IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Twin Lake Estates Property Owners Association	:	
	:	No. 964 C.D. 2012
v.	:	
	:	Argued: September 11, 2012
Robert W. Chilcote and Kathryn Volcy,	:	
Appellants	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McCULLOUGH FILED: November 7, 2012

Robert W. Chilcote and Kathryn Volcy (Appellants) appeal from the January 4, 2012 order of the Court of Common Pleas of Monroe County (trial court) denying Appellants' motion for summary judgment, granting Twin Lake Estates Property Association's (Association) motion for summary judgment, and entering a judgment in favor of the Association in the amount of $26,872.79 plus interest.[1] We affirm.

[1] Appellants argued before the trial court that $22,605.00 of the money sought by the Association was for the installation of a central sewer system which they do not use because they have an on-lot sewage system. However, Appellants have not raised that argument in their brief to this Court.

Twin Lake Estates is a residential community located in Smithfield Township, Monroe County. In 1963, the property upon which Twin Lake Estates is situated was subdivided into 140 lots. The subdivision also included two lakes, common areas, and private roads, all of which are now owned by the Association. Appellants are the owners of lot number 1009 (Lot 1009) of the subdivision.

On July 26, 1973, Twin Lake Estates, Inc. entered into an agreement with three other corporations, N.J.B. Corporation, N.J.A. Corporation, and N.B.J. Corporation, each of which owned some of the subdivided lots. The agreement lists the lots owned by each of the corporations and specifically lists Lot 1009 as owned by N.B.J. Corporation. In pertinent part, the agreement provides as follows:

> Sixth: That all lot purchasers shall have equal rights to the use of all the roads, the lakes and other common facilities which are or may be constructed in the said subdivision.
>
> Seventh: That if restrictive covenants are imposed they shall be recorded and applicable to all the lots in the subdivision.
>
> Eighth: That <u>if a lot owners association is formed, all lot owners shall be required to become members thereof and to pay said dues or charges as may be imposed by such association</u>.
>
> . . .
>
> Tenth: That if, as, and when the said lot owners association is formed, and all lots are sold, the roads, the lakes and any other facilities that are now in existence or that are hereinafter constructed shall be deeded to said association without charge.

> Eleventh: That none of the parties hereto will convey away any of the lots they own in the said subdivision other than in accordance with the provisions hereof.

(R.R. at 7a-8a.) (Emphasis added.)

Shortly thereafter, as contemplated by the "Seventh" section of the July 1973 agreement, the owners of the Twin Lake Estate lots, including N.B.J. Corporation, recorded a document titled "Schedule of Covenants, Easements, Reservations, Charges and Conditions" (Covenants). The introductory paragraph of the Covenants states that the provisions therein "are part of a general development scheme of the land referred to herein, and shall run with and bind the said land…." (R.R. at 10a-11a.) In addition, they provide in pertinent part as follows:

> (3) Any building erected on the premises shall be subject to all governmental regulations relative to construction, in addition to the covenants, easements, reservations, charges and conditions herein contained.
>
> …
>
> (9) The grantee by acceptance of this instrument and the fulfillment of his obligations hereunder, will become a voting member of the proposed [Association], with the right to participate in its proceedings and decisions, and agrees to comply with its by-laws, charges and dues.

(Id.) (Emphasis added.)

N.B.J. Corporation conveyed Lot 1009 to Paragon Equipment Company of Pennsylvania, Inc., by deed dated April 3, 1980. The conveyance was made subject to the Covenants. After Paragon Equipment purchased Lot 1009, it was owned by three other parties seriatim, then finally conveyed to Appellants on September 14, 2004. Although the Covenants are part of the chain of title of Lot

1009, they are not referenced in Appellants' deed. Appellants do, however, have the right to use the roads, lakes and common areas of Twin Lake Estates.

On September 13, 2001, Twin Lake Estates, Inc., N.J.B. Corporation, N.J.A. Corporation, and N.B.J. Corporation, together as grantors, deeded a number of lots to Twin Lake Estates Development, L.L.C.. On the same day, Twin Lake Estates, Inc. conveyed the roads, lakes, and common areas within Twin Lake Estates to the Association. The following language is included on both deeds:

> [i]t is the intent of the Grantor that this deed, together with a deed of even date between Twin Lake Estates, Inc., as grantor, and [the Association], as grantee, convey, in total, all of the lots, parcel and pieces of land currently owned by Grantor in Twin Lake Estates.

(R.R. at 28a; 40a.) Both of the September 13, 2001 deeds expressly exclude twenty-five lots which, like Lot 1009, had been sold back in the 1980s.

Also on September 13, 2001, Twin Lake Estates, N.B.J. Corporation, N.J.A. Corporation, and N.J.B. Corporation filed an agreement entitled "Assignment and Assumption of Interests" (Assignment), in which they assigned their interests in the Covenants to the Association. The Assignment states:

> Twin Lake Estates hereby assigns and transfers all of its rights, title and interests under the Covenants to [the Association] with respect to the lots, parcels and pieces of land situate in the Township of Smithfield, County of Monroe and Commonwealth of Pennsylvania <u>that are being conveyed by deed of even date</u> between Twin Lake Estates, Inc. as grantor and [the Association], as grantee and [the Association] hereby assumes all of such rights, title and interests of Twin Lake Estates under the Covenants.

(R.R. at 49a.) (Emphasis added.)

Schedule A of the Assignment lists all of the Twin Lake Estates lots affected by the Assignment. Lot 1009 does not appear on the list.

When the Association sued Appellants for payment of homeowners' association dues, Appellants took the position that the Assignment did not give the Association any rights pertaining to Lot 1009 because it had been sold years earlier and was not included in the 2001 conveyance to Twin Lake Estates Development, L.L.C. Thus, according to Appellants, the Association did not have standing to seek payment of dues.

The trial court disagreed, concluding that both common law and the Uniform Planned Community Act, 68 Pa. C.S. §§5101-5414 (Act), give the Association authority to collect dues from Appellants. Accordingly, the trial court awarded summary judgment in favor of the Association.

On appeal to this Court,[2] Appellants contend that the trial court erred in granting summary judgment because Lot 1009 was specifically excluded from the Assignment and therefore the Association does not have standing to enforce fees and costs against Appellants.[3]

---

[2] This Court's scope of review of an order granting or denying summary judgment is limited to determining whether the trial court abused its discretion or committed an error of law. Fogarty v. Hemlock Farms Community Association, Inc., 685 A.2d 241 (Pa. Cmwlth. 1996).

[3] In a reply brief, Appellants also contend that summary judgment should not have been entered because there was a genuine issue of material fact as to whether the Association's charges are reasonable. However, this issue was not preserved for appeal. When contesting the Association's motion for summary judgment before the trial court, Appellants argued only that the Association had officiously conferred the benefit of a sewer system upon Appellants without their consent, not that the monetary amount of the assessment was unreasonable. See Appellants' brief in opposition to the Association's motion for summary judgment. (Certified Record.)

The Association is organized under section 5301 of the Act, 68 Pa. C.S. §5301, and Twin Lake Estates is a "planned community" within the meaning of section 5103 of the Act, 68 Pa. C.S. §5103.[4,5] Section 5302 of the Act, gives unit owners' associations the following powers:

> **§ 5302. Power of unit owners' association**
>
> **(a) General rule**.--Except as provided in subsection (b) and subject to the provisions of the declaration and the limitations of this subpart, the association, even if unincorporated, may:
>
> (1) Adopt and amend bylaws and rules and regulations.

[4] Section 5103 of the Act defines "Planned Community" as:

> Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community. For purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes nonresidential campground communities.

68 Pa. C.S. §5103.

[5] Certain sections of the Act apply even to planned communities that were established before the Act became effective in 1996. See 68 Pa. C.S. §5102(b).

> (2) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
>
> . . .
>
> (6) Regulate the use, maintenance, repair, replacement and modification of common elements and make reasonable accommodations or permit reasonable modifications to be made to units, the common facilities, the controlled facilities or the common elements, to accommodate people with disabilities, as defined by prevailing Federal, State or local statute, regulations, code or ordinance, unit owners, residents, tenants or employees.
>
> (7) Cause additional improvements to be made as a part of the common facilities and, only to the extent permitted by the declaration, the controlled facilities.

68 Pa. C.S. §5302 (emphasis added).

Regardless of the wording in the Assignment, we conclude that the plain language of the Act authorizes the Association to enforce the Covenants against Lot 1009 and issue assessments for common expenses, including capital expenditures. Moreover, we agree with the trial court that even if the Act did not give the Association power to collect the fees from Appellants, the Association would nonetheless have authority to do so under common law.

The case of Meadow Run and Mountain Lake Park Association v. Berkel, 598 A.2d 1024 (Pa. Super. 1991) was the first time an appellate court in this Commonwealth addressed the question of whether a homeowners' association had authority to impose assessments for repairs, maintenance and improvement of common areas absent a specific covenant in the lot owners' deeds permitting such assessments. The Superior Court held that:

> absent an express agreement prohibiting assessments, when an association of property owners in a private development is referred to in the chain of title and has the authority to regulate each property owner's use of common facilities, inherent in that authority is the ability to impose reasonable assessments on the property owners to fund the maintenance of those facilities.

Id. at 1027. In support of this holding, the Superior Court noted that:

> The right of [a homeowners' association] to exercise the control of the easements and to maintain them in condition so that they can be mutually used and enjoyed by all property owners has long been settled by the courts. Inherent in its right of management is the right to maintain. Maintenance costs money. Those who are entitled to enjoy the easements are the ones who must pay the costs of maintenance….

Id. at 1026 (quoting Sea Gate Association v. Fleischer, 211 N.Y.S. 2d 767, 778-79 (1960)).

In Spinnler Point Colony Association, Inc. v. Nash, 689 A.2d 1026 (Pa. Cmwlth. 1997), this Court reached a similar conclusion, stating that when property owners in a planned community are permitted to use the common areas, there is an implied agreement to accept a portion of the cost. We further held that this is so even where the chain of title makes no reference to a homeowners' association. The following year, this Court further clarified the principles discussed in Spinnler, stating that:

> A homeowners' association…may be viewed as a miniature government, charged with managing the common areas and facilities of a residential development, and as such is dependent upon the collection of assessments to maintain the common facilities. When the owners of property in a residential development are permitted to use the common areas of a development, there is an implied agreement to accept a portion of the cost of maintaining those facilities.

> And, where a deed is silent on whether a homeowners' association has the authority to make such an assessment, the homeowners may be assessed their proportionate costs of common improvements. Even if an owners' chain of title makes no reference to a homeowners' association, we have held that the owner is nonetheless obligated to pay a share of the costs of maintaining common areas managed by a homeowners' association for the reason that
>
> > [the owners] are the beneficial users of the common areas of the development and are responsible for the cost of repaid, maintenance and upkeep of the common areas. If we were to find to the contrary, lot owners would be able to avoid their duty to pay assessments, and because associations would be powerless to operate, the facilities of a development would fall into disrepair. Thus, we hold that a property owner who purchases property in a private residential development who has the right to travel the development roads and to access the waters of a lake is obligated to pay a proportionate share for repair, upkeep and maintenance of the development's roads, facilities and amenities.

Hess v. Barton Glen Club, Inc., 718 A.2d 908, 912 (Pa. Cmwlth. 1998) (quoting Spinnler, 689 A.2d at 1029) (emphasis added). In other words, this Court has clearly recognized that a homeowner association's right to assess property owners for use or maintenance of common areas exists irrespective of the language in the chain of title.

Here, as in Meadow Run, Spinnler, and Hess, Appellants have the right to use the roads, lakes, and common areas of the Twin Lake Estates. They also have the right to tap into the central sewer system if they so choose. Thus, Appellants are obligated to pay their proportionate share of capital improvements to and

maintenance of common facilities regardless of the chain of title and the wording of their deed.

In summary, Appellants are obligated to pay their share of all reasonable expenses for maintenance and improvement of common areas under both the Act and the common law. Accordingly, we find no error in the trial court's decision to grant the Association's motion for summary judgment.

Affirmed.

_____

PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Twin Lake Estates Property Owners Association	:	
	:	No. 964 C.D. 2012
v.	:	
Robert W. Chilcote and Kathryn Volcy,	:	
Appellants	:	

ORDER

AND NOW, this 7th day of November, 2012, the January 4, 2012 order of the Court of Common Pleas of Monroe County granting summary judgment to Twin Lake Estates Property Owners Association is hereby affirmed.

_____

PATRICIA A. McCULLOUGH, Judge