Washington Supreme Court Rules in Favor of Club

Convenant Does Not Restrict Parking Lot Improvement

By WILLIAM JABINE

Is the operation of a non-profit golf club a business? That, in simplified form, was one of the questions that the Supreme Court of the state of Washington had to answer recently when a man who had bought a lot adjacent to a golf club and built a residence thereon, sought an injunction to prevent the golf club from improving its parking area by blacktopping it. The man claimed that the deed to his property contained a restriction that forbade a "noxious or offensive business trade" on the lots platted at the time he bought them. He said that this restriction had been violated by the club in improving some of the lots for parking purposes.

Legal Side of Golf

Part of Business Operation

A trial court, sitting without a jury, found that although the proposed improvement of the parking lot was neither noxious nor offensive, nor an annoyance nor nuisance to the neighborhood (all restrictions as part of the covenant), nevertheless the golf club operation was a business. Thus, the lower court ruled that the maintenance of the proposed parking lot, being an integral part of such a business operation, was therefore a "business trade", in violation of the restrictive covenant. The club appealed the trial court's decision that enjoined it from improving its parking area as planned.

After reveiwing the general rules of law applying to restrictive covenants, the Supreme court stated: "Applying these rules to the restrictive covenants in question, the intent of the contracting parties becomes apparent. Although no structure other than a detached single-family dwelling was permitted. it was not intended that the land should be used for residential purposes only. Land may be used without a structure thereon, and there is no express covenant prohibiting such use. (Citation) The fact that the parties designated 'noxious or offensive or business trade' as the only prohibited nonresidential use, is clear evidence of their intention that other nonresidential uses were permissible."

Social Organization Not Business

Having thus disposed of the "structure" provision of the series of covenants, the Court addressed itself to the question of whether the operation of a golf club is a business. On this point it said in part: "The word 'business' in restrictive covenants is one of ambiguous and uncertain meaning. (Citation) The appellant is a social club, organized under appropriate statutes as a nonprofit corporation. The fact that it charges its members and guests for services and makes a profit on some of its activities does not change its essential character as a social organization. (Citation) The commonly accepted meanings of the words 'business' and 'trade' do not include social organizations."

Parking Essential Development

The court further stated: "Lots 1 and 2 of block 3 were planted with grass, veloped, and used as the tees for the first hole of the second nine of the course. Lots 3, 4, and 5, in their unimproved condition were used for parking purposes. The respondent made no objection to such use. He objected only when it was planned to make the area more suitable for the established use. The parking facilities were reasonably necessary for the successful operation of the course. Space for automobile parking is essential to the development of any facility where substantial numbers of people gather."

Intention Not Restrictive

"The conduct of the parties to the agreement, and all of the surrounding circumstances, establish that the intent of the parties was that the covenant would not restrict such an improvement. (Citation)

"Restrictive covenants will not be ex-

(*Continued on page* 94)

Parking Lot Improvement

(*Continued from page* 62)

tended by implication to include matters not clearly expressed in the agreement. Applying the rules heretofore stated to the facts in the instant case, we conclude that the improvement of the parking lot does not constitute a 'business trade' within the restrictive covenant."

The judgment of the lower court in favor of the plaintiff homeowner and against the defendant golf club was reversed with instructions to dissolve the injunction that forbade the leveling and blacktopping of the planned parking area. The decision was close with five justices constituting the majority, while four concurred in a dissenting opinion. (Burton v. Douglas County, 399 P. 2d 68.)

Summary Judgment Sought for Negligent Operation of Golf Car

A summary judgment (asked for to ascertain if there is an issue for trial) has been sought in Miami Federal court by an out-of-state golfer against a Largo, Fla. resident, charged with negligent operation of a golf car at a Florida hotel course. The plaintiff is also asking damages in excess of $10,000 from the defendant in a second amended complaint filed along with the motion for summary judgment. The hotel was also named as co-defendant on motions from the plaintiff and the defendant, who was the operator of the car.

The out-of-state golfer was pinned against the wall of a course shelter by an electric car operated by the Largo, Fla. resident. The latter said the accident was unavoidable because the car's brakes failed as he was driving in a rainstorm. The motion for summary judgment on the issue of liability claims that the Largo golfer, the defendant, should have carried his clubs to the shelter rather than attempted to operate the car during a storm.

Don't Forget the Big Date!
May 31 — National Golf Day