

NO. A10-1108

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State of Minnesota
In Court of Appeals

Superior Shores Lakehome Association,

Appellant,

vs.

Jensen-Re Partners, a Minnesota General Partnership
and Joseph Re, individually,

Respondents.

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

1. When the Condominium Association's governing documents require Board approval to subdivide/alter units, and the Board approves said alteration or subdivision on the condition of the payment of two Association fees, is said action null and void because the Declaration is not amended to reflect the additional unit, despite the liberal construction and equitable remedies required by the Minnesota Condominium Act?

The District Court ruled in the affirmative.

2. Is the Respondent, because of its knowledge prior to its purchase of Units 57A and 57B of the agreement by the Board to allow the subdivision/alteration, and Respondent's acceptance of the benefits and improvements related to the subdivision of Unit 57 on the condition of the payment of two fees, equitably barred from raising as a defense to the payment of two fees the lack of an Amendment to the Declaration?

The Court ruled in the negative.

3. If the approval by the Board of the subdivision/alteration of Unit 57 is necessary under the Association's Declaration, but is now rendered a nullity by virtue of the lack of an amendment to the Declaration, then can the Board require the unit to be returned to its original condition?

The Court ruled in the negative.

STATEMENT OF THE CASE

Although the Appendix in this case is quite lengthy, the undisputed material facts and documents boil down to few.

The Appellant is a condominium Association which in the early 1990s approved the subdivision of the subject matter condo unit (Unit 57) into separate units (Units 57A and 57B) and provided additional improvements and maintenance for the separated units in return for the units each paying an Association fee (the "Agreement"). The requesting owners agreed to this condition and the two fees were paid for 12+ years until the Respondent partnership purchased the units. Subsequently, Respondent partnership refused to pay fees for each unit. This suit ensued.

Respondents in their Answer to this action alleged they were not required to pay two fees because the Agreement had not been formalized by an Amendment to the Association's Declaration. Appellant countered with arguments in the alternative:

- The Uniform Condominium Act ("Act") [Minn. Stat. §515A, et seq.] with its emphasis on good faith, liberal construction, and equitable remedies required the court to deem the Declaration amended or reformed to reflect the parties' Agreement.
- Alternatively, equitable remedies of unjust enrichment, equitable estoppel or waiver barred the Respondent from raising the lack of formalization of the Agreement in the Declaration.
- Alternatively if the court concludes that the lack of an Amendment leaves the Agreement a nullity, then the unit must be restored to a single unit.

The lower court granted summary judgment to the Respondents in essence concluding, in a strict construction of the Act, that because there was no Amendment to the Declaration, there was no subdivision. The decision did not address the alternative arguments of counsel except to say “there is no legal basis” for them.

The court’s Summary Judgment Order was filed on October 30, 2009. As it called for payment of attorney’s fees, additional briefing on attorney’s fees resulted in an Order determining the fees filed on April 1, 2010 and a final Judgment for the fees filed April 26, 2010. Appellant appealed from the Judgment on June 24, 2010.

STATEMENT OF FACTS

I. The History of the Condominiums; the Applicable Governing Documents and Statute.

In late 1984, Superior Shores, a condominium complex on Lake Superior, was developed by Superior Shores Partnership (“Developer”). The Developer desired to create restrictions, conditions and covenants which would serve to govern, control and regulate the use and enjoyment of the property. To that end, the Developer filed of record in the office of the Lake County Registrar of Titles, Superior Shores, A Condominium, Condominium No. 1 Declaration, Document No. 17,240. The unit(s) which are the subject of this litigation were added to the regime in November, 1993 with the recording of Amendment to Declaration Condominium No. 1 – Superior Shores, A Condominium, Phase VII, Document

No. 23,138. (The original Declaration, along with Phase VII, which are both public records, will be referred to herein as the “Declarations”) (A-92, Hearn Aff. Exh. F; and A-137, Hearn Aff. Exh. G). The Declarations provide the Plaintiff herein, Superior Shores Lakehome Association (the “Association”), with the authority to enforce the restrictions.

The Association was incorporated for the purpose of “promoting, enhancing, managing and protecting the condominium known as Superior Shores, a Condominium...” Articles of Incorporation, Article II (“Articles”). The Bylaws of the Association (“Bylaws”) empower the Association’s Board (the “Board”) to “do whatever is necessary, conducive, incidental or advisable to accomplish and promote its objectives and purposes...” Article II, paragraph 2.2. Among the enumerated powers granted to the Board is “to sue to collect any charges not paid and in connection therewith to foreclose any lien granted to it...” Article II, paragraph 2.2(k). (See Articles and Bylaws, both public records, A-154, Hearn Aff. Exh. H; A-163, Hearn Aff. Exh. I). The Declaration, Articles and Bylaws are interpreted under the Uniform Condominium Act (the “Act”) which is incorporated at Minn. Stat. §515A, et seq.

II. Request by Unit 57 for a Variance to Original Documents to Subdivide; Subsequent Marketing and Use of Unit as Two Separate Units; Failure of Owners to Amend Declaration.

In the early 1990s, the Board was approached by certain members, including Mr. and Mrs. Boehland (the “Boehlands”), then the owners of Unit 57, with a request to subdivide Unit 57 to allow for separate rentals and sale as

separate units. The Boehlands' request triggered Section 2.6 of the Declaration, which reads in pertinent part:

“2.6. Requirements for Subdivision.

(a) Procedure. If any Unit Owner desires to subdivide or convert, relocate the boundaries of, or alter, his Unit, the procedure set out in this Section 2.6 shall be followed. . .

(f) Conditions. The Board or, on appeal, the Association, may impose conditions on any consent to such work (alteration, subdivision, etc.) to protect the Common Elements, Units and the Condominium. . .”

Pursuant to this process, the Boehlands were given approval by the Board to subdivide Unit 57 into Units 57A and 57B. In addition, the Association paid to have separate walkways, and a parking area to effectuate the separation, and also provided additional lighting for Units 57A and 57B. (*see* A-52, Minutes, Hearn Aff. Exh. C). The units were then also physically altered so there is no ingress or egress between Units 57A and 57B, the units have separate entrances, and separate cooking facilities. The Association maintains (e.g. removes snow, etc.) the separate walkways for the units. (A-83, Re Depo. p. 21:5-14; Hearn Aff. Exh. E). As a condition of, and in consideration for, approval allowing the unit to be subdivided and the Association's payment for improvements to the properties and ongoing separate maintenance, the Board required that Units 57A and 57B be charged separate assessments, doubling the monthly amount due to the Association. (The approval and improvements and maintenance of the improvements in exchange for the obligation to pay two fees will be referred to as the “Agreement”). The Association has included the additional fees in its budget since the time of the Agreement. The Boehlands paid the two assessments

from the time the Unit was subdivided until the sale in December, 2007 to the Respondent Jensen-Re Partners. (A-39, Pearson Aff.)¹

The Boehlands should have prepared an Amendment to reflect the subdivision. Minn. Stat. §515A.2-115(a) requires that if a unit is subdivided, thereby altering the original Declaration, the unit owner shall prepare and execute the Amendment. Minn. Stat. §515A.2-115(b) places upon the unit owner the duty to deliver a certified copy of the recorded Amendment to the Association. However, for reasons never revealed, the Boehlands failed to prepare and provide an Amendment and the Board mistakenly thought one was not necessary. (A-40, Pearson Aff.)

III. Respondent's Purchase of Units 57A and 57B with Knowledge of the Respondent's Obligations of Each Unit to Pay Separate Association Fees; Acknowledge the Separateness of the Units and Market for Sale the Units as Separate Units.

The Boehlands' sale materials for the subject property, prior to sale to Jensen-Re, clearly described the property as separate units paying two Association fees. The property is described as "The upper level unit (57A) is a two-bedroom plus loft and the lower level unit (57B) is a studio." (A-65, Hearn Aff. Exh. D). The flyer goes on to speak separately of "Lakehome 57A" and "Lakehome 57B." Equally important, the Association dues disclosed in the

¹ All other subdivided units were required to pay two Association fees and have done so up to the present and continuing. (A-39, Pearson Aff.)

materials were in the amount of \$9,600 annually, which assumes 57A and 57B each owe an Association fee. (A-65-77, Hearn Aff. Exh. D).

Mr. Re of the Respondent Jensen-Re Partners is the President of Blue Waters Development Corporation, which managed several condominium units within the Lake Shores community, including Unit 57 prior to Respondent Jensen-Re Partners' acquisition of it.² Re testified that while he managed the properties, they had already been reconfigured into Units 57A and 57B. (A-82; Re Depo., p. 20:15-23). He also testified that he was aware that the prior owners, the Boehlands, were paying two Association fees. (A-80-81, Re Depo. p.18:11-15 and p. 19:12-13; A-87, Re Depo. p. 29:9-13). Mr. Re also testified that the other Units in the development that were subdivided or "reconfigured" paid two sets of Association dues. (A-83-84; Re Depo. pp. 21:20-22:5). Jensen-Re is now marketing Units 57A and 57B separately, selling interval interests in each separate unit (A-43-46; Hearn Aff., Exhs. A and B). Re admitted that the purchasers of interval interests in 57A would have no ownership or other interest in 57B. (A-90-A90-1, Re Depo. pp. 32:21-33:2). Re refers to the property as separate units throughout his deposition and acknowledges the improvements made by the Association:

Q. And it was configured into two units?

² Mr. Re was described in oral arguments as being a sophisticated real estate investor and businessman, and Blue Waters Development is listed in public information (Google) as a company employing 100 to 249 employees in development and property management.

- A. It had an upper unit and a lower unit. (p. 20).
-
- A. It is a property that is capable of being rented separately or occupied separately.
- Q. Are there separate entrances?
- A. Yes.
- Q. Separate cooking facilities?
- A. Yes.
- Q. Within the totality of what previously was Unit 57, is there access from 57A to 57B?
- A. No.
- Q. Does the association maintain the separate entrance, for instance, when it snows or...
- A. Yes.
- Q. Do you know if the association provided any lighting or any real property improvements making for that separate entrance?
- A. I know there is a paved trail walkway to the 57 separate entrance, yes.

(A-82-83, Re Depo. p. 20:24-25; p. 21:3-19).

IV. This Action Commenced; Cross Motions for Summary Judgment; Court's Ruling.

After purchasing Units 57A and 57B Jensen-Re continued to use and accepted the continued maintenance, walkway and lighting for each unit, but refused to pay the required two Association fees for 57A and 57B, so this action was brought by the Association seeking to collect back payments and attorney's fees. Respondent answered, asserting for the first time that, because there was no Amendment to the Declaration reflecting the subdivision of the property, there was no basis for the second Association fee, and accordingly counterclaimed that the lien which had been placed on Units 57A and 57B as part of the collection process was invalid and a slander of title and sought attorney's fees. The

Association replied that the defense asserted was barred by unjust enrichment, equitable estoppel, or waiver.

Both parties filed cross-motions for summary judgment. Respondent asserted its defense that the imposition of two fees was without authority because the Declaration had not been amended to reflect the subdivision.³ The Association argued that the Act with its emphasis on liberal construction and equitable remedies called for the Court to either reform the Declaration to reflect the necessary amendment, or invoke equitable remedies to preclude Jensen-Re from asserting the lack of amendment as a defense. Alternatively, the Association argued that, if the Court were to find that the approval by the Board to allow subdivision of Unit 57 into 57A and 57B was in essence a nullity because of the lack of an Amendment of the Declaration, then the net result was that there was no legal basis or approval for the subdivision and the unit must be restored to its original condition.

The trial court granted Respondent's Motion and denied Plaintiff's Motion ignoring and failing to acknowledge all of the undisputed evidence of the Board's approval of the subdivision into separate units under the condition of

³ Respondent Jensen-Re also rather disingenuously argued that the initial Resale Disclosure Certificate erroneously failed to reflect two Association dues. However, this position was not vigorously argued, presumably because the Resale Disclosure Certificate was almost immediately corrected and Mr. Re could not dispute that he was aware by virtue of his management duties and the sales materials from the Boehlands that in fact both Units 57A and 57B were paying Association fees. (A-80-81, Re Depo. p.18:11-15 and p. 19:8-13).

payment of two fees; the improvements made by the Board in reliance on said fees; and the subsequent rental and sale of the units as separate units. Instead the court adopted a legal fiction that the units were not subdivided because the Declaration had not been amended. The court subsequently issued a judgment in favor of Respondents for attorney's fees (the Bylaws allow a prevailing party attorney fees) and this Appeal from the Judgment and Summary Judgment Order followed.

STANDARD OF REVIEW

When reviewing an appeal from an order or summary judgment this court determines first, whether there are any genuine issues of material fact; and second, whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). A reviewing court need not defer to the district court's application of the law when the material facts are not in dispute. Since the parties agree on the material facts, the question here is the application of law, thus no deference need be given to the district court's decision. *A.J. Chrom Const. Co. v. Commercial Mechanical Servs., Inc.*, 260 N.W.2d 579, 582 (Minn. 1977). The proper standard of review is *de novo*.

“When the district court grants a summary judgment based on its application of statutory language to the undisputed facts of a case, as the district court did here, its conclusion is one of law and our review is *de novo*.”

ANALYSIS AND ARGUMENT

I. Introduction

The following arguments are made in the alternative. In other words, a reviewing court looking at this *de novo* could provide any of the following results:

- Based on the dictates of the Uniform Condominium Act for liberal, good faith construction or using the equitable remedy of reformation, the Court should conclude that because the undisputed material facts reveal that an Agreement was made to divide Unit 57 into separate units, both parties have performed, and in fact the physical changes and improvements to effectuate the changes have been made, then the Declaration is “reformed” or amended to reflect the additional unit.
- Alternatively, the Court should conclude that because the Respondents were not only aware of the Agreement allowing for the subdivision and enjoyed the benefits of the subdivision, equity in the form of unjust enrichment, equitable estoppel or waiver should be invoked to bar Respondents from raising the lack of an Amendment to defeat the subdivision and its requisite payment of two fees.
- Alternatively, if the reviewing Court finds that the lack of an Amendment is fatal to there being a subdivision, then Unit 57 must be restored to its undivided original condition because it is clearly two units per the Act, and the Declaration calls for it to be one.

⁴ The district court in this case drafted its order containing “Findings of Fact.” In a summary judgment setting the appropriate focus is on the “material undisputed facts.” As indicated in Appellant’s Request for Reconsideration (A-16) and this Brief, it believes that the trial court not only misapplied the law but failed to consider or treat the appropriate “material” undisputed facts.

II. The Facts of this Case When Interpreted in Light of the Dictates of the Uniform Condominium Act Lead to the Conclusion that the Declaration is Deemed Reformed to Reflect the Subdivision of the Subject Matter Property and the Other Divided Properties which are Paying Two Association Fees.

A. The Uniform Condominium Act, interpreting the facts of this case, leads to the conclusion that the Declaration is deemed amended to reflect the Agreement between the Board and the property owners.

Section 2.3 of the Declaration states that:

“No owner or other person shall at any time partition the project or subdivide any unit or separate a unit from its appurtenant common elements except in accordance with the Act and this Declaration.”

Section 2.6 of the Declaration (*supra* at p.5) indicates that the owner must petition the Board for approval of subdivision and the Board in approving a subdivision can place conditions on that approval. In keeping with all of this, Unit 57 asked to be subdivided, the Board approved, spent money on improvements and required payment of two Association fees. The Association has also continued to maintain the improvements and pay costs (e.g. light bills, snow removal, etc.) associated with the improvements. So far so good. The stumbling block is that the Act at §515A.2-115 calls for an Amendment of the Declaration if a subdivision occurs. The Act requires the owners (the Boehlands) seeking the subdivision to prepare such an amendment. The Boehlands never did this, but they did live up to the Agreement by paying the two Association fees the entire time they owned the property.

However, the Act has specific provisions that clearly provide the ability for this Court to rectify the situation. Minn. Stat. §515A.1-108 expressly indicates that the law of equity supplements the Act; Minn. Stat. §515A.1-113 imposes an obligation of good faith in applications of the Act; Minn. Stat. §515A.1-114 indicates that all remedies under the Act should be **“liberally administered to the end that the aggrieved party is put in as good a position as though the other party had fully performed.”** Taking the combination of these edicts of the Act into account, this Court should rule that the Board be put in the position as though the other party (the Boehlands) had fully performed by preparing the necessary Amendment, and deem the Declaration amended as of the time of the Agreement.

B. The same result can be reached by invoking the equitable remedy of reformation to reform the Declaration to reflect the Agreement.

There is no dispute, and the documents and conduct confirm, that there was an Agreement by the Boehlands to subdivide Unit 57 and to pay two Association fees as a condition of the approval and in consideration of the improvements and ongoing maintenance related to the separate units. The problem is that the Declaration was not amended to reflect this Agreement.

The law of equity addresses this situation by use of the equitable remedy of reformation. Property documents, even deeds, can be reformed by a court using its equitable powers:

“Minnesota law provides that a deed can be reformed by a court using its equitable powers only when it is proved that (1) there was a valid agreement between the parties expressing their real intentions;

(2) the written instrument allegedly evidencing the agreement failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.”

Theros v. Phillips, 256 N.W.2d 852, 857 (Minn. 1977).

In the instant case, the Agreement and its full performance are undisputed. The only problem arises because, presumably by mistake, the Boehlands failed to amend the Declaration. Therefore, whether the Court invokes §515A.1-114 to reform the document or applies the equitable remedy of reformation, the result should be the same – the unit is deemed subdivided pursuant to the Agreement and owes two Association fees.

III. Alternatively, Various Equitable Theories Lead to the Conclusion that the Respondents Cannot Use the Lack of an Amendment to Defeat the Obligation to Pay Two Fees.

Joseph Re, a principal in the Respondent Jensen-Re is a sophisticated real estate investor who is also President of a sophisticated development and management company. Re purchased the subject matter units not only knowing they were clearly separate units and paying separate Association dues, but also was aware of improvements made and maintained to accommodate each of the separate units. When Jensen-Re was in the process of purchasing the property it did not alert the Board that it did not intend to pay Association fees because of the lack of an Amendment, but rather closed on the property and have continued to accept the benefits of maintenance of the improvements and payment of the walkway electricity and snow removal for the units. Not until Respondent Answered this

lawsuit did it ever raise the issue of a lack of an Amendment to be a reason it need not pay the fees. Under these circumstances either or all of the equitable remedies of unjust enrichment, equitable estoppel and/or waiver apply to defeat the ability of Jensen-Re to raise the lack of an Amendment to defeat the obligation to pay fees.

A. Unjust enrichment.

In order to establish a claim for unjust enrichment, the Association must show that Defendants knowingly received something of value to which they were not entitled, and that the circumstances are such that it would be unjust for Defendants to retain the benefit. *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996); *see also, Acton Const. Co. v. State*, 383 N.W.2d 416, 417 (Minn. Ct. App. 1986). (The elements of a quasi contract are: (1) a benefit is conferred; (2) the defendant appreciates and knowingly accepts the benefit; (3) the defendant's retention of the benefit under the circumstances would be inequitable.).

Clearly, the allowance of the subdivision of Unit 57 into 57A and 57B, with the added ability to market interests therein, is a benefit to Defendants. The Association, at its expense, made exterior changes to allow for the efficient, and profitable, use of the subdivided unit and ability to sell the units separately. The Defendants appreciate this benefit, as they have availed themselves of it in marketing the separate apartments. All other owners of subdivided units pay two assessments, per the requirement of the Association (A-39, Pearson Aff.).

Therefore, as a matter of law, Defendants should not be unjustly enriched by being allowed to pay one assessment on the separate living Units 57A and 57B.

B. Equitable estoppel.

It is well settled that a written contract may be modified by subsequent acts and conduct of the parties to the contract. *See, e.g., Huver v. Opatz*, 392 N.W.2d 237, 241 (Minn. 1986). One theory allowing for the modification of contracts is equitable estoppel, which prevents one from asserting otherwise valid rights when the party has acted in such a way as to induce another party to detrimentally rely on those actions. *Pollard v. Southdale Gardens of Edina Condominium Ass'n., Inc.*, 698 N.W.2d 449, 454 (Minn. Ct. App. 2005), *citing Drake v. Reile's Transfer & Delivery, Inc.*, 613 N.W.2d 428, 434 (Minn. Ct. App. 2000)

The elements of estoppel are (1) that promises or inducements were made; (2) reasonable reliance by the asserting party; and (3) that the claimant will be harmed if estoppel is not applied. *Pollard*, 698 N.W. 2d at 454. There is not a requirement that conduct creating estoppel consists of affirmative acts or words. The conduct may consist of silence or a negative omission to act, and the facts need not be actually known to the estopped party. *Id.* Fraud and/or an intention to deceive are not required to prove estoppel. *Id.*

The first promise or inducement came from Defendants' predecessor in title, the Boehlands, who affirmatively agreed to pay two assessments as consideration for the Association allowing the subdivision or partition of Unit 57.

The Association allowed such partition and even made substantial expenditures to allow the separate use, rental and marketing of 57A and 57B. Defendants impliedly promised to continue this arrangement when Defendant Jensen-Re Partnership purchased the units with knowledge that each unit paid dues. Joseph Re was aware that the units were treated separately for rental purposes as he had managed the property and he knew that the property owner incurred two assessments (A-80, Re Depo. p. 18:11-15), as did every single owner who had subdivided his or her unit (A-39-40, Pearson Aff.). By acquiring the property with such knowledge, and with the added value of the walkway, parking and lighting the Association provided, Re impliedly induced the Association to continue allowing the subdivision of the original unit. Additionally, Respondent was aware the Association has set its budget since 1993 with the reasonable expectation that Unit 57A and Unit 57B would each be paying a full assessment.

Weighing heavily against Defendants' position is the fact that not only is Jensen-Re Partnership marketing the two condo units separately, but in its sales flyers advise prospective purchasers of 1/8 undivided interest in each unit that the monthly assessments are \$59.38. Therefore the full monthly assessments that Defendants are disclosing per unit is \$475 (\$59.38 multiplied by 8). *See* A-43; A-45; Hearn Aff. Exhs. A and B. (\$475 per unit is the monthly assessment the Association claims the Respondent is required to pay.) Jensen Re acknowledged that each unit is obligated to pay a full monthly assessment by advising prospective purchasers of that fact.

C. Waiver.

Waiver is a voluntary relinquishment of a known right. *Engstrom v. Farmers & Bankers Life Ins. Co.*, 230 Minn. 308, 41 N.W.2d 422, 424 (1950). Waiver does not need to be proved by express declaration or agreement and may be inferred from acts and conduct not expressly waiving the right. *Id.* In the case at bar, Mr. Re had actual knowledge that the original unit had been subdivided and that the previous owner was paying two sets of assessments. He also testified that he was aware that the other owners with subdivided units were paying two assessments. By purchasing the property with this knowledge and accepting the subdivided property and its benefits, Re knowingly relinquished any arguable rights to pay a single assessment for the subject property.

IV. If the Court Concludes that the Agreement to Subdivide the Property Fails Because of the Lack of an Amendment, then the Status Quo Must be Restored and the Units Restored to their Original Condition.

If the Court concludes as the trial court did that the lack of an Amendment means there is no subdivision, then Units 57A and 57B must be returned to their original condition because Unit 57 in its present configuration violates the definition of a single “unit” under the definition of the Act which states:

“ ‘Unit’ means a portion of the condominium, whether or not it contains, solely, or partially within a building, designated for separate ownership, the boundaries of which are described pursuant to Section 515A.2-110.” Minn. Stat. §515A.1-103(19). [emphasis added]

The court's conclusion that it must strictly construe the Act to declare no subdivision because of no Amendment results in creating a violation of the Act because what it is now deeming as being one unit is clearly two "units" as defined by the Act. Moreover, the Declaration only allows for 49 units (A-106; Superior Shores Declaration) and in order to keep the number at that level, the unit would have to be restored to a single unit. The court cannot strictly construe the Act in favor of Respondent and then refuse to strictly construe the Act relative to the situation of the units now being in excess of the Declaration.

As I am sure there is some legal maxim that states "the law abhors an absurdity," the Respondents cannot have it both ways. Either they have two units as a result of the Agreement and they are free to continue having the benefits of those two units as long as they pay two Association fees, or they only own one unit which cannot be divided for separate ownership or rental or living space.

CONCLUSION

This is an important case because it interprets the Uniform Condominium Act. At least to this author's review there are very few cases in Minnesota or the country which interpret the Act. Moreover, the Court's decision is important to the viability of all condominium associations, which are generally run by volunteer boards. The Court should send the message that when Association boards make and perform agreements in good faith the Act will not be construed to defeat the good faith purposes and intentions of all parties, but rather will be enforced to

validate them. Public policy dictates that this Court should either conclude that the Respondents owe the Association fees, or they must return their units to a single unit. Otherwise other boards acting in good faith will be at risk for clever attacks by more “sophisticated investors” seeking to advance their own financial benefit and jeopardizing the financial resources of the condominium, while benefiting the whole time from the fruits of a good faith Agreement.

(Signature on Next Page)

DATED: July 23, 2010

Respectfully submitted,

NOLAN, THOMPSON & LEIGHTON

A handwritten signature in black ink, appearing to read 'Mark M. Nolan', written over a horizontal line.

By

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