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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-264

No. COA20-450

Filed 1 June 2021

Mecklenburg County, No. 18 CVS 15898

C.E. WILLIAMS, III and wife, MARGARET W. WILLIAMS, R. MICHAEL JAMES, and wife, KATHERINE H. JAMES, STRAWN CATHCART and wife, SUSAN S. CATHCART, MARK B. MAHONEY and wife, NOELLE S. MAHONEY, Plaintiffs,

v.

MICHAEL REARDON and wife, KARYN REARDON, Defendants,

and

JEFFREY S. ALVINO and wife, KRISTINA C. ALVINO, *et al.*, Necessary Party Defendants.

Appeal by plaintiffs and necessary party defendants from judgment entered 15 May 2020 by Judge George Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 February 2021.

Law Office of Kenneth T. Davies, P.C., by Kenneth T. Davies, for plaintiffs-appellants.

Offit Kurman, P.A., by Amy P. Hunt and Robert B. McNeill, for defendants-appellees.

Robinson, Bradshaw & Hinson, P.A., by Richard A. Vinroot, for necessary party defendants-appellants Judith and Richard Vinroot.

Nexsen Pruet, PLLC, by James C. Smith, for necessary party defendants-appellants Thomas and Sarah Belk, D. Steve and Katrice Boland, Shippen and

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Bridget Browne, Joseph and Kristen Downey, Jubal and Katherine Early, John and Carolyn Hudson, John Ames and Anna Blair Kneisel, Alexander and Susan McAlister, Ian and Victoria McDade, Mark William and Rose Patrick Mealy, Walter and Danielle Nisbet, John and McNeely Purcell, Scott John Rogers and Mary Mallard Smith, G. Kennedy and Kathylee Thompson, George and Margaret Ullrich, John and Charlotte Wickham, William and Ellen Wilson, and Landon and Edith Wyatt.

Jordan Price Wall Gray Jones & Carlton PLLC, by H. Weldon Jones, III, and Hope Derby Carmichael, for amicus curiae Community Associations Institute.

DIETZ, Judge.

¶ 1

The parties in this case own property in a residential subdivision in Charlotte referred to in the record as Eastover. The lots are subject to a series of aging restrictive covenants from the 1920s limiting the lots to residential use only and imposing other restrictions on the number, size, location, and various design elements of structures located on each lot:

The forgoing property is conveyed subject to the following covenants, conditions and restrictions which the party of the second part, for himself, his heirs or assigns, hereby covenants and agrees to perform and abide by:

(1) The lot of land hereby conveyed shall be used for residential purposes only and not otherwise, and shall be owned, occupied and used only by members of the white race, domestic servants in the employ of said occupants excepted.

(2) No residence of Spanish architecture or design shall be erected upon said lot of land.

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(3) No residence shall be erected upon said lot which shall not be reasonably worth the sum of \$15,000.00 (servants' house excepted), and no portion thereof higher than four (4) feet above grade shall be erected nearer than 90 feet of Cherokee Road nor nearer either of the side property lines than 20 feet.

(4) No servants' house, garage or outbuilding of any kind shall be erected upon said lot until construction of main residence has begun. Any servants' house, garage or outbuilding erected upon said lot must conform in design and construction to the main residence and shall not be erected nearer to Cherokee Road than 150 feet.

(5) No apartment house shall be erected on the lot hereby conveyed. By "apartment house" is meant any building designed to house more than two families.

(6) No subdivision of any part of the property hereby conveyed, by sale, or otherwise, shall be made so as to result in a plot having a frontage of less than 100 feet.

(7) All fences on the property shall be of metal, brick or stone, with wooden posts when necessary, and no part of any fence exceeding four feet in height shall be nearer the front property line than 90 feet.

(8) No sign boards of any description shall be displayed on the property, with the exception of signs "For Rent" or "For Sale", which signs shall not exceed 2 x 3 feet in size.

(9) A right-of-way along the rear line of the lot hereby conveyed is reserved for pole-lines, pipes and conduits for the purpose of supplying public utilities to the lot and other lots belonging to or holding under the grantor.

(10) It is hereby agreed between the parties hereto that all the conditions and restrictions herein contained shall be held to run with and bind the land hereby conveyed, and

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all subsequent owners and occupants thereof, and the acceptance of this deed shall have the same force and binding effect upon the party of the second part, his heirs and assigns, as if said deeds were signed by said party of the second part.

¶ 2 This case was heard shortly after a case raising the identical legal issues, and in which a number of parties in this case submitted *amicus curiae* briefing. *C Invs. 2, LLC v. Auger*, 2021-NCCOA-209. The dispositive question is whether the challenged covenants are extinguished by operation of the Real Property Marketable Title Act, N.C. Gen. Stat. § 47B-1 *et seq.*, or whether they fall within the exception contained in N.C. Gen. Stat. § 47B-3(13).

¶ 3 For the reasons stated in *C Investments 2*, we affirm the trial court’s judgment. *Id.* at ¶¶ 12–40. Under the plain language of the Marketable Title Act, the only challenged covenant that survives extinguishment is the portion of the first one stating that lots within the subdivision “shall be used for residential purposes only and not otherwise.” The remaining covenants are extinguished by operation of the Marketable Title Act.¹ Accordingly, the trial court properly entered summary judgment in favor of the Appellees. We affirm the trial court’s judgment.

¹ As we noted in *C Investments 2*, the Marketable Title Act contains other exceptions, some of which arguably could apply to certain covenants challenged in this case, such as the ninth covenant concerning a right of way for pole-lines, pipes, and conduits for the purpose of supplying public utilities to the lot and other lots. The parties in this appeal addressed only the exception in N.C. Gen. Stat. § 47B-3(13) and we therefore limit our appellate review solely to those arguments. *See* N.C. R. App. P. 28(b)(6).

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AFFIRMED.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).