Michigan Law Review

Volume 47 | Issue 7

1949

REAL PROPERTY-RIGHTS IN LAND-CONSTRUCTION OF RESTRICTIVE COVENANTS

Donald D. Davis
University of Michigan Law School

REAL PROPERTY—RIGHTS IN LAND—CONSTRUCTION OF RESTRICTIVE COVENANTS—Excepting a small area set aside for business purposes, the deeds conveying more than 1300 lots in the University Heights addition of the City of Albuquerque contained restrictive covenants, the part here involved providing "no building other than dwelling houses . . . to be erected. . . . [N]or shall any building erected on said lots be used . . . for any other purpose than as private dwelling places." Plaintiff, a lot owner in the addition who used his lot as a residence, sought to enjoin defendant's use of two of the restricted lots for parking automobiles

in connection with a business block recently built by defendant.[1] Defendant contended that the covenant applied only to buildings and their use and did not preclude use of the land for any "open air" businesses. *Held,* injunction granted The defendant was perpetually enjoined from using the lots for any other purpose than as a dwelling place. *Hoover v. Waggoman,* (N. M. 1948) 199 P. (2d) 991.

It can admit of little doubt that the subdivider and the purchasers of lots in the addition intended that it be a strictly residential district. On the other hand, it must be admitted that a literal interpretation of the covenant, as contended for by the defendant, would permit any use of the land so long as no building were required. Following a rule of strict construction, courts have permitted pigs,[2] parking lots[3] and oil wells[4] in cases where a covenant covering a residential district was in express terms applicable to buildings only.[5] It is often said that such covenants should "be construed most strictly against the covenant."[6] A few courts have said that this rule of strict construction stems from the general principle that a deed is to be construed most strictly against the grantor.[7] Such reasoning does not seem to be applicable to the case of city subdivisions, where the grantor has no intention of retaining the benefits of the covenant himself and is neither involved in the litigation nor interested in the outcome. More often the reason given is that the law favors a free use of real property.[8] From the point of view of the individual lot owner, restrictive covenants cut down the use which he may make of his property; however, looking at the entire subdivided tract, it would seem quite likely that the covenant has made possible a more beneficial use of all the land included.[9] It is submitted, therefore, that sound policy does not require a literal interpretation of the covenant, and that the court in the principal case quite properly gives full effect to the intent of the parties as gathered from the language of the whole instrument, the attending circumstances, and the object of the parties in making the restriction.

Donald D. Davis

[1] Although the report of the case does not mention the fact, it is assumed that defendant's business was in an adjoining block, which was one of those designated for business purposes.

[2] Granger v. Boulls, 21 Wash. (2d) 597, 152 P. (2d) 325 (1944). The court decided that the pigs' shelters were not "necessary outbuildings for residence uses," however.

[3] Shaddock v. Walters, 55 N.Y.S. (2d) 635 (1945). Contra, Wilbur v. Wisper, 301 Mich. 117, 3 N.W. (2d) 33 (1942).

[4] Cooke v. Kinkhead, 179 Okla. 147, 64 P. (2d) 682 (1937).

[5] Many cases, pro and con, are collected in 155 A.L.R. 528 (1945).

[6] Principal case at 994. See also 14 AM. JUR. 620.

[7] Miller v. Am. Unitarian Assn., 100 Wash. 555, 171 P. 520 (1918); Reformed Protestant Dutch Church v. Madison Ave. Bldg. Co., 214 N.Y. 268, 108 N.E. 444 (1915). Carried to its logical conclusion, this premise would require that covenants restricting the use of land retained by the grantor be broadly construed. The result, a strict construction of the covenants restricting the use of the land conveyed and a broad construction of the same covenants on the retained land adjoining, seems rather absurd. Faced with this situation, the Maryland court construed the covenants "strictly against the person in whose favor they are made." Himmel v. Hendler, 161 Md. 181 at 187, 155 A. 316 (1931).

[8] Cooke v. Kinkhead, 179 Okla. 147, 64 P. (2d) 682 (1937); Gardner v. Maffitt, 335 Mo. 959, 74 S.W. (2d) 604 (1934).

[9] See Dorsey v. Fisherman's Wharf Realty Co., 306 Ky. 445, 207 S.W. (2d) 565 (1947); 5 PROPERTY RESTATEMENT, §526 (1944).