



ACTION TO ENFORCE A RESTRICTIVE COVENANT



WARREN COUNTY, NY:

West Mountain Assets LLC v. Dobkowski, 2024 WL 1914294 (3rd Dept. 2024). Decided May 2, 2024.

Plaintiff owns a parcel improved with a single-family residence. Plaintiff utilizes it as a short-term rental property through Airbnb, with stays ranging in duration from a few days to a couple of weeks. Defendants own an adjacent parcel where they reside full time. Both parcels abut a third parcel owned by plaintiff and defendants as co-tenants on which there is a gravel road providing access to their parcels. All parcels within the subdivision descend from a common grantor who imposed several restrictive covenants. One such restriction in both chains of title sets forth that “[t]he land herein conveyed shall be used only for single family residential purposes.”

Plaintiff commenced this action alleging that defendants interfered with plaintiff’s use and enjoyment of its property. Defendants counterclaimed seeking a declaratory judgment that plaintiff’s use of its parcel for short-term rentals was in violation of the restrictive covenant and to enjoin that use. Plaintiff admits the short-term rental use. Defendants moved for summary judgment on this counterclaim. The lower court granted defendants partial summary judgment declaring that plaintiff’s use as a short-term rental property violated the restrictive covenant prohibiting all uses other than single-family residential and enjoined this improper use. Plaintiff appeals. The Third Department provided the following standard for its review of restrictive covenants:

“The party seeking to enforce a restrictive covenant bears the burden of establishing its applicability by clear and convincing evidence” (citations omitted). In addition, because the law favors the free and unencumbered use of real property, “courts must adopt the less restrictive interpretation when a restrictive covenant is equally susceptible of two interpretations” (citations omitted).

Despite the high bar of the clear and convincing evidence standard, and the Court’s requirement to adopt the less restrictive interpretation, the Third Department affirmed the lower court’s order enjoining plaintiff’s short-term rental use finding it violated the restrictive covenant:

Though owners of properties within the subdivision are permitted to rent pursuant to the express language of the deed restrictions, the restrictive covenant limits the permissible use to only “single[-]family residential purposes.” This phrase unambiguously directs that all properties within the subdivision must be used for only residential purposes, and, thus, any and all rentals must be to those who would utilize the property for residential purposes – i.e., as a residence. A residence is the location where an individual “actually lives” and is established by “[t]he act or fact of living in a given place for some time” (Black’s Law Dictionary [11th ed 2019], residence). Although there is no express durational requirement, a stay in a short-term rental property does not meet this definition (citations omitted). Lodgers in short-term rental properties do not live on the premises but are instead on a short trip and often maintain a residence elsewhere where they “actually live[]” (Black’s Law Dictionary [11th ed 2019],

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ACTION TO ENFORCE A RESTRICTIVE COVENANT (CONTINUED)



residence). This is true even though lodgers may have access to the entirety of the property and may use it in the same manner as a resident, including by cooking meals and sleeping as plaintiff highlighted.

Plaintiff's use of its parcel for short-term rentals does not fit the definition of a residence as is necessary to establish that the property is being used solely for residential purposes. Contrary to plaintiff's argument, this interpretation reflects the plain meaning of the terms of the restriction and does not "extend[] beyond the clear meaning of [its] terms" (citation omitted).

Major takeaway – The buyer must always review the covenants and restrictions of record before purchasing a property to confirm that they do not prohibit the buyer's intended uses.

2024 WL 1914294
Supreme Court, Appellate Division, Third
Department, New York.

WEST MOUNTAIN ASSETS LLC, Appellant,
v.
James DOBKOWSKI et al., Respondents.
(And a Third-Party Action.)

CV-23-0610

Calendar Date: February 13, 2024

Decided and Entered: May 2, 2024

restrictive covenant requiring that use of parcels within subdivision be limited to single-family residential purposes, where short-term renters did not utilize property as residence.

Synopsis

Background: Owner of real property located in subdivision, which owner utilized as short-term rental property, brought against action owners of adjacent property, alleging that adjacent owners interfered with plaintiff-owner's use and enjoyment of its property. Adjacent owners counterclaimed, seeking declaration that plaintiff-owner's use of its property for short-term rentals was in violation of restrictive covenant requiring that use of parcels within subdivision be limited to single-family residential purposes, and to enjoin that use. The Supreme Court, Warren County, [Martin D. Auffredou, J.](#), [78 Misc.3d 963](#), [186 N.Y.S.3d 553](#), partially granted adjacent owners' motion for summary judgment, and plaintiff-owner appealed.

[Holding:] The Supreme Court, Appellate Division, [Powers, J.](#), held that use of parcel of land to allow short-term rentals violated restrictive covenant.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (3)

[1] Covenants

Property owner's use of parcel of land located in subdivision to allow short-term rentals violated

[2] Covenants

The party seeking to enforce a restrictive covenant bears the burden of establishing its applicability by clear and convincing evidence.

[3] Covenants

Because the law favors the free and unencumbered use of real property, courts must adopt the less restrictive interpretation when a restrictive covenant is equally susceptible of two interpretations.

Attorneys and Law Firms

Bartlett, Pontiff, Stewart & Rhodes, PC, Glens Falls ([Malcolm B. O'Hara](#) of counsel), for appellant.

FitzGerald Morris Baker Firth, PC, Glens Falls ([Michael Crowe](#) of counsel), for respondents.

Before: [Garry, P.J.](#), [Aarons](#), [Reynolds Fitzgerald](#), [Fisher](#) and [Powers, JJ.](#)

OPINION AND ORDER

Powers, J.

*1 Appeal from that part of an order of the Supreme Court (Martin D. Auffredou, J.), entered March 7, 2023, in Warren County, which partially granted defendants' motion for summary judgment on their first and third counterclaims.

Plaintiff is the owner of a parcel of real property located in the Town of Queensbury, Warren County, which is part of the Northwest Village subdivision. Plaintiff's parcel is improved with a single-family residence which plaintiff utilizes as a short-term rental property through Airbnb, with stays ranging in duration from a few days to a couple of weeks. Defendants own an adjacent parcel where they reside full time. Both parcels abut a third parcel owned by plaintiff and defendants as cotenants on which is located a gravel access road providing access to their separate parcels. All parcels within the subdivision descend from a common grantor who imposed a number of restrictive covenants for the benefit of all grantees. Among other restrictions, permissible use of properties within the subdivision is limited to only single-family residential purposes.

Plaintiff commenced this action in December 2020 raising various claims based in allegations that defendants had interfered with its use and enjoyment of its property. Defendants answered and counterclaimed seeking, in relevant part, a declaratory judgment that plaintiff's use of its parcel for short-term rentals was in violation of the restrictive covenant and to enjoin that use. Defendants subsequently moved for summary judgment on this counterclaim, as well as another not germane to this appeal. Supreme Court partially granted summary judgment to defendants, declared that plaintiff's use of its parcel as a short-term rental property violated the restrictive covenant prohibiting all uses other than single-family residential and enjoined this improper use. Plaintiff appeals.

^[1] ^[2] ^[3]“The party seeking to enforce a restrictive covenant bears the burden of establishing its applicability by clear and convincing evidence” (*Tedeschi v. Hopper*, 167 A.D.3d 1129, 1131, 90 N.Y.S.3d 322 [3d Dept. 2018] [citations omitted]; see *Kumar v. Franco*, 211 A.D.3d 1437, 1439, 182 N.Y.S.3d 304 [3d Dept. 2022]). In addition, because the law favors the free and unencumbered use of real property, “courts must adopt the less restrictive interpretation when a restrictive covenant is equally susceptible of two interpretations” (*County of Schuyler v. Hetrick*, 178 A.D.3d 1163, 1165, 114 N.Y.S.3d 516 [3d Dept. 2019]; see *Ford v. Rifenburg*, 94 A.D.3d 1285, 1287, 942 N.Y.S.2d 285 [3d Dept. 2012]). As contained in both chains of title, the restriction

sets forth that “[t]he land herein conveyed shall be used only for single family residential purposes.” Among other prohibitions, “noxious, dangerous, offensive or unduly noisy” activities, as well as “manufacturing, commercial or mercantile service[s] or activit[ies]” are expressly prohibited within the subdivision. The types of permissible structures that may be built within the subdivision are also limited and the only signs that may be erected are “For Sale” or “For Rent” signs of a permissible size. Plaintiff does not dispute that it uses its parcel for short-term rentals; therefore, the question distills to whether defendants provided clear and convincing evidence in support of their motion for summary judgment that the restrictive covenant prohibits this use.

*2 Though owners of properties within the subdivision are permitted to rent pursuant to the express language of the deed restrictions, the restrictive covenant limits the permissible use to only “single[-]family residential purposes.” This phrase unambiguously directs that all properties within the subdivision must be used for only residential purposes, and, thus, any and all rentals must be to those who would utilize the property for residential purposes – i.e., as a residence. A residence is the location where an individual “actually lives” and is established by “[t]he act or fact of living in a given place for some time” (Black’s Law Dictionary [11th ed 2019], residence). Although there is no express durational requirement, a stay in a short-term rental property does not meet this definition (*cf. Turner v. Caesar*, 291 A.D.2d 650, 650–651, 737 N.Y.S.2d 426 [3d Dept. 2002]; *but cf. Matter of Friedman v. Town of Dunkirk*, 221 A.D.3d 1581, 1582–1583, 199 N.Y.S.3d 777 [4th Dept. 2023]; *Matter of Cradit v. Southold Town Zoning Bd. of Appeals*, 179 A.D.3d 1058, 1060, 117 N.Y.S.3d 675 [2d Dept. 2020]). Lodgers in short-term rental properties do not live on the premises but are instead on a short trip and often maintain a residence elsewhere where they “actually live[]” (Black’s Law Dictionary [11th ed 2019], residence). This is true even though lodgers may have access to the entirety of the property and may use it in the same manner as a resident, including by cooking meals and sleeping as plaintiff highlighted.

Plaintiff’s use of its parcel for short-term rentals does not fit the definition of a residence as is necessary to establish that the property is being used solely for residential purposes. Contrary to plaintiff’s argument, this interpretation reflects the plain meaning of the terms of the restriction and does not “extend[] beyond the clear meaning of [its] terms” (*Tedeschi v. Hopper*, 167 A.D.3d at 1131, 90 N.Y.S.3d 322 [internal quotation marks and citation omitted]). Thus, defendants established the

applicability of the restriction by clear and convincing evidence, and the burden shifted to plaintiff to raise a triable issue of fact in opposition, which its submissions failed to do (*see Ford v. Rifenburg*, 94 A.D.3d at 1287, 942 N.Y.S.2d 285; *Irish v. Besten*, 158 A.D.2d 867, 868, 551 N.Y.S.2d 659 [3d Dept. 1990]; *cf. Rugby Rd. Corp. v. Doane Bldrs., Inc.*, 61 A.D.3d 1157, 1158, 876 N.Y.S.2d 749 [3d Dept. 2009]; *compare Kumar v. Franco*, 211 A.D.3d at 1441, 182 N.Y.S.3d 304; *Dever v. DeVito*, 84 A.D.3d 1539, 1543, 922 N.Y.S.2d 646 [3d Dept. 2011], *lv dismissed* 18 N.Y.3d 864, 938 N.Y.S.2d 846, 962 N.E.2d 269 [2012], *lv denied* 21 N.Y.3d 861, 2013 WL 4459301 [2013]; *Van Schaick v. Trustees of Union Coll.*, 285 A.D.2d 859, 862, 728 N.Y.S.2d 275 [3d Dept. 2001], *lv denied* 97 N.Y.2d 607, 738 N.Y.S.2d 291, 764 N.E.2d 395 [2001]). Accordingly, Supreme Court properly granted summary judgment to defendants on their first

counterclaim seeking enforcement of the restrictive covenant against plaintiff.

Garry, P.J., Aarons, Reynolds Fitzgerald and Fisher, JJ., concur.

ORDERED that the order is affirmed, with costs.

All Citations

--- N.Y.S.3d ----, 2024 WL 1914294, 2024 N.Y. Slip Op. 02355

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Filings (8)

Title	PDF	Court	Date	Type
<p>1. Reply Brief for Plaintiff-Appellant and Third-Party Defendant</p> <p>WEST MOUNTAIN ASSETS, LLC, Plaintiff-Appellant, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants/Third Party Plaintiffs-Respondents, v. Jonathan Szemansco, Third Party Defendant.</p> <p>2023 WL 9549800</p>	—	N.Y.A.D. 3 Dept.	Dec. 06, 2023	Brief
<p>2. Brief of Respondents</p> <p>WEST MOUNTAIN ASSETS, LLC, Plaintiff-Appellant, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants/Third-Party Plaintiff-Respondents, Jonathn Szemansco, Third-Party Defendant.</p> <p>2023 WL 9549799</p>	—	N.Y.A.D. 3 Dept.	Nov. 21, 2023	Brief
<p>3. Brief for Plaintiff-Appellant and Third-Party Defendant</p> <p>WEST MOUNTAIN ASSETS, LLC, Plaintiff-Appellant, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants/Third-Party Plaintiffs-Respondents, v. Jonathan Szemansco, Third-Party Defendant.</p> <p>2023 WL 9549797</p>	—	N.Y.A.D. 3 Dept.	Aug. 22, 2023	Brief
<p>4. Complaint</p> <p>WEST MOUNTAIN ASSETS LLC, Plaintiff, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants.</p> <p>2020 WL 13853031</p>	—	N.Y.Sup.	Oct. 07, 2020	Pleading
<p>5. Reply Affirmation</p> <p>WEST MOUNTAIN ASSETS LLC, Plaintiff, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants/Third-Party Plaintiffs, v. Jonathan SZEMANSCO, Third-Party Defendant.</p> <p>2022 WL 20621100</p>	—	N.Y.Sup.	Aug. 31, 2022	Motion
<p>6. O'Hara Affidavit in Opposition to Defendant's Motion for Summary Judgement</p> <p>WEST MOUNTAIN ASSETS, LLC, Plaintiff, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants/Third Party Plaintiffs, v. Jonathan SZEMANSCO, Third Party Defendant.</p> <p>2022 WL 20621098</p>	—	N.Y.Sup.	Aug. 25, 2022	Motion
<p>7. Affirmation</p> <p>WEST MOUNTAIN ASSETS LLC, Plaintiff, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants/Third-Party Plaintiffs, v. Jonathan SZEMANSCO, Third-Party Defendant.</p> <p>2022 WL 20621102</p>	—	N.Y.Sup.	July 29, 2022	Motion
<p>8. Memorandum of Law</p> <p>WEST MOUNTAIN ASSETS LLC, Plaintiff, v. James DOBKOWSKI and Jennifer Dobkowski, Defendants.</p> <p>2020 WL 13853032</p>	—	N.Y.Sup.	Nov. 16, 2020	Motion

History (3)

Direct History (2)

1. [West Mountain Assets LLC v. Dobkowski](#)
78 Misc.3d 963 , N.Y.Sup. , Mar. 07, 2023

Affirmed by

2. [West Mountain Assets LLC v. Dobkowski](#)
2024 WL 1914294 , N.Y.A.D. 3 Dept. , May 02, 2024

Related References (1)

3. [West Mountain Assets LLC v. Dobkowski](#)
2020 WL 13850592 , N.Y.Sup. , Nov. 18, 2020

Negative Treatment

There are no Negative Treatment results for this citation.