

12-31-2019

Fashion Plantation Estates Prop. Owners Ass'n v. Sims

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Lindsay Rich, *Fashion Plantation Estates Prop. Owners Ass'n v. Sims*, 12 J. Civ. L. Stud. (2019)

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**BOATS AND BUILDING RESTRICTIONS IN LOUISIANA
LAW AND JURISPRUDENCE: *FASHION PLANTATION ES-
TATES PROPERTY OWNERS ASSOCIATION V. SIMS***

Lindsay Rich*

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Keywords: building restrictions, restrictive covenants, Louisiana Homeowners Association Act, property law

I. INTRODUCTION

The statutory and jurisprudential rules governing building restrictions must strike “a balance between individual demands for the recognition of modifications of property rights to suit individual needs and social demands for the preservation of a relatively simple system of unencumbered property.”¹ The Louisiana Civil Code defines a “building restriction” as a charge “imposed by the owner of an immovable in pursuance of a general plan governing building standards, specified uses, and improvements.”² The Code further requires that if there is any “doubt as to the existence, validity or extent of the building restrictions” it must be “resolved in

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1. A. N. Yiannopoulos, *Real Rights: Limits of Contractual and Testamentary Freedom*, 30 LA. L. REV. 44 (1969).

2. LA. CIV. CODE ANN. art. 775 (2017).

favor of the unrestricted use of the immoveable.”³ Louisiana jurisprudence has established that building restrictions are to be strictly construed,⁴ conflicting with the Revised Statutes, which state that building restrictions should be liberally construed.⁵

II. BACKGROUND

In *Fashion Plantation Estates Property Owners Association v. Sims*,⁶ the Sims owned a home in Fashion Plantation Estates Subdivision located in Hahnville, Louisiana. Their property, along with the rest of the subdivision was subject to the restrictive covenants included in the St. Charles Parish conveyance records. The Fashion Plantation Estates Property Owners Association (the “Association”) was responsible for enforcing the covenants. The original covenant under paragraph 8 provided that “[p]arking or temporary storage of boats, campers, etc. will not be permitted in front of any houses.”⁷ The covenant was amended eleven years later under paragraph 11, which provides that “[p]arking or temporary storage of boats, campers, recreational vehicles, trailers, etc. will not be permitted in front of any homes. Also, such items will not be permitted within 100 feet from the edge of any street unless it is parked behind a six-foot privacy fence or in a garage.”⁸

In 2004, the Sims purchased a boat and parked it in their driveway, next to the garage door, and in front of a portion of their home.⁹ On April 7, 2015 the vice president of the Association sent the Sims an informal notification that they were in violation of paragraph 11 because their boat was parked in front of their property. The Sims

3. *Id.* at art. 783.

4. *Id.* See comment (b). See also *Cashio v. Shoriak*, 481 So. 2d 1013 (La. 1986) (holding that building restrictions should be strictly construed).

5. LA. REV. STAT. ANN. § 9:1141.4 (2019).

6. *Fashion Plantation Estates Property Owners Association v. Sims*, 209 So. 3d 384 (2016).

7. St. Charles Con. Rec., Paragraph 8 (1999) (emphasis added).

8. St. Charles Con. Rec., Paragraph 11 (2010) (emphasis added).

9. This portion of their home was the farthest right wall which faced the street. It included a decorative inlay and was not a main portion of the house.

were also notified that they had three days to remove the boat from their property or formal action would be taken. The Sims failed to remove the boat, and the vice president sent them formal notifications of their alleged violation on April 13, April 15, and May 15, 2015. In these notifications, the Sims were informed that if they continued to remain in violation of paragraph 11, enforcement action would be taken and a \$15.00-a-day fine would be imposed until the violation was corrected, in addition to costs and attorney's fees. The Sims continued to ignore the Association's requests and on August 5, 2015, the Association filed a petition for a permanent injunction pursuant to the Louisiana Civil Code¹⁰ in the 29th Judicial District Court, seeking to enjoin the Sims from further violating paragraph 11 of the amended covenants. The Association also sought the payment of the \$15.00 daily fine and all costs incurred as a result of the Association's enforcement of the covenants, including attorney's fees.

The Sims answered the petition on August 17, 2015 and denied all the claims alleged in the petition. The Sims argued that they were not subject to the amended covenants on paragraph 11, as they were improperly amended, and that they were only subject to the original covenants. The bench trial on the injunction was held on December 4, 2015. At trial, the vice president testified that the Sims's boat was parked in front of their home, was only 54 ½ feet from the street, and was not behind a six-foot privacy fence. Thus, they were in violation of both paragraph 8 of the original covenants and paragraph 11 of the amended covenants. The vice president testified that the purpose of paragraph 11 was to "maintain the value of the properties" and to look like a subdivision and not a "junkyard."¹¹ He also testified that there had been several other instances where boats or

10. See LA. CIV. CODE ANN. art. 779 (2017), providing for injunctive relief. ("Building restrictions may be enforced by mandatory and prohibitory injunctions without regard to the limitations of Article 3601 of the Code of Civil Procedure.")

11. Sims, 209 So. 3d at 386.

trailers had been parked in a similar fashion, but the residents corrected the violation in a reasonable time after notice was given. However, Mr. Sims described the boat to be parked along the side of the house, and not in front of it as the vice president suggested. Both parties submitted post-trial memoranda.

The Sims argued that a legal definition should be applied to the case, not a literal interpretation of what constitutes the front of the Sims' property. The Association argued that the covenants were properly recorded, the boat was parked in front of the home, and the Sims violated the covenants.¹² On February 4, 2016, the trial court issued a judgment in favor of the Sims, finding that paragraph 8 of the original covenants was vague and ambiguous.¹³ The trial court held that the covenants did not define "in front of" and did not use the term "front" in such a way that "in front of" in paragraph 8 could be interpreted in relation to other provisions of the covenants. The trial court went on to note that while the Association contended that the portion of the structure that jutted out past the garage constituted the "front" of the home, this was likely not the opinion of laymen who may view the home.¹⁴ The trial court found that the placement of the Sims's boat on the side of the home and in front of the garage door did not violate the original 1999 restrictive covenants.

As to Sims's other issue, the trial court held in their favor that the paragraph 11 covenants did not apply to them. The court noted that the 1999 covenants, under paragraph 8, set a term of 25 years and a specific method for their continuation and modification. The trial court found that the original covenants were recorded on February 26, 1999 and had not been in effect for the required 25-year

12. *Id.* The Association argued that the violation was "to the detriment of the overall scheme of uniformity of planning and development governing the subdivision and to the detriment of the other property owners."

13. *Id.* at 388. Due to the vague and ambiguous nature of the covenant, the trial court noted that the covenant must be interpreted against the developer and in favor of the property owner.

14. *Id.* at 386. The trial court supported its finding by the testimony of the Association vice president, who testified that the covenants were amended in 2010 because several of them were ambiguous and needed explanation.

term and could not be amended in 2010. The Association appealed the decision to the Fifth Circuit Court of Appeals in Louisiana.

III. DECISION OF THE COURT

The Court of Appeals reversed and remanded the decision of the trial court in favor of the Association. The appellate court held that the trial court erred in the interpretation of the restriction under the Revised Statutes (La. R.S. 9:1141:4), finding that the vice president's testimony proved that the purpose and intent of the restriction was to maintain the value and appearance of the property.¹⁵ The court held that the covenant was not vague or unambiguous, and that the boat was parked in front of the house in violation of paragraph 8. The Association argued in the second assignment of error that the trial court erred in finding that paragraph 11 was not effective against the Sims. The appellate court did not decide whether paragraph 11 was or not effective against the Sims, as the point was moot in light of their holding on paragraph 8.

The court reversed and remanded the trial court's judgment back to the trial court for the issuance of a permanent injunction prohibiting the Sims from parking their boat in violation of paragraph 8. The trial court was instructed to determine the assessment of fees to the Sims associated with the enforcement of the covenants by the Association.

IV. CONFLICTING VIEWS ON BUILDING RESTRICTIONS

The legal nature of building restrictions is not under dispute. They are "incorporeal immovables and real rights,"¹⁶ not simply obligations. They are a restriction on ownership to the detriment of individual owners, to the collective benefit of all other residents of a subdivision. The Civil Code wants them to be regulated "by application of

15. LA. REV. STAT. ANN. 9:1141.4 (2019), provides that "[t]he existence, validity, or extent of a building restriction affecting any association property *shall be liberally construed to give effect to its purpose and intent*" (emphasis added).

16. LA. CIV. CODE ANN. art. 777 (2017).

the rules governing predial servitudes to the extent that their application is compatible with the nature of building restrictions.”¹⁷ Strictly speaking, they do not qualify as predial servitudes: though one may identify a servient estate, there is no dominant estate.¹⁸

There are two views on how to interpret building restrictions. The Civil Code views them as a charge restricting the use of the immovable, and for that reason it prescribes a strict interpretation. This strict interpretation is meant to be protective of the right of ownership. The Revised Statutes prescribe a liberal interpretation, favoring the development of well-regulated subdivisions, protecting the interests of present and future owners at the cost of a limitation of their ownership rights. The narrow view of the Code treats building restrictions as real rights, to prevent structures that are immovable or to prevent any annoying actions by a neighbor. This view protects the property owner. However, building restrictions go well beyond imposing a standard of construction, they also regulate how the individual owners can use the private and public space. This type of regulation makes the type of interpretation used crucial for determining how property owners can use their own property.

The liberal view of the Revised Statutes was used by the Appellate Court in its construction of the phrase “in front of,” creating a building restriction on the boat in favor of the Association. This interpretation is protective of the investment of the developers and of communal living. This view on the building restrictions would allow for the restrictions to further regulate the acts that homeowners can do on their private property, to ensure that the standard of communal living within the subdivision is upheld. Under this broad interpretation of the Revised Statutes, the Sims would be unable to park their boat on their own private property, as the standards of communal living should not be subrogated to that of the rights of the private property owner.

17. *Id.*

18. *Id.* at art. 646.

The trial court used the narrow interpretation under article 783, construing the language in favor of the individual owner and against the Association. The trial court did so because at the time of the enactment of the original restrictive covenants in 1999, the Louisiana Condominium Act had not yet been adopted.¹⁹ The court saw therefore no reason to apply the new law to be found in the Revised Statutes, and therefore ignored the liberal interpretation that it is promoting. This narrow interpretation under the Code favors the rights of the property owner more than the Revised Statutes. Under the Code, building restrictions must always be interpreted in favor of unrestricted use of the immovable, but this cannot be taken to the extreme.²⁰ Individual restrictions must be interpreted to ensure the furtherance of the general development plan, but must not be too burdensome upon the individual property owner.²¹ The conflict between the narrow interpretation promoted by the Code and the liberal interpretation enshrined in the Revised Statutes must be resolved.

V. THE CONFLICT BETWEEN THE REVISED STATUTES AND THE CODE

The trial court narrowly interpreted the covenant in favor of the Sims, using article 783 and comment (b) to find the language of the paragraph 8 covenant language “in front of” to be ambiguous and vague. The appellate court chose to broadly construe the language

19. *Fashion Plantation Estates Prop. Owners Ass’n v. Sims*, No. 80, 281 D, La. Dist. LEXIS 10595, at 5 (La. Dist. Ct. 29th Dist. 2016). Subsequent to the original covenants, the legislature enacted the Louisiana Homeowners Association Act, and changed the law to use liberal interpretations. However, the trial court found that because the Association did not offer any evidence that the Revised Statutes would change the interpretation of the ambiguous covenants, the court decided not to rule on the use of the Revised Statutes.

20. Allen Scott Crigler, *Some Observations on Building Restrictions*, 41 LA. L. REV. 1201, 1212 (1981).

21. *Id.* at 1213. The reasonableness standard allows for a balance to be struck between the need of the developers to have flexible restrictions to allow for a certain standard of communal living, against the public policy concerns that individual’s property is not unduly encumbered, allowing them the freedoms of property ownership.

consistent with the Revised Statutes, holding in favor of the Association. It held that the area where the boat was parked, next to the garage but in front of the farthest right wall that faced the street, was in fact in front of the home, therefore, in violation of the covenant.

The provisions of the Revised Statutes, the Louisiana Homeowners Association Act, were introduced in 1999.²² These Revised Statutes govern building restrictions and homeowners' associations in Louisiana. The appellate court used these Revised Statutes to justify its broad interpretation of the building restriction in favor of the Association. The view under the Revised Statutes to liberally construe building statutes is in direct conflict with article 783, and the Louisiana jurisprudence has well established that building restrictions are to be strictly construed.²³ The statute states specifically that "[t]he existence, validity, or extent of a building restriction affecting any association property shall be liberally construed to give effect to its purpose and intent."²⁴ The Code states that "[d]oubt as to the existence, validity, or extent of building restrictions is resolved in favor of the unrestricted use of the immovable."²⁵ Unrestricted use of the immovable in this case would favor the trial court's narrow interpretation, construing the covenant in favor of the property owner.

This conflict between the Revised Statutes and the Civil Code can be resolved by the doctrine of *lex specialis derogat legi generali* or *specialia generalibus derogant*, a maxim of interpretation that states that the more specific law should be given full effect over the more general law. The Revised Statutes, tailored specifically to building restrictions, should prevail over the code articles, enacted to cover building restrictions in a broader sense. Indeed, article 783 clearly states that the provisions of the Louisiana Homeowners Association Act "shall supersede any and all provisions of this Title in

22. LA. REV. STAT. ANN. § 9:1141.1 *et seq.* (2019).

23. LA. CIV. CODE ANN. art. 783 (2017). *See* comment (b).

24. LA. REV. STAT. ANN. § 9:1141.4 (2019) (emphasis added).

25. LA. CIV. CODE ANN. art. 783 (2019).

the event of a conflict.”²⁶ The appellate court was in that sense correct in using the Revised Statutes, following the prioritization established by the Civil Code itself. However, we are facing a true conflict of norms that may not be resolved by the mechanical application of the maxim. Both the *lex generalis* and the *lex specialis* give a “general” rule of interpretation, and these two rules conflict. The only reason we describe the second one as special law is due to the Louisiana Homeowners Association Act that is housed in the Revised Statutes. Yet, in essence, both are rules of interpretation and they are general.

VI. CONCLUSION

Resolving such a conflict may require legislative intervention, to decide whether the interpretation under the Civil Code, protective of individual ownership, or the Louisiana Landowners Association Act, protective of investment and communal living, is to prevail. Both texts are addressing the very same building restrictions, one in general terms, and the other with more specific rules, and it does not make sense to have one promoting restrictive interpretation, while the other favors liberal interpretation. This conflict may be resolved merely by removing one of the two provisions, as they are antagonistic.

While the appellate court cannot be blamed for applying a time-honored maxim of the civil law, keeping these conflicting provisions is a strange way to strike the balance between the individual demands for the recognition of modifications of property rights and the social demands for the preservation of a system of unencumbered property, which was Professor Yiannopoulos’s concern.

26. *Id.* See also *Cashio v. Shoriak*, 481 So. 2d 1013 (La. 1986).