

IN THE COURT OF APPEALS OF TENNESSEE  
EASTERN SECTION

**FILED**  
**February 14, 1996**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

SAM TUCKER and wife )  
DOROTHY TUCKER ) CUMBERLAND COUNTY  
 ) 03A01-9508-CH-00266  
 )  
Plaintiffs - Appellees )  
 )  
v. )  
 ) HON. VERNON NEAL,  
 ) CHANCELLOR  
 )  
HOLIDAY OUT IN AMERICA AT )  
TANSI CAMPSITE SUBDIVISION )  
NO. 1 PROPERTY OWNERS )  
ASSOCIATION )  
 )  
Defendant - Appellant ) AFFIRMED AND REMANDED

HARRY D. SABINE OF CROSSVILLE FOR APPELLANT  
HENRY T. OGLE OF KNOXVILLE FOR APPELLEES

O P I N I O N

Goddard, P. J.

In this suit Sam Tucker and his wife Dorothy Tucker sue Holiday Out In America At Tansi CampSite Subdivision No. 1 Property Owners Association, seeking a declaration that the Association's attempt to amend the master deed applicable to all

lots in the subdivision, which precluded them from receiving water from November 16 through March 14 of the ensuing year was unenforceable.

From a finding by the Chancellor that such was the case insofar as the Tuckers are concerned, the Association appeals.

It raises two issues as follows.

1. The Trial Court erred in finding for the Plaintiffs as the weight of the evidence does not support the finding of the Trial Court that the amendment to the bylaws was arbitrary, capricious and unreasonable and therefore invalid as it applies to the Plaintiffs.

2. The Trial Court erred in ruling based upon the reasonableness of the amendment as it applied only to Plaintiffs instead of ruling based upon the reasonableness of the amendment as applied to all lot owners.

The pertinent portions of the master deed, which is dated February 7, 1967, are as follows:

Grantor does hereby grant, bargain, sell, transfer and convey unto Grantees, their successors and assigns in common with all other owners of lots in said Subdivision, their successors and assigns, the common use property and facilities shown on the plat of said subdivision above referred to, whether presently owned and constructed or hereafter acquired or constructed in said Subdivision, including but not limited to: (a) bathhouses; (b) beach and playground area; (c) access roads and parking areas; (e) water, electric, and sewage systems. Upon construction or acquisition of any of the aforesaid facilities, the subdivision plat shall, if necessary, be amended to show its location and deeds executed deeding such property or facilities to all co-owners for their common use. (Emphasis supplied.)

In order to promote the expressed purpose of Grantor and assure the orderly construction, development and maintenance of the Subdivision as a condominium campground, Grantor covenants for itself, its successors and assigns, that within three (3) years from the date of execution of this agreement it will procure, construct and install all of the aforesaid facilities; that the water, electric, and sanitary facilities and systems shall meet or exceed all applicable state and local laws and regulations, and that the beach and playground area shall contain a minimum of 90,000 square feet and 300 feet of water frontage. Grantor shall provide a water and electric outlet at each lot. (Emphasis supplied.)

. . . . .

Grantor hereby declares that the following shall constitute the administrative by-laws of the condominium which shall be informally [sic] applicable to all lots, owners of lots, and all other persons using the campgrounds and that said by-laws shall be and remain in full force and effect unless amended as herein provided.

(1) Grantor shall, unless replaced as hereinafter provided, act as administrator for the condominiums and shall be responsible for the proper use, maintenance, and operation of all of the common use, property and facilities, and any common use services which may be provided, and as such shall be entrusted with the custody of said property and facilities and may impose reasonable restrictions upon its use.

. . . . .

. . . . . A simple majority of the votes cast shall be sufficient to conduct any business or activities herein authorized; provided, however, that any amendment of these by-laws and any change in the system of administration herein provided shall require the approval of co-owners representing two-thirds (2/3) of the total lots in the subdivision and shall otherwise comply with the provisions applicable thereto set forth in the aforesaid Horizontal Property Act.

The master deed was amended by instrument dated October 29, 1975, to adopt new rules and regulations which included the following:

ARTICLE XVII. RULES AND REGULATIONS.

Section 1. As to Common Elements. The Board of Directors may from time to time adopt or amend previously adopted administrative rule and regulations governing the details of the operation, use, maintenance, management and control of the common elements of the condominium and any facilities or services made available to the unit owners. The Board of Directors shall from time to time post in a conspicuous place on the condominium property, a copy of the rules and regulations adopted from time to time by the Board of Directors.

At a meeting of the membership held on September 4, 1994, the offending provision hereinafter set out was adopted amending Article XVII, Section 3:

The Condominium Association formed shall levy and collect a reasonable monthly assessment against the owners of each lot sufficient to cover each lot's proportionate share of the actual cost of operating and maintaining all common use property and facilities, providing water from March 15th thru November 15, in addition water will be provided to at least one (1) bathhouse during the period that water is shut off to all the lots in the park, electricity and garbage disposal service, general maintenance and carrying out of its duties hereunder as "management". Likewise, the Association shall include in the assessment so made the sum adequate to pay all real property taxes on the condominium parcel as well as the common elements. The collection of these sums shall be provided for in an adequate manner to assure the maintenance necessary. When the lot owner is not in possession of his lot, the Administrator shall, with the approval of the lot owner, rent or lease his lot, the lot owner receiving payment from the rental or leasing. The Administrator will disburse the payment by check each month.

The amendment was approved by a vote of 293 in favor and 36 against, which exceeded the two-thirds vote required for approval.

Although the amendment is couched in the positive, it results in water service being terminated from November 16 through March 14 of the ensuing year, except for one bathhouse which would have water service year-round.

It appears from the proof that the water lines serving most of the owners of lots in the Subdivision were not laid at a sufficient depth to prevent freezing during the winter months, and that it is necessary that water to these lots be cut off during that period. The water lines, however, serving the Plaintiffs and a number of other landowners was sufficiently deep to prevent freezing and in the past they had received water, although others in the Subdivision had not.

The proper officials of the Association thought that allowing certain landowners to receive water while others could not was discriminatory and determined that all landowners should be treated alike. Consequently, they circulated a notice to the lot owners which contained the following provision:

FINAL REMINDER --- VOTE

Besides the vote on the water issue, which the Board urges you to vote YES on the amendment: which will turn off the water to all lots during the winter months and thereby avoid a large assessment to each lot owner (\$500-\$700). Please mark your proxy YES to approve the amendment.

A vote was taken which resulted as follows:

Yes	293
No	36
Not Voting	42

Approximately 175 property owners were receiving water year-round and it is obvious that a number of them voted in favor of restricting the water supply.

While it is arguable that the master deed, which provided that lot owners would receive water, conferred upon the Tuckers a vested right not subject to being impaired, the parties tried the case below on the question of whether the action of the Association was arbitrary, capricious, and unreasonable.

Counsel for the Association conceded in oral argument that the other lot owners would not be harmed by furnishing water to those who were in a position to receive it. This coupled with the fact that the notice of the vote was couched in language which would tend to insure a favorable vote to the Association's position, we are not inclined to approve the dog in the manger<sup>1</sup> attitude of the majority of the lot owners who as prudent purchasers knew or should have known that water would not be available year-round. Rather, it is our view that--if not precluded by statute, contract or otherwise--the policy of the

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<sup>1</sup>

THE DOG IN THE MANGER

A dog was lying in a Manger on the hay which had been put there for the cattle, and when they came and tried to eat, he growled and snapped at them and wouldn't let them get at their food. "What a selfish beast," said one of them to his companions; "he can't eat himself and yet he won't let those eat who can." Aesop's Fables.

law should be to aid parties when doing so does no harm to others.

We accordingly conclude as to the first issue that the Chancellor properly held the action of the Association was arbitrary, capricious, and unreasonable, and, therefore, invalid.

As to issue two, we note that the case originally sought that the case be certified as a class action, but by agreement of the parties this request was withdrawn, which meant that only the Tuckers were parties Plaintiff. In light of that the Chancellor was not in error in holding that his determination only applied to them. Moreover, we see nothing inconsistent if he had found, based upon different circumstances, that the proposed amendment would be invalid as to some land owners but valid as to others.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of appeal are adjudged against the Homeowners Association and its surety.

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Houston M Goddard, P. J.

CONCUR:

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Don T. McMirray, J.

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Charles D. Susano, Jr., J.