VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 31st day of March, 2022.

Present: Goodwyn, C.J., Mims, Powell, Kelsey, McCullough, Chafin, JJ., and Koontz, S.J.

Mark D. Wells, et al., Appellants,

against Record No. 210469
Circuit Court Nos. CL20000224-00, -01, and -02

Sean Beville, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Pittsylvania County.

Mark and Emily Wells (the "appellants") contend that the Circuit Court of Pittsylvania County erroneously refused to enforce the terms of certain restrictive covenants. Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no error in the judgment of the circuit court.

I. BACKGROUND

In 1964, Virginia and Linda Yeatts subdivided their property on Smith Mountain Lake into twelve lots. Lots 1 and 2 are at issue in the present case.

On July 10, 1970, the Yeattses sold Lots 1 and 2 to John H. Dilworth and Charles L. Oehler. The deed conveying Lots 1 and 2 to Dilworth and Oehler contains eight restrictive covenants, two of which are at issue in this case. Restriction Number 4 states that "[n]o more than one cabin or residence shall be built on a single lot unless the lot exceeds one acre. Lots 1 and 2 shall be considered one lot." Restriction Number 8 states that "Lot No. 1 herein conveyed shall not be sold unless Lot No. 2 is sold to the same person at the same time."

On December 28, 2016, Sean and Carolyn Beville purchased Lots 1 and 2. The deed conveying the property to the Bevilles expressly acknowledged that the conveyance was "subject

to such restrictions and covenants as set forth in the . . . deed of July 10, 1970, if and as to the extent they may still be applicable or enforceable."

The Bevilles subsequently sold Lot 2 to the appellants. The deed that conveyed Lot 2 to the appellants did not specifically reference the restrictive covenants set forth in the July 10, 1970, deed. Nonetheless, the deed observed that the conveyance was "subject to easements, conditions and restrictions of record insofar as the same may lawfully affect the property."

Several months after the Bevilles sold Lot 2 to the appellants, the Bevilles entered into a contract to sell Lot 1 to John Rodenbough. When the appellants learned about the pending sale, they attempted to purchase Lot 1 from the Bevilles. The Bevilles, however, refused to sell Lot 1 to the appellants.

On January 30, 2020, the appellants filed a declaratory judgment action against the Bevilles and Rodenbough (collectively the "appellees"), requesting an interpretation of the restrictive covenants set forth in the July 10, 1970, deed. The appellants argued that the Bevilles violated the restrictive covenants at issue when they entered into a contract to sell Lot 1 separately from Lot 2. Therefore, the appellants requested that the circuit court: (1) set aside the contract between the appellees regarding the sale of Lot 1, and (2) order the Bevilles to convey Lot 1 to the appellants "after arriving at a price" for the property.

The appellees responded that the restrictive covenants set forth in the July 10, 1970, deed were unenforceable following the separate sale of Lot 2 to the appellants. The circuit court agreed and entered judgment in favor of the appellees.[*] This appeal followed.

II. ANALYSIS

On appeal, the appellants contend that the circuit court erred when it refused to enforce the restrictive covenants at issue. The appellants argue that the plain and unambiguous language of the restrictive covenants requires Lot 1 to be sold contemporaneously with Lot 2. Therefore, the appellants maintain that the Bevilles could not sell Lot 1 to Rodenbough. Under the particular circumstances of this case, the Court concludes that the restrictive covenants at issue are unenforceable.

[*] The circuit court also ruled in favor of the appellees on other grounds. In light of the Court's conclusion that the circuit court correctly determined that the restrictions at issue were unenforceable, there is no need to address the other bases of the circuit court's judgment.

The Court reviews the "interpretation of covenants and other written documents de novo." *Perel v. Brannan*, 267 Va. 691, 698 (2004). In general, restrictive covenants are not favored in Virginia. *See, e.g.*, *Sainani v. Belmont Glen Homeowners Ass'n, Inc.*, 297 Va. 714, 722 (2019). "Restrictive covenants 'are to be construed most strictly against the grantor and persons seeking to enforce them, and substantial doubt or ambiguity is to be resolved in favor of the free use of property and against restrictions.'" *Id.* at 723 (quoting *Scott v. Walker*, 274 Va. 209, 213 (2007)). As restrictive covenants are disfavored, they "will not be aided or extended by implication." *Wetlands Am. Trust, Inc. v. White Cloud 9 Ventures, L.P.*, 291 Va. 153, 163 (2016) (quoting *Stevenson v. Spivey*, 132 Va. 115, 119 (1922)).

A restrictive covenant is unenforceable when "conditions . . . have changed so substantially that the essential purpose of the covenant is defeated." *Barner v. Chappell*, 266 Va. 277, 285 (2003). "The determination of the degree of change necessary to have this effect is inherently a fact-specific analysis in each case." *Chesterfield Meadows Shopping Ctr. Assocs., L.P. v. Smith*, 264 Va. 350, 356 (2002). In the present case, changed circumstances have defeated the purpose of the restrictive covenants at issue.

The restrictive covenants at issue here, viewed in light of the appellants' argument, suffer from a fatal flaw. Specifically, while the restrictive covenants expressly require Lot 1 to be sold contemporaneously with Lot 2, the covenants do not contain any reciprocal language requiring Lot 2 to be sold contemporaneously with Lot 1. Under the terms of the restrictive covenants, then, Lot 2 may be sold separately from Lot 1. Thus, the Bevilles did not violate the restrictive covenants when they sold Lot 2 to the appellants.

The separate sale of Lot 2 to the appellants defeated the essential purpose of the restrictive covenants at issue. Although the restrictive covenants contemplated that Lots 1 and 2 would be owned by a single party and treated as "one lot," the separate sale of Lot 2 to the appellants made this objective an impossibility. Following the sale of Lot 2 to the appellants, Lots 1 and 2 were two separate parcels of land owned by different parties.

The application of the restrictive covenants under these circumstances would substantially limit the alienability of Lot 1. As previously noted, Restriction Number 8 states that Lot 1 "shall not be sold unless Lot No. 2 is sold to the same person at the same time." Consequently, Lot 1 could only be sold if the appellants decided to sell Lot 2 at some future date. Even then, Lot 1 could only be sold to the "same person" that decided to purchase Lot 2 from the

appellants. If that person chose not to purchase Lot 1, the property would remain inalienable for another indefinite period of time (i.e., until a future purchaser eventually agreed to purchase Lots 1 and 2 simultaneously).

The separate sale of Lot 2 to the appellants brought about a change in circumstances that defeated the essential purpose of Restrictions Number 4 and 8. Accordingly, the circuit court correctly determined that the appellants could not enforce these restrictive covenants.

III. CONCLUSION

For the reasons stated, the Court affirms the judgment of the circuit court.

This order shall be certified to the Circuit Court of Pittsylvania County.

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Teste: 

Clerk