IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 2019CA003810 AI

MIKEL W. KLINE, et al.,

Plaintiffs,

v.

TRUE SHOT, LLC,

Defendant.
_____/

FINAL JUDGMENT

THIS MATTER came before the Court for a trial without a jury on January 18 and 19, 2022. Having considered the testimony of the witnesses, the documentary evidence submitted by the parties, and the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The facts of this case are largely undisputed. Cypress Creek is a single-family residential community located in Boynton Beach, Florida, containing approximately 465 homes. The Cypress Creek Golf Course property is physically situated within the greater "Cypress Creek" neighborhood, the latter being bounded on the west by Military Trail, on the south by Old Boynton Road, on the east by Lawrence Road, and on the north by the Boynton Canal.

2. The golf course was constructed in or around 1963, at a time when there were no homes in the community. Very few houses were constructed in the community until the 1980s, and the original developer, Weaver Development Corporation, did not sell out the residential section until the late 1990s.

3. In November 1963, "A Map of Cypress Creek Development" was drawn by the surveying firm of Mock Roos ("the Mock Roos Map"), in evidence as Joint Exhibit #25. This drawing depicts the general layout of Cypress Creek as envisioned in 1963, depicting residential lots, streets, and the like. Unquestionably, there are golf holes drawn on what is the Cypress Creek Golf Course property. Importantly, however, this drawing is not a plat, was never recorded in the Official Records of Palm Beach County, and contains no language dedicating the golf course property in any fashion, or restricting the use of the golf course property in any way.

4. In fact, the golf course property has historically been owned separate and apart from the residential section of Cypress Creek. Weaver Development Corporation sold the golf course property in 1998 to Golf Trust of America, and in 2001, the golf course property was in turn sold by Golf Trust of America to the Defendant, True Shot, LLC ("True Shot") (Joint Exhibits # 2 and #3, in evidence).

5. Since it opened for business, the golf course property has been operated as a for-profit public golf course, open to anyone willing to pay a greens fee for the privilege of playing there. Aside from its physical proximity to the residential portion of the community, the relationship between the golf course and the residents has been minimal. None of the homeowners in Cypress Creek, nor the Cypress Creek Property Owners' Association, have ever contributed to support the operation and maintenance of the golf course. Although single and family memberships were offered, only a small minority of residents obtained these memberships. The golf course property has never been a member of the Property Owners' Association, or paid dues to that Association. Nothing in the Association's Declaration of Covenants (Joint Exhibit #22) restricts, or even addresses, the use to which the golf course property may be put. The golf course

property is privately owned, separately taxed, and the residents of Cypress Creek have never been obliged to play the course, or otherwise support the course financially.

6. In 1973, Palm Beach County adopted what is known as its Subdivision, Platting and Required Improvements ordinance, a part of the Unified Land Development Code of the County. In general terms, this law required any new development in the County to go through the platting process, which imposes various requirements on residential communities relating to roads, drainage, landscaping, recreational space, and the like. However, with respect to certain pre-existing communities such as Cypress Creek, a plat waiver, accompanied by an "abstracted boundary survey", could be submitted and, if approved, said communities could avoid the expensive platting process, as well as any use restrictions imposed by the platting ordinance.

7. Such was the case in 1977, when the Cypress Creek golf course on the one hand, and the residential area on the other, were the subject of two separate plat waiver requests (not a single, unified request). As for the golf course, it wished to expand its clubhouse and accessory facilities, and in order to do this, needed (under then-existing law) to obtain a special exception from the County to allow for the property to be used as a golf course (County File Number 77-52, Joint Exhibit #15 in evidence). As for the residential area, a separate application was submitted to change the zoning of the residential property from agricultural to residential (County File Number 77-61, Joint Exhibit #16 in evidence).

8. These petitions culminated in the adoption of two separate resolutions by the County Commission: Resolution Number 77-592, which approved the special exception for the golf course property (Joint Exhibit #18 in evidence), and Resolution Number 77-669, rezoning the residential area from agricultural to residential (Joint Exhibit #19 in evidence). Resolution Number 77-592 required, as a condition of approval, that the golf course property be platted,

separate and apart from the residential portion of the community (the golf course plat, recorded in the Official Records of Palm Beach County in 1978, is Joint Exhibit #7 in evidence). Notably, there is no language in Exhibits 7, 15, 16, 18 or 19 which even mentions the use to which the golf course property may be put, much less restricts such use to golf course use only, in perpetuity.[1]

9. Again, the golf course plat was recorded in 1978. In 1985, the developer of the residential lots sought to amend the 1977 plat waiver regarding the residential area by requesting that a large number of lots in the residential section be reconfigured for various reasons, as set forth in paragraph 5 of the affidavit filed in support of the application (Joint Exhibit #11 in evidence, p. 5). Thus, when the application states that the "property described herein…will not be further subdivided", only the residential portion of the Cypress Creek community was impacted by this statement.[2]

10. Buried in the 211 pages of Exhibit 11, at pages 208 and 209 to be precise, is the granting of an easement to the City of Boynton Beach to allow for the construction of a lift station over a small (25' x 32.50') portion of the golf course property. This likely explains why Joint Exhibits 10 and 11 appear in True Shot's title insurance policy (Joint Exhibit Number 6, in evidence) as an exception, as nothing contained in either Exhibit 10 or Exhibit 11 (other than the small lift station easement) has anything to do with the golf course property at all, and certainly make no mention of any restriction on the use of the golf course property.

11. After operating the golf course for approximately 16 years, at a loss, True Shot, in or around 2017, determined that continuing to operate the golf course was no longer financially

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[1] Plaintiffs' expert, Dennis Painter, a surveyor, opined that simply because the golf course plat is titled "Cypress Creek Golf Course", this implies that the use of that property was forever restricted to golf course use only. The Court rejects this opinion. It is further noted that the Plaintiffs in this case did not plead, nor suggest, that the title to the golf course plat constitutes an express restrictive covenant.

[2] Nevertheless, the residential property *could* be further subdivided, and *was* further subdivided, but only with the County's requisite approval (see 1990 and 1998 affidavits of waiver, Joint Exhibits 13 and 14 in evidence). This language never constituted the absolute prohibition suggested by the Plaintiffs in this case.

feasible. Instead, it listed the golf course property for sale, and received a number of offers, with the most attractive of those coming from residential developers. Ultimately, True Shot entered into a contract with Pulte Homes to sell the golf course property, conditioned upon Pulte obtaining Palm Beach County's approval to change the approved use from the golf course use approved as a special exception in 1977 to residential use. Pulte made an application to the County to rezone the golf course property. On January 26, 2018, John M. Jorgensen, Esq., on behalf of the Plaintiffs in this case, submitted a letter to the County, voicing opposition to the petition for many of the same reasons asserted in this litigation, and based on many of the same documents admitted into evidence in this case (Joint Exhibit #27 in evidence).

12. On March 26, 2018, Jon MacGillis, then-Zoning Director of Palm Beach County, responded to Mr. Jorgensen's letter, advising that the golf course was a "separate entity" from the residential area of Cypress Creek, and was not currently a part of a planned unit development. The letter concluded by advising that Pulte had the right to request approval of a rezoning of the golf course property to a planned unit development (Joint Exhibit #28 in evidence). On February 7, 2019, a report was issued with respect to Pulte's application, in which every county department that needed to review the application recommended that the same be approved (Joint Exhibit #24 in evidence).

STATEMENT OF THE CASE

13. Shortly after the issuance of the aforementioned staff report, on March 22, 2019, the Plaintiffs in this case, the owners of 15 or so of the 465 residential lots in Cypress Creek, filed their initial complaint in this matter (the case was tried on Plaintiffs' Third Amended Complaint, DE #119) and True Shot's Answer and Affirmative Defenses (DE #22). The Third Amended Complaint seeks the imposition of an "equitable servitude" on the golf course property requiring

that the golf course property "be used as a golf course in perpetuity, [and] that there be no development of houses or other development on the property inconsistent with use of the property as a golf course" (Third Amended Complaint, pp. 10-11). Plaintiffs also seek permanent injunctive relief to the same extent.

14. For the reasons that follow, the Court concludes that the Plaintiffs have failed to carry their burden of proof in establishing a legal basis for the imposition of an equitable servitude in this case.

CONCLUSIONS OF LAW

15. Plaintiffs' argument is not based on an express written restriction on the use of the golf course property[3]; rather, they seek the imposition of an "equitable" prohibition on any change of use to the golf course property based on the unrecorded map of Cypress Creek, the various affidavits filed by the former developer of Cypress Creek in an effort to *avoid* compliance with Palm Beach County platting requirements, and the alleged reliance by the Plaintiffs on the notion that Cypress Creek was a "golf course community" and would remain so in perpetuity.

16. These arguments ignore the fact that the golf course property is, and at all material times has been, owned separate and apart from the homes in Cypress Creek. They also ignore the fact that the Plaintiffs failed to present evidence of *any* express agreement set forth in *any* written document, whether recorded or unrecorded, which imposes a restriction on the owner of the golf course property to limit itself to such a use in perpetuity.

17. Instead, Plaintiffs maintained at trial that the 1977 and 1985 plat waivers constitute a "contract" between Weaver Development Corporation and Palm Beach County to restrict the use

[3] There is no evidence of any express restrictive covenant in any of the residential deeds of conveyance, the golf course property deeds, or any other recorded documents. Plaintiffs have conceded this point throughout this proceeding.

of the golf course property in perpetuity. The basis for this assertion is not any clear, unambiguous language in those documents; rather, Plaintiffs argue that because these plat waiver documents make reference to the unrecorded Mock Roos Map, and since the Mock Roos Map depicts a golf course, this expresses the "intention" of Weaver Development and Palm Beach County to forever restrict the use of the golf course land to a golf course use, at the golf course property owner's sole expense, for the collective, cost-free benefit of the residents of the Cypress Creek residential community. Plaintiffs also argue that since these plat waiver documents are in the Official Records of Palm Beach County, they constitute constructive notice to True Shot of this perpetual use restriction. Problems with these assertions follow.

18. The 1977 plat waiver documents, culminating in the enactment of Resolution 77-669, concern ONLY the residential portion of the community, as plainly stated therein. The purpose was to rezone ONLY the residential area from agricultural to residential, and states nothing about the golf course property. Moreover, the effect of Resolution 77-592, approving the existing use of the golf course property as a special exception, was to require the golf course property to be separately platted, seemingly highlighting and formalizing the distinction between the privately owned golf course property, and the unplatted residential lots. Nothing in either of these resolutions, or the related affidavits in evidence, mention restrictions on the use of the golf course property.

19. The 1985 plat waiver documents are no different. The waiver request was filed to facilitate the reconfiguration of a number of residential lots in the community. Aside from a 750 square foot (approximately) easement for a lift station on a small rectangle of golf course property, this document has nothing at all to do with the golf course. Indeed, it does not otherwise mention the golf course property or its use, or any restrictions on that use.

20. To counter, Plaintiffs point to the first page of Exhibit 11, which states that "[t]he property will not be further subdivided", and to the third page of the exhibit, which says "[t]he subdivision will be in accordance with" the Mock Roos Map, as forever restricting the use to which the golf course property might be put. However, in the middle of the first page, the "no further subdivision" language is qualified as applying to "the property described herein…" The "property described" are *the residential portions of* the "rectangle" that includes all of the Cypress Creek community (see the Indemnification Agreement on page 7 of Exhibit 11, where the officers of Weaver Development further explained that the petitioner wishes to "modify lot lines and access ways established on [the] Affidavit of Exemption" recorded in 1977). Those "portions" are itemized on page 12 of Exhibit 11, which lists all of the residential lots affected by this modification of "lot lines and access ways". The golf course property is *not* listed among these properties. Moreover, the golf course property had already been platted for nine years by the time this "waiver of platting" was requested. Put simply, the Court concludes that the "no further subdivision" language in Exhibit 11 does not apply to the golf course property.

21. The aforementioned language on page 3 of Exhibit 11 is no different. This "Application for Waiver of Platting" could not possibly have been intended to affect the golf course property, which had been platted in 1978; no waiver of platting as to the golf course property was necessary. Thus, it is only logical to conclude that this "Application" was intended to address the residential lots described therein.

22. But even if, as the Plaintiffs suggest, Exhibit 11 put any prospective purchaser on notice of the existence of the unrecorded Mock Roos Map, this does not affect the Court's conclusions in this case. The reason for this is simple—the Mock Roos Map is not recorded in the Official Records of Palm Beach County, Florida. More importantly, it contains no dedications or

restrictions on future use. The map does not say that the golf course property will always remain a golf course. Moreover, it contains no legal descriptions. It is a drawing that depicts a number of residential lots and the outline of golf holes. To accept the argument that reference to the Mock Roos Map in a plat waiver document (unrelated to the golf course property) to an unrecorded sketch of residential lots surrounding a golf course is a "contract" expressing clear, unambiguous intent to restrict the use of the golf course property, in perpetuity, is a faulty suggestion, which, if accepted, would undermine record notice principles. Defendant's expert, Christopher Smart, explained the obvious importance of recorded documents in the Official Records of Florida's counties in terms of placing prospective buyers of property on constructive notice of encumbrances, and on covenants restricting the use of property. He also explained plats, which are intended as detailed record documents that delineate dedications, reservations, and use restrictions.

23. None of the documents offered by Plaintiff demonstrate a clear and unambiguous agreement to restrict the use of the golf course property in perpetuity. The 1977 affidavit (recorded in ORB 2655, at page 337) merely confirms that the unrecorded 1963 map was prepared by Mock Roos. The 1985 affidavit (ORB 5298, at page 1022) was to support an alteration of certain lot lines, create certain cul-de-sacs, and eliminate access from Lawrence Road. A 1990 affidavit (ORB 6392, at page 1007) was submitted in support of the reconfiguration of a number of residential lots in the southwest portion of Cypress Creek to align those lots with various utility, access, and landscape easements. Two 1997 affidavits (ORB 10187, at pages 240 and 260) relate to closing off access to Old Boynton Road and creating a cul-de-sac between two residential lots, and otherwise reconfirming the general configuration of the lots in the community. The affidavits do not demonstrate a perpetual restriction on the golf course property.

24. "[R]estraints [on the use of real property] 'are not favored and are to be strictly construed in favor of the free and unrestricted use of real property.' " *Leamer v. White*, 156 So.3d 567, 572 (Fla. 1st DCA 2015), quoting *Wilson v. Rex Quality Corp.*, 839 So.2d 928, 930 (Fla. 2nd DCA 2003). They can not be implied into perpetuity from prior uses. Covenants restraining the free use of realty are not favored. "To provide the fullest liberty of contract and the widest latitude possible in disposition of one's property, restrictive covenants are enforced so long as they are not contrary to public policy, do not contravene any statutory or constitutional provisions, and so long as the intention is clear and the restraint is within reasonable bounds." *Waterview Towers Condominium Ass'n, Inc. v. City of West Palm Beach*, 232 So.3d 401, 409 (Fla. 4th DCA 2017), quoting *Hagan v. Sabal Palms, Inc.*, 186 So.2d 302, 308-309 (Fla. 2nd DCA 1966). *See Publix Super Markets, Inc. v. Wilder Corp. of Delaware*, 876 So.2d 652, 653 (Fla. 2nd DCA 2004) (although law is well settled that restrictive covenants limiting free use of real property are not favored, they "will be enforced if (1) they are unambiguous, (2) they are reasonable, and (3) the parties' intent is clear"). *See also Orange Gardens Civic Ass'n v. Harris*, 382 So.2d 1340, 1342 (Fla. 5th DCA 1980) (restrictive covenants are enforceable when they are clear and reasonable, and have lawful purpose). Restrictions on the free use of real property are "strictly construed in favor of the free and unrestricted use of land," and any ambiguities are resolved against the party seeking to enforce the restriction. *Id.* at 1342. *See Evergreen Communities, Inc. v. Palafox Homeowners' Ass'n, Inc.*, 213 So.3d 1127 (Fla. 1st DCA 2017) (language in declaration of covenants and restrictions that expressed developer's personal intent to develop property for commercial use was ambiguous as to whether developer intended to create restriction on property such that it could only be used for commercial purposes).

25. Defendant does not contest that the doctrine of equitable servitude has been accepted and applied by the courts of this state. *See, e.g.,* *Silver Blue Lake Apartments, Inc. v. Silver Blue Lake Home Owners Association, Inc.*, 245 So.2d 609 (Fla. 1971), and cases cited therein. This category of restrictive covenants includes *private* promises or agreements between owners of the properties in question creating negative easements or equitable servitudes which are enforceable as rights arising out of contract. *Kilgore, supra.*, at p. 7. To be binding on successors to the promisor, any such successor must take title to the subject property with notice of the agreement. *Silver Blue Lake*, *supra.*, and cases cited therein. No proof of notice exists here. The lot transactions do not reference the alleged commitments nor do any of the recorded deeds and other documents.

26. A private agreement which purports to restrict the ability of the promisor and its successors to use its property for any legal purpose must be expressly stated in a document; to consider an alleged oral, or implied, understanding restricting the use of one's property would go against the aforementioned maxim that any such agreement must be clear and unambiguous and set forth the clear intent of the parties thereto. Restrictive covenants not contained in the muniments of title or in the record of documents affecting a party's title will not be enforced on the ground that they were intended by the grantor and should be implied. *Volunteer Security Company, Inc. v. Dowl*, 33 So.2d 150, 159 Fla. 767, 768 (1947). Here, none of the Plaintiffs' witnesses received written assurances. There was also no proof of actual notice.

27. The Plaintiffs also suggest that the history of the development, the "character" of Cypress Creek, the unrecorded map of the community, and the physical presence of the golf course in the center of the community is evidence of an intention on the part of the developer that the golf course property remain as a golf course forever, at the sole expense of the owner of that property.

The golf course property is surrounded by, among other things, some of the homes in Cypress Creek, and is depicted as a golf course on the 1963 Mock Roos Map, as amended. However, these facts do not constitute the requisite agreement upon which a perpetual equitable servitude might be based. The golf course property has always been independently owned, operated as a for-profit enterprise open to the public at large, has never received any financial support from the Plaintiffs or their neighbors (except for those few who, like other members of the public, paid to use the golf course and related services from time to time) and is separately platted in the Official Records of Palm Beach County, Florida. No consideration or terms were proven to support a perpetual restriction/commitment. The very unrecorded map upon which Plaintiffs rely contains no restrictions or dedications.

28. Similarly, the testimony of the Plaintiffs who testified at trial are unpersuasive. The Court understands and sympathizes with the Plaintiffs, most of whom purchased homes with golf course views that may possibly be altered if the golf course property is developed. But Plaintiffs' hopes do not amount to an enforceable agreement between any owner of the golf course property and any of their predecessors in interest sufficient to provide an evidentiary basis for their legal argument in this case. If they wanted a perpetual agreement, prudence required it in writing and of record. They have neither.

29. The Plaintiffs cite to out-of-state case law in support of their arguments. The Court finds these cases unpersuasive, and instead relies on the body of Florida case law, also cited by Plaintiffs, which sets forth what must be established in order for a plaintiff to successfully impose an equitable servitude on another's property in this state. With respect to Florida case law, the Plaintiffs rely mostly on three cases, the first of which is *Burnham v. Davis Islands, Inc.*, 87 So.2d 97 (Fla. 1956). In *Burnham*, a developer recorded a series of plats, one of which contained open

space marked "Reserved—See Margin". In the margin, the plat stated that while said open space *might* become part of a golf course, the developer retained the absolute right to do with the property as it pleased. After a golf course property had been operating in that "open space" for a few years, a replat was recorded that reflected the developer's intention to subdivide the golf course property. Burnham sued to stop this from happening. The questions presented were whether there was a public dedication of the golf course, and if not, whether the developer was estopped from claiming that the golf course was not dedicated to the residential owners, and lastly whether advertising and promotional materials referring to the golf course and other amenities created an enforceable contract with the lot purchasers that the golf course would be there for their future use and benefit. The court found in favor of the developer on all points. However, the Plaintiffs, in their trial brief, suggest that ***Burnham*** stands for the proposition that "a private easement could be implied from sales with reference to a plat showing streets, parks and other areas subject to their use and enjoyment." This was *not* the holding in ***Burnham***. Rather, the court noted that any "implied offer" that may have been present in the form of reference to a "sales map" was "revoked" by the recording of a plat.

> Insofar as appellants claim that sales by the developer with reference to sales maps showing the disputed blocks as blank green areas with miniature golf players and tees, prior to recording of the plats containing the reservation, amounted to a contract or covenant that the area would always be reserved for such use, it is clear that the recording of the reservation effectively revoked any such implied offer in respect to those purchasing thereafter with reference to the record plats. City of Miami v. Florida East Coast Ry. Co., 79 Fla. 539, 84 So. 726, supra. And there is no showing in the record that any parties now interested in the land are entitled to rely upon rights which might have vested in predecessors in title purchasing prior to such revocation.

As can be seen from the passage above, the court *did not* hold that such an "implied offer" was otherwise enforceable, and also noted that there was no showing that "any parties now

interested in the land are entitled to rely upon rights which may have vested in predecessors in title..." In the instant case, it is undisputed that none of the Plaintiffs purchased property from the original developer.

30. The second case is *Kasser v. Ke*, 282 So.2d 4 (Fla. 3rd DCA 1973). In that case, a recorded plat showed an area designated as a park for use by property owners in the platted subdivision. Reference to the recorded plat was made in the deeds conveying the residential lots in the platted subdivision. The single point on appeal in that case was as follows: Where the chain of title to lots in a platted subdivision is by deeds making specific reference to the recorded plat, which plat shows an area designated as a park, do such parties acquire private rights in the park even though such area may never have been used as a park? The real issue was whether title to the "park" property was insurable, or whether the prospective buyer could terminate the contract, based on the argument that the plat designation rendered the property uninsurable, as someone might argue later that they had rights to use the park as a park. The court found that title was not insurable, and the buyer was entitled to get his deposit on the property back from the seller. This case has no application here. In *Kasser*, there was a recorded plat, and deeds which referred to the plat, that gave constructive notice of any restrictions contained in that recorded plat. Because that plat was recorded and reflected (arguably) a specific intent to dedicate the "park" as indicated thereon, constructive notice of that possibility existed.

31. Finally, in *McCorquodale v. Keyton*, 63 So.2d 906 (Fla. 1953), a *recorded plat* containing an *express dedication* of certain beachfront property as being set aside for the use of the residents of the subdivision as a park was at issue. Again, there is no recorded plat in this case. And, importantly, the golf course, as reflected on the unrecorded drawings of the Cypress Creek community, and as it physically exists, is not the same thing as a park. Without dispute, the land

has always been privately owned, has always been open to the public (i.e.—not set aside for private use by the residents of the community only), and has been operated as a for-profit business. It has never been operated as a private playground, or "greenspace", for the sole use and benefit of the residents of Cypress Creek. Plaintiffs continue to emphasize the notion of a "private easement" that may be implied in certain cases. All of those cases (except *Burnham*, which the plaintiff lost) involve streets, parks and other areas subject to *private use and enjoyment*. This case involved a for-profit golf course, separately owned, taxed, and platted.

32. Plaintiffs have not established, by the greater weight of the evidence, the existence of an equitable servitude forever restricting Defendant's use of its property. Covenants restraining the free use of realty are not favored in the law[4], and will not be enforced unless the terms are unambiguous and make the parties' intent clear.[5] Plaintiffs' proof of an intended perpetual restriction on Defendant's use of its property does not meet this threshold. Plaintiffs did not prove the existence of a contract entered into by any owner of the golf course property which, clearly and unambiguously, promises to restrict the use of the golf course property, in perpetuity. To the contrary, all of the evidence in this case, equally reflect a contrary intention, namely that the golf course property, a separately owned, separately platted, separately funded property upon which an open to the public, for-profit venture was operated, would always be an entity separate and apart from the residential lots in Cypress Creek, physical proximity notwithstanding. The dispositive point is that there is no proof of a written commitment to perpetually restrict the subject property as a golf course. If the developer of the golf course and the residential lots wanted to place a restrictive covenant of record, it could have done so in a number of ways. It could have platted

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[4] *Kilgore v. Killearn Homes Association, Inc.*, 676 So.2d 4, 7 (Fla. 1st DCA 1996).
[5] *19650 NE 18th Ave., LLC v. Presidential Estates Homeowners Association, Inc.*, 103 So.3d 191, 194 (Fla. 3rd DCA 2012).

the *entire* Cypress Creek development, and set forth express restrictions on use. It could have placed such a restriction in its conveyance of the golf course to Golf Trust of America. It could have included the golf course as a member of the Property Owners' Association and placed restrictions on the use of the golf course property in recorded covenants. It chose none of these options. And little evidence of a separate "contract" imposing such a perpetual restriction was presented to the Court. No credible evidence of record or actual notice was provided. Without such proof, Plaintiffs' request to impose an equitable servitude must be Denied.

33. For all of these reasons, final judgment is hereby entered against the Plaintiffs, MIKEL W. KLINE, NANCY J. KLINE, KEN HANNEY, MADELINE HANNEY, NICHOLAS WESTON, REBECA WESTON, TOORAJ NOWZAMANI, CYNTHIA NOWZAMANI, KELLY CHIARELLA, RICHARD C. BROWN, ROBERTA ATKINS, NANCY LYNN, BARBARA FOSTER, DONALD NEUBAUM, KATHY TUFTS, PAUL V. TUFTS, KATHERIN KHIDIRIAN, KURT E. NELSON, WILLIAM KIRWAN, CHRISTINE M. CHAVERS, ELIZABETH IMMS, DIANE S. YONN, ELANDIEU DELVA, AMBER HOYE, KEITH HOYE, and SUE ELLEN BROWN, and in favor of the Defendant, TRUE SHOT, LLC, which shall go hence without day. Jurisdiction is reserved to consider awarding Defendant costs and attorney's fees, as appropriate, upon the timely filing of a motion requesting same.

DONE AND ORDERED in West Palm Beach, Florida on this 11th day of Feb, 2022.

G. Joseph Curley, Circuit Court Judge

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