



COMMONWEALTH of VIRGINIA

DISTRICT JUDGES
Robert L. Simpson, Jr. Chief Judge
Thomas M. Ammons, III
J. Dale Bimson
Virginia L. Cochran
R. Stanley Hudgins
John B. Preston
March 17, 1992

VIRGINIA BEACH GENERAL DISTRICT COURT
Municipal Center
Virginia Beach, Virginia 23456-9057

CLERK OF COURT
J. A. Daniel Smith

Ms. Annette M. Majors
634 Spirit Court
Virginia Beach, VA 23462

David M. Zobel, Esq.
Huff, Poole & Mahoney, P.C.
4705 Columbus Street
Virginia Beach, VA 23462-6749

In Re: Newpointe Condominium Association, Inc.
v.
Annette M. Majors
GV910052855

Dear Ms. Majors and Mr. Zobel:

This matter was heard on January 8, 1992, and at the conclusion of the evidence, it was agreed that the only issue in dispute was whether the special assessment in the sum of \$100.00 had been properly levied against each unit in Newpointe Condominium and, more particularly, against the unit owned by Ms. Majors.

The special assessment in question was purportedly adopted by the board of directors of the unit owners' association. Ms. Majors argues that a special assessment can be levied only by the unit owners themselves acting directly at a duly constituted meeting; she also maintains in her grounds of defense that the board was not duly elected, as well as acting outside the scope of its authority.

I have reviewed carefully the relevant provisions of the Condominium Act (Section 55-79.39 et seq. of the Code of Virginia), the condominium declaration and bylaws, and the letter briefs submitted by Mr. Zobel and Mr. Inman.

Section 55-79.73 of the Condominium Act (the "Act") provides the general statutory scheme for management of condominiums. Each condominium shall be governed by an association composed of all unit owners. The bylaws may provide for a board of directors of the association. If a board is

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established, the bylaws may delegate to the board "any of the powers and responsibilities assigned by this chapter to the unit owners' association." Section 55-79.73(b).

The declaration on page 9 provides that the "unit owners association" shall be composed of all the unit owners. The declaration goes on to state that the board "may, among other things, exercise any of the powers and responsibilities assigned by the Condominium Act to the Unit Owners' Association." Declaration, p. 21. The bylaws state that the:

"Board of Directors shall have and are hereby delegated all of the powers, responsibilities, and duties necessary for the administration of the Association's affairs and may do all such acts and things as are not by law or by these Bylaws exclusively assigned to and directed to be exercised and done only by the unit owners or the Association." Bylaws, p. 5.

In light of the foregoing provisions, it clearly appears that the unit owners' association was empowered to delegate its powers to the board of directors and did, in fact, properly delegate to the board the power to levy special assessments. While I understand there may be some irregularity concerning board elections and board actions, the evidence does not establish that the board was not duly constituted or that its procedures were fatally defective.

Accordingly, while I sympathize with the frustration of Ms. Majors, I must conclude that the special assessment was properly levied.

Because both parties were in good faith and there was a bona fide issue involved, I do not believe it is appropriate to award attorney's fees and the plaintiff must bear its own attorney's fee.

Pursuant with Mr. Zobel's request, I will delay entering judgment in accordance with the foregoing until April 13, 1992, to allow Ms. Majors an opportunity to pay the sum in question together with \$14.00 court costs. Prior to April 13, 1992, I would appreciate the parties advising me of any amount remaining unpaid.

Thank you for your assistance in this matter.

Very truly yours,



Thomas M. Ammons, III; Judge

TMA:amw18

cc: Michael A. Inman, Esq.