

IN THE CIRCUIT COURT, POLK COUNTY, FLORIDA.

CLAYTON P. BALZER and
 BLANCHE BALZER, his wife;
 HUBERT MOORE and MARIA S.
 MOORE, his wife; MILDRED
 OSHINSKI; and GEORGE W.
 PHILLIPS and MARY E.
 PHILLIPS, his wife,

Plaintiffs,

vs.

Case No. GC G 73-1557

INDIAN LAKE MAINTENANCE,
 INC.,

Defendant.

FINAL JUDGMENT

The above-styled cause was regularly noticed for final hearing and oral argument on the 6th day of April, 1976. The Court, after considering the Stipulations of Facts, reviewing the transcript, examining the files and pleadings, reading the briefs of the parties, and listening to argument, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the Court is here concerned with the validity of a restrictive covenant found within the deeds to and contracts with purchasers of residential lots at Indian Lake Estates, a platted unincorporated subdivision located in Eastern Polk County, this covenant being more specifically enumerated as follows:

"The Purchaser covenants to pay to Indian Lake Estates, Inc., its nominees, successors, or assigns, on January 15 of each year, the sum of \$20, for each and every lot purchased, to be used for

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general maintenance. This maintenance fee cannot be changed without written approval of the owners of the majority of the residential lots as shown on the recorded plats of the corporation.

All of the above covenants shall remain in force until January 1, 1966, and shall be automatically renewed for each ten year period thereafter, unless owners of at least two-thirds of the lots in the subdivision known as Indian Lake Estates shall, at least six months prior to a change in or an abrogation of any of the above covenants, and record such writing so amending the aforesaid covenants."

2. Plaintiffs contend that the language of the covenant to the effect that it shall be automatically renewed for each ten year period after January 1, 1966 unless the owners of at least two-thirds of the lots in the subdivision known as Indian Lake Estates shall, at least six months prior to any such renewal date, agree in writing to a change in the covenant makes said covenant a perpetual obligation and, therefore, invalid.

3. The Plaintiffs in this cause are all owners of residential real property located at Indian Lake Estates but none of the Plaintiffs reside at Indian Lake Estates. The Intervenors in this cause are all owners of both residential and commercial property at Indian Lake Estates and all reside at Indian Lake Estates.

4. Indian Lake Estates comprises approximately 6,900 acres divided into 7,287 residential lots and 665 commercial lots, and the plat of the subdivision recorded in the public records of Polk County reflects residential lots and certain common drives, parkways, parks, greenways,

lagoons, beaches, a yacht basin, golf courses, a clubhouse site, recreation areas, and parking lots.

5. As early as June 30, 1964, this Court was concerned with the expenditure of maintenance funds generated by the restrictive covenant outlined above and concluded, in part, as follows:

" . . . all maintenance fees hereafter collected by Indian Lake Estates, Inc. shall be used by Indian Lake Estates, Inc. solely for purposes of maintenance at Indian Lake Estates. For the expenditure of any such monies, Indian Lake Estates, Inc. shall present to the Court with notice to the Intervenor, a suitable petition setting forth how Indian Lake Estates, Inc. intends to spend such monies and upon approval of such petition or other order of the Court, Indian Lake Estates, Inc. shall expend such monies accordingly. Indian Lake Estates, Inc. shall make quarterly reports to the Court showing the amount of maintenance fees collected and how such fees were spent."

6. Thereafter, this Court by its Order dated February 16, 1966, appointed Indian Lake Maintenance, Inc. as the appropriate corporate entity to collect these maintenance fees and further required that Indian Lake Maintenance, Inc. every three months submit a schedule of sums expended, amounts collected, and anticipated expenditures, and since April 1, 1966 to date, Indian Lake Maintenance, Inc. has submitted quarterly maintenance reports for court approval.

7. Since 1966, the maintenance funds generated by the restrictive covenant referred to above has been used for the preservation and upkeep of the following described areas and amenities:

Golf Course	18 hole
Clubhouse	23,000 square feet
Fishing Pier	1,158 lineal feet
Beach and Pavilion	3.5 acres
Marina	20 spaces
Boat Ramps	2 ramps
Total Roadways	140 miles
Paved Roads	110 miles
Waterways	6 miles
Roadside Easements	280 miles
Drainage Ditches	75 miles
Lakes	11 lakes
Tennis Courts	2 courts
Shuffleboard Courts	8 courts
Street Lights	75 light poles

8. That title to all the avenues, drives, parkways, parks, greenways, and other recreational areas is presently vested in a Florida nonprofit corporation, the members of which are all owners of lots at Indian Lake Estates.

9. That both resident and nonresident lot owners derive benefits from the enforcement of the subject covenant which insures that the areas designated in Paragraph 7 hereof will be properly maintained for the benefit of all lot owners.

10. That since the roads and avenues within the subdivision were not dedicated to the public, Polk County performs no maintenance within the subdivision and the maintenance of the existing roads is the sole responsibility of Indian Lake Maintenance, Inc.

11. That Indian Lake Estates derives its funding solely from the collection of maintenance fees generated by said covenant, and without this funding there would be no maintenance of the areas outlined above including roads which would ultimately result in the demise of the subdivision.

CONCLUSIONS OF LAW

Plaintiffs rely on the case of Henthorn v. Tri-Par Land Development Corp., 221 So. 2d 465 (2nd DCA 1969) in support of their argument that the Indian Lake Estates covenant creates a perpetual obligation and, therefore, is void for the same policy reasons behind the rule against perpetuities which invalidates the remote vesting of property interests. In the Henthorn case, the developer's successor in interest was attempting to abandon its obligations under a covenant to provide specific services on the basis that the covenant was perpetual and, therefore, terminable at will under the doctrine of Collins v. Pic-Town Water Works, Inc., 166 So. 2d 760 (2nd DCA 1964). Factually, the Henthorn case is to be distinguished from the instant case where a group of nonresident property owners are attempting to invalidate a restrictive covenant which has been the subject matter of Court supervision since 1966. The Court finds that an exception to the doctrine espoused in Collins v. Pic-Town Water Works, Inc., supra, is where the circumstances give rise to a "continuing consideration - continuing advantage" as was the case in City of Gainesville v. Board of Control, 81 So. 2d 514 (Fla. 1955) and City of Daytona Beach v. Stanfield, 258 So. 2d 809 (Fla. 1972).

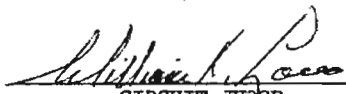
The rule against perpetuities invalidates an interest that vests too remotely and we are not here concerned with a remote vesting problem. The public policy argument in support of a rule which allows for the free alienation of property is obvious, but that same argument is not applicable to the Indian Lake Estates covenant.

This Court does not believe that there are any compelling public policy reasons which would require the invalidation of a covenant from which all interested parties are deriving a benefit.

DECREE

Upon consideration of the foregoing, it is ORDERED AND ADJUDGED that the covenant found within the deeds of property owners at Indian Lake Estates requiring the payment of an annual maintenance fee, more particularly contained in the findings of fact set forth herein, is a valid and enforceable covenant subject to the limitations contained within the covenant.


DONE AND ORDERED in Chambers at Bartow, Polk County, Florida, this 28th day of May, 1976.



 CIRCUIT JUDGE

Copies furnished to:

Jack P. Brandon, Esq.
 Robert J. Boylston, Esq.
 Miss Marie Alice Crano

FILED, RECORDED AND
 RECORD VERIFIED
 E. D. "BOB" DIXON, JR., CL. CL.
 POLK COUNTY, FLA.
 BY  D.C.