STATE OF NORTH CAROLINA HAYWOOD COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 21 CVS 1224
MARY ANNETTE, LLC; JORGE CURE; DANA CURE; TWILIGHT DEVELOPMENTS, INC.; OZZIE 1, LLC; MICHAEL WASHBURN; and CHRISTINE SHEFFIELD, Plaintiffs, v. TERRI LYNN CRIDER and MOUNTAIN GIRL VENTURES, LLC, Defendants.	**ORDER AND OPINION ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

1. This case arises out of disputes concerning the creation, ownership, and management of Mary Annette, LLC ("Mary Annette"). Defendants Terri Lynn Crider and Mountain Girl Ventures, LLC have moved for summary judgment on their sixth counterclaim, which seeks to quiet title to part of the property that Mary Annette was formed to develop. (ECF No. 81.) For the following reasons, the Court **DENIES** the motion.

McLean Law Firm, P.A., by Russell Lyway McLean, for Plaintiffs Mary Annette, LLC, Jorge Cure, Dana Cure, Twilight Developments, Inc., Ozzie 1, LLC, Michael Washburn, and Christine Sheffield.

Smathers & Smathers, by Patrick U. Smathers, for Defendants Terri Lynn Crider and Mountain Girl Ventures, LLC.

Conrad, Judge.

I.
BACKGROUND

2. The Court does not make findings of fact when ruling on a motion for summary judgment. The following background, drawn from the evidence submitted

by the parties, provides context for the Court's analysis and ruling only. Readers may find additional background and procedural history in earlier orders. *See, e.g.*, *Mary Annette, LLC v. Crider*, 2023 NCBC LEXIS 28 (N.C. Super. Ct. Feb. 23, 2023).

3. Mary Annette was formed for the purpose of developing a piece of land in western North Carolina. The company's operating agreement names three members—Mountain Girl Ventures, Twilight Developments, Inc., and Ozzie 1, LLC—and states that each has a one-third interest. Crider wholly owns Mountain Girl Ventures; Jorge and Dana Cure together own Twilight Developments; and Michael Washburn and Christine Sheffield together own Ozzie 1. (*See* Op. Agrmt., ECF No. 31.)

4. Before April 2021, Crider owned a two-thirds interest in the real property at issue, and her brother Joey owned the remaining one-third. (*See* Taylor Aff. ¶ 6, ECF No. 92.) On the first day of that month, the Crider siblings executed deeds of transfer granting to Mary Annette their respective interests in "Tracts C-1, C-2, C-3, C-4 and C-5 as they appear on that certain plat of survey titled, 'Final Plat for Smoky View Cottages and RV Resort' by L. Kevin Ensley P.L.S. dated 2/2/21 drawing no. B-004-21, recorded in Plat Cabinet D, Slot 1234 Haywood County Registry." (Defs.' Ex. 2, ECF No. 88; Defs.' Ex. 3a, ECF No. 90.) Mary Annette then executed a deed of trust on tracts C-1, C-2, and C-4 to secure a $550,000 loan from HP Investment Group Inc. 401k. (Defs.' Ex. 4, ECF No. 91.) Finally, Mary Annette transferred to Crider the entirety of tracts C-3 and C-5. (Defs.' Ex. 8, ECF No. 95.)

5. The parties now disagree as to what exactly the Crider siblings intended to transfer when they deeded "C-4" to Mary Annette. In their sixth counterclaim, Defendants ask the Court to declare that the Crider siblings remain the rightful owners of the cabins and recreational vehicle ("RV") spots located within the perimeter of tract C-4. On 30 June 2023, Defendants moved for summary judgment on this claim. (ECF No. 81.) The motion is fully briefed, and the Court elects to decide it without a hearing. *See* BCR 7.4.

II.
LEGAL STANDARD

6. Summary judgment is appropriate 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. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the Court must consider the evidence in the light most favorable to the nonmoving party, drawing all inferences in the nonmoving party's favor. *See, e.g.*, *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 680 (2018).

7. The moving party "bears the initial burden of demonstrating the absence of a genuine issue of material fact." *Liberty Mut. Ins. Co. v. Pennington*, 356 N.C. 571, 579 (2002). The moving party meets its burden "by proving that an essential element of the opposing party's claim is nonexistent, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of his claim." *DeWitt v. Eveready Battery Co.*, 355 N.C. 672, 681 (2002) (citations and quotation marks omitted). If the moving party makes that showing, "the burden shifts to the

nonmoving party to 'produce a forecast of evidence demonstrating that the nonmoving party will be able to make out at least a prima facie case at trial.' " *Cummings v. Carroll*, 379 N.C. 347, 358 (2021) (quoting *DeWitt*, 355 N.C. at 682).

8. When a party requests offensive summary judgment on its own claims for relief, "a greater burden must be met." *Brooks v. Mount Airy Rainbow Farms Ctr., Inc.*, 48 N.C. App. 726, 728 (1980). The moving party "must show that there are no genuine issues of fact, that there are no gaps in his proof, that no inferences inconsistent with his recovery arise from the evidence, and that there is no standard that must be applied to the facts by the jury." *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985). For that reason, it is "rarely . . . proper to enter summary judgment in favor of the party having the burden of proof." *Blackwell v. Massey*, 69 N.C. App. 240, 243 (1984).

III.
ANALYSIS

9. The sole question presented is whether the deeds executed by the Crider siblings transferred the cabins and RV spots within tract C-4 to Mary Annette. Defendants contend that the deeds transferred the common area surrounding these individual units but not the units themselves. Mary Annette, meanwhile, maintains that it owns the common area and the units.

10. The parties have disputed this issue once already. Before the case was designated to the Business Court, Mary Annette moved for a preliminary injunction to bar Crider from handling rentals of its property. The Honorable George Bell granted that motion and made several factual findings, including that Mary Annette

had purchased all cabins and RV spots within tract C-4 from the Crider siblings. (*See* Order 2, ECF No. 6.)

11. Mary Annette contends that Judge Bell's order controls here based on the principle that one superior court judge may not overrule another's conclusions of law. *See, e.g.*, *State v. Woolridge*, 357 N.C. 544, 549–50 (2003). The Court disagrees.

12. Interpretation of a deed is often, but not always, a pure question of law. When a deed is unambiguous, its interpretation is a question of law, *see Runyon v. Paley*, 331 N.C. 293, 305 (1992), and the Court must decide that question without considering evidence outside the deed, *see Simmons v. Waddell*, 241 N.C. App. 512, 524 (2015). But when "the language is ambiguous so that the effect of the instrument must be determined by resort to extrinsic evidence that raises a dispute as to the parties' intention, the question of the parties' intention becomes one of fact." *Runyon*, 331 N.C. at 305. Unlike most issues of fact, this one falls to the Court, not the jury, to decide. *See id.*; *see also Bank of Am., N.A. v. Schmitt*, 263 N.C. App. 19, 22 (2018) (explaining that "the traditional rule that it is the judge's role to determine the intent of the parties in order to interpret the language in a deed" remains in place).

13. At no point did Judge Bell hold that the deeds at issue are unambiguous. Rather, he found as a fact that Mary Annette had purchased the individual units within tract C-4 and that the deeds had transferred the Crider siblings' interests in those units to Mary Annette. This preliminary factual finding is not binding, and the Court is free to rule on Defendants' motion for summary judgment without risk of overruling Judge Bell. *See Kaplan v. Prolife Action League of Greensboro*, 111 N.C.

App. 1, 16 (1993) ("[T]he findings of fact and other proceedings of the trial court which hears the application for a preliminary injunction are not binding at a trial on the merits.").

14. Still, the preliminary-injunction order is a useful data point. The Court notes that the record appears not to have changed much, if at all, and that Mary Annette's burden is lighter now than it was then. To support its motion for preliminary injunction, Mary Annette needed to show a likelihood of success on the merits. Judge Bell concluded that it had done so. *See, e.g.*, *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401 (1983). To avoid summary judgment, Mary Annette need only present "more than a scintilla" of evidence. *DeWitt*, 355 N.C. at 681 (quoting *Utils. Comm'n of N.C. v. Great S. Trucking Co.*, 223 N.C. 687, 690 (1943)). It has met that lower threshold.

15. As an initial matter, the deeds are ambiguous. The Crider siblings executed deeds transferring to Mary Annette their interests in tract C-4 "as [it] appear[s] on that certain plat of survey titled, 'Final Plat for Smoky View Cottages and RV Resort' by L. Kevin Ensley P.L.S. dated 2/2/21." (Defs.' Exs. 2, 3a.) In other words, the deeds state that the bounds of tract "C-4" can be identified only by reference to an external source, the plat.

16. The plat, a detailed map of the real property that the Criders transferred to Mary Annette, is susceptible to more than one reasonable interpretation. It is divided into five areas; the parties' dispute concerns the largest of the five. In roughly the center of that area, an oval contains the designation "C-4." Immediately below the

oval are the words "2.062 Ac. Common Area." Scattered within the area's perimeter are the contested cabins and RV units, whose individual areas are listed in a rectangle to the left of the map. (*See* Defs.' Ex. 1, ECF No. 87.) As Defendants argue, the placement of the words "2.062 Ac. Common Area" underneath the term "C-4" might indicate that C-4 consists of the common area but not the individual units that ring the common area. But it could also indicate that a portion of tract C-4 is designated as a common area and that other portions within the outer perimeter are designated for individual units, meaning that the common area and the individual units are part and parcel of a single tract. There is no unambiguous sign that C-4 excludes the individual units.

17. Given this ambiguity, the Court must look to extrinsic evidence. *See Runyon*, 331 N.C. at 305; *Lane v. Coe*, 262 N.C. 8, 13 (1964) ("A description is . . . latently ambiguous if it is insufficient in itself to identify the property but refers to something extrinsic by which identification might possibly be made. In such case plaintiff may offer evidence, parol and other, with reference to such extrinsic matter tending to identify the property . . . ."). Each side has submitted evidence to show what Terri and Joey Crider understood C-4 to encompass when they transferred their interests in April 2021.

18. Mary Annette points to Joey Crider's testimony that he sold his entire interest in the property, including his one-third interest in the cabins and RV spots. (*See* J. Crider Dep. 24:20–24, 51:5–15, ECF No. 109.) Likewise, Jack Kersten, the attorney who prepared the deed transferring Terri Crider's interest, testified that the

term "C-4" included the land within the perimeter of the largest portion of the plat and "all improvements thereon," not just the common area. (Kersten Dep. 47:4–12, ECF No. 108; *see* Defs.' Ex. 3a.) Kersten also testified that he explained this to Terri Crider and that the parties agreed that Mary Annette would own all the property. (*See* Kersten Dep. 104:17–105:3, 149:9–25.) This is backed up by additional testimony from Washburn, Sheffield, and Jorge Cure. (*See, e.g.*, Washburn Dep. 26:19–25, 48:7–17, 75:24–25, ECF No. 111; Sheffield Dep. 37:13–23, ECF No. 113; J. Cure Dep. 34:18–25, 62:7–13, ECF No. 112.)

19. Defendants cite contrary evidence to support their position. There is no testimony from Terri Crider herself. There is, however, testimony from the surveyor who created the plat. He stated that he intended C-4 to encompass only the common area and that, to transfer the individual units, "you'll deed it by these unit numbers." (Ensley Dep. 16:8–17:6, ECF No. 98; Ensley Aff., ECF No. 55.2.) Defendants also point to Mary Annette's application to create a planned unit development, which pre-dated the deeds. The application, in their view, shows that the parties intended that Terri Crider would retain a two-thirds interest in the individual units. (*See* General Application Form, ECF No. 35.1.)

20. The Court cannot resolve this factual dispute at the summary judgment stage. For now, the Court need only decide whether Mary Annette has presented enough evidence to establish a genuine issue of material fact. It has. Viewed in the light most favorable to Mary Annette, the evidence supports the conclusion that tract

C-4 includes both the common area and the individual units. Summary judgment is therefore not proper.

IV.
CONCLUSION

21. For all these reasons, the Court **DENIES** Defendants' motion for summary judgment.

SO ORDERED, this the 11th day of October, 2023.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases