

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 20th day of October, 2016.*

Iris R. Hartmann in her individual capacity  
and as Trustee of the Iris R. Hartmann Trust, et al., Appellants,

against Record No. 151819  
Circuit Court No. 121CL14-0968

Carriage Court II Homeowners Association, Inc., Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Montgomery County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is no reversible error in the judgment of the Circuit Court of Montgomery County.

In 2003, L & W Development, L.L.C. (the “Developer”) owned all ten lots of what would eventually become the Carriage Court II subdivision in Blacksburg, Virginia. On July 29, 2003, the Developer executed and recorded a declaration (the “Declaration”) governing the development. The Declaration named “Carriage Court II Homeowners Association, Inc.” (“Carriage Court”) as the entity responsible for the maintenance of the subdivision. Additionally, the Declaration granted Carriage Court the authority to collect an “[a]nnual assessment or charges” as well as “[s]pecial assessment[s] for capital improvements.”

In 2008, Iris and Joseph Hartmann (the “Hartmanns”) purchased a home in the Carriage Court II subdivision. At the time they purchased the property, the Hartmanns received a copy of the Declaration. However, they did not receive any additional documents related to its governance.

On June 1, 2012, Carriage Court was incorporated. Upon incorporation, the homeowners in the Carriage Court II subdivision elected a Board of Directors. Additionally, bylaws were adopted by a simple majority of the homeowners. The Hartmanns did not participate in the election of the Board of Directors or agree to the bylaws.

On May 14, 2014, the Hartmanns brought an action against Carriage Court seeking declaratory and injunctive relief. Specifically, the Hartmanns sought adjudication of whether Carriage Court (1) was a valid property owners' association under the Property Owners Association Act ("POAA"); (2) had the authority to enforce any restrictive covenants in the Declaration; and (3) had the authority to assess any fees under the Declaration.

Both parties filed cross-motions for summary judgment. After considering the parties' arguments, the trial court ruled in favor of Carriage Court. In a letter opinion dated July 23, 2015, the trial court explained that, "[w]hile this case may have some twists and turns insofar as the timetable for the homeowners association to become fully compliant with the statute, they have completed that. The court finds . . . that Carriage Court [] is a valid homeowners association."

On appeal, the Hartmanns assign error to the trial court's decision on the basis that the transfer of rights to Carriage Court under the Declaration had no legal effect because Carriage Court did not exist as a corporate entity at the time the Declaration was executed and recorded.<sup>1</sup> Given this assignment of error, the Hartmanns' argument is limited to the issue of whether

---

<sup>1</sup> The Hartmanns' assignment of error specifically states:  
The Circuit Court erred by holding that a transfer of rights to a corporate entity in a declaration of restrictive covenants has any legal effect when the corporate entity does not exist at the time of the execution and recordation of the declaration.

Carriage Court was required to be incorporated at the time the Declaration was executed and recorded. Code § 55-509 defines a property owners' association as "an incorporated *or unincorporated* entity upon which responsibilities are imposed and to which authority is granted in the declaration." (Emphasis added.) Thus, the fact that Carriage Court was not incorporated until 2012 and, therefore, did not exist *as a corporate entity* at the time the Declaration was executed and recorded is not necessarily dispositive of the present case. Rather, the dispositive issue in the present case is whether Carriage Court existed as an unincorporated entity from July 29, 2003, when the Declaration was executed and recorded, and whether that entity met the requirements of the POAA.<sup>2</sup> The Court finds that it did.

Contrary to the Hartmanns' argument, there is no requirement under the POAA that the entity subject to the declaration exist prior to the recordation and execution of the declaration. Rather, the POAA suggests that such an entity may be created contemporaneously with the execution and recordation of the declaration or, indeed, by the declaration itself. Notably, the POAA defines a declaration as

*any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, or on*

---

<sup>2</sup> The Hartmanns' focus on Carriage Court's incorporation status appears to be based on the fact that the entity named in the Declaration includes "Inc." in its name. It should be noted, however, that nothing in the Code of Virginia or this Court's jurisprudence supports the notion that an unincorporated entity cannot use "Inc." in its name. Although Code §§ 13.1-613 and -812 prohibit unincorporated entities from transacting business, offering to transact business or advertising to transact business as a corporation, such actions are distinctly different from simply including "Inc." in the name of an entity. Accordingly, the inclusion of the word "Inc." in the name of the entity identified in the Declaration does not preclude the entity from being an unincorporated entity.

the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area.

Code § 55-509 (emphasis added).

The inclusion of the language “any instrument, however denominated” clearly implies that a declaration may be either a self-contained document complete within itself or part of another document. Moreover, Code § 55-508 recognizes this expansive definition of declaration, as the statute expressly states that “[c]ovenants,’ ‘deed restrictions,’ or ‘*other recorded instruments*’ for the management, regulation and control of a development . . . correspond with the term ‘declaration.’” (Emphasis added.)

In the present case, Article I of the Declaration establishes Carriage Court and declares that it is the entity that has “jurisdiction” over the development. Membership in Carriage Court is established in Article IV, as are the corresponding voting rights of lot owners and the developer. The property rights of each lot owner are described in Article III. However, those rights are expressly subject to certain rights held by Carriage Court. Article V grants Carriage Court the authority to impose an assessment on each lot, whereas Article VII imposes maintenance responsibilities upon Carriage Court. Furthermore, Article XII, section 1 allows for either a lot owner or Carriage Court to enforce the covenants established in the Declaration. Thus, when the Declaration is read in its entirety, it is clear that, upon execution and recordation, the Declaration contemporaneously created Carriage Court as an unincorporated entity and established it as the property owners’ association for the development.<sup>3</sup>

---

<sup>3</sup> As the Declaration created Carriage Court as an unincorporated entity at the time of execution and recordation, the Hartmanns’ allegation that Carriage Court was “a non-existent legal entity” prior to incorporation is refuted as a matter of law.

Accordingly, the ruling of the trial court is affirmed.

This order shall be certified to the Circuit Court of Montgomery County.

A Copy,

Teste:

*Oate* ✓ *Hamister*

Clerk