

CAUSE NO. 2023-82431

BAYWOOD OAKS COMMUNITY ASSOCIATION, INC.	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
LAURA ISABEL FLORES	§	281ST JUDICIAL DISTRICT

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

COMES NOW Baywood Oaks Community Association (“Plaintiff”) in the above-styled and numbered cause of action, and files this Motion for Summary Judgment against Laura Isabel Flores (“Defendant”) and would respectfully show as follows:

OVERVIEW OF PLAINTIFF’S ARGUMENT

1. Defendant is the sole record owner of real property commonly known as 6002 Lacey Oak Drive, Pasadena, Harris County, Texas 77086 (hereinafter the “Property”) which property is governed by certain restrictive covenants contained within those instruments entitled “Declaration of Covenants, Conditions and Restrictions for Baywood Oaks West, Section One a Subdivision in the City of Pasadena, Harris County, Texas” and “Declaration of Covenants, Conditions and Restrictions for Baywood Oaks, Section One a Subdivision in the City of Pasadena, Harris County, Texas” such documents hereinafter collectively referred to as “the Declaration”). All properties within Baywood Oaks are also subject to certain “Architectural Fence Guidelines” which govern the appearance of wood fences located on properties throughout the neighborhood (“the Guidelines”). Defendant has failed or refused to repair the fence and gate located on the Property, in violation of the terms and conditions of the Declaration, and the Architectural Fence Guidelines. The present condition of the fence constitutes a nuisance and an annoyance, and an eyesore to the surrounding community, and the fence is not in compliance with the aforementioned Guidelines, as there is no rail cap on a portion of the fence. Plaintiff seeks relief, in the form of an affirmative permanent

injunction, wherein Defendant shall be ordered to completely repair and/or replace the damaged portions of the fence, and bring the fence into compliance with the Declaration and the Guidelines. Further, Defendant is obligated by the Declaration to pay mandatory maintenance assessments, interest, and collection charges to Plaintiff. Defendant has failed and/or refused to pay certain annual maintenance assessments and other charges which have accrued against the Property. Therefore, Plaintiff seeks additional relief, in the form of a Judgment against Defendant for those amounts which are past due, and for foreclosure of Plaintiff's lien against the Property. The Defendant is represented by counsel, and has answered herein, by way of General Denial.

SUMMARY JUDGMENT EVIDENCE

2. To support the facts in this motion, Plaintiff incorporates by reference its pleadings, as well as the attached Affidavits and Exhibits. Plaintiff offers the following summary judgment evidence attached to this motion and incorporates such evidence into his motion by reference:

The sworn Affidavit of Adriana Ordaz, Plaintiff's Managing Agent and Custodian of Books and Records;

Exhibit A: True and correct copy of the Deed to Defendant's Property;

Exhibit B: True and correct copy of the "Declaration of Covenants, Conditions and Restrictions for Baywood Oaks West, Section One a Subdivision in the City of Pasadena, Harris County, Texas";

Exhibit C: True and correct copy of the "Declaration of Covenants, Conditions and Restrictions for Baywood Oaks, Section One a Subdivision in the City of Pasadena, Harris County, Texas";

Exhibit D: True and correct copy of the "Baywood Oaks Community Association Architectural Fence Guidelines";

Exhibit E: Photographs depicting the broken fence and gate on Defendant's Property; and,

Exhibit F: Account Statement depicting past due assessments and related charges which have accrued against Defendant's Property.

The sworn Affidavit of Michael J. Treece, in support of Plaintiff's request for an award of reasonable and necessary attorney's fees.

FACTUAL BACKGROUND

A. *Governing Declaration and Rules*

3. During the early - 1990's, the owners of tract of land in Harris County, Texas, commenced the development of the residential subdivision presently known as Baywood Oaks. In connection with such development, a series of instruments entitled "Declaration of Covenants, Conditions and Restrictions" were recorded in the Official Public Records of Real Property of Harris County, Texas, for the purpose of establishing a uniform plan of development, improvement and sale of property within all Sections of Baywood Oaks, including but not limited to Baywood Oaks West, Sections One (1) through Six (6), to insure the preservation of such uniform plan for the benefit of both present and future owners of properties within Baywood Oaks, and to establish restrictive covenants which encumber and/or govern the use and occupancy of all properties within the Baywood Oaks neighborhood. All properties throughout the Baywood Oaks neighborhood were made subject to and governed by the primary Declaration, being the Declaration of Covenants, Conditions and Restrictions for Baywood Oaks, Section One. Pursuant to the provisions of the Declaration, Plaintiff was organized for the purpose of promoting the health, recreation and welfare of all residents and owners within said subdivision, for enhancing and protecting the value, desirability and attractiveness of the land and improvements within the Baywood Oaks subdivision, managing and maintaining all common areas within the neighborhood, collecting maintenance assessments, providing common services to the development and enforcing the Declaration. *See Exhibits "B" and "C"*.

4. During 2015, Plaintiff duly and properly adopted that certain "Baywood Oaks Community Association Architectural Fence Guidelines", which Guidelines were recorded in the office of the

Harris County Clerk on September 18, 2015, and a corrected version of which was recorded on November 17, 2016, bearing County Clerk's File No. RP-2016-518297. Such Guidelines were adopted under the express authority provided under Chapter 204 of the Texas Property Code. *See Exhibit "D"*.

B. *Ownership of the Property*

5. On or about June 29, 2001, Defendant LAURA ISABEL FLORES, became record owner of the property commonly known as 6002 Lacey Oak Drive, Pasadena, Harris County, Texas 77086, being legally described as:

Lot Forty-Four (44), in Block One (1) of Baywood Oaks West, an addition in Harris County, Texas according to the map or plat thereof recorded in Film Code No. 428108 of the Map Records of Harris County, Texas.

The Deed evidencing conveyance of such property to Defendant states, on its face, that the Property was conveyed subject to all restrictions, conditions and covenants appearing of record. *See Exhibit "A"*.

C. *Restrictive Covenants and Condition of Defendant's Property*

6. The Property is located within the residential neighborhood known as Baywood Oaks West, which is also known as Baywood Oaks West, Section One. All lots located within Baywood Oaks West are encumbered by certain restrictive covenants contained within that certain Declaration of Covenants, Conditions and Restrictions for Baywood Oaks West, Section One, a Subdivision in the City of Pasadena, Harris County, Texas, recorded October 27, 1999, at County Clerk's File No. U046009, and Film Code No. 528-82-3812, et seq., as well as that certain Declaration of Covenants, Conditions and Restrictions for Baywood Oaks, Section One, a Subdivision in the City of Pasadena, Harris County, Texas, recorded August 30, 1991, at County Clerk's File No. N299094, and Film Code No. 044-17-0221, et seq., both of which are attached to this Motion as Exhibits "B" and "C",

respectively, and incorporated herein by reference. As provided within such documents, all owners of lots within Baywood Oaks are automatically members of Baywood Oaks Community Association.

Plaintiff is entitled to enforce the following terms of the Declaration.

7. Article VI, Section 7, of the Declaration provides, in pertinent part, as follows:

“... No offensive odors or offensive activity of any sort shall be permitted, nor shall anything be done on any Lot which may be or become an annoyance or nuisance to the neighborhood.”

8. Article VI, Section 15 of the Declaration provides, in pertinent part, as follows:

“All Lots shall be kept at all times in a sanitary, healthful, safe and attractive condition ...”

9. Article VII, Section 1 of the Declaration provides, in part, as follows:

“The Association or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations (including liens and charges), now or hereafter imposed by the provisions of this Declaration”

10. Finally, the Architectural Fence Guidelines provide, in pertinent part, as follows:

Fences must be equipped with a rot board and cap rail, and shall be constructed with the following materials:

1” x 6” x 6’ Cedar pickets #1 or #2
(3) 2” x 4” ACQ Treated pine rails/runners

- One top runner positioned below the top cap.
- One bottom runner positioned at the junction of the rot board and picket bottoms
- One middle runner centered between the top and bottom runners.

1” x 6” ACQ treated pine “corral” board, shall serve as the rot board. The rot boards must be in contact with the ground.

2” x 6” Cedar cap rail with a 1” x 4” cedar fascia trim board.

These requirements (Guidelines) shall apply only to fences which are visible from streets, parks and/or Common Areas. Fences which serve only as separation between adjacent Lots, and which are not visible from streets, parks and/or Common Areas are not subject to these requirements.

Fences shall be installed plumb and level. Where there are gradual slopes to the grade, the fence may be installed to follow the contour of grade. All pickets and posts shall be installed in a plumb manner.

Fences installed after the effective date shown above shall meet this criteria. Any fences installed which do not meet this criteria must be adjusted or modified in order to meet this criteria, and may be referred to Association management and/or legal counsel for appropriate enforcement action.

11. Defendant is in substantial violation of the above-quoted paragraphs of the Declaration and Guidelines, in that the Defendant has allowed the fence and gate on the Property to fall into disrepair, and has failed or refused to repair, restore or replace such fence, and has failed to install a rail cap on a portion of such fence. The condition of the fence is unsightly and constitutes both a nuisance and an annoyance to surrounding residents of the community. Photos of the fence are attached to this Motion as Exhibit "E" and incorporated herein by reference. *See Exhibit "E"*.

12. Plaintiff seeks a Permanent Injunction, requiring Defendant to fully and completely repair and/or replace all damaged / broken / leaning portions of the fence located on the Property, and to restore such fence to a condition whereby the fence is fully compliant with the Guidelines.

Plaintiff's Authority to Assess Maintenance Charges

13. Article IV, Section 1 of the Declaration provides, in pertinent part, as follows:

[E]ach Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements ... The annual and special assessments, together with late charge penalties, interest, and reasonable attorney's fees as necessary for collection, shall be a charge on the land and shall be a continuing lien upon each Lot against which such assessment is made. Each such assessment, together with interest, late charge penalties and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due.

14. Further, Article IV, Section 8 of the Declaration provides as follows:

To any assessment not paid within thirty (30) days after the due date there shall be added a late charge penalty, the amount of which to be determined by the Board, plus interest calculated from the due date at the rate of ten percent (10%) per annum. The

Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by reason of non-use of the Common Area or abandonment of his Lot.

15. Defendant is in substantial violation of the above-quoted sections of the Declaration, in that Defendant has failed and/or refused, and continues to fail and/or refuse, to pay certain annual maintenance assessments and related charges which have accrued against the Property. Maintenance fees and related charges have accrued against the Property in the amount of **\$4,270.03**, such sum being comprised of delinquent maintenance assessments, late charges, costs of collection, and accrued interest (such sum hereinafter collectively referred to as the "Indebtedness") in addition to deed restriction enforcement charges. See Exhibit "F"

16. Plaintiff seeks a judgment foreclosing its lien against the Property, as provided under the express terms of the Declaration, subject to any outstanding first lien mortgage, if such lien exists.

REQUEST FOR SUMMARY JUDGMENT

17. A movant is entitled to summary judgment in its favor as a matter of law when there exists no genuine issue of material fact. TEX. R. CIV. P. 166a; *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). Evidence must be construed in the light most favorable to the nonmovant. *Nixon*, 690 S.W.2d at 548-49.

18. As a result of Defendant's ownership of the Property, Defendant is obligated to maintain the Property in compliance with the terms of the Declaration, as well as the Guidelines, and is further obligated to pay to Plaintiff annual maintenance assessments and other charges relating to the Property. Such obligations are covenants running with the land, as well as Defendant's personal obligation. See Exhibits "B" and "C".

19. "A 'restrictive covenant' is a negative covenant that limits permissible uses of land." *Tarr v. Timberwood Park Owners Ass'n, Inc.*, 556 S.W.3d 274 (Tex. 2018). Such covenants limit the use an

owner or occupier of land can make of their property. *See* TEX. PROP. CODE § 202.001(4) (defining “[r]estrictive covenant”). The law recognizes “the right of parties to contract with relation to property as they see fit, provided they do not contravene public policy and their contracts are not otherwise illegal.” *Curlee v. Walker*, 112 Tex. 40, 244 S.W. 497, 498 (1922). Texas courts have previously acknowledged that restrictive covenants can enhance the value of real property. *See* *Davis v. Huey*, 620 S.W.2d 561, 565 (Tex. 1981). “Restrictive covenants are subject to the general rules of contract construction.” *Pilarcik v. Emmons*, 966 S.W.2d 474, 478 (Tex. 1998).

20. Restrictive covenants are to be liberally construed to give effect to their purposes and intent. TEX. PROP. CODE § 202.003(a). Whether a restrictive covenant is ambiguous is a question of law for the court to decide by looking at “the covenants as a whole in light of the circumstances present when the parties entered the agreement.” *Id.*; *see also* *Coker v. Coker*, 650 S.W.2d 391, 394 (Tex. 1983). Like a contract, “covenants are ‘unambiguous as a matter of law if [they] can be given a definite or certain legal meaning.’” *Pilarcik*, 966 S.W.2d at 478 (alteration in original) (first quoting *Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 458 (Tex. 1997); and then citing *Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996)). However, “if the covenants are susceptible to more than one reasonable interpretation, they are ambiguous.” *Id.* “Mere disagreement over the interpretation of a restrictive covenant does not render it ambiguous.” *Buckner*, 133 S.W.3d at 297.

21. Pursuant to the terms of the Declaration, Defendant’s actions, or lack thereof, are in substantial violation of the restrictive covenants which govern the Property, as well as all other properties within the Baywood Oaks subdivision. Defendant has failed to repair or otherwise correct the fence located on the Property and, as of the filing of this motion, such violation remains uncorrected. Additionally, Defendant continues to fail and/or refuse to pay the annual maintenance

assessments and related charges which have accrued against the Property. Maintenance fees and related charges have accrued against the Property in the amount of **\$4,270.03** and will continue to accrue against the Property.

22. For the foregoing reasons, the entry of summary judgment in favor of Plaintiff is appropriate. Plaintiff has conclusively proven its claims and causes of action against Defendant, and there are no genuine disputed issues of fact.

CIVIL DAMAGES

23. Plaintiff requests that the Court award Civil Damages against Defendant pursuant to Section 202.004(c) of the Texas Property Code. This section provides that “[a] court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation.” TEX. PROP. CODE § 202.004(c).

24. As Plaintiff has shown, Defendant has violated the restrictive covenants which govern the Property by failing to repair the fence located on the Property. Such condition has existed for more than one full calendar year. Although Plaintiff is entitled to request \$200 for each day that Defendant has violated the restrictive covenants, Plaintiff is only seeking an award of \$4,000.00, which amount is equal to \$200 per day for twenty (20) of the many days within which such violations have existed.

ATTORNEY’S FEES

25. Defendant’s conduct as described in Plaintiff’s First Amended Petition and Application for Permanent Injunction and the resultant damage and loss to Plaintiff has necessitated Plaintiff’s retention of the attorneys whose names are subscribed to this motion. Plaintiff is therefore entitled to recover from Defendant an additional sum to compensate Plaintiff for a reasonable fee for such attorneys’ necessary services in the preparation and prosecution of this action, as well as a reasonable fee for the defense of any and all unsuccessful appeals to other courts. Tex. Prop. Code § 5.006 (2023).

Attached is a sworn Affidavit of Plaintiff's attorney, therein providing verified support for an award of \$3,233.00 as reasonable and necessary attorney's fees.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, BAYWOOD OAKS COMMUNITY ASSOCIATION, prays that Plaintiff be awarded a judgment against Defendant LAURA ISABEL FLORES and that Defendant and/or any agent, representative, servant, employee or other persons, acting with Defendant or on Defendant's behalf, directly or indirectly, be Ordered to take the following action with respect to the Property within thirty (30) days from and after of entry of Judgment:

- i. Fully and completely repair, restore and/or replace all broken and/or damaged portions of the fence and gate located on the Property, and install a rail cap on the entire fence and gate, in compliance with Plaintiff's Architectural Fence Guidelines;

Plaintiff further prays that it be awarded judgment against Defendant for the following:

- i. Civil damages in an amount equal to \$200.00 per day for each day that Defendant is found to be in violation of the Declaration – Plaintiff seeks an award of Four Thousand Dollars (\$4,000.00), being calculated at \$200.00 per day, for twenty (20) days;
- ii. For reasonable attorney's fees and expenses incurred by Plaintiff in prosecuting this action through entry of Judgment in the amount of \$3,233.00, as well as attorney's fees and expenses incurred post-judgment, and anticipated attorney's fees related to any unsuccessful appeal of this Court's Orders;
- iii. For unpaid assessments and related charges in the amount of Four Thousand Two Hundred, Seventy and 03/100 Dollars (\$4,270.03);
- iv. For judgment foreclosing Plaintiff's lien against Defendant's property, as provided under the express terms of the Declaration, subject to any outstanding first lien mortgage, if such lien exists.
- v. For post-judgment interest on all sums awarded to Plaintiff at the rate of five and one-half percent (5.5%) per annum, from the date of judgment until fully paid; and
- vi. For all costs of Court.

Plaintiff further prays for such other and further relief, special and general, at law or in equity,
as Plaintiff may show itself justly entitled.

Respectfully submitted,

TREECE LAW FIRM, P.C.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Plaintiff's Motion for Summary Judgment, including supporting affidavits, exhibits, and proposed Final Summary Judgment, have been served upon defense counsel of record, in accordance with the Texas Rules of Civil Procedure on this 31st day of October, 2024.



Michael J. Treece