S-24-0050

IN THE SUPREME COURT, STATE OF WYOMING

RAFTER J RANCH HOMEOWNER'S ASSOCIATION,
Appellant (Plaintiff),

v.

STAGE STOP, INC.,
Appellee (Defendant).

REPLY BRIEF OF APPELLANT

William P. Schwartz, #5-2164
Leah C. Schwartz, #7-5019
PARSONS BEHLE & LATIMER
20 East Simpson St. | P.O. Box 3890
Jackson, WY 83001
t. (307) 733-5130 | f. (888) 413-7270
bill@parsonsbehle.com
leah@parsonsbehle.com.com

Counsel for Appellant

TABLE OF CONTENTS

NEW ISSUES 1

ARGUMENTS ON REPLY 1

1. The HOA Provided "Alternative" and Superior Definitions of the Term "Commercial" 1

2. The Rafter J Master Plan is Relevant Context 2

3. The Court Must Consider All CCR Provisions 5

CONCLUSION 6

TABLE OF AUTHORITIES

Cases

Davis v. City of Cheyenne, 2004 WY 43 5

Four B Properties, LLC v. The Nature Conservancy, 20220 WY 24 5

Prancing Antelope I, LLC v. Saratoga Inn Overlook Homeowners Ass'n, 2021 WY 3..... 3

Winney v. Hoback Ranches Prop. Owners Improvement & Serv. Dist., 2021 WY 128 2

Other

Black's Law Dictionary (Rev. 4th Ed. 1968) 1, 2

Black's Law Dictionary (7th Ed. 1999)..... 1

Black's Law Dictionary (11th Ed. 2019)..... 1

NEW ISSUES

1. Did the HOA provide "alternative" definitions of the term "commercial?"

2. Is the Rafter J Master Plan relevant context?

3. Should the Court consider all CCR provisions?

ARGUMENTS ON REPLY

1. The HOA Provided "Alternative" and Superior Definitions of the Term "Commercial."

Stage Stop argues that its proffered definition of "commercial property" taken from the Fifth Edition of Black's Law Dictionary should be determinative because the HOA did not "provide any alternative definitions that could apply to the term commercial." (*See* Response Brief of Appellee ("Aple. Br.") at 20.) This argument is misplaced.

The Fifth Edition of Black's was published in 1979—after the Rafter J subdivision was conceived and approved (in 1977) and the CCRs were recorded (in January 1978). (R. 163.) Thus, the edition of Black's existing at the time the governing documents of the subdivision were created would have been the Revised *Fourth* Edition—published in 1968. That edition (like other more recent editions) does not contain any definition for "Commercial Property" and instead merely defines "commercial" as "relating to or connected with trade and traffic or commerce in general." Black's Law Dictionary (Rev. 4th Ed. 1968); *see also e.g.* Black's Law Dictionary (7th Ed. 1999) (omitting definition for "Commercial Property"); Black's Law Dictionary (11th Ed. 2019) (same). The Revised Fourth Edition in turn defines "commerce" as "the exchange of goods, productions, or property of any kind

. . . [i]ntercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof." Black's Law Dictionary (Rev. 4th Ed. 1968).

These definitions generally align with those cited (but disregarded by Stage Stop and the district court) in *Winney v. Hoback Ranches Prop. Owners Improvement & Serv. Dist*., 2021 WY 128, ¶¶ 64–65 as referenced throughout the HOA's brief. (*See* Appellant's Opening Brief "App. Br." at 20, 23, 24.)

Stage Stop's attempt to distinguish *Winney* fails for the same reasons previously argued with respect to the district court's improper distinction of the case. Of course the covenants and facts in *Winney* "differ" from those at issue here. (Aple. Br. at 20.) Even so, the Court's definitions of "commercial" and "commercial activity" should be given proper precedential weight. As in *Winney*, this case involves distinct covenant use classifications that clearly distinguish commercial from residential uses and express their inherent incompatibility.

2. <u>The Rafter J Master Plan is Relevant Context.</u>

Stage Stop goes to great lengths to discourage this Court from considering the Rafter J Master Plan. Understandably, Stage Stop does not want the Court to focus on the clear subdivision-wide residential density limitations established in that document because those limitations are utterly at odds with its desired 50+ unit apartment complex. (*See* Aple. Br. at 27.) Still, Stage Stop's preoccupation with the Master Plan is peculiar given that (i) the

density limitation can also be fairly implied from the CCRs (and the Plat),[1] and (ii) the HOA's overall argument in no way depends upon this Court's acceptance and/or enforcement of the overall density limitation. Regardless, the HOA addresses Stage Stop's argument to rebut the notion that the Master Plan is not probative of the Developers' intent.

2.1. The Master Plan is Not "Parol Evidence."

Stage Stop conflates rules regarding "context" and "parol evidence." While "context" may be fairly considered by the Court in cases involving unambiguous subdivision documents, *see, e.g Prancing Antelope I, LLC v. Saratoga Inn Overlook Homeowners Ass'n*, 2021 WY 3, ¶¶ 26–30, parol evidence involving "subsequent events or conduct of the parties" can only be considered where the document in question is ambiguous. (Aple. Br. at 28.) Thus, for example, Lot 333's use as an assisted living facility decades after the original subdivision approval falls in the category of parol evidence of "subsequent events" not involving the Developers. The HOA agrees such evidence is not properly considered where, as here, the CCRs are unambiguous. By contrast, the Master Plan is highly relevant evidence of the "context" in which the CCRs were established and may therefore be properly considered consistent with this Court's approach in *Prancing Antelope.* Stage Stop disregards this.

2.2. The Master Plan Is What It Purports To Be.

[1] While arguing generally that the Court should not refer to "any other document" in its interpretation of the CCRs (Aple. Br. at 28), Stage Stop does not go so far as to say the Plat is similarly "off limits." Like the Master Plan, the Plat (and CCRs) clearly designate lots for specific uses while setting aside residential lots subject to specific density caps consistent with the Master Plan. (*See* R. 349, 382.)

In addition to wrongfully contending the Master Plan is improper "parol evidence," Stage Stop also wrongfully seeks (for the first time on appeal) to cast doubt on the Master Plan's authenticity. Stage Stop asserts "it is impossible to know what kind of finality this document had" and states that the Master Plan "does not appear to be part of the property records." (*See* Aple. Br. at 26.) But this is disingenuous. As Stage Stop well knows, and the record on appeal confirms, the subdivision Master Plan (submitted August 15, 1977) was both approved by Teton County and recorded in the Teton County Land Records.[2] (*See* R. 440 (recognizing that Master Plan was proposed by the developer and approved and recorded.))

Moreover, as Stage Stop concedes, the Master Plan was "drafted during the planning process of the subdivision." (Aple. Br. at 26.) Thus, regardless of whether the subdivision Master Plan was recorded it was a key part of the Developers' development application contained in the Planning Department files for Lot 333 and as such was reviewed by Stage Stop prior to its purchase. (R. 402, 409, 413.) Thus, unlike later uses of Lot 333 or subsequent definitions of "Commercial Property" in a legal dictionary, the Developers' actual

[2] Stage Stop is intimately familiar with this Master Plan document. In connection with its combined applications for a PUD Amendment and CUP, Stage Stop initially represented (inaccurately): "there is no 'maser' plan [sic] for Rafter J." (R. 482.) This inaccuracy was later "clarified" by Planning Staff and the County, including in its brief in the PUD Amendment Appeal. (*See* Supreme Court Case No. S-23-0157, County Brief at 29) ("there is a document called 'Rafter J Master Plan.") Then, in subsequent discovery carried out in the contested case proceedings involving Stage Stop's BUP applications, the Planning Director verified by signed interrogatory responses that the August 15, 1977 Master Plan and accompanying map were attached to the *Certificate of Developer* recorded in the land records as Doc. 175709. Though not in the record, these interrogatory responses were served on counsel for Stage Stop.

Master Plan is highly relevant and probative "context" surrounding the Developers' intent in establishing the CCRs. That intent in no way supports Stage Stop's proposed apartment use.

3. The Court Must Consider All CCR Provisions.

Finally, Stage Stop suggests this Court cannot properly consider the assessment scheme established by the Developers in Article IV of the CCRs because the HOA did not point to the assessment scheme before the district court. (Aple. Br. at 31.) But this is tantamount to saying this Court cannot in the context of its *de novo* review properly consider **all** of the provisions of the CCRs in determining the Developers' intent. To the contrary, both parties have consistently argued both before the district court and on appeal that the CCRs are to be interpreted as a whole, reading each provision in light of all the others to find their plain meaning . . ." (Aple. Br. at 22.) This is not an instance of the HOA "trying the case on one theory and appealing it on another." *See e.g. Four B Properties, LLC v. The Nature Conservancy*, 20220 WY 24, ¶ 70; *Davis v. City of Cheyenne*, 2004 WY 43, ¶ 27 (declining to consider argument on appeal that Appellant's termination violated his First Amendment rights when he failed to present that alleged violation to the personnel commission.) Rather, the HOA merely offers the assessment scheme established by the Developers as further support for its unwavering legal contention that Stage Stop's desired apartment use is contrary to the plain language of the CCRs.

CONCLUSION

Stage Stop pays lip service to the "goal" of determining and effectuating the "intentions of the parties, especially the grantor" (Aple. Br. at 11), but it does not want to address the contextual evidence surrounding the purpose of the CCRs or even all of the CCR provisions adopted by the Developers. As shown in the HOA's opening brief, Stage Stop's desire to use a specially designated "commercial" amenity lot for residential apartments runs afoul of the CCR lot classifications and *pages* of residential use restrictions designed to benefit Rafter J homeowners. Such use cannot be reconciled with the Developers' plain intentions with respect to the neighborhood. The Court should reject Stage Stop's invitation to disregard relevant context and other CCR provisions to myopically focus on what Stage Stop describes as "the [one] provision at issue herein." (Aple. Br. at 12 (citing Article IX, § 1.)

Respectfully submitted,

/s/Leah C. Schwartz
Leah C. Schwartz, #7-5019
Willaim P. Schwartz, #5-2164

CERTIFICATE OF SERVICE

I certify that on May 29, 2024, a true and accurate copy of the foregoing Opening Brief of Appellants was served electronically via email and the Wyoming Supreme Court C-Track Electronic Filing System (CTEF) to the following:

Karen Budd-Falen
Brandon L. Jensen
BUDD-FALEN LAW OFFICES, LLC
P.O. Box 346
300 East 18th Street
Cheyenne, WY 82003-0346
karen@buddfalen.com
brandon@buddfalen.com

The original paper copy plus six (6) copies of the Reply Brief of Appellants will be sent to the Wyoming Supreme Court by U.S. Mail, first class postage pre-paid, on May 30, 2024. I have accepted the terms for e-filing and hereby certify that the foregoing document, as submitted in electronic form, is an exact copy of the original and hard-copy documents filed with the Wyoming Supreme Court Clerk and is free of viruses. Additionally, I certify that, to my knowledge, no privacy redactions were required.

/s/Leah C. Schwartz
Parsons Behle & Latimer