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2IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA
CIVIL DIVISION

SILVERTHORN/HERNANDO
HOMEOWNERS' ASSOCIATION, INC.,
a Florida Non-Profit Corporation,

Plaintiff,

Case No.: 2020-CA-000545

v.

HERNANDO COUNTY, a Political
Subdivision of the State of Florida,
SILVERTHORN ASSOCIATES, LLC, a
Florida Limited Liability Company,
ACORN TO OAKTREE INVESTMENTS,
LLC, a Florida Limited Liability Company,

Defendants.
_____/

ORDER ON MOTIONS FOR SUMMARY JUDGMENT AND FOR FINAL JUDGMENT

The above-captioned matter came before the Court on April 26, 2023, for hearing on Plaintiff's Motion for Summary Judgment as to Count I, filed March 13, 2023 (Doc. 164,) Plaintiff's Motion for Summary Judgment as to Count II, filed March 13, 2023 (Doc. 163,) Defendant Acorn to Oaktree Investments, LLC's Motion for Summary Judgment as to Count I, filed September 22, 2022 (Doc. 147,) and Defendant Silverthorn Associates, LLC's Motion for Summary Judgment as to Count II, filed February 2, 2023 (Doc. 161.)

Prior to the hearing, the Court issued an order granting Plaintiff and Defendant Acorn to Oaktree Investments, LLC's respective requests for judicial notice.[1]

As set forth below, the Court, having considered the motions, having heard the argument of the parties, having reviewed the court file, and being otherwise duly advised in the premises, will

[1] Order, filed Apr. 19, 2023, at 1-2 (Doc. 173).

deny Plaintiff's motions for summary judgment and grant Defendants' motions for summary judgment.

BACKGROUND

This case arises from a dispute between Plaintiff Silverthorn/Hernando Homeowners' Association, Inc. (the "HOA") and Defendants Silverthorn Associates, LLC ("Associates"), and Acorn to Oaktree Investments, LLC ("Acorn,") regarding the rights, entitlements, and duties arising under the plats, easements, and covenants of Silverthorn, a master-planned gated community, located in Spring Hill, Hernando County, Florida.

Silverthorn Development

Scarborough-Sembler Joint Venture II, LLC (the "Developer") developed Silverthorn in the early 1990s.[2] Silverthorn consists of both residential homes and a privately owned golf course, along with commons areas used for the benefit of both.[3] The Developer installed fencing around the perimeter of Silverthorn (the "Perimeter Fence").[4]

On June 27, 1994, the Developer executed a document titled, "Silverthorn/Hernando Homeowners' Association, Inc. Declaration of Covenants and Restrictions," ("Declaration,") which was later recorded on July 8, 1994.[5] The Developer organized the HOA to own and operate the common areas and common improvements within Silverthorn under the Declaration.[6]

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[2] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 3 (Doc. 141) *with* Def. Acorn's Ans., filed Sep. 22, 2022, at ¶ 3 (Doc. 144)(admitting allegations) *with* Def. Associates' Ans., filed Jan. 12, 2023, ¶ 3 (Doc. 156) (admitting allegations).
[3] *See generally* Original Declaration, filed May 16, 2022, at 1-34 (Doc 105).
[4] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 18 (Doc. 141) with Def. Acorn's Ans., filed Sep. 22, 2022, at ¶ 18 (Doc. 144)(admitting Developer installed fencing) *with* Def. Associates' Ans., filed Jan. 12, 2023, ¶ 18 (Doc. 156) (admitting Developer installed fencing).
[5] Original Declaration, filed May 16, 2022, at 1-34 (Doc 105).
[6] *Id.* at 1.

The Declaration contains certain covenants and restrictions pertaining to the residential lots and common areas set forth in the Plat.[7] The original Declaration specifically excludes the Golf Course Property in the Plat from the covenants and restrictions set forth therein.[8] The Declaration was later amended to subject the Golf Course Property to two restrictions but expressly excluded the Golf Course Property is from "any other terms, covenants, conditions, restrictions and provisions of this Declaration."[9]

Under Article XII of the Declaration, the Developer reserved for himself and his successors and assigns certain easements in the common areas, lots, and streets within the Plats for the Golf Course Property.[10]

One section of Article XII reserves a utility easement in the commons areas and certain portions of lots in the Plats for, among other things, "drainage systems, storm sewers and electrical gas, telephone, water, sewer, and the right and easement for the drainage and discharge of surface water onto and across Common Areas and Lots, ..."[11]

The Developer also reserved an easement for ingress and egress "on, over and across all of the roads, streets and sidewalks constructed and maintained as part of the Common Areas for ingress and egress to Developer's property and the Golf Course Property for the benefit of its agents, employees, contractors, invitees, and authorized members of Silverthorn Country Club and users of Club Facilities . . .."[12]

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[7] Original Declaration, filed May 16, 2022, at 1-34 (Doc 105).
[8] *Compare* Deed to Associates, filed May 16, 2022, at 1-3 (Doc. 125) (describing Golf Course Property within Silverthorn Plats) *with* Original Declaration, filed May 16, 2022, at 4, 34 (Doc 105) (Article II, Section 1 stating that the property "subject to this Declaration" is "fully described on Exhibit 'A'" which does not include Golf Course Property).
[9] Fourth Amend. to Declaration, filed May 16, 2022, at 1-3 (Doc. 106).
[10] Original Declaration, filed May 16, 2022, at 31-32 (Doc 105).
[11] *Id.* at 3.
[12] *Id.*

The easements reserved by the Developer in Article XII of the Declaration are "transferable, alienable, and perpetual" and, pursuant to Article IX, Section 1 of the Declaration, run with the land.[13]

Under Article IX, Section 4, the Declaration allows for the "Covenants, Conditions and Restrictions of th[e] Declaration" to be amended.[14] The HOA has amended the covenants, conditions and restrictions of the Declaration numerous times, with the most recent amendment occurring in 2018.[15]

Scarborough-Sembler Joint Venture II, LLC conveyed the Golf Course Property set forth in the Silverthorn plats (the "Golf Course Property") to Golf Trust of America L.P. in 1998 by Special Warranty Deed.[16] Later, the Golf Trust of America, L.P. conveyed the Golf Course Property to Associates by Warranty Deed, dated April 12, 2001.[17] Associates currently owns and operates a golf course and country club on the Golf Course Property.[18]

Acorn's Jumper Loop Project

Acorn owns property directly east of Silverthorn and contiguous with the Golf Course Property owned by Associates.[19] Acorn obtained approval from Hernando County for plans to develop the vacant property into a residential neighborhood (the "Jumper Loop Project.")[20]

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[13] *Id.*
[14] *Id.*
[15] Pl.'s Req. for Jud. Not., filed Mar. 16, 2023, at 1-53 (Doc. 166).
[16] Deed to Golf Trust, filed May 16, 2022, at 1-10 (Doc. 123).
[17] Deed to Associates, filed May 16, 2022 at 1-3 (Doc. 125).
[18] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 7 (Doc. 141) *with* Def. Associates' Ans., filed Jan. 12, 2023, ¶ 7 (Doc. 156) (admitting Associates owns and operates golf course and country club).
[19] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 10 (Doc. 141) *with* Def. Acorn's Ans., filed Sep. 22, 2022, at ¶ 10 (admitting allegations).
[20] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 10 (Doc. 141) *with* Def. Acorn's Ans., filed Sep. 22, 2022, at ¶ 10 (admitting allegations).

After coming to an agreement with Hernando County and Associates, Acorn acquired an easement from Associates across the Golf Course Property within Silverthorn to install water and wastewaters utilities from the Jumper Loop Project across the Golf Course Property with the goal of connecting into three points of the existing utilities.[21] Two of the planned connections are located within the common areas owned by the HOA and just across the property line from the Golf Course Property.[22]

Associates has asserted that it owns the Perimeter Fence and the land on which the Perimeter Fence is installed on the Golf Course Property and that it has the right to create access to Silverthorn through the Perimeter Fence.[23] Associates, along with Acorn, also has asserted that it is not necessary to obtain the authority of the HOA to access Silverthorn for the purpose of constructing the utilities to the Jumper Loop Project.[24]

Based upon those assertions, the HOA commenced this action on June 30, 2020, by filing a complaint against Hernando County, Associates, and Acorn regarding the HOA's disagreements with the Jumper Loop Projects access to the existing utilities within Silverthorn.[25] The Court later dismissed Hernando County as a party.[26]

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[21] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 44, 46 (Doc. 141) *with* Def. Acorn's Ans., filed Sep. 22, 2022, at ¶ 44, 46 (admitting Acorn negotiated agreements with Hernando County and Silverthorn Associates for the construction of a water and sewer system and paid for an easement).
[22] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 49 (Doc. 141) *with* Def. Acorn's Ans., filed Sep. 22, 2022, at ¶ 49 (admitting allegations).
[23] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 71 (Doc. 141) *with* Def. Associates' Ans., filed Jan. 12, 2023, ¶ 71 (Doc. 156) (admitting allegations).
[24] *Compare* Pl.'s Compl., filed Sep. 16, 2022, at ¶ 60 (Doc. 141) *with* Def. Acorn's Ans., filed Sep. 22, 2022, at ¶ 60 (Doc. 144)(admitting allegations) *with* Def. Associates' Ans., filed Jan. 12, 2023, ¶ 60 (Doc. 156) (admitting allegations).
[25] Pl.'s Compl., filed Jun. 30, 2020, at 1-37 (Doc. 7).
[26] Order, filed Nov. 29, 2022, at 1-5 (Doc. 152).

STANDARD OF REVIEW

Under Florida law, a Court must "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510. Summary judgment is inappropriate, and must be denied, when the factual "evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party." *See In re Amends. To Fla. Rule of Civ. Proc. 1.510*, 317 So. 3d 72, 75 (Fla. 2021) (quotation omitted).

In the context of when summary judgment involves on the interpretation of written instruments, such as contracts:

> If a contract's terms are clear and unambiguous, the language itself is the best evidence of the parties' intent and its plain meaning controls, warranting summary judgment. If, however, there are two reasonable interpretations of a contract, summary judgment is inappropriate because there is a genuine issue of material fact. This is because when a contract is ambiguous and the parties suggest different interpretations, the issue of the proper interpretation is an issue of fact requiring the submission of evidence extrinsic to the contract bearing upon the intent of the parties.

White v. Fort Myers Beach Fire Control Dist., 302 So. 3d 1064, 1071 (Fla. 2d DCA 2020) (quotation omitted) (alteration in original); *see Principal Life Ins. Co. v. Halstead as Tr. of Rebecca D. McIntosh Revocable Living Tr. Dated September 13, 2018*, 310 So. 3d 500, 502 (Fla. 5th DCA 2020).

DISCUSSION

I. Summary Judgment as to Count I

The HOA moves for summary judgment on Count I of the Fourth Amended Complaint seeking a declaration by the Court that Defendants need the HOAs permission to connect new water and wastewater systems to those located within the HOA's common areas and that the HOA's permission is required to access Silverthorn to install the water and sewer facilities.

Conversely, Acorn moves for summary judgment on Count I based upon its belief that neither the County nor Associates is required to obtain the HOA's consent to connect the proposed water and wastewater systems described in the Acorn Easement to the systems located on the HOA Property.

a. Entitlement to Declaratory Relief.

Chapter 86, Florida Statutes, "provides that persons claiming to be interested in or having doubts about their rights under certain instruments, including contracts or other instruments in writing, may seek a declaration of those rights in a declaratory judgment action filed in the circuit court." *Oceans Four Condo. Ass'n, Inc. v. Stafford*, 545 So. 2d 435, 437 (Fla. 5th DCA 1989). Courts, however, "will not issue a declaratory judgment that is in essence an advisory opinion based on hypothetical facts that may arise in the future." *Dr. Phillips, Inc. v. L & W Supply Corp.*, 790 So. 2d 539, 544 (Fla. 5th DCA 2001). That is because the giving of advisory opinions is not a judicial function. *Younkin v. Blackwelder*, 331 So. 3d 686, 689 (Fla. 2021).

Here, there is a genuine dispute over the rights and entitlements under the Silverthorn Plats and Declaration which can be resolved by a declaration by this Court. Therefore, this Court has jurisdiction to determine the rights of Associates and Acorn, if any, to install a new sewer and water facilities to the existing facilities in Silverthorn without the HOA's express permission. *See Dr. Phillips, Inc.*, 790 So. 2d at 544 ("[T]his long-running dispute would be best put to rest by a court declaration informing Phillips and Sowell exactly what the scope of this easement is as a matter of law.").

b. Associates and Acorn's Rights to Install New Water and Waste Water Systems Under the Easements

The HOA vigorously asserts that the HOA's permission is required prior to the installation of a new sewer and water facilities to the existing facilities under the common areas of Silverthorn. This Court disagrees.

"An easement, by definition, is the right to use land owned by another." *One Harbor Fin. Ltd. Co. v. Hynes Properties, LLC*, 884 So. 2d 1039, 1044 (Fla. 5th DCA 2004) "The construction or interpretation of an easement is not evidentiary; it is a matter of law." *Florida Power Corp. v. Silver Lake Homeowners Ass'n*, 727 So. 2d 1149, 1150 (Fla. 5th DCA 1999).

"[A]n easement, like any other contract, when unambiguous, is to be construed in accordance with its plain meaning." *City of Orlando v. MSD-Mattie, L.L.C.*, 895 So. 2d 1127, 1129 (Fla. 5th DCA 2005); *see One Harbor Fin. Ltd. Co.*, 884 So. 2d at 1045 ("Documents that convey easements are subject to the same rules of construction as other contracts and should be interpreted using contract principles.").

Here, the easements at issue are located in Article XII of the Declaration, which states, in relevant part:

> There is hereby reserved for the benefit of Developer, its successors and assigns, the following transferable, alienable and perpetual rights and easements:
>
> (a) Utility Easements. The right and easement for the ***installation and maintenance, repair, replacement and use within the Common Areas*** . . . for . . . utility facilities and distribution lines, ***including without limitation*** drainage systems, storm sewers and electrical gas, telephone, ***water, sewer, ...***
>
> (b) Ingress and Egress. The right and easement on, ***over and across all of the roads, streets and sidewalks*** constructed and maintained as part ***of the Common Areas for ingress and egress*** to Developer's property and the Golf Course Property for ***the benefit of its agents, employees, contractors, invitees,*** and authorized members of Silverthorn Country Club and users of Club Facilities.

(emphasis added).

The original Declaration conveying the easement is unambiguous as to the issue here. The plain meaning of the easements grant Associates, as successor in interest of the Developer of the Golf Course Property, the perpetual right to install new sewer and water facilities to the existing facilities within the HOA's common areas in Silverthorn. This includes the right to access all of the roads, streets, and sidewalks owned by the HOA to accomplish this purpose. Associates' easement is an appurtenant easement because it runs with the land, pursuant to Article IX, Section 1 of the Declaration. Lastly, the Declaration plainly allows Associates to transfer or alienate its rights under the easements to Acorn and further contemplates that the rights under the easements may be assigned.

The HOA, however, asserts in its memorandum that it has since amended the Declaration to address "easements granted to [Associates] to allow the [Golf Course Property] to be maintained and to allow the golf course to operate while preserving the [HOA's] control over access into the community and use of the Common Area." The HOA, using the amended language, argues that "Associates may not increase its use under the easements in the *Amended and Restated Declaration* to any greater extent than contemplated at the time the easement was created." (emphasis added). The HOA's argument is unpersuasive and unsupported by law.

The HOA had no authority under Florida law to unilaterally amend or change the scope of easements granted to Associates. *See Fields v. Nichols*, 482 So. 2d 410, 414 (Fla. 5th DCA 1985) ("The applicable rule of law is that easements, once granted and fixed, are not subject to the whims of either the dominant or servient owners of land, and can only be changed by mutual consent of the parties."); *see also Entzminger v. Thornberry*, 734 So. 2d 1114, 1115 (Fla. 2d DCA 1999) ("An easement created by express grant without reservation or restriction is permanent and can only be changed with mutual consent of the owners of the dominant and servient estates.")

Likewise, the original Declaration, which conveys the easement, does not set forth a right for the HOA to unilaterally amend the perpetual easement granted to Associates. The HOA highlights Article IX, Section 4 of the original Declaration, concerning amendments, which allows for the amendments of the "*Covenants, Conditions and Restrictions* of this Declaration" by the HOA. (emphasis added). That section, however, does not allow for the amendment or termination of the easements. *See Burdine v. Sewell*, 109 So. 648, 654 (Fla. 1926). ("[W]hile the grantee may at any time relinquish his right of passage, without consulting the grantor, the grantor's right to terminate it *must be expressed in the instrument.*" (emphasis added.))

c. The HOA's Right to Exclude under the Easements

The HOA further seeks a declaration that it has exclusive control over access to Silverthorn and therefore can restrict access to Silverthorn to install the Jumper Loop Project connections. But the plain and unambiguous easement language above shows that not to be true. The HOA's common areas are burdened by a perpetual easement for travel upon all of the HOA's streets and sidewalks in favor of Associates and, importantly, for "the *benefit of* its agents, employees, contractors, invitees, and authorized members of Silverthorn Country Club and users of Club Facilities." (emphasis added.) The HOA therefore does not have exclusive control because Associates, its agents, employees, contractors, invitees, authorized members of Silverthorn Country Club and users of Club Facilities can access Silverthorn through any of the streets and sidewalks to go to the Golf Course Property without the HOA's permission or consent, via the easement given in Article XII of the Declaration.

Moreover, the utility easement in Article XII of the original Declaration allows Associates and its assigns, which here is Acorn, the "right and easement for the installation" of water and sewer within the "Common Areas" which the HOA owns. That naturally includes the right to access the

"Common Areas" to install the water and sewer. The unambiguous language fails to expressly state or imply that the HOA's consent is required. Thus, the HOA does not have authority to restrict Acorn, Associates, its agents, contractors, and employees from accessing Silverthorn and the "Commons Areas" to install the Jumper Loop Project connections.

Accordingly, under the plain meaning of the unambiguous language of the easements conveyed in the original Declaration, Associates and Acorn are not required to obtain the HOA's consent to access, install, and connect the new water and wastewater systems located in the common areas of the HOA Property in Silverthorn.[27] Summary judgment in favor of Defendants and against the HOA is therefore appropriate.

II. Summary Judgment as to Count II

The HOA seeks summary judgment as to Count II and a declaration that the HOA owns the Perimeter Fence sitting on the Golf Course Property and, as a result, has an implied easement for the fence, which restricts Associates from removing, altering, or creating access through the Perimeter Fence.

Associates moves this Court for summary judgment on Count II of the HOA's complaint, seeking a determination by the Court that: (1) The Golf Course Property is not encumbered by an easement for the Perimeter Fence; and (2) the HOA has no rights to the Perimeter Fence located on Silverthorn Associates, LLC's property.

As a preliminary matter, the Court concludes that it has jurisdiction to determine the rights and entitlements of Associates and the HOA to the portion of the Perimeter Fence installed upon the Golf Course Property owned by Associates. *See Dr. Phillips, Inc.*, 790 So. 2d at 544.

[27] Because this resolves the dispute, the Court does not decide Hernando County's rights to install new water and wastewater systems.

The HOA, through its arguments, concedes that the Developer never executed a written instrument conveying title to the Perimeter Fence to the HOA and never explicitly conveyed an easement for the fence on the portions of the Golf Course Property. The HOA instead asserts that the Developer intended to keep access to Silverthorn under the control of the Association and, by extension, the Developer must have then intended that the Perimeter Fence belong to the HOA. The HOA next asserts that the HOA must then own an implied easement over the portion of the Golf Course Property that the Perimeter Fence is located on. This Court is not persuaded.

"The Florida Supreme Court has recognized only two circumstances where an easement will be implied. The first circumstance implies an easement from terms contained in a 'duly executed' writing that is ambiguous, but otherwise valid. [] The second circumstance implies an easement from a factual situation giving rise to the creation of a way of necessity as a matter of public policy and is not an issue in the instant case." *One Harbor Fin. Ltd. Co.,* 884 So. 2d at 1044–45.

Here, nothing in the six Plats of Silverthorn explicitly reserve or convey title to the perimeter fence or convey an easement to the HOA for a fence on the Golf Course Property. In fact, the six Plats fail to depict an area where an easement for a perimeter fence on the Golf Course Property could even be implied.[28] *See Estate of Johnston.*, 719 So. 2d at 28 ("A plat is a representation of the subdivision, as exact and complete as possible.").

The HOA has also failed to point to language in the Plats or deeds to the Golf Course Property that is ambiguous as to the title to the fence or easement for the fence were given or

[28] *See, e.g.*, Pl.'s Req. for Jud. Not., filed Jan. 20, 2022, at 38 (Doc. 89) (failing to depict any easement or notations indicating an easement along the borders of Tract B of the Golf Course Property but depicting dashes on residential lots directly west with the notation to the area stating "10' Fence Landscaping and Maintenance Easement").

reserved. Instead, the HOA attempts to impeach of the Silverthorn Plats and deeds to the Golf Course Property through the affidavits and the Declaration (i.e., parol evidence) to show that the Developer intended to give title to the fence to the HOA and an easement for the fence on the Golf Course Property.

"The parol evidence rule serves as a shield to protect a valid, complete and unambiguous written instrument from any verbal assault that would contradict, add to, or subtract from it, or affect its construction." *Bird Lakes Dev. Corp. v. Meruelo*, 626 So. 2d 234, 237 (Fla. 3d DCA 1993) (quotation omitted).

A review of the Silverthorn Plats establishes that the Developer unambiguously created a 10-foot easement for a perimeter fence on residential lots and unambiguously did not create such easement on the Golf Course Property.[29]

The Court declines to consider Plaintiff's parol evidence because the six Plats and deeds at issue unambiguously do not purport whatsoever to grant an easement for a fence or transfer title to the Perimeter Fence to the HOA on the Golf Course Property. *Cf. Hirlinger v. Stelzer*, 222 So. 2d 237, 238 (Fla. 2d DCA 1969) (concluding that an easement by implication may exist where the instrument *'referred to a plat allegedly reflecting the existence* of" the easement." (emphasis added.))

As the Florida Supreme Court has stated:

> If the terms or provisions on the face of the record plat, . . . are such as to negative any particular easement, it is difficult to see how an easement could be implied from parol representations without violating basic rules of property law and conveyancing.

[29] *See, e.g.*, Pl.'s Req. for Jud. Not., filed Jan. 20, 2022, at 38 (Doc. 89) (depicting a ten-foot-wide easement for a fence on residential lots 46-60 but not including the easement on the Golf Course Property directly east).

Burnham v. Davis Islands, Inc., 87 So. 2d 97, 100 (Fla. 1956); *Estate of Johnston*, 719 So. 2d at 27–28 ("As the court said in *Burnham* [], if the provisions on the face of the recorded plat are such as to negative any particular easement, an easement cannot be implied from parol representations. Estoppel may be used to defeat title but not to establish it.")

The Florida Supreme Court has also stated that implying easements in a plat that are not reflected within the plat "would amount to an unauthorized reformation" by the court. *Canell v. Arcola Hous. Corp.*, 65 So. 2d 849, 851 (Fla. 1953).

Accordingly, this Court declines to violate the basic rules of property law and conveyancing by declaring the existence of an implied easement for a perimeter fence on the Golf Course Property through the judicial reformation of the six Silverthorn plats and the deeds conveying the Golf Court Property.[30] *See One Harbor Fin. Ltd. Co.*, 884 So. 2d at 1045 ("[S]uch remedy is beyond this court's power. Courts of equity simply have no power to issue rulings which they consider to be in the best interest of justice without regard to established law."); *Estate of Johnston*, 719 So. 2d at 27 ("In cases where a plat of record fails to disclose an easement or right argued for by persons who have purchased lots in the subdivision, courts have denied those persons easement rights.")

The Court equally declines to declare that the HOA owns the portion of the Perimeter Fence that is on the Golf Course Property owned by Associates.

The undisputed facts establish that the portion of the Perimeter Fence that sits on the Golf Course Property is solely owned by Associates and the HOA does not have an easement for a fence on the Golf Course Property.

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[30] The Court notes that even if the law allowed for an implied easement under the circumstances, Plaintiff failed to provide exactly what the precise description of the alleged implied easement is. This further highlights that no easement was ever conveyed nor intended to be conveyed here.

As to Count II, the Court concludes that summary judgment is appropriate in favor of Associates and against the HOA.

Therefore, it is hereby **ORDERED** and **ADJUDGED**:

1. Plaintiff Silverthorn/Hernando Homeowners' Association, Inc.'s Motion for Summary Judgment as to Count I, filed March 13, 2023 (Doc. 164), is **DENIED**.

2. Plaintiff Silverthorn/Hernando Homeowners' Association, Inc.'s Motion for Summary Judgment as to Count II, filed March 13, 2023 (Doc. 163), is **DENIED**.

3. Defendant Acorn to Oaktree Investments, LLC's Motion for Summary Judgment as to Count I, filed September 22, 2022 (Doc. 147), is **GRANTED**.

4. Defendant Silverthorn Associates, LLC's and its assigns, including Defendant Acorn to Oaktree Investments, LLC, are not required to obtain the HOA's consent to connect new water and wastewater systems to the existing facilities in the common areas of Silverthorn plats, which are owned by Plaintiff Silverthorn/Hernando Homeowners' Association, Inc.

5. Defendant Silverthorn Associates, LLC's Motion for Summary Judgment as to Count II, filed February 2, 2023 (Doc. 161), is **GRANTED**.

6. Defendant Silverthorn Associates, LLC's property within Silverthorn is not encumbered by an easement for a perimeter fence.

7. Plaintiff Silverthorn/Hernando Homeowners' Association, Inc. has no rights to the Perimeter Fence located on Silverthorn Associates, LLC's property within Silverthorn.

DONE AND ORDERED in Chambers, Brooksville, Hernando County, Florida, this 9 day of June, 2023.

Pam Vergara
Judge of Circuit Court

Certificate of Service

THE UNDERSIGNED CERTIFIES that a true and correct copy of the foregoing has been sent to the following persons by e-service or U.S. mail on __June 12_____ , 2023.

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