

Before the
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of
ROBERT McCANDLISH, Owner of
20077 Placid Lake Terrace
Complainant

vs.

Paul Becks, President
Board of Directors
Waters Landing Association, Inc.
Respondent

Case No. 131-0
June 23, 1992

FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND ORDER OF GRANTING MOTION TO DISMISS

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, on the 8th day of June, 1992, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Complainant having presented his testimony, and the case file and the Disclosure Statement having been entered into evidence, the panel makes the following findings of fact and conclusions of law in granting the motion to dismiss the Complaint made by the Respondent at the conclusion of Complainant's case:

1. On August 19, 1992, Robert McCandlish, owner of 20077 Placid Lake Terrace, Germantown, Maryland, hereinafter the Complainant, filed a formal dispute with the Office on Common Ownership Communities. The Complainant alleged that the Waters Landing Association, Inc. Board of Directors, Governing Body of the Waters Landing Association, hereinafter the Respondent, failed to follow proper procedures in implementing the Waters Edge assessments, in violation of Article VIII, Section 9(d)(2) of the Community's Declaration. Specifically, the Complainant contends that the Respondent is unreasonably imposing Neighborhood Assessments to pay for services which are not unique to the individual neighborhoods within the Community, in violation of Article II, Sections 2, 3 and 4, and Article V, Section 2 of the Community's Declaration, and Article VII, Section 3 of the

Community's Bylaws, when the services should be funded from the Community's general assessment.

The Complainant sought an order for the Respondent to cease collection of neighborhood assessments from homeowners within the Waters Edge Neighborhood and for the Respondent to impose neighborhood assessments upon the homeowners within Waters Edge only if such assessments are to cover services exclusive to Waters Edge and in accordance with the governing documents.

The Respondent, Waters Landing Association, Inc., denied all allegations of the Complainant, and further stated that the assessments were adopted in accordance with all required procedures and were properly allocated among all unit owners.

2. The Commission took jurisdiction of this matter to allow this hearing to take place under the provisions of Section 10B-13 of the Montgomery County Code, in order that the facts could be ascertained from the parties to the Dispute.

3. On the hearing record, after the Complainant presented his case, and the evidence listed above was admitted, the Respondent moved for dismissal of the action.

4. The panel has analyzed the facts in the light most favorable to Robert McCandlish, the Complainant and the non-moving party, regarding the Motion to Dismiss.

5. The Complainant failed to produce evidence that the documents of the Waters Landing Association, Inc. and Waters Edge, a neighborhood within that Association, should be read to nullify all references to neighborhood facilities and neighborhood assessments.

6. The Complainant failed to show that the Waters Edge neighborhood members were charged under their neighborhood assessment for any services or facilities which were not received by the members of the neighborhood of Waters Edge.

7. The Complainant failed to show any lack of notice or any other failure on the part of the Waters Landing Association, Inc. to follow appropriate procedures in creating the assessments binding on owners of units in the Waters Edge neighborhood.

8. The Supplemental Declaration of Covenants and Restrictions of the Town of Waters Edge contains a broader statement than that contained in the Declaration with regard to the assessments which may be made against members of the Waters Edge neighborhood in that it states: "Each lot within the Subject Property shall be deemed subject to a covenant running with the land requiring the owner of each Lot in the Subject Property to pay a pro rata share reflecting a fair and equitable allocation of financial responsibilities for facilities or services to be used or enjoyed by owners of the Subject Property as distinguished from the owners of other property subject to the Declaration."

9. The panel finds that the assessments which were charged by Waters Landing Association, Inc. against the Waters Edge neighborhood meet the definition contained in the Supplemental Declaration of Covenants and Restrictions.

10. Section 11B-105(e)(1) of the Annotated Code of Maryland in the Homeowners Association Act allows the vendor to rely on documents in the depository. The Disclosure Statement which is found in the depository contains the following language: "The Neighborhood Assessments cover the costs of maintaining, repairing, and replacing any Common Area exclusively serving or benefitting a Neighborhood and the cost of any services of Waters Landing Association primarily benefitting such Neighborhood. It is anticipated that a Neighborhood Assessment for the Towns at Waters Edge will include, but may not be limited to, costs related to trash removal, snow removal, private parking lot and street repair and maintenance, tot lot maintenance, street lighting, tree maintenance and replacement, and maintenance for certain benches."

11. The panel finds that the provisions contained in this Disclosure Statement are matters of public record and are binding upon the Complainant and the Respondent, and allow for the assessments which are the subject of the Complaint at issue here.

12. Considering all of the facts presented by the Complainant as being true, and all evidence in the light most favorable to the Complainant, we find evidence that the Board of Directors acted within its authority under the Association's documents, in good faith, and with adequate information, including but not limited to, reliance on counsel's opinion, in what it considered to be in the best interests of the Association, and in accordance with its interpretation of the Association documents. The evidence does not show any bad faith, fraud or incompetence on the part of the Respondent, and, therefore, the panel will not substitute its judgment for that of the Association's Board of Directors.


THEREFORE, it is hereby ORDERED that the Motion to Dismiss made by Respondent, Waters Landing Association, Inc. is hereby GRANTED.

It is further ORDERED that the motion for attorney's fees made by the Respondent under 10B-13(d) is DENIED in that the panel finds no factual basis to award attorney's fees.

The foregoing was concurred in by panel members Axelson, Cohen and Mechak.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.

June 23, 1992
Date


Jeffrey M. Axelson
Panel Chairperson
Commission on Common Ownership
Communities