

TIMBER LAKES V. COWAN

## FACTUAL BACKGROUND

- In September 2012, Phillip and Gail Cowan purchased Lot 1275 in the Timber Lakes subdivision on behalf of Peter and Beverly McDermott
- In October 2012, the Cowans began construction of a garage on the Lot
- The Cowans did not receive approval from the Timber Lakes Property Owners Association for the garage
- The location of the garage interfered with the Association's plans to construct a road on the right-of-way depicted on Plat 12
- Association sues for breach of contract and declaratory judgment, seeking a permanent injunction requiring the Cowans to remove or relocate the garage

# PERMANENT INJUNCTION

- In order to get a permanent injunction, the party seeking the injunction must demonstrate that:
  - 1) there are special damages
  - 2) they have a property right or protectable interest
  - 3) **legal remedies (money damages) are inadequate**
  - 4) **irreparable harm** would result if not issued
  - 5) court enforcement of the injunction is feasible
  - 6) they merit an injunction after **balancing the equities**

# DECISION

- The District Court ruled in favor of the Association, finding that the construction and location of the garage was in violation of the Association's governing documents
- BUT the District Court declined to issue a permanent injunction finding that the Association had not demonstrated that legal remedies were inadequate or that the balance of the equities weighed in favor of an injunction
- The District Court gave the Association the opportunity to submit evidence regarding monetary damages instead of appealing the permanent injunction, but the Association declined to do so
- The Court of Appeals upheld the District Court's decision, holding that the Association failed to show irreparable harm

# TAKEAWAYS

- DO NOT ALLOW UNAPPROVED STRUCTURES TO BE BUILT!
  - In order to get an order to have the structure torn down, an association will have to convince the court that the **balance of the equities** weighs in their favor
  - This will be hard to prove when the structure has already been built and the owner has already spent significant time and money on it, especially if the only harm suffered is a violation of the governing documents

# TAKEAWAYS

- Gather and present any and all proper evidence of damages
  - If money damages are available, there is no **irreparable harm**
  - Association's district court counsel could have gathered and presented evidence of the cost of reconfiguring the road to comply with County setback requirements and recovered that amount from the Cowans
  - Choice not to do that resulted in Association being stuck with the garage AND with the costs of reconfiguring the road