

rule that conflicts with these recorded covenants is ultra vires under the By-Laws and unenforceable.

PARTIES, CAPACITY, JURISDICTION AND VENUE

1. Plaintiff is the owner of 3131 Autumn Trace Drive, Autumn Lakes, St. Louis County, Missouri, and brings this action in Plaintiff's individual capacity to enforce the recorded Indenture of Trust and Restrictions, Declarations, and By-Laws governing Autumn Lakes.
2. Defendants John Smith and Charlotte Smith are owners of 3134 Autumn Trace Drive, Autumn Lakes, St. Louis County, Missouri, and are subject to the Governing Documents. Defendants are also licensed realtors who actively advertise, perform professional realty services, and solicit business within Autumn Lakes.
3. The Autumn Lakes Association and Autumn Lakes Condominiums, and their Board of Managers/Trustees, are not parties to this action. Plaintiff previously filed suit naming the Association and including the signage issue; that prior action was dismissed without prejudice and did not resolve the merits. This individual enforcement action is Plaintiff's next step following that dismissal.
4. Venue is proper in St. Louis County because the property and the acts complained of are located there.
5. This Court has subject-matter jurisdiction over claims for declaratory judgment, injunctive relief, and equitable enforcement of recorded covenants under Missouri law, including §§ 526.010–526.110 RSMo and § 448.3-116(1) RSMo.

STATUTORY AUTHORITY

6. Pursuant to §§ 526.010–526.110 RSMo, this Court has authority to grant injunctive relief to restrain violations of law and enforce equitable rights. In addition, § 448.3-116(1) RSMo expressly authorizes individual unit owners to enforce recorded covenants under the Missouri Condominium Act. Plaintiff, as a unit owner, therefore has standing to bring this action, and the Court has jurisdiction to issue declaratory and injunctive relief to enforce the Governing Documents.

GOVERNING DOCUMENTS — OPERATIVE PROVISIONS

7. Indenture Article VII (Signage Prohibition): “*No signs shall be erected or displayed in public view on any property.*”
8. Indenture Article VII (Enforcement Provision): Authorizes enforcement “*by proceedings at law or in equity... to restrain violations and/or recover damages.*”
9. ALA Declaration Article 9.4 (Signs and Exterior Displays): “*No signs shall be hung or displayed on the outside of windows or placed on walls of any building...*”
10. ALA Declaration Article 9.7 (Business and For-Sale Restriction): “*No business, trade, occupation or profession of any kind... shall be conducted... nor... shall ‘for sale’ signs be displayed by any person, firm or corporation.*”
11. ALC Declaration Article 9.4: Mirrors ALA Article 9.4.
12. ALA Declaration §3 (Severability / Non-Waiver): “*Any failure to enforce a breach shall not be a waiver of any subsequent breach.*”
13. By-Laws: Limit Board authority to enforcement consistent with recorded covenants; any conflicting rule is ultra vires.

CAUSE OF ACTION STATEMENT

14. Plaintiff pleads facts sufficient to state causes of action under Missouri law. Plaintiff is a unit owner entitled to enforce the recorded covenants pursuant to § 448.3-116(1) RSMo. Defendants' conduct — including (a) maintaining magnetic realty placards visible from property and common areas, and (b) manually placing realty yard signs in clients' units — violates Indenture Article VII, ALA Declaration Articles 9.4 and 9.7, ALC Declaration Article 9.4, and the By-Laws. Defendants' realtor advertising and solicitation further constitute the conduct of a business from their residence, in direct violation of ALA Declaration Article 9.7, which prohibits any business, trade, occupation, or profession from being conducted within Autumn Lakes. Plaintiff has alleged specific provisions, specific violations, ongoing harm, and specific remedies. Missouri courts (including *Looney v. Hindman*, *Lake St. Louis CA v. Riverview Estates*, *Weiss v. Carriage House Estates HOA*, and *Davis v. Lakewood POA*) recognize these claims as valid causes of action. Accordingly, this Petition states claims upon which relief can be granted.

CASE LAW AUTHORITIES

15. *Looney v. Hindman*, 649 S.W.2d 207 (Mo. banc 1983) — Supreme Court of Missouri. Restrictive covenants are enforceable by injunction; courts must give effect to their plain meaning. Supports Plaintiff's request for injunctive relief.
16. *Lake St. Louis Community Association v. Riverview Estates*, 947 S.W.2d 324 (Mo. App. E.D. 1997) — Missouri Court of Appeals, Eastern District. HOA covenants are enforceable against owners; injunctive relief is proper remedy. Confirms Plaintiff's right to enforce Autumn Lakes covenants.

17. *Weiss v. Carriage House Estates HOA*, 62 S.W.3d 597 (Mo. App. E.D. 2001) —

Missouri Court of Appeals, Eastern District. Daily fines imposed by HOA for covenant violations are enforceable. Supports Plaintiff's request for fines and damages.

18. *Davis v. Lakewood Property Owners Association*, 536 S.W.3d 743 (Mo. App. W.D.

2017) — Missouri Court of Appeals, Western District. HOA boards act ultra vires when adopting rules inconsistent with recorded covenants. Confirms Board's magnetic sign rule is invalid.

19. *Lucas Stucco & EIFS Design, LLC v. Landau*, 324 S.W.3d 444 (Mo. App. E.D. 2010) —

Missouri Court of Appeals, Eastern District. Attorney fees may be awarded in covenant enforcement actions where authorized. Supports Plaintiff's request for attorney fees.

TABLE OF AUTHORITIES AND GOVERNING DOCUMENTS

20. Pursuant to §§ 526.010–526.110 RSMo, Missouri courts are expressly authorized to grant injunctions and equitable relief, providing the jurisdictional basis for Plaintiff's request that Defendants be restrained from continuing their violations. In addition, § 448.3-116(1) RSMo, part of the Missouri Condominium Act, confirms that individual unit owners have standing to enforce recorded covenants. Plaintiff, as a unit owner, therefore has the statutory right to bring this action directly against Defendants, notwithstanding the Board's failure to act.

21. The recorded Governing Documents of Autumn Lakes establish clear prohibitions.

Indenture Article VII provides that "*No signs shall be erected or displayed in public view on any property,*" and further authorizes enforcement "*by proceedings at law or in equity ... to restrain violations and/or recover damages.*" ALA Declaration Article 9.4 states that "*No signs shall be hung or displayed on the outside of windows or placed on walls of*

any building ...,” while ALA Declaration Article 9.7 prohibits both business activity and signage, declaring that “*No business, trade, occupation or profession of any kind ... shall be conducted ... nor ... shall ‘for sale’ signs be displayed*” The ALC Declaration Article 9.4 mirrors the ALA provision, ensuring consistency across both sets of governing documents. ALA Declaration § 3, provides that “*Any failure to enforce a breach shall not be a waiver of any subsequent breach,*” thereby eliminating any claim of waiver or grandfathering. The By-Laws further limit Board authority to enforcement consistent with recorded covenants, rendering any conflicting rule ultra vires and unenforceable.

22. Missouri case law confirms the enforceability of these covenants. In *Looney v. Hindman*, 649 S.W.2d 207 (Mo. banc 1983), the Supreme Court held that restrictive covenants are enforceable by injunction and must be given their plain meaning. In *Lake St. Louis Community Association v. Riverview Estates*, 947 S.W.2d 324 (Mo. App. E.D. 1997), the Court of Appeals confirmed that HOA covenants are enforceable against owners and that injunctive relief is the proper remedy. In *Weiss v. Carriage House Estates HOA*, 62 S.W.3d 597 (Mo. App. E.D. 2001), the court upheld daily fines imposed for covenant violations, supporting Plaintiff’s claim for damages and attorney fees. In *Davis v. Lakewood Property Owners Association*, 536 S.W.3d 743 (Mo. App. W.D. 2017), the court held that HOA boards act ultra vires when adopting rules inconsistent with recorded covenants, directly supporting Plaintiff’s challenge to the Board’s magnetic sign rule. Finally, in *Lucas Stucco & EIFS Design, LLC v. Landau*, 324 S.W.3d 444 (Mo. App. E.D. 2010), the court confirmed that attorney fees may be awarded in covenant enforcement actions where authorized, further supporting Plaintiff’s request for fees.

FACTS

23. Defendants currently and continuously maintain magnetic realty advertisement placards affixed to two vehicles. Each vehicle bears placards on both sides plainly visible from property, common areas, and roadways. This violates Indenture Article VII and ALA/ALC Article 9.4 (“*No signs shall be hung or displayed on the outside of windows or placed on walls of any building ...*”).
24. The placards advertise Defendants’ realty services. Plaintiff pleads these are commercial “*for sale*” signs under ALA Article 9.7 (“*No business, trade, occupation or profession of any kind ... nor ... shall ‘for sale’ signs be displayed ...*”), because they solicit the sale of realty services, and are prohibited.
25. Defendants also manually place “*for sale*” realty yard signs in the lawns of their clients’ units within Autumn Lakes. These signs are plainly visible from property and common areas and constitute an additional violation of Indenture Article VII and ALA Article 9.7.
26. Defendants’ use of residential property and common areas to advertise and solicit realty services constitutes conducting a business in violation of ALA Article 9.7 (“*No business, trade, occupation or profession of any kind ... shall be conducted ...*”).
27. The ongoing display harms aesthetics, uniform enforcement, and property values, contrary to Indenture Article VII (“*No signs shall be erected or displayed in public view on any property.*”).
28. Plaintiff previously filed suit including these signage violations; that case was dismissed without prejudice. The Board and Defendants were on notice.
29. Plaintiff is a former trustee and whistleblower who raised concerns about Board enforcement practices and communicated them to homeowners.

30. Plaintiff demanded removal of the placards and yard signs and impartial enforcement.

The Board failed to act.

31. The Board purported to adopt a rule allowing magnetic signs. Plaintiff pleads this rule conflicts with Indenture Article VII, ALA Article 9.4, and ALA Article 9.7, and is therefore invalid under the By-Laws. The Governing Documents expressly prohibit grandfathering (ALA Declaration §3) “*Any failure to enforce a breach shall not be a waiver of any subsequent breach.*”); therefore, any claim of prior tolerance or waiver is without legal effect.

32. Defendants continue to display the signage and place yard signs, causing ongoing harm.

33. Plaintiff exhausted reasonable pre-litigation remedies; equitable relief is necessary under Indenture Article VII (Enforcement Provision: “*by proceedings at law or in equity ... to restrain violations and/or recover damages.*”).

CLAIMS FOR RELIEF

34. Count I - Declaratory Judgment

Defendants’ magnetic realty placards and manual placement of realty yard signs constitute prohibited “*for sale*” signage under ALA Declaration Article 9.7 and violate Indenture Article VII. Defendants’ realtor advertising and solicitation further constitute the conduct of a business from their residence, in direct violation of ALA Declaration Article 9.7, which prohibits any business, trade, occupation, or profession from being conducted within Autumn Lakes. These violations have caused ongoing harm to Plaintiff by diminishing property value, disrupting aesthetics, and interfering with Plaintiff’s enjoyment of his residence and shared common grounds. Any Board rule purporting to permit such signage or business activity is ultra vires under the By-Laws. The Governing

Documents expressly prohibit *grandfathering* (ALA Declaration § 3), ensuring that prior tolerance or inaction cannot excuse Defendants' conduct.

35. Count II - Injunctive Relief

Plaintiff seeks orders requiring Defendants to remove the magnetic placards and yard signs and prohibiting future displays of signage advertising realty services or other business activity in HOA common areas, pursuant to Indenture Article VII and ALA/ALC Article 9.4. Plaintiff further seeks injunctive relief prohibiting Defendants from conducting business from their residence or within Autumn Lakes, in direct violation of ALA Declaration Article 9.7. Such relief is necessary to prevent further harm to Plaintiff by diminishing property value, disrupting aesthetics, and interfering with Plaintiff's enjoyment of his residence and shared common grounds.

36. Count III - Breach of Covenants; Damages; Attorney Fees

Defendants breached ALA Declaration Article 9.7 and Indenture Article VII by conducting business from their residence and displaying prohibited signage, including both vehicle placards and yard signs. Plaintiff seeks damages for diminution in his property value, disruption of aesthetics and enjoyment of his residence and shared common grounds, costs incurred in addressing Defendants' violations, and attorney fees. Plaintiff's right to recover attorney fees is expressly authorized by the Governing Documents and supported by Missouri law, including § 448.3-116(1) RSMo, which grants unit owners standing to enforce recorded covenants, and Missouri case law such as *Lucas Stucco & EIFS Design, LLC v. Landau*, 324 S.W.3d 444 (Mo. App. E.D. 2010), which confirms attorney fees may be awarded in covenant enforcement actions where

authorized. The Non-Waiver clause (ALA Declaration § 3) preserves enforcement despite prior Board inaction, ensuring Plaintiff's right to relief is not impaired.

37. Count IV - Ultra Vires, Conflict of Interest, Breach of Fiduciary Duty

Defendants' violations are compounded by the Board's failure to enforce, which demonstrates conflicts of interest and ultra vires conduct under the By-Laws. While the Board is not a named party to this action, its inaction has directly harmed Plaintiff by forcing repeated litigation, depriving him of impartial enforcement, and interfering with Plaintiff's enjoyment of his residence and shared common grounds. Judicial enforcement is therefore necessary to protect Plaintiff's rights and ensure impartial compliance with the Governing Documents, including prohibitions against signage and conducting business on the property.

38. Count V - Appointment of Special Master or Receiver

Plaintiff requests that the Court appoint a special master or receiver to oversee and enforce Defendants' compliance with the Governing Documents. This relief is necessary to protect Plaintiff's property interests, enjoyment of his residence and shared common grounds, and to remedy ongoing violations of both signage restrictions and the prohibition against conducting business from the property, where Board inaction or conflicts of interest have left Plaintiff without adequate enforcement. Appointment of a neutral authority will ensure impartial enforcement and safeguard Plaintiff's rights.

39. Count VI - Sanctions and Further Relief

Plaintiff requests sanctions and equitable relief for Defendants' willful noncompliance with the Governing Documents and repeated litigation over the same violations.

Defendants' continued disregard of covenants has caused ongoing harm to Plaintiff,

including diminution in property value, disruption of aesthetics and uniform enforcement, unnecessary costs and burdens associated with repeated filings and court proceedings, and significant discourse within the community that has directly affected Plaintiff's enjoyment of his residence and shared common grounds. Equitable relief is necessary because legal remedies alone are inadequate to deter future violations, including signage and business activity, to restore confidence in impartial enforcement, and to protect the integrity and harmony of the Autumn Lakes community.

EVIDENCE AND DISCOVERY

40. Plaintiff will present documentary, photographic, testimonial, and other admissible evidence demonstrating Defendants' violations of the Governing Documents and resulting harm to Plaintiff.

41. Plaintiff will seek discovery of relevant communications, records, and admissions necessary to establish Defendants' liability and the extent of damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in Plaintiff's favor and against Defendants, and grant the following relief:

- a. Declaratory judgment that Defendants' magnetic realty placards and manual placement of realty yard signs constitute prohibited "for sale" signage under ALA Declaration Article 9.7 and Indenture Article VII, and that such conduct also violates ALA Declaration Article 9.4 and ALC Declaration Article 9.4.
- b. Declaratory judgment that Defendants' use of property and common areas to advertise or perform realty services constitutes prohibited business activity under ALA Declaration Article 9.7.

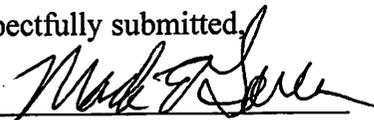
- c. Declaratory judgment that any purported Board rule, waiver, or tolerance purporting to permit such signage or business activity is ultra vires under the By-Laws and unenforceable.
- d. Declaratory judgment that the Non-Waiver / No Grandfathering clause (ALA Declaration § 3) bars Defendants from claiming exemption based on prior Board inaction or approval.
- e. Permanent injunction requiring Defendants to remove all magnetic placards and yard signs and prohibiting Defendants from conducting or performing any realty services, advertising, solicitation, or other business activity from their residence or within Autumn Lakes.
- f. Declaratory judgment that any signage in violation of the Governing Documents may be removed at Defendants' expense, with costs assessed against Defendants, by order of the Court or through a Court-appointed special master/receiver.
- g. Declaratory judgment that any purported Board authorization, waiver, or tolerance inconsistent with the Governing Documents is void and unenforceable, ensuring impartial enforcement of covenants.
- h. Declaratory judgment that enforcement of the Governing Documents must be impartial and free from conflicts of interest, and that such enforcement is expressly authorized by individual unit owners under § 448.3-116(1) RSMo, and may be overseen directly by the Court or its appointed special master/receiver.
- i. Appointment of a special master or receiver to enforce Defendants' compliance with the Governing Documents, bypassing Board inaction or conflicts of interest.
- j. Damages for diminution in Plaintiff's property value, costs of removal, and remediation caused by Defendants' violations.

- k. Nominal or actual damages for trespass and misuse of common areas.
- l. Costs and reasonable attorney fees as authorized by the Governing Documents and Missouri law, including § 448.3-116(1) RSMo, and case law such as *Weiss v. Carriage House Estates HOA*, 62 S.W.3d 597, and *Lucas Stucco & EIFS Design, LLC v. Landau*, 324 S.W.3d 444.
- m. Sanctions for Defendants' willful noncompliance and repeated litigation over the same violations.
- n. Such other and further relief as the Court deems just and proper to ensure uniform enforcement of the Governing Documents and protection of the Autumn Lakes community.

VERIFICATION

I, Mark Gavan, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

By: 

Mark E. Gavan

3131 Autumn Trace Drive

Maryland Heights, MO 63043

Phone: (314) 594-7270

Email: mark@autumnlakesuncensored.com

Plaintiff, pro se

