

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Meadowlake Park Association :
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 :
 v. :
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 John Wieczerzak and Lisa :
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 Wieczerzak, husband and wife, : No. 2058 C.D. 2009
 :
 Appellants : Submitted: February 5, 2010

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: April 30, 2010

John and Lisa Wieczerzak (the Landowners) petition for review from the order of the Court of Common Pleas of Monroe County (common pleas court) which granted summary judgment in favor of the Meadowlake Park Association¹ (the Association) and awarded attorney’s fees in the amount of \$4,500.00.

On April 2, 2007, the Association filed a Complaint against the Landowners alleging they were in violation of a specific covenant and restriction related to the maintenance and cleanliness of their property. The Complaint alleged:

....
3. That the Defendants [the Landowners] . . . are the owners of certain improved residential property . . . located in the Meadowlake Park Association Development, by merit of a certain Deed dated November 26, 2001 and recorded December 19, 2001 in the [Monroe County] office for the Recording of Deeds

¹ The Association is a not-for-profit community association which governs Meadowlake Park, a residential community, in which the Landowners reside and own improved residential property.

4. That the above recited Deed is under and subject to the Covents [sic] and Restrictions applicable to all lots in Meadowlake Park

5. As an owner of property within the Meadowlake Park, the . . . [Landowners] became members of the property owners association.

6. As members of the property owners association the . . . [Landowners] are bound by the Meadowlake Park Association's By-Laws

7. Pursuant to the By-Laws if a member fails to comply with the By-Laws and/or Rules and Regulations adopted by Meadowlake Park Association the Association may seek injunctive relief, recover damages, recover attorney's fees and costs.

8. Pursuant to the Deed Restrictions, Rules and Regulations adopted by Meadowlake Park Association.

11. This lot shall be kept and maintained in a clean, sightly and sanitary condition; all garbage, trash and refuse shall be kept in sanitary and reasonably attractive containers and taken or carried away periodically. At no time shall any unlicensed vehicles, equipment, appliances, merchandise, construction materials and other materials and goods of any nature whatsoever, other than those normally incidental to private residential use, be stored outside of an enclosed building so as to present an unsightly appearance and detract from the beauty of the community. (Emphasis added).

. . . .

9. **The [Landowners] . . . have failed to abide by their Deed Restrictions, By-Laws and Rules and Regulations in that on their lot is situated, equipment, canisters, tires, debris, material, junk and various other garbage.** (Emphasis added).

10. On June 2, 2006, June 27, 2006 and December 4, 2006 Notices were sent to the . . . [Landowners] requesting that these items be removed.

11. The [Landowners] previously indicated they would remove same, but to date have not done so.

12. The [Landowners] . . . lot is unsightly, lowers the property value of . . . [the Associations'] property, the property of other members and is an annoyance.

13. [The Association] . . . believes that the . . . [Landowners] have no intention of removing the nuisances and junk from the property.

14. [The Association] will suffer irreparable harm if the . . . [Landowners] do not remove the nuisances and junk from the property.

.....

Complaint, April 2, 2007, Paragraph Nos. 3-14 at 2-4.

The Landowners filed an answer to the complaint. The Landowners admit paragraphs one through six of the complaint relating to the restrictive covenants and By-Laws applicable to them as members of the Association. The Landowners averred that paragraphs seven and eight were conclusions of law and did not require a response. The Landowners' answer also provided the following explanatory responses:

.....

9. Denied [that the Landowners failed to abide by their Deed Restriction, By-Laws and Rules and Regulations in that on their lot is situated, equipment, canisters, tires, debris, material, junk and various other garbage.] . . . [The Landowners] are working very diligently to upgrade their property. As a result of the work they have done, their property has significantly increased in value. Their neighbors have nothing but praise for the work . . . [the Landowners] have done in greatly improving their property.

10. Admitted [that notices were sent to the Landowners on June 2, 2006, June 27, 2006 and December 4, 2006.]
11. [The Landowners] . . . are attempting to sell the backhoe that was in the mud which they were using to improve their property.
12. [T]o the contrary . . . [the Landowners] have received considerable praise from their neighbors for their efforts to improve their property and the appraisal of their property shows it has increased their property's market value, not diminished it or the value of the surrounding area.
13. [As to whether the Landowners intend to remove the nuisances and junk from the property the averment is] [d]enied as an attempt to guess . . . [the Landowners'] efforts to upgrade their property.
14. [The Association] . . . will suffer no harm at all from [the Landowners']

....

Answer to Complaint, September 18, 2007, Paragraphs 9-14 at 1-2.

On January 29, 2009, the Association filed a Motion for Summary Judgment asserting that it had been roughly two years since the action was initiated and the Landowners failed to take any steps to bring their property into compliance. The Association requested that the common pleas court grant summary judgment in its favor and order the Landowners to refrain from violating the covenants and restrictions, remove all equipment, canisters, tires, debris, junk, and garbage from the property, refrain from littering their property with said items in the future and award reasonable attorney's fees and costs as appropriate.

On April 21, 2009, the common pleas court granted summary judgment in favor of the Association after finding that the Landowners failed to maintain their

property in compliance with the restrictive covenant. In its discussion the common pleas court stated:

[In the Landowners'] . . . Answer . . . they admitted that they are 'working very diligently to upgrade their property.' Further . . . [the Landowners] stated that they are 'attempting to sell the backhoe that was in the mud which they were using to improve their property.' [The Landowners] . . . also admit that they received Notices on June 2, 2006; June 27, 2006; and December 4, 2006 from . . . [the Association] requesting that these items be removed We find that the argument that . . . [the Landowners] are not in violation of the restrictive covenant is without merit. If we were to adopt this view, restrictive covenants would be useless.

....

We have before us irrefutable photographic evidence that . . . [the Landowners'] property is unsightly [contained in the Associations' Motion for Summary Judgment, Exhs. D through F] [The Association] . . . includes photographs taken on October 10, 2006; April 21, 2007; and November 18, 2008. It is clear that each set of photographs depicts [the Landowners'] . . . property. Further, each set of photographs shows that if any 'upgrades' were in fact made by [the Landowners] . . . from the time the first Notice was sent until . . . [the Associations'] Motion for Summary Judgment was filed, the improvements are minimal. The photographs show that there is heavy equipment, vehicles, canisters, tires, debris, junk and other garbage on . . . [the Landowners'] property. [The Landowners] . . . aver that they intend to clean up the premises; however, no reasonable action has been taken in almost two years to remedy the situation. Additionally, [the Landowners] . . . presented discovery which included statements from neighbors that the [Landowners] are working to clean up the property However, these statements do not refute the basic fact that . . . [the Landowners] have been violating their Deed Restrictions, Association By-Laws and Rule[s] and Regulations for almost two years.

....

Court of Common Pleas of Monroe County, Opinion and Order, April 21, 2009, at 4-5.

As a result, the common pleas court ordered the Landowners to remove all of the offending items from their property within forty-five days otherwise the Association was directed to perform removal for a reasonable fee with costs assessed to the Landowners. Additionally, the common pleas court ordered the Association to file an itemized bill for work performed and billable hours to determine reasonable attorney's fees.

Following a hearing on June 16, 2009, and after review of the itemized bill for work performed the common pleas court determined that the Association was entitled to attorney's fees in the amount of \$4,500.00.

The Landowners now appeal to this Court.² The Landowners allege that the common pleas court erred in granting summary judgment³ because there was a

² This Court's scope of review for a grant of summary judgment is limited to whether the lower court made an error of law or abused its discretion. Shimko v. Department of Transportation, 768 A.2d 413 (Pa. Cmwlth. 2001).

³ The criteria by which motions for summary judgment will be adjudicated is set forth in Pa. R.C.P. No. 1035.2. Either party is permitted to move for summary judgment, in whole or in part, as a matter of law:

- (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
- (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

(Footnote continued on next page...)

genuine issue of material fact as to whether they were in violation of the restrictive covenant. The Landowners' central argument is whether the items on the property constitute "junk," "garbage," or "refuse" and they submit that the interpretation of the photographs should rest with the trier of fact after trial and not the common pleas court on summary judgment.

“[N]othing will be deemed a violation of a restriction that is not in plain disregard of its express words . . . that a restriction is not to be extended or enlarged by implication; that every restriction will be construed most strictly against the grantor and every doubt and ambiguity in its language resolved in favor of the owner.” Jones v. Park Lane For Convalescents, Inc., 384 Pa. 268, 27-72, 120 A.2d 535, 547 (1956).

Here, the facts reveal that Meadowlake Park is subject to covenants and restrictions that run with the land and affect all properties located within the community. By virtue of being an owner of property within the Community the Landowners became members of the Association. As members of the Association the Landowners were bound by the Association's By-Laws. Consequently, the

(continued...)

Pa. R.C.P. No. 1035.2. In considering a motion for summary judgment, the burden is on the moving party to prove that no genuine issue of material fact exists. The record must be viewed in the light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Kee v. Pennsylvania Turnpike Commission, 722 A.2d 1123 (Pa. Cmwlth. 1998). The lower court must accept as true all well-pleaded facts relevant to issues in the non-moving party's pleadings and give them the benefit of all reasonable inferences to be drawn therefrom. Summary judgment may be granted only in cases where the right is clear and free from doubt. Department of Transportation v. UTP Corp., 847 A.2d 801 (Pa. Cmwlth. 2004).

Landowners were required to meet specified standards related to maintenance of their property.

Numerous photographs of the Landowners' property taken on multiple occasions clearly depicted items on their property. This Court is of the opinion that it was within the common pleas court's purview to review the photographs and evaluate what items were located on the Landowners' property. After reviewing the photographs the common pleas court stated that the photographs irrefutably showed "heavy equipment, vehicles, canisters, tires, debris, junk and other garbage on . . . [the Landowners'] property." Opinion and Order, at 5. As a result the items on the Landowners' property the common pleas court determined the Landowners' property was in contravention with the Rules and Regulations and By-Laws of the Association. This Court must agree.

First, the restrictive covenant provided that "garbage, trash and refuse" must be kept in "sanitary and reasonably attractive containers" and periodically removed. Covenants and Restrictions, No. 11. Here, the common pleas court found that the Landowners were in violation of the restrictive covenant based upon the items photographed on the Landowners' property, namely debris, junk and garbage.

Second, even assuming *arguendo*, as the Landowners contend, that some of the items on the Landowners' property do not constitute "garbage," "junk," or "refuse," the restrictive covenant identifies other prohibited items that typify unclean, unsightly, and unsanitary conditions. The restriction stated that there may not be any "unlicensed vehicles, equipment, appliances, merchandise, construction materials and other materials and goods of any nature whatsoever, other than those normally

incidental to private residential use, . . . stored outside . . . so as to present an unsightly appearance and detract from the beauty of the community.” Covenants and Restrictions, No. 11. Here, the common pleas court again found that the Landowners were in violation of the restrictive covenant based upon additional items photographed on the Landowners’ property, namely the multiple pieces of heavy construction equipment, a pile of large tires, and canisters that resemble barrels.

Further, although the Landowners suggest that the items on their property were used for “upgrades” and “work” related to improvements to be made to the property, the nature and purpose of the offending items neither absolved the Landowners from complying with the restrictive covenant nor excused the prolonged presence of the offending items on the property. Answer to the Complaint, No. 9. The Landowners’ property was subject to a restrictive covenant that required them to consistently maintain a clean, sightly and sanitary lot even if their property is a work in progress. Answer to the Complaint, No. 12.

Additionally, the Landowners admit that they received three separate notices from the Association that requested removal of the offending items but the Landowners have not taken any reasonable action to remedy the problem in two years. Answer to Complaint, No. 10 at 1. With regard to the Landowners’ intent to remove the offending items, the Landowners’ answer was largely unresponsive as they merely indicated that they were “attempting to sell” a piece of construction equipment. Answer to Complaint, No. 11 at 1. Moreover, the Landowners argue that they presented discovery which included statements from neighbors that the Landowners intended to clean up their property. However, the statements indicated the Landowners were “cleaning [and] . . . have been cleaning/clearing up their

property,” which only reiterates the Associations’ argument that the property was not yet compliant with the restrictive covenant. Answer to Interrogatories, June 25, 2008.

Where, as is here, the Landowners’ actions were in clear defiance of the provisions imposed by the restrictive covenant a court will enforce the restrictive covenant. Vernon Township Volunteer Fire Department, Inc. v. Connor, 579 Pa. 364, 375, 855 A.2d 873, 879 (2004). Consequently, this Court discerns no error. Summary judgment in favor of the Association was appropriate because there remained no genuine issue of material fact as the photographs clearly established that violations of the Deed Restrictions and the Associations’ By-Laws and Rules and Regulations occurred on the Landowners’ property.

Accordingly, the order of the common pleas court is affirmed.

BERNARD L. MCGINLEY, Judge

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ORDER

AND NOW, this 30th day of April, 2010, the order of the Court of Common Pleas of Monroe County granting summary judgment in favor of the Meadowlake Park Association is affirmed.

BERNARD L. McGINLEY, Judge