
From: Erika Kellerhals [REDACTED]
Sent: Friday, March 11, 2016 12:45 PM
To: jeffrey E.
Subject: Re:

Shep Barrows agreed to do a bit more digging on it to get = more realistic value. He said part of the problem is the little marina ne=t door just sold for about 3x what it was worth to the people who have Tha=ch - he's going to pull the numbers for me so I can see what it is. He=said just give him another day or so and he's get back to us but he ↴;s sure he can come in well below \$2.2M.

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PLE=SE NOTE OUR NEW ADDRESS BELOW.

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Fax: [REDACTED] iv>

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On Fri, Mar 11, 2016 at 7:19 AM, jeffrey E. =span dir="ltr">><jeevacation@gmail.com <mailto:jeevacation@gmail.com> > wrote:

after they read the covnenat , what number =o they think is appropriate?

On Thu, Mar 1=, 2016 at 8:00 AM, Erika Kellerhals [REDACTED] = wrote:

Have a call with 2 more appraisers toda= - no one is willing to commit to \$100K just yet.

As for standing - full memo is to be sent to yo= and DKI via separate email - but we believe that you have standing. As a =reliminary matter - the restrictive covenant is valid and enforceable. As =or Kevin's point about whether or not you have standing - you ha=e standing for various reasons.

Generally, in a suit to enforce a restrictive covenant, the party seeking enforcement must demonstrate that t=e covenant was made to for its benefit. Here, Kevin would likely argue that t=e only benefited properties with respect to the restrictive covenant would be Tracts 1 and 2=because they are the only tracts specifically named in the restrictive covenant. Therefore he would claim they are the on=y parties that would have standing.

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He can of course make the argument - but=we believe such argument would be defeated by the language of the res=strictive covenant itself- which states : Parcel 11 "shall be used exclusively f=r a dock, wharf or landing facilities for boats of owners or occupants of premises situated on Great S=. James Island, St. Thomas, or their licensees or invitees . . .♦=80♦ Although the Deed does not expressly name GSJ as a benefited parcel, in actuality - Parcel 11♦=80♦s sole use has been as a dock serving GSJ for many years. Therefore, the language and surrounding circumstances indicate that GSJ is a benefited parcel.

Let's =ssume the Court sided with Kevin and found that GSJLLC is not a "bene=itted party" because of the language of the deed. While that might ha=e Kevin jumping for joy - he's not out of the woods yet - for a couple=of reasons. While specific language is important - the intentio= of the parties is also important in determining who has the right to=sue to enforce the covenant. Intention is determined from the languag= of the covenant in addition to determining the surrounding circumstances =t the time the covenant was made.

As in other actions brought upon obligations imposed by contract or covenant, a plaintiff must show a legal or equitable interest which gives him a right to bring the action. Before a stranger to = conveyance may assert rights based upon a covenant or restriction there mus= be found somewhere the clear intent to establish the restriction for the benef=t of the party suing or his grantor, of which right the defendant must have either actual or constructive notice. How could Kevin argue otherwise? It's clear from the lan=usage that the restrictive covenant was intended to benefit Tract 1, T=act 2 and GSJ.

Whether a right is asserted on the theory of a covenant running with the land, an equitable easement or servitude, or a third-party beneficiary of a contract, the right of a person not a party to a restrictive covenant or agreement to enforce it depends upon the intention of the parties—that is, where the restriction is created by deed, the intention of the grantor and the grant—in imposing it. Specifically, such right depends upon an intent to benefit the land of the person seeking to enforce the restriction, to benefit the party suing or his grantor, to create an easement, servitude, or right which would run with the land, or to benefit a particular piece of ground as distinguished from a personal benefit to the owner at the time of the promise. ♦=AO In order to confer a right of enforcement upon one other than a party to the agreement, it must appear that it was intended to create a servitude or right which would inure to the benefit of the land acquired by the plaintiff and should be annexed to it as an appurtenance, or, as sometimes expressed, that it was intended to operate as between subsequent grantees<=a>. Such intention is stated to be the principal, paramount, controlling, or sole factor for consideration. Thus the general theory behind the right to enforce restrictive covenants is that the covenants must have been made with or for the benefit of the one seeking to enforce it. In this case - that is GSJLLC.

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As a side note - Tract 1 and Tract 2 which are referenced in the deed comprise about 100 acres of property in the east end - it has been subdivided over time into hundreds of lots. If we really wanted to make sure you were a benefitted party and essentially cut off their claims - I think GSJLLC could just purchase a happy piece of property that has been subdivided out of Tract 1 and Tract 2 and sue to enforce the covenant that way.

♦=AO

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On Wed, Mar 9, 2016 at 9:05 PM, jeffrey E. <=pan dir="ltr"><jeevacation@gmail.com <mailto:jeevacation@gmail.com> > wrote:

where are we with appraiser? and standing re=litigation?

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