

WINTER 2014 NEWSLETTER

HOMEOWNERS ASSOCIATION UPDATE

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TEXAS COURT OF APPEALS

***Canyon Vista Prop. Owners Ass'n v. Laubach*, No. 03-11-00404-CV, 2014 Tex. App. LEXIS 1099 (Tex. App.—Austin January 31, 2014, no pet. h.)**

An individual unit owner has standing to bring a cause of action against the association for damage to a common element, unless the condominium association objects to the single unit owner filing suit and proceeding without joinder of any or all of the other co-tenants. This is because the individual unit owner has common ownership of the common elements. Additionally, a unit owner who suffers harm specific to his own property has standing and is entitled to sue on his own behalf.

Appellee, Gerald Laubach, purchased a condominium unit in the Canyon Vista Condominiums in 2004. The Canyon Vista Condominiums are governed by the Canyon Vista Property Owners Association (“Association”). Upon moving-in, appellee noticed that the floor produced unusually loud noises and flexed abnormally when walked upon. The issues were diagnosed as structural problems with the second story unit’s subfloor. Under Canyon Vista’s Declaration, the subfloor is defined as a Common Element and the Association is required to maintain and keep in a good state of repair the Common Elements. Laubach reported the problem to the Association, but the Association failed to take any corrective measures.

Laubach filed suit claiming that the Association breached the Declaration by failing to repair the floor of his unit. At trial, a jury agreed and awarded costs of repair to his unit and additional damages for loss of use of his unit. The Association appealed, claiming that Laubach lacked standing. The Association argued that Laubach did not have a cause of action individually because the claimed damages were for the subfloor, a Common Element, falling into a state of disrepair. As a result, the Association claimed that the damages suffered were by the Association, not Laubach.

The appellate court rejected the Association’s arguments, finding that the issue as presented to the jury was not for damages to the Common Elements, it was for the cost of repair *to his unit* and the loss of use *of his unit*. The appellate court also noted that while it was not clear whether this was an action for damages or an action for equitable relief, under either scenario, Laubach had standing to bring suit and recover damages for two reasons. First, under a damages cause of action a co-tenant in a condominium project can file suit alone to seek damages for the misuse of common property, “absent an objection by the condominium association that the other co-tenants must be joined.” The appellate court held that because the Association did not object at trial to Laubach proceeding alone without joinder of the co-tenants, Laubach had standing to sue. Second, under a cause of action for equitable relief, even assuming the Association had objected to Laubach proceeding alone, he still had standing because as a co-

tenant he may file suit for equitable relief to protect and preserve the common property without joining other co-tenants.

Finally, the appellate court found that Laubach, as a unit owner, had standing to sue on his own behalf because even though the harm he suffered was “related to the common elements,” i.e., the disrepair of the subfloor causing the issues with his unit’s floor, he suffered harm specific to his own property and could recover damages for the harm to his own property.

***Corcoran v. Atascocita Cmty. Improvemtn Ass’n*, No. 14-12-00982-CV, 2013 Tex. App. LEXIS 13442 (Tex. App.—Houston [14th] October 31, 2013, pet. filed)**

The trial court’s discretionary right to award attorney’s fees under the Texas Declaratory Judgment Act does not have a chilling effect on homeowners’ declaratory actions and does not violate the Open Courts provision of the Texas Constitution.

Appellants, G. Christian and Peggy Corcoran, reside in a single-family-home neighborhood subject to the control of Atascocita Community Improvement Association, Inc. (“ACIA”), a non-profit corporation whose members are the property owners in Atascocita. The appellant’s neighborhood is also governed by the Architectural Control Committee (“ACC”), a separate entity that is charged with approving and disapproving of applications for additions or alterations to the neighborhood’s existing structures. A dispute arose between the appellants and their neighbor regarding an application to add a structure on the neighbor’s property. The ACC denied the neighbor’s application. The neighbor appealed the denial to the ACIA and the ACIA approved the application.

The neighbor filed suit against the appellants and the appellants counterclaimed and filed a third-party action against ACIA seeking a declaration that ACIA lacked authority to overturn ACC’s denial of the neighbor’s application. The trial court granted summary judgment for ACIA. The trial court also awarded ACIA \$120,196.14 in attorney’s fees pursuant to section 37.009 of the Declaratory Judgment Act.

Appellants appealed the award of attorney’s fees, claiming that a discretionary award of attorney’s fees against a homeowner that brings suit against an owners association violates the Open Courts provision of the Texas Constitution. At the heart of appellants’ argument was the fact that under the Declaratory Judgment Act, the award of attorney’s fees is solely within the trial court’s discretion and does not require a finding that a party substantially prevailed. Appellants argued that homeowners will be deterred from filing suit, even if they have a good faith belief for bringing a claim, because they will be in fear of being punished for bringing their cause of action by having to pay the association’s attorney’s fees, even if the association is not the prevailing party. Appellants’ claimed that a trial court’s discretionary award of attorney’s fees would “have a stifling effect on the ability of homeowners to question arbitrary and capricious actions taken by their community association[s].”

The court of appeals rejected the appellants’ argument. In so holding, the court of appeals found that a trial court’s discretionary choice to award attorney’s fees under section 37.009 is based on the specific facts and circumstances of each case. Therefore, homeowners

contemplating legal action against an owners association should not base their decision to file suit on the outcome and award of attorney's fees in this isolated case, but instead, should weigh the merits of their own case against the possibility of being held liable for the association's attorney's fees.