IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA *ex rei* Steve Sinclair,
Jana Bever and Brandon Bever,
Plaintiffs,

vs.

REDWOOD KNOLLS CORPORATION,
REDWOOD KNOLLS ASSOCIATION,
THOMAS BRUHN, JAMES R.
RIPPERGER, JAMES KALNY, SALLY T
AYLOR, and CAMELLE A. LASNEK,
Defendants.

Case No. CV5875 a z

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND RULING

FILED
COUNTY,

This matter came before the Court for trial on Plaintiffs petition on September 25,2006. Plaintiffwas represented by Assistant Attorney General Teresa Baustian and Defendants were represented by attorneys Bernard Spaeth and John Moorlach. The evidence was concluded on September 26,2006. At the conclusion of the Plaintiffs case-in-chief, Defendants moved for a directed verdict. By agreement of the parties, consideration of Defendants' motion was to be withheld until the conclusion of all the evidence and in conjunction with the Court's final ruling. Defendants renewed their motion at the close of all the evidence. The parties requested and were granted the opportunity to submit proposed findings, conclusions, and rulings. The Court, having heard the evidence and the arguments of counsel and being otherwise fully advised in the premises, now makes its ruling herein.

As to Defendants' motion for directed verdict made at the close of Plaintiffs' case-in chief, same is overruled. Viewing the Plaintiffs evidence in the most favorable light and granting Plaintiff every reasonable inference therefrom, the Court concludes there was sufficient

evidence offered by Plaintiff to support a finding in Plaintiffs favor by the fact-finder. Having so ruled, the Court now makes its final ruling (and its ruling on Defendants' renewed motion for directed verdict) at the conclusion of all the evidence.

Findin2S of Fact

1. Plaintiff State of Iowa ("State") filed the instant action on behalf of the relators, Steve Sinclair, Jana Bever, and Brandon Bever. Mr. Sinclair and Ms. Bever and her son, Brandon, are individuals and residents of West Des Moines, Polk county, Iowa. During most of the time period relevant to this matter, Mr. Sinclair and Ms. Bever lived together with Brandon in a condominium located in a condominium complex commonly referred to as Redwood Knolls in the City of West Des Moines.

2. The Redwood Knolls condominium complex was established in 1987 and, physically, consists of two buildings, each comprised of eight units, located at 5220 Boulder Drive and 5221 Boulder Drive in West Des Moines.

3. Redwood Knolls is operated by Defendant Redwood Knolls Association, a corporation whose affairs are, in turn, managed by a board of directors derived from the owners of units within Redwood Knolls.

4. Defendants Thomas Bruhn, James R. Ripperger, and Camelle Lasnek were at times material hereto and are presently, along with Mr. Sinclair, the owners of certain condominium units at Redwood Knolls.

5. Mr. Sinclair purchased his condominium unit at Redwood Knolls in April of 2001. Sinclair's unit was in the building whose address is 5220 Boulder Drive. At that time, he was provided with a copy of the Declaration of Submission of Property to Horizontal Property

Regime for Redwood Knolls as well as a copy of the Bylaws of the Redwood Knolls Association. At that time and until March of 2005, the aforementioned declaration contained a provision prohibiting children under the age of 12 years from being permanent occupants of Redwood Knolls. Mr. Sinclair was aware of the aforementioned provision at the time he purchased his condominium as well as the fact that, to his knowledge, there were no children amongst the permanent occupants of Redwood Knolls. Mr. Sinclair was single and childless at the time and mostly indifferent to the existence of the provision though he did verbally express some appreciation of the fact that there were no children permanently occupying Redwood Knolls at times following his purchase of his unit.

6. In 2003, Mr. Sinclair became acquainted with Ms. Bevers and her son, Brandon, who was 7 years old at the time. Ms. Bevers and Brandon resided in Dallas Center, Iowa at the time. A romantic relationship ensued between Mr. Sinclair and Ms. Bevers and by May of 2004, they had decided to live together in Mr. Sinclair's condominium at Redwood Knolls so long as the aforementioned provision was not a problem.

7. On or about May 28, 2004, Mr. Sinclair solicited the advice of Mr. Bruhn regarding the possibility of Brandon becoming a permanent occupant of Redwood Knolls. Mr. Bruhn had purchased a condominium at Redwood Knolls in March of 2002 and had become a popular member of that "community," frequently hosting social gatherings at his unit. Those gatherings frequently included Mr. Sinclair and LeRayn Byers, another owner, amongst others. Through these gatherings and other contact at the complex, Mr. Sinclair and Mr. Bruhn had become friends. Mr. Bruhn indicated to Mr. Sinclair that he (Mr. Bruhn) did not think permanent residence by Brandon at Redwood Knolls would be a problem. However, it was understood by

Mr. Sinclair that Mr. Bruhn had no authority from Redwood Knolls, the Association, or any of the other owners to pennit Brandon to become a pennanent occupant of Redwood Knolls. Nonetheless, Mr. Sinclair was encouraged by Mr. Bruhn's remarks and approximately one week later Ms. Bevers and Brandon took up pennanent residence at Redwood Knolls in Mr. Sinclair's unit.

8. Sometime prior to may of 2004, Redwood Knolls Association ceased handling any of the affairs of Redwood Knolls. Routine tasks such as collection of fees, payment of bills, enforcement of condominium policies and regulations, building maintenance, etc, were handled by one individual in each of the two buildings. Owner James Ripperger perfonned these functions for the building located at 5220 Boulder Drive at times material hereto.

9. In early September, 2004, Mr. Ripperger and James Kalny consulted with attorney Lou Hockenberg, legal counsel for Redwood Knolls Association, regarding the fact that Brandon Bevers had taken up pennanent residence at Redwood Knolls in apparent violation of the aforementioned provision of the Declaration. Attorney Hockenberg advised Mr. Ripperger and Mr. Kalny to draft a letter to Mr. Sinclair concerning the situation and asking him to address the situation. A letter was drafted by Mr. Ripperger which read in pertinent part, as follows:

> "The following owners of 5220 Boulder Drive would like to remind you of Article VIII 2 (d) of the Horizontal Property Regime which states "No children less than 12 years of age shall be pennanent occupants I Redwood Knolls." It appears you are in violation of this Article. Please take steps to correct this situation withjn 30 days and please let me know in writing what those steps are."

The letter was signed by all owners of the units in the building located at 5220 Boulder Drive other than Mr. Sinclair and was delivered by Mr. Ripperger to Mr. Sinclair on September 8, 2004.

10. Mr. Sinclair and Ms. Bever were upset and angered by the letter which they interpreted as requiring Brandon to move out of Redwood Knolls within thirty days. Mr. Sinclair and Ms. Bever also made certain efforts to identify possible alternate living arrangements. These included posting a "For Sale" sign, contacting friends and one or more realtors to find houses, watching classified ads and newspaper real estate supplements, and physically searching for homes themselves, as time and their jobs permitted. However, these efforts never reached a truly serious level and, for all practical purposes, ceased by late October, 2004, for reasons stated below.

11. At defendants' request, attorney Hockenberg sent another letter, dated October 11, 2004, to Mr. Sinclair, wherein the Association threatened legal action as a result of Sinclair's failure to comply with the subject provision of the Declaration including, but not limited to monetary damages, attorneys' fees, and other costs. The letter also informed Sinclair that said costs constituted an automatic lien on his condominium unit which could be foreclosed in the same manner as a mortgage.

12. Mr. Sinclair and Ms. Bever consulted with attorney Margaret Van Houten as to any legal recourse available to them. VanHouten contacted attorney Hockenberg on behalf of Sinclair and Bever for purposes of avoiding the legal action threatened by the Association. Van Houten's overtures were rejected by the Association which then proceeded, through attorney Hockenberg, to place a lien in the amount of$500.00 against Sinclair's condominium unit on October 25,2004, and to record same on October 27,2004. However, the lien was released at Defendants' request on November 1, 2004, and there is no evidence that relators were ever aware of the liens brief existence.

13. On or about October 26,2004, Mr. Sinclair and Ms. Bever learned that the subject Declaration provision likely violated certain federal civil fights laws prohibiting discrimination in housing on the basis of familial status. As alluded to above, Mr. Sinclair and Ms. Bever then suspended any serious efforts to identify alternative housing (and have at no time since resumed such efforts in any serious way). On October 28, 2004, Sinclair and Bever timely filed a complaint against Defendants with the Iowa Civil Rights Commission alleging discrimination in housing on the basis of familial status in connection with the above-described events. That complaint was subsequently investigated by the Commission which then issued a probable cause determination whereupon Sinclair instituted these proceedings in the Iowa District Court for Polk County, Iowa.

14. At no time after causing the aforementioned lien to be placed against Sinclair's condominium unit, did any of the Defendants take any further legal action against any of the relators and, in fact, on or about March 21,2005, Defendants proceeded to amend the Declaration to remove the subject provision, which amendment was acknowledged and endorsed by Sinclair.

15. Prior to the initiation of the above-mentioned proceeding before the Iowa Civil Rights Commission, none of the Defendants, individually or collectively, knew or had any reason to know that the subject provision of the Declaration was unlawful in any respect. The Defendants were at no time alerted by attorney Hockenberg to such a possibility and, indeed, justifiably assumed that said provision was lawful, based upon, amongst other things, Hockenberg's willing assistance and participation in these matters as attorney for the Association. Sinclair testified at trial that he did not dispute any of the foregoing. Indeed,

Sinclair testified that attorney Margaret VanHouten did not alert him to that possibility during the course of her participation in these matters as the relators' attorney. Sinclair further testified that he did not know or have any reason to know that the subject provision was unlawful until sometime between September 8, 2004, and October 28, 2004, when he discussed these matters generally with his sister and brother-in-law who resided in Michigan.

16. Mr. Sinclair and Ms. Bever were both upset and angry as a result of Defendants' actions of September 8, 2004, and thereafter. Both feel their respective relationships with their neighbors at Redwood Knolls have changed, that they feel betrayed by their neighbors, that they no longer trust them, and that they feel alienated from them. On the other hand, these feelings never rose to a level necessitating any sort of counseling or medical care. Brandon may have had some trouble sleeping as a result of his awareness of this dispute but he likewise did not need counseling or medical care as a consequence. Brandon's school performance did not suffer as a result of his awareness ofthis dispute. At no time material hereto was Brandon mistreated in any way by any of the other owners at Redwood Knolls including but not limited to any of the Defendants.

17. While Mr. Sinclair and Ms. Bever maintained a relatively cordial relationship with the other owners at Redwood Knolls prior to September 8, 2004, the only friendships they had with any of the other owners which could be characterized as at all close would have been with Mr. Bruhn and LeRayn Byers. Ms. Byers sold her ownership interest in April of 2004 and apparently moved out of the complex entirely sometime before September 8, 2004. Mr. Sinclair's and Ms. Bever's friendship with Mr. Bruhn essentially ended sometime during the summer of 2004 and before September 8, 2004, as a result of a dispute between them over

Bruhn's use of a coupon from a coupon book Brandon Bever was using as a sample in connection with his participation in a fund-raising campaign for his school. During this dispute, Ms. Bever became quite agitated which Mr. Bruhn and his friend, Beverly Arthur, found to be very embarrassing and offensive and, as a result, all social contacts between Mr. Bruhn and Mr. Sinclair or Ms. Bever ceased.

18. Neither Mr. Sinclair nor Ms. Bever nor Brandon incurred any expenses of any sort as a result of Defendants' actions, individually or collectively.

Conclusions of Law

It is the court's understanding that Defendants acknowledge that the subject provision in the declaration prohibiting children under the age of 12 as permanent occupants of Redwood Knolls and their efforts to apply and enforce said provision with respect to relators, including the letters of September 8, 2004, and October 11, 2004, which they sent and/or caused to be delivered to relators as well as the lien which they caused to be placed on Mr. Sinclair's condominium unit, violated IOWA CODE §§ 216.8(1) and 216.8(3) and this Court concludes that the State has proven as much by a preponderance of the evidence. The real disputes in this case focus on 1) whether Defendants have proven certain affirmative defenses and 2) whether the State has proven that the relators suffered any damages.

I. Affirmative Defenses

A. Waiver (Estoppel by Acquiescence), Laches, Equitable Estoppel, Unclean Hands, *In Pari Delicto*

The Court does not believe that Defendants can avail themselves of any of these equitable defenses nor does it believe that the State's case is barred by any ofthem. Knowledge, to one

degree or another, is essential to the application of these defenses. Waiver requires full knowledge of one's rights and action suggesting waiver or abandonment of same. *In re Guardianship of* Collins, 327 N.W.2d 230, 234 (1982). Laches requires unreasonable delay in asserting a known right. *Markey* v. *Carney,* 705 N.W. 2d 13,22 (Iowa 2005). Equitable estoppel requires reasonable detrimental reliance on knowing false representations or concealment of material facts, by persons who lack knowledge ofthe true facts. *Smith* v. *Coutant,* 6 N.W.2d 421,425 (Iowa 1942); *ABC Disposal Sys. Inc.* v. *D.NR.,* 681 N.W.2d 596, 606 (Iowa 2004). Unclean hands requires knowing involvement in the same sort of inequitable, unfair, dishonest, fraudulent, or deceitful conduct of which one complains. *Ellwood* v. *Mid States Commodities, Inc.,* 404 N. W .2d 174, 184 (Iowa 1987). *In pari delicto* requires that Plaintiff be equally or more culpable than Defendant or that Plaintiff act with the same or greater knowledge of the illegality or wrong that Plaintiff claims caused hislher own losses. *General Car* & *Truck Leasing Sys., Inc.* v. *Lane* & *Waterman,* 557 N.W.2d 274, 279 (Iowa 1996).

It is absolutely clear from the testimony of <u>all</u> the witnesses in this case, whether produced by the State or by Defendants, that none of the parties hereto relied on or fully appreciated the legal consequences of the subject provision until sometime <u>after</u> Brandon Bever came to live as a permanent resident at Redwood Knolls in June of 2004. Nor were any of them aware that the provision was unlawful before September or October of 2004. The foregoing is clear despite the fact that all parties admit to actual or constructive knowledge of the existence of the provision and despite the fact that between early September of 2004 and late October of 2004, all parties had the benefit of legal counsel with respect to the provision.

The fact of the matter, as proven by a preponderance ofthe evidence, is that until

sometime after Brandon Bever moved into Redwood Knolls in June of 2004, no one cared about the provision or enforcing same and, once they did, no one had any reason to doubt the lawfulness of the provision or enforcement of same until Mr. Sinclair spoke with his sister and brother-in-law. To suggest that any party hereto was truly knowledgeable of their own or others' rights and acted upon such knowledge to their own or anyone else's detriment is simply not supported by the record herein.

B. Advice of Counsel

None of the parties have supplied the Court with authority firmly establishing whether this affirmative defense is available to Defendants in the context of IOWA CODE Chapter 216.
Assuming that it is applicable, this Court concludes that Defendants have established same by a preponderance of the evidence.

The Court accepts Defendants' statement of the elements of this affirmative defense. Defendants must show that (1) before taking action, (2) they in good faith sought the advice of an attorney whom they considered competent, (3) for the purpose of securing advice on the lawfulness of their possible future conduct, (4) made a full and accurate report to their attorney of all material facts which they knew, and (5) acted strictly in accordance with the advice oftheir attorney who had been given a full report. *See Hanania* v. *Loren-Maltese,* 319 F. Supp. 814, 839 (N.D. Ill. 2004); *General Car* & *Trnck Leasing Sys. Inc.* v. *Lane* & *Waterman, supra* at 282.

Owners Kalny and Ripperger met with attorney Hockenberg, prior to taking any action against Sinclair, for the express purpose of exploring what their legal rights were regarding Sinclair. The evidence at trial showed that Hockenberg was fully aware of the Association's rules and Sinclair's noncompliance with the child age restriction, and that Kalny and Ripperger

subsequently carried out Hockenberg's instructions. Further, Hockenberg at no time alerted Defendants as to the possible unlawfulness of the subject provision. Even Sinclair's own attorney did not advise that the subject provision might be illegal. Defense counsel asserted at trial that, prior to 1988 and at the time the subject Declaration was adopted and executed, restrictions such as the instant one were lawful and this assertion was not disputed by the State. Perhaps this explains why neither counsel pointed out this potential problem to his or her clients. In any event, the Court finds credible the testimony of each Defendant that if they had received competent legal advice before September 8, 2004, they would have immediately taken the same action they ultimately took on March 21, 2005 - the complete recision of the child age restriction - and certainly would not have sought to enforce it. The Court concludes - based upon its observations at trial- that the Defendant property owners in this case would never have remotely considered being part of a development with restrictions which unlawfuIly discriminated against anyone on any basis including familial relationships.

Further, discrimination on the basis of familial relations is not a type of discrimination with which most lay people would be familiar, unlike race, sex, disability, etc. This court agrees with Defendants' assertion that, for the layperson, differentiating between the types of age restrictions which are aIlowable under state and federal law - as explained in the Code ofIowa, the United States Code, and Code of Federal Regulations - would be a very complex task. In the absence of clear authority showing that the affirmative defense of advice of counsel is not available to Defendants in this instance, this Court concludes that it is available and that Defendants have proven same by a preponderance of the evidence.

II. Damages

Notwithstanding the availability to Defendants of any affinnative defenses including, but not limited to, advice of counsel, this Court concludes that the relators are not entitled to any relief in the way of actual damages by reason of their failure to prove that they have been damaged by Defendants' conduct.

Plaintiff presented no evidence that the relators had incurred any sort of economic damages, i.e. out-of-pocket expenses or loss of income. Mr. SinClair and Ms. Bever gave some testimony regarding the emotional distress caused by Defendants' actions. They were angered and upset. However, Defendant's conduct was short in duration, lasting somewhere between 30 and 60 days. Neither Mr. Sinclair nor Ms. Bever incurred any expense for counseling or medical care. They testified that they spent a certain amount of time looking for another place to live but never did move out and, in fact, still live at Redwood Knolls. Mr. Sinclair's only close friends at Redwood Knolls were Ms. Byers, who actually moved out before the occurrence of most of the events which prompted this lawsuit, and Mr. Bruhn whose social relationship with Mr. Sinclair and Ms. Bevers had actually ended during the summer of 2004 as a result of the coupon book "flap." Finally, Mr. Sinclair and Ms. Bever were apprehensive about moving Brandon into Redwood Knolls to begin with but that apprehension was allayed by their conversation with Mr. Bruhn.

As to Brandon, Ms. Bever suggested that the whole dispute had been upsetting to Brandon in that it had disturbed his sleep. However, the extent of Brandon's sleep disturbance was never quantified. Further, Mr. Sinclair testified that Brandon had not required any counseling or medical care and tbat his academic perfonnance had not suffered. Ms. Bever testified that the other occupants of Redwood Knolls had always treated Brandon well

notwithstanding any of the instant disputes. Finally, Brandon is afflicted with A.D.H.D. (attention deficit hyperactive disorder) and already required medication for that condition.

Based upon the foregoing, this Court concludes that any emotional distress suffered by Mr. Sinclair, Ms. Bever, or Brandon Bever was so insignificant and unsubstantial as to be incapable of valuation. Further, this Court concludes that it is impossible to distinguish any emotional distress suffered by Mr. Sinclair or Ms. Bever from that which they brought on themselves as a result of the coupon dispute or that which Brandon suffered from that which resulted from his A.D.H.D.

The State has also failed to make the requisite showing necessary for an award of punitive damages. First, no actual damages have been shown. At a minimum, actual damages must be shown before punitive damages can be awarded. *Suss* v. *Schammel,* 375 N.W.2d 252, 255 (Iowa 1985)(citing *Pringle Tax Service, Inc.* v. *Knoblauch,* 282 N.W.2dI51, 154 (Iowa 1975)). Second, punitive damages are only allowable when there is clear and convincing evidence of malice or willful and wanton disregard for the rights of another. *See* Uniform Jury Instruciton *210.1; Larson* v. *Great West Casualty Co.,* 482 N.W.2d 170, 174-75 (Iowa App. 1992). The conduct of Defendants herein simply does not rise to the level which is necessary to warrant a punitive award. Further, notwithstanding whether the affirmative defense of advice of counsel is available to Defendants to <u>completely</u> bar Plaintiffs claim, authorities cited by Plaintiff suggest that it <u>is</u> available to bar an award of punitive damages. *See Parlrer* v. *Sony Pictures Entertainment, Inc.,* 260 F.3d 100, 112-13 (2nd Cir., 2001).

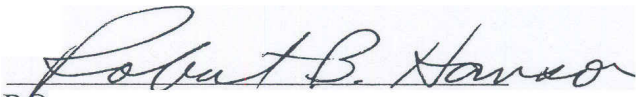
Finally, it is not clear whether the State is still requesting injunctive relief but it has not made a sufficient showing for such relief in any event. Injunctive relief should be granted with

caution and only when clearly required to avoid irreparable damage. *Matlock* v. *Weets, 531* N.W.2d 118, 122 (Iowa 1995). There must be a showing of an invasion or threatened invasion of a right and that substantial injury will or is reasonably likely to result. *Id.* There must be no adequate remedy at law. *Id.* Finally, the Court must balance the hardships which would be suffered by the person to be enjoined against the hardship resulting to the Plaintiff if the Defendant is not enjoined. *Id.* Here, the offending conduct ceased in late October of 2004 and there is no reason to believe it will reoccur. Indeed, the Declarations were amended in March, 2005, to remove the unlawful provision. Permanent injunctive relief is simply not appropriate under the circumstances.

Order

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that judgment is entered against Plaintiff and in favor of Defendant DISMISSING Plaintiff's petition and taxing costs against Plaintiff. In view of the foregoing, no ruling is necessary on Defendants' renewed motion for directed verdict at the close of all the evidence.

Dated this J5ay of January, 2007.



RO BERT B. HANSON, District Judge
Fifth Judicial District of Iowa

Copies to:

Teresa Baustian
Assistant Attorney General
Civil Rights Section Hoover
State Office Building 1305
East Walnut St.
Des Moines, Iowa 50319

Bernard L. Spaeth
John H. Moorlach
WHITFIELD & EDDY, P.L.C.
31? Sixth Avenue, Suite 1200
Des Moines, Iowa 50309-6041