

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NATIONAL DEVELOPMENT CO., INC.)

Plaintiff,

vs.

TRUSTEESHIP OF WOODLAND LAKES,
et al

Defendants.)

TIME STUDY CASE

Record Time Spent by Judge or Magistrate

No. 86-852C(1)

FILED

JUN 25 1986

PLAINTIFF'S POST TRIAL BRIEF

EYVON MENDENHALL
U. S. DISTRICT COURT
E. DISTRICT OF MO.

Plaintiff National Development Co., Inc. (hereinafter "NDC") brought this action against the Trusteeship of Woodland Lakes, James R. Clutter, Wilbert Meyer and William W. King seeking injunctive relief and a declaratory judgment.

I. THE PARTIES

NDC is a developer of recreational property. As of this date, NDC has developed approximately fourteen subdivisions across the country. NDC is the developer of a subdivision located in Washington County, Missouri, known as Woodland Lakes.

Woodland Lakes is comprised of approximately 2700 acres. At this time, there are approximately 5400 lots platted; of these platted lots, approximately twenty-five percent have been sold, fifty-eight percent are currently under a contract for deed and the remaining lots are unsold. In addition, between 400-500 acres are undeveloped and unplatted.

The Trusteeship of Woodland Lakes is a separate legal entity, as set forth in the Amended Trust Indenture and Restrictive Covenants and Conditions Pertaining to a Subdivision of Land in Washington County, Missouri (hereinafter "Trust Indenture", previously marked Plaintiff's Exhibit 1). James R. Clutter, Wilbert Meyer and Wayne W. King (hereinafter "Trustees") are the current trustees of Woodland Lakes. The Trustees were elected at the April 9, 1985, Property Owners' Meeting, replacing the original trustee of Woodland Lakes, Richard Erkenbeck.

II. ISSUES BEFORE THE COURT

A. Validity of Purported Amendments to Trust Indenture.

All of the purported amendments to the Trust Indenture, set forth in Plaintiff's Exhibits 3 and 5 are invalid, illegal, void and of no force or effect because they were illegally enacted contrary to the Trust Indenture and the laws and statutes of the State of Missouri. For purposes of clarity the various purported amendments will be classified and discussed based upon the meeting in which they were allegedly proposed.

The first group of purported amendments consists of the following two amendments:

1. This indenture may be modified or amended by a fifty-one percent (51%) vote of the property owners present at a duly called and scheduled meeting of the Association.

2. Any person shall be considered as an owner entitled to vote for any purpose provided for in this indenture provided said person is the owner by fee simple title, warranty deed or purchaser of the property under contract for deed; and provided that said person shall have fully paid all assessments which may be lawfully made by or under authority of this indenture.

The above two amendments were allegedly enacted during the April 9, 1985, Property Owners' Meeting. The purported amendment concerning which individuals have the right to vote is vague and ambiguous. As written, the purported amendment could provide for more than one vote on a particular lot which is under a contract for deed. Such an amendment is inconsistent with the provisions of the Trust Indenture.

A factual dispute exists as to what actually occurred at the April 9, 1985, meeting. Plaintiff presented evidence to support its contention that no such amendments were enacted at said meeting. Plaintiff's evidence showed that purchasers under a contract for sale were permitted to vote on the trustee election only, and that the Trust Indenture was not amended to give non-deeded land purchasers the right to vote as reflected in the above purported amendment.

Richard Erkenbeck, the original trustee who presided over the April 9, 1985 meeting, testified that he allowed individuals present at the meeting, whether deeded landowners or purchasers under a contract for deed, to vote on the election of the new trustees. Mr. Erkenbeck testified that the Trust Indenture was not amended or modified in any way during the April 9, 1985 meeting.

Karen Lancaster, the secretary who took notes and prepared minutes of the meeting, testified that the Trust Indenture was not amended or modified during the April 9, 1985 meeting. Ms. Lancaster explained that individuals present at the meeting, whether deeded landowners or purchasers under a contract for deed, were permitted to vote for purposes of electing trustees. Ms. Lancaster testified that purchasers under a contract for deed were not allowed to vote on the day of the next meeting, the only other matter of business put to a vote during the April 9, 1985 meeting.

Roy Bullion, Vice President of NDC, testified that it is NDC's practice not to give purchasers under a contract for deed the right to vote because of the high percentage of individuals who default on their contract to purchase. In addition, Mr. Bullion testified that NDC needs to retain control of the development until a sufficient number of lots are deeded in order to assure that the development will progress according to the general plan of the development. This position is consistent with the applicable HUD regulations. See 24 CFR Ch. X Sec. 1710.12.

Defendants contend that the purported amendments were enacted. Donald Bush, a non-deeded purchaser under a contract for sale, testified that he made a motion to amend the Trust Indenture to allow individuals who did not own a lot but were purchasing under a contract for sale to vote at property owners' meetings. Defendant Jim Clutter and Elaine

Meyer, Defendant Wilbert Meyer's wife, also testified that the Trust Indenture was so amended at the April 9, 1985 meeting.

In summary, plaintiff's position, that no amendments to the Trust Indenture were enacted at the April 9, 1985 meeting is supported by the testimony of Richard Erkenbeck, the original trustee and Karen Lancaster, a non-deeded purchaser under contract for sale. In addition, plaintiff's position is supported by the past and current practices of NDC, as well as the applicable HUD regulations.

The second set of purported amendments relate to the August 24, 1985, Property Owners' Meeting. The following amendments are included in this classification:

1. There shall be semi annual meetings of the lot owners at a convenient place in Washington County, Missouri, for the transaction of such business as may properly come before said meeting, on the second Saturday in April and the first Saturday of October, beginning in the year 1986 and each year thereafter. If however, the second Saturday of April preceeds Easter Sunday then the April meeting shall be held on the third Saturday of April. Notice of the date, time and place of said meeting shall be given by insertion of a notice in the newspaper circulated in Washington County, Missouri, at least seven (7) days before the date of the meeting, or, at the election of the Trustees, notice of said meeting may be made by mailing to each lot owner a letter setting forth the date, time and place of said semi annual meeting. Special meetings of lot owners shall be subject to these same notice requirements.

2. A special assessment of Twenty Dollars (\$20.00) per year beginning in 1986 and continuing for a maximum term of ten years upon and against each property owner for the purpose of obtaining electrical transmission and distribution lines to each and every lot within the Woodland Lakes Development.

The above amendments are invalid, void and of no force or legal effect because they were not enacted in accordance with the Trust Indenture.

As discussed above, it is NDC's position that no valid amendments were enacted during the April 9, 1985 meeting. However, even assuming for purposes of argument, that two such amendments were enacted on April 9, 1985 the amendments allegedly enacted on August 24, 1985 are still invalid. The Trust Indenture contains the following quorum requirement:

"...Any business relevant or pertinent to the affairs of the Woodland Lakes property or subdivision thereof, may and shall be transacted at any annual or special meeting discribed above. A majority of the lot owners constitute a quorum at the respective meeting at each.

Article I, Paragraph 3
(Emphasis supplied.)

The purported amendments of April 9, 1985 did not alter the above quorum requirement. It is clear from the evidence presented at trial that a quorum was not present at the August 24, 1985 meeting. In fact, defendants conceded at trial that a quorum, as defined by the Trust Indentures, without the purported amendments of April 9, 1985 was not present at the August 24, 1985 meeting.

Defendants have argued that the quorum requirement was amended on April 9, 1985 to simply "fifty-one percent (51%)" of the property owners present at the duly called and scheduled meeting. Defendants' contention is nonsensical in that the number necessary for a quorum would be determined by the number of individuals present at the meeting. Using

defendants' definition, two landowners could constitute a quorum if three landowners were present at a given meeting. Furthermore, defendants on April 12, 1986 purportedly amended Article I, Paragraph 3 to read:

"One Hundred (100) of the lot owners present and voting shall constitute a quorum at the respective meeting of each."

This action by defendants illustrates that defendants later realized that their purported amendments did not alter the quorum requirement as set forth in the Trust Indenture.

In addition, defendants failed to duly record the April 9, 1985 purported amendments prior to September 1985 as required by Sec. 442.380 and 442.400 R.S.Mo. 1979. Accordingly, the purported amendments even if legally and validly enacted, were not valid at the time of the August 24, 1985 meeting.

The third set of purported amendments relate to the Property Owners Meeting of April 12, 1986. This third set of purported amendments attempts to limit the number of votes of any property owner to a maximum of five (5) regardless of the number of lots owned in excess of five (5). The purported amendments also attempted to change the quorum requirement to "one-hundred (100) of the lot owners present and voting." The purported amendments tried to reduce the number of proxy votes to five (5) per person. There are several additional purported amendments to the Trust Indenture which are set forth on pages five and six of the minutes of the annual meeting, dated April 12, 1986.

Plaintiffs contend that, like the purported amendments of August 24, 1985, the above purported amendments of April 12, 1986 are invalid, void and of no legal force or effect because a quorum was not present at the April 12, 1986 meeting. As discussed above, the quorum requirement was not changed at the time these purported amendments were allegedly enacted. Accordingly, since 51% of the lot owners were not present at the April 12, 1986 meeting, the purported amendments are illegal, invalid and void.

In addition, NDC was denied the right to vote at the April 12, 1986 meeting. The Trustees claimed that NDC owed assessments on some of the lots owned by NDC. However, the Trustees did not know at that time how much, if any, NDC owed the Trusteeship in assessments. NDC adjourned from the April 12, 1986 meeting prior to any motion or vote on the purported amendments. Accordingly, the individuals in attendance at the April 12, 1986 meeting did not constitute a quorum as defined in Article I, Paragraph 3 of the Trust Indenture.

III. ASSESSMENTS

The second issue presently before the Court concerns the amount of assessments owed by NDC, if any. The parties have been unable to resolve this matter and respectfully request the Court to appoint a Master or Magistrate to assist in the resolution of these matters.

A legal issue which is intertwined with the assessment issue is whether or not NDC can offset some of the

assessment charges with expenditures made for the benefit of the Trusteeship and with direct loans made to the Trusteeship. The Trust Indenture is silent in this regard, as are the applicable HUD Regulations. Past practices of the Trusteeship support the permitting of such offsetting of charges. In addition, the evidence presented at trial illustrated that the Trusteeship, especially in its early stages, could not exist without the assistance of NDC. While there are no reported Missouri cases on this issue, the general rule provides that the law will not require the performance of a useless act. The disallowance of an offsetting of legitimate charges between the two parties would constitute the requirement of a useless act.

CONCLUSION

The purported amendments allegedly enacted at the April 9, 1985 August 24, 1985 and April 12, 1986 Property Owners Meetings are invalid, void and have no legal force or effect based on the foregoing reasons. NDC is entitled to offset any assessments it may owe the Trusteeship for lots owned by NDC with expenditures NDC has incurred on behalf of the Trusteeship and any loans made to the Trusteeship.

A copy of the foregoing
mailed this _____ day of
_____, 1986 to Norman
Stricker, Attorney for
Defendants.

Respectfully submitted,

J. H. Mueller

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