



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4009

(703) 246-2221 Fax (703) 385-4432

048-8-411  
RECEIVED

DEC 30 1998

MAYS & VALENTINE  
L.L.P.

F. BRUCE BACH  
J. HOWE BROWN  
MICHAEL P. McWEENY  
MARCUS D. WILLIAMS  
GERALD BRUCE LEE  
STANLEY P. KLEIN  
ROBERT W. WOOLDRIDGE, JR.  
ARTHUR B. VIAREGG  
JANE MARUM ROUSH  
M. LANGHORNE KEITH  
DENNIS J. SMITH  
DAVID T. STITT  
LESLIE M. ALDEN  
KATHLEEN H. MACKAY  
JONATHAN C. THACHER  
JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

JAMES KEITH  
LEWIS D. MORRIS  
BURCH MILLSAP  
BARNARD F. JENNINGS  
LEWIS H. GRIFFITH  
WILLIAM G. PLUMMER  
THOMAS J. MIDDLETON  
THOMAS A. FORTKORT  
QUINLAN H. HANCOCK  
RICHARD J. JAMBORSKY  
JACK B. STEVENS  
RETIRED JUDGES

December 7, 1998

Denise L. Palmieri, Esquire  
Palmieri & Palmieri, P.C.  
International Gateway  
8100 Boone Boulevard, Suite 410  
Vienna, Virginia 22182

Mr. John E. Beacom  
4553 Casablanca Court  
Annandale, Virginia 22003

Re: Cavalcade Homeowners Association v. John E. Beacom  
Chancery Number 153820

Dear Mr. Palmieri and Mr. Beacom:

This matter was tried before this Court on November 12, 1998 on Cavalcade Homeowners Association's ("Cavalcade") Bill of Complaint. At trial I ruled on all the issues presented, except Cavalcade's request for an injunction precluding Respondent from parking a commercial vehicle on public roads in the Cavalcade subdivision (Count II) and its request for attorney's fees under all counts.

The Declaration of Covenants, Conditions, and Restrictions ("Declaration") recorded on September 15, 1972 established Cavalcade as a homeowners association. The Declaration included the right to amend the Declaration by procedures established in that document. The Declaration related to all of Cavalcade's property, including what would become the lots, streets, and common areas. A subsequent amendment to the Declaration, in accordance with the amendment provision, restricted the parking of commercial vehicles on the property. The

Denise L. Palmieri, Esquire

John E. Beacom

Re: Cavalcade Homeowners Association v. John E. Beacom

Chancery Number 153820

December 7, 1998

Page 2

commercial vehicle amendment was created on February 1, 1994 and was recorded on March 23, 1994.

Cavalcade recorded a Deed of Dedication on October 13, 1972, over twenty years before the commercial vehicle amendment. The Deed of Dedication accomplished three goals. First, it subdivided the property into lots pursuant to a plat. Second, it "dedicated to the public use the streets and thoroughfares." One of those streets was Rawlins Drive.<sup>1</sup> Third, it created and dedicated easements.

The question presented is whether the restrictions relating to the publicly dedicated streets enacted by Cavalcade after the Deed of Dedication are valid and enforceable. I hold that they are not.

Virginia Code § 15.2-2265 provides that "[t]he recordation of a plat shall operate to transfer, in fee simple, to the respective localities in which the land lies the portion of the premises platted as is on the plat set apart for streets, alleys or other public use . . . ." The statute further provides that "[n]othing contained in this article shall affect any right of a subdivider of land heretofore validly reserved." *Id.*

The Virginia Supreme Court has precluded dedicators from reserving by implication restrictions in publicly dedicated streets. *Burns v. Stafford County*, 226 Va. 506 (1984).

Public policy, as expressed in the language of the statute, requires that the local governing body have, to the greatest possible extent, dominion and control over its streets free and clear of the claims of developers. The purpose of Code § 15.1-478 [predecessor to Va. Code § 15.2-2265] is to require complete dedication of the streets in order to enable the local governing body, in the exercise of its police power, to promote the public welfare. *Id.* at 514.

Cavalcade's recordation of the Deed of Dedication and its accompanying plat, transferred in fee simple to Fairfax County the streets dedicated to public use, including Rawlins Drive. Cavalcade claims it "validly reserved" that right to enact future restrictions on those street by way of amendment to the Declaration.

The Deed of Dedication states that all lots created remain subject to restriction of the Declarations. There was, however, no mention in the Deed of Dedication that the streets remain

---

<sup>1</sup> The Bill of Complaint refers to the street as "Rawlings Road."

Denise L. Palmieri, Esquire

John E. Beacom

Re: Cavalcade Homeowners Association v. John E. Beacom

Chancery Number 153820

December 7, 1998

Page 3

subject to the restriction. The Deed of Dedication therefore did not expressly "heretofore validly reserve" a restriction as to the streets. (There was, of course, no such restriction in existence at the time of the Deed of Dedication.) The original Declaration reserved the right to amend, however, this was also insufficient to constitute a "heretofore validly reserved" restriction. Indeed, Cavalcade's argument that it can validly reserve the right to add restrictions to publicly dedicated streets by later amendment also is contrary to *Hurd v. Watkins*, 238 Va. 643 (1989). In *Hurd*, the Supreme Court of Virginia noted that the "heretofore validly reserved" language in the statute "contemplated and permitted reservation of *properties* within subdivision." *Id.* at 650 (emphasis added). That is, the language distinguishes between properties dedicated to the public and properties kept by the developer. It does not contemplate reserving the right to restrict at a later date property which is publicly dedicated. Indeed, "the concept of reservation is opposed to the concept of dedication." *Id.* at 650.

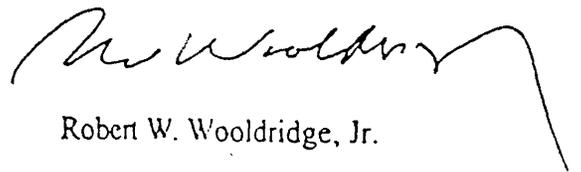
I find that Mr. Beacom's tow truck is a commercial vehicle as that term is used in the Declaration. For the above reasons, I find that the Declaration does not prohibit its being kept on public streets in Cavalcade. Fairfax County accepted the dedication of the streets in the subdivision to public use. Indeed, Fairfax County police have ticketed Mr. Beacom for alleged violations of Fairfax County ordinances for parking his tow truck on Rawlins Drive. Cavalcade relies on an alleged violation of this ordinance in its Bill of Complaint, but has no standing to do so.

These rulings do not affect the validity of restrictions relating to thoroughfares named as "streets" and shown on the plat but not dedicated to the public use.

Having prevailed in part on Count I and on Count III, Cavalcade is awarded attorney's fees in the amount of \$4,000.00.

Ms. Palmieri shall prepare a decree reflecting the rulings made at trial and the findings in this letter and forward it to Mr. Beacom for endorsement. I am placing this matter on my docket for December 18, 1998 at 10:00 a.m. for entry of the decree. Should a fully endorsed decree be provided to me before then, no appearance by the parties shall be necessary.

Very truly yours,



Robert W. Wooldridge, Jr.