

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 1777-CV-01063

MICHELE C. MEYER, M.D., AND SHARON N. BARRETT,  
TRUSTEE OF THE CHESTNUT ASSOCIATES REALTY TRUST,  
PLAINTIFFS

-vs-

CHESTNUT GREEN CONDOMINIUM AT DANVERS TRUST, & ANTHONY TURCO,  
MICHAEL TRIPOLI, JAMES SEARS, MICHAEL ENES, SR., & DANIEL MESSINA, IN  
THEIR CAPACITY AS TRUSTEES OF CHESTNUT GREEN CONDOMINIUM TRUST,  
DEFENDANTS

ESSEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 1977-CV-0704

CHESTNUT GREEN CONDOMINIUM AT DANVERS TRUST,  
PLAINTIFF

-vs-

MICHELE MEYER, M.D. and CHESTNUT ASSOCIATES REALTY TRUST and  
SHARON N. BARRETT IN HER CAPACITY AS TRUSTEE OF THE CHESTNUT  
ASSOCIATES REALTY TRUST  
DEFENDANTS

**MEMORANDUM AND ORDER ON MOTION FOR SUMMARY JUDGMENT<sup>1</sup>**

In this case, Michelle C. Meyer, M.D. and Sharon Barrett, as Trustee of the Chestnut Associates Realty Trust ("Meyer & Barrett") filed suit in Case No. 1777-CV-01063 ("Case 1") asserting in Count 1<sup>2</sup> of the Amended Complaint that certain actions taken by the defendants, Chestnut Green Condominium at Danvers Trust and its individual trustees (the "Association"),

<sup>1</sup> Plaintiffs', Meyer and Barrett, Individually and on behalf of Chestnut Associates Realty Trust, filed their Motion for Summary Judgment as to Count One in Case1 and as Defendants as to Plaintiff's Complaint in Case2.

<sup>2</sup> Count Two of the Complaint alleges breach of contract, breach of fiduciary duties, and breach of covenant of fair dealing by the Association and its trustees. Count Two was not addressed in the instant motion and is therefore not addressed directly herein.

were in violation of G.L. Chapter 183A. Specifically, the Amended Complaint in Case 1 sought a Declaratory Judgment invalidating as unlawful the actions of the Association that required Dr. Meyer to remove a tropical fish tank from her office located in Meyer and Barrett's condominium unit within the Chestnut Green Condominium at Danvers (the "Condominium") based upon alleged violations of a No Pet policy contained in the Rules & Regulations of the Condominium. The Association denied the allegations in Case 1 as originally pleaded and as pleaded in the amended Complaint. The Association brought a separate action in Case No. 1977-CV-0704 ("Case 2") against Meyer and Barrett alleging violation of the No Pet policy and other provisions of the condominium documents relating to the escape of water from the tropical fish tank and seeking enforcement of fines assessed by the Association against Meyer and Barrett and confirmation of the Association's authority to require the removal of the tropical fish tank. Meyer and Barret denied the Association's claims and affirmatively challenged the Association's authority to assess the subject fines and the authority of the Association to require the removal of the tropical fish tank. Meyer and Barrett have filed a Motion for Summary Judgment as to Count One of their Complaint in Case 1 and as to the Association's Complaint in Case 2. The cases were consolidated by Order dated July 16, 2019. The Association has opposed the Motion for Summary Judgment as to both cases. After hearing, the Motion is **ALLOWED**.

### **BACKGROUND**

The facts established by the Parties' Rule 9A(b)(5) Statement of Facts and Appendix of Documents filed therewith, along with inferences drawn in favor of the opposing parties, are as follows:

1. Michele Meyer, M.D. ("Dr. Meyer") is a physician licensed in the Commonwealth of Massachusetts with her principal place of business at Suite 35 of the Chestnut Green Condominium at Danvers, 7 Federal Street, Danvers, Massachusetts (herein "Unit #35").

2. Sharon N. Barrett, M.D. ("Dr. Barrett") is a physician licensed in the Commonwealth of Massachusetts with her principal place of business at Suite 35 of the Chestnut Green Condominium at Danvers, 7 Federal Street, Danvers, Massachusetts.

3. Dr. Meyer and Dr. Barrett are the beneficiaries, and Dr. Barrett is the Trustee of the Chestnut Associates Realty Trust.

4. Dr. Barrett holds legal title, as Trustee of the Chestnut Associates Realty Trust, to Unit #35.

5. The Chestnut Green Condominium at Danvers is a condominium created pursuant to G.L. Chapter 183A by Master Deed dated June 16, 1986.

6. The Chestnut Green Condominium at Danvers Trust (the "Condominium Trust") is the organization of unit owners of the Chestnut Green Condominium at Danvers created pursuant to G.L. Chapter 183A.

7. The Condominium Trust included, as the last two pages of the recorded trust, Rules and Regulations of Chestnut Green Condominium at Danvers (the "Original Rules & Regulations").

8. By document dated January 26, 2011, the Chestnut Green Condominium at Danvers Trustees executed and caused to be recorded an Amendment to the Rules and Regulations of the Chestnut Green Condominium at Danvers (the "First Amended Rules & Regulations").

9. The First Amended Rules & Regulations, *inter alia*, prohibit the keeping of dogs or other animals in or about the units or the common areas and facilities without the written consent of the Trustees which consent may be given and revoked at the sole discretion of the Trustees.

10. By document dated February 21, 2013, the Chestnut Green Condominium at Danvers Trustees executed and caused to be recorded another Amendment to the Rules and Regulations of the Chestnut Green Condominium at Danvers ("Second Amended Rules and Regulations").

11. The Second Amended Rules and Regulations includes provisions, *inter alia*, to regulate the use of individual condominium units and continues to prohibit the keeping of dogs or other animals in or about the units or the common areas and facilities without the written consent of the Trustees.

12. There is no restriction on having any kind of animals and/or fish contained within the Master Deed or the By-laws of the Chestnut Green Condominium at Danvers.

13. At the time the Chestnut Associates Realty Trust purchased Unit #35, there was no restriction on the keeping of animals, pets, or fish in the individual condominium units.

14. Dr. Meyer is a licensed and board-certified child and adolescent psychiatrist.

15. Dr. Meyer has used and occupied Unit #35 in the Chestnut Green Condominium at Danvers as her office and to treat patients since 2000.

16. From the year 2000 up to and including the present, Dr. Meyer has maintained a 38 gallon tropical fish tank in her office.

17. By notice dated May 12, 2016, Peter Kitsakos, as Managing Agent for the Trustees of the Chestnut Green at Danvers Condominium informed Dr. Meyer, *inter alia*, that the Board of Trustees rescinded any approval for her unit to have a fish tank, implied or otherwise. Further, the notice informed Dr. Meyer that the Board was demanding the removal of her fish tank within ten (10) days, and the Board threatened that non-compliance would result in a \$25.00 per day fine.

18. Subsequent to the above notice, the Board of Trustees caused Meyer and Barrett's account to be charged "FINES FOR NONCOMPLIANCE WITH DEMAND TO REMOVE UNAUTHORIZED PET (fish tank)."

#### **DISCUSSION**

On summary judgment, the moving party has the burden to demonstrate that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law. Foley v. Boston Hous. Auth., 407 Mass. 640, 643 (1990). The movant may meet this burden by showing that the plaintiff has no reasonable expectation of producing evidence on a necessary element of his case. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). Once the moving party meets the burden, the opposing party must advance specific facts that establish a genuine dispute of material fact. Id.

#### **I. The Condominium Rules**

Pursuant to Massachusetts General Laws Chapter 183A, the master deed governing an organization of unit owners must contain certain provisions. G. L. c. 183A, § 8. The master deed must contain “[a] statement of the purposes for which the building and each of the units are intended and the restrictions, if any, as to their use.” G. L. c. 183A, § 8(g).

Condominium Trustees may adopt and amend administrative rules or regulations, but the same may only govern “the details of the operation and use of the common areas and facilities.” G. L. c. 183A, § 11(d); A restriction on the “use and maintenance of the units” must be set forth in the master deed or enacted as a by-law, thereby subject to a vote of the unit owners. G. L. c. 183A, § 11(e); Noble v. Murphy, 34 Mass. App. Ct. 452, 454 n.4 (1993) (“restrictions relating to the use of a condominium unit . . . must be contained in either the by-laws or master deed to be enforceable...”).

The Master Deed and By-Laws of the Chestnut Green Condominium at Danvers contain no restrictions on the keeping of animals and/or fish in the condominium units, nor did they contain same at the time the Chestnut Associates Realty Trust/Meyer and Barrett purchased Unit #35 in 1986.

In its Answers to the Complaint and to the Amended Complaint in Case 1 and in its Complaint in Case 2 and in its Motion for Preliminary Injunction in Case 2, previously denied, the Association claimed that the amendment dated February 21, 2013 to the Chestnut Green Condominium at Danvers Trust’s Rules and Regulations prohibiting dogs or other animals in units or common areas (with the exception of those having obtained written consent from the Board of Trustees) gave the Trust and its Trustees the authority to demand the removal of Dr. Meyer’s fish tank from Unit #35. The animal restriction contained in the Rules and Regulations is invalid, as it purports to create restrictions on the use of individual units, without having

obtained a vote of the unit owners. Johnson v. Keith, 368 Mass. 316 (1975). Under G. L. c. 183A, § 11(d), administrative rules and regulations may be enacted by vote of the trustees to govern the “details of the operation and use of the common areas and facilities.” Id. at 318. However, any restrictions on “the use and maintenance of the units . . . not set forth in the master deed” must be enacted as by-laws, subject to a vote of the unit owners. Id., quoting G. L. c. 183A, § 11(e). That was not the case here. In its opposition to the instant Motion for Summary Judgment, the Association conceded that “a rule which seeks to create restrictions on the use of individual units not set forth in the master deed must be enacted as an amendment to the master deed or by-laws by a vote of the unit owners to be enforceable.” Accordingly, I find and rule that the rules purporting to restrict the keeping of pets and animals as contained in the amendments to the Rules and Regulations of the Chestnut Green Condominium at Danvers dated January 26, 2011 and February 21, 2013 are statutorily invalid and unenforceable because they purport to restrict the keeping of animals in individual units, and were subject only to a vote of the trustees.

## II. The Alternate Enforcement Claim

With respect to the generalized claims advanced by the Association as to its authority to require the removal of the fish tank based upon claimed violations of Master Deed Section 9.1 and Condominium Trust Sections 5.2.3 and 5.3, those claims fail as the Trustees failed to comply with the specific enforcement prerequisites contained within Section 5.2.3 and because Dr. Meyer in fact corrected the problem following notice. The claim arising under Trust Section 5.3 fails as that section only applies to maintenance and repair of common areas and facilities.

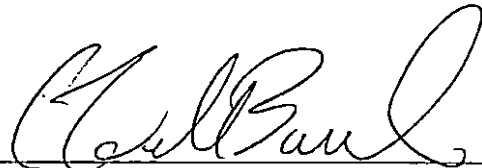
## III. The Remaining Count

Count II of Case 1 was not the subject of the instant Motion for Summary Judgment and therefore is not affected by this Order. The Court encourages the parties to resolve the remaining claim and directs the Clerk's Office to schedule a conciliation.

### CONCLUSION

For the above reasons, the Motion for Summary Judgment is **ALLOWED**. Summary Judgment shall enter for the Plaintiffs on Count One in Case 1 – Docket No. 1777-CV-01063 and for the Defendants in Case 2 – Docket No. 1977-CV-0704.

Dated: September 8, 2020

A handwritten signature in black ink, appearing to read "Charles Barrett", written over a horizontal line.

Charles Barrett,  
Associate Justice, Superior Court