Order

Michigan Supreme Court
Lansing, Michigan

July 9, 2025

166228

MELVIN R. BERLIN REVOCABLE TRUST, RANDY LAMM BERLIN REVOCABLE TRUST, JANIS HEHMEYER TRUST, CAROLE J. NEWTON REVOCABLE TRUST, JEAN I. SMITH REVOCABLE TRUST, and STEPHEN L. SMITH REVOCABLE TRUST,
Plaintiffs/Counterdefendants-Appellees,

v

SC: 166228
COA: 359300
Berrien CC: 2019-000034-CH

THOMAS C. RUBIN, NINA D. RUSSELL, and 14288 LAKESHORE ROAD, LLC,
Defendants/Counterplaintiffs/Third-Party Plaintiffs-Appellants,

and

SWIFT ESTATES ASSOCIATES, a/k/a SWIFT ESTATES ASSOCIATES, INC., CHRISTOPHER HEHMEYER, and STEPHEN L. SMITH,
Third-Party Defendants-Appellees.

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On order of the Court, leave to appeal having been granted and the Court having considered the briefs and oral arguments of the parties, the judgment of the Court of Appeals is AFFIRMED by equal division of the Court.

WELCH, J. (*concurring*).

I write to support this Court's affirmance of the Court of Appeals' holding that defendants' use of their properties as short-term rentals was inconsistent with the "single family residence purposes" language in the governance document for Swift Estates. I write separately to note that I do not agree with some of the reasoning set forth by the Court of Appeals—specifically, the position that "a summer home cannot constitute a permanent residence when [an owner's] domicile is in another location." *Melvin R Berlin Revocable Trust v Rubin*, unpublished per curiam opinion of the Court of Appeals, issued July 20, 2023 (Docket No. 359300), p 4. But I do agree with the Court of Appeals that the homes

in Swift Estates cannot be used for short-term rentals and thus believe that the Court of Appeals ultimately reached the correct conclusion.

I. FACTS

Swift Estates is a small lakefront community spread over 22 acres with nine homes, a private beach on Lake Michigan, and community amenities. Each plaintiff owns a lot in Swift Estates through a revocable trust[1] (collectively, plaintiffs). Defendants, 14288 Lakeshore Road, Thomas C. Rubin, and Nina D. Russell (collectively, defendants),[2] also own lots in Swift Estates. At issue is whether a restrictive covenant in Swift Estates' Declaration of Covenants and Restrictions ("Declaration"), which limits lot use to "single family residence purposes," prohibits short-term residential rentals and, if so, whether defendants' rental of their homes violates the covenant.

Most of the facts are undisputed. Defendant 14288 Lakeshore Road, LLC, which was formed by Laura and Scott Malkin, purchased Lot 8 in 2011. Defendants Thomas Rubin and Nina Russell purchased Lot 5 in 2017. The Malkins and Rubin and Russell have permanent residences, respectively, in England and Washington state. Defendants claim that the ability to rent their homes was a key factor in their decision to purchase in Swift Estates and emphasize that their real estate brokers assured them that rentals were allowed.[3]

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[1] The Melvin R. Berlin Revocable Trust, whose trustee is Melvin Berlin, and the Randy Lamm Berlin Revocable Trust, whose trustee is Randy Lamm Berlin, own Lot 2; the Randy Lamm Berlin Revocable Trust also owns Lot 1. The Janis Hehmeyer Trust, whose trustee is Christopher Hehmeyer, owns Lot 9. The Carole J. Newton Revocable Trust, whose trustee is Carole J. Shortlidge, owns Lot 6. The Stephen L. Smith Revocable Trust, whose trustee is Stephen Smith, and the Jean I. Smith Revocable Trust, whose trustee is Jean Smith, own Lot 3; the Jean I. Smith Revocable Trust also owns Lot 4.

[2] Defendants also filed a counterclaim against plaintiffs and a third-party complaint against Stephen L. Smith and Christopher Hehmeyer, in their official capacities as officers of Swift Estates Association, Inc. ("Association"), which oversees Swift Estates. Defendants later amended their third-party complaint to add Smith and Hehmeyer as defendants in their individual capacities. As such, defendants are respectively counterplaintiffs and third-party plaintiffs in this lawsuit.

[3] Defendants allege that rentals were allowed and that plaintiffs themselves also had renters. Plaintiffs concede that, historically, Association members occasionally rented their homes to family and friends.

Defendants, as a result, contracted with Aqua Vacation Rentals to list their homes online as seasonal vacation rentals. Both homes were rented out several times in the years after they were purchased. During this time, other lot owners complained about renters and their use of the property in a manner that was intrusive and not consistent with the quiet nature of the community.[4] While defendants and Aqua Vacation Rentals attempted to address the complaints related to the rental of Lots 5 and 8, the other owners continued to raise concerns and questioned whether the defendants were violating the terms of the Declaration that created the Swift Estates Association, Inc. ("Association"), which was responsible for enforcing the Declaration.

The Declaration for the Association was recorded in July 1977. The relevant sections follow.

Article I, § 1 addresses the purpose of the Declaration:

> The Developer is the owner of that certain real estate located in Berrien County, Michigan as described in Exhibit A attached hereto and made a part hereof which has been subdivided and provision made in said subdivision for *common properties designed for the private use of owners in said subdivision*, except as otherwise provided herein. The Developer desires to provide for the preservation of the values and amenities in said subdivision and for the maintenance of the common properties therein and to this end desires to subject the real property described in Exhibit A to the covenants [and] restrictions . . . hereinafter set forth . . . . [Emphasis added.]

Article IV, § 1 addresses land use:

> *No lot shall be used for other than single family residence purposes*. No lot shall be improved with other than one single family residence structure and one accessory building structure designed for use in conjunction with the residence as a private garage or servants' quarters for accommodation of owner's [sic] servants, or both, except that the [Architectural Review] Committee [ARC] in its discretion may authorize one

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[4] Specific concerns included large group parties, increased congestion in the neighborhood, use of the community tennis court and private beach, renters cutting through and trespassing on residents' properties, and renters urinating and leaving trash on the beach. Plaintiffs allege that Lakeshore LLC rented the property to at least 55 different renters between 2012 and 2020, and at least 36 of the 55 renters were composed of 10 or more individuals. They allege that Rubin and Russell rented their home three times in 2018 and twice each in 2019 and 2020. Russell noted in her deposition that they had planned to regularly rent the house and that this litigation is the reason they have been unable to "aggressively" do so.

> additional accessory building structure on a lot. . . . Notwithstanding the foregoing provisions, no existing structures on any lot shall be deemed to violate the provision of this Section 1, except that existing structures shall be used only for single family residence purposes or as an accessory building structure with respect thereto. [Emphasis added.][5]

Article II, § 1 provides definitions pertaining to a single family:

> (e) "Single family residence" shall mean *any dwelling structure on a lot intended for the shelter and housing of a single family*.
>
> (f) "Single family" shall mean *one or more persons each related to the other by blood, marriage or adoption, or a group of not more than three persons not all so related together with his or their domestic servants, maintaining a common household in a residence*. [Emphasis added.]

Regarding other prohibited matters, Article IV, § 10 states:

> No animals other than unoffensive common domestic household pets such as dogs and cats shall be kept on any lot. *No home occupation or profession shall be conducted on any lot except as may be authorized by the* [*ARC*]. [Emphasis added.]

The members of the Association requested a formal legal opinion from the Association attorney regarding the Declaration and its restrictions on rentals. In response,

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[5] I cannot help but note that even in 1977, this language was outdated as to "servants' quarters," as I suspect that very few people traveled with servants after the Gilded Age. I suspect that, as with so many legal documents, this language, as well as other language in the Declaration, was cut and pasted by an attorney from prior documents that were decades old. While antiquated, we still must discern the meaning of "single family residence." As the dissent notes, historically, covenants, like many other tools used to navigate and govern society—statutes, contracts, ordinances, etc.—could and often were used to perpetuate various forms of discrimination. I agree with my colleagues that we, as the State's highest court, must be cognizant of these types of discriminatory restrictions and we must do our part in protecting all people in our state. That being said, the mere existence of such a history cannot fundamentally prevent us from individually analyzing legal issues brought before this Court. Restrictive covenants adopted by homeowner associations typically cover a broad swath of lawful rules for associations, including exterior appearance, parking, landscaping, pets, and use of common areas. The restrictive covenant at issue here is narrow in both scope and application. As such, our review must be equally as narrow and focus strictly on whether the Declaration in *this* community permits residential properties to be used *strictly* as short-term rentals.

the attorney advised the members that short-term, transient rentals were not allowed under the terms of the Association's Declaration.

II. PROCEDURAL BACKGROUND

Plaintiffs subsequently filed a complaint for declaratory and injunctive relief to prohibit future short-term vacation rentals in Swift Estates. The trial court granted summary disposition in favor of plaintiffs, agreeing that the Declaration prohibited short-term rentals. A permanent injunction was issued, prohibiting "all renting or leasing of [defendants'] respective Swift Estates properties that do not have a single family residence purpose, as provided for in the July 15, 1977 Declaration of Covenants and Restrictions . . . , including the enjoinment of short-term vacation rentals by Defendants, which were [the] subject of this action."

The injunction also limited use of the common properties to "lot owners/members, their respective resident family members, or those duly delegated tenants who reside upon the respective property instead of the lot owners/members under a leasehold interest," provided that their names and relationships were submitted in writing to the Association's secretary. All other claims not resolved by summary disposition were dismissed by stipulation.

Defendants appealed as of right, and the Court of Appeals affirmed the trial court's ruling in an unpublished opinion. The panel concluded that "defendants' rentals of the properties is contrary to the Declaration, Art IV, § 1 that states that '[no] lot shall be used for anything other than single family residence purposes.' " *Melvin R Berlin Revocable Trust*, unpub op at 7. Additionally, the Court determined that "an individual's rental of their residential property, even for short-term use, constitutes commercial use even when the activity is residential in nature." *Id*., citing *Terrien v Zwit*, 467 Mich 56, 63-64 (2002). The Court of Appeals relied on the plain language of the restrictive covenant to conclude that the Declaration only allowed single family residences on the lots and that there was no provision for short-term or other rentals. *Id*. at 7-8. As such, "[p]laintiffs had the right to contract that their properties would be limited in their nature and free from business purposes." *Id*. at 8.

As a final matter, the Court of Appeals specifically noted that defendants did not utilize their properties as single family residences given that defendants resided in England and Washington, and it further noted that defendants "did not delineate the extent to which they stored their belongings at their homes." *Id*. Relying upon our opinion in *O'Connor v Resort Custom Builders*, 459 Mich 335, 345 (1999), the panel found that defendants' use was intermittent and inconsistent with a single family residence and that it did not reflect the permanence and continuity of presence generally associated with a single family

residence. *Id*. The Court emphasized that a summer home cannot be a permanent residence when a person's domicile is in another location. *Id*., citing *O'Connor*, 459 Mich at 345.[6]

III. LEGAL BACKGROUND

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118 (1999). The interpretation of a contract is a question of law that is also reviewed de novo. *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 172 (2014). Restrictive covenants, which are examined on a case-by-case basis, *O'Connor*, 459 Mich at 343, are analyzed using contract interpretation principles and are therefore reviewed de novo, see *Terrien*, 467 Mich at 60-61.

Restrictive covenants "allow landowners to preserve the neighborhood's character." *Thiel v Goyings*, 504 Mich 484, 496 (2019). They "preserve not only monetary value, but [also] aesthetic characteristics considered to be essential constituents of a family environment." *Bloomfield Estates Improvement Ass'n, Inc v Birmingham*, 479 Mich 206, 214 (2007) (quotation marks and citations omitted).

Any doubts when interpreting a restrictive covenant must be resolved in favor of the free use of property. See *O'Connor*, 459 Mich at 341-342, citing *Wood v Blancke*, 304 Mich 283, 287 (1943). "[R]estrictions for residence purposes, if clearly established by proper instruments, are favored by definite public policy." *Terrien*, 467 Mich at 72 (quotation marks and citation omitted). "[T]he nullification of such restrictions would be a great injustice to the owners of property . . . ." *Id*. at 72 (cleaned up). Despite the rules of application pertaining to construction of a restrictive covenant, "they should not be applied in such a way as to defeat the plain and obvious purposes of a contractual instrument or restriction." *Brown v Hojnacki*, 270 Mich 557, 560 (1935).

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[6] Secondary to the issues in this appeal, the Court of Appeals also rejected defendants' argument that the trial court erred by failing to find that there were factual questions on the issue of acquiescence and waiver. Instead, the Court found that "occasional rentals by other members did not alter the character of a subdivision, did not defeat the original purpose of the restrictions, and did not result in a waiver of restrictions." *Melvin R Berlin Revocable Trust*, unpub op at 8. It also noted that the Declaration itself stated that a failure to enforce a restriction in the Declaration " 'in no event shall be deemed a waiver of any right to do so thereafter.' " *Id*. The Court of Appeals then held that defendants failed to show clear and convincing evidence of fraud by the plaintiffs. *Id*. at 8-10. Finally, the Court rejected defendants' argument that the trial court erred by entering an injunction that did not limit its scope to short-term rentals because the trial court's judgment mirrored the language of the documents governing Swift Estates and the parties were "free . . . to engage in long-term rentals to a clientele premised on a referral system that apparently did not disrupt the nature and character of the Swift Estates community." *Id*. at 10 n 8.

In *O'Connor*, this Court considered whether "interval ownership" (i.e., timeshares) were consistent with a restrictive covenant that provided, " 'No lot shall be used except for residential purposes.' " *O'Connor*, 459 Mich at 337. In that case, the plaintiff property owners sued a developer who was selling timeshare interests in a home within a private residential portion of Shanty Creek resort. *Id*. at 336. *O'Connor* held that a residence is a place that has a permanence and continuity of presence, even if the resident is physically absent. *Id*. at 345.

The Court noted that "[t]he circumstances of each use thus determines whether a particular use is prohibited by a residential restriction" and explained:

> "No clear and definite line can be drawn as to residential use of premises. It is a safe rule that the usual, ordinary and incidental use of property as a place of abode does not violate a covenant restricting such use to 'residential purposes only,'[7] but that an unusual and extraordinary use may constitute a violation." [*Id*. at 343, quoting *Wood*, 304 Mich at 288-289.]

Adopting the analysis of the trial court verbatim, the *O'Connor* Court stated:

> "[W]hat's a residential purpose is the question. Well, a residence most narrowly defined can be a place which would be one place where a person lives as their permanent home, and by that standard people could have only one residence, or the summer cottage could not be a residence, the summer home at Shanty Creek could not be a residence if the principal residence, the place where they permanently reside, their domicile is in some other location, but I think residential purposes for these uses is a little broader than that. It is a place where someone lives, and *has a permanent presence*, if you will, as a resident, whether they are physically there or not. Their belongings are there. They store their golf clubs, their ski equipment, the old radio, whatever they want. It is another residence for them, and *it has a permanence to it, and a continuity of presence, if you will, that makes it a residence*." [*Id*. at 345 (emphasis added).]

We ultimately concluded that timeshare ownership did not constitute a residential purpose and upheld the Shanty Creek residential community's restriction.[8]

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[7] This is a misquotation of *Wood*, which used the phrase "residence purposes only." *Wood*, 304 Mich at 289.

[8] *O'Connor* also noted that the allowance of short-term rentals (as opposed to timeshares) was not dispositive because "defendants [did] not demonstrate[] that the occasional rentals

IV. ANALYSIS

O'Connor's reasoning is helpful as we assess the parameters of single family residential restrictions. While *O'Connor*'s primary focus was on whether timeshare ownership of a single family dwelling complied with the residential purpose restrictions in a Shanty Creek development, the case provided a workable framework for determining whether a property use is "residential." Here, we have to determine whether holding out a property for short-term rental is consistent with the Association's "single family residence purposes" use restriction. Thus, whether examining a restriction that "no lot shall be used except for residential purposes," as we did in *O'Connor*, or that "no lot shall be used for other than single family residence purposes," as we do here, our task is the same in both cases: we must determine what the restrictive terms "residential" or "residence" mean.

O'Connor ultimately concluded that the timeshare units proposed by the developer defendant did not have the permanence required to constitute a "residential purpose" under the facts of the case. *Id*. at 345-346. In rejecting the *O'Connor* defendants' claim that short-term rentals were allowed and thus the plaintiffs' claims should be waived, we noted that short-term rentals were a different use from a timeshare and thus waiver did not apply. *Id*. at 346. We also noted that the defendants did not demonstrate "that the occasional rentals [had] altered the character of the . . . subdivision to an extent that would defeat the original purpose of the restrictions." *Id*. In other words, we noted that short-term rentals could be permitted so long as they did not defeat the original purpose of the restrictions.[9]

When applying the permanence and continuity of presence analysis from *O'Connor* to this case, I generally agree with the result reached by the Court of Appeals. Under these facts, the restrictive covenant is clear—a single family residential purpose cannot include

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[had] altered the character of the . . . subdivision to an extent that would defeat the original purpose of the restrictions." *O'Connor*, 459 Mich at 346. The Court also rejected defendant's argument that allowing rentals constituted a waiver of the right to uphold the restriction. *Id*.

[9] I respectfully disagree with the dissent's claim that the phrase "single family residence purposes" is ambiguous. Ambiguity requires that the language be "*equally susceptible* to more than a single meaning." *Barton-Spencer v Farm Bureau Life Ins Co of Mich*, 500 Mich 32, 40 (2017) (emphasis added). One can always strain words in numerous ways and give them endless meanings. It is, however, our duty to interpret such words within their contexts—here, residential housing restrictions. In light of *O'Connor*, I disagree with the dissent that any of the proposed interpretations of the restriction are as plausible or sensible as the interpretation here—that the restriction requires a degree of permanence and continuity of presence that does not exist when properties are used almost exclusively as short-term rentals.

a home that is almost exclusively held out as a short-term rental. While perhaps a single family residence can be rented out occasionally and still fit the definition of a residence as intended in the Association's Declaration, that is not the case here. The record established that the homes at issue were mass-marketed and held out almost exclusively as short-term rentals. The trial court had to assess the specific facts, and it made a finding that the use did not comply with the restrictions in the Declaration.

While the Court of Appeals agreed with the trial court and properly relied on *O'Connor*, it was erroneous in one respect. When evaluating the "permanence and continuity of presence" analysis, it determined that "a summer home cannot constitute a permanent residence . . . ." *Melvin R Berlin Revocable Trust*, unpub op at 8. Although it cited *O'Connor* to support this conclusion, the Court did not consider the quoted passage in its full context. *O'Connor* had actually rejected this approach, holding that a summer home in fact could be a "residence" under a residential restriction. See *O'Connor*, 459 Mich at 345-346. The *O'Connor* Court shifted the focus from the physical presence of the homeowners to the notion of permanence within the home itself. For example, owners decorate their homes, store their belongings there, come back consistently year after year, create relationships with their neighbors and community, share the space with family and friends, and treat the home as a family heirloom.[10]

Even with this error in the analysis, the Court of Appeals reached the correct result under *O'Connor*. The plaintiffs here all use their homes in a manner consistent with a residential use. They do not necessarily have to maintain domiciles or primary residences at their homes for that to be true. By contrast, defendants use their houses primarily to host transitory renters—members of the public at large with no lasting or long-term ties to the homes. The degree of permanency that defines a residential use did not exist with these rentals.

V. CONCLUSION

To conclude, I concur with this Court's affirmance that under these specific facts, defendants' using their homes almost exclusively as short-term rental properties violates the restrictive covenant governing Swift Estates. While I agree with the end result, the Court of Appeals erred by construing *O'Connor* as not allowing a summer home to constitute a permanent residence.

ZAHRA, J., joins the statement of WELCH, J.

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[10] This is also notably different than the interval ownership at the center of *O'Connor*, where someone else takes full ownership during their allotted time and thus there is no continued sense of presence in the home.

THOMAS, J. (*dissenting*).

I dissent from the Court's order affirming the judgment of the Court of Appeals by equal division. The Court of Appeals opinion and the concurring statement by Justice WELCH aptly summarize the relevant facts, so I will not repeat them here. But I believe the Court of Appeals has erred and we should reverse.

This matter asks the Court to review the trial court's order granting summary disposition under MCR 2.116(C)(10). This Court reviews such decisions de novo. *Maiden v Rozwood*, 461 Mich 109, 118 (1999). The resolution of this case centers on the interpretation of the Swift Estates' 1977 Declaration of Covenants and Restrictions (the "Declaration").

The interpretation of restrictive covenants is a question of law that appellate courts review de novo. *Mazzola v Deeplands Dev Co LLC*, 329 Mich App 216, 223 (2019). Because the foundation of a restrictive covenant lies in contract, the intent of the drafter is controlling. *Stuart v Chawney*, 454 Mich 200, 210 (1997). Restrictive covenants are examined on a case-by-case basis. *O'Connor v Resort Custom Builders, Inc*, 459 Mich 335, 343 (1999). Restrictive covenants are strictly construed against the party seeking enforcement, and any doubt must be resolved in favor of the free use of property. *Id*. at 341; *Thiel v Goyings*, 504 Mich 484, 497 (2019).

I. ANALYSIS

At issue in this case is the whether the defendants' use of their properties for short-term rentals is permitted under a restrictive covenant that limits lots to "single family residence purposes." Plaintiffs contend—and the Court of Appeals implicitly agreed—that "single family residence purposes" unambiguously prohibits short-term rental activity. *Melvin R Berlin Revocable Trust v Rubin*, unpublished per curiam opinion of the Court of Appeals, issued July 20, 2023 (Docket No. 359300). The provision at issue, Art IV, § 1, addresses land use and states:

> *No lot shall be used for other than single family residence purposes*. No lot shall be improved with other than one single family residence structure and one accessory building structure designed for use in conjunction with the residence as a private garage or servants' quarters for accommodation of owner's servants, or both . . . . [Emphasis added.]

If the language of this restrictive covenant is unambiguous, then we are to enforce the terms of its restrictions as written. *Thiel*, 504 Mich at 496. The covenant's language is to be taken in its ordinary and generally understood sense. *Id*. It must be construed to give effect to every word or phrase as far as practicable; a court cannot ignore portions of a contract in order to find (or avoid finding) ambiguity. See *Klapp v United Ins Group*

Agency, Inc, 468 Mich 459, 467 (2003). A restrictive covenant is ambiguous "only if it is equally susceptible to more than a single meaning." *Barton-Spencer v Farm Bureau Life Ins Co of Mich*, 500 Mich 32, 40 (2017). However, ambiguity is a finding of last resort, to be reached only after other conventional means of interpretation have proved inadequate. *Kendzierski v Macomb Co*, 503 Mich 296, 311 (2019).

On examination of this case and the pleadings, up to five plausible readings of this provision present themselves, each one colorable from the meaning of the words used, and more than one of which find support when looking to traditional tools of interpretation and our prior caselaw. Because the restrictive covenant is equally susceptible to multiple meanings, it is ambiguous. This uncertainty requires us to resolve this case in favor of the free use of property. *Thiel*, 504 Mich at 497.

First, after considering the possible meanings of this restrictive-covenant language, one possible reading can be easily rejected: one that relies on the "single family" nature of the restriction and looks to the definition of what is a "single family" in relation to the property's owner. This reading, which would focus on the nature of the relationships among the people in the building as defined by the covenant,[11] is not advanced by any of the parties, and it runs contrary to our prior law. This Court has long recognized that "family" is a term that includes more than just a nuclear or extended family related by blood, and covenants restricting residence to such a narrow view of the family should not be enforced. *Livonia v Dep't of Social Servs*, 423 Mich 466, 526 (1985); *Boston-Edison Protective Ass'n v Paulist Fathers*, 306 Mich 253, 259-260 (1943). See also MCL 37.2502 (prohibiting discrimination in real estate transactions, including rentals, based on familial status). Accordingly, the use of the phrase "single family" does not mean that nonrelatives may not reside in the property.

Another possible reading of "single family residence purposes" focuses on the building structure itself. This reading asks, "what kind of building is it?" This reading would bar, for example, a multifamily apartment unit from being built on one of the lots. Or it would ban a lot from being used for a dog park, instead of for a single-family home. See generally *Bloomfield Estates Improvement Ass'n, Inc v Birmingham*, 479 Mich 206 (2007). This reading finds support in canons of construction as well as our prior caselaw. This Court previously construed a restriction stating that property lots " 'shall be used for strictly residential purposes only' " as referring to the structural or land use. *Id*. at 214-216 (emphasis omitted). In doing so, the Court looked to the "commonly used meaning" and

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[11] The covenant defines "single family" as "one or more persons each related to the other by blood, marriage or adoption, or a group of not more than three persons not all so related together with his or their domestic servants, maintaining a common household in a residence." Art II, § 1.

dictionary definitions of "residential." *Id*. at 226-227 (concluding that use as a dog park was not "strictly residential purposes only").

Notably, the provision at issue in this case is in a section titled "LAND USE," the remainder of which places restrictions on the size and number of buildings that can be erected on a lot. The section does not discuss conduct by lot owners or users. Under the doctrine of *noscitur a sociis*, a word or phrase is given meaning by its context or setting. *Id*. at 215, citing *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 318 (2002). The placement in this section, its title, and the surrounding restrictions support a reading that focuses on the building itself. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 533 (2005) (" '[T]he meaning of statutory language, plain or not, depends on context.' ") (citation omitted); see also *Atlantic Cas Ins Co v Gustafson*, 315 Mich App 533, 541 (2016) (stating that when words " 'are associated in a context . . . , they should be assigned a permissible meaning that makes them similar' "), quoting Scalia and Garner, *Reading Law: The Interpretation of Legal Texts* (St Paul: Thomson/West, 2012), p 195. Under this reading, the "single family residence purposes" provision does not preclude the conduct of short-term rentals, but rather precludes alterations of the land and its structures that are inconsistent with single-family residential construction.

A third possible reading, the one adopted by the Court of Appeals, focuses on duration or permanence of ownership. The Court of Appeals cites *O'Connor* for the sweeping claim that no summer home can be a permanent residence when the owner is domiciled elsewhere. Therefore, the Court of Appeals surmised, defendants did not use the property for a "residence purpose" because they did not live there as permanent residents of the Swift Estates homes. But as Justice WELCH notes, *O'Connor* in fact explicitly states that a summer home *can* be a residence under the terms of a residential-use restriction. *O'Connor*, 459 Mich at 345-346. *O'Connor* examined a time share where the individuals owned the right to use the property for "one or more week-long 'intervals,' along with a corresponding undivided interest in the property." *Id*. at 338. In that case, we adopted the trial court's distinction between a summer home that has " 'a permanence to it, a continuity of presence, if you will, that makes it a residence,' " and by contrast the interval ownership where

> "[t]he people . . . have the right to occupy it for one week each year, but they don't have any rights, any occupancy right, other than that one week. They don't have the right to come whenever they want to, for example, or to leave belongings there because the next resident, who is a one-fiftieth or one forty-eighth co-owner has a right to occupy the place, too, and the weekly owner has no right to be at the residence at anytime other than during their one week that they have purchased. That is not a residence." [*Id*. at 345-346.]

O'Connor relied on this distinction, which is not present in this case, to hold that the "residential purpose restriction" did not permit limited-interval ownership. Defendants in

this case have that full "bundle" of property rights, such as the ability to come and go as they please for the entire year, making this situation closer to the summer-house example mentioned in dicta by *O'Connor* than the time-share model directly addressed in that case. Therefore, reading the phrase "single family residence purposes" as defining the duration or permanence of ownership required also does not clearly preclude short-term rentals of a property.

The last two possible readings focus on the "purposes"; these readings ask, "to what use is the property being put?" In the first, plaintiffs asks us to focus on the "purposes" for which the *owner* is using the property: for example, whether the owner is using the property for any nonresidential purpose, including using the property to make secondary income or to defray the cost of ownership through short-term rentals, which plaintiffs contend is a nonresidential purpose.[12] The Court of Appeals implicitly agreed with that framing, asserting that "an individual's rental of their residential property, even for short-term use, constitutes commercial use even when the activity is residential in nature." *Melvin R Berlin Revocable Trust*, unpub op at 7. However, Michigan courts have not cleanly adopted this exclusivity between commercial and residential purposes with covenants that focus only on residential purposes. For example, the Court of Appeals has held that operating a day care from a single-family house was held to be a residential use "because this use was indistinguishable from the use resulting if the homeowner 'simply ha[d] a large family.' " *Bloomfield Estates*, 479 Mich at 216, quoting *Beverly Island Ass'n v Zinger*, 113 Mich App 322, 328 (1982) (alteration in original). Likewise, we have held that an apartment building, which was built and owned by a landlord for purposes of generating profit, is undoubtedly both a commercial use and residential in character. See generally *Miller v Ettinger*, 235 Mich 527 (1926).

Further, the Declaration in this matter does not contain a broad-based ban on all commercial uses or rentals.[13] Compare *Beverly Island*, 113 Mich App at 331 (allowing a day care under a provision stating that no lot should be used "except for residential purposes"), with *Terrien v Zwit*, 467 Mich 56, 62, 65, 83 (2002) (barring operation of a for-profit family day care as violative of a covenant banning both nonresidential use *and* commercial, industrial, or business use). The level of activity generated by the rentals,

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[12] As the Court of Appeals noted, when the Swift Estates' Declaration was recorded, there were no Internet rental sites, adding another layer of complication to what the Court of Appeals held to be a plain reading of the text. The drafters included no provision in the Declaration explicitly addressing short-term or other rentals.

[13] Article IV, § 10 states that "[n]o home occupation or profession shall be conducted on any lot except as may be authorized by the" association. Plaintiffs did assert that defendants violated this provision, but the trial court granted defendants summary disposition on the issue, ruling that it had not been violated.

similar to the day care in *Beverly Island Ass'n*, is not distinguishable from the activity that one would see from the property being owned and used by a large family in residence. Additionally, as the Court of Appeals noted, other homeowners had rented out their properties in the past. Yet the Court of Appeals says such rentals were different because they were "strong referrals" and "for a lengthy period of time" while offering little analysis regarding how these permissible rentals of a residence are legally distinct under the restrictive covenant from what it deems the impermissible rentals. *Melvin R Berlin Revocable Trust*, unpub op at 8 n 5. Therefore, the phrase "single family residence purposes" does not clearly preclude commercial uses for the property.

The alternative reading, related to the previous one, also focuses on the "purposes" of the property and asks, "how is the *inhabitant* using the property?" This reading, advanced by defendants, would allow the property to be used for short-term rentals because renters are using the property as a unified group of individuals who are eating, sleeping, making meals, and making other uses of the property that are "single family residence purposes." This reading is consistent with prior Michigan cases. Compare, e.g., *Beverly Island*, 113 Mich App at 331 (allowing day care as residential use); with *Wood v Blancke*, 304 Mich 283, 289 (1943) (holding that raising 40 carrier pigeons did not constitute use for "residence purposes"). As this Court has stated:

> No clear and definite line can be drawn as to residential use of premises. It is a safe rule that the usual, *ordinary and incidental use of property as a place of abode* does not violate a covenant restricting such use to "residence purposes only," but that an unusual and extraordinary use may constitute a violation. [*Wood*, 304 Mich at 288-289 (emphasis added).]

The parties do not dispute that the short-term rentals utilized defendants' properties as places of abode, where vacationers could eat, sleep, and recreate.

In addition to the various potential readings that render the provision at issue ambiguous, I also find instructive the interpretation of similar restrictive-covenant provisions by state supreme courts around the country. Faced with similar language in other restrictive covenants, numerous high courts in other states have held that short-term rentals do not violate restrictive covenants mandating residential use or have found ambiguity in the application of those bans that had to be construed in favor of free use of the property. See, e.g., *Vera Lee Angel Revocable Trust v Jim O'Bryant & Kay O'Bryant Joint Revocable Trust*, 2018 Ark 38 (2018); *Pinehaven Planning Bd v Brooks*, 138 Idaho 826 (2003); *Lowden v Bosley*, 395 Md 58 (2006); *Lake Serene Prop Owners Ass'n Inc v Esplin*, 334 So 3d 1139 (Miss, 2022); *Craig Tracts Homeowners' Ass'n, Inc v Brown Drake, LLC*, 402 Mont 223 (2020); *Elk Point Country Club Homeowners' Ass'n, Inc v KJ Brown, LLC*, 138 Nev 640 (2022); *Yogman v Parrott*, 325 Or 358 (1997); *Wilson v Maynard*, 961 NW2d 596 (SD, 2021); *Pandharipande v FSD Corp*, 679 SW3d 610 (Tenn, 2023); *JBrice Holdings, LLC v Wilcrest Walk Townhomes Ass'n, Inc*, 644 SW3d 179 (Tex,

2022); *Scott v Walker*, 274 Va 209 (2007); *Wilkinson v Chiwawa Communities Ass'n*, 180 Wash 2d 241 (2014); *Forshee v Neuschwander*, 381 Wis 2d 757 (2018).[14] The balance of persuasive authority of many other courts finding similar provisions to either permit short-term rentals or to be ambiguous, at a minimum, does not bolster the Court of Appeals' decision.

Given the foregoing, it strains the term "unambiguous" for us to uphold the Court of Appeals' decision, which purports to find a clear prohibition on short-term rentals in this covenant. "Single family residence purposes" is clearly equally susceptible to more than one meaning in this context. *Barton-Spencer,* 500 Mich at 40.

Against this backdrop, I look to our caselaw on the interpretation of restrictive covenants, which favors the free use of property. The right to contract for restrictions on property exists in tension with the freedom to make legal use of one's property. *Thiel*, 504 Mich at 496. Consequently, restrictive covenants are strictly construed against those claiming to enforce them, and, importantly here, "any uncertainty or doubt must be resolved in favor of the free use of property." *Id*. at 497, citing *Stuart v Chawney*, 454 Mich 200, 210 (1997); see also *O'Connor*, 459 Mich at 340. This presumption in favor of the property rights of landowners in the context of restrictive covenants is also favored when we consider that these covenants were, historically, also used as a tool of racial or religious discrimination. See, e.g., *Sipes v McGhee*, 316 Mich 614, 619 (1947), rev'd 334 US 1 (1948) (affirming the validity of a restrictive covenant prohibiting use of property

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[14] Two state supreme courts have found similar covenant language to ban short-term rentals. See *Hensley v Gadd*, 560 SW3d 516 (Ky, 2018); *Morgan v Townsend*, 302 A3d 30 (Me, 2023). However, these cases are distinguishable as both courts focused not only on "residential purpose" restrictions, but also on additional explicit bans on trade or business. *Hensley*, 560 SW3d at 527-528 ("Because [the defendant] used Lot 3 as the functional equivalent of a hotel, . . . his use of the property violated the Deed of Restrictions."); *Morgan*, 302 A3d at 42 ("[B]y using his property exclusively for short-term rentals, [the defendant] is operating a business at the property in violation of the covenant.").

" 'by any person or persons except those of the Caucasian race' ").[15]

In the face of the Swift Estates' Declaration's ambiguous provision, I would follow our longstanding rule disfavoring an interpretation of a restrictive covenant that limits the use of property.

II. CONCLUSION

In order to affirm the lower courts in this matter, it is necessary to conclude that the phrase "single family residence purposes" unambiguously excludes short-term rentals. To affirm the trial court's decision to grant summary disposition, plaintiffs' violation of that unambiguous exclusion must be so clear that there can be no genuine dispute of fact about it. I do not see that unambiguous exclusion in the plain language of the Declaration, or in the context of the Declaration read as a whole. The high courts of 13 sister states did not see that unambiguous exclusion in their analogous cases either. I believe the Court of Appeals has erred by finding an unambiguous exclusion of short-term rentals, and I would reverse the Court of Appeals' decision.

CAVANAGH, C.J., and BOLDEN, J., join the statement of THOMAS, J.

HOOD, J., did not participate because the Court considered this case before he assumed office.

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[15] Cases cited by the parties and their amici and found elsewhere in our caselaw involve enforcement, or attempted enforcement, of restrictive covenants against groups who have experienced discrimination in housing. See, e.g., *Livonia*, 423 Mich 466 (involving a group home providing foster care for those with mental illness); *Malcolm v Shamie*, 95 Mich App 132 (1980) (involving five developmentally disabled women sharing a home); *Delta Charter Twp v Dinolfo*, 419 Mich 253 (1984) (involving unrelated members of a religious community); *Boston-Edison Protective Ass'n*, 306 Mich 253 (involving Catholic priests); *Hartwig v Grace Hosp*, 198 Mich 725 (1917) (involving a "nurses' home"; i.e., unmarried women).