IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THE RESERVES MANAGEMENT CORPORATION, a Delaware corporation,	)	C.A. No. 08C-08-010 JTV
Plaintiff,	)	
v.	)	
30 LOTS, LLC, a Delaware limited liability company, and SEVERN SAVINGS BANK FSB, a foreign corporation,	)	
Defendants.	)	

Submitted: February 2, 2012
Decided: June22, 2012

Steven Schwartz, Esq., Schwartz & Schwartz, Dover, Delaware. Attorney for Plaintiff.

Richard E. Berl, Jr., Esq., Smith, O'Donnell, Feinberg & Berl, LLP, Georgetown, Delaware. Attorney for Defendant 30 Lots.

Michael W. Arrington, Esq., Parkowski, Guerke & Swayze, P.A., Wilmington, Delaware. Attorney for Defendant Severn Savings Bank.

Upon Consideration of Cross-Motions For Summary Judgment
Plaintiff's Motion - DENIED
Defendant 30 Lots, LLC's Motion
GRANTED in Part
DENIED in Part

VAUGHN, President Judge

Reserve Management v. 30 Lots
C.A. No. 08C-08-010 JTV
June 22, 2012

ORDER

Upon consideration of Cross-Motions for Summary Judgment filed by plaintiff The Reserves Management Corporation ("Reserves Management") and defendant 30 Lots, LLC ("30 Lots"), and the record of the case, it appears that:

1. This is an action brought by Reserves Management to collect assessments allegedly due on thirty lots in a development known as Reserves-Resort Spa & Country Club, Phase II (later re-designated Phase III).

2. On March 24, 2004, Reserves Development, LLC ("Reserves Development"), as seller, and Crystal Properties, LLC ("Crystal Properties"), as buyer, entered into an agreement for the sale of thirty lots in said development. Crystal Properties agreed to pay for all site improvements in Phase II, to be reimbursed by Reserves Development for the latter's proportional share of the infrastructure costs. Crystal Properties assigned its rights and obligations under the contract to Bella Via, LLC ("Bella Via"). In October 2004, settlement was held and Reserves Development conveyed the lots to Bella Via. In connection with the transaction, Bella Via gave a first lien mortgage to Severn Savings Bank FSB ("Severn"). The loan note was guaranteed by four individuals who were principal owners of Bella Via.[1]

3. On January 3, 2008, Reserves Development obtained a judgment against Crystal Properties and Bella Via for $603, 959.12 in a Superior Court action for

[1] Bella Via originally consisted of four principals. At some point two principals acquired the interests of the other two, leaving Bella Via with only two principals.

failure of Crystal Properties and Bella Via to pay bonding and infrastructure costs. The judgment became a lien upon the thirty lots subordinate to Severn's first mortgage.

4. In 2006 or 2007 the Bella Via mortgage to Severn appeared to have gone into default. The parties entered into a mortgage modification agreement dated March 30, 2007 and a forbearance agreement dated October 10, 2007. On January 18, 2008, Severn commenced foreclosure proceedings against the lots. On January 29, 2008, Severn and Bella Via entered into a stipulated final judgment in the amount of $3,697,602.43 plus interest, legal fees and costs. On April 14, 2008, one day before a scheduled sheriff's sale of the lots, Bella Via, its two remaining principals, and Severn entered into an agreement which provided, in pertinent part, that the principals of Bella Via would pay a $1,700,000 escrow to be held by Severn's counsel as escrow agent, that Severn would bid no less than $2,000,000 for the property at the sheriff's sale if it were the only bidder, that if Severn was the successful bidder, the principals of Bella Via would deliver to the escrow agent by May 1, 2008 the additional amount needed, together with the escrow, to pay off the loan balance, and that if the two principals performed their part of the bargain, Severn would assign its rights as purchaser at the sheriff's sale to an entity controlled by the two principals. At the sheriff's sale the next day, April 15, 2008, Severn was the highest bidder with a bid of $2,000,000. On May 5, 2008, Severn assigned its rights as high bidder to defendant 30 Lots, an entity owned by the two principals of Bella Via. Under the Court's rules, the sale was confirmed as a matter of course on May 9, 2008. The sheriff's deed, dated May 23, 2008 and recorded August 11, 2008, ran

directly from the sheriff to 30 Lots. Severn received approximately $2,000,000 from 30 Lots and/or its principals and financed the additional amount needed to pay off the Bella Via loan. The plaintiff alleges that the Bella Via mortgage was not actually in default and that the mortgage foreclosure action was a "friendly," collusive, fraudulent proceeding. For purposes of this motion, I will assume that no mortgage default actually existed and that the mortgage foreclosure was an amicable and collusive foreclosure as alleged by the plaintiff.

5. The lots are subject to an original Declaration of Restrictions ("the original Declaration") which was recorded before the lots were sold to Bella Via. The original Declaration created several monetary assessments against lots in the development, including an Annual Assessment, an Initial Assessment of $5000 due upon conveyance of any lot by the declarant, Reserves Development, and a second Initial Assessment of $5000 also due upon conveyance of any lot by Reserves Development. None of these assessments were ever paid by Bella Via. The original declaration also provided that the assessments would be continuing liens against the lots, except that the lien of the assessments would be subordinate to the lien of a first mortgage, and a foreclosure of a first lien mortgage would extinguish the lien of all assessments due prior to the mortgage foreclosure sale.

6. On May 23, 2008, in the aftermath of the above-described mortgage foreclosure, Reserves Development recorded a First Amendment to the original declaration ("the First Amendment"). The First Amendment modified and re-designated the two initial $5000 assessments as a $5000 Initial Assessment and a $5000 Capital Assessment. It provides that both of these assessments are due upon

the conveyance of a lot from the declarant, Reserves Development, to a purchaser for value, or such later time as may be agreed by the declarant in a separate writing. The First Amendment also created the following new assessments: (1) a First Year Assessment in the amount of the full annual assessment levied upon a lot for the year in which a third party purchaser (referring to a purchaser from the declarant) makes settlement thereon, without proration regardless of the date of settlement; (2) a Sewer Connection Assessment in the amount of $4,007; and (3) a Prorata Contribution to Site Improvements Assessment.

7. The Prorata Contribution to Site Improvements Assessment provides, in substance, that if any lot is sold at a time when the site improvements for the development have not been completed or require additional work, the owner of the lot at the time of such conveyance must deposit with Reserves Management, in escrow, that lot's pro rata share of the estimated cost to install and complete such site improvements. Any balance remaining after the work is completed would be returned to the owner who made the deposit. It also provides that any shortfall shall be assessed against each lot upon completion of the work. The First Amendment estimates the Site Improvements assessment to be $80,000 per lot. The First Amendment further provides that if a lot is sold without the seller delivering to Reserve Management for escrow the $80,000 assessment from the lot proceeds, the assessment shall run with the lot as a lien. It further provides that the buyer of a lot shall be personally liable for the assessment if the assessment is not paid into escrow by the seller at the time of the new buyer's purchase. It further provides that each

deed conveying a lot without paying into the escrow shall contain a clause imposing personal liability for the assessment against the buyer. It further provides that if a sale occurs where the assessment is not paid into escrow and the clause pertaining to the buyer's personal liability is omitted, the seller shall remain personally liable.

8. The First Amendment also, in effect, nullifies the provision in the original Declaration that assessments are subordinate to the lien of any first mortgage.

9. The plaintiff seeks $3,465,931.80 against 30 Lots for Annual Assessments from April 15, 2008, the Capital, Initial and First Year Annual Assessments, and the $80,000 per lot Prorata Contribution to Site Improvement Assessment.

10. Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[2] The moving party bears the burden of establishing the non-existence of material issues of fact.[3] If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.[4] In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.[5] Thus, the court must accept all undisputed factual assertions and accept the non-movant's version of

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[2] Super. Ct. Civ. R. 56(c).

[3] *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super.).

[4] *Id.*

[5] *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

any disputed facts.[6] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more throughly into the facts in order to clarify the application of law to the circumstances."[7]

11. As mentioned, the plaintiff has contended that the Severn mortgage foreclosure was a "friendly," collusive, fraudulent foreclosure, orchestrated by the two principals of Bella Via and 30 Lots with Severn to deprive Reserves Development and/or Reserves Management of the benefit of the above-mentioned $603,959.12 judgment, and to otherwise avoid financial obligations which Bella Via and its principals owed to Reserves Development/Reserves Management. In support of its contention, the plaintiff discusses the mortgage foreclosure in detail. As mentioned, I will accept all of the facts in support of the plaintiff's argument as true for purposes of this motion. However, the facts alleged by the plaintiff cannot overcome the facts that the mortgage foreclosure occurred and was confirmed by this court, and that title to the lots is now vested in 30 Lots.

12. Earlier in this case Severn Bank filed a motion for summary judgment as to the plaintiff's claim against it. In response to that motion, the plaintiff also argued that the mortgage foreclosure was a "friendly," collusive, fraudulent proceeding. In an order dated November 30, 2009, I granted Severn's motion. In

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[6] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

[7] *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *4 (Del. Super.).

doing so, I ruled that the mortgage foreclosure proceeding was not a fraudulent transfer under the Fraudulent Transfers Act. I further ruled that the Sheriff's deed, which ran directly to 30 Lots, related back to the date of the sheriff's sale, April 15, 2008. I further find now that under the original Declaration, the sheriff's sale extinguished all assessments which had become due and payable prior to April 15, 2008.

13. I find that 30 Lots is liable for the Annual Assessment from April 15, 2008. I adopt the analysis of the Annual Assessment of the Court in *The Reserve Management Corporation v. American Acquisition Property I, LLC*,[8] including the finding that each lot bears an equal, pro rata burden of the annual assessment, based upon the total number of lots. For the reasons given there, the amount due the plaintiff for the Annual Assessment from April 15, 2008 cannot be determined on summary judgment. The appropriate amount will have to be determined by the trier of fact. Reserves Management may also be entitled to appurtenant interest and attorney's fees. Therefore, both parties' Motions for Summary Judgment as to the Annual Assessment will be denied.

14. The issue then becomes: are the lots also subject to the Initial, Capital, First Year Annual, and Prorata Contribution to Site Improvements Assessments? The answer depends, at least in part, upon whether or not the lots are subject to the First Amendment. I conclude that they are not.

15. In the original Declaration, Reserves Development reserved a generic

[8] 10C-03-006 (Del. Super. Sept. 23, 2011).

right to modify the restrictions. However, the exercise of such a right is not unlimited.[9] Where a developer seeks to enforce an amendment to restrictions against non-consenting owners who bought their lots before the amendment was effective, the amendment must be reasonable in light of the original intent of the developer and the lot owners.[10] If it is not reasonable, it is invalid.[11] Reasonableness may be ascertained from the declaration of restrictions and all of the attendant facts and circumstances relevant to the nature of the development.[12]

16. Here, nothing in the declaration of restrictions or any of the attendant facts and circumstances suggests in any way that the power to amend would be used to create significant new monetary assessments or to reimpose assessments which had been discharged under the original declaration. There is nothing in the facts and circumstances that shows that such an amendment was foreseeable or within the original intent of the developer and the lot purchasers. For these reasons, I find that

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[9] *Hutchens v. Bella Vista Vill. Prop. Owners' Ass'n, Inc.*, 110 S.W.3d 325, 330 (Ark. Ct. App. 2003).

[10] *Id.*; *Buckingham v. Weston Vill. Homeowners Ass'n*, 571 N.W.2d 842, 844-45 (N.D. 1997); *O'Buck v. Cottonwood Village Condo. Ass'n,* 750 P.2d 813, 817 (Alaska 1988); *Johnson v. Hobson,* 505 A.2d 1313, 1317 (D.C. 1986); *Scudder v. Greenbrier C. Condo. Ass'n,* 663 So.2d 1362, 1369 (Fla. Dist. Ct. App. 1995); *Ridgely Condo. Ass'n v. Smyrnioudis,* 681 A.2d 494, 498 (Md. 1996); *Bluffs of Wildwood Homeowners' Ass'n v. Dinkel,* 644 N.E.2d 1100, 1102 (Ohio Ct. App. 1994).

[11] *Hutchens v. Bella Vista Vill. Prop. Owners' Ass'n, Inc.*, 110 S.W.3d 325, 330 (Ark. Ct. App. 2003) (citing *Buckingham v. Weston Vill. Homeowners Ass'n*, 571 N.W.2d 842, 844-45 (N.D. 1997)); *Raimey v. Ditsworth*, 261 P.3d 436, 442 (Ariz. Ct. App. 2011).

[12] *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 633 S.E.2d 78, 88 (N.C. 2006).

the First Amendment is unreasonable as a matter of law and invalid. Therefore, it is not binding upon the thirty lots which are the subject of this proceeding, and 30 Lots is not liable for any of the assessments contained in the First Amendment.

17. Therefore, the plaintiff's Motion for Summary Judgment is ***denied*** and defendant 30 Lots' Motion for Summary Judgment is ***granted in part*** and ***denied in part***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File