Harvey J. Sepler, P.A., and Harvey J. Sepler (Hollywood), for appellant.

Ashley Moody, Attorney General, and Kseniya Smychkouskaya, Assistant Attorney General, for appellee.

Before FERNANDEZ, C.J., and SCALES and BOKOR, JJ.

PER CURIAM.

This court has not evaluated the "benefit" element in the current version of section 838.022, Florida Statutes, though we have previously upheld convictions under section 839.25, Florida Statutes, the predecessor statute to section 838.022, where the offending officer falsified official reports to avoid punishment for failure to follow office procedures. See Barr v. State, 507 So. 2d 175, 177 (Fla. 3d DCA 1987) ("Officers Barr and McQueen recanted the false information contained in their reports only after suspecting that they might be found out. Allowing them to assert the defense of recantation does not remove the impression that they used their positions to avoid the consequences of their mistake and thereby benefit."); Bauer v. State, 609 So. 2d 608, 611 (Fla. 4th DCA 1992) (citing Barr for the proposition that the State can prove the officer's intent to benefit by direct or circumstantial evidence that the falsification of documents "was intended to avoid punishment, whether it be in the form of a reprimand, lawsuit, criminal charges, termination or the like," and finding that circumstantial evidence that officer's actions were deliberate and "inconsistent with simply an honest mistake" satisfied this element); Hames v. City of Miami Firefighters' & Police Officers' Tr., 980 So. 2d 1112, 1117 (Fla. 3d DCA 2008) (noting, as basis for predicate offense, that officer violated section 839.25, Florida Statutes, by giving "a false, sworn statement to investigators to hide the actions of his fellow officers from the eyes of the law"). Based on the facts before us, the result would be the same under either version of the statute.

Affirmed.

Luis Antonio BECKETT-MORALES and Sharon Talamantes-Santiago, Appellants,

v.

Craiger SCHEUER and The Cottages at San Lorenzo Homeowners' Association, Inc., Appellees.

No. 2D22-781

District Court of Appeal of Florida, Second District.

May 3, 2023

Background: Landowner brought action against his neighbors, alleging that neighbors' new fence cut off the view of a nearby storm water pond that he previously had enjoyed from the rear of his property. The Circuit Court, 12th Judicial Circuit, Manatee County, Edward Nicholas, J., entered summary judgment for landowner and ordered neighbors to comport their fence with the contractor's sketch, and neighbors appealed.

Holdings: The District Court of Appeal, Rothstein-Youakim, J., held that:

(1) landowner could sue to require that neighbors comply with the declaration of covenants, as well as architectural guidelines, and

(2) fence did not violate either declaration of covenants which applied to home-

owners' association or association's architectural guidelines.

Reversed and remanded with instructions.

1. Appeal and Error ⚷3554

Appellate court reviews de novo a trial court's grant of summary judgment.

2. Appeal and Error ⚷3740

Appellate court does not defer to a trial court's construction of restrictive covenants and instead reaches its own conclusion as to their proper interpretation.

3. Covenants ⚷49

Court's task is to give effect to commonly understood meaning of terms used in restrictive covenants.

4. Covenants ⚷49

Restrictive covenants are not favored and are to be strictly construed in favor of the free and unrestricted use of real property.

5. Covenants ⚷49

Any doubt as to the meaning of the words used in restrictive covenant must be resolved against those seeking enforcement of covenant.

6. Common Interest Communities ⚷152

Declaration of covenants which applied to homeowners' association gave landowner the right to enforce the declaration's restrictions, conditions, or covenants, and as such, landowner, who alleged that neighbors' new fence cut off the view of a nearby storm water pond that he previously had enjoyed from the rear of his property, could sue to require that neighbors comply with the declaration, as well as architectural guidelines.

7. Evidence ⚷1871
Pleading ⚷36(3)

Landowners were not bound by any of the homeowners' association's admissions in its answer and affirmative defenses with respect to suit brought against landowners and association by neighbor seeking to enforce restrictive covenant against landowners whose new fence allegedly cut off the view of a nearby storm water pond that neighbor previously had enjoyed from the rear of his property; party was bound by its judicial admissions, but third party to those admissions was not.

8. Common Interest Communities ⚷96(1, 3)

Landowners' new fence that allegedly cut off view of nearby storm water pond that neighbor previously had enjoyed from rear of his property did not violate either declaration of covenants which applied to homeowners' association or association's architectural guidelines; landowners submitted their application, they received approval from architectural review committee to install their fence subject to condition that fence comply with guidelines for waterfront lots, and their fence complied with guidelines, and no language in declaration or in guidelines expressed broad intent to guarantee water views for lots, such as neighbor's, that did not abut storm water ponds, and requiring landowners to build fence that exposed more of their property to their neighbor's view than declaration and guidelines required impermissibly infringed on their right to enjoy their lot. Fla. Stat. Ann. § 720.3035(4).

Appeal from the Circuit Court for Manatee County; Edward Nicholas, Judge.

Derek W. Eisemann of Michael J. Belle, P.A., Sarasota, for Appellants.

David J. Fredericks of Anderson, Givens & Fredericks, P.A., Sarasota, for Appellee Craiger Scheuer.

No appearance for remaining Appellee.

ROTHSTEIN-YOUAKIM, Judge.

Luis Antonio Beckett-Morales and Sharon Talamantes-Santiago appeal the trial court's summary judgment order enjoining them to modify their privacy fence. Because the existing fence complies with the underlying declaration of covenants and the architectural guidelines, we reverse.

Craiger Scheuer, who lives next door to Morales and Santiago, complained to the parties' homeowners' association (the association) that their new fence cuts off the view of a nearby stormwater pond that he previously enjoyed from the rear of his property.[1] When the association refused to require that Morales and Santiago modify their fence so that Scheuer could still see the pond, he brought this lawsuit.

Scheuer's theory, which the trial court embraced, is that the declaration of covenants and the architectural guidelines for the association require that Morales and Santiago build the fence set forth in a contractor's sketch that they had initially provided to the association as part of the fence application process. Scheuer claims that if Morales and Santiago had built *that* fence, he would still be able to see the pond from his backyard.

Morales and Santiago were indeed required under the declaration of covenants to apply to the association so that they could build their fence. Pursuant to article VIII, section 1, of the declaration:

> [N]o improvement or alteration of any kind, including, but not limited to, a fence ... shall be installed, painted, erected, removed or maintained within the Property, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing by, a majority of the Board of Directors of the Association.... *The Board of Directors of the Association may condition its approval of proposals and plans and specifications as it deems appropriate*, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Board of Directors of the Association *may also issue rules or guidelines setting forth procedures for the submission of plans for approval*.

(Emphases added.) To implement this provision, the association prepared and published architectural guidelines, including ones for fences, and delegated to an architectural review committee its authority to review the requisite applications.

When Morales and Santiago submitted their fence application, they included with it two conflicting documents. The first was a contractor's sketch that depicts their proposed fence as it approaches the pond, transitioning from six-foot-high, opaque white vinyl panels to four-foot-high, black rail panels at a spot fairly close to their house. If that fence had been built, Scheuer would still have been able to see the pond. But they also attached a survey that instead shows the transition between the two types of fencing happening far closer to the pond, such that the vinyl panels would obstruct Scheuer's pond view.

Significantly, the architectural review committee here did not just rubber stamp this application with its conflicting documents. Instead, it approved the application subject to the following handwritten condition: "Please ensure all ARC [architectural

1. Scheuer's lot is not a waterfront lot; it neither backs up to nor is adjacent to the pond. Rather, he merely had a diagonal view of the pond from the rear of his lot through the rear of Morales and Santiago's lot, which backs up directly to the pond.

review committee] Guidelines are followed for 'lot type.' "

Two of those guidelines are relevant here. Guideline 5.C. provides:

> Perimeter fences shall be 6'-0" in height, except: On waterfront lots, fences shall be four feet high across the rear property line and shall transition from six feet high alongside property lines to four feet in height along rear property line. *Transition will begin in the last ten to sixteen feet of the side fences (as it approaches the rear property line).*

(Emphasis added.) Guideline 5.D. in turn provides: "Fences shall be 2 types: all vinyl white T&G (tongue and groove); or ONLY on lots abutting bodies of water or conservation areas, shall install open-picket 3-rail in black aluminum."

The first fence that Morales and Santiago installed had six-foot-high, white vinyl panels running around the perimeter of their lot. Scheuer complained, and that fence was modified, with the association covering the cost of the modification. The existing fence transitions from six-foot-high, white vinyl panels to four-foot-high, black rail panels in the last twelve feet of the side fences approaching their rear property line—squarely within guideline 5.C.

In support of his summary judgment motion, Scheuer filed emails from association representatives who agreed that the existing fence is inconsistent with the contractor's sketch included with the application. He also filed the association's answer and affirmative defenses, which "admit[ted]" Scheuer's allegations in his amended complaint that the existing fence fails to conform to the approved application and violates the declaration and architectural guidelines.

Morales and Santiago responded that a fence built consistently with the contractor's sketch would have violated guideline 5.C. They emphasized that the existing fence is the result of modifications that the association paid for to address a *previous* complaint by Scheuer. In addition, they submitted counter emails and correspondence from the association showing that in the association's view, the existing fence complies with its governing documents. One such letter candidly states that the fence "is in compliance with the Association's Architectural Guidelines and as such was properly approved."

The trial court granted Scheuer's motion for summary judgment and ordered Morales and Santiago to comport the fence with the contractor's sketch. The court concluded that the fence "was to be installed with the submitted application as required under Article VIII, Section 1, of the Declaration and Section 5 of the Architectural Guidelines," which, the court concluded further, set forth "restrictions [that] are in place to protect" Scheuer's water view.

Analysis

[1–5] This court reviews de novo a trial court's grant of summary judgment. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). We do not defer to a trial court's construction of restrictive covenants and instead reach "our own conclusion as to their proper interpretation." *Wilson v. Rex Quality Corp.*, 839 So. 2d 928, 930 (Fla. 2d DCA 2003). Our task is to "give effect to the commonly understood meaning of the terms used in" such covenants. *Heleski v. Harrell*, 119 So. 3d 1271, 1272 (Fla. 2d DCA 2013); *see also Barrett v. Leiher*, 355 So. 2d 222, 225 (Fla. 2d DCA 1978) ("[A] reasonable, unambiguous restriction will be enforced according to the intent of the parties as expressed by the clear and ordinary meaning of its terms."). In so doing, we remain mindful that "[r]estrictive covenants are not favored and are to be strictly

construed in favor of the free and unrestricted use of real property .... Any doubt as to the meaning of the words used must be resolved against those seeking enforcement." *Wilson*, 839 So. 2d at 930 (citing *Moore v. Stevens*, 90 Fla. 879, 106 So. 901, 903–04 (1925)).

[6] Article XVI, section 2, of the declaration expressly gives Scheuer the right to enforce the declaration's "restrictions, conditions, [or] covenants." As such, Scheuer may sue to require that Morales and Santiago comply with article VIII, section 1, of the declaration, as well as sections 5.C. and 5.D. of the architectural guidelines. *See Waterview Towers Condo. Ass'n v. City of West Palm Beach*, 232 So. 3d 401, 409 (Fla. 4th DCA 2017) ("These building restrictions are restrictive covenants, 'equitable rights arising out of the contractual relationship between and among the property owners.' " (quoting *Cudjoe Gardens Prop. Owners Ass'n v. Payne*, 779 So. 2d 598, 598–99 (Fla. 3d DCA 2001))).

[7, 8] Yet Scheuer has identified no provision of the declaration or architectural guidelines that Morales and Santiago have breached. They submitted their application. They received approval from the architectural review committee to install their fence subject to the handwritten condition that the fence comply with the guidelines for waterfront lots. And, although initially installing a fence that did not comply with those guidelines, they have now installed one that does.[2] To be sure, that existing fence does not comport with the contractor's sketch that they originally submitted with their application, but the fence in the sketch did not comply with guideline 5.C., which stipulates that the transition from vinyl to rail panels "*will* begin in the last ten to sixteen feet of the side fence[ ] (as it approaches the rear property line)."[3] (Emphasis added.)

In concluding that the fence restrictions were intended to protect Scheuer's view of the pond, the trial court cited *Imperial Golf Club, Inc. v. Monaco*, 752 So. 2d 653, 654 (Fla. 2d DCA 2000), in which this court affirmed an injunction requiring the removal of restroom facilities on a golf course so that those facilities did not impede a homeowner's view of the course. But in that case, the underlying declaration provided "[t]hat no fences, hedges, or other obstructions may be constructed around or near the boundaries of the lands set forth and described hereinabove, the purpose of this clause being at all times to permit complete visibility of the golf course." *Id.* Here, in contrast, no language in the declaration or in the guidelines expresses a broad intent to guarantee water views for lots, such as Scheuer's, that do not abut stormwater ponds, and we refuse to import such an intent.

Finally, requiring Morales and Santiago to build a fence that exposes *more* of their property to their neighbors' view than the declaration and the guidelines require im-

2. As even Scheuer's counsel was compelled to acknowledge at oral argument, the existing fence complies with the guidelines. Morales and Santiago are not bound by any of the association's admissions in its answer and affirmative defenses. *See Kendrick v. Middlesex Dev. Corp.*, 586 So. 2d 436, 437 (Fla. 1st DCA 1991) (noting that a party is bound by its judicial admissions, but that a third party to those admissions is not). And it would be particularly odd to bind them to the association's admissions here, when the association has already told them in writing that the existing fence—which the association paid for, in part—complies fully with the association's governing documents.

3. We note that *will* is not a permissive term; it is "used to express a command, exhortation, or injunction." *Will*, Merriam-Webster Dictionary Online, https://www.merriam-webster.com/dictionary/will (last visited March 10, 2023).

permissibly infringes on their right to enjoy *their* lot. *See* § 720.3035(4), Fla. Stat. (2018) ("Each parcel owner shall be entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants concerning the ... construction of permitted structures and improvements on the parcel and such rights and privileges shall not be unreasonably infringed upon or impaired by the association ...."); *see also Wilson*, 839 So. 2d at 930 (recognizing that restrictive covenants are "strictly construed in favor of the free and unrestricted use of real property"). We therefore reverse the injunctive relief ordered by the trial court and remand for further proceedings consistent with this opinion.

Reversed and remanded with instructions.

SLEET and LABRIT, JJ., Concur.

Victoria E. BRIEANT, Appellant,

v.

AJAX MORTGAGE LOAN TRUST 2019-E, etc., Appellee.

No. 3D22-339

District Court of Appeal of Florida, Third District.

Opinion Filed May 3, 2023

An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge. Lower Tribunal No. 20-16844

Jacobs Legal, PLLC, and Bruce Jacobs, for appellant.

Lamchick Law Group, P.A., and Ronald Pereira, for appellee.

Before FERNANDEZ, C.J., and SCALES and BOKOR, JJ.

PER CURIAM.

Affirmed. See Applegate v. Barnett Bank of Tallahassee, 377 So. 2d 1150, 1152 (Fla. 1979) (affirming where "the record brought forward by the appellant is inadequate to demonstrate reversible error"); Simmons v. Pub. Health Tr. of Miami-Dade Cnty., 338 So. 3d 1057, 1061 (Fla. 3d DCA 2022) (recognizing that Florida Rule of Appellate Procedure 1.510(a) does not require the trial court to state its reasons for granting or denying a summary judgment motion in a written order; rather, the trial court may orally state its reasons at the summary judgment hearing); Chowdhury v. BankUnited, N.A., 3D22-378, ––– So.3d ––––, ––––, 2023 WL 2777484, at *1 n.2 (Fla. 3d DCA Apr. 5, 2023) ("[T]o the extent that [defendant] relied on an affirmative defense to [plaintiff's] claim, [defendant] bore the burden of showing that the affirmative defense was applicable and, therefore, precluded entry of summary judgment. Only upon [defendant's] showing that an affirmative defense was applicable did the burden then shift back to [plaintiff] regarding that affirmative defense.") (citation omitted); Cong. Park Office Condos II, LLC v. First-Citizens Bank & Tr. Co., 105 So. 3d 602, 608 (Fla. 4th DCA 2013) ("A trial court does not abuse its discretion in granting a motion for summary judgment, despite the pendency of discovery, where the non-moving party has failed to act diligently in taking advantage of discovery opportunities.").