COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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May 24, 2019

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Re: *The Norman Law Firm v. Middlesex Beach Ass'n*,
Civil Action No. 2017-0919-PWG

Dear Counsel:

This case concerns a sign, which the owner and tenant of a commercial property in Middlesex Beach wish to erect on their property. The Middlesex Beach covenants impose restrictions on signs, and the Middlesex Beach Association (the "Association" or "Defendant") approved the sign subject to conditions based on those covenants. This matter was presented to Master Griffin, who issued a Final Report dated November 5, 2018. The plaintiffs have taken exceptions to that report, which this letter decision overrules for the reasons that follow.

I. Background

Rather than repeat the detailed background set forth in the Master's Final Report, I will include a short recitation of the facts.

The Norman Law Firm (the "Law Firm") is a commercial tenant of DMF Associates, Inc. ("DMF", and together with the Law Firm, "Plaintiffs").[1] The commercial property is in Bethany Beach, Delaware, and is subject to the restrictive covenants imposed by the Association.[2] In the fall of 2017, DMF applied on behalf of the Law Firm to erect a 100 square foot digital sign.[3] After obtaining a sign permit from the Sussex County Planning and Zoning Commission, the Association approved the sign, subject to two conditions: the two existing ground signs be removed and the message on the sign be changed only once every 24 hours (the "24-hour condition").[4] The sign removal condition arose from Section 5.1 and 7.8 of the Middlesex Beach covenants.[5]

In December 2017, the Law Firm filed action in this Court seeking declaratory judgment that the Association's signage covenants are ambiguous, arbitrary, and thus unenforceable.[6] Soon after, the Law Firm amended its complaint to add DMF

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[1] C.A. No. 2017-0919-PWG, Docket ("Dkt.") 33, Master's Final Report ("Report") at 1.

[2] *Id.*

[3] *Id.*

[4] *Id.* at 3.

[5] Sections 5.1 and 7.8(d) outline sign requirements (i.e., commercial district lots may only have one ground sign with at most two sides) while Section 7.8(a) allows for the removal of non-conforming signs. Dkt. 7, Pls.' Mot. for Summ. J. Ex. 9.

[6] Dkt. 1, Compl. ¶¶ 53–60.

as a plaintiff.[7] About two weeks later, Plaintiffs moved for summary judgment contending that the Law Firm's sign is not subject to the 24-hour condition.[8] The 24-hour condition arose from Sections 5(a) and 5(b) of the Middlesex Beach covenants, which prohibit flashing signs, except time-and-temperature signs, as well as animated signs.

Defendant cross-moved for summary judgment arguing that both the Law Firm and DMF lack standing to challenge the covenants.[9] Defendant contends that the covenants govern the rights of the parties and provides the parameters for digital signs.[10] Defendant asserts that its twenty-four-hour limit is a "reasoned, non-arbitrary" condition used to protect the visual harmony of Middlesex Beach.[11]

On November 5, 2018, Master Griffin issued her Final Report recommending that the Court deny Plaintiffs' motion for summary judgment and grant the Defendant's cross-motion for summary judgment in part and deny it in part.[12]

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[7] Dkt. 6, Am. Compl.

[8] Pls.' Mot. for Summ. J. at 9–10. The Association's second condition that requires removal of the existing signs on the property is not at issue. *See supra* note 5 and accompanying text.

[9] Dkt. 11, Def.'s Answering Br. ¶¶ 18–23.

[10] *Id.* ¶¶ 8–10.

[11] *Id.* ¶ 26.

[12] Report at 21.

II. Analysis

Plaintiffs took exceptions to the Final Report's recommendations,[13] and the Court held oral argument on April 29, 2019.[14] In its exceptions, Plaintiffs challenge the Final Report's recommendations that the Law Firm lacks standing and that factual determinations preclude a grant of Plaintiffs' motion for summary judgment.[15]

"The standard of review for a master's findings—both factual and legal—is *de novo*."[16]

The Final Report recommends that the Court grant the Association's cross-motion for summary judgment in part because the Law Firm lack standing,[17] and deny it in part to permit factual development on whether DMF is estopped from prosecuting this action because of equitable estoppel or acquiescence.

The Final Report correctly resolved the standing issue. The Law Firm bears the burden of demonstrating that it has standing.[18] "The issue of standing is

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[13] Dkt. 34, Pls.' Exceptions to the Master's Final Report.

[14] Dkt. 41.

[15] *See generally* Dkt. 36, Pls.' Opening Br. in Supp. of Exceptions. ("Pls.' Opening Br.").

[16] *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999).

[17] Report at 8–9.

[18] *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 38 (Del. Ch. 2012).

concerned 'only with the question of who is entitled to mount a legal challenge and not with the merits of the subject matter of the controversy.'"[19] Court of Chancery Rule 17(a) provides that "[e]very action shall be prosecuted in the name of the real party in interest."[20]

As found in the Final Report, only Middlesex Beach property owners are members entitled to enforce the Association's covenants.[21] The Law Firm is a tenant, not a property owner.[22] Accordingly, the Law Firm lacks standing, and I adopt the Master's analysis and recommendation to grant Defendant's motion for summary judgment as to the Law Firm.

The Final Report also correctly concluded that whether DMF is barred from pursuing this action raises factual issues requiring further development of the

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[19] *Id.* (citing *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991)). To have standing, "(1) [The plaintiff must have] . . . suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of[;] the injury has to be fairly traceable to the challenged action of the [respondent] and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.*

[20] Ct. Ch. R. 17(a).

[21] Report at 9. Put differently, sometimes: "[Y]ou got to have a membership card . . . ." Five Man Electrical Band, *Signs* (Lionel Records 1970).

[22] Report at 9–10.

record.[23] Generally speaking, "[t]here is no 'right' to a summary judgment."[24] When confronted with a Rule 56 motion, the Court may, in its discretion, deny summary judgment if it decides upon a preliminary examination of the facts presented that it is desirable to inquire into and develop the facts more thoroughly.[25]

I agree with the Master's recommendation that the Court deny Plaintiffs' motion to permit development of the factual record.[26] I need not repeat the Final Report's analysis, which I adopt.[27]

IT IS SO ORDERED.

Very truly yours,

/s/ Kathaleen St. J. McCormick

Kathaleen St. J. McCormick

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[23] Pls.' Opening Br. at 3–5.

[24] *Telxon Corp. v. Meyerson*, 802 A.2d 257, 262 (Del. 2002) (quoting *Anglin v. Bergold*, 565 A.2d 279 (Del. 1989)).

[25] *Chen v. Howard-Anderson*, 87 A.3d 648, 693 (Del. Ch. 2014) (citing *Mentor Graphics Corp. v. Quickturn Design Sys., Inc.*, 1998 WL 731660, at *3 (Del. Ch. Oct. 9, 1998)).

[26] Report at 21.

[27] *In re Xura, Inc. S'holder Litig.*, 2019 WL 581386, at *1 (Del. Ch. Feb. 13, 2019) ("[B]elieving the . . . Master to have dealt with the issues in a proper manner and having articulated the reasons for [her] decision well, there is no need for me to repeat [her] analysis." (quoting *In re Erdman*, 2011 WL 2191680, at * 1 (Del. Ch. May 26, 2011))).