STATE OF MICHIGAN

COURT OF APPEALS

HUNTERS WOODS SITE CONDOMINIUM ASSOCIATION, INC., Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED May 24, 2011
v HOMES OF HUNTERS WOODS CONDOMINIUM ASSOCIATION, INC., Defendant/Counter-Plaintiff-Appellee.	No. 296001 Ottawa Circuit Court LC No. 08-061390-CH

HUNTERS WOODS SITE CONDOMINIUM ASSOCIATION, INC., Plaintiff/Counter-Defendant-Appellee,	
v HOMES OF HUNTERS WOODS CONDOMINIUM ASSOCIATION, INC., Defendant/Counter-Plaintiff-Appellant.	No. 296989 Ottawa Circuit Court LC No. 08-061390-CH

Before: HOEKSTRA, P.J., and MURRAY and M. J. KELLY, JJ.

PER CURIAM.

In this dispute between condominium associations within a phased development, plaintiff Hunters Woods Site Condominium Association, Inc. appeals as of right the trial court's judgment entered in favor of defendant Homes of Hunters Woods Condominium Association, Inc., after a bench trial. Defendant appeals as of right the trial court's subsequent order denying its motion for sanctions. Because we conclude that there were no errors warranting relief, we affirm.

Plaintiff first takes exception to the trial court's ruling that upheld an indemnity provision in defendant's recreational facilities rules and regulations. We review a trial court's factual findings following a bench trial for clear error, but review de novo its legal conclusions. *Villadsen v Mason Co Rd Comm*, 268 Mich App 287, 291-292; 706 NW2d 897 (2005). "A finding is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.* at 292. We also review de novo, as questions of law, the proper interpretation of statutes as well as the relevant condominium documents. *In re Rudell Estate*, 286 Mich App 391, 402-403; 780 NW2d 884 (2009).

MCL 559.153 provides, in pertinent part, that the "administration of a condominium project shall be governed by bylaws recorded as part of the master deed, or as provided in the master deed." A condominium association has an implied power to adopt reasonable rules to govern the use of common property except as limited by statute or the condominium documents. See 2 Restatement Property (Servitudes), 3d, § 6.7(1), p 140. Nevertheless, a condominium association must act reasonably in administering the condominium project. *Cohan v Riverside Park Place Condo Ass'n, Inc*, 123 Mich App 743, 746-748; 333 NW2d 574 (1983).

Defendant's master deed gives it broad authority to administer, operate, manage and maintain the Homes of Hunters Woods Condominium: "The Board shall have all powers and duties necessary for the administration of the affairs of the Condominium and may do all things which are not prohibited by law or the Condominium Documents." Defendant's master deed also provides that "the Recreational Facilities shall be a General Common Element and shall be owned and administered by [defendant] but subject to the rights of third parties as set forth herein."

In this case, defendant's board clearly acted within the scope of its authority when it promulgated rules and regulations regarding the recreational facilities. The trial court correctly recognized the general principle that a condominium board "has a duty and the authority to manage the common elements of the traditional condominium project, including the recreational facilities," and properly concluded that "requiring all users to sign an indemnity agreement [was] reasonable." The indemnity provision essentially provides that anyone who uses the recreational facilities does so at their own risk, that defendant and its agents do not "assume responsibility for any occurrence, accident or injury in connection with such use," and that anyone who uses the recreational facilities agrees not to make any claims against defendant or its agents for "any loss of life, personal injury or damage to or loss of personal property, sustained as a result of, or in connection with any such use of the recreational areas." There does not appear to be anything unreasonable or onerous about the terms of the indemnity provision. Moreover, plaintiff on appeal makes no argument that the indemnity clause is unreasonable. Notably, the record suggests that plaintiff's members held a similar view, where 12 of plaintiff's members obtained recreational facilities memberships in 2008, and all 16 members did so in 2009. We conclude that the indemnity provision within defendant's recreational facilities rules and regulations was a reasonable exercise of defendant's rulemaking authority. See *Cohan*, 123 Mich App at 746-748.

On appeal, plaintiff essentially argues that defendant's recreational facilities rules and regulations should not apply to its members. Plaintiff's arguments ignore the fact that the relevant provision of defendant's bylaws gives it the authority to promulgate the rules at issue. It is also noteworthy that defendant's own members had to agree to a similar indemnity provision

as set forth in the recreational facilities rules and regulations. We reject plaintiff's attempt to isolate certain portions of defendant's condominium documents to advance its arguments that the indemnity clause is an infringement on its member's rights to use the recreational facilities. We further reject plaintiff's claim that the indemnity provision was an amendment to defendant's bylaws. The indemnity provision does not change an existing structural law, as an amendment does, but it acts as a tool to manage the recreational facilities. *Meadow Bridge Condo Ass'n v Bosca*, 187 Mich App 280, 282; 466 NW2d 303 (1990). We also reject plaintiff's assertion that defendant compelled plaintiff's members to enter into a "surety agreement." The indemnity provision is plainly not a surety agreement. See *Will H Hall & Son, Inc v Ace Masonry Constr, Inc*, 260 Mich App 222, 228; 677 NW2d 51 (2003).

Additionally, plaintiff argues that the indemnity provision infringes on its members' easement rights to use the recreational facilities. An easement is "a right to use the land burdened by the easement rather than a right to occupy and use the land as an owner." *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378; 699 NW2d 272 (2005). An easement is a limited property interest, which is confined, generally, to a specific purpose. *Id.* at 378-379. Defendant's master deed does provide an easement for plaintiff in order to use the recreational facilities: "An easement is hereby granted in favor of [plaintiff] and others so authorized by [defendant], over and across the Project as is necessary to provide such persons with the right to utilize the Recreational Facilities." But this easement is confined to the specific purpose to permit plaintiff's members to walk through defendant's condominium project to access to the recreational facilities. The easement rights are separate from the use of the recreational facilities themselves and the indemnity provision at issue does not purport to limit that easement.

Next, plaintiff asserts that the trial court erroneously held that its master deed granted defendant an easement to withdraw water for the irrigation system. "The extent of a party's rights under an easement is a question of fact, which this Court reviews for clear error." *Blackhawk Dev Corp v Dexter Village*, 473 Mich 33, 40; 700 NW2d 364 (2005).

To create an express easement, there must be language in a writing that manifests a clear intent to create a servitude. *Forge v Smith*, 458 Mich 198, 205; 580 NW2d 876 (1998). "Any ambiguities are resolved in favor of use of the land free of easements." *Id.* Nevertheless, the intent to establish an easement must be manifest:

> "The intent to grant an easement, however, must be so manifest on the face of the instrument that no other construction can be placed on it. Thus, to create an easement by express grant, there must be a writing containing plain and direct language evincing the grantor's intent to create a right in the nature of an easement rather than a license." [*Id.* at 205 n 17 (quotation omitted).]

Plaintiff's master deed creates a nonexclusive perpetual easement in favor of defendant and the condominium project administered by defendant for "[t]he Drainage Easement and other utility easements depicted on the Condominium Subdivision Plan, and other utilities which may be located within any Common Elements." Both master deeds define "drainage easement" as "the drainage system, retention ponds, easements and other related areas as depicted upon the Subdivision Plan." The site plan depicts two "wet ponds," neither of which are designated as retention (or detention) ponds, and an area designated as "drainage detention pond (dry)." At

trial, the developer explained that the original development designated a "dry pond"; however, he decided to change it to a "wet pond" that would be used in connection to the irrigation system. Regardless of the "wet" or "dry" designation, it is clear that this particular pond had a defined purpose as a "drainage detention pond."

Our courts enforce deeds according to their plain language. *Minerva Partners, Ltd v First Passage, LLC*, 274 Mich App 207, 216; 731 NW2d 472 (2007). In this case, only one pond could be considered to be a "retention pond," which would be included in the definition of "drainage easement" under the master deed. That pond is the pond at issue, although designated as a "drainage detention pond" on the site plan rather than as a retention pond, as stated in the master deeds. In context, "detention" and "retention" are essentially synonymous. Here, it is obvious that the pond is meant to hold water. Hence, under the unambiguous language of master deed, the drainage easement includes the pond at issue as well as "other related areas." All the deed's language must be harmonized and construed in such a way to make all of the language meaningful. *Dep't of Natural Resources*, 472 Mich at 370. As such, we conclude that the pump and pump house are included within the "other related areas" language of the definition of "drainage easement" because the pump and pump house are related to the intended use of the pond. Thus, we conclude that the "drainage easement" includes the pond, pump, and pump house (i.e., the irrigation system), and that plaintiff's master deed creates "a nonexclusive perpetual easement for the benefit of" defendant. See *Minerva Partners, Ltd*, 274 Mich App at 216.

In reaching our conclusion, we note that the trial court concluded that the irrigation system did not fall within the meaning of the "drainage easement." The trial court, however, essentially determined that the irrigation system fell within the meaning of water utility as stated in plaintiff's master deed. The trial court concluded that plaintiff's master deed contained an ambiguity, specifically the term "water."

Plaintiff's master deed referred to "other utility easements depicted on the Condominium Subdivision Plan, and other utilities which may be located within any Common Elements." The master deed also provided context for what "other utility easements" and "other utilities" constituted: "gas, electricity, telephone, cable television, water, sewer, drainage, light power, and communications." Notably, plaintiff's master deed includes water, sewer, and drainage, but it does not include irrigation. Generally, an enumeration of things excludes other undesignated things. *Hoerstman Gen Contracting, Inc v Hahn*, 474 Mich 66, 74; 711 NW2d 340 (2006). The term "water" is given meaning by its context or setting. *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 215; 737 NW2d 670 (2007). Clearly, the term water does not include sewer or drainage because those terms are separately specified, and it does not include irrigation because it was excluded from the list. *Hoerstman Gen Contracting, Inc*, 474 Mich at 74. Thus, the irrigation system did not fall within the meaning of utility easement as a water utility and the trial court erred when it concluded otherwise. Nevertheless, we will not disturb a trial court's ruling where it reached the right result, even if for the wrong reason. *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003). And, the trial court correctly determined that defendant had an easement to withdraw water for the irrigation system.

Plaintiff next contends that the trial court erroneously concluded that defendant had an implied easement to withdraw water for the irrigation system. However, because the express drainage easement included the irrigation system, the issue whether an implied easement existed is necessarily rendered moot. *Ardt v Titan Ins Co*, 233 Mich App 685, 693; 593 NW2d 215 (1999).

On cross-appeal, defendant challenges the denial of its request for sanctions. Defendant asserted in the trial court, and maintains on appeal, that plaintiff's action against defendant, plaintiff's defense against defendant's counterclaim, and plaintiff's motion were frivolous and warranted sanctions. We review for clear error a trial court's determination whether an action is frivolous. *BJ's & Sons Constr Co v Van Sickle*, 266 Mich App 400, 405; 700 NW2d 432 (2005). "Under Michigan law, a party that maintains a frivolous suit or asserts frivolous defenses is subject to sanctions under applicable statutes and court rules." *Id.* at 404. The trial court denied defendant's request for sanctions, concluding that the suit was not frivolous. On review of the record, we conclude that the trial court properly determined that plaintiff's complaint was not frivolous. Further, there was no indication that plaintiff's defense or its motion for contempt were meant to harass, embarrass, or injure defendant. MCL 600.2591(3)(a)(i). The trial court did not err when it denied defendant's request for sanctions.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Kelly