

STATE OF MICHIGAN
COURT OF APPEALS

PAUL MARINO and LINDA MARINO,

Plaintiff-Appellants,

v

GRAYHAVEN ESTATES LTD., LLC,
GRAYHAVEN-LENOX LIMITED DIVIDEND
HOUSING ASSOCIATION, GRAYHAVEN
ESTATES DEVELOPMENT COMPANY,
CHARLES BROWN, PULTE HOMES OF
MICHIGAN CORPORATION, and PULTE
CORPORATION,

Defendants-Appellees.

UNPUBLISHED

June 19, 2001

No. 215764

Wayne Circuit Court

LC No. 98-813922-CH

Before: Smolenski, P.J., and Holbrook, Jr., and White, JJ

WHITE, J. (*concurring in part and dissenting in part*).

I concur in the majority's remand with respect to counts II, III and VI.

I also agree with defendants and the majority that the waiver provision was not limited to the restrictions regarding single family residences. By its own terms, the waiver clearly applied to "any and all building or use restrictions," and was explicitly not limited to those regarding single family residences. Thus, e.g., the provision stating that "[n]o docks, structure or obstructions of any nature shall be constructed in any lagoon" was waived.

I respectfully disagree, however, with the conclusion that the record made below establishes that "any and all building and use restrictions" refers to those paragraphs of the 1926 deed that set forth "agreements," as distinguished from "restrictions." The deed refers to "building restrictions and agreements" in both the paragraph introducing the restrictions and agreements and the paragraph that marks the end of the delineation of the restrictions and agreements. While most of the separately titled paragraphs located between these two paragraphs use language of restriction - - "no dwelling or structure shall," "all structures shall," etc., - - several paragraphs use language of agreement - - "grantee agrees," "grantors agree." Thus, the deed recognizes the recital of building restrictions and agreements as two separate categories. The waiver, however, refers to "any and all building and use restrictions," and does not mention "agreements." Under these circumstances, I conclude that the court erred in

concluding that by its terms the waiver applied to all provisions of the deed at issue, including those constituting “agreements.” Whether plaintiffs can show a violation of the agreements is a separate question that should be addressed on remand.

Lastly, I agree that the court did not abuse its discretion in denying a preliminary injunction.

/s/ Helene N. White