

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

In the matter of

GREENCASTLE LAKES
COMMUNITY ASSOCIATION
c/o Todd Hassett, Property Manager
The Management Group
One Bank Street, Suite 250
Gaithersburg, Maryland 20878

Complainant,

vs.

Case No. 607-G

QUAN DUNG and
DENISE TRAN
13901 Carthage Circle
Burtonsville, Maryland

Respondent.

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland (the "Commission") for hearing on February 24, 2004 pursuant to §§10B-5(i), 10B-9(a), 10B-10, 10B-11(e) 10B-12 and 10B-13 of the Montgomery County Code, 1994 as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines and orders as follows:

Background and Summary of Testimony and Evidence

This matter comes before the Commission pursuant to a Complaint filed September 12, 2002 by the Greencastle Lakes Community Association (the "Complainant" or "Association")) represented by Jennifer S. Jackman, Esquire. The Complaint alleges that the owners of 13901 Carthage Circle, Burtonsville, Maryland (the "Property"), Quan Dung and Denise Tran (collectively, the "Respondent") had stained or painted the wooden deck located in the rear yard at that address in violation of certain provisions of the Greencastle Lakes Community Association Declaration of Covenants and Restrictions dated March 27, 1985, as amended, (the "Declaration") and the rules and regulations and architectural control guidelines promulgated pursuant thereto (collectively with the Declaration, the "Covenants"). Complainant demanded that the white color on the deck be completely removed such that the deck would be of a natural color, consistent with the requirements of the Covenants. The Commission marked and presented the file of the Commission as Commission's Exhibit #1.

The Complainant presented the testimony of Mr. Israel Putnam, President of the Association, regarding the history of the community and the alleged violation of Covenants by Respondents.

Mr. Putnam identified Complainant's Exhibit #1, a copy of the Covenants, which was received as evidence. He then identified Complainant's Exhibit #2, the Standards and Guidelines of the Architectural and Environmental Review Committee, revised June 1994 and Complainant's Exhibit #5, the June 1, 2000 amendments to Complainant's Exhibit #2 (collectively the "AERC Rules"), each of which was also received as evidence. Mr. Putnam pointed out the sections of the Covenants and AERC Rules which provided that any protective coating on the decks must be transparent and that painting of the decks is specifically prohibited.

Mr. Putnam then testified that the deck on the Property was found to have been painted or stained white in the summer of 2000. No request for such change had ever been made to or approved by the Complainant's Architectural and Environmental Review Committee (the "AERC") by Respondent. He testified that Complainant had sent several notices to the Respondents to correct the problem, but that any efforts by Respondent to correct the violation had been, at best, incomplete. Mr. Putnam testified that Complainant sought to have the white color removed from the deck completely, and recommended that Respondent seek professional advice for removal, which could include additional power washing, sanding or replacement of boards.

Complainant then called Mr. Todd Hassett, Property Manager at The Management Group, management company for the Complainant. Mr. Hassett testified that his company had sent a letter on behalf of Complainant to the Respondent in fall of 2000 complaining of the problem with the deck which letter was noted in the company records. In January, 2001 a letter introduced and admitted as Complainant's Exhibit #3 was sent to Respondent advising again of the violation and giving Respondent 15 days to resolve it. Complainant's Exhibit #3 contained a response from Respondent that the matter would be corrected in the summer of 2001. Complainant's Exhibit #4 again identified and admitted into evidence, was a letter formally extending the date for correction of the violation until June 30, 2001.

Mr. Hassett testified that the attempts by Respondent to correct the violation were ineffectual, and as a result, another letter, identified by him as Complainant's Exhibit #6 dated July 29, 2002 was admitted into evidence, threatening that the Complainant itself would make the corrections and assess the Respondent for the cost. When that letter failed to prompt corrective action, the Complainant filed the Complaint herein, marked as Complainant's Exhibit #7 but not admitted. The AERC agreed to further extend the deadline for compliance with the AERC Rules until May 1, 2003 which was evidenced by the Complainant's Exhibit #s 8 and 9, the AERC Action Sheet and letter to Respondent, respectively, which were admitted into evidence. According to Mr. Hassett, the Respondent still had not corrected the violation as of May 1, 2003 and as a result another letter, marked as Complainant's Exhibit #10 and admitted into evidence, was sent to the Commission requesting that the Commission move forward on the Complaint. Mediation followed, but was unsuccessful in resolving the problem, as was evidenced by Complainant's Exhibit #11 and 12, correspondence with the Commission, which letters were admitted into evidence.

Complainant, through Mr. Hassett, then introduced several photographs of the Respondent's deck, the first three identified as Complainant's Exhibit #s 13, 14 and 15, were not admitted, as they were black and white copies that were of poor quality. The color photos, Complainant's Exhibit #s 16 and 17, showing the white color remaining in patches on the decks, were admitted into evidence.

Respondent, Quan Dung, was present and represented himself. Mr. Dung testified that he was unaware of the prohibition on painting the deck when he applied what he called a white stain in the year 2000. Mr. Dung then introduced Respondent's Exhibit #s 1-5, being color photographs showing the deck, which were admitted into evidence. Respondent contended that the deck could not be seen by the public or his neighbors and that the Exhibits demonstrated that contention. There were other decks in the community that were not left in a natural color and had been stained, according to Mr. Dung. He also testified as to the efforts he made to remove the white stain from the deck, first with a stain removing solvent and later with a rented power washing machine. Mr. Dung testified that he had attempted to power wash out the stain on four separate occasions over the past two years, introducing an estimate from a power washing contractor as Respondent Exhibit # 6, which guaranteed only that 90% of the stain could be removed.

Complainant then presented Mr. Putnam as a rebuttal witness to testify that the Respondent's deck could indeed be seen from Robey Road and that the neighbor's could definitely see the deck. He also rebutted Respondent's testimony that the other decks in the community were not uniform and that some had been stained. It was admitted that some decks had been stained to a darker color than permitted by the AERC Rules, and in those cases, the offending homeowner had been cited for the violation, but that in each case the stain was of a type that would fade over time, so that no remediation had been required.

Findings of Fact

The Greencastle Lakes Community Association Declaration of Covenants and Restrictions dated March 27, 1985, as amended, and the rules and regulations and architectural control guidelines promulgated pursuant thereto govern the uses of the subject Property. The Declaration, Article VII, Section 1, provides generally that no exterior change, including a change of color, may be made without first obtaining the consent of the AERC. Further, the AERC Rules, both as originally promulgated, and as amended in June, 2000, prohibits the painting or staining of decks, and requires that they remain in a natural color, except for the permitted application of "transparent protectant" of natural wood or light brown color.

Respondent stained his deck white in the summer of 2000 and did not seek or obtain permission from the AERC of Complainant for such a change.

Respondent has attempted unsuccessfully to remediate the violation by applying a stain remover and by power washing the deck on four occasions. Respondent's efforts to correct the violation have been unsuccessful in bringing the deck into compliance with the Covenants.

Complainant has given Respondent many extensions of time and many opportunities to correct the violation. Respondent has neither sought, nor obtained professional advice as to the best method to correct the problem, but has rather attempted, unsuccessfully, to correct the violation on a do-it-yourself basis.

Conclusions of Law and Discussion

Upon a review of the testimony and other evidence submitted as set forth above, the Panel concludes that Respondent has violated and continues to violate the Covenants governing the Property by staining his deck a white color without permission of the AERC and not correcting the violation.

ORDER

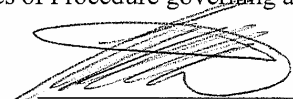
Based upon the evidence of record and for the reasons set forth above, it is this 7th day of April, 2004, by the Commission on Common Ownership Communities:

ORDERED, that Respondent shall restore the rear yard of the Property of Respondent to a natural condition, without the visible appearance of white stain to the public or any neighbors, and it is further

ORDERED that Respondent shall complete such remedial action within 30 days after the date of this Order.

Panel Members Jeff Kivitz and Sarah M. Havlicek concur unanimously in this decision.

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.



Louis S. Pettey, Panel Chair

Copies to:

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