STATE OF MICHIGAN

COURT OF APPEALS

LAKE FOREST ESTATES CONDOMINIUM ASSOCIATION,

Plaintiff-Appellee,

v

TAMARA M. BERRYMAN and ROBERT C. BERRYMAN,

Defendants-Appellants.

UNPUBLISHED
December 14, 2004

No. 249570
Oakland Circuit Court
LC No. 2002-044493-CH

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendants appeal as of right from an order denying their motion to set aside a default under MCR 2.603(D). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

A motion to set aside an entry of default, unless grounded on lack of jurisdiction, "shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D). The decision whether to set aside a default is entrusted to the trial court's discretion and will not be set aside absent a clear abuse of that discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

Plaintiff commenced this action to foreclose on liens that were filed against condominium units 4, 5, and 8, for failure to pay condominium assessments. The trial court determined that defendants failed to show a meritorious defense to the action. We agree.

As the trial court found, defendants were not entitled to the developer's exemption because they were never listed as the "developer" of the project in any of the condominium documents of record. Furthermore, contrary to what defendants argue, the existence of a meritorious defense does not hinge on whether units 4, 5, and 8 are "units," which they clearly are under the condominium documents and the Condominium Act, MCL 559.104(3), but rather on whether these units were occupied.

"Occupancy" is not defined by the master deed or the Condominium Act. Where a term is undefined, courts "will review its ordinary dictionary meaning for guidance." *Corley v Detroit Bd of Ed*, 470 Mich 274, 279; 681 NW2d 342 (2004). The *Random House Webster's College*

Dictionary (2d ed), p 904, defines "occupancy," in relevant part, as "the act, state or condition of being or becoming a tenant or of living in or taking up quarters or space in or on something," "the possession or tenancy of a property," "the act of taking possession, as of property." The *Merriam-Webster's Dictionary of Law* (1996) defines "occupancy" as "the fact or condition of holding, possessing, or residing in or on something," and "the act or fact of taking or having possession (as of abandoned property) to acquire ownership." Similarly, *Black's Law Dictionary* (6th ed), p 1078, defines "occupancy," in relevant part, as "[t]aking possession of property and use of the same" and "[p]eriod during which a person owns, rents, or otherwise occupies real property or premises."

Defendants offer no support for their argument that units 5 and 8 are not occupied because they are vacant lots, or that unit 4 was not occupied until their home was completed. To the contrary, the ordinary dictionary definition of the term "occupancy" indicates that all three units were occupied because defendants, not the developer, owned and possessed them. Thus, defendants, as co-owners and occupiers of the three units, were liable for the association assessments under the terms of the master deed.

Although the trial court did not reach the issue of good cause, defendants argue that they established good cause to set aside the default because they had directed plaintiff to forward all matters regarding this dispute to their attorney and because defendants served them at an address where they did not reside. We disagree.

Although defendants submitted a letter wherein they instructed plaintiff's president to "direct all future correspondence" to defendants' attorney, the letter did not authorize defendants' attorney to accept service of process on defendants' behalf. Defendants also argued that 7451 Lake Forest Drive was not their proper address, which instead is 7441 Lake Forest Drive. But plaintiff submitted evidence indicating that defendants have repeatedly represented that 7451 Lake Forest Drive is their address. In any event, the process server submitted an affidavit indicating that she was familiar with where defendants lived, and that she actually posted a copy of the summons and complaint at 7441 Lake Forest Drive.

It is apparent that any confusion concerning defendants' correct address was caused by defendants' own conduct in routinely using an address they now claim does not exist. Defendants may not create a defect amounting to good cause by simply refusing to pick up documents served on them in accordance with the trial court's order for substituted service. See *Barclay v Crown Building & Development, Inc*, 241 Mich App 639, 641-651; 617 NW2d 373 (2000). Further, defendants admit that they actually received the summons and complaint. They only dispute the date of receipt.

We conclude that defendants have not shown a substantial irregularity or defect in the proceeding on which the default was based, or that they had a reasonable excuse for failing to timely file their answer to plaintiff's complaint. *Alken-Ziegler, supra* at 233. Thus, defendants have not shown good cause to justify setting aside the default.

For these reasons, the trial court did not abuse its discretion in denying defendant's motion.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens