

The *Virgil Adams v. Kimberley One* Decision
and Minority Rights in Idaho Owner's
Associations

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Question

What limits an association's power to amend its CC&RS?



Facts

Adams purchased a townhouse, subject to a declaration of covenants, conditions, and restrictions (1980 Declaration) that did not specifically restrict an owner's ability to lease his or her unit. Subsequently, the Association amended the 1980 Declaration to provide that an owner could not rent a unit for a period of less than six months.



Precedent

Shawver v. Huckleberry Estates, 140 Idaho 354, 93 P.3d 685 (2004). Purchasers designed home based on original CC&Rs. The developer (unilaterally) amended the CC&Rs after purchasers applied for approval of their design.



Precedent

Shawver v. Huckleberry Estates

The [purchasers] had no right under the Sale Agreement to override the amendment provision or to avoid compliance in the event amendments were properly adopted. Courts do not possess the roving power to rewrite contracts in order to make them more equitable.



Precedent

Best Hill Coal. v. Halko, LLC, 144 Idaho 813, 172 P.3d 1088 (2007). An owners association recruited new members to reach the 75% supermajority needed to amend the CC&Rs and add a new density limitation. -



Precedent

Best Hill Coal. v. Halko, LLC

With the additional members, Best Hill had the seventy-five percent majority required to amend the Original Covenants. Thus, at the same meeting, the new members of Nettleton Estates joined with the existing members to execute an Amendment to the Original Covenants (“Amendment”).



Split Authority

Wilkinson v. Chiwawa Cmty. Ass'n, 327 P.3d 614, 622 (Wash. 2014) (holding a new restriction on short-term rental activity invalid, reasoning “homeowners cannot force a new restriction on a minority of unsuspecting Chiwawa homeowners unrelated to any existing covenant.”)



Arguments on Appeal

Adams argues the rental restrictions are invalid because:

- (1) they do not properly reflect the intent of the parties with respect to their original agreement;
- (2) Adams had an unrestricted, enforceable right to rent his property under the original agreement;
- (3) the CC&Rs must be construed in favor of the free use of land rather than in favor of the Association; and
- (4) the restriction allows for arbitrary discretionary enforcement by the Association.



Arguments

Adams argues the amendment deprived him of the benefit of his bargain by failing to give effect to the provision that expressly allowed him an unrestricted right to rent his unit. However, as we stated in *Shawver*, preventing the Association from amending as it sees fit does not give effect to the amendment provision in the declaration. Adams agreed to the entire 1980 Declaration, including the amendment provision, and allowing him to now avoid compliance with that provision is inconsistent with the bargain he made.



Arguments

Adams argues that to allow amendments of the type in this case creates a slippery slope that provides no protection for owners in the minority voting position. However, this disadvantage to those in minority voting position was apparent from the 1980 Declaration at the time of the original purchase.



Arguments

“Covenants that restrict the uses of land are valid and enforceable.” *Jacklin Land Co. v. Blue Dog RV, Inc.*, 151 Idaho 242, 246, 254 P.3d 1238, 1242 (2011). However, because restrictions on the free use of property are at odds with the common law right to use land for all lawful purposes, the Court will enforce such restrictions only when clearly expressed. *Sky Canyon Props. v. Golf Club at Black Rock, LLC*, 155 Idaho 604, 606, 315 P.3d 792, 794 (2013). All doubts in that regard should be “resolved in favor of the free use of land.” *Id.* “Therefore, while clearly expressed restrictions will be upheld, restrictions that are not clearly expressed will be resolved in favor of the free use of land.” *Jacklin Land*, 151 Idaho at 246, 254 P.3d at 1242 (internal quotation marks omitted).



Arguments

Although it was Adams' conduct that precipitated the need for the amendment, there is nothing in the language of the 2013 Amendment that could reasonably be interpreted to apply only to Adams' unit. All the rental restrictions facially apply equally to all units within the Subdivision.

Adams further argues the board's discretion to grant exceptions to the rental restrictions shows that the amendment does not apply equally to all units. He argues the board provided itself with such discretion to allow it to enforce the rental restriction "solely against Appellant, Mr. Adams." However, there is nothing in the record to suggest, nor does Adams argue, that the board has engaged in any conduct amounting to discriminatory enforcement.



Arguments

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Rule

“There is doubtless a point when a party has changed his or her position in reliance upon the covenants in effect to a degree that enforcement of an amendment would be precluded, but that point was not demonstrated in this case.”

...there is a point at which an amendment to CC&Rs will go too far, and have too adverse an effect on those bound by it, in which case the amendment would be precluded.



Rule

Kimberley One - limiting short term rentals even where prior long term rentals had occurred.

Shawver - changing ACC requirements after owner designed house and applied for approval.

Best Hill - recruiting new members to amend and change density requirements



Rule

Kimberley One - (dicta)

We are not faced with a situation where Adams was permitted to engage in short-term renting for ten years and then, all of a sudden, an amendment no longer permitted such use.



Approved Rental Restriction

Units may be rented “only in strict accordance with the following” conditions:

- (a) the owner must execute a written document with the renter;
- (b) the document must be approved in advance by the board;
- (c) advertising for the unit must be approved by the board;
- (d) no rentals for fewer than six months will be approved;
- (e) no subleasing is permitted;
- (f) owner must provide contact information to the board; and
- (g) the board has discretion to grant exceptions to these rental requirements and to create house rules for their enforcement.



Food for Thought

“Residential use / Single family use” clauses

Even prior to the amendment, the rental activity was limited by the declaration to allow rentals or leases “for single family residential purposes only.” In substance, the 2013 Amendment simply narrowed what may be considered a “single family residential purpose.” That term implies a certain degree of long-term or stable occupancy of the residence, rather than it being used as a hotel as Adams had. The 2013 Amendment simply provided clarity to that term.

Kimberley One



Food for Thought

“Residential use / Single family use” clauses

Pinehaven Planning Board v. Brooks 138 Idaho 826, 70 P.3d 664 (2003)

Where the CC&Rs incorporate definitions used by the Uniform Building Code, the definition of “residential” includes apartment houses and hotels, so CC&Rs alone were not sufficient authority for a rule banning short-term rentals.



Bonus Question

Can an association be awarded fees permitted for “enforcement actions” when case was brought by owner for declaratory relief?



Bonus Question

Although Adams titled his complaint an action for declaratory judgment, he also characterized the action in various places as an “existing controversy as to the validity and enforceability of the [2013 Amendment]” and as entitling Adams to attorney fees “as the prevailing party in the enforcement of the original covenants.” (Emphasis added). In addition to these characterizations of the action, Adams alleged that he was entitled to attorney fees under the provision in the declaration allowing fees to the prevailing party in an action to enforce the declaration. Further, Adams argues on appeal that he is entitled to attorney fees “aris[ing] from the fee provisions of the CC&R’s.” In substance, this action was brought in response to the Association’s attempt to enforce the 2013 Amendment and was an attempt by Adams to prevent enforcement of the 2013 amendment and to enforce the use provisions of the previous versions of the declaration.



Related Decisions:

- *Virgil Adams v. Kimberley One Townhouse* <http://www.isc.idaho.gov/opinions/42192.pdf>
- *Shawver v. Huckleberry Estates* <http://caselaw.findlaw.com/id-supreme-court/1034473.html>
- *Best Hill Coal. v. Halko, LLC* <https://casetext.com/case/best-hill-coali-v-halko>
- *Nordstrom v. Guindon* <https://casetext.com/case/nordstrom-v-guindon>
- *Wilkinson v. Chiwawa Communities Association* (Washington)
https://scholar.google.com/scholar_case?case=7926471790245785341&hl=en&as_sdt=200006
- *Pinehaven Planning Board v. Brooks* <http://caselaw.findlaw.com/id-supreme-court/1160015.html>
- *Sky Canyon Properties v. The Golf Club at Black Rock, LLC* <http://www.isc.idaho.gov/opinions/42216.pdf>

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