

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR
LAKE COUNTY, FLORIDA

WERNER TIMMERS,

Case No. 03-CA-793

Plaintiff,

v.

ALARAN INC.,

Defendant.

2003 JUN 30 PM 3:16
CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAYLORS FLORIDA

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE was heard before the Court on June 12, 2003, on Defendant's Motion for Summary Judgment and Plaintiff's Cross-Motion for Partial Summary Judgment. The Court, having considered the pleadings, affidavits, and arguments made in this case and being duly advised in the premises, finds the following material facts to be undisputed:

A. Defendant is the owner of two duplexes located on Lots 11A, 11B, 12A, and 12B in the Vineyards at Lake Dora subdivision in Lake County, Florida (the "Vineyards"). The duplex on lot 12 is two-stories tall, the only two-story duplex in the subdivision.

B. Prior to building the duplexes at issue, Defendant submitted his building plans and blue prints to the Architectural Control Committee of the Vineyards (the "ACC"). Within thirty (30) days after Defendant's submittal of the plans, the ACC approved Defendant's plans to build the duplexes on Lots 11A, 11B, 12A, and 12B on September 30, 2002.

C. Plaintiff is a lot owner in the Vineyards and has sued Defendant to have the buildings torn down and to prohibit Defendant from using the buildings it has constructed.

D. Plaintiff's lawsuit is based on the amended deed restriction, recorded in Official Records Book 2180, Pages 2148-2150, Public Records of Lake County, Florida (hereinafter referenced as the "Amended Restrictions").

E. The Amended Restrictions have only one section. The two provisions relevant to this lawsuit in section 1 of the Amended Restrictions are as follows:

JAMES C. WATKINS, CLERK OF COURT, LAKE COUNTY, CFN 20000303006 B1/P16 02/25/7/Pgs 0061 - 0061 (5/1/03) DATE: 07/11/2003 09:30:35 AM

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Exterior Elevations. the Board of Directors of the Association shall maintain a set of blueprints, which includes and exterior elevation design, which shall be used for reference during the design and review of new structures within The Vineyard at Lake Dora. No buildings, walls or other similar structures shall be commenced, erected, or maintained upon the Properties, unless said structures are [sic] consistent with the exterior elevation of the model blueprints for the subdivision. To further assure consistency, prior to construction, all plans and specifications showing the nature, kind, shape, height, materials and location of the new structure and a landscape plan shall be submitted to and approved in writing by the Board of Directors of the Association or its Architectural Control Committee (if so established by the Board of Directors). In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required. This provision does not waive the requirement that all new structures be consistent with the model plans on file with the Board of Directors and Architectural Control Committee, and it shall be the responsibility [of] individual lot owners to assure compliance with this Article prior to Construction.

AND

Variations and Criteria for Approval. The purpose of this Article is to assure architectural and design consistency within The Vineyards of Lake Dora. The Architectural Control Committee, in its sole discretion may, by written instructions, grant variations or modifications to these Covenants, Conditions, and Restrictions, when such variation or modification does not result in a conflict between new structures or improvements and the established development scheme. Upon written approval by the Architectural Control Committee, such variation or modification shall be binding on all Owners. Under no circumstances may a variation or modification be granted that results in a significant change to the overall development scheme, specifically including the exterior appearance of new structures and improvements when compared to existing structures

and improvements.

F. In addition to specifically approving the building plans and buildings at issue in this case, the ACC also approved a modification to the Amended Restrictions which, among other things, approved every home in the Vineyards and certified that each duplex in the Vineyards is consistent with the Restrictions. The ACC modification is recorded in Official Records Book 213, Pages 1197-1198, Public Records of Lake County, Florida (hereinafter referenced as the "ACC Modification"). The ACC Modification specifically states:

All homes currently existing in the Vineyards, and in particular, the homes constructed and being constructed on Lots 11A, 11B, 12A, and 12B are consistent with the Vineyards scheme of Development and blue prints. To the extent any of the existing homes or homes currently being constructed in the Vineyards vary, they are approved and a variation is granted so that said homes are confirmed to be consistent with the Restrictions, Amended Restrictions, blue prints, and the existing scheme of development.

G. Plaintiff does not allege, assert, or provide any evidence that the ACC acted arbitrarily, capriciously, or unreasonably in adopting the ACC Modification or in approving the plans and buildings on Lots 11A, 11B, 12A, and 12B. The ACC was not made a party to this action and no issues regarding the ACC's approval have been litigated herein. The sole issue before the Court is the interpretation of the above-cited amendments.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

1. Under Rule 1.510, Florida Rule of Civil Procedure, judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Summary judgment as to all issues and claims in this case is appropriate as the material facts of this case are uncontroverted and there is no genuine issue as to any material fact.

2. "Where the determination of the issues of a lawsuit depends upon the construction of a written instrument and the legal effect to be drawn therefrom, the question at issue is essentially one of law only and determinable by entry of summary judgment." Volusia County v. Aberdeen at Ormond Beach, 760 So. 2d 126, 130 (Fla. 2000)(quoted cases and citations omitted). This case solely rests on a matter of contract interpretation and thus, is appropriate for summary judgment by this Court.

3. The parties do not dispute that the Amended Restrictions at issue in this case provide "Upon written approval by the Architectural Control Committee,

such variation or modification shall be binding on all Owners." It is also undisputed that the ACC approved the plans and buildings at issue in this case and that the ACC adopted a modification confirming that the buildings at issue in this case are, as stated in the modification, "consistent with the Restrictions, Amended Restrictions, blue prints, and the existing scheme of development."

4. The Plaintiff's position is that summary judgment is appropriate, the language in the Amendment is unambiguous, and the only reasonable interpretation of the above-quoted section, "Exterior Elevations," would place the ultimate responsibility of assuring consistency with the model blueprints on the individual lot owner, regardless of any action or inaction on the part of the ACC. Such an interpretation is not reasonable. The sole reasonable interpretation of the two provisions at issue in the Amended Restrictions is the interpretation offered by the Defendant. That is:

A. In the event the ACC fails to approve or disapprove plans, then the individual lot owners are responsible for ensuring compliance.

B. When the ACC actually approves plans and adopts a modification declaring the acceptability of the plans, as in this case, the approval and modification are, as stated in the Amended Restrictions, "binding on all owners."

5. In this case, the Amended Restrictions are subject to only one reasonable interpretation. However, even if this Court were to deem the Amended Restrictions ambiguous, summary judgment is still appropriate because this Court must resolve the ambiguity "against the party claiming the right to enforce the restriction." Sweeney v. Mack, 625 So. 2d 15, 17 (Fla. 5th DCA 1993); Orange Gardens Civic Assn. V. Harris, 382 So. 2d 1340 (Fla. 5th DCA 1980) (affirming summary judgment even though enforcing party argued that evidence of parties' intent should be taken on intent of restriction); Reliable Life Insurance Company v. Trimble, 502 So. 2d 1303 (Fla. 1st DCA 1987) (summary judgment affirmed even though contract ambiguous because rule of construction required that ambiguity be construed against appellant); Fidelity and Guaranty Insurance Underwriters, Inc. v. Federated Department Stores, Inc., WL 728888 (Fla. 3d DCA March 5, 2003).

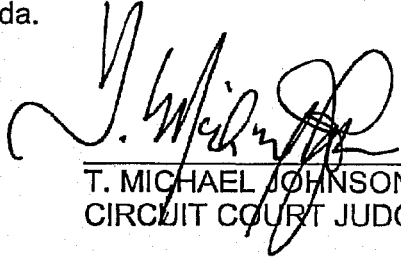
Furthermore, "it is well established by Florida case law that covenants are strictly construed in favor of the free and unrestricted use of property . . ." Snider v. Grodetz, 442 So. 2d 344, 345 (Fla. 5th DCA 1983) citing Washingtonian Apartment Hotel Company v. Schneider, 75 So. 2d 907 (Fla. 1954).

6. For the afore-mentioned reasons, Defendant's Motion for Summary Judgment is **GRANTED** and Defendant is the prevailing party in this action. Plaintiff's Cross-Motion for Partial Summary Judgment is **DENIED**.

It is adjudged that Plaintiff, WERNER TIMMERS, take nothing by this action and that the Defendant, ALARAN, INC., shall go hence without day and

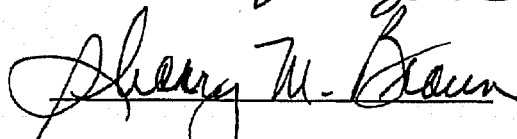
recover costs from the Plaintiff in an amount to be determined which shall bear interest at the statutory rate, for which let execution issue.

DONE AND ORDERED this 27 day of June, 2003, in chambers at Tavares, Lake County, Florida.


T. MICHAEL JOHNSON
CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Michael L. Wenger, Esq., P.O. Box 231, Orlando, FL 32802-2031, and Derek Schroth, Esq. P.O. Box 926, Eustis, FL 32727, by regular mail this 30 day of ~~June~~ June, 2003.


Judicial Assistant/Clerk