

Before the
Commission on Common Ownership Communities
for Montgomery County, Maryland
June 30, 1994

In the matter of		
Sharon P. Goozh-Mosches, Owner,	X	
Apartment 702	X	
10401 Grosvenor Place	X	
Rockville, MD 20852,	X	
	X	
Complainant,	X	
	X	
v.	X	Case No. 231-O
	X	
Grosvenor Park Homeowners	X	
Association, Inc.	X	
10500 Rockville Pike	X	
Rockville, MD 20852,	X	
	X	
Respondent.	X	

DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, 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 Commission having considered the testimony and evidence of record, it is therefore, this June 30, 1994, found, determined and ordered as follows:

On April 26, 1993, Sharon P. Goozh-Mosches, hereinafter Complainant, owner of Apartment 702, 10401 Grosvenor Place, Rockville, Maryland, a unit in Grosvenor Park III, a condominium, filed a complaint with the Commission on Common Ownership Communities on her own behalf and as "spokesperson" for the greenhouse garden club. The complaint was against the Board of Directors of Grosvenor Park II (GP II), a condominium, and the Grosvenor Park Homeowners Association, Inc. (GPHA), an umbrella association consisting of three Condominiums (Grosvenor Park II, Grosvenor Park III and Grosvenor Park IV). Complainant asked that the Directors of GP II, on whose property the greenhouse was situated, be restrained from taking unilateral action regarding the greenhouse and that the responsibility and authority of GPHA regarding the greenhouse be reaffirmed. The complaint as it related to Grosvenor Park II was disregarded as complainant does not have the necessary relationship to Grosvenor Park II to sustain an action against that entity. The complaint against Grosvenor Park Homeowners Association, hereinafter Respondent, alleged that the Board of Directors of the Association was failing to assert its

authority to preserve the greenhouse which was a common element of the Association.

By letter dated April 28, 1993, the Office on Common Ownership Communities transmitted a copy of the complaint to the President of the Board of Directors of the Grosvenor Park Homeowners Association, requesting a response within ten days and notifying the Association that under the terms of Chapter 10B-9(e), Montgomery County Code, 1984, as amended, the Association must not take any action to implement the decision, except filing a civil action, until the common ownership community dispute resolution process is completed.

By undated letter, received in the Office of Common Ownership Communities on May 6, 1993, George W. McCorkle, President of the Grosvenor Park Homeowners Association, notified the Office on Common Ownership Communities that the greenhouse had been "dissembled" on May 1, 1993. He stated that this action was approved by the GP II Board of Directors.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On November 3, 1993, the Commission voted to hold a public hearing. As there were some outstanding questions regarding the jurisdiction of the Commission over this matter, the designated panel chairwoman was requested to review the jurisdictional issues and report back to the Commission at the following meeting. The Panel Chairwoman reviewed the documents in the record and found evidence to support a colorable claim of Commission jurisdiction over the dispute described by the Complainant against the Grosvenor Park Homeowners Association. On December 1, 1993, the Commission on Common Ownership Communities accepted the Panel Chairwoman's recommendation. The public hearing was commenced and concluded on March 16, 1994 though the record was kept open for receipt of a copy of the Deed of Easement and Agreement which was not marked with highlighting marker. The copy of the Deed was received by the Office on Common Ownership Communities from the attorney representing the Respondent on March 18, 1994.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following findings:

1. Grosvenor Park Homeowners Association, Inc., is an umbrella homeowners association comprised of the condominium associations of Grosvenor Park II, Grosvenor Park III and Grosvenor Park IV.

2. The Declaration of Easements, Covenants, Conditions and Restrictions for the Grosvenor Park Homeowners Association, Inc., hereinafter "GPHA Declaration", at Article I, "Definitions", defines "Member", at subparagraph (b), as "(i) each Council of Unit Owners representing a condominium established on any part of the Property; and (ii) the record owners of the fee simple title to each of the parcels of land designated as parcels I, II or III in Exhibit A hereto on which no condominium regime exists." Exhibit A describes Grosvenor Park II, Grosvenor Park III and Grosvenor Park IV. The appropriate documents have been filed to establish the condominium regime on these properties. At subparagraph (e), "Owner" is defined as "the occupant of any Condominium Unit on the Property, excluding any Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure or in the instance that the Property has not been submitted to the Condominium Act then the record title owner of the Property."

3. The GPHA Declaration Article VIII, "General Provisions", at Section 2, "Remedies", states, "The Association, or any Member, shall have the right to enforce these Restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any Restriction, to restrain violation, to require specific performance and/or to recover damages. The expense of enforcement by the Association shall be chargeable to the Owner violating these Restrictions and shall be deemed a debt of such Owner collectible in the same manner as assessments hereunder."

4. Grosvenor Park II representatives notified the Board of Directors of the Homeowners Association at the March 30, 1993 meeting that the Board of Grosvenor Park II would probably vote to raze the greenhouse and invited representatives of the garden club, Grosvenor Park III and Grosvenor Park IV to attend the Grosvenor Park II Board meeting on April 8, if they wished to make a presentation on the issue. No one attended that meeting to speak to the issue of razing the greenhouse. The Grosvenor Park II Board decided on or about April 12 to raze the greenhouse. Representatives of Grosvenor Park II informed those with plants in the greenhouse that it would be razed and requested that the plants be removed.

ORDER

In view of the foregoing, and based on the evidence of record,

the Commission orders the dismissal of this case due to the absence of a plaintiff entitled to enforce the Grosvenor Park Homeowners Association Declaration. The GPHA Declaration specifies that the Association or a Member, defined as a condominium Council of Unit Owners, shall have the right to seek a remedy for a violation, either of omission or commission, of the Declaration. This limited grant of authority is most reasonably interpreted as intended to be exclusive to the Members. Owners must seek redress through their Council of Unit Owners. Therefore, under the Declaration, an Owner does not have standing to bring an action to enforce any obligation which the Association may have had regarding the maintenance or disposal of the greenhouse. No Member of the Association is a party to this case.

The foregoing was concurred in by panel members Gordon, Sullivan and Stevens.

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.

Dinah Stevens

Dinah Stevens, Panel Chairwoman
Commission on Common Ownership
Communities