

## Guillette v. Daly Dry Wall, Inc. (CB 447)

July 1967/March 1968 → Wallace Gilmore records a plan for development of a tract of land.

The plan reflects Gilmore's aim to have the tract developed as single-family residential dwellings (SFRD). The plan he records doesn't list any restrictions on use of the individual lots.

*What is the point of recording such a plan?*

- The plan would likely satisfy some local zoning requirements and would also specify which parts of the tract would be dedicated to public roads, utilities, etc.
- Why didn't the plan include anything about SFRD restrictions on the lots? It's not clear from the opinion, but at least two explanations are possible:
  - Carelessness or oversight on Wallace's part.
  - A desire to maintain flexibility. Wallace might worry that if the lots weren't selling well to people who were interested in single family residences, he'd want the option to sell part of the land for some other use (like apartments).

Aug 1967: Gilmore → Walcotts. The deed:

- Refers to the plan dated July 1967.
- Places restrictions on the Walcotts' lot: SFRD only.
- Mentions no restrictions on the remaining land owned by Gilmore.

**Question :** If you wanted to live in an area with only SFRD, what risk would you be taking if you were to buy into Wallace's development with a deed like the one the Walcotts got?

May 1968: Gilmore → Guillettes. The deed:

- Refers to a plan dated March 1968 [same as July 1967 plan].
- Places restrictions on the Guillettes' lot: SFRD only.
- Provides that:
  - The restrictions in the deed (SFRD) are imposed solely for the benefit of the other lots covered by the plan; AND
    - Note: "Benefit" is a term of art in covenant law. If the restrictions in the deed the Guillettes received are for the benefit of other lots in the plan, it means that any owner of one of those other lots covered by the plan could go to court to enforce the restriction in the deed against the Guillettes (or indeed against anyone else the Guillettes might sell the land to). Why "solely" for the benefit of the other lots in the plan? That term would exclude other people living nearby but not part of the land covered by the plan from seeking to enforce the restrictions.
  - The same restrictions (SFRD) are hereby imposed on each of said lots now owned by the seller (Gilmore)

June 1968: Gilmore → Paraskivas. The deed:

- Refers to the March 1968 plan.
- Places restrictions on the Paraskivas' lot: SFRD only.
- Mentions no restrictions on the remaining land owned by Gilmore.

April 1972: Gilmore → Daly Dry Wall. The deed:

- Refers to March 1968 plan
- States no restrictions on the lot Daly is buying (and none on the remaining land owned by Gilmore).

Daly didn't ask about any land use restrictions, and he didn't notice it's all single-family residential houses in the area.

August 1972: After learning of the restrictions, Daly gets a building permit for 36 apt units on the lot.

Subsequently:

- The Guillettes, Walcotts, and the Paraskivas bring an action to enjoin Daly from building apartments on its lot.
- The lower court enjoins Daly from building any structures on its land other than SFRD – *i.e.*, he must abide by the restrictions stated in the 1968 Gilmore→Guillettes deed.
- Daly appeals, and the case is transferred to the Supreme Judicial Court.
- The SJC affirms.

**Consider *Guillette* in light of these three scenarios (and assume that all deeds are promptly recorded and properly indexed):**

Blackacre	Whiteacre

First Scenario:

- O owns Blackacre which is originally the two lots shown above.
- O splits Blackacre in two, and sells the eastern half, now called Whiteacre, to A. The deed to A contains a promise (covenant) by A, for the benefit of O as owner of Blackacre, to limit development of Whiteacre to SFRD. No other restrictions are stated.
- O decides to build apartments on Blackacre (now the western lot). Can A get an injunction preventing that development?
  - As the *Daly* court observes, the answer is no. Imposing a SFRD restriction on the lot now called Blackacre would violate the Statute of Frauds, which would require that any creation of a limitation on Blackacre be in writing.

Second Scenario:

- O owns Blackacre which is originally the two lots shown above.
- O splits Blackacre in two, and sells the eastern half, now called Whiteacre, to A. The deed to A contains:
  - a promise (covenant) by A, for the benefit of O as owner of Blackacre, to limit development of Whiteacre to SFRD; and
  - a promise by O, for the benefit of A as owner of Whiteacre, to limit development of Blackacre to SFRD.

- Suppose:
  - O then decides to build apartments on Blackacre. Can A get an injunction preventing that development?
    - As the *Daly* court observes, the answer is yes. What makes this different from the First Scenario?
  - Suppose instead O sells Blackacre to Z. The O→Z deed says *nothing* of the SFRD restriction on Blackacre. Z then decides to build apartments on Blackacre. Can A get an injunction preventing that development?
    - As the *Daly* court observes, the answer is yes. Why is that fair to Z?

Third Scenario:

Blackacre	Whiteacre	Greenacre

- Owns Blackacre which is originally the three lots shown above.
- O sells the middle lot, now called Whiteacre, to A. O retains ownership of the western third, still called Blackacre, and the eastern third, now called Greenacre. The deed to A contains:
  - a promise (covenant) by A, for the benefit of O as owner of Blackacre, to limit development of Whiteacre to SFRD; and
  - a promise by O, for the benefit of A as owner of Whiteacre, to limit development of any of O's land that is adjacent to Whiteacre to SFRD.
- O then sells Greenacre to X. The deed says nothing about any restrictions on the use of Greenacre or O's property.
- X announces plans to build apartments. A, the owner of Whiteacre, sues to enjoin X from building anything other than SFRD on Greenacre.
- Would it be fair to X to hold he could not proceed with his plan? How would this come out under *Guillette v. Daly Dry Wall*? Was the outcome in *Guillette* fair to Daly? Might this scenario be distinguishable from *Guillette*?