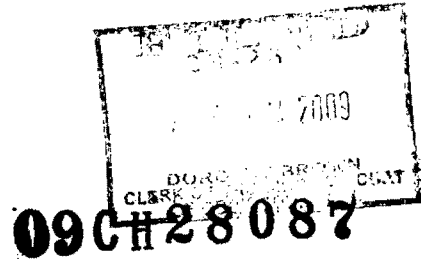


IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

WYNDHAM CLUB CONDOMINIUM)
ASSOCIATION, an Illinois not-for-profit)
Corporation,)
Plaintiff,)
v.)
MARK MCHUGH,)
Defendant.)

No.



COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

Plaintiff, Wyndham Club Condominium Association, an Illinois not-for-profit corporation, by and through its attorneys, Kovitz Shifrin Nesbit, files this Complaint for Injunctive Relief and Declaratory Judgment against Defendant, Mark McHugh, and in support thereof, alleges and states as follows:

Parties, Venue and Jurisdiction

1. Plaintiff, Wyndham Club Condominium Association (the "Association"), is incorporated under the laws of the State of Illinois as a not-for-profit corporation and is granted the authority to administer the premises pursuant to the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants and By-Laws for Wyndham Club Condominium Association (the "Declaration"), recorded with the Cook County Recorder of Deed's Office under Document Number 0011078785 on November 16, 2001. A copy of the Declaration is attached hereto as Exhibit A.

2. Defendant, Mark McHugh ("Defendant"), is the legal owner of the property commonly known as 1317 Wyndham Circle, Unit 108, Palatine, Illinois 60074 (the "Premises"), which is subject to and bound by the covenants, conditions and restrictions contained in the

Declaration, Rules and Regulations, and the Illinois Condominium Property Act, 765 ILCS 605 *Et seq.* (the "Act").

3. Cook County is the proper venue for this matter pursuant to 735 ILCS 5/2-101 since Defendant currently resides in Cook County and the State of Illinois has subject matter jurisdiction pursuant to 735 ILCS 5/2-209(b)(2) because Defendant was a resident of Illinois when this cause of action arose.

COUNT I: INJUNCTIVE RELIEF

1-3. The Association re-alleges and incorporates by reference Paragraphs 1 through 3 above as Paragraphs 1 through 3 of Count I herein.

4. Article 5, Section 5.7(f)(viii) of the Declaration states:

(f) The Board shall have the power to exercise all other powers and duties of the Board of Directors or Unit Owners as a group referred to in the Declaration or the Act. More specifically, the Board shall exercise for the Association all powers, duties and authority vested therein by law or the condominium instruments except for such powers, duties and authority reserved thereby to the members of the Association. The powers and duties of the Board shall include, but shall not be limited to, the following matters:

(viii) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property, after a meeting of the Unit Owners called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations; however, no rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article 1 of the Illinois Constitution.

5. Article 7, Section 7.1(e) of the Declaration states:

(7.1) The Property shall be occupied and used as follows:

(e) No animals shall be raised, bred or kept in any Unit or the Common Elements, except for dogs and cats (but not more than two (2) animals per unit), small birds and fish of a Unit Owner, provided said animals are of a breed or variety commonly kept as household pets, are not kept or bred for any commercial purpose, are not allowed to run loose on the Property, are not allowed, unattended, on the Common Elements, are collared and leashed while on the Common Elements, are kept in strict accordance with such other rules and

regulations relating to household pets as may be from time to time adopted or approved by the Board, and do not, in the judgment of the Board, constitute a nuisance to others. (emphasis added).

6. Article 10, Section 10.1(b) of the Declaration states:

10.1 Violations. Upon the occurrence of any or more of the following events, the Board shall have the right and remedies set forth in Section 10.2 of this Declaration:

(b) Violation or breach by a Unit Owner (or any occupant of his Unit) of any provision, covenant or restriction of the Act, Declaration, the By-Laws, contractual obligation to the Board or Association undertaken by such Unit Owner, or rules and regulations promulgated by the Board, and continuation of such violation or breach for thirty (30) days after written notice thereof shall have been given such Unit Owner, provided that such defaulting Unit Owner shall not be entitled to written notice and opportunity to correct such violation or breach if such Unit Owner has been given three or more notices pursuant to this Section 10.1(b) during the twelve-month period immediately preceding the first day of such violation or breach.

7. Article 10, Section 10.2(b) of the Declaration states:

10.2 Remedies. Upon the occurrence of any one or more of the events described in Section 10.1, the Board shall have the following rights and remedies:

(b) For a violation or breach described in Section 10.1(b) hereof, the Board shall have the right: ... (ii) to enjoin, abate, or remedy by a proceeding at law or in equity the continuance of any such violation or breach provided, however, that no summary abatement shall be undertaken in connection with any alteration or demolition of improvements until judicial proceedings are instituted.

8. Article 10, Section 10.2(f) of the Declaration states:

(f) All expenses incurred by the Board in connection with any actions, proceedings or self-help in connection with the exercise of its rights and remedies under this Article, including without limitation, court costs, reasonable attorneys' fees and all other fees and expenses, all damages and late fees, together with interest thereon at the rate of eighteen percent (18%) per annum shall be charged to and assessed against the defaulting Unit Owner, and shall be added to and deemed part of his respective share of the Common Expenses, and the Board shall have a lien for all of the same upon the Unit Ownership of such defaulting Unit Owner and upon all of his additions and improvements thereto.

9. Additionally, Section 9.2(b) of the Act states:

Any attorneys' fees incurred by the Association arising out of a default by any unit owner, his tenant, invitee or guest in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expenses.

765 ILCS 605/9.2(b)

10. On January 1, 2005, the Association adopted Rules & Regulations detailing operation and use of the property and the Premises. The Rules and Regulations were subsequently modified by the addition of two (2) addendums that became effective on January 1, 2006, and July 30, 2007, respectively. A copy of the Rules and Regulations and subsequent addendums are attached hereto as Exhibit B.

11. Chapter 13, Section 6(D) of the Rules and Regulations states:

D. Removal: Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property upon ten (10) days written notice.

12. Further, an addendum to Chapter 13, Section 6(D) of the Rules and Regulations was adopted by the Board and became effective July 30, 2007, which allows the Board to permanently remove a pet from the Association if that pet attacks a person or another pet and a police report is filed.

13. On December 1, 2008, Defendant's dog attacked another Unit Owner's dog, which resulted in a police report being generated by the Palatine Police Department and the issuance of a Citation to Defendant. A copy of the police report is attached hereto as Exhibit C.

14. On January 11, 2009, the Association's counsel sent a letter to Defendant regarding the incident, and enclosed an Agreement requiring Defendant's dog to be muzzled at all times when outside the Premises. If Defendant's dog was seen outside the Premises without a

muzzle, it would be permanently removed from the Premises. A copy of the letter and Agreement are attached hereto as Exhibit D.

15. Pursuant to the January 11, 2009 letter, Defendant was given seven (7) days to execute and return the Agreement to Association's counsel.

16. On January 19, 2009, an attorney contacted the Association on behalf of Defendant and requested additional time to review the Association's Rules and Regulations. A copy of said letter is attached hereto as Exhibit E.

17. On January 30, 2009, a letter was sent to Defendant's counsel advising that Defendant's failure to execute and return the Agreement within the seven (7) day timeframe, coupled with additional inappropriate and threatening actions on his part, caused the Association to rescind its offer to permit Defendant to retain his dog on the Premises. A copy of said letter is attached hereto as Exhibit F.

18. On February 16, 2009, the Association, through its counsel, received a letter from Defendant's counsel advising that she would no longer be representing Defendant in this matter. A copy of said letter is attached hereto as Exhibit G.

19. Subsequently, the Defendant requested a hearing before the Board to discuss these issues.

20. On March 26, 2009, the Association's Board of Directors (the "Board") held a violation hearing at the clubhouse, located at the Association, to provide him with an opportunity to discuss the circumstances surrounding the conduct of his dog.

21. Present at the meeting was the Association's counsel, Katharine Griffith, Defendant, and the following board members: Sharon Ward, Derek Weber, Jason Milostan and Wally Mohammad.

22. Defendant presented evidence to the Board in an attempt to demonstrate that his dog was well trained and did not pose a threat to other dogs on the Association's property. After Defendant completed his presentation, the Board advised him that it would notify him of its decision in the near future.

23. On April 10, 2009, the Board, through its counsel, notified Defendant that it decided to permit Defendant to retain his dog so long as he continued to place a muzzle on it while outside the Premises. The Association also reminded Defendant about its zero tolerance policy regarding pets that attack other pets. A copy of said letter is attached hereto as Exhibit H.

24. On April 20, 2009, a Unit Owner, took photographs of Defendant's dog, while outside the Premises without the required muzzle, in violation of the Association's agreement with Defendant. Copies of said photographs are attached hereto as Exhibit I.

25. On May 23, 2009, the Association's maintenance man, saw Defendant's dog outside the Premises without the required muzzled, in violation of the Board's agreement with Defendant.

26. On May 28, 2009, the Association's counsel sent a "Final Notice Before Filing Suit" to Defendant demanding permanent removal of his dog within ten (10) days. A copy of said letter and accompanying photograph taken on May 23, 2009, are attached hereto as Exhibit J.

27. On June 30, 2009, another Unit Owner photographed Defendant's dog outside the Premises without a muzzle, in violation of the Board's agreement to allow Defendant's dog to remain on the property. A copy of this photograph is attached hereto as Exhibit K.

28. The dog has not been removed from the Premises and as of the date of the filing of this Complaint, remains at the Premises.

29. Defendant's retention of his dog that previously bit another dog violates the Association's Declaration and its Rules and Regulations.

30. The Association has attempted to resolve this issue without the need for Court intervention.

31. Despite the Association's repeated notifications, demands from Association's counsel, and a hearing held with Defendant present to attempt to resolve the problem, Defendant has failed and refused to work with the Association to resolve this issue and has subsequently failed to remove his dog from the Association.

32. The Association believes that Defendant will continue to violate the Declaration and Rules and Regulations without Court intervention.

33. Given the unique nature of this violation, and Defendant's ongoing threat posed by his dog, the Association has no adequate remedy at law.

34. When balancing the equities, the equities favor the Association.

WHEREFORE, Plaintiff, Wyndham Club Condominium Association, an Illinois not-for-profit corporation, respectfully requests that this Court grant the following relief:

- A. Enter a Mandatory Injunction requiring Defendant to permanently remove his dog from the Association by a date certain;
- B. Enter an Injunction allowing the Association, or its agent, to enter the property commonly known as 1317 Wyndham Circle, Unit 108, Palatine, Illinois 60074 and permanently remove the dog at Defendant's expense;
- C. Enter a Prohibitory Injunction preventing Defendant from interfering with the Association's removal of Defendant's dog from the property commonly known as 1317 Wyndham Circle, Unit 108, Palatine, Illinois 60074;
- D. Enter a judgment for all costs incurred by the Association or its agent if forced to remove his dog from the property commonly known as 1317 Wyndham Circle, Unit 108, Palatine, Illinois 60074, including, but not limited to, costs incurred for locksmiths and the removal of the animal;

- E. Enter a money judgment against Mark McHugh and the property commonly known as 1317 Wyndham Circle, Unit 108, Palatine, Illinois, 60074, for the Association's court costs and attorneys' fees incurred in pursuing this matter pursuant to Article 10, Section 2(f) of the Declaration;
- F. Enter an Order directing Defendant to comply with the Declaration and Rules and Regulations; and
- G. Award the Association such other and further relief as this Court deems just and proper under the circumstances.

COUNT II: DECLARATORY JUDGMENT

1-34. The Association re-alleges and incorporates by reference Paragraphs 1 – 34 herein above as Count I, as Paragraphs 1 through 34 of Count II.

35. There is an actual and legal controversy as to whether the Premises, is bound by and subject to the Association's Declaration, Rules and Regulations and the Act.

36. There is an actual and legal controversy as to whether Defendant violated the Association's Declaration and Rules & Regulations by keeping a dog that previously bit another dog and subsequently generated the filing of a police report, at the Premises.

37. There is an actual and legal controversy as to whether Defendant is responsible to the Association for its court costs and attorneys' fees incurred in pursuing this matter.

38. By virtue of having been charged by the Declaration to direct, administer and manage the responsibilities, duties and affairs of the Association, including ensuring the enforcement of covenants as set forth in the Declaration, the Association has a tangible and legal interest in the above-described controversy.

39. The instant controversy is susceptible to an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof.

WHEREFORE, Plaintiff, Wyndham Club Condominium Association, an Illinois not-for-profit corporation, respectfully requests that this Court enter judgment in its favor and against Defendant, Mark McHugh, by declaring that:

- A. Mark McHugh is the legal owner of the property commonly known as 1317 Wyndham Circle, Unit 108, Palatine, Illinois 60074;
- B. Defendant's property commonly known as 1317 Wyndham Circle, Unit 108, Palatine, Illinois 60074, located within Wyndham Club Condominium Association, is subject to and bound by the Association's Declaration, Rules and Regulations and Illinois Condominium Property Act;
- C. Defendant violated the Association's Declaration and Rules & Regulations by keeping a dog at the Association after it bit another dog, which generated the filing of a police report, and received notice from the Association to remove the dog;
- D. By virtue of his violation, Defendant is responsible for the Association's court costs and reasonable attorneys' fees incurred in bringing this action pursuant to Article 10, Section 10.2(F) of the Association's Declaration and Section 9.2(b) of the Illinois Condominium Property Act; and
- E. The Association shall be awarded any and all other relief that this Court deems just and proper under the circumstances.

Respectfully submitted,

WYNDHAM CLUB CONDOMINIUM
ASSOCIATION, an Illinois not-for-profit
corporation,

By: 

One of its attorneys

Michael J. Shifrin
KOVITZ SHIFRIN NESBIT
750 W. Lake Cook Road, Suite 350
Buffalo Grove, IL 60089
(847) 777-7229
Firm No. 38862