

Property Owners' Rights Upheld in Course Development Case

By WILLIAM JABINE

An outlook over a golf course is a valuable possession. That is what the supreme court of New Mexico said in effect recently when an attempt was made to deprive some homeowners of such a view.

Back in 1947 a real estate development was established and the then owners of the land set apart two tracts, one of which according to certain covenants in the instrument filed with the plat of the subdivision



"shall be used as a hotel or clubhouse"; and the other "shall be used as a golf course, tennis courts, swimming pools, lawful athletic contests and activities". The layout of the proposed subdivision was in the form of the letter "V." The residence lots were located along the arms of the "V" with the golf course tract between them.

After about 10 years has elapsed, the ownership of the course and clubhouse tracts passed to a new owner who desired to change their character. Only 9 of the planned 18 hole course had been constructed. The new owner executed a document by which the restrictive covenants covering the clubhouse and golf course tracts were extinguished. In an attempt to take advantage of this document, the new owner brought action seeking a declaratory judgment as to the validity of the so-called "extinguishment" of the restrictions.

The trial court ruled that the document was valid and that the restrictions had been lawfully extinguished. An appeal was taken to the New Mexico supreme court.

Rules for Homeowners

That court reversed the judgment of the trial court. It held that the homeowners who had bought their lots relying on the promise that the golf course would be maintained, had acquired a right in

the clubhouse and golf course tracts which the new owner could not take away from them.

The court said in part: "Although it is contended by defendants that there was some type of dedication, either common law or otherwise, of the golf course, we do not deem it necessary to so decide. The fee of the golf course area is owned by the plaintiff, but the plaintiff's use thereof must be subordinated to the extent of the easement in favor of the owners of any of the property in the subdivision. The issue of the right of the public to use the area is not before us and we express no opinion.

"There would appear to be no doubt when we consider the terms of the instrument together with the situation as illustrated by the plat and the surrounding circumstances that it was intended that the benefits of having the golf course area utilized for the purpose originally specified would attach to the other lands in the subdivision. Plaintiffs proposed extinguishment or partial amendment would only be opening the door for such further reduction in the size of the area as originally shown, so that in theory at least, it might eventually become a 'midget' golf course, or none at all, and the area develop into a vista of roofs, chimneys and television aerials." (Cree Meadows, Inc. (NSL) v Palmer, 362 P.2d 1007.)

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Seniors' Film Available

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