Circuit Court for Charles County
Case No. C-08-CV-20-000259

UNREPORTED

IN THE APPELLATE COURT OF

OF MARYLAND

No. 1735

September Term, 2021

LANCASTER NEIGHBORHOOD ASSOCIATION, INC.

v.

LANCASTER TOWNHOMES ASSOCIATION, INC.

Beachley,
Shaw,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: December 16, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is an appeal from the dismissal of a complaint for declaratory judgment and injunctive relief by the Circuit Court for Charles County. In September 2019, Appellee, Lancaster Townhomes Association, Inc., ("LTA") constructed a fence within its community without seeking prior approval from the Westlake Village Planning and Design Review Board ("PDRB"). An adjacent community, Appellant, Lancaster Neighborhood Association, Inc., ("LNA") filed a Complaint in the circuit court, requesting the court order LTA to remove the fence. Following a hearing, the court dismissed LNA's Complaint with prejudice. LNA filed a Motion for Reconsideration, which the court denied. LNA filed a timely appeal and presents eight questions for our review, which we have condensed and rephrased:[1]

[1] LNA's questions were phrased as follows:

1. Did the trial court erroneously conclude that the Westlake Village Covenants must be re-recorded to burden Lancaster Townhomes Association with recorded restrictive covenants?
2. Did the trial court fail to consider the Developer's purposes, since Lancaster Neighborhood Association submits that the [a]ppellate cases in Maryland have ruled that the first step is to analyze the purposes of the Covenants and Developers' stated purposes, and accordingly, was the trial court in error in its legal conclusions for this reason and should be reversed?
3. Did the trial court erroneously determine that Lancaster Townhomes Association was an "independent" association of townhomes all on common area within a 1,000+ acre development duly authorized by Charles County Commissioners in the Ordinance of July 15, 1981 connected to Zoning Docket #90?
4. Did the trial court commit clear error in its legal conclusions and could not and did not explain what the purpose of re-recording the same covenants previously recorded among the Charles County Land Records since these Architectural Covenants were already of record

1. Did the circuit court err in dismissing Appellant's Complaint with prejudice?

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and bound successive owners including Lancaster Townhomes Association?

5. Did the trial court ignore the plain language of the 'subordination agreement' executed by Interstate Condominiums, Inc., the developer of Lancaster Townhomes, as Lancaster Townhomes Association's predecessor in title which were signed on June 14, 1984, as an acknowledgement that the Westlake Village Architectural Covenants were binding on LTA, which by consent of Interstate Condominiums subordinates Lancaster Townhomes Association to the Westlake Village Architectural Covenants as the master association for the 1000+ acre development?
6. Did the trial court erroneously conclude that the June 14, 1984, signatures by Interstate Condominiums on the Westlake Village Architectural Covenants did not establish that the subordination agreement was "not effective for purposes intended by the developer?"
7. Did the trial court both misunderstand and misstate Lancaster Neighborhood Association's argument that Lancaster Townhomes Association's Covenants were not valid; and did the trial court instead reach the erroneous legal conclusion that Lancaster Neighborhood Association had acknowledged that Lancaster Townhomes Association's Covenants were still valid for enforcement by the trial court in this case, as opposed to the trial court's enforcement of the Westlake Village Architectural Covenants, thus stating an incorrect [o]pinion on a matter which was not the issue?
8. Did the trial court improperly, or conversely, fail to properly consider the 'sham issue' raised by Lancaster Townhomes Association that "Common Areas" were only enforceable as defined in Lancaster Townhomes Association's Covenants and By-Laws as recorded, which included the only language in the LTA covenants where the Common Areas in LTA were defined as "where a structure cannot be built;" and further, did the trial court fail to recognize that "where a structure cannot be built" was a 'sham issue' advocated by Lancaster Townhomes Association to avoid the effect of the Developer's stated purposes in analyzing the duly recorded Westlake Village Architectural Covenants, as the Master Covenants to be enforced?

For reasons discussed below, we affirm the dismissal by the Circuit Court.

BACKGROUND

Lancaster Townhomes Association, Inc., Appellee, and Lancaster Neighborhood Association, Inc., Appellant, are two subdivisions of a planned 1200+ acre development community within Westlake Village in Charles County. Westlake Village was established in 1981 between St. Charles Associates, a Maryland Limited Partnership, and the County Commissioners of Charles County, Maryland, ("County") in connection with Land Records Zoning Docket No. 90. The developer, St. Charles Associates Limited Partnership granted the "County" the property described in Zoning Docket No. 90 for the purpose of creating a planned unit development. St. Charles Associates and its successor in interest Interstate Condominiums, Inc. executed various covenants on the property.

LTA is a residential community with over 200 townhomes. LTA operates independently of Westlake Village, has its own Board of Directors, and maintains its roads, townhome buildings, residential townhome units, and common areas. LTA's community is comprised of common areas and "lots" which are individual townhome structures with front and rear yards, and parking spaces. Each "lot" is individually owned by its residents.

LNA is one of three neighborhood associations within Westlake Village, alongside Dorchester Neighborhood Association and Hampshire Neighborhood Association. LNA's community is comprised of residential lots, green space, and open space. The green space preserves natural features on the property and the open spaces are large areas for recreation, similar to common areas, that are excluded from residential or commercial construction.

On or about June 4, 2019, LTA began constructing a 1200-foot-long fence on its property to address crime, vagrants, and trash. The fence was financed and maintained solely by LTA, and it was built on its independently owned and maintained common area. The fence did not touch LNA's open or green spaces or residents' property, or any other communities' property.

On March 18, 2020, LNA filed a declaratory judgment action against LTA in the Circuit Court for Charles County. LNA sought a court order requiring the removal of the fence. LNA argued that LTA is a subdivision of both LNA and Westlake Village and is required to follow Westlake Village's architectural approval process as outlined in Westlake Village's Architectural Covenants. LNA asserted its enforcement authority stems from the plain language of § 8.01 of Westlake Village's Architectural Covenants as a "Residential Association".

LNA also asserted that Westlake Village delegated enforcement authority to it through an assignment by the Westlake Village Planning, Design and Review Board. The assignment authorized LNA "to enforce the Architectural Covenants relating to maintenance of permanent improvements within the Lancaster Neighborhood…." LTA argued it was not subject to the approval process and LNA had no basis to force removal of its fence.

Following a hearing, the court took the matter under advisement. On November 4, 2021, the judge rendered an oral decision, dismissing LNA's Complaint with prejudice. The court held that the Westlake Village Architectural Covenant, specifically Section 8.01,

does not allow a residential association to enforce covenant violations in residential associations outside its own boundaries. The court found that LNA and LTA are "two separate and distinct entities" and that LNA had no authority over LTA, "except that arguably designated to LNA through the Assignment from Westlake Village Association's Planning, Design and Review Board."

The court held that LNA could not make claims that LTA did not follow its own procedural requirements in deciding to construct the fence. The court stated LNA had no standing to "sue over an issue involving the internal decisions, or whether or not those decisions followed the appropriate process any more than any other third party would have the ability to sue LTA over that ability." (cleaned up). "It would have to be some other entity or some other individuals... And the Court gives no weight to those allegations."

The Westlake Architectural Covenants contained a subrogation clause, which appellant argued, included LTA. The court found that:

> LTA's Covenants were completed in April of 1987. The Westlake Covenants were completed in June of 1987. About two and a half months later…. The Westlake Covenants contain a subrogation clause from the developer, Interstate Condominiums, Inc. for the land which LTA is responsible for…. There's no subrogation clause for LTA… attached to the Westlake's Covenants…. LTA was clearly a necessary party to allow the subrogation of its Declaration of covenants, [w]hich existed prior to the Westlake Covenants. The Court finds that the subrogation clause for Interstate Condominimus,[sic] Inc. is insufficient to subrogate the interests of LTA.

The court reasoned:

> If the developer did not want LTA's Declarations to remain in full force, the developer could have amended [them] at any time, or not filed them in land records. Clearly the developer intended LTA's Declarations to exist and

> applied to LTA as written. LNA has failed to produce any evidence which would convince the Court otherwise.

The court then found that "LTA's Declaration of Covenants, control LTA…. And since the Declarations do clearly distinguish common areas from lots there was no need for any approval. Even assuming the Westlake Village Declaration of Covenants applied, LNA would still not be entitled to relief." The court also held that LNA could not prevail because it failed to comply with the Architectural Covenant that required a recommendation from the Board prior to seeking covenant enforcement. Because LNA failed to present any evidence of this condition precedent, the court held that the complaint must be dismissed.

The court issued its written Order on November 17, 2021. LNA filed a Motion for Reconsideration, which LTA opposed. On December 29, 2021, LNA filed a timely notice of appeal to this Court. The reconsideration motion was denied on February 3, 2022.

STANDARD OF REVIEW

In non-jury cases, this Court "will review the case on both the law and the evidence." Md. Rule 8-131(c). This Court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of witnesses." *Id.* "We review a circuit court's decision whether to grant or deny declaratory relief under an abuse of discretion standard." *RDC Melanie Drive, LLC v. Mark Eppard et al.*, 474 Md. 547, 564 (2021). When reviewing matters involving restrictive covenants, "the interpretation of a restrictive covenant, including a determination of its continuing vitality, is subject to a *de novo* standard of

review as a legal question." *Id.* (citing *Dumbarton Imp. Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 55 (2013)).

DISCUSSION

LNA argues the court erred in dismissing its complaint with prejudice. LNA contends the court failed to consider the developer's purposes in erecting the community, erroneously classified LTA as an "independent" association, and ignored the plain language of the covenants and subrogation agreement. LNA asserts the court improperly disallowed standing based on noncompliance with a condition precedent outlined in the Assignment.

LTA counters, that LNA did not have standing to pursue the architectural enforcement action. LTA asserts it is a separate and distinct entity and is not subject to LNA's approval process. LTA claims its covenants are controlling because they were executed approximately two months before the execution of the Westlake Covenants, Westlake Architectural Covenants, and LNA's Covenants. LTA argues the developer's decision to record LTA's Covenants after Westlake and LNA's covenants, without referencing a subrogation clause demonstrates the developer's intent to not bind LTA by LNA or Westlake's Covenants. LTA also argues that LNA does not have enforcement authority pursuant to an assignment because LNA did not receive a recommendation from the Planning, Design and Review Board to initiate the action.

In reviewing restrictive covenants, "[p]rinciples of contract interpretation govern." *RDC Melanie Drive, LLC v. Eppard*, 474 Md. 547, 564 (2021). "We look to the objective

intent of the original parties as it 'appears or is implied from the [restrictive covenant] itself.'" *Id.* (citing *Dumbarton Imp. Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. at 52). The Court of Appeals stated the standard for construing restrictive covenants:

> In construing covenants, '[i]t is a cardinal principle ... that the court should be governed by the intention of the parties as it appears or is implied from the instrument itself.' The language of the instrument is properly 'considered in connection with the object in view of the parties and the circumstances and conditions affecting the parties and the property. ...' This principle is consistent with the general law of contracts. If the meaning of the instrument is not clear from its terms, 'the circumstances surrounding the execution of the instrument should be considered in arriving at the intention of the parties, and the apparent meaning and object of their stipulations should be gathered from all possible sources.'
>
> If an ambiguity is present, and if that ambiguity is not clearly resolved by resort to extrinsic evidence, the general rule in favor of the unrestricted use of property will prevail and the ambiguity in a restriction will be resolved against the party seeking its enforcement. *The rule of strict construction should not be employed, however, to defeat a* restrictive covenant *that is clear on its face or is clear when considered in light of the surrounding circumstances.*

(emphasis in original). *RDC Melanie Drive*, 474 Md. at 568–69 (citing *Belleview Constr. Co. v. Rugby Hall Cmty. Ass'n*, 321 Md. 152, 157–58 (1990)).

In *Dumbarton Imp. Ass'n v. Druid Ridge Cemetery Co.*, the Court of Appeals addressed the enforcement and effectiveness of restrictive covenants. Druid Ridge Cemetery Company ("Druid Ridge"), one of the respondents, "entered into a contract to sell 36.21 acres of the approximately 200 acres that it owns" to Druid Ridge, LLP, the other respondent. *Id.* at 42-43. The purpose of "the contract was to construct fifty-six semi-detached residences on portions of the land . . . ." *Id.* at 43. The petitioners, "Dumbarton Improvement and Long Meadow Neighborhood Associations . . . brought an action . . .

seeking a declaration that the residential development violated restrictive covenants contained in the deed conveying the cemetery property to Druid Ridge." *Id.* The restrictive covenant provided, in relevant part, "the following covenants and conditions which the said Druid Ridge Cemetery Company for itself, its successors and assigns, does hereby covenant and agree to perform: [t]hat the said property be maintained and operated as a cemetery." *Id.* at 47. The circuit court concluded that the covenant was ambiguous, and this court affirmed.

The Court of Appeals reversed, holding that the "restrictive covenant in the deed, clearly and unambiguously, requires that all 200 acres sold to the Druid Ridge Cemetery Company be maintained and operated as a cemetery." *Id.* at 68. The Court stated that:

> [t]he language of the restrictive covenant is the first source to which we must look in an effort to uncover the intent of the covenanting parties; if the language of the covenant is unambiguous, it is the only source to which we look, except to confirm the plain meaning of the covenant.

Id. at 53.

"As with contracts generally, a covenant is ambiguous if its language is susceptible to multiple interpretations by a reasonable person." *Id.* The Court concluded that the language of the restrictive covenant was unambiguous because the deed described all 200 acres and clearly conveyed the "property to the Druid Ridge Cemetery Company subject to the conditions 'that the said property be maintained and operated as a cemetery . . . .'" *Id.* at 58. In reviewing restrictive covenants, the Court stated that "[t]he first step is to '[d]etermine from the language of the agreement itself what a reasonable person in the

position of the parties would have meant at the time it was effectuated,' and if 'the language of the contract is plain and unambiguous there is no room for construction.'" *Id.* at 53-54.

I. The Plain Language of Section 8.01 of the Westlake Architectural Covenants does not permit LNA to enforce the covenants against LTA.

The Westlake Architectural Covenants were created on June 27, 1984 and apply to all property described in Schedule A which includes LTA's 6.93-acre property. Under Article VIII Section 8.01 of the Westlake Village Architectural Covenants:

> The protective covenants, conditions and restrictions contained in this Declaration shall be construed as covenants running with the land and any and all covenants, conditions and restrictions herein contained shall inure to the benefit of and be *enforceable by* (i) the Board, *(ii) the Residential Associations (which will be agents for all of their respective members for such purpose)*, (iii) the Developer (so long as it continues to be an Owner or Tenant within the Property), and (iv) any Owner or Tenant of any portion of the Property, by actions at law or suits in equity.

(emphasis added).

LNA argues that a plain reading of the text, establishes its ability as a residential association to enforce the covenants. LTA argues otherwise.

The circuit court held:

> [s]ection 8.01 of the Covenants allows residential associations to enforce covenants, however, a reading of this section indicates that it does not extend to properties governed by other residential associations. It is clear from this section that LNA and LTA, as two separate and distinct entities, would not be allowed to enforce the covenants in each other's neighborhoods. There's nothing in the covenants that can be interpreted to allow a residential association to enforce covenants in other residential associations.

We agree with the circuit court. The language provides that a residential association acts as an agent for its members and is permitted to enforce the Westlake Architectural

Covenants against its members. The covenant contains no express language establishing enforcement rights against other communities. This interpretation is consistent with language found in other parts of the covenant, such as section 8.03 Suspension of Right to Use Recreational Facilities which states: ". . . [t]he Residential Associations affected by such Owner's or Tenant's violation, may, in addition to all other remedies, suspend such Owner's right . . . to use that particular Residential Associations' recreation facilities . . . ." In our view, it would be illogical to allow an Association to suspend an owner's rights to use of facilities outside of that owner's community and community's control when the covenants provide that owner has no rights to use another community's facilities.

We note also that an assignment was created afterwards, that specifically addresses enforcement issues and LNA's limited role in enforcement of covenant violations. We agree with the circuit court, that if, Section 8.01 provided for enforcement authority, there would clearly be no need for the assignment. Thus, LNA does not have enforcement authority under Section 8.01.

Considering our conclusion, we determine there is no need to address LNA's argument regarding subordination or LTA's failure to follow its own processes. However, we do so for completeness in responding to Appellant's arguments.

II. LTA's covenants are controlling.

LNA argues that the Westlake Village Architectural Covenants control LTA, based on a declaration within the covenants subordinating LTA's interests. The declaration states:

> As owner of the approximately 6.93 acres of real estate situated within the Property described in Schedule A hereof, which real estate is known as LTA . . . hereby consents to the Westlake Village Architectural Covenants—Declaration of Easements, Covenants, Conditions and Restrictions (the "Declaration") and further hereby subordinates its interest in the aforementioned real estate to such Declaration, and to any modification, extension, replacement or renewal thereof …."

LNA argues that LTA consented to and subordinated its interests to the Declaration of Westlake Village Architectural Covenants. LTA argues that its covenants were filed after the Westlake Village Architectural Covenants and "did not incorporate Westlake's Architectural Covenants, nor any reference to Westlake Village or LNA at all." The court found:

> that the subrogation clause for Interstate Condominiums, Inc. is insufficient to subrogate the interests of LTA, as assigned to it previously. . . . The Court is unmoved by LNA's argument that Westlake Village Declarations, . . . was to control, because a developer responsible for drafting all these documents [filed] the Westlake Declaration with the Clerk's Office prior to recording LTA's Declarations.
>
> * * *
>
> Clearly the developer intended LTA's Covenants to exist and appl[y] to LTA as written. LNA has failed to produce any evidence which would convince the Court otherwise. Therefore, LTA's Declaration of Covenants . . . control LTA.

We agree that LTA's covenants are controlling. LTA's Covenants were created in April of 1984 and recorded in October. Interstate Condominiums, Inc. did not include a subordination clause in LTA's Covenants, prior to recording them. Had the developer intended to subordinate LTA's interest to LNA, it could have included a subordination clause in LTA's Covenants, or it could have elected to not record the covenants and

delegate LNA enforcement authority. The developer did neither and as a result, LTA's covenants remained in full force and effect at the time of recordation.

III. A common area does not include a lot.

LNA argues alternatively that even if LTA's Covenants govern, LTA did not follow its own architectural approval process before constructing the fence. It contends that the fence was improperly constructed on a lot. In resolving the dispute between "lots" and "common areas," the court referenced § 1.20 of LTA's Covenants which defines "lot," and states it means any plot of land shown upon any recorded subdivision map of the property upon which a dwelling unit could be constructed. Explicitly it states, "[l]ot does not mean Community Facilities." Section 1.08 defines "Community Facilities" and states such property "may (but need not) include any common areas, public, neighborhood, or community buildings, and vehicle parking areas not otherwise a part of a [l]ot." The word "lot" does not include "common areas" in LTA's Declaration of Covenants. The intent to consider "common areas" and "lots" as distinct types of land holdings is clear and unequivocal because a "lot" is residential and "common areas" are not.

Section 8.04 titled "Screens and Fences" under Article VIII of LTA's Covenants further distinguishes lots from common areas and places restrictions on the use and improvement of lots. The provision states, in pertinent part:

> Fences, walls and screens shall be of material and height necessary to accomplish stated objectives of the Owner or Resident appropritae [sic] to the type of land use on a Lot . . . . Fence, wall and screen location, height, material, treatment and color shall be subject to written approval by the Covenants Committee which will consider, among other things, the uses intended and the impact on the neighborhood, particularly adjacent Lots.

As we see it, this section specifically provides general restrictions on the use and improvement to lots, not common areas. Thus, LTA was able to construct a fence on its common area and LNA has offered no evidence that any covenants prohibit residential associations from building on their own common areas. As such, there was no need for LTA to seek approval. Further, as previously stated, LNA had no authority to enforce another residential association's covenants. Accordingly, the court did not err.

IV. LNA did not satisfy the condition precedent to enforcement under the Assignment.

On August 31, 1995, an assignment was created between the Planning, Design and Review Board for Westlake Village ("Assignor") and Lancaster Neighborhood Association ("Assignee") that, in Section 1, states, in pertinent part:

> Assignor, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, does hereby transfer and assign unto Assignee, its successors and assigns, (a) the right to enforce the Architectural Covenants relating to maintenance of Permanent improvements within the Lancaster Neighborhood provided that *such enforcement shall take place only after the Assignor has recommended to the Assignee that such action be taken*

(emphasis added).

LNA argues this assignment gave it enforcement authority over LTA and that the PDRB delegated "ultimate approval authority to LNA by the Assignment." LNA argues the present action was commenced without receiving a specific recommendation from the PDRB because LTA disregarded the approval process and failed to apply to the PDRB for

consideration prior to constructing the fence[2]. LTA argues that the "provision clearly mandates, as a condition precedent, that Westlake Village first recommend 'such action'" and LNA never received such recommendation. LTA also argues "the Assignment pertains on its face to improvements in LNA's Neighborhood" and there "is no indication that this Assignment was broadened in any way to include LTA."

In ruling on the assignment, the trial court focused on the document's plain language, which provides enforcement authority, "only after the Assignor [Westlake Village PDRB] has recommended to the Assignee [LNA] that such action be taken." The court found:

> In order to demonstrate that LNA has the authority pursuant to [the Assignment], LNA must establish all conditions preceden[t] were met. The requirement that LNA must receive a recommendation that the present action be taken from the Westlake Village Planning, Design and Review Board is a condition precedent under the agreement. LNA has failed to provide evidence that it complied with the condition precedent at any time prior to trial in this case. There's no evidence in this case that LNA obtained a recommendation that any action be taken against LTA or that LNA obtained a recommendation from the Westlake village PDRB, to pursue the current court action. LNA has the burden of proof as the plaintiff. There's no evidence that LNA obtained the required recommendation to file this lawsuit. Without such recommendation the Court cannot determine that LNA has authority to act pursuant to the Assignment…."

[2] LNA argued that it could not comply with the condition precedent requiring enforcement action to be predicated on a recommendation from the PDRB because LTA did not submit an application for review. However, LNA was notified months in advance of LTA's intent to construct the fence. In February 2021, Keri Williams, LTA President, sent an email to Cindy Johnson, LNA's Manager, notifying LNA of LTA's desire to "erect[] fences at our property lines." The fence's construction began in June of 2019 and LNA had knowledge that the fence was being constructed during that two-month construction. In addition, Ms. Williams testified that she attended LNA's Board Meeting on March 14, 2019, to submit LTA's proposal and was told "LNA does not need to review any improvements that LTA might have on their common area."

LNA argues that because § 8.01 of the Westlake Architectural Covenants provided LNA with enforcement authority over LTA, it did not need to rely solely on a PDRB recommendation. For the reasons previously stated, we hold that LNA's authority did not derive from the covenant. We also hold that LNA did not satisfy the condition precedent to its enforcement authority because it did not obtain a recommendation from the Board.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.