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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

CRYSTAL LAKES HOMEOWNERS')
ASSOCIATION, INC., an Oklahoma)
not-for-profit corporation,)
))
Plaintiff/Appellee,)
))
vs.)
))
JUST LIKE HOME RENTALS LLC,)
an Oklahoma limited liability company,)
))
Defendant/Appellant.)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

FEB 7 2025

JOHN D. HADDEN
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Case No. 122,352

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APPEAL FROM THE DISTRICT COURT OF
MCCLAIN COUNTY, OKLAHOMA

HONORABLE CHARLES GRAY, ASSOCIATE DISTRICT JUDGE

REVERSED AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

The appellant, Just Like Home Rentals LLC, appeals the court's grant of summary judgment in favor of appellee, Crystal Lakes Homeowners' Association, Inc. The court granted summary judgment on Crystal Lakes' claims for breach

of contract, specific performance, and an injunction. Upon review, we find Crystal Lakes was not entitled to summary judgment, and we thereby reverse and remand for entry of judgment in favor of Just Like Home.

BACKGROUND

In February 2022, Just Like Home, a business which owns and leases real property for short-term, mid-term, and long-term rentals, purchased a home located in the Crystal Lakes Addition in Newcastle, Oklahoma. Just Like Home intended to use the property for short-term rentals, specifically listing the property on VRBO. By purchasing the property, Just Like Home became a member of the Crystal Lakes HOA. The HOA is responsible for enforcing the Declaration of Covenants, Conditions, and Restrictions for the addition. In purchasing the home, Just Like Home agreed to abide by the covenants and restrictions in the declaration.

One such provision, § 7.1, provides: “No gainful occupation, profession, business, trade or other non-residential activity shall be conducted on any lot or in any residence or detached structure thereon.” Doc. 3, *Petition*, Exhibit A (capitalization modified). Crystal Lakes asserted that Just Like Home breached that covenant by using or planning to use the property as a short-term rental facility and brought this action for breach of contract, specific performance, and injunctive relief. The HOA later argued that it was entitled to summary judgment on all three claims and the trial court ultimately agreed. Just Like Home appealed. We review the grant of summary judgment *de novo*. *Carmichael v. Beller*, 1996 OK 48, ¶ 2, 914 P.2d 1051.

ANALYSIS

On appeal, Just Like Home raises several propositions in error; however, the dispositive issue in the present case is whether § 7.1 of the covenants and restrictions prohibits the use of the property for short-term rentals. Section 7.1, entitled Land Classification, reads as follows:

All Lots within the existing property are hereby classified as Single-Family Lots, i.e., each Lot shall be used exclusively for single family residential purposes and for the exclusive use and benefit of the Owner thereof. No gainful occupation, profession, business, trade, or other non-residential activity shall be conducted on any Lot or in any residence or Detached Structure located thereon. Nothing herein shall be deemed to prevent the leasing of any Lot from time to time by the Owner thereof subject to all the terms and provisions hereof, and to the Rules.

Doc. 3, *Petition*, pg. 3.

Crystal Lakes first argues that, under 63 O.S. § 1-1201, Just Like Home's intended use of the property fell under the definition of a hotel. While we agree that if Just Like Home's use of the property fell under the definition of a hotel it would be in clear violation of § 7.1, we do not agree with Crystal Lakes' interpretation of § 1-1201.

That provision defines a hotel as any "place where sleeping accommodations are furnished, or offered, for pay for transient guests, if *four or more rooms* are available therein for transient guests." 63 O.S. § 1-1201 (emphasis supplied). Crystal Lakes argued that Just Like Home openly marketed its property as a private resort that has five bedrooms (sleeping fourteen guests), thus, according to 63 O.S. § 1-1201, it is a hotel. However, upon review, we find

that the Oklahoma Administrative Code provides significant clarity as to 63 O.S. § 1-1201, which we find consistent with the language and purpose of the statute.

Section 310:285-1-1 of the Oklahoma Administrative Code explicitly provides that the “rules in this Chapter implement the Lodging Establishment Statute, 63 O.S. Section 1-1201 et seq.” The next section, 310:285-1-1.1 provides:

The rules in this chapter shall apply only to guest rooms and any supporting facilities. It is not the intent of this chapter to license or regulate:

- (1) Living quarters where permanent residents reside; or
- (2) *Establishments which require the rental of the entire establishment and grounds.*

We find this interpretation consistent with the statute, which refers to “rooms” being made “available ... for transient guests.” We find it clear that 63 O.S. § 1-1201 was not intended to apply to the leasing of real property in its entirety; rather, it regulates property in which individual rooms are leased on a room-by-room basis.

Crystal Lakes also argued that Just Like Home’s intended use of the property fell under the definition a hotel pursuant to the City of Newcastle Municipal Code, Title III, § 35.095. However, upon review of the cited section, we find that the municipal code was also intended to regulate the leasing of a room or rooms on a property, not the property in its entirety.¹ Notably, the cited section

¹ See Title III, § 35.095, defining occupancy as “[t]he use or possession ... of any *room or rooms* in a hotel;” defining occupant as “any person who ... uses or possesses, or has the right to use or possession of any *room or rooms* in hotel;” and defining room as “any *room or rooms* of any kind in any part or portion of a hotel which is available for or let out for use or

of the code also does not provide for any private right of action and the HOA could not enforce the section against Just Like Home as Crystal Lakes is not the entity that collects the hotel tax. Just Like Home also provided sufficient evidence that it is not subject to the tax.²

Because we have now determined that the intended use of the property does not fall under the definition of a hotel according to Oklahoma state and municipal law and, therefore, does not clearly constitute a gainful occupation or business, we must next determine if short-term rentals are still nonetheless prohibited by the covenant at issue in this case.

Oklahoma courts have consistently held that restrictive covenants are not favored and will be strictly construed. “[S]uch covenants are not favored by the law and they will be strictly construed to the end that all ambiguities will be resolved in favor of the unencumbered use of the property.” *Jackson v. Williams*,

possessed” (emphasis supplied). Just Like Home does not lease individual rooms on the property, rather, it intends to lease the property in its entirety. *See* Doc. 9, *Defendant’s Response and Objection to Plaintiff’s Motion for Summary Judgment, Exhibit E, Affidavit of Jeff Cooper*.

² Just Like Home admitted that it originally filed an application for a transient guest room/short-term rental certification of registration as a hotel. However, in a verified response to one of Crystal Lakes’ interrogatories, Just Like Home related that it was informed by the city of Newcastle that a permit was not required. Doc. 9, *Defendant’s Response and Objection to Plaintiff’s Motion for Summary Judgment, Exhibit A*. The answer specifically reads: “There were several phone calls made with the City of Newcastle in regard to licensing, either by Mr. Jeff Cooper or Ms. Rebecca Farrow, both principals of [Just Like Home]. The last conversation took place ... in which Camille Dowers with the city of Newcastle informed [Just Like Home] that it wasn’t necessary for [Just Like Home] to have a license to operate.” *Id.* When further inquiring about how the city would be able to collect taxes from Just Like Home on the property, Ms. Dowers responded that the city had made a decision to not collect taxes in this case. *Id.* She explained that because the property did not fit into the requirements for either a business license or a hotel license, the city would not require any specific licensing and Just Like Home could continue to lease the home as it saw fit. *Id.*

1985 OK 103, ¶ 16, 714 P.2d 1017 (footnote omitted). The Court in *Jackson* also stated that “the intentions of the parties to restrictive covenants ordinarily control the construction of the covenants.” *Id.* See also *Goss v. Mitchell*, 2011 OK CIV APP 74, ¶ 12, 259 P.3d 886 (holding that restrictive covenants are to be interpreted to effect the intent of the parties). “In arriving at the parties’ intent, the terms of the instrument are to be given their plain and ordinary meaning.” *May v. Mid-Century Ins. Co.*, 2006 OK 100, ¶ 22, 151 P.3d 132. “Where the language of a contract is clear and unambiguous on its face, that which stands expressed within its four corners must be given effect.” *Id.*

In ascertaining the parties’ intent in this case, we must examine the terms of the covenant at issue and discern its plain and ordinary meaning. The covenant first provides that all lots are to be “classified as single family lots, i.e., each lot shall be used exclusively for single family residential purposes” Next, the covenant prohibits “gainful occupation” and any other non-residential activity from being conducted on the property. The declaration does not further define or describe what single family residential purposes are.

While the Supreme Court has not yet addressed whether a short-term rental of one’s home violates a restrictive covenant for the use of a home for strictly residential purposes, while prohibiting gainful occupation on the property, the question was recently addressed in a published decision of Division III this Court. See *Graham v. Reynolds*, 2024 OK CIV APP 26, ___ P.3d ___.³ We

³ No petition for certiorari was filed.

find the Court's decision in *Graham* to be cogent and persuasive and adopt its reasoning in full.

In *Graham*, defendant Reynolds began using his lake house for short-term rentals through VRBO and other vacation rental websites. *Id.* ¶ 6. Plaintiff Graham brought a declaratory and injunctive action against him, alleging that Reynolds's use of the property violated the housing addition's restrictive covenant against "commercial use." *Id.* ¶ 2. Reynolds filed a motion for summary judgment which the court granted, finding that the short-term rental of Reynolds's lake property did not violate the restriction against use of the property for a business purpose because the short-term renters use the property for ordinary residential purposes. *Id.* ¶ 11.

Division III affirmed. In reaching its decision, the Court noted that the intentions of the parties in drafting the document were difficult to ascertain as neither "residential purpose" nor "commercial purpose" were defined within the addition's restrictive covenants. *Id.* at ¶ 15. Further, there was "no apparent restriction on renting one's property" in the addition, regardless of the duration of the rental term. *Id.* In the present case, "residential purpose" and "gainful occupation, profession, business, trade, or other non-residential activity" are similarly not defined. Notably, the HOA's restrictive covenant does specifically allow for leasing of a property from "time to time."⁴ Thus, by explicitly allowing

⁴ Because "time to time" is not defined, there is ambiguity that cannot be resolved simply by examining the language in the covenant. Thus, the court may "consider parol and extrinsic evidence and other circumstances, such as the parties' admissions and construction as evidence by subsequent acts and conduct of the parties in connection therewith." *K & K Food Servs., Inc. v. S & H, Inc.*, 2000 OK 31, ¶ 15, 3 P.3d 705, 710.

for leasing of a property from time to time, there is arguably even more evidence that the restrictive covenant here would allow Just Like Home to use the property as a short-term rental on VRBO than in *Graham*.

We, like the Court in *Graham*, also note that “the majority of other jurisdictions to have considered this issue have found that ‘residential purposes’ provisions do not prohibit short term rentals.”⁵ *Craig Tracts Homeowners’ Ass’n, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 10, 477 P.3d 283, 285–86 (citing cases). The court in *Craig Tracts* noted that the decisions focus on what is *being done* at a particular premises, not *how long* any particular individual is performing the activity. For example, the Florida Court of Appeals in *Santa Monica Beach Prop. Owners Ass’n v. Acord*, 219 So.3d 111, 114 (Fla. Ct. App. 2017), held that the critical issue in the case was whether “the renters are using the property for ordinary living purposes such as sleeping and eating, not the duration of the rental.” Thus, we, like the Court in *Graham*, agree with the majority of jurisdictions and hold that the short-term renting of one’s own property for residential use *is* residential use, and thus, does not violate a restrictive covenant limiting the use of that property to “single family residential

Just Like Home introduced evidence in its motion for declaratory judgment that the HOA had allowed leasing of other properties in accordance with the language in § 7.1. For example, Just Like Home attached three separate deeds to its response to summary judgment demonstrating that Chukkar CT LLC, HP Oklahoma 1 LLC/HPA Borrower 2020-2 ML MLLC, and Outland OK Residential LLC, are all limited liability companies that own properties in the Crystal Lakes Addition and lease out those properties. See Doc. 5, *Motion for Declaratory Judgment*, Exhibits C, D, & E.

⁵ The Court in *Graham* also recognized that a “minority view is followed in roughly six states. In the remaining eighteen states, the courts have either not directly addressed the question or have evaluated short-term rentals using a case-by-case approach.” *Id.* ¶ 18.

purposes.” Accordingly, we reverse the trial court’s grant of summary judgment to Crystal Lakes and remand with instructions for the district court to enter judgment in favor of Just Like Home.⁶

REVERSED AND REMANDED.

WISEMAN, P.J., and FISCHER, J., concur.

February 7, 2025

⁶ Just Like Home also appealed the court’s denial of its motion for declaratory judgment, in which Just Like Home marshalled two arguments. We decline to review the merits of the court’s denial because the first argument is moot, and the second argument raises issues not ripe for adjudication. The first argument was that the board violated certain procedural rules in adopting an “interpretive rule” (not a modification of the covenants and restrictions, which would have required a vote of the members, not just the board) as to the relevant covenant which would, if followed, outlaw short-term rentals in the subdivision. As the board’s interpretation has been entirely overcome by our directly contrary interpretation, we find the question of the validity of its adoption to be moot. *Rogers v. Excise Bd. of Greer Cnty.*, 1984 OK 95, ¶ 15, 701 P.2d 754, 761 (“This Court will not decide abstract or hypothetical questions disconnected from the granting of actual relief or make determinations where no practical relief may be granted.”). In its second argument, Just Like Home noted that Crystal Lakes was apparently in the process of attempting to amend the relevant restriction via a membership vote and argued that any such amendment, if passed, would be unconstitutional or otherwise unlawful, at least as applied to them. As the record does not demonstrate that the proposed amendment has ever passed, we find that this issue is not ripe for adjudication. *French Petroleum Corp. v. Oklahoma Corp. Comm’n*, 1991 OK 1, ¶ 7, 805 P.2d 650, 652–53 (“The ripeness doctrine is a part of judicial policy militating against the decision of abstract or hypothetical questions.”).