NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1221

EFFIE MAE LAFARGUE

VERSUS

WILLIAM J. BARRON, MAUREEN M. BARRON AND SEAN S. BARRON

Judgment Rendered: FEB 10 2012

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 592,385, SECTION 25

THE HONORABLE FRANK FOIL, JUDGE PRO TEMPORE

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDONALD, J.

This is a very unfortunate case, as the trial court stated in its oral reasons for judgment. The defendants, William J. Barron and Maureen M. Barron, built an addition to their home that violated the Broadmoor subdivision restrictions for their filing, which require that no building on any lot be any nearer to the side property line than 5 feet. The addition was 3 feet, 6 inches from the side property line. Their son, Sean S. Barron, also named as a defendant, lived in the house but was not the owner of the home at the time suit was filed. Sean Barron graduated from LSU with a degree in education and a minor in construction management, and William Barron testified that Sean "ran the project" on the addition, as William and Maureen Barron were living in New Jersey at the time.

The plaintiff, Effie Mae Lafargue, lived next door to the Barron home on the side where the addition was built. At the time of trial she had lived there for 45 years. On July 8, 2010, Mrs. Lafargue filed a petition for declaratory judgment, mandatory injunction to enforce building restrictions, and for attorney fees and costs, naming William, Maureen and Sean Barron as defendants. After a trial on the merits, the trial court ruled in favor of Mrs. Lafargue, and against the defendants, finding that the defendants were in violation of Section Four of the 2005 Amendment to the Act of Restrictions for Broadmoor, Third Filing, prohibiting any building closer to a side property line than 5 feet. The trial court ordered that the defendants "remove all of the sued upon improvements by July 1, 2011, to bring said improvements, consisting of a two story garage addition, including the foundation, to a position that is no closer than five (5') feet from the side property line of plaintiff, Effie Ma[e] Lafargue." The trial court also ordered the defendants to pay attorney fees of $6,335 to Ms. Lafargue, and court costs in the amount of $1,895.

The defendants are appealing that judgment and assert two assignments of error.

1. The trial court erred in its ruling when it ordered that the structure at issue be removed from the violated portion of the property because it created a harsh remedy.

2. The trial court committed legal error when it awarded plaintiff attorney fees.

William and Maureen Barron purchased the subject property from their two sons, Daniel Barron and Sean Barron, on October 4, 2005. The act of sale clearly states on the first page that "[s]aid property is sold, conveyed and accepted subject to any and all valid restrictions, servitudes, mineral conveyances and/or reservations affecting same, if any."

Prior to starting construction, Sean Barron applied for and received a variance from the Metropolitan Board of Adjustment to reduce the 8 foot side yard setback to 3 feet. However, this variance did not affect the requirements of the Broadmoor subdivision restrictions. The restrictions provide in part that "No building, structure, fence, or improvements of any kind shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the board of directors as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation." The Barrons failed to submit any plans to the Broadmoor subdivision Board of Directors.

The plans for the addition to the house were reviewed for compliance by the City of Baton Rouge, Parish of East Baton Rouge Inspection Division prior to beginning construction. The plans were stamped on November 2, 2009, by a reviewer for the Inspection Division to indicate they had been reviewed for code compliance. This stamp clearly states on the first page of the plans, in bold

lettering, "Note: This agency does not enforce private deed and/or subdivision restrictions. However, the issuance of this permit does not release the owner and/or contractor/builder from complying with any such restrictions that may be attached to the property mentioned in this permit."

On September 2, 2009, the City of Baton Rouge, Parish of East Baton Rouge, Department of Public Works Inspection Division, notified William Barron by letter that plans for the project had been reviewed and listed items that needed to be done to complete the review. Page three of this letter, in bold print, states that "The City Parish does not enforce private subdivision deed restrictions: The issuance of a building permit by the City Parish does not release the builder or owner from any deed restrictions that may be attached to the property."

A second letter to William Barron sent from the City of Baton Rouge, Parish of East Baton Rouge, Department of Public Works Inspection Division, dated February 19, 2010, again states in bold print on page three, "The City Parish does not enforce private subdivision deed restrictions: The issuance of a building permit by the City Parish does not release the builder or owner from any deed restrictions that may be attached to the property."

The defendants were thereafter notified by letter from the Broadmoor Residents Association, dated March 22, 2010, that "[t]he subdivision restrictions require [a] 5' side set back line and prevail over a City-Parish Board of Adjustment waiver. Any variance from these restrictions without prior approval from the board can result in legal action."

On appeal the defendants rely upon La. C.C. art. 670 which provides that when a landowner, in good faith, constructs a building that encroaches on an adjacent estate, and the owner of that estate does not complain within reasonable time after he knew or should have known of the encroachment, or in any event complains only after the construction is substantially completed, the court may

allow the building to remain. This is not the case of a building which encroaches on an adjacent estate, but rather a case wherein the landowner violated the building restrictions of the subdivision.

Building restrictions are charges imposed by the landowner of an immovable in pursuance of a general plan governing building standards, specified uses, and improvements. La. C.C. art. 775. Building restrictions are incorporeal immovables and real rights likened to predial servitudes. They are regulated by application of the rules governing predial servitudes to the extent that their application is compatible with the nature of building restrictions. La. C.C. art. 777. Building restrictions may be enforced by mandatory and prohibitory injunctions. La. C.C. art. 779.

While the law in this case provides a harsh remedy, the homeowners had an obligation to comply with the Broadmoor subdivision restrictions, which they failed to do, despite numerous notices that the issuance of a City of Baton Rouge, Parish of East Baton Rouge building permit did not release the builder or owner from any deed restrictions that were attached to the property. We cannot say that the trial court committed legal or manifest error in requiring the defendants to bring the addition to their home into compliance with the subdivision restrictions. In regard to the attorney fees, the Broadmoor subdivision restrictions at issue specifically provide that the Broadmoor Residents Association, Inc., or any property owner subject to the restrictions, shall be entitled to enforce the restrictions and to recover the actual attorney fees, expert witness fees, and cost of any litigation incurred, which shall be assessed against any property owner adjudged in violation of the restrictions. Thus, the trial court did not commit legal error in awarding attorney fees to Mrs. Lafargue.

In brief, Ms. Lafargue asserts that the trial court erred in not finding that the defendants also violated the subdivision restriction against a carport or garage

being converted to an enclosed living area without written approval of the Broadmoor Residents Association Board of Directors. This court only reviews issues which are submitted to the trial court and contained in specifications or assignments of error. Uniform Rules, Courts of Appeal, Rule 1-3. As Ms. Lafargue did not file an answer to the appeal, only a brief, we do not address this issue.

For the foregoing reasons, the trial court judgment, dated November 19, 2010, is affirmed. Costs are assessed against the defendants.

AFFIRMED.