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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

INNIS ARDEN CLUB, INC., et al.,)
)
 Plaintiffs,)
)
 v.)
)
 JOHN H. BINNS, JR., et ux,)
 et al.,)
)
 Defendants.)

84-2-09622-5

No. ~~84-2-09622-9~~

ORDER REGARDING CROSS
 ENFORCEABILITY OF VIEW
 PRESERVATION AMENDMENT

I. HEARING

1.1 Date. November 2, 1990.

1.2 Judge. Honorable Anne Ellington.

1.3 Appearance. Foster, Pepper & Shefelman and G. Richard Hill appeared for Plaintiffs; John F. Hall appeared for Respondents John F. and Emily R. Hall; Cook, Berst, Landeen & Butler and George S. Cook appeared for Defendant Reiten; and Richard Eadie appeared for Richard Eadie.

II. ORAL DECISION

The oral decision of Judge Ellington, including conclusions of law, was rendered November 2, 1990. A copy of the verbatim transcript of the oral decision is attached hereto and incorporated herein.

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Order Regarding Cross Enforceability
 of View Preservation Amendment - 1

FOSTER PEPPER & SHEFELMAN
 1111 THIRD AVENUE
 SEATTLE, WASHINGTON 98101
 (206) 447-4400

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1 Prior to making its Decision, the court heard argument of
2 counsel and considered the records and files herein, including
3 but not limited to all pleadings in this case, all documents
4 identified in the court's Order Granting Class Action Summary
5 Judgment dated May 4, 1987, Motion of Respondents John F. and
6 Emily Hall for Summary Judgment and Memorandum and Affidavit in
7 Support thereof, Declaration of Ronald Salvino, Declaration of
8 Craig Runions, Declaration of John D. Blankinship, Memorandum of
9 Plaintiffs Regarding Enforcement of View Covenant filed May 22,
10 1990, Howard T. Almquist joinder with John Hall in Motion for
11 Summary Judgment on Enforcement of View Covenant Across
12 Subdivision Boundaries, Declaration of Paul F. Blauert dated
13 June 14, 1990, Response of R. George Ferrer to Court's Request
14 for Comment Regarding Enforceability of Tree Covenants Across
15 Subdivision Boundaries, Richard D. Eadie Memorandum Regarding
16 Cross Subdivision Enforceability of View Covenants dated June
17 15, 1990, Addendum to Reply Brief of Respondents to John F. and
18 Emily Hall dated June 20, 1990, Declaration of Jack L. Dierdorff
19 dated June 20, 1990, Declaration of Albert O. Prince dated June
20 20, 1990, Memorandum of Plaintiffs Regarding Enforcement of View
21 Covenant and Motion to Vacate Order dated June 21, 1990, Reply
22 of Respondents John F. and Emily R. Hall to June 9, 1990 Letter
23 of Innis Arden Club, Inc., Cook Response to Plaintiffs June 21,
24 1990 Memorandum, Reply Declaration of Paul F. Blauert dated June
25

1 26, 1990, Authenticating Affidavit of R. George Ferrer dated
2 June 27, 1990, Response of R. George Ferrer to Plaintiffs
3 Memorandum Regarding Enforcement of View Covenant dated June 27,
4 1990, Affidavit of R. George Ferrer Regarding Cross Subdivision
5 Enforcement and Alleged Laches, Waiver or Estoppel dated August
6 17, 1990, Affidavit of Anton and Pamela Ness on Enforcement of
7 View Covenant dated August 17, 1990, Notice to Owners of All
8 Lots in Innis Arden 1, Innis Arden 2, Innis Arden 3, and John
9 Hall Reply Brief of June 14, 1990.

10 III. CONCLUSIONS

11 Based upon the materials reviewed, including the arguments
12 of counsel, the court makes the following conclusions:

13 1. There are no genuine issues of material fact regarding
14 the cross enforceability of the view preservation amendments to
15 the Innis Arden restrictive covenants ("View Preservation
16 Amendments"), and Plaintiff Class is entitled to a grant of
17 summary judgment as a matter of law, and John Hall's motion for
18 summary judgment must be denied as a matter of law.

19 2. The View Preservation Amendments are enforceable across
20 Innis Arden subdivision boundaries.

21 3. The conclusion stated in paragraph 2 is implicit in the
22 court's initial Order Granting Class Action Summary Judgment
23 dated May 4, 1987, the issue of cross enforceability was raised
24 before the court in that initial proceeding, and the doctrine of
25

1 collateral estoppel bars raising the issue of cross
2 enforceability in this second phase of the proceeding. The time
3 to raise the issue of cross enforceability was in the initial
4 phase, as that issue relates directly to the facial validity of
5 the View Preservation Amendments.

6 4. The doctrine of laches is not applicable to bar
7 Respondents Halls' Motion for Summary Judgment.

8 5. The court explicitly reaffirms its earlier ruling
9 regarding the enforceability of the View Preservation Amendments
10 across subdivision boundaries. The intent of the View
11 Preservation Amendments, in light of the surrounding
12 circumstances made clear by undisputed facts in the record,
13 requires the court to reach the conclusion that the View
14 Preservation Amendments are enforceable across Innis Arden
15 subdivision boundaries.

16 IV. ORDER AND JUDGMENT

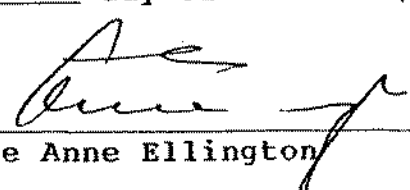
17 Based on the foregoing, it is hereby, ordered, adjudged and
18 decreed, that:

19 1. Plaintiff Class' motion for class action partial
20 summary judgment that the View Preservation Amendments are
21 enforceable across Innis Arden subdivision boundaries is
22 granted, and Respondent Halls' motion for partial summary
23 judgment is denied.

24 2. Plaintiff Class is hereby awarded a declaratory
25

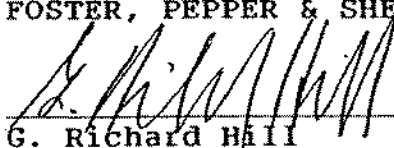
1 judgment that the View Preservation Amendments are enforceable
2 across Innis Arden subdivision boundaries within the three Innis
3 Arden subdivisions.

4 DONE IN OPEN COURT this 5 day of December, 1990.

5
6 
7 _____
8 Judge Anne Ellington

9 Presented by:

10 FOSTER, PEPPER & SHEFELMAN

11 
12 _____
13 G. Richard Hill
14 WSBA No. 8806
15 Attorneys for Plaintiff Class

16 Approved as to form; notice
17 of presentation waived:

18 _____
19 John F. Hall
20 Attorney for Respondents
21 John F. and Emily Hall

22 COOK, BERST, LANDEEN & BUTLER

23 _____
24 George S. Cook
25 Attorneys for Defendant Reiten

Richard Eadie

R. George Ferrer

GRII-344

Order Regarding Cross Enforceability
of View Preservation Amendment - 5

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

INNIS ARDEN CLUB,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN BINNS, JR., et al,)
)
 Defendants.)

No. 84-2-09622-5

COURT'S ORAL DECISION

November 2, 1990

Before: The Honorable Anne Ellington

ORIGINAL

1 AFTERNOON SESSION

2
3 NOVEMBER 2, 1990

4
5 (Reconvened at 3:55 p.m.)

6
7 THE COURT: Once again, please be seated.
8 I've taken just a brief moment to gather my
9 thoughts.

10 I'd like to begin by recognizing Mr. Hall and
11 thanking Mr. Hall for injecting some much needed
12 civility into the proceedings. And I mean by that
13 his remarks about his neighbors and friends, because
14 one of the things which seems to me central to this
15 unfortunate dispute is its ability to separate
16 neighbors and friends. It's not ability so much as
17 its insidious tendency to do that. I'm well aware
18 of the bitterness that has been created in the Innis
19 Arden community, and I very much regret it.

20 I very much regret that any matter of this kind
21 ever has to be brought for judicial determination.
22 And Ms. Knight also brought before us some sense of
23 the personal consequences to those who disagree with
24 water views as the only views or as the preferred
25 views, and their sense of loss at enforcement of the

1 covenants. That is something that I am acutely
2 aware of but we all need to remember.

3 I suppose it's not necessary for me to say
4 how dismayed the Court has been at the divisions
5 created in the Innis Arden community by this
6 process. Mr. Hall said this is an unusual case.
7 I certainly agree with that, and I could only hope
8 it is unique and never to be repeated, at least in
9 its bitter aspects, anywhere else.

10 I think I've said before that the Court's
11 ruling with respect to the validity of the covenants
12 was not an expression of the Court's view as to
13 their wisdom. I did and do believe they were
14 validly adopted. The question, of course, today is
15 whether the residents of one subdivision can enforce
16 the covenants of another subdivision.

17 What I'm faced with, basically, is two cross
18 motions for summary judgment, one of which would
19 determine that the enforcement is not available, and
20 the plaintiffs' cross motion to determine that, in
21 fact, enforcement is available.

22 I have reviewed the cases and the authorities
23 that have been cited, and, of course, at this point
24 I have a long familiarity with the process by which
25 the covenants were adopted.

1 It's my conclusion that the view covenants are
2 enforceable across subdivision lines on two grounds.

3 The first is collateral estoppel. Mr. Cook
4 pointed out that had the Court thought the matter
5 had been resolved in 1987, the Court might not have
6 set this hearing, and in some types of proceedings
7 that might have been the Court's response.

8 In this particular proceeding, first of all,
9 the Court would not foreclose argument on a
10 legitimate issue raised in good faith, but,
11 secondly, this was raised at a time when, as
12 Mr. Cook remarked or Mr. Hall, I believe, remarked,
13 things had bogged down in terms of procedure and we
14 did not have class representation for the
15 defendants, as we still do not. It was my judgment
16 that the matter should be set for a full hearing,
17 even though collateral estoppel was definitely an
18 issue.

19 In addition to that, the matter had been
20 referred to the Court by the special master, because
21 the motion was first filed there. The special
22 master, of course, did not have the original files,
23 the original briefs in the 1987 matter, at least to
24 my knowledge, and simply passed the matter to the
25 Court as one which would affect many pending

1 petitions. So in that context, it was set for
2 hearing. That setting was not meant, at least by
3 me, to communicate a view with respect to collateral
4 estoppel.

5 I do believe that the ruling here is implicit
6 in the original decision. It was raised in at least
7 one brief as to whether cross subdivision
8 enforcement was an issue. It was answered in at
9 least one brief. It was not directly addressed by
10 the Court, that's true, but in finding that the
11 amendments were valid as to all lots, it seems to me
12 the conclusion is implicit.

13 In addition to that, at the time, the arguments
14 included a view corridor approach and a number of
15 other approaches to enforcement, which were being
16 suggested by all parties, which had nothing to do
17 with cross subdivision lines. The time for bringing
18 this kind of matter to the Court was originally. It
19 was a matter which, it seems to me, did relate to
20 the validity of the covenants because their
21 evenhandedness of application throughout the
22 community was an issue for the Court at that time in
23 determining their validity, and in fact it was a
24 central issue. Without a determination of an
25 evenhanded enforcement, the covenants could not have

1 been determined valid.

2 With respect to laches, I disagree with the
3 plaintiffs as to that, because were there a finding
4 on collateral estoppel, I would believe this was a
5 timely raising of the issue. But for collateral
6 estoppel, while the matter could have been raised
7 earlier in the proceedings, it logically was raised
8 by Mr. Hall the first time he was impacted by the
9 covenants at the first special master hearings.

10 With respect to the merits, however, it is my
11 view that intent is the central question. It is not
12 discernible from the face of any single amendment
13 what intent there was to cross subdivision
14 enforcement.

15 The ambiguity is created not in the language of
16 the amendment itself, but rather in the fact that
17 there are three identical amendments which must be
18 construed together because of the style and fashion
19 of their adoption. They were essentially
20 simultaneously adopted, they are essentially
21 identical, and unless there is enforcement available
22 across subdivision lines, there is neither sense nor
23 fairness to the result.

24 Given that ambiguity, there is a question of
25 fact as to the -- I should change my phrasing --

1 there is a factual inquiry as to the intent at the
2 time of adoption which is resolved on the record
3 because there is no genuine issue of material fact.
4 Looking at the circumstances of the adoption of the
5 amendments, what is germane is not what
6 conversations were had, which will be infinitely
7 varied, what is germane is the surrounding
8 circumstances, the topography of the property of all
9 three subdivisions, and the fact that it is a single
10 community. That's clear from the record. It has
11 been clear from the record all along.

12 Therefore, as to the material fact, there is no
13 genuine issue, and I conclude that the amendments
14 are enforceable across subdivision lines.

15 I'll ask Mr. Hill to prepare a form of order.

16 ~~I have another matter to bring to your~~
17 attention. I have a letter from the special
18 master. It is a letter of resignation. He has
19 been appointed -- sorry, I'm not sure it's an
20 appointment. It must be an election. He has
21 assumed the presidency of a major national
22 organization. It is an unexpected term of office,
23 apparently caused by some other unexpected event.
24 Because of that, he expects to be out of the local
25 ~~area rather often and to be unable to devote time~~

STATE OF WASHINGTON } ss.
County of King

I, BARBARA MINER, Clerk of the Superior Court
of the State of Washington, for the County of King, do hereby certify
that I have compared the foregoing copy with the original instrument and
the same appears on file and of record in my office, and that the same
is a true and perfect transcript of said original and of the whole thereof.
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the
Seal of said Superior Court at my office at Seattle this _____
day of JAN 15 2004 _____ 20

By BARBARA MINER, Superior Court Clerk
Deputy Clerk