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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-417

Filed: 21 November 2017

Chatham County, No. 16-CVS-439

CHATHAM FOREST HOMEOWNERS ASSOCIATION, INC., Plaintiff,

v.

PHIL STONE HOMES, INC., Defendant.

Appeal by plaintiff from order entered 6 December 2016 by Judge Carl R. Fox in Chatham County Superior Court. Heard in the Court of Appeals 18 September 2017.

*Harris & Hilton PA, by Nelson G. Harris, for plaintiff-appellant.*

*Gunn & Messick, LLP, by Paul S. Messick, Jr. for defendant-appellee.*

DIETZ, Judge.

Plaintiff Chatham Forest Homeowners Association brought this suit seeking to compel Defendant Phil Stone Homes to convey a piece of property to the HOA. The HOA contends that plat maps in the property's chain of title designated it as a common area that must be conveyed to the HOA for the benefit of all lot owners in the development.

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As explained below, the trial court properly rejected this argument and entered summary judgment in favor of Phil Stone Homes. The Declaration that created the Chatham Forest development was never amended to include the property owned by Phil Stone Homes. Thus, that property cannot be subject to the restrictions in the Declaration, even if some plat maps in the property's chain of title suggest that, at one time, the Declarant intended to make the property part of the Chatham Forest community. We affirm the trial court's entry of summary judgment in favor of Phil Stone Homes.

**Facts and Procedural History**

In 1998, Voller Realty & Construction, Ltd. recorded a "Declaration of Covenants, Conditions, and Restrictions" in the Chatham County Registry. The Declaration created a 73.102 acre planned community known as Chatham Forest, established the Chatham Forest Homeowners Association, and named Voller as the Declarant.

The Declaration anticipated future phases of Chatham Forest's development that would extend beyond the subdivision's initial 73.102 acres. It provided that additional property may be added to the development "by amendment to this Declaration executed by Declarant his successors and/or assigns."

The Declaration also designated various portions of the development as "Common Area" that would be maintained by the HOA for the benefit of all lot owners

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in the community. That Common Area includes “any open space . . . as shown on the recorded plat (or future plats and phases) of Chatham Forest.” The Declaration requires all Common Area located within a particular phase of the development to be conveyed to the HOA before conveyance of a last lot within that phase.

In 1999, one year after creating the Chatham Forest subdivision, the Declarant acquired additional adjacent property, later referred to as “Phase 9” of the Chatham Forest development. The Declarant never amended the Declaration to include this property as part of the Chatham Forest development, as the terms of the Declaration required.

In 2006, the Declarant subdivided the Phase 9 property and recorded a new plat map that included an area with the notation “Reserved For Future Development.” In 2008, the Declarant recombined and recorded the plat and relabeled a portion of the area marked “Reserved for Future Development” as “New Open Space.” This plat map also referenced the Declaration for the Chatham Forest development in a note providing that “all open space shown in this plat shall be maintained by the property owner and/or property owner’s association pursuant to the recorded covenants as filed with the Chatham County Deed Registry.”

In 2013, the Declarant recorded a new plat map that created a new subdivision consisting of Lots 209 to 212, including Lot 210A. Lot 210A is located in the area previously designated as “New Open Space” in the 2008 plat map. The Declarant then

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conveyed Lot 210A to a third party, who later conveyed it to Defendant Phil Stone Homes.

At some point after Phil Stone Homes bought the property, the HOA asserted that the property was subject to the Declaration and that Lot 210A was a Common Area that must be conveyed to the HOA for the benefit of all lot owners. Phil Stone Homes refused to convey the property and the HOA filed suit seeking declaratory judgment that Phil Stone Homes took Lot 210A subject to an obligation to convey the property to the HOA. The trial court entered summary judgment in favor of Phil Stone Homes and the HOA timely appealed.

**Analysis**

The HOA argues that the trial court erred by entering summary judgment in favor of Phil Stone Homes. As explained below, we affirm the trial court's order.

Summary judgment is properly granted 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 any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c).

The HOA contends that when Phil Stone Homes bought Lot 210A, it took the property subject to the terms of the Declaration and, because earlier plat maps designated Lot 210A as “New Open Space,” Lot 210A was Common Area under the Declaration and must be conveyed to the HOA. This argument fails because the

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Declaration applies only to property subject to it, and the trial court properly concluded that Lot 210A is not subject to the Declaration as a matter of law.

The Declaration applies only to two categories of property: first, the 73.102 acres of property constituting the original Chatham Forest subdivision; and, second, any property added to the development in future phases “by amendment to this Declaration executed by Declarant his successors and/or assigns.”

The HOA conceded at oral argument that the Declarant never amended the Declaration to include Lot 210A within its terms. Thus, as a matter of law, Phil Stone Homes cannot be subject to covenants contained within that Declaration.

To be sure, as the HOA points out, various plat maps that the Declarant filed between 2006 and 2008 suggested that the Declarant *intended* to bring the property that is now Lot 210A into the development and subject it to the covenants accompanying the Declaration. And, at least arguably, those same plat maps indicate that the Declarant *intended* to designate Lot 210A as a Common Area that must be conveyed to the HOA.

Based on those plat maps, the HOA might have a claim against the Declarant. But Phil Stone Homes is an innocent third party, not the Declarant. When Phil Stone Homes bought Lot 210A, a title search would have revealed that Lot 210A was not subject to the Declarations. Simply put, although the HOA may have claims against the Declarant (who is not a party to this action), the claims it asserted against Phil

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Stone Homes fail as a matter of law. Accordingly, the trial court properly entered summary judgment in favor of Phil Stone Homes.

**Conclusion**

We affirm the trial court's entry of summary judgment in favor of Phil Stone Homes.

**AFFIRMED**

Chief Judge McGEE and Judge BERGER concur.

Report per Rule 30(e).