

IN THE CIRCUIT COURT OF MARYLAND FOR MONTGOMERY COUNTY

PATRICK MATTHEWS BOGART
and BENJAMIN KURTZ,

Plaintiffs,

vs.

Civil Case No. 273518-V

CARDEROCK SPRINGS CITIZENS
ASSOCIATION, INC.,
c/o John F. McCabe, Jr., Esq.
200A Monroe Street, Suite 300
Rockville, MD 20850

Defendant.

COUNTERCLAIM BY CARDEROCK SPRINGS CITIZENS ASSOCIATION, INC.

Carderock Springs Citizens Association, Inc., by its undersigned attorney, files the following counterclaim and alleges:

1. Defendant Carderock Springs Citizens Association, Inc. is a Maryland non-stock corporation whose members are residents of the community in Montgomery County, Maryland known as Carderock Springs as more specifically described in its articles of incorporation, bylaws, and covenants.
2. Plaintiffs are the record owners of certain real property within the community of Carderock Springs known as 8209 Stone Trail Drive, Bethesda, Maryland 20817 and more particularly described in their Deed dated September 30, 2005 and recorded December 1, 2005 at Liber 31354, folio 180 among the Land Records of Montgomery County, Maryland.
3. There are recorded among the Land Records of Montgomery County, Maryland a Declaration of Conditions, Covenants, and Restrictions and Easements dated April 4, 1966 and recorded April 4, 1966 at Liber 3486, folio 473.

RECEIVED

OCT 31 2006

Clerk of the Circuit Court
Montgomery County, Md.

EN, WALSH, TECLER
& MCCABE, LLP
ATTORNEYS AT LAW

200A MONROE STREET
SUITE 300
ROCKVILLE, MARYLAND 20850

4. Defendant is charged with enforcing said declaration and with the performance of other duties as more specifically described therein and in Defendant's articles of incorporation and bylaws. The aforesaid declaration runs with the land and pertains to the community known as Carderock Springs in which the property of Plaintiffs Patrick Matthews Bogart and Benjamin Kurtz lies.

5. Plaintiffs as record owners of the property described above are subject to the aforesaid declaration of covenants.

6. There exists a genuine controversy between Plaintiffs and Defendant in that Plaintiffs are attempting to make changes and modifications to their home without first obtaining written approval from the Architectural Review Committee of the Defendant. This court has jurisdiction of this matter in accordance with Maryland Courts and Judicial Proceedings Section 6-103. Further this is an action for declaratory judgement pursuant to Maryland Courts and Judicial Proceedings Section 3-401 through 3-415 for the purpose of determining a question of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding.

7. Plaintiffs have applied for approval of certain changes and modifications to their property before the Architectural Review Committee of the Defendant. The Architectural Review Committee has denied those changes and modifications on the basis that they are not consistent with the above referenced declaration of covenants and with the existing surrounding development in Carderock Springs.

8. Plaintiffs have filed a declaratory judgment action requesting that the aforesaid declaration of covenants be declared invalid and unenforceable.

COUNT I.

9. The factual allegations of Paragraphs 1 through 8 are incorporated herein by reference.

10. Defendant requests a declaration by this court that the above referenced declaration of covenants is valid and enforceable and further that Plaintiffs have failed to comply with said declaration of covenants, and such further relief as this court deems just and proper.

COUNT II.

11. The factual allegations of Paragraphs 1 through 10 are incorporated herein by reference.

12. The bylaws of Defendant adopted to implement the above referenced declaration of covenants provide that a party not satisfied with the decision of the Architectural Review Committee may appeal that action to a full Board of Directors and thereafter to the Defendant Association. Plaintiffs have failed to follow that procedure and therefore their Complaint is not ripe for review. Article II, Section 3 of the Bylaws provides:

“At such time and to such extent as the Association is empowered to enforce the esthetic covenants in the Carderock Springs subdivision as set forth in the Declaration on file in the land records of Montgomery County, the Board of Directors shall appoint an Architectural Committee of three members of the Association, who shall review, approve, or disapprove all proposed building plans and other land uses within the terms of the covenants. Decisions of the Architectural Committee may be appealed to the Board of Directors by any member of the Association, and the Board of Directors shall establish reasonable provisions for notice and hearing with respect to such appeals. Any party to such appeals before the Board of Directors, may within thirty (30) days from notification of the Board of Director’s decision, appeal such decision to a special meeting of the Association called in accordance with the provisions of Article IV, Section 2, hereof. Final decisions of the Board of Directors, or the Association, as the case may be, with respect to the aforesaid building plans and land uses within the terms of the covenants, shall for all purposes be considered the official decision of the “Architectural Committee” as referred to in the said Declarations on file in the land records of Montgomery County.”

13. Defendant requests a declaration that Plaintiffs must first follow the appeal procedures of Defendant's bylaws before they may bring an action in this court, and for such further relief as this court may deem proper.


COUNT III

14. The factual allegations of Paragraphs 1 through 13 are incorporated herein by reference.

15. Upon information and belief Defendant alleges that Plaintiffs have commenced or intend to commence construction of improvements on their property without obtaining the approval of the Architectural Review Committee of Defendant.

16. Defendant requests preliminary and permanent injunctive relief ordering Plaintiffs to cease immediately any improvements on their property without first complying with the covenants applicable to their property requiring approval of the Defendants Architectural Review Committee and such other relief as this court may deem appropriate.

Respectfully submitted,

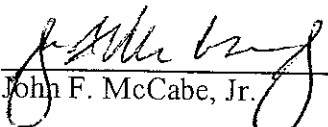


John F. McCabe, Jr.
200A Monroe Street, Suite 300
Rockville, MD 20850
301-279-9500

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 2006, a copy of the foregoing "Respondent's Request for Production of Documents" was mailed via first-class mail, postage prepaid, to:

Samuel D. Williamowsky, Esq.
VanGrack, Axelson, Williamowsky
Bender & Fishman, P.C.
401 North Washington Street, Suite 550
Rockville, MD 20850



John F. McCabe, Jr.