IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOEL K. HART,	:	NO. 08 – 02,766
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DONALD F. and GWENDOLYN WILTON, et al.,	:	
Defendants	:	

OPINION AND VERDICT

Before the Court is Plaintiff's Complaint for Specific Performance, in which Plaintiff, the developer of a subdivision known as Mifflin Manor, asks the Court to order Defendants, homeowners in the development, to assume operational control of the Mifflin Manor Homeowner's Association, Inc., and accept the deed to the sewage treatment system which services their homes.[1] At the time of trial, on June 17, 2010, counsel presented a stipulation of facts and trial briefs.[2] The Court accepts the stipulation of facts[3] and therefore will not make separate findings of fact.[4]

The arguments of counsel center on the Court's decision, in addressing preliminary objections,[5] to find in the defendants' deeds by implication a requirement that all homeowners in the subdivision join the Homeowners' Association. Plaintiff's counsel agrees, of course, with the Court's decision and bases his request for relief thereon. Defense counsel argues, however, that the

---

[1] A further request for fees and costs was dismissed by Order entered in response to preliminary objections on June 29, 2009.

[2] Although counsel for Defendant Susquehanna Trust & Investment did not file a trial brief, he did join in the brief filed by counsel for the homeowner defendants.

[3] The stipulation will be annexed hereto as Exhibit "A".

[4] Although inconsequential to the instant decision, it should be noted that finding of fact number 3, that all defendants are owners of lots within the subdivision, is slightly incorrect; Defendants Dale and Beverly Cupp are not owners of a lot within the subdivision, they have simply connected to the sewage treatment system by agreement of the developer. By Order dated June 17, 2010, they were dismissed from this action.

[5] See this Court's Opinion and Order dated June 29, 2009.

covenant in question is a restrictive covenant and therefore cannot be read into the deed by implication. While the Court believes a restrictive covenant can be implied, *See* Birchwood Lakes Community Association v. Comis, 442 A.2d 304 (Pa. Super. 1982)(a restrictive covenant may be defined as a covenant restricting or regulating the use of real property …, usually created by a condition, covenant, reservation, or exception in a deed, but susceptible of creation by … implication), it also does not believe the instant covenant to be a restrictive covenant, as such does not restrict or regulate the use of real property or the kind, character, and location of buildings or other structures that may be erected thereon. Instead, this case is similar to Birchwood Lakes Community Association, *supra*, wherein the homeowners were required to pay annual dues by a covenant in their deeds. There, the Court found such requirement did not restrict or regulate the use of their land and thus was not a restrictive covenant. Here, the homeowners are required to join a homeowners' association in order to maintain and operate their sewage treatment facilities.[6]

Therefore, the Court is to apply the rule for non-restrictive covenants: if an agreement is not clearly expressed, the court should interpret the language to give effect to the intention of the parties as expressed at the time, and in order to ascertain the intention of the parties its language should be interpreted in the light of the subject matter, the apparent object or purpose of the parties, and the conditions existing when it was made. Birchwood Lakes Community Association, *supra*. As was stated in ruling on the preliminary objections, it is clear to the Court that the parties intended that the sewage system would be established by the developer, that all homes would be served by that system, and

[6] Even without joining the association, by express language in their deeds the homeowners are required to pay an

that the homeowners would bear the cost of such. It is also clear that the parties anticipated the formation of a homeowner's association which would enable the homeowners, as a group, to operate and maintain the sewage system. Without such, when Plaintiff dies, the system will no longer operate and defendants will not have sewage treatment available, thus rendering their homes practically useless. Surely such was not intended and the Court will not adopt such a short-sighted interpretation.

VERDICT

AND NOW, this 30th day of June 2010, for the foregoing reasons, Plaintiff's request for specific performance is GRANTED. All of the named defendants except Dale and Beverly Cupp, and all their successors in title, shall be deemed members of the Mifflin Manor Homeowner's Association, Inc. and, as such, shall immediately take whatever steps are necessary to accept the deed to the sewage treatment system and assume responsibility for the maintenance and operation of such.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph Orso, III, Esq.
Paul Ryan, Esq., 136 E. Water St., Lock Haven, PA 17745
Paul Welch, Jr., Esq., 136 E. Water St., Lock Haven, PA 17745
Betty Steinbacher, 1008 Washington Blvd., Williamsport, PA 17701
Curt and Karen Thompson, 132 Walnut Lane, Jersey Shore, PA 17740
Gary Weber, Esq.
Hon. Dudley Anderson

---

annual assessment (determined by the PUC) to cover the cost to maintain and operate the system.