COLORADO COURT OF APPEALS

Court of Appeals No. 09CA1987
El Paso County District Court No. 08CV2923
Honorable Larry E. Schwartz, Judge

Charles Warne, Bridget Warne, Brandon Cuffe, Norman Villanueva, Nancy Villanueva, Howard Surber, Luana Surber, Travis R. Helton, and Karen E. Helton,

Plaintiffs-Appellees,

v.

Woodmen Hills Covenant Management Board and Woodmen Hills Metropolitan District,

Defendants-Appellants.

JUDGMENT AFFIRMED

Division V
Opinion by JUDGE RUSSEL
Webb and Gabriel, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced June 17, 2010

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Susemihl, McDermott & Cowan, P.C., Jason W. Downie, Colorado Springs, Colorado, for Defendants-Appellants

Defendants, Woodmen Hills Covenant Management Board and Woodmen Hills Metropolitan District, appeal from the trial court's summary judgment in favor of plaintiffs, Charles Warne, Bridget Warne, Brandon Cuffe, Norman Villanueva, Nancy Villanueva, Howard Surber, Luana Surber, Travis R. Helton, and Karen E. Helton. Because we conclude that defendants lack authority to enforce restrictive covenants, we affirm.

I. Background

Melody Homes developed part of the Woodmen Hills Metropolitan District (WHMD).[1] Melody built houses there and filed a declaration of covenants that governed the properties. By the end of 2006, Melody had sold all the lots in this development.

In 2007, WHMD sought to acquire Melody's right to enforce the covenants. Melody initially responded that it no longer had any rights to assign. But it eventually executed an assignment "in the nature of a quitclaim." (Melody agreed to assign its enforcement rights to WHMD, but it disclaimed any assertion that those rights were valid.) Thereafter, WHMD assigned the enforcement rights to a

[1] The pertinent development comprises Woodmen Hills Filing No. 8 and part of Woodmen Hills Filing No. 9.

nonprofit corporation, the Woodmen Hills Covenant Management Board (WHCMB).

WHCMB then tried to enforce the covenants against property owners in the district. It asked all the owners to pay a monthly fee for covenant enforcement. It also notified some owners that they were using their properties in ways prohibited by the covenants.

In 2008, after receiving notices of the alleged violations, some of the owners filed a declaratory judgment action against WHMD and WHCMB. Other owners entered the lawsuit later.

In 2009, the court granted summary judgment in favor of the owners. The court ruled that defendants lacked authority to enforce the covenants or to charge fees for such enforcement.

Defendants now challenge the court's judgment. We consider and reject their arguments as follows.

II. Joinder

During the pendency of the action, defendants asked the court to order the joinder of everyone who owned property in the development. The court declined to do this. It ruled that mandatory joinder was unnecessary because the action centered on defendants' rights and would not directly affect the rights of non-

parties. (The court noted that defendants were free to add the other property owners if they wanted.)

We uphold this ruling.

Whether a party is indispensable depends on the facts of each case. *Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Estates Owners Ass'n*, 214 P.3d 451, 456 (Colo. App. 2008) (*cert. granted* Aug. 31, 2009). We will reverse the trial court's order only if the court misapplied the law, *see id.*, or otherwise abused its discretion. *See Good v. Bear Canyon Ranch Ass'n*, 160 P.3d 251, 256 (Colo. App. 2007).

Contrary to defendants' view, this declaratory judgment action did not prejudice the rights of non-parties in violation of C.R.C.P. 57(j) and section 13-51-115, C.R.S. 2009. Plaintiffs did not seek, nor did the court issue, a ruling that would require non-parties to undertake any action, would limit the use of their properties, or would control or direct the use of their money. *Cf. Clubhouse*, 214 P.3d at 456-57 (joinder was required, in part, because the declaratory judgment directed the use of dues paid by non-parties).

Defendants note that, in framing their complaint, the owners asked the court to declare propositions that, if true, could

potentially affect the rights of non-parties. (For example, the owners asked the court to declare that "the Amended Covenants are the controlling document for the Owners" and that "the Amended Covenants have no mechanism for covenant enforcement.") But we see no prejudice: (1) the propositions represent a proposed line of reasoning and were not essential to the ultimate declaration that plaintiffs requested; (2) the propositions were not incorporated into the court's judgment[2]; and (3) even if they had been incorporated into the judgment, non-parties would not have been bound by the court's ruling. *Cf. Clubhouse*, 214 P.3d at 456-57 (joinder was required, in part, because the declaratory judgment required the court to construe a term that would affect the rights of non-parties).

Under the circumstances, we see no abuse of discretion.

III. Summary Judgment

Defendants also challenge the court's summary judgment. They contend that the court overlooked certain sources of their authority to both enforce the covenants and charge fees for this service.

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[2] Although the court agreed with defendants that the 2003 amendments were void, it expressly noted that this observation "has no impact on this ruling."

We review de novo. *See B.B. & C. Partnership v. Edelweiss Condominium Ass'n*, 218 P.3d 310, 315 (Colo. 2009) (interpretation of statutes and covenants is reviewed de novo); *Planned Pethood Plus, Inc. v. KeyCorp, Inc.*, 228 P.3d 262, 264 (Colo. App. 2010) (order granting summary judgment is reviewed de novo). And we conclude that the court ruled properly.

A. Enforcement Authority

We first explain why defendants lack enforcement authority.

By statute, a metropolitan district may exercise only the enforcement powers that are authorized in the declaration:

> The board of a metropolitan district has the power to furnish covenant enforcement and design review services within the district if:
>
> (I) The governing body of the applicable master association or similar body and the metropolitan district have entered into a contract to define the duties and responsibilities of each of the contracting parties, including the covenants that may be enforced by the district, and the covenant enforcement services of the district do not exceed the enforcement powers granted by the declaration, rules and regulations, or any similar document containing the covenants to be enforced; or

> (II) The declaration, rules and regulations, or any similar document containing the covenants to be enforced for the area within the metropolitan district name[s] the metropolitan district as the enforcement or design review entity.

§ 32-1-1004(8)(a), C.R.S. 2009.

Here, defendants were not named in the declaration. And we conclude that they received no enforcement authority by assignment. Our reasoning proceeds as follows:

1. Because Melody Homes was the declarant, we assume (without deciding) that it was the sort of "master association or similar body" that could contractually assign its enforcement authority.
2. Under article VII, section 6, of the declaration, Melody had significant enforcement authority as long as it owned property in the development.[3] But this authority ceased when Melody sold its last property.

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[3] This provision states: "During such time as Declarant owns any Lot, Declarant, or any authorized agent of it, may enforce, by self-help, any of the provision, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration, provided such self-help is preceded by notice and a hearing."

3. Melody sold its last property (and thus lost its right of enforcement) before it assigned any rights to defendants. Therefore, defendants received nothing under the quitclaim assignment.

To circumvent this line of reasoning, defendants assert that Melody enjoyed enforcement rights under article VII, section 5, of the declaration. This provision states:

> Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provision of this Declaration.

We conclude that, at the time of the assignment, Melody did not have any enforcement rights under section 5. We support this conclusion with three related observations:

1. As noted, Melody received significant enforcement powers under section 6. Therefore, it clearly was a "Person entitled to enforce the provision of this Declaration," within the meaning of section 5. But just as clearly, Melody lost its powers under section 6 when it sold its last property. And we see nothing in

section 5 that would, even by implication, extend the rights that Melody lost under the plain terms of the declaration.

2. Because Melody is the only entity that received express enforcement powers under the declaration, it is possible that section 5 was nullified when Melody sold its last property. (Under this view, there is no longer any "Person entitled to enforce the provision of this Declaration," within the meaning of section 5.)

3. Defendants assume that section 5 implicitly confers enforcement rights other than those expressly mentioned in the declaration. Even if this assumption is correct (an issue we need not decide), Melody was not empowered as defendants believe. Under the terms of section 5, any implicit right of enforcement would be limited in two ways: (1) it would permit only the filing of a lawsuit (and would not arguably authorize any type of self-help); and (2) it would belong only to those who own property in the development. Thus, at the time of the quitclaim assignment, Melody no longer had any implicit right of enforcement under section 5.

Defendants also suggest that Melody had a perpetual right of enforcement under article I, section 3 of the declaration.[4] We dismiss this suggestion. The general declaration of "mutual benefit" conveys no power of enforcement independent of those expressed in the declaration's specific enforcement provisions. *Cf. Massingill v. State Farm Mut. Auto. Ins. Co.*, 176 P.3d 816, 825 (Colo. App. 2007) ("It is a basic principle of contract interpretation that a more specific provision controls the effect of more general provisions in a contract."). We see nothing in this provision that would override the plain terms of article VII, section 6.

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[4] This section states: "Declarant, for itself, its successors and assigns, hereby declares that the Property shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall bind, be a charge upon and inure to the mutual benefit of: (a) the property (as hereinafter defined); (b) Declarant and its successors and assigns, and (c) all Persons having or acquiring any right, title or interest in the Property, or any Improvement thereon, and their heirs, personal representatives, successors or assigns. This Declaration shall be recorded in every county in which any portion of the Property (as hereinafter defined) is located."

B. Right to Charge Fees

Under section 32-1-1001(1)(j)(I), C.R.S. 2009, a metropolitan district board may "fix and from time to time . . . increase or decrease fees . . . for services, programs, or facilities *furnished by the special district*." (Emphasis added.) Because defendants lack authority to enforce the covenants, they also lack authority to charge fees for this service.

The judgment is affirmed.

JUDGE WEBB and JUDGE GABRIEL concur.