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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 10-1017

PAM'S INVESTMENT PROPERTIES, LLC, and SHAROKH ABEDI APPELLANTS	**Opinion Delivered** April 13, 2011
V.	APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT [NO. CV-2009-1114-2]
TERRY McCAMPBELL, KEITH CONNER, BRYAN MOORE, and OTHER SIMILARLY SITUATED RESIDENTS OF JAMESTOWN ADDITION OF THE CITY OF WHITE HALL, ARKANSAS APPELLEES	HONORABLE ROBERT H. WYATT, JR., JUDGE AFFIRMED

DOUG MARTIN, Judge

Appellants Pam's Investment Properties, Inc. (Pam's) and Sharokh Abedi appeal from the circuit court's order granting the motion for summary judgment filed by appellees Terry McCampbell, Keith Conner, Bryan Moore, and other similarly situated residents of the Jamestown Addition of the City of White Hall (McCampbell). We affirm.

Pam's is the record owner of Lot 11 in the Jamestown Addition in White Hall. On September 23, 2009, Pam's filed a "lot split" whereby it purported to split Lot 11 into Lot 11A and Lot 11B. Pam's retained title to Lot 11A and transferred title to Lot 11B to Abedi, who began constructing a house on Lot 11B. On November 24, 2009, McCampbell and other residents of Jamestown Addition filed a complaint in Jefferson County Circuit Court

seeking to set aside the lot split. McCampbell pointed to language in the restrictive covenants for Jamestown Addition that prohibited the splitting or subdividing of lots into smaller lots except under certain circumstances and asked the court to both enjoin any further construction on either Lot 11A or Lot 11B and set aside the lot split.

Pam's answered the complaint, denying that the division of Lot 11 violated the restrictive covenants in question. Pam's subsequently filed a motion for summary judgment, arguing that the language in the restrictive covenant was ambiguous and should be construed strictly against McCampbell. McCampbell responded, denying that the language in the restrictive covenant was ambiguous and arguing that the plain language of the covenant should be enforced. After a hearing on the summary-judgment motion on July 8, 2010, the circuit court entered an order on July 21, 2010, granting McCampbell's motion for summary judgment. Pam's filed a timely notice of appeal and now argues on appeal that the circuit court's interpretation of the restrictive covenant was erroneous.

Our supreme court has repeatedly held that summary judgment is to be granted only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Monday v. Canal Ins. Co.*, 348 Ark. 435, 73 S.W.3d 594 (2002); *Foreman Sch. Dist. No. 25 v. Steele*, 347 Ark. 193, 61 S.W.3d 801 (2001). However, where, as here, both parties agree on the facts and have filed cross-motions for summary judgment, the appellate court's only determination is whether the appellee was

entitled to judgment as a matter of law. *Jones v. Juanita S. Woods Family Ltd. P'ship*, 95 Ark. App. 326, 236 S.W.3d 573 (2006).

In its sole point on appeal, Pam's argues that the trial court erred in concluding that the pertinent language in the restrictive covenant was unambiguous and precluded a lot split like the one that Pam's attempted to accomplish. The relevant language, found in Paragraph 4 of the restrictive covenant, provides, in pertinent part, as follows:

> 4. Division of Lots
>
> A "lot" shall consist of a numbered lot as shown on the plat of this addition or portions of one or more platted lots having a distance at the front building setback line of not less than 80 feet. No lot shall be split or resubdivided into smaller lots, but portions of adjacent lots may be sold and used to result in larger lots. In addition, there shall be only one residence on any one lot in the subdivision. For purposes of these Restrictive Covenants the word "lot" shall refer to a building area as herein set forth and defined.

Pam's argues that this language is ambiguous and that, as a result, the provision should be construed strictly in its favor. Restrictive covenants are not favored, and if there is any restriction on land, it must be clearly apparent. *Hutchens v. Bella Vista Village Prop. Owners' Ass'n*, 82 Ark. App. 28, 110 S.W.3d 325 (2003). Where there is uncertainty in the language by which a grantor in a deed attempts to restrict the use of realty, freedom from that restraint should be decreed; but when the language of the restrictive covenant is clear and unambiguous, the parties will be confined to the meaning of the language employed, and it is improper to inquire into the surrounding circumstances of the objects and purposes of the restriction to aid in its construction. *Holmesley v. Walk*, 72 Ark. App. 433, 39 S.W.3d 463

(2001). Stated another way, where the language of the restrictive covenant is clear and unambiguous, application of the restriction will be governed by our general rules of interpretation; that is, the intent of the parties governs as disclosed by the plain language of the restriction. *Royal Oaks Vista, L.L.C. v. Maddox*, 372 Ark. 119, 271 S.W.3d 479 (2008); *Martin v. Shew*, 96 Ark. App. 32, 237 S.W.3d 497 (2006).

Pam's argues that the language in the restrictive covenant is ambiguous and "almost indecipherable." It contends that the first sentence of the restriction provides that a "lot can be either a numbered lot as shown on the plat or portions of one or more platted lots apparently joined together both having a distance at the front building setback line of not less than 80 feet." This, Pam's asserts, means that "a 'lot' can be a lot or portions of one lot." Pam's argument on this issue is without merit, as Pam's does not dispute that it purchased "a numbered lot."

Next, Pam's challenges the second sentence, which provides that "[n]o lot shall be split or resubdivided into smaller lots[,] but portions of adjacent lots may be sold and used to result in a larger lot." We find this language to be clear and unambiguous. No lot shall be split or divided into smaller lots. Adjacent lots, however, may be joined to create larger lots. Clearly, the intent of this provision is to ensure that lots maintain a minimum size of at least eighty feet across the front building setback line. To the extent that Pam's argues that it is confused as to how a lot can be defined in the first sentence "as portions of one lot then in the next sentence there be a declaration that no lot may be split," it is apparent that this

language is referring to an instance where portions of adjacent lots have been joined to create larger lots.

Finally, regarding the clause that states, "[f]or purposes of these restrictive covenants the word 'lot' shall refer to a building area," Pam's asserts that the phrase "building area" is undefined in the restrictive covenant. Paragraph 3, however, clearly defines "building location," describing the minimum setback lines within which buildings or dwellings must be located.[1] Moreover, Pam's does not explain how the failure to specifically define "building area" (as opposed to "building location") renders the language prohibiting lot-splitting ambiguous.

In short, the restrictive covenant is not ambiguous; as such, we construe it according to our general rules of interpretation and determine the intent of the parties governs as disclosed by the plain language of the restriction. Here, it is clear that the intent behind the restriction was to preclude splitting of lots into smaller parcels. Pam's actions were clearly in

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[1] That clause of the restrictive covenant provides as follows:

> No building or dwelling shall be located on any lot nearer to the front or side lot line than the minimum setback lines shown on the recorded plat. A distance of 15 feet from the side lot lines of any permitted structure on any such lot shall be maintained as side yard without a structure thereon, or as shown as side building setback lines on the recorded plat, whichever is the greater. No building shall be erected or constructed nearer than 10 feet to the rear property line of any lot in the subdivision. For purposes of this covenant, steps, eaves, and overhangs are not considered as part of the building, unless they extend more than 5 feet beyond the foundation line of the building to which they are attached, but covered porches shall be considered as part of the building.

contravention of that restriction, and the circuit court was correct to grant summary judgment in favor of the plaintiffs.

Affirmed.

PITTMAN and ABRAMSON, JJ., agree.