

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Hartford.

James B. CARROLL 2003 Revocable Trustee

v.

Robert RICCIARDELLO.

No. CV044003691

Not Reported in A.2d, 2007 WL 2080583

April 4, 2007.

I

PROCEDURAL HISTORY

*1 This action arises out of the property dispute between the plaintiff, James B. Carroll, and the defendants, Robert Ricciardello and Connecticut Outfielder, LLC, each of whom are landowners within the Ferrando Subdivision of Glastonbury Connecticut. For years the plaintiff has owned lot eight and Ricciardello has owned five, seven, nine, ten and eleven. All lots within the subdivision are subject to a “Declaration of Covenant and Restrictions,” dated March 29, 1996, and recorded in the Glastonbury land records in volume 997, page 98. The covenants provide, in part, that: “Each lot shall be used and maintained solely and exclusively for one-family residential purposes ... No trailer, tent, shack, garage, barn or other outbuilding erected on any Lot shall at any time be used as a residence temporarily or permanently ... [The] covenants and restrictions are to run with the land and shall be binding on the Declarant, purchasers or owners of any Lot ... for a period of twenty (20) years from the date of recording ... During the twenty-year period that this Declaration is in effect, any or all of the covenants, conditions and restrictions contained herein may be amended or terminated by an instrument signed by the then owners of at least six (6) of the Lots described on Schedule A hereto, which instrument shall be recorded on the Glastonbury land records.”

On August 18, 2004, Ricciardello created Outfielder LLC, a Pennsylvania limited liability company, and on August 20, 2004, he created the Connecticut Outfielder, LLC. The same day that Connecticut Outfielder was formed it purchased lot two of the subdivision. Three weeks later, on September 10, 2004, Ricciardello and Connecticut Outfielder executed a “Release of Declaration of Covenants and Restrictions,” that was recorded in the Glastonbury town clerk's office in book 2108, page 217. The instrument states that Ricciardello, as the owner of lots five,

seven, nine, ten and eleven, and Connecticut Outfielder, as the owner of lot two, “hereby release and terminate all of the restrictive covenants contained in the Declaration of Covenants and Restrictions.” The release was executed by Ricciardello and Ann E. Brookes, as duly authorized agent for Connecticut Outfielder, and was witnessed by two witnesses.

On May 26, 2005, the plaintiff filed the operative complaint against the defendants alleging, *inter alia*, breach of the restrictive covenants.^{FN1} The complaint alleges that the defendants are in violation of the covenants because the release is invalid and because Ricciardello's lots: (1) fail to contain any residence, (2) are used as a private orchard and recreational area, (3) contain heavy construction and farm equipment, (4) are used for hunting and target practice purposes, and (5) and are frequently sprayed by agricultural chemicals. The plaintiff claims that he is suffering, and will continue to suffer, irreparable damages from Ricciardello's alleged violations. Moreover, the plaintiff alleges that Ricciardello has applied for a building permit to erect a barn and that this structure would be inconsistent with the single-family residential purpose of the covenants. If Ricciardello is permitted to erect this barn, the plaintiff argues that he will suffer irreparable damage that impairs his use and enjoyment of the property. For each violation of the covenants the plaintiff argues that there is no adequate remedy at law and that injunctive relief is proper.

FN1. The complaint also alleges causes of action in private nuisance, public nuisance, misuse of easement, overburdening of easement and trespass. In Connecticut Outfielder's memorandum of law in support of the motion for summary judgment, it states that on October 3, 2005, the plaintiff's counsel conceded that the only count against Connecticut Outfielder was for the breach of restrictive covenants. Although the case detail and record fail to reflect such a fact, there is no question that the only applicable count remaining from the complaint is the breach of restrictive covenants.

***2** On July 14, 2005, the defendants filed the operative answer alleging eight counterclaims, one seeking a declaratory judgment as to whether the release of the covenants is valid, and five special defenses.^{FN2} Connecticut Outfielder filed this motion for summary judgment on July 20, 2006, contending that there are no genuine issues of material fact and that Connecticut Outfielder is entitled to judgment as a matter of law for the breach of restrictive covenants count and the counterclaim seeking a declaration judgment that the release of covenants is valid.^{FN3} Connecticut Outfielder's grounds of the motion are that the plaintiff testified that Connecticut Outfielder did not breach the covenants, and, the plaintiff did not allege any wrongdoing by Connecticut Outfielder in the operative complaint.^{FN4} Connecticut Outfielder filed a memorandum of law in support of this position. The Plaintiff objects to the motion in a memorandum of law asserting that there are genuine material issues of fact. Both parties filed subsequent numerous exhibits and memoranda. The motion and objection were argued before the court on March 5, 2007.

FN2. The remaining counterclaims allege three counts of trespass, assault and battery, breach of easement, prima facie tort, and another count seeking a declaratory judgment. The special defenses are the failure to state a cause of action, unclean hands, equitable

estoppel, the right to farm act, and the preemption doctrine.

FN3. Connecticut Outfielder's motion requests the court to award costs pursuant to Practice Book § 17-57.

FN4. Notice of the pendency of Connecticut Outfielder's claim for a declaratory judgment was sent to all potentially affected non-parties by certified mail along with return receipt, as required by Practice Book § 17-56(b).

II

DISCUSSION

“Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party ...” (Internal quotation marks omitted.) Cogan v. Chase Manhattan Auto Financial Corp., 276 Conn. 1, 6, 882 A.2d 597 (2005). “The party seeking summary judgment has the burden of showing the absence of any genuine issue of material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law ... and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact.” (Internal quotation marks omitted.) Larobina v. McDonald, 274 Conn. 394, 399-400, 876 A.2d 522 (2005).

The plaintiff argues that genuine issues of material fact exist concerning whether the defendants breached the covenants and whether the covenants were properly released. The plaintiff states that on or around June 2004, a dispute occurred between him and Ricciardello. Ricciardello informed the plaintiff that he planned to build a barn on the property that abuts the plaintiff's lot and the plaintiff told Ricciardello that such a structure would violate the covenants. Believing that Ricciardello was going to build the barn, the plaintiff began discussions with other lot owners in the subdivision in an attempt to amend the covenants. At the same time, Ricciardello also engaged in conversations with the other lot owners to determine whether they objected to the barn. Sometime thereafter Ricciardello told the plaintiff that he was not going to build the barn. The plaintiff allegedly relied on these assurances and, along with the other lot owners, decided not to amend the covenants.

*3 Ricciardello argues that no genuine issues of material fact exist and disputes many of the facts stated by the plaintiff. Ricciardello states that the evidence does not substantiate that other neighbors would have agreed to amend the covenants. Moreover, Ricciardello asserts that the plaintiff's reliance is misplaced because the agreement with the plaintiff did not occur by Ricciardello providing assurances to the plaintiff but rather, the plaintiff providing assurances to Ricciardello.

Having reviewed the entire record the court denies Connecticut Outfielder's motion for summary

judgment. The court finds that there are numerous issues of material fact in dispute, including, *inter alia*, whether the plaintiff and other lot owners were going to amend the covenants; whether the plaintiff reasonably and detrimentally relied on Ricciardello's assurances that he would not build the barn whether any liability of Ricciardello in breaching the restrictive covenants is also binding on Connecticut Outfielder.

III

CONCLUSION

For the aforementioned reasons, the motion for summary judgment is hereby denied.

So Ordered.