

**Before the  
Commission on Common Ownership Communities  
Montgomery County, Maryland**

In the Matter of:

**Greencastle Lakes Community Association**

Complainant,

v.

**Kimberly Davis**

Respondent

Case No. 11-06  
April 10, 2008

**DECISION AND ORDER**

The above-entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and arguments on January 23, 2008, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code. The hearing panel has considered the testimony and evidence presented, and finds, determines, and orders as follows:

**Background**

Greencastle Lakes Community Association (Complainant) filed a complaint with the Commission on Common Ownership Communities on November 9, 2005. Complainant alleged:

1. The residential unit owned by Kimberly Davis (Respondent) and located at 3538 Childress Terrace, Burtonsville, Maryland, is under the authority of Complainant to “require any person to take any action, or not take any action, involving a unit.”
2. Respondent installed a shed without Complainant’s approval.
3. Respondent’s shed does not comply with the Architectural and Environmental Review Committee (AERC) guidelines.

**Findings of Fact**

Complainant is a homeowners association established pursuant to the Maryland Homeowners Association Act (Title 11B of the Real Property Article of the Code of Maryland) whose governing documents are recorded in the land records of Montgomery County, Maryland, and which constitute covenants running with the land and affecting all lots within that association.

Respondent is the owner of a lot governed by the Complainant's governing documents.

Respondent and her husband were properly notified by the Commission of the filing of this dispute and of the hearing date. The original complaint was filed only against Thomas Davis. However, Complainant requested that the complaint be amended to add Kimberly Davis as the Respondent and remove Thomas Davis because Thomas Davis's name no longer appeared on the deed for the property. The Commission on Common Ownership Communities contacted Respondent to inform her of the pending hearing. She did not respond, but the Panel determined that she had been properly notified and afforded the opportunity to respond. The Panel therefore decided to proceed with the hearing as scheduled. Respondent did appear at the hearing and provided testimony.

Complainant stated that Respondent had installed a shed on their property without Complainant's approval and that the shed did not meet AERC guidelines because it was too large (height and width), siding with the wrong material, and the wrong color. Respondent did not refute these claims or deny that her husband constructed a shed on the lot without the approval of the Complainant, which is a violation of the Complainant's governing documents.

Complainant's representative, a member of the association's board of directors and a member of the AERC, testified that Respondent had not submitted the necessary application for the shed. Complainant's representative further testified that he notified Respondent of the violation by letter in November 2003, February 2004, March 2004, and July 2004. Previous Respondent Thomas Davis eventually responded and requested mediation. Complainant's representative stated that mediation with Mr. Davis occurred in April 2006, and Mr. Davis agreed to apply to the AERC for approval of the shed. Mr. Davis filed the application with the AERC and was denied approval. He appealed to the board of directors, and the board denied the appeal.

Complainant's representative stated that he inspected Respondent's unit and determined that the shed is over six feet tall, approximately eight feet wide, and is covered in siding that does not match Respondent's unit, all of which are violations.

Complainant provided photographs of Respondent's shed showing that the shed's siding does not match Respondent's unit's siding.

Complainant concluded its case by requesting attorney's fees.

Respondent testified that she did not become aware of the alleged violation related to the shed until she received documents from Thomas Davis in their divorce agreement. Respondent further testified that she had hired a contractor who had altered the shed dimensions to bring it within AERC guidelines. She also stated that she had purchased the paint and shingles required to bring the shed completely within AERC guidelines and planned to complete the work by March 31, 2008. Respondent further stated that she is the current owner of the unit and is responsible for correcting any violations. She stated that she was not present at the mediation and did not become aware of the alleged violation until May 2006.

## Conclusions of Law

### Architectural Violation

The Panel agrees with Complainant that Respondent is in violation of Article VII of Complainant's Declaration regarding architectural restrictions. According to Article VII, Section 1 of Complainant's Declaration, "Architectural and Environmental Review Committee," unit owners shall not make "exterior addition to or change ... or other alteration thereupon ... until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change ... shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural and Environmental Review Committee." Complainant stated that the AERC application for the shed was denied, and a subsequent appeal was denied as well. Respondent agreed that she is responsible for correcting any architectural violations associated with the shed and stated that she is in the process of doing so. Therefore, the Panel concludes that Respondent is responsible for correcting the architectural violation associated with the shed.

### Attorney Fees

Under Section 10B-13(d) of the Montgomery County Code, attorney fees may be awarded against the losing party if the Panel finds that the party has maintained a frivolous dispute, unreasonably refused to accept mediation of a dispute, or substantially delayed or hindered the dispute resolution process without good cause. This section also allows the hearing panel to award attorney's fees when "an association document so requires and the award is reasonable under the circumstances."

The Panel agrees that the Respondent should be compelled to bear some of the financial burden incurred in the pursuit of this action. The alleged violation was first noted in November 2003, and while Respondent stated that she was not aware of the alleged violation until her divorce proceedings in 2006, she has lived in the unit since 1986. Further, Respondent did not respond to the summons sent by the Commission even though she had taken steps to correct the violation. This indicates that she was aware of the issue and may have been able to settle the matter before the hearing if she had communicated with Complainant. The Panel believes this represents a substantial delay or hindrance of the dispute resolution process without good cause.

Furthermore, Section V of the "Standards and Guidelines" of the Complainant's AERC explicitly state that "Any costs for [Complainant's] legal action during pursuit of its right to remove or correct violations shall be charged to the affected homeowner following resolution of the action" (Commission Exhibit 1 at p.50). The Panel concludes that an award of fees is proper under both parts of Section 10B-13(d).

However, the Panel believes the amount of \$2,112.00 is excessive for the effort required on the part of Complainant. For a simple hearing such as this, the Panel's experience with

similar cases has been that a reasonable attorney fee is approximately \$150 to \$200 per hour, as opposed to \$230 per hour claimed by Complainant's counsel, and substantial preparation is not required. The alleged violation was straightforward, and the issues were essentially uncontested. Further, the hearing was approximately one hour long, where Complainant's attorney is claiming 2.5 hours for "Attendance at CCOC hearing." Finally, including in the requested attorney's fees the time spent preparing an affidavit to document requested attorney's fees is inappropriate.

### **Order**

Based on the evidence of record and the reasons stated above, it is ordered that within sixty (60) days from the date of this decision, Respondent must correct her architectural violation by altering the shed on her lot to meet community requirements or by removing the shed completely. Respondent must also reimburse Complainant \$500.00 in reasonable attorney's fees.

If Respondent fails to pay the attorney fee reimbursement in full within the 60-day period and on time, Complainant may add the amount of this award to the Respondent's account and may proceed to collect it in the same way as authorized by State law and its governing documents to collect any other unpaid debts, including but not limited to the imposition of interest charges, liens, and an action at law to collect a debt or to initiate foreclosure.

If Respondent fails to meet the requirements of this order, Complainant may pursue any remedies available to it, including (to the extent permitted by Complainant's governing documents) correcting the architectural violation in the least expensive manner that is agreed to by both parties and placing a lien for such services on Respondent's property subject to reimbursement for the associated costs and attorney's fees.

Commissioners Allen Farrar and Stephen Maloney concurred in this decision.

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, under the Maryland Rules of Procedure.

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Douglas Shontz, Panel Chair  
Commission on Common Ownership Communities