

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
CIVIL BRANCH
FOURTH DIVISION

FILED AND ENTERED
ATTEST, WILMA F. LYNCH, CLERK
MAY 09 2008
BY *[Signature]* CLERK
DEPUTY

GORDON SLONE and
HATTIE SLONE

PLAINTIFFS

v.

OPINION AND ORDER

NO. 07-CI-1939

COPPERFIELD NEIGHBORHOOD
ASSOCIATION, INC.

DEFENDANT

This matter is before the Court on motion of the defendant, Copperfield Neighborhood Association, Inc. ("Copperfield") for summary judgment. Plaintiffs, Gordon Slone and Hattie Slone ("the Slones"), husband and wife, are the owners of a lot located at 1376 Glenview Drive, Lexington, Kentucky. Said lot was conveyed to the Slones on July 3, 1992 and is located in the Copperfield Subdivision.

At issue in this lawsuit is the interpretation of Copperfield's Deed of Restrictions and whether the provision therein assessing an annual maintenance fee of \$50.00 may be amended.. Copperfield increased the annual maintenance fee from \$50.00 to \$200.00 to finance the purchase of the clubhouse, swimming pool, and tennis courts and the operations of the clubhouse and tennis courts. This change took place on or about March 31, 2003 following an amendment to the Copperfield Deeds of Restrictions. A special meeting of the members of Copperfield was held April 24, 2003.

In February 2003, the Slones tendered payment of \$50.00 for the annual maintenance fee. Said check was returned on or about May 4, 2003. The Slones have tendered a check in the

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amount of \$50.00 prior to February 1st of each subsequent year. The checks have either been returned to them or have not been cashed. In January 2007, the Slones received an invoice for \$1,000 for dues of \$200 per year for the past four years and 2007. The Slones initially sent a check for \$50.00 for the invoice. They subsequently paid the remaining \$950.00 under what they deem to be protest. In February 2008, the Slones paid the \$200 maintenance fee and is currently in good standing as members of Copperfield.

The Slones filed this lawsuit on April 23, 2007, asking this Court to determine the following:

1. The Deed of Restrictions cannot be changed prior to February 12, 2017, the expiration of the initial twenty-five (25) years; and
2. The annual maintenance fee cannot exceed \$50.00 per lot; and
3. The Amended Restrictions are new restrictions on the property of [the Slones], not merely changes to the existing restrictions; and,
4. [T]he Slones have not assented to be bound by members in [Copperfield]; and,
5. [Copperfield] failed to give appropriate notice of, or hold a special meeting, or to conduct a vote as required by Section 7.5 of the By-laws of [Copperfield] for the purpose of increasing the annual assessment due [Copperfield]; and,
6. [Copperfield] has failed to have filed, in the Fayette County Courthouse, an assignment from the Copperfield Development Company, for the right to collect the maintenance fees provided for in the original deed of restrictions; and,
7. The Deed of Restrictions do not provide for the imposition of late fees or liens for failure to abide by the restrictions, but only that the restrictions are “enforceable by appropriate legal action.”

See the Slones' Complaint, paragraphs 13 through 19.

The Slones seek a judgment from this Court decreeing that the original Deed of Restrictions cannot be changed prior to February 2017; that the Amended Deed of Restrictions is void; that the annual maintenance fee cannot exceed \$50.00; that they are not members of Copperfield and, thus, not bound by their by-laws; that they do not owe maintenance fees for the years 2003 through 2007 and, thus, are entitled to a refund of \$950.00.

The Slones seek further determination that Copperfield cannot collect or use maintenance fees for the purpose of purchasing the real property, swimming pool, club house, or tennis courts located at 1336 Copper Run Boulevard, or for paying the mortgage, maintenance or operating costs of said property and facilities; that Copperfield did not comply with the requirements of Section 7.5 of the By-Law of Copperfield in their attempt to increase the annual maintenance fee and that Copperfield cannot demand more than \$50.00 per year as an annual maintenance fee.

The Slones also seek attorney fees and reasonable costs associated with this action. They previously filed a Motion for Summary Judgment contending they were entitled to judgment as a matter of law. The Court overruled said motion. The case is now before the Court on Copperfield's motion for summary judgment.

Based on the Court's review of the record, the pleadings, Copperfield's Deed of Restrictions, Copperfield's By-laws, their Amended Deed of Restrictions, the applicable case law, and being otherwise sufficiently advised; IT IS HEREBY ORDERED AND ADJUDGED that Copperfield's Motion for Summary Judgment be and the same is hereby SUSTAINED. Although not necessary, the Court makes the following findings in support of its decision to sustain Copperfield's motion.


1. The Deed of Restrictions does, in fact, allow for its amendment.

2. Copperfield followed the proper protocol for amending the Deed of Restrictions. Therefore, the Amended Deed of Restrictions is, in fact, valid.
3. The Slones are members of Copperfield. They have paid their dues for 15 years, and cannot renounce their membership.
4. The Slones have in essence waived any rights they had to challenge the Amended Deed of Restrictions by waiting four (4) years to do so.
5. The legal concept of Laches prohibits the Slones from prevailing in this matter.

Based on the foregoing analysis, Copperfield is entitled to judgment as a matter of law.

The Complaint filed herein is hereby dismissed with prejudice. There being on just cause for delay, this is a final and appealable Order.

SO ORDERED this 8th day of May, 2008.



JUDGE, FAYETTE CIRCUIT COURT
FOURTH DIVISION

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Opinion and Order was mailed, first class, postage prepaid, on this 9 day of May, 2008, to the following:

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BY: 
