

MONTGOMERY COUNTY, STATE OF MARYLAND

Maureen Gallagher
13681 Winterspoon Lane
Germantown, MD 20874

:
: COMMISSION ON COMMON
: OWNERSHIP COMMUNITIES

Complainant

:
: Case No. 05-771-0

vs.

:
: Panel Hearing Date: December 8, 2005
: Decision Issued:

Willow Cove Manor Condominium
c/o Vanguard Management
P.O. Box 39
Germantown, MD 20875

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Respondent

Panel Chair Memorandum By: John F. McCabe, Jr. :

MEMORANDUM DECISION AND ORDER

The above captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on December 8, 2005, pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record, and finds, determines and orders as follows:

BACKGROUND

This is a complaint filed on May 5, 2005 by a unit owner in a condominium against her condominium. The unit owner seeks an order requiring the condominium to reimburse her in the amount of \$2,400.00 for the costs she paid to repair a broken water supply line serving only her unit. The condominium’s position is that the water supply line is, by definition, a part of the unit and therefore the responsibility to repair and maintain it lies solely with the unit owner.

FINDINGS OF FACT

1. The Complainant lives in a townhouse condominium unit. The water supply line to that unit was a one inch polybutylene pipe line. The unit was constructed in approximately 1988. Complainant moved into the unit in 1993.

2. The water line is located underground in the common elements up to the point where it connects with Complainant's unit.

3. Complainant's water line broke on or about January 30, 2005. Complainant had the water line repaired shortly thereafter for a cost of \$2,400.00.

4. Complainant presented as a witness Gary Hunter, a plumber who is employed by Gaithersburg Plumbing, Inc., the company which repaired Complainant's water line in February 2005. Mr. Hunter has been a plumber for 15 years. Mr. Hunter repaired Complainant's water line. Mr. Hunter testified that the method by which he repaired the water line was to access the pipe at the connection at one end and pull a new pipe through, inside the old pipe. He stated that he found tree roots in the water line when he repaired the pipe. He did not dig up the pipe to determine the conditions at the point where the pipe broke. Mr. Hunter also testified that the water line in question serves only the Complainant's property.

5. With regard to the type of pipe serving Complainant's property, polybutylene, Mr. Hunter stated that he was very familiar with this material in pipes. He testified that the normal

life for a polybutylene pipe is no more than 20 years, even when there is no pressure on it from roots or other sources. Because of the nature of the repair, bringing a new pipe through the old pipe without excavating, Mr. Hunter could not determine where the break occurred or whether there were roots on the water line at the break that were pressuring the water line.

6. There was a tree over the water line in the common elements at one time. The property manager for the Respondent, Annie Geralis, testified, and Respondent's Exhibit 5 showed, that the tree in question was removed on or about June 10, 2004. The stump was apparently not ground and the roots were not removed at that time. The landscape service which did the work also advised that pruning tree roots is not a service that it provides or that is typically provided in the industry. December 7, 2005 letter from D & A Dunlevy Landscapers, Inc. to Betty Hileman, Respondent's Exhibit 5.

7. Ms. Geralis also testified that she has been a manager for the property for approximately three years. She stated that the tree involved, to the best of her knowledge, was a developer installed tree, which would mean it was planted some time at or prior to 1988. Ms. Geralis further testified that based upon her inspection of the records for the condominium and upon her personal knowledge, the condominium had never received notice that the tree in question was damaging the Complainant's pipe, either before or after it was removed in June, 2004.

8. Ms. Geralis testified that other unit owners in Willow Cove Manor Condominium have had water service lines break and that the policy of the condominium has

consistently been that the homeowner was responsible for the repairs. The pipes which are breaking are generally the polybutylene pipes, which are the original water service line pipes used in the 1980's.

CONCLUSIONS OF LAW

1. The water service line pipe in question is by definition under the Declaration for Willow Cove Manor Condominium a part of the Complainant's unit, since it is designated to serve only that unit. Declaration, Article I, Section 7.

2. Under the By-laws of Willow Cove Manor Condominium, Article V, Section 13(b) the unit owner is responsible for the repair and maintenance of his/her unit.

3. While the Respondent condominium may have known for some time that the polybutylene water service pipes are susceptible to breakage, it was never on notice that anything that the condominium did or failed to do was causing those breaks to occur or to occur prematurely. The polybutylene pipe is apparently a pipe which has a limited life and the Complainant's pipe was in the last stages of that life.

4. The Panel finds that the limited facts of this case do not give rise to a duty on the part of the condominium to remove trees and/or tree roots that may interfere with water supply lines. The Complainant did not establish that any action or inaction on the part of the Respondent condominium was the direct proximate cause of the break in her water supply line.

5. It would be unreasonable to require the condominium to remove all trees and all

roots which may interfere in some way with a water or sewer line, when there is no notice or reason to believe that such is actually occurring. This is particularly true where the plantings are original, developer installed plantings.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is as of the decision issued date set forth on the first page of this Order

ORDERED:

1. The complaint is dismissed.
2. The Respondent condominium is urged to consider what notice, if any, it might afford to its unit owners regarding the possible issues with the polybutylene pipes supplying their units. The Panel however does not place any burden upon the condominium other than to consider advising its unit owners that this situation potentially exists.

Panel Members Jeffrey A. Kivitz and Antoinette Negro concurred in the foregoing.

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 of this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.

_____ John F. McCabe, Jr., Panel Chair