

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CENTER FOR A SUSTAINABLE COAST and *
KAREN GRAINEY, Plaintiffs, *
*
v. *
*
LUMAR, LLC, Defendant. *
*
_____ *

COMPLAINT

1.

This case seeks a declaratory judgment and injunctive relief to cease construction of a dock and to restore coastal marshlands.

JURISDICTION, PARTIES, AND VENUE

2.

This Court has jurisdiction pursuant to GA CONST, Art. 6, § 4, ¶ I and O.C.G.A. §§ 12-5-290 and 15-6-8.

3.

Lumar, LLC is a domestic Limited Liability Company. Lumar, LLC's registered agent is in Fulton County, Georgia. Lumar, LLC's registered office is 300 Century Springs West, 6000 Lake Forest Dr., N.W., Atlanta, Georgia in Fulton County. Pursuant to O.C.G.A. §§ 14-2-510(b)(1) and 14-11-1108(b), Lumar, LLC is deemed to reside in Fulton County, Georgia. Lumar, LLC is subject to the venue of this court pursuant to GA CONST, Art. 6, § 2, ¶ III; and O.C.G.A. §§ 9-10-30, 14-2-510(b)(1), and 14-11-1108(b).

4.

Center for a Sustainable Coast is a 501(c)(3) organization dedicated to ensuring the responsible use, protection, and conservation of coastal Georgia's natural, historic and economic resources. Center for a Sustainable Coast brings this action on behalf of itself and its members who have been and will be injured by Lumar, LLC's construction of a dock in coastal marshland in violation of the Coastal Marshlands Protection Act.

5.

The members of Center for a Sustainable Coast use and enjoy coastal marshlands and the Cumberland Island National Seashore for aesthetic, recreational, ecological, and biological values. The Lumar, LLC dock, which is located on and over coastal marshland, and within the Cumberland Island National Seashore, will adversely impact the use and enjoyment of these values by the members of Center for a Sustainable Coast.

6.

The members of Center for a Sustainable Coast have been and will be injured as a result of Lumar, LLC's violation of the Coastal Marshlands Protection Act. This failure creates an increased risk of and actual harm to the environment. Center for a Sustainable Coast's interests in this action fall within the zone of interests protected by the laws sought to be enforced in this action.

7.

Karen Grainey is a member of Center for a Sustainable Coast and a resident of Georgia who uses and enjoys coastal marshlands and the Cumberland Island National Seashore for aesthetic, recreational, ecological, and biological values. Karen Grainey has been and will be

injured as a result of Lumar, LLC's violation of the Coastal Marshlands Protection Act. This failure creates an increased risk of and actual harm to the environment which can be redressed by this Court.

STATEMENT OF FACTS

8.

Lumar, LLC owns an 87.51-acre parcel of land on Cumberland Island in Camden County, Georgia.

9.

Lumar, LLC submitted a request to Georgia's Coastal Resources Division for authorization to construct a private single-family dock adjacent to its property.

10.

The Coastal Marshlands Protection Act states, "No person shall ... construct or locate any structure on or over marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee or, in the case of minor alteration of marshlands, the commissioner." O.C.G.A. § 12-5-286(a)(1).

11.

"Minor alteration" means any change in the marshlands which involves less than 0.10 acres. O.C.G.A. § 12-5-282(9).

12.

"Commissioner" means the Commissioner of Natural Resources. O.C.G.A. § 12-5-282(4).

13.

Lumar, LLC requested authorization to construct a 2,380 square-foot structure on or over marshlands within the estuarine area.

14.

Since the proposed structure is less than 0.10 acres, Lumar, LLC was required to obtain a permit from the Commissioner of Natural Resources before construction.

15.

The Coastal Marshlands Protection Act sets forth specific exemptions and stream-lined authorization procedures for certain activities in the coastal marshlands.

16.

None of those exemptions or stream-lined authorization procedures apply to the Lumar, LLC dock.

17.

O.C.G.A. § 12-5-295(7) exempts the following activities from the Coastal Marshlands Protection Act:

The building of a private dock exclusively for the noncommercial use of the owner or his or her invitees and constructed on pilings, the walkways of which are above the marsh grass not obstructing tidal flow, by:

(A) The owner of a lot on which a detached single-family residence is located on high land adjoining such dock; or

(B) The owner of a lot having at least 50 front feet of land abutting the marshlands which contains high land suitable for the construction of a detached single-family residence and where the construction of such a residence is not prohibited.

18.

The Lumar, LLC parcel is vacant land, so the exemption at O.C.G.A. § 12-5-295(7)(A) does not apply.

19.

The Lumar, LLC parcel is zoned CP - Conservation Preservation.

20.

The Camden County Zoning Ordinance prohibits construction of detached single-family residences in CP zoning classifications. Camden County Unified Development Code, Article 2, Table 2-2.

21.

Inasmuch as construction of such a residence is prohibited on the Lumar, LLC parcel, the exemption at O.C.G.A. § 12-5-295(7)(B) does not apply.

22.

Another category of activities is not exempt from the Coastal Marshlands Protection Act, but do not require a permit. These activities can be authorized by a "letter of permission," which is written authorization from the Department of Natural Resources to conduct a proposed activity in coastal marshlands, "provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months." O.C.G.A. §§ 12-5-282(7.1) and 12-5-286.

23.

The Lumar, LLC dock is not within the physical perimeter of an existing project and does not involve the construction and removal of a temporary project.

24.

Accordingly, the Lumar, LLC dock does not qualify for a letter of permission.

25.

Another category of activities is neither exempt from the Coastal Marshlands Protection Act nor authorized by a letter of permission but is subject to permitting under a streamlined "General Permit" process.

26.

However, this Programmatic General Permit, PGP 83, does not apply to projects on Cumberland Island.

27.

Since the Lumar, LLC dock is not exempt from the Coastal Marshlands Protection Act, is not subject to a letter of permission, and does not qualify for a General Permit, Lumar, LLC was required to obtain an individual permit from the Coastal Marshlands Protection Committee or the Commissioner of Natural Resources.

28.

However, Lumar, LLC did not obtain a permit from the Coastal Marshlands Protection Committee or the Commissioner of Natural Resources.

29.

Instead, Lumar, LLC sought and obtained written authorization from the Department of Natural Resources.

30.

This written authorization, from the Department of Natural Resources' Coastal Resources Division, was referred to as a "Letter of Authorization."

31.

The purported Letter of Authorization appears tantamount to a "letter of permission."

32.

The purported Letter of Authorization is not a permit from the Coastal Marshlands Protection Committee or the Commissioner of Natural Resources.

33.

Even assuming the Letter of Authorization conveyed any rights to "construct or locate any structure on or over marshlands," O.C.G.A. § 12-5-286(a)(1), Lumar, LLC is in violation of the terms set forth in the Letter of Authorization.

34.

The letter was dated December 23, 2015.

35.

Requirement No. 11 in the letter states:

Construction of the Proposed Dock Facility must be completed within 3-years from the date of issuance of this letter and the Revocable License. If such construction is not completed within said timeframe, the Revocable License shall become void, making any portion of the Proposed Dock Facility that may have been constructed subject to removal without further notice or remedy to you.

36.

The Lumar, LLC dock was not completed within 3-years from the date of issuance of the Letter of Authorization.

37.

To the best of Plaintiff's knowledge, the Lumar, LLC dock has not been completed.

38.

Requirement No. 7 in the letter states:

Any change in the ... use of the Proposed Dock Facility for any purpose other than a private, single-family, recreational dock, without prior notification to and approval from the Department, will result in immediate revocation of the Revocable License, voiding of the authorizations provided herein, and your removal of the Proposed Dock Facility from the state-owned property.

39.

As set forth above, the Lumar, LLC parcel is not zoned for single-family residential housing.

40.

Under the CP zoning classification, the land can be subdivided for a minor subdivision with up to ten lots.

41.

Such subdivision requires a variance from the County to allow a subdivision on an unpaved road.

42.

Such subdivision would also require the parcel to be subdivided.

43.

On August 12, 2016, Lumar, LLC requested a variance from Camden County to allow a subdivision on an unpaved road.

44.

The Camden County Planning Commission approved the variance, but that decision was appealed.

45.

To the best of Plaintiff's knowledge, that variance appeal has not been resolved.

46.

To the best of Plaintiff's knowledge, the Lumar, LLC parcel has not been subdivided.

47.

Until the parcel is subdivided, single-family residences are not a permitted use.

48.

In its request for authorization, submitted to the Coastal Resources Division, Lumar, LLC asserted, "the dock is exempt from Coastal Marshland Protection Act permitting as a private recreational dock for use by the owner of an adjacent lot."

49.

As set forth above, that exemption does not apply because there is no existing single-family residence on the Lumar, LLC parcel, and the construction of such a residence is prohibited under the current zoning and land use configuration. O.C.G.A. § 12-5-295(7).

50.

As of the date Lumar, LLC submitted its request for authorization to the Coastal Resources Division, Lumar, LLC had not submitted the request to Camden County for a variance and had not submitted an application to subdivide the parcel to authorize construction of single-family residences.

51.

As of the date of the Coastal Resources Division's purported Letter of Authorization, Lumar, LLC had not submitted the request to Camden County for a variance and had not submitted an application to subdivide the parcel to authorize construction of single-family residences.

52.

Under its existing zoning and land use configuration, the Lumar, LLC parcel cannot be used for a private, single-family, recreational dock, as set forth in Requirement No. 7 in the Letter of Authorization.

53.

Even if the parcel could be used for a single-family residence, and even if the three-year term set forth in the purported Letter of Authorization had not expired, the Lumar, LLC dock cannot be constructed in coastal marshlands without a permit from the Coastal Marshlands Protection Committee or the Commissioner of Natural Resources. O.C.G.A. § 12-5-286(a)(1).

REQUEST FOR DECLARATORY JUDGMENT

54.

Pursuant to O.C.G.A. § 9-4-1 et seq., Plaintiffs request that this Court declare that the Lumar, LLC dock is not exempt from the Coastal Marshland Protection Act.

55.

Plaintiffs request that this Court declare that the Lumar, LLC dock is not subject to approval by a Letter of Permission.

56.

Plaintiffs request that this Court declare that the Lumar, LLC dock is not subject to approval by a Letter of Authorization.

57.

Plaintiffs request that this Court declare that the Lumar, LLC dock is in violation of the Coastal Marshlands Protection Act.

58.

Plaintiffs request that this Court declare that the Lumar, LLC dock is in violation of the Coastal Resources' Division Letter of Authorization, Requirements No. 7 and No. 11.

REQUEST FOR INJUNCTIVE RELIEF

59.

Plaintiffs will be irreparably harmed if Lumar, LLC is allowed to complete construction of the dock, or is allowed to maintain the dock in coastal marshlands in violation of the Coastal Marshlands Protection Act and in violation of the purported Letter of Authorization.

60.

No adequate remedy is provided at law to protect Plaintiffs' interests.

61.

"The superior court of the county in which land or any part thereof lies or in which jurisdiction is appropriate shall have jurisdiction to restrain a violation of this part at the action of any person." O.C.G.A. § 12-5-290.

62.

Inasmuch as Lumar, LLC's registered office is in Fulton County, venue is proper in this Court pursuant to GA CONST, Art. 6, § 2, ¶ III; and O.C.G.A. §§ 9-10-30, 14-2-510(b)(1), and 14-11-1108(b).

63.

The superior court, upon finding that any person is or has been violating any of the provisions of the Coastal Marshlands Protection Act, "may order the person to restore, as nearly as possible, all marshland to the condition existing prior to the alteration of the marshland." O.C.G.A. § 291(a)(5).

WHEREFORE, Plaintiffs request that:

- (a) this Court enters judgment in favor of Plaintiffs and against Defendant;
- (b) this Court enter a declaratory judgment declaring that the Lumar, LLC dock is not exempt from the Coastal Marshland Protection Act.
- (c) this Court enter a declaratory judgment declaring that the Lumar, LLC dock is not subject to approval by a Letter of Permission;

- (d) this Court enter a declaratory judgment declaring that the Lumar, LLC dock is not subject to approval by a Letter of Authorization;
- (e) this Court enter a declaratory judgment declaring that the Lumar, LLC dock is in violation of the Coastal Marshlands Protection Act;
- (f) this Court enter a declaratory judgment declaring that the Lumar, LLC dock is in violation of the Coastal Resources' Division Letter of Authorization, Requirements No. 7 and No. 11;
- (g) This Court provide equitable relief and issue an injunction preventing further construction of the Lumar, LLC dock in violation of the Coastal Marshlands Protection Act and the purported Letter of Authorization;
- (h) This Court provide equitable relief and issue an injunction ordering removal of the Lumar, LLC dock;
- (i) This Court provide equitable relief and issue an injunction ordering Lumar, LLC to restore, as nearly as possible, all marshland to the condition existing prior to the alteration of the marshland; and
- (j) Plaintiffs have such other relief as this court deems just.

Respectfully filed February 19, 2019.

/s/ Jon L. Schwartz

Jon L. Schwartz

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