

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2449-FT

Cir. Ct. No. 2015CV74

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

NORTH COUNTRY PROPERTIES, LLC,

PLAINTIFF-APPELLANT,

V.

**LOST ACRES HOMEOWNERS ASSOCIATION OF BURNETT COUNTY AND
MARK STEEGE,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Burnett County:
KENNETH L. KUTZ, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. North Country Properties, LLC appeals a summary judgment dismissing its action against Lost Acres Homeowners Association of

Burnett County and Mark Steege (collectively, Lost Acres).¹ North Country argues the circuit court erred by concluding Lost Acres had authority to prohibit North Country from leasing its property for short-term rentals. We reject North Country's arguments and affirm the judgment.

BACKGROUND

¶2 In July 2002, a Declaration of Protective Covenants and Building Restrictions for Lost Acres, which is a residential development, was filed with the Register of Deeds for Burnett County. In November 2013, Nicole and Eric DeCook purchased property that was part of the Lost Acres development and, thus, subject to the Declaration. The DeCooks intended to not only occupy the property as their part-year residence, but to offer short-term rentals of the property. Although the DeCooks originally took title in their own names, they later formed North Country Properties, LLC, and quitclaimed their interest to the LLC.

¶3 In October 2014, Lost Acres filed an Amendment to the Declaration, prohibiting owners from renting out their property on a short-term basis. North Country filed the underlying action, requesting a permanent injunction against Lost Acres from enforcing its amended covenant, removal of the restriction from their title, and money damages for civil slander of title. The parties filed competing motions for summary judgment, and the circuit court granted summary judgment in favor of Lost Acres. This appeal follows.

¹ This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

DISCUSSION

¶4 This court reviews summary judgment decisions independently, applying the same standards as the trial court. *Smith v. Dodgeville Mut. Ins. Co.*, 212 Wis. 2d 226, 232, 568 N.W.2d 31 (Ct. App. 1997). Summary judgment is granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987).

¶5 North Country argues the circuit court erred by concluding Lost Acres had authority under the Declaration to prohibit North Country from leasing its property for short-term rentals. The interpretation of a written document affecting land is a question of law we review independently. *Solowicz v. Forward Geneva Nat'l, LLC*, 2010 WI 20, ¶13, 323 Wis. 2d 556, 780 N.W.2d 111. Ordinary contract rules apply to interpreting the terms of contracts such as the Declaration. See *id.*, ¶34. The goal in interpreting contracts that were freely entered into “is to determine and give effect to the parties’ intention.” *Id.*, ¶34. If the intent of the contract can be ascertained with certainty from the document itself, it will be enforced. *Id.*, ¶36.

¶6 Citing Article VII of the Declaration, which describes the “Purpose and Membership” of the Homeowners Association, North Country asserts the Declaration is confined to regulation of the common land, not the individual lots within that land. The cited language of Article VII follows:

Purpose and Membership.

The LOST ACRES HOMEOWNERS ASSOCIATION OF BURNETT COUNTY (hereinafter referred to as the “Association”) is organized for the purpose of owning, maintaining, preserving, supervising and regulating the Common Land for the use and enjoyment of the common

land owners. Any party or group of parties with an ownership interest in any particular Lot located in LOST ACRES is automatically a member of the Association, but each separate Lot shall be entitled to one, and only one, vote in the Association.

¶7 Despite North Country’s focus on this reference to common land, a contract must be interpreted as a whole in order to give reasonable meaning to all its provisions. See *Berg v. Schultz*, 190 Wis. 2d 170, 175, 526 N.W.2d 781 (Ct. App. 1994). Relevant to this appeal, the subject Declaration provided:

WHEREAS, Declarant and Developer desire to subject the real property described in Article I to the conditions, restrictions, covenants, and reservations hereinafter set forth, for the benefit of said real property as a whole and for the benefit of each owner of any part thereof.

NOW THEREFORE, Declarant hereby imposes upon and subject all of the real property described in Article I hereof to the following conditions, restrictions, covenants and reservations hereinafter set forth.

Article I provided the legal description of the real property in the Lost Acres development. Therefore, by its terms, the Declaration made the entire Lost Acres development—not just the common areas—subject to the conditions, restrictions, covenants, and reservations set forth. That the Association’s membership oversees use and enjoyment of common land does not undermine the Declaration’s stated purpose to subject the entire Lost Acres development to the “conditions, restrictions, covenants, and reservations” set forth therein. The scope of the Declaration as a whole clearly includes all real property within the development, not just the common areas.

¶8 North Country alternatively argues that Lost Acres did not have the authority to unilaterally modify the restrictive covenants. The Declaration provided, however:

The provisions contained herein shall run with and bind the owners of parcels in Lost Acres, and shall inure to the benefit of and be enforceable by or against any owner of land included in LOST ACRES, their respective legal representatives, heirs, successors, and assigns for the date of the recording of this Declaration. Said provisions shall remain in full force and effect until and unless an amendment to this instrument ... signed by two-thirds of the then owners of the Lots of LOST ACRES has been recorded, agreeing to change said covenants in whole or in part.

It is undisputed that the requisite number of lot owners agreed to and recorded the amendment prohibiting short-term rentals of property. Because North Country purchased the property subject to the Declaration, it took ownership with the implied consent to additional restrictive covenants, such as the one at issue. The circuit court, therefore, properly dismissed North Country's challenge to the enforceability of the Declaration Amendment at issue.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

