IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KIRKWOOD KNOLL MAINTENANCE CORPORATION,	)	
Plaintiff-Below/Appellant,	)	
v.	)	**C.A. No. CPU4-14-003607**
FRANCIS WARREN and KATHIE WARREN,	)	
Defendants-Below/Appellees.	)	

Submitted: December 14, 2015
Decided: April 21, 2016

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Pro se Defendants

DECISION AFTER TRIAL

This is a debt collection action brought pursuant to a residential real property deed restriction and Maintenance Declaration, against *pro se* defendants seeking collections costs only charged in connection with once-delinquent, but now paid assessment fees. This matter is before the Court as an appeal *de novo* brought from the Justice of the Peace Court pursuant to 10 *Del C.* § 9570 *et seq.* On December 14, 2015, this Court held trial. Subsequently, the Court twice ordered Supplemental Briefing from the parties to address issues which were inadequately argued at trial.[1] This is the Court's Memorandum Opinion and Order after consideration of the pleadings, the testimonial and documentary evidence submitted at trial, the arguments of the

[1] In the initial round of briefing, Plaintiff asserted arguments unsupported by citations to law. The Court required supplemental briefing to clarify issues not directly addressed or improperly briefed by the parties.

parties, supplemental briefing, and the applicable law. For the following reasons, the Court enters judgment in favor of Defendants, as did the Justice of the Peace Court below.

I. Procedural Background

This case originated on June 19, 2014, when the Kirkwood Knoll Maintenance Corporation (hereinafter "Maintenance Corporation" or "Plaintiff") filed a debt action in the Justice of the Peace Court against Francis Warren and Kathie Warren (hereinafter "Defendants") to collect unpaid collections costs (hereafter "costs"), the dues have been paid by Defendants. The Justice of the Peace Court found in favor of Defendants and Plaintiff appealed.

On December 19, 2014, Plaintiff filed a Complaint on Appeal (hereinafter "Complaint") against Defendants, alleging that Defendants, as owners of property in the Kirkwood Knoll subdivision (hereinafter "Subdivision"), are subject to annual assessments. Plaintiff contends that Defendants failed to pay the $165.00, 2013 assessment (hereinafter "Assessment"), thereby obligating themselves, pursuant to the Kirkwood Knoll Maintenance Declaration (hereinafter "Declaration"), to pay any attendant collection fees, interest, and attorney's fees. Plaintiff's alleged damages totaling $4,866.15.[2]

On January 13, 2015, Defendants filed separate, albeit substantively identical, answers. In the Answers, Defendants admit to owing the Assessment, but deny that the Declaration empowers Plaintiffs to seek collections fees.

On December 14, 2015, a half-day trial commenced. The Court heard testimony on Plaintiff's behalf from Amy Dolan, the Maintenance Corporation's Treasurer (hereinafter

[2] On December 13, 2013, Defendants paid the delinquent Assessment, thereby rendering the issue of the Assessment's validity as moot. The Court therefore, will address only the requested collections and attorney's fees.

"Dolan"); Michael Ciabattoni,[3] President of the Maintenance Corporation (hereinafter "Ciabattoni"); and Steve Blanchies (hereinafter "Blanchies"), testifying as a representative of collection agency Neighborhood Resources (hereinafter "Resources"). Plaintiff was the only party who moved exhibits into evidence.[4] Defendants did not utilize any evidence or present live testimony at the one-half day trial.

II. The Facts

The Maintenance Corporation formed on August 21, 1998 pursuant to the Declaration and laws of the State of Delaware. The Maintenance Corporation's purpose as a nonprofit corporation was, for the benefit of all owners, to maintain the "...open space and common facilities" of the Subdivision.[5] The Declaration was properly recorded in the Office of the Recorder of Deeds in and for New Castle County.

At trial, Dolan first testified on the Maintenance Corporation's behalf. Dolan indicated that starting in 2010, she served as the Maintenance Corporation's treasurer for four years. According to Dolan, a budgetary shortfall, caused by a rampant failure of homeowners to pay assessment fees, forced Plaintiff to act in order to obtain the funds necessary to maintain the common facilities. To that end, Dolan testified, she oversaw the process of sending demand letters to homeowners with delinquent assessment fees. Dolan would keep track of which homeowners paid and those who failed to respond or pay.

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[3] A chief issue before the Court is whether Ciabattoni was properly the president of the Maintenance Corporation and therefore able to act on its behalf. The Court's use of the title "president" serves only to clearly define each party's apparent role during the times relevant to the issues before the Court.

[4] At trial, Plaintiff introduced the following exhibits: Exhibit 2, the Declaration; Exhibit 3, the dues notice dated July 9, 2013; Exhibit 4, the "final" dues notice dated August 12, 2013; Exhibit 5, the "second" dues notice dated August 12, 2013; Exhibit 6, the Delinquent Assessment Service Contract (hereinafter "Contract") dated January 10, 2013; Exhibit 7, the Delinquent Assessment Service Contact dated December 18, 2013; Exhibit 8, the Delinquent Assessment Service Contract dated December 31, 2014; Exhibit 10, Resources' demand letter dated September 10, 2013; Exhibit 11, Resources' demand letter dated September 19, 2013; Exhibit 12, Resources' demand letter dated November 25, 2013; Exhibit 13, a Notice of Lien for $541.65; and Exhibit 14, an itemized list of Plaintiff's collections costs and attorney's fees.

[5] Pl. Exh. 2 at pg 4.

Plaintiff's next witness, Ciabattoni, testified that since 2004 he has served as the Maintenance Corporation's President. Ciabattoni indicated that Dolan was elected by acclimation to serve as Treasurer, and that since 2002, every officer of the Board of Directors has been elected in this manner. Ciabattoni also testified that from 2010 – 2014, he and Dolan were the only members of the Board of Directors. Ciabattoni stated that pursuant to the Declaration, homeowners who did not timely pay their assessments would be subject to collections costs and legal fees. Ciabattoni then explained the process of sending letters to Subdivision homeowners with delinquent assessments, specifically Defendants.

The Court heard testimony that on July 9, 2013, Plaintiff sent to Defendants notice of the Assessment fee indicating that payment was due no later than August 9, 2013.[6] On August 12, 2013, Plaintiff sent a "final" notice indicating that if Defendants failed to remit payment by August 30, 2013, the debt would be sent to collections.[7] Plaintiff then sent a "second" notice, also dated August 12, 2013, indicating that unless Defendants made payment by September 9, 2013, the "matter w[ould] be out of the hands of the [Plaintiff] and turned over to a collections agency."[8] Defendants failed to pay the Assessment by the above-listed dates.

Months earlier, in January of 2013, the Maintenance Corporation first contracted for Resources' collections services. The Contract, effective from January 10, 2013 through December 31, 2013, provided for collections services including letters of demand and deed notice; along with consulting and attorney services for court actions.[9] In 2013, Ciabattoni signed the Contract at execution; however Dolan did not sign the Contract until May 27, 2015, well

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[6] Pl. Exh. 3.
[7] Pl. Exh. 4.
[8] Pl. Exh. 5. Though the last two letters sent to Defendants are each dated August 12, 2013, the Court concludes that the differing due dates indicate that the second August 12, 2013 letter was sent to Defendants at a later date.
[9] The Court will not address the contracts executed on December 18, 2013 and December 31, 2014, as they are not relevant to this action.

after this action commenced. Dolan testified that she did not sign the Contract at execution to avoid "trouble" with the neighbors.[10] The Court finds this misfeasence problematic with plaintiffs efforts to collect both fees and collection costs because no authority existed for the Board to do so.

Ciabattoni also testified that on October 22, 2012, he transferred title to his Subdivision property (hereinafter "Property") to his parents, and that he did not again possess title to the Property until April 13, 2015. Ciabattoni indicated that, since he was forming a limited liability company, he transferred title to protect his personal assets.[11]

On cross examination, Ciabattoni admitted that in order to qualify to serve as an officer of the Board of Directors he had to be, in fact, a record Subdivision homeowner. Ciabattoni stated that he was not a Subdivision homeowner from October of 2012 to April of 2015, the period of time during which the Maintenance Corporation levied its assessment against Defendants and executed the Contract with Resources. Ciabattoni described his failure to notify the Subdivision of his ownership status as "an oversight."[12]

Blanchies, Plaintiff's last witness, testified that despite Dolan's failure to sign the Contract during the period in question, Dolan conducted Maintenance Corporation business with Blanchies. Additionally, Blanchies elucidated the various collections fees assessed against Defendants, whose nature was not readily apparent from Resources' letters.

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[10] The Court finds this statement conspicuously inconsistent with Dolan's testimony regarding her responsibilities as treasurer, overseeing the Maintenance Corporation's own collections activity. Specifically, Dolan's addressing homeowners' delinquent assessment fees and working with homeowners to make current, delinquent accounts.

[11] The Court finds it suspect that despite being subject to the protections of a limited liability company, Ciabattoni testified that he transferred title to his fee simple to his parents in order to protect his asset.

[12] Ciabattoni unsuccessfully attempted to minimize the implications of an otherwise questionable decision. Although the Court does not doubt the veracity of those facts substantiated by the trial exhibits, the Court does find as dubious, Ciabattoni's compulsion to mold the facts to his benefit. The Court does not find Ciabattoni's testimony credible.

On September 10, 2013, Resources sent Defendants a letter (hereinafter "First Letter") indicating that Defendants owed $266.65 on the original Assessment. This letter provided that pursuant to the Declaration "...any costs are added to and become part of the delinquent assessment."[13]

On September 19, 2013, after Defendants submitted to Resources a $100.00 payment, Resources sent Defendants a letter (hereinafter "Second Letter") indicating Defendants still owed $166.65, and that Defendants had five days to make payment in order to avoid additional costs.[14] Inexplicably, the Second Letter also informed Defendants that they had ten days to satisfy the debt to avoid additional costs. As in the First Letter, the Second Letter informed Defendants that the Declaration permits Resources to "add any costs . . . to the delinquent assessment."[15]

On November 25, 2013, Resources sent Defendants a letter (hereinafter "Third Letter") requesting payment of the $541.65 then-owed on the delinquent account. The Third Letter informed Defendants that Resources had filed a Notice of Lien on Defendant's property for the unpaid Assessment.

Ultimately, the Maintenance Corporation filed this civil action against Defendants. Various fees were assessed, including a $40.00 charge for a demand letter, $900.00 for attorney's fees associated with a Justice of the Peace Court appearance, $3000.00 for an attorney's services in this Court, and other fees and costs, for various letters to Defendants and filings in New Castle County. All told, Plaintiff seeks $4,866.15 in damages from Defendants, or approximately twenty-nine times the amount of the original and no-longer-delinquent Assessment. The bulk of these costs and fees accumulated after Defendants paid their Assessment.

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[13] Pl. Exh. 10.
[14] Pl. Exh. 11.
[15] *Id.*; Blanchies testified that he would read and familiarize himself with each declaration's language, however, his liberal interpretation of the Declaration's terms, at best, appears clumsy and self-serving.

Although this is not a court of equity, it should be noted that Plaintiff brought this action with unclean hands. The Maintenance Corporation operated for years in disarray, creating a massive budgetary shortfall by willfully failing to collect assessment fees and/or costs. Plaintiff describes this as a "financial crisis." This crisis manifest in an utter failure by the Maintenance Corporation to fulfill its sole purpose of maintaining the Subdivision's open space and common facilities when local businesses refused to provide the Subdivision with basic maintenance services; ironically, for Plaintiff's failure to pay its own bills. The Maintenance Corporation continued this myopic behavior by hiring Resources without consulting its governing documents or being notified by Dolan or the Board of Directors, and then ceaselessly pursuing these collections costs, to which it was not entitled, seemingly to "win" a dispute between Ciabattoni and Defendants, without any consideration of the long-term effect this approach would have on the Subdivision.

III. Parties' Contentions

Plaintiff's primary contention is that, pursuant to the Declaration, it is entitled to the collections costs and attorney's fees associated with Defendant's already-paid Assessment. Plaintiff asserts that Ciabattoni, on behalf of the Maintenance Corporation, entered into a valid contract with Resources for its collections services. Plaintiff further contends that even if Ciabattoni was a non-homeowner from October 22, 2012 to April 13, 2015, and lacking actual authority to act for the Maintenance Corporation, as President, he allegedly had apparent authority to execute the Contract.[16] In the alternative, Plaintiff argues that Dolan, as Treasurer, ratified the Contract by finally signing it in 2015, thereby rendering this Contract enforceable.

[16] The Court need not address Plaintiff's arguments with regard to apparent authority since its decision rests on the plain language of the Declaration. Moreover, Plaintiff set forth an argument that Ciabattoni's title transfer to his parents created a resulting trust and as such, Ciabattoni should be considered a Subdivision homeowner during the

Defendants' principal argument is that the Declaration does not empower the Maintenance Corporation to obtain collections costs from homeowners, and that Co-defendants have already paid their Assessment. In addition, Defendants aver that as a prerequisite to becoming a member of the Maintenance Corporation, and indeed an officer of the Board of Directors, one must own a home in the Subdivision; and that when Ciabattoni transferred title to his parents, he relinquished his membership in the Maintenance Corporation, and thus his eligibility to serve as its President. This divestiture, Defendants contend, rendered Ciabattoni's acts as void or voidable, and therefore, the Contract unenforceable.

IV. The Law

A. Homeowners Associations

This litigation originates in the Declaration's language, and a failure, by the Board of Directors, to be cognizant of the Declaration's dictates. It is imperative that any homeowners association, particularly its governing body, remain committed to learning the language of, and faithfully executing a governing document's purpose as in the case of this Maintenance Declaration.

Delaware courts have previously commented on the "procedural and legal pitfalls" commonly associated with the oftentimes volunteer homeowners associations and their respective governing bodies.[17] Typically, these associations are governed by boards, whose composition is largely of homeowners who have little, if any, experience with corporations and the laws governing their operation.[18] It is not surprising then, when a homeowners association's leadership fails to abide

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period in which he had no title to the Property. This argument is without merit, and moreover, proper analysis of it would lead the Court astray of its jurisdiction.

[17] *Adams v. Calvarese Farms Maintenance Corporation*, 2010 WL 3944961, at *6 (Del. Ch. 2010).

[18] See *Id.*

by the dictates of its governing documents.[19] This failure commonly manifests in a board taking actions conflicting with Delaware corporate law, or, as in the instant matter, an association's governing documents; such as this Board's President failing to maintain continuous Subdivision homeownership.

Delaware law distinguished between void and voidable board actions.[20] Voidable acts "are those which may be found to have been performed in the interest of the corporation but beyond the authority of management."[21] "A board of directors [ ] may ratify [voidable] acts taken by officers . . . [who] might not have had actual authority to take such actions."[22] Void acts are "illegal acts or acts beyond the authority of the *corporation*" and are unratifiable precisely because the corporation "cannot . . . lawfully accomplish them."[23]

B. Breach of Contract

A declaration is a contract between a homeowner and a maintenance corporation.[24] In a breach of contract action, the plaintiff must prove by a preponderance of the evidence that: (1) an agreement existed between plaintiff and defendant; (2) defendant breached an obligation imposed by the contract; and (3) as a result of that breach, plaintiff suffered damages.[25]

It is an ordinary tenant of contract construction that the parties' intent is ascertained from the language of the contract.[26] Moreover, when interpreting a contract's language, unless there is apparent contrary intent, Delaware courts will give the language its ordinary meaning.[27] When

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[19] *See Id.*
[20] *Adams,* at *8.
[21] *Michelson v. Duncan*, 407 A.2d 211, 218 – 19 (Del. 1979).
[22] *Klig v. Deloitte LLP*, 36 A.3d 785, 794 (Del. Ch. 2011) (citations omitted).
[23] *Nevins v. Bryan*, 885 A.2d 233, 245 (Del. Ch. 2005) (citing *Harbor Fin. P'rs v. Huizenga*, 751 A.2d 879, 896 (Del. Ch. 1999)) (emphasis added).
[24] *See Maple Hill Homeowners Ass'n v. Newton*, 2014 WL 4662382, at *2 (Del. Com. Pl. Sept. 19, 2014).
[25] *VLIW Technology, LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003).
[26] *See Citadel Holding Corp. v. Roven*, 603 A.2d 818, 822 (Del. 1992).
[27] *See Id.* at 824.

interpreting a contract, "...unequivocal language controls over qualified language,"[28] and in the case of an inconsistency between general and specific provisions, "...the specific provisions ordinarily qualify the meaning of the general ones, due to the reasonable inference that specific provisions express more exactly what the parties intended"[29]

C. The Maintenance Declaration

The Declaration provides that the Maintenance Corporation's members "...shall be the record owners of [the Subdivision's] lots."[30] Moreover, the obligation to pay assessments to Plaintiff does "not commence until such time that the Board of Directors of [the Maintenance Corporation] is comprised of [Subdivision] homeowners."[31] Implicit in the Board of Director's obligation is that they satisfy the fundamental requisite they be actual homeowners in the association.

When a homeowner fails to pay assessments within thirty days of the due date, the homeowner will be charged twelve per-cent interest from the date of delinquency, and the Maintenance Corporation "may bring an action at law against the owner personally obligated to pay . . . and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment."[32]

V. Opinion and Order

A. The Resources Contract

During the times set forth above Ciabattoni was not a member of the Maintenance Corporation or validly its President or more importantly a record homeowner. The Declaration

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[28] *See Sonitrol Holding Co. v. Marceau Investissements,* 607 A.2d 1177, 1184 (Del. Super. 1992).
[29] *Katell v. Morgan Stanley Group, Inc.*, 1993 WL 205033, at *4 (Del.Ch.,1993) (citing *Statch v. Underwater Works, Inc.*, 158 A.2d 809, 811–12 (Del. Super. 1960)).
[30] Pl. Exh. 2at pg 1.
[31] *Id.* at pg 2.
[32] *Id.*

explicitly limits the class of people who are Maintenance Corporation members to "record owners of lots" in the Subdivision. Moreover, the Declaration implicitly limits Board of Director eligibility to members, since it indicates that assessment payment obligations will not "commence until such time that the Board of Directors is comprised" of Subdivision homeowners; to conclude otherwise would be tantamount to assuming the drafter's intent despite the presence of plainly instructive language.

The Contract executed by Ciabattoni, while he did not own a home in the Subdivision, was incapable of ratification by Dolan acting in her capacity as treasurer.[33] Without regard as to why Ciabattoni decided to transfer title, that act alone divested him of membership in the Maintenance Corporation and eligibility to act as its President. Since Ciabattoni was not a member of the Maintenance Corporation, or its president, whether his acts were void or voidable is irrelevant. The fact remains, that Ciabattoni, while not an officer of the Maintenance Corporation executed the Contract with Resources. The plain language of the law states that "[a] board of directors [ ] may ratify [voidable] acts taken by *officers*."[34] Ciabattoni was not, nor was he eligible to be, an Officer of the Board of Directors at the Contract's execution. Therefore, the Maintenance Corporation could not ratify his acts, whether they were void or voidable.

B. The Collections Costs/Fees

Plaintiff has failed to prove, by a preponderance of the evidence, that it is entitled to the collections costs for which it brought suit against Defendants. Resources' interpretation of the

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[33] Dolan "ratified" the Contract approximately five months after Plaintiff filed this appeal and after the ownership issue was first raised in the Justice of the Peace Court. Moreover, Dolan "ratified" the Contract approximately one and a half years *after* the parties completed performance and the Contract terminated. The Court, for the convenience of either party, will not commingle facts as they existed at the time this action commenced, with facts borne out of a party's self-serving behavioral response to this litigation. The Court therefore, does not consider it relevant that Dolan signed the Contract on May 27, 2015.

[34] *Klig*, 36 A.3d 785, 794 (Del. Ch. 2011) (emphasis added).

Declaration that "...any costs are added to and become part of the delinquent assessment," notwithstanding, this Court must follow the traditional rules of statutory construction.

Ciabattoni testified that in the event of a delinquent assessment the Declaration provides for attorney's and collections fees and/or costs. Paragraph 1(d) of the Declaration is the only portion of the Declaration to address the timeliness of assessment payments. This paragraph delineates the penalties a homeowner may face, should they fail to timely pay their assessment fee.

Paragraph 1(f) of the Declaration provides that a homeowner who accepts title "...shall be held to vest in the [Maintenance] Corporation the right and power . . . to take and prosecute all actions or suits, legal, equitable or otherwise . . . necessary or advisable" to collect assessments. This paragraph confers in the Maintenance Corporation broad powers; powers which are subservient to those defined in Paragraph 1(d) because the powers expressed in the latter are more specific, and expressly limit the scope of the Maintenance Corporation's powers with respect to delinquent assessments. The Court therefore, will examine Paragraph 1(d) to determine whether the Declaration provides for collections costs as this, more specific paragraph, qualifies the meaning of the general provisions set forth in Paragraph 1(f).

The Court finds that the Maintenance Corporation is not entitled to the collections costs because Paragraph 1(d) of the Declaration fails to provide for such costs. By its plain language that paragraph grants the Maintenance Corporation the power to bring "any action at law" and to collect the costs and attorney's fees of "any such action," yet fails to include the term "collections fees." The ordinary meaning of the language used, limits the scope of such fees to only those associated with actions at law brought to recover a delinquent assessment; *i.e*, court costs and attorney's fees.

Even if collections costs were considered to be part and parcel with the typical costs of an action at law, Plaintiff did not bring this action to recover a delinquent assessment since it filed this claim in the Justice of the Peace Court on June 19, 2014, approximately one and a half years after Defendants paid the delinquent Assessment. Indeed, Plaintiff is not entitled to any costs associated with this action at law because this action was not brought to recover a delinquent assessment, and therefore, does not trigger Paragraph 1(d).

Plaintiff brought this action to recover nominal collections costs and in doing so accumulated substantial attorney's fees; which fees, if unrecoverable Plaintiff may be obligated to pay.[35] Plaintiff brought this suit at a cost of $30.00, pursuing collections fees and amassing an unconscionable amount of attorney's fees, in order to avoid setting the "precedent that homeowners do not have to [timely] pay their annual assessments." Plaintiff forgets, that it had already set this precedent through its dereliction of duty and prior mismanagement, culminating in a budgetary shortfall of $8,000.00 and Defendants' having to provide the Subdivision with landscaping services in exchange for the Maintenance Corporation's waiving Defendants assessment fees; this, at a time when collecting assessment fees was of the utmost importance. Similar behavior has propelled Plaintiff into its present dilemma.

Moreover, the Court cannot reconcile the fact that the General Assembly, in vesting this Court with the power to assess attorney's fees, envisioned a circumstance where the Court would award an unconscionable amount of such fees/costs when the fees resulted from a party's ill advised pursuit of collection's fees to which the party was plainly not entitled. After great consideration of the Declaration's ordinary language, as it applies to Plaintiff's arguments, the

[35] Based on Ciabattoni's demeanor towards Defendants at trial, it is reasonable to conclude that this suit was less about funding the Subdivision's upkeep, and more about obtaining retribution for what trouble Defendants may have caused by expressing their opinion of Ciabattoni to other Subdivision homeowners.

Court concludes that Plaintiff is not entitled to recover from Defendants any costs or any attorney's fees.

VI. Conclusion

For the foregoing reasons, the Court finds against Plaintiff, Kirkwood Knoll Maintenance Corporation, and in favor of Defendants Francis Warren and Kathie Warren. Each party shall bear their own costs of this action.

IT IS SO ORDERED this 21st day of April, 2016.

John K. Welch,
Judge

cc: Ms. Tamu White, CCP Civil Manager