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Jason Setty

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RECENT DEVELOPMENT

MILLER V. BAY CITY PROP. OWNERS ASS'N, INC.: ANY SUCCESSORS IN INTEREST TO A PROPERTY DEVELOPER MUST ADHERE TO THE INTENT OF THE ORIGINAL DEVELOPER WHEN THE DEVELOPER CLEARLY INTENDS TO CREATE RESTRICTIVE COVENANTS.

By: Jason Setty

The Court of Appeals of Maryland held that when the intent of a property developer in creating restrictive covenants is clear, the successors in interest to the developer must effectuate the covenants by adhering to the developer's intent. *Miller v. Bay City Prop. Owners Ass'n, Inc.*, 393 Md. 620, 903 A.2d 938 (2006). Specifically, the Court held that when the developer's intent clearly established a step-by-step process through which a Community Boat Harbor Reservation was to be created, all steps must be fulfilled for the restrictive covenant to be effectuated. *Id.* at 641, 903 A.2d at 950-51.

On June 9, 1952, the developers of the Bay City subdivision recorded a deed and general outline plat of the layout of the subdivision. The developers reserved the right to choose a single parcel of land as the location of a Community Boat Harbor Reservation. That parcel was to be indicated on a revised subdivision plat to be recorded among the land records. Upon recording the plat, the boat harbor would be reserved from other uses. A supplemental plat delineating subdivision lots, but not specifically designating any as the Community Boat Harbor Reservation, was recorded in 1958.

In 1975, the Bay City Improvement Association ("BCIA"), successor to the developer, recorded a declaration naming the lots designated as the community boat harbor. The three lots selected were not contiguous and could not reasonably be considered a single harbor. Two lots were on one bank of Broad Creek, and the lot Eric Miller ("Miller") purchased was on the opposite side. BCIA adopted the 1958 plat as the plat designating the boat harbor. A revised plat specifically designating the Community Boat Harbor Reservation was never recorded.

On December 7, 2000, Bay City Property Owners Association (“BCPOA”), successor in interest to BCIA, conveyed one of its lots to Miller. Miller applied for a building permit to build on the lot, but was denied by the BCPOA because the lot was mentioned in the declaration reserving the community boat harbor.

Miller filed suit against BCPOA in the Circuit Court for Queen Anne’s County, seeking a declaratory judgment that a recorded plat depicting his lot as part of the Community Boat Harbor Reservation was a condition precedent to the restrictive covenant prohibiting him from building a residence on his lot. The circuit court granted summary judgment in favor of Miller, holding that the failure to record a revised plat voided the establishment of the Community Boat Harbor Reservation as it was contrary to the express requirements set forth in the 1952 deed. The Court of Special Appeals of Maryland, in an unpublished opinion, reversed the grant of summary judgment, holding that the recorded declaration showed the intent of the parties to create the Community Boat Harbor Reservation and was sufficient to comply with the requirements for creating the reservation. The Court of Appeals of Maryland granted certiorari to determine whether the Court of Special Appeals of Maryland had a legal basis to reverse the Circuit Court of Queen Anne’s County.

Restrictive covenants have long been a part of Maryland law. Maryland courts have limited their applicability, particularly when the intent of the parties in creating the restriction is unclear. *Miller*, 393 Md. at 633-34, 903 A.2d at 945-46. Ambiguity in the parties’ intent is resolved in favor of the unrestricted use of the property. *Id.* at 634, 903 A.2d at 946 (citing *Balt. Butchers Abattoir and Live Stock Co. v. Union Rendering Co.*, 179 Md. 117, 123, 17 A.2d 130, 133 (1941)). This interpretation is known as the strict construction rule. *Miller*, 393 Md. at 634, 903 A.2d at 946. Under this rule, ambiguous restrictive covenants are strictly construed against the parties seeking to enforce them. *Id.* More recently, Maryland has applied the principle of reasonably strict construction, wherein courts determine and effectuate the intent of restrictive covenants that are clear on their faces or those clear in light of surrounding circumstances. *Miller*, 393 Md. at 635, 903 A.2d 947 (citing *Bellevue Constr. Co. v. Rugby Hall Comty. Ass’n*, 321 Md. 152, 158, 582 A.2d 493, 495-96 (1990)).

The *Miller* court determined that the express covenants in the 1952 deed clearly showed the intent of the developers to place a restriction upon the land and the mechanisms through which that goal was to be accomplished. *Miller*, 393 Md. at 637-38, 903 A.2d at 948. The

Court then applied a reasonably strict construction analysis to effectuate the developer's intent to create restrictions on the subdivision. *Id.*

The 1952 deed provides:

(7) The Corporation, for itself and its successors in the ownership or development of the land contained in said Community ... reserves the right, in the future, to select, fix and determine the location, upon the waters of Board [sic] Creek, of a parcel of land, to be known and designated as a "Community Boat Harbor Reservation" and to show and designate the location [of the harbor] upon a plat thereof, to be hereafter filed for record among the Land Records of Queen Anne's County.

(8) Upon the date of the recording of said plat ... such "Community Boat Harbor Reservation" shall, from thence forth be expressly and irrevocably reserved, dedicated and restricted to use in common by the bona fide members of the Association.

Id. at 637, 903 A.2d at 949. The Court found these words clear on three issues: (1) that "there was to be a single boat harbor," (2) that "the designation was to be made on a plat," and (3) that "the designation was to become effective only after the plat was recorded." *Id.* at 637-38, 903 A.2d at 948. The Court also examined other sections of the deed to determine that the developers clearly intended reservations to be shown on revised plats recorded in the land records. *Id.* at 638, 903 A.2d at 948-49. The Court noted that these instances demonstrated the developer's intent to record revised plats. *Id.* As such, the Court held that to allow BCPOA to disregard the recording requirement for the boat harbor reservation would be contrary to the developer's original intent. *Id.* at 638, 903 A.2d at 949.

The developer's 1952 deed also spoke of a single parcel of land to be designated as the community boat harbor. *Id.* The 1975 declaration, adopting the 1958 plat, assigned three non-contiguous lots for that purpose. *Id.* at 627, 903 A.2d at 942. Despite the ambiguity between the documents, the Court chose to apply the principle of reasonably strict construction. *Id.* at 638, 903 A.2d at 949. Using a reasonably strict construction analysis, the Court held that the developers intended to create a single boat harbor. *Id.* The developers chose to use singular terms with respect to the single area to be used

for the Community Boat Harbor Reservation. *Id.* In instances where they created reservations for plural amenities, the developers used plural language. *Id.* at 637, 903 A.2d at 947, n.4.

BCPOA also attempted an alternative argument. *Id.* at 639-40, 903 A.2d at 949-50. They argued that both the recorded declaration and the special warranty deed Miller signed provided constructive notice that Miller's lot was part of the Community Boat Harbor Reservation. *Id.* The Court disregarded the idea that recorded deeds and declarations provide constructive notice of restrictive covenants to buyers. *Id.*

The Court held that the declaration was ineffectual in creating the restriction without the required recorded plat, regardless of whether it provided notice to Miller. *Id.* at 641, 903 A.2d at 950. BCPOA argued that the special warranty deed noted the sale of the lot was subject to any "covenants, restrictions or conditions of record," and that such language bound Miller to the alleged restriction. *Id.* However, the Court found that the restrictions never came into effect because the necessary revised plat was never filed. *Id.*

The Court's holding in *Miller* established that Maryland follows a reasonably strict construction rule of interpreting restrictive covenants. Such a rule could impact developers and property owners throughout the state by applying restrictive covenants more liberally. *Miller* gave developers and attorneys drafting restrictive covenants more freedom in detailing restrictions in development schemes because, even if the language in the restrictive covenants is ambiguous, Maryland courts will ascertain and effectuate the intent of the developers in creating the restrictions, rather than simply strike the covenant in favor of the free use of land.