[Cite as *Koler v. Grand Harbour Condominium Owners Assn.*, 2014-Ohio-1299.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Alex Koler, et al.	Court of Appeals No. E-13-046
Appellants	Trial Court Nos. 11 CV 0687 12 CV 0280
v.	
Grand Harbour Condominium Owners Association	**DECISION AND JUDGMENT**
Appellee	Decided: March 28, 2014

* * * * *

Michael Westerhaus, for appellants.

John B. Stalzer, for appellee.

* * * * *

SINGER, J.

{¶1} Appellants, individual owners of certain condominium units, appeal from a decision of the Erie County Court of Common Pleas granting summary judgment to their condominium association, appellee, Grand Harbour Condominium Association. For the reasons that follow, we reverse the judgment of the trial court.

{¶2} In a letter dated September 9, 2011, appellee notified appellants that a special assessment had been levied against them in the amount of $1,300,000, in accordance with their par value of ownership. The assessment was for the cost of a siding and roofing project.

{¶3} On September 29, 2011, appellants filed a complaint seeking money damages and a preliminary injunction prohibiting appellee from proceeding with the project and enforcing the special assessment. Appellants alleged that appellee approved the project in violation of appellee's bylaws.

{¶4} On February 29, 2012, the trial court denied appellants' application for injunctive relief. Appellee filed for summary judgment which the court granted on July 18, 2013. Appellants now appeal setting forth the following assignment of error:

> The trial court erred by granting defendant's motion for summary judgment.

{¶5} The appellate court reviews the grant of summary judgment under a de novo standard of review. *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 738 N.E.2d 1243 (2000), citing *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Applying the requirements of Civ.R. 56(C), we uphold summary judgment when it is clear:

> (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that

reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co., Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶6} Appellants contend that appellee did not submit sufficient evidence to support its motion for summary judgment. In support of its motion for summary judgment, appellee submitted a copy of the association's bylaws.

{¶7} "Condominium declarations and bylaws are contracts between the association and the purchaser." *Acacia on the Green Condominium Assn., Inc. v. Gottlieb*, 8th Dist. Cuyahoga No. 92145, 2009-Ohio-4878, ¶ 20.

When confronted with an issue of contract interpretation, our role is to give effect to the intent of the parties. We will examine the contract as a whole and presume that the intent of the parties is reflected in the language of the contract. In addition, we will look to the plain and ordinary meaning of the language used in the contract unless another meaning is clearly apparent from the contents of the agreement. When the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties. *Sunoco, Inc. (R & M) v. Toledo Edison Co.*, 129 Ohio St.3d 397, 953 N.E.2d 285, 2011-Ohio-2720, ¶ 37.

{¶8} Article IV describes the general powers of the association. In pertinent part, the bylaws state:

> The association, for the benefit of all the owners, shall acquire, and shall pay for out of the maintenance fund hereinafter provided for, the following:
>
> * * *
>
> The cost of the maintenance and repair of any unit or limited common areas and facilities if such maintenance or repair is necessary, in the discretion of the association, to protect the common areas and facilities, or any other portion of a building, and the owner or owner of said unit have failed or refused to perform said maintenance or repair within a reasonable time a after written notice of the necessity of said maintenance or repair delivered by the association to said owners, provided that the association shall levy special assessment against such unit owner for the cost of said maintenance or repair.

{¶9} As appellants are challenging appellee's authority to levy a special assessment, we can think of no other document than the association's bylaws to support appellee's contention that they have the authority to levy a special assessment. Appellants have claimed that the bylaws should not have been considered since they were

not certified. However, in appellants'complaint, they rely on the very same bylaws, they now label "insufficient evidence," to support their cause of action.

{¶10} Appellee cites in its motion for summary judgment, the above portion of the bylaws in support of its argument that it has the blanket authority to levy a special assessment. However, we read the above language to grant the association power to levy a special assessment in the isolated case of an individual unit owner who has failed to maintain their unit.

{¶11} Appellants next contend that appellee lacked the authority to levy an assessment without the approval of the association. Article IV, Section 2 of the bylaws states in pertinent part:

> The Association's powers hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the maintenance fund any capital additions and improvements (other than for the purposes of replacing or restoring portions of the Common Areas and Facilities * * *), having a total cost in excess of Ten thousand dollars ($10,000), in any twelve month period, nor shall the Association authorize any structural alterations, capital additions to, or capital improvements of the Common Areas and Facilities requiring an expenditure in excess of Ten thousand dollars ($10,000) in any twelve month period, without in each

> case the prior approval of the members of the association entitled to exercise the majority to the voting of the association * * *.

{¶12} Appellee argues, in its motion for summary judgment that the wording, in parenthesis stating "other than for the purposes of replacing or restoring portions of the common areas and facilities," empowered the association to move forward on the $1,300,000 siding and roofing project without seeking approval from the members of the association. Yet, this same portion of the bylaws seems to, at the same time, prohibit appellee from acting without a vote stating again, specifically:

> nor shall the association authorize any structural alterations, capital additions to, or capital improvements of the common areas and facilities requiring an expenditure in excess of Ten thousand dollars ($10,000) in any twelve month period, without in each case the prior approval of the members of the association entitled to exercise the majority to the voting of the association.

{¶13} Because the language used in Article IV, Section 2 is susceptible to two reasonable interpretations, the contract is ambiguous. Accordingly, the court erred in granting summary judgment to appellee based on the wording of the bylaws. Appellants' assignment of error is found well-taken.

{¶14} On consideration whereof, the judgment of the Erie County Court of Common Pleas is reversed and remanded for further proceedings. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.