



Equitable Exceptions to Enforceability of Restrictive Covenants by Injunction in Michigan

by William E. Hosler*

I. Overview

This article focuses on the equitable exceptions to the enforceability of restrictive covenants by injunction. This topic is generally addressed in the author's previous articles reviewing the law of restrictive covenants and deed restrictions in Michigan.¹

A restrictive covenant or deed restriction represents a contract between the buyer and the seller of property.² If a restrictive covenant or deed restriction is unambiguous, courts are to enforce that restriction as written unless the restriction contravenes law or public policy, or has been waived by acquiescence to prior violations.³

However, in Michigan, there are three equitable exceptions to the general enforcement by injunction of valid, unambiguous deed restrictions.

The Michigan Supreme Court created these three exceptions in 1957 in *Cooper v Kovan*,⁴ and they remain the current standard:

- (1) Technical violations and absence of substantial injury;
- (2) Changed circumstances; and
- (3) Limitations and laches.

1 William E. Hosler, *Deed Restrictions and Restrictive Covenants in Michigan—2012*, 38 Mich Real Prop Rev 7 (Winter 2012); William E. Hosler, *Deed Restrictions in Michigan*, 34 Mich Real Prop Rev 37 (Spring 2007); William E. Hosler, *Restrictive Covenants in Michigan*, 25 Mich Real Prop Rev 81 (Summer 1998).

2 *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 212; 737 NW2d 670 (2007).

3 *Id* at 214.

4 349 Mich 520; 84 NW2d 859 (1957).

Defining and uniformly applying these exceptions is an elusive task. More so than in perhaps any other area of real property law, the interpretation, enforcement, and/or avoidance of deed restrictions depends on the unique facts of each case.

II. Application of *Cooper v Kovan* exceptions

A. Technical violations and absence of substantial injury

Webb v Smith (after second remand)

In *Webb v Smith*,⁵ the defendants in 1988 purchased one-half of a lakeshore lot in a residential subdivision. A home owned by third parties already existed on the other half of this lot. Defendants began construction of their home in March 1989. The deed to defendants' property did not contain restrictions that appeared on deeds to the other lots in the subdivision.

The plaintiffs owned lots adjacent to defendants' lot. Plaintiffs believed that the construction of defendants' home would violate both the subdivision's negative covenants and the township's zoning ordinances. The subdivision covenants at issue stated: "No building or dwelling shall be placed closer than 20 feet from the front lot line, and not more than one building shall be used for dwelling purposes on each lot." Plaintiffs also believed that defendants' home would partially block their view of the lake. In April 1989, plaintiffs filed suit to force defendants to remove their home.

5 224 Mich App 203; 568 NW2d 378 (1997); *leave to appeal denied*, 459 Mich 862; 584 NW2d 924 (1998).

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After a bench trial in May 1989, and subsequent litigation spanning six years, on second remand from the Court of Appeals and after an evidentiary hearing, the trial court ruled that defendants' lot was subject to the one dwelling per lot restriction, stating that "plaintiffs' [sic] had a right to expect that no dwelling would ever rest upon the defendants' lot."⁶ The court rejected defendants' argument that the violation did not cause substantial injury, noting that plaintiffs had suffered losses of view, light, and privacy. The court added: "When one considers that plaintiffs have a right to an empty lot next door, it becomes very difficult to argue that their injury is not substantial."⁷ The court also rejected the defendants' argument that the plaintiffs' request for the injunction should be denied because the restrictions' purposes of privacy and aesthetics could not be accomplished because the neighborhood conditions had changed. The trial court ordered defendants to demolish their house from the lot.

On appeal, the Court noted that courts regularly enforce injunctions based on valid restrictions and because the parties' damages are immaterial. The trial court did not err in failing to apply a balancing test. The Court then addressed the three equitable exceptions from *Cooper v Kovan*. It found that the third exception (limitations and laches) was not at issue in the case.

In considering whether the "technical violations and absence of substantial injury" exception applied, the Court noted that no Michigan court had yet defined a "technical violation" in this context. Accordingly, the *Webb* Court adopted the definition from a Louisiana case which characterized a technical violation of a negative covenant as a "slight deviation" or a violation that "can in no wise, we think, add to or take from the objects and purposes of the general scheme of development. . . ."⁸

The *Webb* Court found that no exception to enforcement applied. The defendants' house was built on a half-lot where no house was allowed. The *Webb* Court found that this presented more than a "slight deviation" from the terms of the covenants. Courts give effect to the instrument as a whole when interpreting restrictive covenants.⁹ The Court held that "if any doubt arises surrounding the meaning of the restrictions the court must consider the

sub-divider's intention and purpose."¹⁰ The restriction clearly permitted only one dwelling per lot. The defendants' house detracted from the covenants' stated purposes of regulating construction to guarantee a level of privacy and aesthetic enjoyment to the subdivision's landowners. Further, testimony reflected that plaintiffs' property was impaired because defendants' house obscured their view of the lake and that the resulting damage amounted to at least \$5,500, which the *Webb* Court decided was in fact a *substantial* injury.

Gamble v Hannigan

In *Gamble v Hannigan*,¹¹ another building restriction case, the defendant purchased a platted lot on a lake intending to build a residence. The recorded restrictions included a requirement that no dwelling house or structure (including porches and eaves) shall be located "nearer than 20 feet from the crest of the land approaching the lake." Given the unique location of the lot defendant was interested in, she was given assurances before she bought that some "concessions" would be made regarding the restriction. After she bought, the building committee approved the defendants' construction plan, and provided the defendant with an interpretation of the building setback line to the water and a description of the location of the concrete marker—a description which was [the Court later observed], "to be charitable, slightly erroneous,"¹² After the house was nearly completed, a dispute over the location of the porch ensued and the plaintiffs (the developers of the subdivision) sued to enjoin further construction of the porch and force removal of the portion already built.

The appellate court noted that "the most sensible manner in which to resolve cases of this nature is to consider each case on its peculiar merits."¹³ The Court found that given the building committee's inept description of the concrete marker's location, and the fact that a significant amount of the construction of the offending porch had been completed, it was "disposed to resolve this case on grounds *other than the technical violation* of the building committee's permission."¹⁴ Rather, the "Court chooses to look at the stated purposes behind the covenants and restrictions and then determine the impact of defendant's

6 224 Mich App at 207-08 (quoting trial court).

7 *Id* at 208 (quoting trial court).

8 *Id* at 212.

9 *Rofe v Robinson (after second remand)*, 126 Mich App 151, 157; 336 NW2d 778 (1983).

10 *Webb*, 224 Mich App at 212.

11 38 Mich App 500; 196 NW2d 807 (1972).

12 *Id* at 503.

13 *Id* at 504.

14 *Id* (emphasis added).

porch on the achievement of those purposes.”¹⁵ The Court then, after quoting from the stated purpose of the covenants and restrictions from the recorded documents, decided that the defendant’s porch would not obstruct the view of the lake from adjoining property, as was claimed below, any more than pre-existing structures affected the view.

This published opinion is illustrative of the flexible approach Michigan courts take when interpreting the facts of a dispute involving a restrictive covenant. In a case seeking a technical violation exception, the judge (or panel) is looking to see whether applying that exception to enforcement of a restriction would accomplish what that particular judge (or panel) determines was the object and/or purpose of the restriction within the general scheme of development.

B. Changed circumstances

Rofe v Robinson (after remand)

In *Rofe v. Robinson*,¹⁶ the plaintiffs and other property owners sued the defendant developers to enforce deed restrictions limiting the use of subdivision lots to single family residential purposes and for an injunction enjoining the construction of office buildings on certain subdivision lots. The trial court upheld the restrictions and issued a permanent injunction. The appellate court reversed on the ground that the character of the subdivision had changed. The Michigan Supreme Court held that changes in a highway bordering the subdivision and partial condemnation along the highway had not so changed the character of the subdivision as to subvert the purpose of the deed restrictions and render enforcement inequitable, nor had a change in zoning overridden the restrictions.

The Court was not persuaded that use of one of the 45 lots for office purposes had so changed the character of the subdivision as to render the restrictions inequitable. That structure was built as a residence and had previously been used as such. The use of that building for office purposes had not materially changed the character of the subdivision, which remained substantially residential.

Likewise, the evolution and widening of Telegraph Road did not justify lifting the restrictions. The widening of Telegraph Road had not changed the character of the subdivision, which was still substantially residential. “The fact that substantial changes in the character of the neighborhood outside of the subdivision have taken place does not make it inequitable to enforce the restrictions.”¹⁷

¹⁵ *Id* at 505.

¹⁶ 415 Mich 345; 329 NW2d 704 (1982).

¹⁷ *Id* at 353.

Webb v Smith (after second remand)

The *Webb v Smith*¹⁸ Court also considered but rejected the defendant’s argument that enforcement of the restrictions against defendants should be equitably excused due to the allegedly changed circumstances in the subdivision so as to make enforcement of the covenants inequitable. The evidence did not establish that the covenants’ purposes could no longer be accomplished. Although defendants relied on testimony regarding the general growth of the area, such testimony was insufficient to excuse a covenant violation.¹⁹ The Court noted that “if something more than general growth was not required, it would place all residential restrictions in substantial jeopardy.”²⁰

C. Limitation and Laches

Rofe v Robinson (after second remand)

On remand from the Michigan Supreme Court, the court of appeals in *Rofe v. Robinson*²¹ ruled on the issues of laches, waiver, and interpretation of deed restrictions that were not considered in the Court’s previous decisions.

In determining whether a party is guilty of laches, each case must be determined on its own particular facts.²² The doctrine of laches was explained in *In re Crawford Estate*, as follows:

“Laches is an affirmative defense which depends not merely upon the lapse of time but principally on the requisite of intervening circumstances which would render inequitable any grant of relief to the dilatory plaintiff. * * * For one to successfully assert the defense of laches, it must be shown that there was a passage of time combined with some prejudice to the party asserting the defense of laches. * * * Laches is concerned mainly with the question of the inequity of permitting a claim to be enforced and depends on whether the plaintiff has been wanting in due diligence.”²³

In *Rofe*, the Court found that the plaintiffs instituted

¹⁸ 224 Mich App 203; 568 NW2d 378 (1997); *leave to appeal denied*, 459 Mich 862; 584 NW2d 924 (1998).

¹⁹ *Cooper*, 349 Mich at 531-32.

²⁰ *Webb*, 224 Mich App at 213.

²¹ 126 Mich App 151; 336 NW2d 778 (1983) (after second remand).

²² *Id* at 154.

²³ 115 Mich App 19, 25-26; 320 NW2d 276 (1982) (quoted in *Rofe*, 126 Mich App at 154).



suit against the defendants with reasonable promptness after it was made evident to them that defendants intended permanent violations of the applicable deed restrictions. The Court held that the plaintiffs were not wanting in due diligence and upheld the trial court's conclusion that plaintiffs were not guilty of laches.

The Court also confirmed the importance of determining the intentions of the parties when interpreting deed restrictions.

When interpreting a restrictive covenant, courts must give effect to the instrument as a whole. If there is any doubt as to the exact meaning of the restrictions, the court must consider the subdivider's intention and purpose. Furthermore, the restrictions must be construed in light of the general plan under which the area subject to those restrictions was platted and developed. On the other hand, restrictive covenants are to be construed strictly against those seeking enforcement and all doubts are to be resolved in favor of the free use of property. A court of equity will not enlarge the scope of deed restrictions beyond the clear meaning of the language employed.²⁴

Kamphaus v Burns

Although unpublished, *Kamphaus v Burns*,²⁵ a building restrictions case, provides a thorough review and analysis of all three equitable exceptions.

The plaintiffs sought equitable and monetary relief on the grounds that: (1) defendant failed to submit his building plans to the Association's Building and Use Restriction Committee in violation of their Bylaws; (2) defendant's house violated the two-story height restriction contained in his deed; and (3) defendant's bay window, porch, garage pillars, and chimney violated setback requirements of the deed restrictions. In response, defendant argued that: (1) he was not required to submit his building plans to the Building and Use Restriction Committee but in any case, he did submit his plans; (2) the 1975 deed restrictions were invalid and unenforceable; (3) if the deed restrictions were valid, he complied with them; and (4) if his bay window, porch, garage pillars, or chimney did violate a deed restriction, such violation was subject to an equitable exception to enforcement.

After some delays, eventually a thirteen-day bench trial was conducted. During the course of the proceedings, the trial judge personally viewed defendant's premises and the immediate vicinity. At its conclusion, the trial court held that: (1) the 1975 amendments to the deed restrictions were valid and enforceable against defendant; (2) defendant did not violate the height restriction because the house was two stories and had some unfinished attic space, not a third story; (3) the front porch, bay window, and portico of defendant's house were architectural features and thus not subject to the setback requirements but even if they were they merely constituted "technical violations" that did not result in substantial harm to plaintiffs; and (4) defendant's garage and chimney violated the restrictions but they too constituted merely "technical violations." The trial court found the restrictions had been selectively enforced and that the plaintiffs had unduly delayed in seeking to enforce those restrictions. Accordingly, the trial court dismissed plaintiffs' complaint with prejudice, a decision affirmed on appeal.

Many of the findings in favor of the defendant concerned the application of the equitable exceptions to the enforcement of otherwise valid deed restrictions. The Court found that the location of the defendant's garage pillars were, given the circumstances, a technical violation and did not warrant injunctive relief. The Court then addressed the chimney (which was built 28 feet beyond where the restrictions required it to be) and decided that its construction was *not* a slight deviation. It was not a "technical violation," and also did not qualify as a changed circumstance exception for the neighborhood, so it did not qualify to remain under the first two exceptions. However, the Court did conclude that laches applied. The testimony established that the plaintiff saw defendant's chimney stand in rough condition for at least three or four weeks before it was bricked. In fact, no opposing action was taken against the chimney while it was under construction. The Court noted that the lawsuit was filed over seven months after it became clear the defendant intended a permanent violation of the applicable deed restriction. The Court determined this was too long to wait, and allowed the defendant to keep his chimney based on the application of the third *Cooper v Kovan* exception.

III. Impact of *Terrien v Zwit* on the *Cooper v Kovan* Equitable Exceptions

In 2002, the Michigan Supreme Court issued a decision that cast uncertainty on the usefulness of the first *Cooper v Kovan* exception that a technical violation of a

²⁴ 126 Mich App at 157-58 (citations omitted).

²⁵ Unpublished opinion per curiam of the Michigan Court of Appeals, issued Feb 26, 2009 (Docket No. 279962); *leave to appeal denied*, 485 Mich 927; 733 NW3d 696 (2009).

deed restriction (coupled with a lack of substantial injury) would still present an opportunity to avoid an otherwise valid and enforceable deed restriction.

Terrien v Zwit

In *Terrien v Zwit*,²⁶ the plaintiffs (neighborhood residents) sought an injunction prohibiting the continued operation of “family day care homes” in their community. The defendants each operated a licensed family day care home pursuant to MCL 722.111 *et seq. in their homes within the subdivision*. The trial court granted summary disposition in favor of the defendant day care homes, holding that a covenant precluding the operation of a family day care home was contrary to the public policy of the state of Michigan. The court of appeals affirmed. On review, the Michigan Supreme Court reversed for the plaintiffs. The Court concluded that the relevant covenants restricting day cares did not violate Michigan public policy and were enforceable.

The subdivision was subject to the following covenants:

1. No part of any of the premises above described may or shall be used for other than private residential purposes.

* * *

3. No lot shall be used except for residential purposes.

* * *

14. No part or parcel of the above-described premises shall be used for any commercial, industrial, or business enterprises nor the storing of any equipment used in any commercial or industrial enterprise.²⁷

The Michigan Supreme Court concluded that a covenant barring any commercial or business enterprises was broader in scope than a covenant permitting only residential uses. The Court found significant the fact the restrictions at issue not only prohibited commercial or business activities, but they also prohibited the mere storing of any equipment used in such activities. The Court found this a strong and emphatic statement of the restrictions’ intent to prohibit any type of commercial or business use of the properties.

²⁶ 467 Mich 56; 648 NW2d 602 (2002).

²⁷ *Id* at 59-60.

In response to an argument that this was a mere “technical violation” without substantial harm, the Court held that the plaintiff’s right to maintain the restrictions is not affected by the extent of the damages he might suffer for their violation. The Court held:

It is of no moment that, as defendants assert, the “family day care homes” cause no more disruption than would a large family or that harm to the neighbors may not be tangible. As we noted in *Austin v VanHorn*, 245 Mich 344, 347; 222 NW 721 (1929), “the plaintiff’s right to maintain the restrictions is not affected by the extent of the damages he might suffer for their violation.” This all comes down to the well-understood proposition that a breach of a covenant, no matter how minor and no matter how *de minimis* the damages, *can be* the subject of enforcement. As this Court said in *Oosterhouse v Brummel*, 343 Mich 283, 289; 72 NW2d 6 (1955), “If the construction [13] of the instrument be clear *and* the breach clear, then it is not a question of damage, but the mere circumstance of the breach of the covenant *affords sufficient ground* for the Court to interfere by injunction.”²⁸

A quick read of this statement by the Court might suggest that it is renouncing the 45 year old “technical violation and absence of substantial injury” exception to the enforcement of deed restrictions; i.e., that no matter how minor the violation, and no matter how small the scope of actual injury to the plaintiff, the restriction must be enforced. However, a closer analysis of the language used and the context provided reveals a different message. The opinion reminds the judiciary that it has “sufficient ground” to interfere by injunction—not that it necessarily must do so in all cases.

Village of Hickory Pointe Homeowners Ass’n v Smyk

Two years after *Terrien*, the court of appeals in *Village of Hickory Pointe Homeowners Ass’n v Smyk*²⁹ followed the *Terrien* analysis. The defendants had built a deck without first receiving permission from the homeowners association in clear violation of the deed restriction requirement. The trial court found for the defendants, holding that the breach was *de minimis*, a “technical violation” without any substantial injury to the plaintiff. Quoting *Terrien*, the

²⁸ *Id* at 65 (citations omitted; emphasis added).

²⁹ 262 Mich App 512; 686 NW2d 506 (2004).



court of appeals reversed: “It is a ‘well-understood proposition that a breach of a covenant, no matter how *de minimis* the damages, can be the subject of enforcement. . . . If the construction be clear and the breach clear, then it is not a question of damage, but the mere circumstance of the breach of the covenant affords sufficient ground for the Court to interfere by injunction.’ Because the covenant and the breach thereof are both clear in this case, plaintiff was entitled to summary disposition as a matter of law.”³⁰

This opinion represents a strict application of the *Terrien* standard. It seems to reach a conclusion without regard to whether the violation of the restriction was substantial. The reported analysis ended once a breach of a clear restriction was found. While the panel was unanimous in reversing the trial court, Judge Jansen concurred in the result only.

V. Unpublished Cases after *Terrien v Zwit*

The reports that *Terrien* sounded the death knell for the “technical violation” (and absence of substantial damage) exception to enforcement of valid deed restrictions seem to have been greatly exaggerated. Although the precedential relevance of this Michigan Supreme Court case is obviously recognized and followed, as demonstrated by *Village of Hickory Pointe Homeowners Ass’n*, Michigan courts still exercise their independence and flexibility when deciding if a violation of a deed restriction is substantial and worthy of equitable relief.

Kamphaus v Burns

The court in *Kamphaus v Burns*,³¹ discussed earlier, analyzed both *Terrien* and *Village of Hickory Pointe Homeowners Ass’n* and determined that the “technical violation” exception to enforcement of deed restrictions was still available. The *Kamphaus* court reasoned:

In *Terrien*, the defendants were operating day care businesses in their homes despite a covenant permitting only residential uses and prohibiting commercial, industrial, or business uses. . . . Because the operation of a day care facility was a *substantial* deviation from the deed restriction—not a slight deviation—the covenant could be enforced even if only *de minimis* damages were

sustained. In other word, the first element of the technical violation exception was not met.³²

The *Kamphaus* court also addressed the finding in *Village of Hickory Pointe Homeowners Ass’n* that the “technical violation” exception is no longer viable law. In that case, the defendants built a deck without first receiving permission from the homeowners association in clear violation of the deed restriction requirement. The *Kamphaus* court found: “The cases of both *Terrien* and *Village of Hickory Pointe Homeowners Ass’n* clearly involved substantial violations of deed restrictions. Accordingly, the respective Courts held that the amount of damages sustained as a consequence of the substantial violations was irrelevant.”³³ The *Kamphaus* court determined: “Because the case law that plaintiffs have set forth in support of their position that the “technical violation” exception is no longer viable law, and our own research, has failed to substantiate that claim, we reject that position.”³⁴

Oakwood Meadows Homeowners Ass’n v Urban

In *Oakwood Meadows Homeowners Ass’n v Urban*,³⁵ plaintiff sought enforcement of restrictions with respect to a pump house built by defendants on their property, and lost. The appellate court reversed for the plaintiff, finding: (1) the pump house violated restrictions that expressly forbid sheds and outbuildings and took away from the purpose of the general scheme of the development (i.e., it was not a mere technical violation) and (2) laches did not apply because evidence did not demonstrate a lack of due diligence or unreasonable delay by plaintiff or prejudice to the defendant. The Court noted the *Terrien* rule, but decided the case simply by interpreting the facts differently from the trial court.

Leclear v Fulton

In *Leclear v Fulton*,³⁶ defendant filed a counterclaim alleging that the plaintiff violated the subdivision recorded restrictions that required approval of their house plans before construction and failed to get approval before removing trees. The trial court found no cause of action

³² *Id* at 19, 20 (emphasis added).

³³ *Id* at 21.

³⁴ *Id*.

³⁵ Unpublished opinion per curiam of the Michigan Court of Appeals, issued June 26, 2014 (Docket No. 316193).

³⁶ Unpublished opinion per curiam of the Michigan Court of Appeals, issued May 20, 2008 (Docket No. 277225).

³⁰ *Id* at 516 (citations omitted).

³¹ Unpublished opinion per curiam of the Michigan Court of Appeals, issued Feb 26, 2009 (Docket No. 279962); *leave to appeal denied*, 485 Mich 927; 733 NW3d 696 (2009).

(i.e., it found mere technical violations), but the court of appeals disagreed in part. The Court analyzed *Terrien* and related cases, confirming that a court *may* grant equitable relief. The breach of the covenant regarding the trees was remanded for further proceedings. As for the requirement to review house plans, the Court decided that no such restriction existed. A court will not infer a restriction that is not expressly stated in the controlling documents.

Thom v Palushaj

*Thom v. Palushaj*³⁷ was another case of the defendants building a house in clear and knowing violation of deed restrictions, thus putting themselves at risk of being ordered to tear down and start over. The defendants built closer to the neighbor than allowed and closer to the front lot line than allowed and failed to submit and/or obtain approved plans. The trial court nonetheless agreed with the defendants that the violations were mere technical violations and should not be enforced. The Court of Appeals disagreed. It acknowledged that *Webb* defined technical violations as slight deviations that do not add to or take from the purposes of the development scheme, and noted that the viability of the technical exception “appears questionable in light of the Supreme Court’s decision in *Terrien*.” However, the Court did not have to resolve that controversy since it concluded that the defendants’ violations of the deed restrictions were obviously so substantial, and the restrictions were not waived, that an equitable exception to enforcement was never a reasonable consideration. The case was sent back for the trial court to fashion a remedy consistent with *Webb* (*Aft Sec Rem*).

Johnson v Kristin

*Johnson v. Kristin*³⁸ was somewhat factually similar to *Terrien*. The defendants operated a commercial bed and breakfast in a residential neighborhood in violation of recorded building and use restrictions. The court reviewed *Webb*, *Terrien*, and *Village of Hickory Pointe Homeowners Ass’n*. The defendants argued that even if their operation was in violation of the restrictions, an injunction shutting them down was inequitable since “no substantial harm has resulted to plaintiff or others.” The Court flatly disagreed, finding that a B&B in a subdivision designated for residential use was more than a “slight deviation” from

the general scheme of development set forth in the restrictions. The opinion mentioned the *Terrien* rule that breach of a covenant *can* be the subject of enforcement, but that was not the basis for the Court’s order of a permanent injunction against the defendant’s operations.

Dean v. Hanson

In *Dean v. Hanson*,³⁹ the plaintiff subdivided a parent parcel into five buildable parcels. One of the parcels contained an easement for “common usage,” apparently intended for a future donation to a nature conservancy. After all parcels were sold, the defendants recorded a claim of interest against this area, resulting in plaintiff’s lawsuit. The complaint alleged violations by the defendants of various building and use restrictions. The defendants counterclaimed for declaratory relief, including that the plaintiff be barred from developing the area of common usage. Both sides filed motions for summary disposition. The trial court ruled in favor of the defendants, and against the plaintiff, in both motions.

On appeal, the relief sought by defendants’ counterclaim was affirmed when the Court found that under the doctrine of reciprocal negative easement, the defendants had valuable property rights in the area of “common usage” referenced in the easement.

In denying the plaintiff’s appeal that defendants breached various recorded restrictions requiring injunctive relief, the Court extensively reviewed *Webb* and *Cooper v Kovan*. It also addressed the recently issued *Terrien* opinion, and specifically quoted the phrase about how a breach, no matter how minor, or damages, no matter how *de minimis*, provide the bases to enforce a valid deed restriction. However, the Court nevertheless undertook a thorough *Cooper v Kovan* analysis as to each of the alleged violations, ultimately finding that each of them fell within one of the three exceptions to enforcement.

IV. Conclusion

In sum, the *Cooper v Kovan* exceptions are alive and well, subject to a *Terrien* cautionary review.

37 Unpublished opinion per curiam of the Michigan Court of Appeals, issued Aug 23, 2007 (Docket No. 268074).

38 Unpublished opinion per curiam of the Michigan Court of Appeals, issued March 6, 2007 (Docket No. 266649).

39 Unpublished opinion per curiam of the Michigan Court of Appeals, issued Nov 18, 2003 (Docket No. 241317).