

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

In the Matter of	:	
Howard Ward	:	
	:	
Complainant	:	
	:	
v.	:	Case No. 292-0
	:	
Sierra Landing Condominium	:	
Association	:	
	:	
Respondent	:	

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 and 10B-11(e) of the Montgomery County, Code 1994, as amended, and the Commission having considered the testimony and evidence of record, it is therefore this 21st day of March, 1997, found, determined and ordered as follows:

On January 31, 1995, Howard Ward, owner of 11607 Elkin Street Apartment 201, Silver Spring, Maryland, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleges that the Board of Directors of the Sierra Landing Condominium Association, hereinafter the "Association" or the "Respondent", improperly billed him for a plumbing repair made to the common elements of the Condominium. Specifically, the Complainant asserts that the Respondent billed him \$246.22 for replacing a defective water pipe located within his unit, when in fact the pipe is part of the plumbing system for the entire building and is, therefor a common element of the Condominium. Complainant concludes that the cost of the replacement should have been charged to the Association as a common expense. By correspondence received September 28, 1995, the Complainant amended his complaint to request that the Association also restore the hole in the cabinet and the kitchen wall which were caused during the replacement of the pipe.

The management company for the Association, Zalco Realty, Inc., contends that the repair to the Complainant's unit was to a cold water supply pipe that serves only the Complainant's unit, that it was proper to charge the Complainant and that therefor the expense incurred for the repair is justly due and payable to Respondent. Mr. Ralph Caudle, the agent for Zalco stated that at

At the time the leak into Unit 101, which is directly below Complainant's Unit, was reported it was not known whether the leak was in a common area pipe, that serves two or more units, or in a unit pipe that served only Complainant's unit; that the plumbing contractor examined the leak and its source and determined that the leak was from a cold water supply pipe serving only Unit 201 and that he verified this fact with the contractor before billing the Complainant. Respondent does not allege negligence by Complainant.

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 October 3, 1996, and the Commission voted that this was a matter within its jurisdiction. On November 20, 1996, the Commission conducted a public hearing in this cause.

#### FINDINGS OF FACT

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

- 1) The Complainant is the owner of condominium unit 201 at 11607 Elkin Street, Silver Spring, Maryland, a unit within the Sierra Landing Condominium Association.
- 2) On September 6, 1994, Ralph Caudle, the agent for the property manager, received notice from the owner of Unit 101, Vanessa Cook, about water damage in the ceiling of her bedroom.
- 3) The property manager ordered E.J. Whelan and Company to inspect the plumbing problem in Unit 201 and the unit below it, Unit 101.
- 4) On September 26, 1994, the plumber found a leak in a one half inch cold water pipe "in wall from unit 201 running in to den in unit 101. cut open wall in #101." The invoice from the plumber, dated October 11, 1994, states "to expose defective domestic water piping. to replace defective domestic hot water line to replace defective domestic cold water line \$246.22."
- 5) The property manager paid the bill to Whelan in October, 1994. In November, 1994, the Association requested reimbursement from the Complainant, who declined to pay it.
- 6) In November, 1994, Complainant wrote to the Association that

The plumber came to my unit and showed me a [sic] the leaking pipe in which a nail had pierced a hole. The pipe was green from corrosion and the plumber indicated that the nail used during construction had worn into the pipe over time. This condition

eventually caused the leak. The pipe extended halfway into my unit and the unit below. The nail was located in the middle of the pipe.

7) By letter, dated December 6, 1994, the property manager replied that at the time the leak was reported, it was not known whether "the leak was in a common area pipe (a pipe that serves two or more units) or a unit pipe (a pipe that serves only one unit). It turns out the leak was in a cold water supply pipe that serves only your unit." The letter then refers Complainant to Article 6 of the By-Laws.

8) Article 6 of the Bylaws provides pertinently;

(a) By the Board of Directors. The Board of Directors shall be responsible for the maintenance, repair and replacement... of the following, the cost of which shall be charged to all Unit Owners as a Common Expense:

(1) All of the common elements, whether located inside or outside of the Units.

(2) .... the roof, party walls and any other portions of the Units which contribute to the support of the Building, such as the ... boundary walls of the Units, floor slabs, and load bearing columns; but excluding however, the interior surfaces of all walls, floors and ceilings of the Units.

(3) ...all water, electric, plumbing and telephone lines, facilities and systems that are deemed Common Elements, including all conduits, ducts, plumbing, wiring and other facilities for the furnishing of all utility services into two or more Units, but excluding therefrom all plumbing, heating and electrical appliances, fixtures systems and parts thereof which are enjoyed by only a single Unit and are located solely within the boundaries of an individual unit;...

(b) By the Unit Owner. Except for the portion of his Unit required to be maintained, repaired and replaced by the Board of Directors as described above, each Unit Owner shall be responsible for the maintenance, repair and replacement, at his own expense, of the following: .... and those parts of the ...plumbing...systems which are a part of and serve his Unit and no other.... [Emphasis Supplied].

9) The Declaration of Condominium provides, pertinently, at Article III Section 1 a definition of a Condominium Unit:

Section 1. The Condominium Units. The general description ... of each condominium unit in the condominium, including its perimeters,... is set forth on the Condominium Plat.

The lower boundary of any condominium unit in the condominium is a horizontal plan(or planes), the elevation of which coincides with the elevation of the upper surface of the unfinished subfloor thereof(to include finished flooring materials within the condominium unit), extended to intersect the lateral or perimetrical boundaries thereof. The upper boundary of any condominium unit in the condominium is a horizontal plane(or planes) the elevation of which coincides with the unexposed upper surface of the ceiling dry-wall or plaster and lath thereof (as the circumstances may require), to include such ceiling dry-wall or plaster and lath within such condominium unit, extended to intersect the lateral or perimetrical boundaries thereof....

10) The distance between the lower boundary of Unit 201 and the upper boundary of Unit 101 is approximately eighteen inches. The subject cold water pipe was located approximately twelve inches below the lower boundary of Unit 201.

11) The subject pipe services Unit 201, but is not located within the boundaries of Unit 201.

12) The preponderance of the evidence indicates that given its size and location, the half inch cold water pipe which served Unit 201 served more than one unit, probably also Unit 101 or additional units on the second floor of the Condominium. The Respondent produced no evidence, expert or otherwise, that if the subject pipe were sealed off or removed, that such action would have no effect on the water supply to other adjoining units in the Condominium.

#### CONCLUSIONS OF LAW

Accordingly the Commission concludes, based upon a preponderance of the evidence and after a full and fair consideration of the evidence of record, that:

1) Applying Article III Section I of the Declaration to the facts, the eighteen inch distance between the lower boundary of Unit 201 and the upper boundary of Unit 101 was not part of Unit 201 of the Condominium.

2) Applying Article 6 (a) (3) of the Bylaws to the facts, the half inch cold water pipe is not "enjoyed" only by Unit 201 and is not "located solely within the boundaries" of Unit 201.

3) The subject cold water pipe is located within the eighteen inch area between Unit 101 and Unit 201, which is a common element of the Condominium. Under Article 6, cited above, the Association is responsible to repair and replace plumbing lines within the common elements.

4) The Respondent has failed to establish that the Complainant is responsible to reimburse it for the cost of replacing the cold water pipe.

5) The cost to repair the hole in the cabinet and the kitchen wall in Unit-201 is a consequential damage, which Respondent incurred incident to its responsibility to repair a common element. The record does not indicate whether this repair has been made and if so, which party has paid for it. It would be unreasonable to hold Complainant responsible for this damage to his Unit, which was caused by the agent of the Association.

#### ORDER

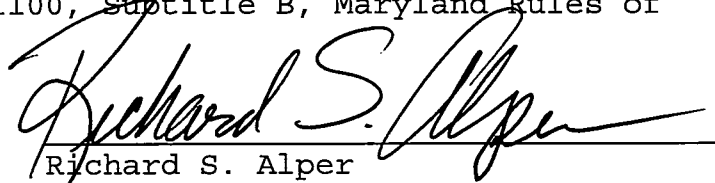
In view of the foregoing, based on the evidence of record, the Commission orders that:

1) The Complainant is not required to reimburse the Respondent \$246.22, the cost for the plumbing work that was properly incurred by Respondent.

2) Within thirty days from the entry of this Order, Respondent shall, subject to cooperation from Complainant, repair, cause to be repaired, or reimburse Complainant upon presentation of paid invoices therefor, the cost to repair the hole in the cabinet and the kitchen wall in Unit 201.

The foregoing was concurred in by Panel Members Gick, Perlingiero, and Alper.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.



Richard S. Alper  
Panel Chairperson, Commission on  
Common Ownership Communities