

SUPREME COURT OF MISSISSIPPI

Joel Misita v. Roy A. (Al) Conn and Mitzi P. Conn

161 So. 3d 1203 (Miss. 2014) · No. No. 2011-CT-01865-SCT · Decided October 25, 2011

SUMMARY

The Mississippi Supreme Court considered whether a restrictive covenant prohibiting the erection of structures ran with the land and whether a large, enclosed, sign-bearing structure violated that covenant. The court held that the covenant was enforceable by the adjoining landowners and that Misita's sign was a structure within the ordinary meaning of the deed restriction. It affirmed in part and reversed in part the Court of Appeals, reinstating and affirming the chancery court's judgment ordering removal of the structure.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Randolph, Presiding Justice; Waller, Chief Justice; Dickinson, Presiding Justice; Lamar, Justice; Kitchens, Justice; Chandler, Justice; Pierce, Justice; King, Justice; Coleman, Justice
JURISDICTION	Mississippi
DECIDED	October 25, 2011
DOCKET	No. 2011-CT-01865-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Mississippi Supreme Court granted the Conns' petition for writ of certiorari following the Court of Appeals' partial affirmance and reversal of an Adams County Chancery Court judgment enforcing a deed restriction.
STANDARD OF REVIEW	The Supreme Court reviews factual findings under the manifest-error/substantial-evidence standard and reviews contract construction and interpretation questions de novo.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; en banc and precedential.
PARTIES	Joel Misita v. Roy A. (Al) Conn, Mitzi P. Conn

TOPICS

covenants and restrictions

real estate

contract interpretation

writ of certiorari

appellate procedure

PRACTICE AREAS

real property

restrictive covenants

contracts

appellate procedure

QUESTIONS PRESENTED

1. Whether the deed restriction prohibiting structures ran with the land and could be enforced by the Conns as successors in interest.
2. Whether Misita's sign was a structure within the ordinary meaning of the deed restriction.

HOLDINGS

1. The restrictive covenant ran with the land and the Conns possessed the right to enforce it against Misita.
2. Misita's sign was a structure within the ordinary meaning of the deed restriction, and its placement violated the restriction.

KEY QUOTATIONS

“A covenant will “run with the land” if three conditions are met: “(1) the covenanting parties must intend to create such covenant; (2) privity of estate must exist between the person claiming right to enforce the covenant and the person upon whom burden of covenant is to be imposed; and (3) the covenant must ‘touch and concern’ the land in question.”” (¶8)

““Such covenants are subject more or less to a strict construction and in the case of ambiguity, construction is usually most strongly against the person seeking the restriction and in favor of the person being restricted.”” (¶10)

“We find that Misita’s “sign” is a “structure.” It is a one-room structure, complete with roof, floor, air conditioning, lights, door with window panes, and a staircase, inter alia.” (¶12)

FACTUAL BACKGROUND

The Wilsons conveyed approximately three acres to Misita by warranty deed containing a provision that no structures were to be erected on the property. The Wilsons later sold their adjoining property to the Conns, who had notice of the restriction and relied on it in purchasing their land. Despite the Conns' objections, Misita placed on the restricted acreage a stationary, enclosed, approximately fifteen-foot-high, three-sided metal-and-wood structure with a floor, roof, lights, air conditioning, door, stairs, and signage.

PROCEDURAL HISTORY

The Conns sued adjoining landowner Joel Misita in Adams County Chancery Court to enforce a deed restriction providing that no structures could be erected on three acres conveyed to Misita. The chancery court found that the restriction ran with the land and that Misita's sign was a prohibited structure, ordering its removal. The Court of Appeals affirmed the Conns' authority to enforce the covenant but held that the sign was not a structure. The Supreme Court affirmed in part, reversed in part, and reinstated and affirmed the chancery court judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court reinstated and affirmed the Adams County Chancery Court judgment, including the order requiring removal of Misita's structure. No further substantive remand instructions were stated.

CASES CITED

- Long Meadow Homeowners' Association, Inc. v. Harland, 89 So. 3d 573, 577 (Miss. 2012)
- Royer Homes of Mississippi, Inc. v. Chandeaur Homes, Inc., 857 So. 2d 748, 751-52 (Miss. 2003)
- Hearn v. Autumn Woods Office Park Property Owners Association, 757 So. 2d 155, 158-59 (Miss. 1999)
- Vulcan Materials Co. v. Miller, 691 So. 2d 908, 913-14 (Miss. 1997)
- Clement v. R. L. Burns Corp., 373 So. 2d 790, 794 (Miss. 1979)
- Kemp v. Lake Serene Property Owners Association, 256 So. 2d 924, 926 (Miss. 1971)
- Andrews v. Lake Serene Property Owners Association, 434 So. 2d 1328, 1331 (Miss. 1983)
- Stokes v. Board of Directors of La Cav Improvement Co., 654 So. 2d 524, 525, 527 (Miss. 1995)
- Kinchen v. Layton, 457 So. 2d 343, 345 (Miss. 1984)
- Sullivan v. Kolb, 742 So. 2d 771, 774-77 (Miss. Ct. App. 1999)
- Turner v. Terry, 799 So. 2d 25, 32 (Miss. 2001)
- Misita v. Conn, 2013 WL 2302945 (Miss. Ct. App. May 28, 2013)