

IN THE CIRCUIT COURT OF
OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY,
FLORIDA.

CASE NO. 80-551

SPECTRUM ASSOCIATES, a Georgia limited partnership,)
)
Plaintiff,)
)
vs.)
)
JAY B. BRAGG, MARYLAND REALTY TRUST and MARYLAND NATIONAL BANK,)
)
Defendants.)
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TRI-SOUTH INVESTMENTS, INC.)
)
Intervenor.)
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NEWMAN S. BRACKIN
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CIRCUIT COURT
OKALOOSA COUNTY FLORIDA

Clerk of Circuit Court
Okaloosa County Florida

FINAL JUDGMENT

THIS CAUSE came before this Court for trial on February 4, 1981 on the Plaintiff's Second Amended Complaint, Defendant Bragg's Counterclaim and the Intervenor's Complaint, and the Court having heard the testimony, reviewed the evidence presented and considered the arguments of counsel for all of the parties, the Court therefore makes the following findings of fact and rulings of law, and it is therefore

ORDERED AND ADJUDGED:

1. That this litigation concerned the meaning, intent and enforceability of the terms of that certain Easement executed by C. K. MARSHALL & CO., INC. (hereinafter referred to as "Marshall"), THE COMMONWEALTH CORPORATION and TRI-SOUTH MORTGAGE INVESTORS, which Easement was recorded in Official Records Book 736, at pages 5 through 8, of the Public Records of Okaloosa County, Florida.

2. That, at the time the Easement was executed, Marshall held title to both Phase I of the apartment complex (upon which the amenities and vehicular easement in question are located) and Phase II of the apartment complex (which was to be

constructed without amenities), as more specifically described in said Easement.

3. That the Plaintiff, SPECTRUM ASSOCIATES (hereinafter referred to as "Spectrum") is the current successor in interest to the title to both the improvements and real property of Phase II.

4. That the Intervenor, TRI-SOUTH MORTGAGE INVESTORS, now known as TRI-SOUTH INVESTMENTS, INC. (hereinafter referred to as "Tri-South"), currently holds a mortgage encumbering Phase II and the Easement.

5. That the Defendant, JAY B. BRAGG (hereinafter referred to as "Bragg") is the current successor in interest to the title to the improvements and amenities of Phase I.

6. That the Defendant, MARYLAND REALTY TRUST, is the current successor in interest to the title to the underlying real property on Phase I.

7. That the Defendant, MARYLAND NATIONAL BANK, currently holds a mortgage on both the improvements and real property of Phase I.

8. That Tri-South required the granting of this Easement as a pre-condition to giving Marshall a mortgage loan for the construction of Phase II.

9. That Tri-South received said Easement and made the Phase II construction loan which was secured by a Mortgage on Phase II and the Easement.

10. That the parties to the Easement clearly contemplated the possibility that Tri-South might foreclose its mortgage on Phase II and that the Commonwealth Corporation might foreclose its mortgage on Phase I.

11. That the Easement provided that Phase II shall have the use of certain amenities located on Phase I and shall also have a motor vehicular easement for ingress and egress across the north 26 feet and the west 26 feet of Phase I.

12. That the Easement provided that its terms would become

permanent and binding upon the successors in interest to the title to Phase I in the event that either the Tri-South mortgage on Phase II or the Commonwealth Corporation mortgage on Phase I was foreclosed.

13. That both the Tri-South mortgage on Phase II and the Commonwealth Corporation mortgage on Phase I were foreclosed and, as a result thereof, the Easement became permanent by its own terms and was thereafter binding upon Bragg, MARYLAND REALTY TRUST and MARYLAND NATIONAL BANK, as the successors in interest to the title to Phase I.

14. That Bragg subsequently attempted to curtail use of the Phase I amenities by the Phase II owners and tenants.

15. That Bragg, MARYLAND REALTY TRUST and MARYLAND NATIONAL BANK, and the successors or assigns in interest, are hereby permanently enjoined and restrained from interfering with the use of the Phase I amenities (as hereinafter defined) and the 26 foot motor vehicular easement (as hereinafter reformed) by the owners, tenants, guests, licensees and the like of Phase II and their successors in interest.

16. That the Easement provides in paragraph 2 thereof for 26 foot vehicle easement for vehicular traffic along the north and west boundaries of Phase I.

17. That the evidence clearly showed that it was the intent of the parties to the Easement that this 26 foot easement for vehicular traffic was supposed to be on the north and east boundaries of Phase I and said Easement is hereby reformed to reflect the true and correct intent of the parties thereto.

18. That the Clerk of this Court is hereby directed to make a proper marginal notation in the margin of the Easement recorded in Official Records Book 736, at pages 5 through 8, Public Records of Okaloosa County, Florida, reciting that the description contained in that instrument has been reformed by this Final Judgment.

19. That, based upon the evidence presented, the Court finds that the amenities on Phase I to which reference is made in the Easement include the club house, swimming pool, tennis court and laundry room, and Spectrum and Tri-South and their successors in interest shall have the right of normal and reasonable ingress and egress over Phase I for the use of said amenities.

20. That Bragg and MARYLAND REALTY TRUST and their successors in interest are bound by paragraph 7 of the Easement to continue maintaining the amenities without charge to the owners of Phase II.

21. That the owners, tenants, guests and the like of Phase II shall use said amenities under the same reasonable rules and regulations as the owners, tenants, guests and the like of Phase I.

22. That, in light of the permanent injunction granted herein, the temporary injunction order previously entered by this Court on April 3, 1980 is hereby dissolved and the bond posted by Spectrum is hereby released.

23. That, in light of the foregoing findings and rulings, Braggs's Counterclaim is hereby denied.

24. That costs shall be assessed against the Defendants, the amount of which shall be determined by stipulation, affidavit or subsequent hearing.

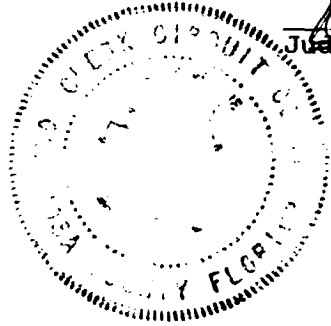
DONE AND ORDERED at Shalimar, Florida this 24th day of March, 1981.

G. Robert Barron
G. Robert Barron, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that conformed copies have been furnished this 24 day of March, 1981, to JAMES W. GRIMSLEY, ESQUIRE, Smith, Grimsley, Remington, Kessler & Simpson, Post Office Box 2379, Fort Walton Beach, Florida 32549, Attorney for Plaintiff; JAMES W. MOORE, ESQUIRE, Post Office Box 746, Niceville, Florida 32578, Attorney for Defendant Bragg; CHARLES FRANCIS, ESQUIRE, Ervin, Varn, Jacobs, Odom & Kitchen, Post

Office Box 1170, Tallahassee, Florida 32302, Attorney for Maryland Realty Trust and Maryland National Bank; and JAMES M. SPOONHOUR, ESQUIRE, Post Office Box 2809, Orlando, Florida 32802, Attorney for Tri-South.



Maxine J. Jody
~~Judge's Secretary~~ Deputy Clerk

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