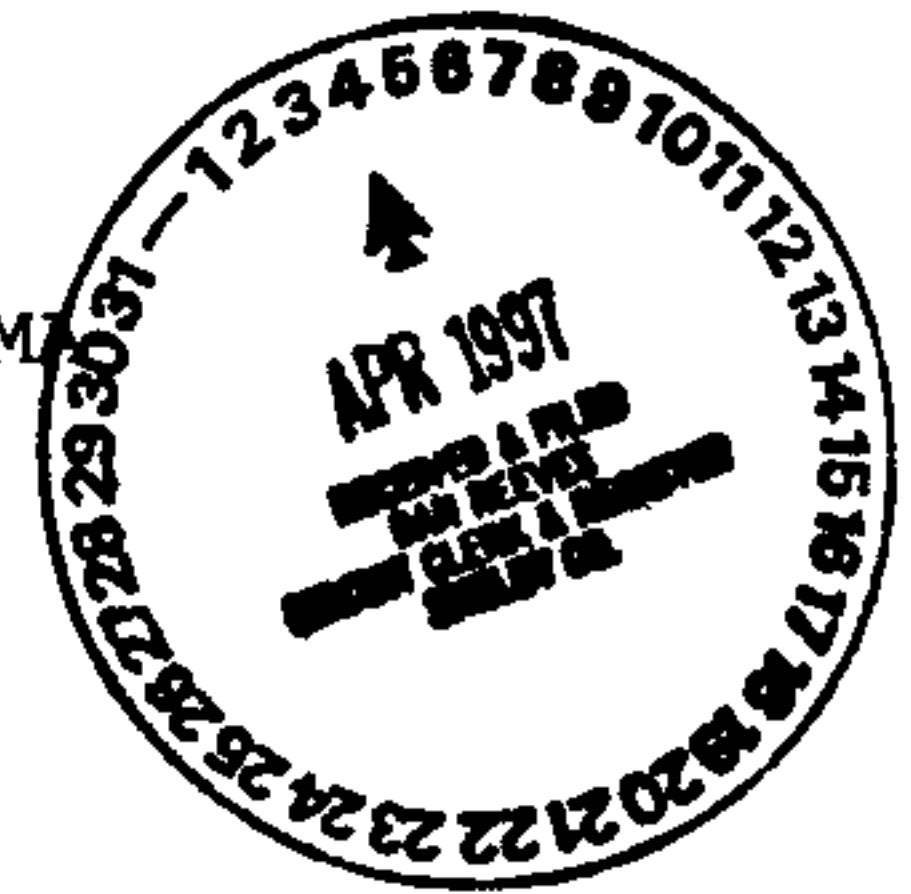


IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA



CLARA CLARK, et al.,

Plaintiffs,

vs.

CAMBRIAN WOOD CONDOMINIUM, INC.,  
et. al

Defendants.

CIVIL ACTION NUMBER:

CV-96-606

ORDER FOR PERMANENT INJUNCTION

THIS CAUSE COMING ON TO BE HEARD, on February 13, 1997, on the merits of plaintiffs' complaint for declaratory judgment and permanent injunction, the parties: Plaintiffs, Clara Clark and Thomas L. Johns, and defendants, Cambrian Wood Condominium, Inc., and individual defendants: Harold Miller Biebel, Jr., Wanda June Burke, Mitchell Carbonie, Alex Randall Christian, Russell O'Neil Davidson, Merrill Louis Heath, Michelle Lynn Herrick, Christopher Henry Stall, and, Cynthia Spafford, appeared through their respective counsel. Plaintiffs are individual unit owners in a Cambrian Wood Condominium, a condominium development located in what is commonly called the "Inverness" area of North Shelby County. Defendant Cambrian Wood Condominium, Inc., is the corporate entity legally responsible for the governance of the condominium development. Individual defendants are officers and/or directors of the corporate defendant at the time of the acts complained of by plaintiffs. This court first considered plaintiffs' motion to amend the complaint to conform the individual defendants' names to reflect their true and correct names. Without objection this motion was granted from the bench. Next this court considered defendants' motion for summary judgment and plaintiffs' response in opposition thereto, which this court treated as a motion for summary judgment. The parties through their respective counsel agreed to submit to this court for its consideration the issue regarding the validity of the purported 1983 amendment to the rules and regulations portion of the Article X of the bylaws of Cambrian Wood Condominium, Inc., captioned "Resolution to Amend Rules and Regulations of Cambrian Wood Condominium, Inc." (hereinafter "1983 resolution") dated August 15, 1983, and recorded on August 26, 1983, at Book 52,

Pages 318-320, in the Office of the Judge of Probate, Shelby County, Alabama, which plaintiffs have sought through their complaint to have declared invalid. This court considered the pleadings, motion for summary judgment, response thereto, all exhibits and affidavits accompanying both, the argument of counsel made in their respective briefs. Having considered same, including the representation of defense counsel that no evidence exists to contradict plaintiffs' contention that the 1983 resolution was not submitted for a vote to the membership of Cambrian Wood Condominium, Inc., this court is of the opinion that there is no genuine issue of material fact on regarding plaintiffs' cause under Counts II and III of the complaint seeking to declare invalid the 1983 document and the court makes the following findings of fact:

Findings of Fact -- Summary Judgment

1. The bylaws duly enacted at the inception of Cambrian Wood Condominium, Inc., provide in Article VII, § 7.1(8), that a repeal of any initial rules or regulations require an affirmative vote of 75% of the voting membership.

2. A voting member is a condominium unit owner as provided in Declarations §§ 3.22 & 3.2B, as recorded in Book 12, Page 87, et seq., in the Office of the Judge of Probate, Shelby County, Alabama.

3. The 1983 document states that it is an amendment to delete the initial rules and regulations contained in the Bylaws, Article X, "Rules and Regulations," as recorded at Book 12, Pages 151 et seq., and it has been used by defendant corporation and individual defendants in lieu of the duly enacted rules and regulations specifically found at Book 12, Pages 160 through 162.

4. The 1983 resolution on its face represents itself as being a resolution of the board of directors of Cambrian Wood Condominium, Inc., and the certificate of the president of defendant Cambrian Wood Condominium, Inc., does not state that a duly recorded vote of the membership of Cambrian Wood Condominium unit owners was held and that a 75% affirmative vote was received in favor of said 1983 resolution in order to amend the initial rules and regulations of the bylaws.

5. No duly called vote of the membership of Cambrian Wood Condominium, Inc., was ever called, and no 75% affirmative vote of the membership was ever obtained, for the purpose of adopting the 1983 resolution as an amendment to the initial rules and regulations of the bylaws.

6. The board of directors through its then president, Glenn Graff, in a letter to the membership dated September 23, 1991, advised that the 1983 resolution was never duly adopted by

the membership via a vote and 75% affirmance of such document, and that the defendant corporation had an opinion of counsel that said document was ineffective as an amendment to the bylaws.

7. The 1983 resolution has been used by defendants in lieu of the duly enacted rules and regulations contained in Bylaws, Article X, "Rules and Regulations," as recorded at Book 12, Pages 160 through 162, and said 1983 resolution differs in material respects from the rules and regulations duly enacted and recorded at Book 12, Pages 160 through 162.

8. The 1983 "Resolution to Amend Rules and Regulations of Cambrian Wood Condominium, Inc." recorded at Book 52, Pages 218-220, is invalid as amendment to the initial rules and regulations of the bylaws because it was never adopted by a duly called and affirmatively received vote of 75% of the members (unit owners) of Cambrian Wood Condominium, Inc.,

Thereafter, the cause proceeded to hearing on the merits of plaintiffs' complaint for declaratory judgment and injunctive relief as contained in Counts I, II and III, of the complaint. Plaintiffs complain that defendants have failed and refused to recognize, obey, adhere and enforce the rules and regulations contained in Bylaws, Article X, "Rules and Regulations," as recorded at Book 12, Pages 160 through 162, in the operation, management, control and governance of Cambrian Wood Condominium, Inc. Specifically, they complain that: Defendants have refused to recognize plaintiffs' right to assigned, numbered parking spaces as provided in Bylaws, Art. X, § 10.3.22, threatened plaintiff Thomas L. Johns with a fine if numbers designating assigned parking spaces were not removed from the curb of one of his units, stated that action would be considered against other unit owners with parking space numbers on their curbs, and complain variously that defendants "frequently and routinely act in contravention of the specific mandates, directives and requirements of the bylaws." On this last allegation, plaintiffs complain that defendants have allowed alterations, improvements, additions or changes, to the common elements of Cambrian Wood Condominium without the required 75% affirmative vote of the membership on same.

The court heard testimony of both plaintiffs, defendants Harold Miller Biebel, Jr., Merrill Louis Heath, and plaintiffs' witness George Clark, considered large amounts of documentary evidence and pictorial evidence. Upon consideration of all the testimony, evidence, authorities and arguments presented by counsel for plaintiffs and defendants, the court makes the following findings of fact:



Finding of Fact -- Hearing on the  
Merits Counts I, II & III

9. The Declaration of Condominium Ownership, § 7.02, provides authority for the designation of parking spaces in the form of "limited common elements":

There are no Limited Condominium Elements presently a part of the Condominium Property. Limited Common Elements subsequently may be designated agreed upon by [Cambrian Wood Condominium, Inc.] to be reserved for the exclusive use of more than one but not all Condominium Units such as special corridors, **assigned parking spaces**, stairways, sanitary services common to the Condominium Units of a particular building, and the like. All areas so designated in the future as Limited Common Elements **will be reserved for the exclusive use of the Owners of the Units to which they are adjacent or to which they are declared appurtenant.**

[Emphasis added.]

10. The initial rules and regulations part of the Bylaws, Art. X, § 10.3.22, exercised the authority given in Declaration § 7.02, to provide assigned parking spaces:

Parking spaces shall be assigned as follows: Each **assigned space shall be marked with a one, two or three digit number consecutively labeled within any free standing parking area. . . .** Guests shall park in unassigned parking areas.

[Emphasis added.]

11. Bylaws, Art. X, § 10.3.22, provides a mandate that a unit owner shall have the right to assigned, numbered parking spaces for his or her exclusive use and that said parking spaces are adjacent to the units so served and that guest parking is to be provided in areas not assigned to unit owners.

12. Historically, there have been two parking spaces per unit at Cambrian Wood Condominium for the exclusive use of a unit owner. Guest parking areas have also been designated as well. This began in May 1977 when two parking space numbers per unit were painted on the curbs on Heath Drive as part of a common plan or scheme of parking consistent with Bylaws, Art. X., § 10.3.22. The painted numbers correspond to the street number of the unit served by the parking spaces. The painting and numbering of parking space numbers on curbs in other areas of Cambrian Wood Condominium followed thereafter. The curb numbers were repainted by, or at the direction of, Cambrian Wood Condominium, Inc., at least once subsequent to the initial paintings. Later, some

individual unit owners, including plaintiffs, repainted their curb numbers on their own.

13. Previous boards of directors of Cambrian Wood Condominium, Inc., have enforced a unit owner's right to exclusive parking under Bylaws, Art. X, § 10.3.22, although the present board of directors comprised of defendants has failed and refused to do so and has threatened action against unit owners who claimed their right to assigned, numbered, parking spaces.

14. Those "common elements," pertinent to the issues raised in this action, insofar as plaintiffs' complaint against defendants regarding changes, modifications or alterations thereto include roofs, perimeter walls, main walls, yards, decks (excluding the interior space thereof) as mentioned and alluded to in Declaration §§ 7.01(a)-(f).

15. Alterations, improvements, additions or changes to the common elements are tightly controlled by Declaration § 13.02(e) and Bylaws Art. 10, § 10.3.5, both of which curtail the ability of unit owners to make unauthorized changes to the common elements.

16. Alterations, improvements, additions or changes to the common elements require approval by an affirmative vote of 75% of the membership (unit owners) of Cambrian Wood Condominium, Inc., as provided for in Bylaws Art. VII, § 7.1(2).

17. Five instances of alterations, improvements, additions or changes to the common elements were made or allowed to be made without the required 75% affirmative vote of the membership as required by Bylaws Art. VII, § 7.1(2):

(i) One instance of conduit covered by metal shield running vertically down the backside, exterior wall of a unit on Cambrian Way;

(ii) Three instances of corrugated, plastic sheeting affixed to the exterior subsurface of three decks to units on Cambrian Way apparently as a rain shelter for the ground below it;

(iii) One instance a swing set, poles and bricks forming a walkway and patio area in yard area near the rear of a unit on Heath Drive;

All of the above-cited instances being violative of the provisions of the bylaws and declaration and, in the case of instance (iii), it also being a violation of the prohibition against obstruction of the common elements under Bylaws Art. X, § 10.3.4.

18. Bylaws Art. X, § 10.3.8, prohibits the parking of vehicles on the common elements. There exists one remaining instance of a golf cart being parked on the common element behind a unit on Cambrian Way which violates § 10.3.8.

19. One instance exists of a silver Nissan automobile parked in the visitor's parking area on Heath Drive, which vehicle was described in testimony as having peeling paint, low tires, a hubcap on its hood and not having moved in more than two years and characterized by plaintiffs as a "junk" vehicle, the continuing presence of which is at least violative of Bylaws Art. X, § 10.3.8, prohibition against storage of vehicles on the common elements.

Wherefore, upon consideration thereof, it is, therefore:

ORDERED, ADJUDGED AND DECREED, that defendant Cambrian Wood Condominium, Inc., and its officers and directors: Harold Miller Biebel, Jr., Wanda June Burke, Mitchell Carbonie, Alex Randall Christian, Russell O'Neil Davidson, Merrill Louis Heath, Michelle Lynn Herrick, Christopher Henry Stall, are hereby:

I. Permanently enjoined and restrained in the operation, management, control and governance of Cambrian Wood Condominium, Inc., from disseminating, enforcing, using, adhering to, or otherwise applying the 1983 document entitled "Resolution to Amend Rules and Regulations of Cambrian Wood Condominium, Inc." recorded at Book 52, Pages 218-220, either themselves or through third parties, as an amendment to the true rules and regulations section of the bylaws as recorded in Book 12, Pages 160 through 162.

II. Permanently enjoined and restrained in the operation, management, control and governance of Cambrian Wood Condominium, Inc., from not recognizing, using, obeying, adhering to and enforcing the initial rules and regulations section of the bylaws as duly adopted in Bylaws, Article X, "Rules and Regulations," as recorded at Book 12, Pages 160 through 162, unless and until such time as same are changed by a vote of the membership of Cambrian Wood Condominium, Inc., in accordance with the procedures established in the declaration and bylaws of said corporation.


III. Ordered to recognize plaintiffs' and other unit owners' rights to their assigned, numbered parking spaces at Cambrian Wood Condominium and to neither take nor threaten action against plaintiffs or other unit owners for their using and enjoying same.

IV. Ordered to enforce plaintiffs' and other unit owners' asserted rights to their assigned, numbered parking spaces at



Cambrian Wood Condominium against third parties, if requested by plaintiffs or other unit owners, within the powers granted to Cambrian Wood Condominium, Inc., under its declaration and bylaws, as such enforcement has previously been done in the past and in similar circumstances, including but not limited to sending notice of violation to an offender who parks in one or more parking spaces of a unit owner, assessment of a fine (when appropriate under the circumstances) against an offender who is unit owner and such other appropriate and necessary actions as are within the legal ability of defendants to do so.

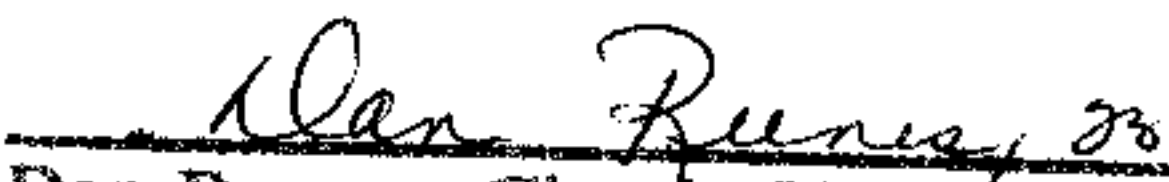
DONE AND ORDERED this 4<sup>th</sup> day of April 1997.

  
D. Al Crowson  
Presiding Circuit Judge

cc: Henry T. Henzel, Esq.  
Jeff Parmer, Esq.  
Thomas Hale, Esq.  
Michael Beard, Esq.

Certified a true and correct copy

Date: 12-3-97

  
Dan Reeves, Circuit Clerk  
Shelby County, Alabama

Inst # 1997-39374

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SHELBY COUNTY JUDGE OF PROBATE  
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