
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 a more realistic value. He said part of the problem is the little marina next door just sold for about 3x what it was worth to the people who have it - 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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PLEASE NOTE OUR NEW ADDRESS BELOW.

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

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

On Thu, Mar 10, 2016 at 8:00 AM, Erika Kellerhals <[REDACTED]> wrote:

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

As for standing - full memo is to be sent to you and DK1 via separate email - but we believe that you have standing. As a preliminary matter - the restrictive covenant is valid and enforceable. As for Kevin's point about whether or not you have standing - you have standing for various reasons.

Generally, in a suit to enforce a restrictive covenant, the party seeking enforcement must demonstrate that the covenant was made to for its benefit. Here, Kevin would likely argue that the 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 only 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 restrictive covenant itself- which states : Parcel 11 "shall be used exclusively for 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 assume the Court sided with Kevin and found that GSJLLC is not a "benefitted party" because of the language of the deed. While that might have Kevin jumping for joy - he's not out of the woods yet - for a couple of reasons. While specific language is important - the intention of the parties is also important in determining who has the right to sue to enforce the covenant. Intention is determined from the language of the covenant in addition to determining the surrounding circumstances at 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 a conveyance may assert rights based upon a covenant or restriction there must be found somewhere the clear intent to establish the restriction for the benefit 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 language that the restrictive covenant was intended to benefit Tract 1, Tract 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 or 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. 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. 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.

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On Wed, Mar 9, 2016 at 9:05 PM, jeffrey E. <jeevacation@gmail.com> wrote:

where are we with appraiser? and standing re litigation?

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