IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MICHAEL & ILIANNA TEIXIDO, LOIS ROGERS, HARRY CRIPPS, COLEMAN & ELLEN HOMSEY, JAMES AND JANICE DELLE PAZZE, MARY H. SCOTT and DACE BLASKOVITZ, R. STOKES & LAURA NOLTE,	)	
Plaintiffs,	)	
v.	)	C.A. No. 19900
COSIMO & SANDRA FAELLA,	)	
Defendants.	)	

MEMORANDUM OPINION

Submitted: June 22, 2004
Decided: August 26, 2004
Revised: August 30, 2004

John E. Tracey, Esquire, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware, *Attorney for the Plaintiffs.*

John J. Thompson, Esquire, LEVIN & THOMPSON, Wilmington, Delaware, *Attorney for the Defendants.*

LAMB, Vice Chancellor.

I.

In 1953, a large tract of land was deed restricted to limit its further subdivision to no more than a specific number of lots, each of a specified minimum size. The land was subsequently subdivided into the maximum number of lots, all of which conformed to the minimum size requirements. Now the owners of one of the lots seek to further subdivide their lot and by adding it to an adjacent, unrestricted parcel to create an additional building lot. The other owners seek to enforce the deed restrictions in an effort to protect the character of the neighborhood. Because the defendants' proposed subdivision violates these reasonable and enforceable deed restrictions, the plaintiffs' motion for summary judgment will be granted.

II.

A. Background

On April 28, 1953, Eleanor Marshall sold 56.67 acres of land to John Alexander. The deed conveying the property from Marshall to Alexander was subject to a series of deed restrictions which, among other things, placed limits on the number and size of lots to be created on this land. The deed states in relevant part "[t]hat no lot, piece or parce[l] of land within said tract containing less than

two and one-half acres of land shall be alienated in any way, and that said tract shall not be subdivided for resale into more than ten such lots, pieces or parcels."[1]

Alexander subsequently subdivided the tract of land into ten lots. On May 26, 1953, he conveyed 5.81 acres to Jean and Mary Morris (the "Morris Lot"). Alexander conveyed the other nine lots as well, including one to plaintiff Harry Cripps, one to plaintiff Lois Rogers, and one to himself. All conveyances were made subject to the original deed restrictions.

In order to provide access to the neighborhood, Alexander acquired a small parcel of land (the "Warner Lot") that lay between the Marshall tract and Snuff Mill Road. Alexander created an easement across this property and built Snuff Mill Lane that gives five lots in the neighborhood access to Snuff Mill Road. Finally, Alexander conveyed a .74 acre residual portion of the Warner Lot to the Morrises (the "Residue Parcel"), the adjoining property owners. With both the Morris Lot and the Residue Parcel, the Morrises then owned over six acres fronting on both Snuff Mill Lane and Snuff Mill Road.

B. The Parties

The plaintiffs are owners of several parcels of the original Marshall tract. The plaintiffs Harry Cripps and Lois Rogers are original purchasers of lots from

[1] App. To Accompany Pls.' Opening Br. In Supp. Of Mot. For Summ. J. at A-81.

Alexander. Plaintiffs Michael and Ilianna Teixido purchased Alexander's personal lot in 1995. [2]

Also in 1995, the defendants Cosimo and Sandra Faella purchased the Morris Lot together with the Residue Parcel in a single transaction.[3] The Morris Lot is expressly subject to the deed restrictions from the original Marshall tract. In contrast, the Residue Parcel is not subject to the deed restrictions since it was never part of the original Marshall tract.

C. The Challenged Subdivision

In the fall of 1999, the Faellas submitted a proposed subdivision plan to New Castle County essentially shifting the lot line between the Morris Lot and the Residue Parcel. The Faellas sought approval for the subdivision because the New Castle County Unified Development Code (the "UDC") requires a minimum of two acres to create a buildable lot. Since the Residue Parcel has only .74 acres, the Faellas proposed shifting the Morris Lot line southward to add approximately 1.26 acres of land from the Morris Lot to the Residue Parcel. By shifting the lot line, the Faellas would create a saleable second lot of sufficient acreage to meet the building requirements of the UDC.

[2] *Id.* at A-126.
[3] *Id.* at A-130.

At the time the Faellas made their proposal to the County, they did not notify any of the plaintiffs of the proposed subdivision. The County did publish a notice once in the Wilmington *News Journal*, before approving the proposed plan in December 2000. The record is clear, however, that the plaintiffs did not receive actual notice of either the Faellas' subdivision plan or the County's approval.

In March 2002, the Teixidos noticed that the Faellas were clearing trees on their property. At about the same time, Cripps observed a surveyor on the Faella property and discovered an advertisement in a local real estate magazine advertising the newly created lot for sale to a third party. Teixido then inquired with the County and learned of the approved subdivision plan.

On March 28, 2002, the plaintiffs sent a letter to the Faellas detailing their concerns with the subdivision and their desire to enforce the terms of the deed restrictions. The Teixidos followed up with a personal note on April 8, 2002, and Cripps visited with the Faellas to further discuss the plaintiffs' concerns. The neighbors made several additional attempts to secure compliance with the deed restrictions, including correspondence from their attorneys alerting the Faellas that their subdivision plan was in violation of them. Teixido visited the Faellas again in early July 2002 to discuss the neighbors' concerns. Because the Faellas would not respond to these concerns, the plaintiffs began this litigation seeking to enjoin the Faellas' proposed subdivision plan.

D. Procedural History

The plaintiffs began this lawsuit on September 16, 2002 to compel the defendants to rescind the subdivision plan that allegedly violates the deed restrictions governing the lots derived from the original Marshall tract. The plaintiffs argue that the defendants' plan of creating an eleventh lot that totals less than two and one-half acres in size violates the deed restrictions concerning both the number of lots and the size of the lots. The defendants answered the complaint and counterclaimed on November 6, 2002. Generally, the defendants allege that they have complied with the deed restrictions and allege that the plaintiffs' claims are barred by laches and estoppel. The defendants also assert that if the court grants the plaintiffs' request, they should be awarded all costs and fees associated with the planning process of the proposed subdivision.

The parties conducted discovery until November 8, 2003, after which the plaintiffs moved for summary judgment. The court heard argument on this motion on June 22, 2004.[4]

[4] The defendants failed to timely respond to the motion for summary judgment. When they failed to appear at the February 3, 2004 hearing on that motion, the court entered judgment against them on the complaint and dismissed the counterclaims. The court vacated the judgment on March 22, 2004, and allowed the defendants to file an opposition to the plaintiffs' motion for summary judgment.

III.

Summary judgment is appropriate when there are no questions of material fact and the moving party is entitled to judgment as a matter of law.[5] In deciding a motion for summary judgment, the facts must be viewed in the light most favorable to the nonmoving party.[6] Additionally, the moving party has the burden of demonstrating that there is no material question of fact.[7]

IV.

A. Summary Judgment Is Appropriate At This Stage

"A party opposing summary judgment . . . may not merely deny the factual allegations adduced by the movant."[8] "If the movant puts in the record facts which, if undenied, entitle him to summary judgment, the burden shifts to the defending party to dispute the facts by affidavit or proof of similar weight."[9]

The defendants assert that summary judgment is not appropriate at this stage, arguing that the original intent of the grantors of the Marshall tract deed is not clear and requesting an opportunity to present evidence of the intent of the grantors. The defendants further argue that the plaintiffs were on inquiry notice of

---

[5] Ct. Ch. R. 56(c). *See Williams v. Geier*, 671 A.2d 1368, 1375 (Del. 1996).
[6] *Tanzer v. Int'l Gen. Inds., Inc.*, 402 A.2d 382, 385 (Del. Ch. 1979) (citing *Judah v. Delaware Trust Co.*, 378 A.2d 624, 632 (Del. 1977)).
[7] *Id.*
[8] *Tanzer*, 402 A.2d at 385.
[9] *Id.*

the proposed subdivision and therefore a trial is necessary to determine when the plaintiffs learned of the subdivision.

The defendants, however, have failed to produce evidence to contradict the plaintiffs' affidavits and depositions. The defendants cannot "rest upon mere allegations or denials" of the plaintiffs' pleadings when they have not set forth any facts showing that there is a genuine issue for trial.[10] Because the plaintiffs' motion is supported by affidavit and by deposition evidence, the burden has shifted to the defendants to dispute the plaintiffs' facts. But they have not met this burden. Instead, the plaintiffs' facts stand undisputed.

B. The Subdivision Plan Violates The Deed Restrictions

"Restrictive covenants and deed restrictions are recognized and enforced in Delaware where the intent of the parties is clear and the restrictions are reasonable."[11] "Restrictive covenants that are applied to all lots of a residential area are not to be ignored by a court unless through desuetude they no longer serve the purpose for which they were designed."[12]

---

[10] Ct. Ch. R. 56(c). *See id.*

[11] *Mendenhall Village Single Homes Ass'n v. Harrington*, 1993 WL 257377, at *2 (Del. Ch., June 16, 1993). The defendants did not directly address the issue of reasonableness of the deed restrictions, so the court will assume they are reasonable for the purposes of this opinion. In any case, the defendants' argument does not relate to their ability to use land that is part of the Marshal tract and subject to the deed restrictions. Instead, they argue that the enforcement of those restrictions prevents them from making use of the Residue Parcel, which is not part of the Marshall tract.

[12] *Id*.

The deed restrictions of the Marshall tract clearly and unambiguously state two pertinent restrictions on the original tract of land: first, the tract cannot be subdivided into more than ten lots and, second, all subdivided lots must be at least two and one-half acres in size. The defendants do not dispute that such restrictions apply to the Morris Lot. Instead they argue that the plaintiffs are improperly trying to impose the deed restrictions on the Residue Parcel.

The plaintiffs are not, however, arguing that the deed restrictions apply to the Residue Parcel. They assert that the deed restrictions apply to the Morris Lot, and that any attempt to subdivide the Morris Lot will improperly create an eleventh lot and therefore violate the deed restrictions on the Marshall tract. Furthermore, the proposed subdivision would create a lot of 1.26 acres, which also violates those deed restrictions.

The defendants make several arguments in support of why the subdivision of the Morris Lot does not violate the deed restrictions. None of these arguments holds weight.

First, the defendants argue that the deed restriction does not limit the number of dwelling units. This argument misses the point of the deed restriction. The deed clearly restricted the Marshall tract to ten lots of two and one-half acres or more. Any argument regarding the dwelling units is irrelevant to the plaintiffs' complaint.

Second, the defendants argue that shifting the lot line makes the Residue Parcel usable without harming the character of the Marshall tract. But the defendants have submitted no evidence to substantiate this claim. The plaintiffs, in contrast, have submitted affidavits detailing their interest in protecting the character of the Marshall tract and its deed restrictions in an effort to maintain the community as it is.[13] Without contrary evidence, the court finds that the deed restrictions created a type of neighborhood that played an important role in the plaintiffs' purchase decisions. Therefore, any material violation of the deed restrictions would necessarily impair the character of the Marshall tract. Certainly, creation of an additional lot is a material violation.

Third, the defendants claim that they are being deprived of the opportunity to build on the Residue Parcel. The difficulty with this argument is that, even if there was no two-acre minimum size requirement, there is nowhere to site a house on the Residue Parcel. The Residue Parcel has an elongated triangular shape, with a long leg of the triangle running along Snuff Mill Road. As is shown on the plat prepared for the Faellas in connection with the subdivision, when one considers the County set back requirements and the location of Snuff Mill Lane, there is nowhere to site a house anywhere on the Residue Parcel. This conclusion was

[13] Aff. of Harry N. Cripps at A-23 ("These deed restrictions . . . guard against the erosion of the type of neighborhood that my wife and I were striving to live in."). Aff. of Michael T. Teixido, MD at A-26 (same).

confirmed at the June 22, 2004 hearing, when the defendants' counsel conceded that the planned new dwelling would be placed predominantly on the Morris Lot.

In summary, the defendants' subdivision plan violates the deed restrictions of the Marshall tract. The deed restrictions are clear, and the defendants have offered no good reason why the restrictions should not be applied to prevent their planned development.

C. The Plaintiffs Are Not Barred By Laches

"Laches . . . bars a plaintiff from delaying unreasonably in bringing a claim to the detriment of the defendant."[14] There are three generally accepted elements to a laches defense: (1) the plaintiff's knowledge that he has a reasonable basis for legal action; (2) the plaintiff's unreasonable delay in bringing the legal action; and (3) identifiable prejudice suffered by the defendant as a result of the plaintiff's unreasonable delay.[15] A laches defense demands a fact-specific inquiry to determine if these three elements exist.

The defendants argue that the plaintiffs knew or should have known of the existence of the subdivision plan. The defendants make this argument even though they concede that the only notice given of the subdivision plan was a single advertisement run in a local newspaper stating that the County had received the plan for approval. The defendants have not introduced any evidence to show that

[14] *Tafeen v. Homestore, Inc.*, 2004 WL 556733, at *7 (Del. Ch. Mar. 16, 2004).
[15] *Id.*

any of the plaintiffs read this advertisement. Also, the defendants acknowledge that they did not give oral or written notice directly to their neighbors or post a sign advertising the subdivision of the property. The record is clear that there were no outward changes to the property to indicate that the subdivision plan was being processed.

In contrast, the record shows that the plaintiffs acted immediately when they observed trees being cleared on the property. The plaintiffs approached the defendants and inquired as to the changes on the land. The plaintiffs did not unreasonably delay in bringing this action once they became aware of the proposed subdivision. In fact, the plaintiffs tried for a period of time to resolve the issue without litigation, but the defendants were not willing to cooperate. Thus, the defendants' claim of laches fails.

D. The Plaintiffs Are Not Barred By Estoppel

"An estoppel arises when a party, by his conduct or words, leads another, in reliance on such words or conduct, to change his position to his detriment."[16] There is no basis in this record to find that the plaintiffs' conduct in any way assured the defendants that they could move forward with their subdivision plan. The plaintiffs were not aware of the subdivision plan until *after* the County approved it, and the defendants incurred their expense in planning the subdivision

[16] *Hartman v. Buckson*, 467 A.2d 694, 697 (Del. Ch. 1983) (citations omitted).

and having the County approve it. Since the plaintiffs did not discover the subdivision plan until after it was approved, there cannot be any detrimental reliance by the defendants. Any claim by the defendants for costs and fees associated with the planning process of the proposed subdivision therefore fail.

IV.

In conclusion, defendants' proposed subdivision violates the deed restrictions of the Marshall tract. Therefore, the plaintiffs' motion for summary judgment will be granted. The defendants shall be permanently enjoined from violating the deed restrictions of the Marshall tract. The plaintiffs are directed to submit a form of final judgment and order, on notice, within 14 days of the date hereof.