IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK HEYWOOD, AN INDIVIDUAL,
Appellant,
vs.
THE LAKES ASSOCIATION, A NEVADA NON-PROFIT CORPORATION AND WEST SAHARA COMMUNITY ASSOCIATION, A NEVADA NON-PROFIT CORPORATION,
Respondents.

No. 47186

FILED

MAR 13 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court summary judgment in a real property dispute regarding homeowners' association dues. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

In December 2002, appellant Jack Heywood purchased a home in Beach View Estates, located within the Lakes at West Sahara development in Las Vegas. The home sits on two lots, as originally recorded in a 1985 subdivision plat map. In 1990, the developer, with the approval of the board of respondent, The Lakes Association (Lakes), combined 33 lots into 18 lots, including the property currently comprising Heywood's lot, to market larger, more expensive properties.

As a condition of its approval of a revised subdivision map recorded in January 1991, the Lakes board required the developer to continue "to pay the same amount in dues but each lot (18 lots) charged based on larger lot size due to lot line and lake frontage assessment." According to the affidavit of a Lakes board member at the time, this

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agreement meant that each enlarged lot owner would pay assessments for two lots, so that the assessment burden would continue to be paid fairly by all lot owners as the subdivision had been originally designed and as contemplated by the original conditions, covenants and restrictions (CC&Rs).

Since the October 1990 Lakes board meeting that approved the combination of lots, the Lakes has been assessing each enlarged lot as two lots for purposes of the master association assessment by the West Sahara Community Association, the Lakes assessment, and the Beach View Estates gate assessment. The CC&Rs for the Lakes and the West Sahara Community Association were never amended after the enlarged lots were created.

When Heywood purchased his property in 2002, it had been listed for sale as a single lot, was identified by a single Assessor's Parcel Number for property tax purposes, and was described as a single lot in his deed description, title documents, and on the 1991 plat map. Heywood claimed that he had no actual or constructive notice, at the time of his purchase, of the original plat map showing that his property originally consisted of two lots, or of the unrecorded Lakes board minutes regarding the agreement with the developer. Heywood's real estate agent gave him a total amount of estimated monthly assessments to pay, which amount was within $10 to $15 of the actual amount assessed and collected monthly by the Lakes, but Heywood did not know how the monthly amount had been calculated. When Heywood subsequently learned that his assessments were based on two lots instead of only one, he filed suit

for declaratory relief, claiming that he should have been assessed for only one lot.

Respondents filed a motion for summary judgment, which Heywood opposed. In a brief order that did not explain its rationale, the district court granted summary judgment to respondents.

We review an order granting summary judgment de novo.[1] Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.[2] The pleadings and other proof must be construed in a light most favorable to the non-moving party.[3]

Construction of a contractual term is a question of law also subject to de novo review.[4] "In interpreting a contract, 'the court shall effectuate the intent of the parties, which may be determined in light of the surrounding circumstances if not clear from the contract itself.'"[5]

In the present case, the facts are undisputed that, at the time the CC&Rs were adopted, Heywood's property consisted of two lots, as recorded in the 1985 plat map. In 1990, the Lakes' board conditioned its

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[1]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

[2]Id.

[3]Id.

[4]NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1158, 946 P.2d 163, 167 (1997).

[5]Id. (quoting Davis v. Nevada National Bank, 103 Nev. 220, 223, 737 P.2d 503, 505 (1987)).

approval of the combination of the two lots into one single lot upon the continued assessment based on two lots, so as not to prejudice the other lot owners by increasing their assessment burden. Since that time, the Lakes' board has consistently assessed the combined lots on the basis of two lots, and Heywood purchased his lot with notice of the approximate amount of his assessment, even if he was not aware of how it was being calculated. In Western Land Co. v. Truskolaski,[6] this court held that, despite changed circumstances and the increased urbanization of a residential neighborhood, restrictive covenants should continue to be enforced to prohibit any commercial development, since the covenants remained of substantial value to the subdivision homeowners and the changes were not so great as to make it inequitable or oppressive to restrict the property in dispute to single-family residential use. Despite changed circumstances, in the absence of an abandonment or waiver of the enforcement of restrictive covenants, this court will uphold the covenants' original purpose.[7]

In this case, respondents, as a matter of law, did not abandon or waive their right to continue assessing the combined lots as two lots, even after the 1991 plat map was recorded to show a re-division of a

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[6]88 Nev. 200, 495 P.2d 624 (1972).

[7]See id.; Tompkins v. Buttrum Constr. Co., 99 Nev. 142, 659 P.2d 865 (1983) (enforcing a restrictive covenant for a minimum lot size despite one other significant violations of the covenant); Gladstone v. Gregory, 95 Nev. 474, 596 P.2d 491 (1979) (enforcing a restrictive covenant limiting homes to one-story despite other violations).

portion of the Lakes at West Sahara. Despite the enlargement of Heywood's lot, the restrictive covenants remained in place and were not overridden by any governmental action to recognize the combined property as one instead of two lots for dues assessment purposes.[8] Throughout the years, the Lakes' board continued to enforce the CC&Rs by assessing Heywood's lot, like all other enlarged lots, on the basis of two lots. Had the board not done so, then the original purpose of the CC&Rs would have been frustrated, as the smaller lot owners would have had to pay a larger proportion of the assessments, in light of the enlargement of eighteen lots and resulting elimination of fifteen lots that formerly shared in paying the assessments.

The fact that Heywood believed that he had purchased a single lot does not change the original purpose of the CC&Rs to have him pay his proportionate share of the respondents' expenses by assessing him for two lots. In Zupancic v. Sierra Vista Recreation,[9] this court held that the appellant was required to remove a portable building that violated the CC&Rs, even though it was on land at the time when appellant purchased the property fifteen years before. Thus, a purchaser's mistaken belief as to what he had purchased will not defeat a restrictive covenant to the contrary.

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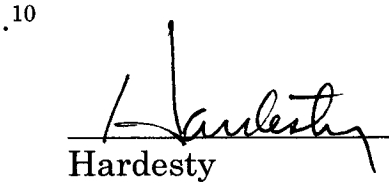
[8]See Western Land, 88 Nev. at 206, 495 P.2d at 627 (stating that a zoning ordinance cannot override privately-placed restrictions).

[9]97 Nev. 187, 625 P.2d 1177 (1981).

Additionally, based on NRS 111.320, we conclude that, as a matter of law, Heywood had constructive knowledge of the original 1985 plat map and that his assessments would be based on two lots.

Accordingly, we affirm the district court's summary judgment.

It is so ORDERED.[10]



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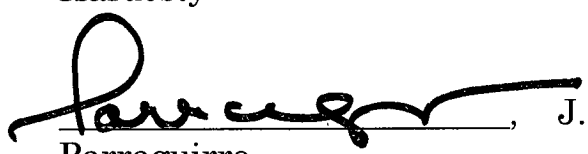

_____, J.
Parraguirre

_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Ara H. Shirinian, Settlement Judge
Kerr & Associates
Alverson Taylor Mortensen & Sanders
Eighth District Court Clerk

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[10]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.