STATE OF MICHIGAN

COURT OF APPEALS

HUNTERS POINTE CONDOMINIUM ASSOCIATION,

Plaintiff-Appellant,

v

GEORGE CSICSILA and HENRIETTE CSICSILA,

Defendants-Appellees.

UNPUBLISHED
November 30, 2001

No. 221603
Wayne Circuit Court
LC No. 98-818196-CH

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a verdict of no cause of action and awarded costs to defendants George Csicsila and Henriette Csicsila. Plaintiff appeals as of right. We reverse and remand.

In 1998, defendant Henriette Csicsila installed a portable hot tub and electrical box on the deck at the back of her condominium unit without requesting and receiving permission from plaintiff, Hunters Pointe Condominium Association (the condominium association). The hot tub is not connected to any water supply, but rather is filled with a garden hose. The tub weighs eighteen hundred pounds when filled. A 220-volt wire encased in waterproof housing runs from the hot tub to the electrical box that was installed on the deck. The electrical box is connected to the fuse panel in Csicsila's condominium unit by a wire that passes through the exterior wall of the unit.

After the president of the condominium association learned of defendants' hot tub, she informed defendants that hot tubs were prohibited by the condominium association by-laws and that defendants had to remove the tub. After defendants refused, plaintiff filed this action alleging violation of the condominium by-laws and seeking to enjoin defendants from "keeping, bringing onto, storing, or placing" a hot tub on their deck or, in the alternative, an order allowing plaintiff to remove the hot tub at defendants' expense. The trial court denied plaintiff's motion for summary disposition and the matter proceeded to trial, where the court, after interpreting and applying the Michigan Condominium Act (the act), MCL 559.101 *et seq.*, and the relevant condominium association documents, found in favor of defendants.

Plaintiff argues on appeal that the trial court erred in its interpretation and application of § 47 of the act, MCL 559.147(1), and the master deed and by-laws of the condominium association. Statutory interpretation is a question of law that this Court reviews de novo on appeal. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 469; 628 NW2d 577 (2001). The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. *Sullens v Ford Motor Co,* 245 Mich App 162, 165; 627 NW2d 608 (2001). To determine the Legislature's intent, this Court must first look to the specific language of the statute. *Id.* If the plain and ordinary meaning of the statute is clear, judicial construction is not permitted. *Id.* This Court also reviews equitable actions de novo. *Webb v Smith,* 224 Mich App 203, 210; 568 NW2d 378 (1997). We review for clear error the findings of fact supporting the decision. *Id.*

Section 47 provides, in pertinent part, as follows:

> Subject to the prohibitions and restrictions in the condominium documents, a co-owner may make improvements or alterations within a condominium unit that do not impair the structural integrity of a structure or otherwise lessen the support of a portion of the condominium project. Except as provided in section 47a, *a co-owner shall not do anything which would change the exterior appearance of a condominium unit or of any other portion of the condominium project except to the extent and subject to the conditions as the condominium documents may specify*[1]. [Emphasis added.]

Art VI, § 3, of plaintiff's by-laws provides, in pertinent part, as follows:

> **Alterations and Modifications.** No Co-owner shall make alterations in the exterior appearance of or make structural modifications to his Unit (including interior walls through or in which there exist easements for utilities) or make changes in any of the Common Elements, Limited or General, without the express written approval of the Board of Directors including (but not by way of limitation) exterior painting or the erection of antennas, lights, aerials, awnings, doors, shutters or other exterior attachments or modifications.

"Patio" is listed as a limited common element under Art IV, § 4.02 of the master deed, and is defined as follows:

> (l) **Patio.** Each patio in the Project, where such is constructed, which is assigned to the Unit which opens onto such deck as shown on Exhibit B.

"Electrical," including "[t]he electrical wiring network contained within Units or Unit walls, floors or ceilings or located in any other portion of the Common Elements," also is identified as a limited common element in § 4.02 of the master deed.

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[1] The exceptions provided in § 47a, which pertain to persons with disabilities, do not apply in this case.

The trial court found that § 47 and the condominium association documents only prohibit changes without condominium association approval to the appearance of the real estate and, by extension, to fixtures. The court found that the deck was a "common element," and that placing items of personal property on the deck does not change the real estate. The court further found that the hot tub, which was not permanently installed, was an item of personal property. Accordingly, concluded the trial court, defendants were not required to obtain permission to place the hot tub on their deck. The court also found that because defendants had spent a sizeable amount of money on the hot tub and it could not be moved inside without "tearing up the condominium," it would be unreasonable to require defendants to remove the tub from the deck.

We conclude that the trial court erred in its interpretation of the statute and condominium documents at issue. First, § 47 prohibits, subject to conditions in condominium documents, "changes to the exterior appearance of a condominium unit or any other portion of the condominium project." Defendants maintain, and the trial court agreed, that the statutory prohibition applies only to changes in the real estate, including fixtures. However, the language of § 47 is not so limited. Rather, the first sentence of the provision prohibits improvements or alterations inside a condominium unit that impair the structural integrity of a structure, and the second sentence prohibits *anything* that would alter *the exterior appearance* of a unit or of *any other portion of the condominium project*, except to the extent allowed by condominium documents. Thus, the plain language of the statute leaves to the discretion of the individual condominium communities what aspects of exterior appearance they choose to regulate. The question then becomes whether, under the relevant condominium documents in this case, the condominium association acted reasonably in demanding the removal of defendants' hot tub. *Cohan v Riverside Park Place Condominium Ass'n, Inc*, 123 Mich App 743, 746; 333 NW2d 574 (1983).

At the time defendants installed the hot tub, the condominium association by-laws did not explicitly prohibit hot tubs. However, Art VI, § 3 explicitly prohibits, without written permission of the condominium association board of directors, "changes in *any* of the Common Elements, Limited or General" (emphasis added). Defendants contend that because the hot tub is "portable" and not permanently attached to the deck, it is unlike the other alterations referred to in Art VI, § 3, including "exterior painting or the erection of antennas, lights, aerials, awnings, doors, shutters or other exterior attachments or modifications."

We note, however, that § 3 also provides that the specific items are not listed "by way of limitation," and conclude that the characteristics of the hot tub installation in this case are not necessarily different from the listed items. Although the hot tub in this case is described as "portable" and could be disconnected from the power source and taken with defendants if they moved, while defendants are living in their condominium unit, the tub is continuously situated on the deck, a common element. Defendants acknowledged at trial that the tub could not be moved into the house; they also acknowledged that the tub is used year-round. Further, the tub is wired to an electrical box that had to be installed on the deck to bring power through the exterior wall of defendants' condominium unit. Because the hot tub is situated on the deck year-round and a separate box with a dedicated 220-volt circuit had to be installed to power the hot tub, under the condominium association documents, installation of the hot tub constitutes a change in a common element, and could reasonably be prohibited by the condominium association board of

directors. We conclude, therefore, that the trial court erred in finding that plaintiff's denial of permission for defendants' hot tub was unreasonable. *Cohan, supra.*

In light of our resolution of the above issue, we need not address whether plaintiff's adoption of Rule IX, which explicitly prohibits hot tubs, may be applied retroactively.

Plaintiff's last argument on appeal is that the trial court clearly erred in finding that plaintiff's claim lacked arguable legal merit and awarding attorney fees to defendants. An award of attorney fees is mandatory if the trial court finds that a civil action or defense is frivolous. MCR 2.625(A)(2); MCL 600.2591. This Court reviews the trial court's finding that a claim is frivolous for clear error. *In re Attorney Fees and Costs,* 233 Mich App 694, 701; 593 NW2d 589 (1999). In view of our resolution of this appeal in favor of plaintiff, we find that the trial court clearly erred in finding plaintiff's claim to be frivolous and awarding attorney fees.

Reversed and remanded for entry of judgment in favor of plaintiff. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Jeffrey G. Collins