[Cite as *BTE Properties, L.L.C. v. Parkman Twp.*, 2026-Ohio-4538.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY

BTE PROPERTIES, L.L.C., et al., Plaintiff-Appellant, - vs - TOWNSHIP OF PARKMAN, OHIO, et al., Defendant-Appellee.	**CASE NO. 2026-G-0010** Civil Appeal from the Court of Common Pleas Trial Court No. 2024 M 000268

OPINION AND JUDGMENT ENTRY

Decided: November 16, 2026
Judgment: Affirmed

Matthew S. Flemming and *W. Andrew Hoffman, III*, Hoffman & Flemming, L.L.C., 24100 Chagrin Boulevard, Suite 280, Cleveland, OH 44122, *James M. Gillette*, 106 Moffet Avenue, Chardon, OH 44024, and *Joseph H. Weiss, Jr.*, 8228 Mayfield Road, Suite 6B-1, Chesterland, OH 44026 (For Plaintiff-Appellant).

Colleen Del Balso and *Todd E. Petersen*, Petersen & Petersen, 10680 Mayfield Road, Chardon, OH 44024 (For Defendant-Appellee).

JOHN J. EKLUND, J.

{¶1} Appellant, BTE Properties, L.L.C. ("BTE"), appeals the judgment of the Geauga County Court of Common Pleas, granting summary judgment in favor of Appellee, Township of Parkman, Ohio ("Parkman"), and dismissing BTE's Complaint to Quiet Title.

{¶2} Appellant has raised one assignment of error arguing that the trial court erred by denying BTE's Motion for Summary Judgment when it found that a deed restriction was enforceable and dismissed Appellant's Complaint to Quiet Title.

{¶3} Having reviewed the record and the applicable caselaw, we find Appellant's assignment of error is without merit. The trial court did not err by finding the 2018 deed transferring property from Parkman to BTE contained a valid use restriction requiring the property be used and maintained as a public square or commons and prohibiting the erection of any structure on the land.

{¶4} Therefore, we affirm the judgment of the Geauga County Court of Common Pleas.

Substantive and Procedural History

{¶5} On June 7, 1843, Simon and Nancy Perkins transferred 2.63 acres of land located at the intersection of Nelson Road and U.S. 422 to Parkman. The deed was recorded on June 8, 1857, and stated in relevant part:

> To all people to whom these presents shall come greeting: Know you, that, we Simon and Nancy Perkins his wife of Warren Trumbull County Ohio, in consideration of Ten Cents, received to our full satisfaction of the inhabitants of the Township of Parkman, Geauga County Ohio, and also in consideration of our desire to promote the prosperity of the inhabitants of said Township of Parkman do hereby, remise, release, and forever quit claim unto the Trustees of the Township of Parkman a tract of land in Parkman, aforesaid . . . . To have and to hold to them the said Trustees and to their successors in office by whatever name at anytime hereafter be called forever, in Trust, and for the purpose that said Trustees and their successors in office shall hold said land for the inhabitants of said township, and all other the good it is out of the State of Ohio, to use as a public square or commons, unencumbered by any buildings or structure whatever except the railing of a public walk.

{¶6} Since that time, the Perkins parcel was used as a community park. A bandstand was erected in 1887, and a gazebo now stands in the same place. The parcel also has benches and walkways.

{¶7} BTE sought to purchase a 0.2596-acre portion of the Perkins parcel ("Small Parcel") in order to access a nearby landlocked property accessible only via a driveway that had existed on that portion of the Small Parcel for an indeterminate period.

{¶8} On January 22, 2018, Parkman conveyed the Small Parcel to BTE for $20,000.00. The 2018 deed stated:

> Premises herein conveyed are subject to easements, restrictions and reservations of record, and taxes and assessments, if any.
>
> Subject to the restriction found in a deed recorded June 18, 1857 . . . "said Trustees and their successors in office shall hold said land for the inhabitants of said Townships to use as a public square or commons unencumbered by any building or structure whatsoever except railing of a public walk."

{¶9} The deed also contained a stamp stating, "Division is a sale or exchange between adjoining lot owners and does not create additional building sites. The parcel described herein shall not be used as a separate building site." BTE shareholder John Yoder admitted knowledge of the use restriction contained in the 2018 deed.

{¶10} BTE consolidated nearby properties to generate a 2.6298-acre commercial lot, which contained the Small Parcel.

{¶11} On December 12, 2023, ABC Development L.L.C. ("ABC") entered into a Purchase Agreement with BTE whereby ABC agreed to purchase land containing the Small Parcel. However, the deed restriction created an exception to title. In recognition of the deed restriction, on March 1, 2024, BTE and ABC entered into an amended purchase agreement making the purchase of the land contingent on the exception to title.

{¶12} On April 16, 2024, BTE and ABC filed a Complaint to Quiet Title in the Geauga County Court of Common Pleas seeking a judgment declaring the 1843 use restriction as invalid and unenforceable. The Complaint named Parkman, care of the

Parkman Township Trustees, and the unknown heirs of Simon and Nancy Perkins as defendants.

{¶13} On May 22, 2024, A.L.L., Inc. ("ALL") filed a Motion to Intervene pursuant to Civ.R. 24. ALL asserted that it owned neighboring property with a significant interest in enforcing the use restriction requiring the Perkins parcel to remain unencumbered by any building and for it to be maintained as a public square or commons. ALL's property is located directly across the street to the north of the Perkins parcel.

{¶14} ABC filed a Brief in Opposition to ALL's Motion to Intervene, and ALL filed a Reply. BTE did not file an opposition.

{¶15} On June 12, 2024, the trial court granted ALL's Motion to Intervene and ordered the Intervenor Complaint attached to ALL's Motion to Intervene to be filed with the Clerk of Courts.

{¶16} On June 12, 2024, ALL's Intervenor Complaint was filed. The Intervenor Complaint sought an injunction prohibiting violation of the use restriction and a declaratory judgment that the use restriction remained valid.

{¶17} On July 3, 2024, Parkman filed its Answer.

{¶18} After this, all parties filed Answers to ALL's Intervenor Complaint, and discovery commenced.

{¶19} Parkman and ALL each filed a Motion for Summary Judgment. BTE and ABC filed a joint Motion for Summary Judgment.

{¶20} On February 17, 2026, the trial court issued a Judgment Entry finding that ALL did not have standing to appear as an Intervenor because it did "not own property that directly abuts or touches the property at issue in this case."

{¶21} The Judgment Entry also granted summary judgment in favor of Parkman, denied BTE's and ABC's Motion for Summary Judgment, and declared that the use restriction contained in the 2018 deed was valid, runs with the land, and was enforceable against BTE, ABC, and all subsequent transferees with actual or constructive knowledge of the restriction.

{¶22} The trial court rejected BTE's argument that Parkman had abandoned the use restriction by erecting a bandstand (and later a gazebo), retaining walls, and utility poles on the property. The trial court also rejected the argument that allowing a driveway to exist on the property to allow access to an adjoining landlocked property did not constitute an abandonment of the use restriction. The trial court held that the "minor deviations and modernizations of the Parcel are inconsequential to the Parcel's intended purposes as a public space and do not render the restriction unenforceable or void."

{¶23} The trial court also rejected BTE's claim that Parkman tacitly declared the Small Parcel unfit for public use when it sold the Small Parcel to BTE in 2018. BTE argued that R.C. 505.10 permits township trustees to sell or dispose of property that it "finds is not needed for public use." However, the statute also permits township trustees to sell or dispose of property "upon whatever terms are agreed to between the board and that person." The trial court determined that the terms of the agreement between Parkman and BTE included the original 1843 use restriction in the 2018 deed and therefore Parkman "ensured the continuation of" the public nature of the land in keeping with the 1843 use restriction.

{¶24} Finally, the trial court rejected BTE's argument that the use restriction was limited to the Parkman "Trustees and their successors in office" and therefore did not

apply to private entities such as BTE or ABC. The trial court said that the argument failed to recognize Parkman's inclusion of the use restriction in the 2018 deed intended to bind "BTE and all subsequent transferees of the Small Parcel. And BTE presumably agreed to it."

{¶25} BTE timely appealed raising one assignment of error.

Assignment of Error and Analysis

{¶26} Appellant's sole assignment of error states: "The Trial Court Erred by Denying Appellant's Motion for Summary Judgment."

{¶27} We review a trial court's grant of summary judgment de novo. *Hapgood v. Conrad*, 2002-Ohio-3363, ¶ 13 (11th Dist.). "We review the trial court's decision independently and without deference, pursuant to the standards in Civ.R. 56(C)." *Allen v. 5125 Peno, L.L.C.*, 2017-Ohio-8941, ¶ 6 (11th Dist.).

{¶28} Summary judgment is appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion and it is adverse to the nonmoving party. *Holliman v. Allstate Ins. Co. Corp.*, 1999-Ohio-116, ¶ 6. The initial burden is on the moving party to set forth specific facts demonstrating that no issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Dresher v. Burt*, 1996-Ohio-107, ¶ 18. If the movant meets this burden, the burden shifts to the nonmoving party to establish that a genuine issue of material fact exists for trial. *Id.*

{¶29} A restrictive covenant is a private agreement usually contained in a deed or lease, the purpose of which is to restrict the use of real property. *Orwell Natural Gas Co., Inc. v. Fredon Corp.*, 2015-Ohio-1212, ¶ 21 (11th Dist.). This is often accomplished by

restricting the “use or occupancy of real property, esp. by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put.’” *Canton v. State*, 2002-Ohio-2005, ¶ 28, quoting *Black's Law Dictionary* (7th Ed. 1999). A restrictive covenant “is said to ‘run with the land’ when subsequent owners of the land are also benefitted or burdened by the covenant.” *Maasen v. Zopff*, 1999 WL 552747, *3 (12th Dist. July 26, 1999), quoting 20 Am. Jur. 2d, Covenants, § 42 (1995). “[A] bona fide purchaser for value is bound by an encumbrance upon land only if he has constructive or actual knowledge of the encumbrance." *Tiller v. Hinton*, 19 Ohio St.3d 66, 68 (1985).

{¶30} “[A] restrictive covenant is considered a contract and is treated as such.” *Orwell* at ¶ 21. Restrictions on the use of property are generally not favored. *Driscoll v. Austintown Assocs.*, 42 Ohio St.2d 263, 276 (1975). However, they “should be construed reasonably and so as to effect the purpose for which they were intended.” *Massen* at *3. “The general rule, with respect to construing agreements restricting the use of real estate, is that such agreements are strictly construed against limitations upon such use, and that all doubts should be resolved against a possible construction thereof which would increase the restriction upon the use of such real estate.” *Loblaw, Inc. v. Warren Plaza, Inc.*, 163 Ohio St. 581 (1955), paragraph two of the syllabus.

{¶31} Because restrictive covenants are interpreted according to general contract principles, “‘when a covenant's language is indefinite, doubtful, and capable of contradictory interpretations, courts are to construe the covenant in favor of the free use of land. . . . However, courts must enforce a restriction where it is clearly and unambiguously found in a covenant.’” *S & S Aggregate, Inc. v. Brugmann*, 2002-Ohio-7348, ¶ 13 (11th Dist.), quoting *Brooks v. Orshoski*, 129 Ohio App.3d 386, 390 (6th Dist.

1998). “Where the language in the restriction is clear, the court must enforce the restriction. Otherwise, the court would be rewriting the restriction. . . . The key issue is to determine the intent of the parties as reflected by the language used in the restriction.” *Dean v. Nugent Canal Yacht Club, Inc.*, 66 Ohio App.3d 471, 475 (6th Dist. 1990).

{¶32} “The goal of interpreting the language of the restrictive covenant is the determination of the intent of the parties as reflected by the language used in the restriction.” *Brooks* at 390. “The court must construe the language of the restriction by giving it its common and ordinary meaning, and read the restrictive covenants as a whole to ascertain the intent of the creator(s).” (Citations omitted.) *Id.* “‘When construing a deed, a court must examine the language contained within the deed, the question being not what the parties meant to say, but the meaning of what they did say, as courts cannot put words into an instrument which the parties themselves failed to do.’” *Arotin v. Arotin*, 2026-Ohio-1226, ¶ 20 (11th Dist.), quoting *McCoy v. AFTI Properties, Inc.*, 2008-Ohio-2304, ¶ 8 (10th Dist.).

{¶33} In the context of neighborhood residential and commercial restrictive covenants, such covenants “may become unenforceable when there is a waiver or abandonment of the restrictions, and if the nature of the neighborhood or community has so changed ‘that the restriction has become valueless.’” *Dillingham v. Do*, 2002-Ohio-3349, ¶ 24 (12th Dist.), quoting *Landen Farm Community Serv. Assn. v. Schube*, 78 Ohio App.3d 231, 235-236 (1992); *see Romig v. Modest*, 102 Ohio App. 225, 229 (2d Dist. 1956) (originating “substantial value test” analysis as to residential restrictive covenants); *Snell v. Englefield*, 1996 WL 752800, *4-5 (5th Dist. Nov. 14, 1996) (applying substantial

value test to commercial property where common scheme or plan for commercial development had already been abandoned in prior development).

{¶34} "In essence, if the nature of a neighborhood or community has so changed that a restriction has become valueless to the owners of the property, a court will not, in the exercise of its discretion, enforce the restrictive covenant. Nevertheless, covenant restrictions may be enforced, even if other violations have occurred, provided that some value to the community remains in the restriction." *Dillingham* at ¶ 24. "Even minimal violations of a restriction will bar enforcement of the restriction if the violations detrimentally affect the essence of the restriction." *Corna v. Szabo*, 2006-Ohio-2764, ¶ 43 (6th Dist.). However, the burden of proof lies with the party alleging waiver. *Romig* at 230.

{¶35} On appeal, BTE argues that the deed restriction in the 2018 deed should not be enforceable for the following reasons:

{¶36} First, the language of the original 1843 restriction was binding exclusively on the Parkman Township Trustees or their successors in office, not on later private holders of the land. BTE contends that if Parkman wanted the restrictive language to continue to apply, the 2018 deed should have removed the language "or their successors in office."

{¶37} Second, the above creates an ambiguity in the meaning of the 2018 deed restriction, and any ambiguity should be resolved in favor of BTE.

{¶38} Third, BTE argues that Parkman either abandoned or waived the enforceability of the restriction by taking action inconsistent with the original 1843 use restriction by transferring the Small Parcel to BTE, which is fundamentally inconsistent

with the original purpose of keeping the land forever as a park or commons. In addition, BTE argues that Parkman tacitly declared the Small Parcel unfit for public use when it sold the land to it and that prior use as a private driveway and its physical separation from the rest of the parcel demonstrate Parkman's waiver of the use restriction.

Successors in office:

{¶39} The 1843 transfer of the Perkins parcel, as recorded in the 1857 deed, devised the parcel to Parkman "for the purpose that said Trustees and their successors in office shall hold said land for the inhabitants of said township, and all other the good it is out of the State of Ohio, to use as a public square or commons, unencumbered by any buildings or structure whatever except the railing of a public walk."

{¶40} The plain language was intended to create a "public square or commons" that was "unencumbered by any buildings or structure whatever except the railing of a public walk." The parcel was devised to the Parkman Township Trustees to accomplish this goal.

{¶41} In 2018, Parkman transferred the Small Parcel to BTE. In doing so, Parkman included a portion of the 1857 deed language in the 2018 deed. To read the restriction in the manner BTE suggests would render the inclusion of that language meaningless. BTE's interpretation of the language would mean that by devising the land to anyone other than the Parkman Trustees or their successors in office, the use restriction would not be effective. This would thwart the entire purpose of placing the use restriction in the 2018 deed and would lead to an arbitrary result where the only entity the use restriction applied to was the entity that conveyed away the property.

{¶42} BTE is incorrect that Parkman should have changed the language of the use restriction to remove the trustees or their successor in office from the language. The natural reading of the 2018 deed makes clear that the continued use of the property, by whomever received it, was "[s]ubject to the restriction found in a deed recorded June 18, 1857," which required the holder of the land to comply with the restriction to maintain the property as a public square or commons unencumbered by any building or structure. To read the 2018 deed in any other way would be to apply an overly wooden reading of the text, which would result in it having no meaning whatsoever.

{¶43} "When interpreting a contract, we will presume that words are used for a specific purpose and will avoid interpretations that render portions meaningless or unnecessary." *Wohl v. Swinney*, 2008-Ohio-2334, ¶ 22. "Accordingly, an interpretation that makes policy language unnecessary or superfluous cannot be reasonable and therefore does not create ambiguity." *Garlock v. Jordan*, 2025-Ohio-82, ¶ 17 (6th Dist.). To construe the 2018 deed as BTE suggests would render the restrictive language entirely superfluous. Their suggested interpretation violates basic principles of contract interpretation, and we decline to find this language to be ambiguous. *See* 11 Williston, *Contracts*, § 31:7 (4th Ed.).

{¶44} Nothing in the 1857 deed language restricted the transfer of the property. The 2018 deed incorporated the 1857 use restriction as a clear restriction on the use of the property meant to apply to whomever held the land. BTE's argument that the language only applied to the Parkman Trustees or their successors in office would be more credible if Parkman had transferred the Small Parcel to BTE in 2018 without explicitly including the 1857 use restriction in the 2018 deed. If Parkman were arguing that the 2018 deed

was subject to the 1857 use restriction sub silentio, there might be a question of whether the restriction was intended to apply. But that is not what happened. Parkman incorporated the use restriction into the 2018 deed to ensure that the use restriction was maintained. BTE had actual knowledge of this deed language.

{¶45} It also bears noting that this is not a question of parsing competing interpretations of an ambiguous contract. "The language is unambiguous if, from reading only the four corners of the instrument, the language is clear, definite, and subject to only one interpretation. The language is ambiguous if it is unclear, indefinite, and reasonably subject to dual interpretations or is of such doubtful meaning that reasonable minds could disagree as to its meaning." *Beverly v. Parilla*, 2006-Ohio-1286, ¶ 24 (7th Dist.).

{¶46} In this case, the language is not ambiguous. It either means something, i.e., BTE and future landholders of the Small Parcel are subject to the 1857 use restriction incorporated into the 2018 deed. Or, the language means nothing, i.e., despite being included in the 2018 deed, the incorporated language only applies to the Parkman Trustees and their successors in office, who by the conveyance, surrendered their rights to use the property at all. "Only when a definitive meaning proves elusive should rules for construing ambiguous language be employed. Otherwise, allegations of ambiguity become self-fulfilling." *State v. Porterfield*, 2005-Ohio-3095, ¶ 11. It would be inappropriate to interpret the language as BTE suggests because it would render the included language in the 2018 deed meaningless, not merely ambiguous. In doing so, this would unjustly benefit BTE by declaring a portion of the deed superfluous.

{¶47} However, it is worth noting that the use restriction applies only to the Small Parcel and does not restrict the use of the rest of BTE's consolidated commercial lot.

Waiver or abandonment of use restriction:

{¶48} The Perkins parcel has been used as a park since it was devised to Parkman in 1843. The use restriction required that the land be used as a public square or commons and that it be "unencumbered by any buildings or structure whatever except the railing of a public walk." However, as early as 1887, Parkman erected a bandstand on the property and later erected a gazebo in the same location. While a bandstand and a gazebo certainly qualify as a building or structure, their presence did not render the original purpose of the use restriction valueless. Indeed, a gazebo can be a way to enhance a public square or park to allow the space to better serve the community. Therefore, while a gazebo is a nonconforming use under the original Perkins parcel deed restriction, it would not be such a use as to render the entire use restriction unenforceable because it does not change the nature of the restriction so as to make it valueless to the community the restriction was intended to benefit. *See Romig*, 102 Ohio App. at 229; *Dillingham*, 2002-Ohio-3349, at ¶ 24 (12th Dist.).

{¶49} We conclude that the covenant should be enforced and that Parkman did not waive it through erecting a bandstand and later a gazebo because the violations do not affect the essence of the restriction, and the enforcement of the restriction will continue to provide some value to the community. *See Corna*, 2006-Ohio-2764, at ¶ 43 (6th Dist.); *Dillingham* at ¶ 24. Likewise, the other so-called violations that BTE has identified do not render the use restriction valueless. Retaining walls and utility poles do no constitute buildings, structures, or uses inconsistent with the essence of the original Perkins parcel restriction of keeping the land for a public square or commons.

{¶50} Next, the continued use of a portion of the Perkins parcel (now the Small Parcel) as a driveway does not work as a waiver or abandonment of the use restriction.

This is especially true given that the use was necessitated to allow access to an adjoining landlocked property. Finally, citing *Babin v. Ashland*, 160 Ohio St. 328 (1953), BTE argues that the use restriction may not survive the sale of land dedicated for a public purpose to a private purchaser. BTE also argues that Parkman tacitly waived the use restriction by declaring the Small Parcel as unfit for public use when it sold the parcel. BTE cites R.C. 505.10 in support of this claim, arguing that the statute permits township trustees to sell or dispose of properties that are "not needed for public use." However, R.C. 505.10(A) provides that

> the sale or other disposition of unneeded, obsolete, or unfit-for-use property shall be made in accordance with one of the following:
>
> . . .
>
> > (6) When a township has title to real property and the board of township trustees wishes to sell or otherwise transfer the property, the board, upon a unanimous vote of its members and by resolution, may authorize the transfer and conveyance of that real property to any person upon whatever terms are agreed to between the board and that person.

{¶51} BTE argues that the transfer of the property from Parkman to a private entity is incompatible with the use restriction's requirements that the land be held as a public square or commons. However, keeping the land from being developed or used in a manner inconsistent with its intended purpose as a public square or commons is still compatible with the original use restriction. The question is not whether the original use restriction "survives" the sale of public land to a private purchaser. This might be the case if the 2018 deed did not specifically incorporate the language of the 1857 deed. But that is not what happened. Instead, Parkman sold the Small Parcel to BTE in 2018 on terms that were agreed to between the Parkman Trustees and BTE. *See* R.C. 505.10(A)(6).

Those terms provided that the 2018 deed was subject to the use restriction requiring the holder of the land to maintain the property unencumbered by any building or structure so that the Small Parcel would continue to serve the community as a public square or commons. While a driveway or other such limited use of the land would be permissible under the purpose of the restriction, other uses that did not conform with the purpose of maintaining the land as a green space would not be permitted. Parkman did not waive or abandon the use restriction by selling it to BTE where the deed specifically incorporated that use restriction and where BTE had actual notice of that restriction.

{¶52} Based on our de novo review, we find no error in the trial court granting summary judgment in favor of Appellees.

{¶53} Accordingly, Appellant's assignment of error is without merit.

{¶54} For the foregoing reasons, the judgment of the Geauga County Court of Common Pleas is affirmed.

MATT LYNCH, P.J., concurs,

SCOTT LYNCH, J., dissents with a Dissenting Opinion.

SCOTT LYNCH, J., dissents with a Dissenting Opinion.

{¶55} I respectfully dissent from the majority's opinion holding that the language of the 2018 deed created a use restriction on BTE. The restriction's clear and unambiguous language, as set forth in both the original 1857 deed and the 2018 deed, provides that the *trustees and their successors in office* are required to hold the land for use as a public square unencumbered by structures. The plain language of this restriction

is inapplicable to third parties. Consistent with this language, and the well-established principle that restrictions on use of one's land are disfavored, reversal of the court's judgment is necessary and BTE should be permitted to use its land without such restriction.

Clear and Unambiguous Language Prohibits Application of Restriction to BTE

{¶56} While it is accurate that the provision in question is clear and unambiguous, this is not for the reasons advanced by the majority. The language of the 2018 deed states that, "subject to the restriction found in a deed recorded June 18, 1857 . . . 'said Trustees and their successors in office shall hold said land for the inhabitants of said Townships to use as a public square or commons unencumbered by any building…'" This can only mean exactly what it says: *Trustees and their successors in office* are required to hold the land under the restricted terms of use. A successor is defined as "[s]omeone who succeeds to the office, rights, responsibilities, or place of another; one who replaces or follows a predecessor." *Black's Law Dictionary* (12th Ed. 2024). A "successor in office" is unquestionably one who became a trustee after the initial deed, not a third party having no relationship to the Board of Trustees or even to a government office. A private third party was not contemplated in the 1857 deed. The majority's approach disregards the deed's allocation of the restriction to a specific public office. The instrument expressly identifies the parties obligated to follow the conditions as the Trustees "and their successors in office," not "grantees" or "successors and assigns."

Inclusion of Restriction in 2018 Deed Does Not Change its Clear Meaning

{¶57} The majority's position relies in large part on its contention that the 1857 use restriction was restated in the 2018 deed, thereby making it applicable to the present

matter. It is accurate that a deed which is subject to a restriction imposed by a prior conveyance will bind the purchasing party. *Blakely v. Capitan*, 34 Ohio App.3d 46, 49 (11th Dist. 1986). However, an inapplicable clause does not become applicable merely by restating it in the most recent deed. In other words, incorporation by reference cannot refashion the identity of the bound party where the original restriction's subject is expressly limited.

{¶58} The majority emphasizes that the 1857 provision would not have been included in the 2018 deed if it was not meant to also apply to BTE. However, it is not for us to decide what was intended by placing the language in the deed since we must confine our analysis to applying the language of the deed where it is clear and unambiguous. *See Violante v. Brady Lake*, 2012-Ohio-6220, ¶ 36 (11th Dist.). We cannot ignore the meaning of the words used in the original 1857 provision, quoted in the 2018 deed, merely because doing so may render inclusion of the provision unnecessary.

{¶59} The majority asserts that, "[w]hen interpreting a contract, we will presume that words are used for a specific purpose and will avoid interpretations that render portions meaningless or unnecessary." (Citation omitted.) *Supra* at ¶ 43. Such a principle applies, however, when "one construction of a doubtful condition written in a contract would make that condition meaningless, and it is possible to give it another construction that would give it meaning and purpose." (Emphasis added.) *Farmers' Natl. Bank v. Delaware Ins. Co*., 83 Ohio St. 309 (1911), paragraph six of the syllabus. In the present matter, there is simply no doubtful condition in the contract that is subject to multiple meanings and we need not resort to other construction principles to determine the

meaning of the condition. There is only clear language that the property was subject to the restriction that applied to "said Trustees and their successors in office."

The Parties' Intent Can Be Determined Only By the Deed's Plain Language

{¶60} Had the parties intended that BTE be subject to the same condition that applied to the trustees and successors in office, the deed could have included wording that clearly and unambiguously conveyed that restriction. It did not. Instead, it repeated a provision from the original instrument which unambiguously fixes duty on a class—trustees and successors in office. That clarity forecloses expansion to other parties by mere inference. "[R]estrictions are not to be extended by conjecture or implication." *Grace Fellowship Church, Inc. v. Harned*, 2013-Ohio-5852, ¶ 47 (11th Dist.), citing *Taylor v. Summit Post Co. No. 19, Am. Legion, Inc.*, 60 Ohio App. 201, 204 (9th Dist.1938).

{¶61} The majority uses the 2018 drafter's potential desire to perpetuate the restriction as a reason to alter the original restriction's obligee, rather than recognizing that the original text limits who can be bound. In the same vein, it is unquestionable that the purchaser had the desire to comply with the terms of the deed as written, i.e., not be subject to inapplicable restrictions. Parkman had the ability to draft the 2018 deed in a manner that applied to third parties had it desired to do so but did not. These conflicting desires highlight the fact that the best way to determine the parties' intentions "is to look at the words found within the four corners of the deed itself and to adhere to the plain language used there." *LRC Realty, Inc. v. B.E.B. Props.*, 2020-Ohio-3196, ¶ 17. Contrary to the majority's conclusion, fidelity to the deed's text is not "wooden"; it is the baseline rule that ought to apply.

{¶62} The majority also argues that BTE's interpretation "would unjustly benefit BTE by declaring a portion of the deed superfluous." *Supra* at ¶ 46. Regardless of which party such an interpretation would benefit, a contract "does not become ambiguous by reason of the fact that in its operation it will work a hardship upon one of the parties thereto." *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 1997-Ohio-202, ¶ 39, citing *Ohio Crane Co. v. Hicks*, 110 Ohio St. 168, 172 (1924). While the majority states that it does not find the contract to be ambiguous, its ultimate analysis and conclusion essentially amounts to such a holding. It must be reiterated that restrictions are not favored and are strictly construed against limitations on the use of land, a principle which has been repeatedly and consistently reaffirmed by the Ohio Supreme Court. *Cincinnati City School Dist. Bd. of Edu. v. Conners*, 2012-Ohio-2447, ¶ 20. This principle is easily applied in light of the plain language of the deed in the present matter and the Ohio Supreme Court's mandate that courts must "[look] first to the plain language of the deed to determine questions of interpretation" because "it is the plain language of the deed that matters." *Koprivec v. Rails-to-Trails of Wayne Cty.*, 2018-Ohio-465, ¶ 23-24.

{¶63} For the foregoing reasons, I would reverse the grant of summary judgment to Parkman and enter judgment for BTE. The words "Trustees and their successors in office" limit who is bound by the use restriction and this court must abide by that limitation. Because the record presents no 2018 covenant that, by its own terms, binds BTE, the restriction is unenforceable.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, Appellant's assignment of error is without merit. It is the judgment and order of this court that the judgment of the Geauga County Court of Common Pleas is affirmed.

Costs to be taxed against Appellant.

JUDGE JOHN J. EKLUND

PRESIDING JUDGE MATT LYNCH,
concurs

JUDGE SCOTT LYNCH,
dissents with a Dissenting Opinion

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.