

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Todd E. Taylor,

PLAINTIFF,

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,

DEFENDANTS.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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,

THIRD-PARTY PLAINTIFFS,

vs.

South Beach Village Lagoon Villas, II,
Horizontal Property Regime LVII,

THIRD-PARTY
DEFENDANT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2020-CP-07-01547

**AMENDED ANSWER AND THIRD PARTY
COMPLAINT**

RECEIVED

May 09 2022

SC Court of Appeals

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”) hereby submit their Amended Answer to the Complaint filed by Todd E. Taylor (“Plaintiff”) on July 31, 2020, and Third-Party Complaint against South Beach Village Lagoon Villas, II,

Horizontal Property Regime LVII (“Regime”). In support of their Answer and Third-Party Complaint, Defendants hereby state as follows:

FOR A FIRST DEFENSE:

1. Unless expressly admitted herein, Defendants deny each and every allegation contained in the Complaint.
2. Defendants have insufficient information to admit or deny paragraphs 1 and 9 of the Complaint; therefore, deny same and demand strict proof.
3. Paragraphs 2 through 5, and 10 of the Complaint are admitted.
4. Paragraphs 6, 7, 8, 11, 12, and 17 of the Complaint appear to state legal conclusions to which no response is required. To the extent that a response is required, Defendants crave reference to applicable South Carolina law, deny anything inconsistent therewith, and demand strict proof.
5. In response to paragraphs 13 and 14 of the Complaint, Defendants crave reference to the recorded land records of Beaufort County, South Carolina, deny anything inconsistent therewith, and demand strict proof.
6. Defendants admit so much of paragraph 15 of the Complaint as may be construed to allege that Defendants improved the real property described in Defendants’ Lis Pendens filed herewith, with the express knowledge, consent, and permission of all necessary parties pursuant to a valid and enforceable encroachment agreement, as is more fully set forth in paragraphs 20, 36, 37, and 38, *supra*, and the Third-Party Complaint. Defendants deny the remainder of paragraph 15, and demand strict proof.
7. Defendants deny paragraphs 16 and 18 of the Complaint, and demand strict proof.
8. To the extent paragraphs 19, 26, 30, 34, 38, and 41 require a response, Defendants deny same and demand strict proof.
9. Defendants deny all allegations in Plaintiff’s prayer for relief.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

10. Defendants reassert the foregoing statements as if set forth at length herein.

11. Paragraph 20 of the Complaint appears to state legal conclusions to which no response is required. To the extent that a response is required, Defendants crave reference to applicable South Carolina law, deny anything inconsistent therewith, and demand strict proof.

12. Defendants deny paragraphs 21 through 25 of the Complaint, and demand strict proof.

FOR A SECOND DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

13. Defendants reassert the foregoing statements as if set forth at length herein.

14. Plaintiff lacks standing to assert a cause of action for violation of the Master Deed and/or By-Laws, and this claim should be dismissed with prejudice.

FOR A THIRD DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

15. Defendants reassert the foregoing statements as if set forth at length herein.

16. Plaintiff has failed to plead sufficient facts showing that Plaintiff has suffered any damages, and/or that any actions of Defendants have proximately caused Plaintiff any cognizable damages.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Trespass)

17. Defendants reassert the foregoing statements as if set forth at length herein.

18. Defendants deny paragraphs 27, 28, and 29 of the Complaint and demand strict proof.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION
(Trespass)

19. Defendants reassert the foregoing statements as if set forth at length herein.

20. The improvements to Unit 1595 were erected in 1995 with the express written consent, approval, and authorization required under all applicable Covenants, Conditions, and Restrictions, the Master Deed and the By-Laws recorded in the Beaufort County Register of Deeds Office (“Governing Documents”).

21. Plaintiff’s cause of action for trespass is barred by S.C. Code Ann. § 15-3-530(3) and should be dismissed with prejudice.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Conversion)

22. Defendants reassert the foregoing statements as if set forth at length herein.
23. Defendants deny paragraphs 31, 32, and 33 of the Complaint and demand strict proof.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Unjust Enrichment)

24. Defendants reassert the foregoing statements as if set forth at length herein.
25. Defendants deny paragraphs 35, 36, and 37 of the Complaint and demand strict proof.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Declaratory Relief)

26. Defendants reassert the foregoing statements as if set forth at length herein.
27. Defendants deny paragraph 39 of the Complaint and demand strict proof.
28. Paragraph 40 of the Complaint appears to state legal conclusions to which no response is required. To the extent that a response is required, Defendants crave reference to applicable South Carolina law, deny anything inconsistent therewith, and demand strict proof. Defendants deny the remainder of paragraph 40, and demand strict proof.

FOR A SECOND DEFENSE TO THE FIFTH CAUSE OF ACTION
(Declaratory Relief)

29. Defendants reassert the foregoing statements as if set forth at length herein.
30. Assessments for individual units are based on the value of the unit as set by the Council of Co-Owners as a whole based on regime expenses, not a valuation or diminution of value of the common elements.
31. The Master Deed and By-Laws do not permit Plaintiff, or any other owner, to alter assessments based on any change to the common elements.
32. Therefore, Plaintiff's claim should be dismissed with prejudice.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION
(Injunctive Relief)

33. Defendants reassert the foregoing statements as if set forth at length herein.

34. Defendants deny paragraphs 42 through 45 of the Complaint, and demand strict proof.

FOR FURTHER AND COMPLETE AFFIRMATIVE DEFENSE:
(Estoppel, Waiver, Laches, Consent, Acquiescence)

35. Defendants reassert the foregoing statements as if set forth at length herein.

36. The improvements to Unit 1595 were erected in 1995 with the express written consent, approval, and authorization required under the Governing Documents.

37. After the completion of the improvements, the Council of Co-Owners agreed to increase Unit 1595's assessment at the annual meeting held on October 30, 1998.

38. Defendants have continually paid the increased assessment rate for Unit 1595 since the increased rate for Unit 1595 became effective with the fiscal year November 1998.

39. Defendants are informed and believe that at least two (2) other Units have also been expanded in a similar fashion in the past, with the express written consent, approval, and authorization required under the Governing Documents.

40. Plaintiff, as owner of Unit 1596, without obtaining the required approval under the Governing Documents, materially changed and altered the Limited and Common Elements of the Regime when he completed renovations to his Unit in 2015.

41. As a result of the foregoing, all of Plaintiff's claims are barred by the doctrines of estoppel, waiver, laches, consent, acquiescence, and should be dismissed with prejudice.

FOR A FURTHER AND COMPLETE AFFIRMATIVE DEFENSE
(Unclean Hands)

42. The previous allegations are incorporated herein as if repeated verbatim.

43. As the owner of Unit 1596, Plaintiff is subject to the terms and provisions of the Governing Documents.

44. Upon information and belief, Plaintiff completed improvements to Unit 1596 in 2014 and 2015, including the replacement of sliding glass doors on the front of Unit 1596 with a fixed window, alterations to the existing exterior wall, deck, and stairs, and addition of a new exterior wall ("2014 Improvements").

45. Pursuant to the Master Deed, maintenance, repair, and replacement of sliding glass doors and windows is the responsibility of the owner, while maintenance, repair, and replacement of exterior walls is the responsibility of the Regime.

46. The 2014 Improvements materially increased the maintenance and repair obligations of the remaining owners including Defendants, and were completed without the required approval pursuant to the Governing Documents.

47. Plaintiff has not paid an increase in assessments since completion of the 2014 Improvements.

48. One who seeks equity must do equity.

49. As a result of the foregoing, Plaintiff's claims against Defendants are barred by his unclean hands and should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

50. Defendants reassert the foregoing statements as if set forth at length herein.

51. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendants pursuant to Rule 12(b)(6), SCRCF, and Plaintiff's claims against Defendants should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

52. Defendants reassert the foregoing statements as if set forth at length herein.

53. Plaintiff's claims are barred by the applicable statute(s) of limitations and statute(s) of repose, and should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

54. Defendants reassert the foregoing statements as if set forth at length herein.

55. Plaintiff's claims are barred by the doctrine of release and should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

56. Defendants reassert the foregoing statements as if set forth at length herein.

57. Plaintiff's claims are barred by ratification and should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

58. Defendants reassert the foregoing statements as if set forth at length herein.
59. The relief requested by Plaintiff is barred by S.C. Code § 15-36-10.

FOR FURTHER AFFIRMATIVE DEFENSE:

60. Defendants reassert the foregoing statements as if set forth at length herein.
61. Defendants reserve the right to assert additional claims and defenses as they may become known.

**THIRD PARTY COMPLAINT AGAINST SOUTH BEACH VILLAGE LAGOON VILLAS, II,
HORIZONTAL PROPERTY REGIME LVII**

62. The previous allegations are incorporated herein as if repeated verbatim.
63. Defendants/Third-Party Plaintiffs are the owners of real property, which is the subject of the action herein, located in the County of Beaufort, State of South Carolina, as is more fully set described in the Lis Pendens filed herewith ("Unit 1595").
64. South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII ("Third-Party Defendant", or the "Regime") is a non-profit organized under the laws of South Carolina.
65. The parties to this action are subject to the jurisdiction of this Court, and venue is appropriate in Beaufort County.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)**

66. The previous allegations are incorporated herein as if repeated verbatim.
67. Pursuant to the Master Deed recorded in Book 215 at Page 1092, and the By-Laws recorded in Book 215 at Page 1099, all owners of the six (6) units in the South Beach Village Lagoon Villas II comprise the Council of Co-Owners.
68. Pursuant to the Master Deed and By-Laws, the affairs of the Council of Co-Owners shall be governed by a Board of Administration ("BOD"), which is responsible for compliance with all of the terms and conditions of the Master Deed and enforcement of same.
69. The BOD and its individual officers, collectively, comprise the legal entity known as the Regime.

70. Actions taken by the Regime, through the BOD and pursuant to the Governing Documents and, specifically, the Master Deed and By-Laws, are binding upon and constitute the valid, lawful acts of the Council of Co-Owners.

71. The Regime has the actual authority, through the BOD and pursuant to Governing Documents, to take actions on behalf of the Council of Co-Owners, and any such actions shall be binding upon the Council of Co-Owner and their privies.

72. The Regime, through the BOD, has apparent authority to take actions on behalf of the Council of Co-Owners, and any such actions shall be binding upon the Council of Co-Owner and their privies.

73. Sometime in 1995, Third-Party Plaintiffs submitted a written request to the Regime, through the BOD and the Architectural Review Board (“ARB”), to build an approximately 154 square foot addition to Unit 1595.

74. The improvement request for Unit 1595 was approved in writing by both the Regime and ARB, through the BOD pursuant to the Governing Documents.

75. The approximate 154 square foot improvement to Unit 1595 is located entirely within the limited common element, to which the Third-Party Plaintiffs possess an exclusive right to use and enjoy pursuant to the Master Deed and the deed(s) conveying interests in Unit 1595 to Third-Party Plaintiffs.

76. The approximate 154 square foot improvement to Unit 1595 does not encroach upon the general common element, as described in the Master Deed and the deeds to each respective unit.

77. A justiciable controversy exists between Third-Party Defendants and the Regime, as the entity representing the Council of Co-Owners and, in turn, all Co-Owners of the Regime.

78. Pursuant to S.C. Code §15-53-10, *et seq.*, Third-Party Plaintiffs are entitled to an order declaring that a valid and enforceable encroachment agreement exists between Third-Party Plaintiffs and the Regime, which grants Third-Party Plaintiffs, and their successors and assigns, an encroachment for the authorized improvements upon the limited common element adjacent to Unit 1595.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that this Court:

1. Dismiss the Plaintiff's Complaint with prejudice;
2. Award Defendants their costs and attorneys' fees;
3. Decree, order and declare that:
 - a. A valid and enforceable encroachment agreement exists between Defendants/Third-Party Plaintiffs and the Regime, that shall run with the land and inure to the benefit of Defendants/Third-Party Plaintiffs' successors and assigns; and,
 - b. Plaintiff lacks standing to sue for a change in the Regime's assessment structure based on Unit 1595's authorized improvements;
 - c. Plaintiff lacks standing to sue for removal of a common element encroachment;
 - d. Defendants have not violated any provisions of the Master Deed and By-Laws, or other Governing Documents;
 - e. Plaintiff and the Council of Co-Owners are estopped from taking any action regarding the authorized improvements to Unit 1595 under the doctrine of laches, and are estopped from forcing the removal of the authorized improvements to Unit 1595 because the Regime, through the BOD, has already entered into a binding encroachment agreement with Defendants/Third-Party Plaintiffs; and
4. Grant such other and further relief as is just and necessary.

FINKEL LAW FIRM LLC

/S/ Magalie A. Creech (SC Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Phone: (843) 577-5460
Fax: (866) 800-7954
mcreech@finkellaw.com
Attorneys for Defendants/Third-Party Plaintiffs