COURT OF APPEALS
DECISION
DATED AND RELEASED

February 6, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 96-0512

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

JAMES EVERSON and SANDRA EVERSON, husband and wife,

Plaintiffs-Appellants,

v.

CARLTON A. WIECKERT and BETTY WIECKERT, husband and wife, SALLY HEH and HENRY HEH, JR.,

Defendants-Respondents.

APPEAL from a judgment and an order of the circuit court for Waushara County: W. M. McMONIGAL, Judge. *Affirmed*.

Before Eich, C.J., Vergeront and Deininger, JJ.

EICH, C.J. We are asked in this action to determine the validity of a use restriction imposed on one of four corner lots abutting an intersection and, if valid, whether the restriction may be enforced by the owner of an adjoining lot. In large part, the result turns on whether the restriction was placed on the lot by a common developer or developers of the four lots pursuant to a

"common plan of development"; for if that is the case, it may be enforced by the owners of the other lots. We conclude that the trial court did not err in answering the question in the affirmative, and we reject the appellants' challenges to the court's other rulings in the case.

I. Background

The dispute giving rise to the action arose when the present owners of one of the corner lots, Henry and Sally Heh, sought to prohibit the construction of a gasoline station on another lot, owned by James and Sandra Everson. The Hehs based their opposition to the construction on restrictions contained in various conveyances and other documents relating to the four parcels.

The Eversons then sued the Hehs for slander of title and sought a judgment declaring any purported restrictions on their lot to be void. The Hehs counterclaimed, seeking a declaration of their rights and an injunction prohibiting the Eversons or future owners from violating the restriction. Carlton and Betty Wieckert, predecessors-in-title of both the Eversons and the Hehs, joined in the Hehs' counterclaim to uphold the restrictions.

Both sides moved for summary judgment. The trial court concluded on the undisputed facts that the restriction was valid and that the Hehs, as intended beneficiaries of a common development plan for the four corner parcels of land, could enforce it. The court granted the Heh/Wieckert motion, denied the Eversons', and entered judgment permanently enjoining the construction of a gas station on the Everson lot. The court also concluded that the Eversons failed to establish a claim for slander of title.

Appealing the judgment dismissing their action, the Eversons raise several challenges to the trial court's decision. They claim that: (1) the court improperly relied on extrinsic evidence, including an unrecorded offer to purchase one of the lots, in reaching its decision; (2) the court erred in holding that there were common grantors of the properties and a common plan for their development; (3) the purported restriction is unenforceable because (a) it is void as violating public policy and the rule against perpetuities and (b) they had no

notice of the plan of development; (4) injunctive relief was improper in any event; and (5) the court erred in dismissing their slander of title claim. We reject the Eversons' arguments and affirm the court's decision in all respects.

II. Facts[1]

The lots are located on the four corners of the intersection of Highways 21 and 49 in Waushara County, and this lawsuit centers primarily on the lot in the *northwest* corner of the intersection—the lot presently owned by the Eversons.

The original owners of the four lots, Jess and Lona Hardel, sold them to Carlton and Betty Wieckert on a land contract on June 1, 1960.[2] The contract required the Wieckerts to make installment payments over a period of several years until the balance due was satisfied, at which time the Hardels would transfer legal title to the lots by warranty deed. The contract also provided that, should the Wieckerts wish to sell any of the parcels before obtaining a deed, the Hardels agreed to "convey such parcels as directed."

In October 1960, the Hardels and Wieckerts agreed to convey the *northwest* corner of the intersection to Donald and Leona Bintz. The offer to purchase, as accepted and signed by the Hardels and Carlton Wieckert, contained a restrictive covenant prohibiting the Bintzes "or their heirs or assigns from ever constructing a motel or gasoline station" on the property. It also

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[1] When, as here, both parties move for summary judgment, the practical effect is that the facts are stipulated and only issues of law are presented. ***Lucas v. Godfrey***, 161 Wis.2d 51, 57, 467 N.W.2d 180, 183 (Ct. App. 1991); ***Stone v. Seeber***, 155 Wis.2d 275, 278, 455 N.W.2d 627, 629 (Ct. App. 1990). Our own review of the record satisfies us that no facts material to the legal issues raised by the parties are in dispute. And while we independently review the trial court's resolution of the legal issues, we have often recognized that we may benefit from the trial court's analysis of the issues, ***Lomax v. Fiedler***, 204 Wis.2d 196, 206, 554 N.W.2d 841, 845 (Ct. App. 1996), and we do so here.

[2] Another couple, Walter and Mary Ellen Long, were joint purchasers of the properties along with the Wieckerts. The Wieckerts no longer have an ownership interest in any of the properties, and the Longs are not parties to the action. Unless otherwise required in the text, we refer to the Longs and Wieckerts collectively as "the Wieckerts."

provided that the Hardels and Wieckerts, as the owners of the other three corners, would give the Bintzes the exclusive right to operate a farm produce market on the property and would prohibit future purchasers of their three lots from engaging in a similar business on those properties.[3]

Pursuant to the terms of the offer, the *northwest* corner was conveyed to the Bintzes on November 28, 1960, and both the land contract and eventual deed contained a restriction prohibiting the Bintzes and all future owners from constructing a motel or gas station on the property.

A year later, on November 28, 1961, the Wieckerts sold the *southwest* corner to the Hehs by a warranty deed containing a restrictive covenant prohibiting the sale of farm produce on the property. On the same day, the Wieckerts obtained warranty deeds from the Hardels to the *northeast* and *southeast* corner lots in satisfaction of the 1960 land contract.

Shortly thereafter, the Wieckerts sold the *southeast* corner to the Hehs pursuant to an agreement entitled "Covenant Running With the Land" which, in consideration for the Hehs' exclusive right to operate a gas station on the *southeast* corner, prohibited the construction or operation of a motel on the *southwest* corner which, of course, the Hehs also owned. The warranty deed conveying the *southeast* corner to the Hehs contained the exclusive right to operate a gas station and prohibited the construction or operation of a produce market or motel on that corner.

In March 1970, the Wieckerts sold the remaining parcel, the *northeast* corner, to the Happersett family. In accordance with the earlier covenants, the warranty deed for the *northeast* corner contained a covenant prohibiting the Happersetts and "their heirs [and] assigns" from operating a gas station or produce market on the land.

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[3] The offer also provided that if the Bintzes or their assigns violated the covenant, the property would revert to the Hardels and Wieckerts. This language, however, was not carried forward into the conveyancing documents.

In 1978, the Eversons purchased the *northwest* corner from the Bintzes. The deed stated that title to the property was subject to "restrictions, easements, and ordinances of record," which, as indicated above, purportedly included a restriction against operating a motel or gas station and granted the owners of the lot the exclusive right to operate a produce market.

In the early 1990s, the Eversons began negotiations to sell the lot to a third party who planned to construct a gas station on the site. Learning of this, the Hehs informed the Eversons that they intended to enforce the "no-gas-station" covenant on the Eversons' property, and the Eversons brought this action. As indicated above, the trial court upheld the restriction, and the Hehs' right to enforce it, and permanently enjoined construction and operation of a gas station on the northwest corner lot.

III. Discussion

A. The Offer to Purchase

As it is on this appeal, the primary issue before the trial court was whether the restriction in question was part of a common plan or scheme, undertaken by a common grantor or grantors of the property—determinations essential to the enforceability of the restriction on the facts of this case. Concluding that such a plan existed, the trial court relied on the 1960 offer to purchase between the original owners of the four corners, the Hardels and the Wieckerts, as evidence of common ownership and a common plan for the four lots. It also relied on affidavits from the Wieckerts confirming the existence of such a plan.

The Eversons argue that the offer and the affidavits were inadmissible under the parol evidence rule, which limits evidence of the terms of a written contract to the document itself and prohibits admission of "extrinsic evidence" to contradict or vary the written terms. *See* ***Kramer v. Alpine Valley Resort, Inc.***, 108 Wis.2d 417, 426, 321 N.W.2d 293, 297 (1982). They never raised the issue in the trial court, however, and we have repeatedly held that the

failure to do so waives the issue on appeal. ***Evjen v. Evjen***, 171 Wis.2d 677, 688, 492 N.W.2d 361, 365 (Ct. App. 1992).[4]

The Eversons next argue that even if the offer is admissible, it was superseded and discharged by the conveyancing documents themselves. The Wieckerts contend that this argument, too, was waived for the Eversons' failure to raise it below. In this instance, however, the claim is not that the issue was never raised below, but that it was raised only in a motion to the trial court to reconsider its decision on the summary judgment motions.

After hiring a new attorney in the wake of the court's summary judgment decision, the Eversons moved for reconsideration, seeking, in

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[4] In their reply brief, the Eversons point to two places in the record which they say establish that they did in fact raise the "extrinsic evidence" argument in the trial court. Both are found in the oral argument of their attorney on the summary judgment motions. In the first, counsel states: "affidavits ... have been prepared which show what ... [the parties'] intent was. But all of this is inadmissible beyond what's actually in the deed." Much later in his argument, he remarks: "To come to this Court and suggest that we can tell you all kinds of things that were in the minds of the individuals ... it's parole [sic] evidence, it's not admissible." We do not believe it can be said from these brief references—considered in the context of a sixty-page transcription of arguments and 104 pages of briefs on the initial summary-judgment motion (the Eversons themselves filed a thirty-eight-page brief supporting their motion)—that they effectively raised the issue in the trial court.

Even so, the parol evidence rule applies only where the "extrinsic" evidence is offered to negate, contradict or vary the terms of a written document. ***Kramer v. Alpine Valley Resort, Inc.***, 108 Wis.2d 417, 426, 321 N.W.2d 293, 297 (1982). That is not the case here. The offer to purchase and the affidavits were put forth by the Hehs as bearing solely on whether there had been a common plan of development for the four lots; the issue before the court was not the terms of the deed—they were undisputed—but the existence of the plan. Indeed, the trial court's conclusion that such a plan existed was based on the recorded deeds and all of the surrounding circumstances—in the court's words, "from an integrated reading of the Offer to Purchase, the land contract, and the various conveyances," and, under the applicable law, that is the proper inquiry. *See* ***Crowley v. Knapp***, 94 Wis.2d 421, 428-29, 288 N.W.2d 815, 819 (1980).

While the waiver rule is discretionary in that we may grant a party relief from a waiver in an appropriate case, ***Town of Menasha v. City of Menasha***, 170 Wis.2d 181, 196, 488 N.W.2d 104, 111 (Ct. App. 1992), we see no reason to do so here.

addition to clarification and reversal of several points in the decision, rulings on several "new" issues not previously raised in the case. The trial court summarily denied the reconsideration motion "as to those items ... that were not presented at the original hearing." In so ruling, the court stated that to allow the Eversons to raise new issues after-the-fact would be "to allow the bootstrapping or the rehabilitation of the record to provide a second level of appeal rights or an enhanced position by virtue of a second kick at the cat."

In ***O'Neill v. Buchanan***, 186 Wis.2d 229, 519 N.W.2d 750 (Ct. App. 1994), we considered whether a party who had failed to appear at a probate hearing could move for reconsideration of the order construing his uncle's will. We concluded that the court's decision to grant the motion was improper, stating that the party's appropriate path to relief was a motion to reopen under § 806.07, STATS., on grounds of excusable neglect or one of the other avenues specified in the statute. ***Id***. at 234-35, 519 N.W.2d at 752. "In contrast," we said, "[a motion for] reconsideration assumes that the question has previously been considered. If a party has not ... presented arguments in the litigation, the court has not considered that party's arguments in the first instance." ***Id***. at 234, 519 N.W.2d at 752. We went on to state that, absent a showing of grounds for relief under § 806.07, the party "waived his opportunity to present his argument." ***Id***. at 235, 519 N.W.2d at 752. "To hold otherwise," we said,

> would allow a litigant to resurrect an issue laid to rest by virtue of waiver, abandonment, stipulation or concession under the guise of reconsideration. Our conclusion provides finality as to orders or judgment rendered by the court and promotes judicial economy by requiring arguments to be presented at the time scheduled in the litigation .... Any injustice this rule affords litigants is justified by these public policy concerns as well as the knowledge that the litigants affected brought about the situation through their own neglect and inaction.

Id. at 235, 519 N.W.2d at 752-53.[5]

[5] In ***Rothwell Cotton Co. v. Rosenthal & Co.***, 827 F.2d 246 (7th Cir. 1987), the Court of

The trial court could, in the exercise of its discretion, properly deny the Everson's reconsideration motion for the reasons stated, and we consider the Eversons to have waived their after-the-fact challenges.

B. Existence of a Common Plan of Development

The Eversons argue that because the Hehs are "strangers in title" to the conveyances concerning the northwest corner, they lack privity and have no legal right to challenge the Eversons' use of their land based on the covenants in the Hehs' deed.

The rule in Wisconsin, however, is that a person purchasing property in a particular tract may enforce a covenant to which he or she was not a party "where there is evidence to show that the original [or common] grantor inserted the covenant to carry out a general plan or scheme of development." ***Crowley v. Knapp***, 94 Wis.2d 421, 425, 288 N.W.2d 815, 817-18 (1980).

Our first inquiry is thus whether there was a "common grantor" of the Heh and Everson lots. As indicated, the original owners, the Hardels, sold all four lots to the Wieckerts on a land contract in 1960, and shortly thereafter, the Hardels and the Wieckerts accepted the Bintzes' offer to purchase the northwest-corner lot, which the Eversons now own, with all parties agreeing

(..continued)
Appeals for the Seventh Circuit discussed the purpose of motions for reconsideration:

> "Motions for reconsideration serve a limited function; to correct manifest errors of law or fact or to present newly discovered evidence. Such motions cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. The nonmovant has an affirmative duty to come forward to meet a properly supported motion for summary judgment.... Nor should a motion for reconsideration serve as the occasion to tender new legal theories for the first time."

Id. at 251 (quoting ***Keene Corp. v. International Fidelity Ins. Co.***, 561 F. Supp. 656, 665-66 (N.D. Ill. 1982), *aff'd*, 736 F.2d 388 (7th Cir. 1984)). We think the court's point is very well taken.

that the Bintzes and all subsequent owners would be prohibited from "ever constructing a motel or gas[] ... station" on that lot. Thus, at the time the Hardels and Wieckerts created the restriction on the northwest lot, they had an ownership interest in all four corners. They were common grantors.[6]

We next consider whether the Hardels and Wieckerts imposed the restrictions on the northwest corner and the other lots with the intent to create a general scheme or plan of development for the intersection. In making this determination, we are "not restricted to an examination of the conduct occurring at or prior to the first conveyance"; rather, a general development plan can "best be determined by examining the pattern manifested by all of [the grantor's] conveyances." ***Crowley***, 94 Wis.2d at 428, 288 N.W.2d at 818-19.

The Eversons first suggest that the following facts are inconsistent with the existence of any such plan: the Hardels and Wieckerts conveyed nearby lots outside the four corners without restriction, and the restrictions on various corner lots were imposed not contemporaneously but over a period of years.

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[6] The Eversons argue that because, at the time of the Bintz sale, the Wieckerts had only a land contract vendee's interest in the property, they could not be considered common grantors with the Hardels. Citing "equitable conversion" cases suggesting that a land contract vendee acquires an interest in the real estate, leaving the vendor with only an interest in personalty, they contend that, as a result, the Hardels cannot be considered "common owners" of the lots with the Wieckerts. In a land-contract sale, however, it is well established that "[u]ntil [the contract] terms are complied with, the legal title [to the property] remains in the vendor as his security." ***Kallenbach v. Lake Publications, Inc.***, 30 Wis.2d 647, 651, 142 N.W.2d 212, 214 (1966); *see also* ***Westfair Corp. v. Kuelz***, 90 Wis.2d 631, 636, 280 N.W.2d 364, 367 (Ct. App. 1979). We agree with the Wieckerts that regardless of the form of their initial transaction, the Hardels and Wieckerts each had an interest to "grant" when the restrictions were imposed.

We note also that, before the actual conveyance of the property to the Bintzes (*via* a warranty deed containing the same "no-gas-station" restriction) the Wieckerts conveyed the northwest corner back to Jess Hardel by a quit-claim deed for the purpose of merging legal and equitable title to the lot (and also for tax purposes). We agree with the Wieckerts that the Bintzes' offer to purchase, and subsequent deed, brought together all parties with an interest in the northwest corner in documents setting forth the challenged restriction.

We think neither argument defeats the existence of a common scheme or plan. First, we agree with the Wieckerts that the sale of several non-intersection properties by the Hardels and Wieckerts without restriction is largely irrelevant in light of the uncontroverted affidavit of Carlton Wieckert stating that his and the Hardels' intention with respect to the corner lots was

> to create a plan for the development of the intersection [so] each the four corners would be permitted to operate [a] certain type of business venture, while ... being prohibited from operating the types of businesses permitted to be run by the owners of the other corners .... [I]t was our intention to have a variety of businesses located at the intersection, none of which would be in direct competition with one another .... [This] was intended to mutually benefit future owners of the property.

Wieckert's statements are, of course, borne out by the reciprocal restrictions ultimately placed on conveyances of all four lots—and we do not believe the fact that the restrictions were imposed at different times warrants a different conclusion. The ***Crowley*** court stated, for example, that:

> "[i]mplicit in the very creation of a residential plan by the practice of inserting ... restrictions in deeds is the fact that the plan evolves and does not immediately burst into full bloom. Therefore, [we] cannot agree that restrictions imposed subsequent to the date of those imposed on [the Everson's] property may not be considered in determining whether a ... plan was created."

Id. at 429, 288 N.W.2d at 819 (quoting ***Tubbs v. Green***, 55 A.2d 445, 450 (1947)).[7]

[7] As additional support for their argument that no common plan of development existed for the lots, the Eversons point out that the quit-claim deeds conveying the lots from the Wieckerts to the Hardels—and especially the quit-claims back to the Wieckerts—contained no express restrictions. They assert that "[i]f the Hardels and the Wieckerts ...

C. Notice of the Restriction

Citing § 706.09, STATS., the Eversons also argue that because they had no notice of the common development plan, they must be held to have taken title to the property free from any and all restrictions. The statute provides that "a transaction or event not appearing of record in the chain of title to the real estate affected" makes such land "free of any claim adverse to or inconsistent with" the fee simple purchased. The argument and the statute are strangers. The question is not whether the "common development plan" appears in the chain of title: there is no requirement that it either should or must. As we have noted above, the inquiry in the existence of such a plan is one involving consideration of the grantor's intent and all of the circumstances surrounding the conveyances. *See* ***Bubolz v. Dane County***, 159 Wis.2d 284, 291, 464 N.W.2d 67, 70 (Ct. App. 1990); ***Crowley,*** 94 Wis.2d at 427-28, 288 N.W.2d at 818-19.

(..continued)
had such an intention [to restrict use of the land], they did nothing .... [to] clearly express such intention." As we noted above, however, *supra* note 6, the quit-claim deeds conveying (and reconveying) the lots between the Hardels and the Wieckerts were exchanged in order to merge legal and equitable title in the Hardels so that warranty deeds could be provided to the Bintzes (and subsequent buyers) while the Hardel-Wieckert land contract was still in effect. As the Wieckerts point out in their brief:

> The undisputed facts demonstrate that within a period of five months in 1960, (1) Hardel conveyed the entire intersection to Wieckert on land contact, (2) Hardel, Wieckert and Bintz entered into the Offer to Purchase the Northwest Corner indicating the intent to restrict the use of the corner, (3) Wieckert quit-claimed the Northwest corner to Hardel, and (4) Hardel conveyed the Northwest corner to Bintz with a deed restricting the use of the property in the manner described in the Offer to Purchase.

Moreover, as we also indicated, at the time for the sale to the Bintzes, the Hardels and the Wieckerts each had an interest in the property *via* the land contract. We repeat that, in our opinion, the succession of events outlined above demonstrates that the Hardels and the Wieckerts, the parties with an interest in the lands comprising the intersection, acted together to develop and execute a plan for development of the four intersection properties.

Indeed, the Eversons conceded that they had at least constructive notice-of-record of the restriction on the use of their land,[8] and they offer no authority for the proposition that because their deed did not inform them of the existence of a common plan for development of the lots, they should not be bound by its restrictions. Whether they had, or did not have, express notice of the existence of a common plan of development for the four corner lots, they had notice of the restriction barring them from operating a gas station or motel on the property.

D. Restraint of Trade/Rule Against Perpetuities

The Eversons also argue that the covenant in their deed should be held invalid as an unreasonable restraint on trade, and as violative of the rule against perpetuities. Because the latter argument was never raised in the trial court, we decline to consider it. ***Evjen***, 171 Wis.2d at 688, 492 N.W.2d at 365.[9]

As to the restraint-of-trade argument, the Eversons, as we have said, concede their knowledge, actual or constructive, of the restrictions on the use of their property from the time they acquired it in 1978. And, as the trial court noted, they have for many years enjoyed the benefit of the plan by holding their property free from competition at the intersection because of the reciprocal restrictions on the other lots.[10]

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[8] The Eversons' deed, as indicated, stated that the northwest corner was subject to "restrictions, easements and ordinances of record," and landowners are charged with notice of, and are bound by, deeds recorded in their chain of title stating the existence of use restrictions, even when their own deed does not specifically set forth the restrictions. ***Mueller v. Schier***, 189 Wis. 70, 77, 205 N.W. 912, 915 (1926).

[9] Even so, we note that valid use restrictions are limitations, not restraints, on alienation, and do not implicate the rule against perpetuities. ***Le Febvre v. Osterndorf***, 87 Wis.2d 525, 531, 275 N.W.2d 154, 158 (Ct. App. 1979).

[10] Indeed, the trial court characterized the Eversons' actions as "hiding behind the protection of [the reciprocal] restrictions and then when it's economically advantageous, ... assert[ing] the invalidity of those same restrictions."

Even so, as the Eversons themselves point out, contracts that restrain trade are not *per se* unenforceable; they are invalid only if the restraint is unreasonable. ***Journal Co. v. Bundy***, 254 Wis. 390, 395, 37 N.W.2d 89, 92 (1949). And a trade restriction or restraint is unreasonable only if it is "greater than is required for the protection of the person for whose benefit the restraint is imposed," or if it "imposes undue hardship upon the person restricted." ***Id***. (quoting RESTATEMENT OF CONTRACTS, §§ 513, 514, 515).

The Eversons are not precluded from operating a gas station, should they wish, anywhere in the world other than on three of the four lots abutting the intersection of State Highways 21 and 49 in Waushara County, Wisconsin. They could, for example, operate a gas station one lot away from the intersection, and they may carry on any other type of business they wish—other than that of a motel or gas station—on their intersection lot. We do not believe the restriction is greater than required for the purpose for which it was imposed. We think counsel for the Wieckerts makes the point best by stating:

> The restriction was part of a plan intended to create a business district comprised of a variety of businesses that would complement and support one another. It was not intended to confer a benefit on one property at the expense of another, but was intended to benefit all properties equally by insuring that each would have its own unique operation.

We are satisfied that the restriction was reasonable under the authorities just discussed and under the test for reasonableness of such a restriction first expressed in ***Huntley v. Stanchfield***, 174 Wis. 565, 570, 183 N.W. 984, 986 (1921):

> Is the restriction a reasonable one under all the facts and circumstances of the transaction in light of the "situation, business, and objects of the parties," and was the restriction "for a just and honest purpose, for the protection of the legitimate interests of the party in whose favor it is imposed, reasonable as between them and not specially injurious to the public?"

(Quoted source omitted.)

Finally, the Eversons challenge the trial court's dismissal of their slander of title claim. Even if the claim survives the statute of limitations—the trial court ruled that it did not[11]—there is nothing in the record suggesting that the Hehs recorded their deed to the southeast corner of the intersection "knowing the contents or any part of the contents to be false, sham, or frivolous" within the meaning of the slander-of-title statute, § 706.13(1), STATS.; *see* ***Kensington Dev. Corp. v. Israel***, 142 Wis.2d 894, 902-03, 419 N.W.2d 241, 244 (1988). As we noted above, the restrictions at issue were legitimately imposed to accomplish the common plan of development.

E. Propriety of the Injunction

The Eversons also argue that the trial court improperly enjoined their use of the property to operate a gas station. They cite cases indicating that the remedy of specific performance of a contract is an equitable remedy which should not be granted if the agreement is unfair or unreasonable. *See* ***McKinnon v. Benedict***, 38 Wis.2d 607, 618-19, 157 N.W.2d 665, 669-70 (1968). But whether the issue is framed in terms of specific performance or the general principles underlying the granting of injunctive relief, they agree that the determination is committed to the sound discretion of the trial court. *See* ***State v. C. Spielvogel & Sons***, 193 Wis.2d 464, 479, 535 N.W.2d 28, 34 (Ct. App. 1995). "We will not reverse a discretionary determination by the trial court if the record shows that discretion was in fact exercised and we can perceive a reasonable basis for the court's decision." ***Prahl v. Brosamle***, 142 Wis.2d 658, 667, 420 N.W.2d 372, 376 (Ct. App. 1987). And where the record shows that the trial court looked to and considered the facts of the case and reasoned its way to a conclusion that is (1)

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[11] The trial court ruled that the action was barred because the Eversons knew or should have known of the restrictions on their property when they acquired it in 1978, regardless of whether the applicable statute of limitations was two years or six years, as argued by the parties. *See* §§ 893.57, 893.52, STATS. The Eversons challenge that ruling, claiming that they did not discover their alleged injury until late 1994 when the Hehs notified them of their intention to enforce the gas station restriction on the Everson land. They have not persuaded us that the trial court's ruling is in any way inappropriate or erroneous. *See* ***Hansen v. A. H. Robins, Inc.***, 113 Wis.2d 550, 560, 335 N.W.2d 578, 583 (1983) (tort claims accrue on the date the injury is discovered *or with reasonable diligence should have been discovered*).

one a reasonable judge could reach and (2) consistent with applicable law, we will affirm the decision "even if it is not one with which we ourselves would agree." ***Burkes v. Hales***, 165 Wis.2d 585, 590, 478 N.W.2d 37, 39 (Ct. App. 1991). Indeed, "`we generally look for reasons to sustain discretionary decisions.'" ***Id***. at 591, 478 N.W.2d at 39 (quoted source omitted).

The trial court granted the injunction to avoid irreparable harm to the Hehs, who had for years, consistent with the reciprocal restrictions on the intersection lots, operated a gas station business on their property. And, under the law, a restriction made binding on a purchaser's heirs and assigns—which is the case here—is "enforceable by injunction if the covenant is an element of a comprehensive developmental scheme which is mutually beneficial" to the buyer and adjacent property owners who purchase their property through the developer, subject to the same or a similar covenant. ***Vorpahl v. Gossman***, 24 Wis.2d 232, 236, 128 N.W.2d 430, 432 (1964).

On the basis of the parties' affidavits and the various conveyancing documents of record, we held earlier in this opinion that the restrictions on the four lots were imposed as part of a common development plan to benefit the property owners by preventing owners of adjacent lots from direct business competition. The Eversons simply have not persuaded us that the trial court, in deciding to issue the injunction, acted contrary to law or rendered a decision that no reasonable judge could reach. We thus affirm its decision as a sustainable exercise of discretion.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.