

ALPERT v LE'LISA CONDOMINIUM

667 AR 2d 947 (1995)

Bloom, Murphy and Salmon JJ.

United States of America: Court of Special Appeals of Maryland

Condominium—common parts included parking spaces—some parking spaces covered, some open air—board assigning covered parking spaces to unit owners on basis of length of ownership—whether valid regulation of use of common areas—whether invalid exclusion of owners from common areas

The Le'Lisa Condominium contained 32 residential units. Its common elements included 20 parking spaces under the building, which were shielded from the elements, and a further 12 in the open air. From 1984, the covered parking spaces had been assigned by the condominium board to individual unit owners, based on the length of ownership in the condominium. When a unit with a covered parking space was sold, the parking space was reassigned to the most longstanding unit owner who was not currently assigned a covered space. The claimant unit owners bought their unit in the belief that it included the right to a covered parking space, and objected to the board's reassignment of the space to another, longstanding, unit owner. They claimed that the condominium board had no authority to assign individual parking spaces for the exclusive use of individual unit owners. The council of unit owners reacted by passing a new by-law, which codified the existing practice. It was passed by a majority of the unit owners at a special meeting, with the claimants objecting. The claimants claimed the by-law was invalid and sought declaratory and injunctive relief. They claimed that the assignment of parking spaces to individual owners changed the interests of other owners in the common elements, by excluding them from parts thereof, and therefore required a unanimously approved amendment to the condominium declaration.

HELD:

Under the Maryland Condominium Act, all unit owners owned the common elements as tenants in common. The common elements could only be used for the purposes for which they were intended, and were subject to mutual rights of enjoyment by all unit owners. The Act and Le'Lisa's by-laws provided for the affairs of the condominium to be governed by a board of directors. The Act gave the board the power 'to regulate the use, maintenance, repair, replacement and modification of common elements'. The by-laws authorised the board to promulgate and enforce 'such rules and regulations and such restrictions on or requirements as may be deemed proper respecting the general and limited common elements as are designated to prevent unreasonable interference with the use and occupancy . . . of the general and limited common elements by the members . . . '.

The issue was therefore whether the assignment of parking spaces amounted to a change in the interests of the various owners in the common elements, requiring a unanimously approved amendment to the condominium declaration; or whether it was merely a regulation of the use of a common element, in which case the by-law amendment was sufficient.

‘There is a distinct difference between cases in which exclusive use, control and/or ownership of the common areas is taken from some or all of the unit owners, and cases in which some reasonable restrictions or regulation of the common areas is imposed on all owners.

...

Inherent in the condominium concept is the principle that to promote the health, happiness and peace of mind of the majority of the unit owners, since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned, property. Condominium unit owners comprise a little democratic sub-society, of necessity more restrictive, as it pertains to the use of condominium property, than may be existent outside the condominium organisation.’

The condominium had restricted the use of parking spaces to avoid a chaotic free-for-all. Each unit owner was assigned a parking space, and each was able to become eligible for the preferred spaces. It was a restriction related to promoting the health, happiness and peace of mind of all the unit owners. It did not amount to the permanent grant of exclusive use of a part of the common elements to particular owners.

Digested case considered in this judgment

Sawko v Dominion Plaza One Condominium Association (1991)

Note

For rules relating to the parking of vehicles, see paragraphs 4.12.5 and 4.12.8 of the text. For restrictions on the use of the common parts, see paragraph 4.12.6 of the text. For limited use areas of the common parts, see paragraph 4.12.7 of the text.