NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 0801

BRETT T. BARKER, MELISSA ROBICHAUX BARKER, EDWARD FREDRICK McCULLA, II, AND CHERYLLYN REDMOND McCULLA

VERSUS

BEAU MATTHEW BLANCHARD

Judgment Rendered: October 29, 2010.

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On Appeal from the
32nd Judicial District Court,
In and for the Parish of Terrebonne,
State of Louisiana
Trial Court No. 156,255

The Honorable George J. Larke, Judge Presiding

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

Gaidry, J
CON CURS

CARTER, C. J.

This suit was instituted by property owners seeking to enjoin the defendant, Beau Blanchard, from feeding birds and storing commercial lawn equipment on his neighboring property in violation of the restrictive covenants applicable to their subdivision. Blanchard now appeals the trial court's judgment enjoining him or those acting on his behalf from feeding any birds on his property and from storing, maintaining, or otherwise operating commercial lawn equipment on the property in violation of the restrictive covenant. Blanchard contends that the trial court was manifestly erroneous in finding violations of the restrictive covenants and also in failing to find that the time period for claiming a violation had prescribed.

The pertinent restrictive covenants state:

> 8.a. No noxious or offensive activity shall be carried on or engaged in upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
>
> . . .
>
> 8.c. No business or commercial enterprise shall be erected, established, maintained, operated or carried on upon any lot.

The trial court heard the testimony of the plaintiffs and Blanchard and reviewed photographs showing the presence of numerous birds and large commercial lawn equipment parked in Blanchard's yard. Based on that evidence, the trial court determined that Blanchard had violated the restrictive covenants. After reviewing the record herein, we find no error in the trial court's determination that Blanchard's activities were in violation of the subdivision's restrictive covenants.

The trial court further determined that this action to enforce restrictive covenant 8.c. had not prescribed under LSA-C.C. art. 781, which provides:

> No action for injunction or for damages on account of the violation of a building restriction may be brought after two years from the commencement of a noticeable violation. After the lapse of this period, the immovable on which the violation occurred is freed of the restriction that has been violated.

The two-year period set forth in LSA-C.C. art. 781 applies to each noticeable violation. **Investment Management Services, Inc. v. Village of Folsom**, 00-0832 (La. App. 1 Cir. 5/11/01), 808 So.2d 597, 605.

After review, we find no error in the trial court's determination that the action had not prescribed. Within the year prior to trial, Blanchard acquired a large John Deere tractor, which, according to one neighbor, is visible six feet above the fence line, causes homes to vibrate when it is started, and gives off a diesel fuel smell. Although Blanchard stored smaller-scale grass-cutting equipment at his home prior to acquiring the large John Deere tractor, there had been no subversion of the original scheme resulting in a change in the neighborhood. Cf. **Diefenthal v. Longue Vue Management Corporation**, 561 So.2d 44, 56 (La. 1990). Thus, we find that the action was timely filed.

For the foregoing reasons, the judgment of the trial court is affirmed in accordance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to Beau Matthew Blanchard.

AFFIRMED.