NAME OF ATTORNEY

Robert M. Alexander

T. R. Freeman, etal.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

FINAL

IXXXX CHANCERY 22752

GUARDIAN AD LITEM

PROCEEDINGS

Date Entered	Dated Filed	
	3-14-66	Bill of Complaint filed
	3-15-66	Process issued
	4/11/66	Demurrer ✓
	7-5-66	Notice, Amended Bill, & Statement. ✓
7/21/66	—	Decree ✓
	8-9-66	Demurrer
	8-10-66	Memorandum, Affidavit
	9-30-66	Answer + Grounds of Defense
		9/9/66 - Dem. overruled.
		Def to answer w/i 21
		Dep - AUB
	9-23-66	Order ✓
	4-3-67	Notice, Motion, Affidavit ✓
4/24/67	—	Decree. ✓
	4-21-67	Supplemental Statement of Points & Authorities, Brief ✓
5/8/67		Decree ✓
	6-12-67	Notice, Motion
4/9/71	—	Mandate

98 87

88

88

J. P. Bell Co.—No. B-500-S

Commonwealth of Virginia

In the Circuit Court of the County of Fairfax

T. R. Freeman, Jr., et al

vs. { In Chancery No. 22752

Little Hunting Park, Inc., et al

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Demurrer	April 11, 1966	15
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Statement of Points and Authorities	July 5, 1966	29
Order	July 21, 1966	31
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Statement of the Case	August 10, 1966	34
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Notice	April 3, 1967	62
Motion	April 3, 1967	63
Opinion	April 21, 1967	65
Supplemental Statement of Points and Authorities	April 21, 1967	66
Order	April 24, 1967	69

I, Thomas P. Chapman, Jr., Clerk of the above mentioned Court, certify that the papers listed above and filed herein, are the original papers in the above styled case.

Teste: THOMAS P. CHAPMAN, JR., Clerk

Edward E Young

Deputy Clerk.

J. P. Bell Co.—No. B-500-S

Commonwealth of Virginia

In the Circuit Court of the County of Fairfax

T. R. Freeman, et al

vs. } In Chancery No. 22752

Little Hunting Park, Inc., et al

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Designation of Appellees	July 28, 1967	83
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I, Thomas P. Chapman, Jr., Clerk of the above mentioned Court, certify that the papers listed above and filed herein, are the original papers in the above styled case.

Teste: THOMAS P. CHAPMAN, JR., Clerk

Edward E. Young

Deputy Clerk.

C. W. WARTHEN CO., NO. 500

Commonwealth of Virginia

In the Circuit Court of the County of Fairfax

Freeman , T. R., Jr. et al

vs.

Little Hunting Park, Inc., et al

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I Deputy C Clerk of the above mentioned Court, certify that the papers listed above and filed herein, are the original papers in the above styled case.

Teste: Edward E. Spra Deputy, Clerk

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, Jr., an adult,
LAURA FREEMAN, an adult, and
DALE L. FREEMAN, a minor,
DWAYNE L. FREEMAN, a minor,
who sue by and through T. R. FREEMAN, Jr.
their father and next friend
6810 Quander Road
Alexandria, (Fairfax County), Virginia

Plaintiffs,

v.

LITTLE HUNTING PARK, INC., and
6417 Olmi-Landrith Drive, Alexandria, VA.
MRS. VIRGINIA MOORE
6417 Olmi-Landrith Drive
Alexandria, (Fairfax County), Virginia

RONALD L. ARNETTE
7019 Canterbury Lane
Alexandria, (Fairfax County), Virginia

S. LEROY LENNON
2616 Woodlawn Lane
Alexandria, (Fairfax County), Virginia

RAYMOND R. RIESGO
7120 Coventry Road
Alexandria, (Fairfax County), Virginia

MRS. MARJORIE MADSEN
6511 Cygnet Drive
Alexandria, (Fairfax County), Virginia

WILLIAM J. DONOHOE
7037 Quander Road
Alexandria, (Fairfax County), Virginia

OSKAR W. EGGER
7003 Stanford Drive
Alexandria, (Fairfax County), Virginia

MILTON L. JOHNSON
6417 Bluebill Lane
Alexandria, (Fairfax County), Virginia

individually and as directors of
Little Hunting Park, Inc.,

Defendants.

FILED
IN CIRCUIT COURT
CLERK'S OFFICE

In Chancery No. 1966

CLERK, FAIRFAX COUNTY, VA.
WRIT TAX PAID: $ 1.50
DEPOSIT 20.00

BILL OF COMPLAINT

To the Honorable, the Judge of the Circuit Court of Fairfax County:

Your plaintiffs respectfully represent as follows:

1. That the plaintiffs T. R. Freeman, Jr. and Laura Freeman are husband and wife, and Dale L. Freeman, age 6, and Dwayne L. Freeman, age 5, are their sons.

2. Defendant Little Hunting Park, Inc. is a corporation incorporated in 1954 under the laws of Virginia for the purpose of maintaining and operating a community recreation facility and swimming pool for the benefit of residents

and former residents of the subdivisions known as Bucknell Manor, Beacon Manor, White Oaks, Bucknell Heights and certain adjacent neighborhoods in Fairfax County, Virginia.

3. The defendants Mrs. Virginia Moore, Ronald L. Arnette, S. Leroy Lennon, Raymond R. Riesgo, Mrs. Marjorie Madsen, William J. Donohoe, Oskar W. Egger and Milton L. Johnson were members of the Board of Directors of defendant Little Hunting Park, Inc. at times here pertinent.

4. On February 1, 1965, plaintiff T. R. Freeman, Jr. and Paul E. Sullivan (lessor) entered into a deed of lease whereby the lessor demised to said plaintiff for the term of one year certain property described in said lease as "the dwelling located at 970 Quander Road, Bucknell Manor, Alexandria 6, Virginia 22306, and the Little Hunting Park, Inc. pool share No. 290," for a rent of $1,548.00 payable in twelve monthly installments of $129.00. The deed of lease between said plaintiff and the lessor was extended in identical terms for an additional year by the execution of a renewal instrument on February 1, 1966.

5. On or about February 1, 1965, the plaintiffs moved their personal and household possessions into the aforesaid dwelling, and they have since resided at that location.

6. In May 1965, the lessor, pursuant to his contractual obligation under the aforesaid deed of lease with plaintiff T. R. Freeman, Jr., performed all necessary acts prescribed by the Certificate of Incorporation and By-Laws of the defendant corporation, to obtain approval by the Board of Directors of said corporation of the assignment of Little Hunting Park, Inc. membership No. 290 to said plaintiff.

7. Plaintiff T. R. Freeman, Jr., in every manner required by the Certificate of Incorporation and By-Laws of defendant Little Hunting Park, Inc. has taken all of the necessary steps to qualify himself as an assignee of said membership No. 290.

8. Plaintiff T. R. Freeman, Jr. and his wife and children are members of the Negro race.

9. Defendant Little Hunting Park, Inc. and its Board of Directors, have refused to approve, and continue to refuse to approve, the assignment of membership No. 290 from the lessor to plaintiff T. R. Freeman, Jr. solely because of the race or color of said plaintiff and his wife and children.

10. The defendants, by refusing to approve, and continuing to refuse to approve, the assignment of Little Hunting Park, Inc. membership No. 290 to

plaintiff T. R. Freeman, Jr. have denied and continue to deny, to said plaintiff and his wife and children the use of the recreation facilities, including the swimming pool, maintained and operated by said defendants.

11. The defendants, by refusing to approve, and continuing to refuse to approve, the assignment of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr. have wrongfully interfered with and prevented the performance of, and continue wrongfully to interfere with and prevent the performance of, the deed of lease entered into on February 1, 1965, and renewed on February 1, 1966, between the lessor and said plaintiff.

12. The defendants, by refusing to approve, and continuing to refuse to approve, the assignment of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr. have wrongfully deprived, and continue wrongfully to deprive, said plaintiff and his family of the full use and quiet enjoyment of the leasehold estate demised to said plaintiff by the lessor.

13. The defendants' action of refusing to approve the assignment of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr. solely because said plaintiff and his wife and children are members of the Negro race, is null and void, since said refusal

a. is an unreasonable restraint of the alienation of memberships in said corporation;

b. does not bear a reasonable relationship to the legitimate interests of said corporation;

c. is arbitrary, capricious and contrary to public policy;

d. is an unlawful racial restriction on the alienation of the premises owned by the lessor located at 6810 Quander Road, Alexandria, Virginia, and appurtenances thereto;

e. is an unlawful racial restriction on the alienation of the lessor's present and future interests and rights with respect to the property and assets of defendant Little Hunting Park, Inc.

f. cannot be recognized as valid by this Court in violation of the rights of the plaintiffs under the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Federal Constitution and statutes of the United States.

14. As a result of the foregoing wrongful conduct by the defendants, plaintiff T. R. Freeman, Jr. and his family have suffered diminishment of the value, desirability and attractiveness of the leasehold estate demised to said plaintiff by the lessor; said plaintiff's right to alienate said leasehold estate

by subletting or assignment has been wrongfully interfered with; said plaintiff and his wife and children have been wrongfully deprived of the use of valuable and healthful recreation facilities with resulting damage to their physical and psychological well-being; and said plaintiff and his wife and children have been subjected to embarrassment, humiliation, indignity and loss of social prestige in the community.

15. The defendants have intentionally and maliciously inflicted emotional harm, and have intentionally, by their acts and words, defamed plaintiff T. R. Freeman, Jr. and his wife and children with resulting serious and substantial injury to their reputation and status in the community.

16. The damage to the plaintiffs, as a result of the foregoing acts by the defendants, is continuing and irreparable, and the plaintiffs have no adequate remedy at law.

WHEREFORE, the plaintiffs demand:

(1) That the defendants, their agents and servants, be enjoined from refusing to approve the assignment or transfer of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr.; and further, from interfering with, and depriving, said plaintiff and members of his family of the full use and quiet enjoyment of the leasehold estate demised to said plaintiff by Paul E. Sullivan, lessor, by denying to said plaintiff and members of his family the use of the recreation facilities, including the swimming pool, maintained and operated by said defendants.

(2) That the defendants, their agents and servants, be ordered forthwith to approve the assignment of Little Hunting Park, Inc. membership No. 290 from the lessor to plaintiff T. R. Freeman, Jr.

(3) That any restriction based on race or color on the assignment or transfer of Little Hunting Park, Inc. membership No. 290 be declared null and void as to plaintiff T. R. Freeman, Jr.

(4) Judgment against the defendants jointly and severally, in the sum of $15,000, as well as costs and counsel fees.

(5) Such other relief as is just and proper.

(6) That the defendants answer under oath.

T. R. Freeman, Jr.

Laura Freeman

BY COUNSEL

Robert M. Alexander

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D. C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D. C. 20003

COUNSEL FOR PLAINTIFFS

State of Virginia :
: ss
County of Fairfax :

T. R. Freeman, Jr. and Laura Freeman, being duly sworn, depose and say they reside at 6810 Quander Road, Alexandria, (Fairfax County), Virginia, that they have read the foregoing complaint and know the contents thereof and that the facts set forth therein are true to the best of their knowledge and belief.

T. R. Freeman, Jr.

Laura Freeman

Subscribed and sworn to before me

this 12th day of March 1966.

Wells G. Proctor
Notary Public

My Commission Expires April 1, 1967

No. 502-S

Little Hunting Park, Inc
~~6417 Olmi-Landrith Drive~~
Alexandria, Virginia

850-19

Pres J Leroy Lennon
2616
Woodlawn La

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. 22752

T. R. Freeman, Jr.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 34
P__ NF__ MF__ RET__
NPF__
COPIES__

Returns shall be made hereon, showing service of Subpoena in Chancery issued March 15th, 19 66, **with copy of Bill of Complaint filed** March 14th, 19 66, **attached:**

Executed on the 22 **day of** Mar 850Pm, 19 66, **in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to** J Leroy Lennon, Pres Little Hunting Park Inc 2616 Woodlawn Lane, Alexandria Va **in person.**

THOMAS S JOHNSON

SHERIFF, COUNTY OF FAIRFAX, VA.

BY Jack Horton, **DEPUTY SHERIFF.**

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

No. 502-S

S. Leroy Lennon
2616 Woodlawn Lane
Alexandria, Virginia

330-P

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. 22752

T. R. Freeman, Jr., etal.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 34
P___ NF___ MC___ RET
NPF___
QUERIES___

Returns shall be made hereon, showing service of Subpoena in Chancery issued March 15th, 19 66, with copy of Bill of Complaint filed March 14th, 19 66, attached:

Executed on the ____ day of ____, 19____, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to ____ in person.

SHERIFF, COUNTY OF FAIRFAX, VA.

BY ____, DEPUTY SHERIFF.

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Executed in Fairfax County, Virginia, this 22 day of Mar 330 PM, 1966, by posting a true copy of the within Subpoena + Bill of Complaint ~~statement of account and/or attached affidavit~~, on the front door of the usual place of abode of S Leroy Lennon he or no member of his family over sixteen years of age being found there.

JAMES D. SWINSON, SHERIFF

By Jack Yoakum
Deputy

No. 502-S 23-MF

Ronald L. Arnette
7019 Canterbury Lane
Alexandria, Virginia

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. [illegible]

T. A. Freeman, Jr.,

Plaintiffs

vs.

Linda Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 34
P. IP. NF. MF. RET
COPIES NPF

Returns shall be made hereon, showing service of Subpoena in Chancery issued [illegible], with copy of Bill of Complaint [illegible] filed [illegible], attached:

Executed on the ..... day of ....., 19....., in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to .....

.....in person.

.....

SHERIFF, COUNTY OF FAIRFAX, VA.

BY....., DEPUTY SHERIFF.

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Executed in Fairfax County, Virginia, this 22 day of Mar 230 PM, 19....., by going to the usual place of abode of Ronald L Arnette and not finding him there, I delivered a true copy of the within Subpoena & Bill of Complaint statement of account and/or attached affidavit to Mrs Ronald L Arnette, Wife a member of his family over sixteen years of age and explained its purport thereof to Her.

JAMES D. SWINSON, SHERIFF

By Jack Norton
Deputy

No. 502-S 23 5-MF

Raymond R. Riesgo
7120 Coventry Road
Alexandria, Virginia

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. 22752

T. B. Freeman, Jr., etal.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 34
P_ IP_ NF_ MF_ RET
LEVY_____
MILES_____ NPF_____
COPIES_____

Returns shall be made hereon, showing service of Subpoena in Chancery issued March 15th, 19 66, with copy of Bill of Complaint filed March 14th, 19 66, attached:

Executed on the ____ day of ____, 19____, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to _____ in person.

_____

SHERIFF, COUNTY OF FAIRFAX, VA.

BY _____, DEPUTY SHERIFF.

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Executed in Fairfax County, Virginia, this 22 day of Mar 2 35 PM 19 66, by going to the usual place of abode of Raymond R Riesgo and not finding him there, I delivered a true copy of the within Subpoena & Bill of Complaint ~~statement of account and/or attached affidavit~~ to Mrs Raymond R Riesgo, Wife a member of his family over sixteen years of age and explained its purport thereof to her.

JAMES D. SWINSON, SHERIFF

By Jack Norton
Deputy

No. 502-S

250-P

William J. Donohoe
7037 Quander Road
Alexandria, Virginia

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. 22752

T. R. Freeman, Jr., etal.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 33
P___ NP___ NF___ RET
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COPIES___

Returns shall be made hereon, showing service of Subpoena in Chancery issued March 15th, 19 66, **with copy of Bill of Complaint filed** March 14th, 19 66, **attached:**

Executed on the ____ **day of** ____, 19____, **in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to** ____ **in person.**

____

SHERIFF, COUNTY OF FAIRFAX, VA.

BY ____, **DEPUTY SHERIFF.**

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Executed in Fairfax County, Virginia this 22 day of Mar 250 PM, 19 66 by posting a true copy of the within ~~Subpoena & Bill of Complaint~~ statement of account and/or attached affidavit, on the front door of the usual place of abode of William J Donohoe he or no member of his family over sixteen years of age being found there.

JAMES D. SWINSON, SHERIFF

By Jack Norton
Deputy

No. 502-S 230 MF

Oskar W. Egger
7003 Stanford Drive
Alexandria, Virginia

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. [illegible]

T. R. Freeman, Jr., etal.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 33

P___ MF___ MF___ RET
LCV___
NPF___
COPIES___

Returns shall be made hereon, showing service of Subpoena in Chancery issued ..... March 15th ....., 19 66, with copy of Bill of Complaint ..... filed March 14th ....., 19 66, attached:

Executed on the ..... day of ....., 19....., in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to .....

..... in person.

.....

SHERIFF, COUNTY OF FAIRFAX, VA.

BY....., DEPUTY SHERIFF.

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Executed in Fairfax County, Virginia, this 22 day of Mar 230 PM, 1966, by going to the usual place of abode of Oskar W Egger and not finding him there, I delivered a true copy of the within Subpoena & Bill of Complaint statement of account and/or attached affidavit to Mrs Oskar W Egger, Wife a member of his family over sixteen years of age and explained its purport thereof to her.

JAMES D. SWINSON, SHERIFF

By Jack Norton
Deputy

No. 502-S 3194

Milton L. Johnson
6417 Bluebill Lane
Alexandria, Virginia

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. 22172

T. R. Freeman, Jr., etal.,
Plaintiffs

vs.

Little Hunting Park, Inc., etal.,
Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 33
P___ IP___ NF___ MF___ RET
LEVY___
NPF___
COPIES___

Returns shall be made hereon, showing service of Subpoena in Chancery issued March 15th, 19 66, with copy of Bill of Complaint filed March 15th, 19 66, attached:

Executed on the 22 day of Mar 3:10 PM, 1966, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to Milton L Johnson 6417 Bluebill Lane, Alexandria VA in person.

JAMES D SWINSON

SHERIFF, COUNTY OF FAIRFAX, VA.

BY Jack Horton, DEPUTY SHERIFF.

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

No. 502-S

Mrs. Marjorie Madsen
6511 Cygnet Drive
Alexandria, Virginia

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. [illegible]

T. R. Freeman, Jr., etal.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 33

P ___ NE ___ MF ___ RET ___
NPF ___
COPIES ___

Returns shall be made hereon, showing service of Subpoena in Chancery issued [illegible], 19[illegible], with copy of Bill of Complaint [illegible] filed [illegible], 19[illegible], attached:

Executed on the ____ day of ____, 19____, in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to ____ in person.

____

SHERIFF, COUNTY OF FAIRFAX, VA.

BY ____, DEPUTY SHERIFF.

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Executed in Fairfax County, Virginia, this 22 day of March 3 PM, 1966, by posting a true copy of the within Subpoena & Bill of Complaint ~~statement of account and/or attached affidavit~~ on the front door of the usual place of abode of Mrs Marjorie Madsen he or no member of Their family over sixteen years of age being found there.

JAMES D. SWINSON, SHERIFF

By Jack Norton
Deputy

No. 502-S

3-P

Mrs. Virginia Moore
6417 Olmi-Landrith Drive
Alexandria, Virginia

PROOF OF SERVICE

Virginia:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CHANCERY NO. 32752

T. K. Freeman, Jr.,

Plaintiffs

vs.

Little Hunting Park, Inc., etal.,

Defendants

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED
1966 MAR 21 AM 10 34
P NE MI RET
NPF
COPIES

Returns shall be made hereon, showing service of Subpoena in Chancery issued March 15th, 1966, with copy of Bill of Complaint filed March 14th, 1966, attached:

Executed on the ..... day of ....., 19....., in the County of Fairfax, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to .....

.....in person.

.....

SHERIFF, COUNTY OF FAIRFAX, VA.

BY....., DEPUTY SHERIFF.

(Use the space below if a different form of return is necessary)

FILED

MAR 23 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Executed in Fairfax County, Virginia, this 22 day of Mar 3 PM, 1966, by posting a true copy of the within Subpoena & Bill of Complaint ~~statement of account and/or attached affidavit~~ on the front door of the usual place of abode of Mrs Virginia Moore ~~he or no member of~~ her ~~family~~ over sixteen years of age being found there.

JAMES D. SWINSON, SHERIFF

By Jack Norton
Deputy

FILED

APR 11 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN et al

Plaintiffs

vs.

LITTLE HUNTING PARK, INC. et al

Defendants

IN CHANCERY NO. 22752

DEMURRER

Comes now the defendants and demur to the Bill of Complaint for the following reasons:

1. The plaintiff, by this action, prays that the court overturn the decision of the Board of Directors and the membership of a private club to grant him the privilege of membership to the private club.

2. The plaintiff asks for a money judgment from the defendants, by reason of their exercising their lawful right in selecting members of their club.

LITTLE HUNTING PARK, INC. et al

By: _____
Counsel

_____
John Chas. Harris
Harris & Roark
Counsel for Defendants

CERTIFICATE OF SERVICE

I do certify that on the 11th day of April, 1966 I sent a true copy of the foregoing Demurrer, postage prepaid, to Robert M. Alexander, Esquire, 1829 Columbia Pike, Arlington, Virginia.

_____
John Chas. Harris

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA, VIRGINIA

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,

Plaintiffs,

v.

In Chancery No. 22752

LITTLE HUNTING PARK, INC., et al.,

Defendants.

FILED

JUL 5 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

NOTICE

To: Little Hunting Park, Inc.
c/o John Charles Harris, Esq.
1500 Belle View Boulevard
Alexandria, Virginia

Please take notice that the plaintiffs will move the Circuit Court of Fairfax County for an order permitting the filing of the attached Amended Bill of Complaint on Friday, July 8, 1966, at 10:00 A. M., or as soon thereafter as counsel may be heard.

Robert M. Alexander

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice was served by mail, postage prepaid, this 2nd day of July 1966, on John Charles Harris, Esq., 1500 Belle View Boulevard, Alexandria, Virginia.

Robert M. Alexander

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al.,	:	
Defendants.	:	

FILED
JUL 5 1966
THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

AMENDED BILL OF COMPLAINT

To the Honorable, the Judge of the Circuit Court of Fairfax County:

Your plaintiffs respectfully represent as follows:

I.

That on the 14th day of March 1966, they filed in this Court their original bill of complaint against the defendants wherein they set forth two causes of action, one of which asserts the wrongful interference by the defendants with the performance of a deed of lease entered into February 1, 1965, and thereafter renewed, between T. R. Freeman, Jr., as lessee, and Paul E. Sullivan, lessor. The second cause of action alleges that the defendants have wrongfully deprived the plaintiffs of the full use and enjoyment of the leasehold estate demised to T. R. Freeman, Jr. under the aforesaid lease. The deed of lease underlying the aforesaid causes of action includes in the description of the property demised, in addition to a certain residence, the assignment of membership share No. 290 in the defendant corporation. Subsequent to the making of the lease, the board of directors of said corporation refused to approve the assignment of membership share No. 290 to T. R. Freeman, Jr. The plaintiffs, in their bill of complaint, prayed for injunctive relief and damages arising from the refusal of the directors to approve the assignment of membership share No. 290. And the defendants appeared and through counsel demurred to the said bill on the ground that the defendant corporation is a "private club."

II.

And now, by leave of Court complainants bring this amendment to the bill into Your Honor's Court and respectfully represent:

1. That paragraph 2 of the Bill of Complaint should be deleted and the following paragraph substituted therefor:

"2. Defendant Little Hunting Park, Inc. was incorporated in 1954 under Section 13-220 of Title 13, Code of Virginia, 1950 (1949), for the purpose, as set forth in its Certificate of Incorporation and By-Laws (Exhibits A and B, respectively, attached hereto), of constructing, operating, and maintaining a community park and recreation facility, including a swimming pool, for the benefit of residents and former residents of the subdivisions known as Bucknell Manor, Beacon Manor, White Oaks, Bucknell Heights and certain adjacent neighborhoods in Fairfax County, Virginia."

2. That paragraph 6 of the Bill of Complaint should be deleted, and paragraph 7 should be redesignated as paragraph "7C."

3. That new paragraphs designated "6", "7", "7A", and "7B", should be added to the Bill of Complaint to read as follows:

"6. The By-Laws of the defendant corporation provide that there shall be 600 memberships available, and that a person is eligible to be a member and may purchase a membership certificate by making application therefor in writing, if he possesses the following qualifications:

a. is a resident of, or owner or former owner of a housing unit in, the geographic area defined in the By-Laws of said corporation;

b. is an adult

7. The By-Laws of the defendant corporation authorize a member to assign his membership share to an eligible person, to wit, one who possesses the qualifications for membership stated in paragraph 6 hereof.

7A. Plaintiff T. R. Freeman, Jr., on February 1, 1965, and at all times thereafter, has possessed the qualifications for membership set forth in paragraph 6 hereof, and has therefore been eligible to receive assignment of a membership share in the defendant corporation.

7B. In May 1965, the lessor, pursuant to his contractual obligation under the aforesaid deed of lease with plaintiff T. R. Freeman, Jr., and in accordance with the By-Laws of the defendant corporation, assigned membership No. 290 to said plaintiff by written instrument in the form prescribed by the Board of Directors of said corporation, and thereafter performed all necessary acts prescribed by the Certificate of Incorporation and By-Laws of the corporation, to obtain approval of said assignment by said Board of Directors."

4. That new subparagraphs designated "g" and "h" should be added to paragraph 13 of the Bill of Complaint to read as follows:

"g. is not authorized by and is contrary to the Certificate of Incorporation and By-Laws of said corporation;

h. is not authorized by and is contrary to applicable provisions of Virginia corporation law."

WHEREFORE, Your complainants pray that they may have such relief as is prayed for in the original bill.

T. R. Freeman, Jr.

T. R. Freeman, Jr.

Laura Freeman

Laura Freeman

BY COUNSEL

Robert M. Alexander

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D. C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D. C. 20003

COUNSEL FOR PLAINTIFFS

State of Virginia :
: ss
County of Fairfax :

T. R. Freeman, Jr. and Laura Freeman, being duly sworn, depose and say they reside at 6810 Quander Road, Alexandria, (Fairfax County), Virginia, that they have read the foregoing amended bill of complaint and know the contents thereof and that the facts set forth therein are true to the best of their knowledge and belief.

T. R. Freeman Jr.
T. R. Freeman, Jr.

Laura Freeman
Laura Freeman

Subscribed and sworn to before me

this 2 day of July 1966.

Wells A. Proctor
Notary Public

My Commission Expires April 1, 1967

Certificate of Service

I hereby certify that a copy of the foregoing Amended Bill of Complaint was served by mail, postage prepaid, this 2d day of July 1966, on John Charles Harris, Esq., 1500 Belle View Boulevard, Alexandria, Virginia.

Robert M. Alexander

EXHIBIT A

BOOK 12 PAGE 189

CERTIFICATE OF INCORPORATION
OF
LITTLE HUNTING PARK, INCORPORATED

This is to certify that we do hereby associate ourselves to establish a corporation, not organized for profit in which no capital stock is required or to be issued, under and by virtue of Section 13-220 of Title 13, Code of Virginia, 1950, and of acts amendatory thereof, for the purposes and under the corporate name hereinafter mentioned, and to that end we do by this certificate, set forth as follows:

1. That the name of the corporation shall be "LITTLE HUNTING PARK, INCORPORATED" (herein called the "corporation");

2. The principal office of the corporation shall be at 1015 Duke Drive, Bucknell Manor, Fairfax County, Virginia. (Post Office: Alexandria, Virginia);

3. The purpose of the corporation shall be:

a. to construct, operate and maintain a swimming pool and all necessary facilities appurtenant thereto;

b. to develop, operate and maintain a community park and playground facilities;

c. to lease own and manage real and personal property for community recreation purposes;

d. to construct and manage any structures necessary to the foregoing purposes;

e. to do any and all things necessary to carry out the above purposes.

4. The affairs of the corporation shall be managed by a Board of Directors, consisting of nine persons. The first Board of Directors shall consist of the persons named in paragraph five. Thereafter the Board of Directors shall be elected at an annual meeting by a majority of the members of the corporation present. Directors shall serve for a term of three years or for such terms as may be specified in the by-laws and shall serve in any event until their successors are elected and qualified. Vacancies on the Board occurring during a term shall be filled by the Board of Directors in accordance with the by-laws of the corporation. The Board of Directors shall have the power to adopt by-laws for the government of the corporation and to amend, alter, and repeal the same from time to time. By-laws shall be valid until rejected by the majority of the voting members present at a duly called meeting.

5. The names and residences of the officers and directors who are for the first year to manage the affairs of the corporation are as follows:

OFFICERS

M. H. Schwartz, President	1015 Duke Drive Alexandria, Virginia
Preble Staver, First Vice President	949 Swarthmore Drive Alexandria, Virginia
Claude R. Yates, Second Vice President	1007 Sweetbrier Drive Alexandria, Virginia
William D. Lincicome, Treasurer	953 Swarthmore Drive Alexandria, Virginia
Mrs. Ann B. Yates, Secretary	1007 Sweetbrier Drive Alexandria, Virginia

Law Offices
FORREAN AND PARRISH
305 COLONIAL BUILDING
510 WYTHE STREET
ALEXANDRIA, VIRGINIA

DIRECTORS

LaRue M. Courson	1001 Sweetbriar Drive, Alexandria, Virginia
James H. Cowan	905 Dartmouth Drive, Alexandria, Virginia
John A. VanGulick	959 Swarthmore Drive, Alexandria, Virginia
Thomas F. Jones	1037 West Hampton Drive, Alexandria, Virginia
Bernard Aurcias	1019 Quander Road, Alexandria, Virginia
Robert L. Mathes	501 Chelsea Drive, Alexandria, Virginia
Harold J. Peake	945 Swarthmore Drive, Alexandria, Virginia
M. H. Schwartz	1015 Duke Drive, Alexandria, Virginia
Bonnie L. Williams	950 Kenyon Drive, Alexandria, Virginia

6. The period for the duration of the corporation shall be unlimited.

7. The amount of real estate which the corporation may hold at any one time shall not exceed 500 acres.

IN WITNESS WHEREOF, the following incorporators have signed this certificate as of the 23rd day of November, 1954, and affixed their seals thereto.

M. H. Schwartz (SEAL)

Bonnie L. Williams (SEAL)

LaRue M. Courson (SEAL)

COMMONWEALTH OF VIRGINIA)
)
CITY OF ALEXANDRIA)

I, the undersigned, a notary public in and for the City aforesaid do hereby certify that M. H. Schwartz, LaRue M. Courson and Bonnie L. Williams, whose names are signed to the above Certificate of Incorporation bearing date on the 23rd day of November, 1954, have acknowledged the same before me in my City aforesaid.

Given under my hand this 23rd day of November, 1954.

My Commission Expires November 3rd 1957

Charlotte C. Bailey
Notary Public

CIRCUIT COURT OF THE COUNTY OF FAIRFAX

CERTIFICATE

I, Paul E. Brown, Judge of the above styled Court hereby certify in accordance with Section 13-222 of the Code of Virginia (1950 edition) as follows:

1. That M. H. Schwartz, LaRue M. Courson and Bonnie L. Williams, have this day presented me a proposed Certificate of Incorporation for a corporation not organized for profit in which no capital stock is required or to be issued, and the same to be named: "Little Hunting Park, Incorporated", the principal office of which is to be located in Fairfax County, Virginia;

2. That I have ascertained that the persons named above who signed and acknowledged the aforesaid certificate are of good moral character, and suitable and proper persons to be incorporated for the purposes set forth in said certificate; and

3. That in my opinion the aforesaid certificate is signed and acknowledged in accordance with the requirements of Chapter 13 of the Code of Virginia (1950 edition).

Given under my hand this 23rd day of November, 1954.

Paul E. Brown
JUDGE

EXHIBIT B

LITTLE HUNTING PARK, INCORPORATED
FAIRFAX COUNTY, VIRGINIA

REVISED BY-LAWS

April 18, 1961

ARTICLE I - Name

The name of this organization shall be Little Hunting Park, Incorporated, hereinafter to be referred to as the Corporation.

ARTICLE II - Purpose

The purpose of the Corporation shall be to own (or lease), construct, develop, operate, maintain and manage suitable facilities for the safe and healthful recreation of the Corporation's members, said facilities to include a swimming pool, a park, and such other appurtenances as the Corporation may deem desirable.

ARTICLE III - Membership

Section 1. Membership in the Corporation is --

a. Established by the purchase of a certificate of membership; and

b. Maintained in good standing by the prompt payment of all charges and assessments; and

c. Limited to persons who reside in, or who own, or who have owned housing units in the subdivisions presently defined and known as Bucknell Manor, Beacon Manor, White Oaks, and Bucknell Heights, and such other area(s) as may be authorized by the Board of Directors; and

d. Limited to six hundred (600) in number, except that, exclusive of all other provisions herein, there shall be forty (40) memberships available to residents of the subdivision known as White Oaks over and above the number of White Oaks memberships of record as of May 1, 1955.

Section 2. Each application for membership must be made in writing, and must be approved by the Board of Directors. In the sale or resale of memberships by the Corporation, applications by residents of the subdivisions specifically named in Section 1.c. shall be given prior consideration before all others.

Section 3. Each membership in the Corporation shall be issued to one adult person. If said person be a member of a family unit, the membership, maintained in good standing, shall entitle all members of the family unit to utilize the Corporation's facilities. A family unit is defined as all persons of the same immediate family, including all persons dependent on the holder of a membership and who permanently reside in the same housing unit.

Section 4. Irrespective of the type or number of memberships held by one person, no member shall have more than one vote in the affairs of the Corporation.

Section 5. Memberships may be transferred, or assigned for temporary use, as follows:

a. Permanent transfer to another eligible person may be effected.

b. The use of the membership may be temporarily assigned to eligible persons for periods not to exceed one year. Reassignment to such eligible persons is permissible.

c. Transfers and assignments of memberships must be by written instrument in such form as prescribed by the Board of Directors and are subject to approval by the Board.

Section 6.

a. A member may, for due cause, and after having been granted an opportunity for a hearing, be suspended for a specified period of time or expelled from the Corporation by a two-thirds (2/3) vote of the entire membership of the Board of Directors.

b. Due cause for suspension or expulsion of a member shall consist of delinquency in payment of any chargs and assessments, or of violation of these By-Laws or the Corporation's rules and regulations, or of conduct inimicable to the Corporation's members.

c. Suspension or expulsion shall not operate to relieve a member of any liability to the Corporation. In the event of expulsion, the Corporation shall offer the membership for sale at the stated price (Article VI, Section 2.n.). The expelled member shall be paid the balance, if any, of the proceeds of such sale after deducting therefrom any indebtedness due the Corporation, plus a reasonable fee to cover expenses of the sale.

ARTICLE IV - Meetings

Section 1. The annual meeting of the Corporation's members shall be held each year during the month of October at a time and place determined by the Board of Directors.

Section 2. Special meetings of the Corporation's members may be called at any time by the Board of Directors, and shall be called by the Board of Directors within fifteen (15) days of the receipt of the written request of not fewer than twenty (20) members.

Section 3. At least seven (7) days before the date of any annual or special meeting of the members, the Secretary shall cause written notice thereof to be handed to each member in person, or mailed to each member at his address as it appears on the records of the Corporation. Written notice of a special meeting shall state the purpose of the meeting and no other business may be conducted.

Section 4. Members, in good standing and not suspended, shall be entitled to vote in the affairs of the Corporation as such affairs are brought before a duly held meeting. There shall be not more than one vote per family unit.

Section 5. At an annual or special meeting twenty (20) members eligible to vote shall constitute a quorum. If no quorum is present, an adjournment may be taken to a date not fewer than seven (7) nor more than fifteen (15) days thereafter, and the members present at any such later meeting shall constitute a quorum, regardless of the number of members present. The same notice shall be given for the later meeting as is prescribed in Section 3 (of this Article) for the original meeting.

Section 6. The order of business at annual meetings shall be:

a. Ascertainment that a quorum is present;

b. Reading and approval (or correction) of the minutes of the last meeting;

c. Report of the Treasurer;

d. Report of the President;

e. Unfinished business;

f. New business;

g. Elections;

h. Adjournment;

xcept that the members assembled at any annual meeting may suspend the above order of usiness upon a two-thirds (2/3) vote of the members present at the meeting.

Section 7. Except as otherwise provided in the By-Laws, Roberts' Rules of Order Revised) shall be observed in the conduct of all meetings.

ARTICLE V - Board of Directors

Section 1. The Board of Directors shall consist of nine (9) members, all of whom shall e members of the Corporation.

Section 2. The first Board of Directors shall be comprised of three members each elected for a term of one year, three members each elected for a term of two years, and three members each elected for a term of three years. Thereafter, at each annual meeting, there shall be elected to the Board of Directors three members each for a term of three years.

Section 3. Any vacancy on the Board of Directors shall be filled by a majority vote of the remaining Directors; but the Director so elected shall hold office only until the qualification of a Director who shall be elected at the next annual meeting of the members of the Corporation to complete the unexpired term.

Section 4. If a Director fails to attend regular meetings of theBoard of Directors for three consecutive months, or otherwise fails to perform any of the duties devolving upon him as a Director, the Board may, after granting the Director an opportunity for a hearing, declare his office vacant and fill the vacancy as herein provided.

ARTICLE VI - Duties of the Board of Directors

Section 1. The Board of Directors shall meet regularly at least once each month. The time and place of such meetings shall be fixed by the Board. The president, or in his absence the Vice-President, may call a special meeting of the Board of Directors, and shall do so upon the written request of three (3) or more Directors. The Secretary shall cause written notice of all meetings of the Board of Directors to be handed to each member of the Board in person, or be mailed to each at his address as it appears on the records of the Corporation. Whenever any notice whatever is required to be given by law, or under the provisions of the certificate of incorporation or of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. For any meeting of the Board of Directors, five (5) Directors shall constitute a quorum.

Section 2. The Board of Directors shall be vested with authority for the general direction and control of the affairs of the Corporation. In addition to the duties customarily performed by Boards of Directors, the Board of Directors shall:

a. Act upon all applications for membership;

b. Fix the amount and character of, and approve, surety bonds required of any persons handling or having custody of funds;

c. Fill vacancies in the Board of Directors as herein provided;

d. Employ, fix the compensation, and prescribe the duties of such employees as may, in the discretion of the Board, be necessary.

e. Establish and approve rules and regulations for the safe and convenient use of the Corporation's facilities, and inform all members and other authorized users of the facilities of such rules and regulations;

f. Designate and maintain a registered office and a registered agent;

g. Authorize and supervise investments of the Corporation;

h. Designate the depository or depositories for funds;

i. Fix the amount of all charges and assessments payable by the members of the Corporation, as well as fix the amount of any fees for use of the Corporation's facilities by non-members;

j. Call annual and special meetings of the members of the Corporation, as herein provided, and establish the time and place of such meetings;

k. Constitute and appoint committees, and define the duties and powers of the same

l. Cause the books of the Corporation to be audited annually by auditors selected by the Board, such audit to be performed by persons who shall neither be Directors nor Officers of the Corporation;

m. Deliver to each member a written report of the state of the affairs of the Corporation after the end of each fiscal year.

n. Establish, from time to time, the stated price at which memberships will be offered for sale or resale by the Corporation.

Section 3. In addition to the powers provided herein, the Board of Directors shall have such other powers, not inconsistent with these By-Laws or existing statutes, as are necessary for the efficient operation and management of the Corporation.

ARTICLE VII - Officers and Their Duties

Section 1. The Officers of the Corporation shall be a President, a Vice-President, a Treasurer, and a Secretary, all of whom shall be elected by the Board of Directors, the President being elected from their number. Unless sooner removed as herein provided, officers shall be elected at the first meeting of the Board of Directors following the annual meeting of the members, to hold office from January 1st of the next succeeding year, for a term of one (1) year or until the election and qualification of their respective successors.

Section 2. The President shall:

a. Be the administrative officer of the Corporation;

b. Preside at meetings of the members and at meetings of the Board of Directors;

c. Perform such other duties as customarily appertain to the office of President or as he may be directed to perform by resolution of the Board of Directors not inconsistent with these By-Laws or existing statutes.

Section 3. The Vice-President shall have and exercise all the powers, authority, and duties of the President during the absence or disability of the latter.

Section 4. The Treasurer shall:

a. Have custody of all funds, securities, valuable papers, and other assets of the Corporation, subject to such limitations and control as may be imposed by the Board of Directors;

b. Provide and maintain full and complete records of all the assets and liabilities of the Corporation;

c. Prepare and submit to the Board of Directors, at times specified by same, financial statements showing the progress and condition of the Corporation.

d. Prepare such financial reports and tax returns as are required by law.

Section 5. The Secretary shall prepare and maintain full and correct records of all meetings of the Board of Directors and of the members of the Corporation, including complete returns of all elections conducted in such meetings. He shall give or cause to be given, in the manner herein prescribed, proper notice of all meetings of the members; and he shall conduct all correspondence pertaining to his office.

Section 6. In addition to the specific enumerated duties of Officers as prescribed herein, any Officer shall perform such other duties as customarily appertain to his office or as he may be directed to perform by resolution of the Board of Directors not inconsistent with these By-Laws or existing statutes.

ARTICLE VIII - General

Section 1. The Corporation shall at all times maintain in force planned insurance coverages.

Section 2.

a. Amendments to these By-Laws may be adopted by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors at any duly held meeting thereof. Amendments thus adopted shall be effective until and unless they be rejected by majority vote of the members present and voting at a duly held Corporation meeting. Members of the Corporation shall be given proper notice of any and all amendments adopted by the Board of Directors, such notice to be given within thirty (30) days of adoption of an amendment.

b. Amendments to these By-Laws may be adopted by the affirmative vote of two-thirds (2/3) of the members present and voting at a duly held meeting of the Corporation.

Section 3. In addition to any other provision(s) in these By-Laws, any Director or Officer of the Corporation may be removed from office by the affirmative vote of two-thirds (2/3) of the members present at a special meeting held for the purpose, but only after an opportunity to be heard has been given him.

Section 4. When any Officer is absent, disqualified, or otherwise unable to perform the duties of his office, the Board of Directors may designate another member of the Corporation to act temporarily in his place.

Section 5. Reports to the Board of Directors by any duly appointed committee shall be presented in writing, signed by the acting chairman and by the acting secretary, if any, of such committee; and all such reports shall become a part of the permanent records of the Corporation.

Section 6. All books of account, minutes of meetings, committee reports, and other records of this Corporation shall be available to the members of the Corporation.

Section 7. Each member of the Corporation shall be provided with a copy of these By-Laws without specific charge for same.

This is to certify that the attached copy of the revised By-Laws of Little Hunting Park, Inc. is as submitted by the Ad Hoc Committee for By-Laws Revision comprising of H. J. Peake, Chairman, L. M. Courson, and W. D. Lincicome, as such revision was considered, revised further and adopted by the Board of Directors at a regular monthly meeting, held at 921 Cornell Drive, Alexandria, Virginia, on April 18, 1961, and the same is duly recorded in the minutes of the said meeting of that date.

JOHN R. HANLEY, President

Attested:

BETTY A. ARMSTRONG, Secretary

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTIE HUNTING PARK, INC., et al.,	:	
Defendants.	:	

FILED
JUL 5 1966
THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

STATEMENT OF POINTS AND AUTHORITIES
FOR AMENDING THE BILL OF COMPLAINT

I. In Virginia, amendment of the complaint in furtherance of justice is favored and liberally allowed.

Sec. 8-119, Code of Virginia, 1950

Rule 2:12, Equity Practice and Procedure

Haskins v. Haskins, 185 Va. 1001, 41 S. E. 2d 25,30

Wolford v. Williams, 195 Va. 489, 78 S. E. 2d 660, 666

II. Amendment may be made at any time or stage of the proceeding, and the fact that when an amended complaint is submitted a demurrer to the original complaint is pending is no reason why the filing of the amended complaint should not be allowed.

Sec. 8-119, Code of Virginia, 1950

Bremner v. Shafer, ___Wash.___, 43 P. 2d 27, 29

Euster v. Standard Accident Ins. Co., 139 Pa. Sup. 6, 10 A. 2d 877, 879

Moore v. Bryan, 52 Ga. 272, 183 S. E. 117, 121

Goins v. Sargent, 196 N. C. 478, 146 S. E. 131, 132-133

Bennett v. Rewis, 211 Ga. 507, 87 S. E. 2d 52, 54

71 C. J. S. Pleading, Sec. 287

Respectfully submitted,

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N. W.
Washington, D. C. 20036

Peter Ames Eveleth
217 Fifth Street, S. E.
Washington, D. C. 20003

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Statement of Points and Authorities was served by mail, postage prepaid, this _____ day of July 1966, on John Charles Harris, Esq., 1500 Belle View Boulevard, Alexandria, Virginia

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al.,	:	
Defendants.	:	

ORDER TO PERMIT FILING OF AMENDED BILL OF COMPLAINT

This cause came on for hearing on July 8, 1966, on plaintiffs' motion for an order permitting the filing of an amended bill of complaint, and it appearing to the Court that said motion should be granted, it is

ORDERED, ADJUDGED AND DECREED that:

1. Leave be granted the plaintiffs to file the amended bill of complaint;

2. The defendants shall have twenty one (21) days from the date of this order to make any response to said amended bill.

Entered:

July 21, 1966

Bernard S. Jennings
Judge
Circuit Court of Fairfax County

Consent:

Allison W. Brown, Jr.
Attorney for Plaintiffs

Attorney for Defendants

Entered in Chancery Order Book No. 113 at page 543 and 34,

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR. et al

Plaintiffs

vs.

LITTLE HUNTING PARK, INC. et al

Defendants

IN CHANCERY NO. 22752

FILED

AUG 9 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

DEMURRER

Comes now the defendants and demur to the Amended Bill of Complaint upon the following grounds:

I. The Bill of Complaint fails to state sufficient facts to constitute a cause of action against the defendants.

II. The plaintiffs, by their action prays the court to overturn the decision of the Board of Directors of a private club and grant him the privilege of membership in that club.

III. The plaintiff asks for a money judgment of the defendant by reason of their exercising their lawful right in selecting members of their club.

IV. That the plaintiff's right of action is against his lessor under the terms of his lease for the defendants have had no contractual agreement with the plaintiff.

V. That the plaintiffs, Laura Freeman, Dale L. Freeman and Swayne L. Freeman are not proper parties to this action.

Wherefore, your defendants pray that this demurrer be sustained without further leave to amend and that they be dismissed with their costs.

LITTLE HUNTING PARK, INC. et al

By: _____
Counsel

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this demurrer was mailed to Robert M. Alexander, Counsel for plaintiffs, at his office, this 8th day of August, 1966.

John Chas. Harris

John Chas. Harris

Harris & Roark
Counsel for Defendant

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants.	:	

FILED

AUG 10 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' DEMURRER

STATEMENT OF THE CASE

This is an action for injunctive relief and monetary damages brought by T. R. Freeman, Jr. and Laura Freeman, his wife, in their own capacities and as representatives of their two sons, Dale and Dwayne, ages 6 and 5, respectively. The defendants are Little Hunting Park, Inc., a Virginia corporation, and eight persons who were directors of the corporation at times material herein. The Bill of Complaint, as amended, embodies two causes of action, one of which asserts the wrongful interference by the defendants with the performance of a deed of lease entered into February 1, 1965, and thereafter renewed, between T. R. Freeman, Jr., as lessee, and Paul E. Sullivan, lessor. The Complaint also alleges conduct constituting wrongful deprivation by the defendants of the plaintiffs' full use and enjoyment of the leasehold estate demised to T. R. Freeman, Jr. under the aforesaid deed of lease.

Dr. and Mrs. Freeman and their two sons, ages 5 and 6, have resided since about February 1, 1965, in a house in the Bucknell Manor subdivision of Fairfax County which Freeman rents from Sullivan. The deed of lease between the parties describes the property demised as "the dwelling located at 970 Quander Road, Bucknell Manor, Alexandria 6, Virginia 22306, and Little Hunting Park, Inc. pool share No. 290." The rent is stated as $1,548.00 annually payable in monthly installments of $129.00.

Defendant Little Hunting Park, Inc. was incorporated in 1954 under

Section 13-220 of Title 13, Code of Virginia, 1950 (1949), for the purpose, as set forth in its certificate of incorporation and by-laws (Amended Bill of Compl., Exhs. A and B, respectively), of constructing and operating a community park and recreation facility, including a swimming pool for the benefit of persons in the subdivisions known as Bucknell Manor, Beacon Manor, White Oaks, Bucknell Heights and certain adjacent neighborhoods in Fairfax County, Virginia. If a person is a resident of, or owner or former owner of a housing unit in one of the designated geographical areas, and is an adult, he is eligible for membership in the defendant corporation, according to its by-laws. The by-laws also provide that membership shares may be transferred or temporarily assigned to such an eligible person.

The Bill of Complaint shows that in May 1965, the lessor, Sullivan, pursuant to his contractual obligation to Freeman, performed all necessary acts prescribed by the certificate of incorporation and by-laws of Little Hunting Park, Inc to effect the assignment of membership share No. 290 to T. R. Freeman Jr. Additionally, Freeman, thereafter took all necessary steps required by the certificate of incorporation and by-laws to qualify himself as an assignee of share No. 290. Although Freeman possesses all the qualifications for membership prescribed by the by-laws of the defendant corporation and has therefore been eligible at all times to receive the assignment of membership share No. 290, the defendant directors have refused to approve, and the corporation continues to refuse to approve, the assignment of membership share No. 290 to Freeman. Freeman and his wife and children are Negroes and it is undisputed for the purpose of this proceeding that the defendants' refusal to approve the assignment of share No. 290 from Sullivan to Freeman is solely because of the race or color of Freeman and the members of his family.

By way of relief, plaintiffs seek an order compelling the defendants to approve the assignment of Little Hunting Inc. membership share No. 290 to T. R. Freeman, Jr., and further restraining the defendants from interfering with and depriving plaintiffs of the full use and enjoyment of the leasehold estate demised by Sullivan to T. R. Freeman, Jr. Plaintiffs also seek judgment against the defendants in the amount of $15,000, actual and punitive damages, as well as costs and counsel fees.

ARGUMENT

I. INTRODUCTION

It is clear from the foregoing, that the defendants, by refusing to approve Sullivan's assignment to T. R. Freeman, Jr. of membership share No. 290, have interfered with the performance of the express terms of the deed of lease entered into by the parties on February 1, 1965, and subsequently renewed. It is equally clear that the defendants, by their conduct, have deprived Freeman and his family of the use and enjoyment of the full leasehold estate covered by the deed of lease. The lease specifically demised to Freeman, not only the residence in Bucknell Manor, but in addition, "pool share No. 290." This entire leasehold estate constituted the consideration for which Freeman agreed to pay monthly rent of $129.

By the refusal of the dependants to approve the assignment to him of membership share No. 290, Freeman and his family have been wrongfully deprived of the use of the community swimming pool and other recreation facilities maintained and operated by the defendants. The Freemans have thereby incurred diminishment of the value, desirability and attractiveness of the leasehold estate demised by Sullivan, and they have suffered physical and psychological damage because of their inability to use these healthful recreation facilities.

The defendants base their demurrer on the assertion that Little Hunting Park, Inc. is a "private club", thereby contending that they have at no time acted wrongfully in refusing to approve Sullivan's assignment of membership share No. 290 to Freeman. This defense does not suffice, however, for reasons which we show below.

II. THE RESTRICTION IMPOSED BY THE DEFENDANT DIRECTORS ON THE ASSIGNMENT OF MEMBERSHIP SHARE NO. 290 IS NOT AUTHORIZED BY, AND IS CONTRARY TO, THE VIRGINIA CORPORATION LAW.

The charter or certificate of incorporation of the corporate defendant (Amended Bill of Compl., Exh. A) contains no limitation on the transfer or assignment of membership shares, and therefore, for the reasons shown below, the refusal of the defendant directors to permit Sullivan to assign membership share No. 290 to T. R. Freeman, Jr. violates the Virginia corporation law.

Little Hunting Park, Inc., as its name indicates, is an incorporated

association, and is therefore subject in its actions to the provisions of the Virginia corporation statutes, as well as the general principles of law governing corporations as developed by the courts of this Commonwealth.[1] At the time of defendant's incorporation in 1954 as a non-stock corporation, and continuing until 1956 when the General Assembly revised the State's corporation laws, the Code provided that the general provisions of the corporation law were equally applicable to both stock and non-stock corporations.[2] Therefore, in ascertaining the rights and relationship between the non-stock corporation and its member it was recognized that the principles governing shareholder rights in stock corporations were equally applicable to non-stock corporations. Hence, as the Court of Appeals held in Baird v. Tyler, 185 Va. 601, 39 S.E. 2d 642, 645, "/T/he rights of members of a non-stock corporation are the same as those of a stockholder in an ordinary corporation."

One of the rights most carefully protected by courts is the right of a shareholder or member to freely transfer the evidence of his ownership in the corporation.[3] Since shares of stock in a corporation are personal property, the owner thereof, like the owner of other personal property, has an absolute and inherent right, as an incident of his ownership, to sell and transfer his shares at will. The judicial concern with the protection of this right is manifested in several respects. Since restrictions imposed by the corporation on the right to transfer its shares are in derogation of the principle of free

1/ The corporation statutes are part of the charter of every corporation formed under the laws of this State. Specific provision to this effect is contained in the present corporation law, and was also contained in the law prior to 1956, the year the General Assembly enacted a general revision of the State's corporation statutes. Sec. 12.1-290 Code of Virginia, 1950 (1964 Replace. Vol.); Sec. 13-3 Code of Virginia, 1950 (1949).

2/ "As used in this title, the terms 'corporation' or 'company' shall include all corporations chartered . . . under the general incorporation laws of this State, . . . and all trusts, associations, and joint-stock companies, having any powers or privileges not possessed by individuals or unlimited partnerships . . . . ; the term 'charter' shall be construed to mean a charter of incorporation by or under which any such corporation is formed . . . . Sec. 13-1 Code of Virginia, 1950 (1949).

3/ "The shares of stock in every corporation shall be personal property and shall be transferable on its books in such manner and under such regulations as the by-laws may provide." Sec. 13-105 Code of Virginia, 1950 (1949).

This not in present code -

13.1-211 Membership shall NOT be transferable

alienability, they are regarded with disfavor, and "are to be strictly construed." Monacan Hills, Inc. v. Page, 203 Va. 110, 122 S.E. 2d 654, 657. See also Wainwright v. Bankers Loan & Investment Co., 112 Va. 630, 72 S.E. 129, 130. Moreover, courts require a corporation which seeks to restrict the right to alienate shares to set forth in specific terms, in its articles of incorporation, the nature of the restriction which it wishes to impose. Thus, it is well settled that a by-law alone cannot render the alienation of shares subject to the unrestrained discretion of the corporation, its directors, officers or shareholders. 8 Fletcher CYCLOPEDIA OF CORPORATIONS Sec. 4205, citing, inter alia, Feckheimer v. National Exchange Bank of Norfolk, 79 Va. 80; and see Fletcher at Vol. 12, Secs. 5454, 5452; Carlson v. Ringgold County Mutual Telephone Co., 252 Iowa 748, 108 N.W. 2d 478, 484-485; Annot. 65 ALR 1159, 1165-1168; 18 AM JUR Corporations Secs. 383, 385; Morris v. Hussong Dyeing Machine Co., 81 N.J. Eq. 256, 86 Atl. 1026, 1028-1029. 4/

Had the directors of the defendant corporation desired to subject the transfer or assignment of shares to their unrestricted discretion, the proper course they should have undertaken would have been to seek proper authorization from the members to amend the charter of the corporation. 5/ Since the directors

4/ The Morris case involved an interpretation of the New Jersey corporation law which contained a provision, identical to the Section 13-105 of the Virginia statutes, supra (Code of Virginia, 1950 (1949)) declaring shares of stock to be personal property transferable in such manner as the by-laws of the corporation provide. The court held that under the New Jersey equivalent of Section 13-105 the directors of a corporation could only be given the authority under a by-law to regulate or approve the formalities of transfer of a share, but not to restrict the absolute right of transfer, and that any attempt to accomplish the latter through a by-law is necessarily void. Prior to its revision in 1956, the Virginia corporation law was patterned after the New Jersey statutes, and hence interpretations by the courts of that State, were accorded highly persuasive effect by the Virginia Court of Appeals. See Thomas Branch & Co. v. Riverside & Dan River Cotton Mills, 139 Va. 291, 123 S.E. 542, 544; News-Register Co. v. Rockingham Publishing Co., 118 Va. 140, 86 S.E. 874, 877; Gibson, The Virginia Corporation Law of 1956, 42 Va. L. Rev. 445, 447.

5/ Under the 1956 revision to the corporation statute, in order to amend the corporation's charter, the board of directors must adopt a resolution finding that the proposed amendment is "in the best interests of the corporation," and approval must be obtained from over two-thirds of the votes of members present or represented by proxy at an annual or special membership meeting. Sec. 13.1-236, Code of Virginia, 1950 (1964 Replace. Vol.).

have not sought nor received such authorization from the members, they are powerless by by-law alone, to arrogate such authority to themselves and impose the instant restriction.

In 1956, in connection with the revision of the State's corporation laws, the General Assembly enacted the Virginia Non-Stock Corporation Act, making several changes in the law governing non-stock corporations.[6] The new act, in effect, recognized the state of the law as it had previously been developed through court decisions, namely, that the relationship between the non-stock corporation and its member must be governed by provisions set forth in the corporation's charter. With respect to corporations created before January 1, 1957, such as defendant, the rights of members granted under the former statute were preserved -- at least until the corporation amended its charter.[7] Furthermore, whether a corporation's charter was adopted either prior to, or subsequent to, January 1, 1957, the new law imposes the specific requirement that if it has members, the qualifications for membership must be set forth in its articles of incorporation.[8] As shown above, the certificate of incorporation of defendant corporation omits all reference to membership qualifications or any restrictions on the transfer of shares which might be read as membership qualifications. It is thus evident that the defendant corporation does not meet the requirement contained in the newstatute, namely, that the corporate articles set forth standards to govern the directors, in the exercise of their discretion in passing upon applicants for membership. It is clear under the current provisions of the Code that in the absence of any qualifica-

6/ The new law is patterned after the Model Non-Profit Corporation Act of the American Bar Association. Gibson, supra, 42 Va. L. Rev. at 450.

7/ Sec. 13.1-211 of the present Code provides that "members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by the articles of incorporation." Hence, it is not relevant here that with respect to corporations organized subsequent to 1957, the same section contains a clause restricting the right of members to transfer memberships.

8/ "If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of members of each class shall be set forth in the articles of incorporation." Sec. 13.1-211. See also, Sec. 13.1-231(d). This requirement is made applicable to all non-stock corporations existing on January 1, 1957 by Sec. 13.1-290.

tions for membership appearing in the corporation's charter, the directors, at the very least, do not possess unfettered discretion to impose restrictions on the transfer or assignment of shares.[9] In short, the directors may not, without charter authorization erect artificial barriers to the alienation of shares.

III. THE RESTRICTION IMPOSED BY DEFENDANT DIRECTORS ON THE ASSIGNMENT OF MEMBERSHIP SHARE NO. 290 IS NOT AUTHORIZED BY, AND IS CONTRARY TO, THE CERTIFICATE OF INCORPORATION AND BY-LAWS OF LITTLE HUNTING PARK, INC.

The certificate of incorporation of Little Hunting Park, Inc., in accordance with the requirements of the Virginia corporation law, sets forth the purposes for which it was established.[10] These purposes include, inter alia maintaining "a community park and playground facilities" and managing "real and personal property for community recreation purposes"(Amended Bill of Compl., Exh. A). The by-laws define this "community" of persons to include all those "who reside in, or who own, or who have owned housing units" in four specified subdivisions of Fairfax County, as well as such other areas as may be authorized by the board of directors (Amended Bill of Compl., Exh. B). Thus, as shown in its charter and by-laws, the purpose for which the defendant corporation was organized was to develop recreational facilities, including a swimming pool, for the benefit of members of a specified geographical "community" in Fairfax County. Hence, the swimming pool which defendant corporation maintains is, by its own characterization, a community facility --- and it has been so represented to persons who have purchased membership shares.

Consistent with this declared corporate purpose, the defendant cor-

9/ It is significant that while the new statute permits the corporation to set forth qualifications for membership, nowhere does it grant the corporation the authority to condition membership on the absolute discretion of the directors. To grant the directors such unfettered discretion would directly defeat the intent of the statute, for the "qualifications and rights of members" would be governed not by the charter, but by the whim of the directors. "The statute does not provide for admission by vote of the directors or members, but confines the power to the adoption of . . . /articles of incorporation/prescribing qualifications and limitations." Meyers v. Lux. 76 S.D. 182, 75 N.W. 2d 533, 536; and see Morris v. Hussong Dyeing Machine Co., supra, 86 Atl. at 1028-1029.

10/ Under both the 1956 and predecessor corporation statutes a non-stock corporation is required to set forth, in its articles of incorporation, the purposes for which it is formed. Sec. 13-221(3) Code of Virginia, 1950 (1964 Replace. Vol.).

poration has not sought to limit its membership in any other manner than by a residence qualification -- with one additional requirement of age, i.e., a person must be an adult in order to be a member (Exh. B, Art. III, Sec. 3).[11] An individual's personal characteristics -- let alone his race or color -- are nowhere mentioned as a determinant of membership eligibility.[12] Indeed, membership is not even personal, but is on a "family unit" basis. A "family unit" is defined in the by-laws as including not only all persons of the same immediate family, but others as well, who are dependent on the member and reside in his household (Ibid.) Moreover, neither the corporate articles nor the by-laws impose any restriction on the use of the corporation's facilities by guests of members.

The by-laws of the defendant corporation expressly permit the transfer or assignment of membership shares to persons "eligible" for membership -- i.e. individuals who satisfy the residence and age qualifications previously referred to.[13] We will discuss in more detail in a later section of this Memorandum the practical significance from the standpoint of the shareholder, that attaches to his ability to freely transfer or assign his share. It should be emphasized here, however, that the ability to transfer or assign a membership to an "eligible" person constitutes an important right under the contract between the member and the corporation. It has long been recognized that corporate articles constitute a contract between a corporation and its members. Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 517; Monacan Hills, Inc. v. Page, supra, 122 S.E. 2d at 657. Hence, where, as here, a corporation states in its charter that its purpose is to operate a community recreation facility,

11/ The mechanics of obtaining a certificate of membership, as provided in the by-laws, are that application must be made in writing and the purchase price must be paid (Exh. B, Art. III, Secs. 1, 2).

12/ The number of members is limited, according to the by-laws, to 600 (Exh. B, Art. III, Sec. 1d). This restriction, of course, does not go to the eligibility of a person for membership, but rather is a limitation imposed by the physical capacity of defendant's facilities. Defendants do not contend that the assignment of membership share No. 290 to the plaintiffs was disapproved because of this limitation.

13/ There is the additional procedural requirement imposed by the by-laws that transfers and assignments must be by written instrument in the form prescribed by the board of directors (Exh. B, Art. III, Sec. 5 c).

and its by-laws declare that eligibility for membership is determined on the basis of age and residence, and nothing more, such declarations constitute an offer "to any bona fide resident to whom the services of the association will be beneficial /of/ the right to become a member of said association upon making application therefor in writing as prescribed by the by-laws." Porterfield v. Black Bill & Doney Parks Water Users' Ass'n., 69 Ariz. 110, 210 P. 2d 335, 339.

Construing the instant by-laws in light of the foregoing, it is evident that "/t/he authority vested in the board of directors is merely to determine whether the applicant /or transferee/ possesses the qualifications prescribed in the constitution and by-laws of the association. If he does it is mandatory upon the board to admit him to membership." Id. at 338-339; and see Meyers v. Lux, supra, 75 N.W. 2d at 536-537; Morris v. Hussong Dyeing Machine Co., supra, 86 Atl. at 1028-1029. To permit the board of directors arbitrarily to create a new determinant of membership eligibility -- race or color -- in addition to those set forth in the by-laws, does violence to the most elementary principle of contract law which prohibits one party to a contract from unilaterally imposing conditions of performance on the other party beyond those agreed to at the time the contract was entered into. Sullivan's right to assign membership share No. 290 to a person of his choice is circumscribed only by the criteria expressly set forth in the contract between himself and the corporation. The attempted imposition by the directors of an additional eligibility determinant plainly contravenes the terms of the contract and is therefore impermissible.

Even where corporate by-laws have been construed as granting a broader range of discretion to directors in determining membership eligibility than is apparent here, it has been uniformly held that such discretion may not be arbitrarily exercised. The directors must act bona fide, in the legitimate interests of the corporation, and not contrary to public policy. 18 AM JUR Corporations Sec. 385; Annot. 2 ALR 2d 745, 766; Annot. 65 ALR 1159, 1165-1168; Cf. Monacan Hills, Inc. v. Page, supra, 122 S.E. 2d at 657. As plaintiffs will show in greater detail below, the racial restriction which defendant directors seek to impose on the transfer of shares in this corporation does not satisfy any of these criteria, and cannot be sanctioned by this Court consistently with the limitations of the Fourteenth Amendment to the Constitution. Moreover, to

construe the instant by-laws as defendants would interpret them, as granting the directors authority to impose a racial or any other arbitrary limitation on the transfer of shares would patently be an unreasonable construction. Such a construction could not reasonably have been within the contemplation of many persons who have purchased shares in the corporation over the 12 years that it has been in existence. Discrimination against one's fellow man on the basis of race is repugnant to many persons on moral and religious grounds, and it would be contrary to reason to give an interpretation to the by-laws implying that individuals with such convictions who are members of the corporation consented to the use of race as the factor determining to whom they could transfer their shares. The folly of such a contention is evident when it is recognized that if the directors are permitted to prevent the consumation of a transfer to an otherwise eligible person because of his race, then they may equally prevent the transfer according to any of their personal prejudices or predelictions. A prospective member, under such circumstances, must purchase a share at his peril, for his right to later transfer it is jeopardized by the future whims of the directors. Similarly, a present member's property rights in his share, which he has purchased for a substantial sum of money, could thus be effectively destroyed.

On the basis of the foregoing, it is apparent that the ground upon which defendants interpose their demurrer -- that defendant corporation is a "private club" -- is clearly inapposite to this case. By so characterizing the corporation, defendants would suggest that Little Hunting Park, Inc. is an intimate social group, similar to a fraternal order or similar organization devoted to fellowship and camaraderie, one in which friendships, tradition, and common social, educational or occupational backgrounds are of paramount importance. But Little Hunting Park, Inc. is not that kind of organization. For one thing, when it became incorporated it gave up some of the features of a completely private organization, in that it became subject to the requirements of the State corporation law. Secondly, Little Hunting Park, Inc. is unlike a fraternal organization or the more conventional type of private club, in that membership in such organizations is generally personal and there is no provision for the transfer or assignment of the evidence of membership, such as is the

case here. Nor would it normally be stated in the charter that such an organization has as its purpose the providing of "community" recreation facilities, or that membership is open to all persons living in a specified geographical area. Indeed, it is the antithesis of social clubs to base membership qualifications on geography alone. Cf. Rockefeller Center Luncheon Club, Inc. v. Johnson, 131 F. Supp. 703, 705 (D.C. N.Y.). Finally, any claim that the defendant corporation is a private club of the type characterized by intimate social relationships is belied by the fact that the defendant admits to membership 600 persons and that each membership subsumes all the members of a person's family, as well as dependents residing in his house.

IV. THE LIMITATION WHICH THE DEFENDANTS SEEK TO IMPOSE ON THE ASSIGNMENT OF SHARES IN THE CORPORATION WOULD HAVE THE EFFECT OF CREATING A RACIAL RESTRICTION ON THE USE OF REAL ESTATE IN THE BUCKNELL MANOR AREA, AND IF GIVEN VALIDITY BY THE COURT, WOULD VIOLATE THE PLAINTIFFS' RIGHTS UNDER THE FOURTEENTH AMENDMENT TO EQUAL PROTECTION OF THE LAWS.

The community or neighborhood swimming pool at issue here is typical of those that have been built in many of the suburbs of metropolitan Washington in recent years. Real estate development in these suburbs has proceeded at an extraordinary rate in the post-World War II period, and local governments in these jurisdictions have had all they can do to keep pace with the rapidly expanding population by attempting to provide adequate schools, roads, sewers, sanitation, libraries, and the like. Few, if any, public funds have been allocated to provide public recreation facilities. Local governmental units, striving to meet other pressing fiscal demands, have generally been unable to take responsibility for developing municipally owned swimming facilities, realizing that the need would be met to a major extent by the development of community swimming pools of the type involved here.

Residents and potential residents of these suburban communities, in turn, have come to rely on the existence of neighborhood swimming pools to meet their recreation needs. One of the considerations that tends to enter the thinking of every potential purchaser or potential tenant in a suburban residential neighborhood is whether there is a swimming pool in the community. Hence, the

existence or non-existence of a community swimming pool has a direct impact on the value of residential real estate. Residential areas lacking a neighborhood swimming pool have become the exception rather than the rule in the suburbs. The importance attaching to a community swimming pool in marketing residential real estate is attested to by the numerous advertisements appearing in the Washington metropolitan newspapers every week in which prominent mention is made of the existence of neighborhood pools.[14/]

The facts of the instant case also illustrate the real and tangible value that accrues to residential property by reason of the existence of a neighborhood swimming pool. Here, the parties thought enough of the lessor's swimming pool interest to specifically provide in the lease for it to pass as part of the leasehold. Certainly, it would be unrealistic to expect a short-term lessee such as Freeman to invest the money required to purchase a pool share which would only be used for the term of the lease.[15/] Therefore, the availability of a share on an assignment from the landlord, as such was the case with Sullivan's, is well suited to a tenant's needs. On the other hand, if such a share is not available for assignment to a potential lessee he might well choose to rent a home elsewhere.

It is apparent, therefore, that when the owner of a home purchases a share in a neighborhood swimming pool, he is making an investment that adds to the value of his property, and the membership share becomes for all effects an adjunct or appurtenance to his real estate. The share has a measurable effect on the value and desirability of the real estate not only, as indicated, if the property is later rented out, but also if it is sold. Clearly, a seller who is able to transfer a swimming pool share to the purchaser of his house is thereby

14/ A recent study, authorized by Congress, by the Outdoor Recreation Resources Review Commission indicates that "by the year 2000 swimming will be the most popular single outdoor recreation activity..." The report points out that "as the population grows and interest in water-based recreation increases, the already heavy recreation pressures on water resources will reach critical proportions. The problems stemming from this pressure are among the most difficult in the entire outdoor recreation field." Outdoor Recreation for America, p 173 (O.R.R.R.C. 1962).

15/ It may not be possible at a given time to purchase a membership share, because of a limitation on the number of shares available. The by-laws of defendant Little Hunting Park, Inc. limit the number of membership shares to 600. (Bill of Compl., Exh. B, Art. III, Sec. 1d.)

able to provide assurance to that purchaser that this valuable right to use the neighborhood recreation facility will be available to him. The seller, on the other hand, who does not own a swimming pool membership can provide no such assurance to a purchaser, and the marketability of his real estate may thus be impaired.

To give validity to the racial restriction which the defendants have here attempted to impose on the assignment of Little Hunting Park, Inc. pool share No. 290 would be to grant to defendants the power to limit on the basis of race the use and occupancy of real estate in the Bucknell Manor subdivision. If a white home owner such as Paul Sullivan cannot assign his pool share to a Negro, he is effectively foreclosed for all practical purposes from renting his house in the Bucknell Manor subdivision to any person of the Negro race. The white tenant can receive an assignment of the membership, but a Negro cannot. Similarly, when Sullivan decides to sell the house, he will be able to transfer the pool share to a white person, but not a Negro. Hence, there is substantial likelihood of being able to sell the house to a white person, while the market so far as Negro purchasers are concerned is practically eliminated. The racial restriction which the defendants thus have imposed results in a limitation not only on Sullivan's right to rent or sell his house to whomever he wishes, but also on the recognized constitutional right of a Negro to rent or purchase property in the subdivision, assuming he locates a willing landlord or vendor.

The instant case is governed by Shelley v. Kraemer, 334 U. S. 1, in which the Supreme Court invalidated racial restrictive covenants on real estate. In the case at bar Sullivan and Freeman are willing parties to a mutually acceptable rental agreement, the performance of which has been interfered with prevented by the defendants. Similarly, Shelley involved the attempt by a party to prevent performance of a contract for sale of a home which one d, the vendor, had voluntarily entered into with Shelley, a Negro vendee. me Court observed, the issue there arose from an attempt "to deny /Shelley/, on the grounds of race or color, the enjoyment of n premises which petitioners are willing and financially able h the grantors are willing to sell." 334 U.S. at 19. In e Court relied heavily on the earlier case of Buchanan v.

Warley, 245 U.S. 60, which had held unconstitutional the provisions of a city ordinance which denied to Negroes the right to occupy houses in blocks in which the greater number of houses were occupied by white persons and imposed similar restrictions on white persons with respect to blocks in which the greater number of houses were occupied by Negroes. The Buchanan case was instituted by the white vendor of property to compel specific performance by the Negro purchaser, who interposed the city ordinance in defense. The Court held that the ordinance violated due process of law in that it interfered with "the civil right of a white man to dispose of his property if he saw fit to do so to a person of color and of a colored person to make such disposition to a white person." 245 U.S. at 81.

The Supreme Court, in Buchanan v. Warley, in addition to holding that the ordinance in question violated the Fourteenth Amendment's proscription against state invasion of "life, liberty and property," also placed reliance on the Civil Rights Acts of 1866 and 1870 enacted pursuant to congressional authority granted by Section 5 of the Fourteenth Amendment.

42 U.S. C. Sec. 1982, deriving from 14 Stat. 27 Sec. 1 (1866) provides: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

42 U.S.C. Sec. 1981, which derives from 16 Stat. 144 Sec. 16 (1870), provides: "All persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens . . . "

It cannot be doubted that Buchanan and its progeny[16/] represent a strict limitation on the power of the State to dictate where people may live. Furthermore, in Shelley v. Kraemer the Supreme Court held that under some circumstances even a private agreement, if validated, has the force of law, and may violate the Fourteenth Amendment. The Court's decision in the latter case implicitly recognizes that a system of private racial restrictive covenants, if given

16/ See e.g., City of Richmond v. Deans, 281 U.S. 704, affirming 37 F. 2d 712; Irvine v. City of Clifton Forge, 124 Va. 781, 97 S.E. 310. (C.A.4)

validity, is in reality the equivalent of, and has the effect of a local zoning law binding those in the area subject to the restriction without their consent.

That Shelley v. Kraemer is controlling in the instant case is confirmed by the dissenting opinion of Justice Black in Bell v. Maryland, 378 U.S. 226. That was a sit-in case, in which Justice Black indicated his disagreement with the contention that it is unconstitutional state action for a State to enforce its trespass laws against a person who is asked to leave a business establishment where his patronage is not wanted. Justice Black carefully distinguished the State's protection of the unwilling property owner who has a right not to sell to, or admit, a particular person, from the situation in Shelley v. Kraemer where the Court held it was unconstitutional for the State to intervene through its judiciary and give legitimacy to efforts by a third party seeking to prevent performance of a contract willingly entered into between two persons. Referring to the restrictive covenant cases Justice Black stated (378 U.S. at 330-331):

> Thus, the line of cases from Buchanan through Shelley establishes these propositions: (1) When an owner of property is willing to sell and a would-be purchaser is willing to buy, then the Civil Rights Act of 1866, which gives all persons the same right to "inherit, purchase, lease, sell, hold, and convey" property, prohibits a State, whether through its legislature, executive, or judiciary, from preventing the sale on the grounds of race or color of one of the parties. Shelley v. Kraemer, supra 334 U.S., at 19. (2) Once a person has become a property owner, then he acquires all the rights that go with ownership: "the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land." Buchanan v. Warley, supra, 245 U.S., at 74. This means that the property owner may, in the absence of a valid statute forbidding it, sell his property to whom he pleases and admit to that property whom he will; so long as both parties are willing parties, then the principles stated in Buchanan and Shelley protect this right. (Emphasis in original.)

As shown by the Complaint before this Court, plaintiffs seek redress for the wrongful interference with their rights by the defendants. Defendants, as we have seen, prevented performance of the terms of the Sullivan-Freeman lease, and further, deprived plaintiffs of the full use and enjoyment of the demised leasehold estate. The racial limitation which defendants have imposed on the assignment of membership shares in the defendant corporation, and by that means on the use of real estate in the Bucknell Manor subdivision, may not be

given validity by this Court, and may not serve as a defense to the plaintiffs' causes of action. For if the Court sanctions or gives vitality to the racial restriction relied on by defendants, it would constitute state action depriving plaintiffs of equal protection of the laws as guaranteed them by the Fourteenth Amendment.

In Shelley v. Kraemer the Supreme Court held that state court action granting equitable relief in the enforcement of a racial restrictive covenant constitutes state action within the meaning of the Fourteenth Amendment. Barrows v. Jackson, 346 U.S. 249, decided four years later, involved a suit for damages against a white seller of residential real estate for breach of a covenant against conveyance to a non-Caucasian. The Court acknowledged the difference between the Shelley and Barrows cases, noting that in the latter a decree would not act directly to carry out the covenant, as was the case in Shelley. The question nevertheless posed in Barrows as the Court noted, was whether a state court could sanction a racial covenant by awarding damages for its breach without violating the Fourteenth Amendment. Answering the question in the negative the Supreme Court stated (346 U.S. at 254):

> To compel respondent to respond in damages would be for the State to punish her for her failure to perform her covenant to continue to discriminate against non-Caucasians in the use of her property. The result of that sanction by the State would be to encourage the use of restrictive covenants. To that extent, the State would act to put its sanction behind the covenants . . . The action of a state court at law to sanction the validity of the restrictive covenant here involved would constitute state action as surely as it was state action to enforce such covenants in equity, as in Shelley, supra.
>
> . . . If a state court awards damages for breach of a restrictive covenant, a prospective seller of restricted land will either refuse to sell to non-Caucasians or else will require non-Caucasians to pay a higher price to meet the damages which the seller may incur. Solely because of their race, non-Caucasians will be unable to purchase, own, and enjoy property on the same terms as Caucasians. Denial of this right by state action deprives such non-Caucasians, unidentified but identifiable, of equal protection of the laws in violation of the Fourteenth Amendment.

On the basis of Shelley, as supplemented by Barrows, it is now recog-

nized that it is impermissible state action for a state court in any way to "sanction" or give "vitality" to a racial restriction on the use or transfer of property. 346 U.S. at 258. The controlling principle was well stated by the Supreme Court of Colorado in Capitol Federal Savings & Loan Ass'n v. Smith, 136 Colo. 265, 316 P. 2d 252, a suit to quiet title brought by a Negro plaintiff to have declared invalid a racial covenant coupled with a forfeiture or reverter clause. Rejecting the defendant's argument that the Shelley doctrine was not controlling for the reason that the forfeiture provided for was "automatic" and did no more than create an "executory" or future" interest in the property, the court stated (316 P. 2d at 255):

> No matter by what ariose terms the covenant under consideration may be classified by astute counsel, it is still a racial restriction in violation of the Fourteenth Amendment to the Federal Constitution . . . While the hands may seem to be the hands of Esau to a blind Isaac, the voice is definitely Jacob's. We cannot give our judicial approval or blessing to a contract such as is here involved.
>
> . . . Because the United States Supreme Court has extracted any teeth which such a covenant was supposed to have, no rights, duties or obligations can be based thereon.

Accord: Robinson v. Mansfield, 2 Race Rel. L. Rep. 445 (Superior Ct., Pima County, Ariz.); and see Harris v. Sunset Island Property Owners, Inc., ___ Fla. ___, 116 So. 2d 622, 624.

Under the foregoing authorities, since state action in violation of the Fourteenth Amendment occurs when judicial sanction or validity is given to a racial restriction on property, it is immaterial whether the plaintiff to a lawsuit relies on a racial clause in asserting a right allegedly due him, or whether, as in the instant case, the racial restriction is revealed in a defensive posture. This point was well made in Clifton v. Puente, 218 S.W. 2d 272 (Tex. Civ. App.) where the plaintiff, who had seized possession of certain land, sued to obtain title under a clause in the deed providing for forfeiture in the event of sale to a person of Mexican descent. When Puente, the Mexican defendant, filed a cross-action for adjudication of title in his favor, Clifton invoked the restrictive covenant as a defense, asserting that Shelley merely proscribed a judgment affirmatively enforcing a racial restriction. The Court flatly rejected

Clifton's contention, stating (218 S.W. 2d at 274);

> It is as much an enforcement of the covenant to deny to a person a legal right to which he would be entitled except for the covenant as it would be to expressly command by judicial order that the terms of the covenant be recognized and carried out. No valid distinction can be predicated upon the position of a party (alleged to be an ineligible grantee) as a plaintiff or as a defendant. Under the decision of the Supreme Court above referred to /Shelley v. Kraemer/, judicial recognition or enforcement of the racial covenant involved here by a state court is precluded by the "equal protection of the laws" clause of the Fourteenth Amendment.

The same conclusion was expressed by the court in Spencer v. Flint Memorial Park Ass'n., 9 Race Rel. L. Rep. 1393 (Circuit Ct., Genessee County, Mich.). There a Negro who owned a cemetary lot (right of sepulture) in the defendant cemetary sued to enforce his right to inter a Negro in that lot. The defendant relied on the fact that when the burial right was purchased, it was on condition that non-Caucasians could not be buried in the cemetary. The cemetary argued, therefore, that this condition was a valid defense to the action. The court, rejecting the argument, stated (9 Race Rel. L. Rep. at 1396) that it could

> . . . conceive of no significant difference between the restrictive covenant being used as a basis for an action for either damages or an injunction by the proponent of such covenant and its assertion as a defense. If such covenant is recognized by a state court either as an offensive or a defensive legal weapon, it is supported in either case by all the coercive power of government and is equally an enforcement of the covenant such as would be barred by Shelley v. Kraemer.

As shown by the line of authority represented by Barrows v. Jackson and the cited court decisions, the racial limitation on the use of property which the defendants, by their conduct, have imposed in the Bucknell Manor area is no more cognizable by this Court because it serves as the basis for the defense, than would be the case if the defendants had initiated court action in the first instance to prevent Sullivan from renting his house and appurtenant swimming pool interest to a Negro.

V. LITTLE HUNTING PARK, INC. OCCUPIES A QUASI-PUBLIC ROLE IN THE COMMUNITY, AND THE REFUSAL OF ITS DIRECTORS TO APPROVE THE ASSIGNMENT OF MEMBERSHIP SHARE NO. 290 TO T. R. FREEMAN, JR. IS CONTRARY TO LAW AND PUBLIC POLICY

The basis of the defendants' demurrer, that Little Hunting Park, Inc. is a private club, does not signify the end of judicial inquiry. For what might seem like a private organization for some purposes, may in fact exhibit quasi-public characteristics warranting the exercise of judicial power to compel the admission to membership of one who has been wrongfully excluded. Thus, where individuals join as members of an organized group and exercise power in concert in such a way as to make it a matter of economic or political necessity that persons outside the group participate as members, a court will exercise jurisdiction to restrain the operation of an admission policy that is arbitrary or contrary to public policy.

A prime example of such an exercise of judicial authority has occurred in the case of labor unions. In the landmark case of James v. Marinship Corporation, 25 Cal. 2d 721, 155 P. 2d 329, the Supreme Court of California enjoined the enforcement of a union security contract under which the union required Negroes to become members of an "auxilliary" local but denied them full membership in the "white" local which negotiated the contracts, handled grievances and dispatched employees to their jobs. The court held that the union had wrongfully excluded the Negroes from membership, and that judicial intervention was warranted. In so concluding, the court stated that where a union has achieved such a degree of economic power that membership in it is for all practical purposes essential to working in one's chosen occupation

> ...such a union occupies a quasi-public position similar to that of a public service business and it has certain corresponding obligations. It may no longer claim the same freedom from legal restraint enjoyed by golf clubs, or fraternal associations. Its asserted right to choose its own members does not merely relate to social relations; it affects the fundamental right to work for a living. [155 P. 2d at 335]

In Williams v. International Brotherhood of Boilermakers, etc., 27 Cal. 2d 586, 165 P. 2d 903, the principle of the James case was applied to another

situation involving a denial of employment because of arbitrary exclusion from membership in a union. In declaring a racially discriminatory union membership policy to be invalid, the court stated, "The public interest is directly involved because the unions are seeking to control by arbitrary selection the fundamental right to work." 165 P. 2d at 906. Accord: Thorman v. International Alliance of Theatrical Stage Employees, etc. 49 Cal. 2d 629, 320 P. 2d 494; Directors Guild of America v. Superior Court, 48 Cal. Rptr. 710, 409 P. 2d 934; and see Betts v. Easley, 161 Kan. 459, 169 P. 2d 831, 839, 842-843; Cameron v. International Alliance of Theatrical Stage Employees, etc., 118 N.J. Eq. 11, 176 Atl. 692; Carroll v. Local 269 International Brotherhood, 133 N.J. Eq. 144, 31 A. 2d 223; Seligman v. Toledo Moving Picture Operators Union, 88 Ohio App. 137, 98 N.E. 2d 54, 59; Wilson v. Hacker, 200 Misc. 124, 101 N.Y.S. 2d 461.

Judicial concern has been shown in other cases for individuals whose rights have been circumscribed as the result of concerted action by persons acting through an organized group. Thus, courts have rejected the contention, usually made, that private organizations are immune from judicial supervision, when it is shown that an organization's activities have quasi-public implications. When such an organization, by means of arbitrary membership restrictions, is able to limit a person's exercise of basic rights and freedoms, judicially compelled admission to the organization is warranted. Professional associations are one such type of organization. In the leading case of Falcone v. Middlesex County Medical Society, 34 N.J. 582, 170 A. 2d 791, the plaintiff, a surgeon and obstetrician, sought an injunction compelling his admission to full membership in the defendant association. His application for membership had been rejected on the ground that he allegedly did not possess the necessary educational qualifications required by the society. The evidence showed that the plaintiff was licensed and fully qualified to practice his profession, that because he was not a member of the society he was refused hospital privileges in the area where he practiced, and that as a result he could not properly serve his patients. The court, after finding that the society's basis for refusing membership to Dr. Falcone was arbitrary and unreasonable, ordered him admitted. In explaining the result reached, the court stated (170 A. 2d at 799):

It must be borne in mind that the

> County Medical Society is not a private voluntary membership association with which the public has little or no concern. It is an association with which the public is highly concerned and which engages in activities vitally affecting the health and welfare of the people. . . Through its interrelationships, the County Medical Society possesses, in fact, a virtual monopoly over the use of local hospital facilities. As a result it has power, by excluding Dr. Falcone from membership, to preclude him from successfully continuing in his practice of obstetrics and surgery and to restrict patients who wish to engage him as obstetrician or surgeon in their freedom of choice of physicians. Public policy strongly dictates that this power should not be unbridled but should be viewed judicially as a fiduciary power to be exercised in reasonable and lawful manner for the advancement of the interests of the medical profession and the public generally . . .

Accord: Blende v. Maricopa County Medical Society, 96 Ariz. 240, 393 P. 2d 926; Greisman v. Newcomb Hospital 40 N.J. 389; 192 A. 2d 817; and see Kurk v. Medical Society of the County of Queens, Inc., 46 Misc. 2d 790, 260 N.Y.S. 2d 520, reversed on other grounds, 24 App. Div. 2d 897, 264 N.Y.S. 2d 859; Meyers v. Lux, 76 S.D. 182, 75 N.W. 2d 533, 536; Porterfield v. Black Bill & Doney Parks Water Users' Ass'n, 69 Ariz. 110, 210 P. 2d 335, 339; Rice v. Flushing Hospital and Dispensary, 266 App. Div. 689, 40 N.Y.S. 2d 586.

As indicated by the foregoing authorities, in cases of arbitrary or discriminatory exclusion from membership, judicial authority will be exercised to control the power of quasi-public organizations -- that is "organizations, 'membership in which is an economic necessity' or 'those which are repositories of civic, civil or political rights.'" Falcone v. Middlesex County Medical Society, supra, 170 A. 2d at 796, quoting Trautwein v. Harbourt, 40 N.J. Super. 247, 123 A. 2d 30, 39, and citing Smith v. Allwright, 321 U.S. 649.[17/] There can be little doubt that power of the type involved in the foregoing cases is similarly wielded by the defendant corporation. We have shown how the membership

17/ In Smith v. Allwright the Supreme Court held that when a political party, even though a private voluntary organization, conducts primary elections which are part of the state machinery for choosing public officials, citizens may not be excluded from voting on account of race or color.

policies of Little Hunting Park, Inc. can directly control the racial composition of the neighborhood from which it draws its members. By disapproving the assignment or transfer of membership shares to Negroes, this private organization is able effectively to foreclose Negro occupancy of homes in the area; the effect of such a policy is identical to a zoning ordinance based on race or color. See Shelley v. Kraemer, supra. The effect of the racial policy of the defendant corporation is remarkably like that which was at issue in Terry v. Adams, 345 U. S. 461. There a self-governing voluntary political club which nominated candidates for public office, and wielded power by which it was able effectively to control the outcome of the Democratic Party primary election was held by the Supreme Court to be subject to constitutional restraints against race discrimination. And see Marsh v. Alabama, 326 U.S. 501, involving a private company town which, because of its public characteristics was held to be subject, the same as any municipality, to constitutional inhibitions with respect to citizen rights.

Judicial authority thus indicates that where, as here, private persons join in concert and exercise powers that are peculiarly akin to sovereign or public powers, their actions are indistinguishable from thoseof the State to the extent of the exercise of such power. Lewis, The Meaning of State Action, 60 Colum. L. Rev. 1083, 1097, 1115-1116. Or as the same writer has suggested, " . . . /W/hen the state through statute or common law doctrines, makes available machinery through which action of a governmental character may be undertaken by private persons, the state has a duty under the /Fourteenth/ amendment to couple the grant of power with restrictions against discrimination." Id. at 1116. This reasoning is implicit in the recent decision of the Court of Appeals for the Fourth Circuit in Hawkins v. North Carolina Dental Society, 355 F. 2d 718. There the court held that because state statutes gave the defendant society power to nominate and elect certain state officers, the State was involved in the activities of the society to such a degree that the society's exclusion of Negro dentists from its membership was impermissible state action under the Fourteenth Amendment. In the course of the controversy giving rise to the Hawkins litigation the offending state statutes were repealed, thus ostensibly severing the society's public ties and returning it to the category of a private organiza-

tion. Chief Judge Haynesworth writing for the court, however, in a searching opinion in which he drew on the article by Professor Lewis cited supra, 60 Colum. L. Rev. 1083, rejected the argument that repeal of the statutes rendered the society's activities completely private and free from the proscriptions of the Fourteenth Amendment. Emphasizing that it is an organization's "exercise of its practical power to control or influence" public action that determines whether its conduct is "within the constitutional requirements" (355 F. 2d at 722), Judge Haynesworth expressed the court's view that in the circumstances of that case the society continued to exercise a public function which brought its activities within the purview of the Fourteenth Amendment. Also see Evans v. Newton, 382 U.S. 296, 301-302, where the Supreme Court held that a private park may acquire public characteristics, thereby rendering control of its use on the basis of racial policies unconstitutional, regardless of who "has title under state law." Ibid. The Court, noting that a park is like a fire department or a police department that traditionally serves the public, stated (ibid.):

> Mass recreation through the use of parks is plainly in the public domain, Watson v. Memphis, 373 U.S. 526; and state courts that aid private parties to perform that public function on a segregated basis implicate the State in conduct proscribed by the Fourteenth Amendment. Like the streets of the public town in Marsh v. Alabama, supra, the elective process of Terry v. Adams, supra, and the transit system of Public Utilities Comm'n v. Pollack, supra, /343 U.S. 451/, the predominant character and purpose of the park are municipal.

CONCLUSION

For the reasons stated, it is respectfully submitted that the defendants' demurrer should be overruled.

Robert M. Alexander

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D. C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D. C. 20003

August 1966

COUNSEL FOR PLAINTIFFS

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTIE HUNTING PARK, INC., et al.,	:	
Defendants.	:	

FILED

AUG 10 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Plaintiffs' Memorandum in Opposition to the Defendants' Demurrer in the above-captioned case has been served this 9th day of August 1966, by mailing it, postage prepaid, to John Charles Harris, Esq., 1500 Belle View Boulevard, Alexandria, Virginia, counsel for the defendants.

Robert M. Alexander

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

COUNSEL FOR PLAINTIFFS

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
Plaintiffs	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al.,	:	
Defendants.	:	

ORDER

This cause came on for hearing on September 9, 1966, on defendants' demurrer to the amended bill of complaint, and upon consideration of argument by counsel, and the Court being of the opinion that the demurrer should be overruled, it is by the Court:

ORDERED, ADJUDGED and DECREED that the demurrer be, and it hereby is, overruled.

It is further ORDERED, ADJUDGED and DECREED that defendants shall have twenty-one (21) days to file a responsive pleading herein, if they so desire.

ENTERED: September 23rd, 1966

JUDGE

Entered in Chancery Order Book No. 115 at page 289 and 2/.

We ask for this:

Robert M. Alexander

Allison W. Brown, Jr.

Patty Ann Enchelt

Attorneys for Plaintiffs

Attorney for Defendants

FILED

SEP 30 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al Plaintiffs	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al Defendants	:	

ANSWER AND GROUNDS OF DEFENSE

1. That they admit the allegations contained in paragraph 1.

2. That they deny the allegations contained in paragraph 2. Little Hunting Park, Inc. is a Virginia corporation organized as a private membership club and not as a community facility.

3. That they admit the allegations contained in paragraph 3.

4. That they admit the plaintiffs reside on Quander Road in Bucknell Manor but are without sufficient information to admit or deny any details of the terms of any lease.

5. That they are without sufficient knowledge to admit or deny the allegations contained in paragraph 5.

6. They deny the allegations contained in paragraph 6 since the requirements for membership are not fully stated. The By-Laws further provide for approval of the Board of Directors.

7. They admit the allegations contained in paragraph 7 but such assignment is subject to the approval of the Board of Directors.

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

8. They admit the allegations contained in paragraph 7A that Freeman possessed the qualifications outlined in paragraph 6 but deny that he was eligible to membership on these qualifications alone.

9. They admit paragraph 7B.

10. They admit, as to the allegations contained in paragraph 7C, that Freeman filed an application for assignment of membership privileges as required by the By-Laws of the corporation.

11. They admit the allegations contained in paragraph 8.

12. They deny the allegations contained in paragraph 9.

13. That they admit, as alleged in paragraph 10, that they have not approved Freeman for assignment of membership privileges and have denied use of the facilities of the corporation to Freeman, his wife and children since he is not a member of the corporation.

14. That they deny the allegations contained in paragraphs 11, 12, 13, 14, 15 and 16.

By way of further defense, the defendants aver:

I. That they are a privately organized club and, in accordance with the By-Laws of the corporation, membership or membership privileges may be granted only upon the approval of the Board of Directors.

II. That the application for assignment of membership privileges was made by T. R. Freeman, Jr. and the defendants have had no dealings whatsoever with the plaintiffs Laura Freeman, Dale L. Freeman and Dwayne L. Freeman.

III. That the said T. R. Freeman, Jr. did appeal his non-acceptance as an assignee of membership privileges to the entire membership at a special meeting held on the 29th day of July, 1965, and, at such meeting the membership by an overwhelming vote, did sustain the action of the Board of Directors.

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

IV. That the defendants did not act arbitrarily or maliciously towards the plaintiffs at any time whatsoever.

Now having fully answered, your defendants pray that the relief requested by the Bill of Complaint be denied and that they be dismissed with their costs.

LITTLE HUNTING PARK, INC.

By: Leavy Lennon
President

Robert W. Eggen

Virginia Moore

Ronald L. Arnette

Marjorie M. Madsen

Raymond R. Rieg, Jr.

Milton L. Johnson

Subscribed and sworn to before me this 28th day of September, 1966.

Notary Public

My commission expires: 8/13/69.

CERTIFICATE OF SERVICE

I do certify that on the 31st day of September, 1966, I mailed, postage prepaid, a true copy of the foregoing Answer and Grounds of Defense to Robert M. Alexander, Esquire, 1829 Columbia Pike, Arlington, Virginia.

John Chas. Harris
Counsel for Defendants

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al.	:	
Defendants.	:	

FILED

APR 3 1967

THOMAS P. CHAPMAN, JR
Clerk of the Circuit Court
of Fairfax County, Va.

NOTICE OF MOTION

Please take notice that the attorneys for the plaintiffs will present to the Court the attached Motion for Production of Documents and Records Under Rule 4:9 on Friday, April 7, 1967, at 10:00 A.M., or as soon thereafter as counsel may be heard.

Robert M. Alexander

Robert M. Alexander
Attorney for Plaintiffs

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
Plaintiffs,	:	FILED
v.	: In Chancery No. 22752	APR 3 1967
LITTLE HUNTING PARK, INC., et al.	:	THOMAS P. CHAPMAN, JR. Clerk of the Circuit Court of Fairfax County, Va.
Defendants.	:	

MOTION FOR PRODUCTION OF DOCUMENTS AND RECORDS UNDER RULE 4:9

Plaintiff T. R. Freeman, Jr. moves the court for an order requiring the defendants to produce and permit plaintiff to inspect and to have possession of for the purpose of photographing, each of the following documents and records:

1. Card files showing the names and addresses and all other information regularly maintained by the defendant corporation relative to present members of said corporation, including the number of the membership certificate held by each present member.

2. Card files or other records in the possession or control of any of the defendants showing the names and addresses of former members of the corporation, including the number of the membership certificate held by each former member.

The defendants have the possession, custody, or control of each of the foregoing documents or records. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

The plaintiffs require brief possession of the foregoing documents or records in order to have photographic copies made, as provided for in Rule 4:9, and for the reasons more fully shown in Exhibit A attached hereto.

Robert M. Alexander

Robert M. Alexander
Attorney for Plaintiffs
1829 Columbia Pike
Arlington, Virginia 22204

CERTIFICATE OF SERVICE

The plaintiffs' Motion for Production of Documents and Records Under Rule 4:9 was served this 2nd day of April 1967 by mailing a copy of the same, postage prepaid, to John Charles Harris, Esq., 1500 Belleview Blvd., Alexandria, Virginia.

Robert M. Alexander

Robert M. Alexander

Exhibit A

State of Virginia
County of Arlington

Robert M. Alexander, being duly sworn says:

1. The documents or records described in the attached motion are known by plaintiffs' attorney to be in the possession or control of the defendants.

2. Each of the documents or records described in the attached motion contains information tending to disclose the characteristics of the defendant corporation, particularly the geographic area from which it has drawn its current and former members, as well as information concerning transfers effected from past to current members.

3. Despite efforts by plaintiffs' attorneys to obtain the foregoing documents or records and the information they contain on a voluntary basis from the defendants, the defendants have refused to relinquish them or make them available except in an unfurnished room adjacent to the office of the defendants' attorney, which room does not contain a desk or table, nor adequate chairs or lighting. Moreover, the documents or records which have been furnished are not complete, but consist of only part of the materials described in the attached motion, and the defendants have placed severe limitations on their use, including the restriction that said records be maintained in alphabetical order, whereas the plaintiffs must arrange them in numerical order to work with them efficiently.

4. In order for the plaintiffs to use the information contained in the documents and records described in the attached motion in the manner most suitable to them, and in order to make a careful and detailed analysis of such information, they require photographic copies of said documents and records.

Robert M. Alexander
Robert M. Alexander

Subscribed and sworn to before me
this 2nd day of April 1967.

Audrey S. Alexander
Notary Public

Fairfax County Courthouse,
Fairfax, Virginia, 22030,
April 21, 1967.

Mr. Robert M. Alexander,
1829 Columbia Pike,
Arlington, Virginia.

Mr. John C. Harris,
1500 Belle View Boulevard,
Alexandria, Virginia.

Re: Freeman v. Little Hunting Park, Inc.;
In Chancery No. 22752.

Gentlemen:

It is my opinion that the conclusion formerly reached in this matter that the defendant corporation is a private social club is controlling in this case. No constitutional right of the plaintiff has been violated. He does not come within the protection of the Civil Rights Act. The charter and by-laws of the corporation constitute a contract between the corporation and the members and between the members themselves. Under the by-laws, transfers and assignments are subject to the approval of the Board of Directors. All parties were aware of this fact. Section 13-105 of the 1950 Code of Virginia, relied on by the complainant, has been repealed. The refusal to approve the assignment to complainant appears to be consistent with the law and with the articles of incorporation. Therefore the relief prayed for will be denied.

Mr. Harris can prepare a decree in accordance with the foregoing and submit it to Mr. Alexander for his endorsement. I am sending a copy of this letter to Mr. Brown.

Very truly yours,

James Keith.

JK:elc

Copy to Mr. Allison W. Brown, Jr.

VIRGINIA

FILED

APR 21 1967

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants.	:	

SUPPLEMENTAL STATEMENT OF POINTS AND AUTHORITIES

Plaintiffs request the Court to consider the following additional citations of authority in support of their contention that even should the Court find that Little Hunting Park, Inc. is a private association, the action of its board of directors created an unlawful restraint on the alienation of property, and is therefore void.[1/]

The common law prohibition against restraints on alienation applies equally to personal and real property. Thus, it is plaintiffs' position that the board of directors' action created an unlawful restraint both on the transfer and assignment of membership shares,[2/] and on the sale, rental or sub-rental of real property in the community served by Little Hunting Park, Inc.[3/]

1/ Plaintiffs, of course, do not concede that defendant corporation is a private and social club, but contend to the contrary, that the additional evidence introduced at trial - especially the showing that membership shares were owned in substantial blocks by Gosnell, Inc. and Monroe Development Corporation and by a local church - compels an opposite finding. Moreover, plaintiffs have shown that the "social" activities organized by defendant were of such limited nature as to readily distinguish it from fraternal orders and the like.

2/ See such cases as Morris v. Husson Dyeing Machine Co., 81 N.J.Eq. 256, 86 Atl. 1026, 1028-1029 cited at pp. 5 and 7 of plaintiffs' memorandum to the demurrer.

3/ Mountain Springs Ass'n v. Wilson, 81 N.J. Super. 564, 196 A.2d 270, 275-277; Tuckerton Beach Club v. Bender, 91 N.J. Super. 167, 219 A.2d 529. See also, White v. White, 108 W.Va. 128, 150 S.E. 531 and cases cited therein; and People's Pleasure Park v. Rohleder, 109 Va. 439, 61 S.E. 794, 795, 796.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.	:	
	:	
Defendants.	:	

ORDER FOR PRODUCTION OF DOCUMENTS AND RECORDS

This cause came on for hearing on April 7, 1967, on plaintiffs' motion for an order requiring the defendants to produce for discovery purposes certain documents, and it appearing to the Court that said motion should be granted, it is

ORDERED, ADJUDGED AND DECREED that:

1. The defendants shall produce forthwith and permit the inspection, copying or photographing, allowing the plaintiffs to withdraw from the possession of the defendants for such purposes, the following documents and records:

   a. Card files showing the names and addresses and all other information regularly maintained by the defendant corporation relative to present members of said corporation, including the number of the membership certificate held by each present member.

   b. Card files or other records in the possession or control of any of the defendants showing the names and addresses of former members of the corporation, including the number of the membership certificate held by each former member.

2. Any documents or records withdrawn from the possession of the defendants shall be returned to them ~~immediately~~ By NOON APRIL 10, 1967 after they have been inspected, copied or photographed by the plaintiffs.

Entered: April 24, 1967

James Keith
Judge
Circuit Court of Fairfax County

I ask for this:

Robert M. Alexander
Robert M. Alexander
Attorney for Plaintiffs

Seen:

John Charles Harris
Attorney for Defendants

Entered in Chancery
Order Book No. 120 at
page 571 and 34.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T.R. FREEMAN, JR., et al.,

Plaintiffs,

v.

LITTLE HUNTING PARK, INC., et al.,

Defendants.

IN CHANCERY NO. 22752

D E C R E E

THIS cause came to be heard this 12th day of April, 1967 upon the bill of complaint, the answer of the defendants, upon the taking of evidence, upon argument by counsel, upon due consideration of the memoranda of law submitted by counsel, and the courts specific finding that the defendant, LITTLE HUNTING PARK, INC., is a private, social club whose by-laws require approval of the board of directors for transfers and assignments of membership; that no constitutional right of the complainants have been violated and they do not come within the protection of the Civil Rights Act, it is, therefore,

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA, VIRGINIA

ADJUDGED, ORDERED and DECREED that the relief requested by the complainants be denied, to which ruling counsel for complainants except.

THIS DECREE IS FINAL.

Entered this 8th day of May, 1967.

James Keith
JUDGE

Entered in Chancery
Order Book No. 12 / at
page 94 and 4.

SEEN:

JOHN CHAS. HARRIS
Counsel for Defendants

SEEN AND EXCEPTED:

Robert M. Alexander
Allison W. Brown, Jr.
Peter Ames Eveleth

BY Robert M. Alexander
COUNSEL FOR COMPLAINANTS

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA, VIRGINIA

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants.	:	

FILED

JUN 8 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: Clerk of the
Circuit Court of Fairfax County
Fairfax, Virginia

The plaintiffs, T. R. Freeman, Jr., Laura Freeman, Dale L. Freeman and Dwayne L. Freeman, by their attorneys, hereby give notice of appeal from the decree entered in this case on May 8, 1967, and set forth the following assignments of error:

The Circuit Court erred:

1. In finding that Little Hunting Park, Inc. is a "private social club."

2. In finding that no constitutional right of the plaintiffs has been violated.

3. In finding that the refusal to approve the assignment of Little Hunting Park, Inc. membership No. 290 to T. R. Freeman, Jr. is consistent with the law, the articles of incorporation and by-laws of the defendant corporation.

The Circuit Court further erred in failing:

1. To find that the defendants' action of refusing to approve the assignment of Little Hunting Park, Inc. membership No. 290 from Paul E. Sullivan to T. R. Freeman, Jr. solely because T. R. Freeman, Jr. and the members of his family are Negroes, is contrary to law and null and void for reasons more fully set forth in the Amended Complaint /Para. 13, as amended/.

2. To find that the defendants, by their action of refusing to approve the aforesaid assignment of membership No. 290, have caused the plaintiffs to suffer serious and substantial injury.

3. To grant the relief prayed for in the Complaint.

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D. C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D. C. 20003

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the Notice of Appeal and Assignments of Error for the Plaintiffs has been served on the Defendants this 7th day of June 1967, by mailing a copy postage prepaid by first-class mail to their attorney, John Charles Harris, Esq., 1500 Belleview Boulevard, Alexandria, Virginia.

Robert M. Alexander
Attorney for Plaintiffs

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants.	:	

FILED

JUN 12 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

NOTICE

TO: Little Hunting Park, Inc., et al.
c/o John Charles Harris, Esq.
1500 Belleview Boulevard
Alexandria, Virginia

Please take notice that the plaintiffs in this cause will move the Court in accordance with the attached Motion for Correction of the Record on Friday, June 16, 1967, at 10:00 A.M. or as soon thereafter as counsel may be heard.

Robert M. Alexander
Attorney for Plaintiffs
1829 Columbia Pike
Arlington, Virginia 22204

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice was mailed, postage prepaid, this 11th day of June 1967 to John Charles Harris, Esq., 1500 Belleview Boulevard, Alexandria, Virginia.

Robert M. Alexander

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,

Plaintiffs,

v.

LITTLE HUNTING PARK, INC., et al.,

Defendants.

In Chancery No. 22752

FILED
JUN 13 1967
THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

MOTION FOR CORRECTION OF THE RECORD

Now come plaintiffs, T. R. Freeman, Jr. , et al., through their attorneys, and move the court to enter an order correcting the reporter's transcript in the above entitled cause in the following particulars:

Page	Line(s)	Now Reads	Correct to Read
3	24	have the right.	have the right to maintain this action.
4	4	share was	share assignment was
4	11	is not barred to	is not a bar to
12	12-13	Club bar negro family living in the subdivision."	Group Bars Negro Family Living in Subdivision."
12	17	was made on grounds other than race, but added that	was 'made on grounds other than race.' But he added that
12	18	the board did not	the Board 'did not
12	19	reasons."	reasons.'"
12	25	with the board?	with "The board".
13	6	said the Freemans	said 'the Freemans
13	7	are negroes. He	are Negroes.' He
13	8	they would	that would
13	9	and slander, but	or slander.' But
13	10	wasn't race, he	wasn't race,' he
13	17	Icanes	Ioanes
14	8-11	"Subject: T. R. Freeman, Jr. contest over Little Hunting Park Swimming pool referred to in the attached article in the front page of the third large section of the Washington Post this morning, was employed by the	"Subject: Theodore R. Freeman. The Theodore R. Freeman, Jr. referred to in the attached article on the front page of the "City Life" section of the Washington Post this morning was employed by the

Page	Line(s)	Now Reads:	Correct to Read:
14	13	a PhD	a recent Ph.D. graduate
14	14	showed an	has shown
14	20	he had hoped	it was hoped
14	23	and settle . . . advised he	to settle . . . advises that he
14	24	to two	to use two
15	1	Seaborne	Seabron
15	3	Seaborne	Seabron
16	11	date you have been	date? You have seen
16	16	only	one
16	16-17	letter of Plaintiffs'	letter of July 16th, Plaintiffs'
19	2	ever	every
20	20	labor	a lot of
21	19	Dr. Freeman	THE COURT: Dr. Freeman
24	7	an indiscriminatory	a nondiscriminatory
25	9	economics and	economics not
43	15	Bucknell, Inc.	Gosnell, Inc.
45	12	one	"one."
47	11	stimlus	stimulus
47	23	extent. As	extend, as
50	5	moved	lived
55	10	dover	cover
59	4	in the	within what
72	22	10:00 A.M., Saturday	10 AM, Easter Saturday
72	23	in the area,	of the area,
72	24	under are . . . in the	under, are . . . from the
72	25	Moore, Chairman of the Activity."	Frank, Chairman of Special Activities."
73	5	Marjory Mattson	Marjorie Madsen
73	6-21	Marjory Mattson, our special activity director, has arranged the following schedule of events for the season: Teen-age party, swimming, 7 to 9 P.M. and then dancing until 11:00 P.M., admission free, but you will have to furnish your own refreshments from the concession	Marjorie Madsen, our Special Activities Director, has arranged the following schedule of events for the coming season: Teen party, June 16, Wednesday; swimming, 7 to 9 P.M. and then dancing until 11:00 P.M., admission free, but you will have to furnish your own refreshments from the refreshment stand; members only, plus one guest from outside the area.

Page	Line(s)	Now Reads:	Correct to Read:
		standing members only with one guest outside the area, from 7 to 9 P.M., then dancing until 11:00, admission free. At this one LHP gives you free refreshments, members only. Teen party, August 11th, Wednesday, swimming from 7 to 9 P.M. then dancing until 11:00, admission twenty-five cents per person, members plus one guest, refreshment from the concession. Standing adult party, July 30th, Friday, swimming from 7:30 to 9:00 P.M., entertainment and refreshments. Children's party, August, refreshments in price. In case of bad weather and cool weather, other dates will be arranged.	Teen party, July 14, Wednesday; swimming from 7 to 9 P.M., then dancing until 11:00, admission free. At this one LHP gives you free refreshments; members only. Teen party, August 11, Wednesday; swimming from 7 to 9 P.M. then dancing until 11:00; admission twenty-five cents per person; members plus one guest; refreshments from the refreshment stand. Adult party, July 30th, Friday, swimming from 7:30 to 9:00 P.M.; entertainment and refreshments. Children's party, August 28, Saturday; swimming, games and fun from 2:00 P.M.-5:00 P.M. Refreshments and prizes. In case of bad weather or conflicting events, other dates will be arranged.

WHEREFORE, plaintiffs pray for an order of this Court authorizing the inclusion of the above mentioned matters in the reporter's transcript in this cause.

Robert M. Alexander

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th St., N.W.
Washington, D. C. 20036

Peter James Eveleth
217 Fifth Street, S.E.
Washington, D. C. 20003

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was mailed postage prepaid this 11th day of June 1967, to John Charles Harris, Esquire, 1500 Belleview Boulevard, Alexandria, Virginia.

Robert M. Alexander

V I R G I N I A ;

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T.R. FREEMAN, JR., et al., Plaintiffs	:	
v.	:	IN CHANCERY NO. 22752
LITTLE HUNTING PARK, INC., et al., Defendants	:	

FILED

JUN 22 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

AFFIDAVIT

I, JOHN CHAS. HARRIS, counsel for defendants in the above matter being duly sworn do state:

That on Monday the 12th day of June, 1967 at approximately 10:30 A.M., I did receive a letter dated Friday, June 9, 1967 from Allison W. Brown, Jr., Esquire, one of the counsel for the plaintiffs in the above action. Said letter informing me that on June 9, 1967, the reporter's transcripts of the above case would be submitted to Judge Keith, the trial judge.

That I was later informed by Judge Keith that he received the transcript on Monday, June 12, 1967 at 9:00 A.M. The transcript having been left with his secretary on Friday, June 9, 1967.

That I was given a copy of the transcript on Friday, June 16, 1967, at 1:20 P.M. by Allison W. Brown, Jr., Esquire.

That Mr. Brown's letter of June 9, 1967 did state, "As I indicated, the transcripts contain innumerable errors, and it has been a major task to draft necessary corrections to make them intelligible."

That Judge Keith did not rule on whether I had reasonable notice of the tender of the transcript but stated that he would

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

indicate the facts on the transcript with his signature.

That considering the size of the transcript and the numerous errors contained therein, I have not had reasonable opportunity to examine the copy tendered to me.

JOHN CHAS. HARRIS

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit

Personally appeared before me, JOHN CHAS. HARRIS, who being duly sworn, did state that the foregoing is true and correct.

NOTARY PUBLIC

My commission expires June 8, 1970

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Affidavit was mailed, postage prepaid, this 21 day of June, 1967 to Robert M. Alexander, Esquire, 1829 Columbia Pike, Arlington, Virginia.

JOHN CHAS. HARRIS

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants.	:	

ORDER

This cause came on for hearing on June 20, 1967, on plaintiffs' Motion for Correction of the Record, and it appearing to the Court that said motion should be granted, it is

ORDERED, ADJUDGED AND DECREED that the reporter's transcript of the hearing in this cause be corrected in the manner prayed for in the aforesaid motion.

Ernest Keith
Judge
Circuit Court of Fairfax County

I ask for this:

Allison W. Brown Jr. 6/19/67
Attorney for Plaintiffs

Seen:

Attorney for Defendants

VIRGINIA

FILED

JUL 1[illegible]

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al., Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al., Defendants.	:	

FILED

JUL 12 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED ON BEHALF OF APPELLANTS

The appellants designate the following portions of the record to be printed should an appeal be granted from the final judgment entered in the above-styled cause on May 8, 1967.

1. The following portions of the reporter's transcript:

FROM		TO	
Page	Line(beginning)	Page	Line(Inclusive)
1	1	1	20
2	9	2	18
6	3	7	7
41	2	44	16
44	22	46	12
46	20	51	1
58	2	60	3
60	7	61	5
61	11	68	18
69	24	74	15

2. The following additional materials:

a. Decree of the Court entered May 8, 1967.

b. Letter dated April 21, 1967, from Judge James Keith to counsel setting forth the decision in the case.

c. Notice of appeal and assignments of error.

Given under my hand this 11th day of July, 1967.

Robert M. Alexander
Counsel for Plaintiffs

I hereby certify that a copy of the foregoing designations was mailed to John Charles Harris, Esq., 1500 Belleview Blvd., Alexandria, Virginia, counsel for the defendants, this 11th day of July 1967.

Robert M. Alexander
Counsel for Plaintiffs

FILED

JUL 28 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	IN CHANCERY NO. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants	:	

DESIGNATIONS OF ADDITIONAL PORTIONS
OF THE RECORD TO BE PRINTED
ON BEHALF OF APPELLEES

The Appellees designate the following additional portions of the record to be printed should an appeal be granted from the final judgment entered in the above styled cause.

1. Reporters transcript in its entirety.

2. Affidavit of John Chas. Harris, (Item 78)

Given under my hand this 27th day of July, 1967.

JOHN CHAS. HARRIS
Counsel for Defendants

I hereby certify that a copy of the foregoing designations was mailed to Robert M. Alexander, Esq., 1829 Columbia Pike, Arlington, Virginia, counsel for plaintiffs, this 27 day of July, 1967.

JOHN CHAS. HARRIS
Counsel for Defendants

LAW OFFICES
HARRIS AND ROARK
601 BELLE VIEW BLVD.
ALEXANDRIA, VA.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants	:	

FILED
AUG 2 1967
THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

SUPPLEMENTAL DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED ON BEHALF OF APPELLANTS

The appellants designate the following additional portions of the record to be printed, supplementing the designation of record filed on July 12, 1967, should an appeal be granted from the final judgment entered in the above-styled cause on May 8, 1967. Appellants make this supplemental designation because the parties in this cause stipulated at trial that the record in No. 22751* be a part of the record in this cause.

1. The following portions of the reporter's transcript in No. 22751:

FROM		TO	
Page	Line (beginning)	Page	Line (inclusive)
1	1	1	19
7	1	19	10
27	14	28	5
133	7	138	8
138	14	139	16
140	2	142	19
143	23	145	10
146	4	151	3
163	9	164	25
175	22	177	17
178	4	178	7
182	4	193	10

* Paul E. Sullivan, et al. v. Little Hunting Park, Inc., et al., In Chancery No. 22751 (Circuit Court of Fairfax County, final judgment entered April 12, 1967).

Page	Line (beginning)	Page	Line (inclusive)
195	16	200	7
201	1	205	23
225	4	228	21
229	18	230	5
230	15	231	2
234	7	235	10
235	20	235	20 (Harris)
239	19	240	24 (problem)
241	10	241	10 (Brown)
247	22	248	3
249	13	250	8
251	14	252	27
253	20	254	5
277	17	278	5
280	11	281	19
282	3	282	6
292	1	293	5
297	1	298	6
298	10	298	25
300	11	302	15
315	2	316	11 (years)
316	13	317	8

2. The following additional materials in No. 22751:

   a. Decree of the Court entered April 12, 1967.

   b. Letter dated April 7, 1967, from Judge James Keith to counsel setting forth the decision in the case.

   c. Notice of appeal and assignments of error.

Given under my hand this 1st day of August 1967.

Robert M. Alexander
Counsel for Plaintiffs

I hereby certify that a copy of the foregoing designations was mailed to John Charles Harris, Esq., 1500 Belleview Boulevard, Alexandria, Virginia, counsel for defendants, this 1st day of August 1967.

Robert M. Alexander
Counsel for Plaintiffs

1829 Columbia Pike
Arlington, Virginia 22204
August 1, 1967

FILED

AUG 2 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Honorable Thomas P. Chapman, Jr.
Clerk, Circuit Court of Fairfax County
Courthouse
Fairfax, Virginia

Re: Freeman v. Little Hunting Park, Inc., Chancery No. 22,752

Dear Mr. Chapman:

Enclosed is one copy of Appellants' Supplemental Designation of Record in the above-styled cause, as well as a certificate showing service on opposing counsel.

Twenty days after filing the Supplemental Designation in your Office, I would appreciate it if you would transmit the Supplemental Designation and record, together with the designation which was previously sent to you by letter of July 11, 1967, and filed in your Office. The record and the two designations in this case should be transmitted to Howard G. Turner, Clerk, Supreme Court of Appeals of Virginia, Richmond, Virginia.

I have previously sent you a check to cover fees for preparing the record and transmittal of the same to the Court of Appeals.

If you have any questions concerning this matter, please call me at my office (382-2107).

Very truly yours,

Robert M. Alexander

Robert M. Alexander

Inclosure

cc: John Charles Harris, Esquire
1500 Belleview Boulevard
Alexandria, Virginia

87

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday *the* 4th *day of* December, 1967.

The petition of T. R. Freeman, Jr., Laura Freeman, and Dale C. Freeman and Dwayne L. Freeman, infants, who sue by T. R. Freeman, Jr., their father and next friend, for an appeal from a decree entered by the Circuit Court of Fairfax County on the 8th day of May, 1967, in a certain chancery cause then therein depending, wherein the said petitioners were plaintiffs and Little Hunting Park, Inc., and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the appeal was not perfected in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it (Rule 5:1 § 3(f); Snead v. Commonwealth, 200 Va. 850, 108 S.E. 2d 399), doth reject said petition and refuse said appeal.

A Copy,

Teste:

Clerk

FILED

DEC 14 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Entered in Chancery
Order Book No. 127 at
page 411 and 84.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

IN RE

Sullivan

vs. Chancery 22751

Little Hunting Park, Inc., et al

and

Freeman

vs. Chancery 22752

Little Hunting Park, Inc., et al

It appearing to the Court that on February 5, 1968, the Clerk of this Court received a letter requesting the transmittal, forthwith, of the record in the above captioned cases to the Supreme Court of the United States in Washington, D. C..

It is, therefore, ADJUDGED and ORDERED that the Clerk mail or deliver the said original files, transcripts and exhibits to the Clerk of the Supreme Court of the United States at Washington, D. C., and

It is further ADJUDGED and ORDERED that upon completion of the hearings in the Supreme Court of the United States the Clerk of that Court shall return the said record to the Clerk of this Court.

Entered: February 6, 1968

James Keith
Judge

Entered in Chancery Order Book No. 128 at page 662 and 64.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday *the* 14th *day of* October, 1968.

FILED

NOV 5 1968

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

Paul E. Sullivan, et al., Appellants,

against Record No. R-8257 ch. 21663

Little Hunting Park, Inc., et al., Appellees.

T. R. Freeman, Jr., et al., Appellants,

against Record No. R-8176 ch. 22752

Little Hunting Park, Inc., et al., Appellees.

From the Circuit Court of Fairfax County

Whereas, on July 15, 1968, and October 5, 1968, respectively, the clerk of this Court received and recorded copies of the order entered in these cases by the Supreme Court of the United States on July 12, 1968, and amended on October 4, 1968, in which it was ordered that the judgments of this Court be "vacated", and further "that these causes be remanded to the Supreme Court of Appeals of the Commonwealth of Virginia for further consideration not inconsistent with the opinion of this Court."

Upon mature consideration whereof, and for reasons stated in writing and now filed with the record, this Court adheres to its decision in these causes and to its decrees of December 4, 1967, which refused the appeals in these cases for the reason that the appeals were not perfected in the manner provided by law.

Which is ordered to be certified to the Circuit Court of Fairfax County.

A Copy,

Teste:

A. D. Turner

Clerk

Entered in Chancery
Order Book No. 138 at
page 7 and Ex.

CLERK'S OFFICE

SUPREME COURT OF APPEALS OF VIRGINIA

Richmond

To the Clerk of the Court:

The mandate attached hereto is being sent to you pursuant to Rule of Court 5:14.

When the opinion in this case was rendered by this Court, it was sent to the judge who decided the case in your court. He was requested to give this opinion to you after he had looked it over.

FILED

NOV 5 1968

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Frederick County, Va.

Howard G. Turner

Clerk

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al Plaintiffs, v. LITTLE HUNTING PARK, INC., et al Defendants	:	In Chancery No. 22751
T. R. FREEMAN, JR., et al Plaintiffs, v. LITTLE HUNTING PARK, INC., et al Defendants.	:	In Chancery No. 22752

DECREE

THESE CAUSES came on to be heard this 12 day of February, 1970, pursuant to the mandate of the Supreme Court of the United States dated January 9, 1970, remanding these causes to this Court for further proceedings not inconsistent with the opinion and judgment of the Supreme Court of the United States dated December 15, 1969. This Court having determined that further proceedings are warranted herein with respect to the issues of damages and costs, nonetheless hereby enjoins and restrains the continued violation of rights of the plaintiffs secured to them by 42 U.S.C. Section 1982 and the Thirteenth Amendment to the United States Constitution.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Little Hunting Park, Inc., its agents, employees, successors in interest, and all persons in active concert or participation with it, and each, is hereby enjoined and restrained from:

1. Refusing to permit Negroes and other non-white persons to use the recreation facilities of Little Hunting Park, Inc. upon the same basis and under the same conditions as white persons are permitted to use said facilities.

2. Failing or refusing to make any of the goods, services, privileges, advantages or accommodations of Little Hunting Park, Inc. available to Negroes and other non-white persons upon same basis and under the same conditions as they are made available to white persons.

3. Engaging in any act or practice which deprives, or is intended to deprive, directly or indirectly, any person of the right to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of Little Hunting Park, Inc. without discrimination or segregation on the ground of race or color.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that defendant Little Hunting Park, Inc. shall reinstate Paul E. Sullivan to full membership in Little Hunting Park, Inc,; reinstitute the effectiveness of membership certificates numbered 290 and 925; and restore to Paul E. Sullivan all rights and privileges associated with membership in Little Hunting Park, Inc., including but not limited to the use by Paul E. Sullivan and members of his family of the recreation facilities, including the swimming pool, maintained and operated by Little Hunting Park, Inc.

The Court retains jurisdiction of the subject matter of these causes and of the parties.

And these causes are continued.

Entered this 6th day of February, 1970.

James Cirk
JUDGE

S E E N :

Counsel for Complainants

Counsel for Complainants

Counsel for Complainants

EXCEPTED TO:

Counsel for Defendants

Entered in Chancery
Order Book No. 152 at
page 478 and 84,

FOR THE REASON THAT 42 USC 1982 APPLIES ONLY TO THE RIGHT OF NEGROES TO INHERIT, PURCHASE, LEASE, SELL, HOLD AND CONVEY REAL AND PERSONAL PROPERTY AND NOT THE RIGHT TO JOIN PRIVATE CLUBS.

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
FEB 26 1970
W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

PAUL E. SULLIVAN, et al.	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22751
LITTLE HUNTING PARK, INC., et al.,	:	
Defendants.	:	
. . . . .	:	
T. R. FREEMAN, JR., et al.,	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al.,	:	
Defendants.	:	
. . . . .	:	

PLAINTIFFS' MEMORANDUM TO THE COURT FOLLOWING REMAND FROM THE SUPREME COURT OF THE UNITED STATES

STATEMENT

I. Introduction

Under the order of remand of these proceedings from the Supreme Court of the United States, the plaintiffs are entitled not only to injunctive relief, as previously ordered by this Court, but to the granting of their claims for damages, costs and attorney fees, as set forth in the prayers of their complaints. Damages in the amount of $15,000 were specifically requested in both the Sullivan and Freeman cases. As shown below, the record provides ample justification for the Court to make monetary awards to the plaintiffs for the items claimed.

II. Plaintiffs Should be Awarded Damages in the Amounts Prayed for in Their Respective Complaints

A. Preliminary Statement

The Court requested the views of the parties as to whether further evidence should be taken at this time to up-date the record on the issue of

damages. It is plaintiffs' position that although evidence was taken on the matter of damages in the spring of 1967, when the cases were originally heard, three years have elapsed since then, and plaintiffs are entitled to show what further injuries have been incurred by them since that time.

Plaintiffs' position is fully supported by the authorities. Thus--in McCormick's Handbook on the Law of Damages (Hornbook Series, 1935), Sec. 13, p. 51, it is stated that although the common-law rule was not to allow damages for continuance of harmful conduct after a suit was brought, but to remit a plaintiff to a later suit, equity courts seek to terminate an entire controversy in one suit. Accordingly, equitable courts--such as the instant court--and in many jurisdictions today, law courts, will, "in the injunctive suit, give as an incident thereto compensation for the loss or injury already suffered, and, carrying out the same policy, will allow recovery for the harm or damage sustained through the continuance of the wrong down to the final disposition of the case" (see footnotes with cases cited). Accord: 22 Am. Jur. 2d, Damages Sec. 19, p. 37; 25A C.J.S., Damages Sec. 193, pp. 258-259; Calhoun v. United States, 354 F. 2d 337, 339 (Ct. Cl.); Consolo v. Federal Maritime Commission, 383 U.S. 607, 624-625.[1/] In view of the foregoing, plaintiffs submit that the trial in these proceedings should be reopened by the Court to hear further relevant evidence with respect to such damages as may be warranted by occurrences of the past three years.

B. Summary of the evidence concerning damages up to the spring of 1967

1. Sullivan case

At the trial on March 22-23, 1967, Paul E. Sullivan and his wife, Flora L. Sullivan, testified concerning the injuries suffered by them and members of their family as the result of their expulsion from Little Hunting Park, Inc. In addition to stating a claim for $202.20 in monetary damages (Tr. 69), the Sullivans claim damages for injury to reputation and mental and emotional suffering resulting from the board of directors' action.

1/ Plaintiffs have been unable to locate any Virginia case which passes on this issue.

Sullivan was notified in early July 1965 that the directors had decided at a meeting the previous month that there was "due cause" for his expulsion, and that he was to be given a "hearing" by the board on July 20, 1965 (Tr. 30-31). Commencing on July 16, 1965, and continuing for some time thereafter, while the expulsion proceeding was pending, a series of articles appeared in the major newspapers in the Washington, D.C. area, including The Washington Post, The Evening Star, and Northern Virginia Sun, reporting in detail the action brought by the directors against Sullivan (Sullivan Pl. Exh. Nos. 31-38). The articles gave Sullivan's name, address, place of employment, and quoted the directors' charge against him, i.e., that he was being expelled because of his "harassment" of them (ibid.).

As a result of the publicity received by the expulsion proceeding, Sullivan was adversely affected in his job. He was employed by an "intelligence agency" of the United States Government where, as he testified, there is "a need for anonymity, and any kind of notoriety is not beneficial" (Tr. 71). In one of the published newspaper articles, the attorney for Little Hunting Park, Inc., was quoted as saying that Sullivan had "continually stirred this thing up," and another article quoted the attorney as accusing Sullivan of "heckling and harassing" the board of directors (Sullivan Pl. Exh. Nos. 32, 33). Following the appearance of these articles, Sullivan's co-workers started referring to him as an "agitator" (Tr. 71). Sullivan testified that the publicity created "discomfort" for him in a situation where "anonymity, being a cog in the wheel, is an asset" (ibid.). As a result, Sullivan felt it necessary to discuss the matter with people in his agency's personnel department (Tr. 72).

The swimming pool and other facilities of Little Hunting Park, Inc. are located only a block and a half from the Sullivan's home (Tr. 66-67). There are seven children in the family ranging in age at that time from 15 to 1-1/2--all are plaintiffs herein--and before their father's expulsion, they could walk to the pool unattended to swim (Tr. 67). During the swimming season, the Sullivan children used the pool every day, and their father used it at least twice a week; the mother less often (ibid.). Following the expulsion in August 1965, the family ceased swimming entirely for the rest of the season (Tr. 68).

In the years following 1965, since they could not use Little Hunting Park's facilities, the family had to make alternative arrangements for swimming. Paul Sullivan testified that in the summer of 1966 he transported his family to lakes 25 miles from their home on five occasions, each outing costing $10 (Tr. 68-69). He also noted the inconvenience and time involved in taking his large family on those trips (Tr. 69).

As people in the community learned of the association's expulsion proceeding against Sullivan, the family began receiving harassing phone calls at all hours of the night (Tr. 72, 168). The calls were frequently anonymous, and often the caller would not speak (ibid.). Finally, it got so bad that the Sullivans had the telephone company fix the bell so that it could be turned off and the family "could have an undisturbed night's rest" (ibid.). The family also had its mailbox, which is located in the front yard, torn out of the ground several times (Tr. 169). They complained to the postmaster about that (ibid.).

Mrs. Flora Sullivan testified that because of the expulsion from the association and resulting publicity, she did not feel "comfortable" going to her own church or to P.T.A. meetings (Tr. 168, 169). "[T]here were a lot of dirty looks and people making remarks against my children and myself, so I found it very trying (Tr. 168). She felt that because of the board's action she had been "stigmatized permanently," because when someone gets expelled from an association, people assume there was justification for it, and this reflects on the person expelled (Tr. 168-169).

The Sullivan children, particularly, suffered as a result of their father's expulsion from the association. They had used the pool, which was only a block and a half from their home, "for many years," and they could still watch their friends continue to pass by the house on their way to the pool (Tr. 169). The Sullivan children could not understand why they were barred from the pool, just because their father had questioned the race discrimination practiced by the association and thus tried to "right a wrong" (Tr. 72). Nor did they understand why the Freeman children who were their friends, were not permitted to use the facility (ibid.). Mrs. Sullivan testified that the exclusion of her children from the pool, especially because they live"so close to it," created "a very trying situation" (Tr. 169). One of the Sullivan's little daughters, age 5, was even told

that because of her father's expulsion, if she went across the Little Hunting Park property on the way to school, she would "be arrested" (Tr. 73).

2. Freeman case

Dr. and Mrs. T. R. Freeman testified concerning the harm that was done to them and their two little boys--ages 6 and 8--as the result of their exclusion from Little Hunting Park. A family of substantial achievement--Dr. Freeman holds a Ph.D. degree from the University of Wisconsin, is a captain in the District of Columbia National Guard, and is employed as an economist by the United States Department of Agriculture--the Freemans rented Paul Sullivan's house on Quander Road with every expectation of using the neighborhood swimming pool, as provided for under the membership assignment clause of the lease (Tr. 8, Sullivan Tr. 176-177). However, these four plaintiffs, including the two boys, soon learned that because of their color, they could not use the recreation facilities which were available to everyone else in the community.

For the two summers of 1965 and 1966, the Freemans were excluded from the swimming pool and other facilities which they had contracted to use, and in addition, had to incur extra expenses in finding alternative means of recreation (Tr. 7-8).[2/] They also suffered in other ways. Thus, Dr. Freeman had only held his job for a few months in the spring of 1965, when the board of directors barred him from the association because of his race. As a new employee he was "expected to function at a high level of efficiency" (Tr. 8). However, the directors' action and the attendant publicity put him in an unwanted "spotlight," caused him to be questioned by his superiors, and interfered with his job performance (Tr. 8-9). After the stories appeared in the Washington area newspapers about the Freeman's rejection by the association's board of directors, he was requested by an official of his agency to explain the "nature of the problem" and the official then wrote a letter about the matter to the Under Secretary of Agriculture (Tr. 8-15). Dr. Freeman had a "Top Secret" security clearance for his job, and one of the things that disturbed him most about the newspaper

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2/ In June 1967, Dr. Freeman and his family left the United States for Pakistan where Dr. Freeman was to serve as Assistant Agricultural Attache in the United States Embassy.

articles were remarks attributed to the association's attorney to the effect that Dr. Freeman had not been rejected because of race, but that the directors had been advised not to give the real reason because that would "lay [them] open to suits for libel or slander" (Tr. 10-13, Freeman Pl. Exh. No. 2). As Dr. Freeman understandably testified, he believed this to be "a reflection on my character" (Tr. 10).

Dr. Freeman testified that, in addition to the "general frustration" of being rejected by the association, his family suffered, for example, by having bottles thrown at the house, so that his wife had to call the police about the matter (Tr. 17). Further, cars frequently drove by the Freeman's house, some on more than one occasion, and people would "slow down and look and go to the corner and turn around and come back" (Tr. 30). Nervousness and concern about this situation at home made it difficult for Freeman to concentrate on his work at the office, and prompted him to call his wife frequently to seek assurance that she was all right and that nothing had happened "to the kids on the way home from school" (Tr. 17-18).

After the Freemans first moved into their house in February 1965, their relationship with their neighbors was friendly and, as Dr. Freeman characterized it, "wholesome" (Tr. 19). They had sold their furniture before leaving the last place where they had lived, and after arriving in their new home, neighbors loaned them furniture. After their rejection by the board of directors of the association, however, neighbors stopped speaking to them and social contacts which they had made ceased (Tr. 32). They became "isolated" in the community (Tr. 19). One neighbor who worked in the agency with Dr. Freeman, and with whom he rode the bus and "talked about various things," stopped speaking to him and began avoiding him to the extent of not even getting off at the same bus stop with him any more (Tr. 19-20). The Freeman's two little boys were similarly ostracized. Before the association's rejection of the family, the boys had friends who came to their house, and to whose houses the boys went. After the association's action, their friends were forbidden by their parents to play with the Freeman boys, and the two boys "couldn't ride on the streets without being called names" (Tr. 32-33).

As a result of the "mental strain" of being in a situation where he was "unwanted and fearful" that something would happen to him, to his home, or to his family, Dr. Freeman experienced "frustration and anxieties" which caused him loss of sleep, loss of appetite, and loss of "ten or twelve pounds" of weight during the months following his rejection by the association (Tr. 20). Because of the hostility in the community directed at him which had been engendered by the association's action, "slight noise" at night startled Dr. Freeman and he "became nervous and jumpy" (ibid.). The tenseness of the situation also affected Mrs. Laura Freeman to the point where, one day at home alone, she collapsed in tears and out of control of herself (Tr. 34). She was taken to the emergency room of the Alexandria Hospital where the attending physician gave her a shot and recommended that she go home and rest. He diagnosed Mrs. Freeman's trouble as "depression" and "nerves." She had no previous history of any difficulty of this kind (Tr. 35).

ARGUMENT

I. Plaintiffs are Entitled to Compensatory Damages

A. Sullivan case

Compelling precedent for the allowance of $15,000 in damages, as prayed for by the Sullivan plaintiffs, is provided by the recent case of Simmons v. Avisco, Local 713, Textile Workers of America, 350 F. 2d 1012 (C.A.4). There, a member who was wrongfully suspended from a labor union, brought suit in the District Court for the Eastern District of Virginia, and in addition to an order of reinstatement to membership, was awarded $15,000 damages--the amount prayed for by the plaintiffs here. In Simmons, as in the Sullivan case, one of the principal effects of the organization's action was injury to the plaintiff's reputation and resulting mental anguish. Further, in that case, as here, the evidence showed a pattern of anonymous and abusive phone calls to the plaintiff's home, following the suspension. 350 F. 2d 1018-1019. The facts of the instant case, moreover, are even stronger than those in the Simmons case, for there Judge Oren Lewis disallowed recovery of punitive damages, whereas here, as we show infra, they are warranted by the evidence.

Other factors shown by the record here, but not present in the Simmons case, further justify the $15,000 damages sought by the Sullivan plaintiffs. Thus, here there are nine plaintiffs who have individually suffered injuries as the result of the expulsion of Paul E. Sullivan from the association, whereas in Simmons there was only one plaintiff who sought recovery. Further, in Simmons, the plaintiff's suspension from the union only lasted 3 months, until he was reinstated under a court order, while here the nine plaintiffs have been denied membership privileges in Little Hunting Park, Inc. for 4-1/2 years.

The general rule for the recovery of damages based on wrongful expulsion from a membership association such as Little Hunting Park, Inc., is set forth in 7 C.J.S., Associations, Sec. 26, p. 26. It is stated that such damages

> . . . may include the loss sustained by being deprived of the use and enjoyment of the property of the society and of the privileges of membership,. . . and also the mental suffering caused by the wrongful expulsion and the manner in which it was effected.

In the instant case the nine plaintiffs have been unlawfully deprived for four summer seasons--1966, 1967, 1968 and 1969--of the use and enjoyment of Little Hunting Park's swimming pool and other recreation facilities located only a block and a half from their home. Not only have they been deprived of the valuable right to use these facilities but they have been compelled, at considerable inconvenience and expense, to seek alternative places for recreation.

As the Simmons case, supra, and the quotation from Corpus Juris Secundum indicate, mental suffering or anguish is necessarily a major factor to be taken into account in determining the amount of damages due a plaintiff because of his wrongful expulsion from an association. In Simmons, it was the only factor, coupled with injury to reputation, taken into account by the court, for the plaintiff there did not lose any wages and there is no indication of any other monetary loss.[3/]

3/ In the Virginia courts, similarly it has long been recognized that where a basis for damages otherwise exists, "compensation for mental suffering may be recovered in addition thereto if such suffering is a natural and probable result of the act." Sanford v. Ware, 191 Va. 43, 60 S.E. 2d 10, 13; Penick v. Mirro, 189 F. Supp. 947, 949 (E.D. Va.), and cases cited.

Breach in tort

The evidence in this case leaves no doubt of the injury to their respective reputations, social ostracism, and embarrassment that have been experienced by the members of the Sullivan family as the result of their expulsion from Little Hunting Park, Inc. The Supreme Court held that Paul E. Sullivan was expelled "for the advocacy of Freeman's cause . . . for trying to vindicate the rights of minorities protected by Section 1982." 90 S. Ct. at 404. Sullivan's conduct thus was lawful, but the board of directors, by expelling him, made it appear that he was the wrongdoer, and thereby brought the family members notoriety, opprobrium, and severe mental suffering. For these reasons, an award of substantial compensatory damages is fully warranted.

B. Freeman case

It is difficult to imagine a more humiliating, degrading and abhorrent experience for any family than that suffered by Dr. T. R. Freeman and his family when they were discriminated against because of their race by the directors of Little Hunting Park. Everyone in the neighborhood was entitled to use the nearby swimming pool and recreation facilities, but the Freemans were told they could not, because their color marked them as unworthy. Two parents of superior educational and professional background and their two little boys were thus subjected to the trauma of irrational and unjustifiable racial discrimination. The resulting isolation of the family in the neighborhood where they previously had been well received, and the social ostracism experienced by the two boys, the Court will recall, was movingly and tearfully related by Mrs. Freeman at the trial. The family members experienced injury to the reputation they enjoyed in the community, as well as acute mental distress and anguish as the direct result of their exclusion from Little Hunting Park. In the case of Mrs. Freeman, as related previously, her emotional tension became so critical that it caused an emotional breakdown requiring medical attention.

As shown supra, for the summers of 1965 and 1966, the Freemans were unlawfully deprived of the right to use Little Hunting Park's recreation facilities, a right which they paid part of their rent for under the terms of their lease. The deprivation they thus endured entitles them to appropriate money damages. In addition, Dr. Freeman suffered injury to his reputation at his place of employment, as a result of the notoriety caused by the association's action and particularly its attorney's imputation that the reason for the rejection could give rise to a libel or slander action. The injury to reputation, as well as emotional and psychological injury done to the Freemans are

recognized by the courts as a proper basis for awarding further compensatory damages. Unlawful racial discrimination such as that engaged in by the defendants is "a tort, and an action founded thereon lies in tort . . . [I]n such cases the personal indignity inflicted, the feeling of humiliation and disgrace engendered, and the consequent mental suffering are elements of actual damages for which a compensatory award may be made." Anderson v. Pantages Theater Co., 114 Wash. 24, 194 P. 813, 816. See also, Solomon v. Pennsylvania R. Co., 96 F. Supp. 709, 712 (S.D.N.Y.) ($500 awarded a Negro for humiliation resulting from being forced to move to a segregated railroad car when train reached Richmond, Virginia); Wright v. Chicago, Burlington & Quincy R. Co., 223 F. Supp. 660, 662 (N.D. Ill.) ($3500 compensatory and punitive damages awarded a Negro mother and daughter who were discriminated against with respect to the purchase of tickets for a railroad tour). Although it appears that the breakdown suffered by Mrs. Freeman which required medical attention, was directly attributable to the defendants' discrimination against her and her family, it is not necessary to "prove direct physical injury in order to recover damages" in an action such as this, for the deprivation of rights alone gives rise to "a cause of action for such damages as may have thereby been occasioned . . ." Nash v. Air Terminal Services, 85 F. Supp. 545, 549 (E.D. Va.), and cases cited. See also, Terry v. Elmwood Cemetery, Civil Action No. 69-490, decided December 22, 1969 (N.D. Ala.), and cases cited therein.[4/] Sanford v. Ware, supra; Penick v. Mirro, supra.

II. Plaintiffs are Entitled to Punitive Damages

The circumstances involved in both the Sullivan and Freeman cases warrant the awarding of punitive damages in each proceeding. In Jones v. Mayer Co.,

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4/ As of the time of writing this memorandum, the opinion of District Judge Lynne in the Terry case is not yet officially reported. Copies of the opinion, if not otherwise available, will be supplied to this Court and defendants' counsel prior to the hearing herein scheduled for March 24, 1970. The unofficial reports of two cases arising under 42 U.S.C. Sec. 1982, which are referred to in Judge Lynne's opinion are attached hereto, infra. See, Pina v. Homsi, No. 69-666G, decided July 10, 1969 (D. Mass.) (a husband and wife denied the rental of an apartment because of race were awarded damages for actual monetary injuries, as well as $400 for emotional distress and $350 for counsel fees); Newbern v. Lake Lorelei, Inc., No. 6871, November 14, 1968 (S.D. Ohio) (a Negro couple denied the right to purchase a real estate lot because of race were awarded $1000 compensatory damages, $250 punitive damages, and $1000 attorney fees).

392 U.S. 409, 414-415, n. 14, where the Supreme Court first held that punitive damages may be awarded for violations of 42 U.S.C. Sec. 1982 upon a proper factual showing, the Court cited with approval Wills v. Trans World Airlines, Inc., 200 F. Supp. 360, 367-368 (S.D. Cal.). In the Wills case, the court awarded exemplary damages of $5000 to an airline passenger who was subjected to "unreasonable and unjust discrimination" when his flight reservation was not honored by the carrier because the flight had been oversold. Id. at 367. Although there was no showing in Wills of actual malice or bad motive as a basis for awarding exemplary damages, the Court followed the principle recognized in Virginia that such damages are justified "whether the wrongful act is done with a bad motive, or with such gross negligence as to amount to misconduct, or in a manner so wanton or reckless as to manifest a willful disregard of the rights of others . . ." Franklin Plant Farm, Inc. v. Nash, 118 Va. 98, 86 S.E. 836, 842.[5/] In the latter event, of course, the damage award is grounded on a determination of implied malice.

The board of directors' expulsion of Paul E. Sullivan from Little Hunting Park, Inc. involves elements of both actual and implied malice. The Supreme Court held that Sullivan was "punished" by the directors for "the advocacy of Freeman's cause . . . for trying to vindicate the rights of minorities protected by Section 1982." 90 S. Ct. at 404. Since the term "punishment" implies a desire for retaliation or reprisal, and since the evidence shows that the directors were in fact motivated by hostility, anger, and ill will toward Sullivan because of his "advocacy of Freeman's cause" (ibid.), this Court is fully warranted in finding sufficient malice to support an award of punitive damages. Even without a determination of actual malice, however, implied malice can be found from the reckless disregard of Sullivan's rights exhibited by the directors when they summarily expelled him from the association for engaging in conduct which was protected by federal law. The Court should note that persons wrongfully expelled from voluntary associations frequently have been held entitled to punitive damages under circumstances substantially like those present

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5/ And see Bolton v. Vellines, 94 Va. 393, 26 S.E. 847, 850; Baker v. Marcus, 201 Va. 905, 114 S.E. 2d 617.

in the Sullivan case. See, International Brotherhood of Boilermakers v. Braswell, 388 F. 2d 193, 199-201 (C.A. 5); News Employees' Benevolent Society v. Agricola, 240 Ala. 668, 200 So. 748, 754, 755; St. Louis & S.W. Ry. Co. of Texas v. Thompson, 102 Tex. 89, 113 S.W. 144, 147-148.

In the Freeman case, the record shows that the plaintiffs' exclusion from Little Hunting Park was based solely on race and, as the Supreme Court held, was in violation of 42 U.S.C. Section 1982. Since unlawful racial discrimination is inherently irrational and without justification, it conveys its own implication of malice, i.e., bias and ill will toward a whole race, if not particular individuals. Hence, intentional, racially motivated conduct "in disregard for the rights of others amounts to conduct for which the law will attach a penalty and deterrent by way of exemplary damages." Amos v. Prom, 115 F. Supp. 127, 137 (N.D. Iowa). The record of the instant case fully warrants the awarding of such damages to the Freeman plaintiffs. Terry v. Elmwood Cemetery, supra, and cases cited therein; Walker v. Pointer, 304 F. Supp. 56, 63-64 (N.D. Tex.). See also, Franklin Plant Farm, Inc. v. Nash, supra, 118 Va. 98, 86 S.E. at 842; Kaufman v. Abramson, 363 F. 2d 865, 866-867 (C.A. 4).[6/]

III. Plaintiffs are Entitled to Recover Costs

As set forth in the prayers of their respective complaints, the plaintiffs claim reimbursement for the costs of this litigation. Section 14.1-178, Code of Virginia, 1950 (1964 Replace. Vol.) provides that "the party for whom final judgment is given . . . shall recover his costs against the opposite party . . ."[7/]

6/ In considering the propriety of punitive damages, it is immaterial that at the time the directors denied the Freemans use of the association's facilities and expelled Sullivan, they did not know that they were acting unlawfully. The improper motive justifying an award of punitive damages is not dependent on the actor's knowledge that his conduct is unlawful. Indeed, he usually acts in the belief that his conduct is lawful. For a case much like the instant one, see Scott v. Donald, 165 U.S. 58, where the Supreme Court approved an award of punitive damages based on the seizure by the defendants of contraband liquor under color of a state law which the Court held was unconstitutional. There, as here, at the time of the acts complained of, the defendants did not know that their conduct was unlawful--yet, as was later held, it was, and punitive damages were awarded.

7/ Similar provision for the award of costs to the prevailing party is made in Rule 54(d), Federal Rules of Civil Procedure.

Since this provision has been held to "apply to suits in chancery as well as actions at law" (City of Richmond v. Henrico County, 185 Va. 859, 41 S.E. 2d 35, 38), there can be no question of plaintiffs' entitlement to their costs herein.

IV. Plaintiffs are Entitled to Recover Reasonable Attorney Fees

The decision of Judge Lynne of the Federal District Court for the Northern District of Alabama in Terry v. Elmwood Cemetery, supra, specifically recognizes the right of plaintiffs prevailing in a suit under 42 U.S.C. Sec. 1982 to be awarded attorney fees.[8/]

These recent cases are in accord with the historic equity practice of awarding attorney fees where warranted by the requirements of justice. See, Vaughan v. Atkinson, 369 U.S. 527, 530, citing with approval, Rolax v. Atlantic Coast Line R. Co., 186 F. 2d 473, 481 (C.A. 4). In the Rolax case, the Court of Appeals held that counsel fees were recoverable by Negroes forced to carry on extended litigation against a labor union which had discriminated against them. The justification for awarding counsel fees to the plaintiffs in that case is not unlike that existing here. Further, although the statute (42 U.S.C. Sec. 1982) from which plaintiffs derive their right of action in the instant case contains no express authorization for an award of attorney fees, as the Supreme Court recently held, this "does not preclude such an award in cases of this type." Mills v. Electric Auto-Lite Co., ____U.S.____, 38 U.S. Law Week 4097, 4101 (Jan. 20, 1970).

Respectfully submitted,

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February 1970

8/ And see, Pina v. Homsi, infra; Newbern v. Lake Lorelei, Inc., infra.

HOUSING

Apartments (Massachusetts)

Pina v. *Homsi*, U.S.D.C., D. Mass., Judge Garrity, No. 69-666-G, July 10, 1969 ... F.Supp. ....

An interracial couple, who was refused admittance to the apartment which had been leased by the Caucasian wife, brought suit against the apartment operator in federal district court under 42 U.S.C. Sec. 1982, as interpreted in Jones v. Mayer. On the same day suit was filed, plaintiffs' motion for a temporary restraining order prohibiting defendant from leasing the apartment to or permitting occupancy by anyone other than plaintiffs was granted, on the court's finding that without such relief plaintiffs would probably suffer an irreparable injury in the form of loss of suitable housing accommodations pending the hearing on the request for an injunction. Plaintiffs were required to file a bond of $100 as security for payment of damages to defendant if he were subsequently found to have been wrongfully restrained. At the trial on the merits two days later, the court found that defendant had violated the statute, since the race of the plaintiff husband was the sole basis for the refusal to allow plaintiffs to occupy the apartment. Though injunctive relief would then have been unavailing because plaintiffs had obtained other living quarters prior to the trial, damages awards were found to be in order. In addition to the refund of the deposit of one month's rent, and an award for interim hotel expenses and some other incidental expenses, the trial court awarded $200 each to plaintiff husband and wife as compensation for their emotional distress. Counsel fees of $350 were also awarded. Punitive damages were not granted, because the court thought that defendant "might not have fully understood the ramifications" of Section 1982, since considerable confusion exists generally about the provisions of that statute and Title VIII of the Civil Rights Act of 1968.

Building Lots (Ohio)

Newbern v. *Lake Lorelei, Inc., et al.*, U.S.D.C., S.D. Ohio, Judge Hogan, No. 6871, Nov. 14, 1968, March 12 and April 22, 1969, ____ F.Supp.____.

A Negro dentist and his wife, after having been denied the purchase of a lot in defendant developer's Brown County, Ohio, subdivision, filed suit in federal district court under 42 U.S.C. Secs. 1981-1983, seeking to have their right to purchase the lot enforced and to have defendant enjoined from the further practice of racial discrimination in sales against the class—members of the Negro race—represented by the individual plaintiffs. Defendants contended that as a stated pre-condition to every sale, the prospective purchaser had to gain admittance into defendant Lake Lorelei Property Owners Association, which admittance plaintiffs in this case had been denied. The court inquired into the composition, standards and operations of the Property Owners Association and found that the organization was merely the alter ego of Lake Lorelei, Inc., the development and sales corporation. It was further found as a matter of fact that plaintiffs and other identified Negroes had been discriminated against in being denied an opportunity to purchase lots or to negotiate for purchases, and that the developer's duly authorized representative had on several occasions assured prospective white purchasers that Negroes would be excluded from the subdivision. Section 1982 was found to "prohibit *all* discrimination against Negroes in the sale of property, including discrimination in modes of negotiation"; and the protection of that section was held to apply "even though the sale of the real estate involved automatically entitles the buyer and his family and guests to the use of communal real estate involved in a unified real estate development, such as a clubhouse, swimming facilities, etc." On November 14, 1968, a preliminary injunction was issued enjoining further racial discrimination and prohibiting defendant developer from selling or otherwise disposing of the lot for which plaintiffs had negotiated, except that it might be sold to plaintiffs on terms not less favorable than those in effect when plaintiffs made their offer to purchase. After further hearings on the merits of the case, the court issued a permanent injunction on March 12, 1969, under which both defendants were ordered to cease discriminating on the basis of race; to drop the membership precondition from all sales contracts until they established sandards for membership approved by the court; to admit plaintiffs to membership in the association upon payment of dues; and to pay to plaintiffs $250 punitive damages, $1000 compensatory damages, and $1000 for attorney's fees for plaintiffs' counsel. Since the developer had already sold the lot in question to plaintiffs, the injunction did not include an order requiring such sale. In a further order, entered on April 22, the court approved reinstatement of the membership precondition in the sales contract, provided that the determination of membership be based on: (1) absence of conviction of crime involving moral turpitude, of a substantial police record, and of proclivity for violent behavior, abusive conduct, intoxication or drug addiction; (2) ability to sustain the cost of maintaining the property and paying membership dues; and (3) kinship of male and female joint purchasers of the same lot.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

- - -

CARL F. NEWBERN, et al.,)

Plaintiffs,)

vs.) Civil Action No. 6871

LAKE LORELEI, INC., et al.,)

Defendants.)

- - -

EXCERPT OF PROCEEDINGS

(Hearing on Various Motions)

(Court's Findings)

- - -

BE IT REMEMBERED that on Friday, January 17, 1969, at 9:30 a.m., the above-styled action came on for further hearing in open court before the Honorable Timothy S. Hogan, Judge of the United States District Court for the Southern District of Ohio.

- - -

APPEARANCES:

On behalf of the Plaintiffs Carl H. and Bertha S. Newbern:

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On behalf of the Plaintiff Robert Baynes:

Peter J. Randolph, Esq.

On behalf of the Defendant Lake Lorelei, Inc.:

Ambrose H. Lindhorst, Esq.

James L. O'Connell, Esq.

Lindhorst & Dreidame

On behalf of the Defendant Lake Lorelei Property Owners Association:

John A. Lloyd, Jr., Esq.

that, the taxable costs under the ordinary statutes and rules of this Court, whatever they are, will be taxed against the defendants under an appropriate proceeding, which we haven't done for a long time, but which we think starts in the clerk's office.

THE COURT: Now, coming to Dr. and Mrs. Newbern's case, we are still of the conclusion as a matter of law that insofar as it involves discrimination or insofar as it asserts by plaintiff as a member of a class that there has been sufficient discrimination against his class to conclude that the defendants did at or prior to the filing of this case in fact discriminate, it's the conclusion of this Court that it's a proper class action, that the plaintiff is a proper representative of his class, that the other members of the class are adequately represented as required by Rule 23; and the class is determined to be the Negro citizenry of the Southern District of Ohio.

Since this Court has found on the merits the same facts as we found on the temporary, the same anti-discriminatory injunction will issue on the merits. It's not necessary for us to concern ourselves with the specific performance aspect of this case. That's gone, or that's taken care of itself.

Now, we will find as a fact further that Dr. Newbern did incur and pay for the expenses set forth in

Plaintiff's Exhibit 48, with the exception that that will be reduced by $500.00, since that was a cash bond which in due course of time presumptively will be returned. We will therefore find as a fact that the doctor has expended approximately $1,000 in costs reasonably connected with the prosecution of this case, Civil 6871.

We will also find as a fact, this Court will, that Mr. Muldrow rendered the services itemized in Plaintiff's Exhibit number 50, and that they reasonably required the time, which is approximately -- well, something in excess of 200 hours.

Now, and frankly, we probably could look at books from now till kingdom come without finding anything that's going to help us on this --

Oh, also we will find as a fact that the doctor suffered the invasion of privacy and the mental anguish he has testified to.

Now, getting back to looking at books. If this case had been filed in 1969, January 1st, 1969, today, there is no doubt what the law is when we come to punitive damage and attorney's fees; and the law today would be that the maximum punitive damages that could be awarded by any district court would be $1,000. It's also the current law that attorney's fees could be awarded only on a finding by a court that the plaintiff is unable to pay them.

So that if the law today applies, either as a matter of law, which it doesn't, or as a matter of rationale, which perhaps it should, the most this Court could do, using the parlance, would be this. We would find as a fact obviously that the doctor -- I am sure the doctor would be the first to agree with us -- is financially able to pay counsel, and that would be the end of it today.

However, we are not just today. This was filed last year, and it's frankly a matter of some discretion. There is no continued policy shown here over a long time as there was in that one Tennessee case.

So, taking the punitive damage first and bearing in mind what the law is today, the punitive damage judgment, part of the judgment, insofar as the plaintiffs are concerned, will be one-fourth of what it could be today or $250; or certainly the evidence in this case justifies notice that under the current law even a not long continued discrimination will bring forth some punitive damage award. On the damage part, the ordinary damage part, we will include an award of $1,000 for the doctor's expenses.

As you know, Mr. Muldrow, there are many types of service that are not related really to compensation. We are not going to find what your services are worth, either in that sense or in the ordinary reasonable value sense, but we will find that they are worth not less than and more than

$1,000.

So that as far as an award for the plaintiff's counsel fees in the Newborn case, it will be $1,000 based on that finding which is that your services are worth in excess of that but as a matter of discretion, in the light of all the circumstances, that's what it ought to be.

Now, of course, each side automatically has an objection and an exception to any of this that hurts them, severally to any part of it too.

In view of what we have said, it's hardly necessary to say that the application for a contempt ruling is dismissed. The motion to determine and the motion for a dismissal order on the contempt are granted, while we remember that.

That leaves the objective standards. Mr. Lloyd, we know you have a tough job. We can't approve them as submitted. Whether you could ever go further than the married -- The married part certainly we would approve; the credit part we would approve as an objective standard.

Once you get beyond that in this area, we find it difficult to think of any because if you take, for instance, the word "apparent" in the proposed standards or, for instance, the word "morality" -- The Supreme Court wrote nine different opinions the last time saying what "obscene" meant. So they can't make that objective.

C E R T I F I C A T E

- - -

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

Cincinnati, Ohio

- - -

This is to certify that the foregoing excerpt of proceedings in the matter of

CARL H. NEHEMIN, et al., Plaintiffs,

vs.

LANE LORENZI, INC., et al., Defendants.

Civil Action No. 6871

on the 17th day of January 1969, before the Honorable Timothy S. Hogan, Judge of the United States District Court for the Southern District of Ohio, is a true and correct transcript thereof.

Robert I. Crawford
Official Court Reporter

- - -

V I R G I N I A

FILED

FEB 25 1970

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al.,

Plaintiffs,

v. : In Chancery No. 22751

LITTLE HUNTING PARK, INC., et al.,

Defendants.

. . . . . :

T. R. FREEMAN, JR., et al.,

Plaintiffs,

v. : In Chancery No. 22752

LITTLE HUNTING PARK, INC., et al.,

Defendants.

. . . . . :

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 1970, I served Plaintiffs' Memorandum to the Court Following Remand From the Supreme Court of the United States upon defendants by mailing a copy thereof, postage prepaid, to their attorney, John Charles Harris, Esq., 1500 Belle View Boulevard, Alexandria, Virginia

Allison W. Brown, Jr.

Allison W. Brown, Jr.
Attorney for Plaintiffs

Filed Mar. 11, 1970

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al.

Plaintiffs,

v. IN CHANCERY, NO. 22751

LITTLE HUNTING PARK, INC., et al.

Defendants.

. . . . . .

T. R. FREEMAN, JR., et al.,

Plaintiffs,

v. IN CHANCERY NO. 22752

LITTLE HUNTING PARK, INC., et al.

Defendants.

. . . . . .

DEFENDANT'S MEMORANDUM ON DAMAGES

The United States Supreme Court decided this case under 42 U.S.C. 1982 which applies only to non-whites. Jones v. Alfred H. Mayer Co., 88 S Ct 2186, 392 U.S. 409. Since the negro, Freeman, was no longer in the United States and not seeking entry into the club, the matter was moot as to him unless 42 U.S.C. 1982 allowed him to collect damages. The Court implied that Section 1988 of Title 42, in effect, could give a right to damages under Section 1982.

Sullivan, who is white, is not included under the statement of Section 1982 that 'All Citizens of the United States shall have the same right, in every state and territory,

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as is enjoyed by white citizens . . . ." If Section 1982 does not apply to Sullivan, then there would be no implication that damages would accrue to him by virtue of Section 1988.

In the United States Supreme Court, Sullivan relied on Barrows v. Jackson 346 US 249 to justify his standing before the court since his race would not permit him to contend the protection of Section 1982. Barrows v. Jackson was an action for damages, white plaintiff against white defendant, arising out of breach of covenant in the sale of real estate by the white defendant to a negro. Shelly v. Kramer 334 US 1, which was decided five years previously had held that such restrictive covenants were valid between the parties but the Court, an arm of the state, could not enforce them. In Barrows, the court held that it was a salutary rule that one could not challenge the constitutionality of a statute unless he could show that he was within the class protected by the statute but called this a unique case and if the respondent answered in damages, the State would "punish" her for her failure to discriminate.

In the case of Sullivan, the Supreme Court held that to sustain his expulsion, because he demonstrated for Freeman's rights, would be to punish him and cited Barrows v. Jackson. Would it not follow, that although the club was lawful in expelling Sullivan, as the restrictive covenant in Barrows was lawful, the court felt that such expulsion was in effect, "punishment" by the State Court as the damages were punishment in Barrows. But in Barrows, the petitioner asked the court for damages for violation of the restrictive covenant. In Sullivan, Sullivan asks damages against Little Hunting Park as a result of their legal action in expelling him. Little Hunting Park does not ask the Court for damages against Sullivan nor does it seek "punishment" of Sullivan by the State. Although

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Justice Douglas's opinion is replete with dicta the holding on Sullivan was contained in his words "Under the terms of our decision in Barrows there is no question that Sullivan has standing to maintain this action."

It must be emphasized that the holding in Shelby v. Kramer, supra, and Barrows v. Jackson, supra, both held that restrictive covenants were legal and valid, the enforcement by the Court, an arm of the state, brought the matter within the Fourteenth Amendment. Kramer and Barrows' actions were legal.

If Section 1982 does not apply to Sullivan, then what is his basis for damages against Little Hunting Park?

To recover damages, Little Hunting Park must owe a duty to Sullivan, there must be a breach of the duty resulting in loss to Sullivan. Damnum Absque Injuria. Unless an act is wrongful in the sense of being unlawful, it will not sustain a suit for damages.

The absence of a wrongful act by Little Hunting Park was found by this court which stated that "there was ample evidence to justify [the Board's] conclusion that the complainant's acts were inamicable to the Corporation members and the Corporation." Justice Douglas does not dispute this Court's finding but states

> "We turn to Sullivan's expulsion for the advocacy of Freeman's cause. If that sanction, backed by a state court's judgment, can be imposed, then Sullivan is punished for trying to vindicate the rights of minorities protected by Section 1982."

Little Hunting Park is a private organization, whether it be a social club or otherwise. Any organization has the inherent right to preserve itself from destruction and

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to promulgate rules and regulations for the orderly operations of its business or activities. Rules or laws, without penal consequences, are a nullity.

The expulsion of Sullivan for violation of by-laws and rules, which he was presumed to know, for libel, for failure to abide by the court stipulation of July 16, 1965, and for breach of the peace, would have been sustained by any court, including the United States Supreme Court, if he was not "advocating" the rights of a minority. The Court does not hold the expulsion illegal but the imposition of the judgment of a state court (at the request of Sullivan) places the matter under the Fourteenth Amendment and, therefore, unenforceable.

If Little Hunting Park has done no wrong to Sullivan must it respond in damages to Sullivan?

CONTINUING DAMAGES

Sullivan asks this Court to order damages against Little Hunting Park for the period of time elapsing between the date this court entered a decree adjudging that Little Hunting Park had done no wrong, and the present. In effect they request damages from Little Hunting Park because they complied with the order of this court. Damnum Absque Injuria. What could be more legal than complying with the order of a duly constituted Court? Until overturned the decree of the Circuit Court of Fairfax County was the law of the case.

On page 9 of his opinion, Justice Douglas states "Finally as to damages." Remembering that the matter is moot as to Freeman except for damages, is he speaking of Freeman's damages or Sullivan's or both?

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In the paragraphs immediately following the above statement he cites:

> 28 U.S.C. 1343 (4) providing for the protection of civil rights
>
> Jones v. Mayer Co. as to what damages, if any, might be appropriately recovered for a violation of § 1982.
>
> Bell v. Hood 327 U.S. 678 where he quotes "where federally protected rights have been invaded . . . . and a federal statute provides for a general right . . ."
>
> "The existence of a statutory right implies the existence of all necessary and appropriate remedies"
>
> "A disregard of the command of a statute"

With the continual reference to a federal statute, after holding the § 1982 applied in this case, it could only mean that his statutory reference is to § 1982 which applies to "non-whites" and not to Sullivan.

FREEMAN

The Supreme Court states that the right to damages is a federal right. Citing § 1988, it held that both federal and state rules on damages may be used. § 1988 directs us to the common law, as changed by state constitution and statutes and not inconsistent with the laws and constitution of the United States.

In effect, the decision says a provision for damages does exist,--go find it! In this quest, I am unsuccessful.

At common law, slavery was acknowledged and discrimination was condoned. In Virginia, Code Section 18.1-356 requiring the separation of races at public assemblages has not been repealed and it would be futile to search the Acts of

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Assembly for Civil Rights Legislation. Therefore, the common law has not been changed in Virginia; if a right of damages does exist it must be in the Federal Statutes.

U.S.C. 1343 (4) gives original jurisdiction to federal courts "to recover damages or to secure equitable or other relief under any Act of Congress . . . ."

Texas & P.Ry v. Rigsby 241 U.S. 33,39, decided in 1916 and cited by Justice Douglas, was an action for damages for injuries based on the Federal Safety Appliance Acts, and does not give us an answer. Justice Douglas quotes it as follows:

> "A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages is implied . . . ."

In the decision, the word "implied" is followed by a comma and then the words "according to the doctrine of the common law . . . ."

Nor does Texas & N. O. R. Co. v. Ry Clerks, 281 U. S. 548, 569-570, which Justice Douglas cites for his statement "the existence of a statutory right implies all necessary and appropriate remedies." This case construed the Railway Labor Act of 1926 which did not contain a penalty for violation. The court held that injunctive relief would lie with the words "the right is created and the remedy exists."

The Virginia Law Review, Volume 54, page 491 bemoans the lack of tort liability under Title VII of the Civil Rights Act of 1964 and suggests an "implication" of damages, by the courts, under 42 § 1988. However, on page 503, they conclude:

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> Only the section 1988 approach might fail to provide the relief necessary to accomplish the statutory purpose--the approach will be unrewarding when suit is brought in a federal court sitting in a state which does not recognize a tort theory suitable to granting relief for employment discrimination.

However, Justice Douglas is agreed that punitive damages will not lie when he states: "Compensatory damages for deprivation of a federal right are governed by federal standards . . . ."

The Plaintiffs' brief cites Simons v. Avisco, Local 713, Textile Workers of America 350 F. 2d 1012 and other labor union cases where suit for damages could be authorized under 42 § 2000e-5 (e) (f) (g) (h) (i) (j) (k). Also there are railroad cases and air terminal cases cited where suit could be authorized under 42 § 2000b-2.

Section 42 § 1988 directs the district court to the state common and statutory law. The other cases cited by the plaintiff are of little use to us since they were decided under the common and statutory law of the state in which the federal court sits.

This court sits as a court of equity now being called upon to punish Little Hunting Park, by way of damages, for its actions.

Little Hunting Park's directors, out of concern for the welfare of their members, felt, rightfully or wrongfully from a moral standpoint, that the admission of a negro would jeopardize their club by causing a decline in membership. They sent a delegation to Sullivan to explain their position. Sullivan "demonstrated." The defendants, pursuant to their by-laws, expelled Sullivan. They acted throughout on the

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advise of counsel and were determined right by this court. Three years later a statute, which had been construed for 102 years as a prohibition against the states, is determined to apply to us all and the acts of the defendants are declared unlawful--ex post facto.

Sullivan wants damages for, among other things, abusive telephone calls from anonymous persons. The irony of it all is that Little Hunting Park expelled him for, among other things, instigating unfriendly telephone calls to the officers and directors. He stipulated in open court, prior to his expulsion, that he would abide by the decision of the membership of the club. He then flaunted that same court from which he now demands equity.

Mr. and Mrs. Freeman contend damages because of discrimination by their neighbors in a predominantly white neighborhood. Such discrimination, they contend, was "engendered by the association's action." Mrs. Freeman admitted to being the subject of discrimination during her entire life--even before she heard of Little Hunting Park, Inc. To imply responsibility on Little Hunting Park for actions of the white neighbors of Freeman's would be stretching the doctrine of proximate cause to absurdity.

Respectfully Submitted:

John Chas. Harris
1500 Belle View Boulevard
Alexandria, Virginia 22307

Counsel for Defendants

March 1970

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of March, 1970 I served a copy of the foregoing upon defendants by mailing a copy thereof, to counsel of record.

John Chas. Harris

Counsel for Defendants

KLEENTYPE PARCHMENT

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ALLISON W. BROWN, JR.
Attorney at Law
Suite 501, 1424 - 16th Street, N. W.
Washington, D. C. 20036

March 9, 1970

FILED

MAR 11 1970

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

Clerk
Circuit Court of Fairfax County
Fairfax County Courthouse
Fairfax, Virginia 22030

Attention: Honorable James Keith

Re: Sullivan, et al. v. Little Hunting Park, Inc., et al., In Chancery Nos. 22751, 22752

Dear Sir:

In plaintiffs' memorandum previously filed herein we indicated to the Court that we would supply it with a copy of the enclosed unreported opinion in Terry v. Elmwood Cemetery, C. A. 69-490 (N.D. Ala.), decided December 22, 1969. In addition to the enclosed copy, which is for filing with the Court, we are supplying defendants' counsel with a copy.

Very truly yours,

Allison W. Brown, Jr.

Allison W. Brown, Jr.
Attorney for Plaintiffs

cc & encl:

John Charles Harris, Esq.
1500 Belle View Blvd.
Alexandria, Va. 22307

Date Filed: 12-22-69
Date Received: 12-22-69

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

MRS. MARGARET FAYE TERRY, et al.,
Plaintiffs,

VS.

THE ELMWOOD CEMETERY, et al.,
Defendants.

CIVIL ACTION

NO. 69-490

FILED IN CLERK'S OFFICE
NORTHERN DISTRICT OF ALABAMA
DEC 22 1969
WILLIAM E. DAVIS
CLERK, U. S. DISTRICT COURT
BY: _____ DEPUTY CLERK

MEMORANDUM OPINION

This class action for damages, injunctive and/or declaratory relief was brought by Negro plaintiffs, Mrs. Margaret Faye Terry, Mrs. Jimmie Lee Terry and Mr. Blevin Stout, who were not allowed to purchase burial lots in the public cemetery [1] owned and operated by defendant, The Elmwood Cemetery Corporation. The facts are not disputed and consequently the action has been submitted to the court for a judgment on the pleadings [2] pursuant to Federal Rules of Civil Procedure 12(c).

Bill Henry Terry, Jr., a Negro citizen of the United States and of the State of Alabama, volunteered to serve his country as a soldier on September 22, 1968, was sent to Fort Gordon, then to Japan, and arrived in Viet Nam

---

1/ "The law contemplates two classes of cemeteries, public and private. The former class is used by the general community or neighborhood or church, while the latter is used only by a family or a small portion of a community . . . The test is public user." Smith and Gaston Funeral Directors, Inc. v. Dean, 262 Ala. 600, 80 So. 2d 227, 234 (1955) (quoting from another case). Under this test, Elmwood Cemetery is a public cemetery.

2/ The pleadings consist of the Complaint and the Answer.

on March 8, 1969. Having a premonition that he might be killed while in Viet Nam, he told his mother and young wife, two of the plaintiffs in this action, that he wished to be buried in Elmwood Cemetery in Birmingham, Alabama, in the event of his death. On July 3, 1969, Bill Terry was mortally wounded by the enemy while he was participating in a search and destroy mission. His body was sent back to the United States with the customary military escort, and upon arrival in Alabama was taken by the military authorities, in the company of the plaintiff mother and the plaintiff wife, to the Elmwood Cemetery, where the two mentioned plaintiffs attempted to purchase a burial plot. A man who identified himself as the manager of Elmwood refused to sell a cemetery lot for interment of Bill Terry's remains to these plaintiffs solely because they were Negroes.[3/] Elmwood has attempted to justify this action by answering that it has a policy of refusing burial in its cemetery to persons other than Caucasians which is based on the fact that all lot deeds for grave sites at the cemetery contain a provision limiting interment in Elmwood Cemetery to members of the Caucasian race, and that rules and regulations promulgated by Elmwood in 1954 provide in part:

> Cemetery lots shall be owned only by human beings of the white and/or Caucasian race and the said lots shall be used only for burial of human bodies of the white and/or Caucasian race, and such ownership and use shall at all times be subject to the Rules and Regulations and By-Laws of Elmwood now or hereafter in force. Any attempted transfer of a lot or interest in a lot to one not authorized to own same shall be invalid and of no force and effect and the corporation shall not be obligated to honor such transfer.[4/]

[3/] These facts have been taken almost verbatim from the Complaint at 3-4.

[4/] Answer at 1-2.

Since Bill Terry's wife and mother had already arranged for a funeral, when they were refused the right to purchase a burial lot from Elmwood, they had no alternative on July 19, 1969, but to have his body interred in a Negro cemetery.

On July 25, 1969, the wife and mother of Bill Terry, along with Blevin Stout, a Negro citizen of the United States who resides in Hueytown, Alabama, who also was not allowed to purchase a grave site from Elmwood because he was a Negro, filed this suit, alleging, inter alia, unlawful discrimination against Negroes as a class by Elmwood, which discrimination constitutes a badge or incident of slavery contrary to the thirteenth amendment of the Constitution of the United States and the 1866 Civil Rights Act, 42 U.S.C. § 1982 (1964). Jurisdiction of the court was invoked pursuant to 28 U.S.C. §§ 1343 (3) & (4), 2201 (1964).

The Terry plaintiffs have offered to exhume the remains of Bill Henry Terry, Jr., and to transfer them to the Elmwood Cemetery if the court declares that the defendant wrongfully abridged plaintiffs' rights in refusing to sell them lots in the cemetery solely because they were Negroes.

Elmwood, through its attorneys, has indicated that it will comply with any declaration of rights the court shall make in this matter, and therefore the court will simply declare the rights of the parties, as authorized by 28 U.S.C. § 2201 (1964), and shall decline to issue an injunction at this time.

It is the opinion of the court that the 1866 Civil Rights Act, now embodied in 42 U.S.C. § 1982 (1964), requires

that Negroes and other non-Caucasians be extended the same rights to purchase cemetery lots as whites are given. That Act provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Prior to June 17, 1968, it had long been assumed that this Act did not proscribe private discrimination, but was enacted by Congress under the authority of the fourteenth amendment of the United States Constitution, and thereby was circumscribed by the "state action" limitations of that amendment.[5/] At least one of the reasons for this erroneous assumption was the tortured legislative history of the 1866 Civil Rights Act. It was enacted by an angry and punitive Congress, over the veto of President Andrew Johnson, shortly after the close of the War Between the States. Because many legislators at the time were of the opinion that it was perhaps unconstitutional, after the fourteenth amendment was ratified in 1868, the 1866 Civil Rights Act was reenacted in 1870.[6/] Because of its restricted interpretation, it was seldom invoked by the courts.[7/]

However, in June, 1968, the Supreme Court of the

5/ See 8 Washburn L.J. 268 (1969).

6/ See Comment, Civil Rights: Housing Discrimination -- Revival of Civil Rights Act of 1866, 53 Minn. L. Rev. 641 (1969).

7/ A commentator has capsuled the history of the 1866 Act as follows:

> Like the English artist Aubrey Beardsley, the 1866 Civil Rights Act enjoyed early recognition, suffered thereafter a long period of obscurity, and was discovered anew by a later generation.

Kohl, The Civil Rights Act of 1866, Its Hour Come Round at Last: Jones v. Alfred H. Mayer Co., 55 Va. L. Rev. 272 (1969).

United States in the landmark case of Jones v. Alfred H. Mayer Co.,[8] resurrected this statute from the catacombs of desuetude, and held that:

> § 1982 bars all racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment.[9]

The defendant has vigorously contended that interests in cemetery lots fall without the scope of § 1982. The court is not persuaded. Basically, there are two strings to defendant's bow: (1) § 1982 can only be supported by the thirteenth amendment if the section is considered a fair housing law, and Jones should therefore be limited to its precise facts; (2) the rights of a purchaser of a cemetery lot, because of its unique nature, do not fall within the meaning of the phrase "real and personal property" as used in § 1982. The first aspect of the argument may be disposed of quickly, but the second point requires more detailed consideration.

Since the famous case of Marbury v. Madison,[10] the doctrine of judicial review by the federal courts has been firmly established, and pronouncements by the United States Supreme Court concerning the scope of constitutional provisions and the breadth and validity of statutes are considered the law of the land, binding on this and all other federal and state courts.[11] It is true that the facts in Jones involved the refusal of the defendants to sell the

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8/ 392 U.S. 409.

9/ Id. at 413 (emphasis by the Court).

10/ 5 U.S. (1 Cranch) 137 (1803).

11/ See Cooper v. Aaron, 358 U.S. 1 (1958).

plaintiffs in that case a home in a Missouri community solely because the plaintiffs were Negroes. However, the statements concerning the scope of § 1982 were broad, and the effect of the decision was to reactivate a statute which had fallen into disuse. Nowhere did the Court indicate that § 1982 could only be sustained under the thirteenth amendment if construed as a fair housing law. To the contrary, its "badge of slavery" rationale indicates that it considers that § 1982 is valid and applicable in any situation involving racial barriers to the acquisition of real and personal property. In holding that the thirteenth amendment authorized § 1982, the Court stated:

> Thus, the fact that § 1982 operates upon the unofficial acts of private individuals, whether or not sanctioned by state law, presents no constitutional problem. If Congress has power under the Thirteenth Amendment to eradicate conditions that prevent Negroes from buying and renting property because of their race or color, then no federal statute calculated to achieve that objective can be thought to exceed the constitutional power of Congress simply because it reaches beyond state action to regulate the conduct of private individuals. The constitutional question in this case, therefore, comes to this: Does the authority of Congress to enforce the Thirteenth Amendment "by appropriate legislation" include the power to eliminate all racial barriers to the acquisition of real and personal property? We think the answer to that question is plainly yes.
>
> "By its own unaided force and effect," the Thirteenth Amendment "abolished slavery, and established universal freedom." . . . Whether or not the Amendment itself did any more than that -- a question not involved in this case -- it is at least clear that the Enabling Clause of that Amendment empowered Congress to do much more. For that clause clothed "Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States."[12/]

12/ 392 U.S. at 438-39 (emphasis in first paragraph added, emphasis in second paragraph by the Court).

Cases subsequent to Jones construing § 1982 conclusively demonstrate that this court is on sound constitutional ground in recognizing the broad construction of the reactivated statute. Several recent cases have emphasized the broad language in Jones,[13] three of them holding that whites as well as Negroes are protected by § 1982,[14] and another construing the section to protect Negroes from exploitation by white real estate entrepreneurs.[15] In addition, since Jones, courts have awarded damages, both actual and exemplary,[16] and attorneys' fees,[17] to parties whose

---

13/ See Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969); Gannon v. Action, 303 F. Supp. 1240 (E.D. Mo. 1969); Central Presbyterian Church v. Black Liberation Front, 303 F. Supp. 894 (E.D. Mo. 1969); Contract Buyer's League v. F & F Investment, 300 F. Supp. 210 (N.D. Ill. 1969); Bush v. Kaim, 297 F. Supp. 151 (N.D. Ohio 1969).

14/ See Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969); Gannon v. Action, 303 F. Supp. 1240 (E.D. Mo. 1969); Central Presbyterian Church v. Black Liberation Front, 303 F. Supp. 894 (E.D. Mo. 1969).

15/ See Contract Buyer's League v. F & F Investment, 300 F. Supp. 210 (N.D. Ill. 1969).

16/ See Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969); Pina v. Homsi, 1 Race Rel. L. Survey 183 (D. Mass. 1969); Newbern v. Lake Lorelei, Inc., 1 Race Rel. L. Survey 185 (S.D. Ohio 1969).

17/ See Walker v. Pointer, 304 F. Supp. 56 (N.D. Tex. 1969); Newbern v. Lake Lorelei, Inc., 1 Race Rel. L. Survey 185 (S.D. Ohio 1969).

18/ See Pina v. Homsi, 1 Race Rel. L. Survey 183 (D. Mass. 1969); Newbern v. Lake Lorelei, Inc., 1 Race Rel. L. Survey 185 (S.D. Ohio 1969).

rights under § 1982 have been violated, in spite of the fact that the statute does not mention the availability of these remedies. Finally, the Supreme Court itself, on December 15, 1969, focused upon § 1982 to hold that Negroes may not be barred from acquiring membership shares in and thereby becoming members of community recreational organizations.[19/]

Considering these authorities, this court, while recognizing that Jones has been strongly criticized by some commentators [20/] and was perhaps an exercise in judicial activism, is of the opinion that its real effect is to reactivate § 1982 generally. It therefore becomes the duty of this court to determine whether a cemetery lot is "property" within the meaning of the 1866 Civil Rights Act, 42 U.S.C. § 1982 (1964).[21/]

In any case, the concept of "property" is an elusive one. Property law is replete with semantic problems. It is possible for the same court in the same jurisdiction within the span of a few years to give the same

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19/ See Sullivan v. Little Hunting Park, Inc., 38 U.S.L.W. 4059 (Dec. 15, 1969). The Sullivan decision was handed down after the instant opinion had been prepared, and consequently it is not fully discussed herein. However, Sullivan's thrust reaffirms this court's construction of § 1982.

20/ See, e.g., 1968 Sup. Ct. Rev. 89; Thagard, The Making of a Civil Rights Case: Jones v. Alfred H. Mayer Company, 30 Ala. Law. 438 (1969).

21/ In this respect, the instant case appears to be one of first impression.

general type of interest in property several different labels.[22] Frequently too, the narrow line between contract rights and property rights is vague.[23] The problems inherent in the area are compounded when interests in land are incorporeal in nature. However, if a functional rather than a conceptual approach is used toward property law and interests in land, it is clear that a purchaser's interest in a burial lot is a "property right" whether it be called an easement, license, right of sepulture or whatnot. Tiffany has stated:

> The privilege of interring bodies in a burial ground belonging to a corporation or association has been referred to as an easement, as a usufructury right, and as a license. However characterized, the lot holder, as he is frequently termed, even if not owner of the fee, has an interest in the lot which is such a property right as the law recognizes and protects from invasion.[24]

In the final analysis, a "property right" of any nature may be defined as "that type of relationship which is entitled to protection from a decision maker."[25]

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[22] For instance, in the field of property law concerning real covenants in restraint of trade, which may or may not run with the land, a promise in a deed not to build a store upon a certain parcel of land might be called an "easement," a "covenant," an "equitable servitude," an "equity," or an "amenity," depending upon whether the action is equitable or legal in nature, and the particular result the court would like to reach. See C. Clark, Real Covenants and Other Interests Which "Run With Land" 5 (2d ed. 1947); Comment, Real Covenants in Restraint of Trade -- When Do They Run with the Land?, 20 Ala. L. Rev. 114 (1967).

[23] Comment, Real Covenants in Restraint of Trade -- When Do They Run with the Land?, supra note 22, at 117. See also, Spencer v. Flint Memorial Park Ass'n, 4 Mich. App. 157, 144 N.W.2d 622 (1966).

[24] 3 H. Tiffany, The Law of Real Property § 774 (3d ed. 1939). See also 2 R. Powell, The Law of Real Property ¶ 262 (Recomp. 1967).

[25] H. Cohen, Fundamentals of Land Use Law ix (1962).

Tested against this standard, it may be conclusively established that interests in cemetery lots are property rights. It has been held in Alabama, and this is evidently in accord with the common law in many states, that owners of cemetery lots may maintain actions of trespass against persons who wrongfully interfere with their grave sites,[26] that title to a cemetery lot may be obtained by prescription or adverse possession,[27] and that actions equitable in nature may be maintained by a lot owner's heirs to prevent interference with a dedicated alleyway adjacent to the burial plot.[28] Moreover, cemetery lots may be specifically devised or pass by intestate succession.[29] In addition, the Alabama Legislature has recognized that a cemetery lot is some type of property interest, because it has exempted cemetery lots from "levy and sale, under execution or other process."[30]

The conclusion that the owners of burial rights have a property interest in their lots is further supported by a recent Michigan case, Spencer v. Flint Memorial Park Ass'n,[31] which held that it is a denial of equal

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[26] See Smith and Gaston, Inc. v. Dean, 262 Ala. 600, 80 So. 2d 227 (1955); Bessemer Land & Improvement Co. v. Jenkins, 111 Ala. 135, 18 So. 565 (1895); 3 H. Tiffany, supra note 24.

[27] See Union Cemetery Co. v. Alexander, 14 Ala. App. 217, 69 So. 251 (1915); Annot., 107 A.L.R. 1294 (1937) ("It seems to be well established that right in a cemetery lot may be acquired by adverse possession just as any other interest in real estate may be acquired . . .").

[28] See Weiss v. Taylor, 144 Ala. 440, 39 So. 519 (1905).

[29] See Annot., 26 A.L.R.3d 1425 (1969). If a burial lot is not specifically devised, or if the owner thereof dies intestate, the property interest in the lot passes to the owner's heirs at law. Id.

[30] Ala. Code tit. 7 § 628 (1958).

[31] 4 Mich. App. 157, 144 N.W.2d 622 (1966).

protection of the law in contravention of the fourteenth amendment "for a state to enforce a restrictive agreement of a cemetery association which would deny the owner of a cemetery plot, who is a Negro, the right to bury a non-Caucasian therein."[32] The Michigan court recognized the semantic problems in this area, but concluded that an interest in a cemetery lot is a property right:

> As pointed out by the defendant, the interest of the plaintiff herein is a burial right or right of sepulture. There is no question but that such burial right is a peculiar interest incapable of being pushed into the convenient pigeonhole lawyers and judges are so wont to place difficult concepts. It is not a fee interest, but rather a right of burial which is transferable and the rights of holders thereof are legally enforceable . . . . Regardless of what label we hang on this interest, it is a property right.[33]

To establish that cemetery lot owners do not have "property rights" in cemetery lots, the defendant relies primarily on several general statements from legal encyclopedias,[34] and some observations made by the Alabama Supreme Court in a 1955 case.[35] However, these pronouncements may be explained away by noting that later in the

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[32] 144 N.W.2d at 623.

[33] Id. at 628. The Spencer case is discussed with approval in Note, Constitutional Law -- Racial Restrive Covenant Cannot Be Recognized As a Defense to a Suit for Specific Performance of a Cemetery Burial Contract, 13 Wayne L. Rev. 735 (1967).

[34] See 14 Am. Jur. 2d Cemeteries § 25, at 732 (1964); 14 C.J.S. Cemeteries § 25, at 84 (1939).

[35] See Smith and Gaston Funeral Directors v. Dean, 262 Ala. 600, 80 So. 2d 227, 230 (1955).

same authorities, statements are made to the effect that burial rights are property interests,[36] and by recognizing that the writers of these conclusions were struggling with the semantic problems inherent in the area.

Assuming then, that the owners of cemetery lots, or burial privileges therein, have a "property right" in such lots because their interests will be recognized, protected and effectuated by the courts, it is clear that cemetery lots are "property" within the meaning of § 1982, because the words "real and personal property" as used in the statute exhaust all the possibilities of types of

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36/ In 14 Am. Jur. 2d Cemeteries §25, at 733 (1964), it is stated:

> Even though the purchaser of a cemetery lot may not acquire the fee simple title to the property, he has a property right in his lot which the law recognizes and protects by appropriate remedies from invasion, whether it is by a mere trespasser or by the corporation itself. He acquires the exclusive right to make interments in the lot, and a right to the free and unobstructed use of the alleys and driveways in the cemetery for the purpose of obtaining access to his lot.

And in 14 C.J.S. Cemeteries § 25, at 85, the following observation is made:

> The lot owner's title to the lot is a legal estate, and his interest is a property right entitled to protection from invasion, but only in a restricted sense does it constitute an interest in real property.

In Smith and Gaston Funeral Directors v. Dean, 262 Ala. 600, 80 So. 2d 227, 232 (1955), the Alabama Supreme Court, quoting from another case, made the following statement:

> Ordinarily, the purchaser of a lot in a cemetery acquires only an easement or license to make interments therein exclusive of others. This right of sepulture is a property right, subject to reasonable rules and regulations governing the cemetery and, of course, to be controlled by the state in the exercise of its police powers. When that right is violated, the owner is as certainly entitled to all the remedies which the law affords as if he owned a fee simple.

property.[37] This view concerning the scope of § 1982 is supported by the observations of a commentator on the subject:

> A comparison of Section 1982 with the more recent [civil rights] statutes reveals important differences in the types of property transactions which each was designed to protect. On one hand Section 1982 refers to "real and personal property," without further qualification. There can be no question from a reading of the briefs that the parties in Jones v. Mayer were keenly aware of the potential expansive interpretation of this term. Since most definitions of property consider real and personal property to exhaust the generic concept of "property," rather than being divisions of a larger class, the words of this statute are seemingly all-inclusive.
>
> This expansive definition of the term accords with the general purpose of Congress in drafting Section 1982. The policy of Section 1982 was to allow the emancipated slaves to participate in the wealth of the nation. There is no reason to assume that Congress meant to limit the scope of these terms as they are generally understood, by carving out any portion of property from Negroes' buying power. It therefore appears that "real and personal property," as used in Section 1982, would include more than just housing, food and clothing . . . [38]

Furthermore, in Walker v. Pointer,[39] the Northern District of Texas held that implied easements of ingress and egress, and licenses, are "property" within the scope of § 1982. In that case, white plaintiffs were allowed both actual and exemplary damages, where the manager of an apartment house had evicted them with malice solely because they

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[37] In most modern jurisdictions "all property is divided into two general classes, real and personal, and these terms are commonly used to denote property of all kinds." 73 C.J.S. Property § 4 (1951).

[38] Note, Jones v. Mayer: The Thirteenth Amendment and the Federal Anti-Discrimination Laws, 69 Colum. L. Rev. 1019, 1028-29 (1969).

[39] 304 F. Supp. 56 (N.D. Tex. 1969).

had entertained Negroes in their apartment. Under this authority, it is clear that cemetery lots, or rights of burial therein, even if considered "easements" or "licenses," are "property" within the meaning of § 1982.

The court is also of the opinion that because of the new interpretation of § 1982, the racial covenants and regulations of Elmwood restricting burial in its cemetery to Caucasians are void and of no legal effect, because now, under Jones, even private discrimination is unlawful in the sale or purchase of real or personal property. The court is, of course, aware of the decisions in Shelley v. Kramer[40/] and Hurd v. Hodge,[41/] and their progeny, which held in effect that neither state courts nor the federal courts in the District of Columbia could enforce racial restrictive covenants without contravention of the equal protection clause of the fourteenth amendment or the public policy of the United States. It was generally assumed under these decisions that private discrimination was still constitutionally allowable, even though under expanded concepts of "state action" and other judicial techniques, courts more and more reached out to strike down discriminatory practices.[42/] However, the day has past when even private discrimination in the lease or sale of property will be

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40/ 334 U.S. 1 (1948).

41/ 334 U.S. 24 (1948).

42/ Note, Constitutional Law -- State Action -- Racial Restrictive Covenant Cannot be Recognized as a Defense to a Suit for Specific Performance of a Cemetery Burial Contract, supra note 33, at 735-36.

allowed by the United States Supreme Court.[43]

In all fairness to Elmwood, it should be noted that covenants restricting burial in cemeteries to Caucasions are not a Southern or Alabama phenomenon. As recently as 1953, it was estimated that there were racial restrictive covenants in ninety per cent of all public cemetery deeds and regulations in the United States, because "people, like animals, prefer to be with their own kind."[44]

43/ The Court made this point clear in Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968), when it stated:

> Thus, when Congress provided in § 1 of the Civil Rights Act that the right to purchase and lease property was to be enjoyed equally throughout the United States by Negro and white citizens alike, it plainly meant to secure that right against interference from any source whatever, whether governmental or private.

Id. at 423-24. It might be noted that litigation expense to all parties involved in the instant case will most likely be minimized by a frank recognition that if this case is appealed to higher federal courts, the outcome in favor of the plaintiffs is a virtual certainty, given the emotional posture of the case, and the federal appellate courts' increasing impatience with any kind of distinction based on race. See, e.g., Alexander v. Holmes County Bd. of Educ., 38 U.S.L.W. 3161 (Oct. 29, 1969) ("all deliberate speed" doctrine in school desegregation abrogated).

44/ Rice v. Sioux City Memorial Park, 245 Iowa 147, 60 N.W. 110 (1953), aff'd mem. 438 U.S. 880 (1954), vacated, petition for cert. dismissed, 349 U.S. 70 (1955). Although the actual reference was made to "private" cemeteries, the context of the statement clearly shows that under the test enunciated in note 1, supra, the cemeteries referred to were public in that they were and are used by the general community. In response to the comment that "people, like animals, prefer to be with their own kind," one cannot resist quoting Judge Dooling of California:

> I cannot believe that a man's mortal remains will disintegrate any less peaceably because of the close proximity of the body of a member of another race, and in that inevitable disintegration I am sure the pigmentation of the skin cannot long endure. . .

Long v. Mountain View Cemetery Ass'n, 130 Cal. App. 2d 328, 278 P.2d 945, 946 (1955) (concurring opinion).

Also, the court is aware of and has examined the several decisions that have upheld racial restrictive covenants or regulations with regard to cemetery lots.[45/] However, it suffices to observe that this authority is obsolete, all of it antedating Jones.

Applying the principles enunciated herein to the facts of the instant case, the court holds that under § 1982, defendant Elmwood is legally obligated to sell burial plots in its public cemetery to all United States citizens, on equal terms, without regard to race or color, and has unlawfully abridged plaintiffs' rights under such statute by refusing to sell them cemetery lots solely because they are Negroes. Further, the court declares that the provisions in all existing Elmwood Cemetery lot deeds limiting interment in such cemetery to members of the Caucasian race, and similar provisions in the Elmwood rules and regulations, are void and of no legal effect.

Since the court has concluded that § 1982 is dispositive of the rights and duties of the parties to this case, it will not consider the contention of the plaintiffs that the action of defendant Elmwood in refusing to sell cemetery lots to plaintiffs was also violative of 42 U.S.C. § 1981 (1964). Furthermore, because compensatory damages cannot yet be accurately ascertained, the court will pretermit consideration at this time of plaintiffs' claim for damages, both compensatory and punitive,

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45/ See, e.g., Forest Lawn Memorial Park Ass'n v. De Jarnette, 79 Cal. App. 601, 250 P. 581 (1926); People ex rel. Gaskill v. Forest Home Cemetery Co., 258 Ill. 36, 101 N.E. 219 (1913); Rice v. Sioux City Memorial Park Cemetery, 245 Iowa 147, 60 N.W. 2d 10 (1953); Annot., 110 A.L.R. 388 (1937) (right to exclude from privilege of burial in cemetery).

and for attorneys' fees. Consequently, jurisdiction of this cause will be retained, pending voluntary compliance with the principles enunciated and rights declared in this opinion, and reapplication to this court by the plaintiffs for an award of damages.

Judgment in conformity with the foregoing opinion will accordingly be entered.*

CHIEF JUDGE

* Credit is due Robert L. Potts, Law Clerk to the Court, for the preparation of this opinion.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

MRS. MARGARET FAYE TERRY, et al.,

Plaintiffs,

VS.

THE ELMWOOD CEMETERY, a corporation, et al.,

Defendants.

FILED IN CLERK'S OFFICE
NORTHERN DISTRICT OF ALABAMA
DEC 22 1969
WILLIAM E. DAVIS
CLERK, U. S. DISTRICT COURT
BY: _____ DEPUTY CLERK

CIVIL ACTION NO. 69-490

In conformity with the opinion of the court contemporaneously filed herewith, it is ADJUDGED and DECREED by the court, that under the 1866 Civil Rights Act, now embodied in 42 U.S.C. § 1982 (1964), defendant Elmwood is legally obligated to sell burial plots in its public cemetery to all United States Citizens, on equal terms, without regard to race or color, and has unlawfully abridged plaintiffs' rights under § 1982 by refusing to sell them cemetery lots solely because they are Negroes.

It is further ADJUDGED and DECREED that the provisions in all existing Elmwood Cemetery lot deeds limiting interment in Elmwood Cemetery to members of the Caucasian race, and similar provisions in the Elmwood rules and regulations, are void and of no legal effect.

It is further ADJUDGED and DECREED by the court that jurisdiction of this action be retained for the purpose of passing upon claims for damages and attorneys' fees asserted by plaintiffs.

DONE this 22nd day of December, 1969.

Seybourn H. Lynne
CHIEF JUDGE

Fairfax County Courthouse,
Fairfax, Virginia, 22030,
April 14, 1970.

Opened

Mr. Allison W. Brown, Jr.,
Suite 501,
1424 16th Street, N. W.,
Washington, D. C. 20036

Mr. John Charles Harris,
1500 Belle View Boulevard,
Alexandria, Virginia. 22307

FILED

APR 14 1970

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

Re: Sullivan v. Little Hunting Park, etc. - Ch. 22751;
Freeman v. Little Hunting Park, etc. - Ch. 22752.

Gentlemen:

These causes came before me on March 24, 1970, for a determination of the question of damages. Since there were decrees adverse to each complainant in the first hearing this question was not reached. Both were remanded for further proceedings. At the Court's request, memorandums of authorities were submitted on the question of damages.

After hearing the argument of counsel, and considering the authorities cited, and after a further review of the testimony given at the trial I have reached the following conclusions:

1. No exemplary damages should be awarded in these cases. This type of damage is not allowed because of any special merit in the injured party's case, but is awarded by way of punishment to the offender and as a deterrent, a warning and an example to others. While feelings on both sides were rather warm, this was not unusual in such situations at that time. But there was not that malice present which would warrant punitive damages. Even if the case were otherwise, however, I can find no authority, nor have I been cited to any, where exemplary damages were allowed in equity. Indeed, the general rule appears to be to the contrary (25 CJS 1115, Exemplary Damages, citing 155 F 2d 59. See US v. Hart 86 F. Supp. 787). The Virginia cases all hold that exemplary damages are never recovered as a matter of right, but rest within the sound discretion of the court. Therefore, they will be denied in each case.

2. Nor will the request for counsel fees be allowed. As pointed out above there is not that malice nor wantonness that would warrant such a recovery, nor can the defense in either suit be classed as frivolous so as to justify allowance of counsel fees on that ground. In Virginia the rule is well established that counsel fees are not recoverable as damages.

3. Compensatory damages, however, should be allowed to the complainants. Neither side has cited any authority to either support or defeat the claim for continuing damages. But I do not think this is material. Only Mr. Freeman makes claim to actual monetary damages and these are minimal as well as vague and speculative for the most part. I do not think, however, actual monetary loss is necessary to be entitled to damages. In fixing damages I have noted awards in the federal cases cited and I am not unmindful of the court costs. Therefore damages will be awarded against Little Hunting Park, Inc., only, as follows:

Mr. Paul E. Sullivan	$250.00
Mrs. Flora L. Sullivan	50.00
The Sullivan children (7) $50.00 each	350.00
	$650.00
Mr. T. R. Freeman, Jr.	$1,500.00
Mrs. Laura Freeman	2,000.00
The Freeman children (2) $500.00 each	1,000.00
	$4,500.00

Interest will be allowed from the date of the judgment order.

4. The Clerk has been requested to tax the court costs.

Mr. Brown can prepare a decree in accordance with the foregoing and submit it to Mr. Harris for his approval as to form.

Very truly yours,

James Keith.

JK:elc

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al., Plaintiffs v. LITTLE HUNTING PARK, INC., et al., Defendants.	In Chancery No. 22751
T. R. FREEMAN, JR., et al., Plaintiffs v. LITTLE HUNTING PARK, INC., et al., Defendants	In Chancery No. 22752

JUDGMENT ORDER

THIS CAUSE came to be heard on the remand from the Supreme Court of the United States for a determination of damages, upon the authorities cited by the parties and was argued by counsel.

AND it appearing to the Court that the Complainants are entitled to compensatory damages from the Defendant, Little Hunting Park, Inc., only, it is therefore

ADJUDGED, ORDERED and DECREED that the Complainants recover from the Defendant, Little Hunting Park, Inc., the

sums appearing opposite their names together with their ~~cash~~ costs and interest from the date of this order:

Paul E. Sullivan	$250.00
Flora L. Sullivan	50.00
William F. Sullivan, an infant	50.00
Graciela P. Sullivan, an infant	50.00
Ana L. Sullivan, an infant	50.00
Maire Sullivan, an infant	50.00
M. Dolores Sullivan, an infant	50.00
M. Monica Sullivan, an infant	50.00
Brigid Sullivan, an infant	50.00
T. R. Freeman, Jr.	1,500.00
Laura Freeman	2,000.00
Dale L. Freeman, an infant	500.00
Dwayne L. Freeman, an infant	$500.00

And it is further ORDERED that, pursuant to Section 8.751 of the Code of Virginia, the sums due to William F. Sullivan, Graciela P. Sullivan, Ana I. Sullivan, Maire Sullivan, M. Dolores Sullivan, M. Monica Sullivan and Brigid Sullivan, infants, be paid to their father, Paul E. Sullivan, who shall use the same for their education, maintenance and support. And the sums due to Dale L. Freeman and Dwayne L. Freeman, infants, shall be paid to their father, T. R. Freeman, Jr., who shall use the same for their education, maintenance and support.

To the foregoing, the defendant has duly excepted:

This ORDER is final.

Enter this 27th day of May, 1970.

James Kerr
JUDGE

Robert M. Alexander
Counsel for Plaintiffs

Allison A. Brown, Jr.
Counsel for Plaintiffs

Peter Ames Fiekert
Counsel for Plaintiffs

Plaintiffs except to the inadequacy of the Court's award of compensatory damages and the failure to award punitive damages and counsel fees.

SEEN AND EXCEPTED TO:

Counsel for Defendants

FILED

JUL 1970

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al.

Plaintiffs,

v.

LITTLE HUNTING PARK, INC., et al.

Defendants

IN CHANCERY NO. 22751

T. R. FREEMAN, JR., et al.,

Plaintiffs,

v.

LITTLE HUNTING PARK, INC., et al.

Defendants

IN CHANCERY NO. 22752

NOTICE

TO: Paul E. Sullivan, et al.
c/o Robert M. Alexander, Esquire
2011 South Glebe Road
Arlington, Virginia 22204

TAKE NOTICE that on the 17th day of July, 1970 at the hour of 10:00 EDST or as soon thereafter as counsel may be heard, the undersigned will move the Circuit Court of Fairfax County for the entry of an order staying the judgment in this cause to allow the defendant, Little Hunting Park, Incorporated, to apply for a writ of error to the Supreme Court of Appeals.

Little Hunting Park, Inc.

By _____
Counsel

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 1970, I served a copy of the foregoing Notice on the Plaintiffs by mailing a copy thereof, postage prepaid, to their counsel of record, Robert M. Alexander, Esquire, 2011 South Glebe Road, Arlington, Virginia, 22204.

John Chas. Harris
Counsel for Defendants

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

FILED

JUL 13 1970

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22751
T. R. FREEMAN, JR., et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22752

MOTION

COMES NOW, the defendant, Little Hunting Park, Inc., by counsel, and moves the court that the execution of the judgment entered in this cause be stayed to allow the defendant to apply to the Supreme Court of Appeals for a writ of error to the judgment of this court.

Little Hunting Park, Incorporated

By _____
Counsel

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 1970, I served a copy of the foregoing Motion on the Plaintiffs by mailing a copy thereof, postage prepaid, to their counsel of record, Robert M. Alexander, Esquire, 2011 South Glebe Road, Arlington, Virginia, 22204.

John Chas. Harris
Counsel for Defendants

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22751
T. R. FREEMAN, JR., et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22752

ORDER

THIS CAUSE came to be heard on the motion of the defendant, Little Hunting Park, Inc., that the execution of the judgment entered May 27, 1970 be stayed to allow the said defendant to apply for a writ of error to the judgment of this court.

And it appearing that this motion should be granted, it is,

ORDERED, that the execution of the judgment of May 27, 1970 be stayed for 120 days, upon the defendant, Little Hunting Park, Incorporated, or someone else

HARRIS AND ROARK
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ALEXANDRIA VA. 22307

for them entering into bond in the penalty of $ 500 00
with good and sufficient surety conditioned according to law
within 10 days from the date of this order.

ENTERED this 17 day of July, 1970.

JUDGE

John Chas. Harris
Counsel for Defendants

Robert M. Alexander - w/e except
Robert M. Alexander
Counsel for Plaintiffs

Chancery
158
57 E4,

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

FILED

JUL 23 1970

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al.,

Plaintiffs,

v.

LITTLE HUNTING PARK, INC., et al.,

Defendants.

IN CHANCERY NO. 22751

T. R. FREEMAN, JR., et al.,

Plaintiffs,

v.

LITTLE HUNTING PARK, INC., et al.,

Defendants.

IN CHANCERY NO. 22752

NOTICE OF APPEAL

AND ASSIGNMENT

OF ERROR

TO: W. Franklin Gooding, Clerk
Circuit Court of Fairfax County
Court House
Fairfax, Virginia 22030

Notice is hereby given by the defendant, Little Hunting Park, Incorporated, by counsel, of its appeal of the final judgment entered in the above styled action on the 27th day of May, 1970.

The following are assigned as error:

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

1. The action of the trial court, by its order of February 6, 1970, in enjoining and restraining the defendant from refusing to permit Negroes and other non-white persons from using the defendants facilities and not limiting such injunction to the interference, by the defendant, with the right of Negroes to lease property.

2. The action by the trial court by its order of February 6, 1970, in enjoining the defendant from refusing to make any of the goods, services, privileges, advantages or accomodations of the defendant available to Negroes and other non-white persons and not limiting such injunction to the defendants interference with the right of Negroes to lease.

3. The action of the trial court, by its order of February 6, 1970, in enjoining and restraining the defendant from any practice which deprives, directly or indirectly, any person of the right to full and equal enjoyment of the goods, services, facilities, privileges, advantages and accomodations of the defendant's facilities, without discrimination or segregation on the ground of race or color. Such injunction hould have been limited to restraint against any act which interferes with the right of a Negro to lease.

4. The action of the trial court in awarding damages for the tort of "discrimination" when such tort does not exist at common-law or by statute.

5. The action of the trial court in awarding damages to the Sullivan plaintiffs .

6. The action of the trial court in awarding damages

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to Flora L. Sullivan, William F. Sullivan, an infant, Graciela P. Sullivan, an infant, Ana L. Sullivan, an infant, Maire Sullivan, an infant, M. Dolores Sullivan, an infant, M. Monica Sullivan, an infant, Brigid Sullivan, an infant, T. R. Freeman, Jr., Laura Freeman, Dale L. Freeman, an infant and Dwayne L. Freeman, an infant, solely on the basis of mental anguish without any actual or pecuniary damages.

7. The action of the trial court in allowing the plaintiff, Paul E. Sullivan, to present evidence on the 24th day of March, 1970, as to the "continuing" damages from the date of the original trial until the 24th day of March, 1970.

8. The action of the trial court in considering such "continuing" damages in making its award.

Little Hunting Park, Inc.

By: _____
Counsel

_____
John Chas. Harris
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal and Assignment of Error was served on the Plaintiffs, by mailing a copy thereof, postage prepaid, to their counsel of record, Robert M. Alexander, Esquire, 2011 South Glebe Road, Arlington, Virginia, 22204, this 23 day of July, 1970.

_____
John Chas. Harris
Counsel for Defendants

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

FILED

JUL 23 1970

W. FRA KLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants	:	IN CHANCERY NO. 22751
T. R. FREEMAN, JR., et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants	:	IN CHANCERY NO. 22752

APPEAL AND SUSPENSION BOND

KNOW ALL MEN BY THESE PRESENTS, that we, JOHN CHAS. HARRIS, Principal (for Little Hunting Park, Incorporated), defendant and United States Fidelity and Guaranty Company, Surety, are firmly bound unto the Commonwealth of Virginia in the Sum of Five Hundred Dollars ($500.00), to the payment whereof well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. And we waive the benefit of our exemption as to this obligation.

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

The condition of this obligation is such that,

WHEREAS, in the Circuit Court of Fairfax County, Virginia on the 27th day of May, 1970, in a certain action then pending in said court between Paul E. Sullivan etal., Plaintiffs v. Little Hunting Park, Inc., et al., a judgment was entered for the Plaintiffs against the Defendants for the aggregate sum of Five Thousand One Hundred and Fifty Dollars ($5,150.00) and costs; and

WHEREAS, on the 17th day of July, 1970, the said Court in order to allow the said defendant in said action to appeal said judgment to the Supreme Court of Appeals of Virginia, made an order at the instance of the defendant suspending the execution of said judgment for a period of one hundred twenty (120) days from the date thereof upon the said defendant, or someone for it, giving bond before the Clerk of said Court in the penalty of Five Hundred Dollars ($500.00) conditioned according to law with approved surety; and

WHEREAS, it is the intention of said defendant to perfect said appeal.

NOW, THEREFORE, if the said defendant, Little Hunting Park, Incorporated, shall pay all damages as may accrue to any person by reason of the said suspension, in case a supersedeas to said order should not be allowed, and be effectual, or in case no petition is filed, within the said 120 days, then the obligation to be void; otherwise, to remain in full force

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

and virtue.

Sealed with our seals and dated this 23rd day of July, 1970.

SEAL

John Chas. Harris, Principal
(for ~~Little~~ Hunting Park, Inc.)

United States Fidelity and Guaranty Company

By: Wilfred K. Adolph Jr. SEAL
ATTORNEY-IN-FACT

HARRIS AND ROARK
ATTORNEYS AND
COUNSELLORS AT LAW
1500 BELLE VIEW BLVD.
ALEXANDRIA VA. 22307

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED

AUG 6 1970

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

PAUL E. SULLIVAN, et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22751
T. R. FREEMAN, JR., et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22752

NOTICE OF APPEAL AND ASSIGNMENT OF CROSS-ERROR

TO: W. Franklin Gooding, Clerk
Circuit Court of the County of Fairfax
Court House
Fairfax, Virginia 22030

Counsel for the plaintiffs in the above-styled causes, hereby gives Notice of Appeal from the final judgment entered herein on May 27, 1970.

The following are assigned as error:

1. The action of the trial court in failing to award punitive damages to the plaintiffs.

2. The action of the trial court in awarding compensatory damages to the plaintiffs which are inadequate and insufficient in the circumstances of the case and on the basis of the evidence.

3. The action of the trial court in failing to award counsel fees to the plaintiffs.

4. The action of the trial court in failing to hold the individual defendant directors of Little Hunting Park, Inc. liable for damages and costs.

Robert M. Alexander /s/
Robert M. Alexander
2011 S. Glebe Road
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 - 16th Street, N. W.
Washington, D. C. 20036

Peter Ames Eveleth
920 North Carolina Avenue, S. E.
Washington, D. C. 20003

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal and Assignment of Cross-Error was served on the Defendants by mailing a copy thereof, postage prepaid, on August 4, 1970, to their counsel of record, John Charles Harris, Esq., 1500 Belle View Boulevard, Alexandria, Virginia 22307.

Robert M. Alexander /s/

V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22751
T. R. FREEMAN, JR., et al., Plaintiffs, v. LITTLE HUNTING PARK, INC., et al., Defendants.	IN CHANCERY NO. 22752

FILED
SEP 8 1970
W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

DESIGNATION OF PORTIONS OF RECORD TO BE PRINTED ON BEHALF OF APPELLEES

The appellees designate the following portions of the record to be printed should an appeal be granted from the final judgment entered in the above-styled cause on May 27, 1970.

1. Appellees' assignment of cross-error.

2. Letter dated April 14, 1970, from Judge James Keith to the attorneys for the parties.

3. Judgment order of the Court entered May 27, 1970.

Given under my hand this 4th day of September, 1970.

Robert M. Alexander
Robert M. Alexander
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing designation was served on the defendants by mailing a copy thereof, postage prepaid, on September 5, 1970, to their counsel of record, John Charles Harris, Esq., 1500 Belle View Boulevard, Alexandria, Virginia 22307.

Robert M. Alexander

CHIEF JUSTICE:
HAROLD F. SNEAD
JUSTICES:
LAWRENCE W. I'ANSON
HARRY L. CARRICO
THOMAS C. GORDON, JR.
ALBERTIS S. HARRISON, JR.
GEORGE M. COCHRAN
ALEX. M. HARMAN, JR.

SUPREME COURT OF APPEALS
OF VIRGINIA

CLERK
HOWARD G. TURNER
EXECUTIVE SECRETARY
HUBERT D. BENNETT

Richmond 23210

April 8, 1971

FILED
APR 9 1971
W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

Honorable W. Franklin Gooding
Clerk, Circuit Court of
Fairfax County
Fairfax, Virginia 22030

Dear Mr. Gooding:

The case of T. R. Freeman, Jr., et al. v. Little Hunting Park, Inc., et al., having been disposed of in this Court, I am returning herewith the record.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

Howard G. Turner,
Clerk

By: Allen L. Lucy
Deputy Clerk

ALL/cew

Enclosure

Chy 22752

FILED

APR 9 1971

W. FRANKLIN GOODING
Clerk of the Circuit Court
of Fairfax County, Va.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday *the* 10th *day of* March, 1971.

It appearing to the court that the record in the case of Paul E. Sullivan, et al. v. Little Hunting Park, Inc., et al., from the Circuit Court of Fairfax County was filed herein on September 29, 1970; and it further appearing that no petition for appeal in this case has been filed and that the time allowed by law within which to do so has expired, it is ordered that the said record be returned to the said circuit court.

A Copy,

Teste:

Howard G. Turner, Clerk

By: R. P. Tomlinson
Deputy Clerk

Entered in Chancery
Order Book No. 167 at
page 126 and Ef.

C. W. WARTHEN CO., NO. 500

Commonwealth of Virginia

In the Circuit Court of the County of Fairfax

Freeman , T. R., Jr. et al

vs.

Little Hunting Park, Inc., et al

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I Deputy C Clerk of the above mentioned Court, certify that the papers listed above and filed herein, are the original papers in the above styled case.

Teste:

Deputy, Clerk

FILED

JUL 12 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VA.

THE _____ DAY OF July _____, 19 66

STYLE

T. R. Freeman et al CHANCERY

vs LAW

Little Hunting Park, Inc. et al

ch No. 22752

The Clerk of said Court will please place the above on the docket to be called July 25 _____, 19 66 for the following action:

1. Hearing on Merits _____
   a. With a Jury _____
   b. Without Jury _____
2. Argument on Pleadings X

Mail or Deliver to:

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court

Attorney for Defendants

I hereby certify that a copy of the foregoing notice has this day been deliver - mailed to other counsel of record pursuant to Rule 3:15

Pl - Robert M. Alexander
Def - John C. Harris

SEP 1966

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA

THE 15th DAY OF September, 1966.

FILED

SEP 16 1966

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

STYLE

T. R. FREEMAN, JR., et al

Plaintiffs

VS

LITTLE HUNTING PARK, INC., et al

Defendants

CHANCERY

NO. 22752

The Clerk of said Court will please place the above case on the docket to be called September 26, 1966 for the following action:

1. Hearing on Merits XX
   a. With a Jury _____
   b. Without a Jury XX
2. Argument on Pleadings ___

Mail or Deliver to:
Thomas P. Chapman, Jr.,
Clerk of the Circuit Court,
Fairfax, Virginia

Robert M. Alexander
Robert M. Alexander
Attorney for Plaintiffs

I hereby certify that a copy of the foregoing notice has this day been ~~delivered~~ mailed to other counsel of record pursuant to Rule 3:15 September 15, 1966, postage prepaid.

Robert M. Alexander
Robert M. Alexander
Attorney for Plaintiffs
1829 Columbia Pike
Arlington, Virginia
Telephone: 521-9113

John C. Harris, - Def.

IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VA.

THIS 1st DAY OF APRIL, 1967

STYLE

T. R. Freeman, Jr., et al

CHANCERY NO. 22,752

vs

Little Hunting Park, Inc., et al

~~LAW~~

The Clerk of said Court will please summons the following witness (or witnesses) on behalf of the Plaintiffs, to appear on the 12th day of April, 1967, at 10:00 AM.

Name	Address	County
S. Leroy Lennon	2616 Woodlawn-Ale, VA.	Fairfax
Mrs. Mary Simmons	6414 Cavalier Dr., Ale, VA.	Fairfax
Mrs. Virginia Moore	6417 Olmi-Lanchester Dr, Ale, VA.	Fairfax

Summons issued April 7, 1967;
1 and 3 to Sheriff of Fx. Co.

Ethel R. Short
Deputy Clerk

Robert M. Alexander
Attorney for the Plaintiffs

FORM CO 1-3M-4-61

FAIRFAX COUNTY, To-wit:

Commonwealth of Virginia

SHERIFF'S OFFICE FAIRFAX COUNTY, VA. RECEIVED 1967 APR 10 AM 8 56

To the Sheriff of Fairfax County, — *Greeting:*

You are hereby commanded to summon Me S. Leroy Lennon

TB Mrs. Mary Simmons 8 11 30

TB Mrs. Virginia Moore 8 11 30

SHERIFF'S FEES P IP NF MF REI LEVY $ APP'S FAID COPIES PAID CLERK

to appear before our CIRCUIT COURT of Fairfax County, at the Court-house of said County, on the 12th day of April, 1967, to-wit: Wednesday at 9:45 o'clock, A.M., to testify and the truth to speak on behalf of the Plaintiffs in a certain matter of controversy depending and undetermined in said Court between

T. R. Freeman, Jr., et al

Plaintiff, and Little Hunting Park, Inc., et al (Case No. 22752)

Defendant, and this he shall in no wise omit, under penalty of law. And have then and there this writ.

Witness, THOMAS P. CHAPMAN, Jr., Clerk of our said Court, at the Court-house aforesaid, the 7th day of April, 1967, and the 191st year of the Commonwealth.

THOMAS P. CHAPMAN, Jr., *Clerk.*

By: Ethel R. Hart, *Deputy Clerk.*

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	In Chancery No. 22752
	:	
LITTLE HUNTING PARK, INC., et al.,	:	
	:	
Defendants.	:	

NOTICE

TO: Little Hunting Park, Inc., et al.
c/o John Charles Harris, Esq.
1500 Belleview Boulevard
Alexandria, Virginia

Please take notice that the plaintiffs in this cause will move the Court in accordance with the attached Motion for Correction of the Record on Friday, June 16, 1967, at 10:00 A.M. or as soon thereafter as counsel may be heard.

Robert M. Alexander

Robert M. Alexander
Attorney for Plaintiffs
1829 Columbia Pike
Arlington, Virginia 22204

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice was mailed, postage prepaid, this 11th day of June 1967 to John Charles Harris, Esq., 1500 Belleview Boulevard, Alexandria, Virginia.

Robert M. Alexander

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al., Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al., Defendants.	:	

MOTION FOR CORRECTION OF THE RECORD

Now come plaintiffs, T. R. Freeman, Jr. , et al., through their attorneys, and move the court to enter an order correcting the reporter's transcript in the above entitled cause in the following particulars:

Page	Line(s)	Now Reads	Correct to Read
3	24	have the right.	have the right to maintain this action.
4	4	share was	share assigment was
4	11	is not barred to	is not a bar to
12	12-13	Club bar negro family living in the subdivision."	Group Bars Negro Family Living in Subdivision."
12	17	was made on grounds other than race, but added that	was 'made on grounds other than race.' But he added that
12	18	the board did not	the Board 'did not
12	19	reasons."	reasons.'"
12	25	with the board?	with "The board".
13	6	said the Freemans	said 'the Freemans
13	7	are negroes. He	are Negroes.' He
13	8	they would	that would
13	9	and slander, but	or slander.' But
13	10	wasn't race, he	wasn't race,' he
13	17	Ioanes	Ioanes
14	8-11	"Subject: T. R. Freeman, Jr. contest over Little Hunting Park Swimming pool referred to in the attached article in the front page of the third large section of the Washington Post this morning, was employed by the	"Subject: Theodore R. Freeman. The Theodore R. Freeman, Jr. referred to in the attached article on the front page of the "City Life" section of the Washington Post this morning was employed by the

Page	Line(s)	Now Reads:	Correct to Read:
14	13	a PhD	a recent Ph.D. graduate
14	14	showed an	has shown
14	20	he had hoped	it was hoped
14	23	and settle . . . advised he	to settle . . . advises that he
14	24	to two	to use two
15	1	Seaborne	Seabron
15	3	Seaborne	Seabron
16	11	date you have been	date? You have seen
16	16	only	one
16	16-17	letter of Plaintiffs'	letter of July 16th, Plaintiffs'
19	2	ever	every
20	20	labor	a lot of
21	19	Dr. Freeman	THE COURT: Dr. Freeman
24	7	an indiscriminatory	a nondiscriminatory
25	9	economics and	economics not
43	15	Bucknell, Inc.	Gosnell, Inc.
45	12	one	"one."
47	11	stimlus	stimulus
47	23	extent. As	extend, as
50	5	moved	lived
55	10	dover	cover
59	4	in the	within what
72	22	10:00 A.M., Saturday	10 AM, Easter Saturday
72	23	in the area,	of the area,
72	24	under are . . . in the	under, are . . . from the
72	25	Moore, Chairman of the Activity."	Frank, Chairman of Special Activities."
73	5	Marjory Mattson	Marjorie Madsen
73	6-21	Marjory Mattson, our special activity director, has arranged the following schedule of events for the season: Teen-age party, swimming, 7 to 9 P.M. and then dancing until 11:00 P.M., admission free, but you will have to furnish your own refreshments from the concession	Marjorie Madsen, our Special Activities Director, has arranged the following schedule of events for the coming season: Teen party, June 16, Wednesday: swimming, 7 to 9 P.M. and then dancing until 11:00 P.M., admission free, but you will have to furnish your own refreshments from the refreshment stand; members only, plus one guest from outside the area.

Page	lAne(s)	Now Reads:	Correct to Read:
		standing members only with one guest outside the area, from 7 to 9 P.M., then dancing until 11:00, admission free. At this one LHP gives you free refreshments, members only. Teen party, August 11th, Wednesday, swimming from 7 to 9 P.M. then dancing until 11:00, admission twenty-five cents per person, members plus one guest, refreshment from the concession. Standing adult party, July 30th, Friday, swimming from 7:30 to 9:00 P.M., entertainment and refreshments. Children's party, August, refreshments in price. In case of bad weather and cool weather, other dates will be arranged.	Teen party, July 14, Wednesday; swimming from 7 to 9 P.M., then dancing until 11:00, admission free. At this one LHP gives you free refreshments; members only. Teen party, August 11, Wednesday; swimming from 7 to 9 P.M. then dancing until 11:00; admission twenty-five cents per person; members plus one guest; refreshments from the refreshment stand. Adult party, July 30th, Friday, swimming from 7:30 to 9:00 P.M.; entertainment and refreshments. Children's party, August 28, Saturday; swimming, games and fun from 2:00 P.M.-5:00 P.M. Refreshments and prizes. In case of bad weather or conflicting events, other dates will be arranged.

WHEREFORE, plaintiffs pray for an order of this Court authorizing the inclusion of the above mentioned matters in the reporter's transcript in this cause.

Robert M. Alexander

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th St., N.W.
Washington, D. C. 20036

Peter James Eveleth
217 Fifth Street, S.E.
Washington, D. C. 20003

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was mailed postage prepaid this 11th day of June 1967, to John Charles Harris, Esquire, 1500 Belleview Boulevard, Alexandria, Virginia.

Robert M. Alexander

LAW OFFICES
HARRIS AND ROARK
1500 BELLE VIEW BOULEVARD
ALEXANDRIA, VIRGINIA

JOHN CHAS HARRIS
DEWEY R. ROARK, JR.

TELEPHONE
765-4177

April 13, 1967

Honorable James E. Keith
Circuit Court of Fairfax County
Courthouse
Fairfax, Virginia

Re: Freeman v. Little Hunting Park, Inc.
Chancery No. 22752

Dear Judge Keith:

I am enclosing some newspaper clippings concerning Judge Oren Lewis' decision in the case of Johnson v. Brookville Swimming Club, Inc. Also enclosed is a news article on Cambridge, Maryland which reports that the Justice Department ruled the local swimming pool a private club and still is segregated.

In court on March 12, I mentioned the Timberlake case. This was heard in the United States District Court for Eastern District of Virginia under the style Scott v. Young. Since the refreshment stand also served the general public it was ruled that they came under the Civil Rights Act. The management agreed to abandon the refreshment stand and is now operating on a segregated basis.

The above information was gathered in haste, if you require further details I stand ready to furnish whatever you may require.

Sincerely,

John Chas. Harris

JCH:caw

Enclosures

cc: Robert M. Alexander, Esquire
Allison W. Brown, Esquire

Swim Club Bias Suit Is Dismissed

A suit charging the Brookville Swimming Club, Inc., of Alexandria with racial discrimination was dismissed yesterday by a federal judge.

Judge Oren R. Lewis in Federal District Court in Alexandria said in his order that Brookville is a private club and therefore is not subject to federal civil rights statutes.

The suit was filed Sept. 10 by Marion I. Johnson, a retired Negro Army colonel who has long been prominent in civic affairs.

Francis E. Malcolm, president of the club, was not served with notice of the suit until Sept. 24.

Meanwhile, Malcolm said, club officers who were unaware of the suit—had approved Johnson's membership application.

"I notified Col. Johnson on Sept. 14 that he had been accepted, but his attorneys decided to press the suit anyway, as a class action," Malcolm said.

The suit was dismissed, as a class action and with prejudice, meaning that neither Johnson nor anyone else may bring a similar complaint before the court.

"Col. Johnson was the first Negro applicant we've ever had," Malcolm said. "Our only concern is whether a given applicant would be good for the club, and we thought he would.

"But we wanted to protect our right to withhold membership from anybody, of any group, who we think wouldn't be a good member."

Swim Pool Integration Move Fails

A suit charging an Alexandria swimming pool with racial discrimination was dismissed yesterday by U.S. District Judge Oren R. Lewis.

The suit was filed in September by Marion I. Johnson, a Negro, against the Brookville Swim Club, 1151 N. Van Dorn st. It sought to enjoin the club from discriminating on the grounds of race or color.

Johnson, of 1027 N. Quaker la., was admitted to the club shortly after he filed the suit, and according to Brookville president Francis E. Malcolm, before Malcolm had learned of the suit.

Malcolm denied the club had any established policy against admitting Negroes but contended that being a private club it had the right to select or discriminate among applications for membership on any basis whatsoever, including race or color.

Johnson himself had sought to have the suit dismissed last month. He agreed yesterday not to further contest Brookville's position that it is a private club and therefore exempt from the Civil Rights Act of 1964.

Yesterday's order of dismissal specified that it has "not been judicially established" that Brookville is a place of public accommodation within the meaning of the Civil Rights Act. The suit was dismissed with prejudice, meaning it cannot be filed again.

STILL LITTLE INTEGRATION

Two Years After Racial Strife, Cambridge Is Calm

CAMBRIDGE (AP)—The flag still whips briskly atop the American Legion post, but the black-topped parking area and green lawns no longer are manned with state police cars and barking K-9 dogs.

The gray stone armory, home of the Dorchester County National Guard and once the nerve center for 1,200 guardsmen from across Maryland, stands austere in its cold silence.

In the green, tree-shaded dell adjoining the county courthouse, English sparrows join a noisy tirade as they jostle for position on the edge of a bubbling fountain, and the strains of "We Shall Overcome" are only a faint echo of memory.

This is Cambridge, 1965—two years from what history will record as the "long, hot summer" of 1963.

That was the year this Eastern Shore county seat was catapulted into national headlines by racial demonstrations that eventually culminated in shootings, riots, stonings and, finally, militia law that lasted nearly a year.

But Cambridge recovered quickly.

Racial calm again prevails, but credit, say local leaders, is due not to the Civil Rights Act or accession to Negro demands but to the lack of outside agitation.

Negroes still are not to be seen in white restaurants, although theoretically they have the right to eat there.

Registered Negro voters total just 261 more than they did in 1960 despite a highly touted registration drive.

The town's only swimming pool, ruled a private club by the Justice Department, still is segregated.

Mayor Osvrey Pritchett, who was elected overwhelmingly in 1964 on an avowed segregationist platform, attributes the racial calm to lack of outside agitators.

"There's only a few outside agitators in town and they don't have any followers," he said.

"Things are very quiet. There's no trouble. The only thing we're doing is following the law, and as long as we do that, they can't do very much."

Charles Cornish, Negro president of the town council who was castigated as an "Uncle Tom" by leaders of his own race during the 1963 demonstrations, said he thought Cambridge was "getting out of its difficulty.

"We've made a good bit of progress—housing, more jobs, public accommodations.

"The Civil Rights Law has played a major role. People realize that it's the law of the land now and they abide by it."

But State Sen. Frederick Malkus, a Democrat who has long blamed outside agitators and the press for the town's troubles, said he saw no change at all since the 1963 violence.

"I don't think anything has changed in the state of Maryland since the Civil Rights Act was passed.

"You can't change the feelings of people by passing laws. The change has to come from the heart," he said.

Richard Matthews, a member of the Maryland House of Delegates from Dorchester, echoed Malkus' opinions.

"I can't detect much change so far as the attitudes of the races toward one another are concerned. It takes time.

"As long as these outside agitators keep their big mouths out of things, I think we'll work things out just fine," he said.

Dr. Richard A. Larose, chairman of the city's Human Relation Committee, took a more optimistic note.

He cited the 150-unit low-rent—housing project under construction in the Negro district, the food stamp program, an integrated summer enrichment program for 400 junior and senior high students, Head Start classes for 200 youngsters and a day care center for children of migrant workers.

But John Battiste, now at the helm of the Cambridge Nonviolent Action Committee and one of the so-called "outsiders," feels the Negro community still is in poor shape.

"We want jobs, not just any jobs. We want gainful employment," he said, echoing a demand made by the street demonstrators of 1963.

Robert B. Davis, chairman of the Industrial Development Committee of the Cambridge-Dorchester Chamber of Commerce, cites 12 new businesses employing 1,200 new workers since 1950 as evidence that the town is moving forward jobwise.

But only one company has decided to settle here since 1963 and it provides jobs for relatively few persons.

Battiste feels, too, that the new housing project is only a token.

"Look around here and see how much decent housing we need," he said.

There are about 4,000 Negroes among the 12,600 Cambridge residents.

The issues are much the same as they were in 1963. The sides are identical.

But this is 1965 and Cambridge is at peace.

RESIDENCE: 671-9020

ROBERT M. ALEXANDER
ATTORNEY AT LAW
1829 COLUMBIA PIKE
ARLINGTON, VIRGINIA 22204
JAckson 521-9113

July 11, 1967

Honorable Thomas P. Chapman, Jr.
Clerk, Circuit Court of Fairfax County
Courthouse
Fairfax, Virginia

Re: (1) Sullivan vs. Little Hunting Bark, Inc., Chancery No. 22,751
(2) Freeman vs. Little Hunting Park, Inc., Chancery No. 22,752

Dear Mr. Chapman:

Enclosed are one copy each of the Appellants' Designations of Record in the two above styled causes, as well as certificates showing service on opposing counsel.

Twenty (20) days after filing of the enclosed designations in your Office, I will appreciate your transmitting the records in both cases to Honorable Howard G. Turner, Clerk, Supreme Court of Appeals of Virginia, Richmond, Virginia.

Enclosed is a check for Ten Dollars.($10.00) to cover fees for preparing the record and transmittal of same in these suits to the Court of Appeals.

Very truly yours,

Robert M. Alexander

Robert M. Alexander

Inclosures

cc: John Charles Harris, Esquire
1500 Belle View Boulevard
Alexandria, Virginia

1829 Columbia Pike
Arlington, Virginia 22204
July 31, 1967

FILED

AUG 1 1967

THOMAS P. CHAPMAN, JR.
Clerk of the Circuit Court
of Fairfax County, Va.

Honorable Thomas P. Chapman, Jr.
Clerk, Circuit Court of Fairfax County
Courthouse
Fairfax, Virginia

Re: (1) Sullivan v. Little Hunting Park, Inc., Chancery No. 22751
(2) Freeman v. Little Hunting Park, Inc., Chancery No. 22752

Dear Mr. Chapman:

No. 22,751

As Mr. Peter Ames Eveleth, co-counsel in these causes, informed your office by telephone today, we would appreciate it if you would transmit the designation and record in the Sullivan case (No. 22,751) as per request in our letter to you of July 11, 1967.

No. 22,752

However, in the Freeman case (No. 22,752), please do not transmit the designation and record at this time as we shortly will send you a supplemental designation for filing in that case. Please retain the designation which we previously sent you and which you have filed, and transmit it together with the supplemental designation and record twenty days after you have filed the supplemental designation.

If you have any questions concerning this matter, please call me at my office (382-2107).

Very truly yours,

Robert M. Alexander

Robert M. Alexander

cc: John Charles Harris, Esquire
1500 Belle View Boulevard
Alexandria, Virginia

ALLISON W. BROWN, JR.
Attorney at Law
Suite 501, 1424 - 16th Street, N. W.
Washington, D. C. 20036

February 3, 1970

Honorable James Keith
Judge, Circuit Court of
Fairfax County
Fairfax County Courthouse
Fairfax, Virginia 22030

Re: Sullivan, et al. v. Little Hunting Park, Inc. et al.,
In Chancery No. 22751, 22752

Dear Judge Keith:

In connection with the hearing scheduled for February 6, 1970, in the above matter, enclosed is a decree which the plaintiffs propose for entry.

This proposed decree was submitted to Mr. Harris, counsel for the defendants, for his consideration under date of January 20, 1970, but we have not yet learned of his specific objections to it, if any.

Very truly yours,

Allison W. Brown, Jr.

Allison W. Brown, Jr.

cc: John Charles Harris, Esq.

CLERK'S OFFICE

CIRCUIT COURT OF FAIRFAX COUNTY

FAIRFAX, VIRGINIA

ARTHUR W. SINCLAIR
ALBERT V. BRYAN, JR.
BARNARD F. JENNINGS
JAMES KEITH
WILLIAM G. PLUMMER
JUDGES
SIXTEENTH JUDICIAL CIRCUIT

W. FRANKLIN GOODING
CLERK OF COURT

DEPUTY CLERKS
EDWARD E. YOUNG
MRS. FRANCES D. MYERS
MRS. SYLVIA M. PRESGRAVE

July 8, 1970

Mr. Robert M. Alexander
Attorney at Law
1829 Columbia Pike
Arlington, Virginia 22204

Mr. Allison W. Brown, Jr.
Attorney at Law
Suite 501, 1424 16th St., N. W.
Washington, D. C. 20036

Mr. Peter Ames Eveleth
Attorney at Law
217 Fifth Street, S.E.
Washington, D. C. 20003

Mr. John Charles Harris
Attorney at Law
1500 Belle View Blvd.
Alexandria, Va. 22307

Gentlemen:

In Re: Sullivan, et al vs.
Little Hunting Park - Chy. 22751
&
Freeman, et al vs.
Little Hunting Park - Chy. 22752

Judge James Keith has made the attached computation which are now assessed as costs in the captioned cases and requested that all counsel in the case be advised.

Very truly yours,

Deputy Clerk

EEY/c
Enc.

In Re: Sullivan, et al vs. Little Hunting Park - Chy. 22751
Freeman, et al vs. Little Hunting Park - Chy. 22752

CIRCUIT COURT OF FAIRFAX COUNTY

Clerk's Costs	$ 43.00	$ 625.90
Service of Process	18.00	
Transcript	549.90	
Exhibits (copies)	15.00	

SUPREME COURT OF APPEALS OF VIRGINIA

Clerk's Fee	$ 10.00	
Filing	3.00	
Printing	120.00	$ 133.00

SUPREME COURT OF THE UNITED STATES

By Order of October Term, 1969	$1,235.88	
Printing - 1968 Petition	268.13	Don't See 11 USC Title 28 Sec 57 para 3
Printing - 1969 Petition	291.00	
Printing	499.67	$ 2,294.68

Total $ 3,053.58

In preparing costs of Printing "petitions" is not a taxable item JK

Costs in Circuit Court of Fx Cty:

Clerk's Costs	43.00
Service of process	18.00
Transcript	549.90
Exhibits-copies	15.00
Total	

Supreme Court of Appeals of Virginia:

Clerks fee	10.00	
Filing "	3.00	
Printing	120.00	(VCH 1-182)
Total		

Supreme Court of the United States

Order of October Term, 1969	1235.88	
Printing - 1968 petition	268.13 Bud	Rule 25 sec 57(3)
" 1969 "	291.00 Gw	
"	499.67	
	Total	

Gentlemen:

~~I am~~ Costs in the above matter have been taxed again in accordance with the rulings of Judge Keith ~~in~~ when the matter was before him on July 17, 1970. The attached computation should be substituted for the one attached to my letter to you of July 28, 1970.

Very truly yours

Dep Cl

ALLISON W. BROWN, JR.
Attorney at Law
Suite 501, 1424 - 16th Street, N. W.
Washington, D. C. 20036

382-6030

March 30, 1970

Honorable James Keith
Judge, Circuit Court of Fairfax County
Fairfax County Courthouse
Fairfax, Virginia 22030

Re: Sullivan et al. v. Little Hunting Park, Inc., et al., In Chancery Nos. 22751, 22752

Dear Judge Keith:

The plaintiffs' costs in this Court for the two subject cases, as ascertained from the Clerk and from plaintiffs' records, are as follows:

Filing fees	$ 43.00
Service of process	9.00
Subpoenas	8.75
Depositions (original and 1 copy)	89.70
Transcript-2½ days trial (orig. & 1 copy)	549.90
Exhibits-purchase and preparation	15.00
	$ 715.35

In appealing the two cases to the Supreme Court of Appeals of Virginia, plaintiffs incurred the following costs:

Fee to Clerk for preparation of records	$ 10.00
Filing fees	3.00
Mimeographing-two petitions for appeal	~~169.14~~
	$ 182.14

I question the correctness of this as an item of "Court costs"

$20.00

165 pages / 38 pages @

127 → $2.00 reduce. → 30 copies

In the course of obtaining Supreme Court review of these cases, the plaintiffs incurred the following costs, exclusive of the $1235.88 which was awarded on January 23, 1970, and which has not yet been paid:

Printing-1968 petition for certiorari & reply to brief in opposition	$ 268.13
Printing-1969 petition for certiorari & reply to brief in opposition	291.00
Printing-petitioners' brief & supplemental brief	499.67
	$ 958.80

Very truly yours,

Allison W. Brown, Jr.

Allison W. Brown, Jr.

cc: John Charles Harris, Esq.
Robert M. Alexander, Esq.

ALLISON W. BROWN, JR.
Attorney at Law
Suite 501, 1424 - 16th Street, N. W.
Washington, D. C. 20036

March 26, 1970

Honorable James Keith
Judge, Circuit Court of Fairfax County
Fairfax County Courthouse
Fairfax, Virginia 22030

Re: Sullivan, et al. v. Little Hunting Park, Inc., et al.
In Chancery Nos. 22751, 22752

Dear Judge Keith:

At the hearing in this proceeding held before you on March 26, 1970, during my argument two questions were raised by you, to which I would like to respond, very briefly.

1. You asked for my answer to Mr. Harris' argument, based on his construction of the Supreme Court's opinion, that the Sullivan plaintiffs are not entitled to damages. As I indicated at the hearing, this argument distorts completely the meaning of the Supreme Court's decision. Among other things, I would point out that if, as Mr. Harris asserts, there is no authority to award the Sullivans damages as a consequence of the Supreme Court's holding, by the same token, there would be no authority to award them injunctive relief, such as this Court has already granted. The Supreme Court's opinion plainly states that the plaintiffs sued for injunctions and monetary damages, that the trial court denied relief in the cases, and that those judgments are specifically reversed (slip op. p. 5). Mr. Harris' argument would make nullities of the Sullivans' suit as well as the Supreme Court's holding, for he says in effect that, though the Sullivans may have "standing" to sue the defendants, they have no right to the normal remedies flowing from such a suit because the defendants owed no duty to Sullivan. This contention, plaintiffs submit, is on its face illogical and baseless. Obviously, defendants violated rights of Sullivan which, as the Supreme Court held, devolved from Section 1982. Otherwise, as noted above, there would have been no basis for issuance of the injunction granting relief to the Sullivans, which this Court entered on February 6, 1970. Finally, as I noted at the hearing, Mr . Harris' suggestion that because the Sullivan plaintiffs are white, they do not have rights under Section 1982, is completely refuted by the decision of District Judge Sarah Hughes in Walker v. Pointer, 304 F. Supp. 56 (N.D. Texas).

2. The question was also raised by you at the hearing as to whether a court of chancery may award punitive damages. With respect to this matter, it is to be noted, first, that throughout four years

of protracted litigation, including discussion of the question of punitive damages in the briefs and arguments in the Supreme Court, defendants have never raised this issue. Hence, it would be inappropriate for it to be relied on at this late stage to bar plaintiffs' recovery of punitive damages. In any event, in the instant case, the Supreme Court held that both "federal and state rules on damages" may be utilized, whichever better serves the policies expressed in Section 1982 (slip op. p. 10). The only reported case in point involving Section 1982 is Terry v. Elmwood Cemetery, 307 F. Supp. 369 (N.D. Ala.), which I discussed in another connection at the hearing before you, where Judge Seybourn Lynne assumed the right, in the exercise of his equitable powers, to enjoin violations of the statute and, in addition, to grant punitive damages as called for. Newbern v. Lake Lorelei, Inc., ___ F. Supp. ___ (S.D. Ohio), cited by Judge Lynne, 307 F. Supp. at 373, n. 17, though not yet officially reported, is a case of the same nature. The correctness of these decisions is also supported by the opinion of Judge Sobeloff in Simmons v. Avisco, Local 713, Textile Workers Union, 350 F.2d 1012, 1018 (C.A. 4), where it was held that the suit to vindicate the federal statutory right there involved was both "at law and in equity" and as a result of this merger, partook of the characteristics of both types of proceedings. The same reasoning, plaintiffs submit, is equally applicable here.

In addition to these interpretations which have already been given in cases involving the vindication of federal rights, it is clear that the modern trend of decisions is to abandon the once held view that equitable courts may not award punitive damages. Typical is the decision of the Court of Appeals of New York in I. H. P. Corp. v. 210 Central Park South Corp., 12 N.Y.2d 329, 239 N.Y.S.2d 547, 189 N.E.2d 812, holding that a rule which forbids the combining of equitable relief with an award of punitive damages stems from the historic procedural division between law and equity with no rational basis, apart from history, in modern substantive law or equity. Other recent decisions to the same effect have been rendered by the courts in California, Indiana, Iowa, Oklahoma, Tennessee and Texas. See cases cited at 48 AIR 2d (Later Case Service), p. 868-869.

Very truly yours,

Allison W. Brown, Jr.

Allison W. Brown, Jr.
Attorney for Plaintiffs

cc: John Charles Harris, Esq.
1500 Belle View Blvd.
Alexandria, Virginia 22307

Chy 27752

Inman

Vs

Little Stirling Park Inc.

File 21.50

Serve 9.00 143

Sup 3.~~75~~

Chy 27751

Sullivan

Vs

Little Stirling Park Inc

File 21.50

Serve 9.00

Sup 5.00 1194

Clerk Supreme Ct. Clerks costs 130.00

Printing 1085.88

1,235.88

Will Record

in

Costs

Talked to Mr Alexander

ROBERT M. ALEXANDER
ATTORNEY AT LAW

2011 SOUTH GLEBE ROAD
ARLINGTON, VIRGINIA 22204
521-9113

508 - 5TH STREET, N.W.
WASHINGTON, D.C. 20001
ME 8-4040

May 25, 1970

Honorable James Keith
Judge, Circuit Court of Fairfax County
Courthouse
Fairfax, Virginia

RE: Sullivan et al vs. Little Hunting Park, Inc. et al
Chancery No. 22752

Dear Judge Keith:

Enclosed is a sketch of a Final Judgment Order endorsed by all counsel herein.

Respectfully submitted,

Robert M. Alexander

Robert M. Alexander

RMA:dlp

cc: Allison W. Brown, Jr., Esq.
Peter Ames Evelett, Esq.
John Charles Harris, Esq.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22751
LITTLE HUNTING PARK, INC., et al	:	
Defendants	:	
T. R. FREEMAN, JR., et al	:	
Plaintiffs,	:	
v.	:	In Chancery No. 22752
LITTLE HUNTING PARK, INC., et al	:	
Defendants.	:	

DECREE

THESE CAUSES came on to be heard this _____ day of _____, 1970, pursuant to the mandate of the Supreme Court of the United States dated January 9, 1970, remanding these causes to this Court for further proceedings not inconsistent with the opinion and judgment of the Supreme Court of the United States dated December 15, 1969. This Court having determined that further proceedings are warranted herein with respect to the issues of damages and costs, nonetheless hereby enjoins and restrains the continued violation of rights of the plaintiffs secured to them by 42 U.S.C. Section 1982 and the Thirteenth Amendment to the United States Constitution.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant Little Hunting Park, Inc., its agents, employees, successors in interest, and all persons in active concert or participation with it, and each, is hereby enjoined and restrained from:

1. Refusing to permit Negroes and other non-white persons to use the recreation facilities of Little Hunting Park, Inc. upon the same basis and under the same conditions as white persons are permitted to use said facilities.

2. Failing or refusing to make any of the goods, services, privileges, advantages or accommodations of Little Hunting Park, Inc. available to Negroes and other non-white persons upon same basis and under the same conditions as they are made available to white persons.

3. Engaging in any act or practice which deprives, or is intended to deprive, directly or indirectly, any person of the right to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of Little Hunting Park, Inc. without discrimination or segregation on the ground of race or color.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that defendant Little Hunting Park, Inc. shall reinstate Paul E. Sullivan to full membership in Little Hunting Park, Inc,; reinstitute the effectiveness of membership certificates numbered 290 and 925; and restore to Paul E. Sullivan all rights and privileges associated with membership in Little Hunting Park, Inc., including but not limited to the use by Paul E. Sullivan and members of his family of the recreation facilities, including the swimming pool, maintained and operated by Little Hunting Park, Inc.

The Court retains jurisdiction of the subject matter of these causes and of the parties.

And these causes are continued.

Entered this 6th day of February, 1970.

Samuel Kirk
JUDGE

S E E N :

Allison L. Brown, Jr.
Counsel for Complainants

Peter Ames Fredlett
Counsel for Complainants

Robert M. Alexander
Counsel for Complainants

EXCEPTED TO:

Counsel for Defendants

FOR THE REASON THAT 42 USC 1982 APPLIES ONLY TO THE RIGHT OF NEGROES TO INHERIT, PURCHASE, LEASE, SELL, HOLD AND CONVEY REAL AND PERSONAL PROPERTY AND NOT THE RIGHT TO JOIN PRIVATE CLUBS

Judg. No. 11043

No. Chancery 22752

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX, to wit:

To the Sheriff of said County -- Greetings:

We command you that the goods and chattels of

LITTLE HUNTING PARK, INC.

late in your bailiwick, you cause to be made the sum of $1,500.00 together with costs and interest from date of order

---------- [redacted]

[redacted]

and also the sum of $ ---- costs, which

T. R. FREEMAN, JR.

late before the Circuit Court of Fairfax County, Virginia, recovered against it on May 27, 1970 in that behalf expended, whereof the said LITTLE HUNTING PARK, INC. [redacted] is convict, as appears to us of record.

And have the same before the Judge of our Circuit Court of Fairfax County, Virginia, at the Court House of said County on the Fourth Monday in October, 19 70, next to render unto the said T. R. FREEMAN, JR. of the debt and costs aforesaid.

And have then and there this writ and show how you have executed the same.

Witness, W. FRANKLIN GOODING, Clerk of our said Court, at the Court House of said County, this 17th day of September, 19 70, and in the 195th year of the Commonwealth.

W. FRANKLIN GOODING, CLERK

By _____
Deputy Clerk

COPIES
FEES PAID
LEVY
NPF
P IP NF MF RET

1970 SEP 17 PM 4 01

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED

RETURNED BY
SHERIFF
SEP 22 1970
W. FRANKLIN GOODING
Clerk

Judg. No. 11044

No. Chancery 22752

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX, to wit:

To the Sheriff of said County -- Greetings:

We command you that the goods and chattels of

LITTLE HUNTING PARK, INC.

late in your bailiwick, you cause to be made the sum of $2,000.00 together with costs and interest from date of order

and also the sum of $----- costs, which

LAURA FREEMAN

late before the Circuit Court of Fairfax County, Virginia, recovered against it on May 27, 1970 in that behalf expended, whereof the said LITTLE HUNTING PARK, INC. is convict, as appears to us of record.

And have the same before the Judge of our Circuit Court of Fairfax County, Virginia, at the Court House of said County on the Fourth Monday in October, 1970, next to render unto the said LAURA FREEMAN of the debt and costs aforesaid.

And have then and there this writ and show how you have executed the same.

Witness, W. FRANKLIN GOODING, Clerk of our said Court, at the Court House of said County, this 17th day of September, 1970, and in the 195th year of the Commonwealth.

W. FRANKLIN GOODING, CLERK
By _____
Deputy Clerk

P IP NF MF RET
LEVY
PAID
CRPTES
NPF

1970 SEP 17 PM 4 01

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED

RETURNED BY
SHERIFF
SEP 22 1970
W. FRANKLIN GOODING
Clerk.

Judg. No. 11045

No. **Chancery 22752**

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX, to wit:

To the Sheriff of said County -- Greetings:

We command you that the goods and chattels of

LITTLE HUNTING PARK, INC.

late in your bailiwick, you cause to be made the sum of **$500.00 together with costs and interest from date of order**

---

and also the sum of $ ---- costs, which

DALE L. FREEMAN, an infant

late before the **Circuit** Court of Fairfax County, Virginia, recovered against **it** on **May 27, 1970** in that behalf expended, whereof the said **LITTLE HUNTING PARK, INC.** is convict, as appears to us of record.

And have the same before the Judge of our Circuit Court of Fairfax County, Virginia, at the Court House of said County on the Fourth Monday in **October**, 1970, next to render unto the said **DALE L. FREEMAN, an infant** of the debt and costs aforesaid.

And have then and there this writ and show how you have executed the same.

Witness, W. FRANKLIN GOODING, Clerk of our said Court, at the Court House of said County, this **17th** day of **September**, 1970, and in the **195th** year of the Commonwealth.

W. FRANKLIN GOODING, CLERK
By _____
Deputy Clerk

CHARGES PAID
LEVY NPF
P IP NF MF RET

1970 SEP 17 PM 4 01

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED

RETURNED BY
SHERIFF

SEP 22 1970

W. FRANKLIN GOODING
Clerk.

Judg. No. 11046

No. Chancery 22752

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX, to wit:

To the Sheriff of said County -- Greetings:

We command you that the goods and chattels of

LITTLE HUNTING PARK, INC.

late in your bailiwick, you cause to be made the sum of $500.00 together with costs and interest from date of order

---------- [redacted]

[redacted] _____

_____

and also the sum of $ ----- costs, which _____

DWAYNE L. FREEMAN, an infant

late before the Circuit Court of Fairfax County, Virginia, recovered against it on May 27, 1970 in that behalf expended, whereof the said LITTLE HUNTING PARK, INC. [redacted] is convict, as appears to us of record.

And have the same before the Judge of our Circuit Court of Fairfax County, Virginia, at the Court House of said County on the Fourth Monday in October, 1970, next to render unto the said DWAYNE L. FREEMAN, an infant _____ of the debt and costs aforesaid.

And have then and there this writ and show how you have executed the same.

Witness, W. FRANKLIN GOODING, Clerk of our said Court, at the Court House of said County, this 17th day of September, 1970, and in the 195th year of the Commonwealth.

W. FRANKLIN GOODING, CLERK

By _____
Deputy Clerk

COPIES
PAID
LEVY
NPF
P IP NF MF REL

1970 SEP 17 PM 4 01

SHERIFF'S OFFICE
FAIRFAX COUNTY, VA.
RECEIVED

RETURNED BY
SHERIFF
SEP 22 1970
W. FRANKLIN GOODING
Clerk