STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH ANDREOZZI and CLARENCE LORENTZ,

Plaintiffs-Appellants,

v

STONY POINT PENINSULA ASSOCIATION, BARBARA ORR, JANA BURNETTE, STEVE WILLIAMS, BARCLAY STEWART, KATHLEEN B. LOVERIDGE, BRIAN DOTSON, NANCY JORDAN, DON JOHNSON and ROBERT GROULX,

Defendants-Appellees.

UNPUBLISHED
June 4, 2009

No. 281113
Monroe Circuit Court
LC No. 05-020288-CZ

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal by right the circuit court's grant of summary disposition in favor of defendants. We affirm, albeit for different reasons than those relied upon by the circuit court.

I

This case arises out of plaintiffs' claim that defendants[1] improperly levied an assessment to dredge a canal on lands under the control of the Stony Point Peninsula Association (the association). Although the Stony Point Peninsula area was originally platted in the 1920s, the association was not incorporated until 1963, at which time articles of incorporation were filed in accordance with the summer resort owners corporation act, 1929 PA 137, MCL 455.201 *et seq*. The 1963 articles of incorporation describe the purpose of the association in the following manner:

[1] The individual defendants are or were members of the Stony Point Peninsula Association board of directors.

> To acquire or receive by gift, maintain, develop and service property known as Stony Point Peninsula, Frenchtown Township, Monroe County, Michigan as per the recorded plat thereof, or land adjacent thereto. To lease, [or] sell said land or portion thereof as shall be approved by a majority of [the] Members at the Annual Meeting. In compliance with the provisions of [the summer resort owners corporation a]ct the trustees shall enact, subject to the approval of the members[,] general by-laws pertaining to police powers, control of streets, sanitation, and such other provisions as are provided by [the summer resort owners corporation a]ct.

Sometime before September 2004, defendants became aware that the association's canal was in need of dredging. In early September 2004, defendants issued a written notice announcing that the association's annual meeting would be held on October 2, 2004, and informing the members that the proposed 2004-2005 annual budget would be considered at that time. Attached to the notice was a proposed annual budget, which included a line item labeled "Proposed Canal Dredge Project" in the amount of $110,000. The proposed annual budget made clear that, upon approval of the canal-dredging project by the members, each member would be responsible for paying a prorated portion of the $110,000 amount.

At the annual meeting, a motion was made to "approve the canal dredging project for $110,000." Although the prorated amount that each member would be required to pay for the project was described in the minutes as a "proposed assessment," the minutes made clear that the $110,000 expense would be included as a line item in the "capital improvements portion" of the annual budget. Of the 270 votes cast on the motion, 153 (56 ⅔ percent) were cast in favor of the canal-dredging project, and 117 (43 ⅓ percent) were cast in opposition to the canal-dredging project. The motion was declared to have carried, and defendants included the $110,000 cost in the final budget. Defendants entered into a contract with a dredging company and began collecting each member's prorated portion of the $110,000 amount.

Plaintiffs filed suit in the Monroe Circuit Court, alleging that the canal-dredging expenditure was a "special assessment," and that pursuant to the association's bylaws, it had required approval by two-thirds of the members and proxies voting at the annual meeting. Plaintiffs argued that because the expenditure had only been approved by 56 ⅔ percent of the members and proxies voting, defendants were without authority to enter into the canal-dredging contract or to collect the prorated portions of the $110,000 cost.

The circuit court granted summary disposition in favor of defendants, concluding that the association's board of directors had been authorized to enter into the canal-dredging contract and to charge the association's members for the cost of the project.

II

We review de novo a circuit court's decision to grant or deny summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We similarly review de novo matters of statutory interpretation, *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 10-11; 743 NW2d 902 (2008), and all other questions of law, *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006).

III

A

Under the summer resort owners corporation act, a group of 10 or more property owners may form a summer resort owners corporation by filing articles of incorporation, also known as articles of association,[2] in accordance with the act. MCL 455.201. Upon filing such articles, "the persons so associating, [and] their successors and assigns, shall become and be a body politic and corporate, under the name assumed in their articles . . . and shall have and possess all the general powers and privileges and be subject to all the liabilities of a municipal corporation and become the local governing body." MCL 455.204. All property owners holding lands within the county and "contiguous to the resort community in which the corporation is organized" are eligible to become members of the corporation. MCL 455.206.

The general corporate governance authority of a summer resort owners corporation is vested in a board of directors, also known as a board of trustees. MCL 455.206; MCL 455.209; MCL 455.210. The board has the authority to enact bylaws, which are "subject to repeal or modification by the members at any regular or special meeting . . . ." MCL 455.212. Specifically, the board may enact bylaws for any of the following purposes:

> To keep all [the corporation's] lands in good sanitary condition; to preserve the purity of the water of all streams, springs, bays or lakes within or bordering upon said lands; to protect all occupants from contagious diseases and to remove from said lands any and all persons afflicted with contagious diseases; to prevent and prohibit all forms of vice and immorality; to prevent and prohibit all disorderly assemblies, disorderly conduct, games of chance, gaming and disorderly houses; to regulate billiard and pool rooms, bowling alleys, dance halls and bath houses; to prohibit and abate all nuisances; to regulate meat markets, butcher shops and such other places of business as may become offensive to the health and comfort of the members and occupants of such lands; to regulate the speed of vehicles over its streets and alleys and make general traffic regulations thereon; to prevent the roaming at large of any dog or any other animal; to compel persons occupying any part of said lands to keep the same in good sanitary condition and the abutting streets and highways and sidewalks free from dirt and obstruction and in good repair. [MCL 455.212.]

B

The Business Corporation Act, 1972 PA 284, MCL 450.1101 *et seq*., expressly applies to "summer resort associations" to the extent that it is not inconsistent with the specific acts under

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[2] The document required for the formation of a summer resort owners corporation is variously described as the "articles of incorporation," MCL 455.201, and as the "articles of association," MCL 455.202. However, it is apparent that the "articles of incorporation" described in MCL 455.201 and the "articles of association" described in MCL 455.202 are the same document.

which those summer resort associations were formed. MCL 450.1123(1). An entity formed under the summer resort owners corporations act is statutorily described as a "corporation" rather than as an "association." MCL 455.201; MCL 455.204. Therefore, it is not immediately apparent whether such an entity is a "summer resort association" within the meaning of MCL 450.1123(1). But for the reasons set forth below, we conclude that entities formed under the summer resort owners corporation act do, indeed, constitute "summer resort associations" within the meaning of MCL 450.1123(1).

It is the longstanding opinion of the Attorney General that entities formed under the summer resort owners corporation act qualify as "summer resort associations" within the meaning of MCL 450.1123(1). OAG 1975-1976, No. 5065, p 734 (December 17, 1976); see also OAG 2003-2004, No. 7164, p 167 (October 7, 2004). While opinions of the Attorney General are not binding on this Court, we find the Attorney General's opinion on this matter persuasive for the following reasons. See *Risk v Lincoln Charter Twp*, 279 Mich App 389, 398-399; 760 NW2d 510 (2008).

In addition to the summer resort owners corporation act, Chapter 455 of the Michigan Compiled Laws, entitled "Summer Resort and Park Associations," includes the summer resort and park associations act, 1897 PA 230, MCL 455.1 *et seq*., the summer resort and assembly associations act, 1889 PA 39, MCL 455.51 *et seq*., and the suburban homestead, villa park, and summer resort associations act, 1887 PA 69, MCL 455.101 *et seq*.[3] Each of these acts allows individuals to associate under certain circumstances for the purpose of acquiring, owning, or improving real property. Although each of the acts contains its own distinct provisions, the four acts also share many similarities. See 2 Cameron, Michigan Real Property Law, § 21.36, pp 1225-1228. Whereas the summer resort and assembly associations act and the suburban homestead, villa park, and summer resort associations act describe the entities formed thereunder as "association[s]," MCL 455.51; MCL 455.101, the summer resort and park associations act and the summer resort owners corporation act describe the entities formed thereunder as "corporation[s]," MCL 455.1; MCL 455.201. Nonetheless, the summer resort and park associations act and the summer resort owners corporation act describe the original incorporators as "the persons associating," MCL 455.2, and as "the persons so associating," MCL 455.202. Moreover, all four acts contain at least one provision that describes the incorporating document required thereunder as the "articles of association." See, e.g., MCL 455.2; MCL 455.52; MCL 455.103; MCL 455.202. In light of the placement of the summer resort owners corporation act in the overall statutory scheme, see *Tallman v Dep't of Natural Resources*, 421 Mich 585, 600; 365 NW2d 724 (1984), and the use of the terms "associating" and "articles of association" in the summer resort owners corporation act, we conclude that entities formed under the summer resort owners corporation act do constitute "summer resort associations" within the meaning of MCL 450.1123(1). Accordingly, the Business Corporation Act applies to summer resort owners corporations to the extent that it is not inconsistent with the summer resort owners corporation act. MCL 450.1123(1).

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[3] Chapter 455 of the Michigan Compiled Laws also contains other statutes that are not relevant to this case.

IV

Although plaintiffs' amended complaint did not contain distinct and separately entitled causes of action, it is apparent that plaintiffs attempted to set forth a claim for declaratory relief under MCR 2.605, and a shareholders oppression claim under MCL 450.1489. We are not bound by a party's choice of labels in the complaint because this would exalt form over substance. *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). Instead, we read the pleadings as a whole and look beyond the procedural labels to determine the exact nature of the claims asserted. See *MacDonald v Barbarotto*, 161 Mich App 542, 547; 411 NW2d 747 (1987).

Plaintiffs requested that the circuit court declare that the cost of the canal-dredging project was a "special assessment," that a two-thirds vote of the association's members had been required to approve the $110,000 expenditure, and that because the expenditure had not been approved by two-thirds of the membership, it was "unauthorized, invalid, and unenforceable." We conclude that plaintiffs properly requested declaratory relief in this regard. "MCR 2.605 provides that a court may declare the rights and legal relations of an interested party seeking a declaratory judgment in a case of actual controversy within its jurisdiction." *Kircher v Ypsilanti*, 269 Mich App 224, 226; 712 NW2d 738 (2005).

The complaint also made clear that plaintiffs were asserting a shareholder oppression claim pursuant to MCL 450.1489. The cause of action created by MCL 450.1489 is a cause of action for oppression, running in favor of minority shareholders in a closely held corporation. *Estes v Idea Engineering & Fabrications, Inc*, 250 Mich App 270, 278; 649 NW2d 84 (2002). Although plaintiffs are members of a summer resort owners corporation, and are not in actuality "shareholder[s]" of a closely held business, they are certainly similar in many respects to minority shareholders of a closely held corporation. Specifically, the gravamen of plaintiffs' complaint was that the association's controlling members and directors had engaged in oppressive conduct by violating a supermajority voting requirement in the bylaws, and had thereby trampled upon the voting rights of the minority members. Similar conduct, if committed within the confines of a closely held business corporation, would likely give rise to a cause of action for oppression under MCL 450.1489. See *Franchino v Franchino*, 263 Mich App 172, 184-186; 687 NW2d 620 (2004) (observing that MCL 450.1489 protects the interests of a shareholder "as a shareholder" and that "[s]hareholder's rights are typically considered to include voting at shareholder's meetings, electing directors, adopting bylaws, amending charters, examining the corporate books, and receiving corporate dividends"). As we explained more fully in section III(B), *supra*, the Business Corporation Act applies to summer resort owners corporations to the extent that it is not inconsistent with the summer resort owners corporation act. Therefore, even though plaintiffs are not technically shareholders of a closely held business corporation, we conclude that they were entitled to sue for oppression-like conduct pursuant to MCL 450.1489.[4] See MCL 450.1123(1).

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[4] We reject defendants' assertion that plaintiffs were required to bring a derivative claim on behalf of the corporation rather than a direct claim in their own right. The complaint made clear

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V

Plaintiffs argue that the association's bylaws required an affirmative two-thirds vote before defendants could enter into the canal-dredging contract at issue, that only 56 ⅔ percent of the members and proxies voting at the annual meeting actually approved the contract and expenditure, and that defendants therefore engaged in ultra vires conduct by implementing the canal-dredging project and charging the members for its cost.

The bylaws of Stony Point Peninsula Association state that "[t]he officers or board of directors shall not enter any contract or purchase or sell property, real or personal, if the amount exceeds $500. All purchases in excess thereof must be approved at the Annual, or a duly called Special Meeting of the Corporation by a ⅔ vote of members and proxies present." The parties do not contest that the board entered into a contract in excess of $100,000 and that when the motion was presented at the annual meeting it was supported by less than two-thirds of the members and proxies voting.

The circuit court concluded that although the bylaws required a two-thirds vote before the board of directors could approve a contract or expenditure exceeding $500, the board was nonetheless authorized to enter into the contract at issue in this case because it had general supervisory power over the association's property and common areas, and an accompanying duty to maintain the association's canal. Given this theorized duty, the circuit court determined that the board was not required to abide by the two-thirds requirement in the bylaws when implementing the canal-dredging project.

We conclude that the board's general duty to maintain the canal, to the extent that any such duty existed,[5] could not overcome the specific supermajority provision in the association's bylaws. The relevant statutory language provides that "[t]he board of trustees shall have the management and control of all the business and all the property, real and personal, of the corporation and shall represent the corporation, with full power of authority to act for it in all things legal whatsoever, *and subject only to restrictions or limitations imposed by the by-laws of the corporation and any special restriction or limitation imposed by a vote of the members* . . . ." MCL 455.210 (emphasis added). While the beginning language of MCL 455.210 indicates that the board has broad power over an association's property, the latter portion clearly indicates that the power may be limited by the association's bylaws or a vote of the membership. In this case, the bylaws, which were adopted by the association's members, plainly and clearly limited the board's power to enter into contracts or expenditures in excess of $500 by requiring that at least two-thirds of the members and proxies voting approve such an expenditure. Under MCL

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that plaintiffs were suing to vindicate their own voting rights as minority members of the association, and not merely to enforce rights that belonged to the association itself. Indeed, as this Court has observed, the statutory claim created by MCL 450.1489 "is a direct cause of action, not derivative, and though similar to a common-law shareholder equitable action, provides a separate, independent, and statutory basis . . . ." *Estes*, 250 Mich App at 278.

[5] We expressly decline to decide whether such a general duty to maintain the association's canal existed under MCL 455.210. We need not reach this issue to resolve the present appeal.

455.210, this duly enacted bylaw provision superceded any general duty to maintain the canal that the board might have possessed.

Defendants argue that, irrespective of whether the board had a general duty to maintain the canal, the two-thirds voting provision in the association's bylaws was invalid under the Business Corporation Act. They contend that, under the Business Corporation Act, a supermajority voting requirement must be contained in the articles of incorporation rather than in the bylaws. In support of this contention, defendants cite MCL 450.1441(2), which provides in relevant part:

> Other than the election of directors, if an action is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote on the action, unless a greater vote is required in the articles of incorporation or another section of this act.

But MCL 450.1455, another section of the Business Corporation Act, belies defendants' argument in this regard. The final sentence of MCL 455.1455 provides that "[t]he failure to include [a supermajority voting requirement] in the articles shall not invalidate any by-law or agreement which would otherwise be considered valid." This provision makes clear that when the bylaws require supermajority approval for a given action, that requirement is valid even if it has not been included in the articles of incorporation, so long as the bylaw provision was otherwise properly enacted or adopted. Indeed, legislative analyses prepared at the time the final sentence of MCL 455.1455 was added by 1989 PA 121 indicate that the purpose of the sentence was to "[a]dd a new provision to preclude any inference that a high vote provision [i]s invalid unless included in the articles." Senate Legislative Analysis, Senate Bill 181 (as enrolled), July 24, 1989; see also Senate Legislative Analysis, Senate Bill 181, April 25, 1989.[6] Accordingly, under MCL 450.1455, we conclude that a supermajority voting requirement contained in the bylaws is not invalid merely because it is not included in the articles of incorporation.

We are convinced, however, that the plain language of the summer resort owners corporation act is inconsistent with, and therefore supercedes, the two-thirds voting requirement in the association's bylaws. At the time this action was commenced, MCL 455.219[7] provided that "[t]he corporation may assess annual dues and special assessments against its members, *by a vote of a majority* thereof" (emphasis added). Defendants argue that this statutory language took precedence over the supermajority provision contained in the association's bylaws, and that in

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[6] We acknowledge that legislative analyses are "'generally unpersuasive tool[s] of statutory construction'" because they "are prepared by House and Senate staff members and do not necessarily represent the views of any individual legislator." *Kinder Morgan Michigan, LLC v City of Jackson*, 277 Mich App 159, 170; 744 NW2d 184 (2007) (citation omitted). Nevertheless, "legislative bill analyses do have probative value in certain, limited circumstances." *Id*.

[7] MCL 455.219 was amended by 2006 PA 44, but still requires "a vote of a majority" of the members before a summer resort owners association's board may assess annual dues or special assessments. MCL 455.219(2).

light of the 56 ⅔ percent approval obtained at the annual meeting, they were entitled to proceed with the canal-dredging project notwithstanding the bylaw provision. We agree with defendants in this regard.

As noted above, a supermajority voting requirement contained in the bylaws is not invalid merely because it has not been included in the articles of incorporation. MCL 450.1455. However, as a general rule, the bylaws may not contain any provision that is "inconsistent with law . . . ." MCL 450.1231. Under the version of 455.219 in effect at the time, only a majority vote of the members of a summer resort owners corporation was required to approve the assessment of annual dues and special assessments. Former MCL 455.219. And the summer resort owners corporation act, itself, makes no allowance for the placement of supermajority voting requirements in the articles or bylaws. We conclude that the supermajority voting requirement contained in the association's bylaws was "inconsistent with" the language of the former MCL 455.219, and that the former MCL 455.219 consequently superceded the inconsistent bylaw provision. See MCL 450.1231. In other words, only a majority vote of the membership was required to approve the canal-dredging project and collection of the related costs in this case. Former MCL 455.219.

Plaintiffs contend that the cost of the dredging project was a "special assessment." In contrast, defendants contend that because the project cost was included in the association's annual budget, it was not a "special assessment" but was merely a part of the "annual dues." We need not resolve this dispute. The language of the former 455.219 applied equally to both annual dues and special assessments. Thus, irrespective of whether the prorated amounts assessed against the members to pay for the canal-dredging project were "annual dues" or "special assessments," only a "vote of a majority" of the members and proxies[8] was required to approve the canal-dredging project and expenditure. Former MCL 455.219.

In sum, the supermajority requirement contained in the association's bylaws was "inconsistent with law" to the extent that it imposed a higher vote requirement than was imposed by MCL 455.219. See MCL 450.1231. The plain statutory language of the former MCL 455.219, requiring only "a vote of a majority" of the membership, superceded the inconsistent supermajority requirement contained in the association's bylaws. Because a majority of the association's members and proxies voted to approve the canal-dredging project and expenditure, defendants were authorized to implement the project, to include it in the annual budget, and to charge the association's members for the cost of the project.[9]

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[8] Members of a summer resort owners corporation may vote by proxy to approve annual dues or special assessments at an annual meeting. See OAG 1975-1976, No. 5065, p 734 (December 17, 1976).

[9] We note that, as a precondition to the assessment of annual dues and special assessments, the former MCL 455.219 required approval by a majority of *all* association members rather than by a mere majority of the members and proxies present and voting. Former 455.219; see also OAG 2003-2004, No. 7164, p 167 (October 7, 2004). However, it appears that this requirement was satisfied in the case at bar. The minutes of the annual meeting indicated that although there were

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Given that defendants were authorized to implement the canal-dredging project and to charge the association's members for its cost, see former MCL 455.219, plaintiffs were not entitled to the declaratory relief they sought in this case. For the same reasons, we cannot conclude that defendants' conduct was "illegal, fraudulent, or willfully unfair and oppressive" within the meaning of MCL 450.1489(1). It is axiomatic that we will not reverse if the circuit court has reached the correct result, even if it has done so for the wrong reasons. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).[10]

VI

In light of our conclusion that defendants were entitled to implement the canal-dredging project and charge the association's members for the cost of the project, we need not determine whether defendants were entitled to governmental immunity in this case. Nor do we address the alternative grounds for affirmance raised by defendants on appeal.

Affirmed. No taxable costs under MCR 7.219, a public question having been involved.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

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only 270 votes cast on the canal-dredging motion, there were 297 "Total Eligible Votes," consisting of "[a]ll votes [of] [m]embers in good standing." As noted previously, of the 270 votes actually cast on the motion, 153 were cast in favor and 117 were cast in opposition. The 153 votes cast in favor of the motion constituted a majority of the 297 total eligible member votes in existence at the time of the annual meeting.

[10] We have presumed for purposes of this appeal that the Stony Point Peninsula Association's corporate existence did not expire by limitation in 1993. The duration of a summer resort owners corporation may not exceed 30 years. MCL 455.202. At the expiration of the initial 30-year term, a summer resort owners corporation may reincorporate and renew its existence for one additional 30-year period. MCL 455.281. The Stony Point Peninsula Association's original 1963 articles of incorporation provided for a 30-year corporate existence. In September 1993, the association filed a certificate of amendment to its articles of incorporation, providing that the corporation's existence would be "perpetual" from that time forward. Although a business corporation is authorized to have a perpetual existence, MCL 450.1261(a), a summer resort owners corporation *may not* have a perpetual existence, MCL 455.202. Thus, the 1993 amendment, calling for a "perpetual" existence, exceeded the scope of the statute. Nonetheless, because plaintiffs do not dispute that the association was authorized to reincorporate and renew its existence, and in the absence of any evidence or argument to the contrary, we consider the 1993 amendment as having effectively extended the corporate existence for one additional 30-year period under MCL 455.281.