STATE OF MICHIGAN

COURT OF APPEALS

LASALLE S. MAYES and ELIZABETH MAYES,

Plaintiffs-Appellants,

v

COLONY FARMS CONDOMINIUM ASSOCIATION, MICHAEL ELLIS, MARY LOU HORNER, RITA INGERSOLL and DAVID WHITMORE,

Defendants-Appellees.

and

DOUGLAS DOBSON, ROBERT KOS and DEAN SLOAN

Defendants.

UNPUBLISHED
October 15, 2002

No. 232916
Wayne Circuit Court
LC No. 00-017563-CH

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition. We affirm.

Plaintiffs are co-owners of a condominium unit in the Colony Farms Condominium project located in Plymouth. The individually named defendants are all members of the board of directors of the Colony Farms Condominium Association, a Michigan non-profit corporation that administers the Colony Farms Condominium project. The board members are uncompensated volunteer co-owners of the project.

On April 4, 2000, defendants purported to levy an assessment, in addition to the previously established annual assessment, on the co-owners of the condominium project in the total amount of $432,000. This assessment, to be used for the "repair and replacement of roofs,

gutters, asphalt, garage door siding and other common elements[1] throughout the condominium project," would cost each condominium unit approximately $9,000, to be paid in six equal bi-yearly installments. The assessment at issue was levied by defendants without a vote of the co-owners.

The fundamental issue in this case is whether, based on the Article II, Section 8 of the association bylaws, the assessment properly constituted an "additional assessment," which could have been levied in the board's sole discretion, or a "special assessment," which would have required a two-thirds vote by the co-owners. Article II, Section 8 states, in pertinent part:

> The Board of Directors shall establish an annual budget in advance for each fiscal year. Such budget shall project all expenses for the forthcoming year which may be required for the operation, management and maintenance of the condominium which shall include a reasonable allowance for contingencies and reserves for replacement of common elements . . . . Should the Board at any time determine in its sole discretion that the assessments levied are or may be insufficient to pay the proper costs of operation, management and maintenance of the condominium project or, in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments which it deems necessary. Special assessments in addition to those described above may be made from time to time to meet other needs or requirements of the association, including, but not limited to assessments for capital improvements, or assessments for the purchase of a unit; provided, however, that special assessments shall not be levied without prior approval of two-thirds (2/3) of all co-owners in number.

Plaintiffs argue that, pursuant to the bylaws, the proposed assessment constituted a "special assessment." Therefore, because this alleged special assessment was levied without a vote, plaintiffs assert that defendants' actions were unauthorized. Defendants, in the alternative, claim that the assessment clearly reflected an "additional assessment" for the maintenance of the condominium project. Therefore, because no vote was required, defendants insist that their actions were authorized.

The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Summary disposition of all or part of a claim or defense may be granted when

> [e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. [MCR 2.116(C)(10).]

This Court reviews a trial court's decision to grant or deny summary disposition de novo. *Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000).

As noted, the fundamental issue in this case is whether the assessment at issue properly constituted an "additional" assessment as opposed to a "special" assessment. By requiring each

[1] "Common elements" are defined by Michigan's condominium act as "portions of the condominium project other than condominium units." MCL 559.101.

condominium owner to comply with the association's bylaws, Michigan law has established that the bylaws are controlling with regard to making such a determination in this case. Specifically, the Michigan condominium act states:

> Each unit co-owner, tenant, or nonco-owner occupant shall comply with the master deed, bylaws, and rules and regulations of the condominium project and this act. [MCL 559.165.]

Because there is no state law to the contrary, the resolution of this case is dependent on the construction and interpretation of Article II, Section 8 of the association bylaws.

Generally, bylaws should be construed in accordance with the same rules used for statutory construction. Fletcher, Cyclopedia Corporations, § 4195. This being the case, the first criterion in determining intent is the specific language of the bylaw. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). Furthermore, the "fair and natural import," in light of the subject matter of the law, should govern. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). Moreover, if the language is unambiguous, the drafters are presumed to have intended the meaning plainly expressed. *In re MCI*, *supra* at 411; Fletcher, *supra*. Also, the court should presume that every word has a meaning and should avoid any construction that would render any part of a bylaw nugatory. *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW2d 155 (1992); Fletcher, *supra*.

Article II, section 8 sets forth the board of director's responsibility with regard to budgeting for and financing the operation, management and maintenance of the condominium project. The requirement that the board establish an annual budget projecting all anticipated expenses for the forthcoming year is specifically established in the bylaws. Furthermore, the bylaws allow for the board to levy assessments for a reasonable reserve fund. While the bylaws suggest that each of these expenses should be included in the annual budget, they nevertheless make a concession for the implementation of "additional assessments," at the board's discretion, should the assessments made pursuant to the annual budget become insufficient. Specifically, the bylaws state:

> Should the Board at any time determine in its sole discretion that the assessments levied are or may be insufficient to pay the proper costs of operation, management and maintenance of the condominium project or, in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments which it deems necessary.

While neither the bylaws, nor pertinent statutory authority define "additional" in terms of assessments, the plain meaning of the term "additional" is "added; more; supplementary." *Random House Webster's College Dictionary*, p 15 (1997). Accordingly, we conclude that the "additional" assessments referenced in the bylaws were in consideration of the precise type of repairs and replacements at issue here. The assessment at issue clearly represents one supplementary to the annual assessment for the "operation, management and maintenance" of the condominium project. Specifically, according to the bylaws, the term "additional assessments" expressly contemplates "maintenance." According to the plain meaning of the bylaws, the proposed "repair and replacement of roofs, gutters, asphalt, garage door siding and other

common elements throughout the condominium project" cannot be considered anything but "maintenance." Accordingly, the assessment at issue, for the repair and replacement of common elements of the project, constitutes an additional assessment.

We note however, that the bylaws also allow for "special assessments," stating, in pertinent part:

> Special assessments in addition to those described above may be made from time to time to meet other needs or requirements of the association, including, but not limited to assessments for capital improvements or assessments for the purchase of a unit; provided, however, that the special assessments shall not be levied without prior approval of two thirds (2/3) of all co-owners in number.

Plaintiffs insist that the assessment at issue is, in reality, a "special" assessment because it purports to provide for "items other than the repairs and replacements provided for within the regular annual budget." Also, while acknowledging that the items at issue should have been provided for in the annual budget, plaintiffs state that "for whatever reason they were not [included]." On this basis, plaintiffs contend that the costs of the repairs and replacements at issue would fall squarely into the category of "special," as opposed to "additional" assessments. However, for the reasons set forth above, the proposed repairs and replacements constitute maintenance, and thereby their costs are properly levied as "additional," as opposed to "special," assessments. Accordingly, this argument is without merit.

In support of their argument, plaintiffs also attempt to draw a distinction between "maintaining" a common element and "replacing" one. Plaintiffs argue that replacing a common element, as defendants propose, does not constitute "maintenance" to the condominium project. However, the bylaws state that "[s]uch budget shall project all expenses for the forthcoming year which may be required for the operation, management and maintenance of the condominium which shall include a reasonable allowance for contingencies and reserves for replacement of common elements;" thus, the "replacement of common elements" is clearly included as part of the "maintenance of the condominium."

On appeal, plaintiffs also maintain that defendants' interpretation of the term "additional assessments" is in error because it renders meaningless the portion of the bylaws with regard to "special assessments." Essentially, plaintiffs argue that under defendants' proposed analysis virtually all assessments would be "additional" as opposed to "special." For example, plaintiffs maintain, "[I]f an assessment of $432,000 is not of such a nature as to be characterized as 'special' as contemplated by the bylaws, the provision is meaningless and the co-owners really have no right to vote." However, this would not necessarily be the case. Specifically, in accordance with the bylaws, a special assessment is reserved for items that are above and beyond the ordinary maintenance, management and operations of the association. For instance, a special assessment would be required if the association wished to purchase a unit within the condominium project. Similarly, a special assessment would presumably be required if the association wanted to add a common element that did not already exist, such as a swimming pool, clubhouse, workout facility or walking paths, since these items are above the ordinary maintenance, management and operations of the association. Additionally, maintenance to a

limited common area, which would benefit more than one co-owner but not all co-owners, would necessitate a special assessment. MCL 559.169.

Plaintiffs also imply that the amount of the assessment, as opposed to its purpose, is a controlling factor in the determination of its type. Specifically, plaintiffs reason that the assessment should have been deemed "special," because "[T]he Board of Directors may be properly authorized to represent the interests of the co-owners in the normal course, but a $432,000 assessment is not normal." However, it is not the amount of the assessment that is controlling, but whether the proposed repairs and replacements fall within the bylaws' definition of "maintenance." As noted, the proposed repairs and replacements at issue do fall within that definition.

We also note plaintiffs' argument that because some of the proposed repairs and replacements could constitute "capital improvements,"[2] which are specifically referenced in the bylaws with regard to special assessments, they necessarily reflect special assessments. However, under this line of reasoning nearly all maintenance would require a two-thirds vote of the owners because the majority of repairs would result in the improvement of a fixed asset. Because the board is vested with the authority to administer the condominium project, including maintenance, we assert that it was not the intent of the bylaws to subject a majority of maintenance related decisions to a two-thirds vote of the co-owners. This would only prolong and convolute many potentially critical decisions and actions, a result clearly contrary to the intention of the drafters.

Plaintiffs also allege that the trial court considered the bylaws to be ambiguous, and thus assert that the trial court was bound by past construction of the bylaws. However, our review of the trial court's remarks in context leads us to conclude that the trial court did not, in fact, determine the bylaws to be ambiguous. Accordingly, this argument is also without merit.

Finally, plaintiffs argue that defendants exceeded their authority by levying an assessment that was to be payable bi-yearly over a three-year period. Article II, section 8 of the bylaws states that the board "shall establish an annual budget." Plaintiffs contend that because the board only has authority to devise annual budgets, yet allowed for repayment of the assessment over a three-year period, any assessment that extends beyond the first fiscal year of the assessment should be deemed null and void. However, plaintiffs confuse the concepts of budget and payment schedule. A budget merely sets up the schedule of income and outlay for a particular fiscal year. Within the budget for the three years of the assessment, then, the board would include the payments it expects to receive in each of those years from the payment for the assessment just as it does the monthly assessments it expects to receive during that same year. The budget situation as regards the assessment payments is no different than any other situation in which the board knows in advance of the particular fiscal year what income it can expect from the monthly assessments. Thus, we conclude that the concept of annual budgets does not affect the question of what payment schedule is allowable for additional assessments.[3]

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[2] "Capital improvements" are commonly defined as "[A]n outlay of funds to acquire or improve a fixed asset." Black's Law Dictionary, 201 (7th ed).

[3] We do note, however, that article II, section 3 of the bylaws specifically states, "Assessments (continued…)

According to the Article II, Section 8 of the association bylaws, which are controlling, the assessment at issue was an "additional" assessment, as opposed to a "special" assessment. Therefore, the assessment at issue was authorized. Accordingly, because there were no genuine issues of material fact, and because defendants were entitled to judgment as a matter of law, summary disposition was properly granted.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Hilda R. Gage

(…continued)

shall be due and payable at such times as the Association shall determine . . ." According to article I, section 1 of the bylaws, that "Association" is the group of co-owners of the condominium. Thus, it would seem that the co-owners, not the board of directors, should have determined the payment schedule; i.e., the board properly made the determination of whether the additional assessment was warranted, but the co-owners should have voted on what the best payment schedule would have been. However, plaintiffs do not make this argument.