

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
CARROLL COUNTY, ILLINOIS

FILED

APR 21 2006

CIRCUIT CLERK

Shirish Miller

KARL ANDZIEWICZ, ET AL)
)
Plaintiffs,)

vs.)

Case No. 2004-L-5

LAKE CARROLL PROPERTY OWNERS)
ASSOCIATION, INC., an Illinois)
Not-For-Profit Corporation,)

Defendant.)

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OPINION AND ORDER

Hearing came on before the Court without jury on 3/6 and 3/7/2006. All parties were present and represented by Counsel. Following testimony and arguments of counsel the Court reserved ruling and being now fully advised in the premises enters the following:

1. The Court has jurisdiction of the parties and the subject matter.

2. The plaintiffs are owners of some of the lots in the Lake Carroll Development, a residential and recreation area surrounding a manmade lake. The lake itself is in excess of 600 acres area, located in Carroll County, Illinois, and there are in excess of 2600 residential lots in the entire development.

3. The defendant is an Illinois not-for-profit corporation (hereinafter identified as "LCPOA") composed of the lot owner members, including the plaintiffs, and is the successor to the original developers and covenant declarants.

4. At the time of the hearing, the responsibility for operation and maintenance of the common areas of the development had been placed with the defendant, LCPOA Board of Directors.

5. The source documents for the development itself consist of the recorded Declaration of Restrictions and Covenants, and the related plats recorded since 1972. (Plaintiff Exhibits 1, 5)

6. The declarations and maps identify and define, among other things, the residential lots and certain "common areas".

7. Within the general category of common areas are a number of sub-categories. These include the lake itself, the roadways through-out the development, a campground, natural areas of woods and prairies called "greenways" during the trial testimony, and "reserved areas". "Reserved areas" include the golf course and two marinas, and include also any of the development's commercial uses.

8. All parties concede that the Board of Directors has wide discretion and authority concerning the "reserved areas" (see Declarations, Article 1-X). All parties further agree that no common area may be conveyed to any individual for private or exclusive permanent use, by action of the Board of Directors only.

9. The source documents are silent on the issue of whether the Board of Directors of the LCPOA can grant any of the common areas to a private, exclusive use, short of permanent conveyance.

10. The central dispute in this lawsuit is whether the Board of Directors had authority to promulgate the "Greenway Access Docking Program" (hereinafter identified as "GADP") as it is presently constituted.

11. The GADP is a policy and mechanism devised by the Board of Directors and evolved over time, whereby owners of lots that do not front on the lakeshore are allowed to construct boat docks on the lake off the common areas called greenways, and use that dock to moor their personal watercraft during the boating season each year.

12. At the time of hearing, the evidence showed there are 85 docking spaces of this nature around the lakeshore off the greenways, and outside the actual marinas. Of those 85, 56 docks are private, exclusive use spaces for specific

individuals, and 29 of the spaces are for "day use" only, for all the boaters.

13. The parties entered a number of admissions, respectively, identified as Plaintiffs' Exhibit Number 4 and Defendant's Exhibit Number 5.

14. The defendants' use of the term "revocable license" to describe aspects of the GADP is equivalent to a grant of a permanent, exclusive and private use within the development common area.

15. The GADP, as presently constituted, is in violation of the Declarations and beyond the authority of the Board of Directors of the LCPOA.

16. The plaintiffs have met their burden of proof and are entitled to injunctive relief, as no adequate remedy at law exists, and because the present GADP impairs and restricts use and access, by all the defendant's members, to dedicated common areas.

17. There is no evidence in the record of bad faith conduct or breach of fiduciary duties by the defendants' Board of Directors, and Plaintiffs are not entitled to an allowance for damages or attorney's fees.

The essential dispute, in this Court's view, is governed by the principles of the Illinois cases cited by the plaintiff which jealously guard access and use of

designated common areas in developments such as the Lake Carroll Development. These cases include Carney v. Donley, 261 Ill.App.3d 1002 (2d District, 1994); Sawko v. Dominion Plaza One Condominium Association, 218 Ill.App.3d 521 (2d District, 1991); Board of Managers of Village Square One Condominium Association v. Amalgamated Trust and Savings Bank, 144 Ill.App.3d 522 (2d District, 1986); Stuewe v. Lauletta, 93 Ill.App.3d 1029 (1st District, 5th Division, 1981); Garden Quarter One Association v. Thoren, 76 Ill.App.3d 99 (2d District, 1979); Crest Builders Inc. v. Willow Falls Improvement Association, 74 Ill.App.3d 420 (2d District, 1979); and Thomas Baird v. Board of Zoning Appeals of City of Kankakee, 347 Ill.App.158 (2d District, 1952).

The foundation and source documents in this case do make it clear that the common areas could be altered or diminished by dedication to the public only with the consent of at least two-thirds of the members entitled to vote, and not solely by the Board of Directors' action (Plaintiffs' Exhibit Number 1, Section II-C(4)). It is only logical, then, that a dedication to a private use would be at least as limited in such fashion. Defendants attempt to distinguish a number of the cited authorities on the basis that undivided interest by members of the development in a

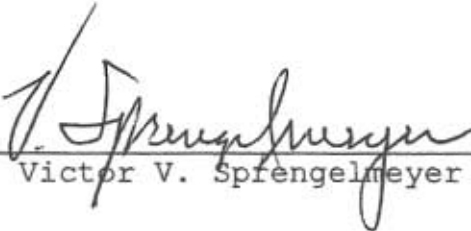
tenancy in common should lead to a different result. Here the common areas are titled to the LCPOA. This Court is of the opinion that the ownership structure is not relevant, as the purpose is clearly to provide use and access to the defined common areas.

The Board of Directors' adoption of the present policy is beyond its authority and any further offers of such leases, permits or "revocable licenses" are enjoined as of the date of this order.

The balance of the appropriate remedy here is a separate problem. The plaintiffs in fact do not complain of some of the results of the Board's policies promulgated in the past which are conceivably beyond the Board's authority. However they do seek an order invalidating the present dock leases pertaining to the 85 existing docks, or outright rescission of those arrangements presently in place. (Complaint, Count II, Prayer for Relief B) Recognizing that all concerned appear to have acted in good faith, it is actually the persons holding interest in these greenway docks already in existence who will be most directly affected by this decision. It occurs to the Court that some of these individuals may not even be fully aware of the present lawsuit, much less the instant decision.

Accordingly, the Court is of the opinion that a specific remedy will need to be crafted to do justice to all parties. Both parties are therefore directed to compose suggested plans to give effect to the phase-out of existing docks in place under the present GDAP, and present those drafts and proposals to one another and to the Court at least 10 days prior to further status which will come before this Court on Tuesday, the 6th day of June at 10:00 A.M.

ENTERED AT GALENA, this 19th day of April, 2006.



Victor V. Spengelmeier