REL: January 11, 2019

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2170815

Great Bend Yacht Club, Inc.

v.

Todd MacLeod and Karen MacLeod

Appeal from Madison Circuit Court
(CV-16-900686)

PITTMAN, Judge.

This appeal, which was transferred from our supreme court to this court pursuant to Ala. Code 1975, § 12-2-7(6), is taken from a judgment entered in a civil action brought in June 2016 in the Madison Circuit Court by plaintiffs Todd

MacLeod and Karen MacLeod ("the lot owners"), who own real property located in Great Bend at Butler Basin, a planned residential community located in Madison County ("the Community"), against Great Bend Yacht Club, Inc. ("the Yacht Club"), a nonprofit corporation founded for the purposes of owning, maintaining, and managing the common areas and marina facilities in the Community. In their complaint, the lot owners averred that they owned two contiguous lots, Lot 1 and Lot 2, depicted in the original November 2000 plat of the Community recorded in the Madison County probate records but had "combined" those lots in October 2014 "by recording a [revised] Plat" in the Madison County probate records; according to the complaint, despite the lot owners' efforts to combine Lot 1 and Lot 2, the Yacht Club had sought to impose "two annual assessments" upon them. The lot owners sought a judgment declaring that the Yacht Club was not entitled to seek the imposition of a lien against the lot owners' property "for failing to pay a second assessment."

In July 2016, the Yacht Club answered the complaint, denying the lot owners' entitlement to relief, and asserted a counterclaim seeking to recover $1,200 plus costs and

attorney's fees based upon a breach-of-contract theory as a result of the lot owners' having failed or refused to pay annual assessed dues as to Lot 2. The parties then entered into a joint stipulation indicating that the issue for the trial court to decide was whether the Yacht Club's bylaws and restrictions allowed it to assess the lot owners based upon their ownership of two lots following the "resubdivision" of Lot 1 and Lot 2 into a single lot; attached to that filing were a number of exhibits, including the original and revised plats, the recorded subdivision restrictions applicable to the Community, the Yacht Club's articles of incorporation and bylaws, and a copy of the report of the Madison County tax assessor as to the lot owners' property. The parties also jointly moved for the submission of the case on written briefs, which motion was granted, and the parties then filed briefs in support of their respective positions.

In January 2018, the trial court entered a judgment in favor of the lot owners, holding that "only one assessment" was "permitted to be charged" to the lot owners. In reaching that decision, the trial court first concluded that the subdivision restrictions pertaining to the Community permitted

the combination of two contiguous lots into a larger one. The trial court noted the decision of our supreme court in Ex parte Odom, 254 So. 3d 222 (Ala. 2017), which had been released just over four months previously, but deemed distinguishable both Ex parte Odom and Claremont Property Owners Association v. Gilboy, 142 N.C. App. 282, 542 S.E.2d 324 (2001), upon which our supreme court had relied in deciding Ex parte Odom. The trial court, in the pertinent parts of its judgment, determined that the case did not involve a violation of subdivision restrictions; concluded that the lot owners "are now the owners of a single lot, duly platted according to law"; and, relying upon an exhibit attached to the lot owners' brief, opined that the Board of Directors of the Yacht Club ("the Board") had previously interpreted its bylaws in a manner favorable to the lot owners' position. Following the denial of its motion to alter, amend, or vacate that judgment, the Yacht Club timely appealed.

As we have noted, the parties agreed that the trial court should decide the case based upon their joint stipulation (including the exhibits attached thereto) and their written

briefs. "[W]here there are no disputed facts and where the judgment is based entirely upon documentary evidence, [appellate] review is de novo." E.B. Invs., L.L.C. v. Pavilion Dev., L.L.C., 212 So. 3d 149, 162 (Ala. 2016). See also McCulloch v. Roberts, 292 Ala. 451, 454, 296 So. 2d 163, 164 (1974) (noting that, when the trial court does not take oral testimony, no favorable presumption applies to the resulting judgment; "[t]his is in effect the negative expression of the ore tenus rule"); Body Max Fitness Ctr. v. Sheffield, 775 So. 2d 836, 836 (Ala. Civ. App. 2000) ("This case was submitted to the trial court on an agreed statement of facts. Thus, no presumption of correctness attaches to the trial court's findings.").

The parties' joint stipulation reveals that the original plat of the Community was recorded on November 3, 2000; 26 numbered lots appear on the original plat, which was attached as an exhibit to the parties' stipulation. In December 2000, a document outlining restrictions applicable to the Community was recorded, in which the owner of the platted lots at that time, Butler Basin Marina, LLC, indicated its intent "to fix and establish certain restrictions as to the use and enjoyment

of ... lots and property embraced in [the original] plat" and its agreement that the lots and property located in the platted area "shall be subject to ... covenants, terms, conditions, restrictions and limitations" that would "run with the title to the real property [t]hereby or [t]hereafter made subject [t]hereto" and would "be binding on all persons having any right, title, or interest in all or any portion of the real property" in the Community "now or hereafter."[1] There are no references in that document to the existence of the Yacht Club, or to any role the Yacht Club might eventually play in the Community, other than provisions that the Yacht Club would assume the duties of Butler Basin Marina, LLC, to appoint members of the Community's architectural-control committee once certain events took place and that owners in the Community would not be permitted to "bring any action or suit" against the Yacht Club seeking damages stemming from submission of plans or specifications to the Yacht Club for approval.

[1]The restrictions provide for an initial effective term of 50 years, subject to amendment, renewal, or termination upon agreement of a sufficient number of owners of real property in the Community.

The December 2000 restrictions document does state that, although no lot in the Community is divisible into two building sites, "a single lot together with contiguous portions of one of more complete lots in the same block may be used for one building site." We can infer from that language that the owner of the Community in December 2000 intended to permit future owners of "lots" in the Community to utilize one "lot" and contiguous portions of neighboring complete "lots" as a singular site upon which to build a structure otherwise conforming to the restrictions. Contrary to the trial court's judgment, however, we perceive no intent on the part of the original owner of the Community to permit such an enlarged "building site" to thereafter constitute a single "lot" for all purposes, much less to allow owners of property in the Community to, in the words of the trial court, "combine two lots into one."

Notwithstanding the foregoing, we note that, in Ex parte Odom, our supreme court stated that, as a general matter, "lots can be combined and re-subdivided," subject to the limiting principle that, "absent an express provision of the [applicable restrictive] covenants permitting a combined lot

to be treated as a single lot for the purposes of applying [those] restrictive covenants, ... the property at issue must always conform with the covenants as they originally attached to the property." 254 So. 3d at 227-28. Here, the record reflects that, in October 2014, two months after the lot owners had purchased Lot 2 and more than five years after the lot owners had purchased Lot 1, the lot owners caused a revised plat to be recorded in the Madison County probate records. In its brief filed in the trial court, the Yacht Club expressly noted that it did not dispute that the lot owners had validly combined Lot 1 and Lot 2, nor did the Yacht Club dispute that the two lots were "now of record as a single lot" in those probate records. Because the Yacht Club has conceded that the lot owners have done all that is required to transform Lot 1 and Lot 2 into a single lot, we likewise deem Lot 1 and Lot 2 as having been combined without reaching potential predicate issues, such as whether the revised plat recorded by the lot owners was compliant with Ala. Code 1975, § 35-2-53, which permits vacation of plats after sales of lots by "all the owners of lots in such plat or map joining in the execution of such writing."

Although Ex parte Odom does support the proposition that even permissible combinations or subdivisions of lots in a common-interest community -- such as the Community in this case -- do not normally alter the application of restrictive covenants as originally applicable to those lots, the lot owners correctly note in their appellate brief that the matter of assessments by the Yacht Club is not addressed in the restrictions document recorded in December 2000. Moreover, although there is authority that an owner of real property in a common-interest community may be bound by terms of a deed conveying title to a parcel "subject to" corporate documents of a homeowners' association so as to require payment of dues, see Fairfield Place Homeowners Ass'n v. Pipkin, 161 So. 3d 1206, 1209-11 (Ala. Civ. App. 2013), and the Yacht Club did assert in its counterclaim that the lot owners' purchases of Lot 1 and Lot 2 were "subject to" the Yacht Club's corporate governance documents, the deeds conveying Lot 1 and Lot 2 to the lot owners that might support that theory do not appear in the record. Thus, on the stipulated facts, any duty that the lot owners may have to remit moneys to the Yacht Club in response to assessments made by the Yacht Club is not an

obligation stemming from real-property law, and we cannot properly deem cases such as Gilboy, supra, and Fawn Lake Maintenance Commission v. Abers, 149 Wash. App. 318, 324-25, 202 P.3d 1019, 1022-23, review denied, 166 Wash. 2d 1014, 213 P.3d 930 (2009) -- both of which involved unilateral attempts by owners of property in common-interest communities to combine parcels with an eye to reducing their fee obligations as set forth in restrictive-covenant documents -- as persuasive authority in this factual context.

The question therefore arises: From where does the Yacht Club derive its authority to require payments from property owners in the Community? To answer that question requires investigation of pertinent provisions of the Yacht Club's articles of incorporation and its bylaws. The articles of incorporation establish that the Yacht Club was formed as a nonprofit organization "to acquire, own, maintain and manage the Common Areas and Marina Facilities of" the Community and to exercise the powers and discharge the duties of the Yacht Club set forth in its bylaws; the articles further expressly confer upon the Yacht Club, among other things, the "power to levy and collect dues and assessments as provided for in" the

bylaws, as well as to expend moneys for expenses, materials, insurance, improvements, and taxes.[2] All funds acquired by the Yacht Club are "held only as agent for and solely for the benefit of" the "[m]embers" of the Yacht Club, which "members" "consist of all of the record owners of [l]ots and [c]ondominiums" in the Community, "the plat of said subdivision being of record in the Office of the Judge of Probate of Madison County, Alabama, in Plat Book 41, Page 29." By virtue of their ownership of Lot 1 and Lot 2, the lot

[2]As a side matter, we note the holding of the Missouri Court of Appeals in Tarsney Lakes Homes Association v. Joseph, 620 S.W.2d 8 (Mo. Ct. App. 1981), that a not-for-profit corporation founded to furnish services to the residents of a residential subdivision, which corporation had the general power under nonprofit-corporation laws "'to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized,'" necessarily had the power "to obligate its members for the payment of assessments" independent of provisions for that power in its articles of incorporation because "[t]he furnishing of services to the ... subdivision residents ... plainly required money." 620 S.W.2d at 10. Alabama has a similar law applicable to all domestic corporate entities. See Ala. Code 1975, § 10A-1-2.11(21) (domestic entity may "take other action necessary or appropriate to further the purposes of the entity"); cf. Patton v. Cumberland Lake Country Club, Inc., 703 So. 2d 376, 382 (Ala. Civ. App. 1997) (business entity had authority to assess its members $100 to fund litigation "relat[ing] directly to the operation of [its] country club facilities"; litigation fell "within the realm of 'providing, operating and maintaining'" corporate facilities "as an entity devoted to the pleasure and happiness of its members."

owners are, under the articles of incorporation of the Yacht Club, "members" thereof, whereas the affairs of the Yacht Club are "managed by a Board of Directors" and administered by officers designated in accordance with the bylaws.

The bylaws of the Yacht Club provide for the annual preparation of a budget for the Yacht Club that is to "take into account the estimated Common Expenses[] and cash requirements for the year, including salaries, wages, payroll taxes, supplies, materials, parts, services, maintenance, repairs, replacements, landscaping, insurance, fuel, power, water and other expenses." Subsequent sections of the bylaws state that "[e]ach Lot or Condominium Owner shall pay his respective yearly proportionate assessment for the Common Expenses, as shown on the annual budget, ... to the manager or managing agent or as may be otherwise directed by the Board" of the Yacht Club, and that "[i]t shall be the duty of every Owner to pay his proportionate share of Common Expenses assessed in the manner herein provided upon receipt of a statement." Under the bylaws, a failure or refusal to make any such payments within 30 days will trigger the Board's right to seek any remedy specified in the bylaws or "otherwise

available at law or in equity"; specifically, the Board may, at its election, "bring suit to recover a money [judgment] for sums, charges or Assessments required to be paid to the Yacht Club," as has been done in the counterclaim in this action. Finally, the bylaws state that, "[i]n any action ... to recover a money judgment ... brought by or on behalf of the Yacht Club against an Owner," the Yacht Club, should it be the prevailing party, "shall be entitled to recover the costs of [the] proceeding and such reasonable attorney's fees, including those incurred on appeal, as may be awarded by the Court."

In this case, the articles of incorporation include the lot owners as "members" of the Yacht Club because the lot owners are undisputedly among "the record owners of [l]ots and [c]ondominiums" in the Community as it was originally platted. The lot owners have the express obligation, incident to their membership in the Yacht Club, to remit payment within 30 days of receiving a statement detailing the "proportionate" assessed share of common expenses. This is in accord with the doctrine that there exists "an implied obligation of a homeowner in a residential development to pay assessments to

a homeowners' association whose services benefit the development." Kaanapali Hillside Homeowners' Ass'n v. Doran, 112 Haw. 356, 362, 145 P.3d 899, 905 (Haw. Ct. App. 2006) (citing caselaw from New York, Pennsylvania, and Mississippi). The Yacht Club has undisputedly issued the lot owners two annual invoices for $1,200 for the years 2015, 2016, and 2017, but the lot owners have paid the Yacht Club only $1,200 per year -- the assessment for one lot -- as to those years.

The critical adjective utilized in the bylaws to describe the assessment or share to be charged to owners of real property in the Community is "proportionate." In considering the meaning of that word, we are guided by the principles that "'[c]orporate documents such as by-laws ... are equivalent to contracts among the members of the organization'" and that "'normal rules of construction for contracts apply.'" Lynd v. Marshall Cty. Pediatrics, P.C., [Ms. 1160683, April 27, 2018] ___ So. 3d ___, ___ (Ala. 2018) (quoting Black v. Glass, 438 So. 2d 1359, 1367 (Ala. 1983)). Among those "normal rules" are that courts "'"should give the terms of [an] agreement their clear and plain meaning ...."'" Lynd, ___ So. 3d at ___ (quoting Turner v. West Ridge Apartments, Inc., 893 So. 2d

332, 335 (Ala. 2004), quoting in turn Ex parte Dan Tucker Auto Sales, Inc., 718 So. 2d 33, 36 (Ala. 1998)).

"Proportionate" may properly be defined as "[b]eing in due proportion," as stated in American Heritage Dictionary of the English Language 1413 (5th ed. 2011), which definition raises the question of who may properly deem a particular proportion, or fraction of a whole "due" or proper. That question is readily answered by the bylaws of the Yacht Club, which vests the power and duty to "[d]etermine the budget for operations and the amount of dues, fees and other charges" in the Board (emphasis added). The bylaws expressly provide that the Board "will have the corporate power ... to determine the interpretation or construction of [the bylaws], or any parts hereof, which may be in conflict or of doubtful meaning," and that the decision of the Board "will be final and conclusive, so long as consistent with applicable law." Thus, the Board's determination of what is "proportionate" is, under the pertinent corporate documents, conclusive.

In this case, the original plat of the Community plainly indicates that there is a wide variance in size among the lots depicted therein. Hypothetically, it would arguably be

"proportionate" if the Board were to allocate a year's projected common expenses among the Yacht Club's members, i.e., the owners of real property in the Community, based upon the relationship of the amount of land owned by each member to the entire amount of land in the Community's original plat. However, the Yacht Club's articles of incorporation suggest another means of determining what is "proportionate": as to all matters placed before the membership other than whether to cover docks located in front of nine particularly identified lots, "the owner of each Lot ... shall be entitled to one vote." In other words, each owner of a lot contained in the original plat of the Community is entitled, by virtue of that quantum of fractional ownership, to the benefit of casting a full vote regardless of the relative size of that lot. The stipulated facts indicate that, commensurate with that benefit, the Board, in budgeting for and determining the amount of charges payable by its members in 2015, 2016, and 2017, has determined that members of the Yacht Club should bear the burden of paying charges reflected on invoices assessing a flat $1,200 per each lot appearing in the original plat, regardless of whether any or all of those lots have been

combined into single building units and/or are deemed to constitute single lots by particular members or governmental taxing authorities.

In reaching the conclusion that the Board has made that determination, we are not unmindful of the trial court's reference to an exhibit attached to the lot owners' brief filed in that court, which purported to be a copy of e-mail correspondence dated December 23, 2014, in which one member of the Board made an informal query of another member of the Board concerning whether owners of two platted lots in the Community should receive one assessment or two assessments; that correspondence indicated that four members of the Board as constituted at that time[3] had favored invoicing such owners with only one assessment. Although the trial court deemed that submission, which was not part of the agreed stipulated facts, as irrefutably indicating that the Board had interpreted the bylaws in favor of the lot owners' position that only one assessment was payable by them, an exhibit attached to the Yacht Club's postjudgment motion indicates that only the personal opinions of the individual members of

[3]Two of those members were the lot owners.

the Board were solicited in that correspondence and that no binding vote was sought or taken. Moreover, the actions of the Yacht Club in causing the lot owners to be invoiced twice for a total of $2,400 for two lots instead of once for $1,200 for one lot, and in subsequently asserting a counterclaim to recover $1,200 per year plus costs and attorney's fees, clearly indicate that the Board has not taken a position consistent with the lot owners' entitlement to relief.

Based upon the foregoing facts and authorities, we conclude that the trial court's judgment in favor of the lot owners is in conflict with the prerogative of the Board to interpret the term "proportionate" in determining how common expenses should be assessed to owners of real property in the Community. The trial court's judgment is, therefore, reversed, and the cause is remanded to the trial court for further proceedings, to include the entry of a money judgment[4] in favor of the Yacht Club for $3,600 plus any taxable costs

[4]We express no opinion regarding whether the Yacht Club would have been entitled to assert the existence of a lien on Lot 1 and Lot 2; the Yacht Club's counterclaim does not seek the imposition of such a lien, and the parties' factual stipulations do not indicate that a lien should be imposed in the event a judgment is entered in favor of the Yacht Club.

and attorney's fees due to be awarded to the Yacht Club under the bylaws.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Thompson, P.J., and Thomas and Moore, JJ., concur.

Donaldson, J., concurs in the result, without writing.