Santa Clara University
School of Law

Santa Clara Law Review

Volume 2 | Number 1 Article 8

1-1-1962

Restrictive Covenants: Equitable Servitudes and Changing Conditions

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Notes and Comments

PROPERTY: RESTRICTIVE COVENANTS: EQUITABLE SERVITUDES AND CHANGING CONDITIONS.

How much reliance can a residential property owner place on the fact that the tract in which his property is located is protected by restrictive covenants? This question is pertinent due to the constant influx of people into California and the subsequent need for commercial outlets and multiple dwellings. The courts have approached this problem with diligence but without any degree of uniformity. Reasons given for this lack of uniformity have been, first, that many facts and circumstances collectively determine whether a restrictive covenant will be denied enforcement; and, second, that decisions in this area are largely in the discretion of the trial court.

The major area of disagreement resolves around the question of what change of conditions will be sufficient to justify a court in refusing to enforce a restrictive covenant. A further question posed by the problem is whether it is necessary that the change be limited to the particular tract in question, or whether enforcement of a restrictive covenant can be denied where all of the changes have occurred outside the tract.

One of the earliest cases on the subject is *Miles v. Clark*.[1] In that case the trial court enjoined the defendants from violating their own servitude by selling lots in the tract for hotel and apartment uses. Appealing to the District Court of Appeal, the defendants urged as ground for reversal that the character of the property in the surrounding neighborhood had so changed since the time the restrictions were imposed that enforcement would now be inequitable. They also contended that many apartments and hotels in the surrounding area made the unrestricted land worth five times the value of the restricted property. The court recognized the general rule that a change in conditions is a sufficient ground for refusing to enforce a servitude, but denied relief in this case because there was no evidence of a *radical* change. The mere fact that the land was more valuable for business purposes was immaterial.

This case has been urged to support the proposition that before a restrictive covenant will be denied enforcement it must be shown that the character of the restricted region as a whole has substantially changed so as to render it unadaptable to the restrictions originally imposed.[2] It has also been cited as holding that this change must come from or be within the entire restricted area.[3]

The majority opinion in *Downs v. Kroeger*,[4] on the other hand, held

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[1] 44 Cal.App. 539, 187 Pac. 167 (1919).

[2] Downs v. Kroeger, 200 Cal. 743, 254 Pac. 1101 (1927). See dissenting opinion.

[3] *Ibid.*

[4] *Ibid.*

that changed conditions may occur outside the tract and still be effective to render unenforceable a restrictive covenant. In this case, defendant started construction of a gas station on a lot limited to residential use. Plaintiffs sought an injunction. To show that substantial changes had occurred which were sufficient to deny enforcement of the restrictive covenant, the defendant introduced evidence that many new stores and business structures had been built on the street abutting the restricted area, that the property was no longer suitable or desirable for residential purposes, and that the removal of the restriction would not depreciate the value of the plaintiff's property or lower the general class or character of the neighborhood.

The trial court denied the relief prayed for and held that the changes in the use to which the property in the neighborhood had been subjected were of such a nature that it was oppressive and inequitable to give effect to the restrictions. The case was affirmed on appeal to the California Supreme Court.

A close analysis of the two cases will illustrate that in each the decision was justified. The real question is whether the change in character of the property both within and without the tract is so substantial that the property is no longer fit for the purpose for which the original restrictions were imposed. The evidence in the *Miles* case demonstrated that the property was still suitable for residential purposes, whereas in the *Downs* case the evidence adduced showed that the property was no longer suitable for residential use.

In *Hurd v. Albert*,[5] it was shown that traffic within and without the tract had increased and that the tract had become surrounded with multiple dwellings. Injunctive relief to enforce the restrictive covenant was denied. The California Supreme Court reaffirmed its decision in the *Downs* case stating:

> The authorities unquestionably support the conclusion of the trial court in holding that where there has been a change in the uses to which the property in the neighborhood is being put, so that such property is no longer residence property, it would be unjust, oppressive, and inequitable to give effect to the restrictions, if such change has resulted from causes other than their breach.[6]

One unique factor of the *Hurd* case was the urging by the plaintiff that the defendants had acquired their property for the sole purpose of breaking the restriction. The Court stated that this should not deprive the defendants of consideration in a court of equity or require that the injunction should be granted against them.

In *Hess v. Country Club Park*,[7] the court again declined to give effect

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[5] 214 Cal. 15, 3 P.2d 545 (1931).

[6] Hurd v. Albert, *supra* note 5, 214 Cal. at 23, 3 P.2d at 548.

[7] 213 Cal. 613, 2 P.2d 782 (1931).

to a restrictive covenant, holding that the property was no longer suitable for residential purposes. Here the court considered as evidence that, since the restrictions had been imposed, the street abutting the lot in question had been widened from fifty to eighty feet; that by virtue of a city ordinance the lot may only be used for certain businesses; and that there were fourteen lots left within the tract which were still unsold, and that three lots had been sold without any restrictions whatsoever. The *Hess* case was followed in *Marra v. Aetna.*[8]

Robertson v. Nichols[9] was a suit to quiet title and for declaratory relief to set aside restrictions to single family dwellings. It was alleged that the restrictions were ineffective because of changed conditions. The streets located within the tract and adjacent to it had become congested; there had been a change in the use of the property located within the tract due to the construction of garage buildings, apartment houses and stores; the property had been rezoned for multiple dwellings; the area located outside the tract was built up with apartment houses and stores; and the lots were worth $2,500 for homes; but $7,000 for apartment houses.

The court held that although the land had become more valuable for other than single family residences due to the location of the plaintiff's property and the westward growth of the city, nevertheless, the property of the plaintiffs and defendants was still suitable and desirable for single family residential purposes in accordance with the restrictions. One of the factors which the court used to reach its decision was the fact that the lots in question were located in the heart of the tract where construction of an apartment would definitely serve to damage the defendants without injuring the plaintiffs. Had the lots in question bordered an unrestricted area the outcome of the case might have been different.

The most recent California Supreme Court view upon the subject of changed conditions was the decision in *Wolff v. Fallon.*[10] Here, the original deeds restricted the property to single-family dwellings. Plaintiff's lot was within an area subsequently zoned commercial. On the block where the plaintiff's lot was located were nineteen buildings of which sixteen were stores and three were residences. The Court denied enforcement of the restrictive covenant, taking into account the following circumstances: there was increased traffic along the street bordering the restricted area and the plaintiff's lot; the value of the lot was $15,000 commercially, while for residential purposes it was worth only $4,000; there were violations of the covenants within the tract itself; the plaintiff's

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[8] 15 Cal.2d 375, 101 P.2d 490 (1940).

[9] 92 Cal.App.2d 201, 206 P.2d 898 (1949). See also, Rice v. Heggy, 158 Cal.App.2d 89, 322 P.2d 53 (1958).

[10] 44 Cal.2d 695, 284 P.2d 802 (1955).

lot had been zoned by ordinance as a part of the commercial district; and the lot was no longer suitable for residence purposes.

An excellent dissent by Justice Spence indicates the problem with which the court is faced in a case of this type.

> It seems clear that a line must be drawn somewhere dividing residential and commercial development in any tract where both are to be permitted. It seems clear that the residential lots which are contiguous to commercial lots will necessarily be some what less valuable. This situation is inherent in any plan of restrictive covenants to provide orderly development; and it cannot justify the lifting of restrictions on such contiguous lots unless the plan itself is destroyed.[11]

In the light of the facts, it would appear that the original plan of the first grantor had been destroyed despite the dissent. There was an encroachment within the tract itself, and the plaintiff's lot was no longer suitable for the purpose for which the original restriction was imposed.

The latest case in this area of changed conditions is that of *Hirsh v. Hancock*.[12] This was an action to remose restrictions limiting the property in question to single-family residential use. The lots were located on or near Wilshire Boulevard. Among the changes that had occurred on Wilshire since the restrictions had been imposed were that it had become one of the most heavily traveled thoroughfares in Los Angeles, and, as a result, dust and noise developed from the traffic: stop lights and newshawkers were on almost every corner; the area had been zoned commercial on both sides of the street; and that the taxes on the plaintiffs were disproportionate to the use to which their property could be put.

The trial judge, who was sustained on appeal, found for the plaintiffs and held that there had been such a change in the vicinity that the lots were entirely unsuitable and undesirable for residential use; that the lots had no present economic value except for business or commercial purposes; and that enforcement of the restrictions would be burdensome, oppressive, and inequitable to the plaintiffs and of no substantial benefit to the owners of the other lots in the tract.

This case again affirmed the principle that the most important factor which the court considers, to determine whether there has been such a change so as to deny enforcement of a restrictive covenant, is that of whether the property involved is suitable to the purpose for which the restrictions were imposed.

Since 1959, changed conditions cases have reached a standstill. What impresses one most about these cases is the fact that there is no absolute rule which can be looked to for a determination. The courts must consider all the circumstances of the case and render a decision based on the evidence presented by the parties. Since these decisions are dependent

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[11] *Id.* at 699, 284 P.2d at 805.

[12] 173 Cal.App.2d 745, 343 P.2d 959 (1949).