



Grant v. Bull Point Plantation Property Owners Association, Inc. et al

2020 | Cited 0 times | D. South Carolina | August 28, 2020

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

BEAUFORT DIVISION Gary D. Grant,) Civil Action No. 9:20-cv-01582-RMG-MGB Plaintiff,)

v.)

REPORT AND RECOMMENDATION Bull Point Plantation Property Owners) Association, Inc.;
Bull Point Plantation) Property Owners Association; Bull Point) Plantation Owners Association,
Inc.; Bull) Point, LLC; Bull Point SC, LLC; DB) Aster, LLC; German American Capital)
Corporation; GSI, LLC; and William E.) Gavigan, 1

Defendants.) _____)

Plaintiff, appearing pro se, filed this action seeking declaratory relief and preliminary and permanent injunctive relief. (Dkt. No. 1.) This matter is before the Court upon Plaintiff's Motion for Preliminary Injunction (Dkt. No. 22), two Motions to Dismiss from Bull Point Plantation Property Owners Association, Inc. ("BPPOA") (Dkt. No. 24; Dkt. No. 51) and a Motion to Dismiss from DB Aster LLC ("DB") and German American Capital Corporation ("GACC") (Dkt. No. 40). Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1) and Local Rule 73.02(B)(2)(e), D.S.C., all pretrial matters involving litigation by individuals who are proceeding pro se are referred to a United States Magistrate Judge for consideration. For the reasons set forth below, the undersigned recommends that Defendant BPPOA's second Motion to Dismiss (Dkt. No. 51) be granted,

1 Although Plaintiff originally included "Does 1 through 100" as Defendants in his Complaint (Dkt. No. 1), Plaintiff voluntarily dismissed "Does 1 through 100" as Defendants on July 13, 2020 (Dkt. No. 32) and did not list "Does 1 through 100" as Defendants in his Am ended Complaint (Dkt. No. 38). As such, the Court no longer considers "Does 1 through 100" Defendants in this civil action.
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and that Plaintiff's Motion for Preliminary Injunction (Dkt. No. 22), Defendant BPPOA's original motion to dismiss (Dkt. No. 24), and Defendant DB's and Defendant GACC's Motion to Dismiss (Dkt. No. 40) be denied as moot. 2



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FACTUAL SUMMARY Plaintiff owns Lot 260, Phase V-B, an unimproved lot within Bull Point Plantation (a subdivision in Seabrook, South Carolina). (Dkt. No. 38 at 1.) He became the owner of this property on April 23, 2020, following a series of conveyances spanning several years. (Id. at 6.) Most recently, the property was owned by Craig Elachie, LLC, a Texas LLC with Plaintiff as the sole member. (Dkt. No. 24 at 4; Dkt. No. 38 at 6.)

Pursuant to the Declaration of Covenants, Conditions and Restrictions for Bull Point Plantation (as amended, the “Declaration”), Bull Point Plantation and the properties therein are subject to certain restrictive covenants. (Dkt. No. 38 at 7 9.) In turn, property owners are required to pay assessment fees to the Bull Point Plantation owners’ association and to comply with architectural standards and restrictions when developing their properties. (Id.) Plaintiff believes that his property is considered “Additional Property” under the Declaration and is therefore exempt from these assessment fees and architectural constraints. (See generally Dkt. No. 38.)

After not receiving payment for the 2020 property assessment fees levied against Plaintiff’s property, Defendant BPPOA sent Plaintiff a letter demanding payment of the past due property assessment fees by April 25, 2020. (Dkt. No. 24 at 6; Dkt. No. 24-17.)

2 As set forth herein, Defendant BPPOA filed a motion to dismiss prior to Plaintiff filing his Amended Complaint. (Dkt. No. 24.) Defendant BPPOA has incorporated by reference the arguments in its initial motion to dismiss and its reply to Plaintiff’s response in opposition to its initial motion to dismiss into its most recent motion to dismiss. (Dkt. No. 51.) As such, the Court considers Defendant BPPOA’s initial motion to dismiss moot and evaluates Defendant BPPOA’s arguments in conjunction with Plaintiff’s Amended Complaint. 9:20-cv-01582-RMG-MGB Date Filed 08/28/20 Entry Number 63 Page 2 of 12

In response, Plaintiff filed this action seeking a declaratory judgment that his property is not subject to assessment fees or architectural restrictions under the Declaration, and alleging that Defendant BPPOA does not have authority to demand assessment fees from Plaintiff because it is not the owners’ association defined in the Declaration. (See generally Dkt. No. 38.) Several days later, Defendant BPPOA executed a lien against Plaintiff’s property in the amount of \$10,034.12. (Dkt. No. 38 at 15; Dkt. No. 34-7.)

PROCEDURAL HISTORY Plaintiff filed his initial Complaint on April 23, 2020. (Dkt. No. 1.) In this initial Complaint, Plaintiff requested declaratory and injunctive relief with respect to the assessment fees at issue in this case. (Id.) On June 29, 2020, Plaintiff filed a motion for preliminary injunction, asking the Court to enjoin Defendant BPPOA from foreclosing on his property. (Dkt. No. 22.) Plaintiff filed a motion for leave to amend his complaint on July 3, 2020. (Dkt. No. 23.)

Defendant BPPOA filed an initial motion to dismiss on July 6, 2020. (Dkt. No. 24.) On July 7, 2020, this Court issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising



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Plaintiff of the dismissal procedure and the possible consequences if he failed to adequately respond to Defendant BPPOA's motion. (Dkt. No. 25.) Plaintiff filed his response in opposition to Defendant BPPOA's motion to dismiss on July 15, 2020. (Dkt. No. 34.) On July 16, 2020, the Court granted Plaintiff's motion for leave to amend his complaint (Dkt. No. 37) and Plaintiff filed his Amended Complaint on that same day (Dkt. No. 38.) In his Amended Complaint, Plaintiff dismissed certain Defendants and added a claim for slander of title. (Id.) 9:20-cv-01582-RMG-MGB Date Filed 08/28/20 Entry Number 63 Page 3 of 12

On July 17, 2020, Defendants DB and GACC filed a motion to dismiss, requesting that the Court dismiss them as Defendants in this case. (Dkt. No. 40.) The Court subsequently issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the dismissal procedure and the possible consequences if he failed to adequately respond to this motion filed by Defendants DB and GACC. (Dkt. No. 45.) Plaintiff declined to file a response to the motion. 3

(Id.) Defendant BPPOA filed its reply to Plaintiff's response in opposition to its motion to dismiss on July 20, 2020 (Dkt. No. 44) and Plaintiff filed his sur reply to Defendant BPPOA's reply to his response in opposition on July 25, 2020. (Dkt. No. 55.) On July 29, 2020, Defendant BPPOA filed its second motion to dismiss, incorporating by reference all of its earlier arguments and applying such arguments to the allegations in Plaintiff's Amended Complaint. (Dkt. No. 51.) The Court again issued an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the dismissal procedure and the possible consequences if he failed to adequately respond. (Dkt. No. 53.) Plaintiff filed his response in opposition to Defendant BPPOA's second motion to dismiss on August 6, 2020, also incorporating by reference all of his earlier arguments. (Dkt. No. 56.) The Court therefore considers Plaintiff's response in opposition to Defendant BPPOA's first motion to dismiss as Plaintiff's response in opposition to Defendant BPPOA's second motion to dismiss. As such, the motions before the Court have been fully briefed and are ripe for disposition.

3 Although the Court ordered Plaintiff to file a response to the motion by August 21, 2020, Plaintiff did not do so. (Id.) 9:20-cv-01582-RMG-MGB Date Filed 08/28/20 Entry Number 63 Page 4 of 12

LEGAL STANDARD I. Liberal Construction of Pro Se Complaint Plaintiff brought this action pro se, which requires the Court to liberally construe his pleadings. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam); *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir. 1978); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Pro se pleadings are held to a less stringent standard than those drafted by attorneys. *Haines*, 404 U.S. at 520. The mandated liberal construction means that only if the court can reasonably read the pleadings to state a valid claim on which the complainant could prevail, it should do so. *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999). A court may not construct the complainant's legal arguments for him. *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993). Nor should a court “conjure up questions never squarely presented.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).



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II. Motion to Dismiss Defendant BPPOA seeks to dismiss Plaintiff's Amended Complaint based, in pertinent part, on Rule 12(b)(1) of the Federal Rules of Civil Procedure. (Dkt. No. 24 at 1.) Under this rule, a claim should be dismissed if it lacks subject matter jurisdiction. When considering a motion to dismiss for lack of subject matter jurisdiction, "the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). "The court may dismiss a case for lack of subject matter jurisdiction on any of the following bases: (1) the complaint 9:20-cv-01582-RMG-MGB Date Filed 08/28/20 Entry Number 63 Page 5 of 12

alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Friends of Dereef Park v. Nat'l Park Serv.*, No. 2:13-cv-03453-DCN, 2015 WL 12807782, at *4 (D.S.C. Apr. 13, 2015) (internal citations omitted). Here, Plaintiff's claim was filed on the basis of diversity jurisdiction, pursuant to 28 U.S.C. § 1332(a). Where subject matter jurisdiction is based on diversity, 28 U.S.C. § 1332(a) provides that district courts have original jurisdiction of all civil actions where the matter in controversy exceeds \$75,000.00. 28 U.S.C. § 1332(a). It is well settled in the Fourth Circuit that the test for determining the amount in controversy in a diversity proceeding is the "either-viewpoint rule" which is concerned with "the pecuniary result to either party which [a] judgment would produce." *Dixon v. Edwards*, 290 F.3d 699, 710 (4th Cir. 2002) (citing *Gov't Emps. Ins. Co. v. Lally*, 327 F.2d 568, 569 (4th Cir. 1964)); see also *Gonzalez v. Fairgale Props. Co.*, 241 F.Supp.2d 512, 517 (D.Md. 2002). Under this rule, the amount in controversy requirement may be satisfied if "the direct pecuniary value of the right that a plaintiff seeks to enforce or the cost of the defendant's compliance with the prospective equitable relief" exceeds \$75,000. *Lee v. Citi mortgage, Inc.*, 739 F. Supp. 2d 940, 946 (E.D.Va. 2010). Further, courts have typically applied the "legal certainty" test in determining the standard for establishing that the amount in controversy threshold has been met. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289, 58 S.Ct. 586, 590, 82 L.Ed. 845 (1938); *Shanaghan v. Cahill*, 58 F.3d 106, 112 (4th Cir. 1995). Under the legal certainty test, a plaintiff asserting federal jurisdiction has the burden of proving to a "legal certainty" that the claim is not less than the jurisdictional amount. *Shanaghan*, 58 F.3d at 112. 9:20-cv-01582-RMG-MGB Date Filed 08/28/20 Entry Number 63 Page 6 of 12

DISCUSSION Defendant's motion to dismiss asks the Court to dismiss Plaintiff's Amended Complaint in its entirety for lack of subject matter jurisdiction. (Dkt. No. 24 at 1.) In the alternative, Defendant asks the Court to "abstain from hear ing the case because it involves distinctly local real estate matter and the state court is already intimately familiar with Bull Point Plantation and its governing documents and is best situated to decide the issues presented in this case."

4 (Id.) For the reasons set forth below, the undersigned recommends that the District Court Judge grant Defendant BPPOA's second motion to dismiss (Dkt. No. 51), and therefore dismiss Defendant BPPOA's original motion to dismiss (Dkt. No. 24), Plaintiff's motion for preliminary injunction (Dkt.



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No. 22), and Defendant DB's and Defendant GACC's Motion to Dismiss (Dkt. No. 40) as moot.

I. Motion to Dismiss Plaintiff's Amended Complaint for Lack of Subject

Matter Jurisdiction Defendant BPPOA argues that the Court lacks diversity jurisdiction because Plaintiff's action focuses on whether he is responsible for paying property assessment dues to BPPOA (with such dues amounting to approximately \$10,000). (Dkt. No. 24 at 1.) In response, Plaintiff contends that he "faces the loss of his property, valued in excess of the jurisdiction amount" at approximately \$140,000. (Dkt. No. 34 at 6.) After reviewing the pleadings, the undersigned agrees with Defendant BPPOA that the amount in controversy here is approximately \$10,000 and that the Court therefore lacks jurisdiction over this litigation. As a result, the undersigned recommends that Defendant BPPOA's motion to dismiss be granted and that Plaintiff's claims be dismissed.

4 Because the Court finds that it does not have subject matter jurisdiction over this litigation for the reasons set forth herein, it declines to address Defendant BPPOA's remaining arguments.

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In his Amended Complaint, Plaintiff requests that the Court provide declaratory judgment that his property is considered "Additional Property" under the Declaration that governs the Bull Point Plantation development and the properties therein. (See generally Dkt. No. 38.) Plaintiff further requests declaratory judgment that, as "Additional Property," his property is not subject to the restrictions of the Declaration, including annual assessment fees and architectural limitations. (Id.) He also brings a claim for slander of title against BPPOA, alleging that BPPOA improperly recorded a lien on his property, and requests preliminary and permanent injunctive relief against Defendants. (Id.) When evaluating a declaratory judgment action or request for injunctive relief, the amount in controversy is measured by the "value of the object of the litigation." *Toler v. State Farm Mut. Auto. Ins. Co.*, 25 F. App'x 141, 143 (4th Cir. 2001) (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 347, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)). Defendant BPPOA argues that the object of this litigation is approximately \$10,000 worth of assessment fees, stating that "Plaintiff's action centers on whether his single unimproved lot in a development . . . is actually part of that development and, as such, is responsible for paying annual POA assessments." (Dkt. No. 24 at 8.) Plaintiff counters that the object of the litigation is his entire property, valued at \$140,000, because if Defendant BPPOA "has the right to levy an assessment . . . it also has the right to enforce the assessment, including the right to foreclose on Plaintiff's [p]roperty." (Dkt. No. 34 at 4.) In response, Defendant BPPOA states that "the value of the property does not rationally represent the amount in controversy," as no foreclosure proceedings have been initiated, but even if BPPOA were allowed to foreclose on Plaintiff's property, it would only be entitled to the \$10,000 owed. (Dkt. No. 44 at 2.)

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The Court must agree with Defendant BPPOA here. Although Plaintiff argues that his unrestricted right to use his property is at issue here, that right is not the object of this litigation. In fact, Plaintiff



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describes the “Nature of the Action” in his Amended Complaint as follows:

1. Plaintiff Gary D. Grant is the owner of Lot 260, Phase V-B, Bull Point Plantation (hereafter "Plaintiff's Property"), a subdivision in Seabrook, South Carolina. The property is in a 694-acre peninsula that is being developed in phases, and that has approximately 185 Lots in five phases as part of the subdivision. Pursuant to certain restrictive covenants, property part of the subdivision that the developer (defined below as the "Declarant") expressly made part of the Development is subject to assessments of an owners' association, whereas other property which the Declarant has yet to make part of the Development is not obligated to pay assessments. Plaintiff's Property and that of approximately 55 other owners is in that part of the peninsula which the Declarant has yet to make part of the Development and thus it is exempt from owners' association assessments. 2. Notwithstanding the clear and unequivocal language in the restrictive covenants that only certain property within the Development is subject to an annual assessment, defendant Bull Point Plantation Property Owners Association, Inc. improperly levied an annual assessment and has taken steps to enforce the improper assessments; further, it seeks to exercise control over Plaintiff's Property when no contractual relationship exists between Plaintiff and said defendant. Accordingly, this action is necessitated to preserve Plaintiff's Property and the rights of owners in Excluded Phases (as that term is defined below). (emphasis added) (Dkt. No. 38 at 2.) Plaintiff then takes about 8 pages of the Amended Complaint to discuss issues relating to the allegedly improper annual assessments levied against his property, compared to about 3 pages to discuss his issues with architectural restrictions and limited property access. (See generally Dkt. No. 38.) Plaintiff also describes “the subject of this declaratory action” as “whether Additional Property is obligated to pay an annual assessment” in the introductory section of his response in opposition to Defendant BPPOA's motion to dismiss. (Dkt. No. 34 at 3.) 9:20-cv-01582-RMG-MGB Date Filed 08/28/20 Entry Number 63 Page 9 of 12

Moreover, the lien that Defendant BPPOA recorded against Plaintiff's property is a lien in the amount of \$10,034.12. (Dkt. No. 34-7.) Thus, the Court agrees with Defendant BPPOA that it would only be entitled to \$10,034.12 in the event of foreclosure. (Dkt. No. 44 at 2.) In turn, the direct pecuniary result to either party that would result if the Court were to grant Plaintiff's request for declaratory judgment and/or injunctive relief could not exceed \$75,000, even in the event of foreclosure. Dixon, 290 F.3d at 710. Further, the Court notes that no foreclosure proceedings have been initiated against Plaintiff's property. Pres. Forest LLC v. Nationwide Gen. Ins. Co., No. 3:19-cv-00634- DSC, 2020 WL 355065, at *2 (W.D.N.C. Jan. 21, 2020) (explaining that “potential future damages are too speculative to establish the amount in controversy”). While Plaintiff argues that foreclosure is imminent, foreclosure is not the only means by which Defendant BPPOA may obtain the past-due assessment fees, nor is it the focus of this litigation. See Bohigian v. Flagstar Bank, FSB, No. 1:11-cv-181-IMK, 2012 WL 112322, at *1 (N.D.W.Va. Jan. 12, 2012) (finding that neither a temporary nor permanent injunction against foreclosure would necessarily place the full balance of a loan at issue because foreclosure was not the only avenue for enforcing the loan); see also Addington v. Loandepot.com, LLC, No. 2:17-cv-104-JPB, 2017 WL 4685428, at *4 (N.D.W.Va. Oct. 18, 2017) (noting that while the plaintiffs may have ultimately wished to prevent their home from being



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foreclosed upon, foreclosure was not the object actually at issue). Because the object of this litigation is approximately \$10,000 in annual assessment dues, the Court finds that the Plaintiff has not met its burden of proving to a legal certainty that the pecuniary result to either party in this litigation can meet the \$75,000 threshold required for the Court to establish subject matter jurisdiction over this case. Shanaghan, 9:20-cv-01582-RMG-MGB Date Filed 08/28/20 Entry Number 63 Page 10 of 12

58 F.3d at 112. As such, the undersigned recommends that Defendant BPPOA's motion to dismiss be granted.

II. Motion to Dismiss Defendant DB and Defendant GACC From The

Case and Plaintiff's Motion for Preliminary Injunction to Prohibit Foreclosure on Plaintiff's Property As discussed above, the Court does not have subject matter jurisdiction over this litigation. The undersigned recommends that Defendant DB's and Defendant GACC's motion to dismiss (Dkt. No. 40) and Plaintiff's motion for preliminary injunction (Dkt. No. 22) be dismissed as moot.

CONCLUSION Based on the foregoing, the undersigned recommends that the Court grant Defendant BPPOA's Motion to Dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction (Dkt. No. 51) and that this action be dismissed in its entirety on that basis. The undersigned further recommends that Plaintiff's Motion for Preliminary Injunction (Dkt. No. 22), Defendant's initial Motion to Dismiss (Dkt. No. 24), and Defendant DB's and Defendant GACC's Motion to Dismiss (Dkt. No. 40) therefore be dismissed as moot. IT IS SO RECOMMENDED.

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Notice of Right to File Objections to Report and Recommendation The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4 th

Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:



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Robin L. Blume, Clerk United States District Court

Post Office Box 835 Charleston, South Carolina 29402 Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

