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Carroll Freeman, Ann Marie Freeman, Sidney L. Cohen, Kathleen Cohen, Plato G. Christapulos, Stella A. Christapulos, E. M. Richardson, Kenneth R. Poulsen, Virginia C. Poulsen, Benjamin N. Meldrum, Grace D. Meldrum, Erwin F. Zeyer, Wilma Grace Zeyer, Edward R. O'Hara, Eileen O'Hara, Oscar Sorenson, M. Alice Sorenson, Earl E. Loman, Helen M. Loman, Robert E. Themselves and For Other Land Owners of Indian Rock Subdivision v. Leland 0. Gee, Vilate D. Gee, James F. Craner and Ida Craner : Appellant's Brief

Utah Supreme Court

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.Leonard J. Lewis; Attorneys for AppellantsRichard L. Bird, Jr.; Attorney for Respondents CranerAlan H. Bishop; Attorney for Respondents Gee

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, SIDNEY L. COHEN, KATHLEEN CO-
, PLATO G. CHRISTAPULOS, STELLA
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ETH R. POULSEN, VIRGINIA C.
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, M. ALICE SORENSON,
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Rock Subdivision,

Plaintiffs

v.

ND O. GEE, VILATE D. GE
ANER and IDA CRANER,

Defendants

APPELLA

AL FROM THE
ND DISTRICT
HONORA

H. BISHOP
tate Exchange Bldg.
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ney for Respondents Gee
ARDS, BIRD & HART
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Lake City, Utah
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Plaintiffs-Appellants,

v.

LELAND O. GEE, VILATE D. GEE, JAMES F. CRANER and IDA CRANER,

Defendants-Respondents.

Case No. 10590

APPELLANTS' BRIEF

STATEMENT OF THE KIND OF CASE

This is an action commenced by residents of Indian Rock Subdivision (plaintiffs-appellants are referred to hereinafter as "plaintiffs"), a residential subdivision of Salt Lake County, located in the general vicinity of 20th South and 28th East Streets, in Salt Lake City (see subdivision plat, Exhibit 2P), to enjoin, and to recover damages for, the violation of restrictive covenants by defendants-respondents (hereinafter referred to as "defendants") who are also residents of the said subdivision.

DISPOSITION IN LOWER COURT

On October 29, 1965, a Pretrial Conference, Honorable Merrill C. Faux, Judge, presiding, was held, and resulted in a preliminary ruling by the Trial Court that the restrictive covenants in question related only to the original construction of defendants' homes rather than also to the use made thereof by defendants. (R. 66.) Subsequently, there were motions to amend the original Pretrial Order (R. 68, 70, 79-81), and plaintiffs filed their memorandum with respect to the interpretation of the restrictive covenants. (R. 90-108.) On December 13, 1965, the Pretrial Conference was continued. Thereafter, on December 17, 1965, the Trial Court made and entered an Amended Pretrial Order (R. 74-78), and on December 20, 1965, made and entered its Memorandum Decision (R. 109), rendering its interpretation of the restrictive covenants in question. Thereafter, the parties submitted proposed Orders to the Court pursuant to the decision of the Court. (R. 120-122, 123-125.) On January 13, 1966, former counsel for plaintiffs, Messrs. Greenwood and Meservy of Salt Lake City, withdrew of record. (R. 110-112.) Counsel appearing herein on behalf of plaintiffs made their appearance. (R. 113-114.) After further proceedings in the Trial Court, which are discussed in greater detail hereinafter, the Trial Court, on March 8, 1966, made and entered its Order dismissing plaintiffs' Complaint with prejudice on the ground that the Complaint failed to state a cause of action against defendants for use of their residences for two-family occupancy. (R. 126-128.)

RELIEF SOUGHT ON APPEAL

Although there are collateral issues presented for decision on this appeal, the basic issue for decision is whether the Trial Court properly construed the restrictive covenants applicable to the lands and residences of both plaintiffs and defendants as not prohibiting defendants' use of their residences for income-producing occupancy by two families. Plaintiffs seek reversal of the Order of the Trial Court dismissing plaintiffs' Complaint upon the basis of the Trial Court's interpretation of the covenants, and ask that the case be remanded for trial upon the merits.

STATEMENT OF FACTS

The restrictive covenants applicable to Indian Rock Subdivision are appended to this brief as Appendix "A" for convenient reference by the Court. Covenant I of the covenants provides as follows:

> "Each and every lot above described shall be known and is hereby designated as a 'Residential Lot' and no structure shall be erected, altered, placed or permitted to remain on any such 'Residential Lot' other than one detached single family dwelling not to exceed two stories in height and a private garage for no more than three automobiles, except that one detached single family dwelling or a duplex may be erected on each of Lots Nos. 30, 31, 38, 39, and 41." (Exhibit 4P.)

Defendants' residences are two-story homes, each so constructed as to have an entrance to the main floor and to the walk-out basement floor. Each floor is independent-

ly equipped so as to be occupied by a separate family. It is conceded and agreed that for a period of time prior to the initiation of this action, each of the defendants occupied the main floors of their respective dwellings and leased or rented the basement floors to other persons, so that, in the case of both residences, it is clear that there was occupancy by more than a single family, and that the residences were so constructed as to provide for such multiple residency. In fact, defendants' residences are duplexes and have for some time been used as such. (Dep. James F. Craner, 2-4, 7-11; Dep. Leland O. Gee, 14-16, 19-21, 22-23; Dep. Earl R. Belnap, 8-12.)

The record establishes that the lot owned by defendants Craner was acquired by a deed that expressly subjected the conveyance to the covenants theretofore recorded. (Exhibit 1P.) Similarly, the lot owned by defendants Gee was acquired by the Gees on October 10, 1961, from Earl R. Belnap, the builder retained by the Gees. (Exhibit 9P.) Belnap had acquired the lot on April 5, 1960, by a deed that expressly subjected the conveyance to the covenants. (Exhibit 7P.) The policy of title insurance acquired by the Gees had appended to it a complete copy of the covenants. (Exhibit 6P.)

After plaintiffs' present counsel appeared in this action, they filed a motion with the Trial Court for reconsideration of the various orders of the Trial Court interpreting the restrictive covenants. In connection with such motion, plaintiffs asked that they be relieved of a statement apparently made to the Trial Court by their former counsel, Mr. Greenwood, to the effect that plain-

tiffs were not seeking any relief by way of demolition of defendants' residences or any required change in the physical features of the homes. The Trial Court denied this relief and held that plaintiffs would be bound by the alleged statements of their former counsel.

ARGUMENT

POINT I.

THE TRIAL COURT ERRED IN ITS AMENDED PRETRIAL ORDER OF DECEMBER 17, 1965, ITS MEMORANDUM DECISION OF DECEMBER 20, 1965, AND ITS ORDER OF MARCH 8, 1966, IN CONSTRUING THE INDIAN ROCK SUBDIVISION RESTRICTIVE COVENANTS AS NOT PROHIBITING DEFENDANTS' USE OF LANDS IN SAID SUBDIVISION FOR MULTI-FAMILY DWELLINGS.

The principal and narrow question for decision on this appeal is whether the Trial Court properly construed Covenant I of the covenants applicable to the Indian Rock Subdivision. That covenant provides in relevant part that,

> "[N]o structure shall be erected, altered, placed or permitted to remain on any such 'Residential Lot' other than one detached single family dwelling . . . except that one detached single family dwelling or a duplex may be erected on each of Lots Nos. 30, 31, 38, 39 and 41." (Exhibit 4P.)

Plaintiffs respectfully submit that the meaning of this covenant is clear and unambiguous. The term "single-family dwelling" is used in contra-distinction to the term "duplex." In their Answers on file herein, each of defend-

ants admits that their homes as originally constructed, and as used and maintained, constitute two-family rather than single-family dwellings. (R. 16-18, 19-20, 45-47, 48-50.) Plaintiffs therefore respectfully submit that there can be no question that the construction of defendants' two-family dwellings was in patent violation of the quoted covenant. Indeed, defendants have not contended that the construction of their two-family dwellings did not violate the covenants.

Defendants contended in the Trial Court, however, that if the construction of their two-family dwellings violated these covenants, plaintiffs' sole remedy would be to require that the structures be demolished or altered so as to constitute single-family dwellings rather than two-family dwellings. In other words, defendants contend that once they have succeeded in violating the covenant, plaintiffs are without any remedy save to require demolition. In so contending, defendants take the position, sustained by the Trial Court, that the quoted covenant imposes no restriction whatever upon the use of a structure once it has been erected—that the covenant restricts construction only, and has no relation to or bearing upon use.

This contention, and the various decisions and orders of the Trial Court based thereon, are contrary to the clear meaning and intent of the quoted covenant, and violate established principles governing the interpretation of restrictive covenants like the covenants here at issue. A very few courts appear to have distinguished between covenants restricting construction only and covenants restricting use, and have held that a covenant which ap-

pears to restrict construction only will not restrict subsequent use of a structure once erected.

DELAWARE: *Daniels Gardens* v. *Hilyard,* 29 Del. Ch. 336, 49 A.2d 721 (1946).

PENNSYLVANIA: *Jones* v. *Park Lane for Convalescents, Inc.,* 384 Pa. 268, 120 A.2d 535 (1956); see dissent of Bell, J., joined by Stearne, J. *Contra*: *Gerstell* v. *Knight,* 345 Pa. 86, 26 A.2d 329 (1942); *Pehlert* v. *Neff,* 152 Pa. Super. 84, 31 A.2d 446 (1943).

GEORGIA: *Jordan* v. *Orr,* 209 Ga. 161, 71 S.E. 2d 206 (1952).

These decisions however, to the extent, if at all that they support defendants' claim, are contrary to the vast weight of authority. The overwhelming majority of cases follow the far more persuasive and logical view that if a restrictive covenant precludes a property owner from erecting a structure of a certain kind, the same covenant, logically and reasonably, must be deemed to prohibit use of a structure once erected for the same purposes as were intended to be avoided by the prohibition of the restricted structures.

ARIZONA: *Ainsworth* v. *Elder,* 40 Ariz. 71, 9 P.2d 1007 (1932).

CALIFORNIA: *Walker* v. *Haslett,* 44 C.A. 394, 186 Pac. 622 (1919); *Bernstein* v. *Minney, et al.,* 96 Cal. App. 597, 274 Pac. 614 (1929) (dictum).

CONNECTICUT: *Hooker* v. *Alexander,* 129 Conn. 433, 29 A.2d 308 (1942).

ILLINOIS: *Simons* v. *Work of God Corp.,* 36 Ill. App. 2d 199, 183 N.E. 2d 729 (1962).

KENTUCKY: *Meyer* v. *Stein,* 284 Ky. 497, 145 S.W. 2d 105 (1940).

MASSACHUSETTS: *Powers* v. *Radding,* 225 Mass. 110, 113 N.E. 782 (1916).

MICHIGAN: *Zelinski* v. *Becker,* 318 Mich. 209, 27 N.W. 2d 615 (1947); *Wood* v. *Blancke,* 304 Mich. 283, 8 N.W. 2d 67 (1943); *Michiana Shores Estates, Inc.* v. *Robbins,* 290 Mich. 384, 287 N.W. 547 (1939); *Nerrerter* v. *Little,* 258 Mich. 462, 243 N.W. 25 (1932); *Boston-Edison Protective Asso.* v. *Goodlove,* 248 Mich. 625, 227 N.W. 772 (1929); *Holderness* v. *Central States Finance Corp.,* 241 Mich. 604, 217 N.W. 764 (1928).

MINNESOTA: *Burger* v. *City of St. Paul,* 241 Minn. 285, 64 N.W. 2d 73 (1954); *Strauss* v. *Ginzberg,* 218 Minn. 57, 15 N.W. 2d 130 (1944).

NEBRASKA: *Hogue v. Dreezen,* 161 Neb. 268, 73 N.E. 2d 159 (1955).

NEW JERSEY: *Rosenblatt* v. *Levin,* 127 N.J. Eq. 207, 12 A.2d 627, aff'd 1941, 129 N.J. Eq. 103, 18 A.2d 267 (1940)

NEW YORK: *Kiernan v. Snowden,* 123 N.Y.S. 2d 895 (1953); *Nielsen* v. *Hiral Realty Corp.,* 172 Misc. 408, 16 N.Y.S. 2d 462 (1939); *Neidlinger* v. *New York Ass'n. Etc.,* 121 Misc. 276, 200 N.Y.S. 852 (1923); *Baumert* v. *Mulkin,* 235 N.Y. 115, 139 N.E. 210 (1923); *Goodhue* v. *Pennell,* 164 App. Div. 821, 150 N.Y.S. 435 (1914).

OKLAHOMA: *Mattson* v. *Fezler,* 202 Okl. 589, 216 P.2d 275 (1949); *Southwest Petroleum Company* v. *Logan,* 180 Okl. 477, 71 P.2d 759, 763 (1937).

TEXAS: *Walker* v. *Dorris,* 206 S.W. 2d 620 (Tex. Civ. App., 1947).

VIRGINIA: *Schwarzchild* v. *Welborne,* 186 Va. 1052 45 S.E. 2d 152 (1947)

WISCONSIN: *Joyce* v. *Conway,* 7 Wis. 2d 247, 96 N.W. 2d 530 (1959).

Accordingly, in *Joyce* v. *Conway, supra,* the Wisconsin Supreme Court held that a covenant against the erection of any building other than a one-family or single dwelling house prohibited the conversion of a structure once erected to a two-apartment building so that it could be occupied otherwise than as a one-family dwelling house.

In *Kiernan* v. *Snowden, supra,* the Supreme Court of New York held that a covenant against the erection of any structure other than a single-family dwelling house precluded the use of such a house, once erected, as a rooming house.

In *Simons* v. *Work of God Corp., supra,* the Illinois Appellate Court held that a covenant that no apartment or structure for the separate housekeeping of more than one family should be built or maintained upon a lot was not merely a building restriction, but was also a use restriction.

In *Walker* v. *Haslett, supra,* the California Appellate Court held that a covenant prohibiting erection of any building other than a "first-class private residence" prohibited the use of a building already erected as a "double or duplex house, or for any purpose than that of a private residence." (186 P.2d 622 at 625.)

In *Southwest Petroleum Company* v. *Logan, supra,* the Oklahoma Supreme Court held that the covenant language "all lots in this plat are restricted to residences

only'' to prohibit ''all other uses upon the land . . .'' (71 P.2d 759 at 763.)

In *Burger* v. *City of St. Paul, supra,* the Minnesota Supreme Court held that:

> ''A use restriction or covenant restricting the erection of any building except for residential purposes of a prescribed type applies to the use as well as to the character of the building.'' (64 N.W. 2d 73 at 80.)

In *Hogue* v. *Dreezen, supra,* the Nebraska Supreme Court held that a covenant proscribing erection of certain classes of buildings "were intended to and had the purpose and effect of limiting the use of the lots to dwelling houses, consisting of one dwelling house on each lot." (73 N.W. 2d 159 at 164.)

Defendants rely on *Jordan* v. *Orr, supra,* and *Jones* v. *Park Lane for Convalescents, Inc., supra.* Plaintiffs respectfully submit that the extent to which these decisions, if in fact they support defendants' view of this case, are contrary to reason and the great weight of authority is well-stated in the dissenting opinion of Justice Bell in the *Jones* case:

> "In my opinion the parties clearly intended 'that the *said property shall be used only for* . . . private dwellings and appurtenances.' The majority opinion limits the restriction to original erection and permits a private dwelling house, one day after erection, to be thereafter *radically altered* and '*used*' for an entirely different purpose. That is contrary to the language, meaning and intent of the restriction. Although the majority opinion is careful not to say so, it logically and necessarily

holds that the owner of the servient tenament can one month or *one day after the erection* of a private dwelling completely remodel the interior or exterior of the private dwelling or both, and since the restriction has no application to *use*—which ignores its *use* provision and clear intent—change it into and *use* it for a store or a commercial building or a sanitarium or a building for any and every other conceivable *use*. I believe this is so unreasonable as to be absurd.

"Whenever two interpretations of a written instrument are reasonably possible, and one construction produces a reasonable result which is in accord with the likely or clearly possible object, purpose and intent of the parties and the other construction produces a result which is unreasonable or absurd, the latter construction should never be adopted." (Emphasis in original.) (120 Atl. 525 at 540.)

It cannot be doubted that to sustain the Trial Court, and the view urged by defendants, would encourage property owners to erect buildings secretly in violation of so-called construction covenants, for once the buildings were completed, they could be used for any purpose.

The record in this case establishes that such a course of deception and concealment was indeed pursued by at least two of the defendants in this litigation. It is a matter of record in this case that defendant Leland O. Gee assured his neighbors in Indian Rock Subdivision in writing during the course of construction of the Gee home that it would be occupied only by the Gees and their family, and that it would not be used for income purposes. (Exhibit 10P.) The Answer on file and a part of the record in this appeal establishes be-

yond doubt that from the very beginning, defendants Gee planned and carried forward the construction of a two-family dwelling with full purpose and intent that it be occupied by two separate families and used for income purposes. (R. 19-20, 45-47; see also Dep. Leland O. Gee, 16-17, 19-21.)

The record establishes with equal clarity that the Craner dwelling was designed and planned from the beginning as a two-family dwelling (R. 16, 49), notwithstanding that defendant Craner was aware of the restriction prohibiting buildings other than single-family dwellings. (Dep. James F. Craner, 5.)

The decision of the Trial Court interpreting the covenants applicable to Indian Rock Subdivision was rendered as a matter of law. No evidence was before the Trial Court bearing upon the intention of the draftsmen of the covenants. As this Court held in *Parrish* v. *Richards,* 8 U. 2d 419, 336 P. 2d 122 (1959), the interpretation of restrictive covenants is governed by the same principles as are applicable to the interpretation of statutes. It is, of course, settled that the intention of the legislature is a consideration of the greatest importance in the interpretation of statutes. Accordingly, and on the same principles, the intention of those who prepared and caused to be recorded the restrictive covenants applicable to Indian Rock Subdivision is a matter of the greatest importance in rendering the proper interpretation of the covenants.

The primary evidence of the intent of those who prepared and recorded the subject covenants is, of course,

the content of the covenants themselves. Plaintiffs respectfully submit that the covenants themselves express a manifest and clear intention to restrict the utilization of lots in Indian Rock Subdivision to occupancy by one family per dwelling. The overriding and paramount purpose of restrictive covenants such as those here at issue is to protect, preserve and maintain the value and integrity of properties subject to the covenants. Plaintiffs have invested in their dwelling sites and improvements in reliance upon covenants providing for restriction to single-family occupancy. Defendants would convert the Indian Rock Subdivision into a neighborhood of rental multiple-family properties.

Even if the intent of the Indian Rock Subdivision covenants is regarded as ambiguous with respect to the question whether they control subsequent use as well as original construction, the Trial Court erred. As has been noted, the Trial Court had before it no evidence other than the covenants themselves of the intention of the parties.

> "The surrounding circumstances are taken into consideration in determining the intention in some cases, where it is necessary to do so by reason of the uncertainty or ambiguity in the language giving rise to the restriction. In such a case, the location and character of the entire tract of land, and whether or not the restriction is for the sole benefit of the grant or for the benefit of the grantee and subsequent purchasers, as well as whether it is in pursuance of a general building plan for the development and improvement of the property, must be considered. The object or purpose which the covenant was designed to accom-

> plish is also taken into consideration." (20 Am. Jur. 2d, Section 186, "Covenants, Conditions, Etc., pp. 754-755.)

Accordingly, this Court, in *Metropolitan Inv. Co.* v. *Sine*, 14 U. 2d 36, 376 P.2d 940 (1962), found a restrictive covenant "ambiguous and subject to interpretation [as to duration] considering the intentions of the parties at the time of its imposition" and held:

> "The intentions of the parties, as gathered from the surrounding circumstances, and purpose of the restriction, must be considered and given effect." (14 U. 2d 36 at 43.)

Defendants have contended, and the Trial Court in this case held, that the ambiguity that defendants assert and the Trial Court apparently found in these covenants should be resolved in favor of the unrestricted use of defendants' properties. This principle, however, is subject to limitations apparently disregarded by defendants and not considered by the Trial Court.

> "Such construction in favor of the unrestricted use, however, must be reasonable. The strict rule of construction as to restrictions should not be applied in such a way as to defeat the plain and obvious purposes of a restriction. (20 Am. Jur. 2d Section 187, "Covenants, Conditions, Etc.," pp. 756-757.)

In summary, plaintiffs respectfully urge that as a matter of law and based upon the overwhelming weight of authority, the admitted use that defendants have made and are making of their properties violates the

Indian Rock Subdivision covenants. If, however, this Court should accept defendants' view that the covenants are ambiguous as to whether they restrict use as well as construction, then plaintiffs urge that the case should be remanded for trial on the merits so that proper evidence of the intention of the parties can be adduced for the purpose of resolving the claimed ambiguity. In either event, the decision of the Trial Court peremptorily and as a matter of law defining away defendants' rights as property owners, and as beneficiaries of the covenants, should be overturned.

POINT II

THE TRIAL COURT ERRED IN ITS ORDER OF MARCH 8, 1966, IN DENYING PLAINTIFFS' MOTION THAT THEY BE RELIEVED OF THE EFFECT OF STATEMENTS MADE TO THE TRIAL COURT BY PLAINTIFFS' FORMER COUNSEL.

It appears from the record that at some point in the pretrial proceedings, plaintiffs' former counsel, Messrs. Greenwood and Meservy, may have advised the Trial Court that the plaintiffs were not seeking demolition or any change in the outward physical aspects of the defendants' two-family dwellings. Immediately upon appearing on behalf of plaintiffs, the undersigned applied to the Trial Court to be relieved of this statement on the ground that it was apparently made to the Trial Court upon the basis of a misunderstanding between plaintiffs and their then counsel, and upon the further ground that under the view of this case taken by the undersigned, together with the view of the Indian Rock

Subdivision restrictive covenants taken by defendants, plaintiffs would be entitled to require demolition or alteration of defendants' two-family dwellings. The Trial Court treated the alleged statement of prior counsel as a formal stipulation abandoning relief originally sought in plaintiffs' Complaint and Amended Complaint, and incorporated the abandonment in its final order of dismissal over the objections of plaintiffs' present counsel. (R. 126-128.)

It is, of course, settled that the court may relieve parties of stipulations. (50 Am. Jur. § § 11, 14, "Stipulations," pp. 611-614.) Moreover, the statement apparently made by plaintiffs' former counsel certainly does not rise to the level of a stipulation, and would have been, at most, a statement of counsel's intentions with respect to this case. The statement contained in the Trial Court's order of dismissal so indicated. (R. 126.) Accordingly, plaintiffs respectfully urge that the refusal of the Trial Court to permit plaintiffs' counsel to pursue this case and to undertake the protection of the plaintiffs' rights and interest in conformity with present counsel's view of the case and the instructions of the plaintiffs was a manifest abuse of discretion that alone warrants the reversal of the decision made by the Trial Court. Again, there were not sufficient facts before the Trial Court upon which the Trial Court could have decided whether plaintiffs were entitled to the relief that the Trial Court now has held plaintiffs cannot seek in any event. The decision of the Trial Court, of course, does not purport to be a decision on the merits on this point but merely seeks to bind plaintiffs to a claimed abandonment of relief sought under the terms of plaintiffs' Complaint

and Amended Complaint and now sought by plaintiffs' present counsel.

Plaintiffs respectfully submit that the refusal of the Trial Court to permit plaintiffs to seek the relief to which they may be entitled on the facts provides a sound and important basis for overturning the order of dismissal entered by the Trial Court and remanding this case for trial on the merits.

CONCLUSION

Plaintiffs respectfully submit that the Trial Court committed error in misconstruing the Indian Rock Subdivision covenants in a vacuum, without any consideration of the manifest and obvious purposes for which the covenants were adopted and without taking into account the intentions of the parties who prepared the covenants and caused them to be recorded. Further, plaintiffs submit that the Trial Court erred in unduly and prejudicially restricting the remedies available to plaintiffs for defendants' violations of the covenants. Upon these grounds, plaintiffs urge that the order of dismissal of the Trial Court be reversed and that the case be remanded for trial upon the merits.

Respectfully submitted,

VAN COTT, BAGLEY,
CORNWALL & McCARTHY

_____

Leonard J. Lewis

_____

C. Keith Rooker

Attorneys for
Plaintiffs-Appellants

APPENDIX "A"

BUILDING RESTRICTIONS
INDIAN ROCK SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned owners of the following described real property situated in Salt Lake County, State of Utah:

> All of Lots 1 to 41, both inclusive INDIAN ROCK Subdivision, according to the official plat thereof on file in the office of the County Recorder of Salt Lake County, Utah,

hereby declare that all and each of said lots above described shall be subject to and shall be conveyed subject to the Reservations, Restrictions and Covenants hereinafter set forth.

I

Each and every lot above described shall be known and is hereby designated as a "Residential Lot" and no structure shall be erected, altered, placed or permitted to remain on any such "Residential Lot" other than one detached single family dwelling not to exceed two stories in height and a private garage for not more than three automobiles, except that one detached single family dwelling or a duplex may be erected on each of Lots Nos. 30, 31, 38, 39, and 41.

II

Every dwelling erected on any of the following described lots: Nos. 1, 2, 3, 4, 28, 29, 32 and 33. shall have

a ground floor square foot area, exclusive of open porches or attached garages, of not less than 1200 square feet. All other lots not less than 1400 square feet.

III

No building shall be erected, placed or altered on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in the subdivision, and as to location of the building with respect to topography and finished ground elevation, by a committee composed of Richard R. Hoyt, John Glauser and J. Alvon Glauser, or by a representative designated by a majority of the members of said committee. In the event of death or resignation of any member of said committee, the remaining member or members shall have full authority to approve or disapprove such design and location or to designate a representative with like authority. In the event said committee, or its designated representative, fails to approve or disapprove such design and location within 30 days, after said plans and specifications have been submitted to it or, in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this Covenant will be deemed to have been fully complied with. Neither the members of such committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this Covenant. The powers

and duties of such committee, and its designated representative, shall cease on and after May 1st, 1957, thereafter, the approval described in this covenant shall not be required unless prior to said date and effective thereon, a written instrument shall be executed by the then record owners of a majority of the lots in this subdivision and duly recorded appointing a representative, or representatives, who shall thereafter exercise the same powers previously exercised by said committee.

IV

No building shall be located nearer to the front residential lot line than the building limit line as shown on the recorded plat of said Indian Rock. However, covered or uncovered, but not enclosed porches, balconies, porte-cocheres, or terraces may extend beyond the building limit line not more than 12 feet, and customary architectural appurtenances, such as cornices, bay windows spoutings, chimneys, may extend not more than four feet beyond said building line. Steps leading to dwelling may extend beyond such building line provided such steps are not higher than the floor level of the first floor of the dwelling. No building shall be located nearer to either side line of a residential lot than 8 feet. No residential structure shall be erected or placed on any building plot, which plot has an area of less than 6400 square feet or a width of less than 70 feet at the front building setback line.

V

No noxious of offensive trade or activity shall be carried on upon any residential lot hereinbefore described or

any part or portion thereof, nor shall anything be done thereon which may become an annoyance or nuisance to the occupants of the remaining residential lots hereinbefore described.

VI

No trailer, basement, tent, shack, garage, or other outbuilding erected in, upon or about any of said residential lots hereinbefore described or any part thereof shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

VII

No structure shall be moved onto any residential lot hereinbefore described or any part thereof unless it meets with the approval of the Committee hereinbefore named, such approval to be given in writing.

VIII

No signs, billboards or advertising structures may be erected or displayed on any of the residential lots hereinbefore described or parts or portions of said residential lots except that a single sign, not more than 3 x 5 feet in size, advertising a specific lot for sale or house for rent, may be displayed on the premises affected.

IX

No trash, ashes or any other refuse may be thrown or dumped on any residential lots hereinbefore described or any part or portion thereof.

X

All covenants and restrictions herein stated and set forth shall run with the land and shall be binding on all the parties and persons claiming any interest in said residential lots hereinbefore described or any part thereof until 25 years from the date hereof, at which time said covenants and restrictions shall be automatically extended for successive periods of 10 years unless by a vote of the majority of the then owners of said residential lots, it is agreed to change the said covenants in whole or in part.

XI

If the parties now claiming any interest in said residential lots hereinbefore described, or any of them, or their heirs, successors, grantees, personal representative or assigns, shall violate or attempt to violate any of the covenants and restrictions herein contained prior to 25 years from the date hereof, it shall be lawful for any other person or persons owing any other residential lot or lots in said area to prosecute any proceedings at law or in equit against the person or persons, firms or corporations so violating or attempting to violate any such covenant or covenants and/or restrictions or restriction, and either prevent him or them from so doing or to recover damages or other dues for such violation or violations.

XII

Invalidation of any one of the covenants and restrictions hereinbefore set forth by judgment or court order shall in no wise affect any of the other provisions hereof which

shall remain in full force and effect until 25 years from the date hereof subject to automatic extension as provided in Paragraph X hereof.

s/ Lena Glauser
s/ John Glauser
s/ Richard R. Hoyt
s/ Maude S. Hoyt
Owners

STATE OF UTAH
} SS.
County of Salt Lake

On the 25th day of April, A.D. 1952 personally appeared before me JOHN GLAUSER and LENA GLAUSER, his wife, and RICHARD R. HOYT and MAUDE S. HOYT, his wife, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

LUCILE R. WRIGHT
NOTARY PUBLIC,
residing at:
Salt Lake City, Utah

(SEAL)

My commission expires 12/10/55.

CERTIFICATE

STATE OF UTAH
} SS.
County of Salt Lake

I, Hazel Taggart Chase, Recorder in and for the County of Salt Lake, State of Utah, do hereby certify that the

foregoing is a full, true and correct copy of the original Building restriction No. 1283662, as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 21st day of September, A.D. 1965.

By H. S. Ensign
Deputy Recorder