**BEFORE THE COMMISSION**
**ON COMMON OWNERSHIP COMMUNITIES**
**MONTGOMERY COUNTY, MARYLAND**

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| GERALD AND SAHFEYAH CHAN, | ) | |
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| | ) | |
| Complainant, | ) | |
| | ) | |
| vs. | ) | Case 446-O |
| | ) | January 7, 2000 |
| HADLEY FARMS COMMUNITY ASSOCIATION, | ) | |
| | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

## DECISION AND ORDER

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(I), 10B9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this day of November 1999, found, determined and ordered as follows:

## BACKGROUND

On April 6, 1999, the Complainants, Gerald and Sahfeyah Chan, filed a Complaint with the Commission on Common Ownership Communities in which they alleged that the Board of Directors for the Hadley Farms Community Association, Inc. acted in an unreasonable manner. They allege the Board practiced selective enforcement of a non–specific guideline by imposing an eight foot height limit on trees planted by the them in their yard. In addition, they challenge the Board's right to change requirements for outdoor lighting installed on the Chans' deck after the board approved the installation.

The dispute began as a disagreement between neighbors. Rather than being resolved between the parties, the dispute spilled over into the community. In July 1998, the Chan's neighbors, Dennis and Lisa McMahon, filed a complaint with the Hadley Farms Architectural Control Committee addressing issues regarding landscaping and features on the Chans' deck. Eventually, the Hadley Farms Board of Directors became involved in the dispute. On December 10, 1998, the Board sent the Chans a letter in which it published its determination on the complaint.

The Board ordered the Chans to move Rose-of-Shannon bushes at least four feet from the curb. The Board also ordered a row of Leland Cypress that paralleled the street to be moved further from the street. In addition, the letter discussed the trees at issue here.

> The row of Leland Cypress along your rear property lying, adjacent to your neighbor's property, must be properly pruned so as not to be invasive to the adjoining property. Please be aware that the adjoining property owners have a right to trim the trees that extend over their property line. Also, please recognize that the Leland Cypress may become so large that a future Board of Directors may act to have them removed.

In addition, the Board resolved the deck light issue by requiring the installation of a dimmer switch on the lights. Finally, the Board told the Chans that if they disagreed with the Board's decision on these issues, they should pursue an appeal with the Commission on Common Ownership Communities.

After numerous additional letters, meetings, visits to the property and renewed complaints from the McMahons, the Board issued another decision addressing the dispute. In this decision, issued in a letter dated March 4, 1999, the Board found the deck lights "obtrusive" and held that leakage of light into the McMahon's yard "must be kept to a minimum." The Board made suggestions as to methods for minimizing the leakage but left it to the Chans "to determine how [they] will comply with this requirement." The Board found that the dimmer switch did not meet the requirement. In the same letter, the Board changed its position regarding the trees along the property line by imposing an eight foot height limit on the Leland Cypress trees.

## FINDINGS OF FACT

1. Gerald and Sahfeyah Chan, complainants, are homeowners residing at 19701 Boxberry Drive, Gaithersburg, MD 20879. This residence is located in the Hadley Farms Community Association.

2. The Hadley Farms Community Association is a community located in Gaithersburg, Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions. The relevant provision of the Declaration that govern this dispute is Article V – Architectural Controls.

3. On or about March 26, 1998, Gerald and Sahfeyah Chan (the Chans) planted approximately 20 Leland Cypress trees parallel to the property line dividing their property from the property at 19703 Boxberry Drive which was, at the time, owned by Dennis and Lisa McMahon (the McMahons).

4. On or about May 16, 1997, the Chans submitted an Application for Exterior Modification to the Hadley Farms Community Association. This application was for the construction of a deck on the rear of their house. Attached to this application were blueprints for the project. The blueprints included a representation of the lights on the deck. Hadley Farms approved the application for the deck which was then constructed.

5. On or about July 6, 1998, the McMahons submitted their first formal complaint to the community regarding the Chans' property. This complaint addressed, among other issues, the Leland Cypress trees along the property line and the lighting on the deck.

6. On December 10, 1998, Hadley Farms issued its ruling on the dispute. In this ruling, Hadley Farms ordered the Chans to move certain bushes and trees near Boxberry Drive, keep the Leland Cypress trees "properly pruned so as not to be invasive to the adjoining property," and install a dimmer for the deck lights. The community gave the Chans until May 1, 1999, to comply.

7. On December 21, 1998, the Chans informed the community, by letter, that they had moved the bushes as requested, moved two of the four trees parallel to Boxberry Dr., installed a berm along the property line "so that it will be easy for us to observe when the Leland Cypress trees/hedge will need trimming," and installed the required dimmer switch of the deck lights. The Chans also requested reconsideration of the decision requiring them to move the other two trees.

8. On December 13, 1998, and January 22, 1999, the McMahons wrote to Hadley Farms expressing their disagreement with the Board's decision. The McMahons characterize the January 22, 1999 letter as an "appeal" of the decision. In the letter, the McMahons asked that the Board require the Chans to remove all trees that are closer to the road than the front corner of the McMahons' house, place a four foot height restriction on the Leland Cypress, and require the Chans shade, change, and/or remove the deck lights.

9. On March 4, 1999, the Board changed its decision regarding the dispute. The Board imposed an eight foot height restriction on the Leland Cypress and ordered the Chans to

"redirect the lights downward, so as not to shine into your neighbors [sic] yard."

10. The McMahons no longer live in the Hadley Farms Community.

## CONCLUSIONS OF LAW

1. The Hadley Farms Community Association Declaration of Covenants, Conditions And Restrictions is a valid and enforceable document. Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992).

2. A general rule of property law is that use restrictions are disfavored. Questions and ambiguities are construed against the party seeking enforcement. Belleview Construction Co., Inc. v. Rugby Hall Community Association, Inc., 582 A.2d 493, 495 (Md. 1989). A "cardinal principle" in construing restrictive covenants is that the intention of the parties as documented in the instrument controls. Markey, et al. v. Wolf, et al., 607 A.2d 82, 92 (Md. 1992).

3. Article V, Architectural Control, defines the Association's authority to regulate and approve or disapprove changes in the community. This provision contains no language giving the Association any authority to regulate landscaping on privately owned lots in the community. Therefore, Hadley Farms Community Association had no authority to impose a height limit on the Chans' trees.

4. The Association approved the installation of the deck lights at the time it approved the installation of the deck. The Association reaffirmed this approval on December 10, 1998, when it required the installation of a dimmer switch. The requirement to install the dimmer to alleviate the potential problem with the level of illumination was a reasonable decision made by the Association in good-faith in order to resolve the dispute. Kirkley v. Seipelt, 212 MD 127 (1957).

5. The March 4, 1999 decision requiring the Chans to keep light "leakage" from their yard "to a minimum," is arbitrary and capricious. Therefore, the decision is unreasonable and unenforceable. Kirkley v. Seipelt, 212 MD 127 (1957).

## DISCUSSION

The essence of the Chans' complaint, and the questions the commission must

decide, are straightforward:

1) May the Hadley Farms Community Association impose an eight foot height limit on the trees planted by the Chans on their property between their house and the house of their next door neighbor; and,

2) May the Hadley Farms Community Association require the Chans to again change the specifications of the outdoor lighting previously approved for installation on their deck.

The answer to both questions is no. Although the record is replete with evidence documenting this dispute, there are but a few exhibits that govern the outcome of this case. These primarily are The Declaration of Covenants, Condition and Restrictions of the Hadley Farms Comunity Association, Inc. (Declaration), and the December 10, 1998, letter from the Community to the Chans.

The Declaration is the ultimate governing document for the Association. It defines what the Association may or may not do. The Association may not act outside the authority granted by the Declaration. The Declaration defines the members of the Association, Article III, and gives the Association authority to collect assessments, Article IV. The Declaration also allows the Association to impose certain architectural controls, Article V, restrict the use of the lots, Article VI, and require units to be maintained, Article VII.

Article V – Architectural Controls gives the Association its authority to limit and approve construction, alterations and/or modifications within the community.

> No building, fence, wall, mailbox or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made (including changes in color) until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the community of Hadley Farms by the Board of Directors of the Association, or by a architectural committee composed of three (3) or more representatives appointed by the

Board.

However, there is no authority in this section allowing the Association to regulate, restrict, limit, or approve any landscaping on a privately owned lot in the community. When asked about this absence of authority during the hearing on this case, Hadley Farms pointed to two additional provisions as authority to regulate landscaping and impose the height limitation on the Chans' trees. Neither provision is availing.

First they cited Article VI, Section 11, "All Owners and occupants shall abide by the Bylaws and any rules and regulations adopted by the Association." This provision implicitly includes the assumption that any rule or regulation adopted by the community is within the penumbra of the Declarations. Landscaping restrictions are not and, therefore, rules and regulations imposing restrictions or limitations on landscaping are precatory and not enforceable. The second provision cited by the Association is Article VII, Section 1 – External Maintenance. "[E]ach Owner should keep each Lot owned by him . . . in good order and repair and free of debris, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management." While this provision allows the Association to require owners to properly maintain landscaping installed, it provides no authority to restrict or limit landscaping.

The deck lights were installed at the time the deck was originally constructed. The Chans applied for, and received, approval to construct the deck. The lights were drawn on the blueprints submitted to the Association with the application for the deck. While it is understandable that the Architectural Control Committee and other community members might not have recognized the lights as part of the deck project, they were on the blueprints and their installation was approved. However, despite testimony and comments regarding the installation of the lights, the light dispute does not revolve around the installation but rather the brightness of the lights.

In its decision on December 10, 1998, the Association imposed, albeit in a friendly manner, the requirement that the Chans install a dimmer switch to address light intensity and the resultant "leakage" into the McMahon's yard. It is unreasonable for the Association to revisit the issue nearly three months later, after the Chans had already complied with the order. In the March 4, 1999 order, the Association provided no definitive solution to the problem but rather left the determination as to whether the Chans complied with the order to the potential caprice of an unidentified future board reacting to another complaint from the McMahons or other similarly

complaining neighbor. Therefore, the controlling decision is the December 10, 1998 decision requiring the installation of the dimmer switch. As an aside, the hearing panel suggests that the Chans install bulbs with an illuminating power below the maximum specified wattage.

## ORDER

In view of the foregoing, and based on the record, for the reasons set forth above, the commission finds:

> Under the Declaration of Covenants, Conditions And Restrictions of the Hadley Farms Community Association, the Association has no authority to regulate, control, approve or disapprove landscaping or other plantings located on privately owned property within the Hadley Farms Community. Therefore, the height restriction imposed by the community, on the trees planted by the Chans, is unenforceable. Furthermore, the Association approved the installation of the deck lights at the time it approved the deck. The Association required the installation of the dimmer switch to control the level of illumination. No additional modification or adjustment of the deck lights can be required by the Association.

The foregoing was concurred in by panel members Murphy, Krampf and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership Communities

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| GERALD AND SAHFEYAH CHAN,<br><br>Complainant,<br><br>vs.<br><br>HADLEY FARMS COMMUNITY ASSOCIATION,<br><br>Respondent. | ) | Case 446-O<br>February 3, 2000 |

ORDER

On January 7, 2000, the Commission on Common Ownership Communities rendered its decision in the above captioned case. The Commission found for the Chans' on all issues except their request for reimbursement of costs and fees. The decision was silent on the question. The Chans have requested reconsideration of the decision on the issue of costs and fees.

In its deliberations on this case, the panel found no evidence to warrant an award of costs and fees. None of the submissions included in the Chans' Request for Reconsideration justify a change of this decision. Therefore, the Chans' Request for Reconsideration is DENIED.

The foregoing was concurred in by panel members Murphy, Krampf and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership Communities