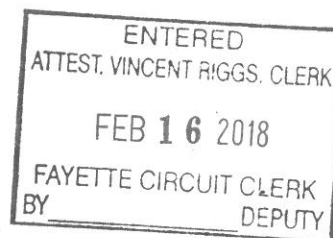


COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
DIVISION THREE  
CIVIL ACTION NO. 17-CI-00640  
consolidated with  
CIVIL ACTION NO. 17-CI-00986 and 17-CI-01360



WHITAKER BANK, INC.

PLAINTIFF

v.

ANDOVER GOLF AND COUNTRY CLUB, INC., *et al.*

DEFENDANTS

**ORDER ON PARTIES' MOTIONS FOR SUMMARY JUDGMENT**

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This matter having come before the Court on Wednesday, February 14, 2018, for a hearing on the following motions: Motion for Summary Judgment filed by Whitaker Bank and AGCC, LLC ("Whitaker"); Cross-Motions for Summary Judgment filed by (i) Andover Forest Homeowners Association, Inc., Andover Neighborhood Association, Inc., The Golf Townhomes at Andover Homeowners Association, Inc., The Golf Townhomes at Andover Homeowners Association, Inc., Phase II, The Golf Townhomes of Andover, Estate Section, Homeowners Association, Inc., The Villas at Andover Homeowners Association, Inc., The Reserve at Andover Residential Homeowners Association, Inc., and Andover Club Villas Owners Association, Inc. (the "Associations"), (ii) Andover Estates Homeowners Association, Inc. ("Andover Estates"), and Robert M. Bath (as Trustee of the Robert M. Bath Living Trust), Greg Penn, and Hubert McGaughey ("Individual Owners"), respectively; and the Associations' Motion to Expressly Define Implied Negative Servitude. The Court having reviewed the record, heard arguments of counsel on Wednesday, February 14, 2018, and Thursday, January 25, 2018, and being otherwise sufficiently and duly advised, and for the reasons stated more fully on the record, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

1. Whitaker's Motion for Summary Judgment is GRANTED, as the Court finds that

the provision of the Golf Course Lease, Construction and Purchase Agreement dated July 11, 1988 (the "Lease"), by and between Ball Homes, Inc., Lochmere Development Corporation, and Corman-McQueen, Inc. do not require Whitaker, or its successors or assigns, to operate the real property formerly subject to the Lease as a golf course and country club.

2. The Cross-Motions for Summary Judgment filed by the Associations, Andover Estates and Individual Owners are GRANTED, in part, and DENIED, in part.

3. To extent the Cross-Motions filed by the Associations, Andover Estates and Individual Owners sought a declaration that the Lease creates an express restriction on the Golf Course Property, they are DENIED, for the same reasons that the Court grants Whitaker's Motion for Summary Judgment.

4. The Court finds that there is no genuine issue of material fact that a "Common Plan of Development" exists and gives rise to an implied negative servitude on the Golf Course Property<sup>1</sup> requiring that property to be used only in a manner consistent with the Common Plan of Development. *See First Security National Bank v. Peter*, 456 S.W.2d 46, 51-52 (Ky. App. 1970). The Associations' and Andover Estates' Cross-Motions for Summary Judgment are, therefore, GRANTED as to this issue.

5. The Associations' Motion to Expressly Define Implied Negative Reciprocal Servitude is held in abeyance regarding specific scope, definition, and content of the implied negative servitude that encumbers the Golf Course Property for further proceedings and a subsequent order.

6. Finally, the Court notes that it has received and reviewed numerous letters and emails from homeowners who are Members of the Associations questioning the legal right of the

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<sup>1</sup> The "Golf Course Property" at issue in this case is approximately 169.6 acres of the real property being more particularly described in Deed Book 3507, Page 182.

Associations to levy capital purchase assessments for the purchase of all or some of the Golf Course Property and ongoing maintenance assessment for the upkeep, repair, and maintenance of same. These communications have been made part of the record herein, and having reviewed and considered all such communications, the Court reiterates and reaffirms its holding set forth in the Order entered on February 12, 2018. Kentucky law clearly and expressly vests Kentucky non-stock, non-profit corporations, such as the Associations here, with the right to purchase and maintain such property and the right to assess their members for the purchase of said property in furtherance of their corporate purpose to further the common good and welfare of the residents of the communities they represent. *See* KRS § 273.171.

7. This is not a final or appealable order.

This 16 day of February, 2018.

/s/ JAMES D. ISHMAEL, JR.  
A TRUE COPY  
ATTEST: VINCENT RIGGS, CLERK  
FAYETTE CIRCUIT COURT  
BY [Signature] DEPUTY  
FAYETTE CIRCUIT COURT JUDGE

**Submitted Pursuant to RFCC 19(B)(4):**

[Signature]  
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**CLERK' SCERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served on the following, on this the 14 day of February 2018 as indicated below:

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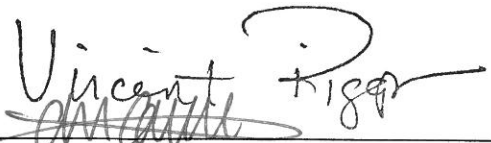
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FAYETTE CIRCUIT COURT CLERK