

THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2006-CA-01810

COR DEVELOPMENT, LLC

Appellant

VERSUS

COLLEGE HILL HEIGHTS HOMEOWNERS, LLC

Appellee

**ON APPEAL FROM THE CHANCERY COURT OF LAFAYETTE COUNTY,
MISSISSIPPI**

REPLY BRIEF OF APPELLANT

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ORAL ARGUMENT IS NOT REQUESTED

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REBUTTAL

According to Appellee, College Hill Heights Homeowners, LLC (hereinafter “the Association”), there is but one issue to be considered in this appeal: “The statutory procedure must be followed to alter a recorded plat of a subdivision.” Appellant, COR Development, LLC (hereinafter “COR”) would respectfully submit that this is not at all the issue that they are asking the Court of Appeals to consider.

It is the Association’s basic argument that by failing to file a petition to alter or vacate the subdivision plat prior to commencement of this action, COR is completely and forever barred from creating a condominium development on their land. At this time, COR has taken no action that constitutes amendment or alteration. The actual question that the Court is being asked is “Will the **proposed** development constitute an amendment?” While it is still COR’s position that its proposed development does not constitute an alteration of the subdivision plat, COR cannot deny that no petition to vacate or amend was filed prior to the Associations commencement of this action. However, this cannot be the end of the discussion. Failure to file such a petition at one point in time should not preclude COR from being able to file such a petition at some later date should it be determined by the Court to be necessary.

In its brief, the Association does not directly respond to COR’s assertions of error. Instead, it merely provides a litany of various portions of case law and statutory language which precedes its argument. The argument itself makes no reference or citation to the law that supposedly supports the Associations positions. Neither does the argument clearly and specifically state which of COR’s assignments of error are being addressed.

Because of this, COR feels that Association has failed to adequately respond to all of COR's assignments of error. Failure of an appellee to respond to an appellant's argument in his brief "is tantamount to a confession of error and will be accepted as such." *Turner v. State*, 383 So.2d 489 (Miss. 1980).

It is the Association's argument that once a subdivision plat has been filed, all streets and utility easements are then dedicated for all time and the only way they can be abandoned is if the county or city takes overt action to abandon them. As discussed in COR's initial brief, street and easements can be abandoned under the theory of common law abandonment. The Association does not appear to offer any argument or legal authority as to the reason the theory of common law abandonment does not apply in this situation. Also, several of the authorities which the Association lists that speak to the issue of street dedication are cited by COR in its initial brief and support COR's abandonment argument.

The issue of whether or not the protective covenants will be violated is barely addressed. The Association makes no response to COR's arguments regarding the definition of re-subdivision other than to say "[t]he division of Lots 6, 7, 8, 9, 10, 19 and 20 of College Hill Heights Subdivision into fifty (50) or more condominiums sites of lots could be nothing but a re-subdividing of the platted lots." Brief of Appellee at p. 12-13. The only authority provided by the Association which makes any reference to re-subdivision is Attorney General Opinion No. 2002-0254-May 17, 2002. This opinion was cited by COR in its initial brief and is in direct support of COR's arguments that it is not re-subdividing lots **and** that Section 19-27-31 of the Mississippi Code "does not dictate when or under what circumstances a plat must be changed."

The Associations response regarding the definition of "multi-family" is equally as weak. The subject is addressed in three sentences:

There is no question but that multiple family residence may have been build on each of the lots. However, to build fifty (50) condominiums on seven (7) lots is certainly a violation of the covenants, as was found by the Chancellor. No other interpretation could have been made.

Brief of Appellee at p. 14.

No legal authority was provided by the Association on this issue. The insufficiency of argument and legal authority on the issue of violation of the protective covenants should be taken as admission that the protective covenants will not be violated by COR's proposed development.

The Association's entire response to the arguments and assignments of error offered by COR is to say that the Association should prevail because COR did not follow the procedures outlined in Sections 17-1-23 and 19-27-31. Unfortunately, this case is not that simple.

Admittedly, COR did not file a petition to vacate or alter the plat prior to commencement of this action. The legal authority provided in COR's initial brief supports COR's contention that this procedure is not required because there will be no alteration or amendment of the subdivision plat. However, if the Court finds that the statutory procedure is required in this instance, there is nothing that should preclude COR from pursuing a vacation of its property from the subdivision.

CONCLUSION

Based on the foregoing, COR Development, LLC respectfully requests that the injunction imposed upon it preventing the development of Hickory Cove be lifted. In the alternative, if the injunction is not lifted, COR Development, LLC requests that it be permitted to seek any alternative statutory avenue by which it may obtain the right to continue its development.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lawrence L. Little, Attorney at Law, Oxford, Mississippi, do hereby certify that I have this date mailed by United States Mail, postage prepaid, a copy of the above and foregoing Appellants Reply Brief to:

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THIS, the 21st day of June, 2007.


TARA B. SCRUGGS