

TITLE IV: COURT ORDER APPROVING SETTLEMENT AGREEMENT

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CHAPTER 40: COURT ORDER APPROVING SETTLEMENT AGREEMENT

Section

40.01 Court order approving settlement agreement

§ 40.01 COURT ORDER APPROVING SETTLEMENT AGREEMENT.

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

KARL ANDZIEWICZ, KEN BASTUGA,)
MARY BASTUGA, JAMES BLAIR,)
MARILYN BLAIR, DANIEL BURICH,)
SUZANNE BURICH, STEVEN V.)
CHESNEY, BEVERLY S. CHESNEY,)
PATRICK DONOVAN, JOANNE)
DONOVAN, FRANK FIENE, LINDA)
FIENE, PAUL GIANNI, STEPHEN)
GIBUS, CLARENCE GRANT, PATRICIA)
HIGGINS, PETER JUNIUS, PHILIP S.)
KONRAD, KATHRYN W. KONRAD,)
ANTHONY LANZA, DANIEL S.)
LEMONIER, SANDRA LEMONIER,)
GILBERT LONGFIELD, EMILY)
LONGFIELD, LARRY J. MEYERS,)
MERCEDES MEYERS, JOHN D.)
MULLIGAN, SHARON L. MULLIGAN,)
EDWARD L. OLDS III, DAVID OZZELLO,)
KAREN OZZELLO, ALICE PAYSEUR, L.)
JACK REVELS, DOROTHY L. REVELS,)
THOMAS D. RUHBERG, MARJORIE A.)
RUHBERG, ANDRIS J. RUMENTS,)
BARBARA RUMENTS, GEORGE VISEL,)
NORMAN J. VONESH, JUDITH VONESH,)
DANIEL WALKER and ANDREA)
WALKER,)

Plaintiffs,)

vs.)

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

Defendant.)

 COPY

FILED
MAY 24 2007
CIRCUIT CLERK
SHERRI A. MILLER

No. 2004-L-5

ORDER APPROVING SETTLEMENT AGREEMENT

By the Opinion and Order of this Court entered April 21, 2006, Plaintiffs and Defendant were to present, individually or jointly, a plan or proposal concerning the phase-out of existing docks in place under the “Greenway Access Docking Program” (GADP) that was the basis of the Plaintiffs’ Complaint herein. The parties have presented to the Court a joint Settlement Agreement concerning the GADP and its rescission, and a replacement docking system which comports with the recorded Declarations of Restrictions and Covenants and addresses Plaintiffs’ Complaint herein. The joint Settlement Agreement is attached hereto as Exhibit “A”.

The parties have presented the Settlement Agreement as a final resolution of the litigation in this cause, and request that the Court approve the Settlement Agreement and thereafter enforce the same, if necessary, through contempt procedures, or by an action at law or in equity. The effective date of the Settlement Agreement would be the date the same is approved by the Court.

The Court, having received the arguments of counsel, finds that the Settlement Agreement is fair and reasonable, and that the same should be approved and enforced according to its terms.

THEREFORE, IT IS ORDERED as follows:

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”) and 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. (Plaintiffs’ Exhibits 1 and 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, natural areas of woods and prairies called “greenways” during the trial testimony, and “reserved areas.” “Reserved areas” include the golf course, a campground, 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 I -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. Both parties submitted a number of admissions, respectively, identified as Plaintiffs’ Exhibit Number 4 and Defendant’s Exhibit Number 5. Said admissions were admitted by the court as substantive evidence in this case.

12. 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.

13. The GADP, as presently constituted, is in violation of the Declarations and Covenants of the Association and beyond the authority of the Board of Directors of the LCPOA to implement. The Association’s governing documents can only be amended by the affirmative vote of a majority of the Owners of all Lots in the Development entitled to vote (Plaintiffs’ Exhibit Number 17 Section XVI). Currently, the Declarations provide that the Association may, upon the affirmative vote of two-thirds of its members entitled to vote, offer any Common Areas for dedication to public use, and not solely by the Board of Directors’ action (Plaintiffs’ Exhibit Number 1, Section II-C(4)).

14. The Board of Director’s adoption of the present GADP policy is beyond its authority. The Plaintiffs have met their burden of proof and are entitled to injunctive relief as no adequate remedy at law exists. The Board of Directors are hereby prohibited from issuing any further offers of such leases, permits or “revocable licenses” because the present GADP impairs and restricts use and access, by all the Defendant’s members, to dedicated common areas.

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

16. The Settlement Agreement in the form attached hereto as Exhibit “A” is approved, effective the date of this Order.

17. The prior Greenway Access Docking Program shall be rescinded and of no further force and effect at the end of the 2006 Lake Carroll boating season, according to the terms of the Settlement Agreement. Nothing in this Order shall be deemed or interpreted to enjoin the Board of Directors from installing and leasing docks in the lake at Lake Carroll that are accessed through the existing marinas or through shoreline reserved areas.

Lake Carroll Association - Court Order Approving Settlement Agreement

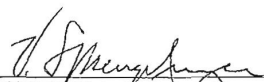
18. Upon the entry of this Order;

(A) On oral motion of Defendant's counsel, Defendant's Motion for Reconsideration is withdrawn;

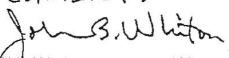

(B) The Opinion and Order of April 21, 2006 is vacated; and

(C) This cause is dismissed, without prejudice, with the Court retaining jurisdiction for the enforcement of the Settlement Agreement as herein provided.

ENTERED: May 24, 2007.


JUDGE, Victor V. Sprengel

ORDER DRAFTED JOINTLY.
APPROVED AS TO FORM
& CONTENT:


John B. Whitton,
Att'y. for Defendant.


(Date recorded 4-21-2006)

CHAPTER 41: ADMISSIONS

Section

41.01 Admissions

§ 41.01 ADMISSIONS.

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT

CARROLL COUNTY

KARL ANDZIEWICZ, et al.,)

)

Plaintiffs,)

) No. 2004-L-5

vs.)

)

LAKE CARROLL PROPERTY OWNERS)

ASSOCIATION, INC., an Illinois Not-For-Profit)

Corporation,)

)

Defendant.)

ADMISSIONS

PARAGRAPH 46 OF PLAINTIFFS' COMPLAINT:

Common Area at Lake Carroll is property used in common and held in common ownership by lot owners. Each lot owner at Lake Carroll holds an undivided interest in the Common Areas. All lot owners at Lake Carroll have a unity of ownership and inherent therein an equal right of possession to all Common Areas. Common ownership in the Common Areas entitles lot owners at Lake Carroll to equal use of the Common Areas. Common Areas cannot be conveyed to any lot owner for private or exclusive usage.

DEFENDANT'S ANSWER TO COMPLAINT: Defendant admits the allegations.

PARAGRAPH 47 OF PLAINTIFFS' COMPLAINT:

Both the Russwood Covenants and the Patten Corporation Covenants define "Reserved Area" as:

"I(o). Reserved Area means all of the real property designated as such in the Supplemental Declaration or in plats of the Development filed in the office of the Recorder of Deeds, Carroll County, Illinois. Ownership of such reserved areas may be retained by Declarant and shall be put to such uses as it shall deem best, including, but not restricted to, commercial enterprises of every type or kind whatsoever." (Emphasis added)

DEFENDANT'S ANSWER TO COMPLAINT: Defendant admits the allegations.

PARAGRAPH 64 OF PLAINTIFFS' COMPLAINT:

In accordance with the Association Covenants and governing documents, Reserved Areas within the development may be designated by the Association Board for commercial or exclusive usage, which would include the development of golf courses, ski areas, marinas and docks.

DEFENDANT'S ANSWER TO COMPLAINT: Defendant admits the allegations.

PARAGRAPH 65 OF PLAINTIFFS' COMPLAINT:

In accordance with the Association's governing documents and in contradistinction to the lawful usage of said "Reserved Areas," Common Areas within the Association may not be used for commercial enterprises nor may they be reserved for the exclusive use of any individual.

DEFENDANT'S ANSWER TO COMPLAINT: Defendant admits the allegations.

KARL ANDZIEWICZ, et al, Plaintiffs

By: HAMMER, SIMON AND JENSEN Their Attorneys

By: _____
Philip F. Jensen

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(Date recorded 5-24-2007)

CHAPTER 42: SETTLEMENT AGREEMENT

Section

42.01 Settlement agreement

§ 42.01 SETTLEMENT AGREEMENT.

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

KARL ANDZIEWICZ, KEN BASTUGA,)
MARY BASTUGA, JAMES BLAIR,)
MARILYN BLAIR, DANIEL BURICH,)
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DANIEL WALKER and ANDREA)
WALKER,)

Plaintiffs,)

vs.)

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

Defendant.)

 COPY

FILED
MAY 24 2007
CIRCUIT CLERK
SHERRI A. MILLER

No. 2004-L-5

SETTLEMENT AGREEMENT

THIS AGREEMENT is made _____, 2007, by and between the Plaintiffs herein identified and the Lake Carroll Association, Inc., also known as the Lake Carroll Property Owners Association, Inc. (the "Association"), the Defendant, to resolve Plaintiffs' Complaint against the Defendant.

RECITALS

A. Plaintiffs filed a Complaint against Defendant in the Circuit Court of the 15th Judicial Circuit, Carroll County, Illinois, in case number 2004-L-5, complaining that the Board of Directors of the Association had implemented a system of docks in Lake Carroll accessed through common areas known as "greenways," and thereafter made portions of such docks available on a fee basis for certain individuals' private and exclusive use, in violation of the Declarations of Covenants and Restrictions for the Lake Carroll complex ("Declarations"), which require that the common areas, including the "greenways" be open to use by all members on a non-exclusive basis. The program to which the Plaintiffs object has been identified as the "Greenway Access Docking Program" or "GADP."

B. Defendant claimed, in response to Plaintiffs' Complaint, that it had the power under Defendant's interpretation of the Declarations to control the use of docks at Lake Carroll through a rental or private-use program, and that Defendant had, in fact, been renting docks accessed through greenways, or otherwise placed in the common area of the lake, for many years.

C. Defendant filed a Motion to Dismiss Plaintiffs' Complaint and said Motion was heard on November 5, 2004. On January 26, 2005, the Court entered an Order denying Defendant's Motion to Dismiss stating in part that "the Defendant (LCA) is charged with the responsibility for protecting and preserving those common areas and promulgating rules which will be in compliance with the governing instruments in place."

D. A hearing was held on Plaintiffs' Complaint on March 6 and 7, 2006. On April 21, 2006, the Court entered an Opinion and Order stating that the GADP, as presently constituted, is in violation of the Declarations and beyond authority of the Board of Directors of the Association. The Court further ordered that the parties to the litigation attempt to resolve the present dock leasing situation with a specific remedy crafted to do justice to all parties, including individuals who are not members of the Plaintiffs' group who may be directly affected by the Court's finding that the GADP is in violation of the Declarations.

E. The Defendant has filed a Motion requesting that the Court reconsider its Opinion and Order of April 21, 2006, preliminary to an appeal of the Opinion and Order if the matter is not reconsidered. An appeal, however, would prolong litigation, create uncertainty concerning the use of docks and access to the lake, and increase the expense of resolving the disagreement.

F. Plaintiffs, in the negotiation of this Settlement Agreement, have acted through a representative committee comprised of James F.L. Blair, Mercedes S. Meyers, and Sharon L. Mulligan, who have signed this instrument representing authority to act on behalf of all Plaintiffs.

G. Both parties desire to resolve the current disagreement concerning the GADP without an appeal and further litigation, and to comply with the Court's opinion that a specific remedy be crafted to do justice to all parties.

AGREEMENT

NOW, THEREFORE, IT IS AGREED as follows:

1. The Plaintiffs and the Association agrees that the current GADP shall be rescinded, and be null and void in its entirety effective at the end of the 2006 Lake Carroll boating season. Defendant further agrees that the Association shall not, in the future, implement any dock-access or usage arrangement the same as, or substantially similar to, the GADP hereby rescinded. This covenant shall be binding upon

the Association and future Boards of Directors of the Association, subject to any future amendment to the Declarations which authorize a dock-access and usage arrangement the same as or substantially similar to the GADP rescinded herein.

2. The Plaintiffs agree that the Association may place, or cause to be placed, one dock only, which dock shall be in compliance with all applicable federal and state rules and regulations as well as all rules and regulations of the Association, in each of the greenways previously under the GADP (identified T-areas as set forth in Exhibit A to this Agreement and identified as such on the final plat recorded at the Carroll County Recorder's Office), which dock shall be open to common use and reasonably marked for "Day Use Only." "Day Use Only" shall be defined as from sunrise to sunset. Overnight parking of watercraft or other substantial private use of any such dock shall be prohibited.

3. The Plaintiffs acknowledge and agree that special consideration is necessary in the removal of the docks accessed through that greenway area adjacent to the East Marina shoreline slip area, identified as area T-5 in Exhibit A, attached. Approximately twenty (20) docks are so accessed which have been in place for many years, known as the "shoreline slips." The Association shall remove the shoreline slips within three (3) years from the effective date of this Agreement, and the Plaintiffs agree that the three-year time is reasonable and should be authorized because of the prior long-standing status of the shoreline slips. The Association shall attempt to replace the shoreline slips with other docks in compliance with the Association's governing documents appropriately accessed through marina areas rather than through greenway areas, with due consideration to the Association's economic circumstances.

4. The Association agrees that in light of the Court's ruling, the Board of Directors shall review, in the normal course of management of the Association, the current Association's policies and procedures concerning the use of common and reserved areas at Lake Carroll, as defined by the Declarations. Further, the Association will consider and attempt to address the removal of docking privileges previously granted certain members of the Association under the GADP hereby rescinded, in a reasonable effort to provide alternative docking opportunities for those individuals in a manner not inconsistent with this Agreement. However, nothing herein shall be deemed to grant any future right to docking privileges to any individual whose prior docking privileges are altered due to the rescission of the GADP.

5. Plaintiffs and Defendant acknowledge and agree that the Declarations may be amended according to the procedures set forth in the Declarations. The parties acknowledge that future amendments to the Association's governing documents properly implemented may alter or rescind this Agreement.

6. The Association, through its Board of Directors, agrees to review past procedures by which members of the Association may present concerns, disagreements, or grievances, to the Board of Directors, and work toward implementing a grievance procedure policy for the Association.

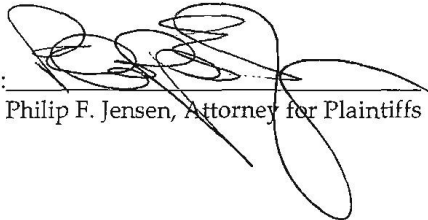
7. The Plaintiffs acknowledge and agree that the management and government of the Lake Carroll complex rests with, and is the province of, the elected Board of Directors of the Association, and other than the rescission of the existing GADP and the placement of "public docks" as authorized hereby, nothing in this Settlement Agreement is intended to usurp the powers of the Board of Directors in such management and government at Lake Carroll. Any commitment by the Association, through its Board of Directors, to monitor, review, examine, or discuss any policies and procedures "in good faith" under this Settlement Agreement shall be fulfilled if the Board of Directors of the Association does so monitor, review, examine or discuss the topic so identified, including the use of common areas at Lake Carroll and grievance procedures, regardless of the final outcome of such review, examination, or discussion.

8. This Settlement Agreement is the resolution of various disputed allegations and claims, without further litigation, and shall not be deemed an admission of liability or wrong-doing by either party. The parties agree that neither shall hinder the implementation of this Settlement Agreement, nor malign the opposing party, and both agree to present this Settlement Agreement to the members of the Association and the public in general in a positive rather than negative manner.

9. This Agreement shall be effective on the date the Agreement is approved by the Circuit Court of the 15th Judicial Circuit, Carroll County, Illinois, and this Agreement shall be enforceable by said Court, either through contempt or an action at law or in equity to implement and enforce the terms of this Agreement. Upon approval of this Agreement by Order of the Court, cause 2004-L-5 before the Carroll County Circuit Court shall be dismissed, without prejudice.

IN WITNESS WHEREOF, the parties acting through authorized representatives of each, have signed this Settlement Agreement on the date first given above, to be effective on the date of approval by the Circuit Court of the 15th Judicial Circuit, Carroll County, Illinois.

BY: HAMMER, SIMON & JENSEN

BY: 
Philip F. Jensen, Attorney for Plaintiffs

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(Date recorded 5-24-2007)