

STATE OF MICHIGAN  
COURT OF APPEALS

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HELEN A. JOHNSON,

Plaintiff-Appellee,

v

RICHARD S. KRISTIN and PHYLLIS J.  
KRISTIN, d/b/a KRISTIN PLACE ON BURT  
LAKE,

Defendants-Appellants.

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UNPUBLISHED

March 6, 2007

No. 266649

Cheboygan Circuit Court

LC No. 05-007455-CZ

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court order enjoining them from operating a bed and breakfast within the Plymouth Beach Subdivision in Indian River, Michigan. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendants operated a bed and breakfast known as Kristin Place on Burt Lake from their home in the Plymouth Beach Subdivision. Plaintiff, their next-door neighbor, filed suit alleging that this activity violated the subdivision's recorded building and use restrictions. The trial court agreed, entering an order permanently enjoining defendants from operating their business.

On appeal, defendants argue that the trial court erred in entering the injunction because, although the building and use restrictions only allow residential dwellings, they specifically contemplate that owners might use such dwellings as for-profit rental property. And, defendants claim, the operation of a bed and breakfast is simply renting a portion of the dwelling for a limited time.

A trial court's decision in an equitable action is subject to de novo review. *Webb v Smith (After Remand)*, 204 Mich App 564, 568; 516 NW2d 124 (1994). Findings of fact in support of such decisions are reviewed for clear error. *Id.* A trial court's findings are clearly erroneous when the reviewing court is "left with a definite and firm conviction that a mistake has been made." *Id.*

"Negative covenants restricting land use are grounded in contract." *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 491; 686 NW2d 770 (2004). A covenant constitutes "a contract created with the intention of enhancing the value of property, and, as such,

it is a ‘valuable property right.’” *Terrien v Zwit*, 467 Mich 56, 71-72; 648 NW2d 602 (2002) (citation omitted). Generally, such agreements, when voluntarily and fairly made, “shall be held valid and enforced in the courts.” *Id.* at 71.

Moreover, “(r)estrictions for residence purposes, if clearly established by proper instruments, are favored by definite public policy. The courts have long and vigorously enforced them by specific mandate.” [*Id.* at 72, quoting *Johnstone v Detroit, G H & M Ry Co*, 245 Mich 65, 74; 222 NW 325 (1928).]

In an action to enforce a restrictive covenant, the intent of the drafter controls. *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997). “The restrictions must be construed in light of the general plan under which the restrictive district was platted and developed.” *Mable Cleary Trust, supra* at 505, quoting *Borowski v Welch*, 117 Mich App 712, 716; 324 NW2d 144 (1982). The enforcing court must strictly construe all provisions of the covenant “against the would-be enforcer,” resolving all doubts “in favor of free use of the property.” *Stuart, supra* at 210. But if it can clearly ascertain the intent of the parties, the court is required to “give effect to the instrument as a whole.” *Village of Hickory Pointe Homeowners Ass’n v Smyk*, 262 Mich App 512, 515-516; 686 NW2d 506 (2004).

The restrictive covenant at issue in this case states:

The occupancy of said land and sites thereon contained by present or future plat, or replat, shall be limited to residential dwellings consisting of single family dwellings and garages of not more than two passenger cars per family dwelling, except that lots number 1 and number 2 or lots number 27 and number 28 may be used for commercial purposes at the discretion of the signers of these restrictions.

The provision prohibits the lot owners, with the exception of the owners of four enumerated lots (of which defendants are not one), from using their properties for anything other than single-family residential dwellings. The prohibition and the exception, when examined together, show that the drafters intended to limit the properties within the subdivision to residential use and prohibit owners from using their lots for commercial purposes.

In *Terrien, supra* at 64, our Supreme Court noted that the term “commercial use” means “use in connection with or for furtherance of a profit making enterprise” while “commercial activity” is defined as “any type of business or activity which is carried on for a profit.” Further, the Food Law of 2000, MCL 289.1101 *et seq.*, defines a “bed and breakfast” as

a private residence that offers sleeping accommodations to transient tenants in 14 or fewer rooms for rent, is the innkeeper’s residence in which the innkeeper resides while renting the rooms to transient tenants, and serves breakfasts at no extra cost to its transient tenants. [MCL 289.1105(c).]

Defendants concede that they rent rooms and serve food to others at the residence in which they live in accord with the statutory definition of a bed and breakfast. Such activity clearly constitutes a commercial use of their property in violation of the subdivision’s building and land use restrictions. Consequently, the trial court did not err in permanently enjoining defendants from operating a bed and breakfast out of their home.

Nevertheless, defendants argue that, even if the operation of their business constitutes a violation of the restriction, the entry of an injunction is inequitable because no substantial harm has resulted to plaintiff or others.

“[A]lthough courts generally will enforce valid restrictions, an equitable exception to that rule occurs when a restriction is technically violated and no substantial injury results.” *Webb v Smith (After Second Remand)*, 224 Mich App 203, 212; 568 NW2d 378 (1997), citing *Cooper v Kovan*, 349 Mich 520, 530; 84 NW2d 859 (1957). A technical violation of a negative covenant occurs when there is “a slight deviation or a violation that can in no wise ... add to or take from the objects and purposes of the general scheme of development.” *Webb, supra* at 212 (citations omitted).

Here, defendants operated a commercial bed and breakfast within a subdivision designated for residential use. This constitutes more than a slight deviation from the general scheme of development set forth in the building and land use restrictions. Thus, contrary to defendants’ arguments, it cannot be considered a mere technical violation of the restriction.

Further, in *Terrien, supra* at 65, the defendants similarly argued against the enforcement of a restrictive covenant, asserting that their “family day care home” caused little disruption and did no tangible harm to the neighbors. In rejecting this argument, our Supreme Court held “the plaintiff’s right to maintain the restrictions is not affected by the extent of the damages he might suffer for their violation.” *Id.*, quoting *Austin v Van Horn*, 245 Mich 344, 347; 222 NW 721 (1929). Rather, “a breach of a covenant, no matter how minor and no matter how *de minimis* the damages, can be the subject of enforcement.” *Terrien, supra* at 65

Additionally, the fact that other subdivision residents, including plaintiff, have rented their residences for short periods of time does nothing to alter the outcome of this case. As the trial court found, renting one’s home for use as a single-family residence by another does not violate the restrictive covenant. Contrary to defendants’ assertions on appeal, the operation of a bed and breakfast consists of more than renting a portion of a dwelling for a limited time. By definition, it requires the provision of meals by a live-in innkeeper. Thus, it is a commercial activity more akin to running a hotel than to renting a home to others for residential purposes.

In conclusion, defendants’ operation of a bed and breakfast from their residence violates an applicable restrictive covenant and no equitable factors weigh against enforcing the restriction. We therefore affirm the trial court’s order permanently enjoining them from engaging in this activity.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Michael J. Talbot  
/s/ Bill Schuette