

STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-12-250
111 -YOK-6/18/2013

ROBERT HARRINGTON,)
)
Plaintiff,)
)
v.)
)
SEASIDE CONDOMINIUM)
ASSOCIATION, et al,)
)
Defendant.)

ORDER

I. Background

Plaintiff owns unit #1 in the Seaside Condominium in York, Maine. The Seaside Condominium has nine units, unit #1 holds a 38.7% interest in the condominium, units #2 & 3 each hold approximately 9%, and units # 4-9 each hold approximately 7% each. Plaintiff's unit includes the basement of the building, however, there is an easement over part of the basement area for the owners of units #2 & 3 to reach to utility installations. Plaintiff alleges that the condo fees for the current year were improperly assessed in violation of the condominium's governing documents. Plaintiff paid fees according to those assessed in 2011, and argues that the fees which Plaintiff has not paid have improperly been attached to Plaintiff's condo. Plaintiff also alleges that the easement over part of his unit has been overused. Plaintiff asks the Court to order the Association to:

- 1) adhere to the condominium governing documents,
- 2) reassess the 2012 and 2013 budget and remove all liens on Unit #1,
- 3) acknowledge Plaintiff's rights to exclusive use of the basement and parking spots, and to clarify those rights in the condominium governing documents,
- 4) an audit of the Associations financial records for the last 4 years and repayment of any Association monies inappropriately paid out,
- 5) separate access be provided to the units #2 & 3 utility installation through unit #3 or eliminate access rights through unit #1,
- 6) reimburse Plaintiff's legal fees and costs for having to bring this action,

7) any other relief the Court deems just.

Defendant moves the Court to dismiss the case for failure to state a claim upon which relief may be granted.

II. Standard of Review

The purpose of a motion to dismiss is to determine the legal sufficiency of the complaint. *Livonia v. Town of Rome*, 707 A.2d 83, 85 (Me. 1998). The Court will review the motion in the light most favorable to the plaintiff, taking the facts as stated in the complaint to be true. *Id.* The Court will grant a motion to dismiss only where “it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that he might prove in support of his claims.” *McAfee v. Cole*, 637 A.2d 463, 465 (Me. 1994) (citations omitted).

III. Discussion

A. Condominium Fees

Plaintiff argues that the condominium fee has been improperly assessed. Currently, Plaintiff holds a 38.7% interest in the condominium. According to the governing document, Plaintiff must pay fees according to their interest in the condominium. Bylaws s.5.3. The fees are a division of the final budget, which is determined by the Executive Board of the Association, subject to disapproval of the unit owners. Bylaws s.5.2. Plaintiff is contesting his fees in comparison to other unit owners in the condominium, however, Plaintiff has not offered the actual monetary amount of fees charged Plaintiff and fees charged other unit holders to the Court. Nonetheless, due the nature of notice pleading the Court will deny Defendant’s Motion to Dismiss and allow Plaintiff the opportunity to prove its claim.


B. Basement Easement

Where an easement is being used for something other than its intended purpose, a party may seek relief from the court. The Court will not rewrite easement agreements “The construction of language in an easement deed is a question of law. If the language of the deed is unambiguous, the scope of a party's easement rights is determined solely from that language.” *Maritimes & Ne. Pipeline, LLC v. Echo Easement Corridor, LLC*, 604 F.3d 44 (1st Cir. 2010), citing *Crispin v. Town of Scarborough*, 736 A.2d 241, 249 (Me. 1999) Plaintiff has not specifically pled that the easement is being used for its intended purpose – to access the utility installations . Furthermore, according to the pleadings of both parties, there is an easement across part of unit #1 for unit #2 & 3 to access utility installations. However due to the fact of notice pleading , the Plaintiff may use discovery to attempt to flesh out any theory that there may be an overburdening of an existing easement and to attempt to establish a basis for the requested relief. The motion is accordingly denied at this time.¹

IV. Conclusion

Defendant’s Motion to Dismiss is DENIED.

DATE: 6/18/13



John O’Neil, Jr.
Justice, Superior Court

¹ The Court is however currently unaware of any theory of liability or lawful authority which would allow as a remedy the rewriting of the Condominium’s Declaration or Bylaws to order the Association to create a new access to that area in order to make the easement unnecessary.

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