

BK 1363 PG 157-162



MISC 2000 17482

RICHARD N TAKEUCHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

IN RE CANDLEWOOD HOME)
OWNERS ASSOCIATION, INC.,)

CANDLEWOOD HOME OWNERS)
ASSOCIATION, INC.,)

Plaintiff,)

vs.)

JOSEPH ADDISON, a home owner)
within the Candlewood subdivision; on)
his own behalf and on behalf of all other)
owners of property within the)
Candlewood subdivision,)

Defendants.)

F DOC. 993 PAGE 562
MISC FEE 236.02 See Below
BKP _____ C/O _____ COMP MB
412 DEL _____ SCAN dc FV _____

SECOND
ORDER OF DECLARATORY
JUDGMENT NUNC PRO TUNC

FILED
JOURNAL CLERK

JAN 11 2001

CLERK DISTRICT COURT

NOW on this 17th day of November, 2000, the above captioned matter comes before the Court for trial pursuant to notice.

Evidence was adduced, and arguments are made. The Court, being well and duly advised in the premises, finds and orders as follows:

1. Plaintiff is a Nebraska not-for-profit corporation. It acts as a home owners association which includes all of the residential lot owners of the Candlewood subdivision and part of the residential lot owners in the Candlewood II subdivision in west Omaha. The legal description of those lots is as follows:

Lots 1 through 84, inclusive, Lots 86 through 112, inclusive,
Lots 115 through 141, inclusive, Lots 144 through 228,
inclusive, and Lots 233 through 400, inclusive, in
Candlewood Addition, a subdivision in Douglas County,
Nebraska, and

59-05650

Lots 1 and 2, Candlewood Replat 1, a subdivision as
surveyed, platted and recorded in Douglas County,

59-05652

Return: Robert S Lunnin
2120 So 72 #1250
Omaha 68124

Nebraska, commonly known as 12212 Rose Lane and 12205 Charles Street,

Lots 1 and 2, Candlewood Addition, Replat 2, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, commonly known as 1751 North 127th Street and 12615 Decatur Street; and

59-05658

Lots 60 through 71, inclusive, and Lots 73 and 74 and that portion of Lot 78 located within the Northwest Quarter of the Northeast Quarter of Section 18, Township 15 North, Range 12 East of the 6th P.M., all of the preceding lots being in Candlewood II, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, and

59-05651

Lots 1 and 2, Candlewood II, Replat 2, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded in Douglas County, Nebraska, commonly known as 1925 North 123rd and 1927 North 123rd Streets.

59-05654

Plaintiff is the fee simple title owner of the property commonly referred to as Lake Candlewood, an impounded lake created by the Candlewood Dam, and the amenities incident thereto, as well as additional common areas in the Candlewood subdivision.

2. This is a class action pursuant to Neb. Rev. Stat. § 25-319. The class consists of all owners of residential lots in the Candlewood subdivision in Douglas County, Nebraska, as well as a limited number of residential lot owners in Candlewood II, a subdivision in Douglas County, Nebraska, as described in Paragraph 1 hereof. Appropriate notice to all class members was given pursuant to prior Order of this Court. The interests of all absent class members have been adequately represented and protected.

3

3. Required membership in the Plaintiff Home Owners Association of all lot owners in the Candlewood subdivision was created pursuant to a Declaration filed with the Douglas County Register of Deeds on or about May 30, 1972 beginning at Book 510, Page 401 and extended by a Declaration filed with the Register of Deeds on or about June 4, 1979 beginning at Book 615, Page 338 (hereafter collectively "the Declaration"). The Declaration states that the requirement for membership in the Home Owners Association shall exist through December 30, 2000, or for such longer or other period as may be otherwise fixed. The Plaintiff Home Owners Association was given the right pursuant to the Declaration to promote and sustain the social welfare and otherwise provide for the health, pleasure, recreation, safety and other interests of the subdivision.

4. The subdivision was recently annexed by the City of Omaha, however, Lake Candlewood and the other common areas continue to be the property of the Home Owners Association.

5. The Home Owners Association also has By-Laws (hereafter "By-Laws"). The Declaration and By-Laws each make reference to the other and are intrinsically connected in their operation. The By-Laws reference the Declaration and state that the covenants contained therein shall run with and bind the land for a term of twenty (20) years from the date of the Declaration, at which time it shall be automatically extended for successive periods of ten (10) years. The Declaration itself does not contain a similar extension provision, but contains other language which establishes the relationship of the By-Laws to the Declaration. The language which provides that the existence of the Home Owners Association may be "for such longer or other period as may be otherwise fixed" can only realistically refer to the By-Laws.

6. The attorney who drafted the Declaration and the By-Laws and one of the developers involved in the development of the subdivision and the creation of the structure for the Home Owners Association have stated that their intention was to provide for the continuity of the Home Owners Association by automatic ten (10) year extensions. This intention is reflected in the language of the respective documents when they are read together, as they must be.

7. To the extent the continuity of, and automatic membership in, the Home Owners Association is threatened, the subdivision would be left in a state of disarray with regard to ownership of the lake and other matters necessary to the efficient operation and existence of the subdivision. Among other things, Lake Candlewood acts as the storm sewer system for the subdivision.

8. It is a cardinal principle of construction that instruments made in reference to and as part of a transaction should be considered and construed together. Baker's Supermarkets, Inc. v. Feldman, 233 Neb. 684, 502 N.W.2d 428 (1993), Properties Inv. Group v. Applied Communications, Inc., 242 Neb. 464, 495 N.W.2d 483 (1993). The extension provision regarding the duration of the requirement for membership in the Candlewood Home Owners Association contained in the By-Laws was intended to be and is equally applicable to the Declaration.

9. The best and most logical interpretation of those portions of the Declaration and the By-Laws dealing with the duration of that part of the Declaration related to the Home Owners Association, and the requirement for membership in the Home Owners Association, is that such provisions were intended to and do extend automatically for successive ten (10) year periods after the expiration of the initial twenty (20) year period after the filing of the Declaration.

The Court, in light of these Findings, Orders, Adjudges and Decrees as follows:

A. The Court has jurisdiction over the subject matter of this action and over the person of the named Defendant, as well as all members of the class.

B. This case may properly proceed as a class action. The Defendant class is comprised of all owners of property within the Lake Candlewood subdivision and part of the owners of property within the Candlewood II subdivision as set forth in Paragraph 1 above. Appropriate notice was given to all class members pursuant to the Order of this Court. The interests of all absent class members were adequately represented and protected.

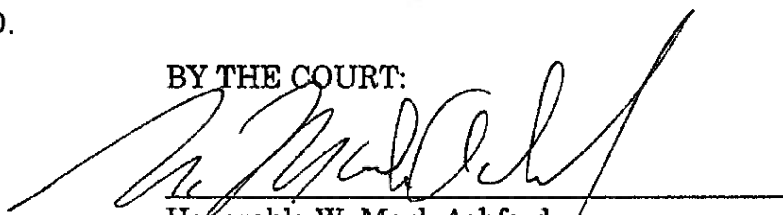
C. Plaintiff's evidence establishes the necessity for continuation of, and automatic membership in, the Plaintiff Home Owners Association for purposes of ownership of Lake Candlewood and otherwise for the benefit of the subdivision. The

evidence further establishes that the Declaration and By-Laws were intended to be read together.

D. The Candlewood Home Owners Association, Inc. is a corporation with perpetual existence. Under the terminology contained in the By-Laws, the initial term for all terms and provisions of the Declaration relating to the Home Owners Association, including but not limited to the lien upon lots for the payment of dues and required membership of individual Candlewood lots in the Home Owners Association, was twenty (20) years from the date of filing the Declaration. Thereafter, all such terms and provisions continue automatically for successive ten (10) year periods. This provision for automatic extensions conforms to the language of the Declaration as clarified in the By-Laws, all as stated herein. Costs are taxed to the Plaintiff.

IT IS SO ORDERED.

BY THE COURT:



Honorable W. Mark Ashford
Douglas County District Court Judge

1-11-01

