

Equity--Injunction--Establishment of a Uniform Plan of Development (Hofmann v. Hofmann, 172 Mis. 378 (1939))

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terial to the investigation, otherwise it will be void.¹⁰ And there can be no oral extension of the requirements of a subpoena for such oral addition will not be a lawful mandate of the court,¹¹ and will therefore be void. Disobedience of a void mandate clearly cannot be a contempt.

L. D. B.

EQUITY—INJUNCTION—ESTABLISHMENT OF A UNIFORM PLAN OF DEVELOPMENT.—Plaintiffs were induced to purchase a lot and dwelling from the defendants upon their oral representations, printed circulars and newspaper advertisements, to the effect that the entire tract being developed by the defendants was to be devoted to private residences only. No mention of the restriction was made in the contract or deed, nor was a map filed. Plaintiff now seeks to enjoin the erection of an apartment house upon the tract. *Held*, injunction granted. Defendants' representations were sufficient to establish a uniform plan. *Hofmann v. Hofmann*, 172 Misc. 378, 14 N. Y. S. (2d) 565 (1939).

Restrictive building covenants are recognized as valid and enforceable in equity.¹ These covenants are enforced even though oral,² generally on the ground of estoppel.³ Furthermore, such an oral statement is binding on a subsequent purchaser with notice.⁴ To constitute an estoppel it is not necessary that there be false representations or concealment of material facts. It is sufficient if the act is voluntary and calculated to mislead and does mislead one who acts thereon.⁵ Such statements are as effectual as a deed from the party estopped.⁶ It has been held that where the purchaser takes in reli-

¹⁰ 70 C. J. (1935) p. 51, § 38.

¹¹ N. Y. GEN. CONSTR. LAW § 28-a; *People ex rel. Donnelly v. Miller*, 213 App. Div. 88, 209 N. Y. Supp. 717 (1st Dept. 1925).

¹ *Flynn v. New York, W. & B. Ry.*, 218 N. Y. 140, 112 N. E. 913 (1916); *Pound, Progress of the Law—Equity* (1920) 33 HARV. L. REV. 813.

² *Tallmadge v. East River Bank*, 26 N. Y. 105 (1862); *Lewis v. Gollner*, 129 N. Y. 227, 29 N. E. 81 (1891); *Bimson v. Bultman*, 3 App. Div. 198, 38 N. Y. Supp. 209 (2d Dept. 1896).

³ *Philips v. West Rockaway Land Co.*, 226 N. Y. 507, 124 N. E. 87 (1919); *Nissen v. McCafferty*, 202 App. Div. 198, 195 N. Y. Supp. 549 (2d Dept. 1922); *Brown v. Hoag*, 35 Minn. 373, 375, 29 N. W. 135, 137 (1886) ("The change of situation necessary to create the equitable estoppel, must, of course have been made in reliance upon, and in pursuance of, the oral agreement, and so connected with the performance of the contract, that, from the nature of the case, the defendant should understand it was done in reliance upon his agreement"); *Johnson v. Mt. Baker Park Presbyterian Church*, 113 Wash. 458, 194 Pac. 536 (1920).

⁴ *Lewis v. Gollner*, 129 N. Y. 227, 29 N. E. 81 (1891).

⁵ *Trustees of Brookhaven v. Smith*, 118 N. Y. 634, 23 N. E. 1002 (1890).

⁶ *Nissen v. McCafferty*, 202 App. Div. 528, 195 N. Y. Supp. 549 (1922)

ance on the grantor's statement, he takes all that the grantor gives whether contained in the deed or not.⁷ In determining whether a restrictive covenant has been established or not, the intent of the parties governs.⁸

Injunction is a proper remedy for a breach of the covenant.⁹ It is not objectionable that the relief sought is novel¹⁰ because "it is a familiar principle that a court of equity, having obtained jurisdiction of the parties and the subject matter of the action, will adapt its relief to the exigencies of the case."¹¹ The injunction will be granted where the injury appears to be irreparable,¹² *i.e.*, where it cannot be adequately compensated for in damages.¹³

In the case of *Philips v. West Rockaway Land Co.*¹⁴ the buyer purchased lots from the seller, and erected improvements thereon, after the seller had exhibited to him a map showing the buyer's lots to be waterfront lots. The grantor was enjoined from selling the land lying between the buyer's land and the ocean. The instant case broadens the doctrine of the *Philips* case, by holding that " * * * the filing of a map is not essential to establish a uniform plan. Of course, when a map is filed containing a lay-out of property for development, it is an important circumstance, as showing a representation of a uniform plan, but * * * such a plan may be plainly shown in other ways. Here, we have all the literature put out by the defendant, newspaper advertisements, pamphlets, circulars and oral representations, together with the actual physical development of the property by the defendants so far as it was developed in accordance with such plan, * * * showing clearly that the plan was to develop this entire tract with private dwellings only and that the plan was that these houses were to be built around a square so that the owners would enjoy the benefits of a public park."¹⁵

A. S. V.

("There are many cases of an individual or a corporation, owning a large tract of real estate, going into a general plan by filing a written plan, and on an oral statement that he will build on the remaining lots not sold so as to observe the restriction. This oral agreement to observe the restriction has always been enforced in such common building plans").

⁷ *Mattes v. Frankel*, 157 N. Y. 603, 52 N. E. 585 (1899).

⁸ *Bauer v. Gribbel*, 2 App. Div. 80, 37 N. Y. Supp. 609 (2d Dept. 1896); *Barrow v. Richard*, 8 Paige 351 (N. Y. 1840).

⁹ *Batchelor v. Hinkle*, 140 App. Div. 621, 125 N. Y. Supp. 929 (1st Dept. 1910).

¹⁰ *United States v. Debs*, 64 Fed. 724 (C. C. N. D. Ill. 1894); *Hamilton v. Whitridge*, 11 Md. 128 (1857); *Niagara Falls International Bridge Co. v. Great Western Ry.*, 39 Barb. 212 (N. Y. 1863).

¹¹ *Valentine v. Richardt*, 126 N. Y. 272, 27 N. E. 255 (1891).

¹² *Kerwin v. Murphy*, 189 U. S. 35, 23 Sup. Ct. 599 (1903); *Campbell v. Seaman*, 63 N. Y. 568 (1876); *Troy & Boston Ry. v. Boston, etc. Ry.*, 86 N. Y. 107 (1881); *Rogers v. O'Brien*, 153 N. Y. 357, 47 N. E. 456 (1897).

¹³ *Marquette Cement Mining Co. v. Oglesby*, 253 Fed. 107 (N. D. Ill. 1918); *Weber v. Rogers*, 41 Misc. 662, 85 N. Y. Supp. 232 (1903).

¹⁴ 226 N. Y. 507, 124 N. E. 87 (1919).

¹⁵ Instant case at —, 14 N. Y. S. (2d) at 569; 4 POMEROY, EQUITY JURIS-