

STATE OF MICHIGAN
COURT OF APPEALS

ORCHARD ESTATES OF TROY
CONDOMINIUM ASSOCIATION, INC.,
CHRISTOPHER J. KOMASARA, and MARIA
KOMASARA,

UNPUBLISHED
September 18, 2008

Plaintiffs-Appellees,

v

FOUAD DAWOOD and NADIYA DAWOOD,

No. 278514
Oakland Circuit Court
LC No. 2006-078471-CZ

Defendants-Appellants.

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting partial summary disposition for plaintiffs. In this case, the bylaws were inoperative because they were not filed along with the master deed as required by MCL 559.101 *et. seq.*, accordingly, we reverse the trial court's decision to deny defendant's summary disposition and remand the matter to the trial court for entry of judgment in favor of defendants.

Defendants first argue that plaintiffs lacked standing to sue under the condominium bylaws because they were never recorded. Although defendants failed to preserve this issue for appellate review, we address it because doing so is necessary for a proper determination of this case, and this issue involves a question of law regarding which all the facts necessary have been presented. *Brown v Loveman*, 260 Mich App 576, 599; 680 NW2d 432 (2004).

Whether a party has standing to bring an action is a question of law that this Court reviews de novo. *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004). Moreover, whether the bylaws were ineffective because they were not recorded involves a question of statutory interpretation that this Court also reviews de novo. *Tousey v Brennan*, 275 Mich App 535, 538; 739 NW2d 128 (2007).

When interpreting statutory language, courts must ascertain the legislative intent that may reasonably be inferred from the words in a statute. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). When the Legislature has unambiguously conveyed its intent, the statute speaks for itself and judicial construction is neither necessary nor permitted. *Id.* Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation

that renders nugatory or surplusage any part of a statute. *Id.* Undefined words should be accorded their plain and ordinary meanings, and dictionary definitions may be consulted in such situations. *Id.* Further, courts should “construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature.” *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001).

As defendants assert, the bylaws were not recorded along with the master deed as required under MCL 559.153. Plaintiffs contend, however, that the bylaws were not required to be recorded to be effective under that statute. MCL 559.153 provides:

The administration of a condominium project shall be governed by bylaws *recorded as part of the master deed, or as provided in the master deed.* An amendment to the bylaws of any condominium project shall not eliminate the mandatory provisions required by section 54. *An amendment shall be inoperative until recorded.* [Emphasis added.]

Further, MCL 559.103(9) defines “[c]ondominium bylaws” or “bylaws” as “the required set of bylaws for the condominium project attached to the master deed,” and MCL 559.108 defines “master deed” as “the condominium document recording the condominium project to which are attached as exhibits and incorporated by reference the bylaws for the project and the condominium subdivision plan for the project.” Reading these statutes together, it is clear that the Legislature contemplated that condominium bylaws be recorded either “as part of the master deed, or as provided in the master deed.” The provision stating that amendments to the bylaws are inoperative until recorded evidences the Legislature’s intent that the bylaws be recorded in order to be operative.

Here, it appears that the Komasaras may have intended to record the bylaws along with the master deed, but failed to do so. The master deed provides, in relevant part:

WHEREAS, Developer [the Komasaras] intends, by recording this Master Deed, together with the Condominium By-Laws attached as Exhibit “A,” and the Condominium Subdivision Plan, attached as Exhibit “B” (both of which are incorporated by reference and made a part of this Deed), to establish the real property described in Article II below, together with all attachments, appurtenances, and improvements located on that real property, as a condominium under the provisions of the Michigan Condominium Act, MCL 559.101 et seq. (referred to in this document as the “Act”).

Although the master deed refers to the bylaws, they were not attached as an exhibit, contrary to the language in the master deed. Rather, the subdivision plan was the only attachment to the master deed, and the plan was recorded immediately after the master deed was recorded according to the liber and page numbers appearing on those documents. In accordance with the statutory provisions previously discussed, the bylaws were inoperative because they were never recorded. As such, plaintiffs had no cause of action against defendants to enforce the bylaws.

Defendants similarly argue that the restrictive covenants were not binding because they were likewise not recorded. Again, defendants failed to preserve this issue for appellate review, but we nevertheless address it because doing so is necessary for a proper determination of this

case, and this issue involves a question of law regarding which all the necessary facts have been presented. *Brown, supra* at 599. The enforceability of a restrictive covenant is a question of law that this Court reviews de novo. *Terrien v Zwit*, 467 Mich 56, 60-61; 648 NW2d 602 (2002).

“Negative covenants . . . are grounded in contract.” *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997). A covenant running with the land is a contract created to enhance the value of property and, accordingly, is a “valuable property right.” *Terrien, supra* at 71, citing *City of Livonia v Dep’t of Social Services*, 423 Mich 466, 525; 378 NW2d 402 (1985). In an action to enforce a covenant, the intent of the drafter controls, and where the language of a restriction is clear, the parties are confined to the language employed. *Stuart, supra* at 210; *Moore v Kimball*, 291 Mich 455, 461; 289 NW 213 (1939). In other words, when interpreting a restrictive covenant that contains no ambiguity, a court should not enlarge or extend the meaning of a covenant by judicial interpretation. *Webb v Smith (After Remand)*, 204 Mich App 564, 572; 516 NW2d 124 (1994). In addition, restrictions are generally construed against those attempting to enforce the restrictions, and all doubts are resolved in favor of the free use of the property. *Moore, supra* at 461.

Defendants argue that the restrictive covenants are not binding because they were never recorded. The plain language of the covenants supports their argument. The covenants provide, in relevant part:

Duration of Covenants. These Covenants are intended to run with the land and *shall be binding on all parties and all persons claiming under them for a period of not less than thirty-five years from the date this Declaration of Restrictive Covenants is filed in the office of the Oakland County Register of Deeds*, after which time these Covenants shall be automatically extended for successive periods of 10 years each unless an instrument signed by at least 51% or more of the Co-Owners of all Units in the Orchard Estates Condominium has been recorded agreeing to change these Covenants in whole or in part. [Italics added.]

Pursuant to the plain language of this paragraph, the covenants are binding only after they are recorded. Because they were never recorded with the Oakland County Register of Deeds, they are not binding. Moreover, because the language of the restriction is clear, the parties are confined to the language employed. *Stuart, supra* at 210; *Moore, supra* 461. Accordingly, the restrictions are not binding on defendants, and plaintiffs have no cause of action against defendants for violation of the covenants.

Plaintiffs argue that statutory law prohibited defendants from changing the appearance of their unit and required their compliance with the restrictive covenants. Plaintiffs rely on MCL 559.147(1), which provides, in relevant part:

[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.

Plaintiffs also rely on MCL 559.165, which states:

Each unit co-owner, tenant, or nonco-owner occupant shall comply with the master deed, bylaws, and rules and regulations of the condominium project and this act.

As previously explained, neither the bylaws nor the restrictive covenants were binding, because they were not recorded. Thus, defendants' modifications were not contrary to the relevant condominium documents. Accordingly, plaintiffs' reliance on these statutory provisions is unavailing.

Based on our resolution of these issues, it is unnecessary to address defendants' remaining issues on appeal.

Reversed.

/s/ Stephen L. Borrello
/s/ Karen M. Fort Hood