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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3050-21**

**THOMAS F. MILLEA and
CECELIA M. MILLEA,**

Plaintiffs-Respondents,

v.

**VAMSEE DEVIREDDY and
THEJASWINI VEERAPALLI,**

Defendants-Appellants.

Argued May 3, 2023 – Decided June 6, 2023

Before Judges Currier, Mayer and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Burlington County, Docket
No. C-000028-21.

Carl D. Poplar argued the cause for appellants.

Douglass F. Sclar argued the cause for respondents
(Sclar & Sclar, LLC, attorneys; Douglass F. Sclar, on
the brief).

PER CURIAM

Defendants Vamsee Devireddy and Thejaswini Veerapalli appeal from a May 16, 2022 order granting a motion for summary judgment filed by plaintiffs Thomas F. Millea and Cecelia M. Millea and denying their summary judgment motion. In granting summary judgment to plaintiffs, the judge enforced a protective covenant and directed the removal of a fence on defendants' property.¹ We affirm.

Plaintiffs and defendants are next door neighbors and reside in a residential golf course community in Moorestown, New Jersey. The homes were constructed as part of a large single-family home subdivision. The subdivision includes a lake and an eighteen-hole golf course (Development). Many of the homes in the Development have views of the lake and golf course.

Defendants, who purchased their home on June 6, 2019, were not the original homeowners. Their deed stated defendants took title to the home "subject to all easements and restrictions of record." Defendants also received a title policy when they purchased the home. The title policy stated defendants' property was subject to a Protective Covenant (Covenant) and provided the book

¹ In a June 7, 2022 order, the judge stayed the portion of her order compelling the removal of defendants' fence pending appeal.

and page number in the Burlington County Clerk's Office where the Covenant was recorded.

The Covenant, recorded in February 1997, provided:

WHEREAS, Laurel Creek, L.P. (hereinafter called "Grantor" which term shall include any builder or developer succeeding to Grantor's interest in the Property) is the owner of a certain tract of ground in the Township of Moorestown, County of Burlington, State of New Jersey, and more particularly described in Exhibit "A" annexed hereof (the "Property").

NOW, THEREFORE, the Grantor does hereby declare, make known, covenant and subject the Property to the covenants and restrictions set forth below which shall run with the land and shall be binding on all grantees of each lot claiming by, through or under Grantor (each such grantee is hereinafter called a "lot owner").

The Covenant also contained a provision regarding fences. The provision stated:

No lot owner shall erect or permit to be erected on any lot any fence . . . for the period of this Declaration without the prior written consent and design approval of the Grantor. . . . The purpose of this restriction is to ensure that all structures and improvements within the Property shall be compatible and aesthetically appealing. Each lot owner shall act to insure that the Property and each lot remain open to light and air. As an example, no stockade fence or similar fence that blocks one's view or any other structure that will in any way prohibit free view of the Property will be permitted. . . . Under no circumstances may any fences

. . . be erected . . . in front of the front wall line of the main house structure.

The Covenant further included a provision addressing its duration, modification, and termination, stating:

This Declaration and the covenants, restrictions and agreements set forth herein shall run with the land and shall be binding upon each lot owner and such lot owner's successors and assigns, subject to the right of said lot owners to modify or terminate this Declaration in whole or in part by agreement in writing of at least sixty (60%) percent of the then current lot owners; provided, however, this Declaration may not be terminated or modified by said lot owners in any manner whatsoever until the last home to be built on the Property by Grantor has been settled

Additionally, the Covenant contained a waiver clause, providing "[n]o waiver by Grantor of any violation hereof by any lot owner shall be deemed a waiver of any subsequent violation by such lot owner or any other lot owner."

On March 12, 2021, defendants applied to the local zoning department for a permit to install a fence in their rear yard. Defendants texted plaintiffs about their intent to construct a fence. Plaintiffs objected to defendants' installation of a fence, explaining it violated the Covenant.

A few days later, plaintiffs and defendants had a discussion regarding the fence. Plaintiffs again told defendants the Covenant prohibited construction of a fence.

Plaintiffs retained an attorney who sent a letter to defendants confirming plaintiffs' objection to the fence. Counsel's letter included a copy of the Covenant and advised that if defendants proceeded with the fence, plaintiffs would likely file a lawsuit. On March 30, 2021, defendants received a permit from the municipality to install a fence. Thereafter, defendants proceeded with the fence construction.

On May 3, 2021, plaintiffs filed a complaint and order to show cause, alleging defendants' fence violated the Covenant. In the complaint, plaintiffs demanded removal of the fence. Defendants filed an answer and the parties proceeded with discovery.

In December 2021, both parties moved for summary judgment. Two months later, the judge heard argument on the motions.

In a May 16, 2022 order, the judge granted plaintiffs' motion for summary judgment, ordering defendants to remove the fence within forty-five days. In her written decision, the judge made the following findings: the Covenant was valid and enforceable; the Covenant did not terminate in 2003 upon the sale of the final lot in the Development; the Covenant continued to run with the land; defendants had notice of the Covenant; and the Covenant had not been abandoned or waived.

On appeal, defendants argue the Covenant permitted installation of the fence. In addition, they assert lack of notice of the Covenant when they purchased their home. Defendants also contend that the terms of the Covenant were abandoned or waived because other homeowners in the Development installed fences. We reject these arguments.

We review a trial court's grant of summary judgment de novo, applying the same standard as the trial court. Woytas v. Greenwood Tree Experts, Inc., 237 N.J. 501, 511 (2019). "Summary judgment is appropriate '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 challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Friedman v. Martinez, 242 N.J. 449, 471-72 (2020) (quoting R. 4:46-2(c)). In reviewing a summary judgment order, we consider the evidence in the light most favorable to the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

We first address the validity and enforceability of the Covenant. "A restrictive covenant, in equity, is enforceable as an equitable servitude against a subsequent grantee who takes with notice of the restriction." Homann v. Torchinsky, 296 N.J. Super. 326, 333 (App. Div. 1997). The right to enforce a

covenant depends on "'the covenant[] having been made for the benefit' of other encumbered land, either retained by the grantor or part of a perceptible neighborhood scheme." Ibid. (quoting Petersen v. Beekmere, Inc., 117 N.J. Super. 155, 167-68 (Ch. Div. 1971)). To establish a neighborhood scheme, the covenant must be:

(a) universal, the restriction applying to all lots of like character brought within the scheme; (b) reciprocal, the restrictions constituting a benefit to all lots involved which are subject to the burden imposed, [and] (c) reasonably uniform as to the restrictions imposed; they need not be identical but any variations must be such as not to create an inequitable burden or benefit.

[Id. at 334 (quoting Olson v. Jantausch, 44 N.J. Super 380, 386 (App. Div. 1957)).]

A restrictive covenant is a contract and subject to general rules of contract construction. Ibid. A court looks to the intent of the parties as evidenced by the contract language. Id. at 335. Additionally, "absent 'explicit indication of a special meaning' words must be given their ordinary meaning." Shadow Lake Vill. Condo. Ass'n, Inc. v. Zampella, 238 N.J. Super. 132, 139 (App. Div. 1990) (quoting In re Barnert Memorial Hosp. Rates, 92 N.J. 31, 40 (1983)). While restrictive covenants should be strictly construed, a technical construction should not defeat a covenant's purpose when that purpose is clear. Homann, 297 N.J. Super. at 335.

Here, defendants' property is governed by a valid and enforceable restrictive covenant. The Covenant created a broad prohibition against structures impacting the Development's aesthetic features, including fences, absent written approval. The Covenant also established a neighborhood scheme to preserve the natural beauty of the Development's lake and golf course for the benefit of all homeowners.

Further, the Covenant was reasonable because it allowed for the termination and modification of its terms. The Covenant could be modified or terminated with the express written approval of the Grantor prior to the sale of the last home in the Development. After the Grantor conveyed title to the last home in the Development, the Covenant could be altered by written approval of at least sixty percent of the current lot owners. Because the Covenant is for the benefit of all homeowners equally, it is valid and enforceable.

We next consider defendants' claim they lacked notice of the Covenant and, as a result, are not bound by its terms. We reject this argument.

"[A covenant's] presence in the chain of title—not to mention the title search and title policy—charge[s] [a defendant] with notice." Olson, 44 N.J. Super. at 388. A purchaser has notice "when the purchaser has actual knowledge or information that a claim is outstanding against the property he or she proposes

to acquire. . . . [and] exists even though the purchaser may have to make an inquiry to ascertain the validity of the claim." 14 Powell on Real Property, § 82.02(1)(d)(iv) (Michael Allan Wolf ed. 2018).

Here, defendants had notice of the Covenant. There is no dispute that the Covenant was recorded in February 1997. Additionally, defendants' title insurance policy, which defendants received prior to buying their home, clearly stated the Covenant was recorded in the Burlington County Clerk's Office in Deed Book 5296, Page 238. Plaintiffs also notified defendants about the restriction in the Covenant governing fences. Plaintiffs' attorney even sent a copy of the Covenant to defendants and advised plaintiffs would likely file a lawsuit if defendants proceeded with the fence. On this record, we are satisfied defendants had notice of the Covenant and were required to obtain the approval of sixty percent of the Development's current lot owners prior to installing the fence.

We also reject defendants' claim that the terms of the Covenant lapsed in 2003 upon the sale of the final lot in the Development. Nothing in the Covenant suggests it expired automatically upon the construction and sale of the last home in the Development. To the contrary, the Covenant stated it "shall run with the land and shall be binding on all grantees of each lot claiming by, through or

under Grantor." Absent modification or termination of the Covenant by written agreement of sixty percent of the current lot owners, defendants remained bound by the Covenant.

We also reject defendants' argument that the Covenant's fence provision was abandoned or waived because there are other fences in the Development. In support of their argument, defendants claim there are at least 104 homes with fences.

Continual violations of the terms of a restrictive covenant may support abandonment of the covenant in whole or in part. Murphy v. Trapani, 255 N.J. Super. 65, 73 (App. Div. 1992). The abandonment analysis depends on whether the violations are "so pervasive as to indicate either a change in the neighborhood or a clear intent on the part of the property owners generally to abandon or modify the original plan." Id. at 74. The concept of abandonment in the context of a restrictive covenant is premised on notions of equity; unequal enforcement of a mutually restrictive covenant is inequitable and contrary to the covenant's purpose. Ibid. (citing Blaine v. Ritger, 211 N.J. Super. 644, 654 (App. Div. 1986)).

Here, without evidentiary support, defendants assert there are 104 homes in the Development with fences and the municipality issued permits for the

installation of those fences. However, defendants failed to provide any evidence that the Grantor gave written approval for those fences as required under the Covenant. Nor did defendants indicate how many of the 104 fences abutted the Development's lake and golf course. Similarly, defendants failed to provide information regarding objections, if any, lodged by neighboring property owners related to the installation of other fences. Defendants simply speculate that it is "possible, if not probable that the owners simply installed their permitted non-obstructive and attractive fences." In the absence of evidentiary support for their contentions, defendants failed to demonstrate a clear intent to abandon the Covenant.

Regarding defendants' waiver argument, the Covenant explicitly states the waiver of a single violation of the terms of the document does not constitute a waiver of all violations. Here, defendants failed to demonstrate any waiver of the provisions in the Covenant. Defendants merely note the existence of fences in the Development.

We also reject defendants' claim that plaintiffs were estopped from enforcing the Covenant because the municipality issued defendants a permit to install the fence. The doctrine of estoppel requires that one party "engage[] in conduct, either intentionally or under circumstances that induced reliance, and

that plaintiffs acted or changed their position to their detriment." Knorr v. Smeal, 178 N.J. 169, 178 (2003). The party against whom estoppel is asserted must have induced the actions of the other party.

The doctrine of estoppel is inapplicable in this case. While defendants may have held an honest belief that they were permitted to install a fence based on the issuance of a municipal permit, they remained obligated to abide by the terms of the Covenant. Neither plaintiffs nor the municipality induced defendants into believing that the Covenant did not apply to their property. To the contrary, plaintiffs told defendants the Covenant prohibited fences. Moreover, the issuance of a zoning permit is premised on an applicant's satisfaction of the requirements for issuance of a permit, such as payment of the required fees, submission of necessary plans or drawings, and compliance with the municipality's zoning ordinances. The municipality has no legal obligation to investigate deed restrictions prior to issuing a permit.

To the extent we have not addressed defendants' remaining arguments, those arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed. We remand the matter to the trial court to vacate the June 7, 2022 consent order staying removal of defendants' fence. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION