

**ELKA FREEMAN
DIEFENTHAL, ANNA BETH
GOODMAN WIFE OF/AND
JOHN GOODMAN, PAUL J.
LEAMAN, JR., MARGARET
CAROLYN OTT WIFE OF/AND
DR. PHILLIP R. LORIA, MAX
NATHAN, JR., AND CAROLE
CROWELL PETTIT WIFE
OF/AND ROBERT L. PETTIT,
JR.**

*** NO. 2002-CA-1470
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA
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VERSUS

**LONGUE VUE FOUNDATION
AND LONGUE VUE HOUSE
AND GARDENS
CORPORATION**

MCKAY, J. CONCURS IN THE RESULT

I concur with the majority's decision to affirm the judgment of the trial court. However, I am not in agreement with the majority's reasoning regarding building restrictions vis-à-vis servitudes.

First of all, I do not believe it was necessary that the majority address the issue of whether the 1931 agreement constitutes building restrictions or servitudes. The issue was not addressed in Judge Magee's judgment, nor did the Supreme Court address it in Diefenthal v. Longue Vue Management Corp., 561 So.2d 44 (La. 1990).

That being said, in my opinion, the 1931 agreement creates a servitude

and not merely building restrictions. The 1931 agreement clearly states that “this agreement shall constitute a servitude upon each and every parcel of property hereinabove described in favor of each and every other piece or portion thereof and shall be a servitude running with the land, binding upon each and every present and future owner thereof.” There are three basic requirements for servitudes. First, there must be two estates involved. Second, the estates must be owned by separate owners. Finally, there must be a charge on one estate for the benefit of the other. *See* La. C.C. art. 646. The covenants in the 1931 agreement meet all of the requirements for servitudes.