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May 17, 2005

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Re: Old Landing Woods Section II Owners Ass'n v. McDermott
C.A. No. 2083-S
Date Submitted: April 6, 2005

Dear Counsel:

This dispute involves Defendant's construction of a home and alleged violation of restrictive covenants enforced by the Plaintiff, a homeowners' association.

Pending is Defendant's motion for enlargement of time to allow for the tardy filing of responses to requests for admissions propounded by the

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Plaintiff. The Plaintiff filed a motion for summary judgment relying upon the facts otherwise deemed admitted under Court of Chancery Rule 36 because of the absence of responses.

The Defendant asserts two grounds in support of her application for enlargement of time: (1) that the parties were engaged in settlement negotiations and (2) that she retained new counsel to represent her. The Plaintiff disputes whether settlement negotiations were ongoing because it had submitted a settlement proposal approximately eight months before filing its motion for summary judgment and had not received a response, despite at least one reminder. As to the change in counsel, even the Defendant's new counsel had been representing the Defendant for several months before Plaintiff filed for summary judgment.

The decision to relieve a party of the consequences of its failure to respond to requests for admissions requires exercise of the Court's

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discretion.¹ The admissions, if left in place, could be case dispositive. Given the confusion that resulted from the limited settlement efforts and the change in counsel, it would further the interests of justice to allow the case to be resolved on the merits.² Thus, the Defendant will be allowed fifteen days from the date of this letter to file her responses to the requests for admissions.

The Defendant, however, is far from blameless in this matter. The delay is hardly justified and constituted a clear (and undisputed) violation of the Court's rules. Thus, the Court's decision allowing the Defendant to file untimely responses to the requests for admissions is conditioned upon the following:

¹ See WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 2257 at 540-41 (2005).

² The Plaintiff also suggests that the delay attributable to the untimely responses to the requests for admissions allowed the Defendant to complete her dwelling, with the goal of limiting the scope of equitable relief available to the Court. It may be, however, that the dwelling was completed by the time that the Plaintiff moved for summary judgment and, thus, the Defendant would have gained no special advantage by her delay. This is a question better left for resolution of the merits of the dispute.

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1. If the Plaintiff decides to withdraw its motion for summary judgment because material facts which were not previously in dispute become disputed as the result of the Defendant's responses, then the Plaintiff will be awarded its reasonable attorneys' fees and expenses incurred in pursuing the summary judgment motion.

2. The Plaintiff will be awarded the attorneys' fees and expenses which it has incurred in responding to Defendant's motion for enlargement of time.

3. If the Court later determines that the admissions, as framed by the Plaintiff in its requests for admissions, are in fact accurate, despite the Defendant's denial in her responses, then the Defendant shall be responsible for the fees and expenses subsequently incurred by the Plaintiff in proving those facts.³

³ Whether this condition has independent significance because of the provision in the restrictive covenants allowing the Plaintiff to recover its fees under certain circumstances will have to await disposition of this action.

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4. The Plaintiff may submit its application for the fees and expenses awarded at its convenience.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Register in Chancery-S