

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. DA 23-0334

Clover Meadows Homeowners Association, Inc., a Montana Non-Profit
Corporation,

Petitioner/Appellant, vs.

Courtnee Spear,

Respondent/Appellee.

On appeal from the Eighteenth Judicial District Court, Gallatin County Cause No.
DV-20-850A, Hon. Peter Ohman

Appellant's Reply Brief

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STATEMENT OF FACTS¹

The following facts bolster the historical use and go to opposing the new argument presented by Ms. Spear regarding the bylaws. Furthermore, there are a number of facts claimed that simply are not supported by the cites given by Ms. Spear.

In 2017 an issue arose within the subdivision. Clover Meadows received a written complaint from an owner that another owner, Cora Desanti, had converted a small room (approximately 400 square feet) above her garage into an accessory dwelling unit. (Opening, Ex.3, Desanti Complaint) Ms. Desanti had added a kitchen to the open area above her garage and advertised it as a vacation rental. (Opening, Ex.3, Desanti Complaint, Opening, Ex.4, Ms. Desanti's Affidavit) Clover Meadows filed suit to have Ms. DeSanti remove the dwelling unit.

Clover Meadows found out that not only was Ms. Desanti's additional dwelling unit a violation of the Covenants, but it was a violation is the DEQ issued Condition of Subdivision Approval, No. 16-78-L5-39 (COSA) (Opening, Ex.5). The COSA only allows one single family residence per lot. (Opening, Ex.5) Clover Meadows also contacted the DEQ regarding Ms. DeSanti's violation of the COSA. (Opening, Ex.4, Desanti Aff.) According to A.R.M. 17.36.101(27), "Living unit"

¹ As Clover Meadows has argued an entire line of argument not addressed in the Opening Brief, those new facts are addressed here.

means the area under one roof that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation.”

Furthermore, Clover Meadows was introduced to *State v. Stewart*. In *Stewart*, the Montana Supreme Court defined a family as one or more persons living and cooking together. *State v. Stewart*, 2003 MT 109, ¶9, 315 Mont. 335, 68 P.3d 712. This is important because after Clover Meadows went through the DeSanti case, it consistently used the definitions found in the ARMs and *Stewart*, to define what the Covenants mean when the Covenants uses the term “a building used for residential occupancy by one family household” to define “Single Family dwelling.” (Opening, Ex. 1, Covenants, Article III(h)) Clover Meadows has consistently used this definition to review other complaints and architectural submissions to determine if the building plans violated the Covenants. (Exhibit 1, Letter to Ms. Spear, and Clover Meadows Response MSJ, Doc. 36, Page 12)

This definition has the added bonus of not violating Federal Law. Essentially, HUD prohibits any housing discrimination on the basis of blood relations. 24 C.F.R. § 5.403. HUD specifically defines family so that it is inclusive of actual or perceived sexual orientation, gender identity, or marital status. 24 C.F.R. § 5.403 HUD regularly exercises authority over owners’ associations. Any Covenant that violates HUD’s rules and regulations is simply not enforceable. Therefore, the definition of Single Family Residence “shall mean a building used for residential occupancy by

one family household. No more than four unrelated adults shall occupy a single family residence” is not enforceable and cannot be used to help define Single Family Dwelling. (Opening, Ex.1, Covenants, Article III(h)) This left a gap which the Single Family Dwelling definition in the ARMs and *Stewart* filled.

Based on this understanding, Clover Meadows and Desanti were able to reach a settlement. Ms. Desanti agreed to tear out all parts of the kitchen, including the stove, refrigerator, dishwasher and sink. (Opening, Ex.4, Desanti Aff.) She also removed all water hook ups and other stubs and dry walled over them, preventing anyone from easily installing a new kitchen in the space. (Opening, Ex.4, Desanti Aff.)

Moving forward from 2017, Clover Meadows focused on what facilities the potential dwelling unit could have to determine if a person or persons could live independently of one another rather than the blood relationship of the people within the potential two units. (Exhibit 1, Letter to Ms. Spear.)

After the DeSanti matter, Clover Meadows has diligently done what it could to attempt to enforce the single-family dwelling language in the Covenants. Its ability to enforce this language is hindered by the fact that it does not have any design review language in the Covenants. (Opening, Ex.1, Covenants, see generally.) The Bylaws do have an architectural review committee, but it is not empowered to do

anything but review and give an opinion when an owner submits plans. (Opening, Ex.2, Bylaws, Page 6) Therefore, owners must understand the Covenants and must build in a manner that complies with the Covenants. If the owner does not, they are subject to the enforcement section of the Covenants. (Opening, Ex.1, Covenants, Article VII, Page 8.)

Because it does not have the power to do more than offer their opinion regarding whether they believe a building violates the Covenants, the Clover Meadows Board does what it can to head off issues, to educate new and existing owners and help owners when asked. For example, past and present Board Presidents actively call real estate agents who have properties listed in the Clover Meadows Subdivision to let them know about the single-family restriction and that a second dwelling is not allowed. (Opening, Ex.7, Miller Depo., P: 134-37) (Mike Miller was the acting Board President at the time of his deposition.) When made aware of a remodel project, Clover Meadows would reach out to the owner to ask for plans, or go over to their home to discuss the remodel with them. (Opening, Ex.7, Miller Depo, P: 140-143) Clover Meadows also reaches out to new owners to give them a copy of the bylaws and covenants, including a brief summary of the Covenants, including the single family requirement. (Opening, Ex.7, Miller, P:150, L:17-25, P:151 L:1-6)

Until the Spear addition, Clover Meadows was unaware of any violation of the single-family language, but for Ms. DeSanti's home. To all outside appearances, all of the homes within the Clover Meadows Subdivision are single-family residences. (Opening, Ex.7, Miller Aff. P:115 L: 8-16) To the best of Clover Meadows' knowledge, when this action was initially filed, no other home had been remodeled in a manner that would violate the covenants. (Opening, Ex.7, Miller Aff. P:115 L: 8-16)

Regarding Ms. Spear's Statement of Facts, Clover Meadows takes objection to all of the cited facts, as none are supported by the cited deposition pages. Some of the pages don't even exist. Below are a few of the facts to show that the record cited by Ms. Spear simply does not support her assertions.

1. "Though not required to under the Covenants, Spear notified the Clover Meadows Boards via email that she was constructing a one-bedroom home addition to her home. (D.C. Doc. 33, Exhibit A, Page 29.)" Page 6, Response Brief.² Exhibit A of Doc. 33 is Ms. Spear's Deposition. Page 29 of the Deposition does not contain any testimony about this issue. However, Clover Meadows will concede that Ms. Spear said she was building a one-bedroom

² It is important to note that none of the exhibits were filed electronically, so it is strange that Clover Meadows is citing the electronic site. Furthermore, no line numbers were cited. Therefore, Clover Meadows reviewed the entire deposition page cited.

addition, which is addressed on Page 46 of the deposition. This was a gross misrepresentation of what she was planning to build. In the deposition, Page 46-47, Ms. Spear admitted that she only told Clover Meadows that she was building an addition. Ms. Spear admitted that she did not include any plans and otherwise did not inform Clover Meadows regarding what she was building.

2. “On June 29, 2020, the HOA expressed concerns that the plans contained a kitchen area and laundry facilities in the addition. (D.C. Doc. 33, Exhibit B, Page 54.)” Page 6, Response Brief. Exhibit B is Michael Spethman’s (Ms. Spear’s father) deposition. Again, Page 54 of the deposition, does not contain any reference to any communication on June 29, 2020. Instead, it contains information regarding an email and attached letter. Clover Meadows will concede that Ms. Spear finally sent Clover Meadows her first set of plans (attached to Opening Brief as Exhibit 9) on June 29, 2020, to which Clover Meadows immediately responded on July 7, 2020. It is the July 7, 2020 letter to which Mr. Spethman is testifying to in the deposition. Clover Meadows will also concede that between the June 29, 2020 delivery of the plans and the July 7, 2020 letter from Clover Meadows, Ms. Spear decided to break ground on the foundation of the addition.

3. “Indeed, one Board member of the HOA said that with the kitchen facilities removed, the new plans looked acceptable under the Covenants. (D.C. Doc. 33, Ex. E, Page 108-109)” This is Clover Meadow’s President Mark Miller’s deposition. Again, pages 108-109 do not contain any reference to this statement.
4. “Clover Meadows focused not on the presence or lack thereof, of the facilities that caused its concern but on the potential that such facilities could be later added to the addition later on. (D.C. Doc. 33, Ex. E, Page 94, 120, 125. D.C. Doc. 33, Ex. F., Page 172, D.C. Doc. 33, Ex. E, Page 208, D.C. Doc. 33, Ex. A, Page 25.)” Response, Page 7. Again, this statement is not found or supported in the cited deposition pages. Regarding Exhibit E, deposition Page 94 is discussing a lunch break, Page 120 is discussing how Clover Meadows required Ms. Desanti to remove, entirely, her kitchen (including walling off all stubs, removing all sinks, etc.) and page 125 discusses the fact that Mr. Miller objected to the fact there were two separate dwellings on the property. Exhibit F is Devri McCannom’s deposition, V.P. of Clover Meadows. There is no page 172 to her deposition. Similarly, Exhibit G is Laura St. John’s deposition. There is no page 208 to her deposition. Exhibit A, Ms. Spear’s deposition, Page 25, is simply Ms. Spear discussing her submission to Clover Meadows. That being said, Page 29, In.

14-16 of Ms. Spears deposition is a confirmation that all of the infrastructure for a kitchen and laundry is in. Page 38 and 39 of Mr. Spethman's deposition outside that he has a full sized refrigerator in the kitchen area.

5. "Clover Meadows can point to no fact that Spear is using the addition as a separate dwelling from her original home. (D.C. Doc. 33, Ex. E, Page 95.)" Response, Page 7. Page 95 of Mr. Miller's deposition discusses the fact the parties broke for lunch. Furthermore, it is not Clover Meadows argument that the use is not single family, the argument is that the definition of single family is not about use, but about the facilities and that those facilities share common areas that is at issue in this case.
6. "The HOA stated that it did not proceed with further enforcement action against Ms. Desantis because it was satisfied by her assurances that she removed the separate kitchen and would not rent out her property. (D.C. Doc. 33, Ex. E, Page 120-121) Spear made the same assurances. (D.C. Doc. 33, Ex. G , Page 51." Response, Page 8-9. None of the cites have any of this information in them. Furthermore, according to Ms. DeSantis affidavit, she did not simply remove kitchen appliances. (Opening, Ex.4, Ms. Desanti's Affidavit) She took out all of the gas and water stubs and walled them over so they could not be used. (Opening, Ex.4, Ms. Desanti's Affidavit) She also filed with the Clerk and Recorder's Office a covenant that she would never

rent out the room above the garage separately from the house. (Opening, Ex.4, Ms. Desanti's Affidavit) Ms. Spear never made the same assurances. She never filed a Covenant with the Clerk and Recorder's office stating that she would never rent the separate unit and she has not torn out the water and gas stubs and walled them over. Exhibit 2 Ms. Spear's Depo., P:29;L:21-25; P:30;L:1-6, Opening, Ex.14, Mr. Spethman's Depo., P:64;L:6-19.

7. Pages 9 and 10 of the Response brief discuss actions Clover Meadows took after being informed of the potential single family dwelling issue at Mr. Miller's deposition. Again, none of the cites seem to have any testimony that would support these assertions. Clover Meadows has fully addressed those issues, including the Edwards, above.

Overall, it appears that none of the deposition cites are correct or supported. (Please review.) Therefore, the Montana Supreme Court should reject Ms. Spear's Statement of Facts and rely only on Clover Meadow's Statement of Facts as they are supported by the record.

ARGUMENT

A. Ms. Spear Has Two Dwellings on Her Property.

Ms. Spear first argues that it is undisputed that the building is used by one family household.) Single Family Dwelling is defined in Article II, Section (h), “shall mean a building used for residential occupancy by one family household. No more than four unrelated adults shall occupy a single family residence.” (Exhibit 1, Opening Brief, page 2) “Family Household” and “residential occupancy” are not defined in the Covenants.

This definition is problematic because it violates Federal Law. Essentially, HUD prohibits any housing discrimination on the basis of blood relations. 24 C.F.R. § 5.403. HUD specifically defines family so that it is inclusive of actual or perceived sexual orientation, gender identity, or marital status. 24 C.F.R. § 5.403 HUD’s oversight includes owner’s associations and any discrimination in the Covenants.

Ms. Spear perpetuates this issue. She argues because her family is related by blood and is immediate family, they are members of the same household and are a “Family Household.” (Response, Page 13.) By defining family household as immediately family and blood relations, Ms. Spear is violating Federal law.

Clover Meadows cannot, as a matter of law, use this definition of Single Family Residence. Because it violates Federal law, in that it inherently promotes a definition of a family as blood related, it cannot be enforced. Therefore, it cannot be used by this Court.

This is why Clover Meadows pointed out that relationships do not and cannot matter. Instead, Clover Meadows had to ask the question, how is the building built? Is it built in a way that regardless of blood ties, it has the facilities for two separate residences? It is not the business of any association to ask about, nor enforce, familial relationships. All an association can care about is whether there are two separate dwelling areas in the building. In this case, Ms. Spear's dwelling currently has the facilities for two separate dwellings, and thus, two Family Households.

As argued in the Opening Brief, according to the Merriam Webster On-line dictionary, facility means "something, (such as a hospital) that is built, installed, or established to serve a particular purpose." <https://www.merriam-webster.com/dictionary/facility> In this case, a unit simply needs the *facility* for sleeping, cooking and sanitation, the unit does not need to actually have the appliances installed, just the ability to hook them up, hence the facility for those items.

Right now, as is, Ms. Spear's building has the facilities for two separate residences. Ms. Spear claims that because she has not installed the actual kitchen appliances (except for the full-sized refrigerator), the Second Dwelling Area is not a second dwelling unit. While she claims that they are never going to put in a kitchen, that fact that they stubbed out the entire kitchen for a gas stove, sink, dishwasher *after* this lawsuit was filed clearly shows that they intend to fully use the

Second Dwelling Area as a separate dwelling. At the very least, Ms. Spear provided the facilities to have a kitchen easily installed. Therefore, it is a dwelling. (Keep in mind that Mr. Spethman, who will be residing in the Second Dwelling Area, stated in his deposition, that he does not see any prohibition on having a full kitchen in the Second Dwelling Area.) (Opening, Ex.14, Spethman Aff., P:59, L:2-13)

Ms. Spear then argues that the definitions put forward by Clover Meadows are not for a “single family dwelling.” Therefore, they should not be used by this Court. This is not the case. While Ms. Spear is correct that the term used in the Covenant is “Single Family Residence,” Single Family Residence and Single Family Dwelling are interchangeable and share the same definition. Likewise are the terms “Dwelling Unit” and “Residence.” The fact that they have slightly different titles does not deter from the fact that their meanings are the same. Therefore, the Court can rely on those definitions when determining the plain meaning of the Covenants.

Ms. Spear argues that in this case, “Single Family Residence” is clearly defined in the Covenants. This is not true. Sadly, like many definitions in covenants, the definition of Single Family Residence in the Covenants does not give us a clear definition. It leaves us more questions than answers, as set forth in the Opening Brief. Furthermore, the definition violates Federal Law. Therefore, the Court can and should turn to Montana law and the dictionary for the plain meaning of single-family residence. That argument is fully set forth in the Opening Brief.

Ms. Spear also argued that the Second Dwelling Area does not have facilities for a kitchen. However, facilities are the ability to have those appliances. As Mr. Spethman testified at his deposition, everything is stubbed in to have laundry (gas, water and electric) and a full kitchen (gas, water and electric.) This is why Clover Meadows is asking this Court for a ruling that Ms. Spear must tear out those connections and wall over them so they can never be used.

The bottom line is that the definition of “Single Family Residence” in the Covenants is not only not helpful, it is illegal and thus unenforceable. (As argued in the MSJ response Brief, Doc. 36.) As the Covenants have a severability clause (Art. XI, Covenants), the term “Single Family Residence” remains, undefined (and even if the definition remained, it is simply not helpful.) Therefore, the Court can use the dictionary and Montana law to help define the term.

Clover Meadows, on behalf of hundreds of Associations, asks that the Montana Supreme Court define Single Family Residence as follows:

Single Family Residence/Dwelling: means the area under one roof that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation.” “Facility” means “something, (such as a hospital) that is built, installed, or established to serve a particular purpose.”

There are hundreds of covenants that have language limiting the Lot to “one single family residence” or “a single family dwelling.” Some have definitions that either violate Federal law or are simply unhelpful, but most do not have definitions. It would be helpful to all of these associations if the Court would adopt a definition in this case. It would certainly bring clarity to Montana’s owner’s associations.

Last, Ms. Spear argues that the fact that she could bring in appliances at a later date is simply speculative, and should not be even considered by the Court. Mr. Spethman testified that he sees no issue with putting in a second kitchen. Opening, Ex.14, Spethman Aff., P:59, L:2-13) If fact, he and Ms. Spear ensured that they could do exactly that at a later date by stubbing in everything needed for the appliances. (Opening, Ex.14, Mr. Spethman’s Depo., P:64;L:6-19.) It is not speculation but will clearly happen if the Court does not order the stubs to be torn out and drywalled over.

The Court should find that Ms. Spear’s building contains two dwellings. Therefore, she must tear out the facilities that make it a second dwelling (water, gas and electric for appliances) and wall over those facilities. In the alternative, the Court should order that the Second Dwelling area be torn down.

B. Based on *Craig Tracts Homeowners' Ass'n v. Brown Drake, LLC*, the Court Should Look at Historical Use to Define the Ambiguity Rather than Automatically Deferring to Free Use of Property.

Restrictive Covenants are strictly construed and ambiguities in covenants are typically resolved to allow free use of property. *Newman v. Wittmer* (1996), 277 Mont. 1, 6, 917 P.2d 926, 929. However, the Montana Supreme Court recently seemed to carve out an exception to this rule. When there is a history of use and/or interpretation within an Association, the Court can look at that history to determine the meaning of the ambiguous covenant. *Craig Tracts Homeowners' Ass'n v. Brown Drake, LLC*, 2020 MT 305, ¶17, 402 Mont. 223, 477 P.3d 28

While Ms. Spear argues that the extrinsic evidence weighs in her favor, it does not. As admitted to in Ms. Spear's Answer, approximately two (2) years before the case was filed, Mr. Spethman and Ms. Spear's husband (now deceased) met with then Clover Meadows' President, Ken Bruwelheide. (Opening, Ex.8, Bruwelheide Aff.) When Mr. Spethman and Ms. Spear's husband met with Ken Bruwelheide, Mr. Spears and Mr. Spethman informed Ken Bruwelheide that the Spears and the Spethmans were interested in building an additional dwelling unit on Ms. Spear's Property in which Mr. and Mrs. Spethman would reside. (Opening, Ex.8, Bruwelheide Aff.) At the meeting, Mr. Bruwelheide gave Mr. Spethman a copy of the Bylaws and Covenants and specifically informed both that an additional dwelling unit is prohibited. (Opening, Ex.8, Bruwelheide Aff.)

Furthermore, Ms. Desantis and Ms. Spear are not similar. Ms. DeSantis removed all stubs for her kitchen, including gas and water and walled them over. She also

entered into a settlement agreement with Clover Meadows never to rent out the area. (Opening, Ex.5, Desanti Aff.) Ms. Spear has not done any of these things. Furthermore, this was litigated in 2017. It was announced in all meeting minutes that the Association was involved in this lawsuit to enforce the single family residential language in the covenants. Ms. Spear purchased her home in 2017, during the litigation. (Exhibit 2, Spear Aff., P:6;L:22-23.)

The extrinsic evidence in this case certainly weighs in favor of Clover Meadows. Otherwise, Clover Meadows believes that the arguments made by Ms. Spear are well argued in the Opening Brief. If there is an ambiguity, it should be resolved in favor of Clover Meadows.

C. The Facts Before the Court are Properly Brought and Material.

The Affidavits of Randy Johnson and Cora DeSantis are part of the record (D.C. Doc. 44 and D.C. Doc. 51.) Ms. Spear never moved to strike them and cannot now argue that the Court should simply disregard them.

Furthermore, the facts presented to the Court regarding the lay out of the two dwellings may be material to the Court based on the definition of Single Family Residence that the Court adopts. All of the facts show that these homes could be split into two home and exist separately. This goes to the argument that they are two dwellings.

While Ms. Spear does receive one tax bill to her address, it is based on having two dwellings. (D.C. Doc. 43, Page 6.) Montana cadastral, when a person clicks on dwellings shows two separate dwelling units.

Furthermore, it is not the ability to put in the facilities that is at issue, it is that the facilities for the kitchen are already in the home. Those are the gas, electric and water stubs that are in the kitchen, not to mention the full-sized refrigerator. Those need to be removed for this to not be a separate residence.

The Court should find that these facts are material and find that Ms. Spear's second dwelling area is a second residence.

D. Clover Meadows Enforcement of the Covenants was not Arbitrary and Capricious; and even if it were, it would not Bar this Action.

Clover Meadows was clearly justified in bringing this action as Ms. Spear's Property is in clear violation of the Covenants. Ms. Spears attempts to claim that Clover Meadows is somehow picking on her, and treating her differently than the other Owners. Therefore, they are being "arbitrary and capricious" in their enforcement action against her. However, this is not the case.

The Clover Meadow Bylaw regarding enforcement and discretion state, in full, as follows:

B. Discretion. The decision to have the Association pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- i. the Association's position is not strong enough to justify taking any or further action; or
- ii. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- iii. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- iv. it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Covenants.

Ms. Spear failed to provide any definition of arbitrary and capricious. Under Montana law, the arbitrary and capricious standard is typically applied to administrative decisions of the Montana administration or of local government bodies. An arbitrary and capricious decision is one that is "random, unreasonable, or seemingly unmotivated..." MM&I, LLC v. Bd. of County Comm'rs of Gallatin County, 2010 MT 274, ¶39, 358 Mont. 40, 246 P.3d 1029. In this case, it is clear that Ms. Spear is in violation of the Covenants, and Clover Meadows had the evidence to prove that. That alone shows the decision to file was not random, unreasonable or seemingly unmotivated.

Ms. Spear tries to argue that Clover Meadows has not filed litigation against others in the neighborhood in a similar circumstance to her. Therefore, their decision

to file against her is arbitrary and capricious. However, there are a number of things wrong with that argument.

Ms. Spear points out that while Ms. DeSanti was sued, she still has a room above the garage and is allowed to use it. This is true, but Ms. DeSanti was required to remove all kitchen equipment, remove all hookups, drywall over those hookups and agree to never have a kitchen or pay the DEQ fines or rent the unit. (Opening, Ex.4, Ms. Desanti's Affidavit) Like many people, her oldest daughter sleeps above the garage, but she eats and lives in the home. (See Opening, Ex.4, Ms. Desanti's Affidavit) To all outside appearances, it looks as if there is only a single-family home on the property, because there is. This is entirely different than what is essentially a two bedroom/two car garage addition with two bathrooms, a kitchen, laundry, living room, deck and hot tub. Clover Meadows is simply seeking to enforce the Covenants so that current and future use are truly that of a single family residence.

Clover Meadow's decision to bring this action against Ms. Spear, and not against another owner at this time was not arbitrary and capricious, it was entirely warranted. Therefore, the Court should deny the motion for summary judgment on this issue.

E. This Court should Award Clover Meadows its Attorney's Fees.

For the same reasons as presented in the Opening Brief, the Court should award Clover Meadows its attorney's fees.

CONCLUSION

The Court should find that the Second Dwelling Area as it currently exists violates the plain language of the Covenants in that it is a Second Single Family Dwelling and only one Single Family Dwelling is allowed on the Property pursuant to the Covenants. Therefore, this Court should either find that Ms. Spear must modify the Second Dwelling Area in a manner that would prohibit it from being used as a second dwelling (i.e. rule that it may not have a kitchen, all appliances must be removed and all water and gas lines in the kitchen area must be removed and drywalled over) or it must be torn down. In the alternative, the Court should remand this matter back to the District Court for a final ruling consistent with the Court's holding.

In the alternative, if the language is ambiguous, because Clover Meadows has consistently defined Single Family Dwelling to mean a dwelling is one where the area under one roof that can be used for one residential unit and that has *facilities* for sleeping, cooking, and sanitation the Court should find that historically, this is the meaning of a Single Family Dwelling in the Covenants. Therefore, this Court should either find that Ms. Spear must modify the Second Dwelling Area in a manner that would prohibit it from being used as a second dwelling (i.e. rule that it may not have a kitchen, all appliances must be removed and all water and gas lines in the kitchen area must be removed and drywalled over) or

it must be torn down. In the alternative, the Court should remand this matter back to the District Court for a final ruling consistent with the Court's holding.

Last, the Court should find that Clover Meadows is the prevailing party and pursuant to the Covenants, award Clover Meadows attorney's fees and costs.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced (except that quoted and indented material are single spaced); with left, right, top and bottom margins of 1 inch; and that the word count calculated by Microsoft Word does not exceed 5,000 words, excluding the Table of Contents, Table of Citations, Certificate of Service and Certificate of Compliance.

Dated this 7th day of February, 2024.



Alanah Griffith, Attorney for
Defendants/Appellees

CERTIFICATE OF SERVICE

I, Alanah Noel Griffith, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 02-07-2024:

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Electronically Signed By: Alanah Noel Griffith
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