

VLW 010-8-127

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

JAYNE HORNSTEIN,

Plaintiff,

v.

FEDERAL HILL HOMEOWNERS ASSOC.

Defendant.

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Case No. 2007 9457

FINAL ORDER

This matter came before the Court upon the Complaint of Plaintiff Jayne Hornstein, as amended, alleging against Defendant Federal Hill Homeowners Association, Inc. counts of slander of title, tortious interference, and violation of Virginia Code § 55-515(A), and, separately, seeking relief in the form of declaratory judgment and injunctive relief. Trial was held on December 7 and 8, 2009, and Plaintiff rested her case on the second day of trial.

Thereupon, Defendant moved to strike Plaintiff's evidence on the grounds that Plaintiff failed to present evidence sufficient to support Plaintiff's causes of action and requests for equitable relief.

The Court, upon hearing argument of counsel for Defendant and Plaintiff, and accepting the evidence in the light most favorable to the Plaintiff, ruled that: 1) Plaintiff failed to present evidence sufficient to support Plaintiff's causes of action for slander of title and tortious interference; 2) Plaintiff was not entitled to relief under Virginia Code § 55-515(A); and 3) Plaintiff's requests for declaratory and injunctive relief were rendered moot by representations of Defendant's counsel made in open court.

In furtherance of its ruling of December 8, 2009, the Court adjudges, orders, and decrees as follows:

AS TO COUNT I, DECLARATORY JUDGMENT, the Court holds that no relief is warranted under this Count as the claims for relief sought under this Count have been mooted by Defendant's representation that it will not place any language in any future Disclosure Packet issued by it pursuant to Virginia Code § 55-509.5 stating that the owner of 3019 Federal Hill Drive, Falls Church, Virginia 22044 (the "Property") must build any fence on the Property or take any action in regard to the strip of ~~common area~~ land running behind the Property (said strip of land hereinafter referred to as "the strip of Parcel B") Defendant is not, however, barred from stating in any future Disclosure Packet that it asserts Parcel B is "Common Area" as defined by the Declaration of Covenants, Conditions and Restrictions of the Federal Hill Community.

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in which Defendant assents is common area.
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AS TO COUNT II, INJUNCTIVE RELIEF, the Court holds that no relief is warranted under this Count as the claims for relief sought under this Count have been mooted by Defendant's representation that it will not place any language in any future Disclosure Packet issued by it pursuant to Virginia Code § 55-509.5 stating that the owner of the Property must build any fence on the Property or take any action in regard to the strip of Parcel B, and Plaintiff may seek appropriate relief for any violation of said representation as a violation of this Order.

AS TO COUNT III, DISPARAGEMENT OF PROPERTY: SLANDER OF TITLE, the Court holds that Plaintiff failed to present evidence sufficient to support a finding that Defendant acted with malice; failed to present evidence sufficient to support a finding that Defendant made statements that disparaged the Property; failed to present evidence sufficient to support a finding that Defendant made any false statements about the Property; failed to present evidence sufficient to support a finding that Defendant published any slanderous statements; and failed to

present evidence sufficient to support a finding that Defendant caused Plaintiff to suffer damages, and, accordingly, the Slander of Title count is stricken and dismissed with prejudice.

AS TO COUNT IV, TORTIOUS INTERFERENCE, the Court holds that Plaintiff failed to present evidence sufficient to support a finding that Defendant employed improper methods to interfere with a contract; failed to present evidence sufficient to support a finding that Defendant intended to interfere with Plaintiff's contract with Peggy Hale; ~~failed to present evidence sufficient to support the existence of any other contract or contract expectancy with which Defendant could have interfered~~; and that Plaintiff failed to present evidence that any contract for the sale of the Property would have resulted in the sale of the Property but for Defendant's actions or statements and, therefore, failed to prove that Defendant proximately caused any damages to Plaintiff and, accordingly, the Tortious Interference count is stricken and dismissed with prejudice.

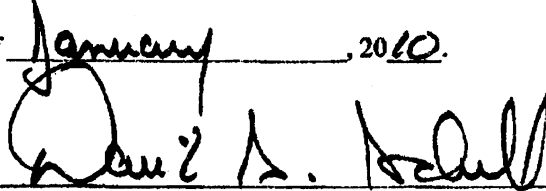
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AS TO PLAINTIFF'S COUNT UNDER VIRGINIA CODE § 55-515(A), added by amendment on April 16, 2009, the Court holds that claims for equitable and legal relief, including claims for compensatory damages and attorney's fees under Va. Code § 55-515(A) may only be sought by a lot owner or person or entity entitled to occupy a lot, and Plaintiff failed to present evidence sufficient to support a finding that Defendant homeowners association is a lot owner or entitled to occupy a lot. Plaintiff is, thus, precluded from utilizing Va. Code § 55-515(A) as the basis for a cause of action against Defendant, and Plaintiff cannot recover damages or attorney's fees against Defendant pursuant to Va. Code § 55-515(A). Plaintiff's request for relief pursuant to Va. Code § 55-515(A) must, therefore, be stricken and dismissed with prejudice.

IT IS FURTHER ORDERED that the language and rulings of this Final Order are without prejudice to Plaintiff's claim for adverse possession and other relief in the case of *Hornstein v. Federal Hill Homeowners Association, Inc.*, Fairfax County Circuit Court Case No. 2009-14767. Pending resolution of that case, Defendant will not take any action to alter the property that is the subject of that suit.

AND THIS CAUSE IS ENDED.

ENTERED this 14th day of January, 2010.



The Hon. David S. Schell
Judge, Fairfax County Circuit Court

SEEN AND _____:

Signatures Waived (Public counsel in open court for presentation of order)
Rule 1:13

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