IN THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE

January 20, 2011 Session

R. DOUGLAS HUGHES ET AL. v. NEW LIFE DEVELOPMENT CORPORATION ET AL.

Appeal

OPINION

$FACTUAL\ AND\ PROCEDURAL\ BACKGROUND^1$

The appellants, R. Douglas and M. Lynne Hughes and Louise and Guy Hubbs (co $\mathbf{OL}_0^{\text{pea}}$

in accordance with the plan. Homeowners further alleged that New Life knew of this plan when it bought property in Cooley's Rift and took title subject to the plan. According to the complaint, New Life had announced its "intent to develop its property in Cooley's Rift in ways that violate the Cooley's Rift Plan and the Restrictive Covenants."

The complaint sets out seven counts: (1) an action for enforcement of three express restrictions of the Restrictive Covenants, (2) a derivative action on benefit of the introduce of the Association to enforce the express covenants, (3) a derivative action for an injunction qui timet "to prevent New Life from altering or destroying any of the Amenities and Preserves," (4) a derivative action for specific enforcement of "the transfelra

Restrictive Covenants. The stated purpose of the amendments was to resolve issue w

of active business income of the type appare

104 (Tenn. Ct. App. 1998). To shift the burden oc1

(2) Any director.

With two (2) of a total of 68 votes, the plaintiffs have only 2.9% of the voting power, not enough to bring a derivative action.

Summary judgment in Case 1

Amendments

In moving for summary judgment in Case 1, New L

•	Article 1.14 defines "homesite." an unimproved parcel of	The original restriction	s stated that a homesite was

•	Article resubdiv	3.06 g viding o	generally f homesite	limits es. The	homesites amendme	s to one nts again a	dwelling dd qualifyi	and p	orohibits s a u	the

members under § 6.13 are not effective without the approval of members whose interests would be adversely affected unless the declaration fairly apprises at n

Many courts go further to s's

not apply uniformly to all lots and were not approved

Preserve and a West Preserve with a combined area of 7

Summary judgment in Case 2

Case 2 involves three claims: an individual action for injunction and two derivative claims. Given our conclusion above concerning the plaintiffs' lack of standing to bring derivative claims, we must conclude that the trial court i