

STATE OF MICHIGAN  
COURT OF APPEALS

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VINEYARDS SUBDIVISION ASSOCIATION,  
Plaintiff-Appellant,

UNPUBLISHED  
July 3, 2007

v

ARLENE MAIER,

Defendant-Appellee.

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No. 273431  
Macomb Circuit Court  
LC No. 05-003615-CH

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order denying its motion for summary disposition concerning the issue of attorney fees. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant owns a residence in Vineyards Subdivision in Sterling Heights. Plaintiff filed suit to enforce a provision of the subdivision's Declaration of Covenants and Restrictions prohibiting residents from parking motor homes on their lots. The trial court entered a consent judgment in which plaintiff agreed to allow defendant and other residents to park such vehicles in the subdivision for up to forty-eight hours. The judgment noted that the parties disputed whether plaintiff was entitled to an award of attorney fees and invited them to submit motions for summary disposition on this issue. When plaintiff filed such a motion, the trial court denied its request for attorney fees.

Generally, we review decisions concerning the award of attorney fees for an abuse of discretion. *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 438; 695 NW2d 84 (2005). However, "any questions of law that affect the determination are reviewed de novo." *Id.* The abuse of discretion standard recognizes that there may be no single correct outcome in certain situations. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Instead, there may be more than one reasonable and principled outcome. *Id.* When the trial court selects one of these principled outcomes, it has not abused its discretion and the reviewing court should defer to the trial court's judgment. *Id.*

Under MCR 2.625, a prevailing party is usually entitled to recover litigation costs. *Lavene v Winnebago Industries*, 266 Mich App 470, 475; 702 NW2d 652 (2005). "Michigan follows the 'American rule' with respect to the payment of attorney fees." *Haliw v Sterling Heights*, 471 Mich 700, 706-707; 691 NW2d 753 (2005). Consequently, a prevailing party

cannot generally recover attorney fees from the losing party “in the absence of an exception set forth in a statute or court rule expressly authorizing such an award.” *Id.* at 707; see also MCL 600.2405(6). Nevertheless, the parties to a contract may include a provision requiring a breaching party “to pay the other side’s attorney fees and such provisions are judicially enforceable.” *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996). However, the non-breaching party’s “recovery is limited to reasonable attorney fees.” *Id.* at 195-196.

In the instant case, plaintiff did not cite a statute or a court rule in its request for attorney fees. Rather, plaintiff asserts that it has a right to such fees under the Declaration.

Negative covenants restricting land use are grounded in contract. *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 491; 686 NW2d 770 (2004). A covenant constitutes “a contract created with the intention of enhancing the value of property, and, as such, it is a ‘valuable property right.’” *Terrien v Zwit*, 467 Mich 56, 71; 648 NW2d 602 (2002) (internal citation omitted). Generally, such agreements, when voluntarily and fairly made, “shall be held valid and enforced in the courts.” *Id.* (internal citation and quotation marks omitted). In an action to enforce a restrictive covenant, the intent of the drafter controls. *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997). The enforcing court must strictly construe all provisions of the covenant “against the would-be enforcer,” resolving all doubts “in favor of free use of the property.” *Id.* If the court can clearly ascertain the intent of the parties, it is required to “give effect to the instrument as a whole.” *Village of Hickory Pointe Homeowners Ass’n v Smyk*, 262 Mich App 512, 515-516; 686 NW2d 506 (2004).

The restriction that plaintiff filed suit to enforce, paragraph 6(a) of the Declaration, provides:

No housetrailer, motor homes, commercial vehicles, cars under repair or restoration, boat trailers, camping vehicles, pickup campers, camping trailers, or any portion thereof, may be parked on or stored on any street in the Subdivision or any Lot, unless stored fully enclosed at all times within an attached garage. Commercial vehicles and trucks shall not be parked or stored in the Subdivision, or on any Lot therein, except while making normal deliveries or pickups in the normal course of business.

Further, the provision plaintiff relied on when making its request for attorney fees, paragraph 15(a) of the Declaration, provides, in pertinent part:

The party enforcing this Declaration may recover against a Lot owner violating the provisions of this Declaration all reasonable costs incurred by such party in enforcing such provisions in any of the foregoing ways, including without limitation, the cost of removing offending structures, actual attorneys fees, and other litigation costs.

Plaintiff’s complaint sought to enforce the absolute prohibition on parking motor homes within the subdivision set forth in paragraph 6(a). Defendant’s answer argued for a forty-eight-hour grace period in line with the restrictions imposed by the City of Sterling Heights. In their consent judgment, the parties agreed that defendant and other residents could park motor homes

in their driveways for such a period without being considered in violation of the Declaration. In rejecting plaintiff's subsequent request for attorney fees, the trial court noted that there had been some confusion regarding plaintiff's restriction and that the parties resolved the issue based on the city ordinance. Plaintiff asserts that no such confusion existed and that the trial court abused its discretion in failing to award attorney fees.

Regardless of whether defendant actually understood the provision, the essence of the trial court's ruling is that Vineyard failed in its attempt to enforce the restriction. Rather, it agreed to adopt a reasonable grace period not included in the Declaration. Because plaintiff did not succeed in enforcing the restriction, paragraph 15(a) of the Declaration does not entitle it to recover attorney fees. Consequently, the trial court did not abuse its discretion.

In arguing against this result, plaintiff asserts that it prevailed in the trial court because, before the consent judgment, defendant had parked her motor home in the subdivision for up to ninety-six hours. We disagree that this argument provides a basis for reversal. We reiterate that, although plaintiff appears to have been allowing a grace period before the entry of the consent judgment, its complaint clearly seeks to enforce the restriction as written. Thus, there was a sound basis for the trial court to conclude that plaintiff failed to prevail in enforcing the Declaration, and its decision was not outside the principled range of outcomes. *Maldonado, supra* at 388.

Affirmed.

/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood