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WA Supreme Court: Implied Equitable Servitude May Keep the Golf Going

November 20, 2014 / Justin Walsh

***Riverview Community Group v.
Spencer & Livingston***

Here's a short story on this one. People bought properties surrounding a golf course. They bought the properties because it was surrounding a golf course. The golf course then went away, and the owners of the golf course sought to change it to homes.

One of the biggest problems here is the time difference between when the representations that this place was being made with the golf course were made by the developers and the time in which the golf course was going the way of the dodo – 30 years.

When this went to the Court of Appeals, they said that the owners of the property did have some expectation that there would always be a golf course, but that you can't be expected to maintain a derelict golf course.

The supreme court first looked at standing. For those that don't know, that is the right for a certain person to bring a lawsuit. In most cases, it's simple. The person bringing the lawsuit is the one who is directly involved in it. Here, it is an organization of people that may or may not have been involved in the original sales of the houses. However, the association here was formed specifically for the purpose of defending the interests and keeping a golf course in the development.

The next question here has to do with something called equitable servitude. Essentially, this is saying that the golf course is restricted to being a golf course because all these people bought the houses because of the golf course. Usually, these things have to be in writing. Here the question is whether it can be implied because it was represented to the people that bought the houses that the golf course was a major part of this development. When the developers say things like this, it raises the property value. When homeowners sell their houses, it allows them to sell at a higher value. Taking away the golf course would take down the property values.

The court found that there was enough evidence here to have a trial as to whether there was an equitable servitude regarding the golf course. The court also reversed the Court of Appeals on the issue of whether it would, essentially, be unfair to force them to keep this is a golf course for profitability reasons. Unfortunately, there was no evidence in the record one way or the other.

Off to trial we go!



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