THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0158, The Cottages at Windchimes Condominium Association v. James Mullaney, the court on June 21, 2007, issued the following order:

The plaintiff, The Cottages at Windchimes Condominium Association (Windchimes), appeals an order of the trial court entering judgment against the defendant, James Mullaney, for his pro rata share of liability insurance for the common areas of the condominium. Windchimes argues that the district court: (1) exceeded its jurisdiction and erred in construing the condominium documents; (2) erred when it determined that Mullaney's units were never assessed and that the Windchimes' budget was based on 30 rather than 32 units; (3) erred in limiting both the amount and scope of Windchimes' recovery; and (4) erred in failing to award attorney's fees and costs to Windchimes. Mullaney, the owner of Units 31 and 32 of Windchimes, cross-appeals and argues that the trial court erred in failing to award him attorney's fees and in barring his testimony concerning Windchimes' motives in bringing this action. We affirm in part, reverse in part, and remand.

A condominium's legal documents are a contract that governs the legal rights between the association and property owners. Barclay Square Condo. Owners' Assoc. v. Grenier, 153 N.H. 514, 517 (2006). The interpretation of a contract is a question of law that we review de novo. Id.

In this case, Windchimes sought recovery of Mullaney's share of condominium common expenses due to his ownership of Units 31 and 32 and for attorney's fees incurred for their collection. In its order, the trial court appears to have found the condominium documents in conflict; it limited the relief granted to Windchimes to Mullaney's pro rata share of the liability insurance for the condominium common areas beginning January 1, 2005, until the date of its order.

In support of the trial court's order, Mullaney argues that Section 13, Paragraph A of the Declaration of the Cottages at the Windchimes Condominium creates an ambiguity that allowed the trial court to limit the relief awarded to Windchimes. We disagree. Section 13 is entitled "Special Provisions for Units 31 and 32." Paragraph A provides that because Units 31 and 32 predated the creation of the condominium, some of the provisions that apply to Units 1 through 30 do not affect or apply to Units 31 and 32. Paragraph A further provides: "The following provisions in this Section 13 apply specifically and only to Units 31 and 32. As to other provisions in the Declaration, such other

provisions not detailed below in this Section 13 apply to and affect equally Units 1 through 32. The provisions subsequently detailed in Section 13 apply to a limited common area "appurtenant to said Units" and to sewer/septic connections; they impose additional rather then fewer obligations upon the owners of Units 31 and 32. Accordingly, we conclude that the trial court erred when it limited the relief awarded to Windchimes. To the extent that Mullaney argues that his prior agreement with a condominium Declarant barred collection of the fee, RSA 356-B:46-a (Supp. 2006) prohibits a unit owner from withholding payments of assessments or making deductions or set-offs without first obtaining a determination from a court of competent jurisdiction that the assessment was unlawful.

Windchimes also contends that the trial court erred in denying its request for attorney's fees. We agree. The condominium by-laws provide: "In any proceeding arising out of any alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceeding, and such reasonable attorneys' fees as may be determined by the Court." Because Windchimes was the prevailing party, it is entitled to recover the costs of the proceedings and reasonable attorney's fees.

In his cross-appeal, Mullaney argues that the trial court erred in barring his testimony concerning the motives of Windchimes in bringing this action and in denying his request for attorney's fees. Given the foregoing analysis, we find no error in the trial court's ruling.

We reverse the order of the trial court in part and remand to allow calculation and entry of judgment for Windchimes and for an award of reasonable attorney's fees.

Affirmed in part; reversed in part and remanded.

DALIANIS, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk