

IN THE SUPREME COURT OF THE STATE OF NEVADA

DON NOBIS, INDIVIDUALLY; AND
MARY NOBIS, INDIVIDUALLY,
Appellants,
vs.
SOUTHERN HIGHLANDS
DEVELOPMENT CORPORATION, A
NEVADA CORPORATION,
Respondent.

No. 48772

FILED

NOV 03 2008

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a district court order granting a preliminary injunction in a real property action. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellants Don and Mary Nobis ("the Nobises") constructed a home in the Estates at Southern Highlands Golf Club ("ESH"). While they submitted their building plans for approval by the Architectural Review Committee ("ARC"), as required by ESH, respondent, the Southern Highlands Development Corporation ("SHDC") later claimed that several elements of the Nobises home, as constructed, violated the strict Covenants, Conditions and Restrictions ("CCR") applicable to homes built in the ESH. More specifically, SHDC asserted that the Nobises unilaterally implemented changes to their previously approved site plan which resulted in a courtyard wall, roof tile, and retaining wall that did not comply with the CCR and other ESH and Clark County regulations.

The Nobises, on the other hand, asserted that SHDC's enforcement of the CCR was suspect because there were other homes with seemingly nonconforming courtyard walls and roof tiles located in the Southern Highlands ("SH"), and that SHDC retaliated against the Nobises

for their refusal to allow a neighbor, a friend of a SHDC principal, to build a “view wall.”¹ In this, the Nobises argued that the view wall violated the ESH CCR but nonetheless, Steven S. Taylor, Vice President of SHDC, licensed architect and member of the ARC, insisted that the outcome of the roofing issue depended on the resolution of the view-wall issue. They further maintained that Taylor gave them express permission to build a courtyard wall with a smaller setback than required by the ESH CCR.

On March 10, 2006, approximately two years after the Nobises began construction of their home, SHDC filed a complaint against them alleging (1) breach of the CCR applicable to their property, claiming that the Nobises used non-conforming roof tile, built a front courtyard wall without a sufficient setback, and constructed non-conforming retaining walls, (2) nuisance, and (3) negligence per se. SHDC sought preliminary and permanent injunctive relief ordering the Nobises to replace their roof tile, move their courtyard wall enclosure, and revise their retaining walls, as well as general damages, special damages, and attorney fees.

On June 1, 2006, SHDC filed a motion for preliminary injunction preventing the Nobises from violating the CCR and other design requirements for homes in the ESH. After a hearing, the district court granted a motion for preliminary injunction as to courtyard and roof

¹ESH refers to a specific section of the SH while SH refers to the general community.

tile issues, leaving the retaining wall issue for later consideration.² The Nobises filed a motion for reconsideration which the district court denied.

The Nobises now appeal from the district court order granting SHDC's motion for a preliminary injunction. They assert that that the district court abused its discretion in granting SHDC's preliminary injunction because there were no legally cognizable violations of the restrictive covenants, there was no irreparable harm, the district court failed to balance the equities, and SHDC could not assert a claim here because it engaged in inequitable conduct and was guilty of laches. Accordingly, they request that we reverse the district court's decision.

We affirm the decision of the district court.

Standard of review

It is within the discretion of the district court to determine whether to grant a preliminary injunction.³ Accordingly, we review preliminary injunctions for abuse of discretion.⁴ Further, our "review is limited to the record to determine whether the lower court exceeded the permissible bounds of discretion. A district court's determinations of fact will not be set aside unless they are clearly erroneous."⁵ The district court

²As a result of the district court's decision to reserve the retaining wall issue for later consideration, the claims pertaining to the retaining wall are not at issue in this appeal.

³Labor Comm'r v. Littlefield, 123 Nev. 35, ___, 153 P.3d 26, 28 (2007).

⁴Id.

⁵S.O.C., Inc. v. The Mirage Casino-Hotel, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001) (citations omitted).

did not abuse its discretion if its findings are supported by substantial evidence.⁶ We review questions of law de novo.⁷

Grant of preliminary injunction

NRS 33.010 provides that an injunction is appropriate when:

1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

It is appropriate for a district court to grant a preliminary injunction when “the moving party has shown a likelihood of success on the merits and that the nonmoving party’s conduct . . . would cause irreparable harm, for which there is no adequate legal remedy.”⁸ In the case of restrictive covenants, however irreparable harm is not required. Instead, “restrictive

⁶Id.

⁷Littlefield, 123 Nev. at ___, 153 P.3d at 28.

⁸Id.

covenants may be enforced irrespective of the amount of damages which will result from a breach. Actual damages need not be shown”⁹

We conclude that the district court did not abuse its discretion in issuing a preliminary injunction. Initially, we conclude that substantial evidence supports the district court’s finding of violations relating to the courtyard. In this, we note that the ESH Design Criteria, the letter that Taylor wrote to the Nobises on November 10, 2003, and the approved building plans appear to support the contention that the Nobises were required to build a courtyard wall with at least a 20 foot setback. We further note that it does not appear that Taylor approved a 6 foot setback in that letter or in his conversations with D’Aire Shannon, Project Manager with Pinnacle Architectural Studio, the design firm that designed the Nobises’ home. Moreover, the district court’s finding that there was a violation of the CCR with respect to the courtyard wall does not rise to the level of an abuse of discretion.

In addition, we conclude that SHDC did not violate its statutory obligation of good faith in enforcing the CCR as to the roof tiles.¹⁰ More specifically, the Design Criteria for the ESH allowed SHDC to define acceptable types of roof tiles and the s-style tiles that the Nobises used were non-conforming. Further, the evidence that the Nobises cite of selective enforcement, i.e. a phone message from Taylor to the Nobises’

⁹Gladstone v. Gregory, 95 Nev. 474, 480-81, 596 P.2d 491, 495 (1979) (citation omitted).

¹⁰The Nobises cite NRS 116.1113 which states that “[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.”

contractor and the photos of other supposedly non-conforming roof tile from the SH subdivision, is speculative at best and does not vitiate SHDC's right to take legal action against the Nobises for their use of s-style roof tiles in violation of the CCR.¹¹ We further note that the district court was cognizant of Taylor's seemingly inappropriate actions but nonetheless ordered the preliminary injunction on the basis that the Nobises' home simply did not comply with the ESH CCR. Accordingly, we conclude that the district court did not abuse its discretion in determining that there were legally cognizable violations as to both the courtyard and the roof tiles in this case.

Moreover, neither a showing of irreparable harm or a balancing of the equities is necessary here. Initially, restrictive covenants may be enforced irrespective of the amount of harm shown; actual damages need not be proven.¹² And, in Gladstone v. Gregory we stated that when the plaintiff requested a balancing of the hardships after violating a restrictive covenant:

¹¹We further conclude that the Nobises' arguments that SHDC should be estopped from making a claim because its alleged selective enforcement of the CCR, or inequitable conduct, constitutes abandonment is without merit. Specifically, Tracy v. Capozzi does not apply to the facts of the instant case because, in that case, the plaintiffs violated their own restrictive covenants. 98 Nev. 120, 642 P.2d 591 (1982). Moreover, we stated in Tracy that the right to enforce one restrictive covenant is not lost by acquiescence to violation of another. Id. at 123, 642 P.2d at 594. In addition, we conclude that even if the Nobises allegations of selective enforcement are true, SHDC's actions did not rise to the level of abandonment of the entirety of the CCR.

¹²See Gladstone, 95 Nev. at 480, 596 P.2d at 495.

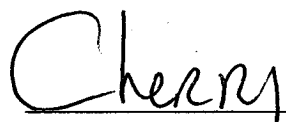
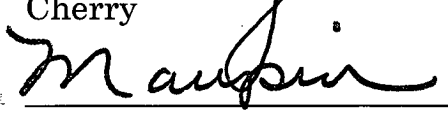

[t]he equitable principle of relative hardship is available only to innocent parties who proceed without knowledge or warning that they are acting contrary to . . . vested property rights.¹³

We conclude that substantial evidence in this record supports the district court's finding that the Nobises knowingly violated the CCR and that a balancing of equities was unnecessary.

Finally, we conclude that there is no laches issue here. Specifically, laches only exists when a delay disadvantages the responding party; a simple delay in filing will not suffice, especially when the statute of limitations has not run, as was the case here.¹⁴ In addition, the Nobises have not provided any compelling evidence that they were disadvantaged by SHDC's delay in filing.

Accordingly, because we conclude that SHDC has demonstrated a likelihood of success on the merits of its request for an injunction, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry

_____, J.
Maubin

_____, J.
Saitta

¹³Id. at 480, 596 P.2d at 495.

¹⁴See Home Savings v. Bigelow, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989).

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Leonard I. Gang, Settlement Judge
Albert D. Massi, Ltd.
Harrison, Kemp, Jones & Coulthard, LLP
Eighth District Court Clerk