Circuit Court for Garrett County
Case No. 11-C-15-014069

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1353

September Term, 2016

LEMONJUICE CAPITAL PARTNERS I, LLC, *et al.*

v.

LAKEWOOD RESORTS COUNCIL OF OWNERS, INC., *et al.*

Gould,
Ripken,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: August 3, 2021

Lemonjuice Capital Partners I, LLC, Lemonjuice Biz, LLC, Lemonjuice Maryland Properties, Inc., and Alexander Krakovsky (collectively "Lemonjuice")[1] filed a complaint against Lakewood Resorts Council of Owners, Inc. ("Lakewood Resorts"), a time-share in which Lemonjuice owns time intervals. Lemonjuice sought declaratory and injunctive relief relating to the management and governance of the time-share. Lemonjuice appeals an order of the Circuit Court for Garrett County granting Lakewood Resorts' motion for summary judgment on Lemonjuice's twelve-count second amended complaint and denying Lemonjuice's cross-motion for partial summary judgment. Lemonjuice appeals the entry of summary judgment in favor of Lakewood Resorts specifically as to counts six and eleven and the denial of its own motion for partial summary judgment as to count eleven. This appeal was stayed during the parties' participation in this Court's alternative dispute resolution program, during which the parties signed a settlement agreement. Lemonjuice initiated a separate suit in the circuit court against Lakewood Resorts regarding the settlement agreement and asserting additional claims. Subsequently, this Court terminated the alternative dispute resolution process. Lakewood Resorts filed a motion to dismiss this appeal as moot. Lemonjuice opposed the motion to dismiss.

We shall deny Lakewood Resorts' motion to dismiss, reverse the circuit court's entry of summary judgment for Lakewood Resorts as to count eleven of Lemonjuice's second amended complaint, affirm the entry of summary judgment as to count six, and affirm the denial of Lemonjuice's motion for partial summary judgment.

[1] Alexander Krakovsky is the managing member of Lemonjuice Capital Partners I, LLC. Lemonjuice Capital Partners I, LLC owns the time-share unit at issue.

FACTUAL AND PROCEDURAL BACKGROUND

Lakewood Resorts is a time-share established in 1985 by the Lakewood Resorts Time-Share Instrument ("Time-Share Instrument") and located on Deep Creek Lake in Garrett County. The time-share property consists of twelve units and shared amenities including a swimming pool, tennis courts, and boat slips. Ownership of each unit is divided into fifty-two weekly time intervals. Time interval owners have access to the unit and shared amenities only during their time intervals.

The time-share operates as a council of owners, in which each time interval owner is a member. Interval owners are entitled to one vote per interval at meetings of the time-share. The Time-Share Instrument reserves one time interval from each unit as a maintenance week. Accordingly, each unit consists of fifty-one voting time intervals. The council primarily acts through an elected board of directors. Among other duties, the board collects assessments from owners for the upkeep of common property.

Units 11 and 12 were added by an expansion project and instrument in 1989. Land adjoining Unit 12, which was initially intended for expansion as Units 13–16 in the time-share, was sold and developed as the Lakewood Village Condominium ("Lakewood Condominium"). Sharon Blank ("Blank") purchased Unit 12 in 1996. Blank entered into an agreement ("Blank Agreement") with Lakewood Resorts and the development corporation owning the Unit 12 time intervals. The Blank Agreement established Unit 12 as a "Whole-Time Unit" for which "[t]here shall be no maintenance week." As a result, Blank would pay a monthly assessment "equal to the assessment paid by the Owners of the Units A–D (13–16)" of Lakewood Condominium instead of the assessment set forth in the

Time-Share Instrument. The Blank Agreement also ensured that Blank would have the same right for a full fifty-two weeks as Lakewood Resorts interval owners have to use the dock slips, pool, and tennis courts. The Blank Agreement stated that Lakewood Resorts "agrees to make a good faith effort in assisting the other parties to this Agreement generally and Blank specifically in removing Unit No. 12 from being subjected to [the Time-Share] Instrument and having it instead subjected to [the Lakewood Condominium] Declaration." The Agreement stated that its provisions benefiting the owner of Unit 12 "run[] with the land."

Lemonjuice purchased Unit 12 from Blank in 2013. According to Lemonjuice, Lakewood Resorts did not permit Lemonjuice to vote the time intervals corresponding to Unit 12 at the 2013, 2014, and 2015 annual meetings.

Lemonjuice filed suit. Count six of the second amended complaint alleges that Lakewood Resorts failed to register Lemonjuice as an owner for owners' meetings. Count eleven seeks, inter alia, a permanent injunction prohibiting Lakewood Resorts from refusing to count all of Lemonjuice's properly cast votes, an order for Lakewood Resorts to register Lemonjuice's voting intervals at owners' meetings, and other relief as may be just and proper. Lakewood Resorts moved for summary judgment as to all claims, and Lemonjuice cross-claimed for partial summary judgment. Lakewood Resorts' motion for summary judgment asserted that the Blank Agreement declared Unit 12 "separate and distinct" from the Time-Share Instrument, and as a result, Unit 12 could no longer vote in the council of owners.

Following a hearing on the motion, the circuit court denied Lemonjuice's motion for partial summary judgment and granted Lakewood Resorts' motion for summary judgment. During its oral ruling addressing the counts at issue here, the court stated:

> The Count 6, failure to, I guess, allow the owner of Unit 12 to vote in any proceedings, the interest of the owner of Unit 12 was taken subject to an agreement entered into by Lakewood Resorts and the then owner, Ms. Blank, in [1996]. The fact that that new owner in 2013, failed to investigate or do due diligence to determine exactly what conditions were placed on his ownership interest, I am dismissing Count 6.
>
> * * *
>
> Injunctive relief is contrary to what [Lemonjuice] might say is a very extraordinary request and certainly not warranted by any of the actions of the Council [of Owners], which none of the pleadings has alleged that they've done anything that is in any way illegal. It's been a Council that has been in existence over 30 years. It's never been challenged on anything and has been functioning properly throughout its life. I'm dismissing Count 11.

Lemonjuice filed this timely appeal.

During the pendency of the appeal, Lemonjuice filed a second suit against Lakewood Resorts relating to thirty-two additional time-share intervals owned by Lemonjuice. This Court stayed the appeal pending the parties' attempted resolution through this Court's alternative dispute resolution services. The parties ultimately executed a settlement agreement and release. Disputes arose regarding performance of the settlement agreement, and Lemonjuice brought a separate suit to enforce the settlement agreement in circuit court. Lakewood Resorts filed a motion to dismiss this appeal as moot.

ISSUES PRESENTED FOR REVIEW

This appeal presents the following issues:[2]

I. Whether this Court should grant Lakewood Resort's motion to dismiss the appeal as moot?

II. Whether the circuit court erred in granting Lakewood Resort's motion for summary judgment as to counts six and eleven?

III. Whether the circuit court erred in denying Lemonjuice's partial motion for summary judgment as to count eleven?

As we explain below, we shall first deny Lakewood Resort's motion to dismiss. Second, we shall reverse the circuit court's entry of summary judgment for Lakewood Resorts as to count eleven and affirm the entry of summary judgment as to count six. Third, we shall affirm the circuit court's denial of Lemonjuice's partial motion for summary judgment.

DISCUSSION

I. LAKEWOOD RESORT'S MOTION TO DISMISS IS DENIED.

Lakewood Resorts argues that this appeal should be dismissed as moot based on the parties' signed settlement agreement. *See* Md. Rule 8-602(c)(8). "As a general rule, courts

[2] Lemonjuice phrased the issues as follows:

1. Whether the Circuit Court erred by Denying Appellee's Motion for Partial Summary Judgment on Count II and by Granting Appellants' Motion for Summary Judgment and Dismissing Counts 6 and 11 of the Complaint in which the Appellants seek an order compelling the Appellee time share to allow them to vote the 51 time share intervals they hold in Unit 12 in the Appellee time share[?]
2. Whether the owner of a time share interval can lose their voting rights by failing to exercise the right to vote in the time share?
3. Whether the owner of a "whole time unit" in a time share losses their right to vote the time share intervals that make up the "whole time unit"[?]

do not entertain moot controversies." *State v. Dixon*, 230 Md. App. 273, 277 (2016). "A case is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy that the court can provide." *State v. Neiswanger Mgmt. Servs., LLC*, 457 Md. 441, 455 (2018) (internal quotation marks omitted) (quoting *Frazier v. Castle Ford, Ltd.*, 430 Md. 144, 162–63 (2013)). "The party seeking to prove mootness carries a heavy burden." *Id.* at 456 (internal quotation marks omitted) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs.*, 528 U.S. 167, 189 (2000)) (holding that appellee failed to demonstrate mootness given the "paucity of the information" about the relevant factual circumstances in the record before the Court). Where the question of mootness involves contested, collateral issues, "the best place to resolve [the] question is the Circuit Court." *Id.* at 457.

Lakewood Resorts did not meet its heavy burden to demonstrate that the issues raised on appeal are moot. Mootness of the appeal depends upon the enforceability of the settlement agreement and release, which has become intertwined with the parties' ongoing dispute and the factual allegations at issue in Lemonjuice's latest complaint in the circuit court. In these circumstances, absent Lemonjuice's consent to dismiss the appeal, we proceed to consider the merits of the appeal. Remaining questions of mootness and the validity of the settlement agreement—which we do not decide—may be resolved by the circuit court. We shall deny Lakewood Resorts' motion to dismiss.

II. THE CIRCUIT COURT ERRED IN GRANTING LAKEWOOD RESORT'S MOTION FOR SUMMARY JUDGMENT AS TO COUNT ELEVEN.

Lemonjuice argues that the Time-Share Instrument entitles the owner of Unit 12 to vote fifty-one time intervals during annual meetings. Lakewood Resorts argues that the circuit court properly granted summary judgment because (1) the Blank Agreement terminated the voting rights in Unit 12 and (2) the relevant counts in Lemonjuice's second amended complaint, counts six and eleven, fail to state a claim upon which relief may be granted.

We review the grant of summary judgment to determine (1) whether a dispute of material fact exists and (2) whether the trial court was correct as a matter of law. *Thacker v. City of Hyattsville*, 135 Md. App. 268, 285 (2000). "We construe the factual record in the light most favorable to the non-movants." *Newell v. Runnels*, 407 Md. 578, 607 (2009). "Contract interpretation is undoubtedly a question of law that may be properly determined on summary judgment." *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 78 (2006). A court may grant summary judgment based on an interpretation of an unambiguous contract or where a contract's ambiguity can be definitively resolved with extrinsic evidence. *Cochran v. Norkunas*, 398 Md. 1, 16 n.8 (2007).

In determining whether allegations are sufficient to state a claim, the reviewing court "must view all well-pleaded facts and the inferences from those facts in a light most favorable to the plaintiff." *Lloyd v. General Motors Corp.*, 397 Md. 108, 122 (2007). We review the legal sufficiency of the allegations in the complaint to determine "the plaintiff's right to bring the action." *Id.* at 121–22.

A. The Blank Agreement Did Not Modify the Voting Rights in Unit 12.

First, the Blank Agreement is unambiguous and did not affect the voting rights in Unit 12. We interpret the Time-Share Instrument and the Blank Agreement according to the law of objective interpretation. *Long v. State*, 371 Md. 72, 84 (2002). Under the objective test, "[t]he written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract[.]" *Id.* at 84. This Court gives effect to the plain meaning of contract language. *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 417 (2014).

The relevant provisions of the Time-Share Instrument entitle the owner of Unit 12 to vote fifty-one time intervals. The Time-Share Instrument states in Article 7:

> [T]he owner of each time interval will . . . have one vote at meetings of the Council. However, the total number of votes entitled to be cast at such meetings shall increase by fifty-one for each additional unit added to the Project as set forth in Article 8.

Article 8, subsection D states: "After any expansion, each time interval in the Project shall be entitled to one vote at meetings of the Council of Owners." Once a unit is added, it "shall not be withdrawn from the Project and the Project may not terminate except as herein provided or except as set forth in Section 108(c) of the Maryland Real Estate Time-Sharing Act." Unit 12 was added by an expansion instrument and represents fifty-one voting time intervals.

The Blank Agreement is unambiguous. It does not terminate or alter the voting rights of Unit 12. In fact, the Blank Agreement is entirely silent on voting rights. Instead, it discusses the assessment to be paid by Blank in recognition that, as a "Whole-Time

Owner," Blank would occupy the unit year-round. It states: "Unit 12 is considered to be 52 weeks and to have the same rights as the cumulative owners of the other units have" regarding access to amenities, "except that this right shall continue for a full 52 weeks as this unit has no maintenance week." The Blank Agreement acknowledges that Unit 12 remains subject to the Time-Share Instrument. In the Blank Agreement, Lakewood Resorts provided that it would make a good faith effort to assist in "removing Unit No. 12 from being subjected to said Instrument[.]" Lakewood Resorts agrees that Unit 12 has not been removed and remains subject to the Time-Share Instrument.

Lakewood Resorts argues that the Blank Agreement nonetheless made Unit 12 separate and distinct, such that its time-share voting rights were extinguished. This argument has no basis in the text of the Agreement. Lakewood Resorts contends this feature of the Agreement is based in the intent of then-owner Blank, who "was never afforded separate votes for each week of Unit 12" in the seventeen years of her ownership. Because the text of the Agreement is unambiguous, we do not consider extrinsic evidence as to the parties' intent. *See Long*, 371 Md. at 84. The circuit court erred in relying on the Blank Agreement to conclude that Unit 12 does not have time-share voting rights.[3]

[3] Lakewood Resorts also argued in opposition to Lemonjuice's motion that Lemonjuice's claims were time-barred and that Blank abandoned the voting rights in Unit 12. The circuit court did not address these arguments, and Lakewood Resorts did not renew them on appeal. We do not consider these arguments because "[i]n appeals from grants of summary judgment, Maryland appellate courts, as a general rule, will consider only the grounds upon which the [trial] court relied in granting summary judgment." *Ross v. State Bd. of Elections*, 387 Md. 649, 659 (2005).

B. Injunctive Relief Is Available to Secure Time-Share Voting Rights.

Second, and relatedly, the circuit court erred in concluding that Lemonjuice failed to state a claim upon which relief may be granted. The circuit court ruled that injunctive relief was not appropriate, generally, because "none of the pleadings [have] alleged that [Lakewood Resorts] [has] done anything that is in any way illegal." We construe this statement as a finding that Lemonjuice failed to state a claim upon which relief may be granted. On appeal, Lakewood Resorts further argues that count eleven does not allege sufficiently egregious conduct to warrant injunctive relief and that count six does not contain a separate prayer for relief. We do not agree that Lemonjuice's allegations in count eleven concerning the time-share voting rights fail to state a claim, and we conclude that injunctive relief is available to protect time-sharing voting rights established in a time-share instrument. However, we agree that count six did not contain a separate prayer for relief.

1. Count eleven sufficiently states a claim upon which relief may be granted.

The Maryland Rules require that "[a] pleading shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief or ground of defense."

We briefly note that Lakewood Resorts' statute of limitation defense presumes that a cause of action arose during Blank's ownership of Unit 12, namely that she was prohibited from voting in breach of the Time Share Instrument granting voting rights to owners. However, the record does not suggest that she was prohibited from voting. Rather, according to Lakewood Resorts' affidavit, Blank "never voted or attempted to use the interval week votes" in Unit 12. There being no argument that a breach occurred, a statute of limitations defense is baseless.

Md. Rule 2-303. "A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought." Md. Rule 2-305.

An injunction is an order "commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience." *El Bey v. Moorish Sci. Temple, Inc.*, 362 Md. 339, 353 (2001) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 394 (2000)). "[I]njunctive relief is a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs." *Id.* (internal quotation marks and italics removed) (quoting *Colendrea*, 361 Md. at 394). A permanent or final injunction is granted after a determination on the merits. *Id.* at 354. To obtain a permanent injunction, a party must demonstrate "that it will sustain substantial and irreparable injury as a result of the alleged wrongful conduct." *Id.* at 355. "[I]rreparable injury is suffered whenever monetary damages are difficult to ascertain or are otherwise inadequate." *Id.* (quoting *Maryland-Nat'l Cap. Park and Plan. Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 615 (1978)). An injury may still be substantial even if it is not very great. *Id.*

Injunctive relief is available to vindicate time-share voting rights. Indeed, under Maryland Code, Real Property Article ("RP") § 11A-125(c) (2015 Repl.), a person adversely affected by a failure to comply with a provision of a time-share instrument has a

right to "appropriate relief."[4] The second amended complaint alleges that Lakewood Resorts failed to count Lemonjuice's votes at multiple meetings and, in 2015, refused to issue ballots to Lemonjuice in contravention of the time-share instrument and governing documents. As discussed in Section II, the Time-Share Instrument and bylaws create voting rights in Unit 12. Count eleven seeks "an injunction prohibiting [Lakewood Resorts] from refusing to count all of [Lemonjuice's] votes (cast properly on behalf of [Lemonjuice's] intervals) . . . ." Without the ability to vote, Lemonjuice and future owners of Unit 12 are denied participation in the election of the Council's board of directors, which is responsible for the management and upkeep of common property, and in other matters requiring member approval, such as levying of special assessments. This harm fits within the class of irreparable harm: it is "difficult," if not impossible, "to ascertain" monetary damages for this alleged injury. An appropriately tailored injunction could, if warranted upon further development of the record, ensure that Lemonjuice is allowed to vote the Unit 12 time intervals. *See* Md. Rule 15-502(e) (requiring that an order granting an injunction "describe in reasonable detail . . . the act sought to be mandated or prohibited."). The circuit court

[4] A similar provision in RP § 11-113(c) allows condominium unit owners or the council of unit owners to sue a unit owner who "fails to comply with [Title 11], the [condominium] declaration, or bylaws, or a decision rendered pursuant to this section" "for damages caused by the failure or for injunctive relief, or both[.]" Additionally, RP § 11-119 permits a lawsuit against the condominium council of unit owners or against the condominium unit owners as a whole.

may also consider Lemonjuice's request for "other and further relief as may be just and proper."[5]

Because the circuit court erred in concluding that the Blank Agreement terminated the voting rights of Unit 12 and because injunctive relief is available to protect time-share voting rights, we shall reverse the circuit court's entry of summary judgment on Lemonjuice's claim for injunctive relief in count eleven.

2. Count six does not contain a separate request for relief.

As Lakewood Resorts points out, Lemonjuice's count six does not contain a distinct request for relief as required by Md. Rule 2-305. Rather, count six simply alleges harm. Because there is no specific request for relief in count six, the circuit court did not err in entering summary judgment on this count. We shall affirm the circuit court's entry of summary judgment for Lakewood Resorts as to count six of Lemonjuice's second amended complaint.

III. THE CIRCUIT COURT DID NOT ERR IN DENYING LEMONJUICE'S MOTION FOR PARTIAL SUMMARY JUDGMENT.

Lemonjuice also appeals from the circuit court's denial of its motion for partial summary judgment as to its request for a permanent injunction prohibiting Lakewood Resorts from refusing to count its votes. The circuit court denied Lemonjuice's motion

[5] Lakewood Resorts points out that Lemonjuice appeals only counts six and eleven, seemingly abandoning a request in count nine that the court "find and declare" that "[Lakewood Resorts] must count all votes properly cast on behalf of [Lemonjuice's] intervals." Lakewood Resorts is correct that Lemonjuice focuses its arguments on injunctive relief, but the circuit court is not foreclosed from considering declaratory relief based on count eleven's request for "other and further relief as may be just and proper."

because it found a genuine dispute of material fact related to the nature of the certified documents and affidavits attached to Lemonjuice's motion. The court also impliedly found, in its grant of Lakewood Resort's motion, that Lemonjuice had no basis for relief as a matter of law. As we explain below, although we hold that the Blank Agreement does not terminate the voting rights in Unit 12, we shall nonetheless affirm the circuit court's denial of Lemonjuice's motion for summary judgment and remand for further proceedings in accordance with the previous sections.

A denial of summary judgment "involves not only pure legal questions but also an exercise of discretion as to whether the decision should be postponed until it can be supported by a complete factual record[.]" *Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 29 (1980). Trial courts "possess discretion to refuse to pass upon, as well as discretion affirmatively to deny, a summary judgment request in favor of a full hearing on the merits[.]" *Id.* at 27–28. "[A]bsent clear abuse . . . , the manner in which this discretion is exercised will not be disturbed." *Id.* at 29.

Even though the circuit court erred in interpreting the Blank Agreement, we will not overturn its denial of Lemonjuice's motion for summary judgment. A permanent injunction may only issue upon a determination on the merits. *El Bey*, 362 Md. at 354. Lakewood Resorts appears to not contest the validity of the Time-Share Instrument and other documents that Lemonjuice relies on to establish Unit 12's voting rights on appeal. Nonetheless, further development of the record may be necessary to determine whether to grant Lemonjuice's requested injunctive relief and, if so, how to appropriately tailor that relief. *See id.* at 357 ("To grant a permanent injunction, there must be evidence adduced

that the party seeking the injunction will suffer irreparable harm without its issuance."). Additionally, the circuit court may find it necessary to address Lakewood Resorts' contention of mootness before reaching the merits of Lemonjuice's requested relief.

LAKEWOOD RESORT'S MOTION TO DISMISS THE APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY REVERSED IN PART AND AFFIRMED IN PART. COSTS TO BE PAID BY APPELLEE.