

CHANCERY COURT

12TH JUDICIAL DISTRICT

P.O. Box 428

WINCHESTER, TENNESSEE 37398

November 12, 1998

JEFFREY F. STEWART
CHANCELLOR
(615) 967-2605

SERVING
BLEDSOE, FRANKLIN,
GRUNDY, MARION, RHEA
& SEQUATCHIE COUNTIES

Honorable Rebecca L. Hicks
Attorney at Law
1374 Railroad Street, Unit 14
Dayton, Tennessee 37321

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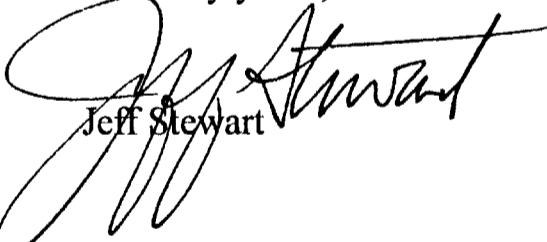
Re: Apollo Shores Community Maintenance, Inc. vs.
Larry Alfred Lynn et al. Joy Carol Lynn
Rhea County Chancery No. 9104

Dear Becky:

Please find enclosed a copy of the Memorandum Opinion I have filed in the above referenced case. I have forwarded the original to the Clerk and Master for entry.

I am directing you and other counsel to prepare an Order in conformity with my findings. If there are any questions concerning this matter please do not hesitate to contact me. With kindest personal regards, I remain

Sincerely yours,


Jeff Stewart

JS/jw

Enclosure

APOLLO SHORES COMMUNITY)
MAINTENANCE, INC.)
)
Plaintiff,)
)
)
)
LARRY ALFRED LYNN et ux,)
JOY CAROL LYNN)
)
Defendant.)

No. 9104

MEMORANDUM OPINION

This matter was presented for trial to the Court meeting at Dayton, Rhea County, Tennessee. The case was tried without the intervention of a Jury.

This case centers on whether or not a double wide mobile home conforms to the restrictive conveyance of the Plaintiffs subdivision and as further modified and interpreted by the ruling entered in the Circuit Court of Rhea County in Case No. 15,102. The entry of said Order is dated May 27, 1988. Also, at issue is whether or not the Defendants mobile home is a manufactured home as described in T.C.A. 13-24-201 or T.C.A. 68-126-202 (4), and whether the definition of a mobile home or house trailer as defined in T.C.A. 55-1-105 is applicable. The Court has also been asked to assess the application of the exemptions set forth in T.C.A. 55-4-409 to this case.

The facts in this case indicate the Defendants purchased two lots in the Apollo Shores Subdivision from Ora Lee Long. These two lots are identified as lots 103 and 104 of Unit Two of the Apollo Shores Subdivision. Subsequently, the Defendants purchased two adjoining lots from Sue Porter identified as Lots 105 and 106 in Unit Two of the Apollo Shores Subdivision. At the time these lots were purchased they were subject too recorded restriction stating "the placing of house trailers, regardless of size and facilities shall be prohibited on any lot in Apollo Shores." It is acknowledged in a declaratory judgment action filed in the Circuit Court of Rhea County, William Keener et al. vs Apollo Shores Community and Maintenance, Inc. et al., case Number 15,102. The Honorable Paul Swafford sitting as Circuit Judge without the intervention of a Jury found as follows:

“The Court is, therefore, of the opinion that so long as the structure, regardless of the method by which it is transported, meets the minimum square footage requirements of Restriction Number 4 and is permanently affixed to a foundation so as to become a part of the realty, Restriction Number 9 does not prohibit such structures. Movable trailers subject to the title requirement of Tennessee law are, nevertheless, prohibited by Restriction Number 9.

Restriction Number 9 is the Restriction stated above regarding the placing of house trailers being prohibited on any lot at Apollo Shores.

Shortly after purchasing their respective lots, the Defendants were advised of these restrictive covenants. The Defendants were advised by Board Members Mike Blaylock, Donald Mirecle and Marvin Lynn. These Board Members talked to the Defendants when they learned the Defendants intended to bring a double wide mobile home into the subdivision. The Defendants contend they were advised it was permissible to bring a double wide mobile home and to place them in the subdivision. The Plaintiffs of course contend the Defendants were advised not to bring in the mobile home and place it on the lots because they determined it was a mobile home and therefore subject to the restrictions contained in the written deed, constitution and bylaws of the association and within the meaning of the Courts previous Order. The Defendant in spite of any admission to the contrary, moved the double wide mobile home onto their lots. Prior to the delivery of the manufactured home the Defendants prepared the site by grading and leveling the location, pouring concrete footers for a foundation, and placing twenty nine stacks of concrete blocks (not submitted) referred to as tiles. The manufactured home was delivered in two sections, was pulled on wheels by a tongue that was attached to each section attached to a tractor. Each section rested on an independent steel high beam. Each section was placed on the piles of concrete blocks and subsequently two sections were attached by means of bolts and wiring. The structure was anchored to the ground by six anchors placed deep into the ground to which metal belts or straps were used to attach each section to the anchors. The wheels and tongue were removed from each half of the structure. Each half of the structure was separately marked and identified by manufacturers identification number. Before the wheel mounts and tongue plate could be removed, an Injunction was issued stopping the Defendant from further activity at the sight. The Defendant did, however, prior to the

Injunction attach water, sewer and electric to the structure. No foundation blocks had been placed on the footing at the time of trial because of the injunctive relief granted. The proof indicated the electrical service was a detached service, ordinarily seen and used in a mobile home rather than permanent site built structures.

The testimony at trial centered primarily on the issue of whether the Defendants manufactured home is permanently attached to the site location and whether it is subject to the title registration of Tennessee Law and whether it is a movable trailer.

The Defendants in this case argue the Court should apply T.C.A. 13-24-201 to the facts in this case. This section of the Tennessee Code does not define manufactured homes. Instead, this provision of the code directs that no power or authority granted an agency to regulate zoning or land use shall be used to exclude the placement of a residential dwelling on land designated for residential use solely because the dwelling is partially or completely constructed in a manufacturing facility. The Court finds this has no applicability to this case since this case does not involve a power or authority granted to regulate zoning or land use planning. This case involves the application of a restrictive covenant in a subdivision.

The Defendants have further asked the Court to find that the Defendants manufactured home is exempt from the title registration laws of the State of Tennessee under T.C.A. 55-4-409. This exemption states that "no mobile home house trailer or other mobile structure which is accessed as real property or is an improvement on the land shall be subject to the requirements of registration imposed by this Chapter". (T.C.A. 55-4-409)(a). The Assessor of Property testified in this case that it is their intention during the next appraisal to access all mobile homes as substandard housing rather than as mobile homes. However, she stated currently they are assessed as mobile homes and not part of the realty. Therefore, this exemption has no applicability to the facts in this case.

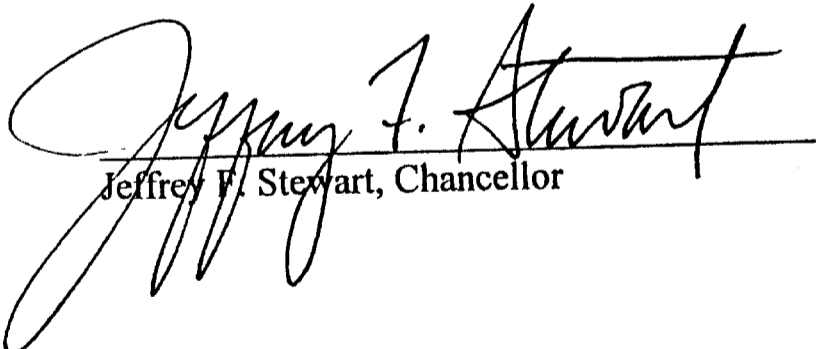
The Court finds the applicable definitions for this case to be those found at T.C.A. 68-126-202, (4); T.C.A. 55-1-105(1) and T.C.A. 55-3-101(a). These Statutes define a manufactured home which conforms to the proof in this case and requires such structures to be titled by a Certificate of Title. In coming to this conclusion the Court cites for authority the case of Beacon Hills Home Owners Association, Inc. et al. v. Palmer Properties, Inc. 911 S.W.

2d 736(Tenn. App.1995). In the case of Albert v. Orwige, 731 S.W. 2d 63 (Tenn. App.1987)

and the case of Hicks v. Cox and Whitaker, 1998 Tenn. App. Lexis 203 (CT. App. 1998).

These cases seem to be clear in applying facts very similar to the facts in this case which would declare the manufactured home purchased by the Defendants as a trailer and within the meaning of the Plaintiffs interpretation of the restrictive covenants governing the Apollo Shores Subdivision. The Court further finds that the manufactured home purchased by the Defendants is subject to the Title Registration Law for the State of Tennessee and finds from the facts that the Defendants have in fact applied for a Certificate of Title and Registration for the manufactured home in question. (Trial Exhibit No.17) The Court further finds the Certificate of Origin (Trial Exhibit No. 4) refers to the manufactured home in question as a "New Mobile Home"and clearly indicate that it has a manufacturer serial number with an overall body width of fourteen feet and measuring forty eight feet in length. It also indicates the number of wheels to be six.

Therefore, for the foregoing reasons the Court concludes the structure owned by the Defendants in this case is a movable trailer subject to the title requirement of Tennessee Law and is prohibited by the subdivision restrictions of Apollo Shores Subdivision and the Circuit Court of Rhea County ruling entered May 27, 1998. Therefore the Court finds in favor of the Plaintiffs and grants the relief prayed for. The costs of this cause are assessed to the Defendant.


Jeffrey F. Stewart, Chancellor

IN THE TWELFTH JUDICIAL DISTRICT OF TENNESSEE,
CHANCERY COURT OF RHEA COUNTY:

APOLLO SHORES COMMUNITY
MAINTENANCE, INC.

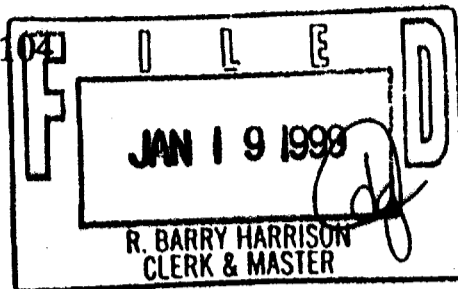
Plaintiff

BARRY ALFRED LYNN et ux
CAROL LYNN

Defendant

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C.A. #9104



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FINAL DECREE

This cause came on to be heard on the 28th day of October, 1998, before the honorable Jeffrey F. Stewart, Chancellor, upon the original complaint filed by the Plaintiff, answer and counter-complaint filed by the Defendants, the testimony of the witnesses and in open court, and the record as a whole appeared to the court that the structure owned by the Defendants is a movable trailer subject to the title requirement of Tennessee law and is prohibited by the subdivision restrictions of Apollo Shores Subdivision. It further appeared to the court that the structure owned by the Defendants is prohibited by a declaratory judgment decree of the Circuit Court for Rhea County entered May 27, 1993.

IT IS THEREFORE ORDERED AND ADJUDGED AND DECREED by the court as follows:

1. The structure owned by the Defendants is prohibited by the restrictive covenants of the Apollo Shores Subdivision in that it is a double wide mobile home and a mobile trailer subject to the title requirements of Tennessee Law.
2. The Defendants shall remove the structure from the Apollo Shores Subdivision and are restrained and enjoined from bringing the structure or any similar structure back to the subdivision.
3. The costs on this cause are adjudged against the Defendant for which execution may issue if necessary.

Jeffrey F. Stewart, Chancellor

APPROVED:

Rebecca L. Hicks

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