

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

January 18, 1996

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(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2271-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**JUNIPER ESTATES COMPLIANCE COMMITTEE
CONSISTING OF:**

**MARY BRENNAN,
ROBERT BRIGGS,
L. PETER GROVES,
ROBERT WEISKE
and RAY WUENSCH,**

Plaintiffs-Respondents,

v.

**JERRY LYDON,
PEGGY LYDON,
JAMES HOFF
and ROSEMARIE HOFF,**

Defendants-Appellants.

APPEAL from a judgment of the circuit court for La Crosse County: PETER G. PAPPAS, Judge. *Affirmed.*

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

PER CURIAM. Jerry Lydon, Peggy Lydon, James Hoff and Rosemarie Hoff appeal from a judgment granting an injunction against them.¹ The issue is whether an amendment to a restrictive covenant was made in a valid manner. We affirm.

This action started with a complaint by the Juniper Estates Compliance Committee against the Lydons and the Hoff's. It alleged that the defendants are property owners in the Juniper Estates development and are bound by its restrictive covenant. The Committee sought an injunction ordering the Lydons to remove a basketball hoop, backboard and support from "the front area" of their lot, and ordering the Hoff's to remove an exterior clothesline.

The basketball equipment and clothesline are prohibited only by the most recent amendments to the restrictive covenant. The issue is whether the amendments were approved by a sufficient number of property owners. If they were, the defendants concede they are in violation. The case was tried to the court on stipulation. The following facts are drawn from the stipulation.

The restrictive covenant was first signed and recorded in 1982. Article VII thereof was titled "Modification of Restrictions," and stated in relevant part: "These restrictions may be altered, changed or modified at any time by the consent of three-quarters of the property owners of the lots in Juniper Estates" An amendment was executed and recorded in 1983. A second amendment to the covenant was executed by various individuals on various dates in December 1986 and recorded in January 1987. This is the amendment at issue.

When the original plat of the development and the initial covenant were made, Juniper Estates consisted of fifty-one separate lots. Before the recording of the second amendment in 1987, certain lots in the development "were divided in the sense that certain lots were split and conveyed to various

¹ This is an expedited appeal under RULE 809.17, STATS.

purchasers and were separately described, taxed and owned," for a total of eighty-one "separately described parcels."²

The dispute between the parties is over the number of "votes" that existed when the second amendment was executed.³ If, as the Committee argues, each of the eighty-one parcels had one vote, the parties have stipulated that at least three-quarters of the owners supported the amendments. However, the defendants argue that each of the original fifty-one lots was given one vote, and division of the lots did not alter this distribution. They further argue that division of a lot did not leave each owner with a proportional vote that could be exercised independently, but that all owners must sign in order for a lot's execution of an amendment to be counted. The parties have stipulated that if only fifty-one votes existed, and they are counted as the defendants argue, there was insufficient support for the amendment.

The circuit court held in favor of the Committee. It concluded that the covenant was ambiguous, but that the better interpretation was that each parcel had one vote, regardless of subdividing. Interpretation of a restrictive covenant is a question of law we review independently of the trial court. *Zinda v. Krause*, 191 Wis.2d 154, 165, 528 N.W.2d 55, 59 (Ct. App. 1995). Whether a covenant is ambiguous is also a question of law. *Id.* The language in a restrictive covenant is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.* at 165-66, 528 N.W.2d at 59.

On the basis of the stipulation and argument provided by the parties, we conclude this case can be resolved on a narrow issue. The defendants' argument is in two parts: (1) subdivision of a lot did not create new votes, and (2) the separate owners of a subdivided lot must be in agreement for the lot's vote to be valid.⁴ Even if we were to accept the first argument, we

² The stipulation names only 28 lots which were divided, suggesting that at least one of the lots was subdivided into more than two parcels.

³ We use the term "votes," as do the parties, even though amending the covenant did not involve an actual election process, but simply the gathering of signatures.

⁴ The defendants do not emphasize this second argument, but it is necessary if they are to prevail because the stipulation provides that there are less than three-quarters of fifty-one votes, "if the owners of both parcels of a divided lot are both required to execute" a

would reject the second. The covenant is not ambiguous on this point. There is nothing that even arguably suggests that such an agreement between owners is necessary. In the absence of an express provision, it would be absurd to construe the covenant as requiring such agreement from independent owners who may otherwise exercise the entirety of their property rights without consulting each other.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

(..continued)

vote. The stipulation does not state what the tally would be if there were fifty-one votes and each owner of a divided lot could cast a partial vote independently. However, because of the wording of the stipulation and the defendants' argument, we assume the result is not favorable to the defendants.