

directors' authority to impose fines; specifically, a board of directors cannot impose fines unless an association's declaration expressly authorizes such action. The Farrans point to Article XIII, § 3 of the Declaration and argue that the sole method to enforce the provisions of the Declaration or other rules and regulations is through a lawsuit.

Belhaven claims that the Farrans misconstrue the clause in Va. Code § 55-513(B) because they ignore the conjunction "or." Belhaven asserts that Va. Code § 55-513(B) creates two instances under which an association can impose fines. An association can impose fines (1) to the extent the declaration expressly provides for imposition of fines, or (2) to the extent rules and regulations duly adopted pursuant to the declaration provides for imposition of fines. Belhaven contends that this case falls into the second category because, pursuant to Article IX, § 1 of the Declaration, the Board has the power to formulate, publish, and enforce rules and regulations. According to Belhaven, the Penalties Resolution was enacted pursuant to that power.

Property owners associations and their members must abide by the corporation's governing documents. *Virginia High Sch. League v. J.J. Kelly High Sch.*, 254 Va. 528, 531, 493 S.E.2d 362, 364 (1997). The governing documents constitute a contract collectively entered into by all the owners in the association. *White v. Boundary Ass'n, Inc.*, 271 Va. 50, 55, 624 S.E.2d 5, 8 (2006). As such, effect must be given to the intention of the parties. *Foti v. Cook*, 220 Va. 800, 805, 263 S.E.2d 430, 433 (1980). Importantly, under the principle of *expressio unius est exclusio alterius*, the omission of a particular covenant or term from a contract reduced to writing shows an intent to exclude it. *First Nat'l Bank v. Roy N. Ford Co.*, 219 Va. 942, 946, 252 S.E.2d 354, 357 (1979).

Although Va. Code § 55-513(B) does grant property owners associations authority to impose fines in certain circumstances, that authority is limited to situations where an association's declaration expressly allows it to impose fines or its declaration expressly allows it to adopt rules or regulations which impose fines. Neither situation applies here. In this case, the omission of a provision allowing Belhaven to impose fines as a method of enforcement shows an intent to exclude. Article XIII, § 3 of the Declaration provides the only methods of enforcement: a proceeding at law or in equity. Nothing in Va. Code § 55-513(B) gives Belhaven authority to exceed the power granted to it in its governing documents. As a result, the Court concludes that the Farrans have sufficiently pled that Belhaven's enactment of the Penalties Resolution was *ultra vires*. The demurrer is overruled as to the Penalties Resolution.

Architectural Request

The Farrans also claim that Belhaven's denial of their architectural request was *ultra vires*. Specifically, the Farrans claim that Belhaven acted without authority when it denied their architectural request because Belhaven's governing documents mandated the creation of the Committee, gave the Committee authority to review and approve such requests, and gave the Board appellate review over the Committee's decisions denying any request. Belhaven claims that nothing in governing documents gives the Committee exclusive jurisdiction to approve architectural requests. In fact, Article VIII of the Declaration specifically states that no structure may be built without approval of the Board or the Committee. Belhaven further contends that Guideline 11, which provides that appeals from a decision of the Committee must be submitted to the Board, does not prohibit the Board from approving or denying requests pursuant to Article VIII of the Declaration.

Once again, property owners associations and their members are contractually obligated to abide by the association's governing documents. *White*, 271 Va. at 55, 624 S.E.2d at 8; *Virginia High Sch. League.*, 254 Va. at 531, 493 S.E.2d at 364. When the meaning of language in a contract is clear and unambiguous, as it is here, the contract needs no interpretation, and "the intention of the parties must be determined from what they actually say and not from what it may be supposed they intended to say." *Carter v. Carter*, 202 Va. 892, 896, 121 S.E.2d 482, 485 (1961).

The language in Article VIII of the Declaration is clear. Either the Board or the Committee may approve architectural requests. The Farrans argue that this reading of the Declaration renders Article IX, § 1 of the Bylaws meaningless and that allowing both the Board and the Committee to approve requests renders Guideline 11 meaningless. The Court disagrees. First, the Farrans' argument is resolved by Article XIII, § 9 of the Declaration which states if there is any conflict between the Declaration and the Bylaws the "Declaration shall control, rule and take precedent over the By-Laws." Second, the Court finds that there is no conflict between the documents. Granting both the Board and the Committee authority to approve architectural requests does not render the Guideline meaningless; rather, it simply creates a system of concurrent jurisdiction.²

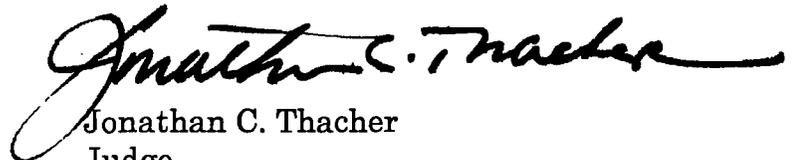
² Such a system of concurrent jurisdiction is hardly difficult to comprehend in Virginia. Indeed, the courts of the Commonwealth often have concurrent subject-matter jurisdiction.

Admitting as true all of the material facts alleged in the Farrans' Complaint and the attached governing documents of Belhaven, the Court finds that the Farrans have failed to sufficiently plead that Belhaven's denial of their architectural request was *ultra vires*. The demurrer is sustained as to this claim.

Conclusion

The Demurrer is overruled with respect to the Penalties Resolution and is sustained with respect to Farrans' claim that Belhaven's denial of their architectural request was *ultra vires*. The Farrans may amend their complaint within twenty-one days. An order is enclosed.

Sincerely,

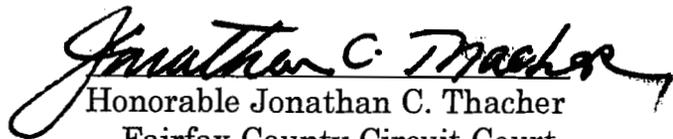

Jonathan C. Thacher
Judge

Enclosure

OPINION LETTER

ORDERED that the Court's Letter Opinion of July 8, 2010 is incorporated into this Order.

ENTERED this 8th day of July, 2010.


Honorable Jonathan C. Thacher
Fairfax County Circuit Court

In order to expedite the disposition of this matter, endorsement of this Order by counsel of record for the parties is waived in the discretion of the Court pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.