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Washington State Appellate Court Docket No. 10019-0-1, Filed 22 November 1982

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DELBERT L. and JEAN B. HAMILTON, THOMAS M. and CAROL SUE RILEY, FRED HEBERLIN, RAUL and DOROTHY LANGLOIS, FRED and DORIS GENSON, BRUCE and LOLA TALBOT, C. P. and RENEE' BRYANT, LESTER E. JONES, SAM MAUPIN, ART TROTTER, ROBERT and MARY RILEY, WILLIAM S. and MARTY WILSON, ALLAN and LOIS JACOBS, A. F. and M. E. MacARTHUR, MARGARET H. CLARK,	)	No. 10019-0-1
Appellants,	)	DIVISION ONE
JANET HARLOW, JOHN and IDA LINDBLAD,	)	
Plaintiffs,	)	
CAROLYN S. BEVERS, LEONARD B. and MARIE I. BEVERS, and DAVID B. and EVELYN UPHAM,	)	
Appellants,	)	
v.	)	
LAGOON POINT IMPROVEMENT CLUB, INC., a Washington corporation,	)	
Respondent.	)	Filed Nov. 22, 1982

SCHOLFIELD, J. -- Hamilton and others appeal from an order entered on summary judgment designating the Lagoon Point Improvement Club as the organization having responsibility for the development, maintenance and upkeep of certain commonly-used tracts within the plat of Lagoon Point on Whidbey Island, Washington.

The original plat of Lagoon Point contained the following description:

> Government Lots 1 and 2, Section 18; Government Lot 3, Section 19, except the East 462 feet thereof; and all of Government Lot 4, Section 19; except County road on east line of said Government Lots 3 and 4; together with tidelands of the second class adjoining and in front of said Government Lots 3 and 4, Section 19, to extreme low tide; . . .
>
> Exhibit 1.

All of the lands involved in this case are included within the above description.

On July 3; 1950; the commissioners of Island County approved a plat entitled "Lagoon Point," which plat included all of the real property above described. That plat contained 14 blocks, and all of the blocks with the exception of Blocks 10, 13 and 14 were further subdivided into smaller residential lots.

On November 17, 1969, the commissioners of Island County approved the plat of Lagoon Point No. 2, which was a replat of Block 14 and a portion of Block 13.

On September 21, 1970, the commissioners approved the plat of Lagoon Point No. 3, which was a replat of portions of Block 11 and Block 13.

On July 14, 1975, the commissioners approved the plat of Lagoon Point No. 4, which was a replat of portions of Blocks 11 and 13.

The original plat of Lagoon Point contained a dedication reading as follows:

> Lots designated as "A" which is named Lagoon Lake, and Lots "B", "C", and "D" all bounded as indicated on this plat, are the undivided and common property of the owners of all lots in this plat for joint recreational use and enjoyment of themselves, their families and guests, and are not dedicated to the public. The development, maintenance, and upkeep of said tracts "A", "B", "C", and "D" are a joint obligation of said lot owners; and for purposes of taxation the assessed value of the area of said Lots "A", "B", "C", and "D" may be prorated and included in the assessed value of all lots shown in this plat. Said Lots "A", "B", "C", and 'D" are subject to such rules and regulations governing the same as from time to time may be adopted by a majority in interest of said owners.
>
> Exhibit 1.

The subject matter of this case is the use and regulation of Lots A, B, C and D. Lot A is a lagoon. Lots B, C and D are parking areas, waterways, and a community beach. Prior to November 1976, the maintenance and development of the four commonly-used lots were the responsibility of the developer of the plat. In November 1976, the Board of Commissioners of Island County ruled that the developer had performed his obligations concerning the construction of improvements for the various divisions of the plat. That responsibility then devolved upon the lot owners.

In 1971, Lagoon Point Improvement Club, Inc. was formed by the lot owners as a nonprofit corporation for the purpose of developing and maintaining the commonly-used tracts.

Early in 1977, lot owners asked the board of directors of Lagoon Point Improvement Club to call a special meeting of property owners for the purpose of considering a resolution delegating to the Lagoon Point Improvement Club the power and authority to carry out the responsibilities of development, maintenance and upkeep of tracts A, B, C and D. Due notice was given to all lot owners, and the meeting was held on April 23, 1977. One hundred seventy-one owners, owning 275 lots, voted "yes," and 14 owners, owning 24 lots, voted "no," on the question of whether Lagoon Point Improvement Club should be delegated that authority.

The Lagoon Point Improvement Club, at the time of the adoption of the resolution, charged membership dues of $10 per family. One $20 assessment was made by the board of directors for costs attributable to development, maintenance and upkeep of the tracts. A 1-time fee to obtain a key to the boat ramp was also assessed.

Delbert Hamilton is the owner of Lot 4, Block 4, plat of Lagoon Point Division No. 1. Hamilton paid the $20 assessment for development, maintenance and upkeep expenses, and tendered to the corporation a fee of $5 required for a key to the boat ramp, which is part of dedicated tract C. He was denied a key and has been denied access to the ramp because he refused to pay dues levied by Lagoon Point Improvement Club.

Hamilton and others filed a complaint for declaratory judgment and sought an injunction restraining Lagoon Point Improvement Club from further action concerning tracts A, B, C and D, and sought a declaration that the dues and assessments against owners of the tracts are illegal and unenforceable. Hamilton contended that only owners of lots in the plat of Lagoon Point Division No. 1 have an ownership interest in tracts A, B, C and D, and that the vote which included owners of lots in Lagoon Point Divisions 2, 3 and 4 was illegal and void.

The court granted summary judgment for Lagoon Point Improvement Club holding that it was the validly-designated organization having the responsibility for the development, maintenance and upkeep of tracts A, B, C and D. The trial court further held that Lagoon Point Improvement Club was the proper organization to collect reasonable dues and assessments from persons entitled to use tracts A, B, C and D, provided that said dues and assessments were applied only to the actual cost of the development, maintenance and upkeep of said commonly-used tracts. The court found that reasonable expenses for this purpose would include normal and reasonable administrative expenses incurred in carrying out its responsibilities.

Hamilton appeals, contending that only the owners of lots in the plat of Lagoon Point Division No. 1 have any ownership interests in tracts A, B, C and D. Hamilton bases his argument upon the language of the dedication, arguing that since Division No. 1 was the only division in existence at the time of the original dedication, the dedication of tracts A, B, C and D as "the undivided and common property of the owners of all lots in this plat" had to apply only to the lots in Division No. 1.

Exhibit 1.

Hamilton argues further that when Divisions 2, 3 and 4 were subsequently platted, there was no similar dedication on the face of those plats. He asserts that only lot owners in Division No. 1 had the authority to elect or designate a responsible entity to continue with the management of the commonly-used tracts and that the lot owners in Divisions 2, 3 and 4 had no right or authority to vote on the designation. Hamilton also contends that the rights and power given by the owners to the Lagoon Point Improvement Club are illegal and unenforceable as an unlawful delegation of authority and as an unreasonable restraint on ownership of land.

We affirm the trial court and hold

> (1) that the intent of the dedicator was to make tracts A, B, C and D available for the joint recreational use and enjoyment of all lot owners of lots contained within the legal description of the original plat of Lagoon Point. This would include owners of lots in Divisions 2, 3 and 4, as well as Division 1;
>
> (2) that designating the Lagoon Point Improvement Club as a legal entity to develop, maintain and control the commonly-used tracts was not an unlawful delegation of authority nor did it place an unreasonable restraint on the ownership of land.

There is nothing in the language of the dedication itself to suggest that the dedicator intended to limit ownership and enjoyment of tracts A, B, C and D to the owners of lots in Division No. 1. The right to enjoy the use of tracts A, B, C and D appears to have been an integral and important aspect of the development of Lagoon Point. No reason is suggested as to why the dedicator would want to make it possible for the owners of lots in Division No. 1 to deny use of those tracts to purchasers of Lots in subsequently developed portions of the overall plat. Furthermore, the language from the dedication, "owners of all lots in this plat" (Exhibit 1), can only reasonably be interpreted as including all lots included within the legal description of the original plat.

In Frye v. King County, 151 Wash. 179, 182, 275 P. 547 (1929), the court stated:

> It is the well settled law that, in construing a plat, the intention of the dedicator controls. The rule has been stated to be: "The intention of the owner is the very essence of every dedication." City of Palmetto v. Katsch, 86 Fla. 506. 98 South.

Burton v. Douglas County, 65 Wn. 2d 613, 399 P . 2d 68 (1965), involved a restrictive covenant and, commencing at page 621 of the opinion, states the principles for construing restrictive covenants as follows:

> (1) The primary objective is to determine the intent of the parties to the agreement, and, in determining intent, clear and unambiguous language will be given its manifest meaning.
>
> (2) Restrictions, being in derogation of the common-law right to use land for all lawful purposes, will not be extended by implication to include any use not clearly expressed. Doubts must be resolved in favor of the free use of land.
>
> (3) The instrument must be considered in its entirety, and surrounding circumstances are to be taken into consideration when the meaning is doubtful.
>
> (Citations omitted.)

The case of Gwinn v. Cleaver, 56 Wn.2d 612, 354 p.2d 913 (1960), involved interpretation of restrictive covenants in a plat. Commencing at page 615 of the opinion, the court stated the applicable principles as follows:

> It is the court's function to determine from the document whether it is ambiguous or incomplete. Only then is resort to parol evidence permissible.
>
> A restrictive covenant is to be strictly construed. Public policy favors the free use of one's own land. Imposed restrictions will not be aided or extended by judicial construction, and doubts will be resolved in favor of the unrestricted use of property.
>
> The laid is settled that, in the interpretation of maps and plats, all doubts as to the intention of the owner or maker should be resolved against him.

The platter's intention is gathered from the plat itself. In Olson Land Co. v. Seattle, 76 Wash. 142, 136 Pac. 118, we held:

> ". . . the plat itself is the best evidence of the intention of the dedicators; and unless such plat is uncertain or ambiguous, parol evidence cannot be heard to determine the intention of the dedicators . . . ."
>
> (Citations omitted.)

Applying the foregoing principles to the facts of this case, we find there is no ambiguity and that the clear intent of the dedication language was that tracts A, B, C and D would be owned by all of the owners of all of the lots which are included in the property which is the subject matter of the plat. We further find that the dedication is clear--that all of the property owners were to be responsible for the cost of developing, maintaining, and managing Lots A, B, C and D after the developer was released from that responsibility. The language of the dedication is also clear that the lot owners could adopt reasonable rules and regulations governing the use and expense of maintaining tracts A, B, C and D.

Appellants' argument relative to an unlawful delegation of management authority is premised upon appellants' contention that only lot owners in Division No. 1 had a legal interest and therefore authority to act in connection with tracts A, B, C and D. Having decided that issue against appellants, it follows that the action of the owners in granting authority to the Lagoon Point Improvement Club for upkeep, development and maintenance of tracts A, B, C and D was lawful.

Finally, appellants argue that a developer in making a dedication in a plat cannot restrict common law rights of any grantees to manage or use their land. The contention is made that to do so is an unreasonable restraint on ownership of land and therefore illegal. In support of this contention, appellants cite Riste v. Eastern Washington Bible Camp, Inc., 25 Wn. App. 299, 605 P.2d 1294 (1980) and Bartlett v. Bartlett, 183 Wash. 278, 48 P.2d 560 (1935).

The Riste case involved a direct restraint on alienation of land which was void under the common law rule prevailing in this state and also violated a statute, RCW 49.60.224. The facts of that case have no application to the facts in this case.

The Bartlett case also involved a restraint on alienation.

The restrictions in this case do not place a restraint upon alienation. The principles governing restrictive covenants have been stated above. All of the cases cited dealing with this general subject necessarily recognize the validity of reasonable restrictions concerning the use of real property.

We find no merit in appellants' contention that the restrictions involved in this case are unenforceable as being unreasonable restraints on ownership of real property.

The trial court's order is, in all respects, affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, IT IS SO ORDERED

CHIEF JUDGE