

Court Says HOA Lost Right to Enforce Restrictive Covenant

by Lawrence Szabo, Esq. | Mar 7, 2018

This case involved a dispute between a homeowners association (“Association”) and homeowners (“Owners”) over the construction of a shed on Owners’ property without prior Association approval. After Owners had built the 12’ x 16’ wooden shed in their backyard which was visible from common areas, Association demanded that they remove it for being in violation of provisions contained in Association’s governing documents and for not having obtained Association’s permission prior to building the shed. After Owners refused to remove the shed, Association filed suit seeking an order compelling Owners to remove the shed.

The trial court granted summary judgment in favor of Owners after finding that the subject community had numerous other structures that were visible from the common areas and the action taken by Association against Owners was arbitrary. Association appealed the trial court’s decision.

On review, the appellate court stated that an association’s right to enforce restrictions may be lost by a general change in the character of a neighborhood which may occur when the circumstances are such that it is no longer possible to accomplish the purpose intended by the restriction or covenant at issue due to the change in the character of the neighborhood. Thus, where over a period of time there has been a history of arbitrary or selective enforcement of restrictive covenants which has resulted in a fundamental change in the character of a neighborhood, the purpose of a restrictive covenant may be defeated and cause the covenant to become unenforceable.

The appellate court found that prior to Owners’ construction of the shed in question, Association had not acted or had acquiesced concerning the construction of other structures on multiple other properties that were visible from the common area in the community. The appellate court further found that such structures had a diverse array of styles, materials and colors to the point that there was not aesthetic harmony in regards to those other structures, and thus the purpose of the restrictive covenant that Association sought to enforce against Owners had been frustrated by Association’s history of inaction or acquiescence regarding the other structures on properties that were subject to the same restrictions that Association sought to enforce against Owners. Because the subject restrictive covenants had been disregarded over a period of years, Association waived or abandoned its right to deny Owners permission to build the shed in question and their action in bringing the suit against Owners was arbitrary. Thus, the trial court’s judgment in favor of Owners was affirmed.

UNPUBLISHED Kentucky Appellate Court decision (March 2, 2018).

SOURCE: <https://www.hoamemberservices.com>