

VIRGINIA: IN THE CIRCUIT COURT OF MECKLENBURG COUNTY

MERIFIELD ACRES LANDOWNERS ASSOCIATION Plaintiff

vs.

WALTER CUMMINGS  
KAY CUMMINGS

Defendants

**ORDER**

This matter came before this Court on April 1, 1999, upon the Warrant in Debt filed and heard in the General District Court and the appeal from the disposition by the General District Court, duly filed by the Plaintiff.

Evidence was presented before the Court and argument was heard from Counsel.

The Plaintiff, Merifield Acres Landowners Association, a property owners association, sought herein to collect from the Defendants, owners of certain lots in Merifield Acres, assessments levied against the Defendants' properties, both as annual assessments and as special assessments.

The Court in considering the Plaintiff's cause of action has separated the relief sought for special assessments and annual assessments, first addressing the annual assessment question. The lots owned by the Defendants are Lots in Section C, Unit 9 of Roanoke Point, Merifield Acres, in particular Lots 142, 143, 155, 156, 157, and 158. Pursuant to the restrictive covenants governing all lots in Section C, Unit 9 recorded in Deed Book 271, Page 752, the Plaintiff assessed each lot for the 1998 annual assessment of \$91.00 per lot on which no improvements existed. The

Defendants were billed for such assessments, but refused to pay the annual assessment on Lot 156, 157, and 158 alleging that the Association had no authority to make such assessments, since the lots did not perk. Evidence produced at the trial indicated that the Association had for a number of years, not assessed lots that did not perk, but upon reviewing the policy, the Association reversed its position and as of 1998, began to assess all lots, whether the lots perked or not. The only distinction the Association made was in the assessment made against lots with improvements located thereon as distinguished from lots without improvements. This distinction is consistent with the covenants and restrictions, but the covenants and restrictions set forth no distinction between perked and non-perked lots.

The Court in reviewing the covenants and restrictions finds that even though the Association did in the past choose not to assess non-perked lots, the covenants which govern the Association's authority make no distinction, either expressed or implied, between perked and non-perked lots. Therefore, the Association is acting within its authority as provided in the covenants to assess all lots indiscriminately. It is therefore ORDERED that judgment be granted in favor of the Plaintiff against the Defendant in the amount of \$273.00, representing the annual assessment for 1998 against Lots 156, 157, and 158.

In addition to the annual assessment, the Association levied against all lots a special assessment based upon the determination by the Board that additional revenues were necessary to carry out the obligations of the

Association. For the year 1998, the Association placed a special assessment of \$30.00 against all lots which were unimproved as of the date of the assessment and \$65.00 against all lots which were improved. The Association based its ability to make such a special assessment not on the covenants recorded in Deed Book 271, Page 752, but under the provisions of the Property Owners' Associations Act (POAA) found in Section 55-508 of the Code of Virginia, as amended. The provisions therein, specifically those set forth in Section 55-514, grant to those Associations governed by the Act, the power to levy special assessments under certain terms and conditions. No issue was raised at trial regarding the manner in which the assessment was done, but the Defendant makes objection to the authority of the Association to act thereunder due to the exclusion contained in Section 55-508, specifically paragraph 8 of Subsection A, which provides in part:

"This chapter shall not be construed to affect the validity of any provision of any prior declaration; however to the extent the declaration is silent, the provisions of this chapter shall apply."

The Defendant relies upon the provision found in the restrictive covenants designated as Section 10 (c), and submits this language prohibits special assessment. It provides as follows:

"Any obligation of the Association to provide street and road maintenance and other such community services as may from time to time be implemented, terminated or renewed, shall be limited to the extent that such services can be provided with the proceeds derived from assessments collected pursuant to this paragraph." (the annual assessment)

Although, the Court finds that this provision of the covenants may not be an expressed limitation of the ability of the Association to make a special

assessment, it does sustain the Defendant's position that the existence of this provision constitutes more than mere silence regarding the authority to make special assessments. The Court therefore finds that the Association is not entitled to act pursuant to the authority of Section 55-514 in creating and declaring special assessments on properties in Merifield Acres under the provisions of the Code of Virginia as in existence of July 1, 1998. However, nothing contained in this finding shall be deemed a determination that other provisions of POAA are not applicable to Merifield Acres Landowners Association and its activities.

It is therefore ORDERED that judgment be granted the Defendant as to the special assessments sought against Lots 156, 157, 158, 142, 143 and 155.

It is furthermore ORDERED that the Plaintiff be granted its costs in this proceeding in the amount of \$130.00 and that the matter be dismissed from the docket of this Court as an ended cause.

ENTERED: 6-30-99

  
William L. Wellons, Judge

We asked for this in part  
and object in part

*James A. Butts III*

James A. Butts, III  
Counsel for Plaintiff  
Butts & Butts, Attorneys  
P.O. Box 446  
South Hill, Virginia 23970  
(804) 447-7155

*Joyathan E. Green*

Joyathan E. Green  
Counsel for Defendants  
306 Virginia Avenue  
Clarksville, Virginia 23927

Amounts and date of any Credits	Date of each Execution	Nature of each Execution	To Whom Directed	Additional cost incident to taxing execution and docketing Judgment	Return Day of Execution	Nature of Return	Date of payment or discharge, in whole or in part, (other than by officer's return) and by whom made
						Satisfied in full this 14 day of Sept 2000. See FD 64pg. 58 Attest: E. E. Coleman, Jr., Clerk By: <i>[Signature]</i>	

VIRGINIA: In the Clerk's Office of Mecklenburg Circuit Court the 15<sup>th</sup> day of July 1999  
at 3:30 Pm The foregoing judgment was this day admitted to record.

Teste: E. E. Coleman, Jr., Clerk  
By: *[Signature]*, Deputy Clerk

AUTHORIZATION TO RELEASE JUDGMENT LIEN

Va. Code §§ 8.01-453, 8.01-454

Pursuant to Va. Code § 8.01-453, the undersigned directs that the clerk of the above-named court shall enter the satisfaction, in whole or in part as shown below, the lien of the judgment described below:

1. Merifield Acres Landowners Association v. Walter Cummings  
2. Circuit Court Mecklenburg Court where judgment entered

3. The court on whose judgment lien docket the lien is to be released in whole or in part is:

[X] Court named in item No. 2, above

4. The judgment was docketed on July 1, 1999 in Judgment Lien Docket Book/Reel 59, page/frame 825, or Instrument/Image

5. Merifield Acres Landowners Association is/are the judgment creditors.

6. Walter Cummings Kay Cummings is/are the judgment debtor(s) by whom the judgment, in whole or in part as shown below, is paid or discharged.

7. The amount of the judgment paid or discharged by the judgment debtor(s) named above is:

[X] the entire remaining unpaid judgment

[ ] \$

9/14/00 DATE

Merifield Acres Landowners Association

PLAINTIFF

By James A. Butte III PLAINTIFF'S ATTORNEY

Commonwealth of Virginia, [ ] City [ ] County of

Acknowledged, subscribed and sworn to before me by

this day of 19

My Commission expires:

NOTARY PUBLIC

Commonwealth of Virginia, [ ] City [X] County of Mecklenburg

Subscribed and sworn to/affirmed before me this day by James A. Butte III, Atty.

9-14-00 DATE

E.E. Coleman Clerk

By WMA Deputy Clerk

VIRGINIA: In the Clerk's Office of Mecklenburg Circuit Court the 14th day of September 2000 at 9:47 AM

The foregoing Release was this day admitted to record.

Teste: E.E. Coleman Clerk By: WMA Deputy Clerk

14 day of Sept. 2000 See 619 59 825 Attest: E. E. Coleman, J. Clerk By: WMA