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S.C. Supreme Court

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS**

Allison R. Lee, Circuit Court Judge

Circuit Court Case No. 07-CP-40-8107
Appellate Case No. 2013-1980
Court of Appeals Opinion No. 2013-UP-237

**On Writ of Certiorari
to the South Carolina Court of Appeals**

Place on the Greene Homeowners Assoc., Inc., Petitioner,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, Respondents.

BRIEF OF PETITIONER

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QUESTION PRESENTED

Did the Court of Appeals err in rejecting the circuit court's finding that laches does not bar enforcement of the restrictive covenant against bars and restaurants?

STATEMENT OF THE CASE

These four consolidated actions were commenced with the filing on December 4, 2007, of complaints by Place on the Greene Homeowners Assoc., Inc., the petitioner herein, against, respectively, W.G.R.Q., LLC, Easy Coin Laundry, Inc., Eva Nell Berry, and Jeffrey O. Kenney, the respondents herein. The petitioner alleged that the respondents were owners of a total of seven condominium units of Place on the Greene, a condominium regime located on Greene Street in Columbia. The petitioner further alleged that businesses were being conducted in these units in violation of a restrictive covenant found in the Master Deed, prohibiting the operation of restaurants, bars, and other businesses dependent upon a volume of walk-in patrons. All four respondents admitted the operation of prohibited businesses but asserted the defenses of laches, waiver, and estoppel.

The cases were consolidated and tried before the Honorable Allison R. Lee, Presiding Judge of the Fifth Judicial Circuit, on April 9, 2009. By order dated July 1, 2011, and entered on July 6, 2011, Judge Lee rejected the defenses and enjoined further operation.

The Court of Appeals reversed the order of Judge Lee, holding that the defense of laches applied.

After the Court of Appeals denied the Association's petition for rehearing, a writ of certiorari was issued.

STATEMENT OF FACTS

Place on the Greene is a condominium regime comprised of seventy-one units in the five-storey building at 2002 Greene Street in Columbia. Sixty-three of these units are one- and two-bedroom residential apartments. Seven residential units are located on the southern half of the street-level floor. On the northern half of street-level, facing Greene Street, are eight commercial units, seven of which are at issue in this action. At time of trial

in 2009, three of these units were leased to two restaurants, Pita Pit and Blue Cactus; three were occupied by a bar, Tavern on the Greene; and one was leased to a convenience store, The Tobacco Shop.

Place on the Greene was developed in 1983–85 by Greene Street Partnership, a limited partnership of Security Federal Savings & Loan Association and two individuals, Beau Powell and Craig Stoneburner. When the Master Deed for the condominium regime was written, the developer included a prohibition against the operation of bars or restaurants in the commercial units, as well as any “retail shop that relies on a volume of walk-in patrons” [Master Deed, Art. X § 3, p. 13, R. 264.] The intention was to limit the use of the commercial units to professional offices and the like. [R. 141.]

In November of 1985 the developer deeded six of the eight commercial units to its limited partners — four units to Mr. Powell and two units to Mr. Stoneburner. Powell and Stoneburner persistently tried to remove the restriction against bars and restaurants but never succeeded. [R. 90; 151; 158; 161–62.] Having failed to remove the restriction, they simply ignored it. In 1988 Mr. Stoneburner rented his Unit A to a 24-hour laundromat [R. 203] and his Unit B to a shoe store. [R. 205.] The board of directors of the homeowners’ association — dominated by board member Powell — took no action. By 1993, a jeweler and a “tan spa” occupied two of the units. [R. 92.] By 1995, Bo-D’s restaurant occupied one of the units. [R. 93.] In 1994 Mr. Powell rented his Units F and G to a restaurant, the Blue Cactus. [R. 193.] Several years earlier, Mr. Powell had rented Unit F to Sub Pub restaurant and bar. [R. 120–21.] In 1999, the shoe store in Unit B was succeeded by a new bar, Tavern on the Greene, which also rented Units C and D. Thus, Tavern on the Greene occupied three of the eight commercial units. The laundromat in Unit A closed in 2000 and was replaced by a restaurant, Pita Pit. Mr. Powell sold his commercial units in 2002 to a new owner, who continued the lease of Units G and H to the Blue Cactus restaurant. The new owner rented Unit F to The Tobacco Shop in 2009. [R. 250.]

Mr. Powell knew that it is the duty of the board of directors of the homeowners’

association — of which he was the dominant member for ten years — to enforce the restrictive covenants. He was able to intimidate the board into inaction. [R. 167.] He controlled and dominated the board. [R. 167; 178.] He was louder and stronger than the other board members. [R. 181.] He was knowledgeable and authoritative. [R. 181.] Most of the other board members trusted him [R. 175] or at least wanted to appease him. [R. 190–91.] He assured them that he was within his rights and that restaurants were allowed. [R. 171; 175.] Most believed him. [R. 189; 178.] The only board member who opposed him was a lone voice. [R. 178–79.] Homeowners are generally reluctant to serve on such boards and often are naive about their duties and about the legalities of condominium operation [R. 175], rendering them especially vulnerable to lingering developer influence. This was clearly true of the board members who allowed Powell and Stoneburner to violate the restrictive covenant as they did. During the period of developer domination, the board failed to enforce the restriction and sometimes acquiesced in its violation.

Each of the present owners of the eight commercial units took ownership subject to the restrictions found in the Master Deed.¹ Three of the present owners acknowledged *actual* notice of the restrictions. The present owner of Unit A was given a copy of the Master Deed when he bought from Stoneburner in 1990. [R. 212.] He continued to

¹ Every owner has notice of the Master Deed, of course. More than that, deeds in the chain of title of every unit involved in this suit contain the following express agreement:

The provisions of the Master Deed . . . shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit, his heirs and assigns, . . . as though such provisions were recited and stipulated at length herein. By subscription to and acceptance of this Indenture Deed, Grantee acquiesces in the provisions of the Master Deed

Pl. Ex. 3, ¶ 4, R. 272, deed of Unit A dated 11/8/85 from the developer to Stoneburner; Pl. Ex. 4, ¶ 4, R. 283, deed of Unit B dated 11/8/85 from the developer to Stoneburner; Pl. Ex. 4, ¶ 4, R. 280, deed of Unit B dated 2/24/04 from Stoneburner to EHM Investments, LLC (slight, immaterial variation in language of last sentence); Pl. Ex. 5, ¶ 4, R. 305, deed of Units C and D dated 10/29/84 from the developer to Bain; Pl. Ex. 6, R. 308, deed of Units F, G, and H from the developer to Powell dated 11/8/85.

operate his laundromat until 2000, when he rented Unit A to Pita Pit restaurant in violation of the restriction. The present owner of two of the three units leased to Tavern on the Greene was advised of the restriction against bars by her attorney at closing, but chose to take the risk. [R. 235.] The present owner of Units F, G, and H rented Unit F to a convenience store in violation of the restriction **after** this suit was brought to enjoin his violation with respect to the restaurant in Units G and H.

The evidence at trial in April 2009 showed the effect of continuing violations of the restrictive covenant:

The bar in Units B, C, and D was open until 2 o'clock in the morning on Saturdays and Sundays and 3 o'clock on the other five days of the week. [R. 217.] Pita Pit restaurant was open until 3 a.m. [R. 112.] Crowds congregated outside the bar until it closed. [R. 120.] The noise from their commotion, arguments, confrontations and occasional fights [R. 120] could be heard throughout the building, where the residents of sixty-three apartments were trying to sleep. The residents could hear "every word they say all the way up to the fifth floor." [R. 120.] It got louder as the night passed. "[W]hen . . . people get drunker and drunker, you're going to have — you know, the noise escalates." [R. 120.] Frequent complaints to the police had little effect. [R. 121; 124; 226, lines 2–8.]

The vagrants who inhabit Five Points often slipped into the building when Pita Pit employees habitually left the back door unlocked and ajar [R. 117]; or when the bar's employees failed to lock the door behind them when they left the building to deposit garbage in the dumpster. [R. 116; 118–19; 125–26; 173; 207; 216.]

The seventy-one apartments of Place on the Greene have only one dumpster, insufficient in capacity for the high volume of garbage generated by the restaurants and bar. [R. 119.] The restaurants and bar deposited waste into the dumpster out of proportion to their number of units, making the dumpster area filthy. Their employees rolled garbage bins through the hallways at any hour to reach the dumpster. Vagrants rummaged through the dumpster looking especially for Pita Pit food — their favorite.

"[They] leave a complete mess back there." [R. 119.] "[L]eaving it smeared all around the garbage area itself."

The roach problem in the building was inevitably magnified by the restaurants and their garbage. [R. 118.]

The condominium regime pays a single water bill for all seventy-one apartments. The residents thereby subsidized the restaurants and bar in their disproportionate use of water. [R. 122–23.]

All the problems generated by the restaurants and the bar — breaches of building security, noise and loud music every night until the wee hours, crowds and commotions on the sidewalk outside, excessive garbage, pests — were the subject of constant complaints to the Association by the residents. [R. 71; 79.]

The owners of the commercial units testified that the value of their property would drop if the restriction were to be enforced. They offered no evidence of any decrease in value with expert testimony or otherwise. On the other side of that coin, there is likewise no evidence of the extent to which the value of the sixty-three residential units at Place on the Greene has been negatively impacted by disregard for the restrictive covenant in these seven units. One needs no expert evidence to conclude that the impact must have been substantial.

The Master Deed contains the following non-waiver clause:

No waiver by Association. The failure of Association or of the owner of a unit to enforce any right, provision, covenant or condition which may be granted by this Master Deed . . . shall not constitute a waiver of the right of the Association or of the owner of a unit to enforce such right, provision, covenant or condition in the future.

On these facts the circuit court weighed the equities and enjoined further violation of the restrictive covenant.

The Decision of the Court of Appeals

The Court of Appeals reversed.

The Court failed to address the validity and effect of the non-waiver provision of the Master Deed — a matter of first impression in South Carolina.

The Court failed to acknowledge the statutory public policy of the State demanding strict enforcement of condominium restrictive covenants.

The Court found that those violating the restriction would suffer financial loss in the future if the restriction were enforced, when of course **every** enforcement of such a restriction will result in future loss of profit to the violator.

The Court found that the covenant violators would not have “entered into obligations” if the restriction had been enforced earlier, where there was no evidence to that effect and the claim was rejected by the circuit court.

The Court failed to acknowledge the fact that a fresh violation of the restriction occurs each day that these bars and restaurants operate, thereby distinguishing this case from those where the violation consisted of a single event which was allowed to happen without objection. None of the three cases relied upon by the Court of Appeals involved an ongoing violation of condominium restrictive covenants in the face of a non-waiver provision.

The Court penalized the homeowners’ board for its “general lack of initiative,” failing to take into account that the restriction at issue can be enforced at any moment by a new purchaser of any of the residential units, who could not possibly be found guilty of laches.

ARGUMENT

The Court of Appeals erred in reversing the circuit court's rejection of the defense of laches.

I.

The Court of Appeals erred in reversing the circuit court's conclusion that the delay was not unreasonable and that no prejudice resulted.

Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. *Byars v. Cherokee County*, 237 S.C. 548, 118 S.E.2d 324 (1961). Whether a claim is barred by laches is to be determined in light of facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches. *Arceneaux v. Arrington*, 284 S.C. 500, 327 S.E.2d 357 (Ct. App. 1985). In sum, the [party asserting laches] must establish the following elements to prove laches: (1) delay, (2) unreasonable delay, (3) prejudice.

Hallums v. Hallums, 296 S.C. 195, 198-99, 371 S.E.2d 525, 527 (1988).

A. Under all the circumstances, the Association's delay was not unreasonable.

The period during which developers Powell and Stoneburner violated the restriction is not counted in the calculus of laches. As the Court reasoned in *Maxwell v. Smith*, 228 S.C. 182, 195, 89 S.E.2d 280, 286 (1955):

[The developer], as the author of the covenant he was violating, should not be heard to insist that immediate resort to the courts is prerequisite to the enforcement of [the covenant].

Developer Powell, an author of the restriction he was violating, continued his violations until 2002, when he sold. The present actions were brought in 2007, five years later. The material delay to sue was five years after the era of developer violation. The Court of Appeals disregarded the just precept of *Maxwell v. Smith* and figured the period of delay from the first violation by developer Stoneburner in 1988. See: *Wall v. Huegenin*, 305 S.C. 100, 102, 406 S.E.2d 347, 349 (1991) (delay of thirteen years was not unreasonable where there was no prejudice to the defendant); *Grossman v. Grossman*, 242 S.C. 298, 309, 130

S.E.2d 850, 855 (1963) (delay of seven years was not unreasonable where there was no prejudice to the defendant). During those five years, nothing different was done.

Delay becomes unreasonable when it prejudices the adverse party — typically by lulling that party into a belief that no corrective action will be forthcoming, thereby inducing the proscribed conduct. In this way the “unreasonable delay” prong of the *Hallums* test melds into the third prong: prejudice.

B. *The respondents gambled that continuing violation of the restriction would never be stopped. The loss of that bet does not result in detrimental reliance in the law of laches. Even if it were otherwise, there is no satisfactory evidence of loss if the restriction were to be enforced.*

A showing of prejudicial reliance is essential to the defense of laches. The respondents made no effort to demonstrate the nature or extent of any financial loss they might incur if they are henceforth required to abide by the restriction.

1. *There is no evidence that any of the respondents paid more than fair market value.*

None of the respondents testified that they would not have purchased their units if the covenant had been enforced earlier.

There was no evidence that any respondent paid more than fair market value in the hope that the unit would continue to be allowed to operate in violation of the restriction. Fair market value is *reduced* by restrictive covenants unless they will soon expire or may be removed by the payment of money. *Homer v. Dadeland Shopping Center, Inc.*, 217 So.2d 844, 847-48 (Fl. Ct. App. 1969).²

Even if a respondent did pay more in the hope that future violation would be permitted, this is not the stuff of prejudicial reliance. *Buffington v. T.O.E. Enterprises*, 383

² Respondent W.G.R.Q. purchased its three units from Mr. Powell as a small part of a package of many parcels for an undifferentiated lump sum. No value was assigned to the purchase price of the three units at issue. Deed from Powell to W.G.R.Q., LLC, Pl. Exh. 6, dated 5/24/02 (inadvertently omitted from Record on Appeal). The conveyance was “subject to easements, conditions and restrictions of record”. The principal of W.G.R.Q. acknowledged that his company would survive an injunction. [R. 253.]

S.C. 388, 393, 680 S.E.2d 289, 291 (2009) (“In our view, it would be inequitable to consider [the violator’s] financial loss in purchasing and improving the land since they were on notice of the covenants when they purchased the property.”).

2. There is no evidence of improvements to the units in reliance upon non-enforcement.

With respect to six of the seven units at issue, the respondents are sued as the owners of the units, not the lessees who operate the bar, the restaurants, or the tobacco store.³ No respondent claimed to have made improvements in reliance upon non-enforcement of the covenant. Any improvements would have been amortized long ago, in any case.

3. Loss of future profit from continued violation is not prejudicial.

The only detriment claimed by respondent Kenney was that he would suffer financial loss if his bar were to be closed. This is simply another way of saying that the owner hopes that future violation of the restriction will be as profitable as past violation. This is not detrimental reliance upon past failure to enforce the restriction.

4. Loss of a prospective sale based upon the hope of continued violation is not prejudicial.

Respondent Easy Coin claimed that it would lose a “verbal contract” for the sale of its unit if the restriction were enforced. Easy Coin failed to present any evidence of the “verbal contract” sales price, and did not claim that this price exceeded fair market value. Even if that hope is implied in this evidence, the hope that a unit’s value is inflated by the prospect of continued future violation is not detrimental reliance.

5. There is no evidence of obligations undertaken in reliance.

The Court of Appeals found that the respondents “entered into obligations they would not have otherwise if the HOA had timely enforced the restrictive covenants” The Court failed to identify any such obligations. There is no evidence that any of the

³ Respondent Kenney owned Unit B, one of the three units occupied by the bar which he ran.

respondents entered into any obligations of any kind.

* * * * *

Since these actions were brought in 2007, the respondents have continued for nearly eight years to profit from the conduct of prohibited businesses in their units.⁴ Respondent Easy Coin renewed the expiring lease of Pita Pit **after** this action began. Respondent W.G.R.Q. leased to a tobacco shop **after** this action began. So far from being the victims of detrimental reliance, the respondents have profited unfairly from the unlawful operation of businesses in their units for the entire time that the covenant was not enforced, and for the many years after this action was brought and after violation was enjoined.

The defense of laches would be unavailable to the respondents if the party seeking injunctive relief were a new owner of any one of the sixty-three residential units. Any of these owners could seek injunctive relief, with or without the participation of the Homeowners' Association. Section 27-31-170 authorizes an action for injunctive relief ". . . in a proper case, by an aggrieved co-owner." The Master Deed confers the same right. Pl. Ex. 1, Art. XIX, § 1, p. 22, R. 265. Now that the Master Deed restriction has become generally known in the community of owners, it is inevitable that one or probably many new apartment owners would seek injunctive relief themselves if this action by the Association were deemed to be barred. In all likelihood, reversal of circuit court's judgment would only postpone, not prevent, enforcement of the restriction. Neither judicial economy nor the parties to this controversy would be well-served by such a course.

⁴ Tavern on the Greene has recently closed, but a new bar could reopen in that location at any time. The respondents have no regard for the injunction, which was not stayed by their appeal. Rule 241(b)(8), SCACR. They sought no supersedeas. Reversal by the Court of Appeals did not destroy the injunction since the remittitur has not gone down.

II.

The non-waiver provision of the Master Deed applies, regardless of the label placed on the defense.

The Master Deed provides that a failure by the Association to enforce its provisions shall not constitute a waiver of the right to enforce those provisions in the future:

No waiver by Association. The failure of Association or of the owner of a unit to enforce any right, provision, covenant or condition which may be granted by this Master Deed or other above-mentioned documents shall not constitute a waiver of the right of the Association or of the owner of a unit to enforce such right, provision, covenant or condition in the future.

Master Deed, Art. XIX § 4, p. 23, R. 265. The Court of Appeals did not acknowledge the existence of the non-waiver provision, which the circuit court had deemed conclusive.

The term used in the Master Deed is “waiver.” Just as “the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations,” *Janasik v. Fairway Oaks Villas horizontal Property Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 388 (1992), the same is true of waiver and laches. Repeated waivers are assimilated in the claim of laches. The label placed on the defense is not dispositive.

The question is not whether the Association should have acted earlier to enforce the covenants of the Master Deed. It should have. The question is whether the Association’s failure to act earlier forfeited the right **ever** to act.

No South Carolina case has been found involving such a non-waiver provision in a condominium’s constitution. However, non-waiver provisions of this nature have been accepted and applied in cases from other jurisdictions where a condominium homeowners’ association delays in seeking relief from covenant violations. To do otherwise would be to re-write the contract which binds these owners.

A leading case is *Burke v. Voicestream Wireless Corp. II*, 207 Ariz. 393, 87 P.3d 81 (Ct. App. 2004). The court observed:

Unambiguous provisions in restrictive covenants will generally

be enforced according to their terms. . . . The non-waiver provision, by its plain language, is intended to prevent a waiver based on prior inaction in enforcing the Restrictions. To hold otherwise would render the non-waiver provision meaningless and violate the expressed intention of the contract among the property owners.

87 P.3d at 86. *Accord: College Book Centers, Inc. v. Carefree Foothills Homeowners Ass'n*, 225 Ariz. 533, 241 P.3d 897 (Ariz. App. 2010).

The Indiana court in *Johnson v. Dawson*, 856 N.E.2d 769 (Ind. App. 2006), observed that unambiguous non-waiver clauses in restrictive covenants are routinely upheld:

[E]nforcement of the nonwaiver clause in the multiparty context allows prospective purchasers of property to rely on recorded restrictions and covenants. *See Simms v. Lakewood Village Property Owners Ass'n*, 895 S.W.2d 779,786-87 (Tex. App. 1995). Again, restrictive covenants are permissible under Indiana law so long as they are unambiguous and their enforcement is not adverse to public policy. . . . [This clause] is an unambiguous nonwaiver clause, and its enforcement is not adverse to public policy. As such, [the defendants] are barred from raising the defense of acquiescence.

856 N.E.2d at 775. *Accord: Dreuter v. Duitz*, 883 N.E.2d 1194 (Ind. App. 2008).

The Arizona court's characterization of the Master Deed as a *contract* among the property owners is reminiscent of the language found in deeds in the chain of title of all seven units involved in this action.

The provisions of the Master Deed . . . shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit, his heirs and assigns, . . . as though such provisions were recited and stipulated at length herein. By subscription to and acceptance of this Indenture Deed, Grantee acquiesces in the provisions of the Master Deed

See footnote 1, above. "Restrictive covenants upon real estate are contractual in nature and bind the parties thereto just like any other contract." *Hynes Family Trust v. Spitz*, 384 S.C. 625, 682 S.E.2d 831, 833 (Ct. App. 2009).¹⁹

¹⁹ *Accord: RV Resort and Yacht Club Owners Assoc. v. BillyBob's Marina, Inc.*,
(continued...)

The circuit court deemed this provision dispositive of the waiver and laches defenses. The respondents did not challenge that conclusion until their appeal.²⁰ The Court of Appeals failed even to mention the non-waiver provision. On this basis alone the common pleas judgment should have been affirmed; but the judgment is correct on the merits, in any case.

III.

Strict enforcement of condominium restrictive covenants is demanded by our statutory public policy.

The validity of a condominium non-waiver clause is reinforced by statute. It is the statutory public policy of this State that condominium covenant restrictions be *strictly complied with*.

Each co-owner shall comply strictly . . . with the covenants, conditions and restrictions set forth in the Master Deed Failure to comply with any of the same shall be grounds for . . . injunctive relief

S.C. Code Ann. § 27-31-170. As was the case in *Kneale v. Bonds*, 317 S.C. 262, 452 S.E.2d 840 (Ct. App. 1994):

Both the [condominium] By-Laws and the Horizontal Property Act provide that the Master Deed should be strictly enforced.

¹⁹(...continued)

386 S.C. 313, 320, 688 S.E.2d 555, 559 (2010); *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539, 542 (2006); *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987) (restrictive covenants are voluntary contracts between the parties, and courts should enforce such contracts unless they are indefinite or violate public policy); *Houck v. Rivers*, 316 S.C. 414, 450 S.E.2d 106 (Ct. App. 1994) (same); *Seabrook Island Property Owners Assoc. v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987) (“Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as any other contract.”) (citing *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985)).

²⁰ Although the petitioner did not seek *certiorari* on this basis, it is true that none of the respondents challenged the circuit court’s detailed rejection of their defenses by post-judgment motion. In particular, the respondents did not challenge the finding that the non-waiver clause is valid and dispositive of the laches defense. See generally: *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011).

Id. at 267, 452 S.E.2d at 842.²¹

Condominium communities cannot function harmoniously unless their restrictive covenants are honored, as this case shows. The non-waiver provision of the Master Deed and the statutory admonition to enforce restrictive covenants both serve this policy.

CONCLUSION

The respondents gambled that the court system would not hold them to their contracts and would not interfere with their wilful, continuing violations. Since the court of common pleas did not abuse its discretion in putting a stop to these continuing violations, the judgment of that court should be reinstated.

For these reasons the petitioner asks the Court to reverse and to reinstate the judgment of the court of common pleas.

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²¹ The "strict enforcement" by-law found in *Kneale v. Bonds* is materially identical to Art. XIX, § 1 of the Master Deed of Place on the Greene. Pl. Ex. 1, p. 22, R. 265.