

No. 35654-6-II

**COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II**

MEADOWMEER GOLF & COUNTRY CLUB

Appellant

vs.

**DAN A. PRESTON & JEANA
PRESTON**

Respondents

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DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

REPLY BRIEF OF RESPONDENTS

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I. INTRODUCTION

Respondents Dan A. Preston and Jeana Preston (“Prestons”) filed an action against Meadowmeer Golf & Country Club (“Meadowmeer”) for slander of title and recording of a wrongful lien. Respondents purchased a home and property at 11621 Meadowmeer Circle N.E., Bainbridge Island, Washington in 1998. In 2004, Meadowmeer recorded a lien on the Prestons’ property for charges, assessments, dues and collection costs. The lien created an encumbrance on the Prestons’ title to their real property.

The Prestons maintain that they are not responsible for these charges for four reasons. First, Prestons’ property is not located within the Plat of Meadowmeer covered by the covenants. Second it is not included in the legal description for “Meadowmeer” for which included properties are subject to the Meadowmeer Covenants. Third, it is not located on the map shown in the covenants document and Meadowmeer has never considered Prestons’ property part of their community subject to the Covenants. Finally, Prestons had a right to rely on record chain of title which provided no notice of Meadowmeer covenants and finally, Prestons obtained no benefits from Meadowmeer.

Meadowmeer argues that it is entitled to enforce the Meadowmeer covenants against the Respondents' property by contract, as a real covenant or equitable restriction. These arguments fail because there is no contract between Meadowmeer (92 lot owner signatories) and Prestons' predecessors in interest approving the addition of the Preston property into those bound by the Meadowmeer Covenants. Moreover; there is no real covenant binding the Prestons' property to the Meadowmeer Covenants and there is no equitable restriction because (1) there is no enforceable promise between the original parties; (2) the covenants do not touch and concern Prestons' property; (3) the covenants were not intended to bind successors to Prestons' property; and (4) the covenants are not enforceable against subsequent purchasers of the Prestons' property due to lack of notice. The Prestons' property was simply never included within the property bound by the Meadowmeer Covenants.

Both parties filed Motions for Summary Judgment. Meadowmeer's Motion was denied. The trial court granted Respondents' motion in part leaving only the issue of damages for trial. The trial court denied Meadowmeer's request for reconsideration. This appeal follows.

II. RESTATEMENT OF THE ISSUES

- 1. The trial court did not err when it held that the Meadowmeer Covenants do not apply to the Prestons'**

property under contract theory because although the subsequent deed of conveyance referred to covenants, the covenants will arise only as to those properties listed in the covenant document.

- 2. The trial court did not err when it held that the Meadowmeer Covenants are not enforceable as to the Preston property either under the doctrines of real covenants or equitable restrictions because there was no enforceable promise, the covenants do not touch and concern nor bind successors in interest to the Preston property and there was no notice to Prestons.**

A. Factual History. The Respondents purchased a home and real property at 11621 Meadowmeer Circle N.E., Bainbridge Island, Washington in 1998. CP 74. It is undisputed that the Respondents' property is located outside and adjacent to the Plat of Meadowmeer. CP 101, 166.

Meadowmeer, Inc. filed a Declaration of Protective Covenants and CC&Rs in May, 1969 governing the Plat of Meadowmeer Division 1, recorded under Auditor's File No. 953961. CP 100. The description of the subject real property did not include Respondents' property:

All the land embraced within the Plat of Meadowmeer, Division 1, according to the plat thereof recorded in Volume 13 of Plats... records of Kitsap County.

CP 100. On January 3, 1979, Meadowmeer, Inc. conveyed property to Meadowmeer Woods Assn. referencing CC&Rs recorded January 19,

1969 under Auditor's File No. 953961. CP-100. The property conveyed did not include the Respondents' property.

On December 27, 1979 Meadowmeer Inc. recorded amended Meadowmeer Protective Covenants under Auditor's File No. 7912270105 affecting real property in Kitsap County, described as follows:

The Southwest quarter of the Southwest quarter together with the West third of the Southeast quarter of the Southwest quarter... of Section 10.

Again, Respondents' property is not included in those "Meadowmeer" properties subject to the Covenants. CP 152. These amended Covenants explicitly "supersede and replace any and all such covenants heretofore made applicable to the Meadowmeer area." CP-152. The Meadowmeer properties subject to the covenants are as follows:

Article I. Section 2. The area subject to these covenants as disclosed by conveyances and other documents of record, shall include all improved residential lots and unimproved building sites situated in the area known and referred to as "Meadowmeer" situated on Bainbridge Island... delineated and more particularly described as follows...

CP 152. It is undisputed that the Respondents' property is not located within the Plat of Meadowmeer; is not described within the legal description in the Meadowmeer Covenants document; and is not located on the map on page 1 of the Covenants. CP 102, 152-160, 166.

In December 1980, Meadowmeer, Inc. conveyed by Statutory Warranty Deed to Meadowmeer Woods Associates certain property including Respondents' property. CP 202. The conveyance deed indicates the property is subject to "restrictive and protective covenants, as amended, and recorded under Auditor's No. 7912271105." CP 202. This auditor number is erroneous. There is no document recorded at the referenced Auditor's File Number. CP 102. The erroneous Auditor's number referenced in the Deed is one thousand document numbers from the actual recording number of the Meadowmeer Covenants (#7912270105 – #7912271105). CP 152-60, 202.

Meadowmeer Woods Associates later sold to Geisler certain property which included the Respondents' property in March, 1983 again referencing a non-existent Auditor's File Number. CP 200. Geislars filed a Short Subdivision Application ("Short Plat 5169") for Lots A, B and C. Respondents now own Lot B. CP 101, 120-130. CP 101. Short Plat No. 5169 was filed under Auditor's Number 9005240198. CP 101, 120-130. Referenced in the Short Plat are covenants recorded under Auditor's No. 7912271105, which does not exist and is not relative to the Meadowmeer covenants. CP 152-60, 202.

Geisler dba Corman conveyed Parcel B to Theros on February 6, 1998. CP 132. The face of the Theros Deed does not reference the covenants or Meadowmeer. CP 132. The Theros' Statutory Warranty Deed of August 31, 1990 only makes reference to the Geisler Short Plat. CP 142.

When the Respondents purchased their property from Theros in 1998, a special title exception was listed as "Covenants, conditions and restrictions contained in the following instrument: Recorded: May 24, 1992. Recording No.: 9005240198 (Geisler Short Plat No. 5169)." CP 107-109, 115. Theros informed Respondents that he had a voluntary membership in the Meadowmeer Golf & Country Club and intended to keep it. CP 91. Again, the Geisler Short Plat references the incorrect Auditor's File Number. CP 101, 120-130.

There are no recorded documents for conveyance of the Respondents' property which reference the Meadowmeer Covenants recorded under the correct Auditor's File No. 7912270105. CP 102-164.

B. Procedural History. Respondents rely on the procedural history as delineated in Meadowmeer's Opening Brief.

III. SUMMARY OF ARGUMENT. The Meadowmeer Covenants simply do not apply to the Preston property. The covenants

specifically describe those properties within the Plat of Meadowmeer which are included, by legal description and by a map. The Prestons' property is not included in those descriptions. Once the covenants were recorded, Meadowmeer, Inc. cannot bind the Prestons' property to the covenants by unilateral reference to the covenants in a deed. A necessary subsequent step is missing from this argument – the fact that the covenants were never amended to include the Prestons' property.

The original covenants were recorded in 1969 by the developers and the amended Declaration of Covenants recorded in 1979 superseded the 1969 covenants and specifically imposed the covenants only on the properties delineated in the subdivision. Prestons' property was not included and cannot be subsequently included by contract, references in deeds or short plat documents when the covenants themselves limit those properties to be included. Appellants argument that the original developer, Meadowmeer, Inc., can subsequently bind properties it retains is not tenable without acceptance of subsequent properties and proper amendment to the covenants.

The covenants explicitly provide those steps necessary to amend the covenants. In fact, in December, 1979 the covenants were amended and provided for 92 "Meadowmeer" signatures of property owners in

approval of the amendment. The Meadowmeer covenants were not amended to include Prestons' property; and the owners of the lots of Meadowmeer bound by the Covenants never agreed to include Prestons' property within the Plat of Meadowmeer to be governed by the Meadowmeer Covenants.

As to the Prestons, the Meadowmeer Covenants are not enforceable under the doctrines of either real covenants or equitable restrictions because the elements required regardless of classification cannot be met by Appellant Meadowmeer. There is no enforceable promise between the original parties. The Meadowmeer Covenants do not touch and concern Prestons' property. The covenants were not intended to bind successors to Prestons' property. No notice of the "Meadowmeer" covenants being applicable to the Prestons' property was provided to Prestons or successors in interest. There is no document recorded which references the correct Auditor's File No. directing Prestons to the Meadowmeer covenants.

IV. ARGUMENT

A. Standard of Review. Appellate courts engage in a de novo review of a ruling granting or denying summary judgment. *Green v. Normandy Park*, 151 P.3d 1038 (2007) citing *Anderson v. Weslo, Inc.*, 79

Wn. App. 829, 906 P.2d 336 (1995). The appellate court thus engages in the same inquiry as the trial court. *See Wilson Court Ltd. v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 952 P.2d 590 (1998). Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a matter of law. CR 56(c). All reasonable inferences from the evidence must be construed in favor of the non-moving party. *Green*, 151 P.3d 1038 (2007) *citing Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 588 P.2d 1346 (1979).

B. Meadowmeer's Covenants do not apply to the Preston property under contract theory because although the subsequent deed of conveyance referred to the covenants, the restrictive covenant will arise only as to those properties listed in the covenant document.

The trial court correctly determined that the Respondents' property is not subject to the Meadowmeer Restrictive Covenants as a matter of law. Appellant Meadowmeer acknowledges that the Respondents' property was not included in the legal description of "Meadowmeer" within the Meadowmeer Covenants and therefore, did not bind the Respondents' property to the Meadowmeer Covenants. Meadowmeer argues, however, that by contract, a predecessor in interest to the Prestons'

property may bind the property to the Meadowmeer Covenants by simply incorporating language into the deeds referencing “subject to” covenants. This argument lacks merit.

A running covenant must originate in a contractual covenant between two or more persons, the "original parties," that is enforceable between or among them under the law of contracts. *WA Prac.* § 3.2. A landowner cannot by himself place a running covenant on his own land, for the same reason that one cannot make a contract with himself or create an easement on his own land. *Id.* Therefore, when a landowner writes up, signs, and records a declaration of covenants, as did “Meadowmeer” in the instant case, no restriction on the land is then created. *Id.*

A restrictive covenant will arise only later when, in the conveyance of all or part of the land, the contract or deed of conveyance refers to or incorporates by reference the declaration of covenants by language that makes them binding upon one or both parties. Critical to the analysis here is that the restrictive covenant will arise only as to those properties listed in the covenant document. Restrictive covenants are interpreted to give effect to carry out the purpose for which the covenants were created. *See Riss v. Angel*, 131 Wn.2d 612, 934 P.2d 669 (1997); *Restatement (Third) of Property: Servitudes* § 4.1 (2000). Subdivision covenants tend to

enhance the efficient use of land and its value. The value of maintaining the character of the neighborhood in which the burdened land is located is a value shared by the owners of the other properties burdened by the same covenants. *Riss*, 131 Wn.2d at 622-24 (1997).

The reference in the contract or deed to the covenants incorporates the covenant document and makes the covenants binding only upon the parties who own those properties listed as bound in the covenants. The two acts must coincide – (1) the covenants provide for those properties listed as bound by the covenants in the covenant document and (2) those contracts or deeds of conveyance of those properties listed should incorporate by reference it is to be bound by those covenants. Meadowmeer's argument fails because Respondents' property is not included in those properties to be bound by the Meadowmeer covenants.

Appellants cite no Washington cases and only one out of state case for the proposition that Prestons property should be bound by the covenants under contract. *Dansie v. Hi-Country Estates Homeowners Association*, 987 P.2d 30 (Utah 1999) does not support Appellant's arguments and supports a finding that the Respondents' property is not bound by the Meadowmeer Covenants.

In *Dansie*, the subdivision's developers recorded CC&Rs by written instrument on Phase I alone. As in the instant case, the developers' written, signed and recorded Protective Covenants expressly limited their application of the Covenants to "the described property." The *Dansie* court held that the *Dansie* property was not a part of Phase I and was not brought under the homeowner's association purview even though subsequent deeds attempted to impose the CC&Rs on the *Dansie* property located outside the subdivision.

Like *Dansie*, the Meadowmeer Covenants run with the land described in the covenants, were created by the Meadowmeer in 1969 and subsequently amended in 1979. Having expressly applied only to property in the subdivision, Prestons' property was not a part of those properties listed in "Meadowmeer" and was not brought under the homeowner's association purview even though subsequent deeds attempted to impose the CC&Rs on Prestons' property which is located outside the subdivision.

In Washington, courts must construe restrictive covenants by discerning intent of parties as evidenced by clear and unambiguous language in document, and must consider document in its entirety. *Mountain Park Homeowners Ass'n, Inc. v. Tydings*, 125 Wn.2d 337, 883 P.2d 1383 (1994). Only in the case of ambiguity will the court look

beyond the document to ascertain intent from surrounding circumstances. *Id. citing Burton v. Douglas Cy.*, 65 Wn.2d 619, 399 P.2d 68 (1965). Any doubt as to the validity of a restrictive covenant against property should be resolved against the restriction.

The Meadowmeer Covenants applied to certain areas delineated on a map and legally described in the covenant document. The Meadowmeer Covenants contained an unequivocally unambiguous clause regarding what properties are subject to the covenants. The covenants state that they are intended to "run with the land." This means that the benefit or burden created in the land passes automatically to successors to the benefited or burdened estates. *Restatement (Third) of Property: Servitudes* § 5.1 and § 1.5, cmt. a (2000). The referenced land in the covenants does not include the Prestons' property. No benefits have been provided to the Prestons and no burden should be imposed.

The covenants constitute "a servitude upon all lots within the area described in the covenants at the time of recording and those future lots properly included and brought within their provisions." CP 158. Meadowmeer's argument that the covenants are applicable to the Prestons' property through subsequent contract fails because it does not

address the fact that the Covenants themselves do not include the Prestons' property.

Once the Meadowmeer Covenants were recorded, additional properties can be included only upon "agreement of the owners" of lots subjected to the covenants. Respondents' predecessors in interest to their property cannot unilaterally subject the Respondents' property to the Meadowmeer covenants without subsequent approval of the Meadowmeer lot owners. An agreement with "Meadowmeer" is required to include the Prestons' property within the legal description of the properties to be bound by the covenants. The owners of the lots within "Meadowmeer" never agreed to include the Respondents' property within the "Meadowmeer."

The Appellate Court in weighing the policy favoring free use of land, intention of parties, and considering the unambiguous covenants in its entirety and the surrounding circumstances, should uphold the trial court's ruling as a matter of law that the Meadowmeer Covenants do not apply to Prestons' property.

C. The Meadowmeer Covenants are not enforceable under the doctrines of real covenants or equitable restrictions because there is no enforceable promise between the original parties; the covenants do not touch and concern the Prestons' land; and no proper notice of

the Meadowmeer covenants being applicable to the Prestons' property was given.

The trial court did not err when it held that the Meadowmeer Covenants are not enforceable as to the Respondents' property under the doctrines of real covenants or equitable restrictions. Washington courts have not generally distinguished between "real covenants" and "equitable restrictions." See *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn.App. 246, 84 P.3d 295 (2004). Meadowmeer provides the elements required for either real covenants or equitable restrictions. Regardless of the classification, in this case Prestons' property is not bound by the Meadowmeer Covenants because (1) there is no enforceable promise between the original parties; (2) the Meadowmeer Covenants do not touch and concern the Respondents' land; (3) the Meadowmeer Covenants were not intended to bind successors to Preston property; and (4) the Meadowmeer Covenants are not enforceable against subsequent purchasers of the Preston property due to lack of notice.

1. **Enforceable Covenant/Enforceable Promise.** The first element necessary for finding equitable restriction in a subdivision setting is "a promise, in writing, which is enforceable between the original parties." *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 974 P.2d 836 (1999). The writing containing a covenant is often recorded as a declaration of

covenants. See e.g. *Mountain Park Homeowners Ass'n. v. Tydings*, 125 Wn.2d 337 (1994). The “[c]ourt must construe restrictive covenants by discerning intent of parties as evidenced by clear and unambiguous language in document, and must consider document in its entirety.” *Id.*

As to the deed transferring the Prestons’ property from Meadowmeer, Inc. (developer and owner) to Meadowmeer Woods Associates (purchaser), even if the writing demonstrates that these parties agreed that the Prestons’ property would be subject to the Meadowmeer Covenants, the covenants themselves clearly demonstrate that Meadowmeer lot owners did not. The Meadowmeer covenants included only specific properties and excluded all others from the benefits and burdens placed on designated properties by the covenants. Therefore, Prestons’ property is not included to be bound by the Covenants. Any additional properties to be considered under the covenants would require an amendment to the Covenants themselves. The Meadowmeer Covenants have not been amended to include the Respondents’ property and a promise contained in a subsequent deed is not enforceable as to the “Meadowmeer” property owners.

2. Touch and Concern The Land. Appellants argue that the Meadowmeer Covenants touch and concern Prestons’ land. This is not

true. In order that a covenant may run with the land it is essential that the "promise" touch or concern the land. To touch and concern, Washington courts have required a semi-physical connection between the covenant and the land. *Stoebuck, Washington Practice* § 3.3, at 133 (citing *Rodruck v. Sand Point Maintenance Commission*, 48 Wn.2d 565, 295 P.2d 714 (1956)).

Prestons agree that the Meadowmeer Covenants touch and concern certain land as delineated therein but do not agree that the Preston property is included in that delineation. The Meadowmeer Covenants are clear and contain explicit language regarding which properties are incorporated into the Plat of Meadowmeer by providing a legal description and a map depicting the Plat. Prestons' property was not described within the legal description nor located on the map on page 1 of the Meadowmeer covenants.

Meadowmeer cites to the record that portion of the Meadowmeer Covenants that denotes "the said covenants shall run with the land and be binding upon all present and future owners of said lots..." CP 158. This is misleading because Meadowmeer fails to further cite to the record the rest of that provision, i.e. "...and upon all persons claiming by, through or

under them as provided in Article I, Section 3 hereof.” CP 158. Article I, Section 3 then provides:

“All improved residential lots and unimproved building sites within the above-described area shall be held, transferred, sold, conveyed and occupied subject to these covenants... all of which shall run with the land and be binding upon all the present and future owners of said property...”

CP 158, 153. Thus, the land which the Meadowmeer Covenants touch and concern does not include the Prestons’ property.

3. **Intent to Bind Successors.** While it is true that the Meadowmeer Covenants were intended to bind successors to properties subject to the covenants, the covenants were not intended to bind successors to the Preston property. Article X, Section 1 provides that:

Any future owners of any of the property subject to these covenants as described in Article 1, Section 3 above shall have rights, powers, privileges and interests hereunder of their predecessor or predecessors and shall likewise be responsible for the performance of all duties and obligations contained herein.

CP 158. As noted in Meadowmeer’s brief, since the Meadowmeer Covenants were amended in 1979, there has been no reference to the correct Auditor’s File Number 7912270105 in any deeds or short plat involving the Preston property. The trial court denied as a matter of law

reformation of the Geisler Short Plat documents. In its Memorandum Opinion dated August 17, 2006, the trial court noted that

[E]ven if the Court could correct what could be found to be a scrivener's error under some other theory of law, the property is still not included in the legal description for Meadowmeer for which included properties are subject to the Meadowmeer covenants.

CP 191-92. If the deeds and short plat are taken at face value, the Prestons' property is not subject to the Meadowmeer Covenants recorded under Auditor's File Number 7912270105.

4. **Vertical Privity.** Vertical privity of estate, i.e., privity between the original parties to the covenant and the present disputants exists in this case.

5. **Horizontal Privity.** Such "privity" is not required for an "equitable restriction" (William B. Stoebuck, *Running Covenants: An Analytical Primer*, 52 Wash. L.Rev. 861, 897 (1977)) as illustrated by its omission from the elements listed in *Hollis v. Garwall*, 137 Wn.2d at 691 (1999). The Restatement flatly states: "As a matter of common law, horizontal privity between the covenanting parties is no longer required to create a servitude obligation." *1 Restatement (Third) of Prop.: Servitudes* § 2.4 cmt. b, at 97. Section 2.4 is titled, "Horizontal Privity Is Not Required to Create a Servitude" and provides in its black-letter text, "No

privity relationship between the parties is necessary to create a servitude." *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn.App. 246 (2004) *citing* 1 Restatement (Third) of Prop.: Servitudes § 2.4, at 96.

6. **Notice of Covenant.** Appellant argues that Prestons had sufficient notice for enforcement of the covenants. That argument fails because no notice was provided to Prestons or predecessors in interest that the Meadowmeer covenants were applicable to their property. This is due to reference to an Auditor's Number which did not exist in all subsequent title documents to the Preston property.

One of the key differences between equitable and real covenants is that an equitable covenant binds successors in possession of burdened land only if they have notice of the covenant or if they acquired the land without giving value. *Dickson v. Kates*, 132 Wn. App. 724, 33 P.3d 498 (2006). The general rule is that a person purchasing real property may rely on the record title to the property.

Erroneous notice is fatal to enforcing covenants when a recorded instrument contains a scrivener's error. In *Koch v. Swanson*, 4 Wn.App. 456, 481 P.2d 915 (1971), the court held that

Where existing property is described, index and recorded document impart notice only as to matters within chain of title of such property, and one searching index has right to rely upon what index and recorded document disclose and

is not bound to search record outside of chain of title of property presently being conveyed.

Koch, 4 Wn.App. 456 (1971) citing *Paganelli v. Swendsen*, 50 Wn.2d 304, 311 P.2d 676 (1957); *Biles-Coleman Lbr. Co. v. Lesamiz*, 49 Wn.2d 436, 439, 302 P.2d 198 (1956); 45 *Am.Jur. Records and Recording Laws* § 128 at 493 (1943); RCW 65.04.050, 65.08.070. Prestons were required to go no further than a search of the record as cited. To adopt Meadowmeer's position would impose an almost impossible burden upon a party seeking to become a bona fide purchaser in that each and every conveyance shown of record would have to be investigated beyond the auditor's records for possible error to avoid a claim of inquiry notice. See *Koch*, 4 Wn.App. 456 (1971).

Meadowmeer does not argue that the covenants amended in 1979 did not include Prestons' property. Rather, Meadowmeer argues that this fact does not matter, i.e. once covenants were generically mentioned in a deed, whether the covenants were intentionally meant to apply to the property or not, the covenants can subsequently be enforced against the Respondent's property and a lien taken. What Meadowmeer fails to recognize is that the Respondents were given notice of covenants referenced in a non-existent document under an incorrect Auditor's File

Number and were not given notice of the Meadowmeer covenants located over 1000 Auditor File Numbers from that referenced in the Short Plat and Deed. The Respondents were not given notice until well after closing by Meadowmeer that it was attempting to enforce its covenants.

The burden of showing duty of inquiry is on person invoking inquiry rule against purchaser of real property. *Olson v. Trippel*, 77 Wn.App. 545, 893 P.2d 634 (1995). The inquiry rule imputes to a purchaser of real estate "notice of all facts which reasonable inquiry would disclose." *Diimmel v. Morse*, 36 Wn.2d 344, 218 P.2d 334 (1950). It does not apply merely because "...diligent inquiry would have led to a discovery" of pertinent facts outside the public record; rather, it applies only when a purchaser has a duty of inquiry, i.e., when a purchaser has "information, from whatever source derived, which would excite apprehension in an ordinary mind and prompt a person of average prudence to make inquiry". *Paganelli v. Swendsen*, 50 Wn.2d 304, 311 P.2d 676 (1957). If the law were otherwise, it would impose an almost impossible burden upon a party... This would destroy the strength of our recording system and any justifiable reliance thereon. *See Koch*, 4 Wn.App. 456 (1971).

It was not until 2003 (five years after purchase of property) that Prestons received notice that Meadowmeer was attempting to enforce covenants against them. In fact, Prestons' subsequently learned that predecessors in interest, Theros, had placed Meadowmeer on notice that the property was not subject to the Meadowmeer covenants. CP 91-94. Fatal to Meadowmeer's argument of notice to enforcing the covenants against Prestons' property is that the wrong Auditor's File Number was referenced in all deeds applicable to the property since the Meadowmeer covenants were amended.

V. CONCLUSION.

For the reasons above stated, Respondents ask this Court to uphold the trial court granting of Prestons' Motion for Partial Summary Judgment and denial of Meadowmeer's Motion for Summary Judgment confirming as a matter of law the Meadowmeer Covenants did not apply to the Preston property.

Respectfully submitted this 23 day of May, 2007.



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Teresa McClain, under penalty of perjury under the laws of the State of Washington, hereby declares as follows:

i) That I am over the age of eighteen (18) years, not a party to this action, and am competent to make this declaration;

ii) That on May 23, 2006, I caused the following document: **Reply Brief of Respondents**, along with this Declaration of Service to be sent via email attachment and first class mail to the following:

Steven Goldstein, Attorney at Law
Betts Patterson & Mines
One Convention Place, Suite 1400
701 Pike Street
Seattle, WA 98101-3927

DATED this 23rd day of May, 2007.



Teresa McClain

dec of mailing for brief.doc