Granted Appeal Summary

Case
TODD J. WESTRICK, ET AL. V. DORCON GROUP, LLC
(Record Number 230625)

From
The Court of Appeals of Virginia.

Counsel
Stephen C. Price and Theresa D. Small (McCandlish & Lillard, P.C.) for appellants.

Scott D. Helsel (Walton & Adams, P.C.) for appellee.

Assignments of Error

1. Because Dorcon failed to assign any error in the Court of Appeals that asserted the Covenant Amendment was a "new restrictive covenant" and not a mere modification, the Court of Appeals was plainly wrong to base its decision on that conclusion.

2. The Court of Appeals was plainly wrong to find that the Covenant Amendment imposed "new restrictive covenants" by focusing only on the form of the Covenant Amendment rather than evaluating the substance of the change in allowable uses made by it.

3. The Court of Appeals was plainly wrong to find that the Covenant Amendment did not merely modify the Original Covenants but imposed a new restrictions when Dorcon failed to establish a record in the trial court which would enable such an evaluation to be performed.

4. The Court of Appeals was plainly wrong in its construction of the term "modify" to find that the Covenant Amendment was a "new restrictive covenant" rather than the modification of an existing one.

5. The Court of Appeals was plainly wrong in failing to find that the Neighbors, as the owners of 82% of the lots improved with dwellings, were empowered to adopt the Covenant Amendment even assuming it went beyond being a mere modification.

Assignment of Cross-Error

If the meaning of "modify" in paragraph 19 of the 1981 Deed can reasonably be interpreted in more than one way, the Court of Appeals erred by not finding that it is ambiguous. However, even if paragraph 19 is ambiguous, the 2020 Deed is still invalid based on the strict construction principle, other applicable canons of construction, and the unrebutted testimony of the subdivision's developer. This provides an additional basis to affirm the Court of Appeals' ruling.