IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Robert Surles and Tracy Surles,	:	
Plaintiffs/Appellants,	:	C.A. No. 06-12-323
v.	:	
1401 Condominium Association,	:	
Defendant/Appellee.	:	

Decision after trial.

Submitted: December 19, 2007

Decided: January 3, 2008

Judgment for the Defendant.

Robert Surles, Esquire and Tracy Surles, Esquire, 26 Vining Lane, Wilmington, Delaware 19807, *Pro Se* Plaintiffs.

Richard E. Franta, Esquire, 1301 North Harrison Street, Suite 102, Wilmington, Delaware 19806, Attorney for Defendant.

Trader, J.

In this civil appeal from the Justice of the Peace Court, the plaintiffs, Robert Surles and Tracy Surles ("Surles"), seek to recover damages from the defendant, 1401 Condominium Association ("Association"), as a result of an alleged improper assessment against the plaintiffs when they tried to sell their condominium. Because the Surles failed to have insurance coverage for damage to the Association's property, resulting from a casualty originating within the Surles' unit, they are liable to the Association for the amount of such damage not covered by the Association's insurance policy. Since the Association is the prevailing party in this proceeding, it is entitled to reasonable attorney's fees under Article 9(A)(2) of the Code of Regulations.

The relevant facts are as follows: Surles purchased condominium Unit 1607 on December 21, 2001. They leased Unit 1607 to Christopher J. Surles from approximately January 1, 2002, to February 12, 2006. The deed by which the Surles took title provides that Unit 1607 is subject to a Code of Regulations for the 1401 Condominium Apartments and this Code of Regulations is recorded in the Office of the Recorder of Deeds in Deed Record O, Volume 113, page 119. On July 13, 2004, the Council of the Association recorded a certificate of amendment to the Code of Regulations, which amended Article 6(A)(1)(a). Under the Code of Regulations, a unit owner is strongly encouraged to have insurance coverage insuring him to the extent of the $10,000.00 deductible under the condominium's master policy against liability for damage to property resulting from a casualty originating within his unit. The amendment essentially provides that if a unit owner does not have the recommended insurance coverage, then such Unit Owner from whose unit the casualty originates will be liable to the Association for the amount of damage not covered by the Association's insurance policy.

On February 12, 2006, Christopher J. Surles intentionally jumped from the window of Unit 1607 in an attempt to commit suicide. He landed on the building's aluminum porte-cochere fourteen stories below. The impact of the tenant's landing damaged the front entrance porte-cochere and necessitated prompt repairs to enable vehicles to pass through it. The estimated amount of the damage was $10,866.29 and the Association's insurance company paid the Association the sum of $866.21, which was due the Association under the Association's master policy after accounting for the policy's deductible. On February 14, 2006, Stephen J. Sfida, the general manager of the Association, sent a letter to the plaintiffs requesting the name of their insurance carrier. On February 22, 2006, Mr. Sfida sent them a second letter with a copy of the quote for repair of the porte-cochere. On March 15, 2006, Richard E. Franta, attorney for the Association, wrote Mr. and Mrs. Surles a letter requesting payment of the $10,000.00 for the damage to the condominium property. The Association's attorney received no response to this letter and on April 24, 2006, the Council for the Association voted to levy an assessment against Unit 1607 in the amount of $10,000.00.

On June 2, 2006, the Surles sold the condominium unit and paid the $10,000.00 assessment to the Association. The Surles assert that the Association erroneously assessed the unit and that the Association wrongfully withheld the sum of $10,000.00 from them when they sold the property. Thereafter, the Surles files this civil action to obtain the money withheld by the Association.

The decision in this case is governed by the contractual rules and regulations of the Association. The enabling statute for the condominium form of real estate ownership

in Delaware is known as the Unit Property Act and is found in 25 *Del. C.* Chapter 22. As a general rule,

> [a] condominium declaration and its accompanying code of regulations together form no more than an ordinary contract between the unit owners (and, initially, the developer), created under the statutory framework of the Unit Properties Act. As with any other contract, the intent of the parties to a condominium declaration or code of regulations must be ascertained from the language of the contract.

Council of Dorset Condo. Apts. v. Gordon, 801 A.2d 1, 5 (Del. 2002)(footnotes omitted). The purpose of the code of regulations is to govern the administration of every property. 25 *Del. C.* § 2206 (code of regulations as governing). The contents of the code of regulations provide for the "method of adopting and amending rules governing the details of the use and operation of the property and the use of the common elements." 25 *Del. C.* § 2208 (9) (contents of the code of regulation). The legislature makes use of both the words "rules" and "regulations" in the Unit Property Act and, as such, "there is a presumption that the legislature intends a distinction between terms when different terms are used in the same statute." *Rockford Park Condo. Council v. Biancuzzo,* 1984 WL 19481, at *3 (Del. Ch. Ct. 1984)(citing *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982)). "Under the scheme of the Unit Property Act, rules govern the details of the use and operation of the property and the use of the common elements. Regulations govern the method of administration of property." *Rockford Park Condo. Council,* 1984 WL 19481, at *3 (internal citations omitted).

Further, one of the condominium council's duties is: "[t]he adoption and amendment of the code of regulations and the . . . enforcement of rules governing the details of the use and operation of the property and the use of the common elements, subject to the right of a majority of the unit owners to change any such actions."

25 *Del. C.* § 2211 (3) (duties of council). The Unit Property Act, "indicates that it provides generally for the rights and duties in regard to the property, with the Code of Regulations governing the details of administration." *Rockford Park Condo. Council,* 1984 WL 19481, at *3. Pursuant to Section 2224 of Title 25 of the Delaware Code, "[a]ll instruments relating to the property or any unit, including the instruments provided for in this chapter, *shall be entitled to be recorded*, provided that they are acknowledged in the manner provided by law." 25 *Del. C.* § 2224 (instruments recordable)(emphasis added). Section 2225 of Title 25 of the Delaware Code, pertaining to recording as a prerequisite to the effectiveness of certain instruments, only lists a "declaration, declaration plan or code of regulations or any amendments thereto" as the documents that are required to be recorded in order to be effective. Under the Unit Property Act, therefore, rules may, but do not have to, be recorded in order to be effective. *Rockford Park Condo. Council,* 1984 WL 19481, at *3.

Based on the above statutory provisions, the Association adopted a Code of Regulations on January 30, 1981, which was recorded in the Office of the Recorder of Deeds. On July 13, 2004, the Council of the Association amended Article A(1)(a) which now provides in pertinent part as follows:

> [e]ach unit owner shall be liable for damages to property outside his unit caused by any casualty originating within the owner's unit regardless of fault on the part of the unit owner, his tenants, agents or invitees. In the event that the unit owner does not have insurance coverage insuring him to the extent of the deductible under the Condominium's master policy, against liability for such damage to property resulting from a casualty originating within his unit, then the unit owner in which his unit the casualty originated will be liable to the Association for the amount of such damage not covered by the unit owner's insurance.

The documents creating the condominium constitute a contract between the unit owners and the association. *Council of Dorset Condo Apt. v. Gordon,* 801 A.2d at 5. "A court must interpret contractual provisions in a way that gives effect to every term of the instrument, and that, if possible, reconciles all of the provisions of the instrument when read as a whole." *Id.* at 7.

Casualty in the present instance, found in the insurance section of the Code of Regulations, takes upon a meaning similar to that found in *Black's Law Dictionary* (8th ed. 2004), which defines "casualty" as a "person or thing injured, lost, or destroyed." Examples of casualty in 6(A)(1)(a) include, but are not limited to, water leaks, fire, and smoke.

Although attempted suicide is not explicitly mentioned in the above sections of the Code of Regulations, I conclude that the willful misconduct, recklessness, negligence, and intentional conduct of a tenant were the responsibility of the unit owner up to the maximum amount of the deductible. This is evidenced by the expansive amendment to Article 6(A)(1)(a), which provides that the unit owner is responsible for all possible types of conduct including the willful misconduct of the tenant. The master policy of the association covers loss or damage within a unit whether or not caused by a failure of a component of a common system and whether or not proximately caused by the willful misconduct, recklessness or negligence of the tenant. Thus, when Article 6(A)(1) is read as a whole I conclude that intentional acts, including the attempted suicide, of the tenant are covered by the regulation.

Based on the above analysis, the Surles are liable for the casualty originating in their unit. Their failure to have insurance makes them liable to the Association for the amount of the deductible.

The Surles contend that under certain unrecorded rules they are not liable for the attempted suicide of their tenant. They cite a rule entitled Liability of Unit Owners which provides as follows:

> 1. Each unit owner shall repair at his or her expense, any damage or defect in any portion of the building which was resulted from *negligence* of the unit owner or his or her lessee or guest or employee. (i.e. contract)
> 2. Each unit owner shall be responsible for his or her actions, the actions of his or her guest and also for the actions of his or her lessee's guest. Any damage to any portion of the property whether *unintentional* or through *negligence* or *willful misconduct* caused by the above person shall be repaired at the expense of the unit owner.

(emphasis added).

The above rules do not include within their scope intentional conduct by the lessee. To the extent there is any conflict between the above cited unrecorded rule and Article 6 A(1)(a), I hold that the later recorded regulation is controlling. Additionally, 6 A(1)(a) provides that the unit owner is liable for losses arising from a casualty proximately caused by willful misconduct, recklessness, negligence, or a violation of the Code of Regulations or Rules of Conduct on the part of the unit owner, his tenants or invitees. An attempt to commit suicide is clearly intentional conduct and it is an act of willful misconduct.

The term "willful misconduct" is not defined within the Association's Code of Regulations. It is well-settled that, "undefined code terms must be construed according to their common and approved usage." *Moore v. Wilmington Hous. Auth.*, 619 A.2d 1166, 1173 (Del. 1993)(citing *Coastal Barge Corp. v. Costal Zone Indus. Control Bd.*,

492 A.2d 1242, 1245 (Del. 1985)). Similarly, under ordinary principles of contract interpretation, "the language of the[] contract will be accorded its ordinary meaning when it is plan and unambiguous." *Guerrieri v. Cajun Cove Condo. Council*, 2007 WL 1520039, at *7 (Del. Super. Ct. 2007)(citing *Goss v. Coffee Run Condo. Council*, 2003 WL 21085388. at *7 (Del. Ch. Ct. 2003)).

"Willful misconduct," as it appears under "misconduct" in *Black's Law Dictionary* (8th ed. 2004), is defined as "[m]isconduct committed voluntarily and intentionally." Taking the words individually, "willful" is defined as "[v]oluntary and intentional, but not necessarily malicious." *Id*. In the present case, the parties agree that the attempted suicide was willful or intentional.

"Misconduct" is defined in *Black's Law Dictionary* as "[a] dereliction of duty; unlawful or improper behavior." *Black's Law Dictionary* (8th ed. 2004). Similarly, We*bster's II New College Dictionary*, 700 (2001), defines "misconduct" as a "behavior not in conformity with prevailing standards or law." Thus, because a suicide is not a behavior in conformity with the prevailing standards, it does constitute a willful act of misconduct. The tenant's willful misconduct was the proximate cause of the damage to the Association's property.

Delaware courts define proximate causation as "that direct cause without which the accident would not have occurred." *Culver v. Bennett*, 588 A.2d 1094, 1097 (Del. 1991). This standard is commonly referred to as the "but for" or *sine qua non* rule. *Moffitt v. Carroll*, 640 A.2d 169, 174 (Del. 1994)(citing *Culver*, 588 A.2d at 1097). Stated more fully, "in order to satisfy the 'but for' test, a proximate cause must be one 'which in natural and continuous sequence, unbroken by any efficient intervening cause,

produces the injury and without which the result would not have occurred.'" *Id.* (quoting *James v. Krause*, 75 A.2d 237, 241 (Del. Super. Ct. 1950)). Therefore, the Surles are liable either because the intentional misconduct of their tenant was the proximate cause of the damage to the Association's property or because they failed to carry insurance for a casualty originating within his unit.

Hence, the Association was correct in assessing the Surles for the damage to the Condominium property arising from its failure to have insurance covering a casualty occurring in their unit causing damage to the Association's property. The Surles' claim for damages in the amount of $10,000.00 from the Association is rejected and judgment is entered on behalf of the Association for the costs of these proceedings.

The Association as the prevailing party seeks an award for reasonable attorney's fees. Article 9 (A)(2) of the Code of Regulation provides that "[i]n any proceeding arising out of any alleged default by a Unit 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."

The Surles contend that the money has been paid to the Association, therefore, the above regulation does not apply to them and, under the American Rule, each side is responsible for its own attorney's fees. The Surles' contention is without merit. This proceeding does arise out of the default by a unit owner. "Arise" is defined by *Black's Law Dictionary* as "[t]o originate; to stem (from); [t]o result (from)." *Black's Law Dictionary* (8th ed. 2004).

In this case, the default arises when the Surles failed to pay the $10,000.00 for damage to the Association's property that was requested by the general manager and the

Association's attorney. Accordingly, they were in default as set forth in the Regulations and it was necessary for the Association to levy an assessment against their unit. The assessment and the controversy currently before the Court all result from the initial default by the Surles. Therefore, the Association is entitled to reasonable attorney's fees.

On the basis of these findings of fact and conclusions of law, judgment is entered in behalf of 1401 Condominium Association and against Robert Surles and Tracy Surles for the costs of these proceedings, plus reasonable attorney's fees.

IT IS SO ORDERED.

_____

Merrill C. Trader
Judge