

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL**

METROCLUB CONDOMINIUM ASSOC.,:	:	JULY TERM, 2010
	:	
Plaintiff,	:	NO. 00279
	:	
v.	:	COMMERCE PROGRAM
	:	
201-59 NORTH EIGHTH STREET	:	
ASSOCIATES, L.P.,	:	
	:	
Defendants.	:	

**OPINION**

Plaintiff Metroclub Condominium Association (the “Association”) appeals from this court’s Order of May 3, 2011, in which the court granted defendant’s Motion for Judgment on the Pleadings and denied the Association’s Cross-Motion for Summary Judgment.

The Association is a condominium association composed of the owners of condominium units at the Metroclub Condominium (the “Condominium”). In this action, the Association sued 201-59 North Eighth Street Associates, L.P. (the “Declarant”), which is the entity that converted the building to condominium use and which still owns approximately 17 of the 130 units in the Condominium. The Declarant ceased to control the Condominium in or about June, 2007, when it succeeded in selling more than 75% of the Condominium units to unaffiliated unit owners. The Association took control of the Condominium at that time.

In this action, the Association claimed the Declarant improperly continues to exercise control over, and to profit from the rental of, 41 of the 153 parking spaces available at the Condominium (the “Contested Parking Spaces”).<sup>1</sup> The Declarant claimed it is entitled to control and ultimately to allocate the Contested Parking Spaces to the units it still owns until it ceases to

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<sup>1</sup> The other approximately 112 parking spaces were previously allocated by the Declarant to the units it sold to the members of the Association.

own any units. The Association argued that since the Declarant no longer controls the Condominium, public policy dictates that it may no longer control the Contested Parking Spaces either.

The Declaration of the Condominium expressly provides as follows with respect to parking spaces:

Section 5.03. Parking Spaces – Limited Common Elements

(a) Assigned Parking Spaces – Allocation by Declarant. All automobile parking spaces located in the Parking Lot are reserved as Assigned Parking Spaces (including all ADA Accessible Spaces), and are restricted to use by (i) those Unit owners other than Declarant to which each such Assigned Parking Space is assigned as a Limited Common Element appurtenant to a Unit, and (ii) as to those Assigned Parking Spaces that have not [been] so assigned, Declarant (as long as it owns any Unit). Until such time as each of the Assigned Parking Spaces is allocated as a Limited Common Element appurtenant to [a] particular Unit, Declarant has the absolute right, without [sic] or without consideration, to allocate Assigned Parking Spaces as Limited Common Elements appurtenant to specific Units, provided that except as otherwise set forth in this Declaration, in no event shall any Unit be allocated more than three (3) Assigned Parking Spaces unless that Unit is owned by Declarant or an affiliate of Declarant. Declarant shall make such assignment either in a written recorded assignment, in the deed conveying the Unit from Declarant to the Unit Owner, or by recording an amendment to this Declaration or the Plats and Plans designating thereon the Unit to which each such Assigned Parking Space is allocated and assigned. Any assignment of an Assigned Parking Space as a Limited Common Element shall be subject to the authority of the Executive Board to reallocate Assigned Parking Spaces as set forth below in this Declaration.<sup>2</sup> The specific Assigned Parking Space(s) assigned to a particular Unit in connection with a sale or other conveyance of a Unit by Declarant to any Person other than Declarant shall be determined by Declarant in its sole discretion.

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(d) Allocation to Declarant. As long as Declarant owns any Units, Declarant may assign and allocate to Units it owns Assigned Parking Spaces not allocated to other Units, regardless of (and without Declarant being subject to) any otherwise applicable limit herein on the maximum or minimum number of Assigned Parking Spaces that may be allocated to a particular Unit.

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(h) Leasing Assigned Parking Spaces. Declarant (for so long as it owns any Unit) may lease any Assigned Parking Space not assigned as Limited

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<sup>2</sup> The Board's authority is limited to requiring the exchange of parking spaces between Unit Owners to accommodate the needs of handicapped or physically disabled persons. See Declaration, Section 5.03(c).

Common Element appurtenant to a particular Unit to any Person, for such term and upon such conditions as Declarant, in its sole discretion, determines.

As set forth in these provisions, the Condominium's Declaration clearly contemplates the Declarant's continued control, and leasing, of unallocated parking spaces for so long as the Declarant owns any Unit. Despite this clear language favoring Declarant control, the Association incorrectly claimed such continuing control violates the provisions of the Uniform Condominium Act and the public policy embodied therein.

The Uniform Condominium Act does not speak to the subject of parking spaces in particular, but it does discuss the allocation of limited common elements more generally:

The declaration for a condominium must contain: . . . A description of any common elements not within the boundaries of any convertible real estate which may be allocated subsequently as limited common elements together with a statement that they may be so allocated and a description of the method by which the allocations are to be made.<sup>3</sup>

A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with [the section quoted above]. The declaration may provide that the allocations shall be made by deeds or assignments executed by the declarant or the association, or by amendments to the declaration.<sup>4</sup>

The statute permits the Declarant to reserve for itself in the Declaration the power to allocate parking spaces as limited common elements. Nothing in the statute prohibits the Declarant from continuing to exercise this power to allocate after the Declarant ceases to control the Condominium. Furthermore, the Uniform Condominium Act does not prohibit the Declarant from leasing parking spaces that it has not yet allocated while the Declarant attempts to sell the remaining Units (and parking spaces) it owns. Therefore, the court correctly found that

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<sup>3</sup> 68 Pa.C.S. § 3205(7).

<sup>4</sup> 68 Pa.C.S. § 3209(c).

Declarant is entitled to continue to lease the Contested Parking Spaces and to allocate them to the units it currently owns when it succeeds in selling such units.

For all the foregoing reasons, the court respectfully requests that its May 3, 2011 Order be affirmed on appeal.

**Dated: May 31, 2011**

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**MARK I. BERNSTEIN, J.**