

Common Property Sold at Tax Sale Still Bound by Declaration

Benoit v. Cerasaro, Case No. 2015-057 (N.H. Apr. 19, 2016)

Covenants Enforcement: The New Hampshire Supreme Court held that selling common property at a tax sale did not extinguish the covenants and easements on that property; therefore, requirements in the declaration applied to the purchaser.

Profile Estates Subdivision was created in 1974 in Merrimack, N.H. The subdivision plans depicted 70 lots and a seven-acre parcel labeled “Common Land for Profile Estates” (common land). All property was subject to a declaration of covenants (declaration), which required each lot owner to join the to-be-formed Profile Estates Homeowners Association (association).

The declaration also provided that the developer would convey the common land to the association when 51 percent of the lots were sold. Until then, the developer was obligated to pay the common-land maintenance costs.

The declaration restricted the common land to use by owners for recreation and conservation and prohibited building structures not incidental to those purposes. Each lot owner had an easement to use the common land.

All lots were eventually sold, but the association was never formed. The developer did not transfer the common land and eventually stopped paying the property taxes. In 1979, Robert Gaumont, who lived in Lot 51 adjacent to the common land, purchased it at a tax sale.

In 2001, Gaumont sold Lot 51 to Thomas Benoit and Kathleen Nawn-Benoit (the Benois). He also sold them the common land for less than \$100. Since 2001, the Benois paid about \$40,000 in taxes on the common land. In 2014, over the objection of other owners, the Benois obtained a variance to construct a single-family home on the common land.

In 2015, the Benois filed suit against the other owners, seeking a determination that the declaration was unenforceable and that they acquired the common land free and clear of the declaration. Alternatively, if the declaration was determined to be enforceable, the Benois sought an order requiring the owners to purchase the common land from them at its fair market value and to reimburse them for their out-of-pocket expenses, including the taxes.

Both sides moved for summary judgment (judgment without a trial based on undisputed facts). The trial court ruled in the owners’ favor, ordering the owners to form the association and the Benois to convey the common land to the association. Further, the trial court determined that the Benois were unquestionably the developer’s successors-in-title to the common land. As such, they were obligated to pay the common land’s costs

until the property was conveyed to the association. Accordingly, the trial court denied the Benoit's request for payment or reimbursement. The Benoit's appealed.

The Benoit's argued that the tax sale extinguished the declaration. They also asserted that the association's rights under the declaration never vested since the association was never formed. The appeals court held that, based on the declaration's plain language, the association's common land rights vested when the declaration was recorded in 1974. Further, a tax sale does not extinguish easements. In the absence of a legally created association, the owners could enforce the declaration.

The Benoit's asserted that, since the owners delayed enforcing the declaration for decades, they were not entitled to do so now based on a legal doctrine called laches. However, with laches, "delay" begins to be measured when a change in condition triggers enforcement.

The appeals court determined that the need for enforcement was triggered when the Benoit's sought the variance; therefore, enforcement was not delayed. Nothing had previously prohibited the owners from using the common land for recreational purposes.

Moreover, the appeals court found no error in the trial court's order that the common land be conveyed to the association without payment or reimbursement. The deed to Benoit's Lot 51 referenced the declaration, thus providing notice of the easements and restrictions on the common land. In addition, the extremely low price for such a large parcel should have raised questions about easements and restrictions.

The trial court's judgment was affirmed.