

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LAWRENCE J. STOPPER and	: No. 00-00050
KAREN A. STOPPER, his wife,	:
Plaintiffs	:
	:
vs.	: CIVIL ACTION - LAW
	:
KEITH S. ARMSON and	:
KAREN ARMSON, his wife,	:
Defendants	: Summary Judgment

ORDER

AND NOW, this 7th day of December 2001, the Court GRANTS the Motion for Summary Judgment filed by defendants, Keith S. Armson and Karen Armson and enters judgment in favor of the defendants.

Plaintiffs' amended Complaint requests the Court to issue a permanent injunction and find that the defendants have violated paragraphs 5 and 13 of the Hickory Hill Estate, Phase II Declaration of Covenants and Restrictions. The Court finds as a matter of law, that the defendants have not violated the aforementioned restrictions. The Court has reviewed the pleadings, affidavits and attached exhibits (including photographs) and the briefs submitted by the parties. Based on the Court's review of this information, it is satisfied that the defendants are not in violation of the Covenants and Restrictions. The key restriction involved in this case is paragraph 13 of the Declaration of Covenants and Restrictions. This paragraph provides that all residence in Hickory Hill Estates, Phase II, "shall be designed with a maximum of three - car garages". Since the defendants own a home in Hickory Hill Estates and provision 13, which was written by the plaintiffs, serves as

a restriction on the use of their land, provision 13 must be construed strictly against the grantor with every doubt and ambiguity in its language resolved in favor of the land owner.

See Jones v. Park Lane for Convalescents, Inc., 384 Pa. 268 (1956).

In the instant case, the unrefuted evidence shows that the defendants have built a garage with 3 bays which would shelter a maximum of three cars. The garage also includes a smaller storage area which the defendants use to store their lawn tractor, yard and garden implements. This storage area is smaller than the area for the car bays and is accessed by means of an overhead door. This overhead door does not open into the driveway, but instead, opens into the defendants' lawn area. The topography of the area is such that it would be difficult to use the storage area for a storage of a motor vehicle.

Loyalsock Township, where the property involved is located, issued a permit for the construction of the structure in question. Loyalsock Township determined the addition subject to this dispute to be a storage area and not a garage for the storage of a motor vehicle. See Exhibit G attached to the defendants' Motion for Summary Judgment.

The Court cannot find that paragraph 13, would clearly preclude the construction of a storage addition. If the concern in this matter is that the storage area has an overhead type door, this could have been addressed in a provision which states a garage shall have no more than three overhead doors. Further, the restriction could have precluded use of overhead doors for storage areas. As written, however, paragraph 13 simply does not address this, Therefore, it cannot be said that provision 13 clearly and unambiguously precludes the construction of a storage area in this case.

Accordingly, there is no basis to grant the plaintiffs' requested Injunctive

Relief to preclude the storage area.

While there are also significant issues of waiver and equitable estoppel which may also favor the defendants' position, the Court feels the provision in this case does not preclude the building of a storage area.

Consistent with this decision, the Court DENIES the plaintiffs' Motion for Summary Judgment.

By The Court,

Kenneth D. Brown, J.

cc: David Chuprinski, Esquire
Joseph Musto, Esquire
Work File
Gary Weber, Esquire (Lycoming Reporter)