintiff has performed his obligations under the agreement, except for those obligations that have been excused or prevented by Defendants' actions.

24. As a direct and proximate result of Defendants' breach, Plaintiff has been and continues to be damaged.

25. Plaintiff is informed and believes that he is entitled to judgment against the Defendants for breach of contract for actual, consequential and incidental damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Trespass)

26. Each and every allegation set forth above is incorporated here.

27. Defendants actions of constructing and maintaining the Encroachment into the Commons Elements have interfered with Plaintiff's undivided right to use and possess the Common Elements.

28. As a direct and proximate result of Defendants' actions, the Plaintiff has been and continues to be damaged.

29. Plaintiff is informed and believes that it he entitled to judgment against the Defendants for actual, consequential and incidental damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Conversion)

30. Each and every allegation set forth above is incorporated here.

31. As alleged herein, Defendants wrongfully misappropriated and gained control of a portion of the Common Elements and converted such to their own use to the exclusion of Plaintiff and in contravention of Plaintiff's rights therein.

32. As a direct and proximate result of the Defendants' actions, the Plaintiff has been and continues to be damaged.

33. Plaintiff is informed and believes that he is entitled to judgment against the Defendants for actual, consequential and punitive damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

34. Each and every allegation set forth above is incorporated here.

35. Defendants have been unjustly enriched by their wrongful conduct as alleged above, all to Plaintiff's detriment.

36. As a direct and proximate result of Defendants' actions, the Plaintiff has been and continues to be damaged.

37. Plaintiff is informed and believes that he is entitled to judgment against the Defendants for restitution of the unjust enrichment of Defendants in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Declaratory Relief)

38. Each and every allegation set forth above is incorporated here.

39. Plaintiff contends that the value used to determine Regime assessments for the Property should be appropriately increased, relative to the value placed on Plaintiff's Regime property, to reflect the corresponding increase in value gained by the Defendants as a result of the Encroachment and/or the related decrease in value suffered by Plaintiff as a result of the Encroachment into the Common Elements by the Defendants. Upon information and belief, Defendants dispute Plaintiff's contention. As a result, a justiciable controversy exists between the parties.

40. Pursuant to the South Carolina Uniform Declaratory Judgments Act, codified in S.C. Code Ann. Section 15-53-10, et seq., and Rule 57 of the South Carolina Rules of Civil Procedure, the Plaintiff seeks, and the Court should issue, a declaratory judgment holding that the value used to determine Regime assessments for the Property should be increased, relative to the value placed on Plaintiff's Regime property, to correspondence with the related increase in value gained by the Defendants as a result of the Encroachment and/or the related decrease in value suffered by Plaintiff as a result of the Encroachment.

SIXTH CAUSE OF ACTION

(Injunctive Relief)

41. Each and every allegation set forth above is incorporated here.

42. The Plaintiff is informed and believes that, unless the Court issues a temporary injunction and/or permanent injunction mandating that the Defendants remove the Encroachment, the Defendants will further refuse to remove the Encroachment and thereby fail to bring the Property into compliance with the Covenants.

43. The Plaintiff is informed and believes that he is without legal remedy to correct the wrongs herein described and that he will be irreparable and immediately harmed if the Defendants are not immediately enjoined.

44. The Plaintiff is informed and believes that until such time as the Court permanently decides the issues set forth herein, no material harm will result to the Defendants if they are temporarily enjoined as set forth herein.

45. As a direct result of the foregoing, Plaintiff is entitled to receive a temporary and permanent injunction for the relief sought herein.

WHEREFORE, Plaintiff prays for judgment in his favor and against the Defendants as follows:

1. An award of actual damages and consequential damages;
2. An award of punitive damages;
3. An order of restitution by Defendants to Plaintiff of all property by which Defendants have been unjustly enriched;

4. An order mandating that the Defendants remove the Encroachment and restore the Common Elements to its original appearance and condition;
5. A declaration that the value used to determine Regime assessments for the Property should be increased, relative to the value placed on Plaintiff's Regime property, to correspond with the related increase in value gained by the Defendants as a result of the Encroachment and/or the related decrease in value suffered by Plaintiff as a result of the Encroachment;
6. For attorneys' fees, costs, pre-judgment interest and post-judgment interest; and
7. For such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED.

COFFEYKUBEC, LLP

By: /s/ Edward M. Kubec
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