

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 10-E-0070

ROBERT SKAFF

v.

GREAT NORTHERN PROPERTY MANAGEMENT

ORDER

The petitioner requests injunctive relief, seeking a Court order, preventing the respondent from interfering with his common area driveway. Specifically he seeks an order enjoining the respondent from placing a barrier blocking his car either in or outside of his garage. The respondent objects. The petitioner's request is DENIED.

Background

On March 5, 2010, the Court granted an ex parte temporary restraining order requiring the removal of an existing barrier blocking the petitioner's garage, and enjoining the respondent from harassing, threatening, intimidating or interfering with the liberty of the petitioner. On March 12, 2010, a hearing was held. The petitioner appeared pro se, and the respondent was represented by counsel. The parties proceeded by offers of proof. Each submitted supporting documentation to the Court.

For the purposes of this injunction, the Court finds the following facts. The petitioner owns a condominium at Shepherds Hill Condominium in Hudson, New

Hampshire. The respondent is the property manager and agent of the Shepherds' Hill Homeowner's Association, Inc. ("Association"). To the extent the respondent has taken any actions, those actions have been on behalf of the Association.

The respondent reports that the petitioner has been delinquent in paying association fees since at least July of 2007, contending that the balance owed exceeds nine thousand dollars (\$9,000.00). The petitioner does not deny that he is delinquent on association fees; however, he does dispute the amount owed. For the purposes of this action, the Court finds that the petitioner is in arrears on his condominium fees and has been since at least August of 2009.

On August 19, 2009, the respondent sent certified notice to the petitioner. This notice, in pertinent part, indicated that due to the petitioner's delinquency, the Association intended to terminate his common privileges and/or any and all services to his condominium unit. The notice specifically indicated that the following services would be terminated: common area driveway/parking privileges; clubhouse privileges; and pool privileges. In October 2009 the Association had the petitioner's vehicle towed from the common area driveway. On March 4, 2010, the Association placed a concrete Jersey barrier in his driveway in an effort to terminate the petitioner's common parking privileges. This action ensued.

Applicable Law

"Notwithstanding any law, rule, or provision of the condominium declaration, bylaws, or rules to the contrary, the unit owners' association may

authorize, pursuant to RSA 356-B, its board of directors to, after 30 days' prior written notice to the unit owner and unit owner's first mortgagee of nonpayment of common assessments, terminate the delinquent unit's common privileges and cease supplying a delinquent unit with any and all services normally supplied or paid for by the unit owners' association. Any terminated services and privileges shall be restored upon payment of all assessments." RSA 356-B:46, IX (2009).

Analysis

The Declaration of the Shepherds Hill Condominium authorizes the termination of common privileges and services to delinquent owners. Driveways are defined as part of the common area, and parking privileges are determined to be services. See Declaration of Condominium of Shepherds Hill, § G.7, G.7.A, 2.6, 3.2.11.2, and 6.1.3. The petitioner admits that he is delinquent.

Furthermore, as is required by law, he was provided notice that the association intended to terminate his services and common area privileges. Unless and until the petitioner becomes current on his condominium fee arrearage, the action taken by the respondent, at the behest of the association, is a viable remedy at law. As such, the petitioner's request for injunction is DENIED.

So ordered.

3/12/10
Date



JACALYN A. COLBURN
Presiding Justice