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SELMA MIRIAM ET AL. *v.* SUMMIT SAUGATUCK, LLC
(AC 45645)

Prescott, Suarez and Seeley, Js.

Syllabus

The plaintiffs, residents of a Westport neighborhood, sought to enjoin the defendant developer from building a multifamily housing development in their neighborhood and constructing anything other than single-family houses on each of its lots. The plaintiffs alleged that their property, and that which the developer owned or had the option to acquire, comprised part of a plan for residential development shown on a map prepared in 1954 for the estate of L, the individual who had owned the property prior to its subdivision. The map purported to subdivide L's property into twenty-two lots, thirteen of which were located substantially or wholly in Westport and nine of which were in Norwalk. The map did not contain any restrictions with respect to the lots. In 1955, G and H, the administrators of L's estate, conveyed seven of the Westport lots to various individuals. Each deed contained a restriction that allowed only a single-family house to be constructed on the lot. The language of the restriction did not evidence an intent for it to be mutually enforceable by the future owners of the properties. As evidenced by a certificate of devise that was recorded in the Westport land records, in 1956, G and W, L's brothers and heirs, each became the owner of an undivided one-half interest in the remaining Westport lots and the Norwalk lots. No restrictions on the lots were recorded at the time of these transfers. Later that year, G and the executor of W's estate conveyed four of the Westport lots pursuant to deeds that did contain the single-family house restriction. In 1959, H and two other individuals conveyed the Norwalk lots to a corporation without any restrictions. The final two Westport lots were also conveyed in 1959, one by the conservator of G's estate and the executor of W's estate and the other by the executors of G's estate and the trustees under W's will. Neither of these lots was subject to the single-family house restriction. The plaintiffs alleged that the eight Westport lots that the defendant planned to develop were conveyed subject to the single-family house restriction because they were part of a common plan of development that existed by virtue of the single-family house restriction in the deeds to the Westport lots. The defendant filed a motion for summary judgment, to which it attached an affidavit and a report prepared by a title company, arguing, inter alia, that the title search records demonstrated that no enforceable common plan of development existed. The plaintiffs filed a memorandum in opposition to the defendant's motion, which the trial court, with the agreement of the parties, treated as a motion for summary judgment. Thereafter, the parties entered into a stipulation, agreeing that the trial court was to consider the issue of whether the plaintiffs had a right to enforce the single-family house restriction against the defendant's lots before considering the other arguments raised by the defendant in support of its motion for summary judgment and that, if the trial court determined that the facts did not demonstrate the existence of a common plan and a right of the plaintiffs to enforce the single-family house restriction as to the defendant's lots, the plaintiffs had no other basis on which to challenge or prevent the defendant from proceeding with its development, which had already received various land use approvals. The trial court determined that no common plan existed with respect to the twenty-two lots because there was no common grantor of the property. As a result, it granted the defendant's motion for summary judgment and denied the plaintiffs' motion for summary judgment. On the plaintiffs' appeal to this court, *held* that the trial court properly granted the defendant's motion for summary judgment and denied the plaintiffs' motion for summary judgment because this court determined, following an analysis of the factors set forth in *Abel* v. *Johnson* (340 Conn. 240), that no common plan of development existed with respect to the Westport lots, and the parties had stipulated that such a conclusion was

dispositive of the plaintiffs' action: it was clear from the factual history of the conveyances of the Westport lots as shown on the map that there was no common grantor that sold or expressed an intent to convey all thirteen Westport lots subject to a common plan to restrict development to single-family houses only, the map that subdivided the land contained no indication that any of the lots shown thereon were or would be subject to any restrictions, and the administrators of L's estate did not record a declaration of restrictive covenants relating to the lots at the time of the subdivision; moreover, although the plaintiffs appeared to treat the various individuals or representatives who conveyed the lots at different times as one common grantor, they did not provide this court with any authority to support their claim that multiple individuals could be considered a common grantor, the only common owner to all thirteen of the Westport lots was L, who never conveyed any lots, placed any restrictions on them, or indicated a common plan for their development, and, contrary to the plaintiffs' assertion, the administrators of L's estate did not convey the lots in a representative, fiduciary capacity on behalf of the true owners of title because, in accordance with *Scott* v. *Heinonen* (118 Conn. App. 577) and *Stepney Pond Estates, Ltd.* v. *Monroe* (260 Conn. 406), the conveyances were made by the estate, as the Probate Court's grant of authority to the administrators to sell the real property provided them with the right to immediate possession and control of the property, which related back to the time of L's death, and, accordingly, L's heirs were deemed never to have taken title to the property; furthermore, although the Westport lots had single-family homes constructed on them in accordance with the alleged plan and substantial uniformity existed in the restrictions imposed in the deeds because the deeds to eleven of the thirteen Westport lots contained identical language concerning the single-family house restriction, these factors were insufficient to demonstrate an intent to create a common plan; accordingly, because this court concluded that the trial court's determination that no common plan existed was proper, even when considered in relation to only the thirteen Westport lots, it did not need to address whether it was proper for the trial court to have taken into consideration all twenty-two lots in determining that no common plan existed.

Argued May 8—officially released August 29, 2023

Procedural History

Action seeking an injunction prohibiting the defendant from constructing a multifamily development on certain of its real property, and for other relief, brought to the Superior Court in the judicial district of Fairfield and transferred to the judicial district of Hartford, Land Use Litigation Docket, where the plaintiff Christopher Gazzelli withdrew from the action; thereafter, the court, *Hon. Marshall K. Berger, Jr.*, judge trial referee, granted the defendant's motion for summary judgment, denied the motion for summary judgment filed by the named plaintiff et al., and rendered judgment thereon, from which the named plaintiff et al. appealed to this court. *Affirmed.*

Joel Z. Green, with whom was *Linda Pesce Laske*, for the appellants (named plaintiff et al.).

Timothy S. Hollister, with whom were *David A. DeBassio* and, on the brief, *Joette Katz*, for the appellee (defendant).

Opinion

SUAREZ, J. In this action to enforce a restrictive covenant, the plaintiffs Selma Miriam and Leslie Ogilvy[1] appeal from the judgment rendered by the trial court following its granting of a motion for summary judgment filed by the defendant, Summit Saugatuck, LLC, and denial of their motion[2] for summary judgment. On appeal, the plaintiffs claim that the court improperly determined, as a matter of law, that a common plan of development does not exist for certain lots of real property located within the historic Saugatuck neighborhood area of Westport, where both plaintiffs reside. We disagree and affirm the judgment of the court.

The following undisputed facts and procedural history are relevant to this appeal. The plaintiffs each own real property in Westport: Miriam's property is located at 29 Hiawatha Lane Extension, and Ogilvy's property is located at 27 Hiawatha Lane Extension. The plaintiffs alleged in their verified complaint (complaint) that their properties "comprise[d] part of a plan for a residential development shown upon a map entitled, 'Map of Property Prepared for the Estate of E. Louise Bradley, Gershom [B.] Bradley, [Administrator], Jeanette [Bradley] Hughes, [Administrator], Westport & Norwalk, Conn., Dec. 6, 1954 . . . .' " On December 17, 1954, that map was recorded in the Westport land records as map number 3802 (map 3802).[3] Map 3802 purports to subdivide real property originally owned by E. Louise Bradley into twenty-two lots. The lots are located in both Westport and Norwalk, with lots 1 through 10 and 20 through 22 being situated wholly or substantially in Westport (Westport lots) and lots 11 through 19 being situated in Norwalk (Norwalk lots). Map 3802, as recorded, contains no restrictions with respect to the lots shown thereon. Currently, Miriam owns lot 2, and lot 1 is owned by Ogilvy.

In 1955, Gershom Bradley and Jeanette Bradley Hughes, as administrators of the estate of E. Louise Bradley,[4] conveyed lots 6, 8, 9, 10, 20, 21 and 22 to various individuals.[5] Each deed of conveyance was recorded in the Westport land records and included a restriction allowing only a single-family house to be erected on each lot (single-family house restriction). Thereafter, on April 9, 1956, as reflected in a certificate of devise that was recorded in the Westport land records, Gershom Bradley and William B. Bradley, brothers and heirs of E. Louise Bradley, each became owners of an undivided one-half interest in the remaining lots owned by E. Louise Bradley, which included lots 1 through 5, lot 7, and the Norwalk lots. At the time when the certificate of devise was recorded, there was nothing in the land records showing any restrictions on these remaining lots.

Subsequently, on various dates in 1956, Edmond P.

Bradley, as executor of the estate of William Bradley, and Gershom Bradley conveyed lots 1, 2, 5 and 7.[6] Each deed of conveyance for those lots was recorded in the Westport land records and contained the single-family house restriction.

In a single conveyance and by warranty deed dated September 30, 1959, the Norwalk lots were conveyed by Julia S. Bradley, Jeanette H. B. Hughes, and Conrad Ulmer[7] to United Aircraft Corporation. These lots were not conveyed subject to the single-family house restriction.

Of the twenty-two lots originally shown on map 3802, the final two lots to be conveyed were lots 3 and 4. By a deed dated September 30, 1959, and recorded in the Westport land records, lot 3 was conveyed by the conservator of the estate of Gershom Bradley and the executor of the estate of William Bradley. This conveyance was not made subject to the single-family house restriction, nor was the conveyance of lot 4,[8] which was conveyed in 1962 by the executors of the estate of Gershom Bradley and the trustees under the will of William Bradley.

The defendant, a developer, owns or has options to acquire lots 6, 7, 8, 9, 10, 20, 21 and 22 as shown on map 3802 and seeks to build a multifamily housing development on the property that will have 157 residential dwelling units that qualify as affordable housing under General Statutes § 8-30g. Following extensive administrative and judicial proceedings[9] involving the defendant, the town of Westport, and the Planning and Zoning Commission of the Town of Westport, an agreement for a reduced development plan was reached. As a result, the pending sewer and zoning cases were resolved by a stipulated judgment that ultimately was approved by the court on July 19, 2021.[10]

The plaintiffs did not intervene in the prior litigation and, instead, commenced the present action seeking to enjoin the defendant from moving forward with the affordable housing development and constructing anything other than a single-family house on each of its lots. In their complaint, the plaintiffs, owners of lots 1 and 2, alleged that the Westport lots, which include all of the lots on which the defendant intends to build its development, were conveyed subject to the single-family house restriction. The basis for this assertion is their claim that a common plan of development exists by virtue of the single-family house restriction in the deeds to the Westport lots. In response, the defendant filed an answer and five special defenses.[11]

Thereafter, the defendant filed a motion for summary judgment with an attached affidavit and a November 8, 2021 report (report) of Andrew R. Sherriff, Jr. Sherriff is the owner of Sound Title, LLC, a title company that, at the request of the defendant, investigated and drafted

the report concerning the twenty-two lots depicted on map 3802. In its memorandum of law in support of its motion for summary judgment, the defendant argued, inter alia, that the title search records demonstrate that no enforceable common plan of development exists that restricts the lots to single-family houses only.[12] The plaintiffs subsequently filed a memorandum in opposition to the defendant's motion for summary judgment, which the court, upon agreement of the parties, treated as a motion for summary judgment.

On January 18, 2022, the parties entered into a stipulation regarding the motions for summary judgment. Pursuant to that stipulation, the parties agreed that the court first would consider the threshold issue of whether the plaintiffs have the right to enforce the single-family house restriction against the defendant's lots 6 through 10 and 20 through 22 before considering other arguments raised by the defendant in support of its motion for summary judgment. The stipulation further provides: "This threshold issue can be adjudicated based on the facts presented in the November, 2021 report prepared by Sound Title, LLC, and attached to [the defendant's] summary judgment motion, along with other related facts presented in the relevant pleadings; that is, *the parties agree that there are no issues of material fact with respect to the threshold issue*; the relevant pleadings along with the pleadings already filed by the parties contain all facts necessary [to] resolve this issue; and an evidentiary hearing on the issue is not required. . . . If this court determines that the facts do not demonstrate the existence of a uniform common plan and a right of any of the plaintiffs to enforce [the single-family house] restriction as against [the defendant's] lots, then the plaintiffs have no other basis to challenge or prevent [the defendant] from acting on the land use approvals granted through the stipulated judgment . . . ." (Emphasis added.)

On February 9, 2022, the court heard arguments on the motions for summary judgment limited to the issue of the existence of a common plan of development. In a memorandum of decision dated May 31, 2022, the court granted the defendant's motion for summary judgment on the basis of its conclusion that no common plan exists with respect to the twenty-two lots shown on map 3802. In making that determination, the court referred to the parties' stipulation that the material facts were not contested and that the court could decide the threshold issue as a matter of law on the basis of the facts set forth in the report prepared by Sherriff. In that report, Sherriff concluded: "The estate of E. Louise Bradley aka Emma Bradley was the only entity that held title to all of the lots as shown on [map 3802]. Of the original [twenty-two] lots, such [e]state conveyed [seven] lots subject to the [r]estriction, while the [r]estriction was not imposed by the estate [on] the remaining [fifteen] lots. The [e]state and [four subse-

quent] owners of the lots owned by the [e]state, imposed the [r]estriction on a total of [twelve] of the [twenty-two] lots, while [ten] of the lots shown on [map 3802] were not made subject to the [r]estriction."

In concluding that no common plan exists, the court stated: "There is no question of fact that E. Louise Bradley was not a common grantor and that she did not create a common plan. Map 3802 was prepared for her estate and, significantly, the map contained no restrictions. In fact, there were several sets of grantors of the lots of the original parcel and some lots were subject to the [single-family house] restriction and some were not.

* * *

"[T]here is no common grantor or evidence of a grantor's intent to convey all of the lots subject to the plan. Indeed, the original twenty-two lots were not all conveyed by the original grantor, E. Louise Bradley's estate, nor were they all conveyed subject to any recorded declaration of restrictions applicable to all lots. This is underscored by the undisputed fact that the nine lots in Norwalk were conveyed without the [single-family house] restriction. . . . Additionally, there is no map of the entire tract with notice of the [single-family house] restriction upon it. While Gershom Bradley was involved in certain transfers—whether he acted as an administrator for E. Louise Bradley, in his individual capacity, or through his estate—the administrators of E. Louise Bradley's estate only imposed the [single-family house] restriction on seven lots (lots 6, 8, 9, 10, 20, 21 and 22) out of the original twenty-two lots. The next four lots (lots 1, 2, 5 and 7) with the [single-family house] restriction were conveyed by different grantors . . . . Thus, of the original twenty-two lots, only eleven had the initial single-family [house] restriction and this does not effectuate a general plan by the grantor." (Citation omitted; footnotes omitted.) The court thus granted the defendant's motion for summary judgment and denied the plaintiffs' motion for summary judgment. This appeal challenging both rulings followed.[13] Additional facts and procedural history will be set forth as necessary.

On appeal, the plaintiffs challenge the court's determination that no common plan of development exists as to the twenty-two lots depicted on map 3802. Specifically, they claim that the court "improperly considered only whether *all* of the land in both Norwalk and Westport was conveyed subject to the [single-family house] restriction" and failed to address their claim that there is a common plan for the Westport lots only. (Emphasis added.) We do not agree.

Before we address the plaintiffs' claim on appeal, we first set forth our well established standard of review pertaining to a trial court's decision granting a motion

for summary judgment. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact . . . . [T]he party moving for summary judgment is held to a strict standard. [The moving party] must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . A material fact is a fact that will make a difference in the result of the case. . . . Because the court's decision on a motion for summary judgment is a legal determination, our review on appeal is plenary. . . . [W]e must [therefore] decide whether [the trial court's] conclusions are legally and logically correct and find support in the facts that appear in the record." (Internal quotation marks omitted.) *Stewart* v. *Old Republic National Title Ins. Co.*, 218 Conn. App. 226, 237–38, 291 A.3d 1051 (2023); see also *Brass Mill Center, LLC* v. *Subway Real Estate Corp.*, 214 Conn. App. 379, 385, 280 A.3d 1216 (2022) ("[s]ummary judgment rulings present questions of law" (internal quotation marks omitted)).

We next set forth relevant legal principles governing construction of deeds and restrictive covenants. "Early Connecticut case law acknowledges the power of property holders with substantially uniform restrictive covenants obtained by deeds in a chain of title from a common grantor to enforce the restrictions against other owners with similar restrictive covenants." (Internal quotation marks omitted.) *Abel* v. *Johnson*, 340 Conn. 240, 256–57, 263 A.3d 371 (2021). "When uniform covenants are contained in deeds executed by the owner of property who is dividing his property into building lots under a general development scheme, any grantee under such a general or uniform development scheme may enforce the restrictions against any other grantee. . . . The owner's intent to develop the property under a common scheme is evidenced by the language in the deeds. . . . [T]he determination of the intent behind language in a deed, considered in the light of all the surrounding circumstances, presents a question of law on which our scope of review is plenary." (Citations omitted; internal quotation marks omitted.) *Cappo* v. *Suda*, 126 Conn. App. 1, 8, 10 A.3d 560 (2011); see also *Abel* v. *Johnson*, supra, 255 ("[i]ntent is determined by the language of the particular conveyance in light of all the circumstances and is a question of law" (internal quotation marks omitted)).

"The doctrine of the enforceability of uniform restrictive covenants is of equitable origin. The equity springs

from the presumption that each purchaser has paid a premium for the property in reliance on the uniform development plan being carried out. While that purchaser is bound by and observes the covenant, it would be inequitable to allow any other landowner who is also subject to the same restriction to violate it. . . . [T]he uniform plan development must be derived from the language of the covenants inserted in the deeds of various owners' plots and it is necessary to determine the intent of the owner in creating the restrictions upon any lot to make the benefit of them available . . . to the owners of the other lots in the tract. The meaning and effect of the [restrictions] are to be determined, not by the actual intent of the parties, but by the intent expressed in the deed, considering all its relevant provisions and reading it in the light of the surrounding circumstances . . . ." (Citation omitted; internal quotation marks omitted.) *Mannweiler* v. *LaFlamme*, 46 Conn. App. 525, 535–36, 700 A.2d 57, cert. denied, 243 Conn. 934, 702 A.2d 641 (1997).

In *Abel* v. *Johnson*, supra, 340 Conn. 240, our Supreme Court recently explained that "[r]estrictive covenants generally fall into one of three categories: (1) mutual covenants in deeds exchanged by adjoining landowners; (2) uniform covenants contained in deeds executed by the owner of property who is dividing his property into building lots under a general development scheme; and (3) covenants exacted by a grantor from his grantee presumptively or actually for the benefit and protection of his adjoining land [that] he retains. . . . With respect to the second category, under which the plaintiffs claim standing, [r]estrictive covenants should be enforced when they are reflective of a common plan of development. . . . The factors that help to establish the existence of an intent by a grantor to develop a common plan are: (1) a common grantor sells or expresses an intent to put an entire tract on the market subject to the plan; (2) a map of the entire tract exists at the time of the sale of one of the parcels; (3) actual development according to the plan has occurred; and (4) substantial uniformity exists in the restrictions imposed in the deeds executed by the grantor. . . . The factors that help to negate the presence of a development scheme are: (1) the grantor retains unrestricted adjoining land; (2) there is no plot of the entire tract with notice on it of the restrictions; and (3) the common grantor did not impose similar restrictions on other lots." (Citations omitted; internal quotation marks omitted.) Id., 255–56.

In this appeal, the plaintiffs claim that the court improperly determined that no common plan exists and that the court, in making that determination, improperly considered all twenty-two lots as shown on map 3802, which included land in both Norwalk and Westport, and failed to determine whether a common plan exists concerning the Westport lots only. The plaintiffs argue that a common plan was implemented only with respect

to the Westport lots, as "manifest[ed] by the conveyance of the first eleven of the thirteen Westport lots by deeds subject to the [single-family house] restriction, within a two year period. Two years later, lot 3 was conveyed out by successor fiduciaries and by deeds that did not contain the [single-family house] restriction. However, all then owners of the [Westport] lots, as well as of the Norwalk tract, then entered into a property agreement in which they acknowledged the [single-family house] restriction and consented to division of lot 3 into two parcels on the condition that the [single-family house] restriction be imposed on the resulting parcels." The plaintiffs further assert that "[t]he absence of the [single-family house] restriction in the first deed conveying out the final lot, lot 4, should be deemed, on balance, to have little to no negating effect, for several reasons," including that "[t]he actual use and development on lot 4 occurred well after the common plan was already manifest with respect to the other lots . . . ." Moreover, according to the plaintiffs, the court "ignored the fact that the Norwalk tract was not approved for subdivision and was not actually divided into building lots at all," which rendered immaterial whether the Norwalk lots were subject to the single-family house restriction. (Emphasis omitted.) We are not persuaded.

The following additional undisputed facts provide context for this claim. As we stated previously in this opinion, the parties' stipulation provides that the threshold issue of the existence of a common plan "can be adjudicated based on the facts presented in the November, 2021 report prepared by" Sherriff that was attached to the defendant's motion for summary judgment. Sherriff drafted the report following his investigation and review of the land records in Westport and Norwalk for the twenty-two lots designated on map 3802; he did not limit his report to the Westport lots only. Furthermore, the plaintiffs' complaint is not entirely clear on this issue. Although the plaintiffs allege in their complaint that "[t]he *Westport lots* were all conveyed subject to" the single-family house restriction, the complaint also alleges that the plaintiffs' properties are "*part of a plan* for a residential development shown upon" map 3802, which depicts all twenty-two lots. (Emphasis added.) The parties' conflicting positions concerning the lots that fall within the scope of the claimed common plan are further demonstrated by the arguments raised in their memoranda in support of their motions for summary judgment. The defendant's argument that no common plan exists clearly encompassed an examination of the twenty-two lots originally owned by E. Louise Bradley as depicted on map 3802. The plaintiffs, on the other hand, focused their argument in support of a common plan on the Westport lots only and disagreed with the defendant's "suggestion that the nondevelopment of the Norwalk lots proves there is no common development plan comprised of

the Westport lots . . . .” According to the plaintiffs, “[i]n sum and on balance, the relevant factors overwhelmingly weigh in favor of finding the existence of a common plan subject to restrictive covenants permitting one family houses only on the [Westport] lots . . . .” Relying on the parties’ stipulation, the court considered the deeds and surrounding circumstances related to the conveyances of all twenty-two lots in determining that no common plan exists.

The transcript of the parties’ February 9, 2022 arguments regarding the motions for summary judgment also sheds light on this issue. During those arguments, the plaintiffs’ counsel discussed the four factors set forth in *Abel* for establishing a common plan. See *Abel* v. *Johnson*, supra, 340 Conn. 256. Thereafter, counsel turned to the three negating factors set forth in *Abel*, arguing that the first one—that the grantor retained unrestricted adjoining land—was not applicable. The following colloquy transpired between the court and the plaintiffs’ counsel:

“The Court: What about the Norwalk property? What about the Norwalk property?

“[The Plaintiffs’ Counsel]: Well, I think that, at the time [the] plan was devised, it was—the Norwalk property . . . well actually, I hadn’t thought of that, Your Honor. Can I get back to you on that one? The . . . unrestricted adjoining land, I think that factor really applies where you have—where it shows that the adjoining land, the owner of the adjoining land wants to impose a restriction to benefit that adjoining land that’s being retained. And I don’t think there’s any evidence of that in this case. Yeah, I think what the intent was is that all of it be developed for residential lots, but then, when the subdivision was denied in Norwalk, the plan was revised to just apply to the Westport property. The retention of the . . . Norwalk land not subject to restriction, I don’t think that placing the restriction for one family homes shows—would benefit the Norwalk property. I don’t think that the—that first factor would apply here.

“The Court: I . . . hear what you’re saying, but again, I don’t think you can make the statement that the plan was revised to apply just to . . . Westport. I don’t think you have any proof of that. It may well be. I’m not suggesting that that didn’t happen, but I don’t think we have in this record anything from the Bradley administrators where they have come out and said, yeah, this is what we’re going to do. I think you’re surmising that. I . . . think that’s what you’ve just indicated, but I . . . don’t think there’s any evidence on that. I may have to conclude that, but I don’t know.

“[The Plaintiffs’ Counsel]: I think that . . . we have to consider what—what property was involved and what was the intent. So, with—

"The Court: *Twenty-two lots. I have twenty-two lots.*

"[The Plaintiffs' Counsel]: Was the original plan, but the Westport subdivision that was approved was only as to the thirteen Westport lots.

"The Court: That's Westport, right. But—

"[The Plaintiffs' Counsel]: And—

"The Court: You know, it begs the question: *Is this a Westport or is this the whole thing*? So, I understand what you're saying, but go ahead." (Emphasis added.)

The plaintiffs' counsel thereafter continued her discussion of the remaining *Abel* factors as applied to the thirteen Westport lots. Significantly, she never directly responded to the court's question concerning whether the matter involved just the Westport lots, although she did subsequently argue that there was a common plan for the Westport lots. Thereafter, the defendant's counsel continued to argue that the Norwalk lots were never approved for a subdivision, making them retained land that was eventually sold for nonresidential purposes, which counsel argued was a dispositive factor in demonstrating the lack of a common plan. The plaintiffs' counsel responded by arguing that no one factor in *Abel* is dispositive. Again, the plaintiffs' counsel never definitively stated that the Norwalk lots should not factor into the determination of the existence of a common plan.

With that background in mind, we turn to the plaintiffs' claim. Before we engage in a plenary review of the court's determination that no common plan exists in this case, we must address the issue of the proper scope of that inquiry, namely, whether that inquiry encompasses an examination of the deeds and circumstances surrounding the conveyances of all twenty-two lots or whether our analysis should be confined to the Westport lots only. The record clearly demonstrates that the parties' positions at oral argument differed on this issue, and the court even questioned whether "this [is] a Westport or is this the whole thing?"[14] Nevertheless, because we conclude, for the reasons that follow, that the court's legal determination that no common plan exists is proper even when considered in relation to the thirteen Westport lots only, we need not determine whether it was proper for the court to have taken all twenty-two lots into consideration in making its determination of no common plan.

Under the circumstances of this case, in which "the uniform plan of development must be divined from the language of the covenants inserted in the deeds of various owners of lots," we must "determine the intent of the owner in creating the restrictions upon any lot to make the benefit of them available . . . to the owners of the other lots in the tract. . . . The intent of the grantor must be determined by reading the deeds in

light of the surrounding circumstances attending the transactions." (Citation omitted; internal quotation marks omitted.) *Contegni* v. *Payne*, 18 Conn. App. 47, 52, 557 A.2d 122, cert. denied, 211 Conn. 806, 559 A.2d 1140 (1989), and cert. denied, 211 Conn. 806, 559 A.2d 1140 (1989). In making that determination, we also are guided by the factors set forth in *Abel* v. *Johnson*, supra, 340 Conn. 256, which "help to establish the existence of an intent by a grantor to develop a common plan . . . ." (Internal quotation marks omitted.) Id.

With respect to the first factor, namely, a common grantor sells or expresses an intent to put an entire tract on the market subject to the plan, we conclude that this factor does not weigh in favor of a determination that a common plan exists. In the present case, map 3802, which subdivided land originally owned by E. Louise Bradley into twenty-two lots, with thirteen of those lots being located wholly or substantially in the town of Westport, was prepared and recorded in the land records in December, 1954, by Gershom Bradley and Jeanette Bradley Hughes, as administrators of the estate of E. Louise Bradley. Map 3802 contains no indication that any of the lots shown thereon were or would be subject to any restrictions, and the administrators did not simultaneously record a declaration of restrictive covenants relating to the subdivided lots shown on map 3802. See *DaSilva* v. *Barone*, 83 Conn. App. 365, 371, 373, 849 A.2d 902, cert. denied, 271 Conn. 908, 859 A.2d 560 (2004).

In July, 1955, the administrators of the estate of E. Louise Bradley, who were authorized and empowered by the Probate Court to sell the real property that was in the inventory of the estate, conveyed lots 6, 8, 9, 10, 21 and 22 to various individuals by deeds, all of which contained the single-family house restriction. The specific language of that restriction was identical in all of the deeds and provided: "Restriction that only a one-family house shall be erected on said premises, the house or plans for which shall be approved by the [g]rantors . . . ." Thereafter, on October 20, 1955, the administrators conveyed lot 20 by a deed containing the same restriction. Thus, seven of the thirteen Westport lots were conveyed by the administrators subject to the single-family house restriction.

Thereafter, the ownership of lots 1 through 5, lot 7, and the Norwalk lots passed by devise to Gershom Bradley and William Bradley, brothers and heirs to E. Louise Bradley. As per a certificate of devise dated April 19, 1956,[15] and issued by the Probate Court, Gershom Bradley and William Bradley each had an undivided one-half interest in those lots.

Of the six remaining Westport lots owned by Gershom Bradley and William Bradley, four—lots 1, 2, 5 and 7—were conveyed on various dates between May 7 and November 9, 1956, by deeds that contained the

single-family house restriction. Those conveyances were done by Edmond Bradley, as executor of the estate of William Bradley, and Gershom Bradley. By the time lots 3 and 4 were conveyed, Gershom Bradley had died. Those lots were conveyed by various representatives and/or trustees under his estate and that of his brother, William Bradley, without the single-family house restriction.

It is clear from this factual history of the conveyances of the Westport lots as shown on map 3802 that there is no common grantor who sold or evinced an intent to convey all thirteen of the Westport lots subject to a common plan to restrict development to single-family houses only. Seven of the eight lots that the defendant either owns or has an option to acquire were first conveyed by the administrators of the estate of E. Louise Bradley, with the remaining lot first having been conveyed by Edmond Bradley, as executor of the estate of William Bradley, and Gershom Bradley. Lots 1 and 2, now owned by the plaintiffs, were initially conveyed by Edmond Bradley, as executor of the estate of William Bradley, and Gershom Bradley. The plaintiffs appear to treat the administrators of the estate of E. Louise Bradley, as well as heirs of E. Louise Bradley and executors of the estates of those heirs, all as one common grantor. In their appellate brief, they argue: "The common plan as to the Westport lots was made manifest by the conveyance of the first eleven of the thirteen Westport lots by deeds subject to the [single-family house] restriction, within a two year period." According to the plaintiffs, "[t]he common grantors were the heirs of E. Louise Bradley, in whom title had descended upon her death, or those acting in a representative, fiduciary capacity on their behalf, and/or by their successors, who all acted [in] concert to convey the first eleven of the thirteen Westport lots subject to the substantially uniform restriction in fairly rapid succession within a two year time frame." The plaintiffs, however, have not furnished this court with any authority to support their claim that multiple individuals can be considered a "common grantor," and we are not persuaded by their novel claim.

A "common grantor is that owner of property who has divided it into building lots that are subject to a general development scheme as simultaneously expressed on the land records of the location of the property." *DaSilva* v. *Barone*, supra, 83 Conn. App. 371. The thirteen Westport lots that the plaintiffs claim are part of a common plan of development were conveyed at different times by various individuals or representatives, including Gershom Bradley and Jeanette Bradley Hughes, as administrators of the estate of E. Louise Bradley (lots 6, 8, 9, 10, 20, 21 and 22); Gershom Bradley, individually, and Edmond Bradley, as executor of the estate of William Bradley (lots 1, 2, 5 and 7); and the conservator of the estate of Gershom Bradley, the exec-

utors of the estate of Gershom Bradley and/or the trustees under the will of William Bradley (lots 3 and 4). Indeed, the only common *owner* to all thirteen of the Westport lots was E. Louise Bradley, who never conveyed any lots let alone placed restrictions on them or indicated a common plan for their development.[16] Instead, the administrators of her estate obtained subdivision approval of map 3802 and recorded the map in the land records. In doing so, however, they never indicated on map 3802 or in a recorded declaration that any of the lots were or would be restricted to single-family houses only, and, after the administrators subdivided the land, other owners acquired some of the lots. Moreover, those administrators conveyed only seven of the thirteen Westport lots subject to the single-family house restriction. As this court has stated previously, "enforceable restrictive covenants usually involve the presence of the same or similar restrictions in *all or substantially all* of the deeds conveyed by the common grantor. See *Whitton* v. *Clark*, 112 Conn. 28, 37, 151 A. 305 (1930) (twenty of fifty-four lots with similar restrictions did not show common plan); *DaSilva* v. *Barone*, supra, 376 (deed restriction applied to two-thirds of lots involved did not show common plan)." (Emphasis in original.) *Cappo* v. *Suda*, supra, 126 Conn. App. 11.

As the defendant argues in its appellate brief: "The sine qua non of a uniform common plan is a 'common grantor,' who may be a person or entity, but must have, at one time, owned all of the lots to be subdivided, and at the time of obtaining subdivision approval, through notice on the subdivision map and a recorded declaration of restrictions, expressed 'simultaneous intent' to impose a mutually enforceable obligation on all initial and subsequent owners. Here, there was no common grantor, no map notation, no recorded declaration, no evidence of intent to make the [single-family house] restriction mutually enforceable by future owners,[17] and no uniform imposition on all lots." (Footnote added.) We agree.

The plaintiffs also assert that, "[w]hen the administrators of the estate conveyed lots pursuant to orders of the Westport Probate Court, they did so in a representative, fiduciary capacity on behalf of the true holders of title, i.e., the heirs at law of E. Louise Bradley and/or those in whom title descended or was devised upon the death of her heirs." We are not persuaded.

In the present case, E. Louise Bradley died without a will. "At death the intestate real property of a decedent vests at once in his [or her] heirs; an administrator does not have title to it, although *it is subject to being brought within the scope of administration of the estate* so far as necessary to the proper exercise of that administration." (Emphasis added.) *Bowen* v. *Morgillo*, 127 Conn. 161, 168, 14 A.2d 724 (1940); see *Zanoni* v. *Lynch*, 79 Conn. App. 309, 321, 830 A.2d 304 ("[T]he fiduciary of

a decedent's estate possesses a limited statutory right to interfere with the passage of title to a devisee. Upon the death of a testator, the title to the real property devised in his will vests in the devisees, subject to the control of the court and possession of the executor during administration." (Internal quotation marks omitted.)), cert. denied, 266 Conn. 929, 837 A.2d 804 (2003); id., 322 ("although title to specifically devised real property passes to a decedent's devisees at his death, such title is not absolute"); see also *Wooden* v. *Perez*, 210 Conn. App. 303, 309, 269 A.3d 953 (2022) ("[o]n the death of an owner, title to real estate at once passes to his heirs, subject to being defeated should it be necessary for the administration of the estate that it be sold by order of the court, and subject to the right of the administrator to have possession, care and control of it during the settlement of the estate, unless the [P]robate [C]ourt shall otherwise order" (internal quotation marks omitted)). It is within the authority of the Probate Court to order a sale of real property, even if it has been specifically devised, for the necessary administration of the estate, including the payment of debts of the estate. See *Zanoni* v. *Lynch*, supra, 321–22. "The estate[18] of a deceased person consists of property the title to or an interest in which is derived from [her], which it is the duty of the executor or administrator to inventory and for which he must account to the Probate Court." (Footnote added.) *American Surety Co. of New York* v. *McMullen*, 129 Conn. 575, 582–83, 30 A.2d 564 (1943).

This court's decision in *Scott* v. *Heinonen*, 118 Conn. App. 577, 985 A.2d 358 (2009), cert. denied, 295 Conn. 909, 989 A.2d 603 (2010), is helpful to our resolution of this issue. In *Scott*, the issue before this court was "whether the executor of an estate, who has been authorized to market certain real property of a decedent to satisfy the financial obligations of the decedent's estate, has the power to evict an occupant to whom the property has specifically been devised by the will of the decedent." Id., 578. After the decedent's death, the plaintiff executor of the decedent's estate submitted a petition to the Probate Court "to market and to sell the property to satisfy creditor claims against the estate and administration expenses." Id., 579. The Probate Court granted the petition, after which the executor served a notice to quit possession of the premises on the defendant, who had been residing at the decedent's property and to whom the decedent specifically had devised the real property in her will. Id. Thereafter, the executor brought a summary process action to evict the defendant. Id. The trial court rendered judgment in favor of the defendant, concluding that the executor did not have the power to evict the defendant even though the Probate Court had issued an order authorizing the executor to market the real property of the decedent to pay the debts of the estate. Id., 579–80. On appeal, this court disagreed. Id., 582.

In concluding that the executor had the power to evict the defendant and was entitled to summary process as a matter of law, this court explained: "[A] central question we must resolve in our determination of the appeal at hand is at what point, after an executor is authorized to market specifically devised property for sale so as to satisfy the debts of an estate, a devisee's title and interest in such property is extinguished. The defendant argues that he retains a superior interest in the decedent's real property until such time that the plaintiff enters a contract of sale on behalf of the estate or the Probate Court orders him to vacate the property. We disagree. In construing a statute, common sense must be used, and courts will assume that the legislature intended to accomplish a reasonable and rational result. . . . Our legislature has granted the Probate Court the power to authorize the sale of specifically devised property to satisfy the debts of an estate. Common sense dictates that inherent in such an order is a right to immediate possession and control of such property by the administrator of the estate to make the property marketable." (Citation omitted; internal quotation marks omitted.) Id., 584.

In *Scott*, this court relied on our Supreme Court's holding in *Stepney Pond Estates, Ltd.* v. *Monroe*, 260 Conn. 406, 797 A.2d 494 (2002), in which our Supreme Court stated: "[U]pon the death of the owner of real estate, neither the executor nor the administrator holds title. . . . Title immediately descends to the heirs or devisees of real estate, subject to the right of administration. . . . It has been held, however, that when an administrator takes possession of his or her decedent's real estate such possession relates back to the time of decedent's death. . . . Accordingly, in such a case the devisees are deemed never to have taken title and, consequently, an executor exercising his power to transfer property *does not transfer the title from the devisees, but from the estate*." (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 433 n.28; see also *Scott* v. *Heinonen*, supra, 118 Conn. App. 588. Therefore, in *Scott*, this court concluded: "[T]he effect of the order of the Probate Court was to grant to the plaintiff, as executor, the right to possess and to control the property so as to make it marketable. Ergo, because the plaintiff as executor is entitled to possession and control of the property, *the specific devisees are deemed never to have taken title.*" (Emphasis in original.) *Scott* v. *Heinonen*, supra, 588.

In the present case, as we stated previously in this opinion, the administrators of the estate of E. Louise Bradley conveyed lots 6, 8, 9, 10, 20, 21 and 22 in July and October, 1955. The deeds conveying all seven of those lots contain the following relevant language: "[U]pon written application of Gershom B. Bradley and Jeanette Bradley Hughes, Administrators of the Estate

of Emma Louise Bradley, late of Westport, in [the] District [of Westport], deceased, praying that the [Probate] Court order the sale of certain real estate owned by the decedent, and empowering them as such Administrators to sell and convey the same, the said Administrators were ordered, authorized and empowered to sell any and all of the said real property described in the inventory of said estate, at private sale, and give a deed of conveyance thereof . . . ." Thus, it is apparent from the language in the deeds that the Probate Court authorized the administrators of the estate of E. Louise Bradley to sell certain of the real property that was part of the estate, similar to what had occurred in *Scott* v. *Heinonen*, supra, 118 Conn. App. 582. It necessarily follows that, in light of the principles set forth in *Scott* and *Stepney Pond Estates, Ltd.*, when those administrators were authorized to sell the real property included within the inventory of the estate, they had a right to immediate possession and control of such property, which related back to the time of E. Louise Bradley's death, and her heirs are deemed never to have taken title to the property. As a result, when the administrators sold lots 6, 8, 9, 10, 20, 21 and 22, the conveyances were from the estate, not the heirs. See *Stepney Pond Estates, Ltd.* v. *Monroe*, supra, 260 Conn. 433 n.28. Accordingly, the plaintiffs' claim fails.

We conclude that the lack of a common grantor or evidence of an intent by a common grantor to convey all thirteen of the Westport lots subject to a common plan to restrict development to only single-family houses weighs significantly against our concluding, as a matter of law, that a common plan exists; nevertheless, we briefly discuss the remaining three factors. With respect to the second factor, the existence of "a map of the entire tract . . . at the time of the sale of one of the parcels"; (internal quotation marks omitted) *Abel* v. *Johnson*, supra, 340 Conn. 256; map 3802 had been recorded in the Westport land records prior to the conveyance of any of the Westport lots. As we indicated previously, however, that map contains no indication of any restrictions on the lots and, thus, does little to advance the plaintiffs' argument. Concerning the third factor, the Westport lots have single-family homes constructed on them. We agree with the trial court that this factor "does not, by itself, demonstrate an intent to create a common plan as defined in our case law." The fourth factor asks whether "substantial uniformity exists in the restrictions imposed in the deeds executed by the grantor." (Internal quotation marks omitted.) *Abel* v. *Johnson*, supra, 256. This factor does weigh in favor of the plaintiffs, as the deeds to eleven of the thirteen Westport lots, albeit from various grantors, contain identical language concerning the single-family house restriction.

We turn next to an examination of the factors that evidence a lack of a common plan for development,[19]

which include "(1) the grantor retains unrestricted adjoining land; (2) there is no plot of the entire tract with notice on it of the restrictions; and (3) the common grantor did not impose similar restrictions on other lots." (Internal quotation marks omitted.) Id. It is not disputed that the second factor exists, that is, that there is no map of the thirteen Westport lots with notice of the single-family house restriction on it. In the absence of a common grantor, an analysis of the first and third factors concerning the actions of the common grantor is not necessary.

After examining the factors concerning the presence or absence of an intent to create a common plan of development by a common grantor, we conclude that there was no intent to create a common plan restricting development of the Westport lots to single-family houses only. Our case law makes clear that the existence of a common plan must stem from the intent of a common grantor to impose uniform restrictions on an entire tract of land. The absence of a common grantor, therefore, is dispositive to any such claim of a common plan. Furthermore, the claim of a common plan is undermined by the fact that the administrators of the estate of E. Louise Bradley, in subdividing the land and recording map 3802 in the Westport land records, did not indicate on the map that the lots were subject to any restrictions, nor did they record a declaration of restrictive covenants. See *DaSilva* v. *Barone*, supra, 83 Conn. App. 371. The fact that those administrators conveyed seven of the thirteen Westport lots with the single-family house restriction does not demonstrate an intent to so restrict all thirteen lots, nor does the fact that *subsequent owners* conveyed four of their six lots subject to a similar restriction. "Restrictive covenants, being in derogation of the common-law right to use land for all lawful purposes which go with title and possession, are not to be extended by implication." (Internal quotation marks omitted.) Id., 376. We therefore agree with the trial court's conclusion that "the undisputed facts demonstrate no question of fact that a uniform common plan does not exist in this case."

In summary, we conclude that no common plan of development exists in this case with respect to the Westport lots. In light of the parties' stipulation that such a conclusion is dispositive of the plaintiffs' action against the defendant, the court properly granted the defendant's motion for summary judgment and denied the plaintiffs' motion for summary judgment.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Christopher Gazzelli initially was a plaintiff in this matter but withdrew from the action. Accordingly, our references in this opinion to the plaintiffs are to Miriam and Ogilvy only.

[2] The plaintiffs filed a memorandum in opposition to the defendant's motion for summary judgment, which the court treated as a motion for summary judgment per an agreement of the parties. See also footnote 13

of this opinion.

[3] Map 3802 was not recorded in the Norwalk land records.

[4] E. Louise Bradley died without a will on April 13, 1953.

[5] Specifically, the conveyances occurred as follows: lot 6 was conveyed by deed dated July 7, 1955, to Howard W. Hare; lot 8 was conveyed by deed dated July 7, 1955, to John Cretella; lot 9 was conveyed by deed dated July 7, 1955, to Peter Milazzo and Theresa Milazzo; lot 10 was conveyed by deed dated July 12, 1955, to John Febbraio and Alice Febbraio; lot 20 was conveyed by deed dated October 20, 1955, to Mary T. Bottone and Fiore Bottone; lot 21 was conveyed by deed dated August 12, 1955, to Louis Nistico; and lot 22 was conveyed by deed dated August 11, 1955, to William Francis Cribari and Olga Elizabeth Cribari.

[6] The lots were conveyed as follows: lot 1 was conveyed by deed dated August 7, 1956, to Joseph Nazzaro and Sadie Nazzaro; lot 2 was conveyed by deed dated November 9, 1956, to Vincent Pascarelli and Catherine Pascarelli; lot 5 was conveyed by deed dated May 7, 1956, to Mariano Cairo and Carmela Cairo; and lot 7 was conveyed by deed dated May 21, 1956, to Mary Cribari.

[7] It is unclear from the record how or when these individuals acquired title to the Norwalk lots from Gershom Bradley and William Bradley.

[8] In their complaint, the plaintiffs allege that lot 3 subsequently was subdivided and made subject to the single-family house restriction per an agreement dated October 13, 1960, which was recorded in the Westport land records. With respect to lot 4, the plaintiffs allege that it "was later divided into three parcels, each developed with a one-family house, although one such house . . . currently has an accessory apartment within it."

[9] Specifically, the trial court noted that, by 2021, there were five pending cases before it, which included an administrative appeal involving a sewer extension; see *Summit Saugatuck, LLC* v. *Water Pollution Control Authority*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. CV-20-6143715-S; an administrative appeal of the 2019 denial by the Planning and Zoning Commission of the Town of Westport of applications for an affordable housing development; see *Summit Saugatuck, LLC* v. *Planning & Zoning Commission*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. CV-19-6120090-S; two appeals concerning emergency access by the defendant over a right-of-way on wetlands located in Norwalk; see *Summit Saugatuck, LLC* v. *Conservation Commission/Inland Wetland Agency*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket Nos. CV-20-6143605-S and CV-20-6143606-S; and a declaratory judgment action against the town and the state Department of Housing concerning § 8-30g. See *Summit Saugatuck, LLC* v. *Dept. of Housing*, Superior Court, judicial district of Hartford, Land Use Litigation Docket, Docket No. CV-20-6127403-S.

[10] As part of the stipulated judgment, the two Norwalk wetlands cases also were withdrawn, as well as the declaratory judgment action. See footnote 9 of this opinion.

[11] The five special defenses are as follows: (1) the plaintiffs' action was barred by laches; (2) the claim alleged in the complaint was previously litigated and barred by res judicata; (3) the plaintiffs' action was barred by the statute of limitations in General Statutes § 52-575a; (4) the plaintiffs' action was an impermissible collateral attack on the stipulated judgment rendered in the zoning action; and (5) the plaintiffs were barred from litigating their claims due to the stipulated judgment.

[12] In its memorandum of law in support of its motion for summary judgment, the defendant raised two other grounds to support its claim that it was entitled to judgment as a matter of law with respect to the plaintiffs' complaint. Specifically, the defendant also argued that the plaintiffs' action is an impermissible collateral attack on the stipulated judgment and that the plaintiffs had to prove, but could not demonstrate, irreparable harm to support the imposition of an injunction. The court, however, did not address those claims in light of the parties' stipulation that the court first had to determine the threshold issue of whether the plaintiffs have a right to enforce the single-family house restriction against the defendant, which was dependent on the existence of a common plan of development. Under the stipulation, if, as was done, the court determined that a common plan of development did not exist, the plaintiffs agreed that they had no other basis to challenge or prevent the defendant from proceeding with its development plans. In light of our agreement with the court's decision, we also need not address the additional grounds raised by the defendant in support of its motion for summary judgment.

[13] We note that, "[a]lthough the denial of a motion for summary judgment is not ordinarily a final judgment and, thus, not immediately appealable, if parties file . . . motions for summary judgment and the court grants one and denies the other, this court has jurisdiction to consider both rulings on appeal." (Internal quotation marks omitted.) *Freidheim* v. *McLaughlin*, 217 Conn. App. 767, 777 n.3, 290 A.3d 801 (2023).

[14] We note that, after the court issued its memorandum of decision finding that no common plan exists in this case, the plaintiffs filed a timely motion to reargue, which the court denied.

[15] The plaintiffs argue that the court misunderstood the legal significance of a certificate of devise in determining that no common plan exists. In making this claim, the plaintiffs take issue with the statements of the court in its memorandum of decision that lots 1 through 5, lot 7, and the Norwalk lots had been "transferred by a certificate of devise to Gershom Bradley and . . . William B. Bradley without the [single-family house] restriction," and that lots 1 and 5 "were conveyed by a certificate of devise in 1956 without any restriction." The plaintiffs argue that "certificates [of devise] are not instruments that can effectuate a conveyance of title or impose a restriction. Instead, they are merely a notice, recorded in the land records, that title has been determined to be in the heirs at law of an intestate decedent . . . ." According to the plaintiffs, "[t]he court's finding that there was a lack of substantially uniform restrictions imposed by a common grantor appears . . . to have been based on [this] misapplication of the law concerning the legal significance of a certificate of devise . . . ." Although we agree with the plaintiffs that the court misstated the legal significance of a certificate of devise, that does not impact our determination, as a matter of law, that there was no common grantor who created a common plan of development for the Westport lots.

"It is fundamental jurisprudence that title to real estate vests immediately at death in a deceased's heirs, or in devisees upon the admission of a will to probate. . . . The recording of a probate certificate of devise or descent is necessary only to perfect marketable title. That certificate furnishes evidence that the heir's or devisee's title is no longer in danger of being cut off by a probate sale to pay debts of the estate and also because it furnishes a record of who received the title. Such a probate certificate is not a muniment of title, however, but merely a guide or pointer for clarification of the record." (Internal quotation marks omitted.) *Zanoni* v. *Lynch*, 79 Conn. App. 309, 320–21, 830 A.2d 304, cert. denied, 266 Conn. 929, 837 A.2d 804 (2003).

In the present case, it was incorrect for the court to state that certain of the lots were transferred or conveyed without any restrictions pursuant to the certificate of devise. Instead, the certificate referenced by the court simply furnished evidence that Gershom Bradley and William Bradley, as the sole heirs of E. Louise Bradley, each held an undivided one-half interest in the remaining parcels of real property within the estate. Although it is noteworthy that, at the time when the certificate of devise was recorded, there was nothing in the land records showing any restrictions on those remaining lots, the certificate, not being an instrument of conveyance, did not itself effect a conveyance without the single-family house restriction. Also, to the extent that the court's misstatement implicated the Norwalk lots, it had no bearing on our analysis of whether the Westport lots, alone, were part of a common plan of development. Moreover, in our plenary review concerning whether a common plan exists for the Westport lots, we afforded the proper legal significance to the certificate of devise and did not construe it as conclusive evidence that the lots were conveyed without the single-family house restriction. Therefore, the court's misstatement has no bearing on our conclusion.

[16] The plaintiffs also argue on appeal that the court misapplied the law concerning title to land within a decedent's estate in making its determination that no common plan exists. The plaintiffs assert in their principal appellate brief that "the court erroneously [relied on] the statement in [Sherriff's] affidavit and title report that '[t]he *estate* of E. Louise Bradley aka Emma Bradley was the only entity that *held title* to all of the lots as shown on [m]ap . . . 3802.' " (Emphasis added.) According to the plaintiffs, "[t]he court's finding is not accurate and reflects a misapplication of the law because a decedent's estate does not 'hold title' to the property within the decedent's estate. A decedent's estate cannot own property because '[a]n estate is not a legal entity. . . .' Instead, '[t]itle to real property passes upon death to the heirs of the owner subject to the right of administration.' " (Citation omitted.)

The plaintiffs are correct that "[a]n estate is not a legal entity. It is neither

a natural nor artificial person, but is merely a name to indicate the sum total of the assets and liabilities of the decedent or incompetent. . . . Not having a legal existence, it can neither sue nor be sued." (Internal quotation marks omitted.) *American Tax Funding, LLC* v. *Design Land Developers of Newtown, Inc.*, 200 Conn. App. 837, 845, 240 A.3d 678 (2020); see also *Isaac* v. *Mount Sinai Hospital*, 3 Conn. App. 598, 600, 490 A.2d 1024, cert. denied, 196 Conn. 807, 494 A.2d 904 (1985). Additionally, an estate "cannot hold title to property . . . ." *Trumbull* v. *Palmer*, 104 Conn. App. 498, 503, 934 A.2d 323 (2007), cert. denied, 286 Conn. 905, 944 A.2d 981 (2008). We also agree with the plaintiffs that the statement in the report that "[t]he estate of E. Louise Bradley . . . was the only entity that held title to all of the lots as shown on [m]ap . . . 3802" is not accurate. Although the real property was part of the estate's inventory, it is clear from case law that the estate did not hold title to the real property, that, upon the death of E. Louise Bradley, the property within her estate passed to her heirs, and that the administrators of her estate also did not hold title to the real property. Nevertheless, because we exercise plenary review over this appeal, any error in the court's reliance on the language used by Sherriff does not affect our conclusion that no common grantor exists.

[17] We note, as did the trial court, that none of the deeds containing the single-family house restriction contains words of succession binding the heirs and assigns of the allegedly restricted land. "It is well settled that where a restrictive covenant contains words of succession, i.e., 'heirs and assigns,' a presumption is created that the parties intended the restrictive covenant to run with the land"; *Weeks* v. *Kramer*, 45 Conn. App. 319, 323, 696 A.2d 361 (1997), appeal dismissed, 244 Conn. 203, 707 A.2d 30 (1998) (certification improvidently granted); that is, "[t]he presence or absence of express words of succession—such as 'heirs' or 'assigns'—offers strong, though not conclusive, evidence of whether the parties intended to bind future owners of the land." *Wykeham Rise, LLC* v. *Federer*, 305 Conn. 448, 464, 52 A.3d 702 (2012).

[18] Black's Law Dictionary defines the term "estate," when used in the context of probate proceedings, to encompass the "totality of assets and liabilities of [the] decedent, including all manner of property, real and personal, choate or inchoate, corporeal or incorporeal. . . . The total property of whatever kind that is owned by a decedent prior to the distribution of that property in accordance with the terms of a will, or, when there is no will, by the laws of inheritance in the state of domicile of the decedent. It means, ordinarily, the whole of the property owned by anyone, the realty as well as the personalty." (Citation omitted.) Black's Law Dictionary (6th Ed. 1990) p. 547.

[19] The plaintiffs also claim that the court misapplied the law relevant to the factors that help negate the existence of a common plan of development. See *Abel* v. *Johnson*, supra, 340 Conn. 256. In making this claim, the plaintiffs focus on the court's application of those factors to the Norwalk lots. In light of the plaintiffs' claim on appeal that the Norwalk lots are not relevant to the issue of a common plan for the Westport lots, as well as our determination that a common plan does not exist with respect to the Westport lots, we need not address this claim, as any error is immaterial to our analysis.