IN THE SUPREME COURT OF THE STATE OF NEVADA

THE GLENBROOK CLUB, A NEVADA NONPROFIT CORPORATION, Appellant/Cross-Respondent, vs. MATCH POINT PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondent/Cross-Appellant.	No. 49955 FILED MAR 09 2011 TRACIE K. LINDEMAN CLERK OF SUPREME COURT BY S. Young DEPUTY CLERK
THE GLENBROOK CLUB, A NEVADA NONPROFIT CORPORATION, Appellant, vs. MATCH POINT PROPERTIES, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondent.	No. 50527

ORDER AFFIRMING IN PART AND REVERSING IN PART

These are a consolidated appeal and a cross-appeal from a district court declaratory judgment in a real property dispute and an appeal from a post-judgment order awarding attorney fees and costs. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge.

This matter involves a dispute about the use of a piece of land, referred to as the tennis parcel, and a cart path in a community known as Glenbrook. On appeal, Glenbrook Club, the owner of a golf course in the community, argues that Match Point Properties, LLC's use of the tennis parcel is restricted by the terms of the planned unit development (PUD) plans, a 1980 Parcel Map restriction, and a 1998 Declaration. With respect to the 1998 Declaration, Glenbrook Club assigns error to the district court's determination that the declaration was ambiguous and its

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subsequent decision to admit parol evidence to decide that the document did not limit Match Point's right to build on the tennis parcel. We disagree.

We conclude that there are no use restrictions on the tennis parcel under either the PUD or the 1980 Parcel Map restriction. Moreover, because the district court correctly determined that the 1998 Declaration is ambiguous, did not abuse its discretion in admitting parol evidence with respect to the declaration, and properly construed the declaration, we affirm the district court's determination that no building restriction applies to the tennis parcel under that declaration.

With regard to Match Point's cross-appeal, we agree with Match Point and determine that the district court erred when it found that Match Point had committed trespass on its own property.[1]

The tennis parcel is not part of the Glenbrook PUD

Notwithstanding that the 1980 Parcel Map restrictive covenant limiting the use of the tennis parcel for tennis purposes and related recreational uses was extinguished by common ownership when Larry Ruvo owned both the golf course and tennis parcel in the 1990s,[2] Glenbrook Club argues that Match Point's use of the tennis parcel is so restricted because it is part of the PUD and therefore subject to the covenants, conditions, and restrictions (CC&Rs) recorded in 1977, which,

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[1]As the parties are familiar with the facts, we do not recount them further except as necessary for our disposition.

[2]Ruvo was the majority owner and manager of Glenbrook Golf and Tennis Club, LLC. In 1998, Ruvo sold the golf course to Glenbrook Club and the tennis parcel to Match Point.

likewise, restrict its use to tennis-related purposes. In making this argument, Glenbrook Club concedes that the tennis parcel was never annexed into the PUD. However, it argues that the language of section 11.2 of the 1977 CC&Rs provides that additional property "may" be annexed—it does not mandate annexation. Instead of annexation, Glenbrook Club argues that the tennis parcel was automatically incorporated into the PUD when Glenbrook Properties (then owner/developer of the tennis parcel) subdivided the tennis parcel in the 1980 Parcel Map. To support its argument, Glenbrook Club states that Nevada's PUD laws are designed to give developers flexibility to make appropriate adjustments in developing later phases. We conclude that Glenbrook Club's argument is without merit.

A district court's factual determinations will not be set aside so long as they are not clearly erroneous and there is substantial evidence in the record to support the district court's findings. Jordan v. Bailey, 113 Nev. 1038, 1044, 944 P.2d 828, 832 (1997). "'Substantial evidence' is that which 'a reasonable mind might accept as adequate to support a conclusion.'" City of Reno v. Estate of Wells, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994) (quoting Ruggles v. Public Service Comm'n, 109 Nev. 36, 40, 846 P.2d 299, 302 (1993)).

In Nevada, a PUD is developed as a single entity. NRS 278A.065. Pursuant to NRS 278A.400, PUD residents have the power to enforce provisions of the PUD. NRS 278A.400 states:

> 1. All provisions of the plan shall run in favor of the residents of the planned unit residential development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan and to that extent such provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or

> equity by the residents acting individually, jointly or through an organization designated in the plan to act on their behalf.
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> 2. No provision of the plan exists in favor of residents on the planned unit residential development except as to those portions of the plan which have been finally approved and have been recorded.

"[R]ecorded" in this context means "entry in the county recorder's registry of real estate titles." Glenbrook Homeowners v. Glenbrook Co., 111 Nev. 909, 915, 901 P.2d 132, 137 (1995).

Glenbrook Club's argument that Nevada's PUD laws are designed to give developers flexibility misconstrues the language of NRS Chapter 278A. While NRS 278A.110(3) states in pertinent part that "flexibility of development . . . is a prime objective of this chapter," the context in which the statute discusses flexibility is for density, design, or intensity of land use. See NRS 278A.110(3). Glenbrook Club fails to provide any support for its theory that Nevada's PUD laws allow for annexation by mere intention. Rather, it argues that the tennis parcel automatically became part of the PUD because of the subdivision delineated in the 1980 Parcel Map. In making this argument, Glenbrook Club ignores the language of the 1977 CC&Rs, which plainly stated that annexation was the exclusive method by which land could be added to the PUD. Glenbrook Club would have us ignore the 1977 CC&Rs and base our decision on speculation as to what was the intent of the developers some 30 years ago. We decline to do so.

Not only did Section 11.2 of the 1977 CC&Rs expressly state that annexation was the method for inclusion of land within the PUD, but the plat maps for Glenbrook Units 2 and 3 show the tennis parcel to be outside the PUD. When Glenbrook Properties drafted the 1977 CC&Rs, it

did not own all the parcels of land depicted on the attached maps. As this court noted in Glenbrook Homeowners v. Glenbrook Co., the 1977 CC&Rs "encumbered approximately 47 acres of the planned development." 111 Nev. at 912, 901 P.2d at 135. Glenbrook Properties expressly reserved the right to annex parcels in the future. However, it never annexed the tennis parcel. Nor are there any documents contained in the record showing that the tennis parcel was formally approved and recorded as part of the Glenbrook PUD. The law is clear—only the provisions of the PUD that have been recorded may be enforced. NRS 278A.400(2). Therefore, substantial evidence supports the district court's finding that the tennis parcel was not part of the Glenbrook PUD.

The 1980 Parcel Map restriction was extinguished due to common ownership

As noted above, the golf course and tennis parcel had a common owner, Larry Ruvo, before they were sold to Glenbrook Club and Match Point, respectively. The district court determined that any negative easement had been extinguished by that common ownership. Glenbrook Club presents four arguments to persuade this court that the district court erred in determining that Glenbrook Club could not enforce the 1980 Parcel Map restriction. First, and without citing any authority, Glenbrook Club asserts that restrictive covenants, unlike easements, are not automatically extinguished when some of the servient and dominant estates fall into common ownership. Further, it contends that the merger doctrine should not apply in the subdivision context. Next, Glenbrook Club argues that the district court made a factual error when it overlooked a 1988 lot line adjustment that conveyed land from dominant residential Parcel 1 to the golf course. Glenbrook Club asserts that that conveyance made the golf course a dominant estate within the 1980 Parcel Map

subdivision, thereby allowing Glenbrook Club to enforce the 1980 Parcel Map restriction once it acquired the land in 1998. Finally, relying on the 1998 conveyance, Glenbrook Club argues that even if the restrictive covenant of the 1980 Parcel Map was extinguished by merger, it was revived in 1998, when the one-time dominant estate, the golf course, was sold to Glenbrook Club. All of Glenbrook Club's arguments are unpersuasive.

This court reviews questions of law de novo. Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003). In Nevada, the same general principles govern both restrictive covenants and easements. See Meredith v. Washoe Co. Sch. Dist., 84 Nev. 15, 17, 435 P.2d 750, 752 (1968). Our jurisprudence is in line with the Restatement (Third) of Property, and we see no reason to depart from it now. See Restatement (Third) of Prop.: Servitudes § 1.1(2) (2000). Therefore, Glenbrook Club's first contention, that restrictive covenants are unlike easements in that they do not automatically extinguish due to common ownership, is wholly without merit.

Glenbrook Club's next argument, that the merger doctrine should not apply in the subdivision context fails in light of the fact that we agree with the district court's finding that the tennis parcel is not part of the Glenbrook PUD. This court has had occasion to apply the doctrine of merger to easements, holding that, "[w]hen one party acquires present possessory fee simple title to both the servient and dominant tenements, the easement merges into the fee of the servient tenement and is terminated." Breliant v. Preferred Equities Corp., 109 Nev. 842, 846-47, 858 P.2d 1258, 1261 (1993). We have held that once an easement is extinguished by merger, it cannot come into existence again merely by

severing the dominant and servient estates. Breliant v. Preferred Equities Corp., 112 Nev. 663, 671, 918 P.2d 314, 319 (1996).

We also conclude that the negative easement on the tennis parcel was not reciprocal in nature and thus did not affect the rights of other landowners in the use and enjoyment of their property. It follows that there did not need to be unity of the ownership of the entire division to extinguish the negative easement. In other words, the limitation on the merger doctrine identified in comment c to section 7.5 of the Restatement (Third) of Property is inapplicable.[3] Therefore, the district court properly determined that any negative easement was extinguished,[4] not only because of the unity of title that occurred when the golf course and tennis parcel were owned by a common owner, Ruvo, in the 1990s, but also because the easement was not reciprocal in nature.

Glenbrook Club's third argument—that the district court ignored the 1988 lot line adjustment—is also unpersuasive. The district

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[3]This comment provides, in pertinent part: "Because merger takes place only when all the benefits and burdens of the servitude come into a single ownership, subdivision covenants and servitudes in other developments with reciprocal servitudes are rarely terminated by merger." Restatement (Third) of Prop.: Servitudes § 7.5 cmt. c (2000) (emphasis added).

[4]We note that the district court reached this determination by applying the partial merger doctrine. We conclude that application of the partial merger doctrine was not necessary here because the general merger doctrine applied. Thus, because the district court reached the correct result, albeit for the wrong reason, we affirm the district court's decision. See Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000) (explaining that we will affirm the district court's decision if it reaches the right result, even for the wrong reason).

court determined that even if the golf course parcel was the dominant estate by virtue of the 1988 lot line adjustment adding 0.66 acres of residential Parcel 1 to the golf course, the result was the same. When the golf course later merged with the servient estate, the tennis parcel, by virtue of the 1998 boundary line adjustment transferring the small triangle portion of the tennis parcel to the golf parcel, there was unity of ownership. The 1998 lot line adjustment thus resulted in the merging of the dominant estate, the golf course parcel, with the servient estate, the tennis parcel. See Leggio v. Haggerty, 42 Cal. Rptr. 400, 407 (Ct. App. 1965) (explaining that common ownership that is coextensive extinguishes the servitude at issue).

Glenbrook Club's fourth argument builds on its third argument; it contends that it is now a dominant estate owner because it bought the golf course from Ruvo in 1998. This assertion skips over years of history during which the golf course and tennis parcel were held in common ownership with unity of title, which was coextensive. Glenbrook Club's contention ignores the clearly recognized principle that a mere separation of title does not revive an extinguished servitude. See Restatement (Third) of Prop.: Servitudes § 7.5 (2000); see also Breliant, 112 Nev. at 671, 918 P.2d at 319.

For these reasons, we conclude that the district court properly concluded that the 1980 Parcel Map restriction had extinguished under common ownership, and therefore, the Glenbrook Club, as current owner of the golf course, could not enforce the restriction against Match Point.

The 1998 Declaration did not limit Match Point's right to build on the tennis parcel

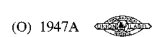
Next, Glenbrook Club assigns error to the district court's determination that the 1998 Declaration was ambiguous and its

subsequent use of parol evidence to decide that the document did not limit Match Point's right to build on the tennis parcel. It asserts that there is no ambiguity in the 1998 Declaration. Glenbrook Club argues that the declaration itself excludes the tennis parcel from a "Building Area," and the maps attached to the 1998 Declaration are entirely consistent with this definition. Glenbrook Club contends that, according to the plain language of the 1998 Declaration, the attached site plan does not designate a building envelope for the tennis parcel and, therefore, there is no ambiguity. Further, it asserts that even when parol evidence is admissible to explain terms in a writing, it cannot be used to vary or contradict those terms, as was done here.

The district court's decision to admit evidence is reviewed for an abuse of discretion. State, Dep't of Transp. v. Cowan, 120 Nev. 851, 858-59, 103 P.3d 1, 5-6 (2004). Concerning the admission of parol evidence, this court has held that

> [t]he parol evidence rule does not permit the admission of evidence that would change the contract terms when the terms of a written agreement are clear, definite, and unambiguous. However, parol evidence is admissible to prove a separate oral agreement regarding any matter not included in the contract or to clarify ambiguous terms so long as the evidence does not contradict the terms of the written agreement.

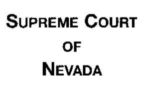
Ringle v. Bruton, 120 Nev. 82, 91, 86 P.3d 1032, 1037 (2004). Contractual ambiguity depends on whether the terms in question are "'reasonably susceptible to more than one interpretation.'" Shelton v. Shelton, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (quoting Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994)). Where contract terms are ambiguous, courts may look to extrinsic evidence to determine the parties' intent. Ringle v. Bruton, 120 Nev. 82, 93, 86 P.3d 1032, 1039



(2004). When there is doubt concerning the construction of covenants, the terms should "be construed against the person seeking enforcement." Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 268, 849 P.2d 310, 312 (1993).

In this case, the contract in question is the 1998 Declaration and its attached site plan. The district court found that the documents were ambiguous because the Declaration defined "building area" as "those areas shown on the site plan excluding the Golf Course and Tennis [Parcel] to be utilized for construction of building," however, the site plan delineated building envelopes for several parcels, including the golf course, but not the tennis parcel. It also noted that section 8 of the 1998 Declaration listed further prohibited uses on all properties in the development. We conclude that these facts can be reasonably interpreted as ambiguous, since they appear inconsistent and, therefore, susceptible to more than one interpretation. Accordingly, the district court did not abuse its discretion when it determined that the 1998 Declaration was ambiguous.

To clarify the ambiguity, the district court allowed extrinsic evidence to determine the parties' intent. Larry Ruvo repeated numerous times that he intended to convey the tennis parcel to Match Point with "maximum flexibility." Ruvo also testified that he did not intend the lack of a building envelope to restrict where structures could be built on the property. Further, Match Point owner and manager David Kingman's subsequent actions (making various development plans for the tennis parcel) show that it was his intention and understanding that there was no building limit on the property. He spent time and money hiring two different designers to come up with various plans for the tennis parcel. While there was conflicting extrinsic evidence offered by Charles Johnson,



who was president of Glenbrook Club when Ruvo sold the tennis parcel to Kingman, and who testified that Ruvo had represented to him that Kingman wanted to run a tennis club, the majority of evidence presented at trial supported the claims of Ruvo and Kingman. In addition, Match Point's deed to the tennis parcel specifically states "[n]othing herein shall be construed to limit the use of the Property and Buyer is under no obligation to operate the Property as a tennis club." Accordingly, we determine that the documentary evidence supports Ruvo's and Kingman's testimony that there was no intention to limit Match Point's use of the tennis parcel. In light of the evidence presented at trial, and construing the ambiguous covenants against the party seeking enforcement, we conclude that the district court did not abuse its discretion when it admitted parol evidence to resolve an ambiguity in the 1998 Declaration. Further, the extrinsic evidence admitted at trial supports the district court's conclusion that the 1998 Declaration did not restrict Match Point's right to build on the tennis parcel.

Match Point did not commit trespass on its own property

On cross-appeal, Match Point assigns error to the district court's finding that it committed trespass by using the panhandle portion of the cart path because it owns the land at issue. Match Point asserts that the district court was mistaken when it determined that the cart path was located on Glenbrook Club's property. Glenbrook Club concedes that it did not reserve an easement within the quitclaim deed that conveyed the panhandle portion to Match Point; however, it raises for the first time on appeal that this court should find an easement by implication or necessity.

We need not address Glenbrook Club's argument that the circumstances support a finding of an implied easement or one by

necessity as it did not raise this contention below and therefore waived it on appeal. Diamond Enters., Inc. v. Lau, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997). Because there is no easement, Match Point cannot be ordered to make repairs on its own land. Accordingly, we reverse and vacate the portion of the district court's order regarding repair of the cart path.

CONCLUSION

For the reasons discussed above, we affirm in part and reverse in part the district court's judgment. We reverse the district court's finding that Match Point committed trespass on the disputed cart path and vacate the order directing Match Point to repair and/or rebuild the golf cart path, and we affirm the district court's declaratory judgment in all other respects.[5]

It is so ORDERED.

_______________, J.
Cherry

_______________, J.
Saitta

_______________, J.
Hardesty

[5]With respect to Glenbrook Club's appeal in Docket No. 50527 from the district court's post-judgment order awarding Match Point attorney fees and costs, because Glenbrook Club does not prevail in its appeal from the final judgment, and it failed to provide any argument with respect to its appeal from the district court's order awarding costs and attorney fees, this court will not disturb that order. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n. 38, 130 P.3d 1280, 1288 n.38 (2006).

cc: Hon. Michael P. Gibbons, District Judge
Lester H. Berkson, Settlement Judge
Georgeson Angaran, Chtd.
Thomas J. Hall
Douglas County Clerk