IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Fawn Ridge Estates Homeowners Association	:	
v.	:	No. 1462 C.D. 2010
Gerald Carlson and Dolores Carlson, Appellants	:	Submitted: January 14, 2011

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER **FILED: July 25, 2011**

Gerald Carlson and Dolores Carlson (Appellants) appeal from an order of the Court of Common Pleas of Monroe County (trial court) granting a Motion for Summary Judgment (Motion) in favor of the Fawn Ridge Estates Homeowners Association (Association) in the amount of $5,274.11 for unpaid dues and assessments. Appellants now appeal this order.[1]

[1] "This Court's scope of review of a trial court's grant of summary judgment is limited to a determination of whether the trial court abused its discretion or committed an error of law." Riverwatch Condominium Owners Association v. Restoration Development Corporation, 980 A.2d 674, 680, n.9 (Pa. Cmwlth. 2009).

On May 22, 2009, the Association filed a Complaint with the trial court, averring that the Association operates and manages a Pocono-area residential development known as Fawn Ridge Estates (Fawn Ridge), Appellants own property within Fawn Ridge, and Appellants have failed to pay assessments due to the Association totaling $5,274.11. The Association filed its Amended Complaint in June 2009 after Preliminary Objections (P.O.s) similar to those filed herein by Appellants were sustained by the trial court in two nearly identical cases brought by the Association against other homeowners seeking future assessments, which resulted in the striking of claims by the Association for *future* assessments, but still sought the amount of $5,274.11 owed through 2009. Appellants filed their Answer, New Matter, and Counterclaim on November 25, 2009. In the Answer, Appellants denied that they owed the assessments, asserting that those assessments are neither "legal [nor] proper" nor "properly authorized or calculated upon a proper budget." (Answer ¶ 9.) Appellants sought the dismissal of the Association's claims for the payment of those assessments.

Appellants' New Matter asserts forty-two counts against the Association, including its alleged failure to maintain roads, weeds, a park bridge, and all common areas in Fawn Ridge. The New Matter additionally includes challenges to the inclusion of any legal fees in the assessments.[2] Appellants raise numerous additional issues related to the Association's actions, resolutions, procedures and assessments, and how these have violated the Fawn Ridge Declaration of Restrictions, Covenants

[2] Appellants allege that the legal fees sought arose from legal disputes with the Association over the corporate authority of the Association prior to 2005 and from a previous lawsuit filed by Appellants against the Association.

and Easements (Declaration), the Association By-laws and the Uniform Planned Community Act, (UPCA), 68 Pa. C.S. §§ 5101-5404. The New Matter additionally asserts that the Association has violated the Pennsylvania Fair Credit Extension Uniformity Act (Fair Credit Act),[3] 73 P.S. §§ 2270.1-2270.6, and/or the Unfair Trade Practices and Consumer Protection Law (UTPCPL),[4] 73 P.S. §§ 201-1 – 201-9.3. For the reasons asserted in the New Matter, Appellants deny they owe the assessments and request dismissal of the Association's Complaint.

Appellants' Counterclaim alleged that the Association's actions constitute unfair trade practices, offend public policy, and are otherwise unethical or oppressive. Appellants contend that the Association has violated the Fair Credit Act, arguing that the assessments due constitute a "debt" as defined pursuant to Section 4 of the Fair Credit Act. 73 P.S. § 2270.4(a). They also maintain that such a violation of the Fair Credit Act also constitutes a violation of the UTPCPL, for which Appellants request punitive damages. Appellants further claim damages for public embarrassment, emotional distress, lowered esteem in the community, attorneys' fees, statutory damages in the amount of $1,000, and other damages that are "fair and just" in addition to treble damages.

The Association filed its Motion on February 8, 2010, asserting it was entitled to summary judgment for the assessments owed by Appellants in the amount of $5,274.11 plus reasonable attorneys' fees, interest, and costs pursuant to Rule 1035.2

[3] Act of March 28, 2000, P.L. 23.

[4] Act of November 24, 1976, P.L. 1166, as amended.

of the Pennsylvania Rules of Civil Procedure.[5] In opposition to the Motion, Appellants filed an Answer and Brief, contending that the Association's averments before the trial court were insufficient and did not entitle the Association to summary judgment. The trial court granted the Motion in favor of the Association on April 20, 2010. After reviewing the Association's and Appellants' pleadings and briefs of record and noting that the issues and arguments raised in the instant case were nearly identical to those raised in Fawn Ridge Estates Homeowners' Association v. Mackenzie, (Monroe County, No. 5990 Civil 2008, filed March 15, 2010), the trial court, in its April 20, 2010 Order, adopted the rationale set forth in Mackenzie.[6]

[5] Rule 1035.2 provides that "any party may move for summary judgment" after the close of the pleadings, and the grant of summary judgment is permitted when "there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report" or "if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa. R.C.P. No. 1035.2(1)-(2).

[6] In Fawn Ridge Estates Homeowners' Association v. Mackenzie, (Monroe County, No. 5990 Civil 2008, filed March 15, 2010), the Association filed an action seeking to collect outstanding assessments, late fees, interest, and dues from Mackenzie, who owned property in Fawn Ridge, and a Magisterial District Judge entered judgment in favor of the Association. Mackenzie at 1, 4. On Mackenzie's appeal to the trial court, the Association filed a motion for summary judgment based on the facts that the Association came into legal being by judicial order and that such associations of property owners in private developments that are mentioned in chains of title have "the authority to regulate the use of common" areas and facilities "and the inherent authority to impose reasonable assessments on the property owners." (Mackenzie at 2-3 (citing Treasure Lake Property Owners Association v. Meyer, 832 A.2d 477 (Pa. Super. 2003).) Mackenzie challenged the authority of the Association to impose the assessments and argued, based on Kelso Woods Association v. Swanson, 692 A.2d 1132 (Pa. Cmwlth. 1997), that the assessments were illegal and unequally assessed. Mackenzie at 3. After reviewing the pleadings, the motion for summary judgment, and Mackenzie's response, the trial court held that the Association was entitled to summary judgment pursuant to Pa. R.C.P. Nos. 1035.2 and 1035.3. The trial court noted that, under Rule 1035.3, the non-moving party in a summary judgment case "may not rest upon the pleadings, but must set forth specific facts demonstrating a genuine issue for trial" and the "[f]ailure to allege such specific facts will result in a summary judgment, if appropriate, against the non-

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(Trial Court Order at 1, April 20, 2010.) Appellants filed a Notice of Appeal, and the trial court directed them to file a Statement of Matters Complained of on Appeal (Statement) pursuant to Pa. R.A.P. 1925(b). (Trial Court Order, May 19, 2010.) Appellants filed their Statement on June 8, 2010, setting forth numerous issues and several sub-issues.[7] Thereafter, the trial court filed an Opinion in support of its April 20, 2010 order pursuant to Pa. R.A.P. 1925(a). (Trial Court Op., July 1, 2010). The matter is now ready for appellate review.

Having reviewed and considered the issues raised by Appellants in this appeal, we now affirm the trial court's April 20, 2010 order based upon its well-reasoned Opinion, filed on July 1, 2010, No. 4865 Civil 2009. However, in affirming upon the Opinion, we note that the trial court stated that it reserved for this Court to decide

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moving party." Mackenzie at 2 (citing Phaff v. Gerner, 451 Pa. 146, 303 A.2d 826 (1973) and Pa. R.C.P. No. 1035.3). The trial court distinguished Kelso Woods on the basis that, in that case, the assessments being imposed were *new* assessments, which was not the case in Mackenzie, or in this matter. The trial court held that it was clear that the Association has the legal authority to impose reasonable assessments and that Mackenzie did not raise any issues of material fact regarding the Association's ability to assess dues and fees that needed to be heard at trial, but merely attempted to "muddy the water" by raising irrelevant grievances. (Trial Court Op. at 5-6.)

[7] The issues raised by Appellants on appeal are as follows: (1) the order dated May 19, 2010 does not comply with Pa. R.A.P. 1925(a); (2) the order dated April 20, 2010 was in error when it adopted the decision in Mackenzie; (3) there are genuine issues of material fact about whether the Association acted improperly in its assessments that were properly pleaded and Association did not file an Affidavit in Support of its Motion for Summary Judgment to verify its actions; (4) the record contains genuine issues of material fact; (5) the Motion for Summary Judgment (Motion) only restated averments in the Complaint after proper denials had been set forth in the Answer, New Matter, and Counterclaim and that, when resolved in the manner most favorable to the non-moving party, all doubts as to genuine issues of material facts must be resolved against the moving party; (7) the lack of hearings, depositions, admissions, and transcripts does not permit the granting of the Motion; and (8) Mackenzie made the finding that "assessments here are not based on a new assessment formula," Mackenzie at 3, but this finding is not supported by any fact of record in the instant case.

whether the trial court's reliance upon Mackenzie was erroneous. Appellants argue that reliance upon Mackenzie was erroneous because: (1) Appellants were not parties to Mackenzie, had no ability to object or introduce evidence therein, and had no voice in whether that case was appealed, (Appellants' Statement ¶ 4b); and (2) the holding in Mackenzie was based upon the trial court's determination that there were no material facts at issue in that case and, therefore, it should not be the basis upon which to determine that all past and future actions of the Association in other cases are proper or comply with its Declaration, By-Laws, or other law. (Appellants' Statement ¶ 4c.)

We note that the underlying Complaint initially filed by the Association against Appellants involved the Association's authority to assess Appellants as homeowners within the Association. The trial court's Opinion correctly sets forth why the substantive and procedural law supports the grant of the Motion, and cites Mackenzie for its legal explanation that: assessments are due and payable by the homeowners; the issues raised concerning the propriety or legality of those assessments are neither properly litigated in a suit for the collection of those assessments nor properly withheld for such reasons; and the homeowners contesting the assessments must seek remedies other than self-help or non-payment, such as a declaratory judgment action. As a matter of settled substantive law, the Opinion explains why these ancillary issues raised by Appellants cannot be used as a defense against non-payment.[8]

[8] Although Appellants' ancillary issues allege improprieties and/or illegalities of the assessments, such issues are not a defense for non-payment and cannot be used to delay payments that are due as a matter of law to the Association. See generally Locust Lake Village Property Owners Association v. Wengerd, 899 A.2d 1193, 1199 (Pa. Cmwlth. 2006) (rejecting the homeowners' argument that they are not liable for the association's charges); Hess v. Barton Glen Club, Inc., 718 A.2d 908, 913 (Pa. Cmwlth. 1998) (concluding that all of the owners are responsible for a proportionate share of the costs of maintaining all of the assocation's common facilities); *(Continued…)*

Additionally, the Opinion explains that Appellants failed to present the evidence required by Rule 1035.3 of the Pennsylvania Rules of Civil Procedure[9] necessary to

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Spinnler Point Colony Association, Inc. v. Nash, 689 A.2d 1026, 1029 (Pa. Cmwlth. 1997) (holding that appellants, "who have the right to travel the development roads and to access the waters of a lake, are obligated to pay a proportionate share for repair, upkeep and maintenance of the development's roads, facilities and amenities"); Fogarty v. Hemlock Farms Community Association, Inc., 685 A.2d 241, 244 (Pa. Cmwlth. 1996) (holding that absent language in the deed covenant prohibiting an association from levying special assessments for capital improvements, the homeowners may be assessed their proportionate costs to construct the new improvements); Meadow Run & Mountain Lake Park Association v. Berkel, 598 A.2d 1024, 1026 (Pa. Super. 1991) (noting that residential communities are "analogous to mini-governments" that "are dependent on the collection of assessments to maintain and provide essential and recreational facilities" and that, absent an express agreement prohibiting assessments, when an association of property owners in a private development is referred to in the chain of title and has the authority to regulate each property owner's use of common facilities, inherent in that authority is the association's ability to impose reasonable assessments to fund the maintenance of those facilities); Wrenfield Homeowners Association, Inc. v. DeYoung, 600 A.2d 960, 964 (Pa. Super. 1991) (holding that the association's declaration clearly makes the defaulting homeowner liable for assessments plus the cost of collection for the amount in default to the association, including attorneys' fees); Rivers Edge Condominium Association v. Rere, Inc., 568 A.2d 261, 263 (Pa. Super. 1990) (holding that appellant's action in withholding his condominium assessments, even assuming that he has suffered the property damage he alleges, is not justified by the language of the By-Laws, the statutes of this Commonwealth, or general public policy considerations).

[9] Rule 1035.3 states, in relevant part, that:

> (a) Except as provided in subdivision (e), the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying
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> (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
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> (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.
>
> (b) An adverse party may supplement the record or set forth reasons why the party cannot present evidence essential to justify opposition to the motion and any action proposed to be taken by the party to present such evidence.

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withstand a summary judgment motion. Finally, the trial court's Opinion properly distinguishes this matter from Kelso Woods, upon which Appellants relied to support their argument that the trial court can assess the propriety of any assessment when there is an allegation that it was improper, unequally assessed, or illegal.[10] Therefore, in view of the substantive law on assessments by homeowner's associations, the

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> (c) The court may rule upon the motion for judgment or permit affidavits to be obtained, depositions to be taken or other discovery to be had or make such other order as is just.
>
> (d) Summary judgment may be entered against a party who does not respond.

Pa. R.C.P. No. 1035.3(a)-(d). Thus, as the non-moving party, Appellants could not avoid summary judgment simply by resting upon the mere allegations or denials contained in the pleadings, but were required to take affirmative action to present sufficient evidence "on an issue essential to [their] case and on which [they] bear[] the burden of proof such that a jury could return a verdict" favorable to the non-moving party. Ertel v. Patriot-News Company, 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996); Barnish v. KWI Building Company, 602 Pa. 402, 421, 980 A.2d 535, 547 (2009) (citing Ertel for same principle); Riverwatch, 980 A.2d at 682 n.14. "Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Ertel, 544 Pa. at 102, 674 A.2d at 1042. The trial court noted that it was "incumbent upon [Appellants] to provide evidence of facts to bolster their averments that material issues of fact exist. [They] only list a myriad of issues without support and . . . we find that [Appellants] have not alleged facts with enough specificity to preclude summary judgment." (Trial Court Op. at 6-7.) Having reviewed the record in this case, we agree with the trial court that the record does not contain any specific evidence supplied by Appellants in response to the Motion that would be legally sufficient to support their opposition to the Motion.

[10] The trial court concluded that Kelso Woods was distinguishable because that case involved unpaid assessments that were based on a new assessment formula that was being challenged, which is not the case here. We conclude that Kelso Woods is further distinguishable because, *inter alia*, the defendant therein counterclaimed not for damages as Appellants seek herein, but for a declaratory judgment that "the new assessment formula was an improper exercise of the Association's authority and beyond [the defendant's] obligations as a lot owner." Kelso Woods, 692 A.2d at 1134-1135. Additionally, the appeal in Kelso Woods did not involve a challenge to the grant or denial of summary judgment, but a decision on the merits that the assessment was reasonable and, therefore, the procedural posture of Kelso Woods is unlike that in the present case.

prohibition against self-help or non-payment based on alleged improprieties of a particular assessment, and the pleadings and other evidence presented by Appellants, we agree with the trial court that Appellants did not meet the evidentiary requirement to overcome the Motion and the trial court did not err or abuse its discretion in granting the Motion and ordering Appellants to pay the assessments that were due on their property.

Appellants argue that it was erroneous for the trial court to rely upon Mackenzie in its resolution of this case for two reasons: (1) Appellants were not parties in Mackenzie; and (2) Mackenzie should not protect every future action the Association takes. Our review of the record reveals that, in granting the Motion in the Association's favor, the trial court cited Mackenzie for two reasons. First, the trial court concluded that the procedural grounds for granting the Motion in the instant case were very similar to those in Mackenzie. Secondly, as in Mackenzie, Appellants' response to the Motion was inadequate because it failed to identify the facts or issues necessary to show why they did not owe the assessments as a matter of law. In sum, the trial court cited and relied upon Mackenzie as a matter of stare decisis[11] because the legal analysis of the procedural and substantive reasons for granting summary judgment in favor of the Association were as applicable to the instant case as they were in Mackenzie. Appellant's second argument is that

[11] The "[r]ule of *stare decisis* declares that for sake of certainty, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different." Commonwealth v. Tilghman, 543 Pa. 578, 588 n.9, 673 A.2d 898, 903 n.9 (1996) (emphasis in original) (citing Burke v. Pittsburgh Limestone Corporation, 375 Pa. 390, 394, 100 A.2d 595, 598 (1953)). Here, the trial court in this matter recognized that the rationale for granting summary judgment in Mackenzie applied here as well and, therefore, applied that rationale to this case.

Mackenzie cannot be read as a determination that all "future actions of this [Association] are proper, whether or not the Association complies with its own Declaration, By-Laws or other law." (Appellants' Statement ¶ 4c.) However, the trial court was not referring or citing to Mackenzie in the manner characterized by Appellants in their Statement, but was, in accordance with the principle of stare decisis, citing to the case for the applicable legal principles and as a shorthand manner of applying a particular legal analysis to a similar set of facts. Because we agree with the trial court, we discern no error in that determination or in the trial court's grant of summary judgment on these bases.

Accordingly, this Court affirms on the basis of the well-reasoned Opinion issued by the Honorable Jennifer Harlacher Sibum, Judge of the Court of Common Pleas of Monroe County, in Fawn Ridge Estates Homeowners' Association, Inc. v. Carlson, (Monroe County, No. 4865 Civil 2009, filed July 1, 2010).

RENÉE COHN JUBELIRER, Judge

COMMONWEALTH COURT OF PENNSYLVANIA

Fawn Ridge Estates Homeowners Association	:	
v.	:	No. 1462 C.D. 2010
Gerald Carlson and Dolores Carlson, Appellants	:	

O R D E R

NOW, July 25, 2011, the order of the Court of Common Pleas of Monroe County in the above-captioned matter is hereby **AFFIRMED** on the basis of the well-reasoned opinion issued by the Honorable Jennifer Harlacher Sibum, Judge of the Court of Common Pleas of Monroe County, in Fawn Ridge Estates Homeowners' Association, Inc. v. Carlson, (Monroe County, No. 4865 Civil 2009, filed July 1, 2010).

RENÉE COHN JUBELIRER, Judge