STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK P. CALDERONE and MARY LINDA CALDERONE,

Plaintiffs/Cross-Defendants/Appellees,

v

LEE ABAJAY and GAIL ABAJAY,

Defendants,

and

RICHARD ADAMS, NANCY ADAMS, WILLIAM BIZER, PATRICIA BIZER, JACK CAPPOCCIA, ROSE CAPPOCCIA, RONALD COLE, CAROLYN COLE, LEE COX, DEBORAH COX, and GERALD DUNN,

Defendants/Cross-Plaintiffs/Appellants.

UNPUBLISHED

July 9, 1996

No. 183211
LC No. 92-429860

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

In this action for a declaratory judgment and a permanent injunction tried before the bench, defendants appeal by right the circuit court's order declaring that Lot 20 consists of two distinct parcels, and that plaintiffs could build a single-family home on each parcel. We affirm.

This appeal concerns the interpretation of a restrictive covenant attached to Lot 20 of the West Franklin Estates subdivision, in Farmington Hills, Michigan. The deed restriction at issue stated that: "There shall be not more than one house built on each parcel of land." The developer attached this deed restriction to all 55 lots in the subdivision. Plaintiffs wanted to build a house on the western

* Circuit judge, sitting on the Court of Appeals by assignment.

portion of Lot 20, even though a house was already erected on the eastern portion of Lot 20. They argued that this would not violate the restrictive covenant since "parcel," as used in the restrictive covenant, did not mean the same thing as "lot." Defendants argued that plaintiffs' building plans would violate the restrictive covenant since "parcel" was equivalent to "lot." In the alternative, defendants argued that plaintiffs' building plans would violate the subdivision's common scheme or plan.

I

Defendants first argue that the trial court clearly erred in finding that plaintiffs' building plans would not violate the restrictive covenant. We disagree.

When reviewing equitable actions, this Court employs de novo review on the decision and review for clear error of the findings of fact in support of the equitable decision rendered. *Webb v Smith (After Remand)*, 204 Mich App 564, 568; 516 NW2d 124 (1994). A trial court's findings are considered clearly erroneous when this Court is left with a definite and firm conviction that the trial court made a mistake. *Id.* When interpreting a restrictive covenant, courts must give effect to the instrument as a whole. *Rofe v Robinson (On Second Remand)*, 126 Mich App 151, 157; 336 NW2d 778 (1983). If there is any doubt as to the exact meaning of the restrictions, the court must consider the subdivider's intention and purpose. *Id.* Restrictions must be construed in light of the general plan under which the area subject to those restrictions was platted and developed. *Id.* However, restrictive covenants are to be construed strictly against those seeking enforcement and all doubts are to be resolved in favor of the free use of property. *Id.*, p 158.

We hold that the trial court's finding that the deed restriction did not prohibit building a house on the western portion of Lot 20 was not clearly erroneous. Since it was unclear from the face of the restriction whether plaintiffs' proposed building plans violated its terms, the trial court correctly looked to the developer's intent in order to determine the restriction's scope. See *Rofe, supra*, p 157. The trial court's finding that the developer did not intend to prohibit more than one house on Lot 20 was not clearly erroneous. The evidence established that the developer did not intend to prohibit lot splits. The developer, himself, attempted to split some of the subdivision's lots. Therefore, since the developer did not intend to prohibit lot splits, it is highly unlikely that he intended to restrict Lot 20 to only one house.

II

Defendants next argue that the trial court clearly erred in finding that plaintiffs' building plans would not violate the subdivision's general scheme or plan. We disagree.

If the owner of two or more lots sells one lot with restrictions that benefit the land retained, the restriction becomes mutual, and, during the period of restraint, the owner of the lot or lots retained can do nothing forbidden to the owner of the lot sold. *Sanborn v McLean*, 233 Mich 227, 229-230; 206 NW 496 (1925). This is known as a reciprocal negative easement. *Id.* A reciprocal negative easement cannot be created retroactively by mutual agreement among common land owners to act in a

certain way. *Id.* A reciprocal negative easement restricts a parcel of land only to the extent that a common grantor previously restricted some related parcel of land for the grantor's own benefit. *Id.*

The only express restriction alleged to have created a reciprocal negative easement was the deed restriction discussed under Issue I. This restriction could not have created a reciprocal negative easement prohibiting plaintiffs from building a house on the western portion of Lot 20 since, as discussed under Issue I, the developer did not intend the deed restriction to prohibit such activity. Therefore, the trial court did not clearly err in finding that a reciprocal negative easement prohibiting more than one house on each lot was not established.

Affirmed.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin