

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PATRICK MATTHEWS BOGART, et al.

Plaintiffs,

v.

CARDEROCK SPRINGS CITIZENS ASSOCIATION, INC.

Defendant.

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Case No. 273518-V

AMENDED COMPLAINT

COMES NOW, the Plaintiffs, Patrick Matthews Bogart and Benjamin Kurtz, by and through counsel, VanGrack, Axelson, Williamowsky, Bender & Fishman, P.C. and Samuel D. Williamowsky, Esq., Jeffrey M. Axelson, Esq., and Koushik Bhattacharya, Esq and file this Amended Complaint against the Defendant, Carderock Springs Citizens Association, Inc., and in support thereof, states as follows:

Jurisdiction and Venue

- 1. Plaintiffs, Patrick Matthews Bogart and Benjamin Kurtz, are over the age of eighteen (18) years and are residents of Montgomery County, Maryland.
2. Defendant, Carderock Springs Citizens Association, Inc., is a Maryland corporation that does business in and has its principal place of business in Montgomery County Maryland.
3. That the cause of action which forms the basis of this lawsuit occurred in Montgomery County, Maryland.
4. That this Court has jurisdiction in this matter in accordance with Md. Courts & Jud. Proc. Code Ann. §1-501 and §6-103.

INGRACK, AXELSON WILLIAMOWSKY, BENDER & FISHMAN, P.C. ATTORNEYS AT LAW 1 N. WASHINGTON ST. SUITE 550 ROCKVILLE, MD 20850 (301) 738-7600
1300 M STREET, N.W. SUITE 800 WASHINGTON, D.C. 20037
7799 LEESBURG PIKE SUITE 900 N ELLS CHURCH, VA 22043

5. That venue is proper under Md. Courts & Jud. Proc. Code Ann. §6-201.

Facts

6. That Plaintiffs, who are homeowners within the subdivision of Carderock Springs and are members of the Defendant Association, had the intention of putting additions on their home.

7. That, as a homeowners, Plaintiffs are required to submit their planned property improvements to the Architectural Review Committee before beginning construction.

8. That the Architectural Review Committee is comprised of three members, who are chosen by the Board of Directors, and shall review, approve or disapprove all proposed building plans and other land uses within the terms of the covenants.

9. That the Plaintiffs presented their proposal to the Architectural Review Committee for the addition to their home, but the plans were not approved.

10. That the Plaintiffs provided revisions to their proposal for an addition to their home, but the plans were still denied.

11. That Douglas Soelin of Soelin Architects is a member of the Board and the Architectural Review Committee and has a conflict of interest since he has done and is doing work on design of community homes.

12. That Malcolm Stevenson is a member of the Board and the Architectural Review Committee and has a conflict of interest since he has done work to his own home in the community in the past without approval.

COUNT I

(Declaratory Judgment - Selective Enforcement of Restrictive Covenant)

13. That paragraphs 1 through 12 are incorporated herein by reference as though repeated in full.

14. That this is an action for declaratory judgment pursuant to the Md. Courts & Jud. Proc. Code Ann. §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, as hereinafter more fully appears.

15. That Plaintiffs maintain Defendant has acted in bad faith by selectively enforcing certain planned improvements, yet allowing others in the community to make that same improvement.

16. That Defendant's inconsistent enforcement of the covenant amounts to a general abandonment of the restrictions that prohibit the Plaintiffs from making home improvements.

17. That Defendant maintains they have the right to enforce their covenants.

18. That there exists an actual controversy of a justiciable issue between the Plaintiffs and Defendant within the jurisdiction of this Court, involving the rights and liabilities of the parties.

19. That antagonistic claims are present between the parties which indicate imminent and inevitable litigation.

20. That a declaratory judgment by this Court will terminate this controversy.

WHEREFORE, Plaintiffs request the following relief:

A. That the Court enter a Judgment declaring the restrictions of this covenant to be invalid and unenforceable.

B. Grant Plaintiffs costs, attorney's fees and such other and further relief as the Court deems just and proper.

COUNT II
(Breach of Contract)

21. That paragraphs 1 through 20 are incorporated herein by reference as though repeated in full.

22. That Plaintiffs entered into an agreement with Defendant, by which the Plaintiffs bought a home in the Defendant's community and agreed to abide by the conditions, covenants, restrictions and easements affecting the property.

23. That the Defendant breached his obligation to the Plaintiffs by enforcing a covenant against the Plaintiffs in which the Defendant had selectively enforced in the past.

24. That as a result of the breach, Plaintiffs have incurred a loss in property value from being unable to make additions to their home.

WHEREFORE, Plaintiffs request the following relief:

A. That the Court enter a Judgment approving the Plaintiff's proposed plans for renovation.

B. judgment against Defendant in the amount of \$750,000.00 plus interest and costs.

COUNT III
(Constructive Taking)

25. That paragraphs 1 through 24 are incorporated herein by reference as though repeated in full.

26. That the Defendant is depriving the Plaintiffs of all reasonable use of their property.

27. That interference is so substantial it creates a considerable decrease in value of the Plaintiffs' property.

WHEREFORE, Plaintiffs request judgment against Defendant in the amount of \$750,000.00 plus interest and costs.

COUNT IV
(Declaratory Judgment - Approval of Plaintiff's Proposed Plans)

28. That paragraphs 1 through 27 are incorporated herein by reference as though repeated in full.

29. That this is an action for declaratory judgment pursuant to the Md. Courts & Jud. Proc. Code Ann. §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, as hereinafter more fully appears.

30. That Plaintiffs maintain that the Defendant has acted in bad faith in denying the Plaintiffs' proposed additions and that the conclusions made concerning the Plaintiffs' plans were not made with a reasonable determination considering the current state of other residences in the development.

31. That Defendant's inconsistent enforcement of the covenant amounts to a

general abandonment of the restrictions that prohibit the Plaintiffs from making home improvements.

32. That there exists an actual controversy of a justiciable issue between the Plaintiffs and Defendant within the jurisdiction of this Court, involving the rights and liabilities of the parties.

33. That antagonistic claims are present between the parties which indicate imminent and inevitable litigation.

34. That a declaratory judgment by this Court will terminate this controversy.

WHEREFORE, Plaintiffs request the following relief:

A. That the Court enter a Judgment approving the Plaintiffs' proposed addition to their property.

B. Grant Plaintiffs costs, attorney's fees and such other and further relief as the Court deems just and proper.

Respectfully submitted,

**VANGRACK, AXELSON, WILLIAMOWSKY,
BENDER & FISHMAN, P.C.**

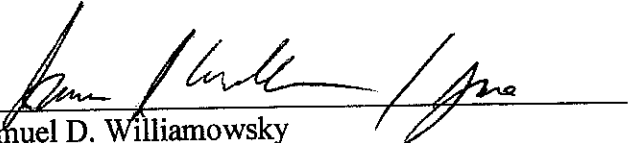
By: _____

Jeffrey M. Axelson

By: _____

Koreshik Bhattacharya

By:


Samuel D. Williamowsky
401 North Washington Street, Suite 550
Rockville, Maryland 20850
(301) 738-7680
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, via first class, postage prepaid, this 29th day of December 2006 to:

John F. McCabe, Jr.
200A Monroe Street, Suite 300
Rockville, MD 20850
Attorney for Defendant


Jeffrey M. Axelson, Esquire