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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

INNIS ARDEN CLUB, INC., et al.,)
)
 Plaintiffs,)
)
 v.)
)
 JOHN H. BINNS, JR., et ux,)
 et al.,)
)
 Defendants,)
)

No. 84-2-09622-9
ORDER GRANTING CLASS
ACTION SUMMARY JUDGMENT

I. HEARING

- 1.1 Date. February 17, 1987 and March 16, 1987.
- 1.2 Judge. Honorable Anne Ellington
- 1.3 Appearance. Foster, Pepper & Riviera and G. Richard Hill and Beth A. Clark appeared for plaintiffs; Houger, Miller & Stein, P.S.C. and William L. Houger and William L. Leavell, III appeared for the Defendants; and Cook, Berst, Landeen & Butler and George S. Cook appeared for Defendant Reiten.

II. ORAL DECISION

The oral Decision of Judge Ellington, including conclusions of law, was rendered March 16, 1987. A copy of the verbatim transcript of the oral Decision is attached hereto and incorporated herein.

1 Prior to making its Decision, the court heard argument of
2 counsel and considered the records and files herein, including
3 but not limited to all pleadings in this case, Plaintiffs'
4 Memorandum in Support of Motion for Class Action Summary
5 Judgment, Declaration of Plaintiff John Blankinship, Declaration
6 of Plaintiff Jack Dierdorff, Declaration of Plaintiff Mary Ann
7 McKnight, Declaration of Plaintiff Richard Wolf, Declaration of
8 Plaintiff Henry G. Liebman, Memorandum of Law in Support of
9 Defendants' Motion for Summary Judgment, Memorandum in Support of
10 Defendants' Motion for Attorney Fees, Affidavit of Defendant
11 Tate, Affidavit of Defendant Mahan, Affidavit of Defendant Binns,
12 Affidavit of Defendant Castner, Affidavit of Defendant Rust,
13 Affidavit of Defendant Adkins, Affidavit of Defendant Lundh,
14 Affidavit of Defendant Flick, Affidavit of Defendant Riely,
15 Affidavit of Defendant Kluge, Affidavit of Defendant Kohn,
16 Affidavit of Defendant Almquist, Affidavit of Defendant Wahl,
17 Supplemental Declaration of Plaintiff Mary Ann McKnight,
18 Plaintiffs' Memorandum in Opposition to Defendants' Motions for
19 Summary Judgment and for Attorney Fees, Defendants' Memorandum in
20 Opposition to Plaintiffs' Motion for Summary Judgment, Affidavit
21 of Defendant John H. Binns, Jr., Plaintiffs' Reply Memorandum,
22 Supplemental Declaration of Plaintiff Mary Ann McKnight,
23 Memorandum of Defendant Reiten, Affidavit of George S. Cook,
24 Plaintiffs' Reply Memorandum, Reiten's Answer to Plaintiffs'
25 Reply.

1 III. CONCLUSIONS

2 Based upon the materials reviewed, including the arguments of
3 counsel, the court makes the following conclusions:

4 1. There are no genuine issues of material fact, and
5 Plaintiffs are entitled to a grant of summary judgment as a
6 matter of law.

7 2. The view preservation amendment ("Amendment") to the
8 Innis Arden restrictive covenants ("Covenants") was adopted in
9 accordance with the amendment procedures set forth in the
10 Covenants. The Amendment was executed properly by signature of
11 the requisite super-majority of Innis Arden lot owners and was
12 filed properly. The court rejects the Defendants' argument that
13 the Amendment could only be amended during certain time frames.

14 3. The scope of the Amendment is within the original intent
15 of the grantor of the Covenants to preserve and maintain views
16 from building sites, as expressed in paragraphs four, ten and
17 eleven of the Covenants. The court rejects the Defendants'
18 argument that the Community Club's alleged failure to enforce
19 restrictions under paragraphs four and eleven constitute a waiver
20 or now estop the Plaintiffs.

21 4. Enforcement of the Amendment is not an unconstitutional
22 taking of private property for private purposes. The treble dam-
23 ages statute has no application in this case.

24 5. The Amendment, as drafted, is reasonable in purpose,
25 i.e., the Amendment is evenhanded, applies to all lot owners and

1 applies to all trees wherever and whenever planted, so long as
2 such trees obstruct views. Overall the Amendment is reasonable
3 in application; however, whether application of the Amendment
4 is reasonable in particular circumstances may require a factual
5 inquiry.

6 6. Appointment of a special master to conduct a factual
7 inquiry, upon the request of any party to this proceeding opposed
8 to application of the Amendment, and to make recommendations for
9 disposition to this court, would be an appropriate means of
10 determining whether application of the Amendment is reasonable in
11 a particular circumstance; said Special Master shall also propose
12 guidelines, for the Court's approval, to guide future enforcement
13 of the Amendment. The court assigns the initial costs of the
14 initial appointment of a special master to the Innis Arden
15 Community Club. The term "initial costs" shall be the subject of
16 determination at later proceedings.

17 7. There is no just reason for delay in entry of this
18 order. The court finds that any appeal from this order should be
19 taken at this time.

20 IV. ORDER AND JUDGMENT

21 Based on the foregoing, it is hereby ordered, adjudged and
22 decreed, that:

23 1. Plaintiffs' motion for class action summary judgment is
24 granted; and Defendants' motion for summary judgment is denied;

