

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	
	)	Case No. 20-CP-07-00989
TURNER'S MARINA LLC,)	
)	
Plaintiff,)	
)	
vs.	)	SUMMONS
)	
R.V. RESORT AND YACHT	)	(Jury Trial Requested)
CLUB OWNERS')	
ASSOCIATION, INC.,)	
)	
Defendant.)	
_____)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the **Amended Complaint** herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at Post Office Box 5550, Hilton Head Island, South Carolina 29938, 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, judgment by default may be rendered against you for the relief demanded in the Complaint.

Law Office of Thomas C. Taylor, LLC

s/ Thomas C. Taylor, Esq.

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TURNERS MARINA LLC.

Hilton Head Island, South Carolina
May 8, 2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	
	)	Case No. 20-CP-07-0989
TURNER'S MARINA LLC,)	
)	
Plaintiff,)	
	)	Amended
vs.	)	Complaint for Declaratory Relief
	)	and
R.V. RESORT AND YACHT	)	Temporary and Permanent
CLUB OWNERS'	)	Injunctive Relief
ASSOCIATION, INC.,)	
	)	(Jury Trial Requested)
Defendant.)	
)	

Pursuant to S.C.R.Civ.P. 15(a), the Plaintiff files this Amended Complaint prior to a responsive pleading being served, and alleges as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff Turner's Marina LLC (hereinafter sometimes referred to as "Turner's Marina") is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina. Its principal place of business is in Beaufort County, in the State of South Carolina, and it is authorized to do business in the State of South Carolina.

2. That the Defendant R.V. Resort and Yacht Club Owners' Association, Inc. (hereinafter sometimes referred to as the "YCOA,") is a not-for-profit corporation, organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Beaufort County, in the State of South Carolina. The YCOA is authorized to do business in the State of South Carolina.

3. That this Court has jurisdiction over all the parties under the South Carolina Rules of Civil Procedure, the South Carolina Code Annotated, and the common law.

4. That venue for all causes of action stated herein lies in Beaufort County.

FACTS

5. That on June 12, 1981, a Declaration of Condominium entitled “Declaration of Covenants and Restrictions for Outdoor Resorts RV Resort and Yacht Club and Provisions for the RV Resort and Yacht Club Owner’s Association, Inc.” (hereinafter sometimes referred to as the “Covenants”) was executed and subsequently recorded in the Office of the Beaufort County Register of Mesne Conveyances at Book 325, Page 920.

6. That the Covenants are applicable to certain property on Hilton Head Island, South Carolina commonly known as the “Outdoor Resorts Marina,” consisting of approximately 200 individually owned lots and certain common areas and amenities as are more fully described in Deed Book 325 at Page 939 in the Office of the Clerk of Court for Beaufort County (hereinafter sometimes referred to as the “Property”), and the Covenants contain restrictions, easements, affirmative obligations, charges, liens and leases affecting the Property. The individually owned lots are arranged in an oval pattern along roads surrounding recreational facilities including a swimming pool and a tennis court. Adjacent to the oval area are additional recreational facilities and common areas belonging to the YCOA, including roads, a recreational building and swimming pool adjacent to the marina basin, and two tennis courts adjacent to a parking lot. All property owned by the Defendant YCOA is subject to the Covenants.

7. That the marina described in Article XII, Section 12.5 of the Covenants as an “adjacent but totally separate development” is now owned by the Plaintiff Turner’s Marina, and consists primarily of a marina basin and docks, rental office, boat launching ramp, marina bath house, fuel dock, marina office, parking spaces with a parking lot, and certain roads. Both the Plaintiff and the Defendant own portions of the property subject to the Covenants.

8. That the Covenants also contain and incorporate By-Laws, Rules and Regulations for Owners, a lease of certain portions of the Property, procedures for amendment, and they set forth the rights and obligations of owners and members to enforce the Covenants and recover attorneys fees and expenses incurred in doing so if they prevail.

9. That Article VII of the Covenants grants the original "Developer" the right, in the absence of use by the lot owner or his guest, to rent lots within the Property at scheduled rates. Pursuant to this article, the Developer, or any person or entity exercising the Developer's rights, is obligated to remit fifty (50%) percent of the gross amount collected to the lot owner and retain the other fifty (50%) percent.

10. That the original Developer of the Property was O.R.A. of Carolina, Inc.

11. That the entity known as Billybob's Marinas, Inc., a South Carolina corporation, validly acquired that certain real property and all improvements thereon referred to above as the "Outdoor Resorts Marina," consisting of 1.41 acres, more or less. That in addition Billybob's Marinas, Inc. validly acquired that certain dock extending from the 1.41 acres into and on the marshes and waters of Skull Creek subject to certain permits including OCRM permits numbered 91-3D-324-P, 97-IT-0280P-C, and 2009-1417-1IQ. That in addition, Billybob's Marinas, Inc. validly acquired that certain marina and dock extending from the 1.41 acres in to the waters of Blue Heron Creek and that certain harbor located to the east of the 1.41 acres, as is subject to OCRM permits numbered 83-3C-062 and 91-3D-324-P.

12. That in addition, Billybob's Marina, Inc. validly acquired certain tangible personal property located in, on and about the 1.41 acres and certain intangible property, including, without

limitation, contract rights and rights under the Covenants, and the internet domain www.hiltonheadharbor.com.

13. That on or about December 21, 2017, Billybob's Marinas, Inc., for the consideration of \$4,600,000, conveyed to the Plaintiff Turner's Marina, all of its right, title and interest to the afore-described tangible and intangible property. Said conveyance also included the conveyance by Billybob's Marinas, Inc. to Turner's Marina, of all of Billybob's Marinas, Inc.'s right and interest in all documents recorded in the Office of the Register of Deeds for Beaufort County, South Carolina providing for a right of first refusal as to any lots or parcels located at the Property, subject only to the provision that Billybob's Marinas, Inc. retained the right of repurchase acquired from Property Research Holdings, Inc. by documents including but not limited to those recorded in Deed Book 245 at Page 1052 and Record Book 1843 ap Page 1509, until the latter of two (2) years from the closing of the sale (which occurred December 21, 2017), or the date the seller financing of \$1,150,000.00 is paid off.

14. That the Plaintiff Turner's Marina is the valid owner of all currently existing "Declarant Rights" as are set forth in the Covenants and that Turner's Marina is the valid owner of all currently existing recorded rights of first refusal emanating from the Covenants as to any lots or parcels located at the Property.

15. That since acquiring the property and rights from Billybob's Marinas, Inc. on December 21, 2017, the Plaintiff has attempted in good faith to work with the Defendant to enforce and amend the Covenants to the mutual benefit of both parties, but the Defendant has failed and refused and continues to fail and refuse to enforce and amend the Covenants in myriad ways.

16. That among other violations of the Covenants that the Defendant has consistently allowed--and indeed encouraged—have been the routine violations of Article 8.1's specific guidelines as to the size and make of travel trailers allowed on lots on the Property, along with the requirement that all travel trailers be readily movable.

17. That the refusal of the Defendant YCOA to enforce the Covenants has directly and proximately damaged the Plaintiff by causing the Plaintiff to lose revenues for the rental of certain lots, from which the Plaintiff would have received one half of the proceeds.

18. That pursuant to Article 8.10 of the Covenants, the Plaintiff is entitled to recover its reasonable attorney's fees and costs of this suit.

FOR A FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

19. That the allegations contained in Paragraphs 1 through 18 are re-alleged as fully as if repeated verbatim herein.

20. That the Plaintiff Turner's Marina brings this action pursuant to South Carolina Code Annot. Sections 15-53-10 through 15-53-140 and the South Carolina Rule of Civil Procedure 57, for judicial declarations:

- a. that the Plaintiff is the valid and lawful owner of the original Developer's "Declarant Rights" under the Covenants;
- b. that the Plaintiff is the valid and lawful owner of all existing rights of first refusal as to any lots or parcels at the Property emanating from the Covenants;
- c. that the Plaintiff is legally entitled to enforce the Covenants pursuant to its ownership interests in the tangible and intangible property set forth above;
- d. that the Defendant YCOA is prohibited from conducting its business in derogation of the Covenants and must enforce the written terms and conditions of the Covenants uniformly and consistently;

- e. that those travel trailers commonly known as “5th wheels” are in fact and legally, “modern travel trailers” subject to the requirements and restrictions of Section 8.1 (b) of the Covenants;
- f. that the Defendant YCOA must adhere to the terms of the Beaufort County (S.C.) Municipal Code Section 78-68 (c), which requires all travel trailers to be on site less than 180 days and be fully licensed and ready for highway use at all times;
- g. that it is a violation of the Covenants to utilize any structure or vehicle on a lot at the Property, as permanent living quarters;
- h. that the obligations of the Developer (now passed to and imposed on the Plaintiff) under Section 7 (VII) of the Covenants are only that the Plaintiff shall render fifty (50%) percent of all gross rentals to the appropriate lot owner and maintain an advertising program to promote the rental of lots at the Property;
- i. that all recreational vehicles on any lot on the Property must always be capable of being immediately moved either under the vehicle’s own power or by a towing vehicle that must remain with the recreational vehicle at all times on the lot;
- j. that all recreational vehicles on any lot on the Property must be intended for temporary stays and be readily moveable;
- k. that the current “Rules and Regulations” of the Defendant pertaining to the Property are invalid and/or enforceable under South Carolina law because they lapsed on January 10, 2019, and have not been approved by the Plaintiff (as the assignee the Developer’s rights);
- l. that any Rules and Regulations promulgated by the Defendant regarding the Property, are subject to the Plaintiff’s rights to approve same as the assignee of the Developer under Section 8.9 of the Covenants; and,
- m. that the Plaintiff, as the assignee of the Developer’s rights, has the right to approve or disapprove any rule or regulation promulgated by the Plaintiff regarding either the operation, use, maintenance, management and control of the Common Properties or governing and restricting the use and maintenance of the lots on the Property.

21. That the Plaintiff requests this honorable Court advance this case to the top of the trial docket consistent with South Carolina law and the Declaratory Judgement statute.

FOR A SECOND CAUSE OF ACTION
Injunctive Relief

22. That the allegations contained in Paragraphs 1 through 21 are re-alleged as fully as if repeated verbatim herein.

23. That the Defendant's intentional and consistent operation of its business in violation of the Covenants as outlined above, amounts to a breach of contract in South Carolina, and that said breach is damaging the Plaintiff in myriad ways, including, but not limited to, denying the Plaintiff its opportunity to rent lots that should be available, but that are, in fact, with the Defendant's knowledge and encouragement, being used as permanent residences.

24. That the Plaintiff is informed and believes, and on the basis of that information and belief alleges, that unless restrained by Order of this Court, Defendant YCOA will continue to violate the Covenants as described above, causing the Plaintiff continuing damages.

25. That such conduct will result in irreparable harm to Plaintiff in that Plaintiff will continue to be damaged due to the loss of revenue from renting lots.

26. That the threat of such irreparable and permanent damage justifies the issuance by this Court of a temporary injunction and a permanent injunction, as well as an award of attorney's fees.

27. That the Plaintiff has no adequate remedy at law for the injuries that the Plaintiff is suffering and will continue to suffer in the future.

WHEREFORE, the Plaintiff Turner's Marina LLC prays that this Honorable Court inquire into the matters set forth herein, and that the Plaintiff have the declarations as sought:

- a. that the Plaintiff is the valid and lawful owner of the original Developer's "Declarant Rights" under the Covenants;
- b. that the Plaintiff is the valid and lawful owner of all existing rights of first refusal as to any lots or parcels at the Property emanating from the Covenants;
- c. that the Plaintiff is legally entitled to enforce the Covenants pursuant to its ownership interests in the tangible and intangible property set forth above;
- d. that the Defendant YCOA is prohibited from conducting its business in derogation of the Covenants and must enforce the written terms and conditions of the Covenants uniformly and consistently;
- e. that those travel trailers commonly known as "5th wheels" are in fact and legally, "modern travel trailers" subject to the requirements and restrictions of Section 8.1 (b) of the Covenants;
- f. that the Defendant YCOA must adhere to the terms of the Beaufort County (S.C.) Municipal Code Section 78-68 (c), which requires all travel trailers to be on site less than 180 days and be fully licensed and ready for highway use at all times;
- g. that it is a violation of the Covenants to utilize any structure or vehicle on a lot at the Property, as permanent living quarters;
- h. that the obligations of the Developer (now passed to and imposed on the Plaintiff) under Section 7 (VII) of the Covenants are only that the Plaintiff shall render fifty (50%) percent of all gross rentals to the appropriate lot owner and maintain an advertising program to promote the rental of lots at the Property;
- i. that all recreational vehicles on any lot on the Property must always be capable of being immediately moved either under the vehicle's own power or by a towing vehicle that must remain with the recreational vehicle at all times on the lot;
- j. that all recreational vehicles on any lot on the Property must be intended for temporary stays and be readily moveable;
- k. that the current "Rules and Regulations" of the Defendant pertaining to the Property are invalid and/or enforceable under South Carolina law because they lapsed on January 10, 2019, and have not been approved by the Plaintiff (as the assignee the Developer's rights);
- l. that any Rules and Regulations promulgated by the Defendant regarding the Property, are subject to the Plaintiff's rights to approve same as the assignee of the Developer under Section 8.9 of the Covenants; and,

- m. that the Plaintiff, as the assignee of the Developer's rights, has the right to approve or disapprove any rule or regulation promulgated by the Plaintiff regarding either the operation, use, maintenance, management and control of the Common Properties or governing and restricting the use and maintenance of the lots on the property.

FURTHER, the Plaintiff requests this Court award the Plaintiff its attorney fees and costs as per the Covenants, and for any and all further declarations as this Court deems just and proper.

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Plaintiff requests trial by a jury.

s/ Thomas C. Taylor, Esq./

Thomas C. Taylor

Hilton Head Island, South Carolina

May 8, 2020