STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

[FILED: December 26, 2014]

CLIFTON PAYNE	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. WC-2012-0449**
	:	
TOWN OF NEW SHOREHAM,	:	
THE TOWN OF NEW SHOREHAM	:	
ZONING BOARD OF REVIEW,	:	
THE TOWN OF NEW SHOREHAM	:	
PLANNING BOARD and CAROLE PAYNE,	:	
PAYNE'S 1614 REALTY, LLC	:	
Defendants.	:	

DECISION

STERN, J. This case arises out of a request for declaratory relief pursuant to G.L. 1956 § 9-30-2 to declare the rights of the Plaintiff, Clifton Payne (Clifton), as well as a request for an injunction by Clifton against his co-tenant and sister, the Defendant, Carole Payne (Carole), as those claims relate to property held subject to an agreement by both parties, identified as Plat 5, Lot 110 in the Town of New Shoreham.

I

Facts and Travel

Clifton and Carole own Plat 5, Lot 110 in the Town of New Shoreham (Town or the Town) as co-tenants, each possessing an undivided one-half interest in Plat 5, Lot 110. Am. Compl. ¶¶ 2, 5. Both are co-trustees and co-beneficiaries of Lot 110 in accordance with their responsibilities to the Frank C. Payne Trust. Located on Plat 5, Lot 110 is a well and pumping system that supplies water to Clifton's marina and dock, known as Payne's Dock. Id. at ¶ 3. Payne's Dock is operated by Clifton as his principal source of income. Id. The water being

supplied to Payne's Dock is used for both drinking water and for washing off boats docked at the marina. Id. While Clifton is the sole owner and operator of Payne's Dock, Carole owns abutting property to Plat 5, Lot 110. Answer to Am. Compl. ¶ 4. The abutting property is Plat 5, Lot 111. Am. Compl. ¶ 4. Carole owns Payne's 1614 Realty, LLC, a limited liability company that operates Payne's Harborview Inn on Plat 5, Lot 111. Id. Carole is the exclusive owner of Plat 5, Lot 111. Am. Compl. ¶ 4.

The parties' interests in Lot 110 are restricted by an Agreement to Restrict Development Rights (Agreement or the Agreement) which was signed by both Clifton and Carole in a competent capacity. [1] Id. at ¶ 5. The relevant terms of the Agreement for the purposes of this dispute pertain to the restrictions posed by paragraph 6 of the Agreement. Id. The relevant portion of paragraph 6 as found in the Agreement reads:

> "…the use of [lot 110] is restricted so that the same shall not be developed in any way other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot." Am Comp. ¶ 5; see Ex. A of Pl.'s Am. Compl.

The controversy in this suit stems from Clifton's allegation that Carole has "developed" [2] and used Plat 5, Lot 110 for purposes otherwise not allowed in the Agreement. Am. Compl. ¶ 6. In turn, Clifton seeks a declaration of his rights under the Agreement and an injunction to force his sister from using Plat 5, Lot 110 in any way not allowed by the Agreement. See Am. Compl. 4.

[1] When the Agreement was signed in 1999, Clifton and Carole each held Payne's Dock, Plat 5, Lot 111 and Plat 5, Lot 110 as co-trustees in the Frank C. Payne Trust. Today, Clifton retains exclusive control of Payne's Dock while Carole retains exclusive control of Plat 5, Lot 111 where she ultimately built Payne's Harborview Inn. As previously stated, however, Clifton and Carole each still hold an undivided, one-half interest as co-trustees in Plat 5, Lot 110.

[2] The words "developed" "development" "developing" or "develop" are defined as "[t]he construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; or any change in use, or alteration or extension of the use, of land." G.L. 1956 § 45-24-31(20); New Shoreham Zoning Ordinance § 202(A)(51).

In October 2010, in order to operate Payne's Harborview Inn on Plat 5, Lot 111, Carole applied for and received a special use permit from the Town's Zoning Board of Review. The special use permit allowed Carole to open and run a restaurant and bar at the aforementioned Payne's Harborview Inn. Payne v. Town of New Shoreham, 2013 WL 3835909, at *2; Am. Compl. ¶ 12. No appeal was taken by Clifton from the Town's Zoning Board of Review's decision as the Town's Zoning Board of Review's decision only applied to Plat 5, Lot 111 which is in the exclusive control of Carole. Payne v. Town of New Shoreham, 2013 WL 3835909, at *2. In June 2011, the Town's Planning Board issued a decision approving landscaping and exterior changes to Plat 5, Lot 111, to include the placement of a row of boulders along the border shared by the jointly-owned Plat 5, Lot 110 and Carole's owned Plat 5, Lot 111. Id. The boulders clearly marked the boundary between the two parcels of land as well as acting as a hazard when crossing between the two lots. Id.

In 2012, Carole sought a ruling from the Town's Planning Board so as to modify their original June 2011 decision. Id. The modification would allow for the removal of the boulders that clearly marked the boundary between Carole's exclusively-held property on Plat 5, Lot 111 and the co-owned Plat 5, Lot 110. Carole's request was granted by the Town over Clifton's objection. Id. At a bench trial on October 27, 2014, Carole cited that she wanted to remove the previously placed boulders for aesthetic purposes. The modified decision allowed Carole to "remove the boulders and instead install fences, [different] boulders, or other obstructions to prevent vehicles from driving within 20 feet of the wells on Lots 111 and 110."[3] Id. Today, Carole does not operate Payne's Harborview Inn as a restaurant and bar, nor has Carole ever

[3] It must be reinforced that the well located on Plat 5, Lot 110 is the object most important to the underlying controversy as it pumps water to Payne's Dock, which is in the exclusive control of Clifton.

erected any other type of obstruction to divide her lot and the jointly-held lot.

Following the Town's Zoning Board of Review's refusal to overturn the modification, Clifton filed an Amended Complaint in Superior Court which sought to "(1) declare the Planning Board's decision void; (2) declare the Town's zoning ordinance void to the extent that it permits more than advisory opinions from the Planning Board; and (3) enjoin Carole from using Lot 110 in any manner that is inconsistent with the Agreement." Id. at *3.

The uses of Plat 5, Lot 110 that Clifton wanted to enjoin Carole from performing are any purposes not specifically allowed for by the Agreement. Clifton seeks to enjoin Carole from placing port-a-johns, dumpsters, wedding tents, automobiles, and other things of that nature on the subject Lot. Am. Compl. ¶ 19. At the October 27, 2014 bench trial, Carole admitted that oil trucks use the property in question to deliver oil to Payne's Harborview Inn on the adjacent property and further admits to "occasionally…pitching a tent…or having an occasional port-a-john or car parked" on Plat 5, Lot 110. Payne v. Town of New Shoreham, 2013 WL 3835909, at *9. Carole's admitted past uses of Plat 5, Lot 110 serve as the crux for the present suit as they raise the genuine issue of whether Carole has violated the terms of the Agreement via her past uses of Plat 5, Lot 110.

Summarily, Clifton then moved for summary judgment pursuant to Super. R. Civ. P. 56 against all of the named defendants on August 31, 2012.[4] Id. at *3. On November 8, 2012, Carole and her company filed an objection to Clifton's Motion for Summary Judgment. Id. This Court agreed with Carole and denied Clifton's Motion for Summary Judgment on July 18, 2013

[4] The Town moved to dismiss Clifton's claim against them on September 4, 2012 pursuant to Super. R. Civ. P. 12(b)(6) alleging lack of standing. Payne v. Town of New Shoreham, 2013 WL 3835909, at *3. The Town's Motion was granted as this Court held that Clifton did not have standing to sue the Town and granted the Town's Motion on July 18, 2013, effectively removing it from this present suit. Id. at *3-8.

concluding,

> "that the resolution of [Clifton's] claims against Carole and Payne's 1614 Realty would be inappropriate at this time because the determination of whether a party has breached its contractual obligations is typically a question of fact best decided by the jury. Accordingly, this Court denies Plaintiff's Motion for Summary Judgment." Id. at *10.

Following the resolution of the dispositive issues, Clifton and Carole/Payne's 1614 Realty, LLC continued discussions regarding the fate of Plat 5, Lot 110. On October 27, 2014, during the bench trial, the issues came to a head with Clifton filing his pre-trial memorandum on October 27, 2014 and Carole/Payne's 1614 Realty, LLC filing theirs on the same date. This case turns on whether or not Carole's actions constituted a violation of the Agreement and, if so, whether an injunction is the appropriate remedy.

Parties' Arguments

First and foremost, Plat 5, Lot 110 is subject to the Agreement. Both parties agree on that issue. The section of the Agreement relevant to the present controversy states, "…the use of [lot 110] is restricted so that the same shall not be developed in any way other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot." Am. Compl. ¶ 5; see Ex. A of Pl.'s Am. Compl. ¶ 6.

Clifton avers that Carole has not acted in accordance with the Agreement as she has allowed wedding tents, port-a-johns, automobiles, dumpsters, oil trucks, and other objects to be parked, placed, or otherwise used on Plat 5, Lot 110. Clifton argues that those aforementioned uses do not conform to the intended purpose of Plat 5, Lot 110, which is for the development of other wells and structures in order to assure the purity of the water contained in the well on that site. Alternatively, Clifton contends that Carole is using Plat 5, Lot 110 for purposes other than

what is agreed to in writing pursuant to the Agreement, which is for the placement of other wells on the subject Lot.

In light of the language of the Agreement, Clifton argues that the use of Plat 5, Lot 110 is limited to a singular purpose—for the placement of other wells on that lot. Simply put, Clifton believes that a violation of the Agreement occurs when either he or Carole uses Plat 5, Lot 110 for any use other than for the placement of wells on the jointly-held piece of property.

In the alternative, Clifton makes the argument that Carole has "developed" Plat 5, Lot 110 in violation of the Agreement. Using the Town's Zoning Ordinance and the Rhode Island General Laws, "development" or "developed" is defined as "[t]he construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; or any change in use, or alteration or extension of the use, of land." Clifton avers that Carole's uses of the subject property constitutes a "change in use, or alteration . . . of the use, of land" and in turn a "development" and a violation of the Agreement. Sec. 45-24-31(20); New Shoreham Zoning Ordinance § 202(A)(51). In sum, Clifton, pursuant to § 9-30-2, is seeking declaratory relief for his rights under the Agreement, attorney's fees, and to enjoin Carole from using Plat 5, Lot 110 in any manner which does not comport with the Agreement.

Conversely, Carole avers that although she places tents, port-a-johns, etc. on Plat 5, Lot 110, those activities do not amount to her having "developed" the Lot in violation of the Agreement. She argues that her position on the verbiage of the Agreement is correct by citing to the Town's Zoning Ordinance and the Rhode Island General Laws which define "development" and "developed" as "[t]he construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining excavation, landfill or land disturbance;

or any change in use, or alteration or extension of the use, of land." Sec. 45-24-31(20); New Shoreham Zoning Ordinance § 202(A)(51).[5] Since she is the co-owner of Plat 5, Lot 110, she asserts that she is allowed to use the subject property for the very benign, non-developmental purposes she has been using it for and has summarily not violated the Agreement.

II

Analysis

A

"Agreement" Rights under the Uniform Declaratory Judgments Act

1

Standard of Review

The General Laws of Rhode Island empower this Court with jurisdiction to construe contract rights:

> "Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Sec. 9-30-2. Exeter-W. Greenwich Reg'l Sch. Dist. v. Dube, No. WC 05-16, 2005 WL 1109642, at *1 (R.I. Super. May 5, 2005).

"The Uniform Declaratory Judgments Act (UDJA) grants broad jurisdiction to the Superior Court to 'declare rights, status, and other legal relations whether or not further relief is or could be claimed.'" Tucker Estates Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009). "[T]he existence of alternate methods of relief does not preclude a party from relief available under the Uniform Declaratory Judgments Act." Berberian v. Travisono, 114 R.I. 269,

[5] Both parties agree on the definition of "developed" in the current case, but differ as to whether Carole's actions constitute a "development" in violation of the Agreement.

272, 332 A.2d 121, 123 (1975).

"The Supreme Court of this State has held that the purpose of the Uniform Declaratory Judgments Act is to 'facilitate the termination of controversies.'" Abad v. City of Providence, No. 01-2223, 2004 WL 2821310, at *10 (R.I. Super. Oct. 5, 2004) aff'd sub nom. Arena v. City of Providence, 919 A.2d 379 (R.I. 2007). However, "[a] decision to grant a remedy under the [UDJA] is purely discretionary." See Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997). Moreover, "the trial justice undertakes a fact finding function, . . . and then decides whether to grant or deny [declaratory] relief." Providence Lodge No. 3, Fraternal Order of Police v. Providence External Review Auth., 951 A.2d 497, 502 (R.I. 2008).

2

Application

In the case at bar, Clifton has asked this Court to render a declaratory judgment pursuant to the UDJA, more specifically § 9-30-2. This Court, in exercising its discretionary authority, has decided not to enter a declaratory judgment. See Woonsocket Teachers' Guild, 694 A.2d at 729; see also Cruz v. Wausau Ins., 866 A.2d 1237, 1240 (R.I. 2005) ("[E]ven if the complaint contains a set of facts which bring it within the scope of our declaratory judgments act, there is no duty imposed thereby on the court to grant such relief, but rather the court is free to decide in the exercise of its discretion whether or not to award the relief asked for."). As such, it is the opinion of this Court that a declaratory judgment is unnecessary as a final judgment, and, based on a review of all the pleadings and all oral arguments, is the proper way for this Court to resolve the issues raised in this case.

B

Whether Carole's Actions Violate the Agreement

1

The Express Language of the Agreement

a

Standard of Review

"[W]hen the restriction at issue is unambiguous, this Court will not . . . seek ambiguity where none exists but rather we will effectuate the purposes for which the restriction was established." Cullen v. Tarini, 15 A.3d 968, 981 (R.I. 2011) (internal quotations omitted). "We construe the terms of any restrictive covenant 'in favor of the free alienability of land while still respecting the purposes for which the restriction was established.'" Martellini v. Little Angels Day Care, Inc., 847 A.2d 838, 843 (R.I. 2004) (quoting Gregory v. State, Dep't of Mental Health, Retardation and Hosps., 495 A.2d 997, 1000 (R.I. 1985)). This Court '"will not . . . seek ambiguity where none exists but rather we will effectuate"' the restrictive covenant's objective. Ridgewood Homeowners Ass'n v. Mignacca, 813 A.2d 965, 972 (R.I. 2003) (quoting Hanley v. Misischi, 111 R.I. 233, 238, 302 A.2d 79, 82 (1973)). "Moreover, in those instances when the limitation in issue is unambiguous, restrictive covenants are to be strictly construed." Martellini, 847 A.2d at 843 (citing Hanley, 111 R.I. at 238, 302 A.2d at 82). Ashley v. Kehew, 992 A.2d 983, 989 (R.I. 2010).

b

Application

The tipping point for the case at bar is whether or not Carole violated the Agreement when she allowed for non-well items to be placed and used on Plat 5, Lot 110. Again, the

pertinent part of the Agreement in this controversy is paragraph 6 which reads:

> ". . . the use of [lot 110] is restricted so that the same shall not be developed in any way other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot." See Agreement ¶ 6.

The restriction imposed by the Agreement unambiguously[6] states that the sole purpose of Plat 5, Lot 110 is to consistently produce fresh drinking water and, as such, the Court is bound and "constrained to interpret this limitation in its literal sense." Martellini, 847 A.2d at 843. In construing the Agreement in its literal sense, this Court finds that the exclusive "developments" that either Clifton or Carole can "develop" on Plat 5, Lot 110 are other wells and/or other structures and equipment which can help to assure "the quality of the water from the present well and any future wells on [Plat 5, Lot 110]." See Agreement ¶ 6. This is a reasonable interpretation when considering that both parties signed the Agreement in order to protect the quality of the water located on said lot.[7] In turn, automobiles and port-a-johns do not comport with that purpose.

The purpose of the Frank C. Payne Trust is to keep the well located on the subject Lot flushed with clean drinking water so that the clean drinking water can then be used to operate Payne's Dock. Clifton testified at trial of the importance of having clean water being delivered to Payne's Dock via the well. Fresh water is all too uncommon on Block Island, and as Clifton testified, Town water can be very expensive and drilling a well closer to Payne's Dock is all but

[6] Both parties acquiesce that the Agreement is unambiguous. See Defs.' Post-Trial Mem. 4, n.3; see Pl.'s Post-Trial Mem. 5.

[7] The goal of Clifton to have a continual source of clean water is evidenced by his strict compliance with both State and Town water laws as well as frequently having the well tested for any potential contamination.

impossible because of the location to the Atlantic Ocean.[8] As such, it is imperative for Clifton's livelihood that he be able to access the clean water on Plat 5, Lot 110 and be able to drill future wells as needed in order to supply his business with affordable, fresh water.

Moreover, "[w]hen the restriction at issue is unambiguous, this Court will not . . . seek ambiguity where none exists but rather we will effectuate the purposes for which the restriction was established." Cullen, 15 A.3d at 981 (internal quotations omitted). The intent of the Agreement was to supply Payne's Dock with fresh water. When the Agreement was signed in 1999 by both parties, Payne's Harborview Inn had not been built yet. The only issues regarding the use of Plat 5, Lot 110 came after Carole had built Payne's Harborview Inn which is located on Plat 5, Lot 111, adjacent to the well lot.

Carole used Plat 5, Lot 110 as a parking lot for her customers, as a platform for oil delivery trucks to supply her business, as a place to erect tents, and with that came port-a-johns and dumpsters. Automobiles, trucks, wedding tents which hold a large number of people, port-a-johns and dumpsters in particular, are all things which could very easily, one way or another, lead to the contamination of the well and, in turn, would defeat the very purpose of the Agreement— which is to limit the use of Plat 5, Lot 110 for the construction of future wells and for structures and equipment that effectuate the goal to have clean water in the years to come. See Agreement ¶ 6.

Moreover, referring back to the facts of the case, when the Agreement was signed in 1999, both Clifton and Carole owned Payne's Dock, in exactly the same way as they now own Plat 5, Lot 110 as co-beneficiaries under the Frank C. Payne Trust. However, the parties'

[8] Because Payne's Dock is located on the Atlantic Ocean, the ground water mixes with the ocean water creating brackish water which is a combination of fresh and salt water and thus, that water becomes unsuitable for human consumption and business operation purposes such as to wash off boats that are docked at Payne's Dock.

undivided one-half interest in Payne's Dock ended after entering into an agreement which gave Clifton exclusive control of Payne's Dock and gave Carole exclusive control of Plat 5, Lot 111, with each retaining their undivided, one-half interest in Plat 5, Lot 110. This Court must respect the intent of the parties and not try to find questions of fact where none exist. Horseshoe Falls Pres., Inc. v. Flynn, No. WC 98-384, 2006 WL 163567, at *4 (R.I. Super. Jan. 20, 2006). Therefore, when Carole signed the Agreement before the division of title under the Frank C. Payne Trust, it comports well with the notion that her **intent** was to provide Payne's Dock with fresh water for years to come. (Emphasis added). This is because, when the Agreement was signed Carole had just as much of an interest in affordable, fresh water being delivered to Payne's Dock as Clifton has now. However, Carole's attitude towards the water supply for Payne's Dock (and Clifton) has undoubtedly changed since the start of litigation as she no longer has any real, vested interest in keeping the water clean and abiding by paragraph 6 of the Agreement. Carole's interest now lies in operating Payne's Harborview Inn in the most profitable manner possible (i.e., hosting weddings, which in turn bring people, cars, delivery trucks, etc.). In so finding, Carole's initial intent when the Agreement was signed was to unequivocally provide Payne's Dock with fresh water and to protect the water located within the confines of Plat 5, Lot 110. Just because she no longer owns Payne's Dock, and no longer has a financial stake in it, does not serve as grounds for her violating the Agreement today.

In Hanley, the Court, in interpreting the meaning of a restrictive covenant, wrote "[p]roper regard must be had for the intent of the parties." 111 R.I. at 238, 302 A.2d at 82. Here, the intent of the parties is clear, that both Carole and Clifton cannot use Plat 5, Lot 110 for any purpose "other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot."

See Agreement ¶ 6. Or rather, unless it is for the betterment of the water pumped by the well presently located on Plat 5, Lot 110 or any future wells located on Plat 5, Lot 110, neither party can do anything on the subject Lot if there is a chance that the water supply might become threatened.

This Court will "give the words of a restrictive covenant their plain and ordinary meaning unless a contrary intent is discernible from the face of the instrument." Ridgewood Homeowners, 813 A.2d at 971 (internal quotations omitted). The plain and ordinary meaning of paragraph 6 of the Agreement is to, again, limit the use of Plat 5, Lot 110 for the purpose of protecting the water supply and allowing for the placement of future wells and other quality water assuring structures as needed. See Agreement ¶ 6. No "contrary intent is discernible" because, at the time the Agreement was signed, it comported well with the objective of the parties that Payne's Dock receive a seemingly limitless amount of fresh water because both parties had a legal, equitable and financial interest in Payne's Dock. Ridgewood Homeowners, 813 A.2d at 971.

Moreover, restrictive covenants are to be strictly construed when the restriction at issue is unambiguous. Ashley, 992 A.2d at 989. As both parties have stated in their pleadings, the Agreement itself is unambiguous and this Court agrees. See Defs.' Post-Trial Mem. 4, n.3; Pl.'s Post-Trial Mem. 5. In interpreting the restrictive covenant in a strict fashion in accordance with the governing precedent of this State, Plat 5, Lot 110 can only be used for the singular purpose "for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot." See Agreement ¶ 6.

In Cullen, the Court found that the plain language of the restrictive covenant was binding and overriding. 15 A.3d at 980. In that case, it was found that the defendant's development of the subject lot of land violated the restrictions which were tied to that lot of land. Id. The

restrictive covenant was put on the defendant's lot of land because prior to the defendant's purchasing of the lot in controversy, the plaintiff, in an effort to protect the future of his "grand vista" view from his scenic Newport, Rhode Island home, made it so that any purchaser of the defendant's lot could not build anything that would fall in the "direct line of the main vantage point" from the plaintiff's home. Id. at 971. The defendants purchased the lot and were told by the plaintiff of his early intention to strictly enforce the restrictive covenant placed on the defendant's lot. Id. When the defendant began to build a home on the subject lot, the plaintiff sued for injunctive relief; arguing that the construction of the defendant's home violated the restrictive covenant that the plaintiff had put on the lot and wanted them to discontinue and undo said construction. Id. at 971-73. The Court found for the plaintiff because the defendant's construction of the home went against the direct language of the restrictive covenant and against the plaintiff's future interest of always having a scenic view. Id. at 980. In short, when the plaintiff's view was obstructed, it constituted a direct violation of the restrictive covenant and entitled the Court to look at the plain meaning of the restrictive covenant itself. Id. at 983. In turn, the Court awarded the plaintiff with an injunction in order to enforce the terms of the restrictive covenant placed on the defendant's lot. Id.

The facts and holding in Cullen shed light on the issues in the case at bar. Like the defendant in Cullen who began the improvement of his lot with the knowledge of the plaintiff's restrictive covenant, so too did Carole have notice of the restrictive covenant as it pertained to Plat 5, Lot 110 before she set about using it for the placing of tents, parking of cars, placement of port-a-johns and dumpsters. Id. at 972. Carole's aforementioned uses of Plat 5, Lot 110 are not allowed by the express language of paragraph 6 of the Agreement because tents, cars, etc. are not "structures and equipment" that can help assure the quality of water on the subject lot. See

Agreement ¶ 6. Carole's uses post-construction of the Payne Harborview Inn, can only harm the quality of water on Plat 5, Lot 110. Given a strict reading of the restrictive covenant which this Court is inclined to do, this Court finds that the Agreement has been violated by Carole. Cullen, 15 A.3d at 983; Ashley, 992 A.2d at 989.

In sum, Carole's continuous use of Plat 5, Lot 110 has violated the plain and unambiguous language of the Agreement which was signed with the ultimate and exclusive intent to keep the well presently located on Plat 5, Lot 110 as a continual source of fresh water in the years to come, in addition to allowing for future wells to be built on the property as needed. See Agreement ¶ 6; Exs. 3-31

2

Interpretation of the Word "Developed"

a

Standard of Review

Past precedent has shown that according to the canons of statutory interpretation, where the language of a statute "is clear on its face, then the plain meaning of the statute must be given effect and this Court should not look elsewhere to discern the legislative intent." Ret. Bd. of Emps.' Ret. Sys. of State v. DiPrete, 845 A.2d 270, 297 (R.I. 2004) (internal quotations omitted). When statutory provisions are unclear or ambiguous, this Court examines the statute in its entirety. See In re Advisory to the Governor, 668 A.2d 1246, 1248 (R.I. 1996). This Court also must be mindful that where "the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference, as long as that construction is not clearly erroneous or unauthorized." City of Cranston v. R.I. State Labor Relations Bd., 2008 WL 2880711, at *8

(R.I. Super. July 14, 2008) (quoting Labor Ready Ne., Inc. v. McConaghy, 849 A.2d 340, 345 (R.I. 2004)). Moreover, "in approaching a statute, it is axiomatic that this Court will not broaden statutory provisions by judicial interpretation unless such interpretation is necessary and appropriate in carrying out the clear intent or defining the terms of the statute." State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005) (internal quotations omitted).

b

Application

Carole seeks to persuade this Court to find that she has in no way "developed" Plat 5, Lot 110 as defined in the Agreement, and thus, is not in violation of the Agreement. Carole's attempt at persuasion comes by defining the word "developed" as "[t]he construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; or any change in use, or alteration or extension of the use, of land." Sec. 45-24-31(20); New Shoreham Zoning Ordinance § 202(A)(51). Carole avers that her actions did not amount to any part of that land being "developed" but, instead, the pitching of tents, the parking of cars and trucks, and the port-a-johns' placement are all benign, removable objects and are in no way a threat to the plain terms of the Agreement. Id.

However, Carole's assessment of the definition of the word "developed" is misplaced. As the Court has already explained, the Agreement is not ambiguous, and this Court should enforce the restrictive covenant's objective to protect the fresh water found on Plat 5, Lot 110. Ridgewood Homeowners, 813 A.2d at 971. The parties agree that Plat 5, Lot 110 cannot be "developed" in order to effectuate the Agreement's purpose. See Agreement ¶ 6. The term "developed" which Carole uses defines development as "any change in use, or alteration or

extension of the use, of land." Sec. 45-24-31(20); New Shoreham Zoning Ordinance § 202(A)(51).

Carole's admitted actions of "occasionally . . . pitching a tent . . . or having an occasional port-a-john or car parked" on Plat 5, Lot 110 constitutes a direct change in use of Plat 5, Lot 110. Payne v. Town of New Shoreham, 2013 WL 3835909, at *9 (R.I. Super.); Exs. 3-30. The only use of Plat 5, Lot 110 is for the placement of other wells and other structures in order to assure the quality of water as permitted by a strict interpretation of the unambiguous restrictive covenant at issue. That use is entirely consistent with the parties' intentions when the Agreement was signed. Carole's use of Plat 5, Lot 110 for the placement of wedding tents, dumpsters and the like deviates from how Plat 5, Lot 110 was initially only to be used.

It is worth repeating that, "when a statute expresses a clear and unambiguous meaning, the task of interpretation is at an end and this [C]ourt will apply the plain and ordinary meaning of the words set forth in the statute." State v. Bryant, 670 A.2d 776, 779 (R.I. 1996). "'If the language is clear on its face, then the plain meaning of the statute must be given effect' and this Court should not look elsewhere to discern the legislative intent." Henderson v. Henderson, 818 A.2d 669, 673 (R.I. 2003) (quoting Fleet Nat'l Bank v. Clark, 714 A.2d 1172, 1177 (R.I. 1998)). When "a statutory provision is unambiguous, there is no room for statutory construction and we must apply the statute as written." In re Denisewich, 643 A.2d 1194, 1197 (R.I. 1994)." Ret. Bd. of Emps.' Ret. Sys. of State, 845 A.2d at 297.

In keeping with practice, "change in use" as written under § 45-24-31(20) and New Shoreham Zoning Ordinance § 202(A)(51) propounds this Court to apply the plain and ordinary meaning of those words, which invariably means that using the subject lot for anything which could threaten the water supply and/or is not for the purpose of installing another well is

prohibited. Plat 5, Lot 110 was not intended to host social gatherings, it was not intended to be used as a delivery platform for Payne's Harborside Inn, nor was it intended to serve as a parking lot. But, it was intended to be used as a reservoir of sorts in order to provide Payne's Dock with clean water, and that intention of use must be respected and protected.

For these reasons, this Court disagrees with Carole's interpretation of the word "development" under § 45-24-31(20) and New Shoreham Zoning Ordinance § 202(A)(51) and, therefore, finds that Carole's activities constituted a "change in use" on Plat 5, Lot 110 and thus violated the Agreement. Sec. § 45-24-31(20) and New Shoreham Zoning Ordinance § 202(A)(51); Agreement ¶ 6.

C

Public Policy

It is undisputed that the well located on Plat 5, Lot 110 pumps water to Payne's Dock to be used for human consumption. For that reason, this Court feels compelled to briefly address the public policy considerations that were taken into account.

Block Island and its picturesque seaside Town of New Shoreham are highly-visited tourist attractions in the State of Rhode Island. Most tourists and resident Rhode Islanders alike visit Block Island either by taking the Block Island Ferry or sail their own boats; with some of those boaters invariably docking at Payne's Dock. Given the amount of visitors that Block Island experiences on a daily basis, especially during the summer months, it is important to make sure that businesses such as Payne's Dock can, on its most basic level, be able to provide its clientele with clean water to drink. Clifton, as it currently stands, is able to do so because the well located on Plat 5, Lot 110 supplies Payne's Dock with that ability.

Carole asserts that as co-trustee of Plat 5, Lot 110 she can continue to use said Lot in accordance with the way she has in the past, and, as she argues, to hold otherwise would infringe upon her rights to use the property for those certain benign purposes. Carole's argument is misplaced as it was held "that where the public interest in drinking water sources is at loggerheads with the owner's right to use its land, the public interest emerges paramount." Landfill & Res. Recovery, Inc. v. Dep't, Envtl. Mgmt. of R.I., No. PM 84-2467, 1992 WL 813554, at *32 (R.I. Super. May 7, 1992). Those words ring true in the present case. The issue is not whether Carole has rights to use Plat 5, Lot 110 as co-trustee, the issue is how Carole is exercising those rights. The facts have shown that Carole has oil delivered to Payne's Harborview Inn via oil trucks which park and/or drive across Plat 5, Lot 110. If, for some reason, anything were to happen which would cause a tanker spill on Plat 5, Lot 110, it could very well contaminate all the water being supplied by the well on that Lot and, in turn, make any water pumped through the well unsafe for human consumption at Payne's Dock. It must be noted that Payne's Harborview Inn is located directly off a main road from which an oil truck could park and deliver the necessary oil without jeopardizing the quality of water pumped via the well on Plat 5, Lot 110.

Moreover, "[s]ince this court decided Rose v. Socony-Vacuum in 1934, the science of groundwater hydrology as well as societal concern for environmental protection has developed dramatically." Wood v. Picillo, 443 A.2d 1244, 1249 (R.I. 1982). Wood outlines the importance of clean drinking water. 443 A.2d at 1249. Society at large, the legislature and the judiciary have recognized that sources of drinking water need to be protected and place extreme importance on that issue. Id.; see In re Advisory Op. to the Governor: Pub. Drinking Water Prot. Act of 1987,

556 A.2d 1000, 1001 (R.I. 1989) ("The express purpose of this legislation was the protection and restoration of the purity of drinking-water supplies in this state.").

Public safety and fresh drinking water is paramount. In Wood, the Court wrote "[w]e now hold that negligence is not a necessary element of a nuisance case involving contamination of public or private waters by pollutants percolating through the soil and traveling underground routes." 443 A.2d at 1249. In so holding that no negligence is needed when it comes to the contamination of public or private waters, Clifton can be found liable if the water served at Payne's Dock is contaminated through Carole's actions or otherwise. In so concluding, it would comport well with public policy to uphold the express and plain intent of the Agreement and keep the water being pumped to Payne's Dock via the well located on Plat 5, Lot 110 as free from contaminants as possible.

D

Injunctive Relief as the Appropriate Remedy

1

Standard of Review

Injunctive relief is the appropriate remedy so long as the purpose for which the restrictive covenant was created continues to exist. Restatement (Third) Property: Servitudes § 8.3, cmt. B at 495-96 (2000). Moreover, the issuance and measure of injunctive relief rests in the sound discretion of the trial justice. DeNucci v. Pezza, 114 R.I. 123, 130, 329 A.2d 807, 811 (1974). Furthermore, "[c]ases involving restrictive covenants present such a wide spectrum of differing circumstances that each case must be decided on ad hoc basis." Hanley, 111 R.I. at 238, 302 A.2d at 82.

Generally, "[a] court may, in its discretion, issue a permanent injunction if it concludes (1) that a party has suffered, or will suffer, an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the parties, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." Global NAPs, Inc. v. Verizon New England, Inc., 706 F.3d 8, 13 (1st Cir. 2013).

"Factors that may be considered in determining the availability of injunctive relief include, inter alia, the 'purpose of the servitude, the conduct of the parties . . . and the costs and benefits of enforcement to the parties.'" Restatement (Third) Property: Servitudes § 8.3 at 493. The doctrine of balancing the equities is applied in cases when the enforcement of a restriction will disproportionately harm the defendant with little benefit to the plaintiff. See 9 Richard R. Powell, Powell on Real Property, § 60.10[3] at 60–137–60–138.1 (Michael Allan Wolf ed. 2000). However, "the benefit of the doctrine of balancing the equities is generally reserved for the innocent party who proceeds without knowledge or notice that he or she is encroaching upon another's property or property rights." Cullen, 15 A.3d at 982.

What is more, "[c]onsistent with Martellini, this Court in Ridgewood did not require a balancing of the equities before strictly enforcing a restrictive covenant. In Ridgewood . . . we held that proof of a violation of a restrictive covenant was sufficient for a court to grant injunctive relief." Id. at 981. "Furthermore, this Court stated that establishing a violation of the restrictive covenant 'was sufficient for a court to provide the injunctive relief sought.'" Id. at 980 (internal citations omitted).

2

Application

In the present case, Clifton seeks to enjoin Carole from using Plat 5, Lot 110 in any manner that it not consistent with the terms and conditions of the Agreement. More specifically, Clifton is seeking a permanent injunction to prevent Carole from using Plat 5, Lot 110 "in any way other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot." Am. Compl. ¶ 5; see Ex. A to Pl.'s Am. Compl. ¶ 6.

As discussed at length above, this Court has found that Carole's actions have violated the restrictive covenant posed by the Agreement. That fact, and in accord with judicial precedent, allows this Court to issue an injunction without having to go through the usual analysis for granting equitable relief in the form of injunctions. See Cullen, 15 A.3d at 968 (the trial court was not required to balance the equities prior to issuing a permanent injunction after it was discovered that the defendant had violated the restrictive covenant). This Court has held "that proof of a violation of a restrictive covenant was sufficient for a court to grant injunctive relief." Cullen, 15 A.3d at 981 (citing Ridgewood Homeowners, 813 A.2d at 975).

In Ridgewood Homeowners, property owners in a residential subdivision sought to enforce a restrictive covenant whose purpose was to prohibit the keeping of certain animals on residential lots. Ridgewood Homeowners, 813 A.2d at 965. The trial court held that plaintiffs' request for equitable relief should be denied because, as the trial court found, the plaintiffs had not suffered any injury at the time the suit was brought and that none of the plaintiffs would experience any hardship from the defendants' continued keeping of a miniature horse on their property. Id. at 974. The Supreme Court reversed, holding that when a plaintiff is seeking to

enforce a restrictive covenant which has been breached, the plaintiff "need not establish money damages or any other hardship to receive equitable relief." Id. at 975. Put another way, the holding in Ridgewood Homeowners concluded that when a restrictive covenant is breached, the plaintiff does not need to show irreparable harm in order to have an injunction granted in their favor. Id. Later, the Court in Cullen addressed and clarified the Court's holding in Ridgewood Homeowners by writing "[b]ased on this Court's holding in Ridgewood, we are satisfied that the trial justice did not improperly grant injunctive relief without proof of irreparable harm to plaintiff." Cullen, 15 A.3d at 980.

Applied to the case currently before this Court, even though Clifton has not suffered any injury at this time from Carole's use of Plat 5, Lot 110, and any injury to the well water is only speculative, Clifton is still entitled to equitable relief under the law. Id. This is because Carole's actions quite literally constituted a change in use of the land and violated the express terms propounded unto her by the Agreement. See Restatement (Third) Property: Servitudes § 8.3, cmt. B at 495-96 (2000). The purpose of the restrictive covenant is still enforceable in this case; that is to keep the water on Plat 5, Lot 110 which supplies the well that runs down to Payne's Dock flooded with clean water. Just because Clifton has not suffered irreparable harm at this point does not mean that he is not entitled to enforce that interest. In doing so, this Court sides with the holdings in Ridgewood Homeowners and Cullen. Ridgewood Homeowners, 813 A.2d at 975; Cullen, 15 A.3d at 980.

Moreover, the facts in this case align well with those in Martellini. See Martellini, 847 A.2d at 843. In Martellini, the plaintiffs sought an injunction to enforce a restrictive covenant that prohibited anyone from operating a day-care in a residential home. 847 A.2d at 840. The Supreme Court held that the defendant's for profit business violated the unambiguous terms of

the restrictive covenant limiting the use of defendant's home to "single family private residence purposes." Id. at 844. The Court ordered the defendant to cease operations. Id. In Martellini, the Supreme Court did not apply a balancing of the equities between the burden on the defendant in closing their business and the harm to the plaintiffs should the Court allow the defendant business to continue operating as a day-care for profit. Id. at 845. But rather, the Supreme Court, when deciding whether or not to balance the equities, took into account the "strong competing public policy of supporting the right of property owners to create and enforce covenants affecting their property." Id.

The same can be said in the present case. The restrictive covenant posed by paragraph 6 of the Agreement has been violated, as was the restrictive covenant in Martellini, 847 A.2d at 845. Moreover, both parties concede, and the Court concurs, that the Agreement is in and of itself, unambiguous. See Defs.' Post-trial Mem. 4, n.3; Pl.'s Post-Trial Mem. 5. Similarly, the court in Martellini likewise determined the restrictive covenant in that case was unambiguous. 847 A.2d at 845. In turn, it would comport well with public policy to effectuate the clear language of the Agreement in accordance with the law as set forth in Martellini. Id. The fact that the plain language of the Agreement so clearly limits Plat 5, Lot 110 "for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot," means that enjoining Carole from using Plat 5, Lot 110 in any way that does not coincide with the Agreement's express purpose is the appropriate course of action.

Finally, and although this Court does not have to balance the equities between granting the injunction for Clifton and any hardships that would befall Carole as a result of the issuance of an injunction against her, under Cullen, this Court's analysis now turns to whether the granting

of the injunction would be at all inequitable against Carole.[9] Cullen, 15 A.3d at 981. In Cullen, the Court ordered that the defendant be enjoined from continuing to construct a home that was in clear violation of an unambiguous restrictive covenant as outlined previously. Id. The hardship that the defendant in Cullen was faced with when the trial court ordered the injunction was that the injunction caused the "defendants to lose their investment of approximately $1.25 million in construction costs." Id. The Court in Cullen found that because the defendant had notice of the restrictive covenant, understood the restrictive covenant, and was told by the plaintiff that he would enforce the restrictive covenant if the defendant continued to build, but nevertheless still violated the restrictive covenant, a balancing of the equities was not appropriate despite the fact that there would be "a lack of substantial harm to plaintiff if injunctive relief is denied" while the defendant would suffer a loss in excess of a million dollars. Id. at 981-83.

Cullen sheds light on the case at bar. This is because Carole not only had notice of the Agreement, but she signed it, and helped to write it. In fact, Carole "testified that she had suggested [the Agreement as a means to restrict building on Plat 5, Lot 110] at a meeting at the offices of Bradford Gorham, Esq." See Defs.' Post-Trial Mem. 2. Many of Carole's actions, which Clifton is seeking to have enjoined on the property, can still be done. For example, the oil trucks can park and use the road next to Payne's Harborview Inn as opposed to driving over Plat 5, Lot 110. In the same manner, Carole could use smaller tents, which in turn would mean that it would not encroach over the property line between her Plat 5, Lot 111 and the jointly-owned Plat 5, Lot 110. In an effort to reach the heart of the matter without listing every possible alternative that Carole could employ so as to still be able to use her scenic location, she could install another

[9] "[A]lthough the trial justice was not required to balance the equities, we must consider whether he erred by declining to weigh the harm to defendants from granting an injunction against the harm to plaintiff from denying injunctive relief." Cullen, 15 A.3d at 981.

barrier—it does not have to be boulders—across the property line between Plat 5, Lot 110 and Plat 5, Lot 111. These, is turn, would naturally prevent automobiles and oil trucks alike from driving through the co-owned lot; and when she does host social gatherings, it would provide an easily recognizable barrier that would inherently protect the well by limiting where her guests can go.

In sum, this Court enjoins Carole, via an injunction, from using Plat 5, Lot 110 for any purposes not otherwise allowed for in the Agreement as, without said injunction, Carole would continue to use Plat 5, Lot 110 in a manner which violates the Agreement. As such, Carole is enjoined from using Plat 5, Lot 110 "in any way other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot." Am. Compl. ¶ 5; see Ex. A to Pl.'s Am. Compl. ¶ 6.

III

Conclusion

For the reasons outlined above, this Court finds:

1. That a Declaratory Judgment is not appropriate in the present matter;
2. The Agreement binds both Clifton and Carole as co-trustees of Plat 5, Lot 110;
3. Carole has violated paragraph 6 of the Agreement;
4. Carole's actions (i.e., placing port-a-johns, dumpsters, allowing for automobiles to park, etc.) constituted a "change in use" under § 45-24-31(20) and New Shoreham Zoning Ordinance § 202(A)(51), which in turn violated the Agreement;
5. Public policy comports well with a strict reading of the Agreement to protect the water supply located on Plat 5, Lot 110;

6. Carole is hereby enjoined from using Plat 5, Lot 110 in any manner not in conformity with the Agreement which states that the exclusive ". . . use of [Lot 110] is restricted so that the same shall not be developed in any way other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from the present well and any future wells on the lot." The injunction includes the placing of dumpsters, port-a-johns, and tents on Plat 5, Lot 110 and also includes the parking of cars and movement and parking of oil trucks on Plat 5, Lot 110;
7. Clifton's request for attorney's fees is denied.

Counsel for Clifton shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Clifton Payne v. Town of New Shoreham, et al.
CASE NO:	WC 2012-0449
COURT:	Washington County Superior Court
DATE DECISION FILED:	December 26, 2014
JUSTICE/MAGISTRATE:	Stern, J.

ATTORNEYS:

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