

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

MARK GAVAN,)	
Plaintiff,)	Case No. _____
)	
v.)	Division _____
)	
MELVIN RHOMBERG and)	
SANDRA RHOMBERG,)	
Defendants.)	

**VERIFIED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF,
DAMAGES, AND ATTORNEY FEES
(Unauthorized PVC Flag-Pole on Common Ground)**

COMES NOW Plaintiff Mark Gavan (“Plaintiff”), and for this Petition against Defendants Melvin Rhomberg and Sandra Rhomberg (“Defendants”), states as follows:

I. Parties, Jurisdiction & Venue

1. Plaintiff is the record owner of Condominium Unit located at 3131 Autumn Trace Drive in Autumn Lakes, holding title to the interior of that unit in fee simple together with an undivided interest in the common elements, and is a member of both Autumn Lakes Association (“ALA”) and Autumn Lakes Condominium (“ALC”).
2. Defendants are husband and wife who own Condominium Unit located at 3177 Autumn Trace Drive in the same development, holding title to the interior of their unit in fee simple together with an undivided interest in the common elements.
3. Venue is proper in St. Louis County because the property and the complained-of structure are located here, and all parties reside here. § 508.010, RSMo.

4. This Court has subject-matter jurisdiction over claims for injunctive relief under §§ 526.010–526.110, RSMo, and for equitable enforcement of recorded covenants under § 448.3-116, RSMo.

II. Governing Documents & Applicable Law

5. Indenture Prohibition. Article VII Restriction 15 of the Autumn Lakes Indenture states: “No above-ground structure, other than required street lights, may be erected within a cul-de-sac, divided street entry island, or median strip.” (Book 7267, Page 968).
6. Parallel Condominium Ban. Article 9.8 of the ALC Declaration contains the identical prohibition for common elements (Book 7320, Page 445).
7. Board & Trustee Authority Is Subordinate. Although the ALC Board “may” approve exterior changes (ALC Decl. §17.1), its discretion exists only where the proposed work is otherwise permissible; the Board cannot authorize what the governing covenants forbid.
8. Missouri Enforcement Principles. *Looney v. Hindman*, 649 S.W.2d 207 (Mo. banc 1983); *Lake St. Louis CA v. Riverview Estates*, 947 S.W.2d 324 (Mo. App. E.D. 1997); daily fines upheld in *Weiss v. Carriage House Estates HOA*, 62 S.W.3d 597 (Mo. App. E.D. 2001); ultra-vires board acts, *Davis v. Lakewood POA*, 536 S.W.3d 743 (Mo. App. W.D. 2017).
9. Non-Waiver / No “Grandfathering.” ALA Declaration §3 (Severability) provides any failure to enforce a breach “shall not be a waiver of any subsequent breach.” (Book 7267, Page 997).
10. Missouri Condominium Act. Sections 448.3-102(6) & (11) RSMo empower the condominium association to adopt rules, impose reasonable fines, and litigate matters

involving the common elements; § 448.3-116(1) authorizes any unit owner or the association to sue to enforce the covenants, bylaws, and rules.

III. Facts Common to All Counts

11. In or about April 2025, Defendants reinstalled a PVC flagpole—without a concrete footing—on a landscaped entry island that is undisputed common ground owned by ALA.
12. Plaintiff has repeatedly demanded that Defendants remove the flag-pole; Defendants refused. Defendants contend their flag-pole had been “approved,” but any such approval would be ultra vires and void under the non-waiver clause (paragraph 9).
13. The flag-pole impedes landscaping maintenance, obstructs motorists’ line-of-sight, and increases ALA’s insurance exposure.

COUNT I – Declaratory & Injunctive Relief

14. Plaintiff incorporates paragraphs 1–12.
15. Defendants’ erection and maintenance of the flag-pole violates the Indenture (Art. VII paragraph15) and the ALC Declaration (Art. 9.8) and cannot be cured by any HOA action. *Looney* and *Lake St. Louis* compel injunctive relief.

Prayer on Count I – Declare the flag-pole unlawful; permanently enjoin Defendants to remove it immediately. If not removed, authorize ALA/ALC to impose a \$100-per-day fine (*Weiss*, 62 S.W.3d 597) and to assess all removal costs and fines against Defendants’ unit.

COUNT II – Breach of Covenants

16. Plaintiff incorporates paragraphs 1–14.

17. By installing and maintaining the flag-pole, Defendants materially breached the recorded covenants (Indenture VII.15; ALC Decl. Art. 9.8). Any purported Board approval is ultra vires under *Davis*, 536 S.W.3d 743, and the non-waiver clause preserves enforcement.

Prayer on Count II – Judgment for restoration costs and reasonable attorney fees under ALA Decl. Art. XI and *Lucas Stucco*, 324 S.W.3d 444.

COUNT III – Trespass to Real Property

18. Plaintiff incorporates paragraphs 1–16.

19. Defendants intentionally placed a permanent fixture on land they do not own, without legal right, constituting a continuing trespass.

Prayer on Count III – Nominal damages and equitable relief including removal of the flag-pole.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- a) Declare that Defendants’ flag-pole violates the governing documents and Missouri law.
- b) Issue a permanent injunction compelling Defendants to remove the flag-pole immediately.
- c) Authorize and compel ALA/ALC to fine Defendants \$100 per day under § 448.3-102(11) RSMo beginning on the petition filing date until and including the date of the flag-pole removal, and to assess all related costs and fines against their unit.

- d) Award Plaintiff and/or the Association reasonable attorney fees, costs, and expenses incurred in enforcement.
- e) Award nominal or actual damages caused by the trespass.
- f) Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: _____

Mark Gavan

3131 Autumn Trace Drive

Maryland Heights, MO 63043

Phone: (314)594-7270

Email: mark@autumnlakesuncensored.com

Plaintiff, pro se

VERIFICATION

I, Mark Gavan, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

By: _____

Mark Gavan

3131 Autumn Trace Drive

Maryland Heights, MO 63043

Phone: (314)594-7270

Email: mark@autumnlakesuncensored.com

Plaintiff

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served via email on this 7th day of July 2025, upon:

MELVIN RHOMBERG & SANDRA RHOMBERG
3177 Autumn Trace Drive
Maryland Heights, MO 63043
brhomberg@hotmail.com, slrhomberg@hotmail.com
Defendants

Mark Gavan