[Cite as *Orwell Natural Gas Co., Inc. v. Fredon Corp.*, 2015-Ohio-1212.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

ORWELL NATURAL GAS COMPANY, INC., et al.,	:	**O P I N I O N**
Plaintiffs-Appellants,	:	**CASE NO. 2014-L-026**
- vs -	:	
FREDON CORPORATION, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 13 CV 001117.

Judgment: Affirmed.

Erik L. Walter, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (For Plaintiffs-Appellants).

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CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, Orwell Natural Gas Company, Inc., et al., appeal the judgment on the pleadings entered by the Lake County Court of Common Pleas in favor of appellees, Dominion Resources, Inc., the East Ohio Gas Company (collectively referred to as "Dominion"), and Fredon Corporation. At issue is whether a certain restrictive

covenant imposed on several parcels of property is an enforceable contract and whether that restriction is unenforceable as against public policy. For the reasons that follow, we affirm.

{¶2} The statement of facts that follows is based on the parties' pleadings and the trial court's findings of fact, which appellants do not dispute on appeal.

{¶3} On July 6, 2006, appellant, OsAir, Inc., by its president, appellant, Richard M. Osborne, recorded with the Lake County Recorder a "Declaration of Utility Restriction" (hereafter referred to as "the restriction") on 12 parcels of land in Mentor, Lake County, Ohio. Appellee, Fredon, operates its business as a tenant on one of these parcels. OsAir stated in the restriction that it owns said parcels and that Osborne is chairman and part-owner of appellant, Orwell Natural Gas Company, an Ohio public utility, which provides natural gas to customers in Lake County. OsAir stated in the restriction that it wanted to ensure that said parcels would be provided with natural gas exclusively by Orwell, even if OsAir may in the future no longer own any of the parcels referenced in the restriction. OsAir thus subjected said parcels to the following restriction:

> **{¶4}** The owner [,i.e., OsAir], and/or any current or future tenants of the owner of said parcels of land shall be required to obtain their natural gas supply for any and all buildings and/or structures erected upon said parcels of land from Orwell and/or its successors and assigns. No other natural gas public utility company shall be permitted by the owner or tenant of the aforesaid parcels of land to

supply any natural gas to the buildings or structures located thereon, without the express written consent of Orwell.

{¶5} This Deed Restriction shall run with the land in perpetuity and shall be binding up [sic] all owners of the land and their heirs, administrators, successors and assigns.

{¶6} Any breach of these restrictions shall permit Orwell and the Declarant to pursuer [sic] all equitable and legal remedies available including, but not limited to, [sic] seek injunctive relief for any breach.

{¶7} By creating this restriction, the owner of the parcels, OsAir, acting by its president, Osborne, required that all subsequent owners and tenants of the parcels would only be permitted to obtain natural gas from Orwell Natural Gas Company. And, Orwell "approved and accepted" this restriction by Osborne, Orwell's chairman and part-owner. Thus, the restriction was not created by a grantor and grantee of the parcels, but, rather, was created by and for related companies, each of which is owned and/or controlled by Osborne.

{¶8} In September 2012, Fredon switched its natural gas provider from Orwell to appellee, Dominion, in breach of the restriction.

{¶9} As a result, on May 21, 2013, appellants filed a four-count complaint against appellees. In Count I, appellants requested declaratory judgment, alleging that Fredon violated the restriction by terminating its contract with Orwell to purchase natural gas solely from it and entering a contract with Dominion to purchase its natural gas.

{¶10} In Count II, appellants alleged Fredon breached the contract contained in the restriction to purchase its natural gas solely from Orwell by entering a contract with Dominion for its natural gas. Appellants sought an unspecified amount of damages in excess of $25,000.

{¶11} In Count III, appellants alleged that Dominion tortiously interfered with their contract with Fredon.

{¶12} In Count IV, appellants sought an injunction "preventing [appellees] from continuing to disregard the [restriction] or causing the breach of the same."

{¶13} Dominion and Fredon each filed an answer and a one-count counterclaim seeking declaratory judgment. They both sought judgment declaring that the restriction is unenforceable because it does not meet the requirements of a contract and also because it violates public policy.

{¶14} Dominion and Fredon subsequently filed separate motions for judgment on the pleadings. They argued that the restriction is unenforceable because it is not supported by consideration and lacks definite terms and, further, because it violates public policy. Appellants filed briefs in opposition to the two dispositive motions.

{¶15} After considering the parties' briefs, the trial court granted appellees' motions for judgment on the pleadings. The court found that the restriction was a contract because appellants considered it to be a contract in that they asserted claims for breach of contract and tortious interference based on Fredon's alleged breach of its contract with Orwell. Further, the court found that the contract was unenforceable for lack of consideration because Fredon, the promisor, received no benefit and Orwell, the promisee, sustained no detriment. Further, the court found there was no consideration

recited in the restriction. The court found that because the contract was unenforceable, appellants could not assert any cause of action based on it. Finally, the court found that, since the lack of consideration was dispositive of this matter, the court was not required to address appellees' public policy argument. The court dismissed the complaint and entered judgment in favor of appellees on their counterclaims for declaratory judgment.

{¶16} Appellants appeal the trial court's judgment, asserting two assignments of error. Further, appellees present one cross-assignment of error. For their first assigned error, appellants allege:

{¶17} "The trial court erred by granting Appellants' [sic] Motion for Judgment on the Pleadings because a genuine issue of material fact existed as to whether or not the Declaration of Utility Restriction is valid."

{¶18} Because a Civ.R. 12(C) motion for judgment on the pleadings tests the legal basis for the claims asserted in a complaint, our standard of review is de novo. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996). In ruling on the motion, a court is permitted to consider the complaint and the answer as well as any documents attached as exhibits to those pleadings. *McDonald v. Ault*, 4th Dist. Ross No. 97CA2291, 1998 Ohio App. LEXIS 2759, *4 (June 17, 1998), citing *Peterson v. Teodosio*, 34 Ohio St.2d 161, 165-166 (1973). In so doing, the court must construe the material allegations in the complaint, with all reasonable inferences drawn therefrom, as true and in favor of the non-moving party. *Whaley v. Franklin Cty. Bd. of Commrs*., 92 Ohio St.3d 574, 581 (2001). A court granting the motion must find that the plaintiff can prove no set of facts in support of the claims that would entitle him or her to

relief. *Pontious, supra*, at 570. "[A] motion for judgment on the pleadings has been characterized as a belated Civ.R. 12(B)(6) motion for failure to state a claim upon which relief can be granted." *Gawloski v. Miller Brewing Co*., 96 Ohio App.3d 160, 163 (9th Dist.1994).

{¶19} Further, while the abuse-of-discretion standard applies to dismissals of declaratory-judgment actions as not justiciable, once a trial court determines that a matter is appropriate for declaratory judgment, its holdings regarding questions of law are reviewed de novo. *Arnott v. Arnott*, 132 Ohio St.3d 401, 2012-Ohio-3208, ¶13.

{¶20} In their briefs in opposition to appellees' motions for judgment on the pleadings, appellants argued that the restriction was not a contract, but, rather, an easement and thus a binding restriction on the land. However, in their briefs on appeal, appellants assert inconsistent positions with respect to whether the restriction is a contract. Under their first assigned error, they argue that the restriction is a restrictive covenant, which, they argue, "denotes a contract." However, in their second assignment of error, they argue that the restriction is an easement and thus not a contract, but, rather, a "binding restriction on the land." Then, finally, in their amended reply brief, appellants assert again that the restriction is a restrictive covenant and thus a contract.

{¶21} "A restrictive covenant is a 'private *agreement*, usually in a deed or lease, that restricts the use or occupancy of real property, especially by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put.'" (Emphasis added.) *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, ¶28, citing Black's Law Dictionary 371 (7th Ed.Rev.1999). In the context of property law, a

restrictive covenant is considered a contract and is treated as such. *Maasen v. Zopff*, 12th Dist. Warren Nos. CA98-10-135, CA98-10-138, and CA98-12-153, 1999 Ohio App. LEXIS 3422, *6 (July 26, 1999). The Tenth District in *Maasen* stated:

> **{¶22}** *In the law of real property, the term "covenant" denotes a contract.* The common use of the word refers to the *promises* concerning real property contained in conveyances or other instruments. * * * A covenant is generally held to be personal. However, a covenant is said to "run with the land" when subsequent owners of the land are also benefitted or burdened by the covenant. *Id*., at Section 42. Restrictive covenants are covenants running with the land, intended to limit the grantee's use of the land to specified purposes, with the object of protecting the interests of all landowners in the same allotment or community. The scheme forms an inducement to each purchaser to buy, and it enters into and becomes a part of the consideration for their purchases. * * * (Emphasis added.) *Maasen, supra*, at *6-*7.

{¶23} Similarly, this court in *Grace Fellowship Church, Inc. v. Harned*, 11th Dist. Trumbull No. 2013-T-0030, 2013-Ohio-5852, stated:

> **{¶24}** In the context of property law, a "covenant" denotes a contract * * *. *Maasen*[, *supra*, at] *7. * * * Ohio's legal system does not favor restrictions on the free use of real property. *Driscoll v. Austintown Assocs*., 42 Ohio St.2d 263, 277 (1975); *Rockwood Homeowners Assn. v. Marchus*, 11th Dist. Lake No. 2006-L-130, 2007-Ohio-

3012, ¶12 ("[i]t is well-established that restrictive covenants on the use of property are generally viewed with disfavor.").

{¶25} A restrictive covenant is interpreted under general contract principles and "'when a covenant's language is indefinite, doubtful, and capable of contradictory interpretations, courts are to construe the covenant in favor of the free use of land. * * * However, courts must enforce a restriction where it is clearly and unambiguously found in a covenant.'" *S & S Aggregate, Inc. v. Brugmann*, 11th Dist. Portage No. 2001-P-0079, 2002-Ohio-7348, ¶13, citing *Brooks v. Orshoski*, 129 Ohio App.3d 386, 390 (6th Dist.1998); *LuMac Dev. Corp. v. Buck Point Ltd. Partnership*, 61 Ohio App.3d 558, 563 (6th Dist.1988). *Grace, supra*, at ¶25-26.

{¶26} Likewise, the Sixth Circuit, interpreting Ohio law, stated that a restrictive covenant "denotes a contract," and that such covenants are "*treated like contracts*; for example, they are construed in large part to give effect to the intent of the creators." (Emphasis added.) *Wright v. State Farm Fire & Cas. Co*., 555 Fed. Appx. 575, 578 (6th Cir.2014).

{¶27} Further, in *Johnson v. American Gas Co*., 8 Ohio App. 124 (7th Dist.1917), the Seventh District acknowledged that a restrictive covenant granting a right of way to a gas company is a contract and as such requires consideration to be enforceable. *Id.* at 135.

{¶28} Here, the restriction by its terms restricts the use of the property by specifying that only Orwell can provide natural gas to the property. Further, subsequent

owners and tenants of the parcels, such as Fredon, are required to accept the terms and pay the prices required by Orwell for all natural gas provided to the parcels. Therefore, the restriction is a restrictive covenant and as such is a contract.

{¶29} "'A contract is generally defined as a promise, or a set of promises, actionable upon breach. Essential elements of a contract include an offer, acceptance, contractual capacity, *consideration* * * *, a manifestation of mutual assent and legality of object and of consideration.'" *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, ¶16, quoting *Perlmuter Printing Co. v. Strome, Inc*., 436 F. Supp. 409, 414 (N.D.Ohio 1976).

{¶30} Appellants' first assigned error alleges that the trial court erred in granting judgment on the pleadings due to the existence of a genuine issue of material fact regarding the validity of the restriction. However, they do not identify any questions of fact or present any argument in support of their contention that a fact issue exists regarding the validity of the restriction.

{¶31} Instead, appellants argue that the provisions of the restriction are clear and unambiguous and, thus, the restriction is valid and enforceable. However, in making this argument, appellants fail to recognize the distinction between whether the terms of a contract are ambiguous, and thus subject to interpretation, and whether a purported contract contains the elements of a contract, and is thus enforceable. This court recognized this distinction in *Brugmann, supra.* In *Brugmann*, this court noted that the appellant in that case had not challenged the validity of the restrictive covenant and, thus, that issue was not before the court; rather, this court said the sole issue presented was whether appellant violated the terms of the covenant. *Id*. at ¶9. Here, appellees do

not dispute that the provisions of the restriction are clear and unambiguous; instead, they challenge the *validity* of the contract. As fully discussed under appellants' second assigned error, because the restriction is not supported by consideration, it is invalid.

{¶32} The trial court correctly noted, "[a]s Plaintiffs are alleging claims for breach of *contract* and tortious interference with *contract*, Plaintiffs clearly consider the Declaration to be a contract and the Court agrees." (Emphasis sic.)

{¶33} Based on our review of the pleadings, the trial court did not err in finding the restrictive covenant to be a contract and is to be treated as such.

{¶34} Appellants' first assignment of error is overruled.

{¶35} For appellants' second and last assignment of error, they contend:

{¶36} "The trial court erred in holding that no consideration was given for the Declaration of Utility Restriction and it was therefore invalid."

{¶37} As a preliminary matter, appellants argue that consideration is a question of fact, which cannot be determined as a matter of law by appellees' motions for judgment on the pleadings. However, it is well-settled that "[i]f a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined." *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc*., 15 Ohio St.3d 321, 322 (1984). Further, the Supreme Court of Ohio in *Williams v. Ormsby*, 131 Ohio St.3d 427, 2012-Ohio-690, held that whether there exists consideration is a question of law for the court. *Id*. at ¶17.

{¶38} Just as appellants presented conflicting arguments concerning whether the restrictive covenant is or is not a contract, appellants have made conflicting arguments concerning whether the restriction was required to be supported by

consideration in order to be enforceable. In their briefs in opposition to appellees' motions for judgment on the pleadings filed in the trial court, appellants argued that "the restriction spells out the consideration." However, appellants did not argue what the consideration was. Further, the trial court correctly found that the restriction contains no such recitation and there is no mention of the word "consideration" in the restriction.

{¶39} Likewise, in their appellate brief, appellants argue that "the restriction spells out the consideration." However, based on our review of the restriction, it does not spell out or otherwise recite the payment of consideration by appellants in exchange for the restriction.

{¶40} We note that for the first time in their amended reply brief, appellants argue that "the restricted use of an estate amounts to consideration." Appellants never made this argument in the trial court. It is well-established that an appellant may not assert a new theory for the first time before an appellate court. *Kalish v. Trans World Airlines*, 50 Ohio St.2d 73, 77 (1977). Appellants are thus precluded from making this argument for the first time here. In any event, we note the argument is incorrect. Appellants cite *Brown v. Huber*, 80 Ohio St. 183, 201-202 (1909), in support of this proposition. However, appellants either misstate or misconstrue the holding of this historic case. In *Brown*, the Supreme Court of Ohio stated:

> **{¶41}** *"When value is paid for an estate*, such stipulation (a stipulation that the property granted should be used only for particular purposes) is construed to be a covenant running with the land in the nature of a trust for the uses and purposes expressed in the deed of conveyance, and in case of a breach of the trust a court of equity

> will, in a proper action, decree the performance of the trust by confining the uses of the estate to the uses and purposes expressed in the deed. In such cases the restricted use of the estate becomes *a part of the consideration and is consented to by the grantee and it is no hardship on him and his assigns to be compelled to observe the covenants contained in the deed*." (Emphasis added.) *Id*. at 201-202, quoting *Ashland v. Greiner*, 58 Ohio St. 67 (1898).

{¶42} Thus, contrary to appellants' argument, the Supreme Court in *Brown* did not hold that the restricted use of an estate was the entire consideration. To the contrary, the restricted use is only one-half of the consideration. The other half is the value paid by the grantor for which the grantee agrees to restrict the use of the property. For this reason, the Court in *Brown* said the restricted use is only "a part of the consideration."

{¶43} As noted above, "a contract is not binding unless supported by consideration." *Williams, supra*, at ¶15. "Consideration * * * is a 'bargained for' legal benefit and/or *detriment." Prendergast v. Snoeberger*, 154 Ohio App.3d 162, 2003-Ohio-4742, ¶28 (7th Dist.), citing *Kostelnik, supra.* "A benefit may consist of some right, interest, or profit accruing to the promisor, while a detriment may consist of some forbearance, loss, or responsibility given, suffered, or undertaken by the promisee." *Williams, supra*. Further, "'[g]ratuitous promises are not enforceable as contracts, because there is no consideration.'" *Williams, supra*, at ¶17, quoting *Carlisle v. T & R Excavating, Inc*., 123 Ohio App.3d 277, 283-284 (9th Dist.1997). In other words, in

order for there to be consideration, the promisor (the party binding himself to perform) must receive some benefit, and/or the promisee (the party receiving the benefit of the performance) must sustain some detriment. Further, "*consideration must be given in order to have a valid restrictive covenant*." (Emphasis added.) *Willis Refrigeration, Air Conditioning & Heating, Inc. v. Maynard*, 12th Dist. Clermont No. CA99-05-047, 2000 Ohio App. LEXIS 102, *10 (Jan. 18, 2000); *accord Johnson, supra.*

{¶44} Here, based on our review of the pleadings and the restriction, there was no consideration. First, the restriction does not reflect the existence of two separate parties to the contract, i.e., a promisor and a promisee. To the contrary, the restriction reflects that OsAir created the restriction for the benefit of Orwell, and that both companies are owned and operated by the same person. Thus, as between OsAir and Orwell, no benefit was given to OsAir and no detriment was undertaken by Orwell. Further, the restriction recites that all owners and tenants of the parcels are bound to purchase natural gas only from Orwell and, according to the terms of the restriction, none of the tenants or owners, including Fredon, received any benefit in exchange. As between Orwell and Fredon, Orwell receives only a benefit without sustaining any detriment or obligation, and Fredon undertook a responsibility without receiving any benefit. In short, the obligation to purchase natural gas only from Orwell is a gratuitous promise by Fredon that is not enforceable as a contract because there is no consideration.

{¶45} We therefore hold that the trial court did not err in finding there was no consideration because "there is neither a benefit to the promisor (Fredon) nor a detriment to the promisee (Plaintiff Orwell)."

{¶46} Appellants' second assignment of error is overruled.

{¶47} For appellees' sole cross-assignment of error, they allege:

{¶48} "The trial court correctly determined that the Declaration of Utility [sic] was unenforceable as a matter of law, but erred in failing to declare the Declaration of Utility [sic] as void against [sic] Ohio public policy."

{¶49} Initially, we note that appellees' argument is not a proper subject of a cross-assignment of error. R.C. 2505.22, entitled "assignments of error filed on behalf of appellee," provides in pertinent part: "In connection with an appeal of a final order, * * *, assignments of error may be filed by an appellee who does not appeal, which assignments shall be passed upon by a reviewing court before the final order * * * is reversed in whole or in part."

{¶50} Further, App.R. 3(C) provides:

{¶51} Cross appeal.

{¶52} (1) Cross appeal required.

{¶53} A person who intends to defend a judgment * * * against an appeal taken by an appellant and *who also seeks to change the judgment* * * *, shall file a notice of cross appeal within the time allowed by App.R. 4.

{¶54} (2) *Cross appeal and cross-assignment of error not required*.

{¶55} A person who intends to defend a judgment * * * appealed by an appellant on a ground other than that relied on by the trial court but *who does not seek to change the judgment * * * is not required to file a notice of cross appeal or to raise a cross-assignment of error*.

{¶56} App.R. (3)(C)(2) was recently amended on July 1, 2013. The Staff Notes to App.R. 3(C) explain the effect of this amendment as follows:

> **{¶57}** App.R. 3(C)(2) is amended to clarify that a party seeking to defend a judgment on a ground other than that relied on by the trial court need *not* file a cross-assignment of error to do so; instead, *that party may simply raise the arguments in the appellate brief*. The prior rule suggested as much, but some courts, relying on R.C. 2505.22, have refused to consider arguments in defense of a judgment in the absence of a cross-assignment of error. *See e.g*. * * * *Zotter v. United Servs. Auto. Assn*., 11th Dist. Portage No. 94-P-0001, 1994 Ohio App. LEXIS 5078 (Nov. 19, 1994). Other courts, by contrast, followed the "well established" rule "that 'a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof.'" *See e.g. Schaaf v. Schaaf*, 9th Dist. [Medina] No. 05CA0060-M, 2006-Ohio-2983, ¶19, quoting *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 92, 637 N.E.2d 306 (1994). The language of the amendment to App.R. 3(C)(2) clarifies that the latter view is the correct one and confirms that *the requirement of a cross-assignment of error in R.C. 2505.22 is abrogated by rule*. (Emphasis added.)

{¶58} Appellees assert their public policy argument on appeal, not to change the trial court's judgment, but, rather, to prevent reversal of the judgment under review.

Thus, according to the amendment of App.R. 3(C)(2), appellants were not required to assert their public policy argument by way of a cross-assignment of error. We therefore construe appellees' cross-assignment of error as an additional argument presented in opposition to appellants' appeal.

{¶59} The Supreme Court of Ohio has repeatedly stated that contracts entered into freely and fairly are enforceable. *Cincinnati City Sch. Dist. Bd. of Educ. v. Conners*, 132 Ohio St.3d 468, 2012-Ohio-2447, ¶15. Further, the Court stated that, "[t]he freedom to contract is a deep-seated right that is given deference by the courts." *Id.* However, this deference is not absolute. *Id*. at ¶16. The Court stated, "'"[l]iberty of contract is not an absolute and unlimited right, but [on] the contrary is always subservient to the public welfare. * * * The public welfare is safeguarded, not only by Constitutions, statutes, and judicial decisions, but by sound and substantial public policies underlying all of them."'" *Id*., quoting *J.F. v. D.B.*, 116 Ohio St.3d 363, 2007-Ohio-6750, ¶5, quoting *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. v. Kinney*, 95 Ohio St. 64 (1916), syllabus. In *Conners*, the Supreme Court explained that "'the right of making contracts * * * is a personal privilege of great value, and ought not to be * * * restrained; but it must be restrained when contracts are attempted against the public law, general policy, or public justice.'" *Id*., quoting *Key v. Vattie*r, 1 Ohio 132, 147 (1823).

{¶60} The Supreme Court in *Conners* stated that "'"[p]ublic policy" is the community common sense and common conscience extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like."'" *Id*. at ¶17, quoting *Kinney, supra*, at 64. "'"[P]ublic policy is that principle of law

which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good. Accordingly, contracts which bring about results which the law seeks to prevent are unenforceable as against public policy."" *Id*., quoting *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, ¶64, quoting Ohio Jurisprudence 3d, Contracts, Section 94, at 528 (1980). The Supreme Court has stated that it is the legislative branch that is the ultimate arbiter of public policy, and it is the duty of the courts to determine when the public-policy exception must be recognized. *Conners, supra*.

{¶61} In *Conners, supra*, the board of education sold an unused school building to a charter school. The board sought a declaration that a deed restriction prohibiting the use of the property as a school was valid and enforceable and sought to enjoin the charter school from operating the property as a school. The Supreme Court noted that R.C. 3313.41(G) provides that when a board of education decides to dispose of real property, prior to disposing of that property, it shall first offer that property for sale to any charter schools in the school district. The Supreme Court held the restriction, on its face, prevented the free use of the property for educational purposes and thus frustrated the state's intent to make classroom space available to charter schools, as evidenced by R.C. 3313.41(G). *Conners, supra*, at ¶21.

{¶62} We must therefore examine whether the subject deed restriction accomplishes a result that the legislature has sought to prevent. *Conners, supra.*

{¶63} R.C. 4929.02(A), which addresses Ohio's public policy with regard to the provision of natural gas, provides in pertinent part as follows:

{¶64} (A) It is the policy of this state to, throughout this state:

{¶65} * * *

{¶66} (3) Promote *diversity of natural gas * * * suppliers*, by giving consumers *effective choices over the selection of those * * * suppliers*;

{¶67} * * *

{¶68} (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves *effective competition * * * between willing buyers and willing sellers * * *.* (Emphasis added.)

{¶69} The instant deed restriction provides that any future owner or tenant of any of the subject parcels must buy all natural gas for any buildings erected on these parcels from Orwell forever and in perpetuity, thus binding all future owners and tenants to only one natural gas supplier for all time.

{¶70} The restriction, on its face, frustrates diversity of natural gas suppliers by denying all owners and tenants of the subject parcels any choice over the selection of such suppliers. Moreover, the restriction thwarts competition between willing buyers and sellers by providing that the restriction applies to these consumers in perpetuity.

{¶71} Based on our review of R.C. 4929.02(A), this statute reflects the General Assembly's intent to promote diversity of natural gas suppliers, provide consumers effective choices over the selection of such suppliers, and promote effective competition between willing buyers and willing sellers. The deed restriction it issue here is at odds with this statute, and, instead of promoting the objectives contained therein, establishes

barriers to them that the legislature sought to prevent by the enactment of R.C. 4929.02(A).

{¶72} While we recognize the importance of the freedom to contract, this case provides a compelling reason to support the application of the public-policy doctrine. We therefore hold that the inclusion of the deed restriction involved here, which binds all owners and tenants of the property to one natural gas supplier for all time, is unenforceable as against public policy.

{¶73} For the reasons stated in this opinion, the assignments of error are overruled. It is the order and judgment of this court that the judgment of the Lake County Court of Common Pleas is affirmed.

COLLEEN MARY O'TOOLE, J., concurs,

THOMAS R. WRIGHT, J., concurs in judgment only.