[Cite as *Benton Village Condominium Owners Assn., Inc. v. Bridge*, 2018-Ohio-4896.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106892

BENTON VILLAGE CONDOMINIUM OWNERS ASSOCIATION, INC.

PLAINTIFF-APPELLEE

vs.

WILLIAM W. BRIDGE, IV, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-17-877372

BEFORE: Kilbane, P.J., McCormack, J., and Stewart, J.

RELEASED AND JOURNALIZED: December 6, 2018

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MARY EILEEN KILBANE, P.J.:

{¶1} Appellant, William W. Bridge, IV ("Bridge"), appeals from the trial court's judgment granting injunctive relief and awarding attorney fees to Benton Village Condominium Association, Inc. ("Benton Village"). For the reasons set forth below, we affirm.

{¶2} In January 2015, Bridge purchased a condominium unit located at 337 East 235th Street, Euclid, Ohio 44123. As an owner of a condominium unit, Bridge is a member of Benton Village. Benton Village has a declaration and bylaws applicable to all condominium owners ("the Declaration"). The declaration also allows Benton Village to promulgate additional rules and regulations. All condominium owners and occupants are required to comply with the Declaration.

{¶3} The Declaration contains use restrictions requiring unit owners to use and occupy their units subject to the recorded covenants and conditions. Pertinent to this appeal, the Declaration has a recorded land contract resolution. Under the land contract resolution, any owner intending to sell a unit under a land contract shall record the land contract in the Cuyahoga

County Records before the buyer of the unit begins occupying the unit. In addition, before the buyer begins occupying the unit, the owner shall provide Benton Village's Board of Managers with a copy of the land contract, with evidence it has been recorded.

{¶4} On March 15, 2017, Benton Village filed a complaint seeking a permanent injunction against Bridge. In the complaint, Benton Village alleged that Bridge was either leasing the unit or engaging in a land sale contract in violation of the use restrictions. The complaint also alleged that the individual occupying Bridge's unit engaged in obnoxious nuisance behavior that included contentious exchanges with board members, contractors, and residents.

{¶5} On October 20, 2017, Benton Village filed a motion for summary judgment. On November 13, 2017, Bridge filed his brief in opposition to Benton Village's motion for summary judgment. In his brief in opposition, Bridge argued that the unit at issue was presently unoccupied, rendering Benton Village's request for injunctive relief moot.

{¶6} The trial court held the motion for summary judgment in abeyance and conducted a bench trial on December 4, 2017. The trial court heard testimony from two witness: Benton Village's board president, Hal Ehretsman ("Ehretsman"), and Bridge's father, William Bridge, III ("Bridge III"), who had power of attorney to act on his son's behalf regarding the condominium unit.

{¶7} The testimony established that sometime around late February or early March 2017, Bridge conveyed possession of the subject property, via a land contract, to a nonowner occupant. Ehretsman testified that Bridge did not provide Benton Village with a copy of the land contract, nor did he provide contact and identifying information of the occupant prior to the individual taking possession of the unit. Bridge III testified the subject unit became vacant in

July 2017.

{¶8} The testimony also established that sometime around late November or early December, Bridge again conveyed possession of the unit, via a land contract, to another nonowner occupant. Ehretsman testified that Bridge did not provide Benton Village with a copy of the land contract, nor did he provide contact and identifying information of the occupant prior to the individual taking possession of the unit.

{¶9} Through a journal entry dated January 2, 2018, the trial court granted permanent injunction to Benton Village. On January 10, 2018, the trial court conducted a hearing on attorney fees and awarded Benton Village $10,653.

{¶10} It is from this order Bridge appeals assigning the following errors for our review:

Assignment of Error One

> The trial court abused its discretion and committed prejudicial error by permitting [Benton Village] to introduce expert testimony from Attorney Amanda Baretto on the issue of the reasonableness of attorney fees at the Court's January 10, 2018 hearing even though [Benton Village] failed to disclose Baretto's identity as an expert witness to [Bridge] in discovery and violated Cuyahoga County Court of Common Pleas Local Rule 21.1 Part I by not providing [Bridge] with Baretto's written expert witness report.

Assignment of Error Two

> The trial court abused its discretion and committed prejudicial error by permitting [Benton Village] to enter Exhibits 1 and 2 into evidence at the court's January 10, 2018 hearing because such [Benton Village's] responses to [Bridge's] discovery failed to indicate that such exhibits would be submitted at trial.

Assignment of Error Three

> The trial court abused its discretion and committed prejudicial error by permitting [Benton Village's] President Hal Ehretsman to testify at the Court's December 4, 2017 trial because [Benton Village] violated Cuyahoga County Common Pleas Court Local Rule 21.1, Part II by failing to file a witness list more than seven (7) days prior to the final pretrial of the matter.

Assignment of Error Four

> The trial court committed prejudicial error by granting [Benton Village] $10,653.00 in attorney fees in its February 2, 2018 judgment entry because the court's decision was based on insufficient evidence and against the manifest weight of the evidence.

Assignment of Error Five

> The trial court committed prejudicial error by permanently enjoining [Bridge] for violating [Benton Village's] declarations, bylaws, and rules and regulations in its January 2, 2018 judgment entry because there was insufficient evidence that [Bridge] was in fact violating [Benton Village's] rules and court's granting of an injunction to [Benton Village] was against the manifest weight of the evidence adduced at trial.

{¶11} For ease of discussion, we will address Bridge's assignments of error out of sequence or jointly, where appropriate.

{¶12} In the fifth assignment of error, Bridge argues issuance of a permanent injunction was against the manifest weight of the evidence.

{¶13} When reviewing a civil appeal from a bench trial, we apply a manifest weight standard of review. *Gerston v. Parma VTA, L.L.C.*, 8th Dist. Cuyahoga No. 105572, 2018-Ohio-2185, citing *Revilo Tyluka, L.L.C. v. Simon Roofing & Sheet Metal Corp.*, 193 Ohio App.3d 535, 2011-Ohio-1922, 952 N.E.2d 1181, ¶ 5 (8th Dist.), citing App.R. 12(C) and *Seasons Coal v. Cleveland*, 10 Ohio St.3d 77, 461 N.E.2d 1273 (1984). A verdict supported by some competent, credible evidence going to all the essential elements of the case must not be reversed as being against the manifest weight of the evidence. *Gerston*, citing *Domaradzki v. Sliwinski*, 8th Dist. Cuyahoga No. 94975, 2011-Ohio-2259, ¶ 6; *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶14} The party seeking a permanent injunction must demonstrate by clear and convincing evidence that they are entitled to relief under applicable statutory law, that an

injunction is necessary to prevent irreparable harm, and that no adequate remedy at law exists. *Wagar Plaza Condominium Owners Assn. v. Iaffaldano*, 8th Dist. Cuyahoga No. 96427, 2012-Ohio-801, citing *Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 268, 747 N.E.2d 268 (5th Dist.2000).

{¶15} The trial court issued a well-reasoned opinion, which cited our decision in *Acacia on the Green Condominium Assn. v. Gottlieb*, 8th Dist. Cuyahoga No. 92145, 2009-Ohio-4878. In *Acacia*, we stated:

> Chapter 5311 of the Ohio Revised Code governs condominium associations. R.C. Chapter 5311 of the Ohio Revised Code governs condominium associations. R.C.5311.19 provides that individuals who purchase condominiums are bound by all covenants and conditions in the deed, as well as the condominium declaration and bylaws. *Grand Bay of Brecksville Condominium v. Markos* , 8th Dist. No. 73964, 1999 Ohio App. LEXIS 1162, 1999 WL 166016 (Mar. 25, 1999). Further, the statute also authorizes an association to seek an injunction where a unit owner fails to comply with any of the rules or regulations. *Georgetown Arms Condominium Unit Owners' Assn. v. Super*, 33 Ohio App.3d 132, 133, 514 N.E.2d 899 (8th Dist.1986).
>
> * * *
>
> "Compliance with condominium declarations and by-laws is required under R.C. 5311.19 where the restrictions are reasonable." *Pineview Court Condominium v. Andrews* (Oct. 28, 1999), Cuyahoga App. No. 74713, 1999 Ohio App. LEXIS 5060. This court has previously utilized a three-part test to determine whether a restriction is reasonable. A restriction is reasonable if (1) it is not arbitrary, (2) it is not applied in a discriminatory manner, and (3) the rule was made in good faith for the common welfare of all occupants of the association.

Id.

{¶16} In the instant case, attached to the complaint as exhibit No. 4 was a copy of Benton Village's duly recorded resolution pertaining to land contracts. The resolution states in pertinent part:

> Any Owner intending to sell a Family Unit under a land contract shall record the land contract in Cuyahoga County Records before the buyer of the Family Unit

begins occupying the Family Unit. Additionally, the Owner shall provide the Board with a copy of the land contract, with evidence that it has, in fact, been recorded before the buyer begins occupancy of the Family Unit.

{¶17} At trial, Ehretsman testified as follows:

[NEVIN]: Has defendant complied with that provision?

[EHRETSMAN]: No.

[NEVIN]: Does the Association have any land contracts on file for 337 East 235th?

[EHRETSMAN]: No.

[NEVIN]: Has that frustrated the Association's ability to administer the condominium property?

[EHRETSMAN]: Immensely, counselor. Immensely. It makes our job much more difficult.

[NEVIN]: Was the property occupied or — so at the beginning of this case, the property was under land contract. There is no copy of that land contract on file, correct?

[EHRETSMAN]: That's correct, counselor.

[NEVIN]: During the pendency of the case, the unit allegedly became vacant. Was the Association updated of that change in occupancy?

[EHRETSMAN]: No, it was not.

[NEVIN]: Recently, an email was — did you receive an indication, Mr. Ehretsman, that the property is again under land contract?

[EHRETSMAN]: I did — I did not. That was not addressed to me. It was addressed to you counselor, but it wasn't addressed to me. You then relayed to me in conversation and with a copy of that.

[NEVIN]: Is that consistent with your personal observation being on the premises?

[EHRETSMAN]: I'm on the premises twice a day, counselor, morning and evening minimum. And that is consistent that the unit is being rented, I'm going to use that terminology, because that's what we have, in fact here. Not only do I

> see it, but I hear it from the neighbors on either side; the noise complaints. We are all entitled to peaceful enjoyment, quiet environment by law, * * *.

{¶18} Our review of the record indicates Bridge offered no testimony to refute Ehretsman's claim that Benton Village had not received any documents regarding the aforementioned two separate land contracts or any information pertaining to the occupants of the subject unit.

{¶19} Instead, in reference to exhibit No. 4, the resolution concerning land contracts, Bridge III's testimony substantiates Benton Village's claim that it never received any copies of land contract relating to the subject property. Bridge III testified that he filed a memorandum of land contract, which he thought was sufficient. Bridge III also testified he recorded two land contracts relative to the subject property. However, the evidence indicates both were recorded after Benton Village filed its complaint and that one was recorded the day of trial. Thus, it is clear that Bridge failed to comply with Benton Village's resolution concerning land contracts.

{¶20} In addition, Bridge was not in compliance with R.C. 5311.09, which provides in pertinent part:

> (2) Within thirty days after a unit owner obtains a condominium ownership interest, the unit owner shall provide the following information in writing to the unit owners association through the board of directors:
>
> (a) The home address, home and business mailing addresses, and the home and business telephone numbers of the unit owner and all occupants of the unit;
>
> (b) The name, business address, and business telephone number of any person who manages the owner's unit as an agent of that owner.
>
> (3) Within thirty days after a change in any information that division (A)(2) of this section requires, a unit owner shall notify the association, through the board of directors, in writing of the change. When the board of directors requests, a unit owner shall verify or update the information.

{¶21} The record indicates that Bridge failed to provide Benton Village with the

information as required by R.C. 5311.09. As previously noted, Bridge entered into two separate land contracts, one before the case commenced and the other during the pendency of this matter, but failed to comply with the land contract resolution and the statute.

{¶22} The trial court's written opinion stated:

> [Bridge's] conduct has frustrated the [Benton Village's] administration of the condominium property. It has caused the Board of Directors to receive complaints regarding Bridge, the unit, and the occupants. [Bridge's] failure to provide the information has impacted the quiet use and enjoyment of individuals within the Association.

{¶23} As we previously stated in Acacia,

> "A purchaser of a condominium unit voluntarily submits himself to the condominium form of property ownership, which requires each owner to give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization."

Id., 8th Dist. Cuyahoga No. 92145, 2009-Ohio-4878, at ¶ 25, quoting *Pineview Court Condominium v. Andrews*, 8th Dist. Cuyahoga No. 74713, 1999 Ohio App. LEXIS 5060 (Oct. 28, 1999), quoting *Hidden Harbour Estates, Inc. v. Norman* 309 So.2d 180, 182 (Fla. App.1975).

{¶24} Based on the foregoing, because Bridge was not in compliance with the land contract resolution and was in violation of the statute, the trial court's issuance of the permanent injunction was not against the manifest weight of the evidence.

{¶25} Accordingly, the fifth assignment of error is overruled.

{¶26} In the fourth assigned error, Bridge argues the award of attorney fees was based on insufficient evidence and was against the manifest weight of the evidence.

{¶27} Appellate courts review a trial court's award of attorney fees for abuse of discretion. *Blisswood Village Home Owners Assn. v. Cleveland Community Reinvestment,*

L.L.C., 8th Dist. Cuyahoga No. 105450, 2018-Ohio-2299, citing *Motorists Mut. Ins. Co. v. Brandenburg*, 75 Ohio St.3d 157, 160, 1995-Ohio-281, 648 N.E.2d 488. An abuse of discretion constitutes more than an error in law or judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶28} A trial court must determine whether attorney fees are reasonable based upon the actual value of the necessary services performed by the attorney, and evidence must exist in support of the court's determination. *Bolek v. Miller-McNeal*, 8th Dist. Cuyahoga No. 103320, 2016-Ohio-1383, citing *Koblentz & Koblentz v. Summers*, 8th Dist. Cuyahoga No. 94806, 2011-Ohio-1064, ¶ 9, citing *In re Hinko*, 84 Ohio App.3d 89, 95, 616 N.E.2d 515 (8th Dist.1992).

{¶29} In making that determination, some of the factors to be considered include: (1) time and labor, novelty of issues raised, and necessary skill to pursue the course of action; (2) customary fees in the locality for similar legal services; (3) result obtained; and (4) experience, reputation and ability of counsel. *Miller-McNeal*, citing *Pyle v. Pyle*, 11 Ohio App.3d 31, 35, 463 N.E.2d 98 (8th Dist.1983).

{¶30} In the instant case, the trial court held a hearing on attorney fees on January 10, 2018. Attorney Amanda Baretto ("Baretto") testified on behalf of Benton Village. Baretto testified she primarily represents condominium and homeowners' associations in various residential real estate matters. Baretto testified she routinely brings declaratory judgment and injunction cases within the realm of condominium associations.

{¶31} Baretto reviewed exhibit No. 1, the summary of attorney fees from the law firm representing Benton Village. Upon reviewing the summary, Baretto testified that 67.2 hours

was a reasonable amount of time to spend on a case of this nature. When asked if the total fees of $10,228 was reasonable, Baretto testified that given her practice, the amount of the fees was reasonable, based on the length of time the case had taken, its complexity, the amount of pleadings required, plus the amount of in-court appearances necessary.

{¶32} The trial court issued a well-written opinion stating it was satisfied with Baretto's competence and experience in the nature of this type of case, and it was satisfied in its own discretion that the amount billed was reasonable and necessary.

{¶33} Our review indicates the trial court considered all the determinative factors to arrive at the decision that the fees were reasonable. Based on the foregoing, we find no abuse of discretion in the amount of attorney fees awarded.

{¶34} Accordingly, the fourth assignment of error is overruled.

{¶35} We will address assignments of error one, two, and three jointly because they all contend that the trial court erred with either permitting certain testimony or in admitting certain exhibits.

{¶36} First, Bridge contends the trial court should not have permitted Baretto to testify on the issue of the reasonableness of attorney fees because she was not disclosed as an expert during discovery. Bridge argues Benton Village violated Loc.R. 21.1 of the Court of Common Pleas of Cuyahoga County, General Division, which requires expert opinions to be set forth in a report and provided to opposing counsel. Bridge also contends Benton Village violated Civ.R. 26(E), which requires parties to supplement their discovery responses with respect to the subject matter on which an expert witness is expected to testify.

{¶37} Any action the court takes with respect to either Loc.R. 21.1 or Civ.R. 26(E) is subject to review only for an abuse of the court's discretion. *Beard v. St. Vincent Charity Hosp.*,

8th Dist. Cuyahoga No. 105245, 2017-Ohio-7608, citing *Di v. Cleveland Clinic Found.*, 2016-Ohio-686, 60 N.E.3d 582, ¶ 73 (8th Dist.); *Maglosky v. Kest*, 8th Dist. Cuyahoga No. 85382, 2005-Ohio-5133, ¶ 46.

{¶38} This court has previously stated: '"[t]he primary purpose of Loc.R. 21 is to avoid prejudicial surprise resulting from noncompliance with the report requirement."' *Eastman v. Hirsh*, 8th Dist. Cuyahoga No. 90081, 2008-Ohio-3042, ¶ 32, quoting *Preston v. Kaiser Permanente*, 8th Dist. Cuyahoga No. 78972, 2001 Ohio App. LEXIS 4988 (Nov. 8, 2001), citing *Reese v. Euclid Cleaning Contrs., Inc.*, 103 Ohio App.3d 141, 147, 658 N.E.2d 1096 (8th Dist.1995).

{¶39} This court has further explained how to evaluate surprise:

> "'A court is not required to prohibit the witness testimony where there is no evidence appellant was prejudiced by the admission of the testimony. The determination of whether the testimony results in a surprise at trial is a matter left to the sound discretion of the trial court. In the absence of surprise, there is no abuse of discretion. This court has also found that when a complaining party knows the identity of the other party's expert, the subject of his expertise and the general nature of his testimony, a party cannot complain that they are ambushed."'

Eastman at ¶ 33, quoting *Miller v. Gen. Motors Corp.*, 8th Dist. Cuyahoga No. 87484, 2006-Ohio-5733, ¶ 11, quoting *Yaeger v. Fairview Gen. Hosp.*, 8th Dist. Cuyahoga No. 72361, 1999 Ohio App. LEXIS 904 (Mar. 11, 1999).

{¶40} Bridge should not have been surprised by Baretto's appearance to testify on the issue of the reasonableness of the attorney fees. The record reveals Benton Village's bench brief, filed almost a month prior to the hearing on attorney fees, identified Baretto as the witness who would be testifying to the reasonableness of the attorney fees. Our review also indicates the attorney fees invoice was produced at the trial on December 4, 2017. As such, at the hearing

regarding attorney fees on January 10, 2018, Bridge should not have been surprised.

{¶41} In addition, by identifying Baretto and producing the attorney fees invoice, almost a month prior to the hearing on attorney fees, Benton Village complied with the spirit of Civ.R. 26(E)(1)(b).

{¶42} Further, in the trial court's well-reasoned decision, it relied on this court's decision in *Cleveland v. CapitalSource Bank*, 8th Dist. Cuyahoga No. 103231, 2016-Ohio-3172. In *CapitalSource*, we restated: "[I]n Ohio there is no steadfast rule that the 'reasonableness' of attorney fees must be proved by expert testimony." *Id.*, citing *Joseph G. Stafford & Assocs. v. Skinner*, 8th Dist. Cuyahoga No. 68597, 1996 Ohio App. LEXIS 4803 (Oct. 31, 1996) (recognizing a line of cases that permits a trial court to determine reasonable attorney fees without independent expert testimony).

{¶43} Because the trial court could independently determine the reasonableness of the attorney fees, Bridge was not prejudiced.

{¶44} Second, Bridge contends the trial court should not have permitted Benton Village to introduce exhibit No. 1, the invoice for attorney fees, and exhibit No. 2, the fee agreement between Benton Village and its attorneys.

{¶45} However, R.C. 5311.19(A) authorizes an award of reasonable attorney fees. R.C. 5311.19(A) provides in relevant part:

> (A) All unit owners * * * of a condominium property shall comply with all covenants, conditions, and restrictions set forth in a deed to which they are subject or in the declaration, the bylaws, or the rules of the unit owners association, as lawfully amended. Violations of those covenants, conditions, or restrictions shall be grounds for the unit owners association * * * to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action.

{¶46} Because the trial court is empowered to award attorney fees by statute, exhibit No.

1, the aforementioned invoice, would have inevitably been introduced to aid in the determination of reasonable attorney fees. As such, its introduction was harmless. Likewise, the introduction of exhibit No. 2 was harmless. The trial court could have reached its determination without the fee agreement. Therefore, Bridge was not prejudiced.

{¶47} Third, Bridge contends the trial court committed prejudicial error by permitting Ehretsman to testify at the trial in violation of Loc.R. 21.1, Part II, because Benton Village failed to file a witness list more than seven days prior to the trial.

{¶48} However, our review of the record reveals Benton Village attached Ehretsman's affidavit to its motion for summary judgment filed October 20, 2017. Therefore, Bridge should not have been surprised that Ehretsman would have been called to testify at trial. Based on these facts, Bridge was not prejudiced.

{¶49} We further observe that there is a presumption in a bench trial that the trial court considered only evidence that was reliable, relevant, and competent in rendering its decision unless it affirmatively appears to the contrary. *Albert v. UPS of Am., Inc.*, 8th Dist. Cuyahoga No. 103163, 2016-Ohio-1541, citing *Sonis v. Rasner*, 8th Dist. Cuyahoga No. 101929, 2015-Ohio-3028, citing *State v. Pleban*, 9th Dist. Lorain No. 10CA009789, 2011-Ohio-3254, ¶ 45 ("There is a presumption in a bench trial that the trial judge knows and follows the law, and only considers matter properly before it.").

{¶50} Based on the foregoing, we conclude Bridge was not prejudiced when the trial court allowed Baretto to testify, allowed exhibits Nos. 1 and 2 to be introduced, and allowed Ehretsman to testify.

{¶51} Accordingly, the first, second, and third assignment of errors are overruled.

{¶52} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

TIM McCORMACK, J., CONCURS;
MELODY J. STEWART, J., DISSENTS (SEE SEPARATE DISSENTING OPINION)

MELODY J. STEWART, J., DISSENTING:

{¶53} Although the court found that the association would be irreparably harmed if the injunction did not issue, I believe that finding was an abuse of discretion because the association had an adequate remedy at law for a breach of contract. "Condominium declarations and bylaws are contracts between the association and the purchaser and are subject to the traditional rules of contract interpretation." *Heba El Attar v. Marine Towers E. Condominium Owners' Assn.*, 8th Dist. Cuyahoga No. 106140, 2018-Ohio-3274, ¶ 9, citing *Grand Arcade, Ltd. v. Grand Arcade Condominium Owners' Assn.*, 8th Dist. Cuyahoga No. 104890, 2017-Ohio-2760, ¶ 16, citing *Nottingdale Homeowners' Assn., Inc. v. Darby*, 33 Ohio St.3d 32, 35-36, 514 N.E.2d 702 (1987). The association thus had an adequate remedy at law by way of an action for breach of contract such that a permanent injunction should not have issued.

{¶54} The court's injunction also failed to enjoin anything. Civ.R. 65(D) requires that

"every order granting an injunction * * * shall be specific in terms; shall describe in reasonable detail * * * the act or acts sought to be restrained * * *." No such detail was provided here. The court's injunction stated: "Defendant Bridge, or those individuals acting on his behalf, is hereby permanently enjoined and ordered to immediately and henceforth comply with the Declaration, Bylaws, and rules and regulations concerning the use and occupancy restrictions contained in Article III Section (B)(11) of the Declaration and/or the "Resolution Concerning Land Contracts." This merely restated Bridge's contractual obligation to comply with the declaration and bylaws of the association. Because "[t]he specificity provisions of Rule 65(d) are no mere technical requirements," *Derolph v. State*, 78 Ohio St.3d 419, 425, 1997-Ohio-87, 678 N.E.2d 886, fn. 1, quoting *Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed. 2d 661 (1974), the court had to actually enjoin something rather than remind Bridge that he had to comply with a contract.

{¶55} Finally, the injunction was unnecessary because the court lacked competent evidence to show that the unit was occupied such that immediate action was required. The association's only witness was its board president. The president conceded that he had no personal knowledge that anyone was living in the unit:

> Q. Have you spoken with any alleged occupants of the unit at issue, personally?
>
> A. No.
>
> Q. You testified that you believe that there is allegedly a current occupant in the unit.
> Have you spoken with that person?
>
> A. No, but I've heard from the neighbors on either side about the noise, the lack of quiet enjoyment —
>
> Q. Have you observed any noise violations, personally?

A. Counselor, I don't need to observe those if I hear firsthand from the neighbors on either side what's going on.

{¶56} The president's testimony was rank hearsay — the association offered an out-of-court statement for the truth of the matter asserted; that is, that noise coming from the unit indicated that the unit was occupied. *See* Evid.R. 801(C). Bridge testified that although he did have a land contract with a person, he had no personal knowledge of whether the unit was occupied. With no competent evidence to show that the unit was occupied, there was no immediacy that required the issuance of an injunction. I therefore dissent.