

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 11th *day of* May, 2012.

Charles G. Marterella, et al., Appellants,

against Record No. 111625
Circuit Court No. CL08000007-00

Bellevue Landowners Council, Inc., Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of Fauquier County.

Upon review of the record, briefs and argument of counsel, the Court concludes that there is error in the judgment of the trial court setting aside a jury verdict.

Charles G. and Lori K. Marterella (the "Marterellas") purchased a lot in the Bellevue Farms Subdivision in 2000 and began developing a vineyard and winery on the property. In 2005, the Bellevue Landowners Council, Inc. ("BLOC") denied the Marterellas' request to engage in on-site retail sales of wine on their property. Notwithstanding BLOC's decision, the Marterellas began to engage in the retail sale of wine on their property.

In 2008, BLOC filed a complaint seeking injunctive relief to prohibit the Marterellas from engaging in the retail sale of wine on the property in violation of the Subdivision's declarations and covenants. The Marterellas filed a counterclaim and a plea in equity claiming, as relevant here, that the relief BLOC sought was

barred by estoppel, waiver and selective enforcement.¹ The Marterellas sought a jury trial on their plea. BLOC filed a motion to strike the plea arguing, as relevant here, that whether BLOC had the authority to regulate the Marterellas' on-site retail sale of wine was a legal issue to be resolved by the court, not a jury. The trial court denied BLOC's motion holding that the issue could be decided by a jury.

At the trial on the plea in equity, the Marterellas testified that in their view, the on-site retail sale of wine is part of a farm winery and therefore was within the agricultural commercial activity "expressly permitted" without BLOC or Site Committee approval in the Subdivision as stated in the handbook. The relevant handbook provision stated:

Agriculture is the only commercial activity expressly permitted under the covenants. Any other work . . . that causes external change to your property or leads to regular visits by customers, suppliers, business associates or others, is not acceptable.

If you wish to engage in non-agricultural business activity the Committee will rule on its acceptability and the Board would then approve or disapprove your request.

A former member of BLOC testified that in 2003 during his tenure on BLOC he asked the Site Committee to review the provision in the handbook recited above stating that the provision "could be misleading" because it was inconsistent with the requirement in the

¹In a pretrial ruling, the trial court concluded that selective enforcement is not a recognized defense but, as part of the unclean hands doctrine, facts supporting the claim would be relevant to establish estoppel.

declarations and covenants that all commercial activities had to be approved by the Site Committee.

The Marterellas also testified that their interpretation of the handbook was consistent with the development of a vineyard and the on-site retail sale of the wine produced on property near the Marterellas' property and that other commercial activities were conducted on other properties in the Subdivision. The Marterellas also testified that, relying on their interpretation of the handbook language, they made a significant financial investment in their vineyard and winery.

The jury was instructed that it could return a verdict in favor of the Marterellas on their estoppel plea only if the Marterellas showed by clear and convincing evidence that:

- (a) BLOC made statements or otherwise showed through its conduct that the use the Marterellas sought approval for was permitted in Bellevue Farms; and
- (b) The Marterellas relied on the statements or conduct of BLOC in engaging in a specific use for their property; and
- (c) The Marterellas incurred expenses in adopting a use for their property in reliance upon statements or conduct from BLOC that the use would be permitted.

Or,

. . . .

[T]hat BLOC has not enforced the covenant uniformly, consistently, reasonably and in good faith against all lot owners in Bellevue Farms.

The jury returned a general verdict in favor of the Marterellas. BLOC filed a motion to set aside the verdict under

both the waiver and estoppel theories of recovery. The trial court granted the motion, set aside the verdict and, following a hearing on BLOC's complaint for injunctive relief, entered final judgment in favor of BLOC. The Marterellas' appeal challenges only the trial court's action in setting aside the verdict based on their claim of estoppel.

A trial court may set aside a jury verdict only if that verdict is plainly wrong or without credible evidence to support it. Code § 8.01-430. See, e.g., Burroughs v. Keffer, 272 Va. 162, 166, 630 S.E.2d 297, 300 (2006). In setting aside the jury verdict in this case, the trial court held that the term agriculture as "commonly understood" did not include the on-site retail sale of wine. The trial court concluded that it was unreasonable as a matter of law for the Marterellas to interpret and rely on the handbook statement as allowing on-site retail sales of wine without approval from BLOC and the Site Committee and that "[a] reasonable person would have inquired as to whether or not such activities violate the prohibition."

The trial court's rationale for setting aside the jury verdict is inconsistent with the jury instructions given in this case, which constitute the law of the case. Wintergreen Partners, Inc. v. McGuirewoods, LLP, 280 Va. 374, 379, 698 S.E.2d 913, 916 (2010). While no jury instruction contained a definition of agriculture, the jury was instructed that "[w]hen language in the Declaration is plain and unambiguous, you must determine the intent of the parties from the words actually set forth in the Declaration." Thus, the jury was entitled to determine whether "agriculture" as used in the

declarations and covenants included the on-site retail sale of wine, as the Marterellas contended.

Under the instructions given, it was up to the jury to decide whether BLOC's statements or conduct permitted the use the Marterellas sought, whether the Marterellas relied on statements or conduct of BLOC in engaging in that use, and whether the Marterellas incurred expenses based on this reliance. Nothing in the jury instructions required the jury to find that the Marterellas' interpretation of the word agriculture was reasonable, that the use they sought to engage in was a use which required permission from BLOC or the Site Committee, or that their reliance on their interpretation of the handbook was reasonable.² By injecting a standard of reasonableness, the trial court deviated from the law of the case as set out in the instructions given to the jury. Wintergreen, 280 Va. at 379, 698 S.E.2d at 916.

Although the trial court apparently did not base its decision on the insufficiency of the evidence, as recited above, the record contains sufficient evidence to support the jury's verdict.

For these reasons, we conclude that the jury verdict, under the instructions given in this case, was not plainly wrong and was not without evidence to support it. Accordingly, we reinstate the verdict of the jury, reverse the judgment of the trial court granting injunctive relief and attorneys' fees in favor of BLOC and enter final judgment in favor of the Marterellas.

²In Jury Instruction E, listing the issues in the case, the estoppel issue was described as including a "reasonable" belief that the use was permitted. However, as set out above, this standard was not included in the instruction describing the elements of estoppel in this case.

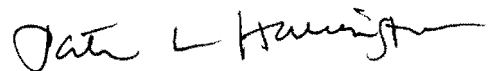
Justice Goodwyn took no part in the consideration of this case.

This order shall be certified to the said circuit court.

JUSTICE McCLANAHAN dissents.

A Copy,

Teste:

A handwritten signature in cursive script, appearing to read "Oate L. Hanning".

Clerk