STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	CIVIL ACTION NO. 2012-CP-23-7243
Pelham Spring Homeowners' Association, Plaintiff,	)	
vs.	)	**ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF PLAINTIFF**
The Summit at Pelham Springs Property Owner's Association, Inc., Defendant.	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 FEB 7 PM 3 38

INTRODUCTION

This matter came before the Court on Plaintiff's motion for summary judgment. The issue presented is whether under the Master Deed for The Summit at Pelham Springs Horizontal Property Regime, the Plaintiff, as the owner of two (2) undeveloped lots on which condominium units were intended to be built by the original developer, but never were, is a "Unit Owner" and liable to Defendant for regime fees.

Both parties were well represented by experienced counsel who presented their clients' positions thoroughly on the complex matters presented by this case. There being no material factual disputes, however, the issue to be determined is primarily a legal one. Having considered the briefs, exhibits presented and the oral arguments of counsel, the Court grants Plaintiff's motion for summary judgment for the reasons set forth below.

FACTS

The Summit at Pelham Springs Horizontal Property Regime and The Summit at Pelham Springs Property Owners Association, Inc. were established by the filing of the Master Deed for The Summit at Pelham Springs Horizontal Property Regime (the "Master Deed") pursuant to the

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South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et seq.*, on October 3, 2003.[1] The Master Deed is the governing document applicable to The Summit at Pelham Springs Horizontal Property Regime.

As set forth in the Master Deed, the property was originally intended to consist of seven (7) three-story brick structures ("buildings"), each of which would contain six (6) condominium units. (Master Deed, Art. II, at Page 518). However, only five (5) buildings were ever built before the original developer filed for bankruptcy or otherwise became insolvent. Subsequently, the remaining two lots, where the other two buildings were intended to be built, were foreclosed upon by Carolina First Bank without those lots ever having been built upon. Attachment A to this Order shows the location of these two still undeveloped lots.

On or about April 21, 2009, Carolina First Bank acquired title to these two (2) undeveloped lots pursuant to the above-mentioned foreclosure sale. On or about February 23, 2011, Plaintiff, Pelham Springs Homeowners Association, purchased the two undeveloped lots from Carolina First's successor in interest, TD Bank.

The dispute that gives rise to this action goes back to Carolina First's ownership of the undeveloped lots. Under the Master Deed, "Unit Owners" are members of the Defendant Property Owners Association and are subject to regime fees and assessments under the Master Deed. On or about October 21, 2009, Defendant contended that Carolina First owed regime fees for 12 non-existent Units on the two undeveloped lots and actually filed a lien at Book 5059, pages 4611-4613. However, prior to conveying these lots to Plaintiff on February 23, 2011, a Satisfaction and Release of Lien was recorded at Book SAT at Pages 5499-5500. Carolina First paid no money or other consideration to Defendant to obtain satisfaction of that lien. There is an

[1] The Master Deed is recorded at Book 2058, Page 513, *et seq.*, in the office of the Register of Deeds for Greenville County, South Carolina and the page number references herein are to the page numbers assigned by the Register of Deeds.

issue between the parties concerning the reason and validity of this Release. However, and as set forth below, the Court need not address this issue in light of its ruling.

On or about October 3, 2012, a little over 19 months after Plaintiff purchased the two undeveloped lots, Defendant, through its counsel, sent Plaintiff a notice demanding payment of $131,689.68 for all outstanding assessments on the 12 non-existent Units never built on the two vacant lots. This amount included fees and dues which, if owed by Plaintiff, accrued prior to Plaintiff's purchase of the undeveloped lots. Plaintiff responded, specifically denying that it was a member of Defendant's condominium owners association nor responsible for regime fees and assessments because it does not own a "Unit" as described in the Master Deed. It only owns vacant lots. Thereafter, this action for a declaratory judgment was filed to determine whether Plaintiff should be considered a Unit Owner under the Master Deed and responsible, as a "Unit Owner" for regime fees and assessments for the 12 non-existent condominium units.

ANALYSIS

Under Rule 56 of the South Carolina Rules of Civil Procedure, a moving party is entitled to summary judgment when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Robinson v. Estate of Harris*, 388 S.C. 630, 698 S.E.2d 222 (2010).

In interpreting the provisions of a deed, the South Carolina Court of Appeals has noted that "'[t]he construction of an unambiguous deed is a question of law, not fact. The terms of such a deed may not be varied or contradicted by evidence drawn from sources other than the deed

itself.'" *Walters v. Summey Bldg. Systems, Inc.*, 311 S.C. 507, 429 S.E.2d 854 (Ct. App. 1993) (quoting *Vause v. Mikell*, 290 S.C. 65, 68, 348 S.E.2d 187, 189 (Ct.App. 1986) (citation omitted). See, also *Kinard v. Richardson* Op. No. 5192, SC Ct. App. filed 1/29/2014.

The Court finds that there is no ambiguity in the Master Deed regarding who is liable for assessments. Under the Master Deed, The Summit at Pelham Springs Property Owners Association is a "nonprofit entity composed of all Unit Owners…." (Master Deed, Art. III, sec. (d), p. 519). An "Owner" is defined as "the record owner, whether one or more Persons or entities, of fee simple title or leasehold estate in and to any Unit,…." (*Id.*, sec. (w), p. 522). A "Unit" is defined as "any one of those parts of the Buildings which is now or hereafter subject to individual ownership…. The boundaries of each Unit are the interior undecorated or unfinished perimeter and structural walls, floors, ceiling, windows and windows (sic) frames, doors, and door frames and trim…." (*Id.,* sec. (dd), p. 523). Finally, the Master Deed defines "Buildings" as "the structure or structure containing the Common Elements and the Units defined and created hereby, …" (*Id.* sec. (f), p. 519). Under Art. X, only Unit Owners are liable for annual assessments and special assessments. Since, under the plain language of the Master Deed, Plaintiff does not own a "Unit" as described in the Master Deed, Plaintiff is not a member of the Defendant Association and Plaintiff is not liable for assessments under the Master Deed.

Notwithstanding the above, and were there a basis for the Court to consider matters outside of the clear language of the Master Deed, the dealings between the parties further establish that Plaintiff is not responsible for assessments for the two undeveloped lots. Since the time of the foreclosure resulting in the lots being conveyed to Carolina First and Carolina First's subsequent conveyance of the lots to Plaintiff, Defendant had not sent notices of any annual property owner's association meetings to Carolina First or to Plaintiff. Logically, if the owners

of the two lots were "Unit Owners" such notice should have been given. Furthermore, Defendant has not included the ownership interests of the 12 non-existent Units on the two vacant lots in calculating the quorum necessary for those meetings. In other words, Defendant never provided notice or opportunity to the owner of the two lots of any property owner's association meetings nor did Defendant take into account the 12 non-existent Units in determining voting rights or quorums. Defendant contends that neither was necessary since Plaintiff and its predecessor, Carolina First, were delinquent in payment of assessments and not entitled to notice or a vote. However, Defendant could not point to authority allowing Defendant to suspend notice of meetings or to refuse any voting rights of the 12 non-existent units. Further, it is undisputed that while Plaintiff was not being provided notices nor offered the opportunity to participate in the Summit's meetings, another existing "Unit Owner", who was delinquent in payments and was in foreclosure, was nonetheless sent notice of the annual meetings and given the right to participate and vote at the annual meetings. Further, that owner's interest was included in the calculation of the number necessary for a quorum.

Also important to note is that since Plaintiff has owned the two undeveloped lots, Plaintiff has maintained its own insurance on these lots, paid the separate real property taxes related to the two lots and separately provides and pays for landscaping and maintenance of the two lots. Plaintiff even, at its expense, had the public utilities related to the lots separated from the Defendant and pays the same.

The Court acknowledges that granting Plaintiff's motion for summary judgment may not seem fair to the existing members of the Defendant property owners association, considering that the developer originally intended the property owners association would eventually have 42 Unit Owners paying for the upkeep of the property. However, even in light of this reality, the Court

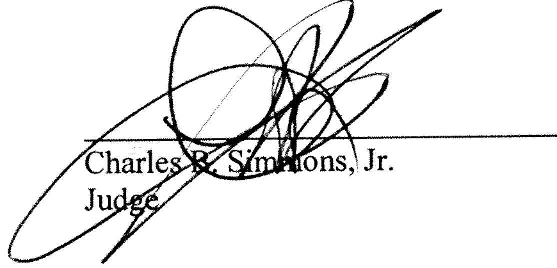
cannot reach a different result as to who is liable for assessments without varying the clear language of the Master Deed. In this case, Defendant's developer chose specifically to clearly define a "Unit Owner" and expressly make them solely responsible for assessments. Defendant's Master Deed language is clear that Plaintiff is not liable for assessments on these two undeveloped lots. In addition, "[i]n a condominium project, unlike a normal subdivision, the recording of a final tract map does not automatically convert the single parcel of land into as many separate condominium units as appear on the map." *Harrington v. Blackston*, 319 S.C. 1, 459 S.E.2d 309 (Ct. App. 1995), *vacated by consent*, 322 S.C. 470, 473 S.E.2d 47 (1976) (citing 15A Am.Jur.2d Condominiums § 15 (1976)). Further, it is at least worth noting that not building 12 of the contemplated 42 Units has proportionately reduced Defendant's overall infrastructure and maintenance costs, and Plaintiff has assumed all costs associated with the undeveloped lots' upkeep.

This decision is made on the narrow ground that Plaintiff is not a "Unit Owner" and is, therefore, not liable for fees and assessments under the Master Deed. Plaintiff's rights with respect to the use of the two lots going forward are not before the Court. While that matter is not before the Court at this time, and therefore the parties are not being ordered to do so, the Court would encourage the parties to try to reach, if possible, an agreement regarding the future development of the two lots.

CONCLUSION

Under the Master Deed, only Unit Owners are liable for assessments. For the reasons set forth above, Plaintiff is not a Unit Owner. Therefore, Plaintiff's motion for summary judgment is GRANTED, and Plaintiff is not liable for fees and assessments under the Master Deed.

IT IS SO ORDERED.



Charles B. Simmons, Jr.
Judge

Greenville, South Carolina
2/5, 2014

"X" indicates the subject lots.

491-100

FINAL PLAT

CERTIFICATE OF OWNERSHIP AND DEDICATION

CERTIFICATE OF ACCURACY

CERTIFICATE OF APPROVAL FOR RECORDING

FILE NUMBER 05-138

THE SUMMIT AT PELHAM SPRINGS PHASE I ADDITION NO. 1

POINSETT DEVELOPMENT, LLC — OWNER

LANDMARK SURVEYING, INC. — ENGINEER OR SURVEYOR

LOCATION MAP N.T.S.

SITE

PELHAM RD.

PELHAM SPRINGS PL.

BUTLER SPRINGS RD.

PELHAM SPRINGS PLACE

FALLING ROCK WAY

ROCKY TOP DRIVE

ZONE C3

SCALE 1" = 40'

GRAPHIC SCALE – FEET

THIS PLAT SUPERCEDES PLAT RECORDED IN PLAT BOOK 49-L, PAGE 70.

Attachment A (B)