STATE OF MICHIGAN

COURT OF APPEALS

GROVE PARK HOMES IMPROVEMENT ASSN, Plaintiff-Appellee, v THOMAS CHADWICK and CAROLYN CHADWICK, Defendants-Appellants.	UNPUBLISHED March 18, 2010 No. 286669 Washtenaw Circuit Court LC No. 06-001182-CH
GROVE PARK HOMES IMPROVEMENT ASSN, Plaintiff-Appellee, v KELLY A. CARPENTER, Defendant-Appellant.	 No. 286671 Washtenaw Circuit Court LC No. 00-001184-CH

Before: OWENS, P.J. AND SAWYER AND O'CONNELL, JJ.

PER CURIAM.

In this summary disposition case, defendants Kelly Carpenter, Thomas Chadwick, and Carolyn Chadwick appeal as of right from the trial court's grant of plaintiff's motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. Facts

Defendants in this case are homeowners of property located in the Grove Park subdivision. Grove Park is a townhouse development. Plaintiff, Grove Park Homes Improvement Association (GPHIA), is an incorporated association of homeowners who all own property in the Grove Park subdivision.

The deeds for each property in the subdivision reference the bylaws and declarations of covenants, which are essentially a contract between the property owner and GPHIA. Under the covenants, members of GPHIA are charged monthly assessments. In 1974, the covenants set the annual assessment at $161.44. In 1983, the amount of the assessment was amended to $480 per year ($40 per month). Sometime between 1983 and 2002, the assessment was increased to $110 per month. In 2002, the assessment was increased to $170 per month, and again increased in 2006 to $175 per month. It is the 2002 increase that is at issue in this case. Defendants have not paid their assessments since August 2005 because they believed that the increase was not valid.

As a result, plaintiff recorded liens on defendants' properties. Thereafter, plaintiff filed a complaint to foreclose the liens and for a money judgment. Defendants filed affirmative defenses, including that there was an incorrect calculation of the dues owed. Plaintiff filed a motion for summary disposition. The parties stipulated to partial summary disposition as to liability, but left the issue of damages to be determined. Plaintiff then filed a second motion for summary disposition with respect to damages only. The trial court granted plaintiff's motion for summary disposition, and later clarified that defendants had failed to demonstrate that there was an issue of fact as to the validity of the 2002 assessment increase.

II. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for a claim; the motion should be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *The Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 55-56; 744 NW2d 174 (2007). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue on which reasonable minds might differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding a motion for summary disposition under subrule (C)(10), a court must review the pleadings, affidavits, depositions, admissions, and other documentary evidence in a light most favorable to the nonmoving party. *Cowles v Bank West*, 476 Mich 1, 32; 719 NW2d 94 (2006).

III. Analysis

Defendants argue that the trial court improperly granted plaintiff's motion for summary disposition under MCR 2.116(C)(10). We disagree.

In their briefs on appeal, defendants argue that they should not have been required to pay the $170 per month assessment because the board did not validly increase the assessment. They contend that a quorum was not present when the increase was voted upon. Defendants do not, however, offer any evidence that the requisite quorum was not present, nor did they offer such evidence to the trial court. On the other hand, in support of their contention that the assessment was validly increased, plaintiff presented: a letter dated October 21, 2002 from the president of the board of GPHIA to all Grove Park homeowners describing the need for a vote of the members to increase the assessment to $170 per month; a notice to Grove Park homeowners that a meeting of the GPHIA would take place on November 19, 2002 and indicating that the purpose of the meeting was to increase the assessment from $110 per month to $170 per month; a letter

from the board to homeowners dated November 25, 2002 indicating that the assessment had been increased and that a quorum was present and that two-thirds of those present voted to increase the assessment; and minutes from subsequent board meetings discussing the increase in assessment.

In response to this evidence, defendants merely argue that they doubt the veracity of the documents. However, they offer nothing in the way of affidavits, depositions, or other documentary evidence that would call in to question the veracity of the documents. Given that plaintiff submitted evidence that it complied with the covenants, while defendant merely reiterated their contention that it did not, the trial court properly concluded that there was no genuine issue of material fact on the issue of damages.

In addition, defendant Carpenter argues that plaintiff's failure to plead its case under MCR 559.154(5) (part of Michigan's Condominium Act) is fatal to this case. This argument is without merit, as the properties in question are not condominiums.

Defendant Carpenter also contends that any change to the amount of assessment constituted an amendment of the declaration of covenants, and was therefore required to have been recorded with the register of deeds. The trial court rejected this argument and found that a change in the amount of the assessment was not the equivalent of an amendment to the declaration of covenants. Indeed, nowhere in the section of the declaration of covenants discussing increasing assessments does it indicate that such an increase would be considered an amendment of the covenants. This argument is without merit.

Therefore, the trial court properly concluded that there was no genuine issue of material fact that the assessment of $170 per month was valid and it properly granted plaintiff's motion for summary disposition.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O'Connell