WYKEHAM RISE, LLC *v.* ERIC A. FEDERER ET AL.
(SC 18653)

Norcott, Palmer, Zarella, McLachlan, Eveleigh, Harper and Vertefeuille, Js.

Argued February 2—officially released June 19, 2012

Linda L. Morkan, with whom were *Brian R. Smith* and, on the brief, *Joel C. Norwood*, for the appellants (defendants).

William C. Franklin, for the appellee (plaintiff).

Opinion

HARPER, J. The principal issue in this appeal concerns the circumstances in which, as a matter of law, a covenant restricting the use of land may be deemed unenforceable between nonparties to the initial covenant agreement. The defendants, Eric A. Federer and Wendy R. Federer, appeal[1] from the judgment of the trial court granting summary judgment in favor of the plaintiff, Wykeham Rise, LLC, with respect to the plaintiff's declaratory judgment action seeking to establish the unenforceability of certain restrictive covenants contained in a deed to its property, and with respect to the defendants' counterclaims seeking to quiet title to the plaintiff's property and to enforce the restrictive covenants. We conclude that summary judgment was inappropriate because, contrary to the trial court's conclusions, the covenants at issue in this case are not void as a matter of law and questions of material fact exist as to whether the defendants are entitled to enforce them.

The following undisputed facts are relevant to this appeal. Prior to 1990, the parcel of land now owned by the plaintiff that is the subject of this appeal was owned by the Wykeham Rise School (school). An adjacent property, now owned by the defendants, was then owned by Wendy Federer's father, Bertram Read, a member of the school's board of trustees and past chairman of that board. In 1990, the school sold its property (school property) to a limited liability corporation subject to a set of restrictive covenants, one of which provides that the grantee "will not construct any buildings or other structures or any parking lots on that area of the above described premises lying within 300 feet, more or less, at all points, northerly from the most southerly boundary of said premises, which area is now commonly known as the 'Playing Field.' " The deed further provides that "[t]he foregoing covenants and agreements shall be binding upon the [g]rantee, its successors and assigns, shall inure to the benefit of the [g]rantor, its successors and assigns, and shall run with the land." The covenants do not expressly reference any third parties, and the school did not own any property other than the parcel being sold. The year after the conveyance, the school was administratively dissolved by the secretary of the state. Over the following seventeen years, the school property was sold twice, first to another limited liability corporation and ultimately to the plaintiff in 2008, pursuant to a deed that expressly referenced the covenants.[2]

During the period in which the school property was owned by the plaintiff's predecessor in interest, Read sold the adjacent property to the defendants. Ten years after that sale, and three years before the plaintiff purchased the school property, Wendy Federer and the chairman of the now defunct school's board of trustees

executed a document purporting to assign the school's rights under the restrictive covenants to Wendy Federer in exchange for consideration of $500. Several years later, Wendy Federer also executed and recorded a "Declaration of Beneficial Ownership" claiming the right, along with Eric Federer and their heirs and assigns, to the benefit of the covenants as owners of the adjacent property.

The present action arose after the plaintiff sought permits to develop the school property in a manner inconsistent with the terms of the restrictive covenants. The defendants objected to the issuance of the permits and brought an administrative appeal after one such permit was issued, citing the restrictive covenants.[3] The plaintiff then sought a judgment declaring that the covenants at issue "are null and void, are of no legal effect, and are accordingly unenforceable as to the plaintiff, its successors, and assigns . . . ." The defendants brought counterclaims seeking, inter alia, to have the covenants declared enforceable, to enjoin the plaintiff from violating the covenants, and to receive monetary damages. The defendants also asserted special defenses of waiver and unclean hands to the plaintiff's declaratory judgment action.

The plaintiff then moved for summary judgment with respect to both its declaratory judgment action and the defendants' counterclaims, claiming that the covenants are void and that the school's transfer of its rights under the covenants similarly is void. With respect to the covenants, the plaintiff contended principally that they neither fell within the three categories of restrictive covenants permitted by law nor satisfied the requirement that there be "unity of title" between the burdened and the benefited parcels of land at the time of covenant formation. The plaintiff further asserted that any covenant benefits that did exist did not pass to the defendants, both because the covenants do not run with the land and because the school did not validly assign the benefits to the defendants. The defendants objected to the plaintiff's motion, claiming that, as a matter of law, the covenants are not invalid because the abolition of the unity of title doctrine expands the types of covenants recognized by law and that, consequently, they are entitled to enforce the covenants as third party beneficiaries. They further claimed that there are material issues of fact as to, inter alia: whether the school conveyed its right to enforce the restrictive covenants, whether the covenants benefit the defendants' property and whether the school intended to confer such a benefit. In support of their claimed third party beneficiary status, the defendants submitted several affidavits, including one from the chairman of the school's board of trustees at the time the covenants were created attesting that "[Read] . . . asked me if the [r]estrictive [c]ovenants could be imposed, in part, to benefit his property. I asked the other members of the [board of

trustees] if this was acceptable and we, on behalf of the [s]chool, agreed to propose them in negotiations, as long as the imposition of the [r]estrictive [c]ovenants would not adversely affect the sale to [the buyer]. [The buyer] did not object, so the [r]estrictive [c]ovenants were included in the final deed." On the basis of the pleadings and affidavits submitted by both parties, the trial court rendered judgment in favor of the plaintiff. The court concluded that the "the restrictive covenants are null, void and of no legal effect because they were void at the time they were first conveyed in 1990," relying in significant part on the fact that "the covenants do not fall within any of the three classes [of restrictive covenants] recognized by the appellate authority of this state." The court further concluded that the facts did not establish that the covenants were intended to benefit the defendants' property and that the covenants were of a personal nature that did not run with the land. In light of these conclusions, the court did not reach the issue of whether the school could assign its rights under the covenants after its administrative dissolution. The trial court also rejected the defendants' equitable special defenses. The defendants' appeal followed.

On appeal, the defendants contend, inter alia, that questions of material fact bear on the proper interpretation of the restrictive covenants, that this court's decision in *Bolan* v. *Avalon Farms Property Owners Assn., Inc.*, 250 Conn. 135, 735 A.2d 798 (1999), abolished the unity of title doctrine so that a covenant may exclusively benefit a third party, and that the covenants run with the land. The defendants also claim that the trial court improperly rejected their equitable special defenses of waiver and unclean hands. The plaintiff, in response, asserts that no material facts bear on the interpretation of the covenants, that the covenants do not fall into any of the three categories of restrictive covenants recognized by Connecticut law, and that unity of title remains a prerequisite for the creation of covenants. We conclude that summary judgment was improper because the covenants were not void upon creation as a matter of law and questions of material fact must be resolved to determine whether the covenants can be enforced by the defendants against the plaintiff. Additional facts will be set forth as necessary.

The standard governing our review of a decision to render summary judgment is well established. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party

is, therefore, entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant [the plaintiff's] motion for summary judgment is plenary." (Citation omitted; internal quotation marks omitted.) *Plato Associates, LLC* v. *Environmental Compliance Services, Inc.*, 298 Conn. 852, 862, 9 A.3d 698 (2010).

To determine whether summary judgment was proper in this case, we proceed by outlining the present state of the law as it pertains to the creation and enforcement of restrictive covenants, with the intent of both clarifying the issue before us and resolving some apparent confusion that has recently arisen in the lower courts. Specifically, we address the considerations that bear on three essential questions: were the covenants properly created; if properly created, can they be enforced against the plaintiff (the allegedly burdened party); and can they be enforced by the defendants (the allegedly benefited parties)?

In considering these questions, we bear in mind that, "[i]n construing a deed, a court must consider the language and terms of the instrument as a whole. . . . Our basic rule of construction is that recognition will be given to the expressed intention of the parties to a deed or other conveyance, and that it shall, if possible, be so construed as to effectuate the intent of the parties. . . . In arriving at the intent expressed . . . in the language used, however, it is always admissible to consider the situation of the parties and the circumstances connected with the transaction, and every part of the writing should be considered with the help of that evidence. . . . The construction of a deed in order to ascertain the intent expressed in the deed presents a question of law and requires consideration of all its relevant provisions in light of the surrounding circumstances." (Internal quotation marks omitted.) *Bolan* v. *Avalon Farms Property Owners Assn., Inc.*, supra, 250 Conn. 140–41.

I

The threshold question presented by this case—whether the trial court properly concluded, as a matter of law, that the covenants were not properly created—can be answered in relatively straightforward fashion. First, because the covenants were created as part of a conveyance of land, they are subject to the formal writing and recording requirements set forth in General Statutes §§ 47-5[4] and 47-10,[5] respectively. See 1 Restatement (Third), Property, Servitudes § 2.7 (2000) ("[t]he formal requirements for creation of a servitude are the same as those required for creation of an estate in land of like duration").[6] To be valid, covenants also must not violate the public interest. See, e.g., *Shelley* v. *Kraemer*, 334 U.S. 1, 19, 68 S. Ct. 836, 92 L. Ed. 1161 (1948) (racially restrictive covenants judicially unenforceable); *Lampson Lumber Co.* v. *Caporale*, 140 Conn. 679, 683, 102 A.2d 875 (1954) ("The test of the

validity of [a covenant in restraint of trade] is the reasonableness of the restraint imposed. . . . To meet this test successfully, the restraint must be limited in its operation with respect to time and place and afford no more than a fair and just protection to the interests of the party in whose favor it is to operate, without unduly interfering with the public interest." [Citation omitted; internal quotation marks omitted.]); 1 Restatement (Third), supra, § 3.1 (2), (3), (4) and (5) (covenant or other servitude invalid if it unreasonably burdens fundamental constitutional right, imposes unreasonable restraint on alienation or trade or is unconscionable).

In the present case, no formal or public policy defects in the formation of the covenants at issue have been alleged, nor are any such invalidating features apparent on the face of the covenants. It is therefore clear that summary judgment could not properly have been rendered on the ground that the covenants are inherently invalid.

The trial court, in reaching the opposite conclusion, relied in significant part on its determination that "the covenants do not fall within any of the three classes [of restrictive covenants] recognized by the appellate authority of this state." Although the notion that Connecticut courts ordinarily recognize only three "classes" of restrictive covenants has some support in recent appellate case law; *Max's Place, LLC* v. *DJS Realty, LLC*, 123 Conn. App. 408, 414, 1 A.3d 1199 (2010); this idea misconstrues our case law and muddies the already murky law of servitudes. The first articulation of a three category taxonomy of covenants in this state occurred in 1928, when this court was asked to determine whether one property owner could enforce a covenant appearing in another property owner's deed,[7] when both properties had been conveyed by a common grantor. See *Stamford* v. *Vuono*, 108 Conn. 359, 143 A. 245 (1928). Relying on New York case law, this court observed: "For our present purposes restrictive covenants of this character may be divided into three general classes: First, when there are mutual covenants in deeds exchanged between owners of adjoining lands; second, when under a general development scheme the owner of property divides it up into building lots to be sold under deeds containing uniform restrictions, and third, where a grantor exacts covenants from his grantee presumptively or actually for the benefit and protection of his adjoining land which he retains. *Korn* v. *Campbell*, 192 N.Y. 490, 495, 85 N.E. 687 [1908]." *Stamford* v. *Vuono*, supra, 364. Contrary to the trial court's interpretation in the present case, this classification was not intended to limit the varieties of covenants that lawfully could be created, but was rather a shorthand device for determining whether a lawfully created covenant subsequently could be legally enforced between parties other than the covenant's original signatories. That the categories articulated in *Stamford* relate to the enforce-

ability by and against strangers to the original deed rather than the initial validity of covenants is confirmed by reference to *Korn*, the New York case upon which *Stamford* relies. In that case, the Court of Appeals of New York concluded that, where a covenant did not fall into these three categories, "[t]he original covenant, *which may be good in favor of* [*the initial grantor/beneficiary*] *or his assigns as against any grantee* of [the original grantee] in this tract, is not enforceable as between such grantees." (Emphasis added.) *Korn* v. *Campbell*, supra, 497.

The validity of covenants that do not fall within the categories contemplated by *Stamford* is well illustrated by this court's decision in *Hartford National Bank & Trust Co.* v. *Redevelopment Agency*, 164 Conn. 337, 321 A.2d 469 (1973). In that case, a trust provided money for the purchase of land, contingent on the purchaser covenanting not to develop the land in a manner prohibited by the terms of the trust. Id., 338–39. Although the covenant did not fall within the categories identified in *Stamford* because it did not create a benefit in an identifiable parcel of land, the court did not reject the covenant as invalid. Instead, the court recognized it to be a valid restrictive covenant creating a benefit not tied to ownership of land: "[I]t seems clear that what the restrictive covenants did create for the benefit of the plaintiff trustee is an easement in gross . . . ."[8] Id., 341.

We also take this opportunity to clarify, contrary to the plaintiff's assertion, that a person need not simultaneously own both the benefited and the burdened parcels of land in order to create a valid covenant—that is, "unity of title" is not a prerequisite for covenant creation.[9] Although we recognize that the Appellate Court has recently indicated that such a requirement does exist; *Max's Place, LLC* v. *DJS Realty, LLC*, supra, 123 Conn. App. 414–15; the analysis underlying this authority is misguided, in that it improperly conflates the rules governing easements and covenants and fails to properly apply this court's abolition of the unity of title doctrine even in the context of easements. This court's limited embrace of the unity of title requirement can be traced to *Curtin* v. *Franchetti*, 156 Conn. 387, 389, 242 A.2d 725 (1968), wherein the court held that an easement could be created only if one person simultaneously owned both the right-of-way on the servient estate and the dominant estate benefited by the way. In *Bolan* v. *Avalon Farms Property Owners Assn., Inc.*, supra, 250 Conn. 144–45, the court expressly overruled *Curtin*, holding that "the unity of title doctrine should be abandoned and that the intent of the deed creating an easement should be effectuated even if no unity of title exists between the servient estate and the dominant estate the easement is intended to serve." Contrary to the assumption of the Appellate Court in *Max's Place, LLC*, and the parties in the present case, *Curtin* did

not apply the unity of title doctrine to covenants or indicate that the doctrine would apply in such circumstances, and we are aware of no other authority for the proposition that such a requirement governs the creation of covenants in Connecticut.[10] Indeed, every other appellate case that had applied the doctrine before its abolition in *Bolan* had done so in the contexts of easements or similar rights-of-way. See, e.g., *Branch* v. *Occhionero*, 239 Conn. 199, 202, 681 A.2d 306 (1996); *Carbone* v. *Vigliotti*, 222 Conn. 216, 217, 610 A.2d 565 (1992); *Stankiewicz* v. *Miami Beach Assn.*, 191 Conn. 165, 170, 464 A.2d 26 (1983). Moreover, even if the rule in *Curtin* did extend to covenants, this court's abandonment of that rule in *Bolan* would by the same logic necessarily apply to covenants as well.[11]

II

Having determined that summary judgment could not properly have been granted on the ground that the covenants are inherently invalid, we address the possibility that summary judgment was nonetheless appropriate on the ground that the covenants are unenforceable. More precisely, we consider whether the covenants, presumably enforceable as between the original covenanting parties, remain effective as between the parties in the present case, who are both strangers to that initial agreement. For purposes of clarity, we divide our analysis of enforceability into two parallel inquiries, outlining on the one hand the considerations governing whether the *burdens* of the covenants pass to the plaintiff in this case, and on the other hand whether the covenants' *benefits* pass to the defendants.

A

The first question, whether the plaintiff can properly be burdened by the covenants at issue, implicates both principles of law and considerations of equity.[12] Our inquiry begins with consideration of whether the burdens are to be characterized as "running with the land" (appurtenant) or as personal (in gross)—that is, whether they apply to the burdened property itself or rather to the person of the initial grantee. As we later explain, in the present case the covenants may be enforced at law only if they run with the land such that the plaintiff acquired the school property subject to the covenants. Even if the covenants do not run with the land, however, we also must consider whether the plaintiff may nonetheless be subject to them as a matter of equity. We conclude that the covenant burdens in the present case are likely enforceable against the plaintiff both at law and in equity.

1

Whether the covenants' burdens run with the land is, primarily, a question of the parties' intent. *Carlson* v. *Libby*, 137 Conn. 362, 367, 77 A.2d 332 (1950) ("[w]hether a promise with respect to the use of land

is a covenant real as distinguished from a personal covenant depends upon the intent of the parties to the promise, to be determined in the light of the attendant circumstances");[13] see *Pulver* v. *Mascolo*, 155 Conn. 644, 649, 237 A.2d 97 (1967) ("[i]n the determination of the meaning in which words in a restrictive covenant are used, the controlling factor, when discovered, is the expressed intent"). The presence or absence of express words of succession—such as "heirs" or "assigns"—offers strong, though not conclusive, evidence of whether the parties intended to bind future owners of the land. *Kelly* v. *Ivler*, 187 Conn. 31, 40, 42, 450 A.2d 817 (1982) (where servitude "does not contain words of limitation, i.e., heirs and assigns, we would ordinarily presume that a mere easement in gross was reserved," but this presumption may be rebutted by circumstantial evidence).[14]

The intent of the parties, however, is not dispositive, insofar as obligations that are inherently personal cannot be made appurtenant to the land. Thus, "[t]he use of words of succession binding the 'heirs and assigns' of the grantee of restricted land does not in itself cause the burden to run if the nature of the restriction is not one which could run with the land. . . . It is well settled that a covenant personal in its nature and relating to something collateral to the land cannot be made to run with the land so as to charge the assignee by the fact that the covenantor covenanted on behalf of himself and his assigns."[15] (Citation omitted.) *Pulver* v. *Mascolo*, supra, 155 Conn. 650–51. On the other hand, "[i]f [a promise] touches the land involved to the extent that it materially affects the value of that land, it is generally to be interpreted as a covenant which runs with the land."[16] *Carlson* v. *Libby*, supra, 137 Conn. 367. With respect to the relative strength of these competing considerations, moreover, this court has long held that a restrictive covenant "will not be inferred to be personal when it can fairly be construed to be appurtenant to the land . . . ."[17] *Bauby* v. *Krasow*, 107 Conn. 109, 114, 139 A. 508 (1927).

In addition to these considerations, one final formal requirement also potentially bears on the question of whether a covenant's burdens may be said to run with the land so as to bind a stranger to the covenant. Common-law doctrine dictates that covenants may run with the land only if they are conveyed along with some other interest in land. As this court previously has held, relying on an earlier Restatement of Property, "[t]he burden of a covenant will run with land only when the transaction of which the covenant is a part includes a transfer of an interest in land which is either benefited or burdened thereby, or the covenant is made in the adjustment of the mutual relationships arising out of the existence of an easement held by one of the parties in the land of the other. [5 Restatement, Property § 534 (1944)]."[18] *Carlson* v. *Libby*, supra, 137 Conn. 368.

Alongside the legal rules governing whether the restrictive covenants in the present case run with the land, long-standing equitable principles applicable to restrictive covenants provide an important, and independent, framework for determining whether the covenants' burdens may be enforced as a matter of equity. This court has long recognized that "[t]he question whether [a restrictive] covenant runs with the land is material in equity only on the question of notice. If it runs with the land, it binds the owner whether he had knowledge of it or not. If it does not run with the land, the owner is bound only if he has taken the land with notice of it. In *Tulk* v. *Moxhay* [2 Phil. Ch. 774, 777, 41 Eng. Rep. 1143 (1848)] the leading case upon this question, the court said . . . 'The question is, not whether the covenant runs with the land, but whether a party shall be permitted to use the land in a manner inconsistent with the contract entered into by his vendor, and with notice of which he purchased.' The decisions proceed upon the principle of preventing one having knowledge of the just rights of another from defeating such rights, and not upon the theory that the covenants enforced create easements or are of a nature to run with the land." *Bauby* v. *Krasow*, supra, 107 Conn. 112. Therefore, under the rules of equity, if the plaintiff took the property in question with notice that it is burdened by restrictive covenants, it may be bound in equity to those burdens, regardless of whether the burdens run with the land.

Turning to the summary judgment rendered in the plaintiff's favor in the present case, we cannot say as a matter of law that the burdens of the covenants at issue in this case do not run with the land. Indeed, there is strong evidence to the contrary: the covenants were formally created as part of a transfer of land; they explicitly provide that they are "binding upon the [g]rantee, its successors and assigns, shall inure to the benefit of the [g]rantor, its successors and assigns, and shall run with the land"; and they appear on their face to relate to the land and not to impose any conceivable burden on the initial grantee independent of its ownership of the land. We recognize that circumstantial facts may emerge casting doubt on the apparent intent of the covenanting parties to create burdens appurtenant to the land; however, such determinations are for the finder of fact to make with the benefit of evidence introduced at trial.

Even if the covenants did not meet all the requirements at law for the burden to run with the land, the issue of enforceability also turns on the possibility of an equitable remedy. In the present case, there is uncontested evidence indicating that the covenants at issue

restrict the plaintiff from using the land in certain ways, rather than requiring affirmative action by the plaintiff, a burden that could not be enforced in equity. There is also uncontested evidence that the plaintiff knew of these covenants at the time of purchase. Although further facts may be uncovered that preclude the plaintiff from being burdened by the covenants, at this point it cannot be said as a matter of law that those burdens do not apply to the plaintiff, either at law or in equity.

B

Looking to the other side of the equation, we now outline the conditions that must be met in order for the defendants in the present case to potentially enforce the covenants against the plaintiff, such that summary judgment could not have been rendered on this basis. The defendants claim the right to enforce the covenants as the successors or assigns of the covenants' original beneficiary or beneficiaries. We must therefore consider the covenants' benefits at two points in time: first, looking to the time of the covenants' creation, we determine the intended beneficiary or beneficiaries and the type of benefit or benefits created; second, looking to the present time, we determine whether the defendants could obtain the right to those benefits by way of assignment or devolution. As we previously have noted in our recitation of the procedural history of this case, the trial court decided that it was not necessary to reach the plaintiff's claim that the rights to enforce the covenants had not been validly assigned to the defendants. We conclude that the defendants are not precluded from enforcing the covenants as a matter of law and that material questions of fact exist regarding whether they may enforce the covenants here.

As with covenant burdens, covenant benefits may be appurtenant (directly benefiting the land) or in gross (accruing to a person independent of ownership of land) and may be held by the signatory to the covenant as well as third parties that the parties to the covenant intended to so benefit. The covenant benefits in the present case, at the time of their creation, thus may conceptually be described in one or more of four ways: (1) the benefits inured to the school as the owner of a piece of land; (2) the benefits inured to the school independent of its ownership of land; (3) the benefits inured to Read, Wendy Federer's father, a third party beneficiary, as owner of the land adjacent to the school; and (4) the benefits inured to Read independent of his ownership of land. Under the circumstances of this case, we focus on scenarios two and three, leaving the relatively implausible scenarios represented by one[19] and four[20] to the side. We consider each in turn along with the related question of whether the defendants properly could have obtained those benefits.

We consider first whether the benefits of the covenants inured to the school in a manner that is independent of its ownership of a particular parcel of land. It is clear that these benefits in gross may validly be created. See *Hartford National Bank & Trust Co.* v. *Redevelopment Agency*, supra, 164 Conn. 341. A further question potentially arises regarding whether the right to such benefits may be transferred or assigned.

Although this court previously has not addressed this specific question, related case law indicates that such assignments properly can be made, if consistent with the covenanting parties' intent. Assignability of rights is clearly favored with respect to contracts generally. *Rumbin* v. *Utica Mutual Ins. Co.*, 254 Conn. 259, 267, 757 A.2d 526 (2000) ("[o]ur analysis . . . begins by emphasizing that the modern approach to contracts rejects traditional common-law restrictions on the alienability of contract rights in favor of free assignability of contracts"); see also *Rossetti* v. *New Britain*, 163 Conn. 283, 291, 303 A.2d 714 (1972) (clarifying that whereas obligations under personal service contracts cannot be delegated, rights under such contracts may be assigned). We find this approach generally appropriate to covenant rights held in gross; however, recognizing that the burdens of covenants typically endure far longer than those of contracts, we add the important caveat that covenant benefits (or burdens) in gross may not be transferred if doing so would be inconsistent with the intent of the parties. This proviso accords with the Restatement (Third), which distinguishes between the general class of freely alienable covenant benefits in gross and a narrower class of "personal" covenants that may not be transferred.[21] 1 Restatement (Third), supra, § 4.6. Per the Restatement (Third), "[a] servitude benefit . . . is personal if the relationship of the parties, consideration paid, nature of the servitude, or other circumstances indicate that the parties should not reasonably have expected that the servitude benefit would pass to a successor to the original beneficiary."[22] Id., § 4.6 (2). All benefits in gross that do not qualify as personal are treated like other property rights and may freely be transferred.[23] Id., § 4.6 (1) (c); 2 Restatement (Third), supra, § 5.8 (1) ("[b]enefits in gross are property interests that are transferred by assignment or other conveyance effective to transfer an interest in land, and otherwise devolve as property to their owners"). Accordingly, under this rubric, if the benefits were intended to benefit the school, and the parties did not intend them to be nonassignable, the school could validly assign those benefits to the defendants.

2

Turning to the alternative plausible interpretation of the covenants in the present case, we next consider whether the defendants may enforce the covenants on the theory that Read, as the owner of the land adjacent

to the school property, was the intended third party beneficiary of the covenant between the school and the initial buyer of the school property and that, by virtue of their purchasing the benefited parcel of land, the right to enforce the covenants devolved to the defendants.

The third party beneficiary doctrine provides that "[a] third party beneficiary may enforce a contractual obligation without being in privity with the actual parties to the contract. . . . Therefore, a third party beneficiary who is not a named obligee in a given contract may sue the obligor for breach." (Internal quotation marks omitted.) *Wilcox* v. *Webster Ins., Inc.*, 294 Conn. 206, 217, 982 A.2d 1053 (2009). Although the third party beneficiary doctrine was originally developed in the law of contracts, this court has recognized that third party beneficiaries may enforce covenants in land.[24] See, e.g., *Colaluca* v. *Ives*, 150 Conn. 521, 526, 191 A.2d 340 (1963); see also 1 Restatement (Third), supra, § 2.6 (2) ("[t]he benefit of a servitude may be granted to a person who is not a party to the transaction that creates the servitude").

Under the third party beneficiary doctrine, "[t]he ultimate test to be applied [in determining whether a person has a right of action as a third party beneficiary] is whether the intent of the parties to the contract was that the promisor should assume a direct obligation to the third party [beneficiary] . . . . [T]hat intent is to be determined from the terms of the contract read in the light of the circumstances attending its making, including the motives and purposes of the parties. . . . [I]t is not in all instances necessary that there be express language in the contract creating a direct obligation to the claimed third party beneficiary . . . ."[25] (Citation omitted; internal quotation marks omitted.) *Dow & Condon, Inc.* v. *Brookfield Development Corp.*, 266 Conn. 572, 580, 833 A.2d 908 (2003). We also note that, although construction of a deed is ultimately a matter of law and subject to plenary review; *Il Giardino, LLC* v. *Belle Haven Land Co.*, 254 Conn. 502, 511, 757 A.2d 1103 (2000); the analysis is a context dependent one: "[I]f the meaning of the language contained in a deed or conveyance is not clear, the trial court is bound to consider any relevant extrinsic evidence presented by the parties for the purpose of clarifying the ambiguity." Id.

3

With this framework in mind, we now look to the undisputed facts of the present case relating to covenant benefits and the intent of the covenanting parties that may be discerned from those facts. First, it is possible to conclude that the covenants at issue created a transferable benefit in gross that inured to the school independent of its ownership of land. Specifically, the deed provides that the covenant benefits "shall inure to the benefit of the [g]rantor, its successors and

assigns, and shall run with the land." This language makes clear that the parties intended to create an enduring benefit that would survive the school, but because the school retained no land following the sale, any benefits conferred on the school cannot possibly be appurtenant to the land and therefore must be construed to be in gross. See *Pulver* v. *Mascolo*, supra, 155 Conn. 650–51.[26]

The possibility that the covenants at issue created a transferable benefit in gross in the school sets up a potentially dispositive question regarding whether the school has transferred that right to Wendy Federer.[27] It appears that the school and Wendy Federer attempted to accomplish such a transfer, but that the putative transfer occurred after the school had been dissolved by administrative order pursuant to General Statutes § 33-890.[28] Under General Statutes § 33-891 (a), "[a] corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under [General Statutes § 33-884] . . . ." The question of whether corporate action qualifies as "winding up" is a factual matter for the trial court to determine, subject to a clearly erroneous standard of review. See *Campisano* v. *Nardi*, 212 Conn. 282, 290, 562 A.2d 1 (1989). In the present case, the trial court concluded that the covenants are void and therefore made no determination whether there are material questions of fact regarding whether the school's attempted transfer of its rights under the covenant qualified as winding up its affairs.

With respect to the question of whether the defendants could enforce the covenants in the present case as third party beneficiaries, the trial court concluded that "the present deed expresses a clear intent to benefit the grantor, the school, not the defendants' property, and the surrounding circumstances do not contradict that intent." After a review of the record, we conclude that the trial court improperly determined that there are no issues of material fact regarding whether the parties to the original contract intended that the covenants would provide an appurtenant benefit to Read as owner of the adjacent property now owned by the defendants. Although the covenants do not specifically mention the adjacent property or Read, the circumstances surrounding the transaction at the very least create an ambiguity as to whether the covenants were intended to confer such a benefit. Although the school may enjoy some personal benefits from the covenants notwithstanding the fact that it retained no land, the most obvious and direct benefits of the covenants flowed to Read as the owner of the adjacent land. The clear aesthetic—and likely financial—benefits conferred on Read's property from not having the school property commercially developed, considered along with the relationship between Read and the school and the fact that, as attested to by the chairman of the

school's board of trustees, Read's request prompted the creation of the covenants, could provide a factual basis for concluding that the original covenanting parties intended the covenants to be enforceable by the owner of the defendants' land.[29] Faced with uncertainty in the factual record on this issue, the trial court could not properly have rendered summary judgment on the ground that the defendants are not entitled to enforce the covenants.

We thus conclude that the enforceability of the covenants in the present case cannot be foreclosed as a matter of law. Further proceedings are necessary to determine both whether the plaintiff is bound by the covenants' burdens, as a matter of law or equity, and whether the defendants may enforce the covenants as assignees of the school's interest or, alternatively, as third party beneficiaries to whom Read's third party interest devolved. Additionally, it may be necessary to determine whether, even if valid at the time of creation and properly passed down to the parties here, the covenants continue to serve " 'a legal and useful purpose' " and thus remain enforceable burdens on the plaintiff's land. *Gangemi* v. *Zoning Board of Appeals*, 255 Conn. 143, 151, 763 A.2d 1011 (2001) ("it is the policy of the law not to uphold restrictions upon the free and unrestricted alienation of property unless they serve a legal and useful purpose" [internal quotation marks omitted]); 1 Restatement (Third), supra, § 3.5 (2) ("[a] servitude that lacks a rational justification is invalid"); 2 Restatement (Third), supra, § 7.10 (providing for modification or termination of servitudes).

Because we determine that the trial court's conclusions that no material questions of fact existed concerning the validity of the restrictive covenants in the present case and that the covenants are void as a matter of law were improper, we do not reach the defendants' claim that the trial court improperly rejected their special defenses of waiver and unclean hands.

The judgment is reversed and the case is remanded for further proceedings.

In this opinion NORCOTT, PALMER, ZARELLA and McLACHLAN, Js., concurred.

[1] The defendants appealed from the trial court's judgment to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199 (c).

[2] Although the deed conveying the property from the initial purchaser to the intermediate owner did not contain the restrictive covenants, the deed conveying the property from the intermediate owner to the plaintiff does reference the covenants, and the plaintiff has not claimed that it lacked notice of the covenants.

[3] The plaintiff received a permit from the inland wetlands commission of the town of Washington to conduct regulated activities on the property, and the defendants brought an administrative appeal from that decision. *Federer* v. *Inland Wetlands Commission*, Superior Court, judicial district of Litchfield, Docket No. LLI-CV-09-4007882-S (January 5, 2009). The defendants' subsequently withdrew from that appeal, however, the matter is still pending with regard to an intervening plaintiff's claim. The plaintiff's application for a special permit to construct an inn and spa on their property was denied

by the zoning commission of the town of Washington, and that denial was upheld on the plaintiff's appeal. *Wykeham Rise, LLC* v. *Zoning Commission*, Superior Court, judicial district of Litchfield, Docket No. LLI-CV-09-4007939-S (October 11, 2011). The plaintiff's petition for certification to appeal was thereafter granted, and its appeal is pending in the Appellate Court.

[4] General Statutes § 47-5 (a) provides: "All conveyances of land shall be: (1) In writing; (2) if the grantor is a natural person, subscribed, with or without a seal, by the grantor with his own hand or with his mark with his name annexed to it or by his attorney authorized for that purpose by a power executed, acknowledged and witnessed in the manner provided for conveyances or, if the grantor is a corporation, limited liability company or partnership, subscribed by a duly authorized person; (3) acknowledged by the grantor, his attorney or such duly authorized person to be his free act and deed; and (4) attested to by two witnesses with their own hands."

[5] General Statutes § 47-10 (a) provides: "No conveyance shall be effectual to hold any land against any other person but the grantor and his heirs, unless recorded on the records of the town in which the land lies. When a conveyance is executed by a power of attorney, the power of attorney shall be recorded with the deed, unless it has already been recorded in the records of the town in which the land lies and reference to the power of attorney is made in the deed."

[6] As we discuss later; see footnote 18 of this opinion; there is some uncertainty regarding the enforceability of covenants, unlike those in the present case, that are not created as part of a transfer of other interests in land.

[7] The restrictive covenant at issue did not actually appear in the deed of the burdened party but did appear in a prior deed. *Stamford* v. *Vuono*, supra, 108 Conn. 362–64.

[8] *Hartford National Bank & Trust Co.* v. *Redevelopment Agency*, supra, 164 Conn. 341–42, defines a covenant in gross, a term that we discuss in more depth later in this opinion, as "one which is not created to benefit or . . . does not benefit the possessor of any tract of land in his use of it as such possessor. . . . An easement in gross belongs to the owner of it independently of his ownership or possession of any specific land. Therefore, in contrast to an easement appurtenant, its ownership may be described as being personal to the owner of it." (Citation omitted; internal quotation marks omitted.)

We note that, with respect to the question of initial validity, it appears that at common law covenants with benefits in gross were at one time prohibited. 1 Restatement (Third), supra, § 2.6, comment (a), p. 102 ("Early law prohibited the creation of servitude benefits in gross . . . . American law recognizes easements in gross, but has retained remnants of the prohibition against interests in gross with respect to covenants."). We are aware of no Connecticut authority expressly prohibiting the creation of covenants with benefits in gross, and it is at any rate clear that at least since *Hartford National Bank & Trust Co.* such covenants have been recognized as valid in Connecticut. Connecticut's recognition of covenants with benefits in gross also accords with the embrace of such covenants by the Restatement (Third), supra, § 2.6. Considerations bearing on the enforcement of benefits, whether held in gross or appurtenant to the land, will be further addressed in part II of this opinion.

[9] Contrary to the concurring justice's suggestion, rejection of the purported unity of title requirement is a necessary precondition for our determination that summary judgment was not appropriate in this case. It is undisputed that, if there were a unity of title requirement, the covenants would not satisfy that requirement. Thus, the plaintiff would clearly be entitled to judgment in its favor as a matter of law but for the fact that we conclude that there is no unity of title requirement. Put otherwise, although the concurring justice rightly identifies a factual ambiguity with respect to the proper interpretation of the covenants; see part II B 3 of this opinion; this factual issue is material to the case only because we conclude that the plaintiff is not independently entitled to judgment on any other ground, including that the covenants were invalid at their creation. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

[10] Notably, the unity of title requirement is inconsistent with one category of covenants expressly recognized in *Stamford* v. *Vuono*, supra, 108 Conn. 364, "when there are mutual covenants in deeds exchanged between owners of adjoining lands."

[11] The plaintiff contends that the holding of *Bolan* v. *Avalon Farms Prop-*

erty Owners Assn., Inc., supra, 250 Conn. 144–45, that an easement should be effectuated even if no unity of title exists between the servient and the dominant estates should not apply to covenants because, whereas ambiguous wording in an easement grant will be interpreted to favor the recipient of the easement; *Lago* v. *Guerrette*, 219 Conn. 262, 268, 592 A.2d 939 (1991); this court has held that covenant burdens "are not to be extended by implication." *Pulver* v. *Mascolo*, 155 Conn. 644, 649, 237 A.2d 97 (1967). The plaintiff's reliance on these apparently different standards for interpreting uncertainties in easements and covenants, however, has no bearing whatsoever on whether a formal, extratextual requirement such as unity of title dictates whether these interests in land may be created. Moreover, as discussed in footnote 25 of this opinion, we are not inclined to adopt the broad reading of *Pulver* that the plaintiff endorses.

[12] Because the defendants' counterclaim seeks both injunctive relief and money damages, we note that, as with remedies under contracts law more generally, the court has discretion to award either form of relief as appropriate, regardless of whether the theory of liability under which the relief is granted was traditionally a matter of law or equity. 2 Restatement (Third), Property, Servitudes § 8.3 (1) (2000) ("A servitude may be enforced by any appropriate remedy or combination of remedies, which may include declaratory judgment, compensatory damages, punitive damages, nominal damages, injunctions, restitution, and imposition of liens. Factors that may be considered in determining the availability and appropriate choice of remedy include the nature and purpose of the servitude, the conduct of the parties, the fairness of the servitude and the transaction that created it, and the costs and benefits of enforcement to the parties, to third parties, and to the public.").

[13] The terms "covenant real" and "personal covenant" as referenced in *Carlson* v. *Libby*, supra, 137 Conn. 367, have fallen into disuse; historically, the term "real covenant" referred to the subset of covenants running with the land that could be enforced at law (rather than in equity). 1 Restatement (Third), supra, § 1.4, comment (a). The term "personal," by contrast, was used to describe covenants that were interpreted not to run with the land. Id., § 1.5, comment (c).

[14] The Appellate Court, citing *Kelly* v. *Ivler*, supra, 187 Conn. 40, and similar holdings, has held that there is a reciprocal presumption when words of succession *are* used: "It is well settled that where a restrictive covenant contains words of succession, i.e., 'heirs and assigns,' a presumption is created that the parties intended the restrictive covenant to run with the land." *Weeks* v. *Kramer*, 45 Conn. App. 319, 323, 696 A.2d 361 (1997), appeal dismissed, 244 Conn. 203, 707 A.2d 30 (1998). Although we agree with the Appellate Court that words of succession are strong indicators of the covenanting parties' intent, we stop short of holding that such language creates a presumption of appurtenance, as such a presumption is largely redundant and potentially confusing when applied in the context of the general rule that restrictive covenants will, whenever possible, be interpreted to be appurtenant to the land. *Bauby* v. *Krasow*, 107 Conn. 109, 113–14, 139 A. 508 (1927).

[15] Such personal covenants include "[a] covenant by a grantee not to erect any dwelling until its exterior lines had been approved by the grantor, or by an architect selected by him . . . ." *Pulver* v. *Mascolo*, supra, 155 Conn. 651.

[16] Challenging the long-standing notion that a covenant must "touch," or "concern," the land in order to be interpreted as running with the land, the Restatement (Third) calls for superseding the touch-or-concern doctrine in favor of a rule permitting servitudes to run with the land so long as they do not violate public policy by, inter alia, imposing an unreasonable restraint on trade or on alienation. See 1 Restatement (Third), supra, § 3.2 and comment (a). In the present case, there is no question that the covenants' restrictions on development of the plaintiff's land touch and concern the land, and we therefore do not address the continuing viability of this formal requirement.

[17] The court further explained that a restrictive covenant under which the grantee promised to erect only a single-family house "will generally be construed to have been intended for the benefit of the land, since in most cases it could obviously have no other purpose, the benefit to the grantor being usually a benefit to him as owner of the land, and that, if the adjoining land retained by the grantor is manifestly benefited by the restriction, it will be presumed that it was so intended." *Bauby* v. *Krasow*, supra, 107 Conn. 114. The Restatement (Third) presents this purposive approach more

generally, stating that just as a servitude benefit will be considered appurtenant if it would be more useful to the initial beneficiary's successor in the property interest than to the original beneficiary, once the beneficiary has sold his or her land, the burden will be considered appurtentant "if it could more reasonably be performed by the successor to a property interest held by the obligor at the time the servitude was created than by the original obligor after having transferred that interest to a successor . . . ." 1 Restatement (Third), supra, § 4.5 (3) (a).

[18] These circumstances have been characterized as creating what is, somewhat archaically, termed "horizontal privity." The court's reliance in *Carlson* on the Restatement as authority for the proposition that horizonal privity is necessary for covenants to run with the land is significantly undermined by that same authority's outright repudiation of any privity requirement. See 1 Restatement (Third), supra, § 2.4 ("[n]o privity relationship between the parties is necessary to create a servitude"). The Restatement (Third) notes that the first Restatement's endorsement of the horizontal privity requirement has been universally rejected by scholars, and it observes that the sole extant purpose of the privity requirement, namely, to ensure that covenants are formally recorded, is performed by modern writing and recording requirements such as General Statutes §§ 47-5 and 47-10. See footnotes 4 and 5 of this opinion; 1 Restatement (Third), supra, § 2.4, comment (b). Perhaps more significant, the rule is readily evaded (by resorting to conveyance through a straw person) and thus serves as little more than "a trap for the poorly represented . . . ." 1 Restatement (Third), supra, § 2.4, comment (b), p. 97. As it is clear that the covenants in the present case were created in the context of a transfer of land and thus satisfy the horizontal privity requirement, we do not address the continuing viability of the horizontal privity doctrine.

[19] The first scenario describes appurtenant benefits that inure to the land of a covenanting party, and thereafter to subsequent owners of the benefited land. This sort of benefit is straightforward and requires essentially the same analysis as determining whether the covenants' burdens run with the land of the burdened party. Because the school retained no land after selling the property on which the school sat and therefore could not possibly receive any benefits associated with ownership of the land, the first scenario seems irreconcilable with the intent of the parties.

[20] The record provides no basis for concluding that the covenanting parties intended to confer a benefit on Read independent of his ownership in the land adjacent to the school, and the record likewise reveals no facts indicating that he transferred or assigned any such benefit in gross to the defendants. We therefore do not further consider the highly unlikely possibility that the defendants may enforce the covenants as the assignees of a third party beneficiary of a benefit in gross.

[21] We note that the use of the term "personal" in the Restatement (Third) is distinct from the word's traditional use, which was roughly interchangeable with the term "in gross." See footnote 13 of this opinion. To be consistent with prior cases, we use the term "personal" in this traditional sense and do not adopt the terminology of the Restatement (Third).

[22] According to the commentary to the rule, words of succession suggest that the parties did not intend the covenant benefits to be personal; on the other hand, facts such as a close relationship between the parties and lack of consideration would suggest that the benefit is personal, particularly if held in gross. 1 Restatement (Third), supra, § 4.6, comment (d).

[23] We note, however, that "as a general rule, an appurtenant benefit may not be severed and transferred separately from all or part of the benefited property." (Internal quotation marks omitted.) *Il Giardino, LLC* v. *Belle Haven Land Co.*, 254 Conn. 502, 515, 757 A.2d 1103 (2000), quoting 2 Restatement (Third), supra, § 5.6. That is, an appurtenant benefit may not be converted into a benefit in gross in order to transfer the benefit to a third party with no interest in the benefited land.

[24] Although, as we previously have noted, *Stamford* v. *Vuono*, supra, 108 Conn. 364, identified three categories of restrictive covenants that may be enforced by nonparties to a covenant, the fact that third party beneficiary enforcement is not tied to a direct contractual relationship between the parties and thus operates independently of questions of privity significantly undermines the notion that those three categories meaningfully limit the range of restrictive covenants that can be effectively enforced. The diminution in the significance of *Vuono* as a limiting principle is well illustrated by the course of legal developments in New York following *Korn*, from which the three categories of covenants are derived: "[T]he early cases held

that there had to be privity of estate between the person who had imposed the covenant and the person seeking to enforce it, in the sense the latter had to be a grantee of the former, either directly or through mesne conveyances. Thus, under this approach, in *Korn* v. *Campbell* [supra, 192 N.Y. 490] the court enumerated the three classes of cases in which restrictive covenants could be enforced by persons other than the grantor or covenantee . . . .

"However, the third-party beneficiary theory is not limited by any concept of privity (2 American Law of Property, § 9.30, p. 425 [1952]). Upon the adoption of that theory by the New York courts, the enforcibility of restrictive covenants was no longer limited to the three classes enumerated in [*Korn*]. The question then became one solely of intention. *The owner of the land intended to be benefited had the right to enforce the covenant, even though he did not come within any one of the enumerated classes.*" (Emphasis added.) *Zamiarski* v. *Kozial*, 18 App. Div. 2d 297, 300–301, 239 N.Y.S.2d 221 (1963).

The Restatement (Third) offers a more general explanation of this trend: "The prohibition on creating covenant benefits to run with the land of third parties began breaking down with the development of the general-plan doctrine in the 19th century. Under that doctrine, the conveyance of any lot in the subdivision could create servitude benefits in favor of all other lots in the subdivision. In the 20th century, the prohibition on creating rights in third parties has almost completely disappeared with the development of the third-party-beneficiary doctrine in contracts law. The third-party-beneficiary doctrine provides the basis for recognizing that servitude benefits of all types can be created in favor of persons, either in gross or as holders of interests in land, who are not otherwise parties to the transaction." 1 Restatement (Third), supra, § 2.6, comment (a), p. 103.

[25] The fact that the contract at issue in this case is a covenant contained in a deed does not substantially alter our analysis. As this court explained in *Bolan* v. *Avalon Farms Property Owners Assn., Inc.*, supra, 250 Conn. 140–41: "In construing a deed, a court must consider the language and terms of the instrument as a whole. . . . Our basic rule of construction is that recognition will be given to the expressed intention of the parties to a deed or other conveyance, and that it shall, if possible, be so construed as to effectuate the intent of the parties. . . . In arriving at the intent expressed . . . in the language used, however, it is always admissible to consider the situation of the parties and the circumstances connected with the transaction, and every part of the writing should be considered with the help of that evidence. . . . The construction of a deed in order to ascertain the intent expressed in the deed presents a question of law and requires consideration of all its relevant provisions in light of the surrounding circumstances." (Internal quotation marks omitted.)

Notwithstanding this court's clear endorsement of contextual evidence as an important interpretive tool, the plaintiff contends that the trial court was not permitted to consider evidence contained in several affidavits describing the relationship among the relevant parties at the time of the initial sale of the school's property. In support of this proposition, the plaintiff cites the Appellate Court's recent declaration in *Max's Place, LLC* v. *DJS Realty, LLC*, supra, 123 Conn. App. 412, that "[t]he meaning and effect of the [restrictive covenant is] to be determined, not by the actual intent of the parties, but by the intent expressed in the deed, considering all its relevant provisions and reading it in the light of the surrounding circumstances . . . ." (Internal quotation marks omitted.) This court has called for such an interpretive approach in connection with easements; see, e.g., *Lago* v. *Guerrette*, 219 Conn. 262, 268, 592 A.2d 939 (1991); and we previously have suggested that a more stringent approach applies when interpreting the scope of covenant obligations. Specifically, this court has held that the scope of the obligations created in a covenant is to be determined by reference to the parties' expressed intent and "[r]estrictive covenants being in derogation of the common-law right to use land for all lawful purposes which go with title and possession, are not to be extended by implication." *Pulver* v. *Mascolo*, supra, 155 Conn. 649.

We recognize that there is some tension between this court's injunction not to expand the scope of covenant burdens beyond what the text expresses and the contrary principle that covenants are to be read, insofar as possible, to accomplish the intent of the parties in light of the surrounding circumstances. In the present case, however, there is no question regarding the scope of the burdens imposed by the covenants. Although we do not on this occasion need to determine whether *Pulver* remains good law, we see

no reason to extend its prohibition on implied covenant burdens to prohibit implicit extension of covenant *benefits* to third parties. Such an artificial limit is inconsistent with our jurisprudence regarding third party beneficiaries and runs counter to the modern trend in servitudes property law toward honoring the parties' intent unless doing so would be contrary to the public interest.

[26] We note that unlike in *Pulver*, there is no indication that the benefit in the present case falls within the limited class of benefits in gross that may not be transferred. See part II B 1 of this opinion.

[27] The plaintiff contends that the initial purchaser of the school's property is in fact the successor in interest to the school and was therefore empowered to release the burdened party from its obligations under the covenant. The record shows that the initial purchaser did sign such a release, but the plaintiff has pointed to no authority, nor are we aware of any, supporting the perplexing proposition that a grantee of land burdened by a covenant may unilaterally release itself or its successors from the covenant, whose benefits inured to the grantor.

[28] As we previously have noted, in 2005, Wendy Federer and the chairman of the now defunct school's board of trustees executed a document purporting to assign the school's rights under the restrictive covenants to Wendy Federer in exchange for consideration of $500.

[29] We also find considerable contextual illumination in the facts that the school retained no land after selling the property and was dissolved shortly after the sale. In light of these facts, it seems unlikely that the school sought exclusively—or even chiefly—to benefit itself through these covenants. We thus find peculiar and unconvincing the trial court's conclusion that the covenants in fact benefited only the school, with the consequence that they "constitute restrictions that were personal to the school and ceased to exist when the school sold its property. This also supports the conclusion that the covenants are void because the restrictions could not go into effect until the property was conveyed." In addition to the fact that the trial court's reasoning is difficult to square with the general law of servitudes, namely, that a "personal" covenant benefit is traditionally one that is *not* dependent on ownership of a parcel of land, we find it unlikely that the parties to the initial covenants actually intended to create benefits so ephemeral that they disappeared at the moment they came into existence.