

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

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: August 24, 2009

Decided: August 26, 2009

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Eric C. Howard
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Re: *Pilot Point Ass'n of Owners, et al. v. Bonk, et al.*
Civil Action No. 4714-CC

Dear Counsel:

I have plaintiffs' motion for reargument and defendants Bonk, Hawkins and Thompson's response to the motion. Contrary to plaintiffs' contention, the Court's July 31, 2009 bench ruling did not misapply the law or misapprehend the material facts. First, based on the Court's review of all of the testimony and the evidentiary exhibits introduced at the trial, the Court concluded that the Council of Owners for Pilot Point had acquiesced to the encroachments of certain decks into the common element. In addition, contrary to plaintiffs' argument that by "prior agreement" the Council's acquiescence was limited to an eight-foot standard, the Court expressly found that the evidence did not support the existence of such a "prior agreement" or understanding. The one neutral and unaffiliated witness who testified at the trial made clear that she had no knowledge of such an understanding or prior agreement. Furthermore, even if such prior agreement was shown to exist, nothing in the record supported a finding that the prior agreement was limited to eight feet. Second, it is an undisputed fact that there is no written standard regarding the size of permissible decks in Pilot Point.

Plaintiffs are also incorrect in their contention that the Court's decision will encourage or sanction further encroachments. This action was an equitable proceeding seeking a mandatory injunction to compel the defendants to remove encroachments into the common element. Plaintiffs failed to meet their burden of persuasion regarding the existence of an enforceable standard (whether of eight feet or of any other dimension) and therefore were not entitled to the extraordinary relief of a mandatory injunction. To repeat, the overwhelming weight of the evidence demonstrated that the Council of Owners for Pilot Point has consistently and repeatedly acquiesced in the encroachment of decks into the common element. Because of that acquiescence, the Council of Owners is estopped from objecting to the existing decks which were the subject of this litigation. In the future, however, the Council certainly has the authority to advise unit owners regarding prospective plans for the construction of decks to replace existing decks on units in Pilot Point.

Accordingly, for the above reasons, I deny plaintiffs' motion for reargument.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and includes a horizontal line under the "III" at the end.

William B. Chandler III

WBCIII:meg