STATE OF MICHIGAN

COURT OF APPEALS

RICHARD O. BOULTER, JUDITH M. BOULTER, KAREN ANN CARTER, TIMOTHY O. CHAFFEE, BRENDA K. RAHAM-CHAFFEE, RONALD NESMITH, LINDA M. NESMITH, MAYNARD L. ROBBINS, JR, KATHERINE L. BAISDEN, PAUL R. THIBAULT, and NANCY A. THIBAULT,

Plaintiffs/Counter-Defendants-Appellees,

v

ROBERT LEE DRESSELHOUSE and CARLIN CLAIRE DRESSELHOUSE,

Defendants/Counter-Plaintiffs-Appellants,

and

BRENDA SCHRADER and MARIA HECK,

Intervening-Defendants.

UNPUBLISHED
September 30, 2014

No. 317139
Washtenaw Circuit Court
LC No. 12-000285-CH

Before: MURRAY, P.J., and DONOFRIO and BORELLO, JJ.

PER CURIAM.

Defendants Robert and Claire Dresselhouse appeal as of right the trial court's amended judgment enforcing deed restrictions and challenge the court's prior order denying their motion for summary disposition. We affirm.

I. BACKGROUND

This is a dispute between neighbors regarding deed restrictions that arose when defendants began preliminary work to build a second garage on their lot in a residential subdivision, Breeze Acres Subdivision No. 2 ("Breeze Acres No. 2"), located in Lodi Township. All parties are lot owners in Breeze Acres No. 2. A Declaration of Restrictions was recorded for all lots in Breeze Acres No. 2 on November 23, 1966. Relevant to this appeal are the Original

Restrictions' limitation on buildings and the mechanism for amendment of the restrictions. Regarding the former, Section One of the Original Restrictions allowed lot owners to construct a private garage in addition to a single family dwelling. With respect to the latter, Section Eight of the Original Restrictions provided a procedure for amending the restrictions, allowing amendments to become effective at the end of each 10-year term.

Defendants purchased their home in 2010. The home has attached to it a 424 square foot garage. In the spring of 2011 defendants commenced preliminary work to construct a separate garage. Once defendants hired a builder, moved a retaining wall, staked the ground, and had top soil delivered, the dispute arose and no further construction occurred. Wishing to build a second garage on their property, and knowing that many neighbors thought the Original Restrictions precluded a second garage and one of this magnitude, defendants drafted a Termination of Declaration of Restrictions ("Termination"), which was recorded on November 7, 2011, and purportedly terminated all restrictions in Breeze Acres No. 2. Plaintiffs then drafted an Amended Declaration of Restrictions ("Amended Restrictions"), which changed the Original Restrictions in relevant part by permitting a second detached garage, measuring up to 750 square feet, in addition to an attached garage. The Amended Restrictions were recorded on November 22, 2011. After the Amended Restrictions were recorded, defendants still planned to build the 1200 to 1408 square-foot detached garage. As a result, plaintiffs brought this lawsuit to enjoin construction and declare the Amended Restrictions valid and enforceable.

II. PROCEEDINGS

On March 15, 2012, plaintiffs filed a complaint requesting enforcement of the Amended Restrictions and injunctive relief to prohibit the construction of defendants' proposed detached garage. The parties then filed cross-motions for summary disposition. Defendants argued that the Termination abrogated the Original Restrictions and was controlling, the Amended Restrictions did not apply to them, and that alternatively they had detrimentally relied on the Original Restrictions when they planned to build the detached garage. Plaintiffs responded, arguing that the Amended Restrictions should be declared valid and enforceable, and that defendants lacked a reasonable expectation that they could build the proposed garage.

The court held that plaintiffs were entitled to file the Amended Restrictions and that those restrictions applied. However, the court reserved ruling on whether defendants could prove that they justifiably relied on the Original Restrictions when they purchased the house. As the court explained:

> One of the original deed restrictions at issue allows only residential use of all lots, and one detached single-family dwelling and a private garage.
>
> The Section 8 of the original restrictions indicates that these are binding for a series of years, and will be automatically extended for successive periods of years unless an instrument signed by a majority of the then owners of the lot has been recorded, agreeing to change said covenants in whole or in part. So the triggering language is whether or not it has been signed by a majority of the then owners and that it has been recorded. I read nothing in that restriction to indicate that change

> means it can only be less restrictive, not more restrictive, and indeed the case of McMillan versus Iserman[1] specifically says that.
>
> In this case I find that the – there's no -- I am not persuaded, it's a brilliant argument, Mr. Lloyd, but I'm just not – I'm not in agreement with you that by -- by following the principle of a majority of owners recording a termination of declaration of restrictions, that that can't be revisited or can't be changed, there was a second recording that put it -- put it in the amended restrictions. And so, I'm upholding that process, and it currently it's the amended restrictions that apply, and I don't think there's a serious factual dispute whether you can fit in if they had gone and built it while that was in -- you know, while the amendments were there and they changed it, then I think you had a very good argument here and I would follow McMillan versus Iserman.
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> Here I think are -- and certainly for another day, we can hear the argument on whether your clients should be entitled under -- during that period. I can look at that, but the principle is that they are in effect.

The court entered an order reflecting this ruling on August 29, 2012.[2]

An evidentiary hearing on the issue of justifiable reliance ensued, after which the court ruled in favor of plaintiffs. Specifically, after reiterating that the Amended Restrictions are valid and enforceable and that the Termination had no effect, the court ruled that the proposed garage was not permitted under the Original Restrictions:

> I'm prepared to make a preliminary ruling which is that the Court interprets the original building restrictions the same way [plaintiffs' counsel] does. The Court believes that it clearly states that you get one dwelling and one garage, whether it's attached or detached doesn't make any difference, but you get one. So if you already have one, then if you build a second one, the Court would find that to be a violation of the original building rest -- restriction.
>
> Now, all your other arguments you're still capable of making and -- and you can make the record that way, but -- but as far as that fine point, preliminarily I agree with the -- with the plaintiff that the original building restrictions would prohibit a second garage. If you have one attached garage that's all you get.

The court went on to reject defendants' claim of detrimental reliance and found that defendants were not prejudiced by the Amended Restrictions. Defendants appealed of right.[3]

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[1] *McMillan v Iserman*, 120 Mich App 785; 327 NW2d 559 (1982).

[2] At the October 4, 2012 motion hearing, intervening-defendants Brenda Schrader and Maria Heck made nearly identical arguments as defendants, which were also rejected.

[3] Intervening-defendants did not appeal.

III. ANALYSIS

A. THE TERMINATION IS NOT EFFECTIVE

Defendants argue that the trial court erred in holding the Amended Restrictions superseded the Termination. Although the motions for summary disposition were brought pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10), the court looked to evidence outside the pleadings, so this Court uses the standard of review under MCR 2.116(C)(10). *Meridian Mut Ins Co v Hunt*, 168 Mich App 672, 676; 425 NW2d 111 (1988). This Court reviews a trial court's ruling on a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo. *McCoig Materials, LLC v Galui Const, Inc*, 295 Mich App 684, 693; 818 NW2d 410 (2012). "A motion for summary disposition pursuant to MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Curry v Meijer, Inc*, 286 Mich App 586, 590; 780 NW2d 603 (2009). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motor Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

"A deed restriction represents a contract between the buyer and the seller of property." *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 212; 737 NW2d 670 (2007). Accordingly, this Court applies the principles of contract construction to determine the meaning of deed restrictions. Courts will abide by the plain language of the deed restrictions when there is no ambiguity. *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 373; 761 NW2d 353 (2008). "The interpretation of contractual language is an issue of law that is reviewed de novo on appeal." *Singer v American States Ins*, 245 Mich App 370, 373-374; 631 NW2d 34 (2001).

To determine whether the Amended Restrictions apply, the Court must examine the amendment mechanism provided in the Original Restrictions, which provides:

> The covenants are to run with the land and shall be binding on all parties and all persons claiming under them, for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

Abiding by the plain language of the deed restriction, any amendment could not take effect until November 23, 2011, the commencement of the next 10-year term. Indeed, construing a substantively identical provision, this Court held that an amendment to deed restrictions takes effect only "upon commencement of the next 10-year automatic extension period." *Brown v Martin*, 288 Mich App 727, 730-732; 794 NW2d 857 (2010).[4] Therefore, although the

[4] The provision discussed in *Brown* is substantively identical to the provision at issue here. As quoted by the *Brown* Court, the provision provided: "Term: These covenants are to run with the

Termination was executed and recorded before the Amended Restrictions, the Termination was not the governing instrument at the time the Amended Restrictions were executed and recorded. The Original Restrictions were. Accordingly, the Termination could not preclude further amendment to the Original Restrictions at the time the Amended Restrictions were executed. Moreover, while the Original Restrictions do not specifically address the recording of conflicting amendments prior to the effective date, this is of no moment here. Indeed, three signatories to the Termination revoked their approval *before* the effective date of November 23, 2011, thereby depriving the Termination of the majority required by the Original Restrictions. Thus, as of November 23, 2011, the *only* amendment recorded with majority support was the Amended Restrictions. These govern under the plain language of the Original Restrictions.[5]

Defendants present several theories for the proposition that the signatories' revocation of support for the Termination was invalid and that the Termination is therefore effective. None has any merit.

First, we reject defendants' argument that signatories of the Termination entered a legally binding contract that prohibited them from revoking their support for the Termination or signing another amendment. The Original Restrictions provided that amendments can be recorded by a majority of lot owners at any time and will become effective at the commencement of the new term. Accordingly, because the Termination was never effective, there could be no breach of that document and there was nothing binding the signatories to seek permission before "chang[ing] his or her mind." By the same token, defendants cannot accuse plaintiffs of "wait[ing] until the last possible minute to record [the Amended Restrictions]," especially where defendants were on notice that plaintiffs sought to obtain approval for and to record these restrictions.

Second, defendants' argument for promissory estoppel likewise fails. The Court in *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008), set forth four elements necessary for a promissory estoppel claim: "(1) a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee and (3) that, in fact, produced reliance or forbearance of that nature (4) in circumstances requiring enforcement of the promise if injustice is to be avoided." Defendants argue that, in recording the Termination and ceasing collection of additional signatures from lot owners in Breeze Acres No. 2, they acted in reliance of the signatures on the Termination. But—even assuming the signatures constituted a promise, defendants cannot show that the signatories—by signing the Termination—should have reasonably expected to induce defendants to seek only the minimum number of signatures.

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land and shall be binding on all parties and all persons claiming under them for a period of twenty-five years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part." *Brown*, 288 Mich App at 729.

[5] Because the Termination failed to satisfy these conditions, defendants' reliance on race-notice recording rules is inconsequential.

Defendants also failed to satisfy the fourth element. Indeed, injustice will not result from prohibiting defendants from building a 1200 to 1408 square-foot garage; no lot owner in Breeze Acre No. 2 has a second garage of this size. More importantly, defendants may not claim injustice because they had notice that subsequent amendments may be made to the Original Restrictions before November 23, 2011. Defendants were notified that a neighborhood meeting was going to be held (and, in fact, they attended it) to amend the Original Restrictions *after* the Termination was recorded. This was in accordance with the amendment provision in the Original Restrictions that permitted amendments to be recorded at any time before November 23, 2011, by a majority of lot owners. *McMillan v Iserman*, 120 Mich App 785, 792; 327 NW2d 559 (1982) (holding defendants "were on notice that the restrictions originally imposed and applicable to their land when they bought it were not absolute and could be amended at a later date."). Therefore, defendants' promissory estoppel argument was properly rejected by the trial court.

Third, defendants' argument—that the lot owners' revocation of signatures from the Termination is similar to a retraction of votes by a stockholder or member of an association—completely misses the mark. The signatures on the Termination were not binding until November 23, 2011, and lot owners were free to revoke their signatures before that date. And, there is no authority for importing corporate legal principles to aid in the interpretation of an unambiguous contract.

Defendants also argue that the Amended Restrictions could not revive the Original Restrictions, since the Termination abolished the Original Restrictions. This argument fails since, as already discussed, the Termination never became effective and therefore never abolished the Original Restrictions.

We also reject defendants' claim that the Amended Restrictions should apply to only the signatories of the Amended Restrictions. The *McMillan* Court held that any valid amendment to a covenant applies to all properties subject to the covenant. *McMillan*, 120 Mich App at 790 ("[L]and use covenants containing restrictions such as reciprocal negative easements may include a clause giving the grantees or lot owners the power to amend, modify, extend or revoke the restrictions and that any such action taken by the property owners applies to all the properties which are subject to the restriction."). So does the plain language of the unmodified Original Restrictions. In short, none of defendants' arguments can show that the Termination, rather than the Amended Restrictions, is controlling.[6] The trial court correctly ruled that the Amended Restrictions were valid and enforceable, and the Termination was unenforceable.

[6] Although the straightforward application of the amendment provision is clear, it bears highlighting that equity also weighs in plaintiffs' favor. See *Johnson Family Ltd Partnership*, 281 Mich App at 373-374 (holding that deed restrictions are enforced in equity). The Amended Restrictions were supported by a majority of lot owners, while, following the revocation, the Termination was supported by a minority of lot owners. All lot owners in Breeze Acres No. 2 gave up rights in their property in exchange for neighborhood covenants. The Termination destroyed the neighborhood covenants entirely, while the Amended Restrictions were consistent

B. DETRIMENTAL RELIANCE

We next reject defendants' claim of detrimental reliance on the Original Restrictions. The court held an evidentiary hearing on the issue of detrimental reliance. The court's ruling required interpretation of the Original Restrictions, which this Court reviews de novo. *Singer v American States Ins*, 245 Mich App 370, 373-374; 631 NW2d 34 (2001) ("The interpretation of contractual language is an issue of law that is reviewed de novo on appeal."). Findings of fact made by a trial court are reviewed for clear error. *Eller v Metro Indus Contracting, Inc*, 261 Mich App 569, 571; 683 NW2d 242 (2004).

Contracts are to be interpreted by the ordinary, plain meaning of the language used. *Singer*, 245 Mich App at 374. "Plain and unambiguous contract language cannot be rewritten by the Court under the guise of interpretation." *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130-131; 743 NW2d 585 (2007) (citation and internal quotation marks omitted). Courts may use dictionary definitions to determine the common meaning of a word in a contract in the absence of a statutory definition. *Anzaldua v Neogen Corp*, 292 Mich App 626, 634; 808 NW2d 804 (2011).

Defendants claim that their proposed garage is permitted under the Original Restrictions, which provide:

> No lot in this subdivision shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any single residence lot other than *one detached single family dwelling and a private garage*. [Emphasis added.]

This language clearly sets forth the structures permitted on lots in the subdivision as one detached family dwelling and one private garage. To be sure, this is what the indefinite article, "a" means. See *Random House Webster's Unabridged Dictionary*, *Second Edition* (1998) (defining "a" as "one" or "a single."). And since it was undisputed at the evidentiary hearing and further confirmed by the Assessor's records that defendants already have a garage, the Original Restrictions did not permit defendants to construct their proposed second garage.

Despite this straightforward application of the Original Restrictions, defendants argue that because their existing garage is attached to their house, the Original Restrictions entitled them to construct their proposed garage. The problem for defendants is that this interpretation would entitle them to two garages on their property since, as noted, defendants already have a

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with the historical development of Breeze Acres No. 2. Since some lots in Breeze Acres No. 2 had built second garages, with the largest second garage measuring 720 square feet, it logically followed that the Amended Restrictions allowed for lot owners to build second garages, while regulating the size of the second garage. The Amended Restrictions were more lenient than the Original Restrictions, which aligned with the intentions of the lot owners who had permitted detached garages up to 720 square feet.

structure that satisfies the definition of a "garage."[7] Indeed, the deed restriction at issue makes no distinction between an "attached" or "detached" garage. It simply entitles the landowner to have "a"—one—garage.[8] Defendants counter that even if the Original Restrictions prohibit their proposed structure, the so-called historical implementation of those restrictions would allow it. However, the Court is not permitted to examine this parol evidence since the restriction at issue is clear and unambiguous. *In re Skotzke Estate*, 216 Mich App 247, 251; 548 NW2d 695 (1996) ("Where a contract is clear and unambiguous, parol evidence cannot be admitted to vary it.").

In any event, defendants' arguments regarding the historical implementation of the Original Restrictions are without merit. For starters, while defendants point out that many of the lots in Breeze Acres No. 1 have both an attached and detached garage, defendants fail to realize that Breeze Acres No. 1 is a legally separate subdivision with a separate Declaration of Restrictions. Those restrictions were recorded six years prior to the Breeze Acres No. 2 Original Restrictions. They are binding on lot owners in that subdivision and not on defendants or other residents in Breeze Acres No. 2.

Nor is it dispositive that (at most) three lots in defendants' subdivision have both an attached and detached garage. Indeed, the case law is clear that the failure to challenge a violation to a deed restriction does not waive the future applicability of that deed restriction, particularly if the subsequent violation is "more serious." *Bloomfield Estates Improvement Ass'n, Inc*, 479 Mich at 208 ("[A] plaintiff may contest a 'more serious' violation of a deed restriction, even if such plaintiff has not contested less serious violations of the deed restrictions in the past."). This is fatal to defendants' argument here, considering that defendants' proposed garage would measure 1200 to 1408 square feet, and would easily eclipse the current largest garage in their subdivision by almost half. On this point, it bears further emphasis that plaintiffs have, in fact, contested other serious violations of the deed restrictions in the past. For example, in 1989, certain plaintiffs in this action contested the building of a large garage in Breeze Acres No. 2. A consent judgment was entered for the case, restricting the size of the garage to 750 square feet. Again in 1999, certain plaintiffs in this action objected to the construction of a large pole barn on a lot in Breeze Acres No. 2, after which the owner decided not to build the structure. If anything, these actions show not only that the Original Restrictions were not waived, but just as importantly, that the historical implementation of the restriction at issue cuts against defendants' attempt to build their proposed garage.

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[7] See *Random House Webster's Unabridged Dictionary*, *Second Edition* (1998) (defining a private "garage" as a "building or indoor area for parking or storing motor vehicles"); see also Lodi Township Zoning Ordinance, § 2.0 (defining "private garage" as "[a]n accessory building or structure used principally for storage of automobiles and for other incidental storage purposes only.").

[8] Defendants' alternative proposition of converting their private garage into additional living space in order to permit the building of their proposed garage is of no moment. Indeed, this proposal is not presented out of good faith reliance on the plain meaning of the Original Restrictions, but to circumvent them.

This conclusion necessarily renders defendants' final claim of detrimental reliance futile. This Court held in *McMillan*, 120 Mich App at 793, that a party must satisfy a two-prong test in order to prevail on a claim of detrimental reliance on deed restrictions:

> We thus hold that an amended deed restriction does not apply to a lot owner who has, prior to the amendment, committed himself or herself to a certain land use which the amendment seeks to prohibit, providing: (1) the lot owner justifiably relied on the existing restrictions (*i.e.*, had no notice of the proposed amendment), and (2) the lot owner will be prejudiced if the amendment is enforced as to his or her lot.

As a preliminary matter, it is impossible for defendants to satisfy the first prong of the *McMillan* test because defendants were not permitted to build the proposed second garage under the Original Restrictions, as discussed above. The plain language of those restrictions is clear and defendants' justifiable reliance claim does not even get off the ground.

Defendants maintain that application of the amended restrictions would prejudice them since they "staked out their land" and contracted to build their proposed garage. However, under *McMillan*, this fact would hold sway only if defendants could show justifiable reliance, and as already noted, the original restrictions clearly precluded defendants' proposed garage. Nor does defendants' alleged reliance on the visual appearance of two other lots with two garages bolster their claim. As noted, defendants' proposed garage would be up to twice as large as any other garage in the subdivision. The trial court therefore did not err in holding that defendants could not show justifiable reliance based on this fact. In any event, defendants can hardly show prejudice by application of the Amended Restrictions where the Amended Restrictions are more lenient than the Original Restrictions and would permit defendants to build the largest second garage in the subdivision.

Defendants also argue that they were prejudiced since the Amended Restrictions were recorded after the Termination was recorded. However, despite the fact that the Amended Restrictions were recorded after the Termination, the Termination was not able to be effective until November 23, 2011. Since the Amended Restrictions were discussed before November 23, 2011, and defendants were on notice of this discussion, there was no prejudice.

Finally, defendants appear to suggest that other residents' previous non-compliance with the Original Restrictions constitutes waiver that precludes plaintiffs from enforcing the Original Restrictions. This argument fails. As discussed above, the law does not require plaintiffs to challenge less serious violations of a deed restriction to avoid waiver of more serious violations. *Bloomfield Estates Improvement Ass'n, Inc*, 479 Mich at 208. Regardless, as stated above, plaintiffs did contest the construction of large outbuildings on lots in Breeze Acres No. 2 on two separate occasions. It is therefore impossible for defendants to prove detrimental reliance on this issue.

Affirmed.

Plaintiffs may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello