

H6

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

B. J. JACKSON and
LOIS ANN JACKSON, et al.,

Plaintiffs,

v.

MERRITT L. PIZITZ, et al.,

Defendants.

CIVIL ACTION NO:
CV 84-266

DECREE

177 MAR 899
This cause came to be heard on the 25th day of March, 1988, upon plaintiff's Complaint for Declaratory Judgment and Permanent Injunction, and the Answer of defendants. USR Realty Development, Division of U. S. Diversified Group, USX Corporation, formerly known as United States Steel Corporation, has entered an appearance in this cause for the limited purpose of joining in the consent decree entered hereafter.

FACTS

The Facts are stipulated to be as follows:

In 1974, USR Realty Development, Division of U. S. Diversified Group, USX Corporation, formerly known as United States Steel Corporation, ("USR Realty"), owned and began to develop the property which eventually became Heatherwood Subdivision Third Sector as recorded in Map Book 8, page 29 in the Office of the Judge of Probate, Shelby County, Alabama. In 1984, USR Realty began to market lots in the subdivision.

FILED IN OFFICE THIS THE _____ DAY

OF MAR 30 1988, 19

Kyle Sanford

Prior to attempting a vacation of the Heatherwood lots later designated as Parcel A, Merritt Pizitz, as agent for the Ann N. Paget Trust, made an offer to purchase a portion of Heatherwood Subdivision, which later was designated "Parcel A" and is more particularly described as follows:

Parcel A, the former lots 35, 36 and 37, Heatherwood 3rd Sector, as recorded in Map Book 9, Page 30, in the Office of the Judge of Probate of Shelby County, Alabama.

BOOK 177 PAGE 900
Prior to the actual sale to the trustee of the Ann N. Paget Trust by USR Realty, Parcel A was vacated from the subdivision by the developer. Said vacation was approved by the Shelby County Planning Commission, the Shelby County Health Officer, and the Shelby County Engineer. After this vacation, First Alabama Bank as trustee for the Ann N. Paget Trust, purchased the property as shown by Deed recorded in Real Book 003, page 983, Shelby County Probate Office. A zoning certificate allowing use as a horse riding ring was also obtained.

Parcel A is now being used as a private horse riding ring by Mr. and Mrs. Pizitz. The horse riding ring on Parcel A is a sand-covered ring with a wooden fence around the ring and covers most of the property previously designated lots 36 and 37 Heatherwood, 3rd Sector. A row of hedges is on the roadside side of the riding ring. The land to the south of the riding ring, most of which was previously designated lot 35, Heatherwood, 3rd Sector, is now vacant.

Plaintiffs have asked the Court to determine that the restrictive covenants apply to defendants' property, that the

vacation of Parcel A from the subdivision was void, and that the Pizitz use of Parcel A violates the R-2 zoning restriction. The plaintiffs claim the present use of Parcel A as a horse riding ring is inconsistent with the restrictions and covenants of Heatherwood Subdivision, recorded in Real 3, page 537 in the Office of the Judge of Probate of Shelby County, Alabama.

All parties have reached an agreement and presented the Court with a proposed decree. After reviewing the pleadings and considering the evidence, it is the Court's opinion that the decree is due to be entered.

FINAL JUDGMENT

It is hereby ORDERED, ADJUDGED and DECREED that:

The current owner of Parcel A, Map Book 9, page 30 in the Office of the Judge of Probate of Shelby County, Alabama, and its beneficiaries, heirs, successors and assigns, hereinafter referred to as "Trust Beneficiaries," shall have the right to continued use, enjoyment and maintenance of Parcel A as presently constructed, subject to the terms, limitations and conditions contained herein:

- (a) No lights can be supplied for nighttime use of Parcel A.
- (b) No person using the riding ring may park vehicles of any type in the Heatherwood Subdivision except for vehicles used for purposes of maintenance of the shrubs or fences.

BOOK 177 PAGE 902

- (c) Parcel A can only be used for private use, and more specifically no horse shows, horse jumping shows or other commercial use is permitted.
- (d) No ingress or egress to Parcel A from Heatherwood Subdivision, Sector 3 will be allowed except for no more than three occasions per year when maintenance vehicles will be allowed to enter the ring from Heatherwood Subdivision.
- (e) No buildings, barns, sheds or other such structures will be built on Parcel A.
- (f) The landscaping and shrubbery shall remain as presently located and shall be kept in a neat fashion. The landscaping and shrubbery shall be replaced as necessary.
- (g) A water sprinkler system for dust control shall be added to Parcel A, to be used at times of unusual dust.

It is further ORDERED, ADJUDGED and DECREED that "Trust Beneficiaries" have the right to grade, fence, plant and use as additional pasture that part of Parcel A that is presently vacant, most of which was previously designated lot 35, Heatherwood, 3rd Sector, subject to the following terms and conditions:

- (a) No barns, sheds or other buildings can be built on said lot (note a perimeter fence will be allowed but no cross-fencing of this parcel).

BOOK 177 PAGE 903

- (b) The grass on said lot shall be neatly maintained by mowing at least two times per year.
- (c) "Trust Beneficiaries" shall follow the recommendations of the U.S. Soil Conservation Service in maintaining said lot.
- (d) If said property is converted to additional pasture, "Trust Beneficiaries" shall plant and maintain a line of shrubbery along the roadway which, in effect, extends the shrubbery line presently existing on the north half of Parcel A.
- (e) If the additional property in Parcel A that is presently vacant is fenced, it can never be cross-fenced nor can it be barricaded so as to become a holding area for animals in this fenced area.
- (f) In the event this portion of Parcel A is fenced, then similar shrubbery and landscaping shall be extended along the fence along the Oakmont Road in Heatherwood Subdivision and between this land and the land adjoining this portion of Parcel A on the South side.

It is further ORDERED, ADJUDGED and DECREED that plaintiffs have and receive of defendant "Trust Beneficiaries" the following damages:

- (a) Plaintiffs Michael W. Wesler and Cathy A. Wesler jointly receive \$4,000.
- (b) Remaining plaintiffs to receive a total of \$3,500,

to be disbursed pursuant to an agreement among them.

(c) Plaintiffs' attorney, Courtney Mason, to receive \$3,500 as attorney's fee.

All said sums are to be paid directly to Courtney Mason as attorney for the plaintiffs who shall be responsible for the disbursement of the funds.

BOOK 177 PAGE 904
It is further ORDERED, ADJUDGED and DECREED that the defendants, First Alabama Bank as trustee of the Ann N. Paget Trust, Merritt L. Pizitz, Frances Paget Pizitz, and USR Realty Development, Division of U. S. Diversified Group, USX Corporation, formerly known as United States Steel Corporation, their successors and assigns, are hereby released by all parties from any and all liability resulting from the vacation of Parcel A from Heatherwood Subdivision, Third Sector, which said Parcel A is now subject to the herein specified restrictions for the protection and benefit of the plaintiffs and other owners of property within said Heatherwood Subdivision, Third Sector.

It is further ORDERED, ADJUDGED and DECREED that USR Realty Development, Division of U. S. Diversified Group, USX Corporation, formerly known as United States Steel Corporation (and any successors in interest), will not vacate any additional lots in the property known as Heatherwood Subdivision, Sector 3, Map Book 8, page 29 in the Office of the Judge of Probate, Shelby County, or attempt to alter the restrictions applicable thereto without first obtaining the consent of all property owners in

said Sector.

It is further ORDERED, ADJUDGED and DECREED that the subject property, Parcel A, shall not be a part of Heatherwood Subdivision, and the covenants and restrictions of Heatherwood Subdivision, recorded in Real Book 3, page 537, Office of the Judge of Probate, Shelby County, shall not apply to said property, and using Parcel A as a horse riding ring does not violate the R-2 zoning restriction of Shelby County. However, in the event "Trust Beneficiaries" or any subsequent owner desires to build any residence on said property or should the owner of said Parcel A fail to comply with the restrictions ordered herein after receiving ten (10) days written notice of any alleged failure of compliance, then Parcel A shall become subject to the covenants and restrictions of the Heatherwood Subdivision recorded in Real Book 3, page 537 of the Shelby County Probate Court, and all construction and use of said Parcel A will be in conformance with those covenants and restrictions. Plaintiffs may reapply to this Court for any appropriate Order to enforce compliance of this decree.

The clerk of this court shall cause a copy of this Order to be recorded with the Shelby County Probate Court and this decree, with the herein specified restrictions on the use of Parcel A, shall run with the land and be binding on all owners of said Parcel A and their successors, heirs and assigns.

Costs are hereby taxed against the defendants.

Done this 25th day of March, 1988.

John T. Chester
Circuit Court Judge

Approved: [Signature]

Attorney for the Plaintiffs

Frank Elsh
Attorney for Plaitz

Robert Simpson
Attorney for First Alabama Bank

[Signature]
Attorney for USX Corporation

BOOK 177 PAGE 906

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RECORDING FEES

Recording Fee	<u>\$20.00</u>
Index Fee	<u>1.00</u>
TOTAL	<u>\$21.00</u>