

LANDMARK INDIANA DECISION ON RENTAL RESTRICTIONS

SUMMARY FOR THE VILLAS WEST II v. McGLOTHIN CASE

P. Thomas Murray, Jr.
Eads Murray & Pugh, P.C.
9515 East 59th Street, Suite B
Indianapolis, Indiana 46216
Telephone: (317) 536-2565 Email: tmurray@eadsmurraypugh.com

On May 15, 2008, the Indiana Supreme Court issued a decision that is a major victory for community associations of all varieties. The case pertains to covenants that totally ban rentals.

Summary

The case of Villas West II of Willowridge Homeowners Association, Inc. v McGlothlin began when the association for a duplex-style community sued a homeowner who was renting her home. The covenants state: "For the purpose of maintaining the congenial and residential character of Villas West II and for the protection of owners with regard to financially responsible residents, lease of a Dwelling by an Owner, shall not be allowed." The owner countersued by claiming that the rental ban had a greater impact on minorities and therefore constituted a violation of the racial discrimination laws.

At the trial, the homeowner's expert offered statistical evidence to show that a total ban on rentals had a "disparate impact" (a legal term of art) on minorities as compared to Caucasians. The association introduced substantial evidence that there were very legitimate reasons for rental restrictions that had nothing to do with race. However, the trial court judge found that the association was in violation of the fair housing laws, and the Indiana appellate court upheld that decision in January of 2006. In fact, the lower courts went so far as to hold that the rental ban was "subterfuge for excluding minorities from renting homes."

Indiana Supreme Court Decision --- May 15, 2008

On May 15th, the Indiana Supreme Court [ruled](#) that the trial court and appellate court decisions were wrong, and overturned them. The Justices, in a 3-2 decision, held that there were legitimate, non-discriminatory reasons for the covenant and that both the evidence in this case and common sense tell us that owner-occupants have a much better incentive than tenants to not only preserve property values, but to actually enhance property values.

The Court analyzed federal laws to determine the proper test to be applied, and then concluded that Villas West II did not violate the Fair Housing Act with respect to the

"disparate impact" theory. In addition, the Indiana Supreme Court decision made general observations on community associations that bolster a recent trend in decisions issued by the Indiana Court of Appeals that favor the enforcement of covenants.

Significance of This Case

This case has been watched closely all across the country, especially by community association attorneys and the Community Associations Institute. This is because: (1) so many associations already have rental restrictions of one sort or another, and (2) this was the first case in the United States that specifically addressed the application of fair housing laws to rental restrictions set forth in covenants.

Tom Murray, a founding shareholder of Eads Murray & Pugh, P.C. and a member of CAI's College of Community Association Lawyers, acted as co-counsel for the Kokomo homeowners association throughout the trial and then before the state appellate court and the Indiana Supreme Court.