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Case No. 10302-VCN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIC T. HOUGH,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. 10302-VCN**
	:	
SCHOONER VILLAGE I PROPERTY OWNERS ASSOCIATION, INC., a Delaware Corporation,	:	
	:	
and	:	
	:	
BOARD OF DIRECTORS OF SCHOONER VILLAGE I PROPERTY OWNERS ASSOCIATION, INC.,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

Date Submitted: July 16, 2015
Date Decided: August 24, 2015

Adam C. Gerber, Esquire of Hudson, Jones, Jaywork & Fisher, LLC, Dover, Delaware, Attorney for Plaintiff.

R. Karl Hill, Esquire of Seitz, Van Ogtrop & Green, P.A, Wilmington, Delaware and Sean A. Dolan, Esquire of the Law Office of Cynthia G. Beam, Newark, Delaware, Attorneys for Defendants.

NOBLE, Vice Chancellor

Plaintiff owns a home in a community overseen by a homeowners association. The association has levied a special assessment, approved by a member vote, requiring owners to fund exterior renovations to the buildings in the community. Plaintiff balks at paying his portion of the assessment. At issue is whether the homeowners association has the authority to pursue the project and to assess members of the community for the project's cost, and if so, whether it has properly executed its powers.

I. BACKGROUND

A. *The Parties*

Schooner Village I consists of fifty-three townhomes in eight separate buildings near Bethany Beach, Delaware. Formed in September 1992, its properties are "held, sold and conveyed subject to" a Declaration of Covenants, Conditions and Restrictions (the "CCR").[1] The community is administered by Defendant Schooner Village I Property Owners Association, Inc. ("Schooner Village"), which has the authority

> to maintain, operate and administer the common areas and community facilities in Schooner Village I . . . ; to enforce the covenants, restrictions, easements, charges and liens provided in the [CCR]; to assess, collect and disburse the charges created under the [CCR] . . . ; and to exercise all powers and privileges and to perform all duties and obligations of [Schooner Village] under the [CCR].[2]

[1] Defs.' Opening Br. in Supp. of Their Mot. for Summ. J. ("Defs.' Opening Br.") Ex. A. (CCR).
[2] *Id.* Ex. B (Certificate of Incorporation), at 1.

Schooner Village's corporate governance is prescribed by the Certificate of Incorporation and its Bylaws (the "Bylaws").[3] The Bylaws delegate the authority to manage and direct the association's affairs to a board of directors (the "Board," and with Schooner Village, the "Defendants"). The Board "may exercise all of the powers of [Schooner Village] subject only to approval by the owners when such is specifically required by the [CCR] or . . . [the Bylaws]."[4]

Plaintiff Eric T. Hough ("Hough" or "Plaintiff") purchased a Schooner Village townhome in May 2005 and owns his property subject to Schooner Village's governing documents.[5] He initiated this action to contest Defendants' right to levy a special assessment requiring all homeowners to fund the replacement of the siding, roof, and gutters of all eight Schooner Village buildings.

B. *The Renovation*

On August 1, 2013, the Board notified all homeowners that "the useful life of the exterior fascia (i.e., cedar siding boards) of each building ha[d] come to an end" and that a complete refacing of all buildings was recommended.[6] The Board set a special homeowners' meeting for September 14. At that meeting, the Board presented renovation alternatives and financing options, and formed a special

[3] *Id.* Ex. C (Bylaws).
[4] Bylaws § 11.
[5] Schooner Village's governing documents include its Certificate of Incorporation, its Bylaws, and the CCR.
[6] Defs.' Opening Br. Ex. E., at 2.

committee (the "Renovation Committee") to explore the scope, timing, and payment options for the work.[7]

At Schooner Village's next annual meeting, held on June 28, 2014, the Renovation Committee presented its findings and introduced the contractor it had selected. The committee's proposed financing would require each homeowner to pay a "base price plus the cost of any repairs to damaged areas that are necessary for installation of the siding, roof and gutters."[8]

The Board scheduled a special meeting for July 26, 2014, to vote on whether to pursue the renovation project. On July 16, homeowners were provided notice of the meeting, along with proxies allowing for absentee voting.[9] Before the vote, they were also supplied a spreadsheet breaking down the project's cost per unit. The homeowners ultimately "voted in favor of a special assessment for capital improvements to replace the siding, roof and gutters of all buildings in Schooner Village."[10] A notice to homeowners confirming that result attached a spreadsheet with the base cost to be paid by each homeowner.[11] Each owner was required to pay an initial deposit of $5,000.00 on or before October 1, 2014, and was given the

[7] *Id.* Ex. G (Sept. 14, 2013, Minutes of Special Meeting of Homeowners), at 4.
[8] *Id.* Ex. J (June 28, 2014, Annual Board Meeting Minutes), at 2.
[9] *Id.* Ex. K (Notice of Special Meeting of Owners).
[10] *Id.* Ex. N (Notice of Capital Assessment for Schooner Village Renovation Project).
[11] *Id.* The notice advised that the base cost was approximate and a final price would be determined shortly.

option of paying the balance in one lump sum or in two installments.[12] All homeowners other than Plaintiff paid the deposit, and construction on the first building began on October 1, 2014.[13]

C. *Schooner Village's Governing Documents*

The Bylaws authorize the Board to "[c]ollect assessments at regular intervals as determined in its discretion."[14] Although it has exercised its power to collect annual assessments, it retains "the right . . . at any time in [its] sole discretion to levy an additional assessment in the event the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies."[15]

> The assessments for common expenses provided for [in the Bylaws] shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the owners and occupants of the subdivision, and maintaining the subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors and in accordance with Article V of the [CCR].[16]

Article V of the CCR, entitled "Covenant for Maintenance," empowers Schooner Village to charge assessments for the exclusive purpose of

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[12] These charges constitute the special assessment.
[13] Refurbishing all buildings during the renovation would allow all necessary work to be done at once while also maintaining a uniform community character.
[14] Bylaws Art. IV § 12(g).
[15] Bylaws Art. VI(b)2.
[16] Bylaws Art. XII.

> promoting the recreation, health, safety, and welfare of the residents in the community, and particularly for the improvement and maintenance of the common areas located in the property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the common areas, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, and for operating reserve funds and reserve funds for repair and replacement of the common areas, the facilities thereon, and the Association maintenance responsibilities under Article [IV].[17]

Article IV obligates Schooner Village to "provide exterior maintenance upon individual dwelling[s] as follows: paint, stain, repair, replace and care for fences, roof surfaces and roof systems, gutters, downspouts, chimneys, and all exterior building surfaces with the exception of entry doors, windows, glass and their appurtenant hardware which shall be the responsibility of the owner."[18]

The CCR empowers Schooner Village to

> levy in any assessment year a special assessment (which may be fixed at one uniform rate for each lot) applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto, and for operating the common areas, for which a reserve fund does not exist or is not adequate, provided that any such assessment shall have the ascent [sic] of two-thirds (2/3) of the votes of [Schooner Village].[19]

[17] CCR Art. V § 1. The parties do not dispute that the CCR's reference to Article III is a typographical error.
[18] CCR Art. IV § 1.
[19] CCR Art. V § 4.

D. *Nature and Stage of the Proceedings*

On October 31, 2014, Hough filed a Verified Complaint to enjoin renovation of his townhome. He claimed that Schooner Village lacks the power to perform the work pursuant to the special assessment. He contended further that even if Defendants could theoretically pursue the project, the procedure used to carry out the assessment was improper. Finally, he charged Defendants with mismanagement, arguing that the work, if authorized, should have been done pursuant to annual assessments and could have been limited in magnitude, especially if the buildings had not been allowed to deteriorate.

The parties filed cross-motions for summary judgment on March 20, 2015. Hough subsequently filed an amended complaint, adding a claim for reimbursement of certain past annual assessments.[20] That count is not subject to a summary judgment motion. The issues now before the Court are whether Schooner Village's governing documents permit Defendants to implement the special assessment to fund and to complete the renovation project, and whether the Board followed reasonable and appropriate procedures to obtain the homeowners' approval.

[20] The amended complaint restates the first fifty-two numbered paragraphs in the original complaint; the differences between the two pleadings are irrelevant to resolution of the pending motions.

II. ANALYSIS

Summary judgment may only be granted when no material fact is genuinely in dispute and the moving party is entitled to judgment as a matter of law.[21] When cross-motions fail to raise any material issue of fact, the "Court . . . deem[s] the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions."[22]

Schooner Village's governing documents unambiguously authorize Defendants' challenged actions, and the procedures undertaken to renovate the

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[21] Ct. Ch. R. 56(c).

[22] Ct. Ch. R. 56(h). In his brief opposing Defendants' motion for summary judgment, Hough suggested that his amended complaint "added counts alleging mismanagement as well as claims for reimbursements of overpayments of past assessments." Pl.'s Br. in Opp'n to the Mot. for Summ. J. of Defs. 2. Those counts supposedly involve factual issues that render the claims not appropriate for summary judgment. Hough contended that the only question that can be answered at this stage is whether Defendants have the authority to impose the assessment. *Id.* That view was narrower than what he espoused in his opening brief in support of his motion: "Plaintiff seeks a judgment as a matter of law that the governing documents do not authorize Schooner Village to levy the special assessment, and that the procedure followed by the Board in levying this assessment was unreasonable and improper." Pl.'s Opening Br. in Supp. of His Cross-Mot. for Summ. J. ("Pl.'s Opening Br.") 2.

Defendants have moved for summary judgment on Hough's first three counts (which were unaltered by his amended complaint). As will be seen, Defendants are entitled to summary judgment on those counts. There are no disputed issues of fact related to Count I, which objects to Defendants' actions as ultra vires. Any purported factual issues related to Counts II (lack of reasonable procedures) or III (mismanagement) are immaterial. Also, despite Hough's indication otherwise, his amended complaint only added the count for reimbursement of past assessments; the mismanagement claim was not new. Defendants agree that Hough's fourth count is not ready for summary judgment.

community's buildings were reasonable and consistent with those governing documents. Accordingly, Defendants' motion for summary judgment on Counts I, II, and III is granted, and Plaintiff's motion is denied.

A. *The Governing Documents Authorize the Special Assessment*

Hough owns his property subject to Schooner Village's governing documents.[23] Despite his objections, those documents clearly allow the Board to carry out the renovation project. Article IV of the CCR requires the Board to "provide exterior maintenance upon individual dwelling as follows: paint, stain, repair, replace and care for fences, roof surfaces and roof systems, gutters, downspouts, chimneys, and all exterior building services . . . ." The maintenance

[23] Hough does not dispute that he had notice of the covenants and conditions. He accepts that the governing documents are enforceable. Schooner Village did recently learn that it had been operating under the mistaken assumption that it was a condominium association. In his Complaint, Hough stated, in a conclusory fashion, that "[b]ecause [Schooner Village] is not a condominium association, it does not have the legal right to assert this authority over an individual property such as Plaintiff's." Compl. ¶ 33. His theory of the case appears to have shifted. In his reply brief, he asserted that his argument is not "that only condominium regimes can levy a special assessment. To the contrary, Plaintiff is simply arguing that the Board of Schooner Village did not have authority under its own governing documents to levy this particular special assessment for replacement of the exterior of his home." Pl.'s Reply Br. in Supp. of His Mot. for Summ. J. ("Pl.'s Reply Br.") 3. "Restrictive covenants and deed restrictions are recognized and enforced in Delaware where the intent of the parties is clear and the restrictions are reasonable." *Mendenhall Vill. Single Homes Ass'n v. Harrington*, 1993 WL 257377, at *2 (Del. Ch. June 16, 1993).

project aims "to replace the siding, roof and gutters of all buildings in Schooner Village."[24] The project is within the Board's mandate.

Further, Schooner Village is expressly authorized to levy a special assessment to fund the renovation. Schooner Village may charge residents to satisfy its "maintenance responsibilities under Article [IV]."[25] A special assessment may be for "the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto . . . ."[26] Because the Board has the express authority to levy a special assessment to pay for the renovation project, summary judgment on Hough's first count, attacking Defendants' actions as ultra vires, is warranted in Defendants' favor.

B. *The Board Adopted Reasonable Procedures to Implement the Special Assessment*

Hough argues that the special assessment should be invalidated even if it is within the scope of Defendants' authority. His objections are generally that (i) insufficient notice was provided for the July 16 meeting at which the renovation project was approved, (ii) the special assessment lacks specificity regarding its

[24] Notice of Capital Assessment for Schooner Village Renovation Project.
[25] CCR Art. V § 1.
[26] CCR Art. V § 4. Any objection to the renovation project's status as a capital improvement is unfounded. A capital improvement is "[a]n improvement made to extend the useful life of property or add to its value. . . . Additions to a building or major repairs, such as the replacement of a roof are considered to be capital improvements." West's Tax Law Dictionary § C410.

scope and each homeowner's ultimate cost, and (iii) the assessment was not properly apportioned among homeowners. He also contends that the Board mismanaged Schooner Village by failing to perform renovation work incrementally over time.

The special assessment was approved by the required vote of two-thirds of Schooner Village's members.[27] Homeowners were given the proper ten days' notice of the meeting.[28] Moreover, they were aware by no later than August 1, 2013, that the buildings' exteriors required work.[29] At the September 14, 2013, special homeowners' meeting, the Board discussed viable options for completing and financing the necessary work. A special committee was formed, which included two members from Hough's building.[30] Before the homeowners voted on the project, they received a breakdown of anticipated costs. They were more than adequately informed regarding the project's scope and cost.[31]

[27] *See supra* text accompanying note 19 (CCR provision requiring for two-thirds vote).
[28] *See* Bylaws Art. III(c).
[29] *See supra* text accompanying note 6.
[30] Sept. 14, 2013, Minutes of Special Meeting of Homeowners at 4.
[31] That the price may not be completely finalized until the contractor performs the work does not render the notice to homeowners deficient. Additionally, the Board's selections of contractor and siding type were within its discretion.

Additionally, the Board acted well within its authority in determining how to execute the special assessment.[32] It is responsible for "determin[ing] the method of payment of . . . assessments and the due dates thereof . . . ."[33] That Plaintiff may have approached the renovation differently does not call into question the reasonableness of the Board's decisions. It is unnecessary to elaborate upon each of Plaintiff's objections; nothing in the record suggests that the Board acted outside the scope of its business judgment.[34] Summary judgment on Count II, asserting a

[32] Hough argues that "Schooner Village's CCR clearly prohibits unequal special assessments." Pl.'s Opening Br. 25. But the CCR provides that a special assessment "*may* be fixed at one uniform rate for each lot . . . ." CCR Art. V § 4 (emphasis added).

He also attacks the Board's decisions to secure a loan to fund the project and to allow homeowners to pay over two years. There is no basis within Schooner Village's governing documents for questioning the Board's decision to finance with the loan. Although Schooner Village may only levy "a special assessment . . . applicable to that year only," CCR Art. V § 4, the Board gave homeowners the option to pay with one lump sum. That the Board provided an installment alternative to ameliorate the financial impact on homeowners does not justify invalidating the special assessment. Schooner Village charged the assessment to cover the costs of a discrete renovation project and exercised its discretion to set the method of payment.

[33] Bylaws Art. VI(c).

[34] *See, e.g., Adams v. Calvarese Farms Maint. Corp., Inc.*, 2010 WL 3944961, at *18 (Del. Ch. Sept. 17, 2010) ("[A]bsent evidence of fraud, bad faith, or self-dealing, the court should presume that in making a business decision directors acted in an informed manner and in the belief that their action taken was in the best interests of the corporation.").

lack of reasonable procedures, and Count III, asserting mismanagement, is granted in Defendants' favor.[35]

III. CONCLUSION

Defendants' Cross-Motion for Summary Judgment on Counts I-III is granted and Plaintiff's Cross-Motion is denied.

An implementing order will be entered.

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[35] Hough asserts that the Board should have done a better job of systematically maintaining the buildings' exterior elements over time. Nothing in the record suggests that the Board has not been diligent in performing its duties. The Board budgeted for maintenance annually and decided to pursue the renovation because of increases in those costs and the fact that exterior maintenance is not a long-term solution. That the buildings' siding now needs to be replaced is not a reflection of improper upkeep, and renovating, instead of paying for steadily increasing maintenance costs, is a rational decision.

He also questions "why reserves were not set aside to pay for the renovations to the exterior of the homes." Pl.'s Reply Br. 8. Perhaps that would have been a better approach, but the Board's methodology does not approach gross misconduct, which is the proper measure for an alleged breach of the duty of care by a board of a homeowners association. *See, e.g.*, *Calvarese Farms Maint. Corp.*, 2010 WL 3944961, at *18. It is not clear if Hough wants current Board members personally to pay the cost of the current construction effort because prior boards did not fund the work prospectively. This is yet another aspect of the challenges confronting Hough as he seeks an outlet for his frustrations. Work needs to be done and, while there may have been some room for debate about the nature and extent of the work, who else—other than the current unit owners—should be footing the bill?

Hough's claim of mismanagement is separate (although related) to his count for reimbursement for past annual assessments. Count IV of the amended complaint asserts in part that although a portion of the annual assessments Hough has paid was attributed to the cost of exterior maintenance, no exterior maintenance on his home has been performed. As noted, Defendants have not moved for summary judgment on Count IV.