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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000439-MR

WOODLAWN SPRINGS HOMEOWNERS ASSOCIATION, INC. — APPELLANT

v.

APPEAL FROM NELSON CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 11-CI-00694

YOUR COMMUNITY BANK, INC. — APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: COMBS, LAMBERT, AND NICKELL, JUDGES.

COMBS, JUDGE: The Woodlawn Springs Homeowners Association, Inc., (Homeowners Association), appeals the order of the Nelson Circuit Court denying its motion to modify an order which granted summary judgment to Your Community Bank, Inc. (the Bank). After our review, we vacate and remand.

In 1994, C. Barr and JoAn Schuler created the Woodlawn Springs Subdivision in Nelson County. They also formed the Woodlawn Springs Homeowners Association. The Schulers borrowed money from Your Community Bank in order to finance construction of the subdivision's infrastructure -- such as roads and utility lines. The loans were secured by mortgages on several properties within the subdivision owned by the Schulers. Mr. Schuler died in January 2010, and Mrs. Schuler died two months later. At the time of their deaths, the Schulers were still indebted to the Bank. In December 2010, Mrs. Schuler's estate executed a deed in lieu of foreclosure which conveyed fifty-one lots to the Bank.

The properties in the Woodlawn Spring Subdivision are subject to a declaration of covenants, conditions, and restrictions. The declaration requires property owners to pay an annual fee to the Homeowners Association. However, under the terms of the Declaration of Covenants, the Developer is exempted from the fee. It is undisputed that the Schulers were exempt from paying the fee because they were Developers. The Bank asserted that it acquired the exemption when the Schulers transferred their property to it. However, the Homeowners Association disagreed. After the Bank failed to pay the annual fee, the Homeowners Association acquired a lien on the properties owned by the Bank. The disputed fees total approximately fifteen thousand dollars ($15,000).

The Bank filed a complaint for a declaration of rights and for the release of the lien on September 9, 2011. On November 11, 2011, it filed a motion for summary judgment. The court granted the Bank's motion for summary judgment

on January 11, 2012. The Homeowners Association filed a motion pursuant to Kentucky Rules of Civil Procedure (CR) 59.05 and 60.02 seeking to vacate the summary judgment. The court denied the motion on February 14, 2012. This appeal follows.

In order for summary judgment to be appropriate, the movant must prove that no genuine issue of material fact exists and that the motion "should not succeed unless his right to judgment is shown with such clarity that there is no room left for controversy." *Steelvest, Inc. v. Scansteel Service Center, Inc*., 807 S.W.2d 476, 482 (Ky. 1991). The non-moving party must present "at least some affirmative evidence showing the existence of a genuine issue of material fact." *Id*. On appeal, our standard of review is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Because interpretation of restrictive covenants is a question of law, our review is *de novo*. *Black v. Birner*, 179 S.W.3d 873, 877 (Ky. App. 2005).

The Homeowners Association contends that the trial court improperly granted summary judgment because *Developer* is an ambiguous word and should have been subject to interpretation by the trial court. We agree with the Bank that the term is not ambiguous. As pointed out by the Bank, "[w]here there is no ambiguity, a written instrument is to be strictly enforced according to its terms which are to be interpreted 'by assigning language its ordinary meaning and

without resort to extrinsic evidence.'" *Allen v. Lawyers Mut. Ins. Co. of Kentucky*, 216 S.W.3d 657, 659 (Ky. App. 2007) (quoting *Island Creek Coal Co. v. Wells*, 113 S.W.3d 100, 104 (Ky. 2003)). The court agreed with the Bank that the Declaration of Covenants should be interpreted according to this rule of strict construction.

The Declaration specifically defines *Developer* as the Schulers ***and any person or entity who succeeded them***. The Declaration explicitly states that the rights of the Developer pass ***to any subsequent owner*** of the Developers' property. Therefore, the court found that the exemption from paying fees passed from the Schulers to the Bank.

We are persuaded that the argument of the Homeowners Association concerning the definition of the word *Developer* is not relevant to a proper resolution of this matter. In Kentucky, restrictive covenants are not subject to the rule of strict construction. *Colliver v. Stonewall Equestrian Estates Ass'n, Inc*., 139 S.W.3d 521, 523 (Ky. App. 2003). Rather, their interpretation is based on the ***intention*** of the parties. *Id*. at 522. The court should consider the "general scheme or plan of development and surrounding circumstances." *Id*.

A review of the Declaration of Covenants in the context of the plan of development and surrounding circumstances convinces us that the exemption of association fees for the Developer expired with the Schulers. When the Schulers created the subdivision, they personally financed the construction of the infrastructure – roads, utilities, *etc*. It was wholly equitable and reasonable that

they should have been exempt from further contributing to the payment of fees used to maintain the elements of the infrastructure. As the Association argues, if the Developer rights passed onto all fifty-one lots, logic would dictate that eventually all fifty-one owners would have been exempt from paying the fees. This reasoning would result in a loss of fifteen-thousand dollars per year to the Homeowners Association, which is now responsible for maintenance of common elements and for enforcement of restrictions. This interpretation would result in an absurdity undermining the very purpose of the Homeowners Association and rendering it a nullity. As Justice Palmore wrote, "When all else is said and done, common sense must not be a stranger in the house of law." *Cantrell v. Kentucky Unemployment Ins. Comm'n*, 450 S.W.2d 235, 237 (Ky. 1970).

Furthermore, the Declaration includes several restrictions that require the Developer's involvement. For example, approval for placing antennae on property is "within the sole and absolute discretion of the Developer." Enforcement of all the restrictions is to be performed by the Homewowners Association or the Developer. It is illogical to suppose that the intent was for a committee of fifty-one owners of certain lots, along with the Association, to carry out the duties enumerated in the Declaration.

In *Colliver v. Stonewall Equestrian Estates Ass'n Inc*., 139 S.W.3d at 524-525, the court interpreted the creation of an Association as a delegation of authority and responsibilities by the Developer:

> Plainly, the developer intended at some point for the Association to take over enforcement of the covenants. This was the sole purpose for the creation of the Association. Accordingly, we agree with the circuit court that at the dissolution of the developer, its authority passed to the Association.

We believe the same reasoning applies here. In essence, it is the Homeowners Association that functionally stands in the shoes of the Developer – not the Bank.

Although the Bank claims that it enjoys the exemption of fees, it does not accept the burden of inheriting the responsibilities that the Declaration enumerates for the Developer. Because the Association has assumed the duties of the Developer, it alone is entitled to collect fees from all property owners – including the Bank – as authorized by the Declaration. As noted earlier, any other holding would reach an absurd and inequitable conclusion that is clearly at odds with the Schulers' intention. This conclusion also renders moot the Association's arguments concerning the definition of *Developer*.

Accordingly, we vacate and remand the order of the Nelson Circuit Court for findings consistent with this opinion.

ALL CONCUR.

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