

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

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CIRCUIT & DISTRICT
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KEVIN R. HUGHINS and ROBERT W.
LOVELESS,

Plaintiffs,

v.

THE HIGHWAY 43 FOREST PARKS
RESIDENTIAL ASSOCIATION, INC.,

Defendant.

CASE NO. CV-2008900321

ORDER GRANTING PLAINTIFFS'
MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs Kevin R. Hughins and Robert W. Loveless having moved for a summary judgment on Count One of the Complaint; and Plaintiff Kevin R. Hughins having moved for summary judgment on Count Two of the Complaint; and Defendant having filed a response to the motions, the Court proceeded to hear arguments on the motions and response. Having considered the motions and response, the exhibits filed in support thereof, and the arguments of counsel, it appears to the Court that there is no genuine issue as to any material fact and that the Plaintiffs are entitled to a judgment as a matter of law. The Court specifically finds as follows:

1. The Declaration of Protective Covenants for Forest Parks 2nd Sector, recorded in the Probate Office of Shelby County, Alabama, as Instrument # 1997-11561, and the Declaration of Protective Covenants for The Estates of Forest Parks, recorded in the Probate Office of Shelby County, Alabama, as Instrument # 2000-16815, do not provide for amendment of their provisions.

2. Amendments One, Two and Three to the covenants were not approved by all of the owners of lots in the affected subdivisions and are therefore invalid under Alabama law.

3. Neither the covenants referred to above nor any other documents in the chain of title of the Plaintiffs' real property provide for the formation of a homeowners' association, require membership in such an association, mandate payment of dues or assessments to such an association to fund its operations, or permit enforcement of such dues or assessments by filing liens. It is, therefore,

ORDERED AND ADJUDGED that the relief requested in Plaintiffs' summary judgment motions is granted hereby as follows:

1. On Count One of the Complaint:

A. Amendment One of The Highway 43 Forest Parks Residential Association, Inc. Declaration of Protective Covenants - All Sectors, recorded in the Probate Office of Shelby County, Alabama, as Instrument # 20071119000528230; Amendment Two of The Highway 43 Forest Parks Residential Association, Inc. Declaration of Protective Covenants - All Sectors, recorded in the Probate Office of Shelby County, Alabama, as Instrument # 20080129000036900; and Amendment Three of The Highway 43 Forest Parks Residential Association, Inc. Declaration of Protective Covenants - All Sectors, recorded in the Probate Office of Shelby County, Alabama, as Instrument # 20080617000247120, are invalid and void and are hereby canceled. A copy of this order shall be recorded in the Probate Office of Shelby County, Alabama, and indexed properly showing said cancellation;

B. Plaintiffs are not required to be members of Defendant association;

C. Plaintiffs are not required to pay assessments or dues to Defendant association to fund its operations;

D. Defendant association may not enforce collection of such assessments or dues by

liens placed on Plaintiffs' lots;

E. Defendant association is ordered to release immediately the Lien for Assessments it filed against Plaintiff Kevin R. Hughins' property, recorded in the Probate Office of Shelby County, Alabama, as Instrument # 20080909000358690; and

F. Judgment is entered in favor of Plaintiff Robert W. Loveless against Defendant association in the amount of \$350.00, for money paid by him to Defendant under threat of enforcement by lien.

2. On Count Two of the Complaint, judgment is entered in favor of Plaintiff Kevin R. Hughins against Defendant association in the amount of \$ 350⁰⁰ as special damages and in the amount of \$ 500⁰⁰ as punitive damages.

3. Plaintiffs are further entitled to recover the costs of this action from the Defendant.

4. All other relief is hereby denied.

This the 21st day of November, 2008.



Circuit Judge