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session, the lessee's right would be vindicated without a personal judgment, and his right could, in this respect, be classified as real under the Code.

In conclusion, it seems that there has never been any definitive judicial statement as to the true nature of a real right in Louisiana. The latest position taken by the court is that a real right is the same as an interest as owner. An examination of the code provisions indicates, however, that the true characteristics of the real right are: (1) that it passes with the land,³⁴ and (2) that it does not make anyone personally liable, but is merely a charge on the property.³⁵

If the court should choose to interpret real rights in strict adherence to the terms of the Code, it seems that the position taken in the *Reagan* case must be amended to include those real rights that are not synonymous with an interest as owner. If, however, the present position is adhered to, and a real right is confined to those rights which constitute an interest as owner, it would seem that another name must be found for those real rights that are not compatible with that definition. In any event, it seems that the position of the court as to the nature of a real right should be clarified.

Edward C. Abell, Jr.

Building Restrictions in Louisiana

The purpose of this Comment is to examine and analyze the Louisiana law pertaining to building restrictions.¹ In this analysis a comparison with other means of restricting the use of property will be made.

The building restriction is a limitation on the use of property imposed by an ancestor in title in accordance with a general plan where the purpose is to maintain certain building standards and uniformity in improvements.² The law of building restrictions has primarily developed from judicial decisions beginning

34. LA. CIVIL CODE art. 2011 (1870).

35. *Id.* art. 2012.

1. See Comment, 8 TUL. L. REV. 262 (1933).

2. See *Ouachita Home Site & Realty Co. v. Collie*, 189 La. 521, 179 So. 841 (1938); *Rabouin v. Dutrey*, 181 La. 725, 160 So. 393 (1935); *Hill v. Wm. P. Ross, Inc.*, 166 La. 581, 117 So. 725 (1928); *Munson v. Berdon*, 51 So.2d 157 (La. App. 1951).

with the case of *Queensborough Land Co. v. Cazeau*.³ Although this case was not decided on the basis of the rights of holders of title derived from a common ancestor,⁴ dicta in the case concerning the rights of these holders or grantees⁵ was adopted in the later case of *Hill v. William P. Ross, Inc.*⁶ While the court in the *Hill* case relied heavily on common law authority, the court in the subsequent case of *Ouachita Home Site & Realty Co. v. Collie*⁷ likened building restrictions to servitudes and quoted extensively from the Civil Code.⁸ Thus the judicial development of the Louisiana law of building restrictions has been from both the common and civil law.

A building restriction may be easily distinguished from a servitude since a building restriction requires "an ancestor in title"⁹ and a "general plan"¹⁰ while neither of these is required for the establishment of a servitude.¹¹ Further, there need be only two estates involved to establish a predial servitude¹² while the concept of the building restriction has developed in the context of multiple estates such as encountered in a subdivision.¹³

While the building restriction and the servitude are the more accepted means of restricting the use of property, a theory advanced in the recent case of *Tucker v. Woodside*¹⁴ may also be

3. 136 La. 724, 67 So. 641 (1915).

4. The action brought in the *Queensborough* case was for a resolution of the sale between the vendor and vendee. The vendee had sold property to a Negro in violation of a covenant contained in the contract. The court stated that probably the occupants of other lots could not rescind the contract since that right was not expressly reserved to them.

5. The court stated: "[I]t would seem as if they [the other landowners] might not have the right to rescind the sale. . . . Their remedy would seem to have to be restricted to injunction (mandatory and other) and damages, as stipulated in the contract." *Queensborough Land Co. v. Cazeaux*, 136 La. 724, 737, 67 So. 641, 646 (1915).

6. 166 La. 581, 117 So. 725 (1928).

7. 189 La. 521, 179 So. 841 (1938).

8. *Id.* at 527-28, 179 So. at 843.

9. *Holloway v. Ransome*, 216 La. 317, 43 So.2d 673 (1949); *Alfortish v. Wagner*, 200 La. 198, 7 So.2d 708 (1942); *Munson v. Berdon*, 51 So.2d 157 (La. App. 1951).

10. *Edwards v. Wiseman*, 198 La. 382, 3 So.2d 661 (1941); *Cambias v. Douglas*, 167 La. 791, 120 So. 369 (1929); *Herzberg v. Harrison*, 102 So.2d 554 (La. App. 1958); *Murphy v. Marino*, 60 So.2d 128 (La. App. 1952).

11. While not a requisite to the validity of a servitude, an ancestor in title may impose a servitude. See LA. CIVIL CODE art. 729 *et seq.* (1870). The owner has the right to establish any servitude on his estate that he deems proper. *Id.* art. 709.

12. See *id.* art. 648. It is not contrary to the nature of servitudes that the same servitude should be established on several estates for the benefit of one, or that the same estate should be subject to a servitude for the benefit of several estates. *Id.* art. 745.

13. See, e.g., *Cambias v. Douglas*, 167 La. 791, 120 So. 369 (1929).

14. 53 So.2d 503 (La. App. 1951).

valid. In this case the First Circuit Court of Appeal found that a covenant restricting the use of property *where the obligation was due to a person* was a real obligation running with the land.¹⁵ A restriction on the use of property where the obligation is due a person is not a predial servitude since the Code requires the obligation be due to an estate.¹⁶ Neither does the restriction recognized in the *Tucker* case fall within the three personal servitudes—use, usufruct, and habitation—recognized by the Civil Code.¹⁷ Since a restriction of this type is neither a predial servitude nor a personal servitude enumerated in the Civil Code, there is some reason to believe this expression of the law may not be correct.¹⁸

Establishment of the Building Restriction

While no clear pattern can be ascertained, it appears that in imposing building restrictions, the early practice was to insert the restriction in each individual sale. Today, the common practice appears to be that the vendor enters a declaration of the building restrictions or a map of the property which contains the restrictions into the conveyance records and subsequently brings these restrictions to the purchasers' attention by reference in the act of sale. Owners of adjacent properties have entered into agreements styled building restrictions, yet these restrictions lack the necessary characteristic of an ancestor in title. Although these agreements do not appear to be building restrictions, a court could give effect to the owners' intentions by finding that the owners established predial servitudes on their property.¹⁹

If a doubt arises as to the intention of the ancestor in title

15. Although Article 2012 lists only three kinds of real obligations, the court felt that this listing was not intended to be exclusive when considered in the context of Article 2013 and Article 2015. But in the case of *Cambias v. Douglas*, 167 La. 791, 120 So. 369 (1929), where the vendee had bound herself to erect on the premises a single residence, the Supreme Court found this similar covenant to be a personal obligation. See *Begnaud v. Hill*, 109 So.2d 562 (La. App. 1959); *Herzberg v. Harrison*, 102 So.2d 554 (La. App. 1958); *Murphy v. Marino*, 60 So.2d 128 (La. App. 1952); *LeBlanc v. Palmisano*, 43 So.2d 263 (La. App. 1949). *But cf.* *Lowe v. Wilson*, 194 Tenn. 267 (Tenn. App. 1952).

16. LA. CIVIL CODE art. 646 (1870).

17. *Ibid.*

18. See note 15 *supra*.

19. This type of covenant could easily be a predial servitude. It is established by an agreement between landowners for the benefit of the estates which is exactly the manner prescribed by the Civil Code. LA. CIVIL CODE arts. 646, 709 (1870). The Code also permits the establishment of a servitude for the benefit of several estates upon one estate and the establishment of servitudes on several estates for the benefit of one estate. *Id.* art. 745.

to establish a general plan of restriction, it appears to have been the policy of the courts to resolve the doubt in favor of the free use of the property. Thus where the restrictions are established by the ancestor in title by insertion in each individual sale, omission from a substantial portion of the deeds has been held to prevent the establishment of the restriction.²⁰ Even in the instance where the restrictions are properly inserted in each sale, the failure to make these restrictions uniform has been sufficient to cast a doubt on the intention of the ancestor in title to establish a general plan of restriction.²¹

For a valid building restriction, the covenant must be for the exclusive benefit of other property owners, rather than for the vendor imposing the restriction.²² Thus, where the owner has to obtain permission from the vendor to use the property for a certain purpose, there is not a true building restriction, but merely a personal covenant enforceable only between the parties.²³

Imposition of building restrictions on property after a mortgage has been recorded will not affect the rights of the mortgagee.²⁴ The reason for this rule is that the placing of building restrictions on the property might diminish its value and thereby prejudice the mortgagee if he were bound by the restrictions. The public records doctrine protects the mortgagee in this situation.²⁵

Action for Enforcement

Since building restrictions are established for the benefit of the surrounding property, the right to enforce the restrictions is a real right running with the land.²⁶ Thus the original vendees and those who hold title under them have the right to en-

20. *Cambias v. Douglas*, 167 La. 791, 120 So. 369 (1929); *Herzberg v. Harrison*, 102 So.2d 554 (La. App. 1958); *Munson v. Berdon*, 51 So.2d 157 (La. App. 1951).

21. *Murphy v. Marino*, 60 So.2d 128 (La. App. 1952).

22. *Ouachita Home Site & Realty Co. v. Collie*, 189 La. 521, 179 So. 841 (1938); *Rabouin v. Dutrey*, 181 La. 725, 160 So. 393 (1935); *Hill v. Wm. P. Ross, Inc.*, 166 La. 581, 117 So. 725 (1928).

23. *LeBlanc v. Palmisano*, 43 So.2d 263 (La. App. 1949).

24. *Vernon v. Allphin*, 98 So.2d 280 (La. App. 1957). LA. CIVIL CODE art. 750 (1870) provides substantially the same rights for mortgagees where the property is subjected to a servitude after the property is mortgaged.

25. *Ibid.*

26. *E.g.*, *Edwards v. Wiseman*, 198 La. 382, 3 So.2d 661 (1941); *Hill v. Wm. P. Ross, Inc.*, 166 La. 581, 117 So. 725 (1928); *Queensborough Land Co. v. Cazeaux*, 136 La. 724, 67 So. 641 (1915). See Comment, 21 LOUISIANA LAW REVIEW 462 (1960).

force these covenants.²⁷ When a violation of the restrictions on the property occurs, it has been indicated that those owners whose property was not affected by the violation could not bring an action to enforce the covenant.²⁸ However, it would seem that property within a subdivision and subject to a restriction would be near enough to be affected in some way by a violation even though it was some distance from the place of the violation.²⁹ On the other hand, an attempt to enforce a restriction on property outside of the original restricted area was ineffectual since only property within the original restricted area could be within the general plan intended by the ancestor in title.³⁰

Remedies Available for Violation of Restrictions

Injunction is the usual remedy sought and granted in actions concerning violations of building restrictions.³¹ In several instances owners have been forced to remove buildings that were erected in violation of a restriction³² or were forced to cease certain activities that were violative of a building restriction.³³ That damages would be an appropriate remedy is indicated by references in a section of the Revised Statutes³⁴ and the dicta in the *Queensborough* case,³⁵ even though there does not appear to be any litigation raising this issue that has reached the appellate level. Where a building restriction might be prescribed, substantially violated, vague, or even where no restriction was established, the *sic utere* servitude or the tort remedy of nuisance might be available for the protection of owners of adjacent prop-

27. *Ibid.*

28. See *Guyton v. Yancey*, 125 So.2d 365 (La. 1961).

29. The effects of the lowering of value of property on the farther side of a subdivision are felt throughout the subdivision when a building restriction is violated. The effect of having a violation creep house to house until it is next door would also be a good reason to allow the enjoining of a violation in its inception. See *Finn v. Murphy*, 72 So.2d 358 (La. App. 1954). *But see* *Guyton v. Yancey*, 125 So.2d 365 (La. 1961).

30. *Begnaud v. Hill*, 109 So.2d 562 (La. App. 1959).

31. E.g., *Hill v. Wm. P. Ross, Inc.*, 166 La. 581, 117 So. 725 (1928); *Guyton v. Yancey*, 115 So.2d 622 (La. App. 1959); *Finn v. Murphy*, 72 So.2d 358 (La. App. 1954); *Munson v. Berdon*, 51 So.2d 157 (La. App. 1951).

32. E.g., *Harris v. Pierce*, 73 So.2d 330 (La. App. 1954); *Plauche v. Albert*, 42 So.2d 876 (La. App. 1949).

33. E.g., *Rhodes v. Foti*, 54 So.2d 534 (La. App. 1951); *Sherrouse Realty Co. v. Marine*, 46 So.2d 156 (La. App. 1950); *LeBlanc v. Palmisano*, 43 So.2d 263 (La. App. 1949).

34. LA. R.S. 9:5622 (1950) provides in part: "Actions to enjoin or to obtain damages for . . . violation of restrictions . . ." (Emphasis added.)

35. See note 5 *supra*.

erty.³⁶ It must be noted that where a violation of a building restriction is not a nuisance, this fact will not be a defense to the action for violation of the restrictive covenant.³⁷

Termination of the Building Restriction

The covenant establishing the building restriction may provide for its termination after a specified period of time or upon the happening of a certain event. A building restriction is also deemed to be at an end in an area where there has been a general abandonment of the plan of the ancestor in title.³⁸ To warrant an inference of a general abandonment of the scheme there must be a sufficient number of violations of the particular restriction in relation to the number of lots affected by it.³⁹ Thus if the restriction requires that a residence be built facing a certain street, only the violations on property subject to this restriction will be considered in determining if there has been a general abandonment of the plan.⁴⁰ However, a number of minor breaches would not warrant the inference of an abandonment of the general plan since no intent to abandon the scheme would be shown.⁴¹ Even where the violations of one restriction are sufficient in number to constitute an abandonment of the plan, only the building restriction which has been violated is considered as having been abandoned.⁴² Thus a change in a neighborhood from residential to commercial would not affect a restriction relating to the setback from the front of the property.⁴³

Changes outside the restricted area, which would be indicative of an abandonment of the plan if within the ambit of the restriction, are usually not considered.⁴⁴ Even a general abandonment in one part of a subdivision will not disturb the validity of the restriction in another portion of the subdivision where it is still observed.⁴⁵

36. *Roche v. St. Romain*, 51 So.2d 666 (La. App. 1951).

37. *Harris v. Pierce*, 73 So.2d 330 (La. App. 1954).

38. *Hill v. Wm. P. Ross, Inc.*, 166 La. 581, 117 So. 725 (1928); *Finn v. Murphy*, 72 So.2d 358 (La. App. 1954). *Accord*, *Guyton v. Yancey*, 115 So.2d 622 (La. App. 1959).

39. E.g., *Edwards v. Wiseman*, 198 La. 382, 3 So.2d 661 (1941); *Finn v. Murphy*, 72 So.2d 358 (La. App. 1954); *Rhodes v. Foti*, 54 So.2d 534 (La. App. 1951).

40. *Edwards v. Wiseman*, 198 La. 382, 3 So.2d 661 (1941).

41. *Guyton v. Yancey*, 115 So.2d 622 (La. App. 1959).

42. *Edwards v. Wiseman*, 198 La. 382, 3 So.2d 661 (1941); *Finn v. Murphy*, 72 So.2d 358 (La. App. 1954); *Rhodes v. Foti*, 54 So.2d 534 (La. App. 1951).

43. *Alfortish v. Wagner*, 200 La. 198, 7 So.2d 708 (1942).

44. *Plauche v. Albert*, 42 So.2d 876 (La. App. 1949).

45. *Salerno v. De Lucca*, 211 La. 659, 30 So.2d 678 (1947).

The legislature has provided a two-year prescriptive period on actions to enjoin or to obtain damages for the commission or continuance of a violation of restrictions contained in the title to land.⁴⁶ This statute evidently includes not only building restrictions but servitudes and all other means of restricting the use of land since it provides that "a violation of restrictions contained in the title to land are prescribed."⁴⁷

Prescription under the statute terminates a building restriction and frees the particular parcel of land from the restriction.⁴⁸ Prescription of a particular restriction on one parcel of property will not affect other building restrictions validly imposed on that property since no abandonment of the other restrictions can be imputed to the adjacent owners.⁴⁹ However, once a certain piece of property is free of a restriction, the restriction is treated as if it never existed on that particular piece of property.⁵⁰ This was demonstrated in *Chexnayder v. Rogers*⁵¹ where the property was freed of a commercial restriction. The owner of the property was not only permitted to enlarge the business premises but was allowed to conduct business of a different nature. Although one lot is freed of a particular restriction by prescription, this does not affect the same restriction on other lots similarly situated, even those adjacent and owned by the same person unless there has been a general abandonment of the plan.⁵²

Some question exists as to the commencement of the two-year prescriptive period even though the statute provides that it is to begin at the "commencement" of the violation.⁵³ The court has indicated that prescription may not run where the violation is unnoticeable.⁵⁴ In other instances an activity may not be a violation when carried on as a modest operation but could be a violation if the activity were expanded.⁵⁵

In addition to the two-year prescription, the legislature has

46. LA. R.S. 9:5622 (1950), as amended, La. Acts 1960, No. 448.

47. *Ibid.*

48. *Ibid.*

49. *Edwards v. Wiseman*, 198 La. 382, 3 So.2d 661 (1941).

50. *Ibid.* But cf. *Salerno v. De Lucca*, 211 La. 659, 30 So.2d 678 (1947).
Contra, The Work of the Louisiana Supreme Court for the 1946-1947 Term — Property, 8 LOUISIANA LAW REVIEW 238 (1947).

51. 95 So.2d 381 (La. App. 1957).

52. *Sherrouse Realty Co. v. Marine*, 46 So.2d 156 (La. App. 1950).

53. LA. R.S. 9:5622 (1950), as amended, La. Acts 1960, No. 448.

54. See *Roche v. St. Romain*, 51 So.2d 666 (La. App. 1951).

55. *Ibid.* Here the question would be *when* the activity would become a violation, not *if* the activity was a violation.

provided that the owners of a majority of the square footage of land in a subdivision, where there is no provision for terminating the restrictions, may terminate them by recording an agreement in the conveyance *and* mortgage records⁵⁶ of the parish in which the land is located, provided that the restrictions must be in effect fifteen years before their termination.⁵⁷ Although there is no express provision for the termination of building restrictions for a portion of the restricted area, the language of the statute would appear broad enough to permit this construction.

A proffered title which contains a building restriction that has been violated but not prescribed should enable the vendee to refuse specific performance where he was unaware of the violation at the time of the execution of the contract to purchase.⁵⁸ Where it is clear that the restriction has lapsed through prescription, it would seem that specific performance should be granted since the statute provides that prescription terminates the building restriction. In the event that it is uncertain whether prescription has run, the granting of specific performance would seem unjust to the vendee since the court's decision would not be binding on third parties.⁵⁹ It would seem that the best solution here would be for the vendor to seek additional time to perfect his title by obtaining a declaratory judgment.⁶⁰

Effect of Zoning Restricted Property

A valid restriction on the use of real property should not be nullified nor superseded by the adoption of a zoning ordinance.⁶¹ Thus the zoning of land in a residentially restricted area to commercial usage would not have the effect of destroying the restrictive covenants or preventing their enforcement. The zoning of an area as commercial, however, may be evidence of an abandonment of the general plan in that area.⁶² If one buys land free of restrictive covenants, a subsequent zoning ordinance restrict-

56. No reason can be ascertained as to why the legislature thought it necessary to require the recording of the agreement in the mortgage records.

57. LA. R.S. 9:5622 (1950), as amended, La. Acts 1960, No. 448, § 1.

58. See *Oubre v. Stassi*, 56 So.2d 598 (La. App. 1952). Cf. *Rabouin v. Dutrey*, 181 La. 725, 160 So. 393 (1935).

59. A decision by the court that prescription had run would not prevent third parties from bringing suit later to enjoin the violation. See *Oubre v. Stassi*, 56 So.2d 598 (La. App. 1952).

60. The vendor could join all the other landowners in an action to declare the restriction to be prescribed. See LA. CODE OF CIVIL PROCEDURE arts. 1871-1873 (1960).

61. See *Alfortish v. Wagner*, 200 La. 198, 7 So.2d 708 (1942).

62. *Munson v. Berdon*, 51 So.2d 157 (La. App. 1951).

ing the use of property would be valid since the holding of property is subject at all times to a valid exercise of the police power.⁶³

Conclusion

The development of the Louisiana law of building restrictions will probably continue to be through further legislative enactments and adaptation of common law theories and civilian theories of servitude. Since there seems to be no predominance of adaptation of the common law or civilian theories, it would seem that the courts in developing the jurisprudence will continue to adapt the rules that appear to give the more just results.

Martin Smith, Jr.

Union Enforcement of Individual Employee Rights Arising from a Collective Bargaining Contract

It appears to be settled that vis a vis the employer, a collective bargaining contract creates rights for individual employees, as well as for unions.¹ The distinction between employee and union rights may be illustrated by comparing a contract provision which concerns individual wages of the employees² with a provision which provides for arbitration of grievances.³ This Comment is concerned with the enforcement by a union of the individual rights of the employees as against the employer.

Section 301(a) of the Labor-Management Relations Act provides that either the union or the employer may sue in the federal courts for the enforcement of a collective bargaining contract.⁴ It has been held, however, that the individual em-

63. *Ransome v. Police Jury of Parish of Jefferson*, 216 La. 994, 45 So.2d 601 (1950).

1. Howlett, *Contract Rights of the Individual Employee as Against the Employer*, 8 LAB. L.J. 316, 319 (1957); *Report of Committee on Improvement of Administration of Union Management Agreements, 1954*, 50 NW. L. REV. 143, 158 (1955).

2. See *Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437 (1955).

3. See *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957).

4. 61 STAT. 156 (1947), 29 U.S.C. § 185(a) (1952): "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States