IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 2, 2023 Session

JEFFREY SWINGHOLM, ET AL. V. THE FARM AT CLOVERCROFT HOMEOWNERS ASSOCIATION, INC., ET AL.

Appeal from the Chancery Court for Williamson County
No. 22-CV-51511 Deanna B. Johnson, Chancellor

No. M2022-01633-COA-R3-CV

The plaintiffs filed this breach of contract action against their homeowners association for failure to rectify alleged violations of the neighborhood restrictions. The plaintiffs sought a declaratory judgment establishing that the issues complained of were actual violations of the restrictions. The trial court dismissed the action in favor of the homeowners association and the plaintiffs' neighbors who joined as interested parties. We affirm.

Tenn. R. App. P. 3 Appeal as Right; Judgment of the Chancery Court Affirmed; Case Remanded

JOHN W. MCCLARTY, J., delivered the opinion of the court, in which W. NEAL MCBRAYER and JEFFREY USMAN, JJ., joined.

Benjamin E. Goldammer, Nashville, Tennessee, for the appellants, Jeffrey and Nikki Swingholm.

Wm. Ritchie Pigue and Matthew C. Pietsch, Nashville, Tennessee, for the appellee, The Farm at Clovercroft Homeowners Association, Inc.

Robert A. Peal and Evan S. Rothey, Nashville, Tennessee, for the appellees, Michael S. and Rebecca Lewis.

OPINION

I. BACKGROUND

Jeffrey and Nikki Swingholm (collectively "Plaintiffs") own a residence located in The Farm at Clovercroft ("the Subdivision"). Michael and Rebecca Lewis (collectively

"the Lewises") own a home adjacent to the Plaintiffs. Those who live in the Subdivision are subject to the Declaration of Easements, Covenants, Conditions, and Restrictions ("the Declaration") and the Bylaws for the Subdivision ("Bylaws"). The Subdivision is also governed by a homeowners association ("the HOA"), which is responsible for the enforcement of the Declaration and the Bylaws.

In 2021 and early 2022, the Lewises completed a landscaping project with a number of modifications to assist with the drainage of their property. These modifications included the installation of drain lines, the planting of trees, and general landscape design. Plaintiffs believed that the modifications negatively impacted their property and violated the Subdivision's restrictive covenants. Plaintiffs lodged numerous complaints with the HOA.

On January 6, 2022, the HOA advised Plaintiffs by letter that it would no longer respond to communications from Plaintiffs regarding the Lewises. The HOA directed Plaintiffs to issue any further complaints regarding the Lewises to a third-party property manager who would determine whether the HOA held any authority or duty to intervene. The HOA assured Plaintiffs that they could contact the HOA for any issues concerning the Subdivision at large or other violations not concerning the Lewises.

Plaintiffs hired counsel and submitted a demand for production of documents. The HOA complied and produced the requested documents, from which Plaintiffs learned that certain parts of the Lewis project were not approved by the HOA prior to installation. Plaintiffs then issued a demand letter, compelling the HOA to address the violations committed by the Lewises.

On February 4, 2022, Plaintiffs filed the instant action, in which they alleged breach of contract for failure to address the violations and requested a declaratory judgment that the issues complained of were in violation of the Subdivision's restrictions. Plaintiffs alleged four separate violations that are as follows:

> First, the Lewises installed a metal divider down the property line and installed drain lines to divert rainwater from the roof to the public storm structures. The drain lines are above ground, in open trenches. The Lewises have neither sought — nor obtained — approval from the HOA (acting through its Architectural Committee) for the installation of these modifications to their property. The failure to obtain approval of the Architectural Committee is a clear violation of Article IV, Section 2(a) of the Declaration. In addition, these modifications are not "neat and attractive" and consequently violate Article IV, Section 19 of the Declaration. Furthermore, these modifications have the impact of diverting excessive rainwater onto the [Plaintiffs'] property.
>
> Second, the trees planted by the Lewises as part of their landscaping plan

> violate the height restrictions in Article IV, Section 6 of the Declaration. These trees impact the sight line from the [Plaintiffs'] driveway for cars and delivery trucks pulling in and out of the driveway.
>
> Third, while it appears the HOA (acting through its Architectural Committee) approved the . . . use of loose bricks to landscape their landscaping beds, the installation does not [comply] with their submittal and therefore violates Article IV, Section 2(a) of the Declaration. The submittal (attached as Exhibit 3) states: "brick to be sunk to current level of dirt to allow water to flow unchanged & to prevent additional erosion since any planting or mulch will wash out". As can be seen from the photographs attached as Exhibit 2, the loose bricks are certainly not "sunk to current level of dirt".
>
> Fourth, [the] side landscaping improvements . . . violate Article IV, Section 4 of the Declaration. The . . . planting of trees, metal divider, and surface drain lines encroach on the 5' side setback shown on the Final Plat of Subdivision of the Farm at Clovercroft, Section 3 (attached as Exhibit 4). This impacts water flow in the drainage easement serving the properties.

The HOA filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. As pertinent to this appeal, the HOA argued that its alleged inaction did not establish a claim for breach of contract or give rise to a justiciable claim when the Declaration afforded the HOA broad discretion in determining whether to utilize its enforcement power. Likewise, the Lewises, who joined the action as interested parties, moved for judgment on the pleadings pursuant to Rule 12.03 of the Tennessee Rules of Civil Procedure, asserting that the modifications were properly approved and not in violation of the Declaration. They further claimed that Plaintiffs misrepresented the modifications and submitted photos that showed the project prior to its completion, e.g., the drain lines complained of were buried underground before the filing of the complaint. Lastly, they asserted that recovery was not warranted absent any allegation of bad faith or unreasonableness.

Following a hearing, the trial court granted the motion for judgment on the pleadings in favor of the HOA and the Lewises (collectively "Respondents"), finding that Plaintiffs failed to state a claim upon which relief can be granted. The court stated as follows:

> The HOA is under no duty to enforce the restrictions contained in the Declaration and has broad discretion over determining what constitutes a violation in the first place. Without the existence of this duty, [Plaintiffs'] breach of contract claim fails as a matter of law. [Plaintiffs] have also failed to allege any material facts which would preclude the [c]ourt from disposing of this case at this phase. [Plaintiffs] have not submitted factual allegations which would justify disturbing the HOA's discretionary decision-making.

This timely appeal followed.

II. ISSUE

We consolidate and restate the dispositive issue on appeal as follows: Whether the trial court erred in granting the motion for judgment on the pleadings.

III. STANDARD OF REVIEW

The grant or denial of a motion for judgment on the pleadings is reviewed de novo by an appellate court. *Lawson v. Hawkins Cnty.*, 661 S.W.3d 54, 58 (Tenn. 2023). "[A] motion for judgment on the pleadings is in effect a motion to dismiss for failure to state a claim upon which relief can be granted." *King v Betts*, 354 S.W.3d 691, 709 (Tenn. 2011) (citations omitted). When this court reviews a trial court's ruling on a motion for judgment on the pleadings, we must accept as true "all well-pleaded facts and all reasonable inferences drawn therefrom" alleged by the parties opposing the motion. *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 470 (Tenn. 2004); *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991). "A judgment on the pleadings for a defendant should be affirmed when the plaintiff 'can prove no set of facts' in support of a claim entitling her to relief." *Lawson*, 661 S.W.3d at 58–59 (quoting *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. App. 2003)).

IV. DISCUSSION

The essential elements of a claim for breach of contract are 1) the existence of an enforceable contract, 2) nonperformance amounting to a breach of contract, and 3) damages caused by the breach of the contract. *Bynum v. Sampson*, 605 S.W.3d 173, 180 (Tenn. Ct. App. 2020); *ARC Lifemed v. AMCTenn.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005). We, like the trial court, acknowledge that the Declaration created a valid and enforceable contract between the HOA and the residents in the Subdivision. Plaintiffs argue that the HOA breached the Declaration by failing to uphold its duty of enforcement according to the Bylaws, causing damages to them.

A panel of this court provided the following guidance in the interpretation of restrictive covenants as contracts:

> Rules governing the interpretation of restrictive covenants are generally the same as those applicable to contracts. The primary task is to determine the intention of the parties as expressed by the plain and ordinary meaning of the language in the covenants. However, because restrictive covenants are in derogation of the right to freely use and enjoy one's property, they are strictly

> construed. Therefore, courts resolve any ambiguities in a manner which advances the unrestricted use of the property.

Royalton Woods Homeowner Ass'n, Inc. v. Soholt, No. M2018-00596-COA-R3-CV, 2019 WL 366525, at *8 (Tenn. Ct. App. Jan. 29, 2019) *perm. app. denied* (Tenn. June 20, 2019) (internal quotation and citations omitted). When the restrictive covenants provide the HOA with discretion in its enforcement powers, "courts will not disturb [such discretionary decisions] unless it is shown that the [HOA] acted unreasonably or in bad faith." *Id.*

Article IV, Section 2(c) of the Declaration provides, in pertinent part, as follows:

> [The HOA] and the Architectural Committee are hereby authorized and empowered, *at their sole and absolute discretion*, to make and permit reasonable modifications or deviations from any of the requirements of this Declaration relating to the type, kind, quantity or quality of the building materials to be used in the construction of any building or improvement on any Lot and of the size and location of any such building or improvement when, in their sole and final judgment, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Property and the improvements as a whole[.]

(Emphasis added.). Likewise, Article VII, Section 2(h) of the Bylaws provide that "[i]t shall be the duty of the Board of Directors to . . . [e]xercise all discretion as provided in the Declaration regarding enforcement of all terms, restrictions and provisions contained in the Declaration and to take any and all enforcement actions as may be required[.]"

As noted by the trial court, a plain reading of the pertinent sections of the Declaration and the Bylaws provides that the HOA held no duty of absolute enforcement. Rather, the HOA held a duty to exercise its discretion in approving and denying requests for variances and modifications and in determining what constitutes a violation of the Declaration. The HOA ultimately approved the modifications at issue in this action, as was its prerogative.

Plaintiffs next argue that the HOA acted in bad faith and exhibited unreasonable conduct by refusing to address the violations claimed by Plaintiffs as evidenced by their January 6, 2022 letter. Whether the HOA acted unreasonably or in bad faith is generally a factual question determined in light of the circumstances. *Avalon Sections 4, 6 & 7 Homeowners Ass'n v. Chaudhuri*, No. M2013-02346-COA-R3-CV, 2014 WL 2949458, at *6 (Tenn. Ct. App. June 26, 2014). However, the trial court found that Plaintiffs failed to allege sufficient facts to establish bad faith or unreasonableness in their pleadings.[1] A

[1] The Lewises argue that any such claim of bad faith or unreasonableness has been waived for

review of the pleadings reveals that the HOA fielded numerous complaints filed by Plaintiffs before refusing to address the matter further. Under these circumstances and upon our de novo review, we agree with the trial court that even construing all factual allegations in a light most favorable to the Plaintiffs, they have not asserted any facts sufficient to even raise the question of bad faith or unreasonable conduct by the HOA.

V. CONCLUSION

For the reasons stated above, we affirm the decision of the trial court. The case is remanded for such further proceedings as may be necessary. Costs of the appeal are taxed to the appellants, Jeffrey and Nikki Swingholm.

_____?
JOHN W. MCCLARTY, JUDGE

failure to specifically allege bad faith or unreasonableness in the complaint. While Plaintiffs did not directly cite the January letter as evidence of bad faith in the complaint, a general allegation of bad faith or unreasonableness was present in the pleadings. The letter was also included in the pleadings. We decline to waive the issue on appeal.