

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

LEO E. STRINE, JR.
VICE CHANCELLOR

New Castle County Courthouse
Wilmington, Delaware 19801

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Decided: October 21, 2005

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**Re: ANNE A. DOLAN v. VILLAGES OF CLEARWATER
HOMEOWNER'S ASSOCIATION, INC.
C.A. No. 097-S**

Dear Counsel:

This case involves a homeowner's request to make certain improvements to her property and a denial of that request by the architectural review board of her homeowner's association (the "Review Board"). The plaintiff, Anne A. Dolan, filed an action seeking to set aside the decision of the Villages of Clearwater Homeowner's Association (the "Association") to disapprove her plan to pave the area under her home and between her home and the street. Dolan contends that the Review Board's decision is not within the authority granted to it. This action was referred to the Master, who issued a thorough Report that initially rejected Dolan's claim (the "Master's Report" or

“Report”).¹ The Master then considered the exceptions filed by Dolan in an equally thorough manner and concluded that his initial decision to deny Dolan’s claim was correct. Dolan filed exceptions from the final Master’s Report and those exceptions are now before me.

The standard of review for a master’s findings, both factual and legal, is *de novo*.² The mere fact that exceptions are taken to the Master’s factual determinations does not itself require a new trial; rather, it is often the case that the court can read the record that is relevant to the exceptions raised and draw its own factual conclusions.³ “Only where exceptions raise a bona fide issue as to dispositive credibility determinations will a new hearing be inevitable.”⁴ Here, none of the key factual determinations turn on credibility issues or otherwise require a new hearing for fair resolution. Thus, I base my ruling on a *de novo* review of the record before the Master. After reviewing the exceptions in light of that record, I conclude that the Master’s recommendations contained in his well-reasoned Report are correct. Judgment, therefore, will be entered in favor of the Association.

I. *Factual Background*

The Villages of Clearwater (the “Villages”) are comprised — as its name implies — of three distinct sections within the development. The Newport Village section is composed of larger lots with larger free-standing homes. The Northampton Cottages

¹ See Master’s Report, *Dolan v. Villages of Clearwater Homeowner’s Assoc., Inc.*, C.A. No. 097-S, 2005 WL 1252351 (Del. Ch. May 12, 2005).

² See *DiGiacobbe v. Sestak*, 743 A.2d 180 (Del. 1999).

³ *Id.*

⁴ *Id.*

section is composed of cottages on smaller lots. The third section, the Village of Half Moon Bay (“Half Moon Bay”), is where Dolan’s house is located. With the exception of a small separate section set aside for cottages, a majority of Half Moon Bay contains houses in the “Key West” style.⁵ All Key West-style houses are raised on pilings and have an apron or driveway of white pea gravel extending from the paved street to the house for the house’s full width, and in all but one house, the apron continues completely under the house. Both these traits — the pilings and apron of white pea gravel — are distinct to this style of home. Other houses in the Villages have driveways of stone and pavement, but none have house-width pea gravel treatment under the home because only the Key West houses are raised on pilings. Dolan lives in Half Moon Bay and has a Key West-style home.

Deed restrictions applicable to all properties in the Villages are contained in Article 7 of the Declaration of Covenants, Conditions and Restrictions of the Villages (the “Declaration”). Pursuant to this Article, authority granted to the developer has been transferred to the Review Board. Section 7.3 in Article 7 states the objectives of the architectural review, which the Review Board must consider when evaluating homeowners’ applications for proposed improvements. In pertinent part, these objectives include “[en]suring that the architectural design of structures and their materials and colors are visually harmonious with the Development’s overall appearance, history and

⁵ The Key West and non-Key West houses in Half Moon Bay are not intermixed. Master’s Report, 2005 WL 1252351 at *1. For a more detailed description of the neighborhood’s three sections, including the distinctive architectural features of the Key West style not raised in this case, see Master’s Report, 2005 WL 1252351 at *1.

cultural heritage, with surrounding development, with natural land forms and native vegetation....” (the “Deed Restriction”).⁶

In November 2003, Dolan made an application to the Review Board to remove the white gravel in front of and under her home and install white paving that would incorporate a gutter catchment system to assist with drainage. Under its authority in Article 7, the Review Board rejected Dolan’s application. If Dolan’s request had been granted, Dolan’s house would have been the only Key West-style house in Half Moon Bay without a white gravel apron in front of and under her raised house. She would have been a trendsetter by combining a professionally-designed gutter catchment system on top of white pavement or asphalt, a hard surface both in function and by appearance. Other applications to replace all the gravel with paving submitted by owners of Key West-style homes were denied by the Review Board.⁷ Dolan then filed suit in this Court seeking a judicial determination that the Review Board’s decision was improper and that she may proceed with her plans to pave her property.

II. *The Master’s Report*

The Master recommended denying Dolan the relief she sought, finding that the Association acted reasonably in denying Dolan permission to pave the area on her property originally covered in white pea gravel because that denial helped preserve the

⁶ Def.’s Br. App. Ex. B at B20 (providing Article 7, Section 7.3(C) of the Declaration of Covenants, Conditions and Restrictions for Villages of Clearwater).

⁷ Dolan points out the Review Board has allowed one Key West homeowner to place brick pavers under the house but required the white gravel to remain in the area between the house and the street. *See* Jt. Ex. 1, No. 6. Other than this, only non-Key West homes have paving. I address this example, repeatedly highlighted by Dolan, in Part III.

visual harmony of the community, a specific purpose mentioned in the Deed Restriction. The Master concluded that: (1) the Deed Restriction is not ambiguous and validly directs the Association on how to preserve the visual harmony of the Villages; (2) the developer had a plan to construct separate areas with different and distinct architectural styles, the most distinctive of which is Half Moon Bay with primarily Key West-style houses; and (3) it was not arbitrary or capricious for the Association to deny a homeowner the right to change an exterior element that contributes to the Key West style, which is a look maintained through certain features including the white gravel.

III. *Exceptions & Legal Analysis*

Dolan raises several exceptions to the Master's Report. There is no need for me to replicate the Master's thoughtful opinion. That opinion addresses this dispute in a well-reasoned manner, leaving me only to explain briefly why I reject Dolan's exceptions to it. Dolan's exceptions are interrelated points that can be grouped around two main arguments. First, Dolan contends the Deed Restriction is ambiguous about what is meant by "visually harmonious" and so the Deed Restriction must be read in her favor. Second, Dolan maintains that if the Deed Restriction is not ambiguous, then the Review Board has enforced it arbitrarily and unreasonably against her. For the following reasons, I determine Dolan's exceptions are without merit and affirm the Master's decision to deny declaratory and injunctive relief.

1. *Whether the Deed Restriction is Ambiguous*

The Association raised two grounds to support the Review Board's denial of permission to pave the area in front of and under Dolan's home. First, the Association

contended that paving the area instead of using the white pea gravel would not be “visually harmonious” with the neighborhood, as required by the Deed Restriction, because the Key West style of home has a unique appearance. Second, the Association defended its denial of permission to Dolan on the basis of the effect paving would have on drainage. Dolan believes that the Master correctly found the Association’s drainage concerns to be unfounded; thus, she focuses her exceptions on the Association’s first ground — that pavement is not visually harmonious with the surrounding Key West-style homes and is therefore impermissible under the Deed Restriction.

I find that ensuring visual harmony, as required by the Deed Restriction, is a valid basis for the Review Board’s decision. The Deed Restriction is not ambiguous and the Master correctly interpreted it. The Deed Restriction provides that with respect to design materials and colors, the Association’s Review Board is directed to ensure visual harmony with both the “surrounding development,” together with the “Development’s overall appearance.”⁸ The Master interpreted “surrounding development” to mean the area in which the structure is located, which is the section of Half Moon Bay, and the “Development’s overall appearance” to refer to the Villages as a whole.

The Deed Restriction, if ambiguous, of course, must be read in Dolan’s favor.⁹ But, I find the Deed Restriction is not ambiguous because the Master’s reading is sensible and consistent with the actual design of the Villages, which is comprised of three distinct sections and styles of housing. Additionally, the majority of Half Moon Bay, with the

⁸ Pl.’s Br., Ex. A1.

⁹ *Alliegro v. Homeowners of Edgewood Hills Inc.*, 122 A.2d 910, 912. (Del. Ch. 1956).

exception of a small section of cottages, is comprised of Key West-style homes. The Master noted that the photographs submitted at trial show white stone yards in front of the Key West-style homes and constitute sufficient evidence to demonstrate that the stones are a distinctive architectural feature of this style.¹⁰ Thus, the Master correctly affirmed the Review Board's determinations that white gravel is an element key to ensuring visual harmony in the surrounding development, Half Moon Bay, and that the Deed Restriction permits the Review Board to restrict homeowners' requests for improvements that disrupt visual harmony.

The alternative reading of the Deed Restriction, proposed by Dolan, is that design materials and color simply must be "visually harmonious" with both the Villages as a whole and the surrounding development outside the Villages. This interpretation does not make sense. For starters, the Review Board was correct to conclude that its duty was to measure the visual harmony standard against the overall design of the Villages, recognizing that inherent to that design was the creation of three individual sections with their own distinct looks. Thus, it was perfectly sensible and in keeping with the Deed Restriction for the Review Board to focus on whether Dolan's proposal disrupted the visual harmony of Half Moon Bay. Moreover, the Association had no authority over the area and structures outside the Villages. As the Master stated in his report, "they would have no reason to try to insure 'harmony' with, for instance, a local trailer park, borrow pit, or gated residential community."¹¹ For this reason, Dolan's proffered reading is non-

¹⁰ Master's Report, 2005 WL 1252351 at *1.

¹¹ *Id.* at *4.

sensical and cannot serve as an alternative interpretation. Thus, the Master's interpretation of the Deed Restriction is correct and the Review Board's desire to maintain the visual harmony created by the unique elements of the Key West style provided a valid basis for the Review Board to reject Dolan's application.¹²

2. *Has the Review Board Applied the Deed Restriction Arbitrarily?*

I also conclude that the Master's Report correctly found that the Review Board's denial of Dolan's application for improvements is not arbitrary, capricious, or otherwise unreasonable. Under Delaware law, a deed that conditions the right to make improvements on the permission of a developer or Review Board is enforceable but permission must not be withheld unreasonably and the burden is on the Review Board to show its actions are reasonable.¹³ A refusal to permit an improvement based on pure aesthetics, relying on the language of a deed restriction, is unenforceable as too vague to

¹² Dolan also raises a due process argument. She contends the Review Board's written decision failed to cite visual harmony expressly as the basis for denying her application and that an after-the-fact justification is unfair to applicants before the Review Board. But Dolan waived that issue because she did not fairly present it to the Master. And, even if Dolan had timely preserved her due process exception, it is inferable from the text of the Review Board's brief ruling and the circumstances that the visual discordance caused by Dolan's proposed pavement motivated the Review Board's denial. I have no reason to believe Dolan was blindsided. Likewise, the trial before the Master carefully elicited the grounds supporting the Review Board's decision and made clear what the Review Board had in mind. Furthermore, Dolan had ample opportunity to address the visual harmony before the Master, and cannot fairly claim that she has been surprised. Finally, the Review Board is a private entity not subject to the Fourteenth Amendment and the enforcement of the Deed Restriction does not implicate this Court in enforcing a racist covenant or some other restriction that is invidious. *See generally Tansey-Warner, Inc. v. East Coast Resorts, Inc.*, 1978 WL 22460 (Del. Ch. Nov. 27, 1978).

¹³ *Seabreak*, 517 A.2d at 268 (explaining restrictive covenants that give an architectural review committee authority to review and approve plans are suspect because of their tendency to be arbitrary, capricious, and therefore unreasonable).

permit reasoned and non-arbitrary decisions.¹⁴ But in contrast, where the Review Board is directed to ensure improvements are “visually harmonious” with surrounding development, a denial of permission based on lack of visual harmony can be upheld if there is a reasoned, non-arbitrary basis for the reviewing authority to assess whether a proposal would disrupt the visual harmony of the affected community.¹⁵ In other words, if a community has a sufficiently coherent visual style, a deed restriction may protect the perpetuation of the style from erosion so long as the authority entrusted with that task does so in an even-handed, non-arbitrary fashion.

Like the Master, I believe the Deed Restriction was capable of being enforced in this manner. Similarly, I agree with him that there was an adequate basis on which the Review Board’s decision was not arbitrary. As the Master’s analysis correctly found, the Key West style is a “distinctive look” meant to convey an “exotic” feel,”¹⁶ and white pea gravel is a core component of that style. There is ample guidance as to what visual harmony means for Key West-style homes in Half Moon Bay.¹⁷ That style is not a subjective aesthetic standard that gives the Review Board unlimited discretion in interpreting visual harmony.¹⁸ If Dolan’s request was granted, her home would be the first Key West-style home to have paving both below and in front of her home rather than gravel. Dolan’s house would be out of harmony with the surrounding homes — the vast

¹⁴ *Id.* at 269.

¹⁵ *See Cannonshire Maintenance Assoc.*, 1996 WL 14849 at *2 (Del. Ch. Oct. 8, 1996) (citing *Alliegro v. Homeowners of Edgewood Hills Inc.*, 122 A.2d 910 (Del. Ch. 1956)).

¹⁶ Master’s Report, 2005 WL 1252351 at *5.

¹⁷ *See id.* (describing the other distinctive characteristics of the Key West style).

¹⁸ *Seabreak*, 517 A.2d at 270 (explaining review power should not be imprecise and that covenant language should have objective standards that can be applied even-handedly).

majority of which are also in the Key West style. Thus, as the Master explained, in the context of the Key West look in Half Moon Bay, the restriction requiring visual harmony implicates objective exterior elements, such as the white gravel, which contribute to the Key West style.

I also find that the Review Board's decision was not arbitrary or unfair to Dolan. Dolan relies repeatedly on one isolated example where the Review Board permitted an owner of a Key West-style home to place brick pavers under the house, but required the white gravel apron to remain between the house and the street. Dolan presents this as evidence that the Deed Restriction has not been enforced even-handedly. But that isolated decision is not sufficient to render the Review Board's denial of Dolan's application arbitrary or unreasonable.¹⁹ One modest partial exception is not sufficient to show that a deed restriction has been so indolently or erratically enforced as to render future enforcement arbitrary.²⁰ In fact, in this case, the solitary anecdote actually tends to reinforce the importance of the white gravel in maintaining visual harmony.

¹⁹ In *Brandywine Hills Cmty. Assoc. v. T. Bruce Wilmoth Constr. Co. et. al.*, 1995 WL 767336 (Del. Ch. Dec. 21, 1995), a homeowner alleged the Association failed to apply certain deed restrictions uniformly and that such inconsistency made enforcement of the restrictions against the homeowner arbitrary and capricious. *Id.* at *10. The court rejected this argument explaining that, when due to inadvertence or a good faith non-enforcement decision, a prior failure to enforce does not preclude future enforcement of the same restrictive covenant. *Id.* Moreover, the court noted that the homeowner would need to produce sufficiently compelling facts to show the Association intended to abandon the right to enforce the restriction or that the attempt to enforce against the homeowner constituted bad faith. *Id.* See also *Cannonshire*, 1996 WL 592720 *1 (explaining a community will not be deemed to have abandoned restrictive covenants unless violations are so general as to indicate intent to abandon the restrictions).

²⁰ Compare *Welshire Civic Ass'n v. Stiles*, 1993 WL 488244 (Del. Ch. Nov. 19, 1993). In *Welshire*, the court concluded an Association's objection to a homeowner's fence was unreasonable when that Association had repeatedly ignored its own standards in approving applications permitting fencing. *Id.* at *4. The court noted the requested fence was permissible

In that instance, the Review Board permitted brick but only under the home, where it is less visible, while requiring the white gravel to remain between the house and the street. That compromise, although debatable, is nonetheless consistent with the view that white gravel is a distinctive element of the Key West style. The Review Board had no reason to demand that the white gravel remain only in front of the house other than that the gravel is a key architectural feature that assists in ensuring visual harmony as envisioned by the Deed Restriction covering design materials and colors. The Review Board's prior decision thus demonstrates a commitment to the appearance of the Key West style in Half Moon Bay — a style that is part of the unique ambience that apparently attracts its residents to this section of the Villages.

Dolan also overstates the significance of the Review Board's decision in that instance. This partial exception aside, the Review Board has denied all other homeowners' applications, similar to hers, to pave the white gravel, and no application to pave a Key West-style home in the section of Half Moon Bay in the manner Dolan is requesting has been permitted.²¹ Thus, as the Master's Report finds, it is neither arbitrary nor capricious for the Review Board to deny residents the ability to change one of the primary exterior elements of the Key West style.²²

because the Association had approved "several other fences" similar to the one requested by the homeowner. *Id.*

²¹ If in the future the Review Board were to grant applications selectively to remove the white gravel from Key West-style houses, arguments of the kind Dolan advances will be more compelling.

²² As the Master noted, this is particularly true because Dolan knew of the Review Board's authority and had agreed contractually at the time of purchase that the Review Board had the authority to reject improvements not consistent with deed restrictions. *See Seabreak*, 517 A.2d

IV. *Conclusion*

For the reasons stated herein and for the reasons stated by the Master, the Master's recommendations are correct. In her complaint, Dolan seeks various forms of relief, all of which are dependent on her assertion that the Review Board's denial of her application was wrongful. As that decision was not wrongful, Dolan's claims are hereby dismissed. Each side to bear its own costs. IT IS SO ORDERED.

Very truly yours,

/s/ Leo E. Strine, Jr.

Vice Chancellor

at 270 (“[F]undamental fairness requires that a property owner be given notice, whether written or *de facto*, of the specific requirements to which the building plans must conform . . .”).