(10)

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

May 16, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Spaulding Green, LLC v. Erie County Clerk's Office*
Document Received:	Verified Petition
Name of Claimant:	Spaulding Green, LLC
Claimant's attorney:	Donald G. Powell, Esq. Schop Powell & Allen 5900 Main Street Williamsville, New York 14221

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Jeremy Toth
Jeremy C. Toth
Second Assistant County Attorney
jeremy.toth@erie.gov

JCT:dld

Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

SPAULDING GREEN, LLC

Petitioner

for an Order directing the Clerk of the County of Erie to cancel, vacate of record, and expunge that certain SUPPLEMENTAL EXTENDING DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS which was recorded in the Office of the Erie County Clerk on February 28, 2013 in Liber11240 of Deeds at Page 4615.

NOTICE OF PETITION

Index No.: I 2013-002686

Assigned Justice:

Hon.: _____, J.S.C.

PLEASE TAKE NOTICE, that upon the annexed petition of Donald G. Powell, Esq., executed on the 8th day of May, 2013, the affidavit of Dominic Piestrak, sworn to on the 2nd day of May, 2013, and the exhibits thereto, the affidavit of Alan K. Scheff, sworn to on the 1st day of April, 2013, the affidavit of Marlene Culligan, sworn to on the 1st day of April, 2013, and upon all the papers and proceedings heretofore had herein, an application will be made in Part ___ of this Court to be held at the courthouse located at _____, Buffalo, New York on the ____ day of May, 2013 at _____ or as soon thereafter as counsel can be heard for an Order directing the Clerk of the County of Erie to cancel, vacate of record and expunge that certain SUPPLEMENTAL EXTENDING DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS, which was recorded in the Office of the Erie County Clerk on February 28, 2013 in Liber11240 of Deeds at Page 4615, and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that an answer and supporting affidavits, if any, must be served upon the undersigned not less than seven days prior to the return date hereof.

Petitioner designates Erie County as the place of trial. The basis of venue is the residence of the petitioner who resides in the County of Erie and State of New York.

Dated: May 8, 2013
Williamsville, New York

Respectfully submitted,

SCHOP, POWELL & ALLEN

Donald G. Powell, Esq.
Attorneys for Petitioner,
Spaulding Green, LLC
5900 Main Street
Williamsville, New York 14221
Tel: (716) 633-1444
E-mail: Dpowell@SchopPowellAllen.com

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

SPAULDING GREEN, LLC

Petitioner

for an Order directing the Clerk of the County of Erie to cancel, vacate of record, and expunge that certain SUPPLEMENTAL EXTENDING DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS which was recorded in the Office of the Erie County Clerk on February 28, 2013 in Liber11240 of Deeds at Page 4615.

VERIFIED PETITION

Index No.:_____

Assigned Justice:

Hon.: _____, J.S.C.

Petitioner, by and through its attorneys, Schop, Powell & Allen, hereby states as follows:

1. Petitioner is a domestic limited liability company with its principal place of business situate at 9470 Rosecroft Drive, Clarence Center, New York, 14032.

2. Petitioner is the developer of the Spaulding Green Project (the "Project"), an approximately 370 acre residential development situate in the Town of Clarence which, when all phases have been completed, will comprise approximately 380 single family building lots.

3. As part of the development of the Project, Petitioner caused the Spaulding Green Homeowners Association, Inc. (the "HOA") to be formed under the Not-For-Profit-Law of

the State of New York, and in connection therewith prepared and filed with the Investor Protection Bureau, Real Estate Finance Section of the Office of the Attorney General of the State of New York (the "AG") a Cooperative Policy Statement No. 7 ("CPS-7"), pursuant to Article 23-A of the General Business Law of the State of New York, which sought, *inter alia*, to bring all 380 building lots within the ambit of the HOA. The CPS-7 treatment was granted by the AG on or about April 30, 2009. A copy of the CPS-7 is annexed hereto as Exhibit A.

4. In April, 2012, a First Amendment (the "1st Amendment") to the CPS-7 was submitted to the AG, which amendment sought to reduce the number of lots being offered in conjunction with membership in the HOA from 380 to 122. On or about May 22, 2012, the 1st Amendment was incorporated into the CPS - 7 filing for the HOA. A copy of the 1st Amendment is annexed hereto as Exhibit B.

5. The Petitioner caused the Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Declaration"), which is incorporated into both the CPS-7 and the 1st Amendment thereto, to be duly filed with the Clerk of the County of Erie in Liber 11218 of Deeds at Page 7986 on March 6, 2012. A copy of the Declaration is annexed hereto as Exhibit C.

6 The Declaration provides, at Section 2.01, that the 122 building lots which were described in Schedule A (the "Initial Property") will be subject to the covenants, conditions, restrictions, easements, charges, and liens as set forth and described therein.

7. The Declaration further provides, at Section 2.02, that the Petitioner may bring other lands with the scope of the Declaration ("Additional Property") within 40 years of the date of recording of the Declaration without the necessity of seeking or obtaining the consent of the owner(s) of the fee interest(s) in any building lot or home.

8. On or about February 25, 2013, Petitioner, by and through counsel, submitted a Second Amendment (the "2d Amendment") to the CPS-7 to the AG, which amendment sought to: (1) advise that the firm of Schop, Powell & Allen had been substituted as counsel for Petitioner in the place and stead of Block and Longo, P.C.; and (2) advise that the Petitioner was going to bring Additional Property, 21 building lots, within the scope of the Declaration such that the number of subdivision lots would be 143, as opposed to the 122 lots included in the 1st Amendment. A copy of the 2d Amendment is annexed hereto as Exhibit D.

9. Petitioner duly filed a Supplemental Extending Declaration of Protective Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Supplemental Declaration") with the Clerk of the County of Erie on February 28, 2013, which was recorded in Liber 11240 of Deeds at Page 4615, to extend the provisions of the Declaration to include the additional 21 building lots ("Phase 5"). A copy of the Supplemental Declaration is annexed hereto as Exhibit E.

10. The AG rejected the 2d Amendment unless the Petitioner secured the consent of the owners of the fee interest in all 122 building lots with are, pursuant to the 1st

Amendment, part of the HOA. This rejection came despite the fact that the Declaration, which the AG reviewed and approved on two (2) separate occasions, specifically states at Section 2.02 that Additional Property may be brought within the scope of the Declaration for a period of forty (40) years without the consent of owners of building lots which are included within the HOA and that the AG's web site states that a CPS-7 application shall be deemed granted upon submission of the application. A copy of the AG publication is annexed hereto as Exhibit F. See, also, New York State Attorney General, Investor Protection Bureau, Real Estate Finance Division publication, Simplified Procedure For Homeowners Associations With A Di Minimis Cooperative Interest (Effective October, 1996, Rev. August 1, 2000), http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/Cps7.pdf

11. The owners of the fee interest in 121 of the 122 building lots which are covered by the HOA consented to the extension.

12. In light of the AG's refusal to accept and incorporate the 2d amendment to the CPS-7 for the HOA without the consent of the owners of the fee interests of the 122 building lots and the refusal of 1 of the 122 owners of the fee interests to consent, Petitioner has withdrawn the 2d Amendment and has taken steps to form a new Homeowners Association and begun preparation of a new CPS-7, with its own Declaration of Protective Covenants, etc., for the balance of the residential building lots in the Project.

13. The withdrawal of the 2d Amendment, however, leaves the Supplemental Declaration of record in the Erie County Clerk's Office with respect to Phase 5, which needs to be canceled, vacated of record, and expunged.

14. The Supplemental Declaratation needs to be canceled, vacated of record, and expunged for the following reasons: (1) to prevent potential purchasers of building lots, either one of the initial 122 or the 21 lots in Phase 5, from being confused and/or misled such that they believe that the 21 lots in Phase 5 are part of the HOA and are subject to the Supplemental Declaration; (2) to ensure that documents on file with the Clerk of the County of Erie which are supposed to provide notice to the public regarding real property are accurate; and (3) because the Supplemental Declaration is a cloud on title which, because it is not enforceable and effective, must be addressed in the title insurance process.

15. Prior to the time that Petitioner was advised that the 2d Amendment would not be accepted for filing, it had sold 2 of the 21 residential building lots in Phase 5. Accompanying this petition are affidavits from those purchasers and the Petitioner, who together hold all of the fee interest in all of the subject 21 residential building lots in Phase 5 consenting to the cancellation, vacateur, and expungement of the Supplemental Declaration.

WHEREFORE, Petitioner respectfully requests an Order which directs the Clerk of the County of Erie to cancel, vacate of record, and expunge that certain SUPPLEMENTAL EXTENDING DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS,

EASEMENTS, CHARGES AND LIENS which was recorded in the Office of the Erie County Clerk on February 28, 2013 and recorded in Liber11240 of Deeds at Page 4615.

Dated: May 8, 2013
Williamsville, New York

Respectfully submitted,
SCHOP, POWELL & ALLEN

Donald G. Powell, Esq.
Attorneys for Petitioner,
Spaulding Green, LLC
5900 Main Street
Williamsville, New York 14221
Tel: (716) 633-1444
E-mail: Dpowell@SchopPowellAllen.com

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

Dominic Piestrak, being duly sworn, deposes and says: that deponent is a Member of Spaulding Green, LLC, that the deponent has read the foregoing Verified Petition and knows the contents thereof, that the same is true to the deponent's own knowledge except as to matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true. The reason why this verification is made by deponent is that deponent is a Member of Spaulding Green, LLC, which is a domestic limited liability company, and deponent is familiar with all the facts and circumstances herein. The sources of deponent's information and grounds of deponent's belief as to all matters not therein stated upon deponent's knowledge are as follows: investigation and examination of the books and records of Spaulding Green, LLC

Dominic Piestrak

Subscribed and sworn to before me
this 9th day of May, 2013

Notary Public

DONALD G. POWELL
Notary Public, State of New York
Qualified in Erie County
My Commission Expires August 30, 13