



July 16, 2020

Via electronic and regular mail

Board President/Chair
Morristown Court Condominium Association
c/o Debbie Sabillón
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Debbie@armanagementco.com

Re: Demand to Permit Political and Expressional Signage

Dear Board Chair and all Morristown Court Board members:

I am writing to you on behalf of Kimberly Krone, a 14-year resident in Apt. #48. The Association's property manager, Debbie Sabillón, told Ms. Krone to remove a "Black Lives Matter" placard in the window of her individual unit in three e-mails, two dated June 26, 2020, and the third on July 2, 2020. Ms. Sabillón asserted in her first communication that "there is no signage permitted at Morristown Court," and noted, in a follow-up message, that this policy "is not a statement as to the message of the signs but rather an effort to maintain the aesthetics of the property and maintain uniformity to the Association." The July email reiterated the theme that a "condominium community holds its appeal by presenting one uniform property" and discourages individuality" requiring "homeowners to maintain the same colors, styles, and material throughout the complex."

Notwithstanding Ms. Sabillón's rationale, this is a misstatement of the Association's Master Deed and Declaration of Restrictive and Protective Covenants ("Restrictive Covenants") and its Rules and Regulations, which on their face seek to regulate only commercial speech, not political or expressive speech. Moreover, even if the Board were to interpret its

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governing signage restrictions to cover such expressive speech (colloquially understood as "First Amendment speech"), such interpretation, and any disciplinary action taken pursuant to that interpretation, would violate the New Jersey Constitution.

New Jersey Appleseed Public Interest Law Center is a nonprofit 501(c)(3) organization, which has a Common Interest Association Democracy Project under which we have decided to represent Ms. Krone. This project was operated jointly with Professor Frank Askin of the Rutgers Constitutional Law Clinic prior to his retirement and thus has focused, and continues to focus, on assisting common interest association owners in their efforts to ensure open and fair board elections as well as advocating for the reasonable and nondiscriminatory application of association rules and regulations, pursuant to the New Jersey Constitution and the Property Real Estate Development and Full Disclosure Act, or "PREDFDA".

Toward that end, we hereby demand that the Board permit Ms. Krone and other owners residing in Morristown Court Condominium Association ("Morristown Court") to place expressive signs of a political or artistic nature in the windows of their individual units and refrain from enforcing its regulation regarding signage to control Ms. Krone's placard expressing her associational support of and solidarity with the Black Lives Matter movement. We further demand that if the Board seeks to place time, place and manner restrictions on all signs regardless of content, to do so through a written policy that reasonably accommodates owners' New Jersey constitutional rights of political speech and association pursuant to Art. I, par. 18 of the New Jersey Constitution.

As you know, both the Restrictive Covenants and the Morristown Court Rules and Regulations (Schedule B of the Association's Bylaws) address the issue of signage. Specifically, the relevant covenant reads as follows:

§11.06 Signs. Except as herein reserved for Grantor, **no advertising signs of any kind** shall be erected, placed, or permitted either inside or outside the Condominium Units' windows or be erected, placed or permitted to remain on the Condominium Property **without the written consent of the Association**. The Association shall have the right to erect reasonable and appropriate signs. (emphasis added)

Similarly, but with no reference to the windows of Condominium Units, the specific rule states:

4. Signs. Except as reserved for Grantor in the Bylaws or Master Deed of the Association, **no advertising signs of any kind** shall be erected, placed or permitted to remain on the Condominium Property **without the written consent of the Association**. The Association shall have the right to erect reasonable and appropriate signs. (Emphasis added.)

Based on the exact language of Morristown Court's governing documents, Ms. Sabillón has no authority to demand that Ms. Krone remove her sign from the inside of the window of her condominium unit. She was simply wrong when she told Ms. Krone that "no signage" of any kind was permitted at Morristown Court.

Furthermore, if the Board were to interpret and/or amend its Restrictive Covenants and Regulations to cover political and expressive signs and to reach signs on the inside and outside of condominium unit windows, such a blanket prohibition would place a significant and unreasonable burden on owners' expressional rights. A complete prohibition of signage in the windows of an owner's individual unit would leave Morristown Court owners without adequate (i.e., convenient, feasible) alternatives to get their political or expressive message out to other unit owners or other neighbors. In accordance with the New Jersey Constitution, as interpreted in a line of Supreme Court cases starting with Comm. For a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 192 N.J. 344 (2007) ("Twin Rivers"), through Mazdabrook Commons Homeowners' Ass'n v. Khan, 210 N.J. 482 (2012) ("Mazdabrook"), and ending with Dublirer v. 2000 Linwood Avenue Owners, Inc., 220 N.J. 71 (2014) ("Dublirer"), the Board of Morristown Court cannot adopt or enforce a complete ban on expressive signage, and any attempt to regulate the size, material or number of signs must be in writing and must reasonably accommodate First Amendment speech.

In Mazdabrook, the issue of signage was directly at issue. Specifically, the condominium association banned all residential signs except "For Sale" signs. The Court found that such prohibition banned "virtually all expressional activity," and unconstitutionally barred an owner from placing a sign in support of his own candidacy for Town Council inside the window and door of his townhouse unit. Although the owner was able to distribute flyers within the condominium, the court stated, in relevant part:

Those options, though, are not substitutes for a more enduring message, identified with the speaker in the form of a political sign in the window of the speaker's home. The available alternatives cannot replace the venerable, unique, and important role that inexpensive, convenient residential signs play-- particularly in connection with a political campaign.

Id., 210 N.J. at 502-503 (citing City of Ladue v. Gilleo, 512 U.S. 43, 54-57 (1994)). In Ladue, the United States Supreme Court had recognized, in a case challenging the validity of a municipal ordinance prohibiting residential signs, the importance of such signs as "an important and distinct medium of expression" and "a venerable means of communication that is both unique and important." City of Ladue, *supra*, 512 U.S. at 54-55.

It also must be noted that, contrary to Ms. Sabillón's response to Ms. Krone that the legal opinion that Ms. Krone had sent her (i.e., Mazdabrook) to oppose the Association's removal edict "concerns political signs . . . and does not apply to this case," there is nothing within the opinion, and the First Amendment cases on which it relies, that justifies such a limitation. Indeed, in its discussion of the signage prohibition, the Mazdabrook court quoted the decision in State v. Miller, 83 N.J. 402 (1980), where the New Jersey Supreme Court made clear that all expressive and political communication via residential "signs and posters in [owners'] yards" deserved protection, not just speech related to political campaigns. The Miller court noted:

The case before us now is a fine illustration of the problems in and the limits to aesthetic zoning, particularly when it conflicts with beauty of a different sort of free speech.

. . . The message on the defendant's sign concerned a matter of public interest. As such, it is political speech and occupies a preferred position in our system of constitutionally-protected interests. Murdock v. Pennsylvania, 319 U.S. 105, 115, 63 S. Ct. 870, 876, 87 L. Ed. 1292, 1300 (1943). As the Appellate Division here correctly noted: "Political expression obviously includes any fair comment on any matter of public interest, whether or not the subject of an election campaign, whether or not embarrassing to the local

governing body, and whether or not irritating to one's neighbors." 162 N.J. Super. at 338.

So, it is clear that, in New Jersey, aesthetics cannot trump political expression when it comes to regulation of residential signage, within a condominium association or elsewhere. As a result, Ms. Sabillón's explanation to Ms. Krone for enforcing "a no signs of any kind" prohibition as stated in her second and third communications (i.e., "This is not a statement as to the message of the sign, but rather an effort to maintain the aesthetics of the property and maintain uniformity to the Association") cannot, as a matter of law, support its validity.

Accordingly, we demand that the Board retract its demand that Ms. Krone remove her "Black Lives Matter" sign from the inside of her window and refrain from fining her. If the Board decides to threaten fines and generally interfere with her expressive, political speech, please let me know. Though we do hope to come to some agreement on what owners may or may not do with respect to signage within their unit, if we are unable to so agree, Ms. Krone intends to seek a restraining order as soon as possible. As you know, if we were to prevail, we would be entitled to legal fees and costs under New Jersey's Civil Rights statute, N.J.S.A. 10:6-1 to -2.

Thank you for your anticipated consideration of our demand.

Sincerely,

Renée Steinhagen, Esq.

Cc: Kimberly Krone, Esq.