IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SERVICE CORPORATION OF WESTOVER HILLS,	)	
Plaintiff,	)	
v.	)	Civil Action No. 2922-VCP
ROBERT GUZZETTA and KATHLEEN S. GUZZETTA,	)	
Defendants.	)	

MEMORANDUM OPINION

Submitted: September 24, 2009
Decided: December 22, 2009

Richard H. Cross, Jr., Esquire, Ryan Ernst, Esquire, CROSS & SIMON, LLC, Wilmington, Delaware; *Attorneys for Plaintiff*

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PARSONS, Vice Chancellor.

This matter arises out of a dispute between a homeowners association and a couple who live in the development governed by the homeowners association. A restrictive covenant gives the homeowners association a great deal of power to regulate the types of houses in the development. Thanks in part to such regulation, the development is currently populated by stately houses with similar styling and mature landscaping.

The couple purchased a house adjacent to their home for the purpose of leveling the house to the ground in order to extend their yard and create a grass field on which their children can play. The homeowners association became concerned that such a field would be out of character with and an aberration in the stately neighborhood, and sought to use its powers under the restrictive covenant to block any demolition.

The couple admits that the restrictive covenant regulates home construction or modification, but claims that it does not regulate complete home demolition. The homeowners association contends that the restrictive covenant's regulation of new and existing homes is so pervasive that it extends to home demolition as well.

I first considered this matter in the context of a motion by the homeowners association for a preliminary injunction enjoining the couple from proceeding with the proposed demolition of the house, which I granted. The parties then engaged in mediation before a Master in Chancery, and when that proved unsuccessful, participated in an evidentiary hearing before the Master. After protracted proceedings, the Master entered a Final Report ("Report") finding for the couple and allowing the demolition to proceed. This matter is currently before me on exceptions to the Master's Report filed by the homeowners association. For the reasons discussed in this Memorandum Opinion, I

reach the same conclusion as the Master's Report. Accordingly, the preliminary injunction is vacated and all exceptions to the Report are denied. In addition, to the extent proven by subsequent submissions, I award the couple damages of up to $10,000, the amount of the preliminary injunction bond, and their attorneys' fees and court costs up to $60,000.

I. FACTUAL BACKGROUND

A. The Parties

The Service Corporation of Westover Hills ("Service Corporation") is a Delaware not-for-profit corporation composed of the owners of land within the development known as Westover Hills Section "C" ("Westover Hills").

Robert and Kathleen Guzzetta ("the Guzzettas") are husband and wife, and together they own tax parcel number 0703030007, known at the outset of this litigation as 924 Stuart Road, but later renumbered as 907 Berkley Road ("the Property"). The Guzzettas also own and reside in an adjacent property.

B. Facts

The standard of review for a Master's findings of fact is *de novo* where exceptions are taken pursuant to Court of Chancery Rule 144.[1] However, "a new trial is not necessary if this Court 'can read the relevant portion of the factual record and draw its

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[1] *Dolan v. Villages of Clearwater Homeowner's Ass'n, Inc.*, 2005 WL 1252351, at *1 (Del. Ch. May 12, 2005), *aff'd*, 2005 WL 2810724 (Del. Ch. Oct. 21, 2005); *see DiGiacobbe v. Sestak*, 743 A.2d 180 (Del. 1999).

own conclusions.'"[2] In this matter, the Master's findings of fact are not disputed by either party and appear to be well-founded.[3] Accordingly, I adopt the Master's findings of fact in their entirety, and recite the findings relevant to my analysis below.

According to the Deed and Agreement dated August 28, 1929, between Delaware Land Development Company and William du Pont, Jr. ("Deed Restrictions"), a service organization was to be organized for the purpose of maintaining Westover Hills "in good order and condition . . . ."[4] Pursuant to the Deed Restrictions, lot owners of Westover Hills were to be members of the service organization and bound by all of its rules and regulations.[5] Service Corporation was organized later and assumed the rights and powers of the Delaware Land Development Company by deed and agreement dated December 6, 1966.[6] Westover Hills is now a neighborhood consisting of gracious homes built primarily of stone and brick, and landscaped with mature trees and shrubs of various

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[2] *Lynch v. Thompson*, 2009 WL 1900464, at *1 (Del. Ch. June 29, 2009) (quoting *Cartanza v. DNREC*, 2009 WL 106554, at *1 (Del. Ch. Jan. 12, 2009).

[3] Service Corporation took exceptions to the Master's Report entirely on legal grounds.

[4] Pl.'s First Am. Compl., Ex. A ("PXA"), Art. X at 8.

[5] *Id.* at 8-9.

[6] *Service Corp. of Westover Hills v. Guzzetta et al.*, Del. Ch., C.A. No. 2922-VCP, Ayvazian, M. (Apr. 24, 2009) (Report) at 3. In this Opinion, I rely heavily on the "Factual Background" section of the Master's Report, in some cases quoting from the Report verbatim. I also rely on the record citations contained in that Report. For convenience and brevity, this Memorandum Opinion generally does not indicate quotations and citations to the Master's Report and the record citations contained therein.

types. The Property in dispute is located on the corner of Berkeley and Stuart Roads in Westover Hills and contains a residence, detached garage, and landscaping, including several mature trees.

By letter dated October 19, 2006, Mr. and Mrs. William R. Rubbert, then owners of the Property, informed Service Corporation of their plans to demolish their house. Written correspondence ensued between the parties regarding the appropriate demolition application to be submitted to Service Corporation and the Westover Hills Architectural Review Committee ("ARC"). The last letter from the Rubberts, dated January 19, 2007, stated that the plan was to remove the structures and plant grass. Copies of the New Castle County prescribed lot plan showing no structures on the Property were attached to this letter. Minutes from ARC's meeting on February 21, 2007 reveal that ARC did not recommend approval of the Rubberts' demolition request because of insufficient information and enumerate ARC's various concerns regarding the demolition process and lot restoration.

In a letter dated April 19, 2007, Service Corporation informed the Rubberts that it unanimously had accepted ARC's recommendation to deny approval in the absence of a satisfactory plan of remediation for the Property. The letter cited Article V of the Deed Restrictions, which gives Service Corporation the "'right to refuse any such plans or specifications which are not suitable or desirable, in its opinion, for aesthetic or other reasons', based upon 'the harmony thereof with the surroundings . . . .'"[7] In particular,

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[7] *Id.* at 4 (quoting PXA, Art. V).

the letter stated that demolition of the house on a "highly visible corner lot" "would expose to public view unsightly conditions on the adjacent Guzzetta property[,]" *i.e.*, an exterior elevator shaft and overhead wires.[8]

In May 2007, the Guzzettas purchased the Property from their neighbors, the Rubberts, with the intention of expanding their own backyard so that their children would have a larger area on which to play. The Guzzettas planned to demolish completely all existing structures on the Property and replace them with a grassy playfield, despite knowing that Service Corporation denied similar demolition plans submitted by the Rubberts.

C. Procedural History

Service Corporation brought this action against the Rubberts pursuant to 10 *Del. C.* § 348. Following the Guzzettas' purchase of the Property, the Guzzettas were substituted as Defendants in this action. On June 13, 2007, I granted Service Corporation's request for a preliminary injunction and enjoined the Guzzettas from demolishing the existing structure on the Property and from removing any trees pending a final resolution after trial of Service Corporation's claims. This matter was then referred to the Master for mediation. Although the Guzzettas and Service Corporation almost reached a settlement, negotiations ultimately broke down. The Master subsequently conducted a trial of this matter and later issued a Preliminary Report, finding for the Guzzettas and allowing the demolition to proceed. Both Plaintiff and Defendants took

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[8] *Id.* at 4.

exception to aspects of the Preliminary Report. The Master then issued a Final Report ("Report") that addressed those exceptions but still found for the Guzzettas. The matter is now before me on Service Corporation's exceptions to the Master's Report. After the parties briefed these exceptions, I heard oral argument on September 24, 2009.

D. Parties' Contentions

Service Corporation argues that it has the authority under the plain meaning of Article V of the Deed Restrictions to approve or disapprove the Guzzettas' plans for demolition. Service Corporation further asserts that, consistent with the Deed Restrictions, this authority can and will be exercised in a nonarbitrary manner. The Guzzettas contend that Article V does not cover a demolition, such as they propose, where no structure is to remain on the property. Therefore, according to the Guzzettas, Service Corporation has no authority to review their plans.

Service Corporation also argues that the equities of this situation should preclude an award of attorneys' fees to the Guzzettas, even if they are successful. Not surprisingly, the Guzzettas contend they are entitled to recover their attorneys' fees.

II. ANALYSIS

For a Master's conclusions of law to which exceptions are taken pursuant to Court of Chancery Rule 144, the standard of review is *de novo*.[9]

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[9] *Dolan v. Villages of Clearwater Homeowner's Ass'n, Inc.*, 2005 WL 1252351, at *1 (Del. Ch. May 12, 2005), *aff'd*, 2005 WL 2810724 (Del. Ch. Oct. 21, 2005); *see DiGiacobbe v. Sestak*, 743 A.2d 180 (Del. 1999).

A. Article V of the Deed Restrictions

1. Scope of Article V

Service Corporation urges this Court to issue a permanent injunction barring the Guzzettas from demolishing their neighboring house. The test for obtaining a permanent injunction is well known: Service Corporation must succeed on the merits of its claims after a full hearing, demonstrate that irreparable harm will occur in the absence of an injunction, and demonstrate that the balance of equities weighs in favor of the injunction.[10] For the reasons stated below, I conclude that Article V does not apply to the complete demolition of a structure as proposed by the Guzzettas. Thus, Service Corporation cannot succeed on the merits, and its permanent injunction claims must fail.

Determining the applicability of Article V requires consideration of competing legal interests. Restrictive covenants implicate contractual rights, such as the right of a buyer and seller to enter into a binding contract,[11] but they also implicate property rights, such as one's right to the free use of her land.[12] In situations where these two rights conflict, the law favors the free use of land.[13] Accordingly, restrictive covenants are

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[10] *See Harden v. Christiana Sch. Dist.*, 924 A.2d 247, 269 (Del. Ch. 2007).

[11] *Chambers v. Centerville Tract No. 2 Maint. Corp.*, 1984 WL 19485, at *2 (Del. Ch. May 31, 1984).

[12] *Id.*

[13] *Id.*; *see also The Cove on Herring Creek Homeowners' Ass'n, Inc. v. Riggs*, 2003 WL 1903472, at *2 (Del. Ch. Apr. 9, 2003), *aff'd,* 832 A.2d 1252 (Del. 2003); *Bethany Village Owners Ass'n, Inc. v. Fontana*, 1997 WL 695570, at *2 (Del. Ch. Oct. 9, 1997).

"construed in accordance with their plain meaning in favor of a grantee [such as the Guzzettas] and against a grantor or the one who enforces in his place."[14]

The restrictive covenant at issue here, Article V, reads as follows:

> Approval of Plans
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> No building, fence, or wall or other structure shall be commenced, erected or maintained, nor shall any addition to or change or alteration therein be made, until the plans and specifications, showing the nature, kind, shape, height, materials, floor plans, color scheme, location and frontage on the lot and approximate cost of such structure shall have been submitted to and approved in writing by the party of the first part. The party of the first part shall have the right to refuse to approve any such plans or specifications which are not suitable or desirable, in its opinion, for aesthetic or other reasons; and in so passing upon such plans and specifications it shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, to the site upon which it is proposed to erect same, the harmony thereof with the surroundings and the effect of the building or other structure, as planned, on the outlook from the adjacent or neighboring property.[15]

By its terms, the first clause of Article V, covering structures that are "commenced, erected, or maintained," does not apply to the complete demolition of a house. Service Corporation does not contend otherwise.

The second clause of Article V applies to "change[s] or alternation[s]" of structures. Service Corporation argues that the Guzzettas' planned demolition is a

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[14] *In re Blue Rock Manor Civic Ass'n v. Hartline*, 1992 WL 251381, at *2 (Del. Ch. Sept. 29, 1992) (citing *Brookside Cmty., Inc. v. Williams*, 290 A.2d 678 (Del. Ch. 1972), *aff'd,* 306 A.2d 711 (Del. 1973)).

[15] PXA, Art. V at 6.

"change" within the plain meaning of that word, and such demolition, therefore, is subject to its approval under Article V. In analyzing the language of this clause, I start with the premise that the parties to this restrictive covenant probably intended there to be some distinction between "alteration" and "change"; otherwise, their use together would be mere surplusage. The Merriam-Webster Dictionary defines "change" as "to make radically different" and "implies making . . . an essential difference often amounting to a loss of original identity . . . ."[16] Alteration, on the other hand, "implies a difference in some particular respect without suggesting a loss of identity."[17] Applying these definitions to the context of this case, an "alteration" to structure might encompass, for example, changing the exterior paint scheme, closing in a screened-in porch, or the construction of a back deck. A "change" to a structure is of a more radical and pervasive nature, and might encompass, for example, the gutting of a house followed by a complete refurbishment, a major addition made up of several rooms, or even the complete demolition of a structure. Read alone, this second clause of Article V fairly could cover the complete demolition of a house, as that is something "radically different" and "amount[s] to a loss of original identity."

The second clause of Article V, however, must be read in conjunction with the third clause. The key language of the third clause refers to "the plans and specifications,

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[16] Merriam-Webster Online Dictionary, definition of "change," http://www.merriam-webster.com/dictionary/change.

[17] *Id.*

showing the nature, kind, shape, height, materials, floor plans, color scheme, location and frontage on the lot and approximate cost *of such structure*. . . ."[18] This clause undermines Service Corporation's contention that Article V covers the Guzzettas' demolition for two reasons. First, the complete demolition of a structure so that it is replaced only by a grassy field would result, by necessity, in a change that has no "height, shape, materials, floor plans, color scheme, location or frontage." A grassy field arguably may have a "nature," "kind," and "cost," but granting Service Corporation approval authority on these grounds alone without linking that authority to at least one of the more objective factors of "height, shape, materials, floor plans, color scheme, location or frontage" seems inconsistent with the intent of the third clause.[19] Second, the "plans and specifications" must describe the relevant listed characteristics, including "nature," "kind," and "cost" as they apply to "such structure[s]." The third clause of Article V, therefore, narrows the broad coverage of the second clause. Read together, the second and third clauses only apply to "changes" to an existing structure where some structure will remain afterward. Accordingly, because the Guzzettas do not propose to leave any structure on the Property following demolition, the second and third clauses of Article V

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[18] PXA, Art. V at 6 (emphasis added).

[19] Service Corporation points out that not all plans contain all of the above factors, such as plans for a fence for which there is *ipso facto* no floor plan, but this argument is unconvincing. A fence is a structure specifically subject to approval under Article V. Plans and specifications for a proposed fence typically show such factors as shape, height, materials, color scheme, location, and cost. In that context, the fact that a fence or other structure may not implicate one or more of the other factors listed in the third clause of Article V is immaterial.

do not require them to submit their plans for the complete demolition of the adjacent house to Service Corporation for approval.

The second sentence of Article V also supports the conclusion that the Deed Restrictions do not apply to a complete demolition that will not result in any residual or replacement structure. This second sentence identifies the reasons for which Service Corporation may reject "plans or specifications" submitted for its approval under the first sentence and refers repeatedly to structural things, such as "the proposed building or other structure," the "materials of which it is to be built," the site where it is "proposed to erect the same," and "the effect of the building or other structure" on the outlook from neighboring property. A grassy field is not a building or structure, and cannot be "built" or "erected" within the plain meaning of those terms. Accordingly, the second sentence of Article V does not apply to the Guzzettas proposed demolition.

In sum, Article V is the most relevant provision of the Deed Restrictions and it contains only two sentences. For the reasons stated, neither of those sentences gives Service Corporation approval authority over a planned demolition where no replacement structure is planned. Reading the two sentences of Article V together simply reinforces that conclusion.

Service Corporation advances a different interpretation, arguing that the drafter intended to prevent homeowners from making such a radical change to a property as the Guzzettas propose without the consent of the organization representing the community. Yet, a close reading of the Deed Restrictions, individually and as a whole, reveals no such underlying intent.

Article II limits the use of land to private residential purposes. The change proposed by the Guzzettas would result in a grassy playfield for their children, a private residential purpose. Article II also generally limits any buildings erected on land in Westover Hills to private dwelling houses and private garages, and provides that "not more than one residence shall be erected or constructed upon any plot . . . ."[20] Not surprisingly, Article II does not require that a residence or garage be erected on every plot; rather, it provides that "not more than one residence" may be on each plot. Presumably, vacant lots could thus exist in Westover Hills. Moreover, Service Corporation has not adduced any evidence that Article II was intended to preclude the possibility of replacing a house in the community with a vacant lot without prior approval of the community organization.

None of the other provisions in the Deed Restrictions suggest that the drafters intended to require that there be a building on every plot in Westover Hills. Article III, for example, defines the term "building line" and establishes setbacks for any buildings and garages that may be erected in Westover Hills.[21] Additionally, Article IV provides that "free or open spaces shall be left on every plot built upon, on both sides of every

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[20] In addition to private, single family residential dwellings and garages, there is also a limited building exception, inapplicable here, for the construction of "[s]chools, [c]hurches, [l]ibraries, [a]rt [g]alleries, [m]useums, [c]lubs" or similar buildings. PXA, Art. II at 5.

[21] *Id.*, Art. III at 5.

residence erected thereon, which free spaces shall extend the full depth of the plot."[22] It does not mandate, however, that every lot be built upon or that once a lot included a building, it cannot be returned to the condition of a vacant lot without approval of the homeowners association. The other Articles of the Deed Restrictions are even less relevant to the issue of whether there is any requirement that there be a building on each plot in Westover Hills.

Service Corporation next argues that there are numerous types of plans that should be reviewed in connection with a demolition, such as plans for handling toxic materials like lead or asbestos, plans for protecting Service Corporation's trees from being damaged during the demolition process, and plans for what will be done with the land after the demolition is completed. To some extent, at least, that is probably true. Plans for the handling of toxic materials and the like, for example, may need to be reviewed and approved by a governmental authority with expertise in that area. Other approvals from local governmental agencies also may be necessary. To that end, the Guzzettas already have submitted demolition plans to the City of Wilmington, which has given its approval and issued the Guzzettas the necessary permits.[23] Service Corporation contends, however, that Article V's list of plans and specifications "showing the nature, kind, shape, height, materials, floor plans, color scheme, location and frontage on the lot

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[22] *Id.*, Art. IV at 6.

[23] *Service Corp. of Westover Hills v. Guzzetta*, Del. Ch., C.A. No. 2922-VCP, Ayvazian, M., at *5 (Apr. 24, 2009) (Report).

and approximate cost of such structure . . ."[24] need not be read as exclusive or exhaustive, and that its review and approval also should be required for the demolition of a house. Still, as previously discussed, Service Corporation has failed to provide any legal authority for its argument that the plain language of the relevant restrictive covenant should be accorded an open-ended reading.

Thus, based on the plain meaning of Article V, the law's preference for the free use of land,[25] and the requirement that any ambiguities in the Deed Restrictions be resolved in favor of the grantee and against the grantor,[26] I hold that Article V cannot be construed so broadly as to give Service Corporation the authority to regulate the complete demolition of a house where no replacement structure of any kind is planned. Had the Guzzettas' plans included a razing that would leave some structure remaining or a subsequent construction of anything at all, such as a fence or a small tool shed, for example, my ruling likely would be different and Service Corporation would have some approval authority.

2. Exercise of Article V in a nonarbitrary manner

Even assuming for the sake of argument that Article V could be interpreted to cover the Guzzettas' proposed demolition plans, there is an independent reason why the Guzzettas must be allowed to proceed: Article V provides no standards by which to

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24 PXA, Art. V at 6.

25 *See supra* notes 11-13.

26 *In re Blue Rock Manor Civic Ass'n v. Hartline*, 1992 WL 251381, at *2 (Del. Ch. Sept. 29, 1992).

ensure that Service Corporation will exercise its power in a nonarbitrary manner. Because the Guzzettas' proposal does not envision any structure on the Property after the demolition, the Deed Restrictions provide no guidance as to how Service Corporation is to consider "the suitability of the proposed building or other structure," the "materials of which it is to be built," the site where it is "proposed to erect the same," or "the effect of the building or other structure . . . on the outlook from the adjacent or neighboring property."[27] By default, Service Corporation's decision to approve or deny the Guzzettas' demolition plan would have to be based upon "aesthetic or other reasons," the only remaining consideration specified in Article V that Service Corporation arguably could invoke in the exercise of its power.[28] The courts, however, have voided restrictive covenants that allowed building plans to be rejected for purely aesthetic reasons as unreasonable.[29] Thus, even if the Guzzettas' demolition plan fell within the scope of Article V, as Service Corporation contends, the only basis upon which Service

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[27] PXA, Art. V at 6. Even where a structure is proposed, Delaware courts specifically have rejected planning approval based on the "outlook" from a neighboring property as an impermissibly arbitrary use of discretion. *Seabreak Homeowners Ass'n, Inc. v. Gresser*, 517 A.2d 263, 270 (Del. Ch. 1986), *aff'd*, 538 A.2d 1113 (Del. 1988). "Outlook," as used in Article V, has "no built-in objective standards that would enable it to be applied in an evenhanded manner or to be used as a guideline by lot owners in designing their residences." *Id.*

[28] PXA, Art. V at 6.

[29] *See Chambers v. Centerville Tract No. 2 Maint. Corp.*, 1984 WL 19485, at *3 (Del. Ch. May 31, 1984); *see also Welshire Civic Ass'n, Inc. v. Stiles*, 1993 WL 488244, at *3 (Del. Ch. Nov. 19, 1993); *Seabreak Homeowners Ass'n,* 517 A.2d at 269; *Alliegro v. Home Owners of Edgewood Hills, Inc.*, 122 A.2d 910, 913 (Del. Ch. 1956).

Corporation might refuse to approve the plan has been found unreasonable as a matter of law. This reinforces the conclusion that Service Corporation has no authority to review and approve the proposed demolition.

Service Corporation disagrees, arguing that it has the right to decide what is in harmony with the neighborhood, citing *Dolan v. Villages of Clearwater Homeowner's Association, Inc*.[30] According to Service Corporation, anyone driving down one of the five streets in Westover Hills would consider a large open lot with nothing more than grass on it, as proposed by the Guzzettas, to be an aberration. Service Corporation's reliance upon *Dolan*, however, is misplaced.

In *Dolan*, the dispute involved whether a homeowner could replace white pea gravel under and in front of her home with concrete paving where the surrounding neighborhood consisted of distinctive "Key West" style houses elevated on pilings with white pea gravel under and in front of all the houses.[31] The Association had denied Dolan's application to pave the area under and in front of her home with concrete because, among other reasons, it was not in harmony with the development. Although Dolan brought an action seeking to enjoin the Association from interfering with her plans, she never questioned the authority of the Association to review the materials she proposed to use based on visual harmony or any other criteria. Instead, Dolan argued that

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30 2005 WL 1252351 (Del. Ch. May 12, 2005), *aff'd*, 2005 WL 2810724 (Del. Ch. Oct. 21, 2005).

31 *Id.* at *1.

the Association was required to evaluate the proposed materials for visual harmony with the entire development, and not just with the surrounding section of the development that contained "Key West" style houses.[32] Dolan also challenged the Association's preference for gravel over concrete as an arbitrary exercise of power based solely on aesthetic considerations. Rejecting both those arguments, the court held that the Association had not acted arbitrarily in denying Dolan the right to remove the white gravel, which was an integral element of the Key West style of houses.[33]

Unlike the homeowner in *Dolan*, the Guzzettas challenge Service Corporation's authority to review their plans. Service Corporation's authority to review plans for harmony under Article V, however, is limited to an evaluation of the harmony of a structure and its materials with the surroundings. Because the Guzzettas do not propose to erect or build a structure, *Dolan* is not instructive here.

Service Corporation also cites *Cannonshire Maintenance Association v. Hafcyz* for the proposition that "requiring proposed construction to be in harmony with the development is valid unless it is enforced arbitrarily."[34] The *Hafcyz* decision is not helpful to Service Corporation for two reasons. First, as explained above, the restrictive covenant relevant to the Guzzettas' proposal purportedly authorizes a disapproval for purely aesthetic reasons, which invites arbitrary enforcement. Yet, the very sentence of

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[32] *Id.* at *3.

[33] *Id.* at *4-5.

[34] 1996 WL 592720, at *2 (Del. Ch. Oct. 8, 1996).

Hafcyz upon which Service Corporation relies explicitly recognizes the invalidity of an arbitrarily enforced restrictive covenant. Second, the Guzzettas are not "propos[ing] construction" of anything. Accordingly, *Hafcyz* is inapposite.

Service Corporation also asserts that its past enforcement of the Deed Restrictions has been uniform and not arbitrary. In particular, Service Corporation adduced evidence of three previous demolitions of existing houses in Westover Hills. In two of the three cases, the demolition was approved in advance. Moreover, Service Corporation worked with all three property owners before approving their proposed construction and landscaping plans. In each case, however, a new structure was built upon the property following demolition of the existing structure. The Guzzettas have not questioned the authority of Service Corporation to approve plans and specifications for the construction of a new structure. Thus, the handling of the three previous demolitions does not alter my conclusion that Service Corporation has no authority to review the Guzzettas' demolition plan, which does not envision any post-demolition structure on the Property.

Finally, the Guzzettas' plan to remove the existing landscaping on the Property is not subject to Service Corporation's review under the Deed Restrictions. At trial, a former president of Service Corporation conceded that landscaping, in and of itself, is not an item that the board reviews.[35] Although Service Corporation now argues that the Guzzettas' plan will result in a large open field out of harmony with the rest of the neighborhood, Service Corporation has not identified any language in the Deed

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[35] Tr. 87.

Restrictions authorizing it to review and approve landscaping plans for privately owned property. Indeed, the only time Service Corporation has considered landscaping has been as an ancillary part of a review of a proposed construction project.[36] Because the Guzzettas do not plan any construction after the demolition, Service Corporation has no authority to review their plan to remove the existing landscaping on the Property and create a grassy playfield for their children.

B. Damages

In addition to opposing Service Corporation's claim for injunctive relief, the Guzzettas request damages under Court of Chancery Rule 65(c). Rule 65(c) provides that a party seeking a preliminary injunction must post security "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained."[37] As the court held in *Emerald Partners*, under the "injunction bond rule," any damages resulting from a wrongful injunction must be "limited to the value of the substituted security," provided the plaintiff sought the injunction in good faith.[38]

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[36] *Id.* at 58; PX 14-17.

[37] Ct. Ch. R. 65(c).

[38] *Emerald Partners v. Berlin*, 712 A.2d 1006, 1010-11 (Del. Ch. 1997), *aff'd*, 726 A.2d 1215 (Del. 1998). The Guzzettas have not shown any basis for questioning the good faith of Service Corporation in seeking the preliminary injunction.

Service Corporation has posted a $10,000 bond in connection with the preliminary injunction.[39] Having found, for the reasons stated *supra* Part II.A, that the Guzzettas were wrongfully enjoined from proceeding with their proposed demolition, I award them damages of $10,000, the amount of security posted by Service Corporation.[40]

C. Attorneys' Fees

The Legislature adopted Section 348[41] to make the Court of Chancery's resources available for the prompt and cost effective resolution of disputes between homeowners and homeowners associations. To this end, Section 348 authorizes parties to proceed *pro se* through mediation, and provides that the losing party will pay the winner's attorneys' fees and court costs. These provisions seek to promote quick and relatively inexpensive resolution of disputes over deed restrictions, and discourage protracted litigation. Regrettably, neither of those goals was achieved in this case.

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[39] Service Corporation initially posted a $5000 bond on May 29, 2007. The Guzzettas later filed a Petition to Increase Security Given by Plaintiff, seeking $79,146.94 in security. On October 30, 2008, I issued an order granting the Guzzettas' Petition in part and increasing Service Corporation's required security to $10,000. The Guzzettas moved to reargue that decision, but I denied their request in a letter opinion issued on December 22, 2008, ultimately leaving the $10,000 in security posted by Service Corporation unchanged.

[40] Based on the record created on the Guzzettas' Petition to Increase Security, it is reasonable to infer that the Guzzettas can prove actual damages in the amount of at least $10,000. Service Corporation remains free to argue that the damages were less than $10,000. If they do so unsuccessfully, however, Service Corporation will be liable for any attorneys' fees and costs the Guzzettas incur in further proving their damages.

[41] 10 *Del. C.* § 348.

This dispute involves two financially capable litigants who elected to take their dispute "to the mat" at virtually every turn. If anything, due to the parties' resources, the possibility of recovering their attorneys' fees may have hindered their ability to reach a negotiated resolution and accept something less than a complete victory. Based on the representations of counsel at the argument on September 24, 2009, the Guzzettas have spent approximately $90,000 and Service Corporation has incurred close to $100,000 on attorneys' fees to this point. In a relatively straightforward matter like this, that amount is excessive, not because the attorneys did not do commensurate work, but because the matter could have been resolved much sooner and less expensively had both sides not repeatedly dug in their heels.

The parties' attorneys' fees and costs, however, tell only half the story. The Court of Chancery and, through it, the State incurred significant costs in this matter, as well. Thus far, this dispute has involved a preliminary injunction hearing and ruling, mediation before a Master, multiple proceedings before me on the Guzzettas' petition to increase the bond, a trial before the Master, the Master's Preliminary Report, exceptions to the Preliminary Report, the Master's Final Report, objections to the Final Report, argument on those objections in this Court, and this Memorandum Opinion.

Protracted litigation of this kind is sometimes unavoidable and necessary to preserve a party's rights. I do not believe, however, that the Legislature's decision to shift attorneys' fees to the losing party was meant to facilitate the disproportionate expenditure of the litigants' and the State's resources to the extent that occurred in this case. With those considerations in mind, I have determined preliminarily that an award

of $60,000 in attorneys' fees and expenses to the Guzzettas as the prevailing parties is reasonable and that a higher amount would be unduly harsh in these circumstances.[42] The Guzzettas are hereby directed to file an affidavit and supporting documentation confirming that they have spent $60,000 or more in attorneys' fees and court costs. I characterize this award as "preliminary," because it is without prejudice to the Guzzettas' and Service Corporation's ability to challenge the award as too low or too high. In that event, however, I expect to hold the losing party on any challenge responsible for their adversary's fees and costs on that issue.

Service Corporation argues that it would be unfair and unreasonable and result in a particularly harsh outcome if it were required to pay the attorneys' fees and costs of the Guzzettas' pursuant to 10 *Del. C.* § 348. According to Service Corporation, this litigation was occasioned by the Guzzettas' efforts to deceive Service Corporation before litigation began, and was lengthened at considerable expense by the Guzzettas' post-litigation conduct. In particular, Service Corporation complains that the Guzzettas' refused to stipulate to a trial on two limited issues: (1) the Guzzettas' continuing obligation to water the landscaping planned for the Property; and (2) the question of attorneys' fees. Service Corporation contends that, based on these actions, the Court should decline to award the Guzzettas any attorneys' fees.

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[42] *See* 10 *Del. C.* § 348(e). Section 348(e) provides that the "nonprevailing party at a trial held pursuant to the provisions of this section must pay the prevailing party's attorney fees and court costs, unless the court finds that enforcing this subsection would result in an unfair, unreasonable, or harsh outcome."

Initially, I find the Guzzettas prelitigation conduct largely irrelevant. Although I previously stated that Mr. Guzzetta and Service Corporation engaged in a "lengthy game of cat-and-mouse" for over six months before the commencement of this action,[43] it was Service Corporation that chose to initiate this action and invoke Section 348. Service Corporation, therefore, cannot complain about the statute's applicability.[44] Furthermore, it was the plan for the demolition of the Property, and not any deception by the Guzzettas, that prompted the litigation. Therefore, I see no equitable reason to diminish materially an award of attorneys' fees based on the Guzzettas' pre-litigation conduct.

I also find unpersuasive Service Corporation's contention that the Guzzettas conduct in the parties' failed settlement attempts warrants denying them relief. Both parties vigorously pressed their negotiating positions, but still appear to have acted within the bounds of reasonableness. Service Corporation, having obtained a favorable ruling on its request for a preliminary injunction, understandably sought a number of concessions from the Guzzettas during their settlement negotiations. As previously alluded to, one of the requested concessions was a maintenance agreement requiring the Guzzettas to water the new landscaping contemplated by the proposed settlement. Service Corporation evidently feared that without such an agreement, the Guzzettas

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43 *Service Corp. of Westover Hills v. Robert Guzzetta et al.*, C.A. No. 2922-VCP, letter op. at 15-16 (Del. Ch. June 13, 2007) (referring to Mr. Guzzetta secretly drafting letters from the previous owners to Service Corporation regarding the proposed demolition).

44 *See Swann Keys Civic Ass'n v. Shamp*, 2008 WL 4698478, at *1 (Del. Ch. Oct. 10, 2008), *aff'd*, 2009 WL 765671 (Del. Mar. 26, 2009).

might remove the landscaping entirely or allow it to whither and die. These concerns bespeak the high level of mistrust between the two sides, but that is a common, if unfortunate, attribute of contentious litigation of this type. While Service Corporation's efforts may be understandable, I cannot blame the Guzzettas for resisting those efforts. Nevertheless, the level of brinksmanship engaged in by the litigants here proved to be counterproductive and justifies an award of something less than every dollar expended.

For their part, the Guzzettas generally acted reasonably in insisting upon an unfettered right to pursue their demolition plan for the Property. They maintained from the outset that the plain meaning of Article V does not cover a complete demolition such as the one they proposed. In some respects, the Guzzettas' position is counter-intuitive; in the end, however, they prevailed. The Guzzettas entered into settlement negotiations only because it represented the "better of two evils," and could have prevented the further costs and delays of a trial.[45] But, the Guzzettas had no obligation to settle, and Service Corporation has not shown that they acted unreasonably or in bad faith in choosing to pursue a full vindication of their property rights.

Service Corporation lastly claims that a fee award is not warranted here because it is a non-profit entity. Yet, virtually all homeowners associations are non-profits. Section 348 clearly anticipates litigation involving homeowners associations. If non-profit status alone was sufficient to exempt a party entirely from reimbursing attorneys' fees, then homeowner's associations would very rarely pay, and homeowners would bear virtually

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[45] Defs.' Ans. Br. in Opp'n to Pl.'s Exceptions to the Master's Final Report 14.

all of the risk in litigation under 10 *Del. C.* § 348. Had the General Assembly intended that result, it would have said so in the statute. Because it did not, I do not consider Service Corporation's status as a non-profit to be a compelling consideration. Rather, it is one factor, among several, that informed my decision here.

In sum, both parties were represented by competent counsel, knew the risks and attendant costs, and elected to drive a hard bargain in settlement negotiations and litigate vigorously when those negotiations failed. In these circumstances, it is not unfair, unreasonable, or unduly harsh to shift most of the Guzzettas' attorneys' fees and court costs to the nonprevailing party as authorized by Section 348. At the same time, I consider attorneys' fees in the range of $90,000 or more for a dispute of this kind presumptively excessive. Routinely awarding such fees will encourage other well-heeled litigants to throw caution to the wind and litigate their case to the fullest. Such conduct, however, imposes significant burdens on the courts and hardly supports the General Assembly's intent of providing an expeditious forum for the resolution of disputes involving the enforcement of deed restrictions.[46] Thus, I award the Guzzettas $60,000 in attorneys' fees and court costs subject to the conditions previously stated.

III. CONCLUSION

For the reasons stated in this Memorandum Opinion and in the Master's Report, I concur with the Master's recommendations. Article V of the Deed Restrictions does not give Service Corporation approval authority over the complete demolition of a house

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[46] *See* 10 *Del. C.* § 348, revisor's note.

where no replacement structure of any kind is planned. Therefore, Service Corporation's motion for a permanent injunction enjoining the Guzzettas' proposal to effect demolition of the structure in question is denied. Furthermore, I award the Guzzettas damages in the amount of $10,000 and attorneys' fees and court costs in the amount of $60,000, subject to the conditions stated in Part II.C, above. The Guzzettas' counsel shall submit, on notice, a proposed form of judgment to implement these rulings within ten (10) days of the date of this Memorandum Opinion.