

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

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DEPARTMENT OF HOUSING  
& COMMUNITY DEVELOPMENT

In the Matter of :  
LYNDA ECKARD, et al. Owners :  
3205 University Blvd., T-1 :  
Kensington, MD 20895 :  
Complainants :

vs. :

Case No. 219-0  
April 19, 1995

William Breslyn, President :  
Board of Directors :  
Montgomery Century Condominium :  
3203 University Blvd., 11 :  
Kensington, MD 20895 :  
Respondent :

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, on the 19th day of April, 1995, 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 duly appointed hearing panel, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background

1. The Respondent, Montgomery Century Condominium, Inc. (hereinafter "Condominium") is a mid-rise brick facade condominium consisting of 163 units located in Montgomery County, Maryland. The Complainants are sixteen (16) unit owners in said condominium.

2. Beginning in 1978, evidence was noted of water leaks into various units of the Condominium resulting in damage to the interior of the units and damage to common elements. The leaks appeared to originate near balconies, windows and sliding glass doors. The water passed through the common elements of the building structural components (including building supports and the insulation) before entering the units.

3. Some of the owners and the Condominium have taken various remedial actions to stop water from entering the units,

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but such actions have not resulted in the elimination of the leaks.

4. Actions by the unit owners have included replacement of windows and recaulking, and actions by the Condominium have been limited to minor maintenance, caulking, and case by case remediation.

5. No expert engineering or consultant's report had been requested by the Condominium and no comprehensive investigative services had been ordered by the Condominium in an attempt to determine the causation of the various leaks until 1995, when a building contractor was requested to examine the leak causation.

Findings of Fact

6. The Master Deed of the Condominium in Article I, Section 1(a) defines the word "unit" or "condominium unit" as follows:

"Unit" or "condominium unit" means an enclosed space consisting of one or more rooms occupying all or part of one or more floors in buildings of one or more floors or stories provided, always, that any such unit has direct exit to a thoroughfare or to a common element leading to a thoroughfare. The lower vertical boundary of any such condominium unit in the project is a horizontal plane or planes, the elevation of which coincides with the elevation of the upper surface of the unfinished subfloor thereof extended to intersect the lateral or perimetrical boundaries thereof. The upper vertical boundary of any such condominium unit is a horizontal plane or planes, the elevation of which coincides with the lower surface of the unfinished ceiling thereof, extended to intersect the lateral or perimetrical boundaries thereof. The lateral or perimetrical boundaries of any such condominium unit are vertical planes which coincide with the unexposed surfaces of the perimeter walls thereof, to include the perimeter dry-wall, windows and doors thereof, extended to intersect the upper and lower vertical boundaries thereof and to intersect the other lateral or perimetrical boundaries of the condominium unit. Mechanical equipment and appurtenances located within any unit and designated to serve only that unit, such as appliances, range hoods, outlets, electrical receptacles and outlets, fixtures, and the like, shall be considered a part of the condominium unit, except that heating and air conditioning units shall be common elements and not a part of the unit.

7. The By-laws of Montgomery Century Condominium, Inc. in Article VIII entitled "Management", provides in Section 4:

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Section 1. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, operate and maintain the condominium project and, for the benefit of the condominium units and the owners thereof, shall enforce the provisions hereof and shall pay out of the common expense fund hereinelsewhere provided for, the following:

\* \* \*

(e) The cost of painting, maintaining, replacing, repairing, and landscaping the general common elements and such furnishings and equipment for the common elements as the Board of Directors shall determine are necessary and proper and the Board of Directors shall have the exclusive right and duty to acquire the same; provided, however, that nothing herein contained shall require the Association to paint, repair or otherwise maintain the interior of any condominium unit or any fixtures, appliances or equipment located therein.

\* \* \*

Section 3. Duty to Maintain. Except for maintenance requirements herein imposed by the Association, if any, the owner of any condominium unit shall, at his own expense, maintain the interior of his condominium unit and any and all equipment, appliances or fixtures therein situate, including "through-wall" installation and air conditioning compressors and pads located outside any condominium unit but designed to serve only a single condominium unit in the project) and its other appurtenances (including, without limitation, any balcony, terrace or patio appurtenant to such condominium unit and designated on the Record Plat or otherwise as a limited common element reserved for the exclusive use by the owner of a particular condominium unit), in good order condition and repair, free and clear of ice and snow, and in a clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his condominium unit and all such appurtenances. In addition to the foregoing, the owner of any condominium unit, shall, at his own expense, maintain, repair or replace any plumbing and electrical fixtures, water heaters, filters, fireplaces, plenums, heating and air-conditioning equipment, lighting fixtures, refrigerators, freezers, dishwashers, clothes washers, clothes dryers, meters, disposals, ranges, range hoods, and/or other equipment that may be located within such condominium unit, including "through-wall" installations and air-conditioning compressors and pads located outside any condominium unit but designated to serve only a single condominium unit in the project. The owner of any condominium unit shall also, at his own expense, keep any other limited common elements which may be appurtenant to such condominium unit and reserved for his exclusive use in a clean, orderly and sanitary condition.

Section 4. Windows and Doors. Unless the Board of Directors shall resolve that the exterior surfaces of all windows and/or entry doors of the condominium project shall be cleaned and maintained at

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expense in accordance with a schedule determined by the Board of Directors, the owner of any condominium unit shall, at his own expense, clean, repair and maintain both the interior and exterior surfaces of all windows of the condominium unit and shall at his expense, clean and maintain both the interior and exterior glass surfaces of all entry doors of the condominium unit, including garage doors and including interior and exterior surfaces of any door leading to any balcony, deck, terrace, or patio appurtenant to such condominium unit and designated on the Record Plat as a limited common element reserved for the exclusive use by the owner of a particular condominium unit.

8. There was testimony that the unit owners who are Complainants in this matter are similarly situated to the remainder of the co-owners in the Condominium and leaks have been found in many of the units of the Condominium, not limited to the units of the Complainants in this action. There was testimony that at least forty units have reported leaks at one time or another.

9. The Condominium has not taken sufficient actions to assess the continuous, non-visible damage or deterioration from water to the common elements of the Condominium, nor adequately attempted to stop or alleviate deterioration to the common elements.

10. The actions taken by the unit owners have not resulted in the total cessation of the entry of water into the units.

11. The only expert to testify at the hearing was a contractor, who is also a unit owner, who had inspected the buildings and noted that, in his opinion, the primary source of the current water leakage to common elements and units is caused by faulty attachments of balconies to the buildings. It was his opinion that remedial measures at the points where the balconies are attached to the common elements, can alleviate and eliminate, in all probability, the water leakage near the entrance to the balcony being experienced throughout the community.

12. The water entry points have not been determined, according to the only expert to testify at the hearing, as to

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be at the connection points between the balconies, which are limited common elements, and the building walls, which are common elements and possibly near window sills which are also common elements.

13. The water, then, appears to enter the units through the common elements, including the brick facade and the exterior window sills, and not through the limited common elements or through any area maintained by the unit owners.

Conclusions of Law

14. The material attaching the windows to the brick facade, including the exterior caulking sealing the attachment, and their repair and maintenance, is not the responsibility of the unit owner.

15. The unit owners are responsible for the windows. The Condominium is responsible for the attachment of the limited common elements to the common elements, including the balconies and the caulking around the windows.

16. The windows themselves are not the primary source of the leakage.

17. The sills on the exterior of the windows are not part of the windows, but rather are part of the common elements and are the responsibility of the Condominium.

18. The Condominium has not satisfied its duties to maintain the common elements and to protect the common elements and the units from damage caused by the entry of water into and through the common elements and into the units.

Order

1. The Condominium is ordered to issue a solicitation for bids for an engineering study by an expert qualified to determine the causation of all water leaks into the units and common elements of the Condominium within forty-five (45) days from the

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date of this order. The successful bidder shall be requested to render a response within thirty (30) days after contract award.

2. The Condominium shall issue the contract award within fifteen (15) days of the due date of the bids.

3. Within the period ending ninety (90) days from the date of this order, the Condominium is expected to receive the report of the engineering study by the successful contractor to the bidding.

4. Within thirty (30) days after receiving the report, the Condominium shall solicit bids for the performance of the necessary repairs and maintenance as reported in the engineering study and shall cause to be repaired, at Condominium common expense, such damage to common elements and limited common elements and such remedial efforts to prevent future leaks as deemed reasonably necessary to protect the structural integrity and value of the affected buildings, including the common elements, limited common elements, and units.

5. The Condominium shall require the successful bidder to give a completion date for all necessary repairs and maintenance of no later than one hundred and fifty (150) days from the date of this order.

6. The Condominium shall give notice to all owners of the units in the Condominium that such owners are not individually responsible for the costs of maintenance and alterations necessary to eliminate the water leakage and to repair the damage to the common elements, but that those damages shall be the responsibility of the Condominium, unless the windows themselves (and not the manner in which they are affixed to the building) are the cause of the leaks.

7. The unit owner shall be responsible for any changes made to the balconies themselves and for any new windows installed which are made at the same time as the repairs and which are

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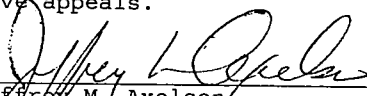
at the request of the unit owners. The Condominium may want to include this as an option in its request for proposals, to be paid for by the unit owners individually if they order new windows or enhancements to their balconies.

8. In carrying out the terms of this order, the Condominium shall act in accordance with its documents and relevant statutes and see that all procedures, resolutions, votes or actions are to be taken by the Condominium or unit owners as required by such documents or statutes.

9. The unit owner shall not be in any way individually responsible for any repair or any remediation to any common element or limited common element except to the extent where the unit owner requests additional work to be performed on the unit or on the limited common element belonging to that unit in excess of the work to be performed on behalf of the Condominium. The Condominium responsibility shall be for all costs necessary to stop water leakage (except for leakage through the window itself) into the unit or the common elements. This shall not preclude the Condominium from making a special or general assessment against all unit owners for these costs in accordance with its governing documents.

The foregoing was concurred in by panel members Axelson, Auvil and Burstyn.

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 governing administrative appeals.

  
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Jeffrey M. Axelson,  
Panel Chairman  
Commission on Common Ownership  
Communities

1/7/95