

STATE OF MICHIGAN
COURT OF APPEALS

LAKE COLUMBIA PROPERTY
OWNERS ASSOCIATION,

UNPUBLISHED
January 9, 1998

Plaintiff-Appellant,

v

No. 198959
Jackson Circuit Court
LC No. 96-076922 CH

ROBERT WALBY,

Defendant-Appellee.

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Plaintiff, a homeowners' association existing by virtue of restrictive covenants in the subdivision deeds of twelve subdivisions surrounding Lake Columbia in Jackson County, appeals as of right a judgment, after a bench trial, in favor of defendant, who proposed to develop his residential lot in the Sherwood Shores Subdivision in a manner contrary to that authorized by the building control committee. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We reverse and remand.

Under the declaration of restrictions, the building control committee has the right to approve plans and specifications for all structures erected in the subdivision. "The committee may reject any plan because of too great a similarity to nearby existing structures. . . ." Here, the committee, pursuant to its bylaws acting through one member on behalf of the whole committee, rejected defendant's plans for the development of lot eighteen, Sherwood Shores, otherwise known as 101 Camelot, opining that the proposed development "has too great a similarity to nearby existing structures."

In the course of the bench trial, and in its subsequent opinion, the trial court focused on theories for rejecting defendant's development that were never relied upon by the building control committee, which posited only the single reason of similarity. The building control committee did not reject defendant's proposed development because it would be a modular home, because of the pitch of the roof, or for any reason other than similarity. A review of photographs of the three homes across the street from defendant's lot and the two neighboring homes on the same block of Camelot Street reflects

that the residences across the street are each architecturally distinct, while the two preexisting homes on defendant's side of the street are both ranch style bungalows, distinct only in that one has a garage and their exteriors are different colors.

Undoubtedly, in rejecting defendant's proposed development for similarity, the building control committee was applying a subjective standard. But the application of such a subjective standard is clearly within the contemplation of the restrictive covenant, which specified no objective criteria for making such a determination.

Negative covenants such as those in the subdivision deeds are grounded in contract. In an action to enforce such a covenant, the intent of the drafter controls. Provisions are to be strictly construed against the would-be enforcer, however, and doubts resolved in favor of the free use of property. *Livonia v Dep't of Social Services*, 423 Mich 466, 525; 378 NW2d 402 (1985). Courts will not grant equitable relief unless there is an obvious violation. *Sampson v Kaufman*, 345 Mich 48, 50; 75 NW2d 64 (1956); *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997).

A negative easement is a valuable property right. *Austin v Van Horn*, 245 Mich 344, 346; 222 NW 721 (1929). Public policy favors use restrictions in residential deeds, *Rofo v Robinson (On Second Remand)*, 126 Mich App 151, 157; 336 NW2d 778 (1983). Property owners who have complied with deed restrictions are entitled to judicial protection of their interests, and restrictive covenants which protect property values and aesthetic characteristics considered to be essential constituents of a family environment are valid and enforceable. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210-211; 568 NW2d 378 (1997).

Michigan courts generally enforce valid restrictions by injunction. *Cooper v Kovan*, 349 Mich 520, 530; 84 NW2d 859 (1957). The three equitable exceptions to the general enforcement rule are (1) technical violations and absence of substantial injury, (2) changed conditions, and (3) limitations and laches. *Cooper v Kovan, supra*; *Webb v Smith, supra*, 224 Mich App at 211. Here, there is no technical violation, but a substantial violation, namely, development by defendant in direct contravention of the covenant requiring approval by the building control committee, which is specifically authorized to reject such development on grounds of similarity. Cf *Gamble v Hannigan*, 38 Mich App 500, 504-505; 196 NW2d 807 (1972). There are no changed conditions, of the type that would effectively abrogate the restrictive covenant. Cf *Cooper v Kovan, supra*, 349 Mich at 531 (suggesting that if most of an area had come to be used chiefly for business purposes instead of residences, and it would be impossible to restore the residential character of the neighborhood by enforcement of the restrictions upon the land to which they apply, it would be inequitable and oppressive to give effect to the restrictions). It appears that all 2,214 lots from all twelve subdivisions, including all 1,012 lots so far developed, are used solely for residential purposes. Inasmuch as plaintiff brought this suit for injunctive relief as soon as defendant proposed to proceed with his development plans, neither limitations nor laches is at issue. *Webb v Smith, supra*.

In reviewing the action of the building control committee, the circuit court is not free to substitute its subjective view of similarity for that of the committee. By its terms, the restrictive covenant grants the subjective authority to the building control committee, and the power accordingly does not "lie in judicial

hands.” *Cooper v Kovan, supra*, 349 Mich at 530. The facts not being in dispute, review of such equitable actions is de novo. *Webb v Smith, supra*, 224 Mich App at 210. Here, the circuit court erred in considering reasons for plaintiff’s action extraneous to the ground asserted by the building control committee as the basis for rejecting defendant’s proposed development plans, and in substituting itself as a subdivision board of review instead of ascertaining whether the action of the building control committee is clearly within the authority granted the committee by the restrictive covenant. As the action of the building control committee in this case is within the explicit terms of the restrictive covenant, which provides no objective criteria that would permit review of such a subjective determination, and because there is no balancing of the equities in such cases, *Webb v Smith, supra*, 224 Mich App at 211, the circuit court erred in denying plaintiff’s request for injunctive relief.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra