IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THE RESERVES MANAGEMENT, LLC, a Delaware limited liability company,	)	C.A. No. K11C-05-002 JTV
Plaintiff,	)	
v.	)	
SANDY SPRING BANK, a Maryland corporation,	)	
Defendant,	)	

Submitted: September 9, 2013
Decided: October 17, 2013

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

John W. Paradee, Esq., Prickett, Jones & Elliott, Dover, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's
Motion For Summary Judgment
GRANTED in Part
DENIED in Part

VAUGHN, President Judge

Reserves Management v. Sandy Spring Bank
C.A. No. K11C-05-002 JTV
October 17, 2013

ORDER

Upon consideration of defendant's, Sandy Spring Bank ("Sandy Spring"), Motion for Summary Judgment, the plaintiff's, The Reserves Management, LLC ("Reserves Management") opposition, and the record of this case, it appears that:

1. This is an action brought by Reserves Management to collect assessments allegedly owed by the defendant in connection with Lot No. 93 ("Lot 93") in a development known as The Reserves Resort, Spa and Country Club (the "Resort").

2. In early 2006, Reserves Development Corporation ("Reserves Development"), the developer, agreed to convey Lot 93 to Christopher Glenn in lieu of $250,000 that Reserves Development, or Reserves Management, or Reserves Management's predecessor, Reserves Management Corporation, allegedly owed to Glenn's company, Fresh Cut.[1] At Mr. Glenn's request and direction, on March 23, 2006, Reserves conveyed Lot 93 to Tekmen Group, LLC. On September 29, 2006, Tekmen Group, LLC conveyed Lot 93 to Mr. Nuh Tekmen, who secured a mortgage loan from Sandy Spring to finance his acquisition of Lot 93. On October 4, 2006, Sandy Spring's mortgage was recorded in the Office of the Recorder of Deeds for Sussex County, Delaware, as a first priority lien against Lot 93.

3. All lots in the Resort are subject to a Declaration of Restrictions (the "Original Declaration"), which Reserves Development recorded on August 13, 2001.

[1] The parties dispute the circumstances surrounding the debt that was allegedly owed to Fresh Cut.

Responsibility for enforcement of the restrictions was delegated to Reserves Management. The Original Declaration created several monetary assessments against lots in the development, including an Annual Assessment, an Initial Assessment of $5,000 due upon conveyance of any lot by the declarant, Reserves Development, and a second Initial Assessment of $5,000 also due upon conveyance of any lot by Reserves Development. The Annual Assessment is payable in advance on a calendar year quarterly basis. 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. The Original Declaration gave the plaintiff a general right to modify the restrictions and provided that any such modification would take effect when recorded.

4. On May 23, 2008, Reserves Development recorded a First Amendment to the Original declaration ("the First Amendment"). The First Amendment modified and re-designated the two Initial $5,000 assessments as a $5,000 Initial Assessment and a $5,000 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. The Prorata Contribution to Site Improvements Assessment is estimated to be $80,000 per lot.

5. The First Amendment also, in effect, nullifies the provision in the original Declaration that assessments are subordinate to the lien of any first mortgage. The First Amendment would allow a first mortgage to have priority over assessment liens only if the mortgagee required the mortgagor to establish an escrow to pay the assessments, and the assessments were paid in a timely fashion.

6. At some point after Reserves Development recorded the First Amendment, Mr. Tekmen defaulted on his mortgage obligations and Sandy Spring foreclosed on Lot 93. On February 15, 2011, Sandy Spring purchased Lot 93 for $70,000 at the mortgage foreclosure sheriff's sale. The sale was confirmed and Sandy Spring received the sheriff's deed for the lot, which was dated March 25, 2011 and recorded on March 31, 2011.

7. On April 18, 2011, Reserves Management sent an invoice to Sandy Spring for Lot 93 assessing an Initial Assessment of $5,000, a Capital Assessment of $5,000, a Site Improvement Escrow Assessment of $80,000, an Annual Assessment of $4,571, and two quarterly assessments totaling $1,714.25. It appears that the Initial Assessment is one of the Initial Assessments created in the Original Declaration, and that the Capital Assessment is the second Initial Assessment created in the Original Declaration and re-designated as the Capital Assessment in the First Amendment. It further appears that the Annual Assessment in the invoice is the First Year Annual Assessment created in the First Amendment; and the Site Improvement

Escrow is the Prorata Contribution to Site Improvements Assessment, which is also created in the First Amendment. The quarterly assessments appear to be the Annual Assessment which is created in the Original Declaration. In this action the Reserves Management also seeks the $4,007 sewer connection assessment which was created in the First Amendment. The aggregate total sought is $100,292.25, plus counsel fees, interest and costs.

8. 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] "[T]he 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 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 thoroughly into the facts in order to clarify the application of law to

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

[3] *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. May 2, 2007).

[4] *Id.*

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

[6] *Id.* at 99-100.

the circumstances."[7]

9. Sandy Spring contends that the assessments cannot be enforced against it because according to this Court's decision in *Reserves Management, LLC v. Bethany Partners, LLC*[8], a mortgage holder cannot be liable for assessments that are made applicable to it through an amendment to the Original Declaration without the mortgagor's consent; that Reserves has failed to produce any evidence or provide any explanation for its calculation of the amount of the Annual Assessment on a per lot basis, as required under the Original Declaration; that the Capital and Initial Assessments were satisfied because Mr. Tekmen paid them; that even if Mr. Tekmen did not pay the Capital Assessment, Sandy Spring is not obligated to pay it because the Capital Assessment only applies to persons receiving title to lots directly from Reserves after May 23, 2008; that the First Year Annual Assessment was never imposed on Mr. Tekmen and thus, does not apply to Sandy Spring; that the First Year Annual Assessment only applies to third-party purchasers who buy directly from Reserves; that the Sewer Connection Assessment and the Prorata Contribution to Site Improvements Assessment were not meant to apply to owners who paid a $250,000 purchase price for their lots; and that Reserves received a $250,000 credit against an antecedent debt when transferring Lot 93 to Mr. Glenn, and Reserves cannot collect this value a second time.

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[7] *Mumford & Miller Concrete, Inc. v. New Castle Cnty.*, 2007 WL 404771, at *1 (Del. Super. Jan. 31, 2007).

[8] *Reserves Mgmt. Corp. v. Bethany Partners, LLC,* 2013 WL 871538 (Del. Super. Mar. 1, 2013).

10. Reserves contends that *Bethany Partners* is distinguishable and inapplicable because the present case does not involve a mortgage holder or retroactive amendment, that is, that Sandy Spring is assessed as an owner who bought its lot after the First Amendment was recorded; that Sandy Spring failed to attempt discovery regarding the calculation of the amount of the Annual Assessment; that while it acknowledges that Mr. Tekmen made two $5,000 payments and one $1,000 payment, Mr. Tekmen owed $26,000 in Annual Assessments at the time, and it rightfully applied Mr. Tekmen's payments to the Annual Assessments rather than to the Capital Assessment; that *The Reserves Management Corp. v. American Acquisition Property I, LLC*[9] is currently on appeal, the result of which may overturn the ruling that application of the First Year Annual Assessment is conditioned upon a purchaser having received title directly from Reserves; that Mr. Glenn did not actually preform the work that caused Reserves to transfer Lot 93 as payment for the work, so there was no antecedent debt discharged by Lot 93's transfer; that Sandy Spring's reliance on *The Reserves Management Corp. v. 30 Lots, LLC*[10] is misplaced; and that *American Acquisition Property I, LLC*[11] upheld and enforced the $80,000 Prorata Contribution to Site Improvements Assessment.

11. I will first consider whether the First Amendment is binding upon Lot

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[9] *Reserves Mgmt. Corp. v. Am. Acquisition Prop. I, LLC,* C.A. No. S10C-03-006 ESB, Order and Final Judgment (Del. Super. Oct. 31, 2012).

[10] *Reserves Mgmt. Corp. v. 30 Lots,* 2012 WL 2367469 (Del. Super. June 22, 2012).

[11] *Am. Acquisition Prop. I, LLC,* C.A. No. S10C-03-006 ESB, Order and Final Judgment, at ¶8 (Del. Super. Oct. 31, 2012).

93. I conclude that it is not. A buyer at a mortgage foreclosure proceeding takes the title to the property as the title stood on the date that the mortgage was executed and recorded.[12] In other words, the title relates back to the date of recording of the mortgage. The sheriff's sale extinguishes all liens, restrictions, easements or other encumbrances which were created or allegedly created subsequent to the recording of the mortgage.[13] On this principle, I find that Sandy Spring purchased Lot 93 free and clear of the First Amendment. No further analysis on that point is necessary. Therefore, Sandy Spring is not liable for any assessments arising from the First Amendment. I further find that since Sandy Spring holds Lot 93 free and clear of the First Amendment, its successors in title will also take Lot 93 free and clear of the First Amendment.

12. Next is the issue of Sandy Spring's liability for assessments arising under the Original Declaration. As mentioned, the Original Declaration provided that a mortgage foreclosure sale extinguished all liens of assessments due prior to the mortgage foreclosure sale. It follows that all assessments arising under the Original Declaration before February 15, 2011 are discharged.

13. The result is that Sandy Spring is not liable for any of the assessments sought by the plaintiff in this action except the Annual Assessment arising under the

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[12] *Mortgage Investors of Washington v. Moore,* 493 So. 2d 6, 8-9 (Fla. Dist. Ct. App. 1986); *Allstate Fin. Corp. v. Zimmerman,* 272 F.2d 323, 325 (5th Cir. 1959); *Summerlin v. Orange Shores,* 97 Fla 996, 1006 (Fla. 1929); *Kling v. Ghilarducci,* 121 N.E.2d 757 (Ill. 1954).

[13] A Delaware statute, not relevant here, also governs discharge of liens. 10 *Del. C.* § 4985.

Original Declaration and payable in advance on a quarterly calendar year basis, beginning February 15, 2011, which is reflected on the invoice as the two quarterly assessments.

14. For the foregoing reasons, the defendant's, Sandy Spring, Motion for Summary Judgment is ***granted in part.*** It is ***denied in part***, that is, denied as to the plaintiff's claim for the Annual Assessment under the Original Declaration coming due on or after February 15, 2011 plus interest and counsel fees relating thereto, and costs.

IT IS SO ORDERED.

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

oc: Prothonotary
cc: Order Distribution
File