LEGAL NOTICES

06/26,07/03,07/10/98

CORPORATION NOTICES

NOTICE is hereby given that Articles of Incorporation were filed on June 10, 1998 in the Department of State of the Commonwealth of Pennsylvania, for the purpose of obtaining a certificate of incorporation. The name of the corporation to be organized under the Business Corporation Law, Act of December 21, 1988, P.L. 1444, 177, Section 103, 15 Pa.C.S.A. Section 101 *et seq.*, is FRANKLIN CLEANING SERVICES, INC. The purpose for which the corporation is organized is to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under this Act.
George E. Wenger, Jr., Esq.
Sharpe, Wenger & Gabler
257 Lincoln Way East
Chambersburg, PA 17201
07/10/98

NOTICE OF INCORPORATION

MAIN STREET MUSIC & ELECTRONICS OF WAYNESBORO, INC has been incorporated under the provisions of the Business Corporation Law of 1988.
CSC - Harrisburg
319 Market Street
Harrisburg, PA 17101
07/10/98

FICTITIOUS NAME NOTICES

NOTICE IS HEREBY GIVEN pursuant to the provisions of Sec. 311 of the Acts of Assembly of December 16, 1982, 54 Ps. C.S.A. 311, that an application for registration of a fictitious name was filed on June 15, 1998 with the Department of State, Commonwealth of Pennsylvania at Harrisburg, Pennsylvania for the conducting of business under the fictitious name VICTORY SPEEDWAY with its principal office at 30 S. Washington St., Greencastle, PA 17225.
The name of the entity owning or interested in said business is TOV, Inc.
Gregory J. Katshir, Esq.
900 Market Street
Lemoyne, PA 17043
07/10/98

MEADOWBROOK HOME ASSOCIATION, INC., Plaintiffs vs. GLENN E. BERNECKER, Defendant, Franklin County Branch Civil Action - Law A.D. 1996-308

Meadowbrook Home Association, Inc., v. Glenn E. Bernecker

1. Enforcement of a restrictive covenant, in a case involving an intentional violation, will be denied if the party opposing enforcement can prove that its enforcement will not result in a significant benefit to the party seeking enforcement. A significant benefit need only amount to the benefit originally intended by the covenant's drafters.

2. The mere fact that a party has acquiesced in *de minimis* violations of a restrictive covenant does not lead one to conclude that the covenant has been abandoned for all time thereby precluding enforcement.

3. A restrictive covenant prohibiting the installation of satellite dishes is not preempted by 47 C.F.R. § 25.104 especially when the satellite dish in question exceeds one meter in diameter.

4. The enforcement of a private restrictive covenant not involving racial discrimination will not implicate the *Shelley v. Kraemer*, 334 U.S. 1, 63 S.Ct. 836, 92 L.Ed. 1161 (1949), doctrine of state action.

Stephen D. Kulla, Esq., Counsel for Defendant
Courtney J. Graham, Esq., Counsel for Plaintiff

ADJUDICATION AND DECREE NISI

Walsh, J., May 18, 1998:

PROCEDURAL HISTORY

The Plaintiff filed its Complaint on July 31, 1996, as a civil action in *law*. However, the relief it sought was purely equitable.[1] At trial, the Defendant never raised an objection to the improper filing and this Court treated the suit as a matter in equity as it is permitted to do so pursuant to Pa.R.C.P. No. 1502. This matter

[1] The Plaintiff's Demand for Relief reads as follows:

> WHEREFORE, plaintiff prays that the Court:
> 1. *enjoin* the defendant to remove the satellite dish from his property known as 2358 McCleary Drive, Chambersburg, Pennsylvania; and,
> 2. *enjoin and restrain* the defendant from erecting and maintaining any exterior antennae [sic] or aerials in violation of the "Declaration of Covenants and Restrictions for Bayer Home Center, Inc.," as are recorded in said Deed Book Volume 974, Page 584, and Volume 922, Page 250; and,
> 3. *grant such other and further equitable relief* as the case may require and as the Court may deem proper.

Plaintiff's Complaint (emphasis added).

was tried without a jury on April 20, 1998, and is now ripe for adjudication.[2] The Court makes the following:

FINDINGS OF FACT

1. The Plaintiff, Meadowbrook Home Association, Inc., is a duly organized Pennsylvania non-profit corporation.

2. The Defendant, Glenn E. Bernecker, is the owner of and resident at 2358 McCleary Drive, Chambersburg, Pennsylvania (hereinafter the 'property" or "Defendant's property").

3. The Defendant's property is subject to the Plaintiff's "Declaration of Covenants and Restrictions, for the Bayer Home Center, Inc.," which is recorded at Franklin County Deed Book Volume 974, Page 584, and Volume 922, Page 250 (hereinafter the "Declaration").

4. Article IX (b)(3) of the Declaration reads as follows:

> No exterior antennae [sic] or aerials shall be installed or maintained, except as permitted by the Board of Architectural and Environmental Control Committee.

(Hereinafter the "Covenant," "suspect covenant" or " restriction").

5. The Defendant has actual knowledge of the restriction prior to purchasing the property in November of 1993.

6. Upon moving to the property in May of 1994, the Defendant has a disassembled satellite dish (hereinafter the "dish") placed in his back yard. Assembled, the dish is ten (10) feet in diameter.

7. After it became apparent to the Plaintiff's Board of Directors (hereinafter the "Board") that the Defendant intended to assemble the dish on his property, the Board sent him a letter on November 7, 1994, advising him that such an installation is prohibited by the Declaration.

8. The Defendant received several additional verbal notices from the Board prohibiting the dish's installation.

9. The Defendant then appeared in person at a Board meeting to seek its approval for the dish's installation.

10. In response to the Defendant's appearance and oral application, the Board sent him a written denial.

11. Thereafter, on or about June 28, 1996, the defendant caused the satellite dish to be assembled and installed on his property.

12. In paragraph 23 of his Answer and New Matter, the Defendant has alleged that numerous structures within Meadowbrook are in violation of the Declaration. [3]

13. Other than just raising the mere allegations, the Defendant failed to meet his burden of proof at trial that the additional structures were constructed in violation of the Declaration.

14. In fact, there is an approval process for structures that deviate from the Declaration. [4]

---

[2] Both parties waived the requirement of Pa.R.C.P. No. 1038 that a decision be rendered within seven (7) days after trial. *See* Pre-Trial Conference Order dated February 24, 1998, paragraph 9.

[3] The alleged violations include: (1) twenty seven outdoor sheds; (2) nineteen clotheslines: (3) six fences; (4) one basketball pole; and twenty-five homes with less than fifty-percent brick or stone frontage. Defendant's Amended Answer and New Matter at ¶¶ 18 - 22.

[4] The language of the approval process reads as follows:

> *No building, fence, wall or other structure or tree, or substantial change of topography shall be commenced, performed, plated, erected or maintained* upon The Properties, nor shall any exterior addition to or decoration, maintenance, repair, alternation therein be made *until the plans and specifications* showing the nature, kind, shape, color, height, materials and location of the same shall *have been subject to and approved in writing* as to the harmony, in relation to surrounding structures and topography, compatibility with the Community, and as to the safety and welfare of the residents of the Properties *by the Board of Directors of the Association, or by an Architectural and Environmental Control Committee of three (3) or more individuals appointed by the Board.* It shall be the policy of the committee to encourage the planting and preservation of trees and branches (as well as shrubs and grass) unless they are or may become inimical to the safety or welfare of the residents, due to such factors as interference with light or lines of sight or proximity to ways or structures or other areas. In the event said Board, or its designated

15. The Defendant presented no evidence to substantiate that the additional structures referred to in footnote 3, *supra*, were constructed without first satisfying the approval process.

16. At the request of the parties, the Court conducted a view of the property on April 20, 1998, where the following was observed:

    A. The Defendant's backyard was generally neat in appearance;
    B. The Defendant's backyard adjoins the backyards of several other units, the collective area of which is known as the "quadrangle";
    C. One unit in the quadrangle had an attached deck;
    D. Several units in the quadrangle, including the Defendant's had trimmed shrubs apparently marking their property lines;
    E. The Defendant's dish was located close to the back of his home;
    F. The Defendant's dish was strung with Christmas lights; and
    G. Other than the Defendant's dish, there were no other dish antennas within the quadrangle nor were there any other antennas or aerials anywhere in sight from the quadrangle.

17. The character of the neighborhood burdened by the Declarations has not gone through a substantial change.

1. The Defendant's installation of his satellite dish was an intentional violation of the covenant as it is written.

2. The presence of the Defendant's dish in the quadrangle

committee, fail to approve or disapprove such design and location within thirty (30) days after said plains and specifications have been submitted to it, or in any event, if no suit to enjoin to addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have fully complied with. Reasonable fees and charges may be imposed for procedures before the committee under this Declaration or any Supplemental Declaration.

Declaration, Article VII, Sec. 1 (emphasis added).

substantially impacts the appearance of the surrounding properties and , if permitted to remain installed, it will substantially change the character of the community.

3. Restrictive covenants are legally enforceable. *Gey v. Beck,* 390 Pa. Super. 317, 568 A.2d 672 (1990.

4. Enforcement of a restrictive covenant, in a case involving an intentional violation, will be denied if the party opposing enforcement can prove that its enforcement will not result in a significant benefit to the party seeking enforcement. *A significant benefit need only amount to the benefit originally intended by the covenant's drafters. Id.*

5. Enforcement of this covenant will result in a significant benefit to the Plaintiff. It will result in the elimination of satellite dishes from the community, the original benefit intended.

6. The mere fact that the Plaintiff has acquiesced in *deminimis* violations of the Declaration does not lead one to conclude that it has abandoned the Declaration altogether thereby precluding its enforcement. *See Rieck v. Virginia Manor Co.*, 215 Pa. Super. 59, 380 A.2d 375 (1977).

7. The covenant is not preempted by 47 C.F.R. § 25.104 as applied to the Defendant's ten (10) foot dish.

8. The enforcement by this Court of a private restrictive covenant not involving racial discrimination will not implicate the *Shelley v. Kraemer, infra,* doctrine of state action. *See Wilco Electronics Systems, Inc. v. Davis* (Wilco II), 375 Pa. Super. 109, 543 A.2d 1202 (1988) *appeal denied* 520 Pa. 619, 544 A.2d 511 (1988); *Midlake on Big Boulder Lake, Condominium Ass'n v. Cappuccio,* 449 Pa. Super. 124, 129, 673 A.2d 340, 342 (1996) *appeal denied* 544 Pa. 684, 679 A. 2d 230 (1996).

STATEMENT OF THE QUESTIONS PRESENTED

I. WHETHER THE RESTRICTIVE COVENANT PROHIBITING THE INSTALLATION OF A SATELLITE DISH IS ENFORCEABLE.

II. WHETHER 47 C.F.R. § 25.104 PREEMPTS THE RESTRICTIVE COVENANT PROHIBITING SATELLITE DISHES.

III. WHETHER THE RESTRICTIVE COVENANT PROHIBITING THE INSTALLATION OF SATELLITE DISHES INFRINGES UPON THE DEFENDANT'S FEDERAL OR STATE CONSTITUTIONAL RIGHTS TO RECEIVE FREE SPEECH.

DISCUSSION

I. Whether the restrictive covenant prohibiting the installation of a satellite dish is enforceable.

On or about June 28, 1996, the Defendant caused to be installed on his property a satellite dish (hereinafter "dish") which the Plaintiff contends is in violation of the Declaration. It is apparent that the Defendant acted intentionally in light of his testimony indicating that he had previously received numerous warnings and prohibitions concerning the dish's installation from the Board and its representatives. He further testified that he was aware of the restrictive covenant precluding the installation of satellite dishes prior to purchasing the property. In response to the dish's installation, the Plaintiff acted promptly by filing its Complaint in just thirty-three (33) days.

The law is clear that although not favored, restrictive covenants burdening real estate are legally enforceable. *Gey v. Beck,* 390 Pa. Super. 317, 568 A.2d 672 (1990); *see also Richman v. Mosites,* 704 A.2d 655 (Pa. Super. 1997) (Restrictive covenants, because they are a limitation on a landowner's use of property, are to be construed narrowly).

> Such covenants are strictly construed against the party seeking enforcement of the covenant. In construing a restrictive covenant, [a court] must ascertain the intentions of the parties by examining the language of the covenant in light of the subject matter thereof, the apparent purpose of the parties and the conditions surrounding execution of the covenant.

Gey, 390 Pa. Super. at 324, 568 A.2d at 675 (citations omitted). We must therefore analyze the covenant to establish the original intent of the drafters.

The restriction reads as follows:

> No exterior antennae [sic] or aerials shall be installed or maintained, except as permitted by the Board of Architectural and Environmental Control Committee.

Declaration, Article IX (b)(3). A court is not precluded from referring to a dictionary to seek the common meaning of a term contained within a restrictive covenant. *See Schreiber v. Cicconi,* 351 Pa. Super. 1, 504 A.2d 1327 (1986). An "antenna" is "A metallic apparatus for sending an receiving electromagnetic waves. In this sense, also called "Aerial." *The American Heritage Dictionary,* 1976. A satellite dish arguably fits this definition.

From the language chosen in drafting the covenant and the nature of the land it burdens, it is clear that the drafters' intent was to exclude antennas, *including satellite dishes,* from their community. In construing the covenant as narrowly as possible to accomplish the original intent of the drafters, the Court finds that the Defendant's installation of his satellite dish was an intentional violation of the restrictive covenant as it is written.

Finding that the dish's installation is a technical violation of the covenant, we must next consider the Defendant's proposition that the covenant is no longer enforceable. The Defendant proffers this argument on three bases: (1) that enforcement of the covenant will not result in a significant benefit to the beneficiary of the covenant; (2) that the surrounding neighborhood has undergone such substantial change that the enforcement of the covenant will not result in the original benefit intended; and (3) that enforcement of the covenant may not be had by the Plaintiff because it has acquiesced in similar violations of the Declaration by other members.

In *Gey,* upon analyzing the numerous cases concerning restrictive covenants in Pennsylvania, the Superior Court developed the following standard for reviewing an *intentional violation* of a restrictive covenant:

> [I]n a case involving an intentional violation of a covenant, enforcement may not be had unless it will result in a significant benefit to the beneficiary of the covenant. However, the benefit shown must only consist in the benefit that the covenant was originally intended to covey. The party opposing enforcement has the burden of showing that significant benefit no longer exists. *Thus, enforcement will appropriately be denied if the party opposing enforcement can prove that, through a change of surrounding neighborhood or for other reasons, enforcement of the covenant will no longer result in the benefit it was originally intended to achieve.* Further, as we have already indicated, the fact that the benefit to result from enforcement may be relatively small is irrelevant where the violation was intentional.

Gey, 390 Pa. Super. at 332, 568 1.2d at 679 (footnote omitted) (emphasis added).

We will consider the Defendant's first tow proffers together because each involves the discussion of the other. It seems clear that enforcement of the covenant will result in a significant benefit to the Plaintiff because it will result in the absence of satellite dishes in the community.

It was the Defendant's burden to establish that "enforcement of the covenant will no longer result in the benefit it was originally intended to achieve." *Id.* The Defendant has failed to prove to the Court's satisfaction that the original benefit is no longer *needed* because of a change in the surrounding neighborhood. The character of the surrounding neighborhood has not changed to such an extent that the Defendant should be permitted to maintain on his property a satellite dish, let alone one strung with Christmas lights; in fact, the Defendant's was the only dish installed within the burdened community that exceeded one (1) meter in diameter. The Court finds that enforcement of the covenant will result in a significant benefit to the Plaintiff because it will result in the original benefit intended.

Finally, the Defendant alleges that the Plaintiff has lost the right to enforce the covenant because it has acquiesced in

numerous other violations[5] of the Declaration.[6] Contrary to the Defendant's assertion,

> In order to effect a release or discharge of the real covenants the burden of proof is upon the owners of the servient tenements to show that the original purpose and intent of the restrictions have been materially altered or destroyed by changed conditions and that substantial benefit and advantage may not inure to the owners of the dominant tenement by the enforcement of the restrictions.

Rieck v. Virginia Manor Co., 251 P. Super. 59, 64 - 65, 380 A.2d 375, 378 (1977); *see also Kajowski v. Null,* 405 Pa. 589, 177 A.2d 101 (1962) (Failure to object to minor violations does not prevent further enforcement of a restriction where the breaches become substantial and more serious). In *Rieck,* the plaintiffs asserted that the restrictions could not be enforced because the defendants had acquiesced in prior violations. Finding that the deviations were minor and that the defendants had acquiesced in prior violations. Finding that the deviations were minor and that the character of the neighborhood had not changed, the court held that the covenants were not abandoned and were still enforceable. We find that the Plaintiff has not abandoned the covenant because the other alleged violations (1) were minor, (2) did not change the character of the community, and (3) are typical in any community. Therefore, the Plaintiff has not lost the right to enforce the covenant although it may have acquiesced in other alleged technical violations of the Declaration.

We find that the covenant is still enforceable and its enforcement will result in a significant benefit to the Plaintiff. We must next analyze the Defendant's preemption argument.

II. Whether 47 C.F.R. § 25.104 preempts a restrictive covenant prohibiting the installation of satellite dishes.

---

[5] *See* footnote 3, *supra.*

[6] The Plaintiff denied that the structures indicated in footnote 3, *supra,* were violations of the Declaration and proof was demanded at trial. Plaintiff's Reply to New Matter at ¶ 23. However, the Defendant failed to provide such proof at trial.

In his second argument, the Defendant primarily places a reliance upon *his interpretation* of 47 C.F.R. § 26.104 that it is preemptive to all other attempts to regulate satellite dish installations including those attempts made by a homeowners' association. We are unpersuaded by his argument. In 1996 Congress amended the Telecommunications Act[7] and regulations promulgated pursuant to the Act include the following language:

> Any *state or local zoning, land-use, building, or similar regulation* that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate that such regulation is reasonable, except that non-federal regulation of radio frequency emissions is not preempted by this section.

47 C.F.R § 25.104 (a) (1996) (emphasis added). The Defendant asserts that this regulation "applies to homeowners [sis] associations as well as local governments." Brief of Defendant, Glenn E. Bernecker Addressing the Legal Issues Relevant to A.D. 1996-308, p. 11. Unfortunately, the Defendant has failed to provide any authority supporting this blanket statement and our research has also been fruitless. However, we believe that this regulation only applies to *state and local government ordinances* and not a private restrictive covenant burdening real estate within a homeowners' association. To the extent that the Defendant attempts to sway the Court to find otherwise, the only authority he cites involves preemption of a local or city ordinance and none involving a restrictive covenant similar to the one at issue.[8]

[7] Pub.L.No. 104-104, 110 Stat. 56 (1996); Telecommunications Act of 1996.

[8] *In the Matter of Petition of Brown*, DA 97-1361 (FCC Report and Order released July 1, 1997) (1997) (47 C.F.R. § 25.104 preempted a *local government ordinance* prohibiting the installation of satellite antennas exceeding the height of fourteen feed); *In the Matter of Petition of Moffat*, DA 97-1362 (FCC Report and Order) (1997) (47 C.F.R. § 25.104 preempted a *local government ordinance* that restricted the installation of satellite antennas on a roof that exceeded the height of six feet). All other authority cited by the Defendant in support of his preemption theory were decided prior to the most recent amendments to the Telecommunications Act and therefore we believe them to be inapplicable to his argument.

In fact, 47 C.F.R. § 1.4000(a)(1) (1996) specifically addresses those regulations and restrictive covenants of a homeowners' association. That section reads as follows:

> Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulation, or any private covenant, *homeowners' association rule or similar restriction* on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership interest in the property, *that impairs the installation,* maintenance or use *of: An antenna* that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, *that is one meter or less in diameter* or is located in Alaska; or an antenna that is designed to receive video programing services via multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or an antenna that is designed to receive television broadcast signals; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

47 C.F.R. § 1.4000(a)(1) (1996) (emphasis added). Both the revised § 25.104 and the new § 1.4000 were promulgated pursuant to the Telecommunications Act of 1996.[9] From a complete analysis of both regulations, it is clear that satellite dishes exceeding one meter in diameter may be regulated by a homeowners' association. It is arguable that the suspect covenant has been preempted to the extent that it regulates those satellite dishes that do not exceed one meter; however, as applied to the Defendant's ten-foot dish, the covenant is enforceable.

We find that the covenant has not been preempted and that it is still enforceable. We must next consider the Defendant's First Amendment argument.

III. Whether the restrictive covenant prohibiting the

[9] *See* footnote 7, *supra.*

installation of satellite dishes infringes upon the Defendant's federal or state constitutional rights to receive free speech.

Having found in the Plaintiff's favor on the previous two contentions, we must now address the Defendant's constitutional argument that enforcement of the covenant will infringe upon his First Amendment right to receive speech, *inter alia,* as enforced through the Fourteenth Amendment to the United States Constitution.[10] Although presently we are dealing with a private association that is seeking enforcement of the covenant, the Defendant advances his argument on the doctrine pronounced in *Shelley v. Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1949) (State court's judicial intervention and enforcement of a racially restrictive *private covenant* equated to state action); *accord Barrows v. Jackson,* 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953) (State court awarding damages for violation of a racially restrictive *private covenant* is state action).

On a preliminary matter, in its Post Trial Memorandum, the Plaintiff asserts that 'the defendant hasn't raised the constitutional issue in his pleadings." Plaintiff's Post Trial Memorandum, Proposed Conclusions of Law ¶ 7. In fact, the Defendant avers in paragraph 29 of his Amended Answer and New Matter that: " The restricted [sic] *Covenant* in question is unenforceable in that it is *contrary to public policy and Federal law, including, but not limited to* Regulations of the Federal Communications Commissions." (Second emphasis added). We find that the Defendant has adequately plead his constitutional argument.

> In *Parks v. "Mr. Ford",* 556 F.2d 132, 136, n. 6a (3rd Cir. 1977), the court noted a distinction when 'state action' is deemed to exist for constitutional purposes and when it does not exist. The court stated that *where state courts take action to enforce the right of private persons which are permitted but not compelled by law, there is no state action for constitutional purposes in the absence of a finding that racial discrimination is involved as under the doctrine of Shelley, supra.*

Cable Investments, Inc. v. Woolley, 680 F. Supp. 174, 177 (M.D.Pa. 1987) (emphasis added) *aff'd* 867 F.2d 151 (3rd Cir. 1989)[11] *see also Wilco Electronics Systems, Inc. v. Davis* (Wilco II), 375 Pa. Super. 109, 543 A.2d 1202 (1988) *appeal denied* 520 Pa. 619, 544 A.2d 511 (1988) (Taking note of the same principle above from the *Parks* decision).

In *Wilco Electronics Systems, Inc. v. Davis* (Wilco I), 50 Bucks L. Rep. 243 (Bucks Co. C.P. 1987), Wilco possessed an exclusive ten year agreement to provide cable services to the Colonial Estates apartments. Several years into Wilco's enjoyment of exclusivity, Bucks County Cablevision (B.C.C.) sought access to provide the same services to Colonial Estates. B.C.C. began running cable into several buildings in the Colonial Estates complex and Wilco objected. B.C.C. did not desist from their activities thereby forcing Wilco to file suit in an attempt to enforce the agreement. B.C.C. then filed suit in the same court alleging that it was wrongfully barred from Colonial Estates. After consolidating the two actions, the trial court, in its conclusion of law, found that "The right of a cable television operator to provide cable television services to the public is one which is protected by the First Amendment." *Id.* at 245. The trial court held that it would not enforce the exclusive agreement because to do so "would contravene the First Amendment." *Id.* at 246. In so ruling, the trial court affirmatively relied upon the *Shelley* doctrine. In *Cable Investments, supra,* the District Court for the Middle District of Pennsylvania questioned the trial

---

[10] "It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences." *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367, 390, 89 S.Ct. 1794,----,23 L.Ed.2d 371, 389 (1969).

[11] We would further note that the *Cable Investments* court, very cohesively, outlined those situations where state action has been found to occur. The court grouped those situations into three categories; they are:

> (1) where there is a symbiotic relationship between a private actor and the government, (2) where there is sufficient nexus between the actor and the government, and (3) where the actor has assumed a public function making it an arm of the state for constitutional purposes.

Cable Investments, 680 F. Supp. at 176 (chain citation omitted); *see also Wilco II, infra,* 375 Pa. Super. at 116, 543 A.2d at 1206 (*Quoting Western Pennsylvania Socialist Workers v. Connecticut General Life Ins. Co.,* 335 Pa. Super. 493, 485 A.2d 1 (1984)). It is the second situation that may invoke the *Shelley, supra,* doctrine of judicial intervention. *Cable Investments, supra.*

court's reliance on *Shelley*. One year later, in reversing the Bucks County court, the Pennsylvania Superior Court held that "*Shelly v. Kraemer* [sic], *supra,* is not applicable to this case, as no state action was involved in the matter before us." *Wilco II,* 375 Pa. Super at 114, 543 A.2d at 1205.[12] We believe that a similar application is appropriate in this case.[13]

It was abundantly clear that racial discrimination was not involved in the enforcement of the covenant prohibiting satellite dish installations. Therefore, this Court holds that the judicial enforcement of the covenant by this Court will not implicate any constitutional questions regarding the deprivation of the Defendant's First Amendment rights including the right to receive speech. The Court will enter an appropriate Order directing the Defendant to remove his satellite dish from his property forthwith.

DECREE NISI

May 18, 1998, the Court hereby orders:

---

[12] More recently, the Superior Court again reaffirmed the *Wilco II* decision in holding that "*Shelley v. Kraemer, supra,* is not applicable to the enforcement of a restrictive covenant in a contract between private parties." *Midlake on Big Boulder Lake, Condominium Ass'n v. Cappuccio,* 449 Pa. Super. 124, 129, 673 A.2d 340, 342 (1996) *appeal denied by* 544 Pa. 684, 679 A.2d 230 (1996). In *Midlake,* the court enforced a condominium restriction that precluded the posting of signs on a unit without the board's approval. The court further opined that:

> The courts of this Commonwealth have vigorously defended the rights which are guaranteed to our citizens by both the federal and our Commonwealth's constitutions. *One of the fundamental precepts which we recognize, however, is the individual's freedom to contractually restrict, or even give up, those rights.* The [applees] contractually agreed to abide by the provisions in the Declaration at the time of purchase, thereby relinquishing their freedom of speech concerns regarding placing signs on this property.

Midlake, 449 Pa. Super. at 130, 673 A.2d at 342 (emphasis added).

[13] We acknowledge that *Gerber v. Longboat Harbour North Condominium, Inc.,* 724 F. Supp. 884 (M.D.Fla. 1989), *vacated in part on reconsideration* 757 F. Supp. 1339 (M.D.Fla. 1991), is contradictory to the ruling we make today. However, "In the absence of a ruling on a particular question by the United States Supreme Court, the decision of a federal intermediate appellate panel, much less that of a federal district court, is not binding on Pennsylvania courts." *Commonwealth v. Giffin,* 407 Pa.Super. 15, 26, 595 A.2d 101 107 (1991) (*Citing Cianfrani v. Johns-Manville Corp.,* 334 Pa. Super., 482 A.2d 1049 (1984)). We are confined to the precedent set by Pennsylvania's high courts not those from other jurisdictions and are therefore inclined to follow *Wilco II, supra,* and *Midlake, supra.*

(1) The Defendant shall remove the satellite dish from his property not later than June 18, 1998;

(2) In the event the Defendant fails to remove the satellite dish from his property by June 18, 1998, the Defendant shall pay a fine of $100 per day for each day the Defendant does not comply;

(3) If post-trial motions are not timely filed, upon praecipe of either party, the Prothonotary shall enter this Decree Nisi as a final Decree pursuant to Pa. R.C.P. §227.4;

(4) Costs of these proceeding on the Defendant.