[Cite as *Rudy v. Apple Valley Property Owners Assn.*, 2026-Ohio-3153.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
KNOX COUNTY, OHIO

ALAN T. RUDY, ET AL Plaintiffs - Appellants -vs- APPLE VALLEY PROPERTY OWNERS ASSOCIATION Defendant - Appellee	Case No. 25CA000021 Opinion And Judgment Entry Appeal from the Knox County Court of Common Pleas, Case No. 24 IN 05-0177 Judgment: Reversed and Remanded Date of Judgment Entry: August 13, 2026

BEFORE: Andrew J. King, Robert G. Montgomery, and Kevin W. Popham, Judges

APPEARANCES: Paul W. Flowers and Jeffrey A. Dittmer for Plaintiffs-Appellants; Adam B. Landon, & Aaron M. Glasgow for Defendant-Appellee; Nicholas R. Barnes for Amicus Ohio Lake Communities Association; Robert J. Tucker for Amici Ohio Realtors and National Association of Realtors

OPINION

Popham, J.,

{¶1} Appellants Rhonda Watt, Alan Rudy, and Kevin Runyon (hereinafter "Homeowners") appeal the judgment entry of the Knox County Court of Common Pleas denying their motion for summary judgment and granting the motion for summary judgment of appellee the Apple Valley Property Owners Association ("AVPOA"). For the reasons below, we reverse and remand.

Facts & Procedural History

{¶2} The Apple Valley subdivision is a lake community located in Knox County, Ohio. In 1970, the developer of Apple Valley recorded a "Declaration of Restrictive Covenants" ("Declarations") with the Knox County Recorder. The Declaration states, in relevant part:

> Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and whereas, Developer shall cause to be incorporated under the laws of the State of Ohio, as a non-profit corporation.

{¶3} Pursuant to the Declaration, the AVPOA was incorporated on October 26, 1972, as a nonprofit corporation governed by a board of directors.

{¶4} Apple Valley consists of eighteen sections, all of which are part of the AVPOA. Although the restrictive covenants for each section contain minor differences, every Declaration includes Article VII, Section 1, which provides, "[a]ll lots not otherwise specifically designated upon a recorded plat or recorded Declaration by Developer shall be used for residential purposes only, and no business, commercial, or manufacturing enterprise shall be conducted on said premises." ("Residential Declaration").

{¶5} The parties agree that the developer intended the entire subdivision to be governed by a single set of Bylaws. The AVPOA recorded its initial Bylaws on September 27, 1985, and has amended them several times since. Before 2024, the Bylaws did not distinguish between short-term and long-term rentals and did not prohibit short-term or long-term rentals. The provisions related to this appeal stated:

> 17.1.1 – Any owner that desires to use their dwelling for a rental property must complete an "Intent to Rent" form and submit it at the Association Office prior to renting the dwelling for the first time. A deposit amount determined by the Board will be required at the time of filing, and will be held in escrow by the Association, to be used in the event that the Association needs to take action for non-compliance with the Association's Covenants, Bylaws, and Rules. The deposit balance must be maintained and will be held until the owner gives notice to the Association that the dwelling is no longer being used as a rental.
>
> 17.1.2 – A copy of all rental/lease agreements must be submitted to the Association prior to occupancy of the tenants each time there is a change of tenants. The Board may establish a fee at the time of filing.

{¶6} Rudy purchased a single-family home in Apple Valley in 2005 and began offering it as a short-term rental in 2020 through Airbnb. The property was rented thirty-five times in 2023 and fifty times through October of 2024. Rudy employs a property management company to "aggressively multimedia market the property." Rudy testified that he completed the "Intent to Rent" form as required by the Bylaws.

{¶7} Watt and Runyon built a home in Apple Valley in 2008 and began using it as a short-term rental in 2016. This home was never their primary residence. Their property was rented thirty-four times in 2022 and twenty-seven times in 2023. They advertised the property on Airbnb and Vacation Rentals by Owner ("VRBO") and are classified as "super hosts" on

Airbnb. Watt testified that she completed the “Intent to Rent” form, which specifically listed “VRBO/Airbnb/etc.” as one of the available (permissible) rental categories.

{¶8} The parties agree that the Homeowners’ properties are subject to the Residential Declaration and that the Residential Declaration is properly recorded in each property’s chain of title.

{¶9} On April 9, 2024, the AVPOA Board of Directors adopted a resolution directing the secretary to place proposed bylaw amendments on the ballot for a vote of the membership. The amendments, to be considered at the annual meeting on June 22, 2024, would prohibit rentals for periods of less than six months beginning January 1, 2026. The proposed amendments provided, in relevant part, that:

> 17.1.19(a) – Any owner that desires to use their dwelling for a rental property must complete an “Intent to Rent” form and submit it as the Association office prior to renting the dwelling. A deposit amount determined by the Board will be required at the time of filing and will be held by the Association to be used in the event that the Association is required to remedy non-compliance with the Association’s Covenants, Bylaws, and Rules at the subject property. . ..
>
> 17.1.1(b) – Beginning on January 1, 2026, no dwelling or part of a dwelling, unless the same is owned by the Association, shall be rented for any period less than six (6) months nor be rented for transient purposes, including, but not limited to rental through services such as Airbnb, VRBO, or other similar services.

{¶10} On May 29, 2024, the Homeowners filed a complaint asserting four claims: (1) a request for a declaratory judgment that the Residential Declaration was a valid and enforceable contract between the AVPOA and the Homeowners, and thus, the AVPOA must amend the Residential Declaration, not the Bylaws, to restrict the use of the Homeowners' property by prohibiting short-term rentals; (2) a request for a preliminary and permanent injunction prohibiting the AVPOA from amending the Bylaws; (3) breach of contract, seeking specific performance and damages; and (4) damages, attorney fees, and costs pursuant to R.C. 5312.13.

{¶11} AVPOA filed an answer and counterclaim on July 1, 2024. In their counterclaim, filed pursuant to R.C. 5312.13, AVPOA sought: a declaration that the use of property for short-term renting in the Apple Valley subdivision is commercial rather than residential in nature and is a violation of the Residential Declaration; that the Homeowners be ordered to cease and desist from using their lots for short-term rentals; and seeking a monetary judgment.

{¶12} Following a hearing on June 10, 2024, the trial court granted the Homeowners a temporary restraining order for thirty days. On August 2, 2024, however, the court denied their request for a preliminary injunction. The Homeowners subsequently sought to amend their complaint, but the trial court denied that motion on November 15, 2024.

{¶13} Both parties moved for summary judgment, filing supporting memoranda, responses, and replies.

{¶14} In a judgment entry dated August 18, 2025, the trial court granted the AVPOA's motion for summary judgment and denied the Homeowners' motion for summary judgment. The court concluded that the Homeowners' short-term rental activities violated the Residential Declaration because they constituted a business or commercial enterprise conducted on the premises. The trial court further determined that the AVPOA had authority under the Declaration to interpret and enforce the restrictive covenants, that the amended Bylaws were properly adopted, and that they represented a valid exercise of the AVPOA's authority.

{¶15} Alternatively, the trial court concluded it lacked jurisdiction to grant the declaratory relief requested in Count One because the Homeowners failed to join all Apple Valley property owners as necessary parties.

{¶16} The trial court entered summary judgment in favor of the AVPOA on both the complaint and the counterclaim, ordered the Homeowners to cease using their properties for short-term rentals, and scheduled a hearing on damages. Before the hearing, the parties stipulated that the AVPOA's damages, attorney fees, and costs totaled $57,386.72, plus statutory interest.

{¶17} The Homeowners appeal the August 18, 2025, judgment entry of the Knox County Court of Common Pleas and assign the following as error:

{¶18} "I. The common pleas court erred as a matter of law by granting summary judgment to the Defendant-Appellee and denying summary judgment to Plaintiffs-appellants."

Summary Judgment Standard

{¶19} Civil Rule 56 states, in pertinent part:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be

> considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

{¶20} Summary judgment may be granted only after the trial court determines that: (1) no genuine issues as to any material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion and, viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977). A court may not resolve any ambiguities in the evidence presented. *Inland Refuse Transfer Co. v. Browning-Ferris Inds. Of Ohio, Inc.*, 15 Ohio St.3d 321, 322 (1984).

{¶21} A genuine issue of fact exists when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Daycab Co., Inc. v. Prairie Tech., LLC*, 67 F.4th 837, 846 (6th Cir. 2023) (quotations omitted); *Lang v. THK Mfg. of Am., Inc.*, 2025-Ohio-4811 (5th Dist.). Summary judgment consists of a burden-shifting framework. *Dresher v. Burt*, 75 Ohio St.3d 280, 294 (1996). The movant bears the initial burden of demonstrating the absence of genuine issues of material fact concerning the essential elements of the nonmoving party's case. *Id.* Once this burden is met, the burden shifts to the nonmoving party. *Id.* According to

Civil Rule 56(E), the nonmoving party may not rest on mere allegations or denials in their pleadings but must set forth specific facts showing a genuine issue for trial. *Id.* at 293.

{¶22} When reviewing a trial court's decision to grant summary judgment, an appellate court applies the same standard used by the trial court. *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 35 (1987). This means we review the matter de novo. *Doe v. Shaffer*, 90 Ohio St.3d 388, 390 (2000).

Restrictive Covenants

{¶23} This case involves a restrictive covenant limiting the use of the Homeowners' property. Ohio law "does not favor restrictions on the use of property." *Driscoll v. Austintown Assoc.*, 42 Ohio St.2d 263, 276 (1975). "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." *Bove v. Giebel*, 169 Ohio St. 325 (1959), paragraph one of the syllabus.

{¶24} A restrictive covenant is a contract and is, therefore, construed according to general principles of contract law. *Grace Fellowship Church, Inc. v. Harned*, 2013-Ohio-5852, ¶ 26 (11th Dist.). The primary objective is to give effect to the parties' intent, which is determined from the language of the covenant itself. *Summit Pointe Homeowners Assn. v. Neslen*, 2013-Ohio-2643, ¶ 14 (12th Dist.). The covenant's terms are given their common and ordinary meaning in light of the circumstances surrounding its creation. *Id.* "Restrictive covenants should be construed to effect the purpose for which they were intended." *Dillingham v. Cao Do.*, 2002-Ohio-3349, ¶ 8 (12th Dist.). While a court has the authority to interpret the language of a restrictive covenant to determine the intent of the drafts, it cannot rewrite a covenant to create new restrictions. *Driscoll* at 277.

{¶25} When a restriction on the use of land is clearly and unambiguously expressed in a restrictive covenant, courts must enforce it as written. *Grace Fellowship* at ¶16. Further, "an enforceable restriction on the use of land by covenant . . . cannot be implied, but must be express." *Lipchak v. Chevington Woods Civic Assn.*, 2015-Ohio-263, ¶ 33 (5th Dist.-ohio-263).

{¶26} However, "where the language contained in a deed restriction is indefinite, doubtful, and capable of contradictory interpretation, that construction must be adopted which least restricts the free use of the land." *Houk v. Ross*, 34 Ohio St.2d 77 (1973), paragraph two of the syllabus.

Business, Commercial, or Manufacturing Enterprise on Premises

{¶27} The trial court found that the Homeowners violated the Residential Declaration because they were conducting a business, commercial, or manufacturing enterprise on the premises through their short-tern rentals. We disagree.

{¶28} Neither the Residential Declaration nor the Bylaws, prior to their amendment, expressly or implicitly prohibited the Homeowners from using their homes for short-term or long-term rentals. To be sure, the Bylaws specifically contemplated both long-term and short-term rentals by providing that any owner who sought to use their home as a rental property was required to complete an "Intent to Rent" form and submit to the AVPOA office. As discussed above, the "Intent to Rent" form provided several options for "Rental Type," including yearly, monthly, weekly, daily, and VRBO/Airbnb/etc. Both Rudy and Watt testified that they completed and submitted the "Intent to Rent" form to the AVPOA and selected the "VRBO/Airbnb/etc." option. The AVPOA consistently permitted the Homeowners to rent their properties on a short-term basis.

{¶29} In *Catawba Orchard Beach Assn. v. Basinger*, 115 Ohio App.3d 402 (6th Dist. 1996), the Sixth District Court of Appeals addressed whether a restrictive covenant providing that "the lots shall be used for private residences only," and that "the premises shall never be used for commercial purposes of any kind" prohibited all commercial uses of the property, including rentals. The Sixth District concluded that the defendants' use of their homes as rental properties did not violate the restrictive covenants because no business was being conducted on the premises. *Id.* at 409. Rather, the rental properties continued to be used as single-family residences. *Id.* The Sixth District reaffirmed this holding in *Kinzel v. Ebner*, 2020-Ohio-4165 (6th Dist.).

{¶30} We agree with the Sixth District that residential structures do not lose their residential character merely because the occupants are renters. *Kinzel* at ¶¶ 69-71; *Catawba* at 409; see also *Crossroads Group, LLC v. City of Cleveland Hts.*, 2026 U.S. Dist. LEXIS 11642 at *16-18 (N.D. Ohio Jan. 29, 2026). The plain and unambiguous language of the Residential Declaration requires this Court to focus on what activity is being conducted "on said premises." Here, the activities occurring "on said premises" are all residential activities, such as sleeping, eating, and cooking. There is no on-site signage, and no retail transactions occur on the premises.

{¶31} Whether owner-occupied or rented for a weekend, the Homeowners' properties remain "residences." The prohibition against commercial or business uses "on said premises" does not unambiguously prohibit the Homeowners' use of their properties as short-term rentals where, as here, renters use the properties for residential activities such as eating and sleeping. The Homeowners' homes were being used for residential purposes; no business was being conducted "on the premises." As the Supreme Court of Ohio has stated, "the word 'residence' has reference to the use or mode of occupancy to which the building may be put." *Hunt v. Held*, 90 Ohio St. 280, 283 (1914).

{¶32} The receipt of rental income does not change the residential nature of the properties because no business was being conducted "on said premises." *Catawba* at 409. Both Rudy and Watt testified that the rental process and any related financial transactions occur off-site. The Homeowners do not solicit renters on-site at the properties; rather, they advertise and communicate with renters through the Internet. Thus, no commercial activity occurs "on said premises" as prohibited by the Residential Declaration.

{¶33} Several other jurisdictions have similarly held that a "residential purposes" restriction contained in a restrictive covenant does not prohibit short-term rentals. *Town of Conway v. Kudrick*, 175 N.H. 714, 722 (2023); *Craig Tracts Homeowners' Assn. v. Brown Drake, LLC*, 2020 MT 305, ¶ 18; *Silsby v. Belch*, 2008 ME 104, ¶ 14; *JBrice Holdings, L.L.C. v. Wilcrest Walk Townhomes Assn.*, 644 S.W.3d 179, 182 (Texas 2022); *Tarr v. Timberwood Park Owners Assn.*, 556 S.W.3d 274, 276 (Texas 2018); *Wilkinson v. Chiwawa Communities Assn.*, 327 P.3d 614, 615 (Wash. 2014); *Wihbey v. Zoning Bd. of Appeals of the Pine Orchard Assn.*, 350 Conn. 87, 89 (2024); *Scott v. Walker*, 274 Va. 209, 211 (2007); *Pinehaven Planning Bd. v. Brooks*, 138 Idaho 826, 829 (2003); *Yogman v. Parrott*, 325 Ore. 358, 366 (1997); *Vera Lee Angel Revocable Trust v. Jim O'Bryant Joint Revocable Trust*, 2018 Ark. 38, ¶ 8; *Forshee v. Neuschwander*, 2018 WI 62, ¶ 2; *Pandharipande v. FSD Corp.*, 679 S.W.3d 610, 614 (Tenn. 2023).

{¶34} The AVPOA draws a distinction between a short-term and long-term rental, which assumes that while the latter is a permissible residential use, but the former, by the nature of its duration, is a commercial or business purposes. However, nothing in the plain language of the Residential Declaration creates such a distinction. This Court is perplexed by the AVPOA attempt to arbitrarily distinguish rentals of less than six-months' duration from those of greater than six-months. What qualifies as a permissible use of the premises does not change simply because the calendar flips between day 179 and day 181.

{¶35} The Residential Declaration contains no specific prohibition against rentals of fewer than six months. Nor does it define how long a person, or their belongings, must remain on a property before that property is considered to serve a "residential purpose." We fail to see how the AVPOA can interpret the Residential Declaration as permitting rentals for six months and one day, seven months, or eight months, while prohibiting rentals for less than six months.

{¶36} If the AVPOA intended to require a minimum period of occupancy before a use could be considered "residential," the Residential Declaration would need to contain clear and unambiguous language establishing such a requirement because an enforceable restriction on the use of land by restrictive covenant must be express, not implied. *Lipchak v. Chevington Woods Civic Assn.*, 2015-Ohio-263, ¶ 33 (5th Dist.); *Baker v. Adams*, 2006-Ohio-3232 (3rd Dist.), ¶ 13. The Residential Declaration contains no such clear and unambiguous language prohibiting short-term rentals of the Homeowners' Apple Valley properties.

{¶37} This Court finds, as a matter of law, that the Residential Declaration is unambiguous and does not prohibit the Homeowners' use of their Apple Valley properties as short-term rentals. Further, even if the terms "residential," "commercial," or "on said premises" were ambiguous and capable of contradictory interpretations, this ambiguity must be resolved in favor of the Homeowners. Where language contained in a deed restriction is indefinite or capable of contradictory interpretation, "the construction must be adopted which least restricts the free use of the land." *Houk v. Ross*, 34 Ohio St.2d 77, 77 (1973).

Amending Bylaws/Amending Covenants

{¶38} The AVPOA argues that, based upon the language contained in the Declarations, it possesses broad authority to interpret and enforce the covenants. This argument is not persuasive. As discussed above, the plain language of the Residential Declaration does not prohibit short-term rentals. Even if the language were ambiguous, the covenant must be construed in favor of the free use of the land.

{¶39} Therefore, the AVPOA cannot be accorded "broad authority" to interpret the Residential Declaration to create a ban on short-term rentals where the language contained in the Residential Declaration does not support such a ban. Although the AVPOA may have discretion to enforce "a clearly applicable restriction, it does not have the discretion to unilaterally create restrictions where none exist." *Woodcreek Assn. v. Bingle*, 73 Ohio App.3d 506, 509 (12th Dist. 1991).

{¶40} If short-term vacation rentals of the Homeowners' properties are to be prohibited, the restrictive covenants themselves must be amended. The AVPOA could not impose such a restriction on the Homeowners through an amendment to its Bylaws when the restriction does not exist in the Residential Declaration. The AVPOA cannot create a new restriction on the use of the Homeowners' property by amending the Bylaws rather than properly amending the Declarations. However, this does not prevent the AVPOA from utilizing the process containing in the Declarations to amend the restrictive covenants.

Joining Necessary Parties to Declaratory Judgment Count

{¶41} In Count One of their complaint, the Homeowners sought a declaratory judgment. The trial court determined it lacked jurisdiction to issue declaratory relief because the Homeowners failed to join all lot owners in the Apple Valley subdivision as defendants, finding that those lot owners were necessary parties.

{¶42} R.C. 2721.12 provides that, when declaratory relief is sought, "all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding." To qualify as a necessary party, however, a person must have a legally affected interest, not merely a practical interest. *Driscoll v. Austintown Assocs.*, 42 Ohio St.2d 263, 271-272 (1975). A legally protected interest is "[a]n interest recognized by law." *Rumpke Sanitary Landfill, Inc. v. State*, 2010-Ohio-6037, ¶ 14.

{¶43} The Homeowners agree that the trial court does not have jurisdiction over any property owners in Apple Valley except for the three homeowners who are the plaintiffs/appellants in this case, and that no non-parties will be bound by the declaratory judgment they are seeking.

{¶44} The cases relied upon by the AVPOA and the trial court are distinguishable from the circumstances presented here. In *Bretton Ridge Homeowners Club v. DeAngelis*, 51 Ohio App.3d 183 (8th Dist. 1988), the homeowners' association sought a declaration that membership in the association and payment of dues was mandatory. Such a declaration affected all homeowners, not merely the named parties. Likewise, *Cerio v. Hilroc Condo. Unitowners Assn.*, 2004-Ohio-1254 (8th Dist.), involved a determination regarding which homeowners would be responsible for the costs of repairing and maintaining balconies. Because homeowners could be held financially responsible for those costs, they possessed a legally protected interest in the outcome. See also, *Binder v. Cuyahoga Cty.*, 2016-Ohio-8305, ¶ 11 (8th Dist.) (rate of pay is legally protected interest).

{¶45} In this case, the Homeowners are not seeking to invalidate the restrictive covenants. Rather, they seek a declaration specific to their own properties, i.e., that the Residential Declaration constitutes a valid and enforceable contract between the AVPOA and the Homeowners, and that any restriction prohibiting short-term rentals on the Homeowners' properties must be accomplished through an amendment to the Declarations, not through an amendment to the Bylaws.

{¶46} The Homeowners seek only to establish their own right to use their own properties as short-term rentals. Unlike the circumstances presented in the cases cited above by the AVPOA, no remaining lot owner in Apple Valley will incur additional costs or obligations as a result of the requested declaratory judgment. The restrictive covenants will remain unchanged. Although the other property owners in the Apple Valley subdivision may have a practical interest in the outcome of this litigation, they do not have a legally protected interest. *Driscoll*, 42 Ohio St.2d at 271-272. Therefore, they are not necessary parties to this action.

Resolution of Counts Contained in the Complaint and Counterclaim

{¶47} In Count One of their complaint, the Homeowners sought a declaration that the Residential Declaration was a valid and enforceable contract between the AVPOA and the Homeowners, and that the AVPOA must amend the Declarations, rather than the Bylaws, if it sought to prohibit short-term rentals on the Homeowners' properties.

{¶48} Based upon our foregoing analysis, we find there exists no genuine issue of material fact regarding Count One of the Homeowners' complaint. As such, we find that the trial court erred by denying the Homeowners' motion for summary judgment on this claim and by granting summary judgment in favor of the AVPOA.

{¶49} In Count Two of their complaint, the Homeowners sought a preliminary and permanent injunction. A permanent injunction is not a claim for relief "but a remedy available to the court for use in the aid of relief it has ordered." *MWL Ents., LLC v. Mid-Miami Invest. Co.*, 2021-Ohio-1742, ¶ 36 (2nd Dist.). The grant of a permanent injunction is an "extraordinary remedy in equity where there is no adequate remedy available at law." *City of Toledo v. State*, 2018-Ohio-2358, ¶ 15, quoting *Garono v. State*, 37 Ohio St.3d 171, 173 (1988). A court may only issue a permanent injunction where the moving party demonstrated success on the merits of its underlying claim and "must also demonstrate that the injunction is necessary to prevent irreparable harm and that no adequate remedy at law is available." *State v. City of Cincinnati Citizen Complaint Auth.*, 2019-Ohio-5349, ¶ 19 (1st Dist.). "It is within the trial court's discretion to make a reasonable determination whether an adequate remedy at law is available or whether irreparable injury will result to the party seeking an injunction if no injunction is issued." *MWL* at ¶ 40.

{¶50} We find the trial court erred in granting summary judgment to AVPOA on Count Two of the Homeowners' complaint. However, due to our disposition of the remaining counts contained in the Homeowners' complaint, genuine issues of material fact remain as to whether the Homeowners have an adequate remedy at law and whether a permanent injunction is necessary to prevent irreparable harm.

{¶51} In Count Three of their complaint, the Homeowners asserted a breach of contract claim against the AVPOA. "Declarations and bylaws of a homeowners association are contracts between the association and the purchasers." *Lisy v. Mayfair Estates Homeowners*

Assn., 2012-Ohio-68, ¶ 29 (9th Dist.). The Homeowners contend that the AVPOA breached this contract by amending the Bylaws to prohibit short-term rentals of the Homeowners' properties. The Homeowners seek damages or specific performance. To prevail on a breach of contract claim, a plaintiff must establish the existence of a contract, performance by the plaintiff, breach by the defendant, and damages or loss resulting from the breach. *Nilavar v. Osborn*, 137 Ohio App.3d 469, 483 (2nd Dist. 2000).

{¶52} Here, based upon the reasoning set forth above, we find that there exists no genuine issue of material fact that a contract existed between the Homeowners and the AVPOA. We find that the AVPOA breached that contract by amending the Bylaws to impose a restriction on the Homeowners' short-term renting of their properties when no such restriction existed in the Declarations. However, that is not the end of the inquiry in a breach of contract claim. To prevail on their breach of contract claim, the Homeowners must still establish damages or loss resulting from the breach or must satisfy the requirements for specific performance.

{¶53} We find genuine issues of material fact remain regarding these issues. Both Rudy and Watt testified that, although they generated approximately $30,000 to $40,000 in gross rental receipts each year from short-term rentals, their tax records reflected that they experienced losses on their Apple Valley properties each year. Accordingly, the trial court erred by granting summary judgment in favor of the AVPOA on the breach of contract claim. However, because genuine issues of material fact remain regarding damages, loss, or specific performance, neither party is entitled to summary judgment on this claim.

{¶54} Finally, in Count Four of the complaint, the Homeowners contend that, pursuant to R.C. 5312.13, they are entitled to recover all amounts expended in connection with the enforcement of the Residential Declaration, including attorney fees, costs, and related expenses. We find that the trial court erred by granting summary judgment in favor of the AVPOA on this claim. However, genuine issues of material fact remain regarding the amount of attorney fees, costs, and expenses, if any, that are recoverable and whether those expenses were incurred in the connection with the enforcement of the Residential Declaration.

{¶55} In its counterclaim, the AVPOA sought: (1) a declaration that the Homeowners' use of their properties as short-term rentals constitutes a commercial, rather than residential, use; (2) a declaration that the Homeowners were violating the Residential Declaration; and (3) damages pursuant to R.C. 5312.13 for expenses incurred in enforcing the restrictive covenant. The AVPOA also sought a cease-and-desist order prohibiting the Homeowners from using their Apple Valley properties as short-term rentals.

{¶56} Based upon our analysis above, we find that the trial court erred by granting summary judgment in favor of the AVPOA on its counterclaim, denying the Homeowners' motion for summary judgment on the AVPOA's counterclaim, and awarding damages to the AVPOA pursuant to R.C. 5312.13.

{¶57} Accordingly, the Homeowners' assignment of error is sustained.

{¶58} For the reasons stated in our Opinion, the judgment of the Knox County Court of Common Pleas is reversed, and this matter is remanded for further proceedings consistent with this opinion.

{¶59} Costs to appellee AVPOA.

By: Popham, J.,

King, P.J. and

Montgomery J., concur