

This tentative disposition of the motion(s) before Judge Ronald Bookbinder in Burlington County, New Jersey based on the papers submitted in the case named below. No further paper submissions will be permitted before oral argument. If oral argument was requested, please communicate with your adversaries and please notify the Court and your adversary if you intend to orally argue your motion.

THE MOVING PARTY IS REQUIRED TO FORWARD THE TENTATIVE DISPOSITION TO ALL COUNSEL OF RECORD.

Old Taunton Colony Club v. Carlson

C-197-07

February 8, 2008

ORDER TO SHOW CAUSE FOR RESTRAINTS AND SPECIFIC PERFORMANCE

MOVING PARTY:

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PLAINTIFF'S APPLICATION FOR RESTRAINTS AND SPECIFIC PERFORMANCE

Plaintiff, Old Taunton Colony Club, was established for the benefit of its members, whom are property owners in the Taunton lakes development, three tracts of land transferred to Plaintiff by deed on February 1, 1984. Plaintiff asserts that it has operated for the benefit of its members and has actively enforced the covenants and conditions contained in the various deeds. On January 2, 1969, Taunton Lakes Co., the original developer, conveyed the property located at 1 Piney Road to Richard C. Alber and Edwina J. Alber, his wife. The deed contained a number of restrictions and covenants, with covenant #4 specifically stating: "no live trees of a greater diameter than four inches at the butt shall be cut or destroyed without the written approval of the grantor." The restrictions and covenants run with the land and are binding upon all successors and assigns. By deed on January 8, 2004, the Mr and Mrs. Alber conveyed the property to Karen Carlson.

Subsequently, in late November 2007, Defendant Carlson retained a contractor to cut and remove numerous trees from the subject property, many of which were alive and over 4 inches in circumference. Plaintiff asserts Defendant never sought permission for the removal of the trees, making her actions in direct violation of the restrictions and covenants applicable to and binding upon her as the owner of the property. Plaintiff asserts that a letter to Defendant Carlson went without a response and asserts now that Plaintiff has no adequate remedy at law because monetary damages cannot compensate Plaintiff for the Defendant's violation of the prohibition against tree removal without permission. Accordingly, Plaintiff seeks an order directing specific performance to cease

and desist from further cutting and removal of trees from the property, directing the defendant to maintain the property in its present condition and directing the order to replace and maintain the trees that were cut.

DEFENDANT'S OPPOSITION

While the Defendant denies the allegations, she does not object from cutting down more trees and does not object to (1) not being able to dispose of the brush and debris, (2) not being able to burn firewood, (3) replacing tree, and (4) allowing Plaintiff to trespass on her property.

TENTATIVE DECISION

Plaintiff's Order to Show Cause is hereby **GRANTED IN PART** and **DENIED IN PART**, with remaining issues, as set out below, to be argued before the Court on the return date of this matter, **February 5, 2008 at 10:00am**. The Court hereby **ORDERS** that the Defendant, Karen Carlson, will replace the trees, as requested by the Plaintiff, and maintain these trees as required pursuant to the restrictions and covenants that run with the property. Moreover, it is **FURTHER ORDERED** that the Defendant maintain the property in its present condition, which includes refraining from disposing of or removing brush, debris, stumps and stacked cut trees, prior to an inspection by the Plaintiff. Furthermore, on the return date of the Order to Show Cause, the parties will argue the specific terms and conditions for any further cutting/removal of trees by the Defendant, and her duties with regards to the general maintenance and care for the property. Additionally, the parties will argue the specific terms and conditions with reference to the authorization of the Plaintiff to "trespass" on the property for any inspection or related activities that Plaintiff seeks to enter onto the property to conduct. Moreover, Plaintiff's request for costs and fees associated with this action are hereby **DENIED**.

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