

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

, PLAINTIFF(S)

VS.

NO.

, DEFENDANT(S)

ORDER

THIS CAUSE came on to be heard on the day of , , on the complaint of the plaintiffs, and , to vacate a plat in part, to terminate protective covenants in part, and for other relief. The Court, having reviewed the pleadings and having received and considered documentary and oral testimony at the trial of this cause, finds as fact the following:

1. The plaintiffs, and , brought this action pursuant to Miss. Code Ann. Section 19-27-31 to vacate a certain part of the plat of . The plaintiffs also sought to terminate protective covenants and other relief.

2. Defendants in this action are the City of , Mississippi, County, Mississippi, all persons who owned lots in as of the date of the filing of the Complaint, and all other persons who may be adversely affected by this action. Plaintiffs obtained personal service on the defendants and further caused to be published according to law in a summons that clearly set forth the objects and purposes of the Complaint.

3. The Court has jurisdiction over the parties and the subject matter.

4. is a duly mapped and platted subdivision recorded in Plat Book at Page in the Chancery Clerk's office of County, Mississippi. The plat of was filed and recorded with the Chancery Clerk of County, Mississippi, on . A certified copy of the plat of was admitted into evidence at trial as Trial Exhibit .

5. The plaintiffs seek to vacate that part of the plat of that is described on the Certificate of Survey attached to this Judgment as Exhibit " ". The real property described on Exhibit " " hereto shall be hereinafter referred to as the "affected part" of . The real property described on Exhibit " " hereto is the same real property identified on and admitted into evidence as Trial Exhibit .

6. The affected part of , which is described on Exhibit " " hereto, consists of lots of , all as identified on the recorded plat of . (Trial Exhibit )

7. is the for the City of , Mississippi. 's duties include the acquisition of rights of way for streets in , Mississippi.

8. and are depicted as public streets on the plat of . (Trial Exhibit , testimony of ). and have never been developed, nor have

they ever been utilized as public streets. These streets have continuously been vacant, undeveloped property since the plat of \_\_\_\_\_ was filed and recorded on \_\_\_\_\_, \_\_\_\_\_. (Testimony of \_\_\_\_\_)

9. The City of \_\_\_\_\_, Mississippi, has no plans to develop \_\_\_\_\_, nor does the City, after consultation with legal counsel, have the authority to itself develop the streets for public use. (Testimony of \_\_\_\_\_)

10. The plat of \_\_\_\_\_ was approved or otherwise accepted by the Board of Supervisors of \_\_\_\_\_ County, Mississippi, as \_\_\_\_\_ was not incorporated as a municipality until \_\_\_\_\_. (Trial Exhibit \_\_\_\_\_ and testimony of \_\_\_\_\_)

11. At the time the plat of \_\_\_\_\_ was filed and recorded, the streets depicted therein were dedicated to \_\_\_\_\_ County, Mississippi, by way of common law dedication. (Trial Exhibit \_\_\_\_\_ and testimony of \_\_\_\_\_)

12. Upon its incorporation as a municipality in \_\_\_\_\_, the City of \_\_\_\_\_, Mississippi, succeeded to the rights of \_\_\_\_\_ County, Mississippi, with respect to \_\_\_\_\_. \_\_\_\_\_ testified that he/she is not aware of any records or other information indicating that \_\_\_\_\_ were statutorily dedicated to the City of \_\_\_\_\_, Mississippi. No evidence was presented to the Court that \_\_\_\_\_ were ever statutorily dedicated to the City of \_\_\_\_\_, Mississippi.

13. The City of \_\_\_\_\_, Mississippi, acquired its rights to \_\_\_\_\_ by way of common law dedication, and not by statutory dedication. (Trial Exhibit(s) \_\_\_\_\_ and testimony of \_\_\_\_\_)

14. The actual development of \_\_\_\_\_ for their use as public streets has become impossible of execution. The City of \_\_\_\_\_, Mississippi, neither has the intention nor authority to develop \_\_\_\_\_. Likewise, \_\_\_\_\_, the owner of all lots adjacent to \_\_\_\_\_, does not intend to develop the streets. (Testimony of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_)

15. The non-development and non-use of \_\_\_\_\_ as public streets has been complete and continuous for a period exceeding \_\_\_\_\_ years. At no time since its incorporation as a municipality in \_\_\_\_\_, has the City of \_\_\_\_\_, Mississippi, attempted to exercise any dominion or control over \_\_\_\_\_. (Testimony of \_\_\_\_\_ and \_\_\_\_\_)

16. \_\_\_\_\_ and \_\_\_\_\_ have been abandoned by the City of \_\_\_\_\_, Mississippi.

17. \_\_\_\_\_ testified that he/she is the fee owner of the property within the affected part of \_\_\_\_\_, as that property is depicted on Trial Exhibit \_\_\_\_\_. This is one and the same property as that described on Exhibit "\_\_\_\_\_" hereto, and consists of lots \_\_\_\_\_ of \_\_\_\_\_.

18. \_\_\_\_\_, by virtue of being the owner of the property adjacent to \_\_\_\_\_, should become the fee owner of the property depicted as \_\_\_\_\_ on the plat of \_\_\_\_\_.

19. \_\_\_\_\_ testified that he/she does not intend to develop the affected part of \_\_\_\_\_, and that he/she has a contract to sell his/her property to \_\_\_\_\_ for development. (Testimony of \_\_\_\_\_)

20. Is not aware of any objections to the relief sought in the Complaint from the mayor, Board of Aldermen, or citizens of , Mississippi. (Testimony of )

21. is the owner of , one of the plaintiffs herein. Testified that he/she has been a since . In that time, has built over homes. has also developed , which are subdivisions in the City of , Mississippi. (Testimony of )

22. desires to develop a subdivision to be known as adjacent to . further desires to incorporate the affected part of into its . The preliminary plat of has been approved by the City of , Mississippi, which plat was admitted into evidence at trial as Trial Exhibit . (Testimony of and )

23. The protective covenants of were recorded in the land records of the Chancery Clerk of County, Mississippi, on , . A certified copy of the protective covenants was admitted into evidence as Exhibit .

24. The protective covenants state that any dwelling built in the subdivision shall not have less than square feet and shall not cost less than \$ .

25. The protective covenants do not contain sufficient square footage or land use restrictions to protect property values in or in . Because of the inadequate restrictions contained in the protective covenants, it is not economically feasible to develop the affected part of . (Testimony of )

26. The inclusion of the affected part of into the proposed subdivision will enhance the property values in . It will further enhance the safety of the residents of , insofar as the development will add an additional ingress and egress route for . (Testimony of )

27. has met with the Board of Directors of the Homeowners Association, the membership of the Homeowners Association, and with most of the property owners in . None of these entities or persons have stated or otherwise indicated any opposition to either the development or the relief sought in the Complaint. (Testimony of )

28. The protective covenants should be terminated as to the affected part of .

29. of , Mississippi, , and the City of , Mississippi, have each filed an answer. None of these entities have objected to the relief sought in the Complaint. None of the other defendants in this action have filed an answer, nor did any defendant other than the City of , Mississippi, appear at the trial of this cause.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the plat of subdivision is hereby vacated as to that part of described in Exhibit " " hereto, which consists of

lots of subdivision, and that said part of is hereby vacated and removed from the plat of subdivision.

IT IS FURTHER ORDERED AND ADJUDGED that the Protective Covenants of subdivision are hereby terminated as to that part of subdivision described in Exhibit " " hereto, which consists of lots of subdivision

IT IS FURTHER ORDERED AND ADJUDGED that the property identified as streets in that part of the plat of subdivision described in Exhibit " " hereto ( ) are hereby decreed to be abandoned streets

IT IS FURTHER ORDERED AND ADJUDGED that the real property decreed to be abandoned streets ( ) by this Judgment is hereby decreed to be the real property in fee of the abutting land owner, .

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to Miss. Code Ann. Section 19-27-31, this Corrected Judgment shall be recorded as a deed, and a memorandum of the vacation of that part of subdivision described in Exhibit " " hereto, which consists of lots of subdivision, shall be noted on the record of the plat of subdivision by the Chancery Clerk of County, Mississippi.

IT IS FURTHER ORDERED AND ADJUDGED that a memorandum of the termination of the Protective Covenants as to that part of described in Exhibit " " hereto, which consists of lots of subdivision, shall be noted on the Protective Covenants of subdivision by the Chancery Clerk of County, Mississippi.

IT IS FURTHER ORDERED AND ADJUDGED that this Corrected Judgment corrects and supersedes this Court's "Judgment Vacating Plat In Part, Removing Protective Covenants In Part, And Granting Other Relief" of , ."

IT IS FURTHER ORDERED AND ADJUDGED that this Court's "Judgment Vacating Plat In Part, Removing Protective Covenants In Part, And Granting Other Relief" of , , is hereby rendered and held to be null and void.

SO ORDERED AND ADJUDGED, this the day of , .

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CHANCELLOR