

CAUSE NO. 2019-33333

TANGLEWOOD HOMES
ASSOCIATION, INC.

Plaintiff,

v.

WMJK, LTD.

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

133RD JUDICIAL DISTRICT

P4
SPJUX
STPLY
MPSJY
7A

JUDGMENT AND DECLARATIONS

On August 20, 2021, THA filed a Renewed Motion for Partial Summary Judgment ("THA's MSJ"). On December 6, 2021, WMJK filed a joint (i) Response to THA's Renewed Motion for Partial Summary Judgment, (ii) Rule 166(g) Pre-Trial Motion Identifying Issues of Law for the Court to Decide and Counter-Motion for Summary Judgment on Requests for Declaratory Relief, and (iii) Motion to Strike THA's MSJ ("WMJK's Motions"). On December 13, 2021, THA filed a joint Reply and Response to WMJK's Motions ("THA's Reply and Response"). The Court commenced a hearing on THA's MSJ on December 13, 2021, but then announced on the record a need to reset the hearing for a later date. WMJK's Motions were set on the submission docket for December 27, 2021. On December 16, 2021, the Court signed an order denying WMJK's "(i) Motion to Strike THA's Renewed Motion for Partial Summary Judgment, (ii) Rule 166(g) Pre-Trial Motion Identifying Issues of Law for the Court to Decide, and (iii) Counter-Motion for Summary Judgment on Requests for Declaratory Relief" (collectively "Defendants' Motions"). On December 17, 2021, THA and WMJK filed amended notices of oral hearing stating that their respective motions for summary judgment were set for hearing on January 14, 2022. On January 7, 2022, WMJK filed a Reply to THA's Reply and Response ("WMJK Reply").

On January 14, 2022, the Court held a hearing on THA's MSJ and WMJK's Rule 166(g) Pre-Trial Motion Identifying Issues of Law for the Court to Decide and Counter-Motion for Summary Judgment on Requests for Declaratory Relief. At the hearing, the Court stated on the record, in open court, that the December 16, 2021 Order denying WMJK Ltd.'s Rule 166(g) Pre-Trial Motion Identifying Issues of Law for the Court to Decide and Counter-Motion for Summary Judgment on Requests for Declaratory Relief was signed in error and that the motions were still pending and on the docket for January 14, 2022. The Court stated that on December 16, 2021, it only intended to deny WMJK's Motion to Strike THA's MSJ. Having reviewed the above listed motions, responses, replies, and evidence attached thereto, arguments of counsel, and the applicable law, the Court is of the opinion that THA's Renewed Motion for Partial Summary Judgment should be DENIED. Further, the Court is of the opinion that WMJK Ltd.'s Rule 166(g) Pre-Trial Motion Identifying Issues of Law for the Court to Decide and Counter-Motion for Summary Judgment on Requests for Declaratory Relief should be GRANTED. Accordingly, the Court hereby RENDERS judgment as set forth below:

1. The Court ORDERS that the Court's December 16, 2021 Order denying WMJK Ltd.'s Rule 166(g) Pre-Trial Motion Identifying Issues of Law for the Court to Decide, and Counter-Motion for Summary Judgment on Requests for Declaratory Relief is VOID and SET ASIDE.

2. The Court further ORDERS that WMJK's Motion to Strike THA's Renewed Motion for Partial Summary Judgment is DENIED.

3. The Court further ORDERS that THA's Renewed Motion for Partial Summary Judgment is DENIED and that WMJK's Rule 166(g) Pre-Trial Motion Identifying Issues of Law for the Court to Decide, and Counter-Motion for Summary Judgment on Requests for Declaratory

Relief are GRANTED, and based on the applicable law and conclusive evidence DECLARES and CONCLUDES the following:

- a. Paragraph (2) of the Section 7 Restrictive Covenants¹ applies to 1661 Tanglewood Blvd., is unambiguous, and grants the owners of 1661 Tanglewood Blvd.² the following rights and imposes only the following restrictions on the property:
 - (i) 1661 Tanglewood Blvd. may be used for residential, commercial, or mixed purposes.
 - (ii) Regardless of whether 1661 Tanglewood Blvd. is used for commercial or residential purposes, the only restriction on the structure that can be placed on the property is that it cannot be temporary in nature.
 - (iii) The use of the property cannot emit obnoxious odors or loud noises.
 - (iv) Other than the restrictions listed at paragraph 3(a)(ii) and (iii) of this Judgment and Declarations, no other restrictions, whether included in the original Section 7 Restrictive Covenants or added later by amendment, apply to 1661 Tanglewood Blvd. This prohibition against additional restrictions applies regardless of whether the property is being used for commercial or residential purposes or whether the structure on the property is commercial, residential, or a mixture of both.
- b. The 2002 Amendments³ are unambiguous and the restrictions therein do not

¹ "Section 7 Restrictive Covenants" refers to the Reservations, Restrictions, and Covenants for Tanglewood Addition applicable to Section 7 of Tanglewood, which were filed by the Harris County Clerk under file no. 864296 and recorded on April 2, 1951.

² "1661 Tanglewood Blvd." refers to the real property which is the subject of this lawsuit and is legally described as Lot Four (4), in Block Thirty-two (32) of TANGLEWOOD, SECTION SEVEN (7), a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in Volume 36, Page 13 of the Map Records of Harris County, Texas.

³ "The 2002 Amendments" refers to the Amendments to Reservations, Restrictions and Covenants for Tanglewood Sections 1 through 4, Section 4-A, Sections 5 through 11, Sections 11-A and 11-B, Sections 12 through 17, Section


apply to 1661 Tanglewood Blvd.

c. The 2018 Amendments⁴ are unambiguous and the restrictions therein do not apply to 1661 Tanglewood Blvd.

d. The Tanglewood Policy Manual⁵ provisions are unambiguous and the provisions therein do not apply to 1661 Tanglewood Blvd.

4. The Court further ORDERS that THA take nothing by their claims against WMJK.

SIGNED ON October 24, 2022.


PRESIDING JUDGE

17-A, and Sections 18 and 19, which were filed by the Harris County Clerk under file no. 200036117 on December 31, 2002.

⁴ "The 2018 Amendments" refers to Amendments to the Amended Reservations, Restrictions and Covenants for Tanglewood Sections 1 through 4, Section 4-A, Sections 5 through 11, Sections 11-A and 11-B, Sections 12 through 17, Section 17-A, and Sections 18 and 19, which were filed by the Harris County Clerk under file no. RP-2018-564761 on December 18, 2018.

⁵ "Tanglewood Policy Manual" refers to the Tanglewood Policy Manual, which was filed by the Harris County Clerk under file no. 300635392 on October 19, 2001.