IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NORM and JANET BRUNS, husband and wife, Appellants/Cross Respondents, v. THE WILLIAM M. AND WILHELMA COFER LIVING TRUST, Respondent/Cross Appellant.	No. 41062-1-II UNPUBLISHED OPINION

Van Deren, J. — The Kitsap County Superior Court entered a partial summary judgment order in favor of Norm and Janet Bruns, finding that improvements to neighboring property owned by the William and Wilhelma Cofer Living Trust violated restrictive covenants. The trial court later held a bench trial on the remaining issues of remedies, affirmative defenses, and counterclaims. Following the bench trial, the trial court entered an injunction against the Cofers that allowed them to elect one of two remedies to bring their property into compliance with the neighborhood restrictive covenants. The Brunses appeal, asserting that the trial court erred by: (1) entering an injunction that did not permanently remedy the Cofers' violations of the restrictive covenants; (2) denying the Brunses' request for monetary damages; and (3) denying their request for sanctions against the Cofers. The Cofers cross-appeal, asserting that the trial court erred by: (1) granting partial summary judgment in favor of the Brunses; (2) denying the Cofers' affirmative

defenses; and (3) denying their request for sanctions against the Brunses. We affirm.

FACTS

William and Wilhelma Cofer live next door to Norm and Janet Bruns in Bainbridge Landing, a 12-lot residential subdivision in Bainbridge Island, Washington. The Cofers are trustees of the William M. and Wilhelma Cofer Living Trust, which purchased a home on Lot 11 in Bainbridge Landing in March 2003. In December 2003, the Cofers, through their living trust, purchased Lot 10 in Bainbridge Landing, which was undeveloped property neighboring the Brunses' home on Lot 9. The Cofers planned to build a residence on Lot 10 that included an accessory dwelling unit (ADU), "as the term is defined by the Bainbridge Island Municipal Code," above their detached garage. Clerk's Papers (CP) at 14.

John and Alice Tawresey developed Bainbridge Landing in 1979 and recorded restrictive covenants applicable to all subdivision lots. The Bainbridge Landing restrictive covenants state in part:

> 1. No lot shall be used except for residential purposes. No building shall be erected or permitted on any lot other than one detached single family dwelling and private garage for not more than three cars.
> 2. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the [a]rchitectural [c]ontrol [c]ommittee [ACC]. The [ACC], in making a decision, shall consider: (1) the quality of the architectural design; (2) harmony of materials with existing structures and/or surroundings; (3) conformity with lot topography; (4) removal of existing trees and vegetation.
> 3. No dwelling shall be constructed with a ground floor area of the main structure, exclusive of one-story open porches and garages of less than 1000 square feet. No prefabricated, modular or premanufactured homes shall be permitted on any lot. No trailers or mobile homes shall be permitted on any lot.
> . . . .
> 7. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding, shall be used on any lot at any time as a residence, either temporarily or permanently.

> . . . .
> 16. The [ACC]'s approval or disapproval as required in these covenants shall be in writing. In the event the committee or its designated representative fails to approve or disprove within 30 days after plans and specifications have been submitted to it, or in any event if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.
> 17. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date these covenants are recorded, after which time said covenants shall automatically be extended for successive periods of 10 years unless an instrument signed by a majority of then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.
> 18. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violations or to recover damages.
> 19. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Ex. 2.

Pursuant to Paragraph 2 of the restrictive covenants, the Cofers submitted their building plans to the ACC for approval before beginning construction on their new home. On April 11, 2005, the ACC approved the Cofers' building plans, indicating that the plans complied with all of the subdivision's guidelines. The building approval letter requested that the Cofers "submit [their] choice of roofing material (color and type) and [their] exterior paint color to [the ACC] for approval prior to applying it." CP at 363. In December 2005, The Cofers submitted their choice of roofing material and paint color to the ACC.

Before beginning construction of their new residence, the Cofers reviewed the Bainbridge Island Municipal Code and discussed the zoning ordinances with city employees. Former Bainbridge Island ordinance 92-08, section 18.06.010 (1992), in effect at the time, allowed for an ADU that could be attached or detached from the main dwelling but the ordinance required that

an ADU not exceed 800 square feet. Although the zoning ordinances allowed for the construction of an ADU, the Cofers concede that ordinances do not abrogate restrictive covenants.

On July 19, 2005, the city of Bainbridge Island issued a building permit to the Cofers. On July 30, the Cofers notified the other residents of Bainbridge Landing that they would begin constructing their new home, but they did not specify that they planned to build an ADU above their detached garage. The Cofers applied for a second address for the ADU on May 2, 2006. On May 26, 2006, the Cofers sold their home on Lot 11. After hearing about the ADU, Janet Bruns went to the Bainbridge Island city hall to review the Cofers' construction file and to discuss the ADU with city staff.[1]

The Brunses served a summons and complaint on the Cofers on July 7, 2006, and, on July 18, 2006, filed their complaint in the Kitsap County Superior Court. The Brunses' complaint alleged that the Cofers' ADU violated the Bainbridge Landing restrictive covenants. The Brunses sought to enjoin construction of the ADU and requested money damages. The Brunses later filed an amended complaint to add an allegation that the Cofers violated paragraph 2 of the restrictive covenants by failing to submit their roofing materials and exterior colors to the ACC for approval. The Cofers moved into their new residence on July 26, 2006.

After unsuccessful settlement negotiations, the Cofers moved for summary judgment on May 25, 2007. In their opposition to the Cofers' summary judgment motion, the Brunses withdrew their complaint regarding the Cofers' failure to submit their choice of roofing materials

[1] Although not relevant to any issue on appeal, the parties continue to disagree about when the Brunses became aware that the Cofers were constructing an ADU. We do not address this ongoing dispute.

and exterior color to the ACC, indicating that they had discovered that the Cofers did comply with this covenant provision. The trial court denied the Cofers' summary judgment motion.

The Cofers filed their answer to the Brunses complaint on June 26, 2007. The Cofers raised numerous affirmative defenses and asserted counterclaims against the Brunses, which counterclaims included allegations of tortious interference with business expectancy and violation of the Bainbridge Landing restrictive covenants by the Brunses. The Cofers also requested sanctions under CR 11 and RCW 4.84.185 based on the Brunses' claim that the Cofers violated the restrictive covenants by failing to submit their choice of roofing materials and exterior paint, which claim the Brunses had withdrawn on May 25, 2007.

The parties then filed cross-motions for partial summary judgment. The trial court granted partial summary judgment in favor of the Brunses, finding that the Cofers' garage ADU violated the Bainbridge Landing restrictive covenants. Its order stated:

> 1. The garage ADU on the property of defendant The William M. And Wilhelma Cofer Living Trust (the "Cofers") violates Paragraph 1 of the Protective Covenants because it exceeds the limitation of one detached single family dwelling and private garage.
> 2. The Cofers' garage ADU violates Paragraph 7 of the Protective Covenants because it utilizes a garage [and]/or other outbuilding as a residence.
> 3. The Cofers' garage ADU violates Paragraph 3 of the Protective Covenants by having a dwelling of less than 1,000 square feet.
> 4. Compliance with the City of Bainbridge Island's zoning rules does not allow the Cofers to avoid the limitations that the Protective Covenants otherwise impose.
> 5. Submitting building plans to the ACC is not enough to avoid or alleviate the restrictions otherwise imposed by the Protective Covenants.
> 6. Based upon the foregoing, the Brunses' Partial Summary Judgment Motion is therefore GRANTED.

CP at 194.

After the trial court ordered partial summary judgment in favor of the Brunses, the Cofers

voluntarily took action to bring their building into compliance with the Bainbridge Landing restrictive covenants. They: (1) terminated the ADU tenant's lease on January 31, 2010[2]; (2) removed the mailbox and address assigned to the ADU; (3) removed the stove and refrigerator from the ADU; (4) terminated the 220 electric service to the ADU by following the instructions of a certified electrical inspector; and (5) certified the decommission of the ADU with the city of Bainbridge Island. The Cofers also hired an architect to create plans to connect their garage to their house. Thereafter, the ACC and the city of Bainbridge Island approved the Cofers' revised building plans.

The trial court conducted a bench trial on the remaining claims, counterclaims, and affirmative defenses. The trial court's findings and conclusions incorporated its December 11, 2009, summary judgment order in favor of the Brunses, denied imposing sanctions against either party, denied all of the Cofers' counterclaims and affirmative defenses, and denied the Brunses' request for monetary damages.

The trial court enjoined the Cofers from violating the Bainbridge Landing restrictive covenants but allowed them to elect one of two ways to remedy their noncompliance with those covenants, dependent on whether they connected their house and garage. Both parties appeal.

ANALYSIS

I. The Brunses' Appeal

A. Adequacy of the Trial Court's Injunction

The Brunses contend that the trial court abused its discretion by allowing the Cofers to

[2] The Cofers' tenant had been renting the ADU for $750 a month beginning on July 1, 2008. The Cofers previously rented out the ADU for $750 a month to another tenant between August 1, 2007, and November 30, 2007.

choose which injunctive remedy to pursue because neither of the injunction's elective remedies adequately protects the Brunses from future violations of the Bainbridge Landing restrictive covenants. We disagree.

1. Standard of Review

We review a trial court's decision to grant or withhold an injunction, and the injunction's terms, for abuse of discretion. *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). We give great weight to a trial court's injunction order, interfering only if the trial court's order is based on untenable grounds, is manifestly unreasonable, or is arbitrary. *Federal Way Family Physicians, Inc. v. Tacoma Stands Up For Life*, 106 Wn.2d 261, 264, 721 P.2d 946 (1986).

We review a trial court's conclusions of law supporting an injunction, including the interpretation of restrictive covenants, de novo. *Rainer View Ct. Homeowners Ass'n v. Zenker*, 157 Wn. App. 710, 719, 238 P.3d 1217 (2010), *review denied*, 170 Wn.2d 1030 (2011); *Bloome v. Haverly*, 154 Wn. App. 129, 137-38, 225 P.3d 330 (2010). We review a trial court's findings of fact supporting an injunction to ascertain whether substantial evidence in the record supports the findings. *Rainer View Ct.*, 157 Wn. App. at 719. Substantial evidence is "a quantum of evidence sufficient to persuade a fair-minded person that the premise is true." *Rainer View Ct.*, 157 Wn. App. at 719.

2. First Elective Remedy—House and Garage Not Connected

The trial court's first elective remedy under the injunction addressed the situation if the garage remained separate from the house:

> The first remedy assumes that there is no structural connection between the [Cofers'] garage and the main house on the Property. The eating area at the

> Property has now been effectively removed as the 220 electrical line has been decommissioned and the stove and refrigerator have been physically removed. This Court is therefore satisfied that the area above the garage is no longer a separate self-contained residence. The violation of the covenants has effectively been removed. The Court does not require further action beyond what has already been done under this remedy to bring the [Cofers] into compliance with Covenant No. 7. Court requires the continued absence of the electrical line, 220 volt line, stove and refrigerator so long as the garage remains a separate unit.

CP at 219.

But the Brunses' contentions regarding the trial court's first elective remedy are moot because the Cofers finished construction of the connection between their house and their garage, as we learned at oral argument.[3] Thus, we do not further discuss this elective remedy and turn to consideration of the trial court's second elective remedy.

3. Second Elective Remedy—House and Garage Connected

The trial court's second elective remedy addressed compliance with the injunction if the garage and house were integrated, i.e., were connected:

> The second alternative remedy which would satisfy this injunction assumes that the [Cofers] elect[] to connect the garage and the main house in accordance with their proposed plan, thus creating a single residence. Provided the connection satisfies any governmental requirements including those of the City of Bainbridge Island and the ACC requirements, this Court need not address the parameters or design of the connection at this time.

CP at 219.

The Brunses argue that the trial court erred in fashioning its second elective remedy because it would allow the Cofers to return the electrical line, 220 volt line, and stove and refrigerator to the living quarters above their garage once the garage is attached to their house. The Brunses contend that, if the Cofers restore the living quarters above their garage to its

[3] Wash. Court of Appeals, *Bruns v. Cofer Living Trust*, No. 41062-1-II, oral argument (Dec. 1, 2011), at 3 min., 32 sec. (on file with court).

previous condition, they would violate paragraphs 1 and 3 of the restrictive covenants because their lot would contain multiple dwellings. The Brunses appear to argue that even if the trial court properly interpreted the meaning of the restrictive covenants, it abused its discretion by fashioning injunctive relief that did not prohibit the Cofers from restoring the area above their garage to its previous condition once attached to the Cofers' house, and did not require the Cofers to "remove the microwave oven, the kitchen sink, the garbage disposal, the dishwasher, the kitchen cabinets, and the 220 volt wiring in the walls," as well as to remove the separate entrance to the area above their garage.[4] Br. of Appellant at 24-25.

We disagree with the Brunses' assertions because paragraphs 1 and 3 of the Bainbridge Landing restrictive covenants do not prohibit the construction of multiple living quarters within the same house. The covenant provisions at issue state:

> 1. No lot shall be used except for residential purposes. No building shall be erected or permitted on any lot other than one detached single family dwelling and private garage for not more than three cars.
> . . . .
> 3. No dwelling shall be constructed with a ground floor area of the main structure, exclusive of one-story open porches and garages of less than 1000 square feet. No prefabricated, modular or premanufactured homes shall be permitted on any lot. No trailers or mobile homes shall be permitted on any lot.

CP at 101.

[4] The Brunses' brief concludes without providing any reasoning or citations to legal authority (apart from citations concerning our standard of review) that an ADU connected to the Cofers' house would violate the restrictive covenants. In their brief, the Brunses state only that "the trial court ordered only the minimal changes necessary to satisfy the city that the disputed space is no longer a legal ADU [but this] is not appropriate . . . in light of the continuing violations of paragraphs 1 and 3 of the covenants (one dwelling per lot and no dwelling under 1,000 square feet)." Br. of Appellant at 23. But the Brunses do not elaborate on how the trial court's interpretation of the covenants was contrary to law, and they do not cite any authority supporting a different interpretation. Because the Brunses do not cite authority supporting their arguments, we interpret the basis of their argument as well as possible from the context of their brief and oral argument.

a. Standard of Review

In determining the meaning of a word or term in a restrictive covenant, we apply basic rules of contract interpretation. *Lane v. Wahl*, 101 Wn. App. 878, 883, 6 P.3d 621 (2000). This includes the "context" rule of *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990). *Lane*, 101 Wn. App. at 883. "An application of the *Berg* rule to restrictive covenants enables trial courts to look to the surrounding circumstances of the original parties to determine the meaning of specific words and terms used in the covenants." *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 696, 974 P.2d 836 (1999). Because this dispute is among homeowners who did not draft the restrictive covenants, "rules of strict construction against the grantor or in favor of the free use of land are inapplicable." *Riss v. Angel*, 131 Wn.2d 612, 623, 934 P.2d 669 (1997).

We give words in a contract their ordinary, usual, and popular meaning unless the agreement as a whole clearly demonstrates a contrary intent. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). Because the restrictive covenants at issue here do not define the term "dwelling," we must determine the ordinary meaning of "dwelling" in the context of the overall purpose of the covenants and the surrounding facts with regard to the existence of multiple living quarters within the confines of a single residence on a Bainbridge Landing lot.

b. "Dwelling"

The Brunses assert that the Cofers violate the restrictive covenants by having an additional "dwelling" on their lot because the space above their garage contains a microwave oven, kitchen sink, garbage disposal, dishwasher, kitchen cabinets, 220 volt wiring in the walls, and a separate entrance. But we hold that the Brunses read the definition of "dwelling" under the applicable

covenants too narrowly.

Under paragraph 1 of the restrictive covenants, a Bainbridge Landing homeowner is limited to "one detached single family dwelling" on their lot. With the Cofers' house connected to their garage, they do not exceed the limit of one single family dwelling, and this restrictive covenant provision does not limit a homeowner from constructing multiple kitchens, bathrooms, or bedrooms within their single family dwelling.

Under paragraph 3 of the restrictive covenants, a homeowner is prohibited from constructing a dwelling "with a ground floor area of the main structure . . . of less than 1000 square feet." CP at 101. With the Cofers' house and garage connected, the main structure of their dwelling has a ground floor area of over 2,000 square feet, well in excess of the 1,000 square feet minimum requirement.

Accordingly, because the Brunses do not provide any authority supporting their arguments, the Brunses have failed to show that the trial court abused its discretion in fashioning injunctive relief, and we affirm. Furthermore, to the extent the Brunses ask us to evaluate the trial court's injunction with regard to the possibility that the Cofers will construct an ADU on their lot at some point in the future in violation of the restrictive covenants, we do not give advisory opinions on speculative facts and refuse to do so here. *Clallam County v. Dry Creek Coal*, 161 Wn. App. 366, 393, 255 P.3d 709 (2011). Thus, we hold that the Brunses have failed to show that the terms of the trial court's injunction were arbitrary, based on untenable grounds, or were manifestly unreasonable. *Federal Way Family Physicians*, 106 Wn.2d at 264.

B. Monetary Damages

Next, the Brunses contend that the trial court erred by denying their request for monetary damages based on the Cofers' violations of the Bainbridge Landing restrictive covenants. Specifically, the Brunses assert that the trial court should have awarded them monetary damages for the Brunses' breach of contract and unjust enrichment claims.

The Brunses assert that the trial court should have awarded them $32,250 based on the total rent the Cofers collected, without deducting for the Cofers' expenses and, in addition, the Brunses should be awarded $750 a month for the 20 months that the ADU sat vacant but was available for rent. Because the Brunses have failed to establish that they have suffered any economic damages resulting from the Cofers' violation of the restrictive covenants, these claims fail.

To recover on a breach of contract claim, the Brunses had to prove that the Cofers breached a contract, that the Brunses incurred actual economic damages as a result of the Cofers' breach, and the amount of damages that they incurred. *Columbia Park Golf Course, Inc. v. City of Kennewick*, 160 Wn. App. 66, 83, 248 P.3d 1067 (2011).

> The purpose of awarding damages for breach of contract is neither to penalize the defendant nor merely to return to the plaintiff that which he has expended in reliance on the contract. It is, rather, to place the plaintiff, as nearly as possible, in the position he would be in had the contract been performed.

Lincor Contractors, Ltd. v. Hyskell, 39 Wn. App. 317, 320-21, 692 P.2d 903 (1984) (quoting *Platts v. Arney*, 50 Wn.2d 42, 46, 309 P.2d 372 (1957)).

Here, the Brunses did not allege or present any evidence at trial that they suffered monetary damages as a result of the Cofers' violation of the restrictive covenants. Instead, it may

be that the Brunses lost the full enjoyment of their property while the Cofers rented the detached ADU. The trial court's injunction adequately protected the Brunses' interest in enforcing the Bainbridge Landing restrictive covenants and, thus, it restored the Brunses to the full enjoyment of their property. Accordingly, the trial court did not err in refusing to award monetary damages to the Brunses under a breach of contract claim.

The trial court also did not err in refusing to award monetary damages under the Brunses' unjust enrichment claim. To prove unjust enrichment, the Brunses were required to prove that (1) the Cofers received a benefit, (2) the benefit was at the Brunses' expense, and (3) the circumstances make it unjust for the Cofers to retain the benefit without payment. *First Am. Title Ins. Co. v. Liberty Capital Starpoint Equity Fund, LLC*, 161 Wn. App. 474, 490, 254 P.3d 835 (2011). Although the Cofers received a monetary benefit from renting their ADU, "[t]he mere fact that a defendant has received a benefit from the plaintiff is insufficient alone to justify recovery. The doctrine of unjust enrichment applies only if the circumstances of the benefits received or retained make it unjust for the defendant to keep the benefit without paying." *First Am.*, 161 Wn. App. at 490.

Here, the trial court's conclusion of law 22 indicated that the Brunses failed to prove that the Cofers unjustly retained a benefit at the expense of the Brunses, stating:

> The [Brunses] have not satisfied the requirements of a showing of unjust enrichment, and that claim fails. The Brunses are not entitled to a monetary award based on unjust enrichment measured by the rent of the ADU by two tenants. This Court is not persuaded that there should be a payment from the [Cofers] to the [Brunses] for what the [Brunses] determine and claim is an unjust enrichment. There is no equitable basis for that rent money to be paid to the Brunses as damages in this case.

CP at 212.

In an action for unjust enrichment, a trial court "reviewing the complex factual matters involved in the case, has tremendous discretion to fashion a remedy 'to do substantial justice to the parties and put an end to the litigation.'" *Young v. Young*, 164 Wn.2d 477, 487-88, 191 P.3d 1258 (2008) (quoting *Esmieu v. Hsieh*, 92 Wn.2d 530, 535, 598 P.2d 1369 (1979)). Because the Brunses failed to prove that they incurred any economic expenses that unjustly benefitted the Cofers, and because the trial court's injunction adequately restored the Brunses to the full enjoyment of their property, the trial court acted within its considerable discretion when it denied the Brunses monetary damages under their unjust enrichment claim.[5]

C. Sanctions and Attorney Fees

Finally, the Brunses assert that the trial court erred by failing to impose sanctions against the Cofers under the trial court's inherent power to control litigation, under CR 11, and under RCW 4.84.185. We again disagree.

RCW 4.84.185 allows a trial court to award reasonable expenses, including attorney fees, to a prevailing party where the non-prevailing party advanced a claim or defense that was frivolous and without reasonable cause. The purpose of RCW 4.84.185 is "to discourage frivolous lawsuits and to compensate the targets of frivolous lawsuits for their fees and costs incurred in defending meritless cases." *Timson v. Pierce County Fire Dist. No. 15*, 136 Wn. App. 376, 386, 149 P.3d 427 (2006).

CR 11 similarly allows a trial court to sanction parties that present pleadings, motions, or legal memorandum that are frivolous or brought in bad faith. A trial court also has inherent

[5] The Brunses also assert that the trial court's findings of fact and conclusions of law do not adequately explain its decision to deny monetary damages to them, contrary to CR 52. Because the trial court entered findings of fact and conclusions of law sufficient for us to consider the Brunses' issues on appeal, their assertion fails.

power to sanction litigation conduct upon a finding of bad faith. *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000).

The Brunses fail to articulate in this appeal any frivolous conduct or bad faith by the Cofers to support the imposition of sanctions against the Cofers. Instead, the Brunses assert that the trial court should have considered the Cofers' cost advantage in the litigation because they received legal services from their son-in-law at no charge. The Brunses thus appear to argue that the trial court should have used its authority to impose sanctions as a fee-shifting mechanism. But absent any showing that the Cofers engaged in frivolous litigation or bad faith conduct, the trial court lacked authority to sanction the Cofers under RCW 4.84.185, CR 11, or its inherent power to control litigation. Accordingly, the trial court did not err by denying sanctions against the Cofers.[6]

II. The Cofers' Cross-Appeal

A. Summary Judgment Order

The Cofers first contend that the trial court erred by ordering summary judgment in favor of the Brunses when it found that the Cofers' detached ADU violated paragraphs 1, 2, and 7 of the Bainbridge Landing restrictive covenants. We also disagree with the Cofers' assertions.

1. Standard of Review

We review an order of summary judgment de novo, performing the same inquiry as the

[6] The Cofers also assert that the trial court failed to adequately explain its denial of sanctions against the Cofers in its findings of fact and conclusions of law contrary to CR 52. But a trial court is "not required to enter negative findings or findings that a certain fact has not been established." *Gen. Indus., Inc. v. Eriksson*, 2 Wn. App. 228, 229, 467 P.2d 321 (1970). Accordingly, the trial court's conclusions that "[t]he Brunses are not entitled to an award of sanctions on any of their three asserted grounds" and "[t]he Court finds no basis for an award of attorney fees to any party in this case, and therefore each party will bear its own attorney fees and courts costs" are sufficient to comply with CR 52. CP at 212.

trial court. *Beaupre v. Pierce County*, 161 Wn.2d 568, 571, 166 P.3d 712 (2007). We consider the facts and all reasonable inferences from them "in the light most favorable to the nonmoving party." *Hertog v. City of Seattle*, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c).

2. Interpretation of Restrictive Covenants

The Cofers do not assert that genuine issues of material fact prevented the trial court's summary judgment order finding their detached ADU violated the restrictive covenants. Instead, the Cofers argue that the trial court erred as a matter of law when it interpreted the restrictive covenants to prevent a detached ADU on their property. Specifically, the Cofers assert that, under the Bainbridge Island zoning code definition of "ADU," their ADU was part of, not detached from, their single family dwelling. The Cofers thus contend that the trial court erred when it determined that their ADU "violate[d] Paragraph 1 of the Protective Covenants because it exceeds the limitation of one detached single family dwelling and private garage." CP at 194.

Contrary to the Cofers' contention, the Bainbridge Island zoning code definition of an ADU does not aid us in our interpretation of the Bainbridge Landing restrictive covenants because the covenants do not use the term "ADU." Rather, because this is a disagreement between homeowners who did not draft the covenants at issue, we give the words and terms of the covenants their ordinary, usual, and popular meaning unless the covenants as a whole clearly demonstrate a contrary intent. *Hearst*, 154 Wn.2d at 504; *Riss*, 131 Wn.2d at 622-23.

Here, paragraph 1 of the restrictive covenants clearly prohibits a Bainbridge Landing homeowner from constructing multiple dwellings on the same lot. The Bainbridge Island zoning ordinances defined "[d]welling or dwelling unit" as "a building or portion of a building that provides independent living facilities with provisions for sleeping, eating and sanitation." Former City of Bainbridge Island Ordinance 92-08, § 18.06.310. And the Cofers' response to the Brunses' partial summary judgment motion, relied on by the trial court in its partial summary judgment order, admits that the Cofers' ADU contained a kitchen/dining room area, bedroom/living room area, and a bathroom. The Cofers' ADU was thus a separate and independent living facility with provisions for sleeping, eating, and sanitation. Accordingly, in the context of the overall purpose of the covenants and the surrounding facts, the trial court did not err when it interpreted the word "dwelling" to prohibit the Cofers' detached ADU as it existed when the garage was not attached to the Cofers' house.

The Cofers also assign error to the portion of the trial court's summary judgment order that found the Cofers' ADU in violation of paragraphs 3 and 7 of the restrictive covenants, but they do not provide any argument in their brief supporting these assignments of error. Accordingly, we do not address them.[7] RAP 10.3(a)(6); *Smith v. King*, 106 Wn.2d 443, 451-52,

[7] The Cofers argue in their reply brief that the trial court erred by finding their ADU in violation of paragraph 7 of the restrictive covenants, but we do not consider arguments raised for the first time in a reply brief. RAP 10.3(c). Although we decline to address the issue for lack of adequate briefing, we discern no error in the trial court's partial summary judgment order finding the Cofers' ADU, as it then existed, in violation of paragraphs 3 and 7 of the restrictive covenants. In their response to the Brunses' partial summary judgment motion, the Cofers admitted that "the square footage of the ADU [wa]s less than 1000 square feet." CP at 158. And paragraph 3 of the restrictive covenants prohibits a dwelling with a ground floor area of less than 1,000 square feet. The Cofers also admitted in their response to the Brunses' partial summary judgment motion that their ADU, as it then existed, was not connected to their house and was being used as a rental unit. And paragraph 7 of the restrictive covenants prohibits the use of an outbuilding as a residence.

722 P.2d 796 (1986) (reviewing court considers an assignment of error waived where it is not argued in the brief and no legal authority bearing on the issue is cited).

B. Affirmative Defenses

Next, the Cofers assert that the trial court erred in enforcing the covenants because the Cofers raised several affirmative defenses that prevented enforcement of the restrictive covenants. Although the Cofers' brief cites legal authority demonstrating that affirmative defenses were available to defeat the Brunses' enforcement of the restrictive covenants, the Cofers do not indicate how the trial court erred in rejecting those affirmative defenses. Here, the trial court's findings of fact and conclusions of law indicate that the Cofers did not meet their burden in proving their affirmative defenses.

Although the Cofers assign error to some of the findings of fact and conclusions of law indicating that they have not met their burden of proving affirmative defenses, they do not argue in their brief that substantial evidence does not support the findings of fact, nor do they argue that the trial court committed an error of law in reaching its conclusions. Thus, it appears that the Cofers are attempting to re-litigate issues the trial court decided. But an appeal from a trial court's decision is not a forum for a new trial; rather, our review of the trial court's decision is limited to determining whether substantial evidence supports the trial court's findings and whether those findings support its legal conclusions. *Panorama Vill. Homeowners Ass'n v. Golden Rule Roofing, Inc.*, 102 Wn. App. 422, 425, 10 P.3d 417 (2000). Because the Cofers fail to articulate any error in the trial court's decision to reject their affirmative defenses, we do not address the issue.

C. Sanctions

Finally, the Cofers contend that the trial court erred by refusing to sanction the Brunses under CR 11 and RCW 4.84.185 for bringing their claim with respect to the Cofers' roof and

paint color without adequately investigating their claim. We disagree.

We leave the decision to impose sanctions under CR 11 and RCW 4.84.185 to the trial court's sound discretion. *Eller v. E. Sprague Motors & R.V.'s, Inc.*, 159 Wn. App. 180, 189, 191, 244 P.3d 447 (2010). We will not overturn a trial court's decision to impose or deny sanctions absent an abuse of discretion. *Eller*, 159 Wn. App. at 189, 191. "A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds or reasons." *In re Guardianship of Lasky*, 54 Wn. App. 841, 854, 776 P.2d 695 (1989).

Here, the record indicates that the Brunses amended their complaint to include the allegation that the Cofers failed to submit to the ACC their choice of roofing materials and exterior paint based on information provided by Alice Tawresey, a member of the ACC. And the trial court's unchallenged finding of fact 9 indicates that the Brunses were not aware that the Cofers had submitted their choice of roofing material and exterior paint until the Cofers moved for summary judgment on May 24, 2007, after which the Brunses withdrew that claim. Accordingly, the trial court did not abuse its discretion in denying sanctions against the Brunses.

We affirm the trial court's decision below in all respects.

D. Attorney Fees on Appeal

The Cofers request attorney fees under RAP 18.1. But their brief does not provide any argument supporting its request, nor does it provide any citing authority supporting its request. "Argument and citation to authority are required . . . to advise us of the appropriate grounds for an award of attorney fees as costs." *Wilson Court Ltd. P'ship v. Tony Maroni's Inc.*, 134 Wn.2d

692, 710 n. 4, 952 P.2d 590 (1998). Thus, we decline to award fees to the Cofers on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Worswick, A.C.J.

Quinn-Brintnall, J.