

to the ground level. The Association advised homeowners that it would not make changes to the antenna system to enable those individuals with non-digital receivers to have access to new digital signals. When transmitters of signals switched to digital format on June 12, 2009, Polites could receive some VHF signals but could not receive UHF signals for two channels. Polites avers that the Association stated that the antenna system cannot provide digital reception.

Based upon these allegations, Polites “argued” in his Complaint that the Association has violated its fiduciary responsibilities to over-the-air television viewers by failing to maintain the antenna system in such a manner that would permit homeowners to view digital transmissions. Polites asserted that he continues to pay his Association dues and that the Association could act minimally to satisfy his demands by re-aligning the antenna. He also suggested that the Association could take other action, such as maintaining connecting wires in a manner that would prevent or forestall the deterioration of those wires that could lead to lost signals.¹

Based upon these facts, Polites sought equitable relief in the form of an order directing the Association to take the following actions: (1) align all the antennas as indicated in his Complaint for optimal reception; (2) encase in plastic conduit all “loose wiring which travels horizontally from mast to mast” as illustrated in an exhibit attached to the Complaint; (3) permit Polites to have access to the antenna system for examination and documentation during business hours; (4) reimburse Polites for his court and sheriff’s costs; and (5) reimburse Polites for

¹ Polites filed three “Amended Complaints,” but these pleadings simply added citations to pertinent law, sought to comply with deficiencies in formalities required under the Pennsylvania Rules of Civil Procedure, and sought to add additional exhibits to the original Complaint. (Certified Record (C.R.), Items 5, 6, and 14.)

loss of access to reception to the two channels he cannot receive for the period following the digital switch-over at a rate of \$20.00 per day.

Following the closing of the pleadings, the Association filed a motion for summary judgment. In that motion, the Association observed that the Complaint did not allege breach of any contract, agreement, or the Association by-laws. The Association contended that the statutory provision upon which Polites relied, Section 3107 of the Pennsylvania Uniform Condominium Act (Act), 68 Pa. C.S. § 3107, pertains to eminent domain and provides no support for Polities' claim that the Association is required to maintain the antenna system. Further, the Association claimed that under Section 3103 of the Act, 68 Pa. C.S. § 3103, the antenna system constitutes a "limited common element." Under the Association's by-laws and declaration, any homeowner to whom "limited common elements" are "assigned" is required to assume assessments for "any charge or expense in connection with expenditures for the limited common element." (C.R., Item No. 16, Exhibit No. 3, at 15.) The Association asserted that Polites has refused to assume the costs associated with the maintenance and repair of the antenna system, as indicated in a letter Polites sent to the Association. (C.R., Item No. 16, Exhibit No. 4.) The Association further asserted that Polites had stated no valid claims under the Act or federal law.²

The trial court granted the Association's motion for summary judgment. In an opinion issued pursuant to Pa. R.A.P. 1925, the trial court identified the merits of Polities' Complaint as turning on the question of whether

² Polites had also filed an action seeking similar affirmative relief from the Federal Communications Commission (FCC). The Association indicated in its motion that the FCC issued an order on June 26, 2009, concluding that Polites could not compel the Association to upgrade the antenna system and denying Polities' requested relief. The Association attached the FCC's order to its motion for summary judgment as Exhibit No. 5.

the law places a duty upon the Association “to upgrade a technologically outdated element of the Condominium, at the behest of one resident, while at the same time the Association has replaced the outdated element for the benefit of all residents.” (Trial court opinion at 4.) First, the trial court identified the distinction the Act makes between common elements and limited common elements of Condominium developments. The Act, the trial court observed, only requires condominium associations to maintain, repair, or replace common elements. The trial court noted that the subject of the dispute was really the condominium’s television system in general, rather than either the antenna system or the cable system individually. The trial court concluded that the record developed at the time of the trial court’s decision indicated that the Association had properly maintained and replaced the television system:

If the Association had remained idle, and allowed the television digital broadcasting switch to occur in 2009 without having implemented any new technology, the residents of the Condominium would be without television. However, that was simply not the instance here, as the record evidence establishes that the Association properly maintained and replaced the television system, fulfilling its requirements pursuant to the Act.

(Trial court opinion 5.)

In this appeal,³ the key issues Polites raises are: (1) whether the trial court erred in concluding that the antenna system is not a common element under

³ This Court’s review of a trial court’s order granting a motion for summary judgment is limited to considering whether the trial court erred as a matter of law or abused its discretion. *Lambert v. Katz*, 8 A.3d 409, 413 (Pa. Cmwlth. 2010). A court may grant a motion for summary judgment only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Bronson v. Horn*, 830 A.2d 1092 (Pa. Cmwlth. 2003), *affirmed*, 577 Pa. 653, 848 A.2d 917 (2004), *cert. denied*, 543 U.S. 944 (2004). The right to judgment must be clear and free from doubt. *Id.* In reviewing the granting of a motion for summary

Section 3103 of the Act; (2) if the antenna system is a common element under the Act, whether the Association has a duty to maintain and repair the system; (3) whether the Association has failed to fulfill its fiduciary duties by refusing to repair and maintain the antenna system.⁴

In the argument section of his brief, Polites essentially contends that some of the trial court's observations are not supported by the record, including the following: (1) the antenna system is out-dated; (2) the cable system constitutes a replacement of the antenna system; (3) that the antenna system *at one time* was used to send signals to all residents (Polites asserts that the statement is inaccurate because he continues to receive a signal); (4) the antenna system is not equipped to provide digital format; (5) the Association maintains and repairs the television system as a whole; (6) Polites failed to raise a breach of fiduciary duty in the Complaint (Polites asserts that he raised a fiduciary duty claim in his August 13, 2009, amendment to his Complaint); and (7) the parties do not dispute the facts of record. Other than these assertions, Polites offers no discussion of the legal standard applicable in this appeal and presents no legal authority in support of his "argument" as to how the trial court erred in its conclusions.

When a party's brief, and specifically the argument section of a brief, is devoid of any legal analysis or citation to court decisions relating to the issues an

judgment, this Court must "view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." *Pappas v. Asbel*, 564 Pa. 407, 418, 768 A.2d 1089, 1095 (2001).

⁴ Polites raises additional issues relating to his underlying requests for relief before the trial court, including: (1) whether the Association should be ordered to pay Polites' court costs; and (2) whether the Association should be ordered to reimburse Polites for the period during which he has not been able to access certain UHF channels. Because these are matters that only the trial court could address if we agree with Polites on the key issues noted above and remand the matter to the trial court, we need not address these issues.

appellant seeks to have an appellate court review, the reviewing court may regard the appellant as having waived his arguments. *D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 742, 750 n.8 (Pa. Cmwlth. 2010) (issue waived where appellant failed to develop legal argument or cite relevant legal authority in support of issue); Pa. R.A.P. 2119. On this basis, we conclude that Polites has waived his arguments, and we affirm the trial court's order.

Further, as the Association points out in its brief, Polities' averments and legal argument fail to establish that the Association violated any provision of the Act or duty to Polites. Section 1 of the Act provides the Association with the power to "[r]egulate the use, maintenance, repair, *replacement* and modification of common elements." 68 Pa. C.S. § 3302(a)(6) (emphasis added). Section 1 of the Act also defines the term "common elements" as "[a]ll portions of a condominium other than the units." 68 Pa. C.S. § 3103. At least one state has sought to flesh-out the limits of the term "common elements." In Florida, the term encompasses "easements through units for conduits, ducts, plumbing, and other facilities" and "[t]he property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements." Fla. Stat. § 718.108 (2011). Even if courts in Pennsylvania were to interpret the term "common elements" in a manner that would encompass improvements in a condominium such as the antenna system at issue and the cable system (or television system in general as the trial court opined), Polites has not explained how the Association violated the Act given that the Act vests in condominium associations the power to make a decision regarding not only the repair and maintenance of common elements, but also the replacement or modification of common elements.

As the Association notes, Polites has pointed to no authority regarding the extent or limitations of the Association regarding decisions relating to the replacement or modification of common elements. Based upon the paucity of discussion of these legal concepts, we conclude that the trial court did not err in granting the Association's motion for summary judgment.⁵ Accordingly, we affirm the order of the trial court.

P. KEVIN BROBSON, Judge

⁵ With regard to Polities' suggestions that the trial court erred in reciting certain factual matters possibly not supported by the record, we agree with the Association that such matters were not material to the trial court's resolution of the motion for summary judgment, and, therefore, we perceive no error in the trial court's order in that regard. Pa. R.C.P. No. 1035.2(1).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Constantine N. Polites,	:	
	:	
Appellant	:	
	:	
v.	:	No. 158 C.D. 2011
	:	
	:	
Strath Haven Condominium	:	
Association	:	

ORDER

AND NOW, this 25th day of August, 2011, the order of the Court of Common Pleas of Delaware County is AFFIRMED.

P. KEVIN BROBSON, Judge