



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

PENNEY S. AZCARATE, CHIEF JUDGE

RANDY I. BELLOWES
ROBERT J. SMITH
BRETT A. KASSABIAN
MICHAEL F. DEVINE
JOHN M. TRAN
GRACE BURKE CARROLL
STEPHEN C. SHANNON
RICHARD E. GARDINER
DAVID BERNHARD
DAVID A. OBLON
DONTAÉ L. BUGG
TANIA M. L. SAYLOR
CHRISTIE A. LEARY
MANUELA CAPSALIS

JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

J. HOWE BROWN
F. BRUCE BACH
M. LANGHORNE KEITH
ARTHUR B. VIEREGG
KATHLEEN H. MACKAY
ROBERT W. WOOLDRIDGE, JR.
MICHAEL P. McWEENEY
GAYLORD L. FINCH, JR.
STANLEY P. KLEIN
LESLIE M. ALDEN
MARCUS D. WILLIAMS
JONATHAN C. THACHER
CHARLES J. MAXFIELD
DENNIS J. SMITH
LORRAINE NORDLUND
DAVID S. SCHELL
JAN L. BRODIE
BRUCE D. WHITE
RETIRED JUDGES

January 23, 2024

Thomas C. Mugavero, Esquire
Whiteford, Taylor & Preston, LP
3190 Fairview Park Drive
Suite 800
Falls Church, VA 22042-4510
Counsel for Ponds at Lafayette Commercial Condominium Unit Owners Association

Thomas R. Breeden, Esquire
Thomas R. Breeden, P.C.
10326 Lomond Dr.
Manassas, VA 20109
Counsel for Integrity Capital Management, LLC

Re: *The Ponds at Lafayette Commercial Condominium Unit Owners Association*
vs. Integrity Capital Management, LLC
Case No. CL-2022-7968

Dear Counsel:

This matter came on to be heard in the Fairfax Circuit Court on January 9, 2024. Plaintiff, THE PONDS AT LAFAYETTE COMMERCIAL CONDOMINIUM OWNERS ASSOCIATION (herein Lafayette), is seeking a permanent injunction, award of costs, award of reasonable attorney fees, and remediation of alterations to the commercial condo unit owned by the Defendant, INTEGRITY CAPITAL MANAGEMENT, LLC (herein Integrity).

Defendant Integrity has pled the defense that the decision of the Board of Directors of Lafayette in denying Integrity's application for approval post construction and alteration to the exterior of the unit, were arbitrary & capricious, and further seeks an Injunction

OPINION LETTER

directing the Board of Directors of Lafayette to approve the application for approval of the constructed improvements.

Plaintiff's corporate designee Mr. Bethi, president of the Board of Directors for Lafayette, and Mr. Lim, the principal of Integrity, were both present.

The factual history of this matter, which is not in dispute between the parties in any significant respect are as follows:

Mr. Jae Lim, the managing partner of Integrity, purchased the subject commercial condo unit in June of 2020 (Unit 1125). The acquisition of the property included in the relevant documents a DECLARATION FOR THE PONDS AT LAFAYETTE COMMERCIAL CONDOMINIUM. And BYLAWS OF THE PONDS AT LAFAYETTE COMMERCIAL CONDOMINIUM. Both documents apply to Mr. Lim's unit, which he acknowledged. Additionally, Mr. Lim, as managing director of a real estate management LLC for the past ten (10) plus years, is not an inexperienced real estate professional or manager.

Immediately upon purchase, Mr. Lim decided to subdivide his newly acquired property into multiple interior office spaces. He hired a general contractor, ALL TRADES SOLUTIONS, and as he testified, he delegated all issues relating to the renovation and subdivision to the contractor, including permits, permissions, and any other requirements pursuant to the build out. Mr. Lim admitted at trial that he did not seek pre-approval of the alterations to the outside of the unit prior to any work occurring. Pre-Approval of any alteration/exterior work etc. is required by the controlling condo documents. (Bylaws Sec 5.)

Interestingly, evidence presented at trial revealed that the general contractor hired by Mr. Lim apparently was neither a licensed contractor, nor did he apply for any permissions from the Association, the responsibility of the owner, Mr. Lim. Evidence was produced by the Plaintiffs that the Fairfax County Building Permits acquired for the build were acquired in the name of RICHARD CHRIST INVESTMENTS, INC. for both the electrical and interior alterations to the condo unit. No permits were acquired for the exterior changes and work.

Mr. Christ appeared and testified that he had no knowledge of the permits obtained using his Contractors License number, he had at no time interfaced with anyone involved in this project and knew nothing of it until contacted concerning the permits. No witness could provide any further information concerning ALL TRADES SOLUTIONS other than the owner reportedly had returned to YUGOSLOVIA. There were no EXTERIOR construction permits obtained. Additionally, under the controlling Condo Association governing

documents, no unit owner enjoys any ownership in any exterior portion or structure of the building.

Lafayette objected to the alterations to the unit, and served notice on Integrity, demanding that the Bylaws of the Association be followed. Post construction, which included changing a window to double doors with sidelights, and construction of a sidewalk from the building to the parking lot, Mr. Lim filed an application for approval of the construction which had been completed.

The Board of Directors of the Association denied the application on two occasions.

Mr. Lim asserts as his defense that the Board's decision to deny the application to approve the completed changes to the exterior of the unit, and the construction of a sidewalk from the building to the parking area are and were Arbitrary and Capricious. The Board of Directors position is that the decision was based on numerous factors, which included crowding of the available space, the creation of non-existent address numbers on the new double doors, and their judgment as the Board that they wanted to follow the Bylaws, and not encourage unauthorized modification to the buildings. The Board relies on and asserts that their decision was clearly within their business judgment.

The Court first turns to the defense of Arbitrary & Capricious. This term is defined as "conduct so willful and unreasonable action without consideration or regard for the facts and circumstances." The Defendant relies upon *Sainani v Belmont Glen Homeowners Association, Inc.*, 297 Va 714 (2019) as their principal authority to support their defense. *Sainani* is in multiple ways different and distinguishable from the case at hand. *Sainani* on the facts is materially different. It involved restrictive covenants concerning holiday decorations of a single owner's property. Nowhere in the restrictive covenants were there provisions for "seasonal guidelines" such that would authorize the Homeowners Association (HOA) to enact such restrictions or regulations. The Court thus found the unsupported guidelines to be Arbitrary and Capricious.

That is not the case herein. In this case, the Defendant constructed exterior modifications to the building, part of the condo unit, in which he enjoyed no ownership interest. He did so without permission, without building permits from any government entity, and did so without seeking pre-approval required by the Association Bylaws.

The Board of Directors, nonetheless, considered Mr. Lim's post construction application, and determined it to not be in the best interests of the entire complex of condo units, to create what appeared to be crowded space, and deciding to strictly follow the governing documents, and denied the request.

Therefore, the Plaintiff's motion for injunctive relief, an order directing the Defendant to return the non-owned outside portions of the structure to its original condition, and to remediate the sidewalk and return it to its original condition is GRANTED.

The DEFENDANT's Counterclaim is DISMISSED.

The parties, by agreement and prior Order of the Court, have agreed to address attorney's fees and costs at a later date and separate hearing.

Plaintiff's counsel should prepare a Final Order for signature. Both counsel are reminded that preparation of the Order is a scrivener's action, and not an opportunity to advocate for their respective positions.

Sincerely,

A large black rectangular redaction box covering the signature of Jonathan C. Thacher.

Jonathan C. Thacher
Judge Designate