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Rockwell v. Arnold

J. ELWOOD ROCKWELL and RUTH ANN ROCKWELL, Plaintiffs,
v. TOBEY L. ARNOLD and JULIE E. ARNOLD, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law and Equity, No. 2009–4445

Covenants, Construction and Application, Covenants as to Use of Real Property, Nature and Operation in General; Covenants, Construction and Application, Building Restrictions, Use Restrictions; Covenants, Action in Breach, Defenses, Changed Circumstances

1. The law generally does not favor restrictions on land, being an interference with an owner’s free use and enjoyment of his property. Restrictive covenants, while enforceable, are strictly construed against the grantor, will not be enlarged by implication and every doubt and ambiguity in the language will be resolved in favor of the landowner.

2. Negative restrictive covenants limit the right of the landowner to utilize or build upon his land as he may wish, and have been divided into two broad categories. Building restrictions concern the physical aspect or external appearance of a building. Use restrictions concern the purpose for which a building is used, the nature of their occupancy, and the operations conducted therein as affecting the health, welfare and comfort of the neighbors.

3. A restriction as to the use of land must be plainly and clearly expressed, or the language will likely be construed to encompass only the type of structure which could be constructed, rather than addressing a building’s subsequent use.

4. Property owners have duty to make themselves aware of any recorded restrictions in the chain of title, being bound thereto by both actual and constructive notice.

5. As with any contractual agreement, restrictive covenants are governed by the intent of the parties, to be ascertained from substance of the entire instrument. In determining a grantor’s intention, instruments containing restrictive covenants must be construed in light of four factors: their language, the nature of their subject matter, the apparent object or purpose of the parties, and the circumstances or conditions surrounding their execution.

6. Language allowing only a “single family residence” has been interpreted to allow construction of residential types of structures, including apartments or duplexes, rather than only allowing a single family home.

7. The deed restrictions were meant to ensure a neighborhood which would perpetually appear residential in nature, with dwellings erected upon each lot, and ancillary buildings which reflect the residential character of the entire subdivision.

8. The proposed structure, due to its materials, size and design, appears commercial or agricultural rather than residential, and would therefore alter the character of the neighborhood which the covenants seek to protect.

9. Equity will restrain a violation of a building restriction regardless of changed conditions if its enforcement remains of substantial value to the dominant tenement.

10. The benefit must relate to the physical use of the land, increasing the owner’s enjoyment of the land in terms of his physical senses.

11. The burden is upon the owner of the servient tenement to show the original purpose and intent of the restriction has been materially altered or destroyed, so that no benefit results from enforcement.

12. The immediate surrounding neighborhood should be considered when determining the usefulness or continuity of restrictions. Violations occurring outside the subdivision which benefits from the restrictions are insufficient to demonstrate such changed circumstances.

13. When violations inside the subdivision are permitted "to such extent as to indicate the entire restrictive plan has been abandoned," equity will bar objections to further violations. Violations that are deliberate and flagrant are more likely to be enjoined that those which are de minimus or unintentional.

14. The Defendants have not satisfied their burden to prove the purpose of the restriction has been materially altered or destroyed by changed conditions, and that no substantial benefit would result from enforcement. Considering the immediate neighborhood and the adjoining tracts in addition to the restricted tract, there is clearly a continued benefit from the restriction.

Appearances:

Donald Kornfield, Esquire, *Counsel for Plaintiff*

John Mooney, Esquire, *Counsel for Plaintiff*

OPINION

Van Horn, J., April 29, 20109

Statement of the Case

After learning of their neighbor's intent to build a structure on a vacant lot across the street from their home, the Plaintiffs petitioned the Court for a special injunction to prevent construction pending a hearing. The Plaintiffs asserted the Defendants sought to improve their lot in Oakwood Forest Subdivision in violation of several negative restrictive covenants placed upon the land therein. The Plaintiffs alleged irreparable injury would result absent a special injunction, as the Defendants could quickly complete the construction and irreparably lower property values in the neighborhood. By Order dated October 15, 2009, the Court enjoined construction of the pole barn by the Defendants pending hearing on the request for preliminary injunction.

On October 26, 2009, the Defendants filed a Reply to Plaintiffs' request, admitting their plans to construct a pole barn but denying such construction would constitute a violation of any restrictive covenants. After a brief hearing regarding the potential prejudice to each side which would result from continuance of the injunction, the Court by Order dated October 27, 2009, enjoined further construction. The following day, on October 28, the Court set full hearing on the matter for January 21, 2010. On the request of the defense, by Order dated November 23, 2009, the hearing was continued to February 15, 2010. Thereafter, on December 10, 2009, at the request of the Plaintiffs, the hearing was again continued to March 15, 2010.

After conducting a view of the disputed property and the surrounding neighborhood on March 15, 2010, the Court heard testimony on the restrictions at issue, as well as upon the proposed construction and the character of the neighborhood. After considering the testimony presented at hearing, the filings of record, and the exhibits submitted by the parties, the Court now issues this Opinion and Order of Court continuing the injunction. As the proposed structure clearly falls outside the definition of a "family-car type garage," and as the restriction at issue continues to substantially benefit the Plaintiffs and the neighborhood, the Defendants shall be enjoined from constructing the pole barn.

Findings of Fact

In the early 1960's, Oakwood Forest Development Corporation [hereinafter "Oakwood"] caused a plan to be laid out for a subdivision in Peters Township, Franklin County. Thereafter, in 1971, a second plan revising the first was recorded in the Franklin County Plat Book Volume 298, Page 76. See Plaintiff's Exhibit [hereinafter P.E.] No. 1. Plaintiff J. Elwood Rockwell, President of Oakwood, laid the boundaries of the lots in the subdivision, and as the owner prior to selling the development in 1974, also approved all the building plans. In addition, during his tenure as owner of the development corporation, Mr. Rockwell caused restrictive covenants to be recorded in each of the subdivision deeds sold by Oakwood.

The instant controversy centers upon the meaning, force, and effect of these restrictions. The Plaintiffs seek to enforce the restrictions in the deeds as members of the subdivision community, as Elwood and his wife, Ruth Ann, purchased four lots in the development and constructed a residence upon one of them for personal use. The Rockwells have lived in the development for forty-seven (47) years, presently owning lots seven (7), eight (8), nine (9), and ten (10) in Section A of the development, their residence upon one and the remaining lots vacant. Each of the original deeds wherein the property

was granted to the couple contains ten restrictive covenants. See P.E. No. 3, 5, 7. The first two restrictions are pertinent to the Court's determination, providing:

> 1. The land conveyed shall be used [for] residential purposes only, except that nothing contained herein shall prevent any person from using a portion of his dwelling for an office, or prevent any doctor, lawyer, dentist or person of like occupation from practicing his profession in a portion of the dwelling.
> 2. No building other than a single-unit dwelling house shall ever be erected on the land hereby conveyed, except that a family car-type garage may be erected for the sole use of the occupants of the dwelling house.

See id.

The Defendants, Tobey and Julie Arnold, live across the street from the Rockwells, their home situated upon lot eight (8) of Section B of the development. The Arnolds also own lot nine (9), a vacant corner lot situated adjacent to lot 8. Lot 8 was originally sold by Oakwood to Arnold and Evelyn Van Sise in May of 1966, lot 9 being subsequently sold by Oakwood to the Van Sise couple in April of 1973. See P.E. No. 9, 10. Each deed granted by Oakwood to the Van Sises contains restrictions identical to those in the deeds between Oakwood and the Rockwells. After the death of Evelyn Van Sise, lots 8 and 9 were conveyed by her estate to her daughter, Janet Hawbaker. See P.E. No. 11. Janet later conveyed lot 8 to her daughter, Julie Hawbaker, who would later marry to become Julie Arnold, Defendant herein. See P.E. No. 12. In 2009, Janet and Julie together conveyed lots 8 and 9 to Julie and Tobey Arnold. See P.E. No. 8. Though the deeds executed by the estate, Janet in her own capacity, and by Julie refer to the property as the same tract conveyed by Oakwood to the Van Sises, none of the subsequent deeds contain the restrictions listed in the first two from 1966 and 1973.

At some point after the Arnolds moved into the development, the Rockwells noticed activity on vacant lot 8, which is situated across from the Plaintiff's residence on Oakwood Drive. The Plaintiffs soon learned the Defendants wished to build a pole barn on the vacant lot, a garage type structure which would be used to store eight (8) vehicles including a Camaro, a pick up truck, two trailers, a ladder truck, and various others. The structure would be constructed of metal siding, with a metal roof and concrete floor, and have dimensions of approximately forty (40) feet by sixty-four (64) feet. In the future, Mr. Arnold planned to add a car lift, accounting for ceilings which would peak at a height of twenty (20) feet. See P.E. 23 (scale model of Arnold home and proposed garage), 13 (application for land use permit), 22 (building code forms, plans of structure). The Rockwells objected, believing the proposed structure would be a violation of both the first and second restrictive covenants.

Being unable to resolve their disagreement, the neighbors now look to the Court to determine whether the proposed pole barn is a permissible "family car-type garage" under the restrictive covenants.

<u>Discussion</u>

A. Characterization of Restrictive Covenants

The law generally does not favor restrictions on land, being an interference with an owner's free use and enjoyment of his property. See Vernon Tp. Volunteer Fire Dept. v. Connor, 855 A.2d 873, 879 (Pa. 2004). Thus, while restrictive covenants are enforceable, they are strictly construed against the grantor, and will not be enlarged by implication. See Jones v. Park Lane for Convalescents, Inc., 120 A.2d 535, 537 (Pa. 1956). Every doubt and ambiguity in the language of a restriction will be resolved in favor of the landowner. Id. at 537-38.

Negative restrictive covenants, those limiting the right of the landowner to utilize or build upon his land as he may wish, have been divided into two broad categories. The first, dubbed "building restrictions," concern the physical aspect or external appearance of a building. See Jones, 120 A.2d at 538. The second, dubbed "use restrictions," concern the "purpose for which a building is used, the nature of their occupancy, and the operations conducted therein as affecting the health, welfare, and comfort of the neighbors." Id. A restriction as to the use of land must be plainly and clearly expressed, or the language will likely be construed to encompass only the type of structure which could be constructed, rather than addressing a building's subsequent use. See Jones, 120 A.2d at 539.

Instantly, the first restriction, stating the land "shall be used for residential purposes only" is clearly a use restriction, dealing with the nature of occupancy of structures on the land, omitting reference to the sort of buildings which may be erected. Cf. Grasso v. Thimons, 559 A.2d 925 (Pa. Super. 1989) ("none of the lots shall be used for any purpose other than residential uses"). On the other hand, the second restriction at issue, providing that "no building other than a single unit dwelling house shall ever be erected…except that a family car-type garage may be erected," is clearly a building restriction. Cf. Schulman, 246 A.2d at 646 ("no building except for residential purposes shall ever be erected"). Thus, the

first covenant restricts the use of the land to residential purposes, with the caveat that a portion of a dwelling may be used as a business office. The second covenant restricts the buildings which may be erected on the land, confining structures to the residential type, with like residential-type garages to house vehicles of the family car-type.

The Defendants do not argue the restrictive covenants in the Van Sise deed do not apply, recognizing that because the restrictions are clearly part of their chain of title, the fact that they were omitted from the deeds subsequent to the original is immaterial. See Vernon Township Volunteer Fire Dept., 855 A.2d at 880 (property owners have duty to make themselves aware of any recorded restrictions in the chain of title, being bound thereto by both actual and constructive notice). Rather, the Arnolds argue that the pole barn falls within the language of the restriction, constituting a "family car-type garage" and a permissible construction on the land. Alternatively, if the barn is not within such definition, the Defendants maintain other garages and structures constructed in the subdivision of an equal character have altered the neighborhood to such extent the proposed structure should likewise be permissible.

B. Interpretation and Enforcement of Restrictive Covenants

Initially, the Court must determine whether the pole barn fits within the definition of "family car-type garage." As with any contractual agreement, restrictive covenants are governed by the intent of the parties, to be ascertained from substance of the entire instrument. See Vernon, 855 A.2d at 879. In determining a grantor's intention, instruments containing restrictive covenants must be construed in light of four factors: their language, the nature of their subject matter, the apparent object or purpose of the parties, and the circumstances or conditions surrounding their execution. See id. (citing Snyder v. Plankenhorn, 159 A.2d 209, 2010 (Pa. 1960)). Where there is an ambiguity in the language of a restriction, the Court may consider extrinsic evidence of the parties' intent to discern how the instrument should be construed. See Barthelmes v. Keith, 732 A.2d 644, 647 (Pa. Super. Ct. 1999).

The language of the first restriction demonstrates the intention to create a residential neighborhood, and to maintain the character of the subdivision as such. The covenant provides the land is to be used only for residential purposes. However the restriction continues to allow business to be conducted within a residential dwelling, stating some enumerated professions and those of like character can operate in a portion thereof. The professions, including "any doctor, lawyer, dentist or person of like occupation," are of the type that operations within a dwelling would not alter the external character of the subdivision. Thus, a doctor or lawyer, whose home-office would not alter the residential appearance on their street, could conduct professional business within their dwelling house. In essence, the focus of the restriction seems to be to prevent operation of an obvious commercial enterprise within the residential neighborhood.

The second restriction supports the construction of the first as being primarily concerned with the residential appearance of the neighborhood, providing only a single dwelling house may be erected on each lot. This covenant makes exception for a garage that is similarly residential in character, a "family car-type" which comports with the rest of the structures in the neighborhood.

Courts have construed language allowing only a "single family residence" as allowing construction of residential types of structures, including apartments or duplexes, rather than only allowing a single family home. See, e.g., Jones, 120 A.2d at 539 ("a restriction against the erection of a building other than a 'house' or a 'dwelling house' is a restriction only in regard to the type of construction and not the subsequent use"). This construction seems to comport with the intent of the grantor and the conditions surrounding the execution of the covenants at issue. In the instant case, the grantor responsible for the restrictions is the party praying for their enforcement. Mr. Rockwell testified credibly that the restrictions were included in the deeds granted by Oakwood in the subdivision in order to preserve and protect the property values of the residential lots. N.T., 3/15/10, at 2. The character of the subdivision was meant to be residential, with restrictions both upon the use of the property for purely commercial purposes, and mandating erection of only residential dwelling-type structures.

The physical and residential appearance of the neighborhood was clearly an important motivation, a conclusion supported by examination of the rest of the restrictions placed in each deed instrument. The majority of the covenants are building restrictions, related to the physical appearance of the lots in the subdivision. Indeed, prohibitions on the placement of mobile homes on the lots demonstrate the motive to protect property values, as do those prohibiting the keeping of livestock or the installation of outdoor privies. See, e.g., P.E. 2. The restrictions also evidence a clear concern for the appearance of the neighborhood and the structures therein, the appearance thereof affecting the property values. See, e.g., P.E. No. 2, restriction 4 (enumerating prohibited building materials).

The "ordinary usage and plain meaning of the phrase…as well as common sense" here dictate the conclusion that a pole barn is outside the meaning of the "family-car style garage." Buck Hill Falls Company v. Press, 791 A.2d 392, 398 (Pa. Super. Ct. 2002). The phrase connotes a structure which is ancillary to the dwelling erected on each lot, and of the size

and nature to store residential and recreational vehicles. The deed restrictions were meant to ensure a neighborhood which would perpetually appear residential in nature, with dwellings erected upon each lot, and ancillary buildings which reflect the residential character of the entire subdivision. The pole barn which the Defendants seek to erect is a bulky structure with an agricultural or industrial appearance, appearing on the model of lots 8 and 9 even larger than the Arnold's residence. Standing alone on the vacant lot, the pole barn would be a material deviation from the uniform residential character of the structures erected in the subdivision. The size of the pole barn further supports the conclusion the structure cannot constitute a "family car-type garage." Mr. Rockwell, in his capacity as a general contractor, experienced in the construction of residential dwellings, also testified as to typical dimension of residential garages[1] . See N.T., 3/15/10, at 2. The Plaintiff testified such structures tend to be between twenty (20) and twenty-four (24) feet in length, and twenty-four feet in width, with doors eight or nine feet high. Id. The proposed structure, identified in the permit application submitted by the Defendant to Peters Township as a two-car garage of the "pole barn type," is clearly far larger. See P.E. 13, 22. A comparison of the proposed structure and other garages already situated in the subdivision demonstrates it would be more than twice the square footage of the largest existing structure. See P.E. No. 15.

Indeed, with dimensions of forty feet by sixty-four feet, the structure is three times the length of a usual residential garage, and twice the width. Id. Further, the structure would hold all eight vehicles the Defendant seeks to store, and possess additional space for the installation of a car lift, presumably also allowing a machine shop of sorts therein. Indeed, the description of the proposed structure clearly shows it would be more akin to the barn for which it is named than the residential garages to which it was compared. As such, this Court simply cannot find the proposed pole barn fits within the definition of a family car-type garage, and thus cannot find its construction permissible in light of the deed restrictions.

C. Changed Circumstances

The Court must still determine whether any change in the character of the neighborhood, or an abandonment of the restriction, allows construction of the proposed pole barn notwithstanding the building restrictions. Equity will restrain a violation of a building restriction regardless of changed conditions if its enforcement "remains of substantial value to the dominant tenement." See Dreher, 481 A.2d at 1211. The benefit must relate to the physical use of the land, increasing the owner's enjoyment of the land in terms of his physical senses. See Schulman, 246 A.2d at 647. The burden is upon the owner of the servient tenement to show the original purpose and intent of the restriction has been materially altered or destroyed, so that no benefit results from enforcement. Dreher, 481 A.2d at 1212.

The immediate surrounding neighborhood should be considered when determining the usefulness or continuity of restrictions. See Schulman v. Serrill, 246 A.2d 643, 646 (Pa. 1968). Violations occurring outside the subdivision which benefits from the restrictions are insufficient to demonstrate such changed circumstances. Vernon Township Fire Dept., 855 A.2d at 882. However when violations inside the subdivision are permitted "to such extent as to indicate the entire restrictive plan has been abandoned," equity will bar objections to further violations. Vernon Township Fire Dept., 855 A.2d at 881. Further, violations that are "deliberate and flagrant" are more likely to be enjoined that those which are "de minimus or unintentional." See e.g., Gey v. Beck, 568 A.2d 672, 677 (Pa. Super. Ct. 1990). In Schulman, the Court upheld enforcement of a building restriction where the appearance of a residential area was maintained under the deed restriction at issue, and could still be maintained with enforcement. See Schulman, 246 A.2d at 647. The Court found substantial value did exist in continuing the residential character of the street, especially where notice of the restriction was clear. Id.

The Defendants have not satisfied their burden to prove the purpose of the restriction has been materially altered or destroyed by changed conditions, and that no substantial benefit would result from enforcement. See Vernon Township Volunteer Fire Dept., 855 A.2d at 880. Considering the immediate neighborhood and the adjoining tracts in addition to the restricted tract, there is clearly a continued benefit from the restriction. Id. at 880.

To demonstrate the altered character of the neighborhood, Defendants submitted several photographs for the Court's consideration, depicting various pick-up trucks and trailers parked on the roads of the subdivision. See Defendant's Exhibit Numbers [D.E. No.] 5, 6, 7, 8. As the Court has determined the garage restriction to be a building restriction, and the use restriction in the deeds permit a permit a portion of the property to be used as a home office, these do little to demonstrate an alteration sufficient to allow the barn to be constructed. The other photographs depict a three-car garage, garages with two doors unattached to a home, a garage with a door leading into a second story, and a garage with an oversized door to permit storage of a camper. See D.E. No. 4, 11, 9, 10, 12. There is no language in the deeds to restrict a garage to two doors, nor is there language requiring it be attached to the residence. There is no language which prevents the storage of a recreational vehicle or a camper upon the property or inside a garage. Indeed, as such vehicles are used for recreational and leisure purposes, rather than commercial pursuits, their storage could arguably fall within

the restriction. Indeed, they do not alter the residential character of the neighborhood.

The structures depicted in exhibits thirteen (13) and fourteen (14) would be akin to the proposed pole barn, yet Defendant admitted on cross examination that these buildings are outside the subdivision. Our jurisprudence is clear that structures outside the subdivision benefiting from a restrictive covenant should not be considered in determining changed circumstances. Vernon, 855 A.2d at 882. In Vernon, the Court found the establishment of three liquor serving commercial enterprises outside the subdivision, though near in distance to the tracts at issue, did not warrant a finding of changed circumstances. Id. at 882. Such changes, relating to the neighborhood outside the subdivision, did not impact the utility of the covenants to those residents therein. Id. Further, Pennsylvania courts have recognized that residential living is a benefit which may be enforced by a restrictive covenant. See Grasso v. Thimons, 559 A.2d 925, 929 (Pa. Super. Ct. 1989).

Additionally, when queried as to the comparability of exhibit 15, which the Defendant had maintained on direct was a good representation of the proposed structure, Mr. Arnold admitted only the materials would be alike. The proposed structure would be almost twice the size of that shown in the exhibit. N.T., 3/15/10, at 7. When applying for a building permit, the Defendant wrote the pole barn would be a "residential garage," and upon questioning from his attorney stated only one vehicle stored therein would be used for commercial purposes. Id. Yet on cross examination, Mr. Arnold testified the majority of the vehicles housed therein are "occasionally" used for commercial purposes. Id. Indeed, the size and appearance of the pole barn implies commercial pursuits are conducted therein, the storage of vehicles used in commercial pursuits merely reinforcing such implication. The pole barn, both due to its immense size and the vehicles it would house, simply does not fall within the definition of "family car-type garage."

As in Groninger, the Plaintiffs may prevent the construction of structures which are not family car-type garages, as the restriction was meant to prohibit construction of "nonresidential type structure[s] which would clash with the surrounding houses." Groninger v. Aumiller, 644 A.2d 1266 (Pa. Super. Ct. 1994). Although the Court need not decide its exact contours, the use restriction would seem to permit a resident of the subdivision to conduct discrete business activity within their residence which did not alter the physical appearance of the neighborhood as dictated by the building restrictions. The overall scheme, as shown by the instruments, seems to have the purpose of providing a uniform residential character for the neighborhood, thereby protecting the property values therein. The proposed structure for which Defendants seek the Court's approval may not violate the use restriction in the deeds, but would clearly alter the visual character of the neighborhood. Indeed, Defendant's Exhibit Number 2, the vacant lot adjacent to their home, with only the pole barn upon it, would alter the visual character of the street far beyond whatever small effect a small trailer by the road could have.

Conclusion

Because the common sense interpretation of the building restrictions at issue prohibits construction of structures lacking in residential character, the attached Order of Court prohibits the Defendants from placing the prepared pole barn upon their vacant lot. The proposed structure, due to its materials, size, and design, appears commercial or agricultural rather than residential, and would therefore alter the character of the neighborhood which the covenants seek to protect. Additionally, the Defendants have failed to carry their burden to prove that changed circumstances in the neighborhood prevent the covenants from providing Plaintiffs substantial benefit. Indeed, as the restrictions continue to provide the neighborhood the benefit of continued residential living, they shall be upheld.

ORDER OF COURT

April 29, 2010, upon consideration of Plaintiffs' Petition for Special Injunction, the evidence submitted at hearing held March 15, 2010, and the Court having conducted a review of the exhibits submitted by the parties and the applicable law, it is hereby ordered that Plaintiffs' Petition for Special Injunction is granted and that the Defendants are hereby prohibited from constructing the proposed pole barn upon vacant lot 8 Section B of Oakwood Forest Development, as shown in the revised subdivision plan dated March 12, 1971, recorded in Franklin County Plat Book Volume 298, Page 76, designated as Tract No. 1 in Instrument Number 2009-22870 in the Franklin County Recorder's Office.

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[1] Mr. Rockwell, the owner of a general contracting business known as Rockwell Construction, began as a residential builder, later progressing to commercial structures. The Plaintiff has been in the business of general contracting for fifty-one (51) years. Rockwell testified he built some seventeen (17) homes in the development himself, and additionally laid and

constructed some of the garages.