STATE OF MICHIGAN

COURT OF APPEALS

A2C2 PARTNERSHIP, LLC,

Plaintiff/Counterdefendant-Appellant,

v

LOCH ALPINE IMPROVEMENT ASSOCIATION,

Defendant/Counterplaintiff/Third-Party Plaintiff-Appellee,

v

LEW WHALEY,

Third-Party Defendant.

UNPUBLISHED
May 21, 2025
1:57 PM

No. 367820
Washtenaw Circuit Court
LC No. 16-001182-CB

Before: YATES, P.J., and LETICA and N. P. HOOD, JJ.

PER CURIAM.

In this declaratory-judgment action, plaintiff, A2C2 Partnership, LLC (A2C2), appeals by right the order of judgment effectuating the jury verdict that A2C2 was prohibited from developing lots within the Loch Alpine subdivision (the Subdivision) for residential use. On appeal, A2C2 contends that the trial court erroneously deprived it of a bench trial because its claim for declaratory relief was equitable in nature. A2C2 alternatively argues that the trial court abused its discretion by denying its motion for a new trial on the basis that the jury verdict was against the great weight of the evidence. We disagree and affirm.

I. BACKGROUND

Defendant, the Loch Alpine Improvement Association (the Association), is a nonprofit corporation organized to administer the affairs of the Subdivision in Washtenaw County, Michigan. William and Cora Blakely transferred the Subdivision land to the Loch Alpine Maintenance Corporation by way of a 1929 warranty deed. The Loch Alpine Maintenance Corporation built an 18-hole golf course on lots 465 through 470 (the Golf Lots). The golf course later became known as the Ann Arbor Country Club (the Country Club), which came to include a

driving range, clubhouse, restaurant, pro shop, and pool area, as well as tennis courts and related service buildings.

In 1957, the Association adopted a restriction agreement (the 1957 Agreement), which contemplated the residential development of the Golf Lots. The 1957 Agreement granted the owners of the lots within the Subdivision an option to purchase the Golf Lots and provided that if they failed to exercise their option, "said golf lots may be employed for residence purposes."

In 1975, the Association adopted another restriction agreement (the 1975 Agreement), which vacated and set aside the 1957 Agreement. Paragraph (a) of the 1975 Agreement provided:

> (a) Residences: No building other than one detached, private, single family dwelling house shall be erected on any one lot within this subdivision; no lot shall be used except for residential purposes . . . , and no building shall be erected on any site less than one lot . . . . Lots 465 through 470, now platted as a golf course, shall be known as golf lots. No use shall be made of the golf lots other than the operation of a private or semi-public golf course. All lot owners in Loch Alpine shall be deemed eligible for membership in any golf club operating the golf lots, but membership or use may be extended also to others.
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> The employment of Lots 465 through 470 as a golf course, shall be the only use alternative to residential use and in that event no structures shall be erected on such lots except such as are used in conjunction with the golf course . . . . These lots may also be employed for park or recreational purposes for the benefit of the entire subdivision, anything to the contrary herein provided not[]withstanding.
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> Restrictions relating to set-back, square foot area, fencing, landscaping, and signs shall not pertain to any structures erected on the golf lots for golf course purposes.
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> All or any of Lots 320 to 330, inclusive, 342 to 346[,] inclusive, and 382 to 387[,] inclusive, may be employed in conjunction with the golf lots for the erection of structures as above described, used in conjunction with the golf course, and for parking. In the event any or all of said lots are not so employed, all restrictions pertinent to residential lots shall apply.

A2C2 is a single-member limited-liability company owned by third-party defendant, Lew Whaley. In 2010, A2C2 acquired the Country Club's mortgage from the underwriting bank. The Country Club eventually defaulted on the loan, and A2C2 foreclosed. It was the successful bidder at a 2013 sheriff's sale. A2C2 operated the Country Club until 2015, when it permanently closed.

After the Country Club's closure, A2C2 sought to redevelop the Golf Lots for residential use. A2C2 applied to the Association's Architectural Control Committee and Board of Directors, requesting approval of its site plan, along with affirmation that the 1975 Agreement permitted residential use of the Golf Lots or, alternatively, a variance permitting residential use of the Golf Lots.

The Association denied A2C2's request to approve the site plan. It maintained that the 1975 Agreement required the Golf Lots to be used only as a golf course, park, or recreational area. The Association denied A2C2's alternative request for a variance on the basis that its proposal failed to meet several requirements within the 1975 Agreement.

A2C2 filed suit seeking a declaratory judgment that the Golf Lots could be used for residential purposes under the 1975 Agreement. The Association counterclaimed, seeking in part a declaratory judgment that the 1975 Agreement limited use of the Golf Lots to a golf course, park, or other recreational purpose benefiting the Subdivision.

The parties filed competing motions for summary disposition, and the trial court granted summary disposition in A2C2's favor. The Association appealed, and this Court vacated the trial court's summary disposition order in an unpublished, per curiam opinion. This Court reasoned as follows:

> Contrary to the circuit court's opinion and order, the 1975 [Agreement] is ambiguous because it is internally inconsistent. Accordingly, the interpretation of the 1975 [Agreement] must go to trial and summary dismissal of A2C2's claim for declaratory relief regarding the meaning of the 1975 [Agreement] and [the Association's] claims for breach of the [1975 Agreement] and equitable servitude was improper.
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> The circuit court in this case did not expressly state that it found the 1975 [Agreement] ambiguous. The court implied this ruling by resorting to evidence beyond the four corners of the document to ascertain its meaning, specifically the 1957 [Agreement]. The circuit court could not resolve the ambiguity on summary disposition, however. It is well settled that the meaning of an ambiguous contract is a question of fact that must be decided by the jury. Where a contract's meaning is obscure and its construction depends upon other and extrinsic facts in connection with what is written, the question of interpretation should be submitted to the jury, under proper instructions. This issue should have been submitted to trial. [*A2C2 Partnership, LLC v Loch Alpine Improvement Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued April 16, 2019 (Docket No. 342743), pp 5-7 (quotation marks, citations, and brackets omitted).]

On remand, and two weeks shy of the scheduled trial date, A2C2, citing MCR 2.509(A)(2), moved for a bench trial. A2C2 argued that the parties were not entitled to a jury trial because their outstanding claims were equitable in nature. The Association opposed A2C2's motion, arguing that the interpretation of the 1975 Agreement was a legal dispute such that the right to a jury trial remained. The Association also argued that this Court's opinion, which specifically stated that the matter must be tried before a jury, controlled under the law-of-the-case doctrine. The trial court denied A2C2's motion on the basis that this Court specifically remanded for a jury trial.

A2C2 applied for leave to appeal, and this Court peremptorily reversed and remanded. See *A2C2 Partnership, LLC v Loch Alpine Improvement Ass'n*, unpublished order of the Court of Appeals, entered March 21, 2023 (Docket No. 362642). This Court concluded that the trial court's reliance on the law-of-the-case doctrine was misplaced because its prior opinion was limited to the conclusion that "the 1975 restrictive agreement was ambiguous and, therefore, its meaning could not be determined by the trial court on summary disposition." *Id.*

On remand, the trial court again denied A2C2's motion for a bench trial. It concluded that the outstanding claims were legal in nature such that the right to a jury trial remained. The case was tried before a jury over the course of multiple days. After the presentation of evidence, the jury concluded that the 1975 Agreement did not permit A2C2 to develop the Golf Lots for residential use. The trial court entered judgment in favor of the Association. This appeal followed.

II. BENCH TRIAL

A2C2 contends that the trial court erroneously deprived it of a bench trial because its claim for declaratory relief was equitable in nature. We disagree.

A party's right to a jury trial depends on whether the constitution or a statute confers such a right. See *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014). We review "de novo whether the trial court properly interpreted and applied this state's Constitution, statutes, and court rules." *New Prods Corp v Harbor Shores BHBT Land Dev, LLC*, 308 Mich App 638, 644; 866 NW2d 850 (2014). We also review "de novo whether the trial court properly applied this state's common law." *Id.*

"The right to jury trial in civil litigation is of constitutional dimension." *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573, 581; 321 NW2d 653 (1982). See also Const 1963, art 1, § 14. We must recognize the distinction between law and equity "for the purpose of preserving constitutional rights to trial by jury in legal matters and trial by court in equity matters." *Abner A Wolf, Inc v Walch*, 385 Mich 253, 261; 188 NW2d 544 (1971). "If the nature of the controversy would have been considered legal at the time the 1963 Constitution was adopted, the right to a jury trial is preserved." *Madugula*, 496 Mich at 705-706. "However, if the nature of the controversy would have been considered equitable, then it must be heard before a court of equity." *Id.* at 706. "In making this determination, we consider not only the nature of the underlying claim, but also the relief that the claimant seeks." *Id.*

Here, A2C2 sought a declaratory judgment that the Golf Lots could be used for residential purposes under the 1975 Agreement. Declaratory relief is an equitable remedy. *Save Our Downtown v Traverse City*, 343 Mich App 523, 543; 997 NW2d 498 (2022). But a request for declaratory relief is not an independent cause of action. *Wiggins v City of Burton*, 291 Mich App 532, 561; 805 NW2d 517 (2011) ("Although it has become commonplace in this state for a plaintiff to assert a request for declaratory relief as a separately labeled cause of action within his or her complaint, this is technically improper because declaratory relief is a remedy, not a claim.") (quotation marks and citations omitted). Whether A2C2's request for declaratory relief must have been submitted to the jury or decided by the trial court thus turns on the "nature of the claim underlying the request for declaratory relief." See *New Prods Corp*, 308 Mich App at 646.

The interpretation of the 1975 Agreement underlies A2C2's request for declaratory relief. The 1975 Agreement is a deed restriction and is therefore grounded in contract. See *Bloomfield Estates Improvement Ass'n, Inc v Birmingham*, 479 Mich 206, 212; 737 NW2d 670 (2007). "Where the language of a contract is clear and unambiguous, construction of the contract is a question of law." *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 638; 734 NW2d 217 (2007). "However, if provisions of a contract irreconcilably conflict, the contractual language is ambiguous, and the ambiguous contractual language presents a question of fact to be decided by a jury." *Id*. In our 2019 opinion stemming from the Association's prior appeal, we concluded that the 1975 Agreement was ambiguous because of its internal inconsistencies. See *A2C2 Partnership, LLC*, unpub op at 4. The proper construction of the 1975 Agreement was therefore a question of fact to be decided by a jury. See *Laurel Woods Apartments*, 274 Mich App at 638. Because the Association timely demanded a trial by jury as permitted by MCR 2.508(B), the trial court did not err by denying A2C2's request for a bench trial.

III. GREAT WEIGHT OF THE EVIDENCE

A2C2 alternatively contends that the trial court abused its discretion by denying its motion for a new trial on the basis that the jury verdict was against the great weight of the evidence. We again disagree.

We review for an abuse of discretion a trial court's decision to grant or deny a new trial on the basis that the verdict was against the great weight of the evidence. *Guerrero v Smith*, 280 Mich App 647, 670; 761 NW2d 723 (2008). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 302 Mich App 7, 21; 837 NW2d 686 (2013).

A trial court may grant a new trial if "[a] verdict or decision [is] against the great weight of the evidence or contrary to law." MCR 2.611(A)(1)(e). "Determining whether a verdict is against the great weight of the evidence requires review of the whole body of proofs." *Dawe v Bar-Levav & Assoc (On Remand)*, 289 Mich App 380, 401; 808 NW2d 240 (2010). "In deciding whether to grant or deny a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party." *Barnes v 21st Century Premier Ins Co*, 334 Mich App 531, 551; 965 NW2d 121 (2020). "This Court gives substantial deference to a trial court's determination that the verdict is not against the great weight of the evidence." *Id*. "This Court and the trial court should not substitute their judgment for that of the jury unless the record reveals that the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id*.

Here, the jury verdict was based on its interpretation of the 1975 Agreement. Prior to trial, we concluded that the 1975 Agreement was ambiguous. See *A2C2 Partnership, LLC*, unpub op at 4. That conclusion therefore stood as the law of the case at the time of trial. See *Ashker ex rel Estate of Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001) ("The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue."). "It is well settled that the meaning of an ambiguous contract is a question of fact that must be decided by the jury." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003). "Where a written contract is ambiguous, a factual question is presented as to the meaning of its provisions, requiring a factual determination as to

the intent of the parties in entering the contract." *Id*. "Thus, the fact finder must interpret the contract's terms, in light of the apparent purpose of the contract as a whole, the rules of contract construction, and extrinsic evidence of intent and meaning." *Id*.

During trial, the parties presented evidence including the 1957 Agreement, the 1975 Agreement, the Association's annual meeting minutes prior to its adoption of the 1975 Agreement, the testimony of a Subdivision resident—Robert Sendra, and the testimony of a former member of the Subdivision's Board of Directors—Thomas Niswonger. Most notably, the 1975 Agreement differed from the 1957 Agreement in that it omitted the provision affording owners of the lots within the Subdivision an option to purchase the Golf Lots and stating that if they failed to exercise their option, "said golf lots may be employed for residence purposes." Despite this distinction, the 1975 Agreement retained language that appeared to contemplate the residential development of the Golf Lots. Nevertheless, Sendra testified that upon adopting the 1975 Agreement, 75% of the Subdivision residents wished to omit provisions permitting residential development of the Golf Lots. And Niswonger testified regarding his belief that the Country Club had repeated financial difficulties and that modifying the restrictions to permit only recreational use of the Golf Lots "was probably the biggest issue" for Subdivision residents at that time. Because this extrinsic evidence conflicted with the portion of the 1975 Agreement that appeared to contemplate the residential development of the Golf Lots, we do not conclude that the evidence preponderated so heavily against the verdict that it would be a miscarriage of justice to allow it to stand. The trial court therefore did not abuse its discretion by denying A2C2's motion for a new trial on the basis that the jury verdict was against the great weight of the evidence.

A2C2 further contends that public policy favors the free use of real property such that the jury could not have construed the 1975 Agreement as prohibiting residential development of the Golf Lots. We again disagree.

We generally enforce deed restrictions out of regard for parties' freedom to contract. *Bloomfield Estates Improvement Ass'n*, 479 Mich at 214. Our Supreme Court has explained the principles underlying our review of restrictive covenants as follows:

> It is a bedrock principle in our law that a landowner's bundle of rights includes the broad freedom to make legal use of her property. Restrictive covenants are at once in tension with and complementary to this right: deed restrictions allow landowners to preserve the neighborhood's character. And the failure to enforce the deed restriction thus deprives the would-be enforcer of a valuable property right. But enforcing a restriction beyond the restrictor's intent deprives the landowner of an even more fundamental property right—his right to legal use of his own property.
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> Weighty interests are at stake, but the balance tilts in favor of the right to control one's own land. Unambiguous covenants must, of course, be enforced as written, but any uncertainty or doubt must be resolved in favor of the free use of property. [*Thiel v Goyings*, 504 Mich 484, 496-497; 939 NW2d 152 (2019) (citations omitted).]

Put simply, we consider challenges to restrictive covenants in a contextualized, case-by-case manner and "with a special focus on determining the restrictor's intent." *Id*. at 496.

A2C2 suggests that our Supreme Court's opinion in *Thiel* required the jury to interpret the ambiguous 1975 Agreement in favor of the free use of the Golf Lots. It does not. *Thiel* states that any uncertainty or doubt must be resolved in favor of the free use of the property. *Thiel* does not state that any ambiguity must be resolved in this manner. The trial court instructed the jury in accordance with *Thiel*—it stated, "When a question arises as to the meaning of restrictions as set forth in a deed, such restrictions are construed strictly against those claiming the rights of enforcement, and all doubts are resolved in favor of the free use of the property." We presume that the jury followed its instructions. See *Ykimoff v WA Foote Memorial Hosp*, 285 Mich App 80, 109; 776 NW2d 114 (2009). Therefore, it contemplated this principle in concluding that A2C2 was prohibited from developing the Golf Lots for residential use. Our public policy favoring the free use of property does not itself render the jury verdict contrary to law.

IV. CONCLUSION

For the reasons stated, the trial court did not err by denying A2C2's request for a bench trial. Nor did it abuse its discretion by denying A2C2's motion for a new trial on the basis that the jury verdict was against the great weight of the evidence. We therefore affirm.

/s/ Christopher P. Yates
/s/ Anica Letica
/s/ Noah P. Hood