STATE OF MICHIGAN

COURT OF APPEALS

JOHN RITZ,

Plaintiff/Counter-Defendant-Appellee,

and

LARRY FURTAW, VINCENT KASS, THOMAS KING, ROBERT BEAUDOIN, LESTER PATRAFKA, IRVAL KESSEE, DANNY DELAP, JOHN MIDDLETON, JOHN NICKLES, and JUDY OFIARA,

Plaintiffs-Appellees,

v

SANDYOAK VENTURE, INC., DELTA PROPERTIES, INC., and SANDYOAK VILLAGE ASSOCIATION BOARD OF DIRECTORS,

Defendants,

and

PAUL MCINTOSH, RUSSELL SPREEMAN, CLIFFORD OLDENBURG, RICHARD POST, LOUIS SCHUTT,

Defendants/Counter-Plaintiffs,

and

BRUCE LANGLOIS,

Defendant/Counter-Plaintiff-Appellant.

UNPUBLISHED
May 17, 2002

No. 228920
Roscommon Circuit Court
LC No. 97-008157-CZ

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment for plaintiffs following a bench trial.[1] We affirm in part and vacate in part.

Sandyoak Village is a recreational vehicle condominium park consisting of campsite units. In late 1996, the board of directors for the Sandyoak Village Association consisted of five members. Defendant was a member of the board and president of the Village's developer, Sandyoak Venture, Inc. Faced with financial problems, a dispute arose amongst the board members regarding how to compute the assessments that Sandyoak Venture owed to the association. To settle the dispute, three members of the board entered into an agreement with Sandyoak Venture in December 1996. Pursuant to the agreement, Sandyoak Venture agreed to pay the association $12,000 a year, for three years, and to transfer ownership of certain maintenance equipment to the association. Thereafter, Sandyoak Venture would not be required to pay the association any costs, except for metered utilities, on developer-owned units. Defendant signed the agreement as the president of Sandyoak Venture. Plaintiff Ritz was the lone dissenting board member.

After a two day bench trial, the trial court determined that the board exceeded its authority because the agreement constituted an amendment of the association's bylaws, which requires a two-thirds vote of the condominium co-owners. The trial court deemed the 1996 agreement invalid and proceeded to address the underlying dispute between Sandyoak Venture and the majority of the board.

On appeal, defendant argues that the board of directors was authorized to enter into the agreement with Sandyoak Venture. We disagree. Because defendant's claim involves the equitable remedy of rescission, we review the trial court's decision de novo, giving due deference to the trial court's conclusions. *Dehring v Northern Michigan Exploration Co, Inc*, 104 Mich App 300, 306; 304 NW2d 560 (1981). "Unless convinced, on review of the evidence, that we would have reached a contrary result, we must sustain the findings of the trial court." *Id*.; see also *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 8-9; 596 NW2d 620 (1999).

The Sandyoak Village Association was incorporated "[t]o manage and administer the affairs of and to maintain Sandyoak Village. . . ." The association was empowered by the articles of incorporation to enter into any contract incidental to the administration, management, or operation of the condominium. The association's bylaws, in turn, created a board of directors and entrusted it with the powers and duties essential for the administration of the association. The bylaws permitted the board to do anything necessary to fulfill this function, unless prohibited by the condominium documents or reserved for action by the co-owners.[2]

Article XIII of the association's by-laws provides a specific procedure for their amendment:

---

[1] The majority of defendants were dismissed by the trial court. Although Sandyoak Village Association Board of Directors and Bruce Langlois remained defendants at the time of appeal, Langlois filed the only claim of appeal. This opinion refers to Langlois as defendant.

[2] The bylaws are considered a condominium document as defined in the master deed.

> Section 1. Proposal. Amendments to these Bylaws may be proposed by the Board of Directors of the Association acting upon the vote of the majority of the Directors or may be proposed by 1/3 or more in number of the Co-owners by instrument in writing signed by them.
>
> Section 2. Meeting. Upon any such amendment being proposed, a meeting for consideration of the same shall be duly called in accordance with the provisions of these Bylaws.
>
> Section 3. Voting. These Bylaws may be amended by the Co-owners at any regular meeting or a special meeting called for such purpose by an affirmative vote of not less than 66-2/3% of all Co-owners in number and in value. . . .

According to the bylaws, a vote of the co-owners was necessary for their amendment. In the context of a condominium bylaw, an amendment is something that acts to change the existing structural law. *Meadow Bridge Condominium Ass'n v Bosca*, 187 Mich App 280, 282; 466 NW2d 303 (1990). In this case, the bylaws stated that Sandyoak Venture was obligated to pay annual assessments for developer-owned units that were completed and occupied, plus maintenance costs on all other developer-owned units. However, the agreement purported to change that obligation to a flat fee for three years without any further assessments. This agreement would have presumptively altered Sandyoak Venture's assessment obligations under the bylaws, and an amendment to the bylaws was necessary. Because the co-owners did not vote to approve the agreement, the board's actions were unauthorized and the trial court properly rescinded the agreement.

Defendant further contends that the trial court improperly addressed the underlying dispute between Sandyoak Venture and a majority of the board of directors. Specifically, defendant claims that the issue was not raised in the pleadings and a that necessary party—Sandyoak Venture—was dismissed before trial. We agree. The interpretation and application of the court rules is a question of law subject to review de novo on appeal. *Colista v Thomas*, 241 Mich App 529, 535; 616 NW2d 249 (2000).

After declaring the agreement void, the trial court addressed the disputed meaning of "occupied" units under the bylaws. However, this dispute was between Sandyoak Venture and the majority of the association's board of directors. Indeed, the trial court's decision effectively determined Sandyoak Venture's rights and legal obligations regarding the payment of assessments. "[P]ersons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief *must be made parties* and aligned as plaintiffs or defendants in accordance with their respective interests." MCR 2.205(A) (emphasis added). We find that Sandyoak Venture was a necessary party to the disposition of this issue.

However, the trial court granted Sandyoak Venture's motion for summary disposition a year before trial. Moreover, when plaintiffs amended their complaint, they did not re-name Sandyoak Venture as a defendant. Although Langlois remained a defendant, he was sued in his individual capacity as a board member and not as Sandyoak Venture's president. Because Sandyoak Venture was dismissed before trial, the trial court's decision improperly determined its legal rights and responsibilities by interpreting the portion of the bylaws regarding developer

assessments. See *Meyers v Patchkowski*, 216 Mich App 513, 521; 549 NW2d 602 (1996). Therefore, we vacate the portion of the trial court's order construing Sandyoak Venture's assessment obligations.

Affirmed in part and vacated in part.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Jessica R. Cooper