

**IN THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES  
MONTGOMERY COUNTY, MARYLAND**

<b>RANDALL GLENN MILLER</b>	:	
	:	
<b>Complainant</b>	:	
	:	
<b>vs.</b>	:	<b>Case No. 379-0</b>
	:	
<b>MANCHESTER FARMS COMMUNITY ASSOCIATION, INC.</b>	:	
	:	
<b>Respondent</b>	:	

**DECISION AND ORDER**

The above case came before the Commission on Common ownership Communities for Montgomery County, Maryland for hearing on April 22, 1998 pursuant to Sections 10B-5(i), 10B-9(a), and 10B-11(f), 10B-12 and 10B-13 of the Montgomery County Code 1994, as amended, on a Complaint filed by Randall Glenn Miller on November 6, 1997. Based upon the testimony and evidence of the record, the panel makes the following findings of fact:

**FINDINGS OF FACT**

1. Manchester Farm Community Association, Inc., (hereinafter "Manchester") is a housing community located in Germantown, Montgomery County, Maryland whose members are record owners of certain properties located therein.
2. The Association is governed by a Declaration of Covenants, Conditions and Restrictions recorded among the land records in Montgomery County.
3. Article IX, Section 9.02(d) of the Declaration of Covenants, Conditions and Restrictions provides in pertinent part:

**“(d) except for parking within garages, and except as herein elsewhere provided, no commercial truck or vehicle over one-half (1/2) - ton capacity, junk vehicle, truck of any kind (as defined by the Maryland Department of Motor Vehicles and/or by common usage or practice) over one-half (1/2) ton capacity, unregistered or inoperable motor vehicle, (which shall include without limitation, any vehicle which would not pass applicable state inspection criteria), trailer recreational**

vehicle, house trailer, boat or other similar machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Area and any facilities situated thereon) shall be kept upon the Property nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Covenant Committee, provide and maintain a suitable area designated for the parking of such vehicles or the like."

4. The Complainant and his wife purchased a home within Manchester Farms at 14013 Gallop Terrace, Germantown, Maryland on or prior to August 12, 1997.

5. Mr. Miller is gainfully employed with a termite and pest control company who provides Mr. Miller with a vehicle to perform the essential functions of his job. The vehicle in question, (a photograph is accepted in evidence by the panel) was described as being a truck for commercial purposes of less than one-half (1/2) ton and which Mr. Miller uses in connection with his employer's pest extermination business.

6. On or about August 12, 1997, Mr. Miller received a notice from the General Manager of Manchester Farms Community Association, Inc., advising the Complainant that he was in violation of the Covenants and Rules and Regulations for parking a commercial truck on common area parking lots. Specifically the notice referenced Section 9.02(d) "Prohibited Uses and Nuisances".

7. Complainant asked for a hearing before the Manchester Board on or about August 14, 1997. Following the hearing, the Board notified complainant on or about October 23, 1997 he would be in violation of Section 902(d) if he continued to park his truck on Association common property. On November 6, 1998 Complainant promptly filed a complaint with this Commission. The Association agreed to hold in abeyance any imposition of sanctions or fines against Complainant pending the outcome this hearing.

8. At the Commission hearing, Complainant produced evidence that prior to his purchasing the home he received and read the documents and specifically read Section 9.02(d) and believed upon reading that section that his vehicle was not within the prohibition described by the actual language contained in that section. Evidence was further received that upon his reliance of that language, Complainant proceeded to purchase the home and parked his vehicle in the common area parking lot.

9. The Panel finds as a matter of fact that Complainant's vehicle is less than one-half (1/2) ton.

10. The Panel finds as a fact that the term "commercial vehicle" and "commercial truck" are not defined within the Declaration of Covenants, Conditions and Restrictions of Manchester.

11. The Respondent interprets the language "no commercial truck or vehicle over one-half (1/2) ton capacity", to mean that any commercial truck or commercial vehicle over one-half (1/2) ton capacity are subject to the restrictions of this section.

12. Respondent acknowledged during testimony that the language was somewhat ambiguous and possibly could be read with two different meanings as to whether the language was intended to exclude only commercial trucks over one-half (1/2) ton or simply to exclude all commercial trucks of any size or capacity. The Association had always interpreted the language to prohibit all "commercial trucks" of any size and weight.

13. The Panel finds as a fact the vehicle in question is a commercial truck.

#### CONCLUSIONS OF LAW

Upon consideration of all of the evidence and testimony presented at the hearing, the Panel makes the following conclusions of law on the issues presented:

The Panel believes the language in Article IX, Section 9.02(d), viz,

*"except for parking within garages, and except as herein elsewhere provided, no commercial truck or vehicle over one-half (1/2) ton capacity, junk vehicle, truck of any kind (as defined by the Maryland Department of Motor Vehicles and/or by common usage and practice) over one-half (1/2) ton capacity...."*

as written is ambiguous as to whether it states that all commercial trucks regardless of size and weight are to be excluded. The panel encourages the Respondent to amended the language of this section at the earliest possible time to remove any ambiguity and further confusion.

One interpretation of the provision would preclude any commercial truck over one-half (1/2) ton including any other vehicle over one-half (1/2) ton from being parked on the common property. Another reasonable reading and interpretation of the provision would be that the language prohibits the parking on the common area any commercial truck (regardless of its

weight or size) as well as vehicles over one-half (1/2) ton.

Although the Respondent argues that "commercial trucks" are easily identifiable by such reason as appearance, commercial advertising or other written language displayed on the vehicle and/or other business related paraphernalia mounted permanently or temporarily on the vehicle (such as ladders and hoses), nowhere in the Declaration of Covenants, Conditions and Restrictions, is the term "commercial truck" defined.

The complainant raises the issue that the Maryland Motor Vehicle Law as referenced in the Declaration of Covenants, Conditions and Restrictions defines a "commercial vehicle" as one used in transport of passengers or property with a gross weight of 6,000 lbs, designed to carry more than 16 passengers or used to transport hazardous materials. The question here however, is to decide the true intent of the restrictions set forth in the Associations Declaration of Covenants, Conditions and Restrictions.

As with condominium associations, a HOA's Declaration of Covenants, Conditions and Restrictions are in the nature of contractual obligations that run with the land<sup>1</sup> and thus are not specifically penal in nature. (If these "restrictions" were indeed considered to be "penal", another and more narrow reading would be applied to construe the language of restrictive covenants)<sup>2</sup>. Restrictive covenants are meant to govern the use and exercise of association membership with respect to such matters as parking and use of the common area. The burden of proof of a violation of a restrictive covenant remains upon the association.

The vehicle parking restriction adopted by Manchester can thus be construed as a covenant between the owner and the association whereby the homeowner agrees to adhere to the reasonable restrictions in the use of common areas. Although the restriction at issue here, proscribing commercial vehicle parking on the common area, is susceptible to more than one

1

Real Property Article Section 14-201(b) says "contract" means a real covenant running with the land or a contract recorded among the land records of a county or Baltimore City.

2

Maryland Courts have long held a penal statute must inform those who are subject to it what conduct on their part would be penalized. "Brewster v. Maryland Securities Com'r, 76 Md. App. 722 (Md.App.1988)). See also Connally v. General Constr. Co., 269 U.S. 385, 391. (statute which either forbids or requires the doing of terms so vague that men of common intelligence must necessarily guess its meaning and differ as to its application, violates the first essential of due process of law). Also, Maryland law has consistently followed the principle that unlawful conduct subjecting one to penal consequences must be clearly and unambiguously written; Bowers v. State of Maryland, 283 Md. 115, 389 A.2d 341 (1978) (must explicitly inform those who are subject to it what conduct on their part will render them liable to its penalties.)

possible reading, the nature of the restriction must be viewed in the light of what was reasonably intended when the language was adopted. In this regard, the Maryland Courts have provided some guidance to interpret restrictive language found in association's governing documents. The Maryland Courts instruct that the endeavor of interpreting these documents should be to ascertain the real purpose and intention and to do this from the surrounding circumstances at the time of the creation of the restriction *as well as* considering the literal reading of the words themselves. Belview Constr. Co. v. RugbyHall Community Ass'n, 321 Md. 152 (1990); Sea Watch Stores Limited Liability Company v. Council of Unit Owners of Sea Watch Condominium, 115 Md. App 5 at 30, 691 A.2d 750 (1997). To arrive at the real intention, the words used should be taken in their ordinary and popular sense unless the words have acquired a peculiar or special meaning in respect to the particular subject-matter. Markey v. Wolf, 92 Md. App 137 (1992) (citations omitted).

The question raised in the instant matter is whether the language, in light of all of the circumstances, is so ambiguous as to make the restriction unenforceable. This question is to be viewed by a standard of reasonableness. An objective reading of section 902(d) leaves no doubt that commercial vehicular parking on common areas of the Association, except for those few exceptions enumerated therein, is to be completely discouraged. It therefore does not follow that the Association intended to allow any commercial truck under 1/2 ton to be parked in the common area while prohibiting all other commercial vehicles of any other description or size which do not fall within any exception from parking therein. Moreover, an entitlement to parking or restriction of it is more akin to a privilege than an inherent right to the use of specific property. In Belview Constr. Co. v. RugbyHall Community Ass'n, *supra*, as cited in Sea Watch Stores Limited Liability Company, the Court said "...The rule of strict construction should not be employed... to defeat a restrictive covenant that is clear on its face, *or is clear when considered in light of the surrounding circumstances.*" (emphasis original).

Thus, from the testimony adduced at the hearing it is clear the Association never envisioned the parking of commercial trucks of any kind on the common areas. Indeed, one reading of the language says so specifically. It is only the possibility of another reading of the language of section 902(d) that raises an issue of whether there was an intent by the Association to allow for "some" parking of commercial trucks in the Association's common area parking spaces. It is clear, upon reviewing the circumstances as a whole, that no such intention was meant nor had there been any evidence that such was the policy or practice of the Association. It therefore follows that the language of section 902(d) prohibits the parking of the complainant's truck in the Association's common area parking spaces as had been done by the Complainant.

As a consequence, the Association is entitled to enforce against the Complainant Article IX Section 9.02(d) and any violations or continuing violation of the Association's Declaration of Covenants, Conditions and Restrictions.

## ORDER

In view of the foregoing, and based upon the evidence of record, it is, on this 2nd day of September, 1998, hereby ORDERED by the Commission Panel that:

1. That the Complainant not be afforded the relief requested in the Complaint;
2. That the Respondent, Association, may enforce its Declaration of Covenants, Conditions and Restrictions to preclude the parking of any commercial truck on Association Property;
3. That the Respondent take necessary steps to remove the existing ambiguity of Article IX, Section 9.02(d) as soon as feasible.
4. The foregoing was concurred in by Panel Members Glancy, Skobel and Hickey.
5. 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 the Maryland Rules of Procedure governing administrative appeals.

BY:

  
William John Hickey, Panel Chairman  
Commission on Common Ownership Communities