

95057220

IN THE CIRCUIT COURT IN AND FOR SARASOTA COUNTY, FLORIDA
COUNTRY CLUB ASSOCIATION, INC.
Plaintiff,

.. OFFICIAL RECORDS ..
BOOK 2742 PAGE 752

vs.

CASE NO. 95-0504-CA-01
DIVISION: C

DOUGLAS V. McNEILL and
MICHELLE V. McNEILL, husband and wife,
PEREZ TILE and CONSTRUCTION CO., and
JAMES STAHL,

Defendants.

FINAL JUDGMENT GRANTING PERMANENT INJUNCTION

This cause having come before the Court for trial, and the Court having heard the testimony, and the arguments of counsel, and having considered the trial briefs, and being otherwise fully advised in the premises, the Court makes the following findings of fact:

1. Country Club Shores, Unit 4, Part 2 is a residential subdivision located in the Town of Longboat Key, County of Sarasota, which is subject to a certain common scheme and plan for development, embodied in certain Covenants and Restrictions recorded at Official Records Book 470, Pages 335-340 of the Public Records of Sarasota County, Florida. Plaintiff is a residential homeowner's association formed pursuant to the Covenants and Restrictions.

2. The McNeill home is located on Lot 1, Block F, COUNTRY CLUB SHORES, Unit 4, Part 2, and the McNeill lot is subject to the Covenants and Restrictions, which appear in the McNeill deed and in the chain of title as evidenced by the title insurance policy

in evidence.

3. Article 3 of the Covenants and Restrictions provides for setback restrictions for construction of a dwelling or any part thereof, and the setback restriction on the canal side of the lots in the subdivision is twenty-five (25) feet.

4. Article 7 of the Covenants and Restrictions provides that no construction may occur until the plans, specifications, and location of proposed structures shall have been approved in writing, by the Association as successor in interest to the developer.

5. Defendants Douglas and Michelle McNeill are the owners of the aforementioned lot, and Defendants Stahl and Perez are agents and servants of McNeill.

6. Defendant McNeill had constructive and actual knowledge of the above requirements well in advance of commencing construction of his residence in January of 1995.

7. Defendant McNeill never submitted a final set of plans for his residence, and never received written approval for any plans, as required by the Covenants and Restrictions.

8. Defendant McNeill knowingly and willfully constructed his residence within the twenty-five (25) foot setback area on the canal side of his lot. The encroachments include a solid block wall encroaching in excess of four (4) feet into the setback area.

9. Although the defense has presented some evidence of other encroachments in the subdivision, there has been no evidence presented of any variance of encroachment of like kind or magnitude

to that of the Defendant McNeill. In any event, the Defendants have failed to establish sufficient evidence for the Court to find a waiver or abandonment of the common scheme and plan of development by the Plaintiff/Association.

Accordingly, it is hereby ORDERED and ADJUDGED as follows:


1. A permanent injunction is hereby entered against the Defendants herein, permanently enjoining and restraining them from violating the setback restrictions for Country Club Shores, Unit 4, Part 2.

2. Defendants are hereby ordered to remove all encroachments into the setback for Country Club Shores, Unit 4, Part 2, within 30 days of the date hereof, or face sanctions by the Court.

3. Costs are to be awarded to the Plaintiff in such amounts as may be determined by a later hearing.

4. The Court reserves jurisdiction to determine entitlement to attorney's fees and the amount of attorney's fees to be awarded to the prevailing party.

DONE and ORDERED in Chambers, in Sarasota County, Florida, this 25 day of May, 1995. ^{at 9:00 A.M.}


The Honorable Becky A. Titus
Circuit Judge

cc: James L. Essenson, Esquire
Kimberly Bald, Esquire
James Stahl
Perez Tile and Construction Co.

\\assoc\pleading\fb1jud.cct

RECORDED IN OFFICIAL
RECORDS
MAY 26 PM 2:46
CLERK OF COURT
SARASOTA COUNTY, FL