IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-363

No. COA20-743

Filed 20 July 2021

Swain County, No. 20-CVS-73

RONNIE C. HEDGEPETH, JR. and SHIRA L. HEDGEPETH, Plaintiffs,

v.

SMCC CLUBHOUSE, LLC, and CONLEYS CREEK LIMITED PARTNERSHIP, Defendants.

Appeal by Plaintiffs from orders entered 9 July 2020 and 31 July 2020 by Judge William H. Coward in Swain County Superior Court. Heard in the Court of Appeals 28 April 2021.

Shira Hedgepeth for the Plaintiffs-Appellants

Sanford L. Steelman, Jr., for the Defendants-Appellees

DILLON, Judge.

I. Background

¶ 1 In 2017, Plaintiffs purchased a home in the Smoky Mountain Country Club (the "Country Club"), a planned community, and have lived there ever since. As residents they are part of the Smoky Mountain County Club Property Owner's Association (the "Association") and subject to the 1999 Amended Declarations

governing the Association.

¶ 2 Defendants, SMCC Clubhouse, LLC ("SMCC") and Conley Creek Limited Partnership ("CCLP"), are the developers of the Country Club, and own the clubhouse adjacent to the Country Club.

¶ 3 The Association has a contract with CCLP, providing the Association members access to the clubhouse for a monthly fee. The Declarations provide, in relevant part, that all property owners must pay monthly clubhouse dues to the Association to fund the contractual obligation that the Association has with CCLP for providing the clubhouse.

¶ 4 In 2014, the Association stopped collecting dues from the Country Club residents after a fire damaged the clubhouse. CCLP, SMCC, and another developer sued the Association for breach of contract. A jury verdict was returned against the Association for roughly $5 million in damages and $2 million in prejudgment interest.

¶ 5 The Association then filed for bankruptcy in the Western District of North Carolina. Five months later, the parties entered into an Agreement of Re-Organization where SMCC agreed to stay execution of the judgment. In return, the Association agreed to, *inter alia*, collect overdue and future dues, pay SMCC $1.5 million in three annual payments, and assess each of the property owners for their share of the payments.

¶ 6 Plaintiffs commenced this action seeking a declaratory judgment to absolve

them from paying their clubhouse dues and judgment fees to the Association. When Plaintiffs filed this action, the abovementioned bankruptcy case was still pending, and the automatic bankruptcy stay entered in that case remained in effect. Plaintiffs did not seek an order from the Bankruptcy Court to allow them to file this present action against Defendants. Citing these facts, Defendants moved for a Rule(12)(b)(1) dismissal for lack of subject matter jurisdiction. The motion was granted, and the court dismissed the case. Plaintiffs then filed a Motion to Reconsider, which the court denied. Plaintiffs timely appealed to this Court.

II. Analysis

A. Motion to Dismiss

¶ 7 Plaintiffs first argue that the trial court erred in granting Defendants' motion to dismiss. We disagree, concluding that the bankruptcy court's automatic stay prohibits Plaintiffs from raising the claims contained in their suit.

¶ 8 "In order for a court to have subject matter jurisdiction to hear a claim, the party bringing the claim must have standing." *Revolutionary Concepts, Inc. v. Clements Walker PLLC*, 227 N.C. App. 102, 106, 744 S.E.2d 130, 133 (2013). Standing may be challenged by a Rule 12(b)(1) motion, and this Court reviews the trial court's granting of a motion to dismiss under Rule 12(b)(1) *de novo*. *Id.* at 106-07, 744 S.E.2d at 133.

¶ 9 Under 28 U.S.C. § 1334(a) (2020), the code states that the bankruptcy court

"shall have original and exclusive jurisdiction of all cases under title 11." A petition filed under bankruptcy operates as a stay applicable to "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]" 11 U.S.C. § 362(a)(3) (2020). This rule "directs stays of any action, whether against the debtor or *third-parties*, to obtain possession or to exercise control over property of the debtor. *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1001 (4th Cir. 1986) (emphasis added). And property of an estate comprises of "[a]ll legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1).

¶ 10 When Plaintiffs filed this action, a related bankruptcy case was pending in the Western District of North Carolina with an automatic stay in full effect. Plaintiffs' complaint prays to obtain a ruling that exempts them from paying clubhouse dues to the bankrupt. The essential purpose of an automatic stay is to prohibit actions that affect the resources of an estate by third parties such as Plaintiffs are attempting to do here. Therefore, the automatic stay directly applies to Plaintiffs and the court was correct to dismiss the case.

¶ 11 We note Plaintiffs' contention that *Travelers Ins. Co. v. H.K. Porter Co.*, 45 F.3d 737 (3d Cir. 1995) should inform our opinion here. However, we conclude that this case is inapposite to our analysis.

B. Findings of Fact

¶ 12 Plaintiffs next maintain that the trial court erred in its determination of two findings of fact. We disagree.

1. Finding of Fact 5

The first contested finding of fact is as follows:

> In January of 2013; SMCC acquired ownership of the Clubhouse Use Facilities, and thereby became a successor and assign of CCLP under the Clubhouse Dues Agreement entitled to receive payment of the Clubhouse Dues collected by Association from Owners.

¶ 13 Plaintiffs argue that the finding that SMCC is a *successor* to a contract is a question of material fact which was not heard during a Motion to Dismiss, so it should not have been included. Incongruously, though, Plaintiffs alleged in their complaint that "SMCC is the current owner of the Clubhouse pursuant to a transfer to it from CCLP in 2013."

¶ 14 Further, we take notice of the following statement in a prior appeal to our Court:

> The language of the 1999 Declaration clearly obligates the Association to bill and collect Clubhouse dues and to pay the total collected amount of Clubhouse Dues to the Declarant. The fact that the original Declarant does not currently hold title to the Clubhouse because title was transferred to another Developer-controlled entity is irrelevant. The 1999 Declaration provides that its provisions and all of its covenants would be "binding upon Declarant, its successors and assigns[.]"

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Owners Association, 255 N.C. App. 236, 249, 805 S.E.2d 147, 156 (2017). We therefore conclude that the trial court did not err in making its Finding of Fact 5.

2. Finding of Fact 6

¶ 15 Finding of Fact 6 states that:

> In September 2014, Association breached the Clubhouse Dues Agreement by repudiating its obligations to assess, bill and collect Clubhouse Dues from Owners for payment to SMCC. Litigation ensued, Swain County Case 14 CVS 238, which, after the North Carolina Court of Appeals in *Conleys Creek Limited Partnership v. Smoky Mountain Country Club Property Owners Association*, 255 N.C. App. 236, 805 S.E. 2d 147 (2017), disc. rev. denied, 370 N.C. 695, 811 S.E.2d 596 (2018), held that the Clubhouse Dues Agreement is valid and enforceable under both the Declaration and the PCA[.]

Plaintiffs contest that the use of the term "valid and enforceable" is prejudicial to them and future parties against Defendants. The finding, though, merely states what this Court stated in another appeal. Indeed, we did state in that opinion that "[t]he language of the 1999 Declaration clearly obligates the Association to bill and collect Clubhouse dues and to pay the total collected amount of Clubhouse Dues to the Declarant. *Id.* at 249, 805 S.E.2d at 156. The finding does not conclude the legal effect our prior statement might have in future litigation. We conclude that the trial court did not err in making its Finding of Fact 6.

III. Conclusion

¶ 16 We hold that the court did not err in dismissing Plaintiffs' claim due to the

stay that was in place in the Association's bankruptcy proceeding pending in the Western District of North Carolina Bankruptcy Court.

NO ERROR.

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).