UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1292

September Term, 2014

ELIZABETH JAZWINSKI

v.

WHITE SANDS CIVIC ASSOCIATION, INC.

Zarnoch,
Hotten,
Leahy,

JJ.

Opinion by Zarnoch, J.

Filed: July 8, 2015

This appeal involves the interpretation of a covenant relating to the assessment of road maintenance and construction fees within the Bancroft Subdivision in Calvert County. After a bench trial, the Circuit Court for Calvert County ruled against Appellant Elizabeth Jazwinski and issued a written declaratory judgment to Appellee White Sands Civic Association, Inc. ("White Sands"), which confirmed its right to assess and collect reasonable road maintenance fees. For the following reasons, we agree with the circuit court and affirm its judgment.

FACTS AND LEGAL PROCEEDINGS

Appellant Elizabeth Jazwinski's property is located at 1165 White Sands Drive, Lusby, Maryland ("the property"). The property was originally part of a 750 acre plot of undeveloped land purchased in 1936 by John Bancroft. In 1946, the land was transferred and subdivided by Bancroft, Inc., which created the Bancroft Subdivision. In 1953, the property was sold to E.M. Freeman and then transferred to White Sands Corporation C in 1954. On December 21, 1959, the property was sold by deed to Mr. and Mrs. Donald Helm.[1] The ownership of the property changed a few additional times before Jazwinski acquired it by deed on August 29, 1997. The deed associated with Jazwinski's property provides:

> The following covenants, conditions, and restrictions are hereby forever imposed upon and attached to the land hereinbefore conveyed and are intended to have the force and effect of covenants running with the land and binding the said grantees and their heirs and assigns . . . All roads and driveways within the property hereby conveyed are to remain private, to be used by the party of the second part and their invitees only. Road

[1] The relevant covenant is located in this deed.

> maintenance costs shall be prorated between property owners serviced, fronting on, or benefited by such roads.

The right to collect road maintenance and construction fees has also changed hands over the years since the subdivision was created. On May 27, 1977, the Estate of F.J. Chesley, the owner of the Bancroft subdivision, transferred the obligation to maintain the roads to White Sands. The Assignment stated:

> Whereas, [White Sands] desires the right to collect and to use all the future fees and assessments which were previously collected by the White Sands Corporation for the maintenance of roads and other common ways within the said development; and
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> Whereas, it is the mutual intention of [the Estate of F.J. Chesley] and [White Sands,] that [White Sands] shall acquire all rights and obligations of [the Estate of F.J. Chesley] to maintain or repair the roads and common ways in the said development.

Originally, the roads in the Bancroft subdivision were privately maintained, but in 1983, Calvert County assumed responsibility for maintaining most of the roads, including White Sands Drive. Some of the roads within the subdivision are still privately owned and maintained by White Sands, with the road maintenance fees being assessed against all lot owners within the subdivision. The amount of the fee is calculated and voted on by members of the Homeowners Association.[2]

On June 21, 2013, Jazwinski filed a Petition for Declaratory and Injunctive Relief.[3] The circuit court held a bench trial on June 9, 2014 and entered its order denying her petition on July 2, 2014. In its order, the circuit court found that "the intention of the

[2] The current annual fee is $155 for each property owner within the subdivision.

[3] Jazwinski conceded at oral argument before this Court that she was aware of the covenant's encumbrances on her property, so there is no issue regarding notice.

original contracting parties was to develop a subdivision and sell individual lots, thereby necessitating a road system to allow access to the lots." To achieve this goal, White Sands has the right to assess and collect road maintenance fees from Jazwinski. The circuit court found the language of the covenant to be ambiguous and considered extrinsic evidence to determine the parties' intent at the time the contract was formed. In doing so, the circuit court concluded that the parties intended for "road maintenance fees to be prorated between all lot owners since they would all benefit [from] the entire road system." The circuit court further found that the costs were reasonable because "road maintenance costs refers to the cost of maintaining the entire road system of the subdivision, including overhead activities related to and necessary for these activities" and that White Sands had "the authority to do what it is doing in the manner it is doing it."[4]

On August 21, 2014, Jazwinski filed her appeal with this Court. Additional facts will be provided below as necessary.

QUESTION PRESENTED[5]

Appellant presents two questions for our review, which we consolidated as follows:

Does the language in Jazwinski's deed give White Sands the authority to assess road maintenance and construction fees against Jazwinski?

[4] In its original order, the circuit court denied Jazwinski's Petition for Declaratory Judgment, but failed to enter a declaration in favor of White Sands. This error was cured once the circuit court filed an Amended Opinion and Order on August 6, 2014, which granted White Sands the right to "assess and collect reasonable road maintenance fees" from Jazwinski.

[5] Appellant's questions to this Court were:

(continued…)

For the following reasons, we agree with the Circuit Court for Calvert County and affirm its judgment.

STANDARD OF REVIEW

Pursuant to Md. Rule 8-131(c), we will "not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Since "[t]he interpretation of a covenant involves both the discovery of facts and the application of legal rules," we review the circuit court's interpretation of the covenant's language *de novo*. *Dumbarton Imp. Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 55 (2013).

DISCUSSION

Jazwinski contends that the circuit court erred by considering extrinsic evidence because the language of the covenant was not ambiguous. She further argues that White Sands' method of calculation for the road fees was unreasonable and created a form of double taxation. White Sands responds that the circuit court correctly found that the covenant was enforceable against Jazwinski and allowed the association to assess road maintenance fees for her property.

(…continued)

1. Under Maryland common law, does the language in Appellant Jazwinski's chain of title or deed give Appellee White Sands Civic Association the authority to assess road maintenance and construction fees against the Appellant?

2. Under Maryland law, does the language in Appellant Jazwinski's chain of title or deed give the Appellee the authority to assess and collect indirect and unrelated costs, including road construction costs, in the road maintenance fees charged to Appellant?

Maryland courts apply an objective approach to contract interpretation by looking at the written language of the agreement. Our task "is not to discern the actual mindset of the parties at the time of the agreement, but rather, to determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Dumbarton Imp. Ass'n, Inc.*, 434 Md. at 52 (Citation and quotations omitted). When interpreting a covenant, the plain language of the covenant "is the first source to which we must look in an effort to uncover the intent of the covenanting parties; if the language of the covenant is unambiguous, it is the only source to which we look, except to confirm the plain meaning of the covenant." *Id.* at 53 (Citation omitted).

A covenant is considered ambiguous "if its language is susceptible to multiple interpretations by a reasonable person." *Id.* A court can consult extrinsic evidence only "when the intent of the parties and the purpose of a restrictive covenant cannot be divined from the actual language of the covenant in question." *City of Bowie v. Mie Properties, Inc.*, 398 Md. 657, 681 (2007). According to the Court of Appeals, "[i]n the case of covenant interpretation, like that of other contracts, extrinsic evidence should answer the question: how would a reasonable person have understood the covenant language at the time it was made?" *Dumbarton Imp. Ass'n, Inc.*, 434 Md. at 59. The evidence should not contradict the language but should be used to explain the drafter's intent. *Id.*

Here, the circuit court concluded that the language was ambiguous. The relevant language of the covenant says: "All roads and driveways within the property hereby conveyed are to remain private, to be used by the party of the second part and their invitees only. Road maintenance costs shall be prorated between property owners serviced,

fronting on, or benefited by such roads." We agree that this language is ambiguous because it is unclear which roads are included and how the maintenance fees are to be assessed.

The covenant's language relating to "road maintenance" and "such roads" is open to multiple interpretations and as a result, extrinsic evidence is necessary to explain the intent of the drafters. The deed does not provide a definition of "road maintenance" to determine what services are covered by the phrase. Furthermore, the interpretation of the phrase "within the *property*" could mean either within only Jazwinski's property or within the whole subdivision itself. The statement that follows this phrase creates additional ambiguity because it states that maintenance costs will be prorated between all property owners that are "serviced, fronting on, or benefited by *such roads*." (Emphasis added). If the previous statement only included roads and driveways contained solely within Jazwinski's property, then the statement relating to a prorated amount of costs between property owners would be superfluous.

The circuit court relied on "testimony regarding other lot owners' deeds within the community, and the expert testimony that White Sands Corporation intended to create a subdivision, even though a road system was not yet in existence at the time of the Helm Deed." Because the language is ambiguous, the circuit court did not err in reviewing extrinsic evidence. Moreover, after reviewing the testimony presented to the circuit court, we agree with the circuit court's conclusion that the ambiguity "in the provision at hand was intentional given the status of the future subdivision at that time." Growth and development were anticipated at the time of creation. It is clear that when the subdivision was created with the purpose of dividing the 750 acres into residential lots, roads would be

constructed to allow for ingress and egress to these residences. At the time the deed was drawn up, the subdivision was not completed. We agree with the circuit court that it was

> clear given the historical context of the White Sands subdivision, that the original parties intended to create a subdivision, and that a road system would necessarily be developed in order to access each respective lot, and therefore, the parties intended for road maintenance costs to be prorated between all lot owners since they would all benefit by the entire road system.

Jazwinski argues that the term "serviced by" clearly states that "a given property may be serviced by a road that it does not front on." Additionally, she acknowledges that "a property owner can benefit from a road, without fronting on, or being serviced by that same road." The road system within the subdivision was created to benefit all of the properties within the subdivision. Jazwinski is clearly benefitting from these private roads and it is disingenuous for her to argue otherwise. Even if she does not make regular use of the roads, her property value is tied to the subdivision. Upon any future sale or conveyance of her property, she will clearly benefit from the amenities provided for by White Sands.

Furthermore, her argument that the transfer of ownership of White Sands Drive to the County voids the covenant lacks merit. A covenant can be voided when there is a "radical" change of circumstances. When we look to the purpose of the covenant, the circuit court's finding "is generally not disturbed in the absence of clear error." *Dumbarton Imp. Ass'n, Inc.*, 434 Md. at 63 (Citation omitted). If there has been a change in circumstances that "prevents the covenant from furthering the purpose for which it was formed," the covenant could be considered void. *Id.*

Here, the purpose of the covenant was to ensure that the roads within the subdivision would be properly maintained. The transfer of ownership to the County does not frustrate

the purpose of the covenant. The evidence presented to the circuit court showed that even the County owned roads within the subdivision still required private maintenance:

> Q: Yet the total for the service, private and public roads, is all aggregated into that same $1,466?
>
> A: Yes, because we still have to maintain the roads even though they belong to the County. There is still certain maintenance that we have to do.
>
> Q: Why do you have to maintain County roads?
>
> A: Because would you like to live in it if you had to walk down amongst a muck of trash every day? That's why we work so hard to keep White Sands Drive and Pine Square and those kinds of things free of trash and litter and keep them mowed sufficiently, because the County can come in about once a year. Other than that people would have to live in filth.

The covenant was created to prorate the maintenance costs between all property owners and all of the roads within the subdivision because all property owners receive a benefit from the road system. It is apparent that even though the County owns some of the roads, there is still a benefit provided by White Sands.

In situations where the character of the neighborhood has changed drastically, courts have invalidated covenants that restrict property uses. *See Whitmarsh v. Richmond*, 179 Md. 523, 529 (1941) (held a covenant unenforceable because the restriction to residential use was no longer feasible after the area turned into a commercial district). This is not the situation here as the drafters developed a residential subdivision and created the covenant to support that plan. Since the purpose of the covenant was to prorate the maintenance costs between all property owners, it remains valid and unaffected by the transfer of White

Sands Drive to County ownership. Therefore, the covenant is still enforceable against Jazwinski.

Additionally, we note that the methodology used by White Sands to determine the amount to be paid by each property owner is not unreasonable. Typically, "courts will not interfere in the internal affairs of a corporation." *Black v. Fox Hills N. Cmty. Ass'n, Inc.*, 90 Md. App. 75, 81 (1992) (Citation omitted). The application of the business judgment rule "precludes judicial review of a legitimate business decision of an organization, absent fraud or bad faith." *Id.* at 82. Therefore, the members of Board of Directors for White Sands are only expected to "act reasonably and in good faith in carrying out their duties." *Id.*

Jazwinski contends that the funds are being misused by the Board, but only alleges that the calculation to determine the amount charged to her is arbitrary. Testimony provided by Mattie Scicchitano, the community manager for White Sands, described the association's method for calculating the road maintenance fees:

> Q: Would you tell the Court how you, and by you I mean White Sands Civic Association, arrived at that $155 figure?
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> A: Well, it was actually developed back in 2009 when we first went to billing as a split. We took the expenses that the Association has and categorized them as either directly or indirectly related to roads or not related to roads at all. Those that were directly or indirectly related to roads were added up, and we came up with a percentage. The annual billing for the entire Association is 180 a year. We took that percentage and applied it to the annual billing, and that's how we got what belonged to roads and what belonged to general.

The directly related costs included "mowing, litter pick-up, snow removal, legal fees, and electricity." Further testimony from Scicchitano provided that every member of the

community was billed the same amount and that Jazwinski was afforded the opportunity to vote on these fees:

> Q: Now, with regard to voting on this – on the assessment itself, do persons who have Ms. – I'm going to use Ms. Jazwinski's type of covenants, do they get to vote on this budget also even though they are not members, or do they not get to vote on it?
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> A: As long as they have paid up their mandatory dues, they are allowed to vote.
>
> Q: Okay. Now, when you say their mandatory dues, do you mean if they have paid up their roads maintenance costs that you assess to them, are they permitted to vote?
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> A: Yes.
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> . . .
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> Q: So it would be fair to say that if the persons that were in that – if the persons who hold those types of covenants were unhappy with the allocations or the amount, they can certainly – they can certainly vote in such a way as to disapprove it?
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> A: Yes
>
> Q: Okay. And you have indicated I think previously that that hasn't happened to date?
> A: Correct.
>
> Q: But they certainly would have the power to do so?
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> A: Correct.
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> . . .
>
> Q: Okay. And just to clarify, the Association items which are determined to have absolutely no relationship to the roads directly or indirectly, those are not billed to persons with Ms. Jazwinski's type of covenants; is that correct?
>
> A: Correct.

From this testimony, it is clear that the Board gave Jazwinski the opportunity to voice her concerns about the road maintenance fees and she failed to make use of this privilege. Even if the methodology may appear to be peculiar, we "will not second-guess the actions of directors unless it appears that they are the result of fraud, dishonesty or incompetence." *Black*, 90 Md. App. at 82 (quoting *Papalexiou v. Tower West Condominium,* 401 A.2d 280, 285-286 (N.J. Super. Ct. Ch. Div. 1979)). Without more evidence, we cannot conclude that the White Sands Board of Directors was acting in an arbitrary and capricious manner to allow this Court to second-guess its decisions on the allocation of its funds.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.