

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-571

MAY TERM, 2004

	}	APPEALED FROM:
	}	
Syn-Cronamics of Canada, Ltd.	}	Lamoille Superior Court
	}	
v.	}	
	}	
Mary Coughlan, Sto-den Trust,	}	DOCKET No.157-7-02 Lecv
Gregory and Lois Kiefer, Rodney	}	
and Brenda Kessler	}	Trial Judge: Hon. Edward J. Cashman
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiff Syn-Cromatics of Canada, Ltd. (developer) appeals from a superior court judgment in favor of defendants Sto-Den Realty Trust, Gregory and Lois Kiefer, and Rodney and Brenda Kessler (homeowners).^{*} Developer contends the court erred in concluding that: (1) it is obligated to maintain a road under a restrictive covenant that runs with the land; and (2) its claim against homeowners for contributions to maintain the road is time barred. We affirm.

Developer owns a residential subdivision in Stowe. It purchased the property in 1982, subject to a set of restrictive covenants contained in a 1964 deed to the original developer Cady Hill Development Corp. The first paragraph of the covenant section states that the conveyance is " subject to the following covenants and restrictions," sets forth several provisions restricting the property to development for residential purposes and prohibiting trailers or mobile homes, and closes with the statement that " these covenants shall be binding upon the herein Grantees, their heirs, executors, administrators, assigns and successors in title to said land." The second paragraph requires that purchasers of lots in the subdivision obtain approval to build from Cady Hill " or its assigns." The third paragraph provides that the road serving the community A will be maintained, including plowing in winter," by the developer " until such time as the Town of Stowe accepts said roads as town roads." The fourth paragraph prohibits construction, except for recreational use, in a designated communal park area. These covenants and restrictions were either expressly set forth, or included by reference, in all of the deeds in developers' chain of title, and all of the deeds in the individual homeowners' chains of title.

Homeowners reside on an extension of the community road built in 1985. That portion of the road has not been accepted by the Town of Stowe, and has been maintained and plowed by developer since its construction. In 1996, however, developer made a written demand upon homeowners for pro rata contributions to the cost of maintenance, which homeowners refused. As a result, developer filed this action for declaratory judgment, seeking a ruling that it was not subject to the road-maintenance covenant, that homeowners are obligated to contribute their fair share, and are liable for the reasonable monetary value that homeowners had received from developer' s maintenance of the road since 1996.

The parties filed cross-motions for judgment on the pleadings. Following a hearing, the court issued a written decision, concluding that the covenant requiring maintenance of the road is one that runs with the land, and that developer is therefore obligated to maintain, plow and repair the road without contribution from homeowners. The court also found, as a separate and independent basis for the judgment, that developer' s claim was time-barred. This appeal followed.

To enforce a restrictive covenant against an owner other than the original covenantee, the covenant must run with the land. Rogers v. Watson, 156 Vt. 483, 487 (1991). To run with the land, a covenant must meet four requirements: it must

be in writing; the parties must intend that it run with the land; it must " touch and concern the land;" and there must be privity of estate between the parties. Id. The sole requirement the developer asserts is unmet in this case is the second " developer argues that the parties did not intend that the covenant run with the land. Developer claims that the restrictive covenant requiring road maintenance does not contain language expressly binding the original developer' s successors or assigns or otherwise indicating that it runs with the land, and therefore is a personal covenant.

We have observed that the parties' intent to have a restriction run with the land " can be implied as well as expressed," id. at 488, and it is well settled that such an " intention is to be determined from . . . [the deed] as a whole and not from any single clause or provision. No particular language is required to demonstrate an intent that a covenant run." Beattie v. State of Okla. ex rel. Grand River Dam Auth., 41 P.3d 377, 389 (Okla. 2002) (Opala, J., concurring); see also LuMac Dev. Corp. v. Buck Point Ltd. P' ship, 573 N.E.2d 681, 684 (Ohio Ct. App. 1988) (" In ascertaining intent, restrictive covenants are to be read as a whole."). We have also recognized that the continuous presence of a restrictive covenant in the chain of title, " evidencing a common scheme as to the property," is indicative of an intent that the covenant run with the land. Albright v. Fish, 136 Vt. 387, 394 (1978).

Viewed in light of these standards, the record evidence shows that the covenant in question was made in furtherance of a general plan or scheme devised by developer' s predecessor in title and that the plan included a maintenance obligation to run with the land and benefit the subsequent purchasers of lots in the subdivision. This is readily apparent from the covenant' s uniform appearance in the deeds in the parties' various chains of title, clearly indicating that the covenant was intended to bind and benefit successors in title. See Musgrave v. Brookhave Lake Prop. Owners Ass' n, 990 S.W.2d 386, 395 (Tex. Ct. App. 1999) (despite absence of specific " heirs and assigns" language in deed, developer' s intent that obligation to maintain roads and property run with land " may be implied from the fact that benefit of covenant was not intended to be transitory in nature"). The language of the covenant section as a whole also supports this conclusion, expressly binding the grantee' s " assigns and successors in title" to " the following covenants and restrictions." Although the specific " assigns and successors in title" language appears only in the first paragraph, it reflects an intention to make binding all of the subsequent or " following" restrictions, including the road maintenance covenant. See LuMac, 573 N.E.2d at 684 (intent of parties to bind successors in title to all six restrictive covenants evident from first paragraph binding " successors and assigns"). Accordingly, we conclude that the trial court correctly determined that the restrictive covenant runs with the land, and obligates developer to maintain the road for the benefit of homeowners. Our conclusion renders it unnecessary to address the court' s alternative holding that developer' s action is time-barred.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Footnote

- * Defendants Mary Coughlan and Jeffrey, Robert, and Betty Folz left the case prior to the trial court judgment.