

STATE OF NORTH CAROLINA
COUNTY OF PENDER

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 174

OLDE POINT PROPERTY OWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

HARBOUR VILLAGE YACHT CLUB, INC.,

Defendant.

**DEFENDANT'S ANSWER, MOTION TO
DISMISS, AND MOTION FOR
JUDGMENT ON THE PLEADINGS**

(JURY TRIAL DEMANDED)

NOW COMES Defendant Harbour Village Yacht Club, Inc. ("Defendant"), and answers and responds to the Complaint ("Complaint") of Plaintiff Olde Point Property Owners Association, Inc., misidentified in the caption and throughout the Complaint as Olde Point Property Owner's Association, Inc. and Olde Point Property Owner's Association (collectively, "Plaintiff") as follows:

First Answer and Motion to Dismiss

Plaintiff's Complaint fails to state a claim for which relief may be granted and should therefore be dismissed pursuant to N.C. R. Civ. P. 12(b)(6) and 12(b)(7).

Without limiting the generality of the foregoing, Defendant says and alleges in support of this Motion to Dismiss that:

1. The Plaintiff-homeowners' association does not have standing as a representative of its members because the claims asserted and the relief requested require the individual members' participation. *See, e.g., Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977); *Creek Pointe Homeowner's Ass'n v. Happ*, 146 N.C. App. 159, 552 S.E.2d 220 (2001).

2. Those persons purporting to act on behalf of Plaintiff in the filing of the instant lawsuit seek a judgment declaring that Defendant does not have authority to operate a yacht club within the Olde Point Development.

3. A substantial number of the members of the Defendant-yacht club are in fact also members of the Plaintiff-homeowners' association who contend that Defendant *does* have authority to operate a yacht club within the Olde Point Development. Plaintiff cannot adequately represent the interests of those persons.

4. Assuming, *arguendo*, Plaintiff has standing to bring this action—it does not—these persons are necessary parties, as that term is used in N.C. R. Civ. P. 19, and Plaintiff's Complaint must therefore be dismissed.

5. In addition to the foregoing, Plaintiff lacks representational standing because the interests it purports to protect are not germane to Plaintiff's stated purpose.

6. Moreover, Plaintiff itself does not meet the irreducible constitutional minimum requirement of having a sufficient stake in the case because, Plaintiff as an organization has no claim to the easement and no right or ability to use the easement. *See Creek Pointe Homeowner's Association v. Happ*, 146 N.C. App. 159, 552 S.E.2d 220 (2001).

Second Answer and Motion for Judgment on the Pleadings

Defendant moves for judgment on the pleadings pursuant to Rule 12(c).

Third Answer and Defense

Defendant responds to the enumerated Paragraphs of Plaintiff's Complaint as follows:

1. Defendant admits the allegations set forth in Paragraph 1 of the Complaint upon information and belief.

2. Defendant admits Plaintiff is a property owners association. Defendant further admits a copy of a document purporting to be an “Amendment of Declaration of Restrictive Covenants” recorded in Book 4700 at Page 1 of the Pender County Registry is attached to the Complaint as Exhibit 1. The documents speak for itself. Defendant lacks information sufficient to form a belief as to the state of mind or purpose of the incorporator of Plaintiff and therefore denies the allegation concerning the purpose of Plaintiff’s formation. Except as expressly admitted herein, the allegations set forth in Paragraph 2 of Plaintiff’s Complaint are denied.

3. Paragraph 3 of Plaintiff’s Complaint purports to state a legal conclusion to which no response is required. To the extent a response is required, and without waiving its right to respond further and at the appropriate time, Defendant says and alleges as follows: The cited provision of the Planned Community Act does not confer standing upon a homeowners’ association where standing does not otherwise exist. *See Creek Point Homeowner’s Association v. Happ*, 146 N.C. App. at 163-64, 552 S.E.2d at 224.

4. The allegations set forth in Paragraph 4 of Plaintiff’s Complaint are denied.

5. The allegations set forth in Paragraph 5 of Plaintiff’s Complaint are admitted.

6. The allegations set forth in Paragraph 6 of Plaintiff’s Complaint are admitted.

7. The allegations set forth in Paragraph 7 of Plaintiff’s Complaint are admitted.

8. The allegations set forth in Paragraph 8 of Plaintiff’s Complaint are admitted

9. Defendant repeats and incorporates by reference its responses to Paragraphs 1 through 8 of the Complaint.

10. Defendant admits the “Parking Lot” tract was conveyed by the Hanley Corporation on or about September 23, 1999. Defendant further admits that a copy of the deed conveying the tract is attached to the Complaint as Exhibit 2. The document speaks for itself. To the extent of

any conflict between the contents of the document and the allegations set forth in Paragraph 10, the allegations are denied. Except as expressly admitted herein, the allegations are denied.

11. Defendant admits Lot 1, Rev. was conveyed by the Hanley Corporation on or about September 23, 1999. Defendant further admits that a copy of the deed conveying the tract is attached to the Complaint as Exhibit 2. The document speaks for itself. To the extent of any conflict between the contents of the document and the allegations set forth in Paragraph 11, the allegations are denied. Except as expressly admitted herein, the allegations are denied.

12. The allegations set forth in Paragraph 12 of the Complaint, inclusive of all subparts, are denied.

13. Defendant admits Defendant has constructed a gate. Because the pronoun “them” is undefined and is therefore subject to more than one interpretation, the remaining allegations set forth in Paragraph 13 are denied.

14. Defendant admits that copies of its Rules and Regulations for Non-Members and its Registration Process for 2022 for Olde Point Residents are attached to the Complaint as Exhibits 3 and 4. The documents speak for themselves. To the extent of any conflict between the contents of the documents and the allegations set forth in Paragraph 14, the allegations are denied. Defendant expressly denies that its enacted and published rules and regulations are unreasonable, inconsistent with easements or other property rights, or contrary to North Carolina law. Except as expressly admitted herein, the allegations set forth in Paragraph 14 of Plaintiff’s Complaint are denied.

15. Defendant admits that a copy of a January 27, 2022 e-mail from William Keith to Greg Leighton is attached to the Complaint as Exhibit 5. The e-mail speaks for itself. To the extent of any conflict between the e-mail and the allegations set forth in Paragraph 15, the

allegations are denied. Defendant expressly denies that its rules and regulations are overly restrictive. Except as expressly admitted herein, the allegations set forth in Paragraph 15 of Plaintiff's Complaint, the allegations are denied.

16. Defendant admits that a copy of a February 4, 2022 e-mail from William Keith to Gregory P. Leighton is attached to the Complaint as Exhibit 6. The e-mail speaks for itself. To the extent of any conflict between the e-mail and the allegations set forth in Paragraph 16, the allegations are denied. Except as expressly admitted herein, the allegations set forth in Paragraph 16 of Plaintiff's Complaint, the allegations are denied.

17. Defendant admits that a copy of a February 8, 2022 e-mail from Gregory P. Leighton to William Keith is attached hereto as Exhibit 7. The e-mail speaks for itself. To the extent of any conflict between the e-mail and the allegations set forth in Paragraph 17, the allegations are denied. Except as expressly admitted herein, the allegations set forth in Paragraph 17 of Plaintiff's Complaint, the allegations are denied.

18. The allegations set forth in Paragraph 18 of the Complaint, inclusive of all subparts, are denied.

19. The allegations set forth in Paragraph 19 of the Complaint are denied.

20. Defendant repeats and incorporates by reference its responses to Paragraphs 1 through 19 of the Complaint.

21. Defendant admits that Defendant took ownership of Lot 1 Rev and the Parking Lot tract pursuant to those restrictions of record recorded prior to the time Defendant took title. Except as expressly admitted herein, the allegations set forth in Paragraph 21 of Plaintiff's Complaint are denied.

22. The allegations set forth in Paragraph 22 of Plaintiff's Complaint are denied.

23. The allegations set forth in Paragraph 23 of Plaintiff's Complaint are denied.

24. Defendant admits Defendant had, and has, the right to construct, lease, operate, and manage a club, marina, or other like facility with associated amenities. Except as expressly admitted, herein, the allegations set forth in Paragraph 24 of Plaintiff's Complaint are denied.

25. Defendant admits a copy of a document purporting to be the Declaration of Restrictive Covenants recorded in Book 745 at Page 422 of the Pender County Registry is attached to the Complaint as Exhibit 9. The document speaks for itself. To the extent of any conflict between the contents of the document and the allegations set forth in Paragraph 25, the allegations are denied.

26. Defendant admits a copy of a document purporting to be the Declaration of Restrictive Covenants recorded in Book 745 at Page 422 of the Pender County Registry is attached to Plaintiff's Complaint as Exhibit 9. The document speaks for itself. To the extent of any conflict between the contents of the document and the allegations set forth in Paragraph 26, the allegations are denied.

27. The allegations set forth in Paragraph 27 of Plaintiff's Complaint are admitted upon information and belief.

28. Defendant lacks information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 of Plaintiff's Complaint and the same are therefore denied.

29. Defendant admits that in an effort to obtain leverage over Defendant, and without any legal authority whatsoever, Plaintiff sought to amend the declaration to remove language which allows Defendant, as successor to the rights of the developer, to operate a yacht club. Defendant expressly denies that Plaintiff's act in removing the operative language had any legal

effect whatsoever. Except as expressly admitted herein, the allegations set forth in Paragraph 29 of Plaintiff's Complaint are denied.

30. The allegations set forth in Paragraph 30 of Plaintiff's Complaint are denied.

31. The allegations set forth in Paragraph 31 of Plaintiff's Complaint are denied.

32. The allegations set forth in Paragraph 32 of Plaintiff's Complaint are denied.

33. Paragraph 33 of the Complaint purports to state a legal conclusion to which no response is required. To the extent a response is required, Defendant denies Plaintiff is entitled to the relief Plaintiff purports to seek.

34. The allegations set forth in Paragraph 34 of Plaintiff's Complaint are denied.

35. The allegations set forth in Paragraph 35 of Plaintiff's Complaint are denied.

36. Defendant repeats and incorporates by reference its responses to Paragraphs 1 through 35 of the Complaint.

37. The allegations set forth in Paragraph 37 of Plaintiff's Complaint are denied.

38. The allegations set forth in Paragraph 38 of Plaintiff's Complaint are denied.

39. The allegations set forth in Paragraph 39 of Plaintiff's Complaint are denied.

40. The allegations set forth in Paragraph 40 of Plaintiff's Complaint are denied.

All other factual allegations not expressly admitted herein are denied.

Fourth Defense: Failure to Join Necessary Parties

Plaintiff's failure to join necessary parties (including, without limitation, the overlapping membership of both the Plaintiff- and Defendant-organizations whose rights will be affected by the ultimate disposition of the case) is pled in bar to Plaintiff's claims.

Fifth Defense: Successorship

Assuming Plaintiff's amended declaration is valid, Defendant is the successor to the rights of Olde Point Associates Limited Partnership General Partner Hanley Corporation and, as such, Defendant has the right to operate and manage a yacht club.

Sixth Defense: *Ultra Vires* Acts

To the extent Plaintiff's president William Keith has acted without the authority of Plaintiff and its membership in causing this lawsuit to be instituted, the absence of legal authority is pled in bar to Plaintiff's claims.

Seventh Defense: No Irreparable Harm

Plaintiff has failed to demonstrate, and cannot demonstrate, the existence or prospect of any irreparable harm and such deficiency bars Plaintiff's claim for injunctive relief.

Eighth Defense: Adequacy of Remedy

Assuming, *arguendo*, Plaintiff has sustained any harm or injury whatsoever, the same being expressly denied, Plaintiff has an adequate remedy at law which would bar any entitlement to injunctive relief.

Ninth Defense: Inadequacy of Description

Plaintiff has failed to describe by metes and bounds the lands over which Plaintiff claims an easement and such failure bars Plaintiff's claim.

Tenth Defense: Scope of Easement

If an easement has been reserved for use by Plaintiff, the same being expressly denied, Plaintiff's intended use of the easement exceeds the purpose for which such easement was reserved and granted.

Eleventh Defense: Reasonable Restrictions

Assuming Defendant's property is burdened by an easement in favor of Plaintiff, the same being expressly denied, Defendant is entitled to impose reasonable rules and restrictions, and to charge reasonable maintenance fees.

Twelfth Defense: Laches and Estoppel

At least as early as 2005, in correspondence and communications from counsel authorized to act on behalf of Plaintiff, Plaintiff made the arguments regarding the easements claimed in this instant case. Plaintiff failed to litigate the issues until 17 years later. By application of the equitable doctrines of laches and estoppel, Plaintiff cannot properly raise these claims again now.

Thirteenth Defense: Statute of Limitations

Defendant pleads all applicable statutes of limitation in bar to Plaintiff's claims.

WHEREFORE, Defendant respectfully prays of the Court as follows:

1. That Plaintiff have and recover nothing of Defendant;
2. That Plaintiff's Complaint be dismissed with prejudice;
3. That the costs of this action be taxed against Plaintiff;
4. That the Defendant have and recover its reasonable attorney's fees, to the extent permitted by applicable law;
5. For a jury trial on all issues so triable; and
6. For such other and further relief as the Court deems just and proper.

This the 6th day of May, 2022.

MURCHISON, TAYLOR & GIBSON, PLLC

By:

Andrew K. McVey, By Bill Mc

Andrew K. McVey

State Bar # 20217

1979 Eastwood Road, Suite 101

Wilmington, NC 28403

(910) 763-2426

Amcvey@murchisontaylor.com

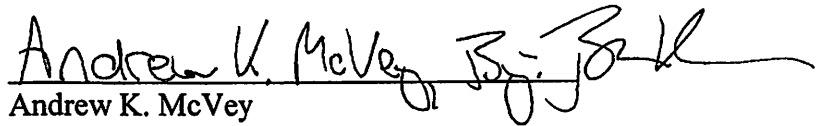
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Answer, Motion to Dismiss, and Motion for Judgment on the Pleadings was this day served upon the below named counsel of record, postage prepaid, and emailing at the addresses shown below:

Bradley A. Coxe
HODGES COXE & POTTER, LLP
3907-100 Wrightsville Avenue
Wilmington, NC 28403
Counsel for Plaintiff

This the 6th day of May, 2022.

MURCHISON, TAYLOR & GIBSON, PLLC



Andrew K. McVey
N. C. State Bar # 20217
1979 Eastwood Road, Suite 101
Wilmington, NC 28403