2014 YEAR IN REVIEW

SIGNIFICANT DECISIONS IN 2014: HOMEOWNERS' ASSOCIATION

By Nichole M. Plagens

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.

***Walton v. Midland Mira Vista Homeowners' Ass'n*, No. 11-12-00214-CV, 2014 Tex. App. LEXIS 10492 (Tex. App.—Eastland Sept. 18, 2014, no pet. h.)**

An owner of two adjacent lots in a subdivision governed by a homeowners' association could not avoid paying assessments on both lots by unilaterally replatting the two lots into a single lot. Additionally, even though the homeowners' association that sued him for payment of unpaid assessments was not created according to the provisions in the Declaration, it still had the authority to levy assessments and sue for non-payment because it fulfilled the intent of the original Developer as laid out in the Declaration.

Appellant, Trent Walton, owned two lots in the Mira Vista Subdivision, a subdivision consisting of thireteen lots and governed by the "Declaration of Restrictions and Covenants for Mira Vista Subdivision" ("the Declaration"). In 2008 and 2009, the Midland Mira Vista Homeowners' Association ("the HOA") levied Maintenance Assessments and Special Assessments against all thirteen lots in the subdivision. After Walton failed to pay the assessments, the HOA filed suit against Walton, seeking payment of the unpaid assessments and a declaratory judgment that Walton would be liable for payment of assessments levied against both of his two lots for as long as he owned the lots. Walton answered the HOA's suit and made a cross claim for a declaratory judgment that: (1) the HOA was not the corporation that was authorized under the Declaration to levy assessments against the lot owners; (2) that Walton owned only one lot in the subdivision because the two lots he purchased had been replatted into one lot; and (3) that that Declaration limited the amount of Maintenance Assessments that could be levied against a single lot to $500 per year.

The appellate court looked at the Declaration, and construed its provisions according to the general rules of contract construction, looking at the entire writing in an attempt to give effect to the true intentions of the parties as expressed in the contract and give effect to all of the provisions of the contract without rendering any meaningless. The appellate court noted that the Declaration stated that the Developer would create a non-profit corporation to be known as the Mira Vista Homeowners' Association and that the Association would have the power and obligation to collect assessments in order to maintain the common areas of the subdivision. The appellate court acknowledged that the HOA was not created by the Developer and was not named the Mira Vista Homeowners' Association, as pointed out by Walton. Instead, the HOA was created by lot owners and was named the Midland Mira Vista Homeowners' Association,

since; (1) the Developer failed to create the HOA; and (2) the name "Mira Vista Homeowners Association" was unavailable with the Secretary of State. However, the appellate court found that these variances did not nullify the validity of the HOA that did come into existence, since to find otherwise would frustrate the Developer's intentions as expressed in the Declaration and would render countless other provisions in the Declaration meaningless. As a result, the HOA was a proper homeowners' association under the Declaration and it had the authority to levy assessments against Walton.

With regards to Walton's argument that he could only be levied assessments on one lot since he had the two lots replatted into one, the appellate court found Walton's argument unconvincing. Again looking to the language in the Declaration, the appellate court found that it went against the intent of the Developer to allow a lot owner to unilaterally apply with the City to replat multiple lots into a single lot as a means of avoiding paying assessments on each individual lot. The appellate court found that Walton owed pass due assessments for both lots, regardless of his replatting the lots into one.

***Tanglewood Homes Ass'n v. Feldman*, 436 S.W.3d 48 (Tex. App.—Houston [14th Dist.] 2014, no pet).**

Chapter 38 of the Civil Practice and Remedies Code that provides for the recovery of a reasonable and necessary attorney's fee for prevailing on a breach of contract claim does not guarantee that a plaintiff who prevails on a cause of action against a homeowners' association based on the interpretation of the homeowners' association's governing documents is entitled to an award of attorney's fees. Although the court looks to general contract construction for interpretation of restrictive covenants, restrictive covenants do not necessarily meet the requirements for a valid contract or a breach as required under Chapter 38 for the recovery of attorney's fees. Additionally, a plaintiff may not plead a declaratory judgment action for the sole purpose of recovering attorney's fees.

Stewart and Marla Feldman (collectively the "Feldmans") own a home in Section 8 of the Tanglewood subdivision. Section 8 of the Tanglewood subdivision is governed by a set of deed restrictions. A dispute arose regarding the application of the deed restrictions to the Feldmans' desire to expand their home. In their petition the Feldmans asserted that if they were to prevail they would be entitled to recovery of attorney fees under Chapter 38 of the Civil Practice and Remedies Code and section 5.006 of the Texas Property Code. The trial court repeatedly questioned the Feldmans' ability to recover attorney's fees under either statute and thought that the declaratory judgment act was the only appropriate vehicle for the recovery of attorney's fees. In light of the trial court's statements, at the end of the Feldmans' case-in-chief, the Feldmans' Counsel requested leave to amend their pleadings to add a declaratory judgment cause of action. Counsel stated that while he believed that they were entitled to attorney's fees under both section 5.006 of the Property Code and Chapter 38 of the Civil Practice and Remedies Code, if the court thought the declaratory judgment act was the more proper vehicle, they should be entitled to amend their pleading to add such an action. The trial court granted the Feldmans' leave to amend.

After a jury trial, the trial court signed a final judgment awarding the Feldmans declaratory relief as well as monetary damages and attorney's fees under the Declaratory Judgment Act. All parties appealed the judgment.

On appeal, the appellate court concluded that the Feldmans' expansion plans were permitted by the subdivisions Deed Restrictions as decided by the trial court, but found that the Feldmans could not recover attorney's fees under the statutes on which they relied, including Chapter 38 of the Texas Civil Practice and Remedies Code and the Declaratory Judgment Act. In so reasoning, the appellate court provided the following analysis.

The Declaratory Judgment Act provides that a trial court may award costs and reasonable attorney's fees when doing so is equitable and just. However, "a party cannot use the [Declaratory Judgment Act] as a vehicle to obtain otherwise impermissible attorney's fees." Additionally, a party may not use a declaratory judgment action to duplicate issues already before the trial court in an attempt to recover fees. The appellate court found that on the record, the Feldmans sought the trial amendment adding a declaratory judgment cause of action solely for the purpose of obtaining attorneys' fees. Additionally, the appellate court found that the added declaratory judgment action did nothing more than duplicate issues already before the trial court in the Feldmans' live pleadings, as evidenced by Counsel's statements on the record. As a result, the trial court abused its discretion when it awarded attorney's fees under the Declaratory Judgment Act.

The appellate court also rejected the Feldmans' claim that they were entitled to recovery of attorney's fees under Chapter 38 because restrictive covenants are construed like contracts and a successful claim for a violation of a restrictive covenant is a contract claim subject to Chapter 38. Rejecting this argument, the appellate court found that while deed restrictions are construed like contracts, that does not mean that the deed restrictions always meet the essential elements of a valid contract or that non-compliance with their terms is always a breach of contract that will support an award of attorney's fees under Chapter 38.

The appellate court reversed the portion of the trial court's judgment awarding attorney's fees to the Feldmans and rendered judgment that they take nothing on their request for attorney's fees.