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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-309

Filed: 17 December 2019

Cabarrus County, No. 17-CVS-1144

BOST REALTY CO., INC.; GK HAMPDEN VILLAGE, LLP f/k/a GK HAMPDEN VILLAGE, LLC; TUCKER CHASE, LLC; TAYLOR MORRISON OF CAROLINAS, INC.; EASTWOOD CONSTRUCTION, LLC f/k/a EASTWOOD CONSTRUCTION CO., INC.; MTS CLT, LLC; PARK VIEW ESTATES, LLC; and B&C LAND HOLDINGS, LLC, Plaintiffs,

v.

CITY OF CONCORD, Defendant.

Appeal by Plaintiffs and cross-appeal by Defendant from an order entered 10 October 2018 by Judge Joseph N. Crosswhite in Cabarrus County Superior Court. Heard in the Court of Appeals 18 September 2019.

*Scarbrough & Scarbrough, PLLC, by James E. Scarbrough, John F. Scarbrough, and Madeline J. Trilling, and Ferguson, Hayes, Hawkins & DeMay, PLLC, by James R. DeMay, for Plaintiffs-Appellants.*

*Hamilton Stephens Steele + Martin, PLLC, by Keith J. Merritt, for Defendant-Appellee.*

INMAN, Judge.

Bost Realty Co., Inc., GK Hampden Village, LLP, Tucker Chase, LLC, Taylor Morrison of Carolinas, Inc., Eastwood Construction, LLC, MTS CLT, LLC, Park View

Estates, LLC, and B&C Land Holdings, LLC, (“Plaintiffs”) appeal from an order entering summary judgment in favor of the City of Concord (the “City”) and dismissing Plaintiffs’ complaint. After careful review, we reverse and remand for further proceedings consistent with our holding in *JVC Enterprises, LLC v. City of Concord*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_, COA19-308 (2019), filed concurrently with this opinion.

### **I. FACTUAL AND PROCEDURAL HISTORY**

Plaintiffs’ appeal and Defendant’s cross-appeal involve procedural facts and legal issues that are substantially identical to those addressed in *JVC Enterprises*. Both arise from lawsuits brought by former real estate developers alleging the City lacked authority to levy prospective water and sewer fees prior to construction and the provision of water and wastewater services, and both turn on the interpretation of a 1986 session law consolidating the City’s charter. *See* 1985 N.C. Sess. Laws ch. 861 (1986). Because this appeal involves different plaintiffs and a minor procedural distinction, a brief recitation of the facts and posture of the case is warranted.

Plaintiffs are all real estate developers who, prior to October of 2016, developed residential subdivisions in the City. Prior to recording Plaintiffs’ residential subdivision plats or issuing zoning clearance permits, the City required each Plaintiff to pay a capacity fee for water and sewer services pursuant to a City ordinance. Following our Supreme Court’s decision in *Quality Built Homes, Inc. v. Town of*

*Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016), which held that cities lacked statutory authority to levy prospective water and sewer fees under the General Enterprise Statutes then in effect, *id.* at 22, 789 S.E.2d at 459, Plaintiffs brought suit against the City to declare the capacity fee ordinance invalid and to recover the fees paid.

The City moved for summary judgment on the basis that the City's charter found in 1985 N.C. Sess. Laws ch. 861 authorized the City to levy those fees notwithstanding the holding in *Quality Built Homes*. The trial court entered summary judgment in favor of the City on all claims on 5 October 2018, which both Plaintiffs and the City appealed. However, the summary judgment order entered in this case lacked the correct file number and, on 30 November 2018, Plaintiffs filed a consent motion to correct the prior order. That motion was allowed on 13 December 2018 and entered *nunc pro tunc*; Plaintiffs filed a corrected notice of appeal denoting the corrected file number on 27 December 2018.

## II. ANALYSIS

As noted *supra*, the legal issues on appeal and cross-appeal in this case are identical to those resolved by our decision in *JVC Enterprises*. In accordance with that decision, we reverse the trial court's entry of summary judgment in favor of the City and remand for further proceedings not inconsistent with that opinion.

REVERSED AND REMANDED.

Judges BERGER and MURPHY concur.

BOST REALTY CO. V. CITY OF CONCORD

*Opinion of the Court*

Report per Rule 30(e).