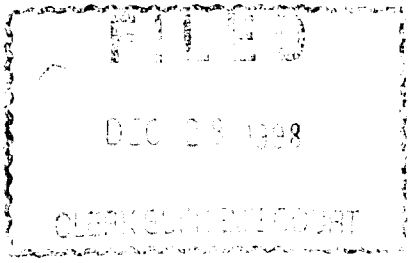
IN THE COURT OF APPEALS OF IOWA

No. 8-594 / 98-0523
Filed December 28, 1998

LAKE PONDEROSA ASSOCIATION, DARRELL TERPSTRA, CAROLYN TERPSTRA, ARIE VERDUGHT, ALICE VERDUGHT, LARRY WORTHINGTON, and DEBBIE WORTHINGTON,
Appellants,

vs.

LYLE TOMPKINS and MARY TOMPKINS,
Appellees.



Appeal from the Iowa District Court for Poweshiek County, Daniel P. Wilson, Judge.

Homeowners association and homeowners appeal from an adverse declaratory judgment in their action to enforce restrictive covenants. **AFFIRMED.**

Lee M. Walker and Corey J.L. Walker of Walker, Knopf & Billingsley, Newton, for appellants.

William D. Olson of Charnetski, Olson, Lacina, Pendleton & Garland, L.L.P., Grinnell, for appellees.

Heard by Sackett, C.J., and Huitink, Vogel, and Mahan, JJ. Streit, J., takes no part.

HUITINK, J.

Homeowners association and homeowners appeal from an adverse declaratory judgment in their action to enforce restrictive covenants.

I. Background Facts and Proceedings.

The basic facts of this case are undisputed. The plaintiffs-appellants are the Lake Ponderosa Association and various homeowners who own land on or near Lake Ponderosa in Poweshiek County, Iowa. Defendants-appellees Lyle and Mary Tompkins own one or more single family residences on or near Lake Ponderosa which they rent to others for profit. The Tompkins' properties are subject to a restrictive covenant which provides owners will not "maintain a commercial enterprise of any kind or character on said lot, on Lake Ponderosa, or on any area used in common with other lot owners in the Lake Ponderosa Development."

The appellants filed a petition for a declaratory judgment and injunction seeking to enjoin the Tompkins from continuing to rent some or all of their property for profit. The appellants contend a proper construction of the restrictive covenant forbids the Tompkins from renting their property to others. Conversely, the Tompkins assert a proper construction of the restrictive covenant does not prohibit such activity.

The matter was submitted to the district court on stipulated evidence. The district court found the term "commercial enterprise" as contained in the restrictive covenant was ambiguous. Consequently, the district court strictly construed the

restrictive covenant, and found the Tompkins' use of their property was not prohibited by its terms.

On appeal, the appellants contend the district court erred in finding the restrictive covenant prohibiting commercial enterprises did not preclude the Tompkins from using their property for rental purposes.

II. Standard of Review.

We review de novo. *See* Iowa R. App. P. 4.

III. Ambiguity of the Restrictive Covenant.

Restrictive covenants are recognized under Iowa law and exist to protect existing and future property owners in a subdivision by placing certain restrictions on the land so that lot owners use their lots in conformity with those restrictions. *Stone Hill Community Ass'n v. Norpel*, 492 N.W.2d 409, 410 (Iowa 1992). Iowa courts will enforce restrictive covenants where the intention of the parties is clear in creating them and the restrictions are reasonable. *Thodos v. Shirk*, 79 N.W.2d 733, 736, 248 Iowa 172, 176 (Iowa 1956). The intention of the parties may be ascertained from the language of the instrument or may be implied from the surrounding circumstances. *Id.* at 738, 180.

A restriction on the free use of property must be strictly construed against a party seeking to enforce it. *Iowa Realty Co., Inc. v. Jochims*, 503 N.W.2d 385, 386 (Iowa 1993); *Stockdale v. Lester*, 158 N.W.2d 20, 22 (Iowa 1968); *Fischer v. Driesen*, 446 N.W.2d 84, 86 (Iowa App.1989). This rule has application "only where the

wording of the restriction is ambiguous." *Id.* Mere disagreement over the meaning of a word or phrase does not establish ambiguity for purposes of the rule. *Farm Bureau Mut. Ins. Co. v. Sandbulte*, 302 N.W.2d 104, 108 (Iowa 1981). Words of a contract must be given their commonly understood meaning. *Iowa Realty*, 503 N.W.2d at 386.

The term "commercial" means "occupied with or engaged in commerce; related to or dealing with commerce." Webster's Third New Int'l Dictionary 456 (unabridged ed. 1993). "Commerce," in turn, means "the exchange or buying and selling of commodities esp. on a large scale"; but it also can mean "dealings of any kind." *Id.* "Commercial" also can mean "having profit as the primary aim." *Id.* "Enterprise" can mean "venture, undertaking, project"; "a business organization: firm, company"; or, simply, "any systematic purposeful activity." *Id.* at 757.

If a "commercial enterprise" is any undertaking or systematic purposeful activity involving business dealings of any kind, then the covenant covers the Tompkins' use of the property, because the Tompkins' activity in renting their property systematically and purposefully generates revenue for themselves. On the other hand, if a "commercial enterprise" requires a business organization that has profit as its primary aim, then the covenant does not cover Tompkins' use, because the record does not demonstrate the Tompkins are a business organization. *Accord*, *Yogman v. Parrott*, 937 P.2d 1019, 1021-22 (Or. 1997)(applying same analysis).

We, like the district court, find the term "commercial enterprise" is ambiguous

because there is a genuine uncertainty as to which of several meanings of this term was intended. *See LeMars Mut. Ins. Co. v. Joffer*, 574 N.W.2d 303, 307 (Iowa 1998)(finding an ambiguity exists if, after the application of pertinent rules of interpretation to the contract, a genuine uncertainty results as to which one of two or more meanings is the proper one). Because we find the term "commercial enterprise" as contained in this restrictive covenant is ambiguous, we also strictly construe the covenant against any restraint on the Tompkins' use of their property. *Iowa Realty*, 503 N.W.2d at 386.

In its decree, the district court stated:

> The Court further specifically finds from a review of all of the submissions in this cause, and particularly from a review of all of the deed restrictions found in the platting procedures of the Lake Ponderosa Development, Inc., that the purpose of the deed restrictions or restrictive covenants is to control the usage of the property in the Lake Ponderosa Development. In this case, defendants Tompkins have residential real estate on the lake which they rent out for residential purposes. The ultimate usage to which the property on the lake is put by the defendants does not differ significantly from that usage which would occur if the defendants lived on the property themselves.

Our de novo review of the record confirms the validity of these findings of fact and we adopt them as our own.

Based on these facts, we conclude the district court's construction of the restrictive covenant was correct and we affirm.[1]

AFFIRMED.

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[1] Our decision is limited to the Tompkins' use of their property for residental rentals. We make no determination whether any other uses are precluded by the covenant.