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Boulder Oaks Cmty. Ass’n v. B & J Andrews Enterprises, 123 Nev. Adv. Op. No. 46 (2007)¹

PROPERTY LAW – COMMON INTEREST ASSOCIATIONS

SUMMARY

Appeal from a preliminary injunction issued by the district court. The injunction prevented a recreational vehicle lot community association (the association) in Boulder City from amending the community’s conditions, covenants, and restrictions (CC&Rs) without the approval of the community’s owner and operator.

DISPOSITION/OUTCOME

Affirmed. Because NRS 116.003² allows a common interest community to depart from the statutory text in its governing documents, the definition of “declarant” in the CC&Rs promulgated by respondent controlled over the definition set out in NRS 116.035.³ Respondent met this definition, and thus the association could not amend the CC&Rs without respondent’s consent. Consequently, the Supreme Court affirmed the district court’s issuance of the preliminary injunction.

FACTUAL AND PROCEDURAL HISTORY

BCRV developed a common-interest community (resort) in Boulder City, Nevada comprised of recreational vehicle lots, and in 1996, via declaration, established CC&Rs modeled after, but not indistinguishable from, Chapters 82 and 116 of the NRS. BRCV included a provision that required lot owners – seeking to rent their lots to third parties – to use BRCV’s rental services, whereby BRCV retained forty-percent of the rental income.

In 2001, BRCV sold – and assigned all of its rights in – the resort to respondent, B & J Andrews Enterprises, LLC (“Andrews”). When lot owners began to rent out their lots without going through Andrews, the respondent moved to enforce the CC&Rs.

The association, in turn, voted to amend the CC&Rs to provide individual lot owners the autonomy to rent their lots without involving Andrews. Andrews immediately sought a preliminary injunction on the ground that the amendment contravened the specified procedures in the association’s bylaws and the community’s CC&Rs. The association maintained that the amendment was valid and enforceable. The district court sided with Andrews and issued a preliminary injunction denying individual lot owners the right to rent out their lots without Andrew’s involvement.

DISCUSSION

In this appeal, The Nevada Supreme Court upheld the district court’s grant of a preliminary injunction because Andrews adequately demonstrated a “reasonable likelihood of

¹ By M. Charles Seaton.

² NEV. REV. STAT. 116.003 (2007).

³ NEV. REV. STAT. 116.035 (2007).

success on the merits.” The court first considered which definition of “declarant”- the one found at NRS 116.035 or the one provided by the CC&Rs- controlled to determine the status of respondent. The court ruled that the latter applied to establish Andrews as a declarant whose approval was necessary to amend the CC&Rs.

The court went on to reject petitioner’s alternative argument that the rental agreement was terminable by the association as a management contract subject to the provisions of NRS 116.3105.⁴ Rather than accept this view, the court explained that the rental provision was a covenant running with the land, which does not invoke the dictates of NRS 116.3105.

Andrews is a “Declarant” whose Consent is Necessary to Amend the CC&Rs

The court concluded that NRS 116.003 allowed BCRV to legally substitute a different definition of “declarant” from that set out in NRS 116.035 because of the former’s plain language. NRS 116.003 specifically provides that the statutory language controls “unless the context otherwise requires.” Here, the court noted that section 1.12 of the CC&Rs defined “declarant” as BCRV’s “successors and assigns.” Because respondent met this criterion under the CC&Rs, and the CC&Rs controlled, Andrews was a “declarant” in this context.

The CC&Rs in question, at section 9.04, further provide that material changes to the CC&Rs cannot occur without the approval of the declarant. Thus, the court found that Andrews’ approval was required before the association could materially alter the rental provision at issue.

Statutory Consideration of Management Contracts and NRS 116.3105

The Supreme Court further held that the rental provision was a covenant running with the land, and not a management contract terminable under NRS 116.3105 as the petitioner contended. The court was persuaded by a Texas appellate court which held that 1) developers enjoy wide latitude to fashion restrictive measures on subdivisions 2) as long as buyers receive notice of said restrictions and 3) CC&Rs run with the land.⁵ Applied here, the Supreme Court concluded that the CC&Rs promulgated by BCRV met the notice requirement and that, as CC&Rs, they were covenants running with the land. Consequently, the specific rental provision at issue was not susceptible to termination as a management contract under NRS 116.3105.

CONCLUSION

In affirming the district court’s grant of a preliminary injunction, the Nevada Supreme Court held that petitioner’s actions to amend CC&Rs violated the CC&Rs themselves, and that any material change must occur with respondent’s consent, which was absent here. Respondent, properly classified as a “declarant” under the CC&Rs, thereby demonstrated the reasonable likelihood of success requisite to sustain the preliminary injunction.

⁴ NEV. REV. STAT. 116.3105 (2007).

⁵ City of Pasadena v. Gennedy, 125 S.W.3d 687, 698 (Tex. App. 2003).