

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

7-2-2022

Moretto vs. Elk Point Country Club HOA, Inc. 138 Nev. Adv. Op. 24 (April 7, 2022)

Anne-Greyson Long

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Law Commons](#)

Recommended Citation

Long, Anne-Greyson, "Moretto vs. Elk Point Country Club HOA, Inc. 138 Nev. Adv. Op. 24 (April 7, 2022)" (2022). *Nevada Supreme Court Summaries*. 1499.
<https://scholars.law.unlv.edu/nvscs/1499>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Adopting Sections 6.7 and 6.9 of Restatement (Third) of Property: Servitudes: The Court was asked to consider the extent of a common-interest-community homeowners association's power to adopt rules restricting the use and design of individually owned properties. The Court concluded that the adoption of sections 6.7 and 6.9 on the Restatement (Third) of Property: Servitude favor public policy.

Summary

This case addressed the extent of a common-interest-community homeowners association's power to adopt rules restricting the use and design of individually owned properties. The Court concluded that public policy favors the adoption of section 6.7 and 6.9 of the Restatement (Third) of Property: Servitudes.² These sections explain that homeowners' associations do not have the implied power to impose use or design on individually owned properties. The governing documents of the association must expressly authorize the imposition of restrictions to do so. These restrictions are subject to a "reasonableness" requirement.³

The Court also acknowledged that neither party addressed whether the respondent's exercise of its design-control power was reasonable-a central tenant of section 6.9. The Court reversed the district court's grant of summary judgment with respect to appellant's claims for declaratory relief and remanded the case back to the district court to consider whether respondent's rules are reasonable under sections 6.7 and 6.9 of the Restatement (Third) of Property: Servitudes.

Facts and Procedural History

In 1990, appellant Jerome Moretto took title to property in the Elk Point subdivision. Mr. Moretto's chain of title included a provision stating that his property was subject to all bylaws, rules, and regulations that the Elk Point Country Club's (hereinafter EPCC) establishes. Since Mr. Moretto took possession of the property the EPCC's bylaws have included article 16(3)'s restriction requiring EPCC to pre-approve construction of any structure on individually owned lots prior to its commencement. In 2018, EPCC adopted a regulation to establish an architectural review committee in addition to a new set of guidelines titled, "Architectural and Design Control Standards and Guidelines." These guidelines created detailed restrictions on individually owned lots (including restrictions regarding building height, setbacks, building materials, etc.). The new regulations required any landowner wanting to develop their lot to comply with these new guidelines and to submit any proposed plans to the architectural review committee which would recommend to the executive board whether to approve the proposed development. Moretto filed a complaint seeking a declaration that the new guidelines exceeded the scope of EPCC's rulemaking authority. EPCC filed its answer, and both parties filed competing motions for summary judgment.

¹ By Anne-Greyson Long.

² Restatement (Third) of Property: Servitude.

³ See generally Elk Point Country Club Homeowner's Association Bylaws.

Discussion

The Court reviewed de novo the district court's grant of summary judgement.⁴ On appeal, both party's arguments mirror the ones presented initially to the district court. Mr. Moretto argued that the court should adopt sections 6.7 and 6.9 of the Restatement (Third) of Property: Servitudes. He argued that 6.9 requires that an association must have an express power to adopt design control restrictions, which EPCC does not have. Mr. Moretto suggested that under the principles outlined in 6.7, EPCC only possess a general rulemaking power and therefore is limited in its power to adopt restrictions concerning individually owned property. EPCC argued that the adoption of the Architectural Guidelines was within the scope of its authority under its bylaws.

Restatement (Third) of Property: Servitudes sections 6.7 and 6.9

When parties raise issues of a purely legal nature, the Court will conduct a plenary review.⁵ Sections 6.7 and 6.9 concern an association's authority to adopt rules regarding the use and design of individually owned properties in a common-interest community. Sections 6.7 and 6.9 were adopted in Nevada pursuant to public policy and protection of private property rights.

Under Restatement sections 6.7 and 6.9, EPCC had the authority to adopt the Architectural Guidelines

Moretto asserted that EPCC does not possess the authority to adopt the Architectural Guidelines. Noting specifically that 1) EPCC's bylaws only provide the association with generally worded rulemaking power and 2) Even if the bylaws did expressly authorize EPCC to adopt the Architectural Guidelines, EPCC does not have a recorded declaration of CC&Rs that expressly authorizes it to do so. The district court determined that article 16 (3) of EPCC's bylaws provided the authority to adopt the Architectural Guidelines. The Court agreed.

The record on appeal does not demonstrate whether the Architectural Guidelines are reasonable

The Court remanded for the district court to consider whether the Architectural Guidelines are reasonable and thus valid under Restatement section 6.9. While the Court agreed that the EPCC did have the authority to adopt the Architectural Guidelines, it does not have the authority to impose any and all restrictions on individual property owners. There is a reasonableness requirement which protects the individual property owner's rights and expectations.

Moretto's other arguments

Moretto included a claim that the Architectural Guidelines violated his property rights. His appeal only challenged the district court's dismissal of his violation of property rights claim as noncognizable. The Court disagreed with the district court that Moretto's claim was noncognizable.

⁴ Wood v. Safeway, Inc. 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

⁵ St. James Vill., Inc v. Cunningham, 125 Nev. 211, 216, 210 P.3d 190, 193 (2009).

Conclusion

The Court expressly adopted sections 6.7 and 6.9 of the Restatement (Third) of Property: Servitudes. Under the Restatement's approach, EPCC's bylaws provide it the express power to adopt design-control restrictions on individually owned property in the Elk Point Community. The EPCC must reasonably exercise its power to adopt design-control restrictions on individually owned property. The Court reversed the district court's order granting summary judgment in favor of EPCC with respect to Moretto's declaratory relief claim and violation-of-property-rights claim. The Court remanded for consideration whether the Architectural Guidelines are reasonable in light of the discussion herein.