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Equity

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EQUITY

In *Deibel v. Wilson*[1] recognition was given to the long established principle that injunction is an extraordinary remedy not to be granted unless the proof is clear and convincing. Plaintiff sought to enjoin the construction, by defendant, of a building which would contain defendant's home and the office for his practice as physician. Defendant commenced construction only after a Board of Zoning adjustment had ordered the building inspector to issue a permit. Later, request for an injunction was made by neighboring property owners and a temporary restraining order issued. The court found that construction of such building was not prohibited by the zoning ordinances. The decision also stated that there were strong equities in defendant's favor: that he began construction upon the advice of administrative agencies that he had the right to do so; that the facts suggest a strong case for variance within the terms of the zoning ordinance; that the evidence establishes that the structure will enhance the value of the surrounding property; and that defendant had invested a substantial sum of money, even though at some risk because of the pendency of a suit for injunction though no order preventing construction was outstanding. The plaintiff's claim for an injunction was also based upon a deed restriction against "use" of the property for other than residential structures. The court rejected this claim because the restriction would shortly expire, possibly even before construction was complete and, second, because a restriction on "use" does not justify an injunction against construction of a building which, because of the nature of the construction, could be put to the prohibited use.

Conforming Matrix Corp. v. Faber[2] considered the right of a former employer to enforce, by injunction, the provisions of a contract by which a former employee agreed not to work for a competitor in an area of nineteen states for a term of five years after the termination of employment. The specific restrictive provisions of the contract were found to be enforceable since they were no wider than reasonably necessary for the protection of the employer's business and did not impose undue hardship on the employee. The employer was held to be reasonably entitled to injunctive relief when the record showed that "special knowledge, experience and skill" gained by the employee in his confidential relationship while working for the employer were utilized in the manufacture by the new competing employer of equipment which was sold to former customers of the plaintiff employer. It should be noted that in the

1. 150 N.E.2d 448 (Ohio Ct. App. 1957).
2. 104 Ohio App. 8, 146 N.E.2d 447 (1957).

present case there was evidence which established use of confidential knowledge and skill in the actual sale of equipment to customers of the plaintiff. Is the restrictive covenant by which the employee agrees not to work for competitors enforceable when he goes to work for a competitor, or is actual use of this knowledge to injure the competitive position of the employer, or at least the immediate threat of use, necessary? This is left unanswerable by the court.

A common pleas court appointed special master commissioners in investigating generally the unauthorized practice of law in the county in which that court sat. The commissioners subpoenaed a person, allegedly licensed as a consultant before the Industrial Commission of Ohio and the Bureau of Workman's Compensation of Ohio, to appear and bring certain records. In *Lattin v. McMillen*[3] the person subpoenaed sought an injunction against the commissioners on the ground that the appointment of the commissioners was contrary to law and that the hearings before the commissioners were not conducted according to proper procedure. The trial court found that certain procedures were improper; jouralized an order to correct such improprieties; and dismissed the injunction. On appeal, it was held that since the appointment of the commissioners was basically a proper manner for the trial court to proceed and that since the faulty procedure had been corrected, the request for an injunction had become a moot question. Consequently, the dismissal of the injunction was affirmed.

In *Wayne Lakes Park v. Warner*[4] plaintiff maintained a lake and park and sold lots adjacent thereto for private ownership. Defendant bought one of these lots by a deed which contained the provision that "the owner . . . shall, at all times, maintain an annual membership in Wayne Lakes Park operated by the grantor. . . ." Defendant refused to maintain his membership. Plaintiff sought to restrain defendant from occupying the demised premises during the time that membership was not maintained. The court refused to use the injunctive process for this purpose. No penalty was provided for failure to maintain the membership and there was no mention of forfetiture or right of re-entry or other remedy upon which the injunction prayed for might be based. Because of this the court found that the grantor had failed to establish with reasonable clarity that maintenance of membership was a condition of retention of ownership. "Forfeitures are not favored, so that, in case of doubt, questionable provisions will be construed as covenants rather than as conditions." The court recognizes the right of a grantor to establish a general building scheme or plan for the development of a tract or

3. 104 Ohio App. 449, 150 N.E.2d 84 (1958).
4. 104 Ohio App. 167, 147 N.E.2d 269 (1957).

subdivision, but held that rights of this type were not in litigation here. Consequently, the injunctive process was not available for the protection of the "covenant" which the grantor had obtained.

In a land contract in which the purchase price was to be paid monthly over a period of several years and vendor, in case of default, had the right to declare the contract void, it was held, in *Economy Savings and Loan Co. v. Hollington*,[5] that the vendor was not required to enforce an equitable mortgage on the property, but could recover the property which would allow him the increase in the value of the property.

Kellogg v. Board of County Commissioners[6] held that, when petitioners filed a petition for an injunction which was positively verified and at the same time filed a motion for a temporary injunction, the petition served the purpose of an affidavit supporting the motion.

In *Carranor Woods Property Owners' Ass'n v. Driscoll*[7] the predecessor of the plaintiff in developing a suburban tract of land, had duly recorded a declaration of restrictions which recited a number of specific reservations and restrictions relating to structures which might be erected on the property with which the declaration was concerned. It also provided that no structure could be erected without the written approval of the developer or his successors. Defendant, with knowledge of the recorded restriction, purchased a lot within the development and, subsequently, submitted a plan for a house thereon. This plan was rejected because the garage faced the street. Plaintiff then commenced construction of the house and garage according to the unapproved plans. Defendant sued to enjoin such construction. The court recognized the legality of general building plans for the development of a tract of property provided the plans are not against public policy. A developer may reserve broad powers of modifying restrictions if some standard or criterion is reserved for the exercise of the reserved power. In the present case, the declaration required that an attached garage conform architecturally to the residence and made no reference to the location of the entrance to the garage. The court therefore concluded that the reservation of the power of approval or rejection of a plan by the developer or his successors was valid provided that it did not add any new or different restrictions than those set forth in the recorded declaration, and that it only required plans be submitted for approval to assure that the plans conformed to the restrictions of record.

In *Wiley v. Wiley*,[8] a husband sued for divorce on the ground of the

5. 105 Ohio App. 243, 152 N.E.2d 125 (1957).
6. 153 N.E.2d 521 (Ohio Ct. App. 1958).
7. 106 Ohio App. 95, 153 N.E.2d 681 (1957).
8. 153 N.E.2d 784 (Ohio Ct. App. 1957).