UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re, Foxwood Hills Property Owners Association, Inc., Debtor(s).	C/A No. 20-02092-HB Adv. Pro. No. 20-80049-HB Chapter 11
Foxwood Hills Property Owners Association, Inc., Plaintiff(s), v. 783-C, LLC et al., Defendant(s).	**ORDER REGARDING DEFENDANT CHRISTOPHER PIERCE AND LOTS #44, 160, 224 AND 225 FOXWOOD HILLS, KINSTON SECTION**

This matter came before the Court for trial on the disputes between Debtor Foxwood Hills Property Owners Association, Inc. ("POA") and Defendant Christopher Pierce. Initially the lawsuit filed by the POA named approximately 3,300 defendants. Disputes with all have been resolved by entry of default judgments or approval of compromises, except for disputes involving Pierce. Appearing at trial were Kyle A. Brannon and Carl H. Petkoff of Nexsen Pruet, LLC, for the POA and Pierce, appearing *pro se*. The POA is a property owners association for Foxwood Hills, a community in Oconee County, South Carolina, where Pierce resides and owns lots in a section currently known as Kinston. The Complaint seeks a declaratory judgment binding Pierce to certain restrictions and thereby to the POA and its bylaws and membership, including the rights and responsibilities associated therewith. Pierce seeks an order declaring he is not subject to the POA bylaws and rather any obligations he owes to the POA arise from a different set of land

restrictions. Additionally, Pierce seeks reimbursement of amounts paid for previously billed dues and asserts the POA committed fraud. At trial testimony was received from Gregory Shephard, previous POA President, Patrick Henry Coates, the current POA Treasurer, and Pierce, and numerous exhibits were submitted. After careful consideration, the Court finds as follows.

Findings of Fact

In 1971 Lakeshore Land Company ("Lakeshore") created Mountain Bay Estates ("Mountain Bay") and served as Mountain Bay's developer until 1976.[1] On August 25, 1972, Lakeshore filed restrictions (the "1972 Lakeshore Restrictions") in the Office of the Oconee County Clerk of Court (the "Oconee Clerk") in Deed Book 11-L, Page 153.[2] Fulton National Bank held a mortgage on all or a substantial portion of the real estate owned by Lakeshore that comprised Mountain Bay. Prior to December 1976, Fulton National Bank foreclosed its mortgage lien on all property still owned by Lakeshore at that time (the "Foreclosed Lots"). At that time the developed community consisted of Sections A, B, C, D, E and F. A deed(s) recorded with the Oconee Clerk on December 20, 1976, at Deed Book 12-P, Page 354 and 355, transferred the Foreclosed Lots to Fulton National Bank.[3] On December 15, 1977, Fulton National Bank conveyed all of the Foreclosed Lots it still owned to Foxwood Corporation, by Limited Warranty Deed recorded with the Oconee Clerk on December 29, 1977, at Deed Book 12-X, at Page 200.[4] That deed incorporates by exhibit the 1972 Lakeshore Restrictions. From 1978 to April 1979, Foxwood Corporation expanded the community by adding infrastructure and developing additional sections, including

[1] ECF. No. 1, pg. 29.
[2] Pl. Ex. 3.
[3] Pl. Ex. 2. p. 3.
[4] Pl. Ex. 2.

Kinston. From 1978 to November 1993, Foxwood Corporation acted as the developer of the community, "Foxwood Hills".

On April 24, 1978, the POA was registered as a nonprofit corporation in the Office of the South Carolina Secretary of State. Foxwood Corporation retained control of the POA until December 1, 1993, at which time it turned over control to the property owner members.

Restrictions Timeline

The 1972 Lakeshore Restrictions apply to the Mountain Bay lots and provide for a yearly assessment in the amount of $48.00 for road system and recreational facilities maintenance. Those restrictions do not provide for membership in any property owners association and do not clearly define the scope or nature of an adequate road system or recreational facilities. The Restrictions nonsensically do not mention any future increases over the 1972 yearly price of $48.00, and do not clearly define the rights and obligations of the parties.

The 1972 Lakeshore Restrictions state they apply to sections A, B, C, D, E and F of Mountain Bay. The plat referenced in the 1972 Lakeshore Restrictions is not part of the record before the Court. Plaintiff's exhibits include a map of the current Foxwood Hills that includes sections labeled A-F, Kinston is not within A-F, but is located on the other side of Lake Hartwell, which runs through the middle of the subdivision.[5]

On April 23, 1979, Foxwood Corporation, the owner of the relevant property, recorded restrictions ("the 1979 Foxwood Restrictions") for Kinston section lots #1-234 in Deed Book 13-J, page 415. Those restrictions provided for a $60 yearly assessment for road system and recreational facilities maintenance, which was to be considered a lien on the property. Again, there

[5] The admitted Exhibit 1 does not provide a date as to when it was prepared. It appears to show all the sections currently considered to be the Foxwood Hills subdivision.

was no provision for future escalation in that yearly price. The restrictions added a provision which stated,

> Every record owner of a lot, including contract purchasers, but excluding persons holding title merely as security for performance of an obligation, will automatically become and be a member of the Foxwood Hills Property Owners' Association and is and shall be subject to the By-laws, Rules and Regulations of Foxwood Hills Property Owners' Association.[6]

Thereafter, on December 6, 1979, the 1979 Foxwood Restrictions were amended and recorded at Deed Book 13-R, page 267 ("the Amended 1979 Foxwood Restrictions"). The change made by the amendment is found in article 16, which provides for a yearly assessment of $60, adding "***or such other assessment levied by the Board of Directors of the Foxwood Hills Property Owners' Association***."[7] (emphasis added). The articles regarding membership and voting rights remained unchanged. No property owners' association yet existed at the time either set of restrictions were recorded.

The Bylaws of the POA define a member in Article I as "any owner of a lot or lots within The Properties, including contract owners, but excluding persons holding title merely as security for performance of a financial obligation." Article III addresses membership further stating,

> Every person or entity who is record owner of a title or undivided interest in title to any real property is subject to dues and assessments by the Association, including contract purchasers….shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a lot which is subject to dues and assessments by the Association" and "the rights of membership are subject to the payment of annual dues and assessments levied by the Association, the obligation of which dues and assessments is imposed against each owner of and become a lien upon the property against which such dues and assessments are made.
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> Article V, voting rights within the Association, draws a distinction between,
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> (a) lot owners who purchased their lots from Foxwood Corporation, a successor corporation to Foxwood Corporation, or those who purchased from the prior

[6] Pl. Ex. 4, p. 2.
[7] Pl. Ex. 5, p. 3.

> developer (Lakeshore) and agree by recorded instrument to pay dues and assessments as set by the association and (b) purchasers of lots from the prior developer that did not agree by recorded instrument to pay such dues and assessments.

Plaintiff contends section (b) refers only to lot owners whose lots were originally purchased from Lakeshore or Fulton National Bank- what the POA understands to be Mountain Bay Lots.

The First Revised Bylaws became effective March 15, 2003, and state that they supersede the previous bylaws, amendments, and supplements in their entirety.[8] Article IV section 1 amended the prior Article III to include,

> Every person or entity who is record owner of a title or undivided interest in title to any real property **within the Foxwood Hills development** is subject to **fees**, dues, and assessments, **as authorized by the applicable restrictive covenants or these Bylaws, levied** by the Association, including contract purchasers…. shall be a member of the Association.[9]

Article VII section 1(O) gives the POA the power to impose fees, dues, and assessments upon its members. The Second Revised Bylaws made effective on March 17, 2011, again superseded any prior versions.[10] No changes relevant to the matter at hand were made between the 2003 and 2011 versions. All three versions of the Bylaws of the POA were recorded on the public record on January 9, 2019, they are located at Book 2427, pages 139-150.[11]

Pierce's Deeds

Details regarding each lot are as follows:

Lot 224. Pierce purchased Kinston lot 224 ("Lot 224") from Philip Bryan in 2017. The deed states the conveyance is subject to "all restrictions and easements of record in the office of

[8] Pl. Ex. 10.
[9] Pl. Ex. 11, p. 3.
[10] Pl. Ex. 11.
[11] Pl. Ex. 9.

the Clerk of Court for Oconee County in Deed Book 11, page 153".[12] These are the only restrictions specifically referenced in the deed. Another provision in the deeds provides,

> Grantee by acceptance hereof and by agreement with the Grantor hereby expressly assumes and agrees to be bound and comply with all of the covenants, terms, provisions, and conditions set forth in the aforesaid declarations and rules and regulations made thereunder.[13]

Pierce's deed identifies the property as being in Foxwood Hills Subdivision and designated as Lot 224, Section Kinston. Philip Bryan obtained Lot 224 from Ercle Akers by warranty deed recorded May 29, 1998, and referencing restrictions at Deed Book 11L, page 153. In fact, all the deeds in Pierce's chain of title to Lot 224 submitted to the Court contain the specific reference to Deed Book 11-L, page 153, which are the 1972 Lakeshore Restrictions. Akers purchased the lot from Robert McCall in 1998, which McCall had obtained from Barbara Pounds by warranty deed recorded May 5, 1998, referencing restrictions at Deed Book 11L, page 153. The deed from Foxwood Corporation to the Pounds references those restrictions and was recorded on December 14, 1980.[14] When Foxwood deeded Lot 224 to the Pounds the deed failed to reference either the 1979 Foxwood Restriction or the Amended 1979 Foxwood Restrictions.

Lot 225. Pierce's deed identifies the property as being in Foxwood Hills Subdivision and designated as lot 225, Section Kinston ("Lot 225"). The property was purchased from Sharon Bryan at the same time as the transaction with Phillip Bryan for Lot 224, and the deed contained the same information. Sharon obtained Lot 225 from Stanley McDaniel by warranty deed recorded September 5, 2006, with reference to restrictions at Deed book 11 page 153. McDaniel's transfer from the Duncans, the original purchasers from Foxwood Corporation, references the restrictions

[12] Pl. Ex. 12, p. 16.The L in the restriction reference is dropped in the deed from Bryan to Pierce. All prior deeds reference book 11-L page 153, the 1972 Lakeshore Restrictions.
[13] Id.
[14] Pl. Ex. 12, p. 11-12.

as 11-L page 153.[15] Like Lot 224, the 1972 Lakeshore Restrictions are the only restrictions specifically listed in the chain of title for Lot 225. Foxwood Corporation sold the property to Wyatt and Betty Duncan by warranty deed, which was recorded on March 4, 1980, and references restrictions at Deed Book 11-L page 153.

Lot 44. Pierce purchased Kinston lot 44 ("Lot 44") from Richard Belton and Rebecca Marx in 2021. The deed describes the property as Lot 44, Kinston Section, Foxwood Hills. That deed states the conveyance was made subject to, "covenants, restrictions, reservations, limitations, easements, and agreements of record, if any, taxes and assessments for the year 2021 and subsequent years, and all zoning ordinances and/or restrictions and prohibitions imposed by government authorities, if any." Additionally, the deed specifically states, "Grantee agrees to all dues and financial obligations for 2021 and as long as he holds title to property."[16] The deed into Belton/Marx from JC Galbreath provided the conveyance was subject to "existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, and rights of way and easements of record". [17] JC Galbreath purchased the property from the Oconee County Forfeited Land Commission ("the Land Commission") who acquired it from through a tax sale. Prior to the Land Commission the lot belong to George Thomas, Jr. by deed of distribution following the death Margaret Thomas, who had acquired it at an initial tax sale. The initial tax sale deed and subsequent deed of distribution state "this conveyance made subject to easements and restrictions of record and otherwise affecting this property."[18] Lot 44 was first conveyed by Foxwood Corporation to Ken and Linda Williams by warranty deed with reference to restrictions at 11-L p. 153, the 1972

[15] Same as above issue at n.11.
[16] Pl. Ex. 14, p. 26.
[17] Id, p. 24.
[18] Id, p. 12, 16.

Lakeshore Restrictions. The property was acquired from the Williams by the Oconee County Delinquent Tax Collector and sold to Margaret Thomas.

Lot 160. Robert Tyler, Jr., conveyed property by warranty deed recorded May 29, 2020, which identified the property as lot 160, Kinston Section, Foxwood Hills, Oconee County, South Carolina ("Lot 160"). Tyler had purchased it by warranty deed from James Slaton, who obtained the lot via tax sale in 2014. The lot came into the possession of the Oconee County delinquent tax collector from the Butts Trust. It had been assigned to the Trust in 2010 by the Butts who initially purchased it by quitclaim deed from Mountain Properties Development Inc. ("Mountain Properties") in 2000. The property was originally sold by Foxwood Corporation to Emily Fallaw in 1981 before Fallaw sold it to Mountain Properties by quitclaim deed recorded May 30, 2000. *The initial deed from Foxwood Corporation to Fallaw references the Amended 1979 Foxwood Restrictions at Deed Book 13-R page 267*.[19] The deed from Mountain Properties to the Butts does not reference the Amended 1979 Foxwood Restrictions at this book and page:

> …this conveyance is made…..; any and all protective covenants and restrictions as to the use of the property as may be recorded in the Office of the Register of Deeds for Oconee County, South Carolina including, but not limited to, those restrictions and covenants for Foxwood Hills Subdivision recorded in ***Deed Book 133, at page 416***, Records of Oconee County.

(Emphasis added.)[20] The 2013 quitclaim deed states, "this conveyance is made subject to easements and restrictions of record and otherwise affecting the property; if any."[21] The warranty deed into Pierce also states the transfer was subject to, "covenants, conditions, restrictions,

[19] Pl. Ex. 15, p.8.
[20] Compare the Deed Book reference of 133 page 416 to the 1979 Foxwood Restrictions recorded at Deed Book 13-**J** page 41**5**.
[21] Pl. Ex. 15, p 21.

reservations, limitations, easements, and agreements of record, if any, taxes and assessments for year 2021 and subsequent years…."[22]

Testimony

It is not clear from a review of the exhibits submitted whether sections A-F of Mountain Bay are the same as current sections A-F listed on the Foxwood Hills map, Plaintiff's Exhibit 1.[23] However, Gregory Shephard testified that sections A- F on the current Foxwood Hills map are the same as A-F described in the 1972 Lakeshore Restrictions. Pierce did not offer any evidence to the contrary. Kinston is not geographically located within any of those sections on the current Foxwood Hills map but is located on the other side of the development. Shephard testified Kinston was not developed until 1978, and he understood that only those lots sold by Lakeshore or Fulton National Bank are "considered by the POA" to be Mountain Bay Lots and therefore subject to the 1972 Lakeshore Restrictions.

Currently, all POA members in good standing, including those in Kinston, have access to the POA's amenities which include forty miles of privately maintained roads, a clubhouse, a restaurant and lounge, a swimming pool, and tennis courts. Following its formation in 1993 the POA has maintained the common property amenities through "budget-based billing practices" to members.[24] In addition to the common property amenities the POA manages security, a dock, two comfort stations, and landscaping of common areas. All community employees, full-time as well as seasonal, are paid through the POA.

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[22] Id, p. 25.
[23] Pl. Ex. 1 states it is not an official plat.
[24] Owners of Mountain Bay Lots were not assessed by budget-based billing until the 2003 Bylaw revisions.

The POA establishes the amount to be assessed to members after determining the necessary annual budget. The budget committee develops a proposed annual budget which is submitted to the Board of Directors for confirmation. Thereafter, the Board charges the dues and assessments to all members. Members who own more than one lot may pay partial or no additional dues for additional lots but must pay full dues on at least one lot. The Bylaws provide that if dues and assessments are not paid, the POA asserts it can place a lien on the property and ultimately foreclose on such lien.

Lot owners have enjoyed and taken advantage of certain membership rights within the POA, been charged by the POA, and expected to pay, fees, dues and assessments, have experienced appreciation in property values because of the existence and right of access to the amenities. None of these benefits would be possible if the owners were not members of the POA paying dues and assessments for these benefits.

Pierce testified that he paid $1,154.00 in outstanding POA fees, dues, and assessments on Lots 224 and Lot 225 at the time of purchase. He has not paid any POA assigned dues or assessments on those lots since 2017. He also has not paid any fees, dues, or assessments in connection with his ownership of Lot 44 and Lot 160, purchased in 2020 and 2021. He agreed he is required to pay dues at the rate of $48 for Lot 44, Lot 224, and Lot 225, and $60 for Lot 160 as he interprets the restriction in his chains of title.[25] The POA would only accept those payments as partial payments and therefore Pierce never actually paid any amount to the POA. Pierce purchased Lot 44 and Lot 160 after state court actions were brought against Foxwood Hills POA regarding the community restrictions, covenants, and bylaws at issue here.

[25] Def. Ex. L.

Pierce believes he is a member of the POA, he has membership credentials, and a membership card.[26] However, he alleges he should not be obligated to pay unless his deed restrictions require him to do so. He also asserts the POA failed to perform its duties under those restrictions. His primary concern was past road maintenance. Pierce alleges he has performed road maintenance on his neighborhood roads and feels he should be reimbursed for those efforts but did not request such reimbursement from the Court. Plaintiff's witnesses testified that road maintenance decisions are made by a committee on a priority basis not by section or schedule. Additionally, Pierce testified the community amenities were part of his consideration in purchasing Foxwood Hills property, as he had previously utilized them as a guest. He testified he has not used any amenities, other than the roadways, since 2017.

Pierce testified that prior to purchasing the lots an acquaintance conducted title searches on Lot 224 and Lot 225, however he was not aware whether that person was qualified to effectively conduct a title search. He testified he did some title searching on his own, but he is not experienced in doing so. No professional title abstractor or title search was conducted in connection with any of his purchases within Foxwood Hills and the parties did not utilize an attorney during the transaction. Additionally, Pierce testified he questioned the previous owner of Lot 224 and Lot 225, the Bryans, and other neighbors about the POA dues prior to his initial purchases and was told dues and assessments were "a few hundred dollars." Pierce admitted he did not request dues information from a real estate agent, Foxwood Hills office staff, or any other official source prior to his 2017 purchase.

[26] Def. Exs. C and D.

Pierce claims the POA committed fraud, based on the fact that he paid $1,154.00 for dues and assessments on Lot 224 and Lot 225 at the time of purchase. He alleges the assessments and dues he was charged and paid exceeded the amount listed on the POA website around the time or due as a result of the terms of his deeds.[27]

DISCUSSION AND CONCLUSIONS

The Complaint sums up the situation, alleging "Lakeshore and the Foxwood Corporation's unilateral mistakes were accompanied by extraordinary circumstances showing imbecility."[28] That Complaint was filed almost three years ago, against thousands of defendants. The original Complaint included factual allegations and causes of action that do not target Pierce.[29] With this background, the Court attempts to resolve the only remaining issue in this adversary proceeding and bankruptcy case: whether Pierce and his lots are bound to the Amended 1979 Foxwood Restrictions. The POA requests a declaratory judgment finding that Pierce is a member of the POA and must pay dues and assessments accordingly, and/or that Pierce must pay budget-based fees, dues, and assessments to the POA.[30] Pierce asks for a finding that he is only obligated to pay $48 dollars for Lot 44, Lot 224, and Lot 225, and $60 for Lot 160. Further, Pierce asserts in his counterclaim that the POA is indebted to him for fraud.

"A property owner is charged with constructive notice of any restriction appearing within a chain of title." *Harbison*, 459 S.E.2d at 863. Furthermore, "A covenant is enforceable on a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice

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[27] Def. Ex. K, p. 2.
[28] ECF No. 1, p. 77.
[29] The Fourth Cause of Action (Reformation of the 1972 Lakeshore Restrictions and 1978 Foxwood Restrictions), and Fifth Cause of Action (Rescission/Cancellation of the Assessment Language in the 1972 Lakeshore Restrictions and 1978 Foxwood Restrictions) address lots in Sections G, I, L, M, Hatteras I and Homestead; the Sixth Cause of Action (Declaration that the Relief Granted Hereunder Also Applies to John Doe, Richard Roe, and Steven Stoe Defendants) clearly are inapplicable.
[30] ECF No. 1, First and Second Causes of Action.

of the covenant." *Id.* at 863 (*citing* 20 Am. Jur. 2d Covenants, Conditions and Restriction § 26 (1965)); *In re Foster*, 552 B.R. 102, 106 (Bankr. D.S.C. 2016).

Pursuant to the South Carolina Code,

> Each co-owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the master deed or lease or in the deed or lease to his apartment. Failure to comply with any of the same shall be grounds for a civil action to recover sums due for damages or injunctive relief, or both, maintainable by the administrator or the board of administration, or other form of administration specified in the bylaws, on behalf of the council of co-owners, or in a proper case, by an aggrieved co-owner.

S.C. Code Ann. § 27-31-170, *see also Cedar Cove Homeowners Ass'n, Inc. v. DiPietro,* 368 S.C. 254, 270, 628 S.E.2d 284, 292 (Ct.App.2006) ("Restrictive covenants often authorize the creation of a homeowners' association, usually in the form of a not-for-profit corporation, and grant it authority to manage common areas, make regulations, levy assessments, and other similar privileges.") *Harbison,* 459 S.E.2d at 862.

Pierce's Lot 160 is bound to the Amended 1979 Foxwood Restrictions through his chain of title. The initial deed from Foxwood Corporation to Emily Farrow referenced the Amended 1979 Foxwood Restrictions located in Deed Book 13-R at page 276. Those Amended 1979 Foxwood Restrictions provide a yearly assessment of $60 *or such other assessment levied by the Board of Directors of the Foxwood Hills Property Owners' Association* for road system and recreational facilities maintenance, which was to be considered a lien on the property. The restrictions further state in part:

> Every record owner of a lot, including contract purchasers, but excluding persons holding title merely as security for performance of an obligation, will automatically become and be a member of the Foxwood Hills Property Owners' Association and

> is and shall be subject to the By-laws, Rules and Regulations of Foxwood Hills Property Owners' Association. [31]

Thus, Pierce is on notice of and bound by the same. To the extent that he has complaints about how the POA is operated or the dues and assessments charged, he should resort to any processes and remedies found in the Bylaws of the POA.

The 1979 Foxwood Restrictions and the Amended 1979 Foxwood Restrictions are not in the chains of title for Lot 44, Lot 224, and Lot 225. The identification of each of Pierce's lots as being a lot number within the Kinston section of Foxwood Hills may be sufficient to constitute inquiry notice that a purchaser should consult a plat of that community to see if said plat indicates any restrictions. However, no plat for the Kinston section was submitted into evidence that would support such a theory. Therefore, the Court cannot reach a conclusion as to whether that plat would reveal a connection to relevant restrictions.

While the 1972 Lakeshore Restrictions are referenced in the chains of title for Lot 44, Lot 224, and Lot 225, those restrictions do not appear applicable to lots in Kinston as the preponderance of evidence before the Court indicates that these lots were not within the sections identified in the 1972 Lakeshore Restrictions. While the POA argues that a party that has actual or constructive notice of a covenant is bound by it, it is not evident whether that would be the 1972 Lakeshore Restrictions, the 1979 Foxwood Restrictions or the Amended 1979 Foxwood Restrictions, or a combination or none of the above.

Pierce admits that at the time of each purchase in Foxwood Hills he was aware that the POA existed, and property ownership made him a member therein, as well as subject to some dues and assessments. Pierce was also on constructive notice of the common interest community of

[31] Pl. Ex. 5, p. 3.

Foxwood Hills, Kinston. Pierce has recognized that he is a member of the POA as a result of his ownership of each lot, and that he holds membership credentials.

The POA has conferred a benefit to Pierce by providing amenities to him and members of the POA. While Pierce argued that he was no longer allowed to use those amenities due to pending litigation, and that he had to fix and maintain the road himself; Pierce still recognized the benefit of having the recreational amenities, and he continued to benefit from usage of the roads and security which the POA provides.

However, the above evidence of a benefit is not enough to convince the Court that Pierce is tied to the price that results from the Amended 1979 Foxwood Restrictions for Lot 44, Lot 224, and Lot 225[32] but it does lead the Court to examine the equitable theories Plaintiff asserts. The POA has asserted Pierce should pay dues and assessments under theories including Quantum Meruit, which requires the following elements: "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8–9, 532 S.E.2d 868, 872 (2000).

As determined above, Pierce is bound to the Amended 1979 Foxwood Restrictions by ownership of Lot 160 through his chain of title to the property and must pay dues and assessment thereon. Regarding the other lots, Pierce can only use the roads and other amenities once, regardless of the number of lots he owns, so it is difficult to find from these facts that he is personally receiving a benefit it would be inequitable for him to retain for all four lots. In other

[32] The Fourth (reformation) and Fifth (rescission) Causes of Action in the Complaint were not directed at Pierce.

words, Plaintiff has failed to show an equitable basis exists to require Pierce to pay dues and assessments in the amount due for Lot 160 four times over. However, certainly some value and benefit is conferred as a result of the ownership of the other three lots, and that amount is likely more than $48 per lot, but it is not clearly quantified by the evidence. The Court notes that the POA's own policies allow owners of more than one lot to pay less than the full amount for additional lots. Although the Court cannot find a corresponding value for the benefit from the evidence, the Court understood from Pierce's testimony that he agreed to pay $48 each as indicated in those 1972 Lakeshore Restrictions in exchange for the benefits he receives from the POA for Lot 44, Lot 224, and Lot 225. This, in addition to other evidence, demonstrates that Pierce recognizes a benefit is conferred on him by the POA and that it would be inequitable for him to retain the benefit without paying at least this amount. Therefore, in addition to his obligations for Lot 160, equitable theories support a finding that Pierce must pay $48 for each of those additional lots. This finding is applicable to Pierce personally, related to his combined ownership of four lots, is based on this record, and is not a finding that necessarily binds or protects future owners of Kinston Lot 44, Lot 224, or Lot 225.

Fraud

> To prove the elements of a fraud claim, the claimant must set forth:
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> > (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Enhance-It, L.L.C. v. Am. Access Techs., Inc., 413 F. Supp. 2d 626, 629 (D.S.C. 2006) (citing *Regions Bank v. Schmauch*, 582 S.E.2d 432, 444 (S.C. 2003)), see also *Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001). The burden of proof for a viable fraud claim should be

supported by clear and convincing evidence, "Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App.1993).

Pierce failed to prove the elements necessary to support his fraud counterclaim. Particularly he failed to prove knowledge of falsity or reckless disregard of its truth or falsity. As is indicated by the dispute outlined above, the amount due from various POA members was subject to reasonable disagreement. Pierce was billed an amount the POA deemed appropriate, and he paid it. Even if he had proven that the amount represented was in error at the time of billing, he has failed to show the billing was the result of any fraud. As Pierce must pay amounts to the POA that exceed the $1,154.00 previously paid, no amount is due to Pierce from the POA under any theory of recovery.

IT IS THEREFORE, ORDERED that Defendant Christopher Pierce, current owner of Lot 160, Foxwood Hills, Kinston section, Oconee County, South Carolina, and any subsequent owners, are bound by the Amended 1979 Foxwood Restrictions at Deed Book 13-R, page 267. Pierce and subsequent owners of Lot 160 are members of the Foxwood Hills Property Owners Association, Inc., who must pay dues and assessments, including any budget-based fees, dues, and assessments regularly charged to members. In addition, Defendant Christopher Pierce is obligated to pay $48 each for Lot 44, Lot 224, and Lot 225, Foxwood Hills, Kinston section, Oconee County, South Carolina, for the benefits he receives from the Foxwood Hills Property Owners Association, Inc., for so long as he owns the same or until a Court of competent jurisdiction should determine otherwise. Any further relief requested by the parties is denied.

FILED BY THE COURT
04/04/2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Chief US Bankruptcy Judge
District of South Carolina

Entered: 04/04/2023