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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-921

No. COA22-460

Filed 29 December 2022

Mecklenburg County, No. 21 CVS 4280

MARGUERITE GEHRKE, Plaintiff,

v.

THE GATES AT QUAIL HOLLOW HOMEOWNERS' ASSOCIATION, LTD.,  
Defendant.

Appeal by plaintiff from order entered 24 February 2022 by Judge George C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 16 November 2022.

*Thurman, Wilson, Boutwell & Galvin, P.A., by James P. Galvin, for plaintiff-appellant.*

*Sellers, Ayers, Dortch & Lyons, P.A., by Brett E. Dressler, for defendant-appellee.*

DIETZ, Judge.

¶ 1 Plaintiff Marguerite Gehrke owns a condominium unit in The Gates at Quail Hollow community in Charlotte. The condominium building required extensive repairs to its foundation, forcing Gehrke to move out of her unit for several years.

¶ 2 Gehrke brought this action against the condominium association, alleging that

the association was responsible for the out-of-pocket moving, storage, and living expenses she incurred while forced out of her unit.

¶ 3 The trial court granted summary judgment in favor of the association and against Gehrke. As explained below, under the plain language of the declaration governing the parties' relationship, the association has no contractual obligation to pay the expenses at issue in this case. Accordingly, we affirm the trial court's order.

### **Facts and Procedural History**

¶ 4 Marguerite Gehrke owns a condominium unit at The Gates at Quail Hollow in Charlotte. As is typical with condominium ownership, Gehrke is a member of a condominium association created through a recorded declaration. The declaration sets forth the respective obligations of the association and the individual condominium unit owners, including the responsibility to maintain and repair various aspects of the condominium building and the individual units.

¶ 5 In 2015, some condominium units in Gehrke's building, including her own, began experiencing significant settling issues. Several years later, the association hired an engineering firm to investigate and perform repairs to the foundation. Because of the extensive nature of the repair work, Gehrke was forced to relocate from her unit until the repairs were completed.

¶ 6 The initial timeline for the repairs was four to six months, but the repairs took two years. In total, Gehrke spent \$39,546.30 in expenses for alternate housing,

moving, and storage. Gehrke demanded that the association pay these expenses. The association refused, asserting that those expenses are not covered by the plain terms of the condominium declaration. Gehrke then brought this breach of contract action.

¶ 7 The parties filed cross-motions for summary judgment. After a hearing, the trial court entered an order denying Gehrke's motion for summary judgment and granting the association's motion for summary judgment. Gehrke appealed.

### **Analysis**

¶ 8 Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. R. Civ. P. 56(c). We review the trial court's grant of summary judgment *de novo*. *Murillo v. Daly*, 169 N.C. App. 223, 225, 609 S.E.2d 478, 480 (2005).

¶ 9 The central issue in this case is the language of the declaration concerning the association's repair work obligations. We interpret this language in the declaration using ordinary contract principles. *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 555, 633 S.E.2d 78, 85 (2006). “When the language of a contract is clear and unambiguous, effect must be given to its terms, and the court, under the guise of constructions, cannot reject what the parties inserted or insert what the parties elected to omit.” *Weyerhaeuser Co. v. Carolina Power & Light Co.*, 257 N.C. 717, 719,

127 S.E.2d 539, 541 (1962).

¶ 10 Here, the declaration makes the association “responsible for the maintenance, repair, and replacement” of structural parts of the condominiums such as the foundation, and also provides that if “any incidental damage” occurs to the condominium unit during this repair work, the association “shall, at its expense, repair such incidental damage”:

*The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of all of the Common Property, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property for the furnishing of utility and other services to the Condominium Units and said Common Property, and should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage.*

(Emphasis added).

¶ 11 Gehrke argues that a “cogent interpretation of contractual obligations to pay repair expenses should include all expenses required by that repair. That interpretation yields the just result, especially in the context of an association where the owner has no agency or control over how—or how long—the repair is conducted.”

¶ 12 The flaw in this argument is that, when examining contractual language, we are not guided by our own views of what is fair or just, but instead by the language

chosen by the contracting parties. *Weyerhaeuser*, 257 N.C. at 719, 127 S.E.2d at 541.

¶ 13 Here, the plain language of the declaration defeats Gehrke's argument. First, the declaration provides that the association "at its expense, shall be responsible for the maintenance, repair, and replacement of all the Common Property." The phrase "Common Property" means the entire condominium building except the interior of the individual units. In ordinary English usage, requiring a contracting party to maintain, repair, or replace a physical structure does not also require that party to pay the out-of-pocket expenses of people impacted by that maintenance, repair, or replacement work. That sort of additional obligation must be the subject of additional contractual language.

¶ 14 The declaration includes additional contractual language, but it does not cover these types of out-of-pocket expenses. The declaration states that the association also will repair any "incidental damage" to a "Condominium Unit." The phrase "Condominium Unit" is a defined term in the declaration and means the physical dwelling space inside the interior walls of the condominium property. Gehrke's moving, storage, and living expenses cannot be interpreted as "damage" to her "Condominium Unit" under any ordinary meaning of this language.

¶ 15 Similarly, the declaration obligates the association to "repair" any incidental damage to a Condominium Unit. The verb "repair" means to fix or mend something that suffered damage. *See Repair, Oxford English Dictionary* (2nd ed. 1989). It is not

a term used in ordinary English to describe the payment of out-of-pocket expenses. There are countless verbs in the English language—such as compensate, reimburse, indemnify, etc.—that could carry this broader meaning when referencing incidental damage to a condominium unit. The word repair, by contrast, describes the act of fixing physical damage to the unit.

¶ 16 In sum, the unambiguous language of the declaration does not require the association to reimburse Gehrke for her moving, storage, and living expenses. As this is the only argument asserted in Gehrke's appellant's brief, we affirm the trial court's order granting summary judgment in favor of the association and against Gehrke.

### **Conclusion**

¶ 17 We affirm the trial court's entry of summary judgment.

AFFIRMED.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).