COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: June 11, 2007
Decided: June 13, 2007

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Re: *Service Corporation of Westover Hills v. Robert Guzzetta and Kathleen Guzzetta*, Civil Action No. 2922-VCP

Dear Counsel:

This is an action by a homeowners' association to enjoin a husband and wife who own a home in the same community and who recently purchased an adjacent property from demolishing the house on that property and converting it to a grassy playfield for their children. Defendants assert that the homeowners' association has no legal basis to control the manner in which they demolish the structure or landscape the property following the demolition. Plaintiff brought this action pursuant to the statute enacted in 2006 regarding disputes involving deed covenants or restrictions, 10 *Del. C.* § 348. Consistent with the requirements of Section 348, the parties have participated in a

mandatory mediation. Because the mediation failed, a trial on the merits is scheduled for August 14, 2007 before a Master in Chancery.

The plaintiff homeowners' association seeks a preliminary injunction to prevent the homeowners from demolishing the structure without working with the association to develop an acceptable landscaping plan to restore the post-demolition property to a state consistent with the character of the community.[1] For the reasons stated, I find that plaintiff is entitled to a preliminary injunction.

I. FACTS

Plaintiff, Service Corporation of Westover Hills ("Plaintiff" or "Service Corp."), is a Delaware not-for-profit corporation consisting of the landowners within the development known as Westover Hills Section C ("Westover Hills").[2]

Defendants, Robert and Kathleen Guzzetta ("Defendants" or the "Guzzettas"), have been homeowners in Westover Hills since 1996.[3] In May, 2007, the Guzzettas purchased the property next to their home, known at the outset of this litigation as 924

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1 By order entered May 29, 2007, I granted a Temporary Restraining Order, over the homeowners' objection, to preserve the status quo until plaintiff's motion for a preliminary injunction could be decided.

2 First Am. Compl. ¶ 1.

3 Prelim. Inj. Hearing, June 11, 2007. The Guzzetta's home is located at 905 Berkeley Road.

Stuart Road, but later renumbered as 907 Berkeley Road (the "Property").[4] The Property is located on the corner of Berkeley and Stuart Roads, and includes a 1943 colonial-style house and mature maple and oak trees. The Guzzettas purchased the Property to expand their backyard for the enjoyment of their growing children.

Properties in Westover Hills are subject to certain deed restrictions recorded with the New Castle County Recorder of Deeds ("Deed Restrictions"), which run with the land and are binding on the owners of all parcels of land located within the Westover Hills Section C development.[5] Article V of the Deed Restrictions provides that:

> *No building, fence, wall or other structure shall be commenced, erected, or maintained, nor shall any addition to or change or alteration therein be made, until the plans and specifications*, showing the nature, kind, shape, height, materials, floor plans, color scheme, location and frontage on the lot and approximate cost of such structure *shall have been submitted to and approved in writing by the party of the first part*. The party of the first part shall have the right to refuse to approve any such plans or specifications which are not suitable or desirable, in its opinion, for aesthetic or other reasons; and in so passing upon such plans and specifications it shall have the right to take into consideration the suitability of the proposed building or other structure and of the materials of which it is to be built, to the site upon which it is proposed to erect same, the harmony thereof with the surroundings and the effect of the building or other structure,

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4 Pl.'s App. at A63; NCC Parcel Record, *available at* http://www.co.new-castle.de.us/ParcelView/parceldetails.aspx?ParcelKey=30770 (online property information search program for New Castle County).

5 Vol. 36Q, p. 100.

> as planned, on the outlook from the adjacent or neighboring property.[6]

The Deed Restrictions also provide that the restrictions shall be enforceable by the Delaware Land Development Corporation or its assignee.[7] On December 28, 1996, the Delaware Land Development Corporation assigned its rights and obligations under the Deed Restrictions to Plaintiff by written instrument filed with the New Castle County Recorder of Deeds.[8]

Since 2004, Service Corp. has used an Architectural Review Committee to initially review proposals, request additional information as necessary, and make recommendations to the Service Corp. board.[9] The record reflects that Service Corp. knew of only three other complete demolitions on land parcels in Westover Hills. In one instance, the owner demolished the property precipitously without Service Corp.'s knowledge or approval. Subsequent to the demolition, however, the owner did submit to Service Corp. for its review and approval a plan for use of the lot, including detailed drawings demonstrating the landscaping design for, and shielding of, the lot.[10] In the

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6 Deed Restrictions at Art. V (emphasis added).

7 Pl.'s App. at A56-57 (Deed Restrictions at Art. XI – XII).

8 Vol. H78, p. 164; *see* Pl.'s App. at A58-60 (Assignment of Power to Service Corp.).

9 Pl.'s App. at A24-25 (Maroney Tr.).

10 Pl.'s App. at A141 (Hazelton Aff. ¶ 9).

other two instances, the landowners followed Service Corp.'s review procedures and obtained permission from the Architectural Review Committee. The landowners submitted plans showing the proposed use of the lots after the demolition and worked with Service Corp. to revise the plans so they were consistent with the other properties in Westover Hills.

Service Corp. also routinely approves landscaping plans related to construction on properties in Westover Hills. For example, in 2004, owners of a house located at 921 Stuart Road sought approval to demolish the structure, build a garage, and create open play space for their children. In that instance, Service Corp. initially rejected the proposed plan, requiring the homeowners to make substantial revisions to comply with the Deed Restrictions. After those revisions, Service Corp. granted the application.[11] In another instance, homeowners sought permission to install a stone retaining wall on their property. Based on the way the wall would be constructed, Service Corp. denied that request because the construction would have a detrimental effect on the London Plane trees owned by Service Corp. and located between the sidewalk and the road.[12]

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[11] Pl.'s App. at A99-116 (Erskine Application documents).

[12] *See* Prelim. Inj. Ex. 18, at A125. The London Plane trees that line the area between the sidewalk and the road were planted before or around the time that Westover Hills was created, in 1929. Prelim. Inj. Hearing Tr. (Hazelton). The homeowners worked with the Architectural Review Committee to develop a natural vegetative barrier in lieu of the stone retaining wall. Prelim. Inj. Ex. 18, at A125.

II. PROCEDURAL FACTS

On April 26, 2007, Service Corp. filed a verified complaint against William and Kathleen Rubbert seeking, among other things, a preliminary and permanent injunction enjoining the demolition of a home and landscaping at 924 Stuart Road in Wilmington, Delaware. That same day, Plaintiff also moved for a temporary restraining order.

The Court held a teleconference on the motion for temporary restraining order, in which the Rubberts failed to appear, but counsel for the Guzzettas, now Defendants in this action, participated. Plaintiff and the Guzzettas informally agreed to maintain the status quo briefly, while the Guzzettas completed their purchase of the Property from the Rubberts. Then, on April 30, 2007, Plaintiff filed a First Amended Complaint for Injunctive Relief, and the Guzzettas replaced the Rubberts as Defendants.

On May 3, 2007, I heard argument on the motion for temporary restraining order and entered a TRO effective until May 29, prohibiting the Guzzettas from demolishing the structure and landscaping on the Property. Thereafter, pursuant to 10 *Del. C.* § 348, the parties participated in mandatory mediation but were unable to resolve this dispute. At a telephonic hearing on May 29, 2007, I extended the TRO pending the Court's determination of Service Corp.'s request for a preliminary injunction and required a $5,000 secured bond. I allowed the Guzzettas to move forward, however, with acquiring city permits and licensing related to demolition, and with terminating utilities to the

Property. A trial on the merits is scheduled for August 14, 2007 before Master Kim Ayvazian.

III. PARTIES' CONTENTIONS

The parties agree that the Property is encumbered by the Deed Restrictions. Plaintiff contends that the only portion of the Deed Restrictions relevant to this case is Article V and that, based on that Article, any change or alteration to a property in Westover Hills must be approved by the Service Corp. Furthermore, Service Corp. argues that the demolition of a home constitutes a change or alteration that requires pre-approval. Specifically, Service Corp. seeks to compel the Guzzettas to work with the association to develop an acceptable landscaping plan to remediate the dramatic change that the contemplated demolition will cause. Service Corp. argues that it needs such a plan to maintain consistency in the physical appearance of the neighborhood and mitigate any adverse impact on neighboring properties.

Defendants challenge Service Corp.'s authority under Article V to prevent them from demolishing the house. In particular, the Guzzettas contend that Article V, read as a whole, grants authority to Service Corp. only as to changes or alterations that require further building or result in a structure remaining on the property. In other words, Defendants contend that Article V applies only to projects that involve some form of new structure or improvement or alteration to an existing structure.

In support of this argument, Defendants contend that the word "change" in the phrase "change or alteration therein" must be read consistently with the rest of Article V. This analysis, according to Defendants, supports construing the word "change" to require "some form of improvement following the change."[13] Regarding the word "alteration," Defendants argue that "alter" means to "change without destroying the identity of the thing changed,"[14] and cite to Texas, Missouri, California, and Wisconsin law to support their contention that "altering" a building does not mean to change it beyond recognition. Because the Guzzettas plan to demolish all the structures on the Property, they assert that Service Corp. has no authority over their plans and that they do not need to submit a landscaping plan. Defendants also argue that, even if Service Corp. had the authority to require them to meet certain landscaping conditions, it would be, at most, a minimum requirement. In that regard, the Guzzettas emphasize the absence of any objective standards in Article V, and assert that they have offered to plant an "evergreen hedge" along the two sides of the play field nearest the street. Additionally, Defendants point out that several undeveloped tracts of land in Westover Hills have never come under review by the association, and that the Guzzettas' situation differs from other demolition proposals the association has considered in the past.

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13 Defs.' Op. Br. at 7.

14 *Id.* quoting *Smith v. U.S.*, 74 F.2d 941 (5th Cir. 1935).

IV. ANALYSIS

A. Standard for Preliminary Injunctive Relief

To obtain a preliminary injunction, the moving party must demonstrate that:

> (1) there is a reasonable probability that the movant will succeed on the merits of its claims;
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> (2) the movant will suffer irreparable harm if injunctive relief is not granted; and
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> (3) the movant's need for the protection of an injunction outweighs any harm the Court can reasonably expect to befall the non-moving party if the injunction is issued.[15]

1. Is there a reasonable probability that Service Corp. will succeed on the merits?

Based on the language of the Deed Restrictions and the evidence presented, I find that Service Corp. has demonstrated a reasonable probability of succeeding on the merits of its claim. At the heart of this issue is interpreting the phrase "change or alteration" under Article V. In construing deed restrictions, courts apply the plain meaning of words, and have taken judicial notice of dictionary definitions to aid in ascertaining such meaning.[16] Webster's Ninth New Collegiate Dictionary defines the word "alter" as meaning "to become different." The relevant definitions of "change" are: "1a) to make different; 1b) to make radically different; 2a) to replace with another or 2b) to shift; … or 4) to undergo a modification." Although these definitions of "alter" and "change"

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[15] *Gimbel v. Signal Cos.*, 316 A.2d 599, 602-03 (Del. Ch.), *aff'd*, 316 A.2d 619 (Del. Supr. 1974).

[16] *See Crisconi v. Cleveland*, 1981 WL 15119, at *1-2 (Del. Ch. May 26, 1981).

underscore the need for some form of modification of an existing "building, fence, wall or other structure,"[17] they do not support limiting the applicability of Article V to modifications in the nature of an improvement or slight adjustment, as Defendants suggest.

Rather, I consider it reasonably likely that, after trial, the court will construe the text of Article V to include any modification of a structure, especially those of a radical nature such as demolishing a house. This interpretation appears to comport with the remainder of the Deed Restrictions, which limit the use of land, the property line, the manner in which garages are designed or erected, and the requirement of free space. This construction also conforms with Service Corp.'s treatment of vacant or unimproved lots as outside the scope of Article V. Lots that have been vacant since the creation of the neighborhood have never been improved by an owner. Thus, they have not undergone a change or alteration that would subject them to review by the association or its Architectural Review Committee. For those reasons, I conclude that Defendants' definitions of the words "change" and "alter" are likely to be rejected as too narrow.

Defendants also argue that the standard for determining whether landscaping is harmonious under Article V is vague or nonexistent and risks capricious application. In the absence of express standards, the Guzzettas contend that a court would apply a

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[17] Deed Restrictions at Art. V.

"minimal" landscaping plan standard.[18] They contend that their current proposed plan, planting evergreen bushes 5 feet apart for the length and width of the yard and installing a retaining wall, should satisfy Service Corp.'s concerns of unsightly views of the back of the Guzzetta's house, while allowing them to maximize the space available for use as a children's play area.

Based on the language of the Deed Restrictions, I consider it unlikely that Defendants will succeed in arguing that Article V either has been applied arbitrarily or lacks sufficiently objective standards. Delaware courts routinely have upheld deed restrictions relating to design harmony and character of a neighborhood. For example, in *Dolan v. Villages of Clearwater Homeowner's Association, Inc.*,[19] Vice Chancellor Strine reviewed deed restrictions relating to a neighborhood of Key West-style homes. The applicable restriction gave the association and its architectural review board the authority to ensure "that the architectural design of structures and their materials and colors are visually harmonious with the Development's overall appearance, history and cultural heritage, with surrounding development, with natural land forms and native vegetation . . . ."[20] The court in *Dolan* upheld the authority of the architectural review board to reject improvements that were not visually harmonious with the development.

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18 Defs.' Op. Br. at 9.

19 2005 WL 1252351 (Del. Ch. Oct. 21, 2005).

20 *Id.* at *2.

In this case, Article V includes language that is similar to that at issue in *Dolan*. For example, Article V explicitly authorizes the homeowners' association charged with reviewing plans to take into consideration the harmony of the proposed change with the surroundings and its effect on the outlook from adjacent or neighboring property. Viewing this language in the context of the overall Deed Restrictions, I find it reasonably likely that Service Corp. will succeed in proving that the standards for review under Article V are sufficiently objective to permit reasoned and nonarbitrary decisions.[21] The photographs of Westover Hills introduced into evidence by Service Corp.[22] depict a neighborhood characterized by streets lined with mature trees and lots with reasonably extensive natural looking landscaping. In the words of the *Dolan* case, Westover Hills appears to have a "sufficiently coherent visual style" to enable Service Corp. to enforce the Deed Restrictions in an "even-handed, non-arbitrary fashion."[23]

Further, I do not find that Service Corp. or its Architectural Review Committee has capriciously or arbitrarily applied the Deed Restrictions in the past. In fact, the evidence submitted in connection with the preliminary injunction hearing suggests that they vigorously and consistently enforced Article V to preserve the overall harmony of the neighborhood. Even in the instance where a homeowner demolished a home without

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21 *See id.* at *4.

22 Prelim. Inj. Exs. 21 and 22.

23 *Dolan v. Villages of Clearwater Homeowner's Ass'n, Inc.*, 2005 WL 1252351, at *4.

Service Corp.'s approval, for example, the Architectural Review Committee immediately contacted the homeowner and ultimately approved a landscaping plan submitted by that homeowner which was consistent with the neighborhood and unobtrusive from the perspective of the neighboring property.[24]

In the Guzzettas' situation, Joan Hazelton, President of Service Corp. and former Architectural Review Committee member, stressed the need to maintain the visual consistency of corner lots located in the five street subdivision because those properties are more exposed. Hazelton testified that a major concern with the Guzzettas' proposed plan is that the Property occupies a major corner in Westover Hills and that, following demolition of the house, the rear of the Guzzettas' home will be entirely visible from both Berkeley and Stuart Roads. In comparison to the other corner lots in the subdivision, Hazelton asserted that a minimalist design consisting of one type of vegetation, such as the Guzzettas proposed, would be inconsistent with the remainder of the neighborhood. Moreover, the Guzzettas only made their proposal informally in the context of this litigation; they did not submit it as part of a comprehensive plan for the demolition project, suitable for review and action by Service Corp. In these circumstances, I find that Service Corp. has met the first prong of the test for a preliminary injunction by demonstrating a likelihood of success on the merits.

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[24] Pl.'s App. at A88-98 (Cawley Application documents; A141 (Hazelton Aff. at ¶9)).

2. Will Service Corp. suffer irreparable harm if injunctive relief is not granted?

As to the second prong of the test, Service Corp., as the agent for the property owners of Westover Hills, faces a significant risk of irreparable harm if the home is demolished and mature trees are removed before final resolution of Service Corp's claims. Actions such as removing mature trees and demolishing a house are effectively irreversible. Moreover, as the process takes place, secondary harms may result. Heavy machinery could significantly damage the current landscaping on the Property and the association's adjacent property by, for example, causing damage to Service Corp.'s London Plane trees, some of which are over 70 years old.

In the abstract, potential problems such as these would not necessarily prevent a homeowner in Westover Hills from obtaining approval from Service Corp. or authorization from a court to proceed with a proposed demolition of all structures on a property. Reasonable parties presumably could negotiate and execute an enforceable agreement setting forth the controlling terms and considerations upon which the project would proceed.

The potential harms in this case, however, rest within a larger context of uncertainty between the parties. The Guzzettas and Service Corp. have not agreed on a landscaping plan or on any method of proceeding until that issue is resolved. Mr. Guzzetta evinced no willingness to modify his current landscaping proposal to the association, such that a comprehensive, enforceable agreement covering all the issues

relating to this project could be achieved. As a result, both parties currently look to a final resolution of this case to determine the parameters of the demolition project. In this context, I find that the harms likely to befall Service Corp in the absence of an injunction, although far from catastrophic, are nonetheless irreparable.

3. Does the balance of the equities favor Service Corp. or the Guzzettas?

The third prong of a preliminary injunction analysis requires that I balance the likely harm to Plaintiff in the absence of an injunction against that to the Defendants if an injunction is granted. As discussed above and based on my reading of the Deed Restrictions, I find that Service Corp. does face a significant risk of irreparable harm, unless the Court issues a preliminary injunction.

In contrast to the harm that would befall Service Corp. if the house and surrounding vegetation are razed, the harm to the Guzzettas is a delay of a few months in their ability to use the Property as they wish. The Guzzettas have been on general notice of the applicability of the Deed Restrictions since 1996 when they purchased their house at 907 Berkeley Road. At the preliminary injunction hearing, Mr. Guzzetta admitted that he knew when he purchased the Property from the Rubberts that Service Corp. would not approve a demolition on that Property without an acceptable plan for the use of it following demolition, including a landscaping design to ensure that the demolition would not leave the property out of harmony with the neighborhood. Indeed, Mr. Guzzetta admitted that he secretly drafted a series of letters from the previous owners to Service

Corp. regarding the proposed demolition dating back as far as October 19, 2006, more than six months before Service Corp. commenced this action. By not disclosing his involvement to Service Corp. for a number of months and directly participating in a lengthy game of cat-and-mouse with it over the need for, and scope of, review by the Architectural Review Committee, Mr. Guzzetta bears responsibility for at least some unnecessary delay in the resolution of this matter. Further, despite knowing of the impasse with Service Corp., the Guzzettas purchased the Property.[25] In these circumstances, I do not consider the possibility that it may take a few months to resolve this matter through litigation to be overly burdensome to the Guzzettas.

At the same time, I am sympathetic to the Guzzettas' desire, as real property owners, to make use of their property as they see fit. In that regard and in an effort to ameliorate any potential harm to them, I allowed the Guzzettas to take the steps necessary to prepare for immediate demolition when I entered the existing TRO on May 29, should they ultimately prevail or reach a mutually satisfactory resolution with Plaintiff. Based on the foregoing analysis, I conclude that the balance of the equities in this case favors Plaintiff.

V. CONCLUSION

Having considered each prong of the injunctive relief standard, I find that Service Corp. has made a sufficient showing to justify imposition of a preliminary injunction

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[25] Pl.'s Op. Br. at 16

until either a final judgment has been rendered on the merits or further order of this Court. The scope of the preliminary injunction will be the same as the current temporary restraining order.[26] Thus, the Guzzettas shall be preliminarily enjoined from demolishing their house at 924 Stuart Road (now named 907 Berkeley Road), or cutting down any trees on that Property without approval of Plaintiff or further Court ruling allowing such demolition or cutting to occur. Bond shall remain at $5,000 secured. Plaintiff shall submit a proposed form of preliminary injunction order, on notice, within five days.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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[26] I find that Service Corp. has demonstrated a sufficient basis for continuing to enjoin the cutting down of any trees on the Property. I base this conclusion primarily on Service Corp.'s showing as to the threat of irreparable harm and the balance of the equities. Defendants failed to rebut that showing, especially in terms of demonstrating any material harm to them caused by the injunction. I do not mean to prejudge, however, the issue of whether Service Corp., as a condition of approval of the proposed demolition, could require that the Guzzettas not cut down any or all of the mature trees on the Property.