

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-892

Filed: 19 May 2020

Forsyth County, No. 16 CVS 7879

SPRING LAKE FARM, LLC, Plaintiff,

v.

SPRING LAKE FARM HOMEOWNERS ASSOCIATION, INC., ERIC S. WARSHAWSKY and LINDA L. WARSHAWSKY, PAUL W. GILLESPIE and JUDITH H. GILLESPIE, JASON D. BRITT and KERI P. BRITT, RICHARD A. REAGAN and DENISE PEROTTA, BRENDA B. JOHNSON, DENNIS J. HIGGINS and TERESA W. HIGGINS, STEVEN SCROGGIN and KAREN CROSS, GLENNELL WATSON and TAMIA W. WATSON, ROLANDA D. CATHCART, CARL E. GOODE and VANESSA L. GOODE, YOLANDA TAYLOR and JOHNNIE TAYLOR, WAYNE L. GREEN and KERA L. GREEN, RANDALL J. WILLE and MICHELE WILLE, EDWARD L. PAULEY and KIMBERLY L. PAULEY, JAMES D. RIDER and ALICIA RIDER, MARK J. CELUSNIAK and CATHERINE R. CELUSNIAK, PETER R. SEOANE and FRANCIS R. SEOANE, JEFFREY W. HENDERSON and ADRIENNE G. HENDERSON, RONALD E. BASKIN and CYNTHIA G. BASKIN, CARLOS PLEDGER and LATARSHA PLEDGER, BUCK K. ENG and MOLLY J. ENG, CHRISTINE S. SERRANO, CHARLES SKEEN and PAULINE SKEEN as Trustees of the SKEEN FAMILY TRUST, RS PARKER HOMES LLC, LR DEVELOPMENT-WINSTON LLC, Defendants.

Appeal by defendant-Spring Lake Farm Homeowners Association, Inc. from judgment entered 12 June 2019 by Judge Eric C. Morgan in Forsyth County Superior Court. Heard in the Court of Appeals 14 April 2020.

*Craige Jenkins Liipfert & Walker LLP, by H. David Niblock and Lori B. Edwards, for plaintiff.*

*Opinion of the Court*

*Davis & Hamrick, L.L.P., by Kent L. Hamrick and Ann C. Rowe, for defendant-Spring Lake Farm Homeowners Association, Inc.*

ARROWOOD, Judge.

Defendant-Spring Lake Farm Homeowners Association, Inc. (“the HOA”) appeals from trial court order granting declaratory judgment in favor of Spring Lake Farm, LLC (“the LLC”). The HOA contends the trial court erred in finding and concluding that: (1) the undeveloped land is not subject to the Declaration; (2) there are no common areas in the Spring Lake Farm Subdivision; and (3) the LLC has no duty or obligation to repair and convey the alleged common areas to the HOA. For the following reasons, we affirm.

I. Background

The Spring Lake Farm LLC is the owner of certain real property in the Spring Lake Farm Subdivision located in Forsyth County, North Carolina, as described in the deeds recorded in Deed Book 2973, pages 1073-1079 and pages 1080-1085 at the Office of the Register of Deeds of Forsyth County, North Carolina (the “real property”). The real property was previously owned by Brower Investments, LLC (“Brower”). On 16 August 2005, Brower recorded the Declaration of Covenants, Conditions and Restrictions of Spring Lake Farm Subdivision (the “Declaration”) in the Office of the Register of Deeds of Forsyth County in Book 2592, pages 1547-1575. The Declaration lists Brower as the Declarant, and declares that the property listed

*Opinion of the Court*

therein is subject to the terms and conditions of the Declaration. Brower began development of the Spring Lake Farm Subdivision (the “Subdivision”) pursuant to the Declaration, but was unable to finish development. The property was foreclosed upon and sold to a third party.

At the time of its sale, the Subdivision had three recorded plats showing land that had been developed, including: (1) Spring Lake Farm, Phase I, Section I; (2) Spring Lake Farm, Phase I, Section I, revised; and (3) Spring Lake Farm, Phase I, Section II. There was also an unrecorded plat, titled Phase II, which consisted of undeveloped land. In 2010, the LLC purchased real property in the Subdivision, including fifteen lots in Phase I of the Subdivision and certain undeveloped land consisting of approximately 24.57 acres of land that has not been platted. The LLC’s property also includes property referred to on the plats and described in the Declaration as “common area.” The LLC sold one of its lots and has fourteen remaining. The LLC also attempted to sell the undeveloped land, but has been unsuccessful due to the uncertainty of its rights in and ability to market and develop the property.

The property owned by the LLC also includes a dam, which has some issues that require repairs estimated to cost up to approximately \$70,000.00. No written agreement exists which requires the LLC to repair and maintain the dam. However, when the LLC purchased the real property, it believed it was the Declarant and had

*Opinion of the Court*

inherited all such rights and obligations. The LLC thus attempted to convey the property described as common area in the Declaration, including the property where the dam is located, to the Spring Lake Farm HOA. The HOA rejected the conveyance and filed a renunciation, refusing to accept the property until repairs were made. A dispute subsequently arose between the LLC and the HOA regarding whether the LLC is the Declarant under the Declaration, whether there is any common area in the Subdivision and whose responsibility it is to own and maintain that common area, and whether the undeveloped land is subject to the Declaration.

On 30 December 2016, the LLC instituted this action for a declaratory judgment regarding its rights in the real property. On 12 June 2019, the trial court granted a declaratory judgment in favor of the LLC. Specifically, it found and concluded that the LLC is not, and has never been, the Declarant; there are no common areas in the real property and the LLC has no obligation to repair, maintain, and/or convey alleged common areas to the HOA; and the undeveloped land is not subject to the terms and conditions of the Declaration because to hold otherwise would result in a severe and impermissible restraint on alienation. The HOA timely gave written notice of appeal on 10 July 2019.

II. Discussion

The HOA raises several arguments on appeal, contending the trial court erred in finding and concluding that: (1) the undeveloped land is not subject to the

*Opinion of the Court*

Declaration; (2) there are no common areas in the Spring Lake Farm Subdivision; and (3) the LLC has no duty or obligation to repair and convey the common areas to the HOA. We disagree.

“ ‘The standard of review in declaratory judgment actions where the trial court decides questions of fact is whether the trial court’s findings are supported by any competent evidence. Where the findings are supported by competent evidence, the trial court’s findings of fact are conclusive on appeal.’ ” *Basmas v. Wells Fargo Bank Nat’l Ass’n*, 236 N.C. App. 508, 511, 763 S.E.2d 536, 538 (2014) (quoting *Cross v. Capital Transaction Grp., Inc.*, 191 N.C. App. 115, 117, 661 S.E.2d 778, 780 (2008)). “Competent evidence is evidence ‘that a reasonable mind might accept as adequate to support the finding.’ ” *Ward v. Ward*, 252 N.C. App. 253, 256, 797 S.E.2d 525, 528 (2017) (quoting *Forehand v. Forehand*, 238 N.C. App. 270, 273, 767 S.E.2d 125, 128 (2014)). “We review the trial court’s conclusions of law *de novo*.” *Propst Bros. Dists. v. Shree Kamnath Corp.*, \_\_ N.C. App. \_\_, \_\_, 823 S.E.2d 633, 636 (2019) (quoting *Calhoun v. WHA Med. Clinic, PLLC*, 178 N.C. App. 585, 597, 632 S.E.2d 563, 571 (2006)).

A. Property Subject to the Declaration

We first address the HOA’s contention the trial court erred in finding and concluding the undeveloped land is not subject to the Declaration. Specifically, the trial court found in its finding of fact 25 that:

*Opinion of the Court*

25. The Declaration states in the beginning of the last full paragraph on page 1 that the Declarant declares all Lots and Common Areas shall be subject to the covenants, conditions and restrictions (the Declaration). Article 2 of the Declaration states that all the “Property” (which includes the other Real Property not included in Phase I of the Spring Lake Farm Subdivision and which does not include any “Lots”) is subject to the Declaration. These provisions conflict and are ambiguous.

It later concluded that “[a]mbiguities exist within the Declaration concerning what real property should be subject to the Declaration” and “[s]ubjecting the Undeveloped Land to the Declaration will result in a restraint of alienation against the Real Property and its use, enjoyment, and its ability to be sold and transferred.” Because such restraint of alienation is disfavored by North Carolina law, the trial court ultimately concluded the undeveloped land “is not subject to or bound by the terms of the Declaration . . . .”

In support of its argument the trial court erred in making these findings and conclusions, the HOA points to the plain language of the Declaration, contending that it makes clear that there is no ambiguity; the Declaration applies to all of the real property acquired by the LLC. Because the provisions of the Declaration run with the land and are binding on successors in title, the HOA argues the LLC is bound by the Declaration with regard to the undeveloped land. We disagree.

The last paragraph of the first page of the Declaration provides as follows:

*Opinion of the Court*

[A]ll of the *Lots and Common Areas* . . . located within the Subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions . . . . All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any of the Property.

(emphasis added). Article I Section 1.19 of the Declaration defines “lot” as “any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed.” In contrast, Article II of the Declaration also describes the property subject to the Declaration, and provides that

[t]he property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgage and occupied subject to the terms, provisions, covenants and conditions of this Declaration. Declarant reserves the right to add additional properties to this Declaration so long as it owns any Lot which is subject to this Declaration.

Article I Section 1.24 defines “property” or “subdivision” as “that certain real estate described in Exhibit A and all other real estate that may be annexed into this Declaration and the Association by the Declarant.” Exhibit A is a metes and bounds description of all the real property that constitutes the Subdivision. Upon analyzing these provisions, the trial court found that there is some ambiguity as to what property is bound by the Declaration, as one provision only states that “[a]ll of the

*Opinion of the Court*

Lots and Common Areas” shall be bound, while another later indicates that the entire property shall be bound. “An ambiguity exists where the language of a contract is fairly and reasonably susceptible to either of the constructions asserted by the parties.” *Hemric v. Groce*, 169 N.C. App. 69, 76, 609 S.E.2d 276, 282 (2005) (quoting *Potter v. Hilemn Labs., Inc.*, 150 N.C. App. 326, 331, 564 S.E.2d 259, 263 (2002)). Here, the LLC argued that conflicting descriptions of property subject to the Declaration meant that the undeveloped land may not be subject to it, while the HOA argued the Declaration’s language indicates it applies to the entire Subdivision, including any undeveloped property. Because Article II’s description of the property bound by the Declaration conflicted with that found on the first page of the Declaration, the trial court found it created an ambiguity such that it was unclear whether the undeveloped land in dispute is bound by the Declaration: on the one hand, the undeveloped land does not fit the definition of a “lot” or “common area,” however, it would be included in the broader definition of “property” as defined in the Declaration.

In addition, the trial court found the Declaration contained other ambiguities as well. In its finding of fact 26, the trial court noted that

26. The Declaration provides for and allows in Section 1.24 the Declarant to annex additional land into the Spring Lake Farm Subdivision, but it does not state whether or not land that is included in the Real Property, but not included in the Plats of Phase I of



*Opinion of the Court*

such Subdivision, can be withdrawn from being subject to the control of the Declaration. . . .

This finding is especially important because the trial court, following a motion for directed verdict by the appellant HOA that the LLC was not the Declarant under the Declaration, ruled that the LLC was not the Declarant. The trial court, in granting such motion, found that:

18. From the date of the purchase of the Real Property by [the LLC] until approximately September 7, 2017 (the date of the report by Samuel Franck, [the LLC's] expert witness) [the LLC] was of the belief, albeit mistaken, that it was the Declarant for the Spring Lake Farm Subdivision and thus [the LLC] acted and attempted to act in accordance with such rights as the Declarant under the Declaration. This presumption was incorrect, and as set forth above [the LLC] is not and has never been the Declarant in this matter.

This finding is supported by competent evidence and is not contested by the HOA. Because the LLC is not the Declarant, it does not have the rights and obligations associated with that status imposed by the Declaration. Thus, the LLC is unable to annex additional land into the Subdivision, and the Declaration does not contemplate at all what rights exist in land that remains undeveloped outside of the 10-year development window established by the Declaration.

Moreover, the trial court found that the LLC's rights in the undeveloped land were further muddled because the LLC does not fit the definition of an "owner" under the Declaration. Section 1.21 provides that owner "shall mean and refer to the record

*Opinion of the Court*

owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision.” Accordingly, though the LLC is an owner with respect to the platted lots it purchased in Phase I, it is by definition not an owner with respect to the undeveloped land composing Phase II. Based on this evidence, the trial court ultimately found that “there are no clear provisions in the Declaration concerning the ownership by [the LLC] of the Undeveloped Land since it has not been platted.”

This Court determines there is competent evidence in the record, in both the Declaration and the testimony given at trial, that supports the trial court’s findings that there exist some ambiguities in the Declaration with regard to the LLC’s rights in the undeveloped land. Though the HOA contends the Declaration is in fact clear on what property is bound by it, “[t]he trial court’s findings of fact are binding on appeal as long as competent evidence supports them, despite the existence of evidence to the contrary.” *Resort Realty of the Outer Banks, Inc. v. Brandt*, 163 N.C. App. 114, 116, 593 S.E.2d 404, 408 (2004). In light of the ambiguity, the trial court appropriately sought to interpret the relevant provisions, ultimately concluding that “[s]ubjecting the Undeveloped Land to the Declaration will result in a restraint of alienation against the Real Property and its use, enjoyment and its ability to be sold and transferred [which] . . . is disfavored by North Carolina law.”

*Opinion of the Court*

“Interpretation of the language of a restrictive covenant is a question of law reviewed *de novo*.” *Erthal v. May*, 223 N.C. App. 373, 378, 736 S.E.2d 514, 517 (2012). A covenant is “a binding agreement or compact” which benefits all parties to the agreement. *Armstrong v. Ledges Homeowners Ass’n, Inc.*, 360 N.C. 547, 554, 633 S.E.2d 78, 84 (2006). “Because covenants originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to the *original* intent of the parties; however, covenants are strictly construed in favor of the *free use of land* whenever strict construction does not contradict the plain and obvious purpose of the contracting parties.” *Id.* at 555, 633 S.E.2d at 85 (emphasis in original) (citing *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238 (1967)). Restrictive covenants will be held valid unless they “impair the enjoyment of the estate” or are “contrary to the public interest.” *Wise v. Harrington Grove Cmty. Ass’n, Inc.*, 357 N.C. 396, 400, 584 S.E.2d 731, 735 (2003) (quoting *Karner v. Roy White Flowers, Inc.*, 351 N.C. 433, 436, 527 S.E.2d 40, 42 (2000)).

“[C]ovenants restricting the use of property are to be strictly construed against limitation on use, and will not be enforced unless clear and unambiguous[.]’ This is in accord with general principles of contract law, that the terms of a contract must be sufficiently definite that a court can enforce them.” *Wein II, LLC v. Porter*, 198 N.C. App. 472, 480, 683 S.E.2d 707, 713 (2009) (quoting *Snug Harbor Property Owners Ass’n. v. Curran*, 55 N.C. App. 199, 203, 284 S.E.2d 752, 755 (1981)). “Where

*Opinion of the Court*

restrictive covenants are ambiguous, their meaning must be construed by determining the intent of the parties, and the intent of the parties must be gathered from an examination of all the covenants contained in the instrument as well as an examination of the surrounding circumstances.” *Claremont Prop. Owners Ass’n, Inc., v. Gilboy*, 142 N.C. App. 282, 289, 542 S.E.2d 324, 329 (2001). “Surrounding circumstances include relevant ‘statutes and rules of law’ existing at the time of execution of the document, as these give context to the words used by the parties.” *Angel v. Truitt*, 108 N.C. App. 679, 682, 424 S.E.2d 660, 662 (1993) (citation omitted). Ultimately, “[a]ny doubt or ambiguity will be resolved against the validity of the restriction.” *Wise*, 357 N.C. at 404, 584 S.E.2d at 737 (quoting *Cummings v. Dosam, Inc.*, 273 N.C. 28, 32, 159 S.E.2d 513, 517 (1968)).

Here, upon consideration of all the covenants contained in the Declaration, it is clear the original intent of the parties to the Declaration was that the undeveloped land be platted and divided into lots. Specifically, paragraph B of the first page of the Declaration provides that “Declarant is developing the Property known as ‘Spring Lake Farm’ by subdividing it into ‘Lots’ that are to be used for residential purposes as well as common real estate and improvements that are to be owned by a homeowners association to which the Owner of a Lot must belong and pay lien-supported maintenance assessments . . . .” The Declaration further provides for a “Development Period,” which was to terminate ten years from the date of recording

*Opinion of the Court*

the Declaration. The Declaration's development plan, however, only contemplated development efforts by the Declarant. As established below at trial, the only Declarant under the Declaration was Brower, who lost ownership of the property through a foreclosure sale to a third-party. The record does not contain any evidence the Declarant rights held by Brower were transferred to the purchasers of the property, including the LLC. As the LLC has no Declarant rights in the property, the Declaration is silent on whether the LLC may proceed with developing the undeveloped land.

In addition, even if the LLC was the Declarant, the development period contemplated by the Declaration expired in 2015. The intent expressed in the Declaration that the undeveloped property be developed into lots and sold for residential purposes is thus frustrated in many respects. To leave the status of the rights of the property as they are currently both contravenes the original intent of the parties and effectively imposes an unreasonable restraint on the alienation of property disfavored by North Carolina law. *See Wise*, 357 N.C. at 404, 584 S.E.2d at 737 ("The law looks with disfavor upon covenants restricting the free use of land."). Though the LLC has legal title to the undeveloped land, leaving the undeveloped land perpetually subject to the terms of the Declaration would mean that the LLC cannot develop the land because it is not the Declarant. The undeveloped land would, however, remain subject to all of the burdens and restrictions imposed upon it by the

*Opinion of the Court*

Declaration. Such a situation greatly restricts the LLC's use and enjoyment of the property, and has already contributed to the LLCs inability to sell it.

This Court has previously recognized that “[r]estrictive covenants are strictly construed, but they should not be construed ‘in an unreasonable manner or a manner that defeats the plain and obvious purpose of the covenant.’” *Hultquist v. Morrow*, 169 N.C. App. 579, 582, 610 S.E.2d 288, 291 (2005) (quoting *Cumberland Homes, Inc. v. Carolina Lakes Prop. Owners’ Ass’n, Inc.*, 158 N.C. App. 518, 521, 581 S.E.2d 94, 97 (2003)). The facts here present such a case. Because strict construction of the Declaration creates ambiguity as to the rights of the LLC in the undeveloped land such that it amounts to an unreasonable restraint on alienation, and “[i]t is in the best interests of society that the free and unrestricted use and enjoyment of land be encouraged to its fullest extent[.]” we hold that the undeveloped land is not subject to the terms of the Declaration. *Terres Bend Homeowners Ass’n v. Overcash*, 185 N.C. App. 45, 54, 647 S.E.2d 465, 472 (2007) (quoting *J.T. Hobby & Son, Inc. v. Family Homes, Inc.*, 302 N.C. 64, 71, 274 S.E.2d 174, 179 (1981)).

B. Common Areas

1. No “Common Areas”

The HOA next argues the trial court erred in finding and concluding that there are no common areas in the Subdivision and the LLC has no duty or obligation to

*Opinion of the Court*

repair the alleged common areas and convey them to the HOA. The HOA specifically challenges the trial court's findings of fact 22-24, which are as follows:

22. . . . Within the Spring Lake Farm Subdivision there is no Common Area as that term is defined in the Declaration and as it is defined under the Planned Community Act.
23. "Common Property/Commons Areas" is defined in Section 1.11 of the Declaration as "all real property, together with all personal property used in conjunction therewith, leased or owned by the Association for the common use and enjoyment of the members." The second sentence in Section 1.11 reads as follows: "Common property includes community facilities, recreation areas and buildings, nature walking trails, roads, streets, dams, lakes or ponds." The Court finds that the specific list of Common property set forth in the second sentence describes specific types of property and facilities that can be included in the definition of "Common Property/Common Areas," provided that the initial requirement is met, namely that such property and facilities are "leased or owned by the Association."
24. None of the Real Property is owned or leased by the Association. The terms of the Declaration and terms of North Carolina law, as set forth in the Planned Community Act, are consistent in this regard, namely that the Common Area consists of real property that is either owned or leased by a homeowner's association. There is no ambiguity about the definition of Common Area.

The HOA argues the trial courts findings of fact and corresponding conclusions of law are not supported by competent evidence. However, as the trial court noted—and the HOA does not contest—the term "common property /common areas" as

*Opinion of the Court*

defined by Section 1.11 of the Declaration means “all real property, together with all personal property used in conjunction therewith, leased or owned by the Association for the common use and enjoyment of members. Common property includes community facilities, recreation areas and buildings, nature or walking trails, road[s], streets, dams, lakes and ponds.” Similarly, the North Carolina Planned Community Act defines “common elements” as “any real estate within a planned community owned or leased by the association, other than a lot.” N.C. Gen. Stat. § 47F-1-103(4) (2019).

It is well settled that Declarations, as covenants that restrict the use of real property, are contracts. *Wise*, 357 N.C. at 404, 584 S.E.2d at 737. “[W]here the language of a contract is plain and unambiguous . . . [a] court may not ignore or delete any of its provisions, nor insert words into it, *but must construe the contract as written[.]*” *Moss Creek Homeowners Ass’n, Inc. v. Bissette*, 202 N.C. App. 222, 229, 689 S.E.2d 180, 185 (2010) (emphasis in original) (quoting *Hemric*, 169 N.C. at 76, 609 S.E.2d at 282). As there is no ambiguity in this definition, we interpret this provision in accordance with its plain language. Pursuant to the Declaration, “common area” is property “leased or owned by the Association.” Here, the uncontested evidence showed the HOA neither owns nor leases any of the real property within the Subdivision, including that property owned by the LLC.



*Opinion of the Court*

Accordingly, there is competent evidence to support the trial court's finding that there is no "common area."

2. No Obligation to Convey

The HOA lastly contends the trial court erred in concluding the LLC has no duty or obligation to repair and convey the alleged common areas, including the dam located on the property, to the HOA. While it is true the Declaration requires the Declarant to convey all common areas to the HOA after the final platting of all lots in the Subdivision, the LLC, having been determined not to be the Declarant, is not subject to such obligation. Accordingly, the LLC bears no duty or obligation to convey property, such as the dam, that may otherwise have been considered to be "common area." The LLC also has no duty or obligation to repair and maintain the dam, as there is no enforceable agreement requiring the LLC to do so and the dam has caused no damage to any members of the Subdivision.

Despite the Declaration's plain language, the HOA argues that the context of the Declaration reveals the Declaration's intent that certain property be treated as common property, and must thus be conveyed to the HOA to ensure its enjoyment by all members. In support of its argument, the HOA points to several opinions of this Court holding that an owner or developer of a Subdivision was required to convey property understood to be "common area" to the HOA. In *Lyerly v. Malpass*, the plaintiffs were owners of lots in the Inlet Point subdivision and alleged they had

*Opinion of the Court*

purchased the lots in part based on representations by the defendants that certain common amenities such as a boat basin and access channel would be built. 82 N.C. App. 224, 226, 346 S.E.2d 254, 256 (1986). The trial court granted specific performance in favor of the plaintiffs, requiring the defendant to build and provide the promised amenities. *Id.* at 228, 336 S.E.2d at 257. This Court affirmed the decision, noting that the evidence showed there was an implied promise by the developer to provide the amenities. Specifically, the restrictive covenant and recorded plats both indicated the subdivision would include a boat basin and access channel, and that access had been a major attraction for the plaintiffs inducing their decision to purchase a lot in the subdivision. *Id.* at 229, 336 S.E.2d at 258.

Similarly, in *Wall v. Fry*, the defendant was the developer of a subdivision and recorded plats showing there would be a private boat ramp in the subdivision. 162 N.C. App. 73, 75, 590 S.E.2d 283, 284 (2004). In addition, the subdivision's restricted covenants' provided that the Declarant would provide continued maintenance of the boat ramp, pier, and lake access. Furthermore, the defendant posted a sign stating that all lots had access to the lake. *Id.* The plaintiffs relied on this sign when they purchased a lot in the subdivision. However, the defendant never obtained the rights to the lake. *Id.* at 75, 590 S.E.2d 284-85. Though at the time the plaintiffs made their purchase a revised plat had been recorded which eliminated the private boat ramp, the sign advertising lake access had not been removed. *Id.* In addition, the

*Opinion of the Court*

plaintiffs were never informed of the revised filing and had only been told that the lake access had not yet been approved. *Id.* at 77, 590 S.E.2d at 286. Furthermore, the contract, the deed, and the restrictive covenant all referenced the original plat. *Id.* at 77-78, 590 S.E.2d at 286. Based on these facts, this Court held there was evidence the contract included a promise by the defendants to provide lake access. *Id.* at 78, 590 S.E.2d at 286. *See also Friends of Crooked Creek, L.L.C. v. C.C. Partners, Inc.*, 254 N.C. App. 384, 391-92, 802 S.E.2d 908, 913-14 (2017) (explaining that a developer who sells lots by reference to a recorded plat effectively promises purchasers use of the common areas advertised on the plat and so induces them).

The present case is notably distinguishable from those cited to by the HOA, as they all involve promises or inducements made by a *developer* or *Declarant*. Here, however, the LLC's position is significantly different, as it is neither a developer of the Subdivision nor the Declarant. Unlike the defendants in the cases cited by the HOA, the LLC did not develop any part of the Subdivision, including Phase I, in which the dam is located; it did not draw the maps and prepare and record the plat referenced in the Declaration; and it is not the Declarant. Furthermore, the LLC has only sold one of the lots it owns and the HOA presented no evidence the purchaser of that lot was induced by promises of use of the dam at issue. Accordingly, we are not persuaded by the facts of this case that the LLC has a duty to convey to the HOA the dam and other property the HOA alleges to be "common area."

*Opinion of the Court*

III. Conclusion

For the following reasons, we affirm the judgment of the trial court.

AFFIRMED.

Judges STROUD and HAMPSON concur.

Report per Rule 30(e).