FILED

DEC 21 2018

CHRISTINE A. FARRINGTON, J.S.C.

DOLAN AND DOLAN, P.A.
One Legal Lane at 53 Spring Street
P.O. Box D
Newton, New Jersey 07860
Attn: Eileen McCarthy Born, Esq.
Attorney ID: 040861989
Email: eborn@dolanlaw.com
Attorney for Plaintiff
Ramapo Mountain Lakes, Inc.

RAMAPO MOUNTAIN LAKES, Inc.	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY
Plaintiff,	:	Docket No. BER-75-17
v.	:	
OWNERS OF PROPERTY IN RAMAPO MOUNTAIN LAKES	:	ORDER
Defendants	:	

THIS MATTER having been opened to the Court by Motion for Partial Summary Judgment by Dolan and Dolan, P.A., attorneys for the Plaintiff Ramapo Mountain Lakes, Inc., Eileen McCarthy Born, appearing, and the Court having considered the papers submitted therewith and opposition thereto submitted by Defendants, if any, and having heard oral argument and for other good cause shown;

It is on this 21st day of December 2018,

ORDERED that Plaintiff's Motion for Partial Summary Judgment on Count II of the Amended Complaint is granted; and

IT IS FURTHER ORDERED that a true copy of this order be served upon all counsel ~~within 7 days.~~ via eCourts

By: Christine Farrington
Christine Farrington, J.S.C.

Dated: December 21, 2018

(✓) Opposed
( ) Unopposed

For the reasons set forth in the attached letter opinion

NOT TO BE PUBLISHED WITHOUT

THE APPROVAL OF THE COMMITTEE ON OPINIONS

RAMAPO MOUNTAIN LAKES, Inc.

v.

OWNERS OF PROPERTY IN RAMAPO MOUNTAIN LAKES

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-5969-18

CIVIL ACTION

OPINION

Argued: December 21, 2018
Decided: December 21, 2018
Honorable Christine A. Farrington, J.S.C.

Eileen McCarthy Born, Esq., Dolan and Dolan, P.A. on behalf of the plaintiff, Ramapo Mountain Lakes, Inc.

Michael R. O'Donnell, Esq., Riker, Danzig, Scherer, Hyland & Perretti, LLP on behalf of the Riker Defendants

Jason R. Finkelstein, Esq. Cole Schotz, on behalf of the Cole Schotz Defendants

Michael Rowan, Esq., Saul Ewing, Arnstein and Lehr, LLP on behalf of the Ewing Defendants

Rajan Patel, Esq., Law Office of Rajan Patel, on behalf of the Patel Defendants

Russell M. Finestein, Esq. Finestein & Malloy, on behalf of the Finestein Defendants

This matter comes before the court on motion of plaintiff, Ramapo Mountain Lakes, Inc. for partial summary judgment on Count II of the Amended Complaint contending that amendments to the Planned Real Estate Development Full Disclosure Act (PREDFDA), N.J.S.A. 45:22A-21, et seq. provides that all owners in a planned real estate development are members of the association and Ramapo Mountain Lakes, Inc. is such a planned real estate development.

The Riker Defendants cross-move seeking judgment that the PREDFDA amendments do not apply to Ramapo Mountain Lakes, that the 2018 amendments to Ramapo Mountain Lakes by-laws are void and ultra vires and the Ramapo Mountain Lakes has waived, abandoned or is otherwise estopped from asserting authority to assess Defendants and place liens on their properties.

The Cole Schotz Defendants also cross-move for summary judgment alleging that the 2018 amendments to the by-laws are null and void, and acts taken by Ramapo Mountain Lakes pursuant to the by-laws are void ab initio, and further barred from

asserting liens and foreclosing on property owners in Ramapo Mountain Lakes.

Saul Ewing and McCarter Defendants join in the cross-motion.

The history of Ramapo Mountain Lakes, Inc. is set forth in National House and Farm Association, Inc. v. Board of Adjustment of Borough of Oakland, 137 N.J.S. 542 (1948).

> "[National House and Farm Association, Inc.,] in 1937, acquired a large tract of land consisting of approximately 700 acres of farms and open fields situate in the respondent Borough. There existed two fresh water lakes on the property, one of them being known as Crystal Lake. . . [National House and Farm Association, Inc.] is engaged in building developments of a residential nature, and following its acquisition of the tract in question, proceeded to lay out the tract in building lots for use as a private, restricted summer colony. A bathing beach was developed adjacent to Crystal Lake for the exclusive use of the property owners, the outside public being completely barred, and its use limited to property owners, their families and guests. The beach was fenced off and a police officer stationed at the entrance gate to prevent admission thereto by unauthorized persons. Title to the beach which is known as Lot 27 in Block 2407 is retained by [National House and Farm Association]. A beach pavilion containing toilets and shower baths was constructed on a portion of the beach for the use of the bathers. This building is of modest size, measuring 20 X 20 feet. Additionally, [National House and Farm Association] invested a substantial amount of money in developing the tract, having built several miles of streets and roads, as well as sewage and water facilities. *Our review of the testimony clearly shows that the development, known as Ramapo Mountain Lakes, is a self-contained community and that neither the residents of the Borough of Oakland nor the general*

public frequent the area or use its facilities to any appreciable extent." (emphasis provided)

As such, Ramapo Mountain Lakes, pre-dated the Municipal Land Use Law, and it is uncontested that the developer subdivided and developed the property pursuant to a system of seven filed maps, recorded between 1946 and 1948. A certificate of incorporation authorized Ramapo Mountain Lakes to issue 3000 shares of Class A stock, and 30 shares of Class B stock. The original holders of Class B stock were the original developers. In 1951 and Indenture was entered into between the Developer and Ramapo Mountain Lakes to transfer ownership and control of common properties and facilities to Ramapo Mountain Lakes. The Indenture confirmed that at the time the Developer sold the individual lots to the individual purchasers in the development, it made agreements with the purchasers that each would become a "part owner" of all of the common facilities, including the lakes, river, clubhouse, etc., through stock ownership in the corporation which owned the properties. Class A stock certificates were issued to each purchaser. The Indenture also confirmed that at the time of the transfer all Class B stock was cancelled, effectively transferring the control of the corporation from the Developers to the Class A Stock shareholders. The

Certificate of Incorporation of the Ramapo Mountain Lakes Country Club indicated the Club was formed "to further the social, recreational and athletic activities of the property owners in the community known as the Ramapo Mountain Lakes Development and to operate and maintain the recreational facilities within said development." On March 10, 1954, a Tripartite Agreement was entered into between the Developer, Ramapo Mountain lakes and the Club. The preamble to the Agreement confirms the history set forth in National House & Farms Association, Inc., supra, and further that the Developer incorporated Ramapo Mountain Lakes to serve as a "Property owners' corporation" and to take title to the common properties for the "ownership, protection, benefit and use of all said Ramapo Mountain Lakes property owners as a private and restricted project." The Agreement confirmed that on December 24, 1951, the Developer had deeded all of the common properties to Ramapo Mountain Lakes. The Agreement restricted sale or transfer of Class A stock to owners of property in Ramapo Mountain Lakes. In addition to other provisions regarding use and control of recreational facilities, the Agreement provided:

> The provisions of this agreement shall always be construed as covenants, and as such *shall run with the land for the joint benefit of all present and future property owners, their heirs, executor, administrators, assigns and*

> *grantees*, it being distinctly understood and agreed that this contract is entered into for the benefit of all such present and future property owners and stockholders of the Corporation and their grantees. The Developer agrees to effect recording of this instrument for the benefit of all parties. (emphasis provided)

It is uncontested that the chain of title search for each of the defendants' properties, for which a full search was provided in discovery, contain a deed from the Developer to the original purchaser of each respective lot. The searches also include deeds which identify each property as a "plot, tract or parcel of land and premises particularly described, and designated as a lot and block of premises laid out and shown on a certain map of Ramapo Mountain Lakes" situated in the Borough of Oakland, Bergen County, New Jersey. The court finds, for the reasons which follow, this gave subsequent purchasers notice of the common development plan, despite the expiration of the restrictions in 1960.

On April 23, 2018, recorded amended by-laws, passed by Resolution of the Board, for purposes of rendering the by-laws compliant with the 2017 amendments to PREDFDA.

N.J.S.A. 45:22A-23 (PREDFDA) defines a planned real estate development as:

> h. "Planned real estate development" or "development" means any real property situated within the State,

> whether contiguous or not, which consists of or will consist of, separately owned areas, irrespective of form, be it lots, parcels, units, or interest, and which are offered or disposed of pursuant to a common promotional plan, and providing for common or shared elements or interests in real property. This definition shall not apply to any form of timesharing.
>
> This definition shall specifically include, but shall not be limited to, property subject to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), any form of homeowners' association, any housing cooperative or to any community trust or other trust device.

Any doubt concerning the retroactive application of the 1993 amendments was resolved by Comm. For a Better Twin Rivers v. Twin Rivers Homeowners' Ass'n, 383 N.J. Super. 22, 55 (App. Div. 2006) rev'd on other grounds, 192 N.J. 344 (2007) and the 2017 amendment. In Twin Rivers the court wrote:

> PREDFDA resulted from the Legislature's "recognition of the increased popularity of various forms of real estate development in which owners share common facilities, units, parcels, lots, areas or interests." N.J.S.A. 45:22A-22. The amendments to the Act passed in 1993 do not relate to the creation or sale of units within a development. Rather, they address the administration and management of planned real estate developments, and were "intended to prescribe a consistency of management methods in all types of PREDs, and to safeguard the interests of the individual owners or occupants." (Committee Statement to Senate, No. 217, L.1993, c. 30 (1993))."The bill also incorporates into PRED law certain provisions-relating to the bylaws of unit owners' associations, the establishment of members' voting rights, the allocation and collection of common expenses, the amendment of association by-laws and the

adoption, amendment and enforcement of rules concerning the common elements– that are now found only in the statute on condominiums." Id. Although the court will first look to the plain language of the statute in its judicial construction, N.J.S.A. 1:1-1, it cannot ignore the intent of the Legislature Page 967 by imposing a rule of strict construction that would defeat the apparent legislative design. Board of Ed. of Manchester Tp., Ocean County v. Raubinger, 78 N.J. Super. 90, 97, 187 A.2d 614 (App.Div.1963). Committee v. Twin Rivers, 890 A.2d 947, 383 N.J. Super. 22 (N.J. Super., 2006). Here it seems that the Legislature did not contemplate that the law would not extend to all PREDs, since the clear intent was to provide consistency of management and to safeguard the interests of owners. Where the drafters of a statute did not consider a specific situation, a court should interpret the enactment "consonant with the probable intent of the draftsman `had he anticipated the situation at hand.'" Matlack v. Burlington Cty. Bd. of Chosen Freeholders, 194 N.J.Super. 359, 361, 476 A.2d 1262 (App.Div.1984) certif. den., 99 N.J. 191, 491 A.2d 693 (1984) (citations omitted). A literal interpretation of a statute will not be applied where to do so would distort the clearly expressed legislative intent. State v. Schumm, 146 N.J. Super. 30, 33, 368 A.2d 956 (App.Div.1977), aff'd 75 N.J. 199, 381 A.2d 33 (1978). It is reasonable to read N.J.S.A. 45:22A-21 through 45:22-41 as inapplicable to portions of communities where building permits were obtained and plans were already completed, since it would have required amendment of permits already in place, and would have subjected developers to fines for sales which had already taken place.* There is no similar logic for extending the exemptions to those sections of the Act that were added in 1993. The legislature clearly intended for any association not in compliance with the regulations prior to the effective date to make "proper amendment or supplementation of its by-laws," and failure or refusal to do so does not "affect their obligation of compliance therewith on and after that effective date." N.J.S.A.

> 45:22A-48.It would be unreasonable to assume that the protections granted to all New Jersey condominium residents and residents of those portions of PREDs constructed after 1977 were not intended to apply to residents of portions of PREDs constructed prior to 1977. Such a literal reading of the Act could result in residents of older homes being given fewer rights regarding community maintenance and administration than their neighbors who may happen to live in a newer home. This court is not willing to find that this is what the legislature intended when enacting the amendments to PREDFDA. Therefore, the court finds that the 1993 amendments to PREDFDA, codified at N.J.S.A. 45:22A-43 through 48, apply to Twin Rivers; and any portion of the Association by-laws and resolutions not in compliance are in violation of the statute.* The court notes that, under the terms of N.J.S.A. 45:22A-37(e), individual owners were not permitted to waive compliance with the PREDFDA requirements. We are in substantial agreement with the motion judge's rationale and conclusion in this regard.

The PREDFDA amendment of 2017, effective November 1, 2017 confirmed that "the rights and protections [of PREDFDA] exist regardless of whether a developer established the community prior to the effective date of PREDFDA." The 2017 amendments include language which makes clear the applicability of both the 1993 and 2017 amendments to all communities. The intent of the legislature was included in N.J.S.A. 45:2A-45.1(1)(g), "It is necessary and in the public interest for the legislature to enact legislation to amend PREDFDA in order to: "(1) Establish that all unit owners are members of the association and provide

basic election participation rights for certain residents of common interest communities. . ."

An "owner" is defined in N.J.S.A. 45:22A-22(d) as "any person or persons who acquire a legal or equitable interest in a unit, lot, or parcel in a planned real estate development. . ." A "common promotional plan" is defined in N.J.S.A. 45:22A-23(i0 as, "any offer for the disposition of lots, parcels, units or interests of real property by a single person or a group of persons acting in concert, where such lots, parcels, units, or interests are contiguous, or are known, designated or advertised as a common entity or by a common name." N.J.S.A. 45:22A-23(p) a "unit" is defined as "any lot, parcel, unit or interest in a planned real estate development that is, or is intended to be, a separately owned area thereof." "Association" in N.J.S.A. 45:22A-23(p) is defined as "an association for the management of common elements and facilities, organized pursuant to section 1 of P.L. 1993, c. 30(C.45:22A-43) N.J.S.A. 45:22A-23(p).

In seeking to avoid partial summary judgment Defendants note, correctly and undisputedly, that Ramapo Mountain Lakes no longer has many of its original amenities. Ramapo Mountain Lakes, however, and also undisputedly, continues to own two lakes, two dams, a beach and contiguous lots. This matter is about those lakes and dams, which are regulated by the New

Jersey Department of Environmental Protection/Dam Safety Section, and governed by the Dam Safety Act, N.J.S.A. 58:4-1. et seq. The assessments Ramapo Mountain Lakes seeks from the defendant property owners is for the required maintenance of those lakes and dams. The property owners, in their efforts to avoid those assessments allege deficiencies in the chain of title, lack of a common interest, common promotional plan, and a common name. As to the last two, the court finds the defendants allegations are just that: mere allegations which are contradicted by the evidence produced in support of Ramapo Mountain Lakes' motion. Defendants offer nothing other than conjecture and speculation to refute the hard evidence Ramapo has produced to show a common promotional plan and common name. They allegations lack the substance required to defeat a motion for summary judgment on this issue. The chain of title allegations require separate treatment. Defendants allege deficiencies in that chain. These allegations derive essentially from defendants' own failure, or where applicable, the failure of their title searchers and insurers, to adequately research and assess the chain of title to their properties. As set forth in Camp Clearwater v. Plock, 52 N.J. Super. 583 (Chan. Div. 1958), the recording of the original covenants in the chain of title of each property in Ramapo Mountain Lakes gave notice to each purchaser that they were buying a lot which was part of

the "Ramapo Mountain Lakes" filed map, and therefore were "chargeable with notice of every matter affecting the estate which appears on the face of any deed forming an essential link in the chain of instruments through which he derived his title, and also with notice of whatever matters he would have learned by inquiry which the recitals in these instruments made it his duty to pursue." Defendants cite Lawrence J. Fineberg, *Handbook of New Jersey Title Practice,* in support of their arguments, but Mr. Fineberg cautions title companies to set up a requirement in Schedule B, Section 1 of their binders whenever a homeowners association ever existed, either presently or in the past to avoid liability on situations similar to the case at bar. SAs to purchasers whose properties were transferred prior to the Indenture and Tripartite Agreements in 1951 and 1954 respectively, those properties would have had notice via the original seven filed maps. As to properties transferred after 1951 and 1954, those recorded documents state the intent of the developer and original owners. Those documents refer to the chain of events up to that point and specifically set forth that all property owners in Ramapo Mountain Lakes would be a stockholder. Based upon the chain of title and recorded documents and maps, the court finds defendants have no credible claim of lack of notice that their properties were part of Ramapo Mountain Lake and a planned real estate development.

The court finds there are no substantial issues of material fact on the issue of whether plaintiff and defendants are subject to the PREDFDA amendments which establish that all owners in a planned real estate development are members of the association. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995), Rule 4:46-2(c).

The court finds further that the expert reports filed on behalf of the Finestein and Riker defendants are not relevant to the court's determination on this issue of law. The court is in the best position to determine whether the opinion of an expert would be useful in resolving this issue. Rule 702 provides, "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise." The court has determined that there are no substantial issues of fact, relevant to its determination of this legal issue. Questions of law, as distinct from questions of fact, are for the court alone and are not appropriate objects of expert testimony. Kamienski v. Dept. of Treasury, 451 N.J. Super. 499, 518 (App. Div. 2017). Any legal opinions submitted on behalf of a party may be disregarded by the court. Kirkpatrick v. Hidden View Farm, 448 N.J. Super. 165, 179 (App. Div.) certif. den. 230 N.J. 412 (2017).

The court finds the plain language of the statute to be unambiguous and gives the language and terms their ordinary meaning. The legislature wrote in the statute that the language of the statute should be construed liberally to effectuate its purposes. The language of the statute makes it clear that Ramapo Mountain Lakes is a planned real estate development and it is clear to the court that the 2017 and 1993 amendments to PREDFDA apply to Ramapo Mountain Lakes. As to defendants argument that Ramapo Mountain Lakes is not a common interest community, the court relies on Fox v. Kings Grant Maint. Ass'n Inc., 167 N.J. 208(2001) where in our Supreme Court relied upon the *Restatement (Third) of Property: Servitudes* §6 (2000) and Condominium and *Homeowner Association Practice: Community Association Law* 2nd Ed, Wayne S. Hyatt, for a definition of common interest community as, "those communities in which the property is burdened by servitudes requiring property owners to contribute to maintenance of commonly held property or to pay dues or assessments to an owners association that provides services or facilities to the community". Further, "a common interest community is distinguishable from any other form of real property ownership because "there is a commonality of interest, an interdependence directly tied to the use, enjoyment and ownership of property." Here, defendants appear to argue that two lakes, a beach, contiguous property and two dams, for

which Ramapo Mountain Lakes is responsible, is not a sufficiently strong common interest, but they cite no authority for the proposition that a common interest based upon ownership of those properties and statutory regulations which require the maintenance of those dams and lakes is insufficient or somehow exempts them from the definition. Shared ownership means shared responsibilities. The Restatement explains "that property owners in a common interest community have "implied powers," meaning "all the powers reasonably necessary for management of the common property, administration of the servitude regime, and carrying out other functions set forth in the declaration. *Restatement (Third) of Property: Servitudes* §6.4 cmt. a (2000). The Court in Fox, continued, "Although a statute may curtail those powers, "to the extent these powers are necessary for maintenance of common property, limitations on the powers should be narrowly construed." This court finds Ramapo Mountain Lakes is a common interest community. This court rejects the Uniform Common Interest Ownership Act definition of common interest community proposed by defendants as that definition is not the law in this state. The court further finds that Ramapo Mountain Lakes has the power to raise funds as defined in *Restatement* §6.5 which states, a common interest community has the power to raise the funds reasonably necessary to carry out its functions by levying assessments against the individually owned property

in the community and by charging fees for services or for the use of common property." These assessments, according to the Restatement, may be allocated among individually owned properties on any reasonable basis and secured by a lien against those individually owned properties. §6.5(1)(a). That power, again according to the *Restatement*, may be implied if not expressly granted. The court need not determine here whether the power is expressly granted or implied because the result is the same.

The depositions of Janet Leogrande, Paul Fegter and Peter Aivars are not relevant to the court's determination of this issue. Nor are the mechanisms utilized in the development of other common interest communities relevant, except to demonstrate that prior to enabling legislation, multiple mechanisms were utilized for the creation of such communities.

For the above stated reasons, partial summary judgment is granted to plaintiff on Count II of its complaint.

Cross motions to declare changes required by PREDFDA to be made to Ramapo Mountain Lakes' by-laws null and void are denied and judgment is entered in favor of Ramapo Mountain Lakes. There is no basis for such motion in the face of the clear requirements of the PREDFDA 2017 amendments to make the by-laws compliant immediately and by

Executive Board action pursuant to N.J.S.A. 45:22A-46(d)(5)(a), and further to record same

The cross-motions concerning Count 1 are deemed premature and denied without prejudice.

Likewise, the Riker defendants' motion for the court to find Ramapo Mountain Lakes has waived, abandoned or is otherwise estopped from assessing the Riker defendants is deemed premature and denied without prejudice.