IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

LAKE HARMONY ESTATES PROPERTY OWNERS ASSOCIATION, Plaintiff	:	
v.	:	No. 16-0472 (M4) No. 16-0473 (Ledgestone)
M4 HOLDINGS and LEDGESTONE PROPERTIES, LLC, Defendants	:	

Aaron M. DeAngelo, Esquire — Counsel for Plaintiff

James R. Nanovic, Esquire — Counsel for Defendants

MEMORANDUM OPINION

Serfass, J. – July 1, 2021

Lake Harmony Estates Property Owners Association (hereinafter "the Plaintiff") initiated two separate actions in this Court on March 9, 2016 – one against M4 Holdings, and one against Ledgestone Properties, LLC (hereinafter "the Defendants"). Complaints were filed on March 29, 2016. These actions relate to disputes between the parties concerning the validity of a rental registration fee imposed by the Plaintiff on Lake Harmony Estates property owners who rent out their properties on a short-term basis. The Defendants filed separate counterclaims against the Plaintiff to recover the rental registration fees paid and to seek an order from this Court determining that the rental registration fee is invalid and/or excessive. Due to the identical nature of the issues raised in both actions, the cases were consolidated for

purposes of judicial economy via order dated August 31, 2018. Following a non-jury trial before the undersigned and our review of the post-trial submissions of counsel, this matter is now ripe for final disposition.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is a non-profit property owners association that manages a planned community situated in Lake Harmony, Carbon County, Pennsylvania. The community, known as Lake Harmony Estates, consists of three hundred forty-one (341) parcels of land of which approximately one-third are used as rental properties. Defendants are two (2) single-use limited liability companies owned and operated by James Millspaugh as the sole member. Mr. Millspaugh became a property owner in Lake Harmony Estates with the purchase of 60 Estates Drive on April 27, 2011. He has since used this property as a residence. Mr. Millspaugh testified that when he became a property owner, he received a resale packet containing a book of governance which included language indicating that property owners are bound by the provisions of the deed and the bylaws, rules and regulations adopted by the Plaintiff. One such provision states that the sum paid annually by lot owners shall be proportionate with all other lot owners in the subdivision.

Mr. Millspaugh, through the Defendants, purchased five (5) additional rental properties situated in Lake Harmony Estates and

has actively held the properties open for rent, typically as short-term rentals lasting less than one (1) year[1]. The crux of this matter concerns the Plaintiff's imposition of a rental registration fee on property owners who rent or lease property within Lake Harmony Estates. On March 29, 2016, the Plaintiff filed complaints against Defendants claiming that M4 and Ledgestone failed to pay the 2015 rental registration fee of two hundred fifty dollars ($250.00) which was assessed to all renting property owners. Defendants have since paid the 2015 rental registration fee, but Mr. Millspaugh testified that he paid the 2015 fee and previous rental registration fees under protest in disagreement with the enforceability of such fees.

The rental registration fee in question was established on October 29, 2005 at the Plaintiff's Fall Semi-Annual Meeting. According to the minutes of that meeting, the rental registration fee was set at one hundred dollars ($100.00) to cover the costs of "administering the rental program and printing informational materials." On December 7, 2009, a letter was distributed to property owners stating that the fee was "not intended to be punitive in nature." The Plaintiff increased the fee from one hundred dollars ($100.00) to two hundred dollars ($200.00) at the

[1] M4 Holdings is the owner of two (2) properties within Lake Harmony Estates - 12 Lupine Drive and 17 Estates Drive. Ledgestone Properties, LLC is the owner of three (3) properties within Lake Harmony Estates - 713 Skye Drive, 100 Spring Street and 58 Knoll Drive.

Fall Semi-Annual Meeting on November 6, 2010, and from two hundred dollars ($200.00) to two hundred fifty dollars ($250.00) at the Board of Directors meeting on December 1, 2012. The minutes of a board meeting held on May 4, 2013, indicate that Attorney Sandy Mulhern, special counsel to Lake Harmony Estates, supported the fee so long as it addressed "costs of operation".

Following the fee increase to two hundred fifty dollars ($250.00), the Board of Directors conducted a review of the costs associated with renters. On December 16, 2015, a letter was distributed to property owners stating that there was a planned rental registration fee increase with an attached schedule in support and that all revenue generated from the rental registration fee would go into the capital reserve fund. The Board of Directors increased the rental registration fee from two hundred fifty dollars ($250.00) to four hundred seventy-five dollars ($475.00) at its annual meeting in December 2015. Mr. John Kline, a former board member and President of the Property Owners Association, testified that the Board arrived at the four hundred seventy-five-dollar ($475.00) fee following its review of the costs associated with security, trash collection, beach maintenance, and road maintenance apportioned to renters. Subsequent to the onset of this litigation, a letter dated March 11, 2016 was distributed to property owners stating that the rental registration fee was

enacted by the membership to improve the community and that the fee would assist in funding a storm water management program.

Mr. Millspaugh testified that he has continued to pay annual member fees to the Plaintiff and that he paid previous rental registration fees under protest until his refusal to pay in 2015. Eventually, he did pay the 2015 rental registration fee in order to provide his renters with beach access. The Defendants produced trial exhibits indicating that Mr. Millspaugh had sent an email and attached letter protesting payment of the rental registration fee to property managers in 2014, but there are no written documents for previous years. Mr. Millspaugh also testified that he does not believe the Plaintiff's actions constitute fraud, bad faith, or self-dealing, but that he disagrees with the enforcement of the rental registration fee as it stands. The Defendants' primary argument is that the rental registration fee as imposed by the Plaintiff is invalid under the Uniform Planned Community Act. 68 Pa. C.S.A. § 5101, et seq. The Plaintiff counters that the rental registration fee is valid and enforceable.

ISSUE

Is the rental registration fee imposed by Lake Harmony Estates Property Owners Association valid under the Uniform Planned Community Act?

DISCUSSION

Under Pennsylvania law, the Uniform Planned Community Act hereinafter, ("the UPCA"), governs the regulation of planned communities. 68 Pa. C.S.A. § 5102. Section 5314 of the UPCA provides that all general common expenses must be assessed against all the units in accordance with the common expense liability allocated to each unit. 68 Pa. C.S.A. § 5314(b). Section 5314(c) also provides for special allocations of expenses, including the assessment of common expenses "benefiting fewer than all of the units" being assessed "exclusively against the units benefitted." 68 Pa. C.S.A. § 5314(c)(2). In relation to liens for assessments, a judgment or decree in any action or suit brought under Section 5315 of the UPCA shall include costs and reasonable attorney fees for the prevailing party. 68 Pa. C.S.A. § 5315(g).

The Plaintiff argues that Section 5314(c) applies in this case because the Property Owners Association has the authority to disparately allocate costs based on the use of the property, namely the higher costs associated with rental properties compared to non-rental properties. The Defendants argue that Section 5314(c) is inapplicable to this case because the rental registration fee is being used to pay for common expenses, such as security, trash collection, beach maintenance and road maintenance, which benefit all of the units rather than benefitting only the rental properties. Moreover, the Defendants claim that the payment of

such common expenses from the rental registration fees generated is contrary to the Plaintiff's stated purpose of imposing the fee which was to cover the costs associated with administering the rental program and printing informational materials.

We find that Section 5314(c) of the UPCA is not applicable here. Section 5314(b) of the UPCA provides that all common expenses of the association shall be assessed against all of the units in accordance with the common expense liability allocated to each unit in the case of general common expenses, with the exception of those assessments addressed in Section 5314(c). The exceptions set forth in Section 5314(c) do not address the facts at issue in the instant matter. The Plaintiff alleges that a portion of Section 5314(c) applies which is an exception providing that "any common expense benefitting fewer than all of the units shall be assessed exclusively against the units benefitted." The reliance on this section is misplaced. Initially, we note that the rental registration fees have been used towards common expenses including, but not limited to, security, trash collection, beach maintenance and road maintenance. We fail to see how these expenditures benefitted only those properties that were assessed a rental registration fee. Clearly, these common expenses do not benefit fewer than all of the units. Rather, they benefit all of the units and, as such, are general common expenses to be assessed against all the units. Moreover, these expenses have not been

assessed exclusively to rental units. Clearly, Section 5314(c)(2), is meant to address those instances where certain expenses would only benefit a limited number of units. That is not the case in the instant matters. The rental registration fees are being used by the Plaintiff to pay common expenses which benefit all units. This is not permitted pursuant to the Uniform Planned Community Act. Indeed, it appears that the Plaintiff did not allocate any portion of the rental registration fee to the cost of administering the rental program or printing informational materials which were the stated purposes for implementing the rental registration fee in 2005.

In reviewing the actions of the Plaintiff in establishing the rental registration fee, we find that the business judgment rule does not apply in this case. See Burgoyne v. Pinecrest Community Association, 924 A.2d 675, 682-83 (Pa. Super. 2007). Rather, it is Section 5303 of the UPCA which governs and the court must determine whether the Plaintiff's officers and board members acted "in good faith; in a manner they reasonably believe to be in the best interests of the association; and with care, including reasonable inquiry, skill and diligence as a person of ordinary prudence would use under similar circumstances." Burgoyne, 924 A.2d at 683 (*citing* 68 Pa. C.S.A. § 5303(a)). We cannot find, based upon the facts of these cases, that the Plaintiff failed to act in good faith or in a manner believed to be in the association's best interests,

particularly given the financial status of the association at the time of the rental registration fee increases. Moreover, we note that there are no claims against the Plaintiff's officers or board members for fraud, bad faith or self-dealing. We further note that one hundred percent of the monies generated from the rental registration fees were earmarked for the capital reserve fund, which is utilized for the preservation and maintenance of the association's long-term assets.[2] Nevertheless, we find that permitting the Plaintiff to retain the improperly assessed rental registration fees paid by the Defendants in these matters would be inequitable and result in the unjust enrichment of the Plaintiff.

Our decision in this matter should not be construed as a ruling which prohibits the Plaintiff from assessing a rental registration fee. Rather, we find that the current rental registration fee, as applied to the Defendants, is contrary to the express provisions of the UPCA and is, therefore, unenforceable as to said Defendants. The Plaintiff is free to assess a rental registration fee which addresses the actual costs of administration of a rental program to monitor rental units within Lake Harmony Estates or for other proper purposes in accordance with the Uniform Planned Community Act.

[2] The preservation and maintenance of Plaintiff's long-term assets are general common expenses of the association to be assessed appropriately under the UPCA.

CONCLUSION

For the reasons stated hereinabove, we find that the rental registration fee, as applied to the Defendants herein, is contrary to the Uniform Planned Community Act and unenforceable against said Defendants. We will, therefore, enter the following

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James R. Nanovic, Esquire — Counsel for Defendants

VERDICT

AND NOW, to wit, this 1st day of July, 2021, following a non-jury trial and our review of the post-trial submissions of counsel, and in accordance with our Memorandum Opinion bearing even date herewith, the Court hereby enters a verdict in favor of the Defendants, M4 Holdings and Ledgestone Properties, LLC, and against the Plaintiff, Lake Harmony Estates Property Owners Association, on the Plaintiff's complaint, and in favor of the Defendants, M4 Holdings and Ledgestone Properties, LLC, and against the Plaintiff, Lake Harmony Estates Property Owners Association, on the Defendants' counterclaim in the amount of eight thousand three hundred fifty dollars ($8,350.00).

Pursuant to 68 Pa. C.S.A. § 5315(g), the Plaintiff shall reimburse the Defendants' costs and attorney fees in the amount of fourteen thousand five hundred sixty-four dollars and eighty-five

cents ($14,564.85) within thirty (30) days following the entry of judgment herein.

PURSUANT to Pa.R.C.P. 227.4, the Prothonotary shall, upon praecipe, enter judgment on the verdict if no motion for post-trial relief has been filed under Pa.R.C.P. 227.1 within ten (10) days after notice of the filing of this decision.

BY THE COURT:

Steven R. Serfass, J.