

STATE OF NORTH CAROLINA
CRAVEN COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10.CvS 1349

FAIRFIELD HARBOUR PROPERTY OWNERS ASSOCIATION, INC.,)
)

Plaintiff,)

v.)

PETER B. DREZ, and wife,)
MARGUERITE F. DREZ, NEAL E.)
GUMPEL, and wife, HELEN GUMPEL,)

Defendants.)
)

JUDGMENT

THIS CAUSE coming on to be heard on the 6th day of December, 2010, before the undersigned Judge Presiding over the December 6, 2010 civil session of the Craven County Superior Court upon the defendants' motion for judgment on the pleadings pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure and the defendants' motion to dismiss under Rule 12(b)6. After considering the plaintiff's Second Amended Complaint and the exhibits attached thereto, the briefs filed by the parties and the arguments of counsel, the Court, after considering the allegations contained in the plaintiff's Second Amended Complaint as being true and in the light most favorable to the plaintiff, has concluded that:

1. Fairfield Harbour, which includes approximately 2,824 residential units, was established in 1971 and meets the definition of a planned community as that term is defined under N.C.G.S. § 47F-1-103(23) of the North Carolina General Statutes which became effective on January 31, 1999.

2. The property owners in Fairfield Harbour have not adopted the Planned Community Act pursuant to N.C.G.S. § 47F-1-102(d), and the powers of the plaintiff

Association, therefore, are governed by the provisions of N.C.G.S. § 47F-1-201(c) to the extent that the applicable Declarations do not expressly provide to the contrary.

3. In a community that has not adopted the Planned Community Act, the powers of the plaintiff are contractual and are limited to those granted to it in the applicable Declaration of Restrictions or are specifically authorized under N.C.G.S. § 47F-1-102(c).

4. The powers granted to associations for planned communities under N.C.G.S. § 47F-1-102(c) do not include N.C.G.S. § 47F-3-102(7), which gives associations for communities that have adopted the Planned Community Act the power to cause additional improvements to be made as part of the common element, or § 47F-3-102(8), which gives such associations the power to acquire and encumber real property.

5. The plaintiff does not have statutory authority to acquire and encumber the Recreational Amenities.

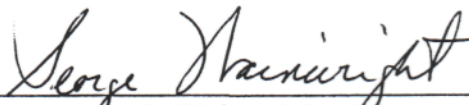
6. Affirmative covenants, such as the covenant for the payment of assessments, are not enforceable unless the obligation for such payment is imposed in clear and unambiguous language which is sufficient to guide the courts in its application.

7. Regardless of the terms and provisions of the Planned Community Act, the Declarations applicable to Fairfield Harbour do not give the Association any right or power to: (1) purchase, lease or otherwise assume control over the Recreational Amenities owned by MidSouth Golf, LLC through an expenditure of funds generated from assessments; or (2) expend funds to bring them within optimal operating condition under any plan to be funded by assessments imposed upon the owners of property subject to the Declarations applicable to Fairfield Harbour.

Based on the foregoing conclusions, it is **ORDERED, ADJUDGED** and **DECREED** that:

1. The defendants' Motion for a Judgment on the Pleadings is hereby granted. The Court, therefore, does not need to address the plaintiff's Second or Third Claims for Relief or the defendants' Motion to Dismiss on the grounds that the plaintiff has failed to state a justiciable issue, all of which are deemed moot. All issues in this cause, therefore, are hereby resolved.
2. The plaintiff shall be taxed with the costs of this action.

This 6 day of December, 2010.

A handwritten signature in cursive script, reading "George L. Wainwright, Jr.", is written over a horizontal line.

George L. Wainwright, Jr.
Judge Presiding