

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 21st *day of* November, 2014.

Waynesboro Village, L.L.C., Appellant,

against Record No. 140313
Circuit Court No. CL11000309

Chick-Fil-A, Inc., Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of the City of Waynesboro.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of the opinion that there is no reversible
error in the judgment of the circuit court.

Chick-Fil-A, Inc. ("Chick-Fil-A") constructed a restaurant on
a 1.296-acre parcel of real property in the City of Waynesboro, a
small section of which was formerly included in a 4-acre parcel
that was subject to a restrictive covenant. The restrictive
covenant prevented any party from constructing or operating a
"drive-in or fast food restaurant" or "free-standing restaurant" on
that property. However, the restrictive covenant included an
expiration clause, which provided:

This restriction shall only apply for so long as any
portion of the remaining property owned by the party of
the first part is being used as a factory outlet and/or
discount retail stores. Upon the discontinuance of such
use this restriction shall expire.

Waynesboro Village, LLC ("Waynesboro Village") the beneficiary of
the restrictive covenant, brought an action in the Circuit Court of

the City of Waynesboro ("circuit court") to enjoin Chick-Fil-A's operation of the fast food restaurant on the property subject to the restrictive covenant.

Chick-Fil-A filed a Motion for Summary Judgment and Memorandum in Support arguing that there had been a "discontinuance" of the use of the property as "a factory outlet and/or discount retail stores" because the factory outlet located on the "property owned by the party of the first part" had ceased operations; all leases had been terminated; all buildings on the property were completely demolished; the property was reconfigured, subdivided and redeveloped; and fourteen months had elapsed between the termination of the final lease and the opening of any part of the new development.

The trial court granted Chick-Fil-A's Motion for Summary Judgment, finding under the undisputed facts of the case that there had been a "discontinuance" of the use of the property as "a factory outlet and/or discount retail stores" and the restrictive covenant had expired by its own terms.

A trial court's decision to grant a motion for summary judgment is a question of law that this Court reviews de novo. St. Joe Co. v. Norfolk Redev. & Housing Auth., 283 Va. 403, 407, 722 S.E.2d 622,625 (2012). Summary judgment is only appropriate when there are no material facts genuinely in dispute on a dispositive issue. Rule 3:20. "Construction of a controlling document may be an appropriate basis for summary judgment in Virginia, but only where it is shown that the moving party is entitled to judgment as a matter of law." Leeman v. Troutman Builds, Inc., 260 Va. 202, 206, 530 S.E.2d 902, 911 (2000). The parties agree that no

material facts are in dispute. The trial court's judgment rested on its interpretation of the restrictive covenant, which is a question of law that this Court reviews de novo. See Scott v. Walker, 274 Va. 209, 212, 645 S.E.2d 278, 280 (2007).

Well-settled principles govern the interpretation and enforcement of a restrictive covenant on the use of land:

Valid covenants restricting the free use of land, although widely used, are not favored and must be strictly construed. The burden is upon the party seeking to enforce deed restrictions to demonstrate that the covenants are applicable to the acts of which the complaint is made. Substantial doubt or ambiguity is to be resolved against the restrictions and in favor of the free use of the property.

Woodward v. Morgan, 252 Va. 135, 138, 475 S.E.2d 808, 810 (1996) (citing Friedberg v. Riverpoint Bldg. Comm., 218 Va. 659, 665, 239 S.E.2d 106, 110 (1977)). "We have defined 'ambiguity' as 'the condition of admitting of two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time.'" Lovelace v. Orange County Board of Zoning Appeals, 276 Va. 155, 159, 661 S.E.2d 831, 833 (2008) (quoting Berry v. Klinger, 225 Va. 201, 207, 300 S.E.2d 792, 796 (1983)). These principles guide our resolution of this case.

An examination of the definitions of "discontinuance" extant at the time the restrictions were included in the deed reveal that "discontinuance" could be either a temporary "cessation" or "interruption," or a more permanent "termination," "ceasing to use," "giving up," or "leaving off." See Webster's Third New International Dictionary 646 (1976); Black's Law Dictionary 417-18

(5th ed. 1979). The expiration clause did not provide a minimum temporal duration on the period of discontinuance, nor did it include a requirement of intent to abandon the contemplated use; it simply provided that the restrictions "shall only apply for so long as any portion of . . . the remaining property . . . is being used as a factory outlet and/or discount retail stores." (Emphasis added.)

While the facts clearly demonstrate that the property is currently being used for discount retail stores, it is undisputed that there were no discount retail or factory outlet stores being operated on any part of the property during the fourteen-month period of redevelopment. Construing the language of the expiration clause most strictly against the grantor, and in favor of the free use of the land, we find that the undisputed fourteen-month period during which the property was not "being used as a factory outlet and/or discount retail stores" constituted a "discontinuance" of such use; therefore, the restrictions in the 1989 deed expired by their own terms.

For these reasons, we affirm the judgment of the circuit court. The appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the Circuit Court of the City of Waynesboro.

A Copy,

Teste:

John L. Hamington

Clerk