

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

CAROLINE S. ROBBOY and PETER A. GEARHART, <i>Plaintiffs,</i> v. TWO INDEPENDENCE PLACE CONDOMINIUM OWNERS' ASSOCIATION, <i>Defendant.</i>	April Term, 2023 Case No. 00157 Control No. 24032669 Commerce Program 838 CD 2024
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FILED
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1ST JUDICIAL DISTRICT PA
JUDICIAL RECORDS

OPINION

Defendant Two Independence Place Condominium Owners' Association appeals this Court's order dated June 7, 2024 and docketed on June 11, 2024, granting Plaintiffs' motion for summary judgment. For the reasons set forth in the Court's opinion, attached hereto as Exhibit "A" and adopted and incorporated hereto by reference, this Court's order should be affirmed.

OPFLD-Robby Etal Vs Two Independence Place Condominium [ACH]



Respectfully submitted,

BY THE COURT:

PAULA A. PATRICK, J.

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

CAROLINE S. ROBBOY and PETER
A. GEARHART,

Plaintiffs,

v.

TWO INDEPENDENCE PLACE
CONDOMINIUM OWNERS'
ASSOCIATION,

Defendant.

April Term, 2023

Case No. 00157

Control No. 24032669

ORDOP-Robboy Etal Vs Two Independence Place Condominium

Commerce Program



ORDER

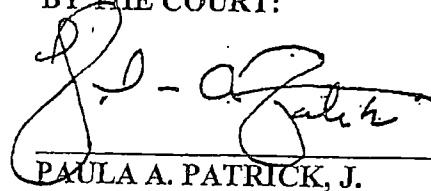
AND NOW, this 7th day of June 2024, upon consideration of Plaintiffs' Motion for Summary Judgment and the response and replies thereto, it is **ORDERED** that the Motion is **GRANTED** and **JUDGMENT IS ENTERED** in favor of Plaintiffs as follows:

1. Defendant is **PERMANENTLY ENJOINED** from enforcing the March 13, 2023 Resolution;
2. Defendant is **PERMANENTLY ENJOINED** from relying on Board Resolutions 8 and 16 as authority to limit the use of the Plaintiffs' property to anything other than those uses provided for in the Declaration;
3. Defendant is **PERMANENTLY ENJOINED** from limiting the use of the Plaintiffs' property to less than all lawful purposes absent an amendment to the Declaration approved by unanimous vote of the condominium unit owners;
4. Pursuant to PA. CONS. STAT. ANN. § 3412, Plaintiffs are entitled to reasonable attorney's fees and costs in connection with this matter and a hearing will be held to decide their amount on August 13, 2024, at 11:00 Am in

Courtroom 654, City Hall. Plaintiffs will submit its attorney's fees and cost along with a memorandum justifying same at least **twenty (20) days** prior to the scheduled hearing and Defendant will submit its response at least **ten (10) days** prior to the hearing;

5. The *lis pendens* filed by Defendant is hereby **STRICKEN and REMOVED** from the record; and
6. The Court retains jurisdiction for the purposes of resolving any future disputes concerning any attempt by Defendant to exercise control or approval of the sale or use of Plaintiffs' property.

BY THE COURT:

A handwritten signature in black ink, appearing to read "P. A. Patrick", is written over a horizontal line.

PAULA A. PATRICK, J.

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

CAROLINE S. ROBBOY and PETER A. GEARHART, <i>Plaintiffs,</i> v. TWO INDEPENDENCE PLACE CONDOMINIUM OWNERS' ASSOCIATION, <i>Defendant.</i>	April Term, 2023 Case No. 00157 Control No. 24032669 Commerce Program
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OPINION

Plaintiffs Caroline S. Robboy and Peter A. Gearheart ("Gearharts") own a commercial condominium unit they are attempting to sell and seek summary judgment on their claims that Defendant Two Independence Place Condominium Owner's Association ("Two Independence Place") has unlawfully infringed their property rights. Two Independence Place has allegedly done so by passing a resolution that essentially gives it veto power over any potential buyer of the unit in violation of the Pennsylvania Uniform Condominium Act, 68 Pa. Cons. Stat. §3101, *et seq.* (the "Act"), the Declaration of Two Independence Place Condominium ("Declaration"), and the Bylaws of Two Independence Place Condominium ("Bylaws").

In response, Two Independence Place argues that it has a right to regulate the use of the unit under the Bylaws as well as resolutions passed pursuant to those Bylaws.

However, the Declaration is clear that the commercial condominium units may be used for any lawful purpose. And, under the Act, the Declaration prevails over the Bylaws. Two Independence Place has therefore exceeded its authority and violated the Act. As a result, the Court will grant the Gearharts' motion for summary judgment as explained below.

BACKGROUND

While the parties dispute Two Independence Place's authority to control the use of the commercial condominium units in the complex, they do not dispute the underlying facts giving rise to the suit.

The Gearharts have owned commercial unit C-3 in the condominium tower at 233 S. 6th St., Philadelphia, PA 19106 since 2006.¹ Two Independence Place is the homeowner's association for the condominium tower.²

In March 2023, the Gearharts were in negotiations to sell their commercial condominium unit to the owners of a child daycare.³ Under Section 7.01(1) of the Declaration governing the condominium complex, it states that commercial units "may be used for retail business, commercial and professional purposes and *any other lawful purposes*."⁴

On the prompting of the potential buyer, the Gearharts' real estate agent Janice Benstock contacted Two Independence Place on March 8, 2023, about any processes that needed to be followed regarding the sale.⁵ In a series of conversations between March 9th and 10th, Susan Kaneff, the manager at Two Independence Place, told Ms. Benstock that the Gearharts would have to apply for approval of the sale with the Board and that it would likely not approve a sale of the unit that resulted in "a bunch of screaming kids running around."⁶

¹ Gearharts' Petition for Preliminary Injunction ("Petition"), Ex. A (Affidavit of Caroline S. Robboy), ¶¶ 2,3.

² *Id.*, ¶ 8.

³ Two Independence Place's Opposition to Summary Judgment ("Opp. to SJ"), Ex. G (Affidavit of Real Estate Agent Janis Benstock), ¶¶ 6-10.

⁴ Petition, Ex. B (Declaration).

⁵ *Id.*, ¶ 5.

⁶ *Id.*, ¶¶ 10-11.

Shortly thereafter, on March 13, 2023, Two Independence Place passed a resolution (“2023 Resolution”) giving itself power to “review and approve” any proposed use of any commercial unit, effectively giving it veto power over uses it did not approve.⁷ Counsel for Two Independence Place also sent the Gearhart’s counsel a letter dated March 31, 2023 in which its attorneys invoked Two Independence Place’s rights under the Bylaws to pass rules and regulations relating to the use of common areas and preventing nuisances to justify passage of the 2023 Resolution.⁸

After the passing of the Resolution, the Gearharts filed suit and sought a preliminary injunction so that they could sell their unit without being subjected to the 2023 Resolution. The Gearharts’ petition was initially declined by the Court. Subsequently, Two Independence Place filed a *lis pendens* against the property on May 22, 2023. The Gearharts then filed a Motion for Reconsideration which the Court granted on June 16, 2023. Oral argument on the Gearharts’ petition was held on July 12, 2023, and the Court granted the Gearharts’ preliminary injunction request on August 29, 2023. Two Independence Place appealed the Court’s order that same day and that appeal is currently before the Pennsylvania Commonwealth Court. The Gearharts have now moved for summary judgment to make the preliminary injunction permanent.

LEGAL STANDARD

Summary judgment can be entered “only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.”⁹ When the trial court considers such a motion, it must view “all facts of record and all reasonable inferences therefrom in a light most favorable to the non-moving

⁷ Opp. to SJ, Ex. F (3/13/23 Resolution).

⁸ *Id.*, Ex. E (3/31/23 Letter).

⁹ *Summers v. Certainteed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010) (*quoting Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1221 (Pa. 2002)).

party[.]” and “resolve all doubts as to the existence of a genuine issue of material fact against the moving party.”¹⁰ Summary judgment is properly granted only “where the right to such judgment is clear and free from all doubt.”¹¹

ANALYSIS

A permanent injunction order requires the moving party to establish that: “(1) the right to relief is clear; (2) the relief is necessary to prevent an injury which cannot be compensated by damages; and (3) greater injury will occur from refusing the injunction than from granting it.”¹²

In determining the right to relief, the sole issue at stake is whether Two Independence Place had the authority to pass the March 2023 Resolution giving the Board the authority to “review and approve any proposed use” of any commercial unit. Since it did not, the Court will grant the Gearharts’ motion.

The parties’ rights and obligations relating to their commercial condominium unit are governed by (1) the Act; (2) the Declaration; and (3) the Bylaws.

According to the Act, a condominium’s declaration is the legal document that essentially “creates” the condominium, similar to a charter.¹³ As a result, a declaration must include the name of the condominium, a description of the real estate, the delineation of the boundaries of each unit and any common elements, and, most importantly for this discussion, “[a]ny *restrictions* created by the declarant on *use*, occupancy, and alienation of the units.”¹⁴

¹⁰ *Id.*

¹¹ *Id.*

¹² *First Phila. Preparatory Charter Sch. v. Dep’t of Educ.*, 179 A.3d 128, 132 n.2 (Pa. Cmwlth. 2018).

¹³ 68 PA. CONS. STAT. ANN. § 3201.

¹⁴ 68 PA. CONS. STAT. ANN. § 3205(9) (emphases added).

Given the declaration's importance in establishing these fundamental facets of the condominium, general changes to the declaration require an amendment endorsed by a two-thirds vote of the condominium association and amendments regarding the "uses to which any unit is restricted" require a *unanimous vote*.¹⁵

Under the Act, the condominium unit owner's association is created subsequent to the declaration and before the conveyance of any condominium unit.¹⁶ Given the precedence of the declaration, any acts carried out by the owner's association or executive board, *including adopting and amending bylaws, rules and regulations*, are subject to the declaration.¹⁷ Additionally, the Act explicitly states that, "[i]n the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails[.]"¹⁸

Bearing this in mind, the analysis is straightforward and the Gearharts' right to relief is clear.

Section 7.01(1) of the Declaration governing the Gearharts' condominium complex states that commercial units "may be used for retail business, commercial and professional purposes and any other lawful purposes."¹⁹

Amendments to a declaration regarding the "uses to which any unit is restricted" require a *unanimous vote*.²⁰

There was no vote, yet alone a unanimous one.

¹⁵ PA. CONS. STAT. ANN. § 3219(d).

¹⁶ 68 PA. CONS. STAT. ANN. § 3301.

¹⁷ 68 PA. CONS. STAT. ANN. § 3302(a); § 3303(a); § 3306

¹⁸ 68 PA. CONS. STAT. ANN. § 3203.

¹⁹ Petition, Ex. B (Declaration).

²⁰ 68 PA. CONS. STAT. ANN. § 3205(9).

Therefore, Two Independence Place violated the Act by attempting an end run around § 3219(d) by passing the 2023 Resolution giving it the right to decide the use of the commercial units, and thus amend the Declaration, without the required unanimous vote.

While Two Independence Place points to various resolutions based in the Bylaws and the Bylaws themselves for the authority to decide a commercial unit's use, the Bylaws are subordinate and subject to the Declaration and in the case of any conflict, such as the one created by the passing of the 2023 Resolution, the Declaration prevails.²¹

In defending the passage of the 2023 Resolution, Two Independence Place provides an array of arguments, invoking abstruse interpretative principles and adding and subtracting to the language of the Act, Declaration, and Bylaws to fit its interpretation. But these arguments fail to acknowledge the hierarchy between these three sets of rules – instead giving the Bylaws precedence over the Act and Declaration – and never confront the explicit requirement of the Act that the Declaration cannot be amended without a unanimous vote.

Further, as a practical matter, allowing the Board or some sub-committee thereof to pass resolutions by fiat altering the property rights of the tenants would make a hash out of the Act – ruining its careful architecture and rendering it a nullity. If the Bylaws are supreme, as Two Independence Place basically argues, what's to stop the Board from altering the boundaries of the units, or changing what is or is not a common area, or making any other sort of revision to those

²¹ Two Independence Place points to two prior 1991 resolutions, Resolution 8 and Resolution 16, for the authority to regulate the uses to which the commercial units are put. Resolution 16 states that the units are only to be used for the “respective purposes for which intended” and that no use or practice “which is a source of nuisance to or interferes with the peaceful possession and proper use” of the units “shall be permitted.” While the “respective purposes” for which the units are intended are set out in the Declaration, by law, the Board's authority to regulate nuisances or other interferences is recognized by this Court so long as those regulations do not conflict with or contradict the Declaration.

foundational elements the Act makes the exclusive jurisdiction of the Declaration without the consent of the condominium owners? Such an inverted reading of the priorities established by the Act leads to absurdities that cannot be endorsed by the Court.

With the Gearharts' clear right to relief established, the other two elements fall readily into place.

The permanent injunction requested by the Gearharts is necessary to prevent an injury which cannot be compensated for by damages. The Pennsylvania courts have repeatedly held that in cases involving a real property interest, "the loss of that interest constitutes irreparable harm because each parcel of real estate is unique."²² Furthermore, without a permanent injunction in place, there would be nothing preventing Two Independence Place from passing additional resolutions or regulations unlawfully encumbering the sale of the Gearhart's unit or the uses to which it could be put.

Finally, greater injury will occur from refusing to grant the permanent injunction than from granting it. While refusing the Gearharts' request would unfairly truncate their property rights, granting it would only require Two Independence Place to follow the rules laid out by the Act, Declaration, and Bylaws to which it is already required to adhere.²³

²² See, e.g., *Peters v. Davis*, 426 Pa. 231, 231 A.2d 748 (1967).

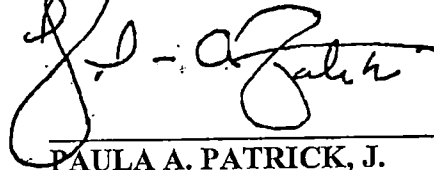
²³ While the Court declines to award punitive damages, as they are "extreme remedy" available only in "exceptional circumstances" not present here, *Hall v. Episcopal Long Term Care*, 54 A.3d 381, 384 (Pa. Super. 2012), the Court will provide in its accompanying order a hearing date on the Gearharts' attorney's fees and costs as provided by the Act, PA. CONS. STAT. ANN. § 3412.

CONCLUSION

For the reasons stated above, the Gearharts' motion for summary judgment is granted.

An appropriate order follows.

BY THE COURT:

A handwritten signature in black ink, appearing to read "P. A. Patrick", is written over a horizontal line.

PAULA A. PATRICK, J.