NO. COA10-610

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

WILLS GROVE HOMEOWNERS ASSOCIATION,

Plaintiff,

v. Wake County
No. 09 CVD 12359

ELIZABETH ANN YAECKEL,

Defendant.

Appeal by plaintiff from order entered 24 March 2010 by Judge Jane P. Gray in Wake County District Court. Heard in the Court of Appeals 3 November 2010.

Harris & Hilton, P.A., by Nelso G. Harris, for plaintiff.

Michael W. Strickland & Associates, P.S., by Michael W. Strickland, for defendant.

ELMORE, Judge.

Wills Grove Homeowners Association (plaintiff) filed a complaint seeking mandatory injunctive relief against Elizabeth Ann Yaeckel (defendant) regarding alterations she made to her home, located in the Wills Grove community. Both parties moved for summary judgment; the trial court entered an order for summary judgment in favor of defendant. Plaintiff appeals.

Neither party disputes the material facts at issue, to wit: The alterations made by defendant comprise the removal of certain shrubs in front of her home and the replacement of their planting beds with a concrete skirt covered in bark that formed an extension of the home's foundation. This dispute is governed by Article XIII, Section 1, of the Declaration of Covenants, Conditions and Restrictions of Wills Grove Homeowners Association. That section states, in relevant part:

> No site preparation or initial construction, erection or installation of any improvements, including, but not limited to, residences, buildings, outbuildings, fences, walls and other structures, shall be undertaken upon the Properties, unless plans and specifications therefore, showing the nature, kind, shape, height, color, materials, and location of the proposed improvements shall have been submitted to Declarant and expressly approved by it.
>
> * * *
>
> No subsequent alteration or modification of improvements may be undertaken on any of the Properties which shall not be subject to the foregoing requirement, without prior review and express approval by the Declarant, or the Board of Directors of the Association, after such approval rights shall have been assigned to the Association.

Defendant did not obtain prior approval from plaintiff before beginning the work.

Plaintiff argues that the trial court incorrectly entered summary judgment in favor of defendant because the alterations made by defendant fall under this section and, thus, defendant was not

authorized to make the alterations without first obtaining approval from plaintiff. We disagree.

Much as plaintiff likes to characterize this section as requiring prior approval for all "modifications or alterations," by its express terms, the section actually only requires prior approval for "improvements," and then for "subsequent alteration or modification of improvements." From the record, it appears clear that the work defendant had performed on the home constituted repairs to the home, rather than improvements thereto.

This is most clearly explained in defendant's email dated 5 October 2008 to Tina Batts, the Wills Grove HOA Community Manager from Sentry Management, which states the following: After discovering three feet of standing water in the crawl space under her home, defendant attempted to remedy the problem with at least two different solutions with no success; she met repeatedly with foundation, waterproofing, and drainage companies in an effort to find a solution; and, with the advice of those professionals, she came to the conclusion that the only remedy that might actually cure the problem at its source would be the cement foundation that was eventually installed. Due to mistakes in construction by the builder (according to defendant and the professionals she consulted), water continued to flow into the crawl space during any period of rain; the problem was exacerbated by the root systems of the bushes in front of the house. The repeated flooding led to the existence of extensive mold in the crawl space.

In interpreting restrictive covenants, this Court "strictly construe[s them] in favor of the unrestricted use of property." *Rosi v. McCoy*, 319 N.C. 589, 592, 356 S.E.2d 568, 570 (1987) (citations omitted). However, "they should not be construed 'in an unreasonable manner or a manner that defeats the plain and obvious purpose of the covenant.'" *Hultquist v. Morrow*, 169 N.C. App. 579, 582, 610 S.E.2d 288, 291 (2005) (quoting *Cumberland Homes, Inc. v. Carolina Lakes Prop. Owners' Ass'n*, 158 N.C. App. 518, 521, 581 S.E.2d 94, 97 (2003)). "In construing restrictive covenants, the fundamental rule is that the intention of the parties governs[.]" *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238 (1967) (citation omitted).

In the case at hand, the clear purpose of the section at issue is to govern the installation of *structures*, as indicated by the language "residences, buildings, outbuildings, fences, walls *and other structures*[.]" (Emphasis supplied.) Plaintiff urges this Court to extend the meaning of this terminology to encompass, in essence, any construction-type *activities* that in some way increase the value of the land; we decline to do so, as we see no evidence of such intent in the language of the section.

Affirmed.

Judges HUNTER, Robert C., and JACKSON concur.

Report per Rule 30(e).