

COMMISSION ON COMMON OWNERSHIP COMMUNITIES

BETH VERCHINSKI,

*

Complainant

*

v.

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**Case No. 57-10
June 22, 2011**

**PLYMOUTH WOODS
CONDOMINIUM ASSOCIATION,**

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Respondent

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MEMORANDUM DECISION AND ORDER

On March 15, 2011, the above-captioned case was heard by a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended.

The duly appointed Hearing Panel now having considered the testimony and evidence presented, finds, determines and orders as follows:

Background

This action was filed by homeowner Beth Verchinski (“Complainant”) against her Association, Plymouth Woods Condominium Association (“Respondent”) concerning the placement of new air conditioning equipment for her unit. In her Complaint, the Complainant alleges that the Respondent does not have the authority to prohibit her proposed installation of an air conditioning unit outside of her unit on the common elements.

Pursuant to Section 10B-13 of the Montgomery County Code, the Hearing Panel assigned to this dispute held a public hearing and received testimony from the Complainant and from witness Paul Verchinski, who is the Complainant's father and a civil engineer, and on behalf of the Respondent from Ralph Caudle, who is its current Property Manager, and from its President D. Fales. The Hearing Panel also admitted numerous documents and photographs into evidence from the parties. These documents were duly considered by the Panel.

Findings of Fact

Based on the testimony and evidence received, the Hearing Panel makes the following Findings of Fact related to the claims of Complainant:

1. The Complainant is the owner of a unit within the Plymouth Woods Condominium and as such she is a member of the Plymouth Woods Condominium Association. The Plymouth Woods Condominium Association, in turn, is a condominium regime whose covenants are filed in the land records of Montgomery County, Maryland and it is a condominium within the meaning of the Maryland Condominium Act, Title 11 of the Real Property Article of the Code of Maryland.
2. In 2005, the Complainant purchased a top floor condominium unit in the Plymouth Woods Condominium. The Complainant's unit has a closet space in which her air conditioning unit is located.
3. In or about 2010, the Complainant sought to replace her air conditioning unit. As part of this replacement process, the Complainant

obtained proposals from several different contractors. At least one such contractor represented to Complainant that a new air conditioning unit could be placed inside her unit in the designated air conditioning closet space. Other contractors submitted proposals placing the air conditioning unit outside of the unit on the common elements.

4. After evaluating the various proposals, the Complainant asked permission to install a new air conditioning unit outside of her unit on the common elements.

5. The Respondent operates pursuant to the terms of the Maryland Condominium Act, Section 11-100, et seq. of the Real Property Article of the Code of Maryland, and within the terms of its Rules, Bylaws and Declaration ("Governing Documents"), which are binding on both the Respondent and Complainant.

6. Respondent's Governing Documents contain various approval requirements for exterior installations by a unit owner. Specifically, Article XI of the Respondent's Bylaws requires that any new installations to a unit or to the common elements be reviewed and approved by an Architectural Control Committee or the Board of Directors, Article X, Section 3(b) of the Bylaws provides that nothing shall be stored upon any common element without the approval of the Board of Directors, and Section 10(a) of the Respondent's Rules states that [n]o apartment air conditioning unit (including central units) may be placed outside the exterior walls of an apartment building, without the prior approval of the Board of Directors."

The Respondent has adopted a form, known as a “Property Improvement Request Form”, for use by its unit owners in requesting approval of a modification.

7. On June 5, 2010, the Complainant submitted to the Respondent a completed Property Improvement Request Form seeking to install an air conditioning unit outside of her unit on the common elements. As part of this installation, the Complainant proposed to place the air conditioning unit outside of a ground floor unit and run a Freon line over the common element exterior walls to reach the Complainant’s unit.

8. At its meeting on June 9, 2010, the Respondent’s Board of Directors considered the Complainant’s Request Form to install a new air conditioning unit on the common elements, and voted to deny the request. The testimony and evidence presented reflected that the Board denied the Complainant’s request on various grounds including aesthetics, running of a Freon line over the common element walls, noise generated outside of ground floor units, and precedent in other units wanting to install items on the common elements.

9. The testimony presented by the Respondent also reflected: that there were approximately 179 units in the Plymouth Woods Condominium with compressors similar to that of Complainant, and that there is at this time at least one air conditioning compressor readily available which can be installed inside the Complainant’s unit that will fit the space used by the current air conditioning unit.

10. The Respondent also presented testimony and evidence to distinguish and address the current existence of air conditioning units on the common elements. Specifically, the Respondent testified that those units with air conditioning units currently on the common elements are ground floor units with a compressor right outside the owner's unit window. Based on their locations immediately adjacent to the units they serve, these current outside placements did not have the same potential to disturb other unit residents and also did not require the running of a Freon line over the common element walls. Notwithstanding, the distinguishing characteristics of these outside air conditioning units, the Respondent testified that it did not have a record of approval for any of these common element air conditioning unit installations and had commenced, albeit recently, enforcement action to address them.

Conclusions of Law

1. Our review of the decisions of a board of directors denying an owner's application to make an architectural change is governed by *Kirkley v. Seipelt*, 212 Md. 127 (1956), in which the Court of Appeals held that "any refusal to approve the external design or location [by the association] would have to be based on a reason that bears some relation to the other buildings or the general plan of development; and this refusal would have to be a reasonable determination made in good faith, and not high-handed, whimsical or captious in manner." 212 Md. at 133. Moreover, the Court held that it would uphold such decisions even if there were no

specific written rules on the matter being regulated so long as the association was acting to preserve an overall architectural plan, 212 Md. at 132. *See also, Colandrea v. Wilde Lake Community Association*, 761 A.2d 899 (Md. 2000) (association's decision to deny application for group home upheld on the basis of the board's consideration of legitimate concerns over the impact of such a facility on residents of the surrounding neighborhood).

2. Based on the foregoing facts and the requirements of the Governing Documents, the Panel finds that:

- a) the Respondent's Board of Directors is charged with the authority for approval of exterior installations, and specifically, the installation of a new air conditioning unit on the common elements as set forth in the Complainant's Request Form, and
- b) the Respondent's Board of Directors had a reasonable basis on which it exercised such authority to deny the Complainant's request for installation of a new air conditioning unit outside of her unit on the common elements.

Order

In view of the foregoing, and based upon the record in this case, it is this 22nd day of June, 2011 by the Commission on Common Ownership Communities,

ORDERED that the Complainant's Complaint and request for relief against the Respondent are DENIED.

The foregoing was concurred in by panel members Richard Brandes and Bruce Fonoroff.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after the date of this Order, pursuant to the Maryland Rules and Procedures governing administrative appeals.

Julianne E. Dymowski, Panel Chair
Montgomery County Commission on
Common Ownership Communities