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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2021-CV-000474

Court: Shawnee County District Court

Case Number: 2021-CV-000474

Case Title: JJ&J Incorporated vs. Andrew Poling, et al.

Type: MEMORANDUM DECISION AND ORDER REGARDING PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS (1-19-22)

SO ORDERED.

/s/ Honorable Mary E Christopher, District Judge

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION EIGHT

J.J.&J., INCORPORATED,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 2021-CV-474**
	)	
ANDREW AND SHERRY POLING, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM DECISION AND ORDER
REGARDING PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS (1-19-22)

On March 30, 2022, this matter comes before the Court on plaintiff's *Motion for Judgment on the Pleadings* filed January 19, 2022. Plaintiff J.J.&J., Incorporated ("JJ&J") appears through Rick Farrant, president, and plaintiff's attorney Jeremy Graber. The "Prairie View Group" defendants, BMH Builders LLC; Barbara Burroughs; Curtis J. Geiken & Lara Hawks Geiken; William Southard Jr. & Nancy Southard; Michelle M. Hutchison; Robert Masleid & Christine Masleid; Raul O. Lopez & Blanca S. Zazueta De Lopez; Charles Horn & Angela Horn; Robert Forman & Susanne Forman; Casy Arganbright & Ashlyn Arganbright; Steven C. Evans & Aimee L. Kosmala; Arthur & Mary Drazin, Co-Trustees of the Drazin Restated Living Trust Agreement, dated June 7, 2008; Larry Stowe & Joretta Stowe; Brian Tangeman & Krystal Tangeman; Glen Thowe & Stacy Thowe; and Kevin Nelson & Vicky Nelson appear at the hearing pro se. Defendants' briefs were prepared and submitted by attorneys Taylor M. Meeks and Pat Reeder before their withdrawal of representation.

This Court finds pursuant to Kansas Supreme Court Rule 133 that oral argument is not necessary as it would not materially aid the Court. Plaintiff's motion/reply and defendants' response and exhibits are fully briefed and deemed submitted.

I. OVERVIEW

In this case, JJ&J owns a part of golf course property that was built as part of a residential subdivision in Shawnee County. Plaintiff's lawsuit seeks declaratory judgment that an existing restrictive covenant does not limit JJ&J's use of the property to a golf course, so it may divide the property into residential lots for sale. The Prairie View Group defendants own property largely surrounding the golf course. They oppose the idea of turning the golf course into residential lots and contend language in the Declaration of Restrictions restricts JJ&J's property use to "golf course, driving range and club facilities."

Here, the legal issue presented is whether this Court may find, as a matter of judgment on the pleadings, the Declaration of Restrictions filed with the Register of Deeds for Deerbrook Subdivision restricts JJ&J's division of its golf course property into residential lots for sale.

II. FACTS

1. In 1988, Shawnee County Recreational Management Corporation executed a plat of Deerbrook Subdivision and recorded the Plat and a Declaration of Restrictions with the Shawnee County Register of Deeds in Plat Book 32 at Page 68. See Ct. file, Sec. Am.Pet. (9-21-21).

2. Plaintiff JJ&J is the owner of part of Lot 1 Block A and Block B Lot 13 within the Deerbrook Subdivision, the site of Prairie View Golf Club which is no longer operating. See Ct. file, Sec. Am. Pet., ¶3 (9-21-21). The Deerbrook Subdivision also includes approximately 38 residential lots, which surround the Subject Property. All Deerbrook Subdivision properties are

subject to a Declaration of Restrictions ("Declaration") signed in 1988 and recorded at Book 2513, Page 517 in the Shawnee County Register of Deeds.

3. According to plaintiff's allegations, Prairie View Golf Club was not profitable for several years. JJ&J closed it in April 2020 and the real property now sits vacant. See Ct. file, Sec. Am. Pet., ¶4 (9-21-21).

4. The defendants own the residential lots in the Deerbrook Subdivision adjacent to or near the golf course property owned by JJ&J (on Lot 1 Block A and Block B Lot 13). Ct. file, Sec. Am. Pet., ¶¶ 2, 6 (9-21-21), Ans. ¶¶2, 6.

5. JJ&J filed an action in declaratory judgment action seeking an order from this Court ruling the Declaration of Restrictions does not bar it from subdividing its real property [former Prairie View Golf Course] into residential lots. See Ct. file, Pet. (9-7-21), Sec. Am. Pet. (9-21-21); *Mot. for J. on Pleadgs*.

6. The Declaration of Restrictions for Deerbrook Subdivision was filed by Shawnee County Recreational Management Corporation, the owner of the real estate located in the subdivision at the time. Two of the opening paragraphs of the Declaration of Restrictions state:

> "… [the corporation] now desires to place certain restrictions on such lots shown on such plat for the purpose of keeping the subdivision desirable, uniform and suitable." Declaration of Restrictions, preamble, 12-21-88.
>
> "NOW, THEREFORE, Shawnee County Recreational Management Corporation makes the declarations hereinafter put forth as to limitations, restrictions and uses to which the lots or tracts constituting Deerbrook Subdivision may be put as follows:"

Declaration of Restrictions, preamble ¶¶3-4, (12-21-88).

7. Paragraph 1 of the Declaration states, in pertinent part:

> "None of the said lots hereby restricted may be improved, used or occupied for other than private residence purposes, except Lot 1, Block A, and Lot 13, Block B, which are for golf course, driving range and club facilities."

Declaration of Restrictions, ¶1, (12-21-88).

8. Paragraph 16 of the Declaration provides, in part:

> "All fence material must be approved by Shawnee County Recreational Management Corporation prior to construction. *Only fence material which will not obstruct the view of the golf course will be considered*."

Declaration of Restrictions, ¶16, (12-21-88).

9. The Declaration of Restrictions provide the "restrictions herein contained shall constitute covenants to run with the land and shall be binding on all owners of lots, their grantees, successors and assigns …." Declaration of Restrictions, ¶19, (12-21-88). The Declaration provides for an initial effective period "of twenty-five (25) years" with automatic extension every ten years thereafter "unless changed by a vote in which seventy percent (70%) of the lot owners approve the change …." Declaration, ¶19.

10. The defendants argue plaintiff's interpretation of the Declaration is unreasonable and strongly object to plaintiff's plan to develop the golf course property. See Answer of Defs' to Pl's Sec. Am. Pet. ¶13 (1-7-22).

11. Defendants seek the Court's approval of their interpretation of the Declaration of Restrictions, which would restrict plaintiff's property to golf course, driving range and club facilities, absent amendment to the Declaration by majority vote as provided in ¶19 of the Declaration. See Answer of Defs' to Pl's Sec. Am. Pet. ¶13 (1-7-22).

12. Defendants' written response brief to plaintiff's *Motion for Judgment on the Pleadings* was prepared and submitted by attorneys Taylor M. Meeks and Pat Reeder before their withdrawal of representation. On March 30, 2022, the Court oral argument would not materially

aid the Court in deciding the pending *Motion for Judgment on the Pleadings*, which was fully briefed and deemed submitted on the briefs.

III. ANALYSIS

As noted, plaintiff owns part of real property in Deerbrook Subdivision known as Lot 1 Block A and Lot 13 Block B, known as Prairie View Golf Course. Plaintiff ceased operation of the golf course in 2020. Defendants are owners of other lots in the Deerbrook Subdivision adjacent to or near the former Prairie View Golf Course. Defendants oppose JJ&J's proposal to turn the golf course into residential lots.

JJ&J's *Motion for Judgment on the Pleadings* asks this Court to grant declaratory relief finding no material facts exist and, as a matter of law, the restrictive covenant allows it the right to subdivide the Prairie View Golf Course into residential lots.

Defendants argue judgment on the pleadings is inappropriate and contend the restrictive covenant unambiguously limits the use of plaintiff's lots to "golf course, driving range and club facilities."

Ownership of real property gives rise to a myriad of legal rights and interests sometimes referred to as a "bundle of sticks." Kansas courts recognize not only the rights and interests of the owners of real property but also acknowledge legal restrictions and limitations circumscribing ownership of real property.

> Ownership of property does instill the owner with certain rights. Generally, ownership of property includes the rights of: acquisition, dominion, possession, access, use and enjoyment, exclusion, and disposition. 73 C.J.S., Property § 3. Kansas courts generally recognize these rights. See *In re Tax Appeal of BHCMC*, 307 Kan. 154, 166, 408 P.3d 103 (2017) (acknowledging property rights include the right to possess and use). But these rights are not unlimited.
>
> While a property owner has the right to use his or her property as desired, that right is not absolute. For example, the property owner cannot use the land in a way that

> harms others or contravenes law or public policy. 73 C.J.S., Property § 4. (Emphasis added.)

Sechrest, LLC v. City of Andover, 426 P.3d 537 (Kan. Ct. App. 2018).

Restrictive covenants run with the land and apply to subsequent landowners; as such they are characterized as servitudes or conditions on use of the property. The nature of the restrictive covenant itself is not contractual but rather a property interest.[1] "Restrictive covenants have long been recognized in this state. A person who takes land with notice of restrictions upon it will not in equity and good conscience be permitted to act in violation thereof." *S. Shore Homes Ass'n, Inc. v. Holland Holiday's*, 219 Kan. 744, 750–51, 549 P.2d 1035 (1976), citing *Reeves v. Morris*, 155 Kan. 231, 124 P.2d 488; *Hecht v. Stephens,*204 Kan. 559, 464 P.2d 258.

This Court must determine whether any material issues of fact have been identified by the parties. Then it may examine the instrument under consideration and consider whether the restrictive covenant either bars or allows plaintiff to transition the golf course into residential lots.

A. Standard of Review

A motion under K.S.A. 60-212(c) for judgment on the pleadings is "based upon the premise that the moving party is entitled to judgment on the face of the pleadings themselves and the basic question to be determined is whether, upon the admitted facts, the plaintiffs have stated a cause of action." *Clear Water Truck Co. v. M. Bruenger & Co.*, 214 Kan. 139, 140, 519 P.2d 682 (1974). The motion operates as an admission by the movant of all factual allegations contained in the opposing party's pleadings. *Purvis v. Williams*, 276 Kan. 182, 186-87, 73 P.3d 740, 745 (2003).

[1] As noted by the United States Court of Appeals for the Seventh Circuit, "although restrictive covenants [ ] may contain the characteristics of both a contract and an interest in real estate, *the primary nature of such covenants is not contractual but rather a property interest*. (Emphasis added.)" *Gouveia v. Tazbir*, 37 F.3d 295, 298 (7th Cir. 1994) (holding bankruptcy statute allowing Trustee to abolish executory contract rights did not apply to restrictive covenants).

Essentially, motions under K.S.A. 60-212(c) permit the court to decide claims as a matter of law when there are no real issues to be tried. If a material issue of fact exists, judgment on the pleadings is inappropriate. *Winfield Livestock Auction, Inc. v. Farmers State Bank of Hardtner*, 193 Kan. 414, 415, 394 P.2d 7 (1964). Further, if a party asks the court to consider information outside the pleadings, the court must treat the motion as one seeking summary judgment. *Doe H.B. v. M.J.*, 59 Kan. App. 2d 273, 283, 482 P.3d 596 (2021), *review granted* (Apr. 23, 2021).

"[R]estrictive covenants in deeds are to be construed in accordance with the intent and purpose of the grantors after examination of the entire instrument under consideration." *South Shore Homes Ass'n v. Holland Holiday's,* 219 Kan. 744, 751, 549 P.2d 1035 (1976) (citing *Sporn v. Overholt,* 175 Kan. 197, 262 P.2d 828 [1953]). The rules governing the *construction* of restrictive covenants as to the use of realty are the same as those applicable to any contract or covenant.

> "[R]estrictive covenants in deeds are to be construed in accordance with the intent and purpose of the grantors after examination of the entire instrument under consideration." *South Shore Homes Ass'n v. Holland Holiday's,* 219 Kan. 744, 751, 549 P.2d 1035 (1976) (citing *Sporn v. Overholt,* 175 Kan. 197, 262 P.2d 828 [1953]). This court has held that "where ambiguity or uncertainty of contract is involved in an agreement, the intention of the parties is not ascertained by resort to literal interpretation, but by considering all language employed, the circumstances existing when the agreement was made, the object sought to be attained, and other circumstances, if any, which tend to clarify the real intention of the parties." *Richardson v. Northwest Central Pipeline Corp.,* 241 Kan. 752, 758, 740 P.2d 1083 (1987).

Universal Motor Fuels, Inc. v. Johnston, 260 Kan. 58, 63, 917 P.2d 877, 881 (1996).

Where ambiguity or uncertainty of contract is involved, the intention of the parties is ascertained by considering all language employed, the circumstances existing when the agreement was made, the object sought to be attained, and other circumstances, if any, which tend to clarify

the real intention of the parties. See *Sporn v. Overholtz, Sporn v. Overholt*, 175 Kan. 197, 262 P.2d 828 (1953) (setting forth rules of construction).

B. Deerbrook Subdivision Declaration of Restrictions

A Declaration of Restrictions (restrictive covenant) for Deerbrook Subdivision was filed with the Register of Deeds Office in 1988. Plaintiff takes the position the restrictive covenant unambiguously allows it to develop the golf course. On the other hand, defendants argue the subdivision's restrictive covenant unambiguously limits plaintiff's use of the lots to "golf course, driving range and club facilities."[2]

As stated above this Court must determine whether it is appropriate to enter judgment on the pleadings alone and if so, whether the Declaration of Restrictions restricts JJ&J's use of its real property to golf course, driving range and club facilities "unless changed by a vote in which seventy percent (70%) of the lot owners approve the change …." Declaration, ¶19.

C. No Issue of Material Fact Identified by Defendants

Defendants argue in their Response that judgment on the pleadings is improper because

[2] In *Creegan v. State*, 305 Kan. 1156, 391 P.3d 36 (2017), our Supreme Court discussed the enforcement of restrictive covenants:

> A restrictive covenant is "[a] private agreement, [usually] in a deed or lease, that restricts the use or occupancy of real property, [especially] by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put." Black's Law Dictionary 445 (10th ed., 2014). …
>
> …
>
> "Except when failure to enforce servitudes in common-interest communities or general-plan developments provides the basis for modification or termination due to changed conditions ... property owners ... may enforce the servitudes against subsequent similar violations by the same or different parties unless, under the circumstances then prevailing, enforcement would be unreasonable or inequitable." (Emphasis added.) Restatement (Third) of Property (Servitudes) § 8.3(2) (2000).

Creegan v. State, 305 Kan. 1156, 1166-67, 391 P.3d 36 (2017).

material facts remain in dispute. Further examination of the Response does not reveal any facts or purported facts identified by defendants that are claimed to be in dispute. The burden to support this argument is borne by defendants.

Defendants also argue the parties' disagreement as to the meaning of the provision of the Declaration is itself an issue of material fact. JJ&J and the Prairie View Group both contend the language in paragraph 1 of the restrictive covenant is unambiguous, yet the parties set forth interpretations of paragraph 1 that are very different from one another. The Court must determine whether paragraph 1 of the restrictive covenant is ambiguous, or susceptible to more than one construction. If there is no ambiguity in the language used, there is no room for construction, and the plain meaning of the language looking at the four corners of the document will govern.

The Court notes such disagreements raise issues of law, not fact. See *Clark v. Prudential Ins. Co. of Am.*, 204 Kan. 487, 489, 464 P.2d 253 (1970) (determining if written instrument ambiguous poses question of law, not fact.). In considering whether judgment may be rendered on the pleadings alone, the Court finds there are no material facts before it that would prohibit the Court from ruling on the merits of plaintiff's motion.

D. Declaration of Restrictions and Lot 1, Block A, and Lot 13, Block B

> In *Sporn v. Overholt*, 175 Kan. 197, 262 P.2d 828, we held that restrictive covenants in deeds are to be construed in accordance with the intent and purpose of the grantors after examination of the entire instrument under consideration. In *Sporn* the court dealt with land on which a dwelling was being constructed and construed a clause in a deed requiring that the property be used for residence purposes only. In the opinion the court stated as follows:
>
> 'The rules governing the construction of covenants imposing restrictions on the use of realty are the same as those applicable to any contract or covenant, including the rule that, where there is no ambiguity in the language used, there is no room for construction, and the plain meaning of the language governs. When construction is necessary, the language used will be given its obvious meaning.

> ‘Another well-settled rule is that covenants and agreements restricting the free use of property are strictly construed against limitations upon such use. Such restrictions will not be aided or extended by implication or enlarged by construction. Doubt will be resolved in favor of the unrestricted use of property. . . .’ (p. 199, 262 P.2d p. 830).

S. Shore Homes Ass'n, Inc. v. Holland Holiday's, 219 Kan. 744, 750–51, 549 P.2d 1035, 1042–43 (1976) (enforcing restrictive covenant prohibiting use of non-residential use of real property for camping).

Paragraph 1 of the Declaration states, in relevant part: "*None of the said lots hereby restricted may be improved, used or occupied for other than private residence purposes, except Lot 1, Block A, and Lot 13, Block B, which are for golf course, driving range and club facilities*." Declaration of Restrictions, ¶

In paragraph 1, the word "except" is used to join the phrase "[n]one of the said lots hereby restricted may be improved, used or occupied for other than private residence purposes," with "Lot 1, Block A, and Lot 13, Block B, which are for golf course, driving range and club facilities." Looking at the plain meaning of the word "except," its use as a conjunction between the two phrases creates an untenable contradiction as to the grantor's intent.

Paragraph 1 may be reasonably read as the grantor intending to restrict Lot 1, Block A, and Lot 13, Block B for [*improvement, use or occupation as*] golf course, driving range and club facilities. The language in paragraph 1 might also be seen as the grantor's intent to create an exemption the golf course property from the residential restrictive covenant or any other covenants. This interpretation would not prohibit JJ&J's future change of use of the property. In addition, it is possible the use of the word "except" in paragraph 1 potentially could be read that the grantor meant Lot 1, Block A, and Lot 13, Block B are *[planned for]* golf course, driving range and club facilities but the owner of is entitled to use the land for another purpose.

Thus, the use of "except" under its plain meaning is problematic. Using "except" as a conjunction both asserts that the purposes of the phrases are the same, i.e., to impose a restriction, and at the same time it denies that the purposes of the phrases are the same. By conjoining the two phrases with the word "except," either an exception or a restriction was intended for Lot 1 Block A, and Lot 13 Block B.

However, according to legal research, the word "except" was sometimes used as a "term of art" by grantors who wished to create an easement in their own land. See e.g., *Wild River Adventures, Inc. v. Board of Trustees of School Dist. No. 8 of Flathead County*, 248 Mont. 397, 401, 812 P.2d 344, 346, 68 Ed. Law Rep. 531 (1991) ("[W]hen the intent of the parties is properly ascertained, an easement may be created by an exception as well as a reservation."). Most courts recognize the right of a grantor to "reserve" or "except" for the grantor's own benefit an easement in the land conveyed by "exception" and carry out the intent of the grantor:

> Technically, a grantor who wishes to retain an easement should use the word "reserve" because reservation implies the creation of a new interest in the grantor. On the other hand, the term "exception" suggests that the right withheld from the operation of the grant already exists in the grantor. An exception usually involves the retention of a strip of land in fee simple. The use of the word "except" to create a servitude raises a serious conceptual problem because one cannot hold an easement in one's own land. This confusion has been compounded by the tendency of parties to use the terms "reservation" and "exception" interchangeably.
>
> Most modern courts wisely disregard the technical distinction between "reservation" and "exception" and construe the language employed to carry out the intention of the parties. Thus, American courts recognize the right of a grantor to reserve or except for the grantor's own benefit an easement in the land conveyed.

§ 3:7. *Express reservation or exception—Reservation/exception distinction*, The Law of Easements & Licenses in Land § 3:7.

The Court considers the entire document in its attempt to ascertain the intent of the grantor. One of the Preamble paragraphs in the Declaration of Restrictions states: "… [the corporation]

now desires to place certain restrictions on such lots shown on such plat *for the purpose of keeping the subdivision desirable, uniform and suitable*." (Emphasis added.) The plat is not in evidence. Paragraph 16 states: "All fence material must be approved by Shawnee County Recreational Management Corporation prior to construction. *Only fence material which will not obstruct the view of the golf course will be* preamble and paragraph 1 *considered*." Declaration of Restrictions, ¶16.

Upon review of the Declaration of Restrictions, it is apparent plaintiff's golf course property was integral to the stated purpose of keeping the subdivision "desirable, uniform and suitable," which would support an intent by the grantor to impose a general scheme of development for the property, in which the use of the land and buildings were restricted. For instance, subdivision landowners had to obtain preapproval of all fence material and fencing could not "obstruct the view of the golf course." This indicates the grantor's recognition that a view of the golf course added value to each of the adjacent lots and constituted a valuable property interest for future residential landowners that should be protected.

The document as a whole indicates the existence of the golf course was integral to the grantor's plan of making the subdivision more attractive to potential purchasers. It also reflects the grantor's recognition that the value of the subdivision as a whole and the value of the individual residential lots were increased due to the adjacency of the golf course.

As an aside, this Court takes note that similar golf course cases appear in jurisdictions across the nation where subdivision property owners or homeowner associations oppose golf course property owners who wish to divide and redevelop the land into residential lots. Some courts have imposed a remedy under equity, recognizing that the re-development of a golf course into residential properties changes the character and value of the residences in the subdivision. *See*

e.g., *Swain v. Bixby*, 247 Ariz. 405 (2019) (ruling implied restrictive covenant proper where developer took a calculated risk designing the subdivision around golf course with intent to create a lucrative residential development); *Skyline Woods Homeowners Ass'n, Inc.*, 276 Neb. at 810 (concluding "homeowners who bought their property relying on the proximity and existence of the golf course should be protected"; see also *Hun Es Tu Malade? No. 16, LLC v. Tucker*, 963 So. 2d 55 (Ala. 2006); Michael P. Schmidt, *Beyond the Green: The Legal Land Use Controls Involved with Golf Course Closures*, 28 Jeffrey S. Moorad Sports L.J. 449, 467–69 (2021); Cf. *Friends of Crooked Creek, L.L.C. v. C.C. Partners, Inc.,* 254 N.C. App. 384, 390, 802 S.E.2d 908 (2017) (finding unrestricted use of land favored, covenant did not restrict golf course development).

A Court from Florida characterized the surrounding residential properties as the "dominant estate[s]" and found the golf course "preserved the character of the community" and "provided residents with a pleasant view," both reasonable objectives of a restrictive covenant. *Victorville West Limited Partnership v. The Inverrary Association, Inc.*, No. 4D16-2266 (August 23, 2017), citing *Metro. Dade Cty. v. Sunlink Corp*., 642 So.2d 551, 555 (Fla. 3d DCA 1992); *Imperial Golf Club, Inc. v. Monaco*, 752 So.2d 653, 654 (Fla. 2d DCA 2000). The *Inverrary* Court reasoned "even if the golf course is failing financially, the covenant must be enforced because it remains a "substantial value to" the surrounding residences, the dominant estates." *Id.*

In this matter, after considering the Declaration of Restrictions as a whole, and applying rules of construction, the question of whether the grantor intended to reserve an easement or restriction by use of the language in paragraph 1 remains subject to interpretation.

E. Defendant's Alternative Request

In their Response, defendants alternatively requested the Court allow the case to proceed to discovery. Defendants stated if ambiguity was found in the restrictive covenant, they should

have the opportunity to complete discovery to ascertain the intent of the original parties to the Declaration. This Court agrees.

Since ambiguity remains, information outside the pleadings may assist in determining the grantor's intent. Therefore, this Court concludes further discovery is merited in this case.[3] Thus, the Court declines to grant judgment on the pleadings.

IV. CONCLUSION

For all the reasons stated above, the Court enters the following orders:

- Plaintiff's *Motion for Judgment on the Pleadings* filed January 19, 2022, is denied;
- Proceedings in this case shall resume and the parties are to confer and submit an Amended Case Management Order, including a pretrial conference date, pursuant to Shawnee County District Court DCR 3.201(1), on or before September 15, 2022;
- The parties are ordered to participate in mediation 30 days prior to the scheduled pretrial conference.

This Memorandum Decision and Order shall constitute the Court's entry of judgment when filed with the Clerk of this Court. No further journal entry is required.

This Order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

HON. MARY E. CHRISTOPHER
DISTRICT COURT JUDGE

[3] *See e.g., Skyline Woods Homeowners Ass'n, Inc.*, 276 Neb. at 805 (determining grantor's intent not only through deed language, but also through "related written documents, including conduct, conversation, and correspondence"); "Parol evidence will be considered only if, after applying the rules of construction to the language of the document, the meaning of the disputed provision is genuinely uncertain.'" *Leawood Estates Homes Assoc. v. Pro*, No. 72603, 1995 WL18253064 (Kan. Ct. App. 1995), *citing Lawrence v. Cooper Independent Theatres*, 177 Kan. 125, 130-31 (1954).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically on the date stamped on the order, with a copy sent via U.S. Mail to any *pro se* party, providing notice to the following:

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