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Artemis Exploration Company v. Ruby Lake Estates Homeowner's Association, 135 Nev. Adv. Op. 48

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PROPERTY LAW: COMMON INTEREST COMMUNITIES FORMED BEFORE 1992

Summary

The Court determined that (1) implied payment obligations for common elements, contained in the property declaration, can provide adequate notice and create a common-interest community; and (2) NRS 116.3101(1) does not apply to common-interest communities formed before 1992, therefore the unit-owners' association does not need to be organized before or at the time the first unit is conveyed.

Background

This case is regarding a subdivision in Elko County, Nevada named Ruby Lake Estates ("RLE"). The developers filed an official Plat Map for the community on September 15, 1989. The first sheet of the Plat Map explains that the Plate was approved as a Final Plat pursuant to NRS 278.380 and the Board of Commissioners "reject on behalf of the public all streets or roadways for maintenance purposes and does hereby accept all streets and easements therein offered for utility, drainage, and access purposes only as dedicated for public use."

After approval, the developers recorded the Declaration for the community on October 25, 1989.² The Declaration subjected the property to the "imposition of covenants, conditions, restrictions and reservations" in order to "provide for the development and the maintenance of an aesthetically pleasing and harmonious community of residential dwellings for the purpose of preserving a high quality of use and appearance and maintaining the value of each and every lot and parcel of said property." Further, the Declaration created an Architectural Review Committee ("ARC") to maintain the "high standard of architectural design, color and landscaping harmony and to preserve and enhance aesthetic qualities and high standards of construction in the development and maintenance of the subdivision."

On December 15, 1989, the developers conveyed the first estates in Ruby Lake Estates. The appellant Artemis Exploration Company acquired two lots. Elizabeth Essington was the sole officer and director of Artemis Exploration. Mrs. Essington and her husband built a residential home on one of the Artemis Exploration owned lots.

From 1997 until 2006, Ruby Lake Estates established an informal Land Owners Association, which levied and collected assessments from lot owners within Ruby Lake Estates to maintain roadways, fences, culverts, and other items within the community. On August 22, 2005, Mr. Essington called for a revitalization of "Ruby Lakes Estates property owners association" which could include "assur[ing] the aesthetic qualities of the subdivision" and "periodic road maintenance." Mr. Essington wanted to "help revitalize the association and assist in making it function as it was intended," specifically wanting to organize the election of association officers.

In early 2006, the Ruby Lakes Estates Homeowner's Association ("RLEHOA") was officially formed. On August 12, 2006, Mr. Essington seconded the motion to approve the bylaws

¹ By Austin Wood.

² NEV. REV. STAT. 116.037 defines "Declaration" as "any instruments, however denominated, that create a common-interest community, including any amendments to those instruments."

for RLEHOA, which included a provision for annual assessments on the property owners for maintenance and other expenditures.

Several years after RLEHOA was created, a dispute arose between Mrs. Essington and RLEHOA's ARC regarding the construction of a building. Mrs. Essington objected to the building of a structure approved by RLEHOA's board and the ARC. As a result, Mrs. Essington stopped paying assessments on behalf of Artemis Exploration Company and Artemis Exploration Company filed a declaratory relief action against RLEHOA challenging RLEHOA's authority to impose assessments.

Both parties filed motions for summary judgment. The district court denied Artemis Exploration Company's motion and granted RLEHOA's motion. The district court held that RLE was a common-interest community because its Declaration sufficiently described RLE's common elements and alerted the owners they would be financially responsible. Further, the district court held that RLEHOA was a validly created unit-owners association in compliance with NRS 116.3101, even though RLEHOA was created after the first lot's conveyance.

After the district court entered a final judgment, Artemis Exploration Company appealed.

Discussion

The Court reviews the district court's decision to grant summary judgment to RLEHOA *de novo*.

First, the Court reviewed NRS 116.021's definition of "common-interest community" and determined the definition depends on the definitions of "common elements" and "real estate."³ NRS 116.017 defines "common elements" as "any real estate within a planned community which is owned or leased by the association." Further, the court explained that NRS 116.081 defines "real estate."⁴

The court explained for RLE to qualify as a "common-interest community," the community's Declaration must describe "real estate" for which unit owners are financially responsible, i.e., "common elements." This Court concluded that RLE falls within the definition because RLE's Declaration provided "for the development and maintenance of an aesthetically pleasing and harmonious community," and it established the Architectural Review Committee. Further, the court looked to RLE's Plat Map which "rejected on behalf of the public all streets or roadways for maintenance purposes." The Court concluded that the Declaration and Plat Map does not expressly state an obligation to pay for common elements. However, when read in conjunction, the documents gave rise to an implied payment obligation that created a common-interest community.⁵

³ NEV. REV. STAT. 116.021 explains that a "common-interest community means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration."

⁴ NEV. REV. STAT. 116.081 defines real estate as "any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvement and interests that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. The term includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water."

⁵ See *Evergreen Highlands Ass'n v. West*, 73 P.3d 1, 7 (Colo. 2003) (adopting the approach taken by a number of other states and the Restatement of Property (Servitudes) in holding that under Colorado's version of the Uniform Common-Interest Ownership Act, language in a declaration, plat and other recorded documents may establish a common-interest community by implication with the association's concomitant implied authority to levy assessments on unit owners to pay for maintenance of the subdivision's common elements).

Second, the Court explored whether RLEHOA was a valid unit-owners' association under NRS 116.3101.⁶ NRS 116.3101 provides that "a unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed." However, because NRS 116.3101 was passed in 1992, the court needs to determine whether the Legislature meant the statute to apply retroactively. The Court determined that "unless the Legislature clearly manifests an intent to apply the statute retroactively, or it clearly, strongly, and imperatively appears from the act itself" the Court will not implement the intent.⁷ Further, the Court examined the legislative history and determined it would be absurd for the Legislature to decide in 1999 to impose NRS Chapter 116's requirements on pre-1992 communities.⁸

Conclusion

The Court concluded that the district court properly found that RLE is a common-interest community pursuant to NRS 116.021 because RLE's Declaration sufficiently gave notice to prospective unit owners that they would be financially liable for maintaining common elements. Additionally, RLEHOA is a valid unit-owners' association because NRS 116.3101(1) does not apply retroactively to pre-1992 common-interest community.

Accordingly, the Court affirmed the district court's decision of summary judgment to Ruby Lake Estates Homeowner's Association.

⁶ NEV. REV. STAT. 116.3101.

⁷ See *PEBP v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 154, 179 P.3d 542, 553.

⁸ See *S. Nev. Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (observing that in resolving statutory construction issues, this court's duty is to select a construction that is consistent with the legislature's intent and the purpose of the legislation as a whole and that also avoids absurd or unreasonable results).