

IN THE SUPREME COURT OF THE STATE OF NEVADA

KOVAL FLAMINGO, LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Appellant,
vs.
MERIDIAN PRIVATE RESIDENCES
HOMEOWNERS ASSOCIATION,
Respondent.

No. 54804

FILED

MAY 26 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court preliminary injunction in a real property action. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Appellant Koval Flamingo, LLC (Koval), purchased Meridian Private Residences and purported to retain exclusive use and possession of the clubhouse (commercial area) through provisions in the Covenants, Conditions, and Restrictions and Reservation of Easements (CC&Rs). Koval filed a complaint for equitable relief, including a preliminary injunction, to exclude respondent Meridian Private Residences Homeowners Association (Meridian HOA) from entering and attempting to disrupt or interfere with Koval's exclusive use of the commercial area. Meridian HOA filed a counterclaim for injunctive relief, and the district court granted Meridian HOA a preliminary injunction, ordering Koval to

immediately cease and desist from making exclusive use of the commercial area.¹

On appeal, Koval argues that the district court abused its discretion in issuing a preliminary injunction in favor of Meridian HOA, precluding Koval from conducting commercial activities in the commercial area and from denying access to the commercial area to Meridian HOA and Meridian unit owners. We agree.

A district court's grant of a preliminary injunction "will be reversed only where the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." Boulder Oaks Cmty. Ass'n v. B & J Andrews, 125 Nev. ___, ___, 215 P.3d 27, 31 (2009) (internal quotations omitted). A preliminary injunction is available when the moving party can demonstrate that the nonmoving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory relief is inadequate, and that the moving party has a reasonable likelihood of success on the merits. Id.

In granting the preliminary injunction, the district court found:

[t]he plain language of the Purchase Agreement executed by and between Koval as the seller and each of the individual purchasers, requires Koval to cease sales activities and return its use of any common elements, including but not limited to the Meridian Clubhouse [commercial area], to the Meridian unit owners no later than ninety (90) days after the transfer of title of the last unit sold.

¹The parties are familiar with the facts and we do not recount them further except as is necessary for our disposition.

The district court also found that “[a]ll but six (6) of the residential units were sold as of August, 2006. Koval retained ownership of the remaining six (6) units but has at no time marketed the units for sale.” Therefore, “the transfer of title of the last Unit” as described in paragraph 12 of the purchase agreement has not occurred, the ninety day transfer period has not been triggered, and Koval was under no obligation to return the commercial area to Meridian HOA.


Moreover, even if the last unit had been sold, section 17.1 of the CC&Rs expressly exempts the commercial area from Meridian HOA’s jurisdiction. The CC&Rs provide, in part:

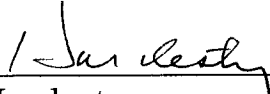
Commercial Area. The Commercial Area, as described on Exhibit “B” hereto, shall not be part of the Condominium Common-Interest Community, and shall not be subject to the jurisdiction of the Association [Meridian HOA]. Without limiting the foregoing, the Commercial Area shall not be subject to Association assessments and shall not be entitled to any vote in the Association. The Commercial Area shall be owned in perpetuity by Declarant [Koval], and/or Declarant’s expressly designated affiliates, successors, and/or assigns, and may be used for such purposes as desired by Declarant, including, but not necessarily limited to, a rental office, and/or a realty office Unit Owners and the Association, and its directors, officers, managers, committee members, and their respective agents, shall not undertake any act, or omit to do any act, which would hinder, obstruct, or interfere with the Commercial Area and/or activities in or related to the Commercial Area, and/or its intended use.

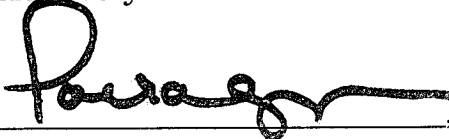
It is clear from the language of the CC&Rs that the commercial area is specifically excluded from the scope of the Meridian Private Residences and from the jurisdiction of Meridian HOA, and Koval was thus under no

obligation to transfer the commercial area to Meridian HOA. Based on section 17.1 of the CC&Rs, Meridian HOA did not have a reasonable likelihood of success on the merits of its complaint for injunctive relief. Given this conclusion, the issue of whether Meridian HOA would suffer irreparable harm need not be reached. See Boulder Oaks, 125 Nev. at ___ n.6, 215 P.3d at 31 n.6. Under these circumstances, we conclude that the district court abused its discretion by granting the preliminary injunction. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Kathleen E. Delaney, District Judge
Janet Trost, Settlement Judge
Lipson Neilson Cole Seltzer & Garin, P.C.
Morgan Associates, PLC
Dan J. Lovell
Michael R. Mushkin & Associates, P.C.
Eighth District Court Clerk