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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-496

Filed 31 December 2024

Transylvania County, No. 21 CVS 408

LOIS MEYER, Plaintiff,

v.

KAREN C. ALLNUTT, SUSAN A. CHRISTIE, and ED LYDA d/b/a LYDA
CONSTRUCTION, Defendants.

Appeal by plaintiff from order entered 15 December 2023 by Judge George C.
Bell in Transylvania County Superior Court. Heard in the Court of Appeals 23
October 2024.

*Asheville Legal, by Attorneys Isabel W. Carson and Jake A. Snider, for plaintiff-
appellant.*

*Davis & Hamrick, L.L.P., by Attorneys Jillianne L. Tate and Ann C. Rowe, for
defendant-appellees.*

THOMPSON, Judge.

Plaintiff Lois Meyer¹ appeals an order granting summary judgment in favor of
defendants Karen C. Allnutt and Susan A. Christie entered on 15 December 2023.

¹ The action was brought on behalf of plaintiff Meyer by her daughter, Lynette Laughter, acting with power of attorney.

After careful review, we affirm the order.

I. Background

Based upon the allegations of the complaint, answers, and deposition testimony, the following facts are uncontroverted. Defendants Allnutt and Christie owned a second-floor condominium, unit 803, located within Shepard Square Town Homes in Brevard. However, they did not reside there. Plaintiff owned the first-floor condominium, unit 801, located directly beneath defendants' property. In April 2019, the tenant residing in unit 803 moved out, and between April and December 2019, Allnutt and Christie renovated the unit in preparation for sale, hiring independent contractors, defendants Wendel C. Darity, Sr. (d/b/a Darity Built Home Improvement) and Ed Lyda (d/b/a Lyda Construction), for the work.² Defendant Lyda installed flooring and baseboards. Plaintiff moved out of unit 801 in July 2019 but maintained ownership. Defendants sold unit 803 to Caleb Neiman in December 2019.

In September 2020, plaintiff's family members discovered wetness and mold inside and outside of a closet in unit 801. Neiman allowed plaintiff's plumber to investigate for a leak in unit 803 in October 2020. The plumber opened a drywall section in unit 803 and discovered that a nail or screw fastening a baseboard had pierced a water pipe attached to a water heater, resulting in a leak. Plaintiff alleged that the leak had caused mold to grow on the drywall in plaintiff's bedroom and

² Defendant Wendel C. Darity d/b/a Darity Built Home Improvement is not a party to this appeal.

bathroom, in unit 801. The plumber repaired the leak in unit 803, and plaintiff replaced or repaired a ceiling, drywall, floors, cabinets, and closet shelving in unit 801.

Plaintiff filed a complaint against defendants Neiman, Allnutt, and Christie as well as any “John Doe” contractors on 20 September 2021. On 2 September 2022, the parties signed and caused to be entered a Consent Order allowing plaintiff to file an amended complaint. The amended complaint, filed the same day, named defendants Allnutt and Christie as well as defendants Darity and Lyda. Nieman was not named as a defendant. Plaintiff claimed that defendants Allnutt and Christie were liable for damages due to negligence and breach of the Declaration of Unit Ownership of Shepard Square Town Homes (HOA Declaration) and the Bylaws of Shepard Square Association III, Inc. (HOA Bylaws); defendants Lyda and Darity were liable due to negligence. Plaintiff sought more than \$25,000.00 in damages.

Defendants Allnutt and Christie filed a Rule 12(b)(6) motion to dismiss, arguing that plaintiff failed to state a claim upon which relief could be granted, along with an answer on 17 October 2022. The trial court denied the Rule 12(b)(6) motion by order entered 7 August 2023. The parties submitted requests for production of documents, admissions, interrogatories, and depositions.

Defendants Allnutt and Christie filed a motion for summary judgment on 11 October 2023; defendant Lyda moved for summary judgment on 16 October 2023. The motions were heard before the trial court on 4 December 2023. Defendant Darity was

no longer a party to the action at the time of the hearing. The court granted defendants Allnutt and Christie's motion for summary judgment, dismissing with prejudice the complaint against them by order entered on 15 December 2023. The court denied defendant Lyda's motion. Plaintiff appeals the order granting summary judgment in favor of defendants Allnutt and Christie. By consent order entered on 24 January 2024, the trial court stayed the action pending the outcome of plaintiff's appeal.

II. Analysis

Plaintiff argues that (1) the trial court's 15 December 2023 order granting summary judgment in favor of defendants Allnutt and Christie was interlocutory and properly before this Court on appeal and that (2) the grant of summary judgment was in error.

A. Interlocutory Appeal

Plaintiff contends that the appeal of the trial court's 15 December 2023 interlocutory order is properly before this Court because the order affects a substantial right. Whether defendant Lyda punctured the water pipe in unit 803 and whether the leak caused damage in unit 801 are factual issues central to plaintiff's negligence claim against defendant Lyda as well as plaintiff's claim against defendants Allnutt and Christie for breach of the HOA Declaration and Bylaws. If separate trials are held to resolve the claim against defendant Lyda and the claim against defendants Allnutt and Christie, different juries could reach inconsistent

verdicts as to the cause of the pipe puncture or the amount of damage. Plaintiff contends that this possibility of inconsistent verdicts affects a substantial right warranting appellate review of the interlocutory order.

“An appeal is interlocutory when noticed from an order entered during the pendency of an action, which does not dispose of the entire case and where the trial court must take further action in order to finally determine the rights of all parties involved in the controversy.” *Beroth Oil Co. v. N.C. Carolina Dep’t of Transp.*, 256 N.C. App. 401, 410, 808 S.E.2d 488, 496 (2017) (citation omitted). “Generally, there is no right to appeal from an interlocutory order.” *Darroch v. Lea*, 150 N.C. App. 156, 158, 563 S.E.2d 219, 221 (2002). However, “[a]n appeal may be taken from every judicial order or determination . . . that affects a substantial right claimed in any action or proceeding[.]” N.C. Gen. Stat. § 1-277(a) (2023). The determination of whether an interlocutory order affects a substantial right is determined on a case-by-case basis. *Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 78, 711 S.E.2d 185, 189 (2011). As a general proposition, “[t]he right to avoid one trial on the disputed issues is not normally a substantial right that would allow an interlocutory appeal, while the right to avoid the possibility of two trials on the same issues can be such a substantial right.” *Green v. Duke Power Co.*, 305 N.C. 603, 606, 290 S.E.2d 593, 595 (1982) (citation omitted).

Where plaintiff seeks to avoid the possibility of two trials on the same overlapping issues—whether the water pipe in unit 803 was punctured by defendants

Allnutt and Christie's contractor defendant Lyda, and whether the leak in unit 803 caused damage in unit 801—we hold that a substantial right is affected, and we consider the merits of the appeal.

B. Summary Judgment

Plaintiff contends that the trial court erred by granting defendants Allnutt and Christie's motion for summary judgment. Plaintiff states that the evidence presents a prima facie case for breach of the HOA Declaration and HOA Bylaws by defendants Allnutt and Christie, that genuine issues of material fact exist, and that defendants Allnutt and Christie are not entitled to judgment as a matter of law. Plaintiff contends that the HOA Declaration and HOA Bylaws confer upon a unit owner the responsibility to pay for damages caused by the owner or the owner's agent. Plaintiff further contends that the allegations, answers, and deposition testimony create a genuine issue of material fact as to whether defendant Lyda fastened a baseboard with a nail that also pierced the water pipe servicing unit 803's water heater, causing a leak which significantly damaged plaintiff's property below, unit 801. Viewing the allegations, answers, and depositions in the light most favorable to plaintiff, plaintiff contends that defendants Allnutt and Christie are not entitled to summary judgment.

Summary judgment "shall be rendered forthwith if 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. Gen. Stat. § 1A-1, Rule 56(c). "Both

before the trial court and on appeal, the evidence must be viewed in the light most favorable to the non-moving party and all inferences from that evidence must be drawn against the moving party and in favor of the non-moving party.” *White v. Consol. Plan., Inc.*, 166 N.C. App. 283, 296, 603 S.E.2d 147, 157 (2004). “[T]his Court reviews a motion for summary judgment de novo.” *SRS Arlington Off. 1, LLC v. Arlington Condo. Owners Ass’n, Inc.*, 234 N.C. App. 541, 544, 760 S.E.2d 330, 333 (2014) (italics omitted). However, “[i]f the trial court grants summary judgment, the decision should be affirmed on appeal if there is any ground to support the decision.” *Gen. Fid. Ins. Co. v. WFT, Inc.*, 269 N.C. App. 181, 185, 837 S.E.2d 551, 556 (2020) (citation omitted).

Governing ownership of condominiums created prior to 1 October 1986, codified within General Statutes, Chapter 47A, Article 1, the Unit Ownership Act provides that

[u]nit ownership may be created by an owner . . . by an express declaration of their intention to submit such property to the provisions of the [Unit Ownership Act] Notwithstanding the formation of a condominium by a declaration . . . , those provisions of Chapter 47C of the General Statutes [North Carolina Condominium Act] that are made applicable to condominiums formed on or before [1 October] 1986, pursuant to [N.C. Gen. Stat. §] 47C-1-102 shall apply and are not in conflict with this Chapter.

N.C. Gen. Stat. § 47A-2. Governing “[c]ompliance with bylaws, regulations and covenants; damages; injunctions,” the Unit Ownership Act states that

[e]ach unit owner shall comply strictly with the bylaws . . .

and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his unit. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of unit owners or, in a proper case, by an aggrieved unit owner.

N.C. Gen. Stat. § 47A-10.

Sections of the Condominium Act made applicable to condominium owners governed by the Unit Ownership Act, include N.C. Gen. Stat. § 47C-4-117 (“Effect of violation on rights of action; attorney’s fees”), “notwithstanding any conflicting provisions in the articles of incorporation, the declaration, or the bylaws” N.C. Gen. Stat. § 47C-1-102(a). Pursuant to N.C. Gen. Stat. § 47C-4-117, “[i]f a declarant or any other person subject to [the Condominium Act] fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief.” N.C. Gen. Stat. § 47C-4-117. We note the comment to this section:

[t]his section provides a general clause of action or claim for relief for failure to comply with the [Condominium] Act by either a declarant or any other person subject to the Act’s provisions. Such persons might include unit owners . . . or the association itself. A claim for appropriate relief might include damages, injunctive relief, specific performance, rescission or reconveyance if appropriate under the law of the state, or any other remedy normally available under state law.

N.C. Gen. Stat. § 47C-4-117 (official comment).

Here, the HOA Declaration for Shepard Square Town Homes was executed in 1977 in accordance with the Unit Ownership Act. Under Article 10 (“Association”), “[t]he operation of the Condominium shall be by the Shepard Square Association III, Inc., herein called the Association [or HOA], . . . which shall be organized and shall fulfill its functions pursuant to” the HOA Bylaws. Under Article 20 (“Compliance and Default”)

(a) Each Unit Owner shall be governed by and shall comply with the terms of this Declaration, by the Articles of Incorporation, By-Laws [sic], and regulations adopted pursuant thereto A default shall entitle the Association or other Unit Owners to the relief described in sub-paragraph (b) of this Article, in addition to the remedies provided by the Unit Ownership Act.

(b) A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family or his or her guests, employees, agents, or lessees, but only to the extent that such expenses [are] not met by the proceeds of insurance carried by the Association.

Under the HOA Bylaws, Article IV (“Directors”), “[t]he affairs of the [HOA] shall be managed by a Board of three Directors” Pursuant to Article V (“Powers and Duties of the Board of Directors”), Section 1, “[a]ll of the powers and duties of the Association existing under the Condominium Act, the Declaration, the Articles of Incorporation, and these By-laws [sic] shall be exercised *exclusively* by the Board of Directors.” (Emphasis added).

The HOA Declaration describes the expenses for which a unit owner is liable under Article 20, sub-part (b). But neither the HOA Declaration nor the HOA Bylaws specifically establish a unit owner's right to bring a cause of action against another unit owner to seek relief in accordance with the HOA Declaration or the HOA Bylaws. Per the HOA Bylaws, that power is exclusive to the Board of Directors, under Article V, Section 1.

The Unit Ownership Act affords a unit owner a cause of action to recover for damages due to another unit owner's failure to comply with HOA bylaws or HOA covenants, pursuant to N.C. Gen. Stat. § 47A-10. Similarly, the Condominium Act authorizes a claim for appropriate relief to "any person," including unit owners "adversely affected by" a failure to comply with an HOA declaration or HOA bylaws, pursuant to N.C. Gen. Stat. § 47C-4-117. The determinative issue here is whether defendants Allnutt and Christie failed to comply with the HOA Declaration and HOA Bylaws.

"In construing restrictive covenants, the fundamental rule is that the intention of the parties governs, and that their intention must be gathered from study and consideration of all the covenants contained in the instrument or instruments creating the restrictions." *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238 (1967) (emphasis omitted). "[T]his Court has held that restrictive covenants are contractual in nature[.]" *Moss Creek Homeowners Ass'n, Inc. v. Bissette*, 202 N.C. App. 222, 228, 689 S.E.2d 180, 184 (2010). "The various terms of the [contract] are to be

harmoniously construed, and if possible, every word and every provision is to be given effect.” *Woods v. Nationwide Mut. Ins. Co.*, 295 N.C. 500, 506, 246 S.E.2d 773, 777 (1978).

Under the HOA Bylaws, Article VII (“Obligations of the Owners”) states:

Section 2. The obligations of the Owners as to maintenance and repair are as follows:

(a) Every Owner must perform promptly all maintenance and repair work within his own Unit, which if omitted would affect the project in its entirety or in a part belonging to other Owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.

We construe the HOA Bylaws, Article VII, Section 2(a), as intending that unit owners be on notice that maintenance or repair of the unit is needed so as to comply with the duty to “perform promptly.” Here, the uncontroverted allegations provide no indication defendants Allnutt and Christie were on notice unit 803 was in need of maintenance prior to plaintiff’s discovery and repair of the pierced water pipe in October 2020. Thus, defendants Allnutt and Christie did not fail to comply with the HOA Bylaws and HOA Declaration, and the trial court properly granted summary judgment on plaintiff’s claim for breach of the HOA Declaration and HOA Bylaws in favor of defendants Allnutt and Christie.

Plaintiff does not challenge the trial court’s grant of summary judgment in favor of defendants Allnutt and Christie on the claim of negligence. Any such challenge is deemed abandoned. *See* N.C.R. App. P. 28(b)(6).

MEYER V. ALLNUTT

Opinion of the Court

AFFIRMED.

Judges GORE and STADING concur.

Report per Rule 30(e).