

Timeline

Raymond, et al v. Worcester County, et al

- 11/21/2019 Complaint filed in Circuit Court by WHP owners against Worcester County seeking to establish that the County campground ordinance cannot be enforced to stop year-round occupancy in WHP.
- 12/14/2019 On its attorney's advice, White Horse Park Community Association, Inc. ("WHPCA") files Motion to intervene in the case to protect its right to enforce the recorded Declaration prohibiting year-round occupancy.
- 1/07/2019 Court grants permission for WHPCA to join the case.
- 1/07/2020 WHPCA files Answer to Plaintiffs' Complaint and a Counter-Complaint seeking a Court ruling that the recorded Declaration (Section 3.1) is valid and enforceable to prohibit year-round occupancy.
- 1/20/2020 Plaintiffs file an Answer to WHP Counter-Complaint contesting the WHPCA position and denying that Declaration Section 3.1 is enforceable to stop year-round occupancy.
- 1/22/2020 Plaintiffs add WHPCA to their Complaint by filing a First Amended Complaint that includes WHPCA as a Defendant. Plaintiffs contend the County law and the WHP Declaration are not enforceable to prevent year-round occupancy.
- 1/31/2020 County files a Motion to Dismiss or for Summary Judgment asking the Court to dismiss the case or rule that the County is entitled to a judgment upholding the law based on the alleged facts and law.
- 2/05/2020 WHPCA files an Answer to Plaintiffs' First Amended Complaint.
- 2/18/2020 Plaintiffs file a response to the County's Motion denying that the County is entitled to judgment or to a dismissal of the case.
- 4/16/2020 WHPCA files Motion for Summary Judgment asking the Court to rule that, based on the law and the alleged facts, WHPCA is entitled to judgment declaring Section 3.1 of the WHP Declaration enforceable to prevent year-round occupancy.

Scheduled Events

- 5/27/2020 Hearing on Motions to determine whether, based upon the law and the alleged facts, the County law and the WHP Declaration are enforceable to prohibit year-round occupancy without the necessity of a trial.
- 6/17/2020 Settlement Conference to give all of the parties an opportunity to try to agree on a compromise to avoid the expense, time and uncertainty of trial.
- 7/27/2020 Trial at which witnesses will testify and documentary evidence will be introduced to support the positions of the parties on whether the County law and WHP Declaration are enforceable to prevent year-round occupancy.

Note: The Chief Judge of Maryland has extended the closure of State Courts until June 5, 2020. Therefore, the hearing for May 27 will be rescheduled and the other dates will probably change too.

ROBERT C. RAYMOND, ET AL

Plaintiffs

vs.

**WORCESTER COUNTY,
MARYLAND, ET AL**

Defendants

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IN THE CIRCUIT COURT

FOR WORCESTER COUNTY

STATE OF MARYLAND

CASE NO. C-23-CV-19-000350

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DEFENDANT’S MOTION FOR SUMMARY JUDGMENT
AND REQUEST FOR HEARING

Defendant White Horse Park Community Association, Inc., by its attorneys, moves for Summary Judgment, pursuant to Maryland Rule 2-501, for the following reasons:

1. There is no genuine dispute as to material fact, and Defendant is entitled to judgment as a matter of law.
2. Defendant incorporates by reference its Memorandum submitted herewith.

WHEREFORE, Defendant requests a hearing on this motion and prays that the Court declare that Section 3.1 of the Declaration for White Horse Park is valid and enforceable.

AYRES, JENKINS, GORDY & ALMAND, P.A.

By: /s/ James W. Almand

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Attorneys for Defendant White Horse Park
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April 2020, an exact copy of the foregoing Defendant's Motion for Summary Judgment was served via MDEC to Hugh Cropper IV, Esq. and Victoria Shearer, Esq.

/s/ James W. Almand
James W. Almand

CERTIFICATION OF COMPLIANCE

I HEREBY CERTIFY that the attached submission does not contain any restricted information, or if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to Rule 20-201(h)(2).

/s/ James W. Almand
James W. Almand
(CPF# 7612010005)

ROBERT C. RAYMOND, ET AL

Plaintiffs

vs.

**WORCESTER COUNTY,
MARYLAND, ET AL**

Defendants

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IN THE CIRCUIT COURT

FOR WORCESTER COUNTY

STATE OF MARYLAND

CASE NO. C-23-CV-19-000350

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DEFENDANT WHITE HORSE PARK’S MEMORANDUM IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT

Defendant White Horse Park Community Association, Inc. (hereinafter “Association”), by its attorneys, submits this Memorandum in support of its Motion for Summary Judgment.

Plaintiffs contend that the recorded covenant against year-round occupancy in White Horse Park (hereinafter “Park”) is no longer valid because approximately 55 lot owners out of 465 lot owners have been able to establish year-round residency in the Park. Maryland law does not support Plaintiffs’ position.

Section 3.1 of the recorded Declaration of the Park specifically prohibits the use of any Campsite (“Lot”) as the “primary and principal residence of the Owner, or any other occupant.” Furthermore, that section limits occupancy to no more than (1) 90 consecutive days and (2) 90 days in any 180-day period. Therefore, an Owner may use his/her Lot a total of 180 days per year but no more than 90 consecutive days.

The Declaration restriction is significantly different than the current County Code provision also at issue in this case. The Code only limits occupancy between September 30 and April 1; during that time Lots may be occupied for 60 days but only 30 of those days may be consecutive. Therefore, the Code allows an Owner to occupy his/her Lot from April 1 to

September 30 (182 days) plus an additional 60 days between September 30 and April 1, for a total of 242 days. This distinction between the Park's Declaration and the County Code is significant when analyzing Plaintiffs' argument and allegations, as will be discussed below.

Plaintiffs' allegations in their Amended Complaint may be summarized as follows:

1. Approximately 55 Lots out of 465 Lots in the Park are occupied by full-time residents, some of whom have resided there for almost 30 years.
2. Those full-time residents reside in single-family dwellings that meet building codes and insulation/energy standards for year-round dwellings.
3. The full-time residents have HUD conforming mortgages and pay property taxes consistent with year-round occupancy.
4. When they purchased their home some of the full-time residents were told "by their realtors, builders, and the managers at White Horse Park" that it was a "permanent or full time community." Also, "realtors and others" advertised the Park as a full-time community.
5. The Board of Directors of the Association "welcomed full time residents, for security reasons, to keep an eye on the Park."

These allegations by Plaintiffs must be assumed to be true for purposes of this Motion; however, those facts do not establish a basis to vitiate the Park's limitations on occupancy. The Association would not know many of the facts cited by Plaintiffs as support for their position. The Association would not know the type of mortgage a Lot owner obtained. The Association would not know the County's tax treatment of an Owner's dwelling or whether the dwelling was built to "year-round occupancy" codes or standards. The Association would not be aware of statements made by realtors and builders to Lot owners. The County or Owners' knowledge of

those facts cannot be imputed to the Association.

The only allegations of the Plaintiffs that could arguably apply to the Association do not establish an abandonment of the occupancy restriction in the Park's Declaration. First, the fact that an Owner occupying one of the 465 Lots may stay beyond 180 days in one year would not be obvious, especially during the typically good weather period between March 15 and November 15, when most Owners would be using their property at the Park. Any Owner could choose to occupy his/her Lot every other day of the year or the first 15 days of each month or for 30 days every other month or for any other combination of days not exceeding 180 days per year. Given the number of Lots and the combination of days allowable to owners, it is not surprising that some owners have been able to circumvent the restriction on year-round occupancy.

Second, the fact that someone connected with the Park (manager or director) stated or implied that the Park may be used for year-round occupancy does not overcome or impair the Section 3.1 prohibition of such occupancy. The occupancy limitation may not be waived by a Park manager or director. It is for the benefit of all owners.

The Declaration's introductory paragraphs state that its provisions "are intended to create mutual equitable servitudes upon each of the Campsites in favor of all such Campsites, with each owner covenanting and agreeing with each and every other Owner" to obey the covenants and conditions of the Declaration and "to grant each and every Owner the right to enforce" the Declaration. That theme is continued into Sections 12.1 and 12.4, which state that any Owner may enforce the Declaration and that a "delay or failure" to enforce the Declaration shall not constitute a waiver of the right to enforce.

Changing the limitations on occupancy is not within the control of the Board of Directors or the Owners. While Article XIV of the Declaration requires a two-thirds vote by all members

of the Association to amend the Declaration, Section 3.1 requires the action of an additional approval authority – the Worcester County Commissioners. Without the County’s approval, the limitation on occupancy cannot be eliminated or modified.

The case pending before the Court is significantly different than appellate cases involving the abandonment of certain restrictive covenants by associations. The restrictive covenant at issue in the Park concerns a prohibition against an unobservable, easily concealable action by Lot Owners. Other cases involve restrictive covenants against easily observable physical components of dwellings and land, e.g., door color, roof type, fences and swimming pools. Such violations can be easily discovered by observing the property at any point in time. However, whether a Park owner is spending his/her 182nd day at the Park is not as clear or noticeable.

In *Lindner v. Woytowitz*, 37 Md. App. 652 (1977), the court evaluated whether a homeowners association abandoned its restrictive covenant prohibiting above ground pools, based on the presence of two above ground pools in the neighborhood prior to enforcement action against a third pool. While evidence showed that the association was aware at least one other pool had been installed prior to enforcing the restriction against the property owner at issue in the case, the court upheld the restrictive covenant and failed to find an intent to abandon on behalf of the association. *Id.* at 659. “An intent to abandon is essential...and is established by evidence clear and unequivocal of acts of a decisive nature.” *Id.* at 658.

Neither the Association nor a majority of its Lot Owners have abandoned the restrictive covenant against year-round residency at the Park, and Plaintiffs’ allegations do not support a finding. A lack of vigilance in spotting an above ground pool is entirely different than a lack of vigilance in discovering how long each Lot is occupied every 180 days. The Association’s difficulty in identifying and enforcing the recorded covenant is understandable and forgivable.

The court in *Liu v. Dunnigan*, 25 Md. App. 178 (1975), relied upon the holding in *Kirkley v. Seipelt*, 212 Md. 127 (1957), and stated, “the allowance of several violations [of a restrictive covenant] in a large development could in no way be considered an abandonment of the purpose for the existence of the covenants.” *Liu*, 25 Md. App. at 191. In *Liu*, a lot owner, Dr. Reeves, violated the covenant restricting the lots to residential use only, by seeing his dental patients regularly at his home. Dr. Reeves contended that he had been using his home for his dental practice for many years without objection. In ruling against Dr. Reeves, the court found that “such a minor violation in so great an area in no way shows that the [other lot owners] were giving up their rights to enforce the restrictive covenant.” *Id.* at 192.

In this case before this Court, Owners of Lots comprising less than 12% of the total Lots (55 out of 465) contend that their ability to go undetected by the Association constitutes a waiver or abandonment of the restrictive covenant prohibiting year-round residency. A small percentage of alleged violations cannot destroy a restriction adhered to by 89% of the owners.

WHEREFORE, Defendant prays that the relief requested by Defendant be granted and that the Court declare that Section 3.1 of the Declaration for White Horse Park is valid and enforceable.

AYRES, JENKINS, GORDY & ALMAND, P.A.

By: /s/ James W. Almand

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Community Association, Inc.

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