IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

PLANTATION PARK ASSOCIATION, INC.,	)	
Plaintiff,	)	
v.	)	C.A. No. 1491-S
JEANNETTE GEORGE,	)	
Defendant.	)	

MASTER'S REPORT

Date Submitted: October 5, 2006
Final Report: January 25, 2007

William B. Wilgus, Esquire, Millsboro, Delaware, Attorney for Plaintiff.

Jeannette George, Pro Se, Defendant.

GLASSCOCK, Master

This matter involves an attempt by a homeowner's association to enforce deed covenants against the defendant, Ms. Jeannette George. Ms. George is the owner of a lot, number 54 Mississippi Avenue, in a Sussex County development, Plantation Park (the "Park"). Ms. George's lot, like all others in the Park, is subject to reciprocal deed restrictions. Deed Covenant 4 provides, among other things, that no house trailer (or other dwelling) more than five years old may be placed on a lot in the Park.[1] On May 3, or 4, 2005, Ms. George caused a 10-year-old trailer to be placed upon her lot. The plaintiff, Plantation Park Association, Inc. (the "Association") brought this action, seeking to enjoin the maintenance of that trailer upon the lot. After Ms. George failed to timely answer the complaint, counsel for the Association moved for a default judgment. After a hearing on December 15, 2005, which Ms. George failed to attend, I found Ms. George in default but declined to enter the requested injunction, pending supplementation of the record. Eventually, I directed Ms. George to remove her mobile home from the Park, by Order of December 19, 2005. Ms. George failed to comply. Counsel for the Association then sought a rule to show cause why Ms. George should not be held in contempt. That rule issued and at a hearing on May 17, 2006, I found Ms. George in contempt of my Order of December 19, 2005. Ms. George failed to appear at this hearing as well. The Contempt Order again directed Ms. George to remove the trailer and found

[1]The restrictions incorporated in the deeds to lots in the Park provide: "4. One (1) detached single family dwelling…may be placed (on the lot)…not more than five years old…at the time it is first placed upon any such numbered Lot…."

her liable for the Association's counsel fees. Once again, Ms. George ignored the injunction.

Accordingly, on July 14, 2006, counsel for the Association sought an order to empower the president of the Association to remove the trailer from the Park. Shortly after that request was made, Ms. George filed an answer, attempting to raise an estoppel defense and asserting that the Court's injunction, if carried out, would lead to extreme hardship on her part. The answer also sought to vacate the prior Court Orders.

I scheduled a hearing on both parties' outstanding motions. After that hearing, and after consideration of the evidence submitted at that hearing and at the prior hearings together with the pleadings, I reach the following conclusions: (1) Ms. George's request to vacate the substantive portions of my Orders finding her in violation of Deed Covenant 4 is without merit, and (2) despite the dilatory nature of Ms. George's response to the complaint in this matter, equity requires that I allow her additional time to comply with the relief ordered. To that end, those portions of my prior Orders which issued mandatory injunctive relief against Ms. George are vacated, and this report substituted.

Facts

In 1992 or 1993, Ms. George purchased a lot improved by a house trailer in Plantation Park.[2] Plantation Park is a development permitting mobile homes and

[2] I am generally familiar with the area of Plantation Park, which is located south of the town of Ocean View in rural Sussex County. After the October 5, 2006 hearing I drove through

manufactured housing. In the Park, each resident owns his own lot. Each lot in the Park is covered by a set of restrictive covenants referenced in each deed and recorded in the Sussex County Office of the Recorder of Deeds. Plantation Park is an attractive, long established and rather rustic community. The lots are relatively large and mostly wooded. The older section of the Park, in which Ms. George's lot is located, is a neighborhood of graveled streets and house trailers of varying ages and conditions. The Park has been in existence for more than 35 years and some of the trailers appear to date from several decades past. Some have trailer-type aluminum siding and flat roofs, many have vinyl or wood siding and A-line roofs erected over the house trailers, and many have framed additions.

When Ms. George purchased her lot in the 1990s, it was improved by a trailer manufactured in the 1980s. In December 2004, she purchased a trailer which was newer and in better condition than the existing trailer. This trailer, manufactured in 1995, was located in Bear, Delaware. Ms. George donated her old trailer to charity and had it removed from the lot, and had her 1995 trailer transported from Bear to Plantation Park in May of 2005. According to Ms. George, she was unaware of the deed covenant limiting trailers placed in the Park to those no older than five years. Of course, Ms. George had constructive knowledge of this deed covenant. Nonetheless, by May 3, 2005 Ms. George

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the Park, including the area of Mississippi Ave. where Ms. George's lot is located. To the extent this report contains a description of the Park, it is based on my view of the Park that day, as well as evidence presented at the hearing.

had divested herself of her old trailer, paid for her new trailer and had it in Plantation Park ready to be placed on her lot.

That was the state of affairs on the afternoon of May 3, 2005 when Mr. Newell, then-vice president of the homeowner's association, noticed the new trailer sitting on the side of a street in Plantation Park. He spoke to the truck driver who had delivered the trailer to the Park and to a friend of Ms. George's who was in the area; Ms. George herself was not in the Park at that time. According to Mr. Newell, he could not tell by looking at the trailer that it was out of compliance with the five-year restriction. Ms. George's friend, however, told him that the trailer was 10 years old. Later that evening, Mr. Newell spoke to Ms. George herself. He told her that she had failed to follow the required procedure for placing a trailer on her lot and that she would have to seek Association approval for her new trailer.[3] Sometime between the evening of May 3 and May 4, 2005 the trailer was placed on the lot. On May 4, 2005, Ms. George contacted Mr. Wilgus, the president of the Association, who was vacationing in South Carolina. Mr. Wilgus informed her that because the trailer was not in compliance with the age requirements of Covenant 4 of the restrictive covenants, she would have to remove the trailer from her lot. Ms. George has declined to do so and this suit has followed. Mr. Newell testified that Ms. George's mobile home is not out of keeping with the character of the Park or the homes of her neighbors. Based on that testimony and my own

[3]Apparently, Mr. Newell was referring to Covenant 34, which requires notice to and approval from the Association for the placement of new housing in the park.

observation, it is clear that Ms. George's current trailer is not an eyesore or outstanding in any way from the homes of her neighbors. The George trailer has vinyl siding, a shingled, pitched roof and a frame addition.

Ms. George's Motion to Vacate the Finding that She is in Violation of the Deed Covenants

Ms. George argues that her conversation with Mr. Newell, in which he told her she needed to seek Association approval for placing the mobile home on her property, was an encouragement to her to place the home on her property and thus should operate as a kind of waiver or estoppel. I need not consider this argument, however, because Ms. George failed to assert waiver or estoppel as a defense in any timely manner and in fact has simply ignored process in this Court until the Association sought leave to remove her trailer from the lot. While Ms. George argued that she was busy, often out of state, not receiving her mail, etc., I find the reasons which she has given for her lack of action in this manner completely unpersuasive. In addition, by Ms. George's own testimony, by the time Mr. Newell spoke to her she was already committed to placing the 1995 trailer on her lot: she had paid for that trailer, divested herself of her old trailer and paid to have the 1995 trailer brought to Plantation Park for placement. Ms. George was living in a hotel waiting for the new trailer to be made ready for occupancy. Therefore, any action by Mr. Newell was irrelevant to the actions taken by Ms. George in violation of Deed Covenant 4. Finally, even if I were to consider the substance of Mr. Newell's

conversation with Ms. George, his statements do not amount to a waiver of the Association's right to enforce its restrictions, nor are they sufficient to cause the type of reliance which might work an estoppel. It is clear to me, therefore, that Ms. George violated Deed Covenant 4 by moving a 10-year-old trailer onto her lot in May 2005.

To the extent Ms. George seeks to lift my finding of contempt and the accompanying Order to pay the Association's legal fees, that request must be unavailing as well. As stated above, Ms. George ignored legal process for many months until she received the Association's request that in the face of her recalcitrance they be permitted to remove her trailer. Ms. George's decision to hunker down and ignore legal process, rather than responding and mounting a defense, has led to a need for three hearings in this matter, and has required the Association to pay legal fees far beyond what would have been required otherwise. For that reason, and also because the deed covenants allow for payments by lot owners of the Association's legal fees in successful actions against them, the appropriate sanction here is for the rather substantial fees incurred by the Association to be paid by Ms. George.[4] For the benefit of the Association, I am vacating that portion of my prior Orders that set the amount of legal fees for which Ms. George is liable. Counsel for the Association at the end of this action should recalculate his fees to include those that were the subject of prior Orders and those incurred since, and provide them to

[4]The deed covenants provide for the payment of fees as follows: "37. Court Costs and Legal Fees: Should any lot/home owner be required to appear in court due to a covenant violation, they (sic) will be responsible for all court costs and legal fees provided the Association wins the case."

me in affidavit form accompanied by a form of order. That order should provide that Ms. George shall pay the legal fees of the Association, and that those fees shall constitute a lien against her real property in Plantation Park until satisfied.

The Remedy

Ms. George is in violation of the deed covenants. The Park seeks the remedy of an order permitting them to enter Ms. George's property immediately and remove her 1995 house trailer. In the alternative, they seek to compel Ms. George to comply with prior Orders of this Court enjoining her to take the same action. Ms. George argues that she will be greatly harmed by the removal of her trailer and that the harm to the Park should it remain is negligible.

Where as here a party seeks permanent injunctive relief, its request will be granted where that party demonstrates a violation of a right; that absent the relief sought it will suffer irreparable harm; and that the equities balance in its favor. Here, the Park has established that Ms. George is in continuing violation of the reciprocal covenants. Moreover, any violation of such covenants involves violation of a property right which of itself works irreparable harm. *E.g.* Slaughter v. Rotan, Del. Ch., No. 1224, Steele, V.C. (Sept. 14, 1994)(Mem. Op.) at 3. Therefore, the Park is entitled to injunctive relief unless such relief is proscribed by equitable considerations.

Our case law is unclear whether one who has violated a deed covenant, despite actual or constructive notice thereof, is entitled to relief from an injunction based on an

equitable analysis, comparing the harm that will result from the injunction against the harm which will result to the moving party in its absence. *Compare* Slaughter (Mem. Op.) at 3 (holding that party seeking to enforce covenant through injunction must demonstrate that balance of harms is in its favor) *with* Welshire, Inc. v. Harbison, Del. Ch., 91 A2d 404, 408 (1952)(holding violator of deed restrictions not entitled to "balance of the harms" analysis). These lines of cases can be readily reconciled as different methods of applying the maxim that equity will not reward inequitable conduct, such as the knowing violation of a covenant in a deed. Thus, those courts requiring a "balancing" analysis in cases seeking to enjoin breach of a deed covenant tend to discount harm resulting for the knowing breach of the covenant. *See* Slaughter (Mem. Op.) at 3. Ms. George's continued maintenance of an uncompliant trailer on her lot is an ongoing violation of the covenants in her deed, and the park is entitled to relieve this violation via injunction. Equitable considerations should apply in crafting the appropriate injunction, and its timing, however.

Ms. George is employed as a utility clerk. She testified without challenge, and I believe, that she has her entire savings invested in her lot and trailer, that she is two years from retirement, that she plans to continue to live in the trailer after her retirement, and that she currently cannot afford to replace the trailer with a newer one. There is no evidence of the value of her trailer if it is removed from the lot; the reality is, however, that a now-11-year-old house trailer is probably of little value. Ms. George maintains that if she has to remove her trailer from the lot she will be "homeless." While I am not

convinced that the situation is so dire as that, it is certainly true that given her modest financial means an order requiring her to immediately remove the trailer from her lot would be a substantial hardship. There is no question that Ms. George had constructive notice of the restricted covenants in her deed. Ms. George testified believably, however, that it did not occur to her that in improving her lot by swapping an older trailer for a newer one in better condition she was violating a deed covenant. In fact, it seems unlikely that anyone would willingly accrue the legal problems from which Ms. George now suffers when the alternative would be simply to have maintained her old trailer on the lot, or to have found a five-year-old-or-newer replacement. I also note, however, that a simple check of the covenants would have revealed the five-year age restriction. In addition, Ms. George is in violation of another covenant, Covenant 34, which requires both notice to and approval from the Association before placement of a new home on a lot in the Park. Had she complied with that covenant, surely the result would have been denial of permission to place the 1995 trailer on the lot, avoiding the hardship she seeks to rely upon here.

The harm to the Association absent the removal of the George trailer is more subtle. The purpose of the five-year age requirement in the deed covenants is to prevent the accumulation in Plantation Park of old run-down trailers, which would lower property values for all Park residents. Ms. George's trailer, however, is neither old nor rundown in appearance. In fact, as I have found it is both upgraded with an A-line roof and vinyl siding (in keeping with the more upscale of her neighbors) and is newer than many of the

other mobile homes in the Park. Nevertheless, the Association does have a strong interest in enforcing its deed covenants. Absent prosecution in defense of this covenant, future actions to prevent placement of older trailers become subject to a defense of waiver. From the Association's point of view, therefore, allowing Ms. George to violate this deed covenant is a step on a path which could lead to the accumulation of old and run-down trailers in the Park; precisely the harm that Covenant 4 seeks to prevent. Under the unique facts of this case, there is no evidence or even assertion of an interest on the part of the Association in removing Ms. George's trailer from her lot, beyond preserving the validity of the deed covenant. Ms. George could have, in perfect conformity with the deed covenants, left her original trailer on the lot. That trailer was not only older than the current trailer, but was more trailer-like, and less house-like, in appearance than the current trailer. If there were a way to restore the status quo ante, the Park would look more, not less, old and run-down. Put another way, Ms. George's maintenance of the current trailer on her lot causes not an iota of harm to the Association *except* to the extent it reduces the future enforceability of the deed covenants.

Therefore, I must craft an order which ends the violation of the covenants by Ms. George, preserves the viability of those covenants against future violation, but takes into account, and, to the extent consistent with goals just stated, mitigates, the substantial harm faced by Ms. George. I find it appropriate to enjoin Ms. George as follows. Within two years of the hearing in this matter, no later than October 5, 2008, Ms George shall remove the trailer currently occupying her lot from the Park. If the trailer is replaced, it

must be with a mobile home compliant with the deed covenants. Should Ms. George fail to comply with this Order, the Plaintiff's designee may, without further Order of this Court, enter Ms. George's property and remove the trailer. The reasonable expense of the entry and removal, in that case, will be entered as a judgment against Ms. George, and may be recorded as a lien against her property.

Once this report becomes final, the plaintiff should submit a form of order together with the affidavit of fees described above.

/s/ *Sam Glasscock, III*
Master in Chancery