

IN THE CIRCUIT COURT FOR CLAIBORNE COUNTY, TENNESSEE
AT TAZEWELL

LONE MOUNTAIN SHORES OWNERS))	
ASSOCIATION, INC.,))	
)	
PLAINTIFF,))	
)	
VS.))	Case No. CV-2354
)	
HENRY BENNAFIELD, ET AL.,))	
)	
DEFENDANTS.))	

OPINION OF THE COURT

This matter came to be called on the 25th day of January, 2024 for a hearing on the parties' competing Motions for Summary Judgment. Plaintiff was represented by attorney Preston Hawkins. Defendants were represented by attorney Ryan Sarr. After hearing oral argument from counsel for the respective parties, the Court took this matter under advisement for issuance of an opinion in accordance with Tennessee Rules of Civil Procedure Rule 56. The opinion of this Court is as follows:

1. At oral argument Plaintiff identified two (2) issues for the Court:
 - I. Are short term rentals prohibited by the Covenants; and
 - II. Do the Covenants apply to Defendants.
2. Defendants position was (1) Covenants must be clear and unambiguous to be enforceable; (2) If not clear and unambiguous, the Covenants cannot be applied to short term rentals; and (3) The Covenants in this case are not clear and unambiguous.
3. There is no dispute that Plaintiff is the homeowners association for the property

development known as Lone Mountain Shores located in Claiborne County, Tennessee.

4. There is no dispute that Defendants are owners of homes in the development and that the Covenants do apply to Defendants.
5. There is no dispute that Defendants have rented their homes for short periods of time, certainly less than 30 days.
6. There is no dispute that Plaintiff issued cease and desist letters to some or all of the Defendants which led to the filing of this lawsuit.
7. Plaintiff claims it is entitled to a permanent injunction as a matter of law against the Defendants, thereby preventing them from utilizing their properties as short term rentals. Defendants' position is that the covenants are ambiguous as to short term rentals, or, alternatively, if the covenant provisions are deemed non-ambiguous then Plaintiff has waived and/or abandoned its ability to claim short term rentals are prohibited or, alternatively, there are disputed facts as to the issue of equitable estoppel.
8. The initial Declaration of Covenants, Conditions, Restrictions, and Easements for Plaintiff were filed in the Claiborne County Register of Deeds Office in 1998. Amended Covenants were recorded in 2013. The 2013 Amended Covenants which are applicable in this case are as follows:
 - A. Section 2.14 (Single Family Residential Purposes) "shall mean the property consisting of just one primary dwelling and all ancillary buildings on it shall be occupied by just one legitimate single housekeeping unit as distinguished from unaffiliated individuals or groups occupying a motel,

hotel, bed & breakfast, or boardinghouse... Any rental accommodations and services such as those provided by hotels, motels, bed & breakfasts, rooming or boarding houses, apartment buildings or condominiums are excluded by this definition.”

- B. Section 6.04 (Residential Use Only). “All lots shall be used for single family residential purposes only, and no commercial use is permitted. This restriction is not to construed to prevent rental of any lot or any dwelling for private single family residential purposes... Examples of prohibited commercial uses of a lot or any dwelling include providing the services of or operating as a restaurant, an inn, a boarding house, or a bed and breakfast or providing other atypical rental services of a commercial nature. Examples of non single family residential purposes use of a lot or any dwelling include, but are not limited to occupancy by two or more unaffiliated individuals or groups that function as independent housekeeping units; owners or their agents occupying any part of the property at the same time as renters; utilizing the lot or any dwelling as a fraternity, sorority or dorm complex; or using the lot or any dwelling as a group home or institution of any kind.”
- C. Section 6.07 (Rental). “Lots and Dwelling may be rented only for private single family residential purposes subject to the following provisions:
- a. The renting to unaffiliated individuals or groups at the same time is prohibited;
 - b. Tenants are required to abide by all LMS Governing Documents;
 - c. Owners are responsible for the actions of their tenants. Each

owner shall take appropriate steps and should put in place additional rules, limitations and restrictions as necessary to ensure that tenants do not conduct deleterious activities or otherwise create a nuisance to other owners;

d. All rules, regulations, or use restrictions of these Covenants promulgated pursuant hereto that govern the conduct of owners and that provide for sanctions against owners also apply to all occupants of any lot.”

9. The Covenants were amended and restated in 2020. The applicable provisions hereinabove referenced were not amended. However, the 2020 Amendments included the following at Article I, Section 1.05: “Binding Arbitration. No civil action concerning any dispute arising under the covenants or bylaws, other than actions for filing and/or foreclosing upon liens for non-payment of Owner’s Association dues...shall be instituted before any court and all such disputes shall be submitted to final and binding arbitration... Further, proceeding to arbitration and obtaining an award thereunder shall be a condition precedent to the bringing and maintaining of any action in any court with respect to any dispute arising under these covenants or bylaws, except for the institution of a civil action to maintain the status quo during the pendency of any arbitration.”
10. There is no dispute that this dispute was NOT submitted to arbitration as required by the Covenants. Both sides acknowledged this provision but made no rigorous argument to enforce or not enforce it..
11. As hereinabove stated, there is no factual dispute that owners of several residential dwellings within the development have permitted short term rentals. It

is also undisputed that Plaintiff took no action against these property owners for many years. Plaintiff relies on Section 10.07 (No Waiver of the Covenants) which states the following: “The failure of the Board, the ARC, an Officer, or any aggrieved owner to enforce any provisions of the LMS Governing Documents is not to be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the LMS Governing Documents in the future. No waiver will be effective unless it is in writing and signed by the President or Vice President on behalf of the Association, or by the Chairman of the ARC on behalf of the ARC.”

12. The Plaintiff/Board, as it existed on May 10, 2023, circulated a document to the property owners titled Material Changes Q&A (questions and answers). The Board and document review committee responded to questions from owners (Exhibit 3 to Defendants’ Motion for Summary Judgment). That document includes the following: (4) A question was raised online over perceived impacts of amended “Residential Use” provision on currently allowed rental practices... The response was “In reviewing Single Family Residential Purposes definition it should be noted that as long as a residential group occupies the property as one legitimate single housekeeping unit, regardless of blood relationships, they are considered using the property for single family residential purposes. A rental group functions as a legitimate single housekeeping unit when it shares expenses and responsibilities for activities at the property and has some type of affiliation whether it is friends, relatives, business associates or a similar association. The property is rented to the group, not to each individual or couple independently. The home is rented, not a room. This is consistent with the current permitted

methods of rentals as provided for in the Covenants and therefore should have no adverse effects. This accepted type of renting is distinguishable from unaffiliated individuals or groups functioning as independent housekeeping units or the renting of a room and sharing a common area of a room or sharing a common area as in a bed and breakfast or boarding house, or renting a single room as in occupying a motel or hotel. It should be noted that the renting at the time to multiple independent groups or couples, or to persons who are not utilizing the property for residential purposes, has always been prohibited by the Covenants.”

13. The Tennessee Supreme Court in *Pratik Pandharipande, M.D. vs. FSD Corporation* No: M2020-01174-SC-R11-CV (2023) set forth the general principles to be considered in the interpretation of restrictive covenants. This case will be referred to herein as *FSD*. The *FSD* Court stated the following: “First, we keep in mind that a property owner’s right to own, use, and enjoy private property is a fundamental right... Second, because restrictive covenants are in derogation of the right of free use and enjoyment of property, they are strictly construed and should not be extended to any activity not clearly and expressly prohibited by their plain terms.... When the terms of a covenant may be construed in more than one way, courts must resolve any ambiguity against the party seeking to enforce the restriction and in a manner which advances the unrestricted use of the property... Third, because a covenant is a contract,... we interpret it by looking to the plain meaning of the words in the document... We also consider the entire document in which the words appear, because one clause may modify, limit or illuminate another... Fourth, we may conclude that the language in a covenant is ambiguous if it is susceptible of more than one reasonable interpretation... But we must

employ all traditional tools of interpretation before reaching that conclusion.”

14. In FSD, the Declaration/Restrictions in Article XII. stated the following:
“Section 1, subsection (a) of that article provides that each lot shall be used for residential and no other purpose.” Subsection (j) further provided “that no gainful profession, occupation, trade or other nonresidential use shall be conducted on any lot.” Article XII. Section 4 stated: “Any owner may delegate, in accordance with the bylaws of the corporation, his or her right of enjoyment to the common area and facilities to the members of his or her family, tenants, and social invitees...”
15. Here, as in FSD, the pleadings before the Court, arguments of counsel, and careful review of the documents at issue, make it clear that **there are no genuine issues of material fact regarding applicability of the Amended Covenants to Defendants’ properties.** The FSD Court stated the following: “The interpretation of Restrictive Covenants, like the interpretation of other written contracts, it a question of law”... As required by FSD, this Court must construe the Covenant terms to determine whether any ambiguity exist. The FSD principles hereinabove set forth must be followed. **Thus, the issue before this Court is a question of law.**
16. According to Merriam-Webster dictionary, “ambiguity” means:1. “(a) the quality or state of being ambiguous especially in meaning; (b) a word or expression that can be understood in two or more possible ways: an ambiguous word or expression, 2. Uncertainty.
17. **Clearly, Article VI. Section 6.04 does not prevent “rental of any lot or any dwelling for private single family residential purposes”.** In FSD, the Tennessee Supreme Court carefully analyzed the definitions of use, residential, and purposes. FSD determined that the definitions of “use” and “purposes” were reasonably

clear. However, the definition of “residential” was less clear. The Tennessee Supreme Court analyzed several dictionary definitions of residence, reside, residential, and other related words. *FSD* stated: “the dictionary definition of “residential” and related terms are less helpful. Those definitions point in two different directions. Some suggest that the term has a temporal element and requires a degree of permanence. Others, however, suggest the term includes shorter stays as well.” Based on that analysis, the Tennessee Supreme Court concluded based on the dictionary definitions of “residence”, that the “*FSD* Covenants did not clearly and expressly prohibit Panharipande from leasing his property for short terms of two to twenty-eight days.”

18. The *FSD* Court went on to analyze the provision that prohibited: “no gainful profession, occupation, trade or other non-residential use.” The Court stated the following: “To be sure, using a property as a short term rental ordinarily generates income for the owner. But the only activities that are regularly conducted on the property when it is being used as a short-term rental are things like eating and sleeping-activities in which a resident would engage that are not similar to performing a profession, occupation, or trade... it is reasonable to consider those activities residential in nature. Accordingly, we do not read subsection (j) to exclude from the category of “residential” uses any use that generates income for the owner.”
19. The *FSD* Court went on to analyze case law from other jurisdictions. After that analysis, the *FSD* Court stated the following: “We now join those courts that have found residential-purposes ambiguous with respect to whether short term rentals are allowed...”.

20. Plaintiff argues that *FSD* is distinguishable from the facts before this Court. Defendants argue that *FSD* confirms ambiguity in the language before this Court.
21. This Court must analyze the language in the Amended Covenants, particularly the portion stating “examples of prohibited commercial uses of a lot or any dwelling include providing the services of or operating as a restaurant, inn, boarding house, or a bed and breakfast, or providing other atypical rental services of a commercial nature. Examples of non single family residential purposes uses of a lot or any dwelling include, but are not limited to, occupancy by two or more unaffiliated individuals or groups that function as independent housekeeping units; owners or their agents occupying any part of the property at the same time as renters; utilizing the lot or any dwelling as a fraternity, sorority or dorm complex; or using the lot or any dwelling as a group home or institution of any kind.”
22. This Court relied on Merriam-Webster definitions: **A.** Apartment-(1) a room or set of rooms fitted especially with housekeeping facilities and usually leased as a dwelling (2) a building containing several individual apartments. **B.** Bed and breakfast-an establishment (such as an inn) offering lodging and breakfast.” **C.** Condominium-(3) a-individual ownership of a unit in a multiunit structure (such as an apartment building) or on land owned in common (such as a town house complex) also: a unit so owned; (3) b-a building containing condominiums. **D.** Hotel- an establishment that provides lodging and usually meals, entertainment, and various personal services for the public; **E.** Motel-an establishment which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area. **F.** Inn-(a) an establishment for the lodging and entertaining of travelers; (b) tavern. **G.** Fraternity/sorority-Fraternity: a group of

people associated or formally organized for a common purpose, interest, or pleasure... a men's student organization formed chiefly for social purposes having secret rites and a name consisting of Greek letters... a student organization for scholastic, professional, or extracurricular activities. Sorority is defined as follows: a club of women, specifically a women's student organization formed chiefly for social purposes and having a name consisting of Greek letters. **H.** A dorm complex/dormitory is defined as follows: a room for sleeping...a residence hall providing rooms for individuals or for groups usually without private baths...a residential community inhabited chiefly by commuters (chiefly British), **I.** Boarding house is defined as: lodging house at which meals are provided. **J.** Restaurant: a business establishment where meals or refreshments may be purchased. **K.** Unaffiliated is defined as: not closely associated with, belonging to, or subordinate to another. **L.** Independent is defined as: not dependent such as (1) not subject to control by others: (2) not affiliated with a larger controlling unit b(1) not requiring or relying on something else: not contingent (2) not looking to others for one's opinions or for guidance in conduct (3) not bound by or committed to a political party. c (1) not requiring or relying on others (2) being enough to free one from the necessity of working for a living. **M.** Group Home-a residence for persons requiring care or supervision. **N.** Institution-(b) a facility or establishment in which people (such as the sick or needy) live and receive care... These definitions are from Merriam-Webster.com dictionary. The site is Merriam-Webster <https://www.merriam-webster.com/dictionary> (February 20, 2024)

23. Plaintiff relies to some extent on the definition of "hotel" in T.C.A. § 68-14-

302(6). That section states the following: “Hotel means any building or establishment kept, used, or maintained as, or advertised as, or offered to the public to be, a place where sleeping accommodations are furnished for pay to transients or travelers, whether or not meals are served to transients or travelers;”. T.C.A. §13-7-602(8) states the following: “Short-term rental unit or unit means a residential dwelling that is rented wholly or partially for a fee for a period of less than thirty (30) continuous days and does not include a hotel as defined in § 68-14-302 or a bed and breakfast establishment or a bed and breakfast homestay as those terms are defined in § 68-14-502.” T.C.A. §68-14-502(1)(A) defines bed and breakfast establishment as follows: “Means a private home, inn or other unique residential facility offering bed and breakfast accommodations and one (1) daily meal and having four (4), but not more than twelve (12), guest rooms furnished for pay, with guests staying not more than fourteen (14) days, and where the innkeeper resides on the premises or property or immediately adjacent to it. Guest rooms shall be established and maintained distinct and separate from the innkeeper’s quarters.”

24. When analyzing the foregoing definitions, in light of the express language in Section 2.14 and 6.04, it appears that all of the examples of non-single family residential purposes pertain to facilities/buildings that contain many parts or rooms which are used or occupied by separate individuals or groups who have no affiliation with each other. Additionally, the prohibited commercial uses refer to entities where services are provided.
25. There are no facts to indicate that the houses being rented in this case were to unaffiliated or separate persons or groups or that any entertainment, meals or other

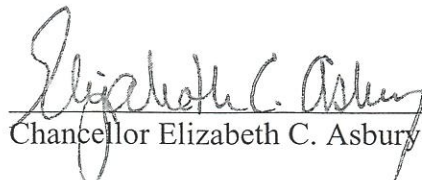
services were provided.

26. There is no factual dispute in the case before this Court that the owners are renting a house to a family and/or affiliated individuals for the purpose of eating, sleeping, etc. The house is rented to families or groups who are purposefully utilizing the entire the house. No individual rooms or sections are rented to other families or groups. The house is not shared by unaffiliated individuals or groups. The owners are not occupying any portion of the house while rented.
27. An obvious question is why did the Amendments simply not clearly state that short term rentals are prohibited and define short term rentals if Plaintiff really intended to prohibit short term rentals.
28. Based on the undisputed facts, one could reasonably conclude that Sections 2.14 and 6.04 were drafted in a way so as to allow short term rentals of an entire house but prohibit a house from being rented in sections to people who are not affiliated.
29. The Court must apply the standard set forth in *Rye vs. Women's Care Center of Memphis* 477 S.W.3d 235 (Tenn. 2015) which is "the non-moving party may not rest upon the mere allegations or denials of its pleadings but must respond, and by Affidavits...set forth facts at the summary judgment stage showing that there is genuine issue for trial." Defendants are the non-moving party as to Plaintiff's Motion for Summary Judgment. Defendants have shown in accordance with TRCP 56 that the covenant language is ambiguous and subject to more than one (1) reasonable interpretation.
30. Interestingly, Plaintiff in 2013 in Section 6.07 approved short term rentals to affiliated groups using the property for single family residential purposes. Now, Plaintiff, relying on the same language, says short-term rentals are prohibited.

Thus, it is clear that two (2) boards of Plaintiff interpreted the same language in opposite ways. This is further support for finding the Covenants/Restrictions ambiguous.

31. Further, the fact that counsel for the respective parties have carefully and meticulously analyzed the Covenants at issue and reached opposite conclusions is additional support for finding that the provisions are ambiguous and subject to different reasonable interpretations.
32. The Court must also point out that Plaintiff failed to submit these issues to arbitration as clearly and unambiguously required by the Covenants.
33. The Covenants/Restrictions do allow rental. However, the restrictions have ambiguous language that is subject to different reasonable interpretation. There is no unambiguous language to define what type or periods of rental are permitted or prohibited.
34. Therefore, this Court concludes, as did the Court in *FSD*, that the language in the Covenants/Restrictions is ambiguous and, therefore, unenforceable against Defendants as to short term rentals.
35. Having found that the language at issue is ambiguous, it is unnecessary for the Court to address waiver, abandonment, or equitable estoppel.
36. Defendants' MOTION FOR SUMMARY JUDGMENT is granted and Plaintiff's MOTION FOR SUMMARY JUDGMENT is denied.

Opined this 1 day of March, 2024.


Chancellor Elizabeth C. Asbury

CERTIFICATE

The undersigned certifies that a true and exact copy of the foregoing **OPINION OF THE COURT** was this date mailed, postage prepaid:

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This _____ day of _____, 2024.

CLERK