Third District Court of Appeal

State of Florida

Opinion filed January 15, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1423
Lower Tribunal No. 16-22052

De Soleil South Beach Residential Condominium Association, Inc.,
Appellant,

vs.

De Soleil South Beach Association, Inc., etc., et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Jose M. Rodriguez, Judge.

The Monestime Firm, and Regine Monestime; Law Offices of Jason Gordon, P.A., and Jason Gordon (Hollywood), for appellant.

Genovese Joblove & Battista, P.A., and Richard Sarafan and Michael Bild; Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Jason S. Koslowe, Joshua A. Munn, and Olivia Sanchez, for appellees.

Before EMAS, C.J., and SCALES and HENDON, JJ.

EMAS, C.J.

INTRODUCTION

De Soleil South Beach Residential Condominium Association, Inc. ("the Condominium Association") appeals the trial court's entry of summary judgment and dismissal of the declaratory action below in favor of De Soleil South Beach Association, Inc. ("the Master Association"), South Beach Resort Development, LLC ("the Corporate Developer"), and Louis Taic ("the Individual Developer") upon a determination that the Condominium Association lacked standing to sue the parties by failing to satisfy a condition precedent contained in the Declaration of Condominium.

We reverse in part, holding that the trial court erred in concluding that the Master Association had standing to assert, as an affirmative defense, the condition precedent contained in the Condominium Association's governing Declaration. However, because the condition precedent could be asserted by the Individual Developer and the Corporate Developer, we affirm the trial court's summary judgment entered in their favor. We also find no abuse of discretion in the trial court's denial of the Condominium Association's request for a stay or abatement.

FACTS AND PROCEDURAL BACKGROUND

In 2006, the Individual and Corporate Developers completed the condominium's building structure that is today operated in part by the Condominium Association. The Individual Developer and the Corporate Developer then recorded

a Master Declaration, thereby creating the entity Master Association. They also recorded a Condominium Declaration, thereby creating the Condominium Association. These documents describe the condominium's building facilities as comprised of three parcels: the garage parcel; the first-floor commercial parcel; and the condominium parcel of units owned and inhabited by residents.

By the terms of its governing document, the Master Association's board consists solely of the owners of these three parcels: the Corporate Developer, as owner of *both* the garage *and* commercial parcels, and the Condominium Association, an entity governed by a board and a membership consisting of the owners of eighty condominium units. The Corporate Developer owns twelve of the eighty units and is, therefore, a member of the Condominium Association. Under its governing document, the Condominium Association is responsible for the collection of certain assessments on behalf of the Master Association. The Individual Developer is not a member of the Master Association or the Condominium Association, but an owner and officer of the Corporate Developer and past member of the Condominium Association's board, whose standing is conceded by the Condominium Association to be the same as that of the Corporate Developer.

In 2016, the Condominium Association sought declaratory judgment and other relief against the Master Association, the Corporate Developer, and the

Individual Developer, arguing that the Individual and Corporate Developers structured the platting and governing documents of the Master Association and the Condominium Association in such a way as to avoid compliance with Florida's Condominium Act. The complaint's gravamen was primarily that the Master Association had, pursuant to a recent amendment of its governing document, given itself power to directly levy and collect assessments from the Condominium Association's members, reaching around the Condominium Association's purportedly exclusive statutory and contractual power to do so. In light of the Master Association's three-votes board, two of which votes were currently in the Corporate Developer's and the Individual Developers' hands, the Condominium Association's powers were allegedly at the mercy of entities that did not represent condominium owners.

The Master Association moved for summary judgment on the Condominium Association's operative complaint, asserting that the Condominium Association lacked standing to sue, since it had failed to obtain a three-fourths, authorizing vote by its members, pursuant to its own governing declaration, a purported condition precedent. The Corporate Developer also filed a motion for summary judgment, but failed to include the authorizing vote issue. The Individual Developer orally joined the Corporate Developer's motion. Opposing the motions, the Condominium Association unsuccessfully responded that the authorizing vote was not a condition

precedent and, even if it was, a stay—not a dismissal—was required, since it did not operate as a bar in favor of the Master Association, which is not a member of the Condominium Association. Explicitly finding that neither the Corporate nor Individual Developer actually joined the argument, the trial court nevertheless found merit in the Master Association's argument and entered summary judgment and dismissal in favor of all three defendants, reasoning that the failure to satisfy the condition precedent divested the Condominium Association of standing to sue anyone.

ANALYSIS AND DISCUSSION

We review the grant of summary judgment de novo. Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000). We also review de novo a trial court's interpretation of a condominium declaration. Lenzi v. Regency Tower Ass'n, Inc., 250 So. 3d 103, 104 (Fla. 4th DCA 2018). Lastly, the lower court's denial of a stay or abatement of the action is reviewed for abuse of discretion. Lightsey v. Williams, 526 So. 2d 764, 766 (Fla. 5th DCA 1988).

1. The "Collection" Exception to the Three-Fourths Authorizing Vote Requirement

The Condominium Association argues that it was not required to obtain a three-fourths, authorizing vote because its suit was one for collection of assessments

and, as such, it was exempt from such requirement. We disagree. The governing Declaration of Condominium provides:

> 9.2 Members' Approval of Certain Association Actions. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Residential Condominium Unit Owners (at a duly called meeting of the Residential Condominium Unit Owners at which a quorum is present) prior to the payment of or contracting for legal or other fees or expenses to persons or entities engaged by the Association in contemplation of a lawsuit or for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:
>
> (i) the collection of Assessments . . . .

Although the parties disagree as to the meaning of the term "assessments," it is the term "collection" we find dispositive here. If the lawsuit does not seek to collect, it matters not whether assessments are in dispute. The Declaration of Condominium does not define the terms "collect" or "collection." Applying canons of statutory construction, we give that term of common usage its plain and ordinary meaning. Lenzi, 250 So. 3d at 104. See also Schmidt v. Sherrill, 442 So. 2d 963, 965 (Fla. 4th DCA 1983) (noting that, "[w]hether they appear in a statute or in a declaration of condominium, words of common usage should be construed in their plain and ordinary sense.") The terms "collection" and "to collect" mean "to gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund; to assemble." *Collect*, BLACK'S LAW DICTIONARY (4th ed. 1969). We conclude that the Condominium Association's suit does not seek to "gather or obtain

funds" in the form of assessments, but instead seeks a declaration that it alone has exclusive *power to collect* assessments, which is not the same as suing to *collect* them. Therefore, we reject the Condominium Association's contention that it is exempt from the three-fourths vote requirement under section 9.2.

2. The Three-Fourths Authorizing Vote Requirement

Nevertheless, the Condominium Association alternatively argues that the Master Association had no standing to assert the Condominium Association's failure to satisfy the three-fourths, authorizing vote requirement, which was contained in the Declaration of Condominium and otherwise served as a condition precedent to the Condominium Association filing suit. We agree.

As the Condominium Association correctly notes, a non-party to a contract generally cannot raise, as a defense, the violation of the terms of that contract. HSBC Bank USA, N.A. v. Buset, 241 So. 3d 882, 890 (Fla. 3d DCA 2018) (holding: "Because the Borrowers are not parties or third-party beneficiaries to the Pooling and Servicing Agreement, they cannot raise purported violations of the Agreement to defend against foreclosure: 'borrowers cannot defeat a foreclosure plaintiff's standing by relying upon trust documents to which the borrower is not a party'" (quoting Citibank, N.A. v. Olsak, 208 So. 3d 227, 230 (Fla. 3d DCA 2016))). See also Castillo v. Deutsche Bank Nat'l Tr. Co., 89 So. 3d 1069, 1069 (Fla. 3d DCA 2012) (holding "Because the appellant is neither a party to nor a third-party

beneficiary of the trust, we find the appellant lacks standing to raise this issue and affirm the final judgment of foreclosure in favor of the appellee, as the holder of the original note and mortgage"); Deutsche Bank Tr. Co. Americas as Tr. for Residential Accredit Loans, Inc. v. Harris, 264 So. 3d 186, 190 (Fla. 4th DCA 2019) (holding that "where the borrower is neither a party to nor a third-party beneficiary of the trust, the borrower lacks standing to raise an issue as to the Bank's compliance with its pooling and servicing agreement when it took possession of the original note and mortgage."); Clay Cty. Land Tr. No. 0804-25-0078-014-27, Orange Park Tr. Servs., LLC v. JPMorgan Chase Bank, Nat. Ass'n, 152 So. 3d 83, 84 (Fla. 1st DCA 2014) (holding: "Because appellant was not a party to the mortgage, appellee correctly asserts that appellant does not have standing to challenge any violation of these mortgage terms. The borrower. . . was the only party who could plead nonperformance of these conditions precedent as required by Florida Rule of Civil Procedure 1.120(c)").

In Lake Forest Master Cmty. Ass'n, Inc. v. Orlando Lake Forest Joint Venture, 10 So. 3d 1187 (Fla. 5th DCA 2009), our sister court reversed a summary judgment in favor of a developer, where there remained issues of material fact as to the notice given of the meeting to hold an identical vote, adding that the statutory, authorizing vote requirement was "designed for the protection of [the homeowners' association's] members, which, if violated, the members may or may not elect to

enforce," and was "not a condition precedent running in favor of a defendant to the right of an association to file suit to recover damages on behalf of the association." Id. at 1195-96. The court noted that the developer himself "properly concede[d] that, if it were not a member of Association, lack of valid authority of the members to file suit would not be a defense to the claims." Id. at 1196.

In Bethany Trace Owners' Ass'n, Inc. v. Whispering Lakes I, LLC, 97 So. 3d 334, 335 (Fla. 2d DCA 2012), another of our sister courts affirmed the trial court's determination that, *because defendant corporation was a member of the homeowners' association*, it had the right to enforce the statutory authorizing vote requirement. (Emphasis added). Other jurisdictions agree. See Willowmere Cmty. Ass'n v. City of Charlotte, 809 S.E.2d 558, 563 (N.C. 2018) (reversing summary judgment for a developer because developer was "a stranger [who could not] invoke the association's own internal governance procedures as an absolute defense to subject matter jurisdiction in a suit . . . against [it]") (citing with approval to Lake Forest, 10 So. 3d at 1195-96); Port Liberte II v. New Liberty, 86 A.3d 730, 738 (N.J. Super. Ct. App. Div. 2014) (reversing summary judgment for a developer because the condominium association's bylaws were "intended to protect the unit owners' financial interests by requiring pre-approval of possibly expensive litigation" and

developer was a "stranger[] to the relationship between Association and the unit owners, hav[ing] no standing to enforce the bylaws.")[1]

Therefore, although the three-fourths voting requirement is a condition precedent that may validly be asserted and enforced by unit owners, it may not be asserted and enforced by non-unit owners. Lake Forest, 10 So. 3d at 1196.

CONCLUSION

Because the Master Association was not a unit owner, we reverse the summary judgment entered in its favor. However, because the Corporate Developer was a unit owner, and since the Condominium Association concedes that the Individual Developer enjoys the same standing in this regard as the Corporate Developer, we affirm the summary judgment entered in favor of the Corporate Developer and the Individual Developer.[2]

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[1] We also note the trial court may have inadvertently conflated the issues of whether appellees had standing to enforce the authorizing vote requirement (i.e., whether the Condominium Association failed to *satisfy a condition precedent* to suit) and whether the Condominium Association had *standing* to sue. The latter cannot reasonably be disputed here. See Kumar Corp. v. Nopal Lines, Ltd., 462 So. 2d 1178, 1182 (Fla. 3d DCA 1985) (holding that standing requires a "[s]ufficient stake in an otherwise justiciable controversy"). The issue here was whether any appellee had standing to assert, enforce or benefit from the Condominium Association's failure to satisfy the three-fourths, authorizing vote requirement. See Willowmere Cmty. Ass'n v. City of Charlotte, 809 S.E. 2d 558, 565 (N.C. 2018) (observing lower court's identical confusion while relying on analogous standing jurisprudence).

[2] The Condominium Association also asserts that the trial court improperly denied its request for a stay or abatement in lieu of dismissal. While a stay is a proper remedy, see, e.g., Lake Forest Master Cmty. Ass'n, Inc. v. Orlando Lake Forest Joint Venture, 10 So. 3d 1187, 1196 (Fla. 5th DCA 2009); Bethany Trace Owners' Ass'n

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

Inc. v. Whispering Lakes I, LLC, 97 So. 3d 334, 335 (Fla. 2d DCA 2012), it is not the ***exclusive*** remedy. Additionally, the request for stay was not made until the summary judgment hearing itself and in the face of an imminent, adverse ruling. See Reddy v. State Farm Florida Ins. Co., 207 So. 3d 338 (Fla. 3d DCA 2016); Gonzalez v. State Farm Florida Ins. Co., 65 So. 3d 608 (Fla. 3d DCA 2011). The granting or denial of a stay is generally vested in the broad discretion of the trial court, and we conclude that the Condominium Association has failed to demonstrate the trial court abused that discretion. We find no merit in the other arguments raised by the Condominium Association in this appeal.