

**IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT**

RAFTER J RANCH HOMEOWNER'S)
ASSOCIATION,)
a Wyoming nonprofit corporation,)
Plaintiff,)
v.)
STAGE STOP, INC.,)
Defendant.)

Civil Action No. 18831

FILED 9:50 pm
JAN 17 2024
Q. B. Nelson
DISTRICT COURT
9TH JUDICIAL DISTRICT
TETON COUNTY WYOMING

ORDER ON SUMMARY JUDGMENT MOTIONS AND MOTION IN LIMINE

This matter came before the court for a hearing on November 9, 2023, on the parties' cross motions for summary judgment and Plaintiff's motion in limine. Kevin Gregory appeared on behalf of the Plaintiff. Brandon Jensen and Rachael Buzanowski appeared on behalf of Defendant.

Factual Background

1. This matter is a declaratory judgment action regarding the interpretation of the Declarations of Covenants, Conditions, and Restrictions (CCRs) of the Rafter J Ranch Homeowner's Association (HOA). All lots in the subdivision are subject to the CCRs.
2. The Plaintiff HOA is a Wyoming nonprofit corporation whose members own property within the Rafter J Subdivision (Rafter J) in Teton County, Wyoming. The CCRs classify lots in Rafter J into five land use categories: residential, multiple dwelling, commercial, common area, and miscellaneous areas (i.e., church area, corral, stables, recreational vehicle storage, and future developable property). CCRs at 27.

3. Defendant is a for-profit corporation who owns Lot 333 in the Rafter J subdivision. Lot 333 is categorized as commercial under the CCRs and is identified on the subdivision plat as “Ranch Headquarters & Local Commercial.”
4. The HOA is managed by the board of directors whose authority to manage the HOA is set forth in the CCRs. The authority and manner in which the board of directors may exercise its authority are defined by the CCRs and Bylaws of the HOA.
5. Defendant purchased Lot 333 on April 30, 2021. Lot 333 currently holds a two-story, 50,000 square foot building that formerly operated from 2005 to 2021 as an assisted living facility known as Legacy Lodge. At that time, the HOA approved of and allowed the use of Lot 333 as an assisted living facility that provided residential units to elderly persons. The existing facility presently contains fifty-seven residential units with kitchenettes where patrons of Legacy Lodge resided. Since 2005, the building has housed people for the purpose of making a profit for sixteen years.
6. After purchasing Lot 333, Defendant applied to convert the assisted living residential units into apartments for workforce housing. As part of that process, the Board of County Commissioners approved an amendment to the Rafter J Ranch Planned Unit Development (PUD), approved a Conditional Use Permit (CUP) and a Basic Use Permit (BUP) to allow workforce apartments on Lot 333. Defendant intends to lease the apartment units out for the purpose of producing income and making a profit through housing people.
7. Plaintiff asserts that the Defendant’s intended use for Lot 333 is residential, not commercial. Plaintiff maintains that Defendant must amend of the CCRs before Defendant may lease the residential units out for profit to people. Plaintiff contends that moving forward with the

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permitting but not attempting to amend the CCRs establishes that Defendant intends to breach the CCRs. According to Plaintiff, allowing Lot 333 to be used for workforce housing will cause irreparable harm and will represent a “drastic and harmful deviation from the status quo with respect to the present and historic use of Lot 333.” *Complaint*, ¶60.

Procedural History

8. Due to the parties’ different interpretations regarding the allowable uses of Lot 333, the Plaintiff filed this action asserting four causes of action: (1) Anticipatory Breach of Contract; (2) Nuisance; (3) Declaratory Judgment that the residential use of Lot 333 violates the CCRs; and (4) Injunctive Relief.
9. In response, Defendant maintains that leasing residential apartment units for profit constitutes a permissible commercial use of Lot 333. Defendant also seeks declaratory judgment that no amendment to the CCRs is required because the property can be used for “any commercial purpose,” including the proposed use by Defendant.
10. The parties filed cross motions for summary judgment. Defendant moves for summary judgment on all of Plaintiff’s claims. Plaintiff moves for summary judgment on its claim for declaratory judgment and anticipatory breach.
11. Defendant filed *Defendant’s Memorandum in Support of Its Motion for Summary Judgment* and *Defendant’s Statement of Facts in Support of Motion for Summary Judgment* on September 21, 2023. Plaintiff filed *Plaintiff’s Response to Defendant’s Motion for Summary Judgment* on October 11, 2023. Defendant filed *Defendant’s Reply Brief in Support of Its Motion for Summary Judgment* on October 25, 2023.

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12. Plaintiff filed *Plaintiff's Memorandum in Support of Motion for Summary Judgment* and *Plaintiff's Rule 56.1 Statement of Undisputed Material Facts* on September 22, 2023. Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment* on October 11, 2023. Plaintiff filed *Plaintiff's Reply to Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment* on October 26, 2023.
13. Additionally, on September 25, 2023, Plaintiff filed *Plaintiff's Motion in Limine*. Plaintiff's Motion in Limine moves pursuant to Wyo. R. Evid. 401, 402, and 403 to preclude any evidence or testimony from previous residents of Legacy Lodge that used the facility for residential purposes but were not receiving care from the assisted living facility. Defendant filed *Defendant's Response in Opposition to Plaintiff's Motion in Limine* on October 12, 2023. Plaintiff filed *Plaintiff's Reply to Defendant's Response to Plaintiff's Motion in Limine* on October 26, 2023.
14. The Court after having reviewed the motions, responses, replies, and considered arguments of counsel finds and concludes as follows:

Standard of Review

15. Summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wyo. R. Civ. P. 56(c). "A genuine issue of material fact exists when a disputed fact, if it were proven, would have the effect of establishing or refuting an essential element of the cause of action or defense that has been asserted by the parties." *Trabing v. Kinko's Inc.*, 2002 WY 171, ¶ 8, 57 P.3d 1248, 1252 (Wyo. 2002); *Williams Gas Processing-Wamsutter Co. v. Union Pacific Res.*

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Co., 2001 WY 57, ¶ 11, 25 P.3d 1064, 1071 (Wyo. 2001). “Material fact” has been defined as a fact falling into any one of the following categories:

[A fact] having legal significance which would control the legal relations of the parties; one upon which the outcome of the litigation depends in whole or in part; one on which the controversy may be determined; one which will affect the outcome of the case depending on its resolution; or, one which constitutes a part of the plaintiff’s cause of action or the defendant’s defense.

Reno Livestock Corp. v. Sun Oil Co., 638 P.2d 147, 151 (Wyo. 1981) (quoting *Johnson v. Soulis*, 542 P.2d 867, 871–72 (Wyo. 1975)).

16. The Court examines the record from the vantage point most favorable to the party who opposed the motion and gives that party the benefit of all favorable inferences that may fairly be drawn from the record. *Franks v. Indep. Prod. Co., Inc.*, 2004 WY 97, ¶ 9, 96 P.3d 484, 490 (Wyo. 2004). The evidence “relied upon to sustain or defeat a motion for summary judgment must be such as would be admissible at trial and that it should be as carefully tailored and professionally correct as any evidence which would be presented to the court at the time of trial.” *Equal. Bank of Evansville, Wyo. v. Suomi*, 836 P.2d 325, 330 (Wyo. 1992) (citing *Gennings v. First Nat. Bank of Thermopolis*, 654 P.2d 154, 155 (Wyo. 1982) and *Newton v. Hunter*, 423 P.2d 648, 650 (Wyo. 1967)). “A motion for summary judgment places an initial burden on the movant to make a prima facie showing that no genuine issue of material fact exists and that summary judgment should be granted as a matter of law. Once a prima facie showing is made, the burden shifts to the party opposing the motion to present specific facts showing that a genuine issue of material fact does exist.” *Gayhart v. Goody*, 2004 WY 112, ¶ 11 (quoting *Moore v. Lubnau*, 855 P.2d 1245, 1248 (Wyo. 1993)).

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Legal Analysis

17. Declaratory Judgment. This matter involves the interpretation of the Rafter J CCRs. The Court is tasked with interpreting the meaning of the language used in the CCRs to ascertain the intent of the words and thus the rights of the parties. Specifically, this matter hinges on the meaning of the word “commercial” as used in the CCRs. Plaintiff asks for a declaratory judgment finding that the Defendant’s proposed use of Lot 333 is prohibited under the CCRs until such time as Defendant seeks an amendment to the CCRs allowing such use. Defendant asks for a declaratory judgment finding that their proposed use of Lot 333 complies with the existing CCRs and therefore does not require an amendment.
18. When interpreting the meaning of CCRs, Wyoming Courts must employ rules of contract construction. The Wyoming Supreme Court has explained, “[c]ovenants are contractual in nature and we therefore interpret them as we would a contract.” *Reichert v. Daugherty*, 2018 WY 103, ¶ 15, 425 P.3d 990, 995 (Wyo. 2018) (citations omitted). The goal is “to determine and effectuate the intention of the parties, especially the grantor or declarant.” *Id.*

As with any contract interpretation we begin with a covenant’s plain language: [t]he words used in the [covenant] are afforded the plain meaning that a reasonable person would give to them. When the provisions in the [covenant] are clear and unambiguous, the court looks only to the ‘four corners’ of the document in arriving at the intent of the parties.

Winney v. Hoback Ranches Property Owners Improvement and Service District, 2021 WY 128, ¶ 47, 499 P.3d 254, 266 (Wyo. 2021) (internal citations omitted). The Wyoming Supreme Court “routinely consult[s] dictionary definitions to ascertain the plain meaning of terms used in agreements. *Douglas as Trustee of Patricia Ann Douglas Revocable Trust v. Jackson Hole Land Trust*, 2020 WY 69, ¶ 16, 464 P.3d 1223, 1228 (Wyo. 2020) (citing *E.g., Four B Props.*, 2020

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WY 24, ¶ 40, 458 P.3d [832], 843 [(Wyo. 2020)]; *Reichert v. Daugherty*, 2018 WY 103, ¶ 18, 425 P.3d 990, 995 (Wyo. 2018); *Berthel Land & Livestock v. Rockies Exp. Pipeline LLC*, 2012 WY 52, ¶ 17, 275 P.3d 423, 431 (Wyo. 2012)).

19. “If the contractual language is clear, the court interprets it as a matter of law and summary judgment is appropriate.” *Fayard v. Design Committee of Homestead Subdivision*, 2010 WY 51, ¶ 12, 230 P.3d 299, 303 (Wyo. 2010).
20. When construing unambiguous contracts the Court should “adhere to the covenant’s plain and ordinary meaning without reference to attendant facts and circumstances or extrinsic evidence.” *See Winney v. Hoback Ranches Property Owners Improvement and Service District*, 2021 WY 128, ¶ 48, 499 P.3d 254, 269 (Wyo. 2021) (citations omitted). “Restrictions upon the use of land, being in derogation of the common law, are not favored, are to be strictly construed, will not be extended by implication, and in case of doubt the restrictions will be construed in favor of the free use of the land.” *Four B Properties, LLC v. Nature Conservancy*, 2020 WY 23, ¶ 62, 458 P.3d 832, 847 (Wyo. 2020).
21. Only if the contract is ambiguous can the court turn to extrinsic evidence. *Wolter v. Equitable Res. Energy Co., W. Region*, 979 P.3d 948, 951 (Wyo. 1999). “A contract is ambiguous if indefiniteness of expression or double meaning obscure the parties’ intent.” *Four B Properties, LLC v. Nature Conservancy*, 2020 WY at ¶ 33, 458 P.3d at 841 (citation omitted). However, “[i]f the contractual language is ambiguous, a question of fact is presented and summary judgment typically is not warranted.” *Fayard*, 2010 WY at ¶ 12, 230 P.3d at 303.
22. The CCRs include the following restrictions with respect to the use of commercial lots:

ARTICLE IX

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ADDITIONAL COVENANTS—COMMERCIAL

Section 1. USE OF COMMERCIAL AREA. Lots 333 and 334 are designated as commercial areas, and may be used for **any commercial purpose**, subject to these covenants and such restrictions as may be contained in deeds, leases, or other instruments of conveyance. (emphasis added).

23. The CCRs do not define the word “commercial.” The Wyoming Supreme Court has analyzed the meaning of the word “commercial” in the context of interpreting restrictive covenants as follows:

The plain meaning of ‘[c]ommercial’ is ‘occupied with or engaged in commerce or work intended for commerce’ and ‘of or relating to commerce.’ See <https://www.merriam-webster.com/dictionary/commercial>. Black’s Law Dictionary defines it as ‘[o]f, relating to, or involving the buying and selling of goods; mercantile’; ‘[r]esulting or accruing from commerce or exchange’; ‘[e]mployed in trade; engaged in commerce’; [m]anufactured for the markets; put up for trade’; ‘**[o]f, relating to, or involving the ability of a product or business to make a profit**’; and ‘[p]roduced and sold in large quantities.’ Commercial, Black’s Law Dictionary (11th ed. 2019). The plain meaning of “commerce” is “the exchange or buying and selling of commodities on a large scale involving transportation from place to place.” See <https://www.merriam-webster.com/dictionary/commerce>. Similarly, Black’s Law Dictionary defines ‘commerce’ as ‘[t]he exchange of goods and services, esp. on a large scale involving transportation between cities, states, and countries.’ Commerce, Black Law Dictionary (11th ed. 2019). These definitions are clear.

Winney, 2021 WY at ¶ 64, 499 P.3d at 279 (emphasis added).

24. Historically, definitions of “commercial” have also included references to apartment buildings.

The Black’s Law Dictionary definition of “commercial property” published contemporaneously with the original CCRs defined “commercial property” as “income producing property (e.g. office buildings, apartments, etc.) as opposed to residential property.” Black’s Law Dictionary (5th ed. 1978). Further, the adjective “any” is defined by Merriam Webster’s Dictionary as follows:

1: one or some indiscriminately of whatever kind: a: one or another taken at

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random **b**: **EVERY** used to indicate one selected without restriction **2**: one, some, or all indiscriminately of whatever quantity: **a**: one or more used to indicate an undetermined number or amount **b**: **ALL** used to indicate a maximum or whole **c**: a or some without reference to quantity or extent **3 a**: unmeasured or unlimited in amount, number or extent **b**: appreciably large or extended.

“any” *Merriam-Webster.com*. 2024 <https://www.merriam-webster.com/dictionary/any> (Jan. 12, 2024)

25. Plaintiff contends that Lot 333 is designated commercial only and any residential use is prohibited. According to Plaintiff, “commercial” in the context of the CCRs restricts commercial areas from being occupied for residential or multiple dwelling uses, which are distinguished within the instrument. Plaintiff also argues that even if the term is ambiguous, the extrinsic evidence used to interpret the intent of the CCRs shows the prospective use of the commercial lot is still prohibited.

26. Defendant asserts that commercial use of the lot encompasses leasing residential apartments for profit and Plaintiff’s argument would require the Court to construe restrictions that only apply to residential lots as also applicable to commercial lots. Defendant states that commercial lots can be used for “any commercial purposes” whatsoever so long as the use has a “commercial purpose.” Defendant will rent out the apartment units in exchange for rent. Defendant will hire staff to maintain the property as a commercial property including performing routine maintenance for the benefit of the persons residing in the units. Defendant also asserts that Defendant’s proposed use of Lot 333 does not violate the CCRs and the plain language of the CCRs is unambiguous.

27. As a result, Defendant also moves for summary judgment against all of Plaintiff’s claims. Defendant argues that the plain and ordinary meaning of “commercial purpose” encompasses

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any type of business or activity which is carried on for a profit, or a use in connection with or for furtherance of a profit-making activity. Defendant asserts that the proposed apartments fall within the definition of commercial purpose as a profit-making venture and do not violate the CCRs. A finding as such would warrant the dismissal of each of Plaintiff's claims which include declaratory judgment, anticipatory breach of contract, nuisance and injunctive relief.

28. The Court does not find any ambiguity or double meanings in the CCRs. In review of the entire document, Article IX allows use for "any commercial purpose." The CCRs categorize lots in Rafter J into five categories: commercial, residential, multiple dwelling, common area, and miscellaneous areas (i.e. church area, corral, stables, recreational vehicle storage, and future developable property). Under the CCRs, residential and multi-dwelling lots include three pages of detailed restrictions that require those lots to be used "exclusively for residential purposes." The CCRs also identify specific use parameters for each type of miscellaneous area by identifying specific types of buildings and facilities that may be associated and used for such purposes. Additionally, the CCRs contemplate potential future changes of use to the miscellaneous areas but specifically restrict the miscellaneous areas from being further subdivided for residential or multiple family dwellings. For example, the CCRs specifically restrict future development of miscellaneous areas stating in pertinent part:

ARTICLE VIII

ADDITIONAL COVENANTS- MISCELLANEOUS AREAS

AND FUTURE DEVELOPABLE PROPERTY

Section 3. HOMEOWNERS ASSOCIATION. If any of the miscellaneous

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areas are subsequently conveyed to the homeowners association, the homeowners association shall thereafter have the right and duty to determine the usage to be made of the miscellaneous areas provided, however, that such miscellaneous areas shall not be further subdivided for residential or multiple family dwelling.

CCRs at 19.

29. In contrast, the CCRs address commercial areas with minimal restrictions. There are no specific parameters included in Article IX that limit the type of commercial uses allowed on Lot 333. The plain and ordinary use of the adjective “any” in front of “commercial purpose” conveys a commercial use without restriction. There is no designation that Lot 333’s use be reserved exclusively for any particular purpose, the only restriction being that it must comply with the CCRs. The management and leasing of apartment units for a profit-making enterprise meets the plain and ordinary meaning of “any commercial purpose.” If Rafter J wanted to exclude certain types of commercial use on Lot 333, the CCRs could have specifically restricted such use as it did with respect to miscellaneous areas. However, no such restrictions were drafted for Lot 333.
30. The parties dispute the significance of the Wyoming Supreme Court’s interpretation of the word “commercial” in the case of *Winney v. Hoback Ranches Property Owners Improvement and Service Dist.*, 2021 WY at ¶63, 499 P.3d 254. In *Winney*, the Court analyzed whether a homeowner’s small-scale use of equipment to maintain the HOA’s roads for profit violated the HOA’s prohibition against commercial activity. 2021 WY at ¶58. Unlike the Rafter J subdivision, the subdivision in *Winney* was intended only for residential use and did not allow for mixed uses. *Id.* at ¶59 The Court in *Winney* focused on the residential nature of the HOA and the restriction prohibiting commercial activity in the same clause. *Id.* at ¶65. The Court concluded that the meaning of commercial was clear and the homeowner’s use of the residential

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lot did not meet the definition of commercial activity because his activities did not involve the “exchange of goods or services involving transportation from place to place.” *Id.*

31. *Winney* involved a different set of covenants, an exclusively residential neighborhood, and an entirely different type of alleged commercial activity. However, the analysis set out in *Winney* is not without value. The *Winney* decision provides this Court with a template for addressing the meaning of “commercial” and whether the Defendant’s proposed commercial use of Lot 333 meets the definition of “any commercial purpose.”
32. The Court notes that there are already existing residential units on Lot 333. These units were formerly leased to elderly persons who wished to reside in an assisted living facility. Now Defendant seeks to convert the interior of the facility from an assisted living facility to apartments by leasing units to persons wishing to reside in an apartment building. Defendant’s proposed commercial use of the property is intended to make a profit for the Defendant. This activity relates to and involves the ability of the Defendant’s business to make a profit which clearly falls under the plain meaning of commercial. The Defendant will be offering a service to all of its lessors just like the assisted living facility did to its residents. In exchange for money, Defendant will provide residential units for residential use within the existing facility and will maintain the building, parking lot, and grounds for the lessors.
33. If the original developers and drafters of the CCRs intended to exclude residential uses on commercial lots they were free to exclude such uses from commercial lots. However, the CCRs which are subject to contract interpretation by this Court do not state that residential uses are precluded on commercial lots. To find otherwise would seem like an interpretation that residential uses cannot be carried out on a commercial lot by implication which is not permitted

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in Wyoming. The Court finds that operating a for-profit apartment rental business on Lot 333 is permitted by the plain language of the CCRs.

IT IS THEREFORE ORDERED that Plaintiff's motion for summary judgment for a declaratory judgment is respectfully **DENIED** and the Defendant's motion for summary judgment on this claim is **GRANTED**.

34. Anticipatory Breach. The Wyoming Supreme Court has clarified its view of anticipatory breach law:

An anticipatory breach of contract is one committed before the time has come when there is a present duty of performance and is the outcome of words or acts evincing an intention to refuse performance in the future.

In ascertaining whether an anticipatory breach of a contract has been committed by a party, it is the intention manifested by his acts and works which controls, and not his secret intention. Moreover, in order to predicate a cause of action upon an anticipatory breach, the words or conduct evidencing the breach must be unequivocal and positive in nature. An anticipatory breach of contract is not established by a negative attitude or one which indicates more negotiations are sought or that the party may finally perform. (Emphasis omitted) 17 Am.Jr.2ed Contracts s 448 (1964).

In order to justify the adverse party in treating the renunciation as a total breach, the refusal to perform must be of the whole contract or of a promise or obligation going to the whole consideration, and it must be distinct, unequivocal, and absolute. 17 Am.Jr.2d Contracts s 450 (1964).

J.B. Service Court v. Wharton, 632 P.2d 943, 945 (Wyo. 1981).

35. Plaintiff asserts that by applying for the PUD Amendment, CUP, and BUP, Defendant demonstrates an intent to use Lot 333 for residential rather than commercial purposes. It is undisputed that the Defendant has not taken any steps to amend the CCRs to permit their proposed commercial use. Likewise, Defendant has made statements and has applied to the

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County for permits which establish that it intends to use Lot 333 for profit by leasing residential units as workforce housing. Employers will lease blocks of units at rates negotiated by employers and Defendant. Thereafter, the employers will offer individual units for rent to their employees.

36. In order for this Court to find that Defendant's proposed use of the commercial property is an anticipatory breach of the CCRs, the Court must find that the proposed use violates or is a breach of the CCRs. The Court finds that the proposed use does not violate the CCRs. Specifically, Article IX designates Lot 333 as a commercial area that may be used for "any commercial purpose." When reading the CCRs as a whole, the Court would have to infer by implication that the CCRs prohibit any residential use designed to generate a profit for the owner of Lot 333. The Court is required to interpret the unambiguous CCRs based on their plain meaning. The Court finds the CCRs allow Lot 333 to be used "for any commercial purpose" such as a for-profit apartment leasing business. Therefore, the Court finds that the Defendant has not committed an anticipatory breach.

IT IS THEREFORE ORDERED that Plaintiff's motion for summary judgment for anticipatory breach of contract is respectfully **DENIED** and Defendant's motion for summary judgment on this claim is **GRANTED**.

37. Nuisance. Defendant moves for summary judgment on Plaintiff's claim that the proposed use of the commercial area by the Defendant is a nuisance pursuant to the definition of nuisance contained in the CCRs.

38. The CCRs in Article XII provide:

Section 5. VIOLATION CONSTITUTES NUISANCE. Every act or omission,

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whereby any restriction, condition, or covenant in this declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by declarant or his successors in interest and/or by any lot owner; and such remedies shall be deemed cumulative and not exclusive.

39. The Court has found that Defendant's proposed use of Lot 333 does not violate the CCRs.

Therefore, the Court cannot find that Defendant's proposed use constitutes a nuisance as defined by the CCRs.

40. Plaintiff also asserts in its *Complaint* that Defendant's conduct constitutes a nuisance under Wyoming state law. In *Plaintiff's Memorandum in Support of Motion for Summary Judgment* there are no assertions regarding the proposed use of Lot 333 by Defendant as a nuisance pursuant to Wyoming law. However, the Court finds it necessary to analyze Defendant's proposed use of Lot 333 under Wyoming law as it was asserted in Plaintiff's *Complaint* and argued in *Defendant's Memorandum in Support of Its Motion for Summary Judgment*. Defendant presented argument at the hearing that the proposed use is neither unreasonable nor unlawful.

41. The Wyoming Supreme Court has defined nuisance "...as a 'class of wrongs which arise from an unreasonable, unwarranted, or unlawful use by a person of his own property, working an obstruction or injury to the right of another.'" *Edgcomb v. Lower Valley Power and Light, Inc.*, 992 P.2d 850, 859 (Wyo. 1996). Based on the Wyoming Supreme Court's definition of nuisance, the Court finds Defendant's proposed use of Lot 333 does not fall under the state law definition of nuisance as it is not an unreasonable, unwarranted, or unlawful use of the property that injures the rights of the other lot owners in the subdivision. The residential units already exist on the property and were used for the purpose of an assisted living center. Now the residential units will be used for the purpose of for-profit residential housing. This Court is sympathetic to the Rafter

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J homeowners that are opposed to Lot 333 being operated for this particular commercial use. However, the Court has concluded that the CCRs permit this commercial use of the property as it falls within the scope of being used for “any commercial purpose.”

IT IS THEREFORE ORDERED that Defendant’s motion for summary judgment on the claim for nuisance is **GRANTED**.

42. Injunctive Relief. Based on the Court ruling Defendant’s conduct with regard to Lot 333 is not a anticipatory breach of contract, a nuisance nor that it violates the CCRs as plead in its claim for a declaratory judgment, the Court finds that Plaintiff’s request for injunctive relief should be denied.

IT IS THEREFORE ORDERED that Defendant’s motion for summary judgment on the claim for injunctive relief is **GRANTED**.

43. Motion In Limine. Plaintiff’s Motion in Limine moves pursuant to Wyo. R. Evid. 401, 402, and 403 to preclude any evidence or testimony from previous residents of Legacy Lodge that used the facility for residential purposes who were not receiving care from the assisted living facility.

44. There are two prospective witnesses that the Defendant appears to want to call at the trial of this matter, Ms. Fyfe-Shivers and Mr. Carpenter, who purport to know that individuals have used the Legacy Lodge for purely residential purposes. It appears this evidence would be introduced for the purpose of the HOA having knowledge of and allowing such use in the past.

45. Plaintiffs assert that this evidence should be precluded because there is no evidence that the HOA was made aware of what they believe is a use violation.

46. At the hearing, counsel for the parties agreed that this issue is more appropriate for the Court to determine at trial. The Court finds the evidence would require a showing that the HOA had

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actual knowledge of the residential use at that time. In light of this Court's order on the parties' cross motions for summary judgment disposing of all claims in this matter, the Court finds it need not address the merits of the Plaintiff's Motion in Limine at this time.

IT IS THEREFORE ORDERED that a ruling on the Plaintiff's Motion in Limine is MOOT.

DATED this 17th day of January, 2024.

1210
Melissa M. Owens
District Court Judge

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served by mail/fax upon the following persons at their last known address this 17 day of Jan 2024.
John M. B. Smith via email
B. Green via fax
B. Suman via fax
By Deputy J. Hester Nelson

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