STATE OF MICHIGAN

COURT OF APPEALS

JOESPH L. O'CONNOR, MARY JANE O'CONNOR, RAYMOND DANIEL, DRUSILLA DANIEL and SHANTY CREEK LODGE ASSOCIATION, INC.,

Plaintiffs-Appellees,

v

RESORT CUSTOM BUILDERS, INC., FRED RUPPERT, JANET B. RUPPERT and FRANKLIN BANK, N.A.,

Defendants-Appellants.

UNPUBLISHED
April 11, 1997

No. 189691
Antrim Circuit Court
LC No. 94-006261-CH

Before: Hoekstra, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Defendants appeal as of right from a declaratory judgment and an order of permanent injunction against defendants. We reverse.

Defendant Resort Custom Builders, Inc. (Resort) owns Lot 7 in Valley View Subdivision but sold a two-week interval (i.e., a timeshare) in Lot 7 to the Ruppert defendants, as tenants in common. Defendant Franklin Bank, N.A., financed the transaction between defendant Resort and the Ruppert defendants and placed a mortgage on the property. Plaintiffs originally sued defendant Resort, seeking to enjoin it from selling timeshares in Lot 7. After learning about the transaction between defendant Resort and the Ruppert defendants, plaintiffs added the Rupperts and Franklin Bank, N.A., as defendants, seeking a declaratory judgment nullifying the interval ownership transaction. Although the trial court granted summary disposition to plaintiffs, holding that the use restriction in defendants' deed precluded interval ownership, a bench trial was held on the merits of defendants' affirmative defenses. Following trial, the court held that plaintiffs had not waived enforcement of the deed, and were not estopped from enforcing it.

Defendants first argue that the trial court improperly ruled that the restrictive convenant in their deed, which allowed use for "residential purposes," did not allow for interval ownership. We agree.

Restrictive covenants are construed strictly against those claiming the right to enforce them, and all doubts are resolved in favor of the free use of property. *Beverly Island Ass'n v Zinger*, 113 Mich App 322, 325; 317 NW2d 611 (1982). A restriction allowing residential uses permits a wider variety of uses than a restriction prohibiting commercial or business use. *Id*. at 326. A business use "may not violate a residential use covenant so long as the nonresidential use was casual, infrequent or unobtrusive and was not detrimental to the property values of neighbors." *Id*., citing *Wood v Blanche*, 304 Mich 283; 8 NW2d 67 (1943). The focus must be on the activity involved and how it parallels the ordinary and common meaning of use for residential purposes. *Zinger*, *supra* at 327.

We construe the covenant in favor of defendants and hold that based on the evidence presented, while interval ownership may be a business use, we find no reason to believe that nonresidential use associated with interval ownership will be obtrusive and detrimental to the property value of neighbors. The testimony at trial indicated that it was acceptable for homeowners to rent out their homes on a weekly basis all year long. While the type of ownership is different, in terms of use, we find that distinguishing interval ownership from year around renting creates a distinction without a difference.

Reversed.

/s/ Joel P. Hoekstra
/s/ William B. Murphy
/s/ Michael R. Smolenski