

RECEIVED MAY 01 2007

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PATRICK MATTHEWS BOGART :
and BENJAMIN KURTZ :

Plaintiffs, :

v. :

Case No. 273518-V

CARDEROCK SPRINGS CITIZENS :
ASSOCIATION, INC. :

Defendant. :

PLAINTIFFS' SUPPLEMENTAL ANSWERS TO DEFENDANT'S FIRST SET OF INTERROGATORIES

TO: Carderock Springs Citizens Association, Inc., Defendant
c/o John F. McCabe, Jr., Esquire

FROM: Patrick M. Bogart, Plaintiff
Benjamin Kurtz, Plaintiff
c/o Samuel D. Williamowsky, Esquire

COMES NOW, the Plaintiffs, Patrick M. Bogart and Benjamin Kurtz, by and through counsel, VanGrack, Axelson, Williamowsky, Bender & Fishman, P.C. and Samuel D. Williamowsky, and in response to Defendant's Interrogatories, answers as follows:

GENERAL OBJECTIONS

The Plaintiffs set forth herein certain general objections that are applicable to many or all of the interrogatories. All or some of the Plaintiffs' answers will specifically object to each particular interrogatory as may be appropriate. The following general objections are set forth to preserve the applicable objections. Each and every general objection stated is a continued objection that the Plaintiffs incorporate into each and every one of their answers to

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interrogatories to the extent applicable. Except as indicated herein, Plaintiffs adopt answers to these interrogatories as first promulgated.

A. To the extent that certain interrogatories are overly broad, unduly burdensome, or seek to obtain information that is not relevant to this action, or likely to lead to the discovery of admissible evidence, the Plaintiffs object to these interrogatories.

B. Plaintiffs object to interrogatories to the extent that they seek information not within the possession or custody or control of the Plaintiffs on the grounds that such discovery is overly broad and unduly burdensome.

C. Plaintiffs object to interrogatories to the extent they seek information protected by attorney work product doctrine, attorney/client privilege, or any other applicable privilege.

D. Nothing in this response shall be construed in any way to waive any objections or certify that the Plaintiffs in response to any of Defendant's requests for production of documents or answers to interrogatories are not objected to.

E. Plaintiffs reserve the right to object further to any interrogatories to the extent that additional objections may be appropriate.

F. Plaintiffs reserve the right to amend or supplement their answers to these interrogatories to the extent they discover additional information in response to the interrogatories.

ANSWERS TO INTERROGATORIES

Interrogatory No. 1: If you contend that Defendant is barred by laches from enforcing its covenants, bylaws, rules and regulations, state the factual basis for your contention, including in particular every example upon which you rely for contending that Plaintiffs have been prejudiced by any delay.

ANSWER: Plaintiffs do not contend that the Defendant is barred by laches but do contend that the Defendant has selectively enforced the alleged covenants, either approving request for construction of homes with similar features to those of the Plaintiffs proposed changes or by failing to object to or enforce covenant against homeowners who did not request approval. By way of further answer state that the alleged covenants do not specifically prohibit the Plaintiffs' proposed additions and improvements.

Interrogatory No. 2: If you contend that Defendant is estopped from enforcing its covenants, bylaws, rules and regulations state the factual basis for your contention.

ANSWER: The Defendant is estopped from enforcing its alleged covenants due to selective enforcement in that numerous other properties belonging to the association have made changes or improvements similar to those proposed by the Plaintiffs.

Interrogatory No. 3: If you contend that Defendant has acquiescence in previous violations of its covenants, bylaws, rules and regulations and therefore is not able to enforce them against you state the factual basis for your contention including for each violation upon which you rely the dates, names of parties, identification of property and nature of activity involved.

ANSWER: The Plaintiffs have surveyed other properties belonging to the association, on many of which changes or improvements have been made which similar to those proposed by the Plaintiffs. See photographs provided with request for production. See list of properties identified below. The list also identifies some of the features which are present in those homes which feature a similar attribute defendant has rejected in plaintiffs design.

- 1) 8023 Fenway Rd.- Two story front entry way, doors with pained glass, overall architecture not similar to community.
- 2) 8404 Carderock Rd.- Entry two story glass, with gable, slope of roof not compliant, front of house set toward street by at least 20 feet.
- 3) 8405 Carderock Rd.- Purple door and garage
- 4) 8413 Fenway Rd.- House exterior is vertical cedar not horizontal as requested for ours, front entry has classical design with widows walk, front of home architecture has been radically changed with no other home in community matching.
- 5) 8600 Fenway Rd.- Gable
- 6) 8505 Fenway Rd.- House was owned by Malcom Stevenson, the fence was put up without prior approval from board, other additions protruding toward street including gable.
- 7) 8307 Still Spring Ct.- Gable off front of house, forward encroachment.
- 8) 8208 Carderock Springs Dr.- Concrete columns in front off home, front deck that wraps around front and side of house, three story solarium with metal roof, pitch of roof not compliant.
- 9) 8128 Hamilton Springs.- Front of house addition set forward
- 10) 8124 Hamilton Springs.- Pink house

11) 8120 Hamilton Springs.- House belongs to ex member of ARC who got addition approved while on the ARC. Double gables off front of house, extremely large addition mainly coming off front of home, does not match any other house in community.

12) #6 Park Overlook Ct.- Gables in front of home, solarium extending height of home, pitch of roof not in compliance

13) 7914 Park Overlook Dr.- Addition comes towards front of property by at least 15 feet.

14) 8021 Park Overlook Dr.- Gable in front of home, stone stairs and entry, stone wall up to roof line.

15) 8100 Hamilton Springs.- House is yellow, addition took home up to three stories, not approved by ARC

16) 8223 Lilly Stone.- Gables over garage, not compliant with ARC demands

17) 8316 Lilly Stone.- Gables on Carport, doesn't look like any other home in community, we believe this might not even be original home.

Interrogatory No. 4: If you contend that there has been a change in the neighborhood or other change which prevents the enforcement of Defendant's covenants, bylaws, rules and regulations state the factual basis for your contention including a list of every such change with property identification and dates.

ANSWER: See Answer No. 3.

Interrogatory No. 5: If you contend that there has been a waiver or abandonment of the covenants, bylaws, rules and regulations which prevents Defendant from enforcing them state the factual basis for your contention including for each instance of waiver or abandonment upon which you rely the dates, names of parties, identification of property and nature of activity involved.

ANSWER: The Defendant's selective enforcement of the alleged covenants results in the waiver of those covenants. See Answer No. 3.

Interrogatory No. 6: If you contend that the Defendant's covenants, bylaws, rules and regulations are unenforceable and/or invalid due to misuse or inequitable or unreasonable or arbitrary or capricious conduct state in detail the factual basis for your contention including an identification of each instance where there has been misuse or inequitable or unreasonable or arbitrary or capricious conduct.

ANSWER: The members of the Defendant's Architectural Review Committee also provide services to homeowners in the association and are biased in their assessment of the Plaintiffs' proposed additions and improvements. All of the features of Plaintiffs' design which were rejected by the Defendant are present in other homes in the Association.

Interrogatory No. 7: If you contend that the covenants, bylaws, rules and regulations are unenforceable due to lack of uniform or sufficient guides or standards state in detail the factual basis for your contention.

ANSWER: The alleged covenants do not prohibit any of the Plaintiffs' proposed additions or improvements. See Answer No. 3.

Interrogatory No. 8: If you contend that the Defendant's covenants, by-laws, rules and regulations are unenforceable as a result of selective enforcement state the factual basis for your contention including for each instance for selective enforcement upon which you rely the dates, names of parties, identification of property and nature of activity involved

ANSWER: See Answer No. 3.

Interrogatory No. 9: If you contend that the action of the Architectural Review Committee in this particular case has been arbitrary, capricious, unreasonable or inequitable state in detail the factual basis for your contention.

ANSWER: The members of the Defendant's Architectural Review Committee also provide architectural services to homeowners in the association and are biased in their

assessment of the Plaintiffs' proposed additions and improvements who did not utilize their services. In addition, individuals who are not member of the Committee were present at hearings offering opinions. All of the rejected elements of Plaintiffs' design are present in other homes in the Association.

Interrogatory No.10: If you contend that the covenants, bylaws, rules and regulations of the Defendant are enforceable for any other reason not named above state in detail the factual basis for your contention.

ANSWER: The alleged covenants do not prohibit the Plaintiffs' proposed additions and improvements and the Defendant is selectively choosing to enforce the alleged covenants against the Plaintiffs for reasons unknown to them. The covenants are not enforceable for any other reason.

Interrogatory No. 11: Identify any and all experts whom you intend to call as witnesses at the trial of this matter stating each expert's area of expertise and the anticipated substance of his or her testimony. Attach to your answers to these Interrogatories copies of any written reports provided to you by any experts whom you propose to call as witnesses at the trial of this matter.

ANSWER: At this time the Plaintiffs name the following experts:

- A) Dee Hernandez, General Contractor
10335 Kensington Parkway # 3
Kensington, MD 20895
(301) 942-6808
Mr. Hernandez will testify to the cost and expenses associated with construction and how delay can affect those costs.
- B) Rich Haan, Real Estate Agent

23800 Grapevine Ridge Terrace
Clarksburg, MD 20871
(240) 793-3381

Mr. Hann will testify to the market value of the Plaintiffs' home with and without the improvements and the loss caused by the delay in construction. He may also testify as to the process involved in and the ability to purchase similar properties, renovate them and resell them at a profit.

C) Ray Amin, Architect
207 Martins Lane
Rockville, MD 20850
(301) 674-3766

Mr. Amin will testify to the reasonableness and likeness of the Plaintiffs' improvements to other homes in the Carderock Springs community.

Interrogatory No. 12: Identify all persons known to you with direct personal knowledge of any facts relevant to this case.


ANSWER: The parties named in this matter are the only parties with direct personal knowledge.

Interrogatory No. 13: Describe in detail the precise additions, changes and modifications you desire to make to your property, including an identification of any plans or other documents showing those changes and modifications.

ANSWER: The Plaintiffs have previously provided detailed architectural plans outlining the proposed additions and improvements to Counsel for the Defendant.

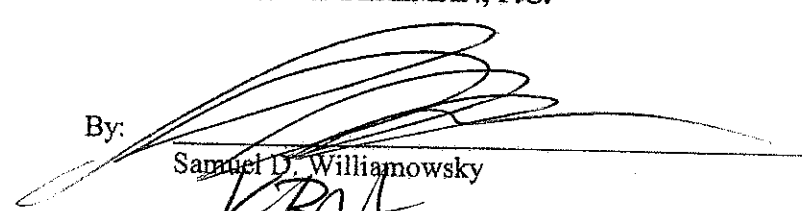
I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.



PATRICK MATTHEWS BOGART

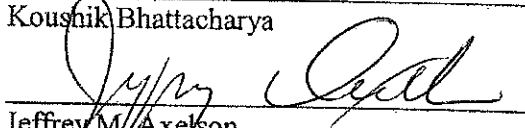

BENJAMIN KURTZ
BCK

Respectfully submitted,

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

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Samuel D. Williamowsky

By: 
Koushik Bhattacharya

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April 2007, a copy of the foregoing Plaintiffs' Answers to Defendant's Interrogatories was mailed postage prepaid to:

John F. McCabe, Jr., Esquire
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Attorney for Defendant



Jeffrey M. Axelson