IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOEL K. HART,	:	NO. 08 – 02,766
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DONALD F. and GWENDOLYN WILTON, et al.,	:	
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the Court are two sets of preliminary objections filed by certain of the numerous defendants in this matter, on May 14 and 15, 2009. Both sets of preliminary objections raise the same issues. Argument was heard June 15, 2009.

Plaintiff developed land in Mifflin Township; the defendants purchased lots in the development, known as "Mifflin Manor". All lots sold are subject to a Declaration of Protective Covenants which provides, in pertinent part: "Developer shall operate and maintain a sewage treatment system serving said development. The Mifflin Manor Homeowners Association shall assume operational and maintenance duties of said system at such time as Developer deeds said system to the Association, or upon Developers' death, whichever occurs first." Developer has incorporated the Association, and has prepared a deed transferring the system to the Association, but none of the purchasers have joined the Association and thus it is not in a position to assume the operational and maintenance duties of the system. In his Complaint, Plaintiff seeks an Order that defendants be required to "accept the Deed to the sewage treatment system and assume operational control of the Mifflin Manor Homeowners Association, Inc.", and also seeks an award of "fees and costs". In their preliminary objections, defendants argue that Plaintiff has failed to state a claim as there is nothing in their deeds which requires them to join the Homeowners Association, that requiring them to so join would violate their constitutional right of association, and that a request for fees and costs is not appropriate in an action for specific performance.[1]

[1] Defendants also claim that Plaintiff should be compelled to join Mifflin Township as an indispensable party as said township is "the entity ultimately responsible for sewage planning in its municipality." As the sewage

With respect to the first contention, that defendants' deeds do not require them to join the Homeowners' Association, while it is true that the deeds do not expressly so indicate, the Court believes such a requirement may fairly be implied. Deed restrictions may arise by expressed covenants or by implication, and in the latter case, such may be implied from the language of the deed, or from the conduct of the parties. Baederwood v. Moyer, 87 A.2d 246 (Pa. 1952). To ascertain the intention of the parties the language of the deed must be viewed in light of the subject matter, the apparent object or purpose of the parties, and the conditions existing when it was executed. Id. Restrictions by implication will be enforced when the facts clearly show the understanding of the parties to have purposed their inclusion, though not fixed by express words. Id. In the instant case, the Declaration of Protective Covenants requires that "all homes constructed in the subdivision must be connected to water, sewer, and underground utilities as provided on individual lots", that "developer shall operate and maintain a sewage treatment system serving said development", that "the Mifflin Manor Homeowners Association shall assume operational and maintenance duties of said system at such time as Developer deeds said system to the Association, or upon Developers' death, whichever occurs first", and that "grantee for himself, his heirs, executors and assigns, covenants and agrees to pay annually his assessment as established by the Public Utility Commission, to cover the cost to maintain and operate said sewage system." It is clear to the Court that the parties intended that the sewage system would be established by the developer, that all homes would be served by that system, and that the homeowners would bear the cost of such. It is also clear that the parties anticipated the formation of a homeowner's association which would enable the homeowners, as a group, to operate and maintain the sewage system. The failure of the deeds to specifically state that the homeowner must join the association appears clearly to be simply an oversight, as the requirement that the association operate and maintain the sewage treatment system is meaningless if the association has no members.

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treatment facility in the instant case is not a public facility, however, and as the claim in this case is based upon the agreements between the parties only, this claim is without merit. *See* York-Adams County Constables Asso. v. Court of Common Pleas, 474 A.2d 79 (Pa. Commw. 1984) (A party is an indispensable party when his/her rights are so connected with the claims of the litigants that any order or decree in the matter at bar would infringe upon or impair those rights.)

With respect to the claim that requiring the homeowners to join the Homeowner's Association will violate their "constitutional right to associate", the Constitution actually states that "Congress shall make no law" which abridges the "right of the people peaceably to assemble". U.S. Constitution, Amendment 1. A deed restriction is not a "law of Congress", and thus no constitutional rights are implicated.

Finally, with respect to the objection to Plaintiff's request for an award of costs and fees, as the Declaration of Protective Covenants provides for enforcement by "proceedings at law or in equity" but does not provide for the awarding of costs, the request for such will be stricken.

ORDER

AND NOW, this 29th day of June 2009, for the foregoing reasons, the preliminary objections are sustained in part and overruled in part. Paragraph (B) of Plaintiff's "Wherefore" clause is hereby STRICKEN. Defendants shall file an Answer to the Complaint within twenty (20) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson