



2007

Recent Developments: Llowden v. Bosley: Restrictive Covenants Requiring Lots Be Used for Residential Purposes Do Not Prohibit the Short- Term Rental of the Property to Tenants

Jason Setty

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Setty, Jason (2007) "Recent Developments: Llowden v. Bosley: Restrictive Covenants Requiring Lots Be Used for Residential Purposes Do Not Prohibit the Short-Term Rental of the Property to Tenants," *University of Baltimore Law Forum*: Vol. 37 : No. 2 , Article 10.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol37/iss2/10>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

RECENT DEVELOPMENT

LLOWDEN V. BOSLEY: RESTRICTIVE COVENANTS REQUIRING LOTS BE USED FOR RESIDENTIAL PURPOSES DO NOT PROHIBIT THE SHORT-TERM RENTAL OF THE PROPERTY TO TENANTS.

By: Jason Setty

The Court of Appeals of Maryland held that restrictive covenants requiring lots be used for “residential” purposes did not prohibit the short-term rental of a home to a single family. *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006). More specifically, the Court interpreted “residential use” of a property to incorporate the use of a property for generally residential purposes, and held that any rents derived from short-term leases will not convert the property to a business use. *Id.* at 68, 909 A.2d at 267.

In September 2003, James and Angela Lowden (“Lowdens”) purchased two lots for building a vacation home in the Stilwater subdivision along Deep Creek Lake in Garrett County, Maryland. At the same time, Daniel and Angela Bosley, among others (“Bosleys and others”), purchased lots in the Stilwater subdivision. After building large homes on their lots, the Bosleys and others made their homes available to vacationers as short-term residential properties. Railey Valley Mountain Lake Vacations, LLC (“Railey”) offered the homes for rent as single rental units. No evidence was presented that any home was rented or offered to different families, or rented or offered on a room-to-room basis.

The Stilwater subdivision was part of a tract of land owned by New Glen Properties, LLC (“New Glen”). All lots in the subdivision were subject to restrictive covenants recorded in June 2003 by New Glen in a Declaration of Covenants, Conditions and Restrictions (“the Declaration”). The Declaration stated that the subdivision was a residential community. Section 8.1 of the Declaration required that all lots be used for single family residential purposes only. Additionally, Section 2.7 of the Declaration stated that any property owner could delegate his right of enjoyment to “members of his family, *his tenants*, or contract purchasers.” (emphasis added).

In May 2004, after learning that the Bosleys and others were offering their homes as short-term vacation rentals, the Lowdens filed a complaint in the Circuit Court for Garrett County seeking injunctive relief, damages and a declaratory judgment. The Bosleys and others filed motions for summary judgment, and the Lowdens subsequently filed a cross-motion for summary judgment. All motions for summary judgment were denied. After a one day, non-jury trial, the circuit court denied the Lowdens' requests for an injunction and damages, filing a written declaratory judgment, stating that the Declaration did not prohibit short-term rentals to vacationers. The Lowdens appealed to the Court of Special Appeals of Maryland, but before any proceedings took place, the Court of Appeals of Maryland issued a writ of certiorari.

When considering restrictive covenants, Maryland courts have held that where the language of the restrictive covenant is clear, there is no reason to consider extrinsic evidence relating to intent. *Lowden*, 395 Md. at 66, 909 A.2d at 265 (citing *Miller v. Bay City Prop. Owners Ass'n.*, 393 Md. 620, 637, 903 A.2d 938, 948 (2006)). Only when a restrictive covenant is ambiguous will courts consider extrinsic evidence. *Lowden*, 395 Md. at 66, 909 A.2d at 266.

The Court of Appeals of Maryland, while agreeing with the circuit court's judgment, differed in the reasoning used to reach the decision. *Lowden*, 395 Md. at 67, 909 A.2d at 266. The Court determined that the Declaration is unambiguous, and therefore did not consider the extrinsic evidence the circuit court heard. *Id.* The Court examined the Declaration and determined that it allowed for the short-term rental of homes to single families. *Id.*

The Court determined that Section 8.1 of the Declaration provided that the lots in the Stilwater subdivision be used for "residential purposes" and that Section 2.7 recognized that an owner may have "tenants." *Id.* at 68, 909 A.2d at 266-67. If a homeowner rents his home to a family that resides in the home, the property is used for residential purposes, even if the owner receives rental income. *Id.* at 68, 909 A.2d at 267. The Court held that "the fact that the owner receives rental income is not...inconsistent with the property being used as a residence." *Id.* (emphasis in original).

The Court of Appeals interpreted "residential use" to mean that the property is used for "living purposes, or a dwelling, or a place of abode." *Id.* (citing 43 A.L.R. 4th 71, 76). The Court mentioned apartment buildings and hotels, among other structures, to which the

word residential has applied. *Lowden*, 395 Md. at 68, 909 A.2d 267. The temporary nature of the use of such buildings does not affect its status as a residential dwelling. *Id.* Furthermore, the Court concluded that the owners' receipt of rental income did not affect the use of the properties as residences by the tenants. *Id.* at 69, 909 A.2d at 267.

The Court interpreted the Declaration to expressly permit an owner to delegate some rights to "tenants." *Id.* at 69-70, 909 A.2d at 268. The Court disagreed with the Lowdens' argument that the Declaration prohibited "short-term rentals," but allowed other rentals. *Id.* at 70, 909 A.2d at 268. The Court found nothing in the language of the unambiguous Declaration to provide for a distinction between long-term and short-term rentals. *Id.*

The Lowdens relied principally on *Keseling*, a zoning case. *Lowden*, 395 Md. at 70, 909 A.2d at 268 (citing *Keseling v. City of Balt.*, 220 Md. 263, 151 A.2d 726 (1959)). In *Keseling*, a zoning ordinance relating to a Baltimore City building prohibited building uses other than for an office. *Lowden*, 395 Md. at 70, 909 A.2d at 268. The Court distinguished *Keseling* because there was no prohibition of any "business or commercial use or benefit" in the instant case. *Lowden*, 395 Md. at 70, 909 A.2d at 268. The Court interpreted the Stilwater Declaration to permit a commercial benefit to the landlord-owner as long as the home was rented for residential use. *Id.*

The Court looked to other jurisdictions for interpretations of "residential" in similar contexts. *Id.* at 71, 909 A.2d 268. The Supreme Court of Idaho, in *Pinehaven Planning Board v. Brooks*, 70 P.3d 664, 668 (2003), determined that, even with a covenant prohibiting commercial or business use of property, "the rental of residential property for residential purposes is more appropriately deemed residential as opposed to business use." *Lowden*, 395 Md. at 71, 909 A.2d at 268. Similarly, the Missouri Court of Appeals held that "residential use" included nightly rental of units. *Id.* at 71-72, 909 A.2d at 269 (citing *Mullin v. Silvercreek Condo. Owner's Ass'n, Inc.*, 195 S.W.3d 484, 490 (Mo. Ct. App. 2006)).

Finally, the Lowdens argued that because Railey's rental agreements did not state that tenants renting a particular home must be related, it violated section 8.1 of the Declaration. *Lowden*, 395 Md. at 72, 909 A.2d at 269. The Court of Appeals held that the "single family" provision of the Declaration was not violated. *Id.* The Court determined that no evidence was submitted to the trial court, either during the summary judgment phase or at trial, that any home was

rented or offered for rent to different families or unrelated individuals. *Id.* The Court, however, had no occasion to explore the meaning or application of the “single family” restriction because it was not an issue generated by the evidence in the case. *Id.*

By issuing a writ of certiorari *sua sponte*, the Court is showing the particular importance of this decision to property owners in Maryland, particularly those owners in new property developments created in areas typically associated with part-time rental, such as vacation areas. The Court’s holding in *Lowden* establishes that property owners whose properties are restricted to residential use are not prohibited from renting those properties. *Lowden* gives property owners the ability to receive the rents from leasing their property without violating the “residential use” portion of the restrictive covenants of their subdivisions. Property developers who wish to completely restrict owners’ ability to rent homes in their subdivisions should take particular note of this case. If development companies do not want owners to rent out homes in their subdivisions, the companies’ drafters must explicitly state that fact in the development’s Declaration.