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Re: Jackson's Ridge Homeowners Association v. May
C.A. No. 2043-VCN
Date Submitted: August 1, 2007

Dear Counsel:

Plaintiff Jackson's Ridge Homeowners Association (the "Homeowners Association") seeks to enforce certain deed restrictions binding real property owned by Defendant Kelly May at 104 Jefferson Woods Drive in the Jackson's Ridge subdivision in Harrington, Kent County, Delaware. Specifically, the Homeowners Association seeks to enjoin Ms. May permanently from operating a daycare business in her home and maintaining a dilapidated footbridge in the front

of her property. Ms. May argues that the Homeowners Association should be estopped from enforcing the restriction against her home business because she relied to her detriment on minutes of a February 2004 meeting of the Homeowners Association purporting to record an amendment to the deed restrictions which would have allowed her home business to continue operating. In addition, she argues that the Homeowners Association waived its right to enforce the deed restrictions against her because it has failed to enforce the restrictions against various other violations in the neighborhood.

For the reasons set forth below in this post-trial letter opinion, the Court will enter judgment in favor of the Homeowners Association and permanently enjoin Ms. May from continuing to violate the Jackson's Ridge deed restrictions by operating her home daycare business and maintaining a dilapidated footbridge in the front of her property.

I. FACTUAL BACKGROUND

Ms. May purchased her home in Jackson's Ridge in December 2001.[1] As part of its general development scheme for the subdivision, the developer had recorded certain deed restrictions against the lots in its *Amended and Restated*

[1] Transcript of Trial ("Tr.") 41.

Declaration of Covenants and Restrictions for Jackson's Ridge[2] (the "Declarations"). Ms. May never read the Declarations before receiving notice from the Homeowners Association of the violations leading to this action.[3] The following provisions of the Declaration primarily govern the conduct at issue:

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[2] Joint Exhibits ("JX") 1. The Homeowners Association was established by Paragraph 19(B) of the Declarations and is now duly authorized to enforce them for the benefit of the community.

[3] *See* Tr. 139:

> MR. SCHWARTZ: Miss May, you started your business in June 2003.
>
> MS. MAY: Yes.
>
> MR. SCHWARTZ: I take it you were aware of the restrictions at that time.
>
> MS. MAY: No. I was naïve and did not read the restrictions."

Tr. 144-145:

> MR. SCHWARTZ: [I]f you had done what you were supposed to do and applied for permission to put your fence up, don't you suppose that you would have learned that you can't have a fence for your business because you can't have a business? . . .
>
> MS. MAY: Once again, I did not read the restrictions, and if I would have read the restrictions, I would have known that I had to go through the developer and the homeowners association, and I would have done that.")

Tr. 148-149:

> MR. SCHWARTZ: [H]ow can you argue that it's unfair that you should be closed down because you relied upon what you thought was a vote to do these things, to buy these things that you had no business buying in the first place without approval of the Homeowners association[?]

> 1(A). No house or residence within the Subdivision shall be used or occupied for any purpose except for that of a private residence . . . nor shall any lot or any part thereof ever be used or occupied for trade, business or professional purposes of any kind whatsoever . . . .; and
>
> 2. No structure . . . shall be commenced, erected or maintained on any lot . . . until and unless the plans and specifications . . . have been submitted to and approved in writing by the Developer . . . .[4]

The Declarations encumber the properties in Jackson's Ridge for an initial period of thirty years during which time they cannot be amended except by the unanimous consent of all the homeowners in Jackson's Ridge.[5] After that period, the Declarations are automatically extended for successive ten year periods and may be amended during that time by a simple majority of the then-homeowners in Jackson's Ridge.[6]

> MS. MAY: Because I made a mistake by not reading my restrictions and my regulations . . . .

[4] JX 1. *See also* JX 8; 9. For ease of reference throughout the remainder of this Letter Opinion, Paragraph 1(A) of the Declarations will be referred to as the "Home Business Declaration" and Paragraph 2 will be referred to as the "Construction Approval Declaration."
[5] *See* JX 1 (Declarations, Paragraph 13). *See also Jackson's Ridge Homeowners Ass'n v. May*, C.A. No. 2043, at 16-18 (Del. Ch. Nov. 1, 2006) (TRANSCRIPT).
[6] *Id.*

Ms. May started a daycare business in her home in June 2003.[7] At various times, her daycare has provided service for as many as eight children who range in age from newborn to twelve years old. Ms. May provides a full service daycare operation for her customers, including changing children's diapers, if necessary, supervising their play in her yard, fixing the children breakfast, lunch, and an afternoon snack, and seeing two of the children off to a local Head Start Program during the school year. The daycare business operates daily during the work week from 6:00 a.m. to 6:00 p.m., and there is some increased traffic activity in the neighborhood as a result.

On February 22, 2004, the Homeowners Association convened a meeting[8] to discuss several proposed amendments to the Declarations and miscellaneous other

[7] Tr. 42. Ms. May's daycare is a sole proprietorship and is licensed under the laws of the State of Delaware. *Id.* *See also* JX 10; 11 (licenses).

[8] The net result of this particular meeting (and a subsequent meeting in March 2005) has been the subject of much debate. Ms. May initially argued that the Homeowners Association amended the Declarations to permit her business to continue operating at the February 2004 meeting, or in the alternative, that a subsequent vote on the proposed amendments in March 2005 was improperly conducted because the Homeowners Association required a supermajority vote of the homeownership to amend instead of a simple majority as stated in the bylaws. Ms. May moved for summary judgment on this issue, but the Court rejected both arguments and, instead, granted partial summary judgment to the Homeowners Association because the Declarations may not be amended except by a unanimous vote of the Jackson's Ridge homeowners before the expiration of their initial thirty year term. *See generally Jackson's Ridge Homeowners Ass'n v. May*, C.A. No. 2043-VCN was (Del. Ch. Nov. 1, 2006) (TRANSCRIPT). The amendment issue continues to linger, however, to the extent that it may be relevant to Ms. May's estoppel defense.

neighborhood issues. According to the minutes of that meeting, the homeowners discussed amending the Home Business Declaration and the Construction Approval Declaration,[9] but there is no record of a formal vote on the proposed amendments. With respect to the proposed amendment to the Home Business Declaration, however, the minutes contain a cryptic notation: "Amended, but must have a business license." The parties differ widely in their interpretations of the effect of that notation.

Ms. May did not attend the February 2004 meeting, but she contends that she relied upon the "amended" notation in the minutes in going forward with her home daycare business.[10] In further support of her position, she offered the testimony of her neighbor, Tami Miller, who did attend the February 2004 meeting. Ms. Miller understood the result of the discussion at that meeting to be an amendment to the Declarations to permit Ms. May to continue operating her daycare business, and she relayed that information to Ms. May the day after the February 2004 meeting.[11] Ms. Miller, however, conceded that the discussion at the

[9] JX 3.
[10] The Homeowners Association has no record of Ms. May's request for a copy of the minutes from the February 2004 meeting until August 10, 2005, after she received notice of her alleged violation of the Declarations. *See* Tr. 90.
[11] Tr. 17.

February 2004 meeting may not have led to an actual vote to amend the Declarations, but instead may simply have been a showing of hands (or some other survey of interest) to see who was in favor of amending the Declarations at some later meeting.[12] In any event, Ms. May testified that she obtained a copy of the February 2004 meeting minutes with the "amended" notation "a few weeks" after her conversation with Ms. Miller to confirm that she could move forward with her business plans.[13]

Ms. May claims to have expended considerable sums of money in furtherance of her business venture in reliance on the purported February 2004 amendment. Those expenditures include purchasing a van to transport the children, erecting a fence around the backyard of her home, and constructing a footbridge[14] over a shallow ditch between her front yard and the street to allow two of her children to reach their school bus stop.[15] Neither the fence nor the bridge

[12] *See generally* Tr. 23-26.
[13] Tr. 57.
[14] The bridge begins on Ms. May's property, outside the building setback line, and extends over a ten foot wide, shallow (2-3 feet deep) drainage easement ditch to the public roadway in front of Ms. May's house. *See generally* Testimony of Robert W. Nash, Tr. 30-40; JX 12.
[15] Tr. 130. There is no compelling (or even good) reason why the children must use the footbridge to reach their bus stop—the school bus driver simply prefers to make a u-turn in the cul-de-sac in front of Ms. May's home in order to leave the neighborhood. Apparently, the footbridge bus stop location allows for this, whereas if the bus stopped at the foot of Ms. May's

plans were submitted to the Homeowners Association for approval prior to their construction.[16]

The Homeowners Association, on the other hand, maintains that no valid amendment to the Declarations occurred during the February 2004 meeting, particularly with regard to the Home Business Declaration, and that its subsequent actions in the months following that meeting confirm that no change had been made to the Declarations. Thus, Ms. May could not reasonably have relied on the purported February 2004 amendment in going forward with her daycare business plan. In support of this position, the Homeowners Association offered the testimony of Raymond Barbier, the current Vice President of the Homeowners Association and Ms. May's next door neighbor, who also had attended the February 2004 meeting, and Louise Sinico-Pickrell, the current President of the Homeowners Association whose administration called for an official vote on the proposed February 2004 amendments in March 2005 to conform with her understanding of the Declarations' amendment procedure.

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driveway, it would then have to travel *all the way* around the block to leave the neighborhood. *See* Tr. 49-50.

[16] Tr. 53; 143. The Homeowners Association does not challenge Ms. May's construction of the fence. As such, the Court need not determine whether the fence also violates the Declarations.

Mr. Barbier did not recall a vote on the proposed amendments at the February 2004 meeting.[17] He did remember receiving a letter, dated May 27, 2004,[18] sent by the Homeowners Association to all Jackson's Ridge homeowners, that expressly reiterated the Declarations' prohibition against home businesses.[19] In addition, Ms. Sinico-Pickrell testified that she set about attempting to correct the previous administration's oversights with respect to the procedure for amending the Declarations when her administration assumed power in early 2005.[20] Thus, on March 4, 2005, Ms. Sinico-Pickrell and the other board members caused a ballot listing the proposed amendments to the Declarations from the February 2004 meeting to be mailed to all the homeowners in Jackson's Ridge. The proposed amendments were to be formally voted upon at the March 22, 2005 meeting of the Homeowners Association, with a supermajority required for passage. After further discussion regarding the proposed amendments at that meeting, a formal vote was

[17] Tr. 76.
[18] JX 4.
[19] Tr. 76-77. Ms. May denied receiving this letter. Tr. 60.
[20] As did her predecessors, Ms. Sinico-Pickrell and her colleagues similarly misunderstood the amendment procedure. Ms. Sinico-Pickrell conducted her vote on the proposed amendments subject to a supermajority requirement drawn from *Roberts Rules of Order*. As the Court noted in its decision on the Defendants' Motion for Summary Judgment, the Declarations cannot be amended during their initial thirty year term, except by the unanimous consent of the homeowners in Jackson's Ridge, notwithstanding the parties' persistent beliefs to the contrary.

taken, and the proposed amendments to the Declarations at issue in this case were defeated. The results of the March 2005 vote were published in the May 4, 2005 Homeowners Association newsletter,[21] which was mailed to all homeowners in Jackson's Ridge.

The Homeowners Association then sent two notices to Ms. May regarding her alleged violations of the Declarations on July 11, 2005—one for her alleged violation of the Home Business Declaration[22] and the other for her alleged violation of the Construction Approval Declaration.[23] Ms. May received those notices but failed to abate the violations. This action followed.

II. ANALYSIS

In order to prevail on its petition for permanent injunctive relief, the Homeowners Association must demonstrate (1) actual success on the merits of its claims; (2) that it will suffer irreparable harm if injunctive relief is not granted; and (3) that the harm that would result if an injunction is not granted outweighs the

[21] JX 7.
[22] JX 9.
[23] JX 8.

harm to Ms. May if an injunction is granted.[24] Because the Homeowners Association has succeeded in establishing its entitlement to injunctive relief under this rubric, the Court will permanently enjoin Ms. May from continuing to violate the Declarations.

A. *The Merits Of The Homeowners Association's Claims*

The Homeowners Association has focused on two provisions of the Declarations. First, it alleges that Ms. May is operating a home business in violation of the Home Business Declaration. Second, it alleges that Ms. May violated the Construction Approval Declaration by failing to seek approval from the Homeowners Association before constructing a footbridge on her property. In addition, with regard to the latter violation, the Homeowners Association also argues that the footbridge, as constructed, violates Paragraph 3(i) of the Declarations because it is located in between the building setback line and the street in front of Ms. May's property.[25]

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[24] *Draper Commc'ns, Inc. v. Del. Valley Broadcasters Ltd. P'ship*, 505 A.2d 1283, 1288 (Del. Ch. 1985). *See also* DONALD J. WOLFE & MICHAEL A. PITTENGER, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY § 12-2[e], at 12-29 (2007).

[25] The Declarations, at Paragraph 3(i) provide in part: "No structure (or any portion thereof) shall be located upon any portion of the lot that is either (i) within the area between any street on which the lot fronts and the building setback line for that lot as shown on the plot . . . ."

1. Ms. May's Daycare Business Violates the Home Business Declaration

The Court earlier decided that the Homeowners Association did not amend the Declarations during either the February 2004 or March 2005 meetings because none of the proposed amendments ever achieved the unanimous support of the homeowners in Jackson's Ridge.[26] Thus, the operation of a home business, such as Ms. May's daycare, in Jackson's Ridge violates the Declarations' plain prohibition against such activity. The question before the Court then is whether the actions of the Homeowners Association in February 2004 (and subsequently) support any of Ms. May's equitable defenses of estoppel, waiver, acquiescence, and laches. The Court concludes they do not.

a. *Equitable Estoppel*

The defense of equitable estoppel arises when "a party by his conduct intentionally or unintentionally leads another, in reliance upon that conduct, to change position to his detriment."[27] In order to establish the defense, Ms. May must prove by clear and convincing evidence that (1) she lacked knowledge or the means of discovering the truth about the validity of the purported vote to amend

[26] *See supra* note 8.
[27] *In re Barker Trust Agreement*, 2007 WL 1800645, at *12 (Del. Ch. June 13, 2007). *See also* WOLFE & PITTENGER, *supra* note 24, § 11-1, at 11-2 to -3.

the Declarations in February 2004; (2) she relied on the conduct of the Homeowners Association; and (3) she suffered a prejudicial change in position as a result of the Homeowners Association's conduct.[28] In addition, her lack of knowledge about the true state of affairs regarding the purported amendment to the Declarations and her reliance on the Homeowners Association's conduct must have been reasonable[29]—in other words, she must have exercised reasonable diligence to protect herself and must not have been misled through her own negligence.[30]

Ms. May failed to exercise reasonable diligence in this case, and her lack of knowledge about the validity of the purported amendment to the Home Business Declaration is unreasonable. Indeed, she had two readily available means of discovering the truth about the purported February 2004 amendments—she could have read the Declarations or she could have consulted the Homeowners Association. Had she done the former, she would have discovered that any attempt to amend the Declarations by less than unanimous consent of the homeowners was

[28] *See, e.g., id.*
[29] *See, e.g., id.*
[30] WOLFE & PITTENGER, *supra* note 24, § 11-1, at 11-4.

invalid.[31] Had she done the latter, she would have learned that no vote on the proposed amendment to the Home Business Declaration had occurred at the February 2004 meeting and that home businesses were prohibited in Jackson's Ridge.

Ms. May's failure to read the Declarations was unreasonable. She chose to live in a deed restricted community, and, by taking title to her property, she agreed to be bound by those restrictions. A plain reading of Paragraph 13 of the Declarations reveals no mechanism for amending the Declarations during their initial thirty year term. One would logically conclude then that the Declarations could not be amended without the unanimous consent of all the homeowners in Jackson's Ridge. Ms. May did not attend the February 2004 meeting nor did she authorize a proxy to vote in her absence; thus, at the very least, she knew that one homeowner did not participate in the purported effort to amend the Home Business Declaration, so unanimity, and therefore an actual amendment of the Declarations, was impossible.

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[31] Paragraph 13 of the Declarations provides: "These covenants are to run with the land and shall be binding upon all owners of lots and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then-owners of the lots has been recorded agreeing to change said covenants, in whole or in party."

Instead of consulting the Declarations, however, Ms. May chose to rely on a secondhand account of the February 2004 meeting and the purported amendment to the Home Business Declaration. She never contacted a board member in the Homeowners Association to confirm that an amendment to the Home Business Declaration had occurred. Although Ms. May testified that she received the minutes from that meeting "a few weeks" after her conversation with Ms. Miller, the Homeowners Association's records indicate that Ms. May did not request a copy of the minutes until August 10, 2005,[32] over a year after she made the bulk of the investments into her business, after she had received numerous general notices that home businesses were prohibited in Jackson's Ridge, and *after* the Homeowners Association served formal notice that her daycare business violates the Declarations.

If anything, the Court concludes that Ms. May relied primarily on Ms. Miller's statement that the Declarations were amended in February 2004. Ms. Miller was not an officer of the Homeowners Association, and she had no authority to speak on behalf of the Homeowners Association. Although it may be understandable that Ms. May would accept as true her friend's account of the

[32] Tr. 90.

February 2004 meeting, it was not reasonable for her to move forward with her business plan without a more concrete authorization from the Homeowners Association.[33]

Even if Ms. May could plausibly argue that she lacked the means of discovering the truth about the need for a unanimous vote to amend the Declarations and could not have taken further steps to confirm an amendment of the Declarations with an officer of the Homeowners Association, she nevertheless fails to demonstrate reasonable reliance on any particular action by the Homeowners Association. The only conduct she could possibly have relied upon is the cryptic "amended" notation in the minutes of the February 2004 Homeowners Association meeting.[34] That notation, however, does not support a conclusion that the Homeowners Association had endorsed home businesses in Jackson's Ridge. There is no accompanying text for the amended Home Business Declaration. At best, the "amended" notation is some evidence of a possible amendment to the text of the Home Business Declaration, but it is hardly a

[33] To the extent Ms. May argues that she did obtain that authorization through the meeting minutes, any reliance on those minutes alone, as discussed immediately below, was also unreasonable.

[34] Based on the evidence and testimony presented in this case, it is doubtful that Ms. May ever bothered to obtain a copy of the February 2004 meeting minutes before receiving notice of her alleged violations of the Declarations in July 2005.

sufficient basis for Ms. May to conclude that she was free to move forward with her daycare business plan because the nature of any "amendment" was not disclosed.

Moreover, other than that notation, the Homeowners Association has taken no action that would give Ms. May any cause to believe that her daycare business was permitted in Jackson's Ridge. To the contrary, ever since the purported amendment to the Home Business Declaration, the Homeowners Association has consistently maintained (indeed, it has routinely notified homeowners) that home businesses are prohibited in Jackson's Ridge. In short, based on the evidence available to Ms. May in the spring of 2004, she had no reasonable basis to believe that the Home Business Declaration had been abrogated in February 2004, and she therefore cannot claim to have relied reasonably upon any specific conduct of the Homeowners Association in moving forward with her daycare business plans.

b. *Waiver, Acquiescence, and Laches*

Ms. May similarly fails to establish her other equitable defenses of waiver acquiescence, and laches. It is, of course, possible for a homeowners association (or other governing body) to waive (or abandon) deed restrictions if it acquiesces in widespread violations of those restrictions. In order to constitute abandonment,

however, the violations must be "so general as to indicate a change in the neighborhood or a clear intent on the part of the property owners generally to abandon the original plan."[35] "Minor violations do not support a claim of abandonment."[36]

Ms. May points to a handful of other possible violations of the Declarations throughout Jackson's Ridge, such as a self-employed painter who lives in the neighborhood, one or two metal sheds, a boat that is not parked near the "rear" of the owner's property, and another footbridge across a drainage ditch, similar to Ms. May's, to allow the homeowner access to her mailbox.[37] She offered no other evidence to support her theory that these alleged violations in fact violate the Declarations, and, indeed, most probably do not. Even if the Court credited Ms. May's analysis of alleged violations, they do not, even in the aggregate, evince a general abandonment of the Declarations.

Finally, with regard to Ms. May's defense of laches, the Court concludes that the Homeowners Association has not unreasonably delayed in bringing this

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[35] *Henderson v. Chantry*, 2003 WL 139765, at *3 (Del. Ch. Jan. 10, 2003) (citation omitted).
[36] *Id. Cf. Penn Mart Supermarkets, Inc. v. New Castle Shopping, LLC*, 2005 WL 3502054, at *6 (Del. Ch. Dec. 15, 2005) (aggregation of relatively minor but pervasive violations may amount to abandonment).
[37] *See generally* Tr. 135-137.

action, nor has Ms. May been prejudiced by any delay that may be assumed to have occurred. Indeed, the Homeowners Association has given Ms. May ample time to abate her violations of the Declarations and to avoid the time and expense necessary to bring this matter to trial.

2. Ms. May Constructed her Footbridge in Violation of the Construction Approval Declaration.[38]

It is undisputed that Ms. May constructed her footbridge in violation of the Construction Approval Declaration. Ms. May never sought approval from the Homeowners Association before constructing the bridge. The footbridge is a structure within the meaning of the Declarations. Moreover, the bridge serves little real purpose and was of shoddy construction that resulted in its current dilapidated condition. Not only is the bridge an eyesore for Ms. May's neighbors in Jackson's

[38] At trial, the Homeowners Association also presented evidence that Ms. May's footbridge violates Paragraph 3(i) of the Declarations, which prohibits any structure from being located within the area of the lot between the building setback line and the street fronting the property. *See generally* Testimony of Robert W. Nash, Tr. 30-40. The Court notes that the Homeowners Association never notified Ms. May in writing of this particular violation as required by Paragraph 21 of the Declarations. Nevertheless, the footbridge clearly violates Paragraph 3(i) of the Declarations. The Court, if necessary, may have concluded that the Homeowners Association's failure to give written notice of this particular violation was merely a technical error and that Ms. May had sufficient notice that her footbridge violates Paragraph 3(i) of the Declarations as well. Thus, this violation could also constitute an alternate ground for the Court to order Ms. May to remove the footbridge.

Ridge, but also it may constitute an attractive nuisance that is dangerous to children in the neighborhood.

As for Ms. May's equitable defenses of estoppel, waiver, acquiescence, and laches, they all fail with respect to enforcement of the Construction Approval Declaration. Ms. May has not identified any conduct of the Homeowners Association upon which she relied in constructing her bridge that would now act as an estoppel to the enforcement of that declaration. Furthermore, for reasons similar to those set forth *supra* in Section A(1)(b), Ms. May's more generalized defenses of waiver, acquiescence, and laches also fail with respect to enforcement of the Construction Approval Declaration.

B. *Appropriateness Of Injunctive Relief*

Although the harm resulting to the homeowners in Jackson's Ridge as a result of Ms. May's violation of the Declarations is difficult to quantify, the Court finds that permanent injunctive relief is the appropriate remedy in this case. The homeowners in Jackson's Ridge entered into a social contract whereby they have agreed to abide by certain rules and restrictions with respect to the use of their private property. As observed in *The Cove on Herring Creek Homeowners Association, Inc. v. Riggs*, "[T]he social contract among the homeowners . . . as

reflected in the Declaration would mean little if injunctive relief [were not available to remedy a violation]."[39] The other homeowners in Jackson's Ridge have been denied the benefits of their social contract. In contrast, the harm to Ms. May of enforcing the social contract to which she agreed is relatively less in this context.[40]

The Court should honor the reasonable expectation of the homeowners in Jackson's Ridge that the Declarations will be enforced by the Homeowners Association to remedy clear violations of the restrictions contained therein. Ms. May has operated her home daycare business in violation of the Declarations since 2003. In addition, it is undisputed that she failed to obtain approval for her footbridge before constructing it. The rules and restrictions contained in the Declarations are reasonable, and there is no evidence that they have been abandoned or unfairly enforced. Accordingly, a permanent injunction should issue.

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[39] 2003 WL 1903472, at *5 (Del. Ch. Apr. 9, 2003).

[40] The cost and inconvenience of relocating her daycare business may be material, but, for purposes of balancing the relative harm of granting a permanent injunction, the benefits attached improperly (here, operating a business in one's house) cannot be accorded great weight in the balancing; otherwise, as the benefits to be gained from violating restrictive covenants become more valuable, the ability to enjoin would diminish; equity will not be bound by such a perverse economic incentive. As for the footbridge, the cost of its removal and the loss of any benefits that might result from it would be *de minimis.*

III. ATTORNEYS' FEES

The Homeowners Association also seeks an award of its litigation costs, including its attorneys' fees. Under the American Rule, each party ordinarily bears its own attorneys' fees. That rule, however, can be modified by contract.[41] The Declarations (which established a contractual relationship among the homeowners in Jackson's Ridge) provide for fee shifting if a homeowner has received notice of a violation of the Declarations and has failed to abate the violation and if the Homeowners Association prevails in its efforts to enforce the Declarations.[42] The Homeowners Association has prevailed on its claims that Ms. May violated the Home Business Declaration and the Construction Approval Declaration. It duly notified Ms. May of her alleged violation of those provisions of the Declarations, and Ms. May failed to abate the violations. Accordingly, the Homeowners Association is entitled to an award of its reasonable litigation costs, including its attorneys' fees.

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[41] *See, e.g.*, *The Cove on Herring Creek Homeowners' Ass'n, Inc. v. Riggs*, 2005 WL 1252399, at *1 (Del. Ch. May 19, 2005).

[42] Paragraph 21 of the Declarations provides, in pertinent part: "In the event that a legal proceeding is commenced for the abatement of such violation or for damages resulting from such violation, the owner of each lot that is the site of the violation shall be jointly and severally liable for the costs of such action, including attorney's fees, provided, however, that such liability shall be imposed only upon a lot owner who has been given the aforementioned notice and has not caused the abatement of the violation on the particular lot of which he is the owner."

IV. CONCLUSION

For the foregoing reasons, the Court will enter judgment in favor of the Homeowners Association and grant the relief it seeks. Ms. May's operation of a home daycare business plainly violates the Declarations' proscription against such activity. Accordingly, the Court will permanently enjoin Ms. May from operating a daycare business in her home. In addition, because she failed to obtain prior approval for the construction of a footbridge on her property as required by the Construction Approval Declaration, Ms. May will be ordered to remove the footbridge. Finally, the Homeowners Association will be awarded costs, including the attorneys' fees and costs which it reasonably incurred in pursuing this matter.

An implementing order will be entered.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K