

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

GRAND OAKS MAINTENANCE)
CORPORATION,)
)
 PLAINTIFF,)
)
v.) C.A. No. 3136-MA
)
RAYMOND C. ACOCELLA)
BELINDA M. ACOCELLA,)
)
 DEFENDANTS.)

MASTER'S REPORT

Date Submitted: January 28, 2008
Draft Report: September 15, 2008
Final Report: September 26, 2008

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Street, Dover, Delaware 19901,
Attorney for the Plaintiff

And

Raymond C. Acocella and Belinda M. Acocella, *Pro Se*,
Defendants.

AYVAZIAN, Master

This action was brought pursuant to 10 Del. C. § 348 by Plaintiff Grand Oaks Maintenance Corporation (“GOMC”) against Defendants Raymond C. Acocella and Belinda M. Acocella, record owners of 145 Mannering Drive, Dover, Delaware, which is located within the Grand Oaks subdivision (“Grand Oaks”). The Acocellas operate a home day care business that, according to the Plaintiff’s Complaint, violates the “Amended Declaration of Restrictions Applicable to Grand Oaks” (“Amended Declaration”) dated December 6, 2001, and recorded in the Kent County Office of the Recorder of Deeds in Deed Book 458, Page 236 on February 8, 2002.¹ The matter was tried before me on January 28, 2008. This is my draft report on GOMC’s request for an order compelling the Acocellas to comply with the deed restrictions, and an award for costs and reasonable attorney’s fees.

Factual and Procedural Background

By declaring and recording the deed restrictions, Stover Builders, Inc., and Stover Homes, L.L.C., (“Stover”), the original owners of the lots in Grand Oaks, imposed upon the subdivision a set of covenants that, among other matters, established an Architectural Review Committee (“ARC”) for the purpose of approving all construction and improvements within Grand

¹ Plaintiff’s Exhibit No. 1.

Oaks.² Pursuant to the deed restrictions, control of the ARC was to transfer to the homeowners or GOMC no later than the time of the sale of the last lot owned by Stover.³ By deed dated September 24, 2004, and recorded September 28, 2004, Defendant Raymond Acocella purchased Lot 93 in Grand Oaks from Stover.⁴ Acocella's deed recited that the lot was subject to "any and all restrictions, reservations, conditions, easements and agreements of record in the Office of the Recorder of Deeds in and for Kent County, Delaware."⁵ By deed dated June 12, 2006, and recorded June 22, 2006, Raymond Acocella transferred the property to himself and his wife, Defendant Belinda Acocella.⁶

In a letter dated April 14, 2007, the GOMC notified Raymond Acocella that the day care operation in his residence violated the deed restrictions.⁷ In its letter, the GOMC asked Acocella to end all business activity by June 15, 2007. Acocella replied to the GOMC in an e-mail dated April 16, 2007, inviting the GOMC to take him to court, stating: "Your association has no right to dictate to me what I do inside the confines of my

² *Id.* at ¶ 3.

³ *Id.* at ¶ 5. David Crout, the president of the homeowners association, testified at trial that the GOMC came into existence in June 2006.

⁴ Plaintiff's Exhibit No. 6.

⁵ *Id.*

⁶ Plaintiff's Exhibit No. 7.

⁷ Plaintiff's Exhibit No. 2.

home.”⁸ The GOMC filed its Complaint in this Court on August 1, 2007, seeking the enforcement of its deed restrictions. Mandatory mediation pursuant to 10 Del. C. § 348 was unsuccessful. After the parties submitted pretrial briefs, trial took place on January 28, 2008.

The Parties’ Contentions

The GOMC argues that the Acocellas are charged with notice of the existence of the deed restrictions by virtue of the Amended Declaration having been properly recorded before the Acocellas took title to their property. Furthermore, the deed restriction in question, prohibiting any form of business for profit or otherwise within Grand Oaks, is clear and unambiguous, and may be fairly and consistently applied in an evenhanded manner to all lots within the subdivision. The Acocellas, who are representing themselves in this litigation, claim that Stover’s representatives: (1) were aware during the building process that the Acocellas intended to operate a home day care; (2) never informed the Acocellas during the building process that they were not allowed to operate a home day care; and (3) used the knowledge of the day care operation at 145 Mannering Drive to sell homes in the development to prospective purchasers.⁹ Moreover, they

⁸ Plaintiff’s Exhibit No. 3.

⁹ The Acocellas made these claims in the “Statement of Facts” of their Pretrial Answering Brief. In the same section of their Answering Brief, the Acocellas claimed that they were given, among other documents, a copy of the deed restrictions for the development after the completion of the

argue that the deed restriction contains language that no homeowners, unless they were lawyers, would understand. They also accuse the officers of the GOMC of harassment and “dirty hands,” meaning that the officers have sought to punish the Acocellas while allowing other residents to conduct businesses in their homes, and have refused to allow changes to be made to the deed restrictions. The Acocellas also argue that they would suffer financial harm and possible foreclosure on their home if they could no longer operate the day care business in their home.

Analysis of the Issues

Deed restrictions implicate both the right of a buyer and seller to enter into a binding contract and a property owner’s right to the free use of his land. *See Chambers v. Centerville Tract No. 2 Maintenance Corp.*, at *2, 1984 WL 19485 (Del. Ch. May 31, 1984). Since the law favors the free use of land, *see The Cove on Herring Creek Homeowners’ Ass’n, Inc. v. Riggs*, at *3, 2003 WL 1903472 (Del. Ch. April 9, 2003), *aff’d*, 832 A.2d 1252 (Del.2003); *Bethany Village Owners Ass’n, Inc. v. Fontana*, at *2, 1997 WL 695570 (Del. Ch. Oct. 9, 1997), restrictive covenants in a deed are construed against the grantor and in favor of the grantee where the language of the

final walk-through. Defendant’s Answering Brief at p. 6. In his opening statement at trial, Raymond Acocella admitted that he never read the deed restrictions.

covenant is ambiguous. *Monigle v. Darlington*, 81 A.2d 129, 131 (Del. Ch. 1951).

The covenant at issue is found at section 8 of the Amended Declaration governing Grand Oaks, beginning on page 239:

There shall not be erected, permitted or maintained upon any of the lands conveyed in this subdivision, any truck in excess of $\frac{3}{4}$ tons, tractor, commercial van, derelict car, trailer, mobile home, above-ground swimming pool, tent, shack, barn, stable, cattle yard, hog pen, found yard, or building of any nature or description except a single-family residence, garage or other accessory structure, constructed in accordance with these restrictions, nor any graveyard, hospital, sanitarium, asylum, or similar or kindred institution, nor shall any animals, other than domestic animal or pets, or any form of business (for profit or otherwise, including the breeding of household pets) be housed or maintained or kept on said land (including but not limited to any household business); nor may any noxious or offensive activity be carried out or upon any lot; nor may anything be done which may be or may become an annoyance to any other lot owner.¹⁰

Although this covenant could have been drafted more concisely, the pertinent language is absolutely clear – any form of business, including any household business, is prohibited in Grand Oaks. Such a blanket prohibition includes a home day care business. *See, e.g., Jackson's Ridge Homeowners Ass'n v. May*, 2007 WL 4179310 (Del. Ch. Nov. 20, 2007); *Brandywine Hills Community Ass'n v. Wright*, 1986 WL 4052 (Del. Ch. April 3, 1986); *Williams v. Tsiarkezos*, 272 A.2d 722 (Del. Ch. 1970). Since the Acocellas' home day care violates the deed restriction, I must turn next to the question

¹⁰ Plaintiff's Exhibit No. 1.

whether the record supports the Acocellas' equitable defenses of estoppel and waiver.

The Acocellas claim that Stover's representatives knew of their intentions to operate a home day care and indicated to them on four separate occasions that it would be permissible to operate the business in the development. In order to establish the defense of equitable estoppel, the Acocellas must prove by clear and convincing evidence that (1) they lacked knowledge or the means of discovering the truth about the deed restrictions; (2) they relied on the conduct of Stover's representatives; and (3) they suffered a prejudicial change in position as a result of the conduct of Stover's representatives. *See Jackson*, letter op. at *4, *supra*. At trial, however, the Acocellas presented no evidence to support their claim that Stover representatives had informed them that it was permissible to operate a home day care in Grand Oaks. Even if they had presented such evidence, the Acocellas had constructive notice of the restrictions, *see, e.g., Mendenhall Village Single Homes Ass'n v. Harrington*, 1993 WL 257377 (Del. Ch. June 16, 1993), and Mr. Acocella's own admitted failure to read the copy of the deed restrictions he had been given by Stover's representatives was simply unreasonable. *See Jackson's Ridge Homeowners Ass'n*, letter op. at *4, *supra*. Nor did the Acocellas present any evidence

that the GOMC or Stover had failed to object to other known violations of the same or similar deed restrictions such that it would be unfair to enforce the home business prohibition against them, i.e., the waiver defense. *See Tusi v. Mruz*, 2002 WL 31499312, at *3, (Del. Ch. Oct. 31, 2002) (defining the terms abandonment and waiver).

However, there was some evidence presented at trial that raises the issue of acquiescence or laches on the part of the GOMC. David Crout, the president of the GOMC, testified that it was common knowledge that a day care facility existed in Grand Oaks, but no action was taken by the GOMC until a formal complaint was made to the officers of the GOMC in April 2007. Only then did Crout send a letter to the Acocellas notifying them of the violation and requesting their voluntary compliance with the Amended Declaration. This was nearly a year after the GOMC had taken over enforcement of the deed restrictions from Stover, and approximately two and a half years after the Acocellas had purchased their property in Grand Oaks. Furthermore, one of the Acocellas' witnesses, Linda Bolduc, testified that when she was in the process of purchasing her lot in Grand Oaks, a representative of the builder mistakenly thought that Bolduc had young children of her own, and informed her of a day care center in the neighborhood. When Bolduc told this individual that she had grandchildren

who would be living next door to her, he immediately replied that the day care center might be good for them.¹¹ Thus, not only did the GOMC have knowledge of the existence of the Acocella's home day care, but Stover did as well.¹²

Nonetheless, there was no evidence presented at trial showing that the Acocellas changed their position to their detriment because of: (1) Stover's acquiescence in the violation, or (2) the GOMC's ten-month delay in bringing this action. *See Williams*, 272 A.2d at 726. In other words, there was no evidence that the Acocellas incurred any additional expense or expanded their home business while Stover and the GOMC took no action to enforce the deed restrictions. The harm, if any, to the Acocellas occurred when they purchased the property and built their home in Grand Oaks with the intention of operating a home day care.¹³ If the Acocellas can prove that they were induced to purchase and build in Grand Oaks by Stover falsely

¹¹ At trial, I reserved decision on Plaintiff's hearsay objection to Bolduc's testimony. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted." Delaware Rule of Evidence 801(c). Bolduc's testimony, however, was not being offered to prove the truth of the matter asserted, i.e., that there was a day care facility in the neighborhood or that such a facility might be good for Bolduc's grandchildren. There is no dispute that a day care was being operated in the neighborhood. Instead, the statements were offered into evidence to prove that Stover, through its representative, had knowledge of the existence of the day care facility in the neighborhood. These statements do not constitute hearsay and, therefore, are admissible.

¹² The record is silent as to the length of time the Acocellas' home day care has been in operation, or when Bolduc had the conversation about the day care facility with the Stover representative.

¹³ Mr. Acocella was unemployed at the time he purchased the property, and the prospective home day care business apparently enabled the defendants to qualify for their mortgage. *See* Defendant's Answering Brief at pp. 7-8.

representing that it was permissible to operate a home day care in Grand Oaks, then the Acocellas may have an action for fraud against Stover in another court. However, the equitable defenses of laches and acquiescence are unavailable to them here.

Remedy

The relief requested by the GOMC is in the form of a mandatory permanent injunction requiring the closing of the home day care. Even though the GOMC has demonstrated that the home day care violates section 8 of the Amended Declaration, I must consider the nature of the harm suffered by the GOMC from the operation of the home day care and balance the harm to the GOMC if relief is not granted against the harm that the Acocellas might suffer if the relief is granted. There was no evidence presented by the GOMC concerning any concrete harm (such as noise or excess traffic) resulting from the operation of the home day care in Grand Oaks. However, the homeowners in Grand Oaks entered into a social contract whereby they agreed to abide by the deed restrictions with respect to the use of their private property. *Jackson's Ridge Homeowners Ass'n*, letter op. at *7, *supra*. The continuing operation of the home day care would result in the other homeowners in Grand Oaks being denied the benefits of the social contract. *Id.* In contrast, Mr. Acocella stated at the conclusion of

the trial that he and his wife might lose their home if the day care was closed because they might be unable to meet their home payments. While I am sympathetic to the Acocellas' financial plight, for the purpose of balancing the equities, I cannot accord it any weight because to condone an illegal home business for this reason would create a perverse economic incentive by benefiting those homeowners who breach the social contract at the expense of those who abide by the rules. *See id.* at n.40. Accordingly, a permanent injunction should issue.

Conclusion

The Acocellas have been operating a home day care business in Grand Oaks in violation of section 8 of the Amended Declaration. Accordingly, once this report becomes final, an order will be entered permanently enjoining the Acocellas from operating a day care business in their home. Pursuant to 10 Del. C. § 348(e), the Acocellas, as the nonprevailing party at trial, shall pay the GOMC's reasonable attorney fees and court costs once this report becomes final.