

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

SEA VILLA HOMEOWNERS	)	
ASSOCIATION, INC.	)	
	)	
Plaintiff-below	)	
Appellee,	)	
	)	
v.	)	C.A. No. CPU6-14-000330
	)	
ANNE R. LAVINE,	)	
	)	
Defendant-below	)	
Appellant,	)	
	)	

John A. Sergovic, Jr., Esq., Attorney for Plaintiff/Appellee.
Anne R. Lavine, pro se, for Defendant/Appellant

Submitted: January 4, 2016
Decided: February 24, 2016

DECISION ON APPELLEE’S MOTION FOR SUMMARY JUDGMENT

At issue in this case are annual lot assessments that the Sea Villa¹ Homeowners Association, Inc. (the “HOA”), Plaintiff below / Appellee, alleges it is owed by Anne R. Lavine, the Defendant below / Appellant.

For the reasons discussed below, Plaintiff’s Motion for Summary Judgment is
GRANTED.

¹ The caption of the initial filing in JP Court names the Plaintiff “Sea Villas Homeowners Association, Inc.,” and the Court captioned the action accordingly. However, both parties in their pleadings consistently refer to the HOA as “Sea Villa Homeowners Association, Inc.” Recorded documents attached to pleadings of both parties indicate the singular appellation is the correct entity name. The Court considers the caption amended by stipulation to the correct name.

Procedural History

On May 16, 2013, the HOA filed suit against Lavine in the Justice of the Peace Court seeking unpaid assessments dating back to 2008, as well as interest thereon and attorneys' fees. On April 2, 2014, default judgment was entered against Lavine for failing to appear for trial despite the J.P. Court's denial of her continuance request. Lavine timely filed an appeal *de novo* to this Court.

Lavine and the HOA have filed several pre-trial motions in this Court, including motions to dismiss, motions to amend, and discovery motions. On July 9, 2015, the Court's Commissioner recommended, *inter alia*, the Court grant the HOA's motions to amend its complaint and strike Appellant's June 2, 2015 memorandum, and deny Lavine's request for discovery. On September 23, 2015, the Court affirmed these recommendations.

The HOA filed an amended complaint and the present motion for summary judgment on October 1, 2015. Lavine filed an answer and a response to the motion for summary judgment on November 9, 2015. On January 4, 2016, the Court held a hearing on the motion for summary judgment.

Facts

Lavine is the deeded owner of Lot 2, Block A of the residential subdivision of Sea Colony, Inc. known as Sea Villa. Lavine's deed ("Deed") is subject to the Declaration of Sea Colony, Inc., ("Declaration") dated August 7, 1972.

Article IV of the Declaration provides that "each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to

covenant and agree to pay to the Association (1) annual assessment or charges.” Section 9 of Article IV states:

If any assessment is not paid on the date when due (as specified in Section 7 hereof), then such assessment shall be deemed delinquent and shall together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot...In addition to such lien rights, the personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title...If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum...in the event a judgment is obtained, such judgment shall include interest on the assessments above provided and a reasonable attorney’s fee to be fixed by the court together with the costs of the action.

From 2008-2013, the HOA charged Lavine an annual assessment in the amount of \$350. In 2014 and 2015, the HOA charged Lavine \$385 annually. The HOA’s suit seeks the unpaid assessments plus 8 percent interest on the delinquent assessments, and reasonable attorneys’ fees and costs.

Standard of Review

Summary judgment is granted only if the pleadings “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”² In reviewing the pleadings, “[a]ll facts are viewed in a light most favorable to the non-moving party.”³

In response to a motion for summary judgment that is

made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.⁴

² Ct. Com. Pl. Civ. R. 56(c).

³ *Dunn v. Vaudry*, 2011 WL 4638266, at *4 (Del. Super. Sept. 30, 2011).

⁴ Ct. Com. Pl. Civ. R. 56(e).

Lavine has filed multiple pleadings attempting to raise various issues regarding her decades-long disputes with the HOA. However, in none of these filings, nor in her oral argument at the motion hearing, has Lavine denied that she failed to pay the assessments at issue to the HOA. Thus, this Court must determine whether the HOA is entitled to the unpaid assessments as a matter of law.

Discussion

The HOA contends that Lavine has an unconditional obligation to pay her annual assessments. Lavine primarily contends that the HOA has misappropriated assessment funds and that the covenant to pay assessments are “dependant [*sic*], concurrent, and continuous; therefore, they are reciprocal.”⁵

Specifically, Lavine points to a portion of Article V of the Declaration titled “Maintenance of Property,” which states:

The Association shall maintain the grass, shrubs and trees and replace or repair all such landscaping. In addition, the Association shall maintain, repair and replace, if necessary, the paving or surfacing of the 20 foot easement to be used for ingress and egress across Lot No. 1 and Lot No. 2, Block A, leading from Cedarwood Lane to Lot No. 3, Block A.

Lavine argues that this section restricts the usage of the annual assessment fees to the maintenance of the landscaping of certain Sea Villa properties and the maintenance of a privately owned access easement. Lavine further asserts that since the HOA has allegedly not complied with the Declaration, it would be “unconscionable” and “inequitable” to require Lavine to abide by the Declaration.⁶

Lavine’s characterization of the covenant at issue is incorrect; her obligation to pay is unconditional. In *Park Centre Condominium v. Epps*, the Superior Court found the

⁵ Pretrial Conference Worksheet, Stipulation and Order.

⁶ Appellant’s Nov. 9, 2015 Opposition and Motion to Deny Motion for Summary Judgment.

“public policy of this State to be in favor of an unconditional obligation to pay the assessment fees, irrespective of any liability which a condominium association may bear to the homeowner.”⁷ *Maple Hill Homeowners Ass’n* makes it clear the obligation is unconditional for homeowners who are part of a homeowner’s association, as well.⁸ The Court need not determine whether Sea Villa has common areas or elements because the obligation to pay homeowners assessments is not dependent on the existence of common areas or elements.⁹ The Court holds that, under Delaware law, a homeowner has an unconditional obligation to pay homeowners’ association fees owed, and that failure to do so negatively impacts the homeowners’ association as a whole.¹⁰ Lavine’s allegations that the HOA has improperly used, or failed to use the assessment funds, even if true, are no defense to her liability for payment of the fees.

Statute of Limitations

Lavine argues the statute of limitations has tolled on some of the unpaid assessments. Specifically, Lavine argues the HOA failed to file suit within the three

⁷ *Park Centre Condo. v. Epps*, 1997 WL 817875, at *2 (Del. Super. May 16, 1997) (“Whatever grievance a unit owner may have against the condominium trustees must not be permitted to affect the collection of lawfully assessed common area expense charges. A system that would tolerate a unit owner’s refusal to pay an assessment because the unit owner asserts a grievance, even a seemingly meritorious one, would threaten the financial integrity of the entire condominium operation. For the same reason that taxpayers may not lawfully decline to pay lawfully assessed taxes because of some grievance or claim against the taxing governmental unit, a condominium unit owner may not decline to pay lawful assessments.”).

⁸ See *Maple Hill Homeowners Ass’n v. Newton*, 2014 WL 4662382 (Del. Com. Pl. Sept. 19, 2014, reargued Mar. 9, 2015) (applying *Park Centre Condo. v. Epps* to homeowner assessments).

⁹ *Id.* at *1. The features of the Maple Hill community were not addressed in the opinion except for the court’s statement that it was “a small, 24-home neighborhood.”

¹⁰ See *Maple Hill Homeowners Ass’n v. Newton*, 2015 WL 1205283, at *5 (Del. Com. Pl. Mar. 9, 2015, revised Mar. 10, 2015) (“Newton, as a resident and homeowner, has a continuing obligation to the other residents of Maple Hill to pay her share of HOA fees. Her failure to pay the assessments causes harm to the Homeowner’s Association as a whole, and Newton is not absolved of the obligation to pay the assessments.”).

year limitations period set by 25 *Del. C.* 81-316(e), which states “a lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.” Lavine also cites 10 *Del. C.* § 8106 in support of her argument that the statute of limitations is three years. The HOA, on the other hand, argues the Declaration is an instrument under seal and thus subject to the twenty year common law limitations, which is expressly excepted from the application of 10 *Del. C.* § 8106. Alternatively, the HOA argues a mutual running account exists between the parties, therefore the correct statute of limitations is six years, pursuant to 10 *Del. C.* § 8108.

Title 25 *Del. C.* § 81-316(e) is inapplicable to this action. Subsection 81-316(e) limits the time in which a *lien on property* may be executed. The case before this Court is not an *in rem* action against Lavine’s *property*; rather it is an *in personam* action for debt against Lavine.¹¹ The time limitation of § 81-316(e) only extinguishes liens against Lavine’s Sea Villa property for the unpaid assessments placed more than three years before suit; it does not extinguish her personal liability therefore.

Lavine argues the HOA is collaterally estopped from claiming applicability of the twenty year limitations period applicable to obligations arising from a document under seal, because it made the same claim, without success, in a previous Justice of the Peace Court action against Lavine for assessment fees. That court essentially refused to apply the twenty year limitations period because the document “under seal” creating the obligation, the Declaration, wasn’t signed by Lavine.

¹¹ This Court does not have jurisdiction over sci. fa. actions.

However, collateral estoppel is not applicable to that prior holding because collateral estoppel prevents re-litigation of issues of fact, not issues of law.¹² Inasmuch as this Court finds that, as a matter of law, an obligation created by an instrument under seal does not necessarily require the actual signature of the party against whom the obligation is asserted upon the document creating the obligation, the HOA is not estopped from invoking the correct law, and this Court is not bound to reapply incorrect law. For the reasons stated below, the Court holds that Lavine's obligation to pay assessments is evidenced by one or more instruments under seal, and therefore subject to the twenty year common law limitations period.¹³

The obligation of Sea Villa property owners to pay annual assessments is created by the Declaration. The Declaration is undisputedly a recorded instrument under seal. It was executed under seal by Lavine's predecessor in interest, Sea Colony, Inc., the original owner of her property at the time the Declaration was executed. The Declaration states Sea Villa property "shall be held, transferred, sold, *conveyed*, occupied and used subject to the Restrictions hereinafter set forth" (emphasis added). One such restriction is the requirement to pay assessments.¹⁴ On December 28, 1977, Sea Colony, Inc., conveyed the Sea Villa property at issue by deed to Stanford A. Lavine and

¹²See *Betts v. Townsends, Inc.*, 765 A.2d 531, 534 (Del. 2000) (citing *M.G. Bancorporation, Inc. v Le Beau*, 737 A.2d 513 (Del. 1999)).

¹³ See generally *Whittington v. Dragon Grp., L.L.C.*, 991 A.2d 1, 10-11 (Del. 2009) (citing *Aronow Roofing Co. v. Gilbane Bldg. Co.*, 902 F.2d 1127 (3d. Cir. 1990) (stating the statute of limitations for instruments under seal is 20 years).

¹⁴ August 1972 Declaration ("The Developer, for itself and its successors and assigns, and for each Lot owner within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor...is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges.").

Defendant Lavine.¹⁵ On October 7, 1988, Stanford A. Lavine conveyed his interest in the property solely to Lavine by Deed.¹⁶ The Deed granted the property to Appellant Lavine “SUBJECT TO (1) Declaration of Sea Colony, Inc., dated August 7, 1972.... setting forth certain covenants, conditions and restrictions.”¹⁷ Both of the Lavine deeds are likewise instruments under seal.

The Deed is a conveyance to subsequent assignees by Sea Colony, Inc., of its rights, obligations, and limitations under the Declaration.¹⁸ Since an assignee cannot receive greater rights than the assignor,¹⁹ Lavine, the recipient of a conveyance, is subject to the same obligations and limitations as the conveyor. The Declaration is an instrument under seal as to the conveyor, therefore it is as to Lavine, as well. Statutes of limitations “may be interposed against the assignee.”²⁰ Section 8106 (a) of Title 10 expressly excepts from the three year limitations period actions “to recover a debt ... *evidenced* by a record or by an instrument under seal.” (Emphasis added.) There is no requirement that the instrument under seal be signed and sealed by the obligor; only that it be *evidenced* by a sealed instrument. Lavine’s obligation to pay assessments is both created and evidenced by the sealed Declaration and her sealed Deed subject to the Declaration restrictions. The twenty year common law limitations period applies, and

¹⁵ Dec. 1977 deed.

¹⁶ Oct. 1988 deed (“Deed”).

¹⁷ *Id.*

¹⁸ See generally *Columbia Assoc., Inc. v. Poteet*, 23 A.3d 308, 318-19 (Md. Ct. Spec. App. 2011).

¹⁹ See *Merck & Co., Inc. v. SmithKline Beecham Pharm. Co.*, 1999 WL 669354, at *44 (Del. Ch. Aug. 5, 1999) (quoting *Smith v. Cumberland Grp., Ltd.*, 687 A.2d 1167, 1172 (Pa. Super. Ct. 1996)).

²⁰ See *Madison Fund, Inc. v. Midland Glass Co., Inc.*, 1980 WL 332958, at *2 (Del. Super. Aug. 11, 1980) (stating that a “rudimentary principle of contract law” is that “defenses such as the **statute of limitations** may be interposed against the **assignee** if it was available against the assignor”).

none of the HOA's claims in this action are time-barred. The Court need not address the HOA's "mutual running account" argument.

Award Calculations

The HOA filed suit on May 16, 2013, seeking the payment of assessments spanning from 2008-2015.²¹

Before the award can be calculated, the date the assessments were levied and became delinquent must be determined for the years 2008-2013. The HOA argues the 2008-2013 assessments were due annually on January 1 and became delinquent on February 1 of each respective year. Lavine states 2008-2013 assessments were due on or about May 31 of each year and became delinquent thereafter. In support of her argument, Lavine provides invoices for the 2014-2015 assessments. The Court finds Lavine has not met the burden of persuasion necessary to show a material issue of fact exists as to the assessment or delinquency due dates. There is no evidence provided that the due dates for the 2008-2013 assessments were not January 1. Invoices for the years 2014 and 2015, standing alone, do not provide insight into the HOA's billing practices for 2008-2013. Thus, the Court finds assessments from 2008-2013 were levied annually on January 1 of each respective year.

²¹ The Court disagrees with Lavine that the action was not commenced on May 16, 2013 because, among other things, summons was mailed to an allegedly incorrect address. *See Sines v. Wyatt* 281 A.2d 499, 501 (Del. Super. 1971) (stating the statute of limitations tolls when an action is filed so long as the "the plaintiff diligently seek to bring the defendant into court and subject him to its jurisdiction") (citing *Casey v. S. Corp.*, 29 A.2d 174 (Del. 1942), *Bokat v. Getty Oil Co.*, 262 A.2d 246 (Del. Super. 1970)). The plaintiff satisfies the diligence requirement even if mistakes in service of process occur so long as there is not purposeful delay. Moreover, even if summons were additionally issued to an incorrect person, they were also addressed to Lavine.

The HOA is entitled to assessments of \$350 for each of the years 2008, 2009, 2010, 2011, 2012, and 2013. Lavine must also pay the HOA interest on the 2008-2013 assessments, beginning on February 1 of each respective year. Assessments from 2014-2015 were levied annually on April 7 of each respective year. The HOA is entitled to assessments for 2014 in the amount of \$385, and 2015 in the amount of \$385. Lavine must also pay the HOA interest on the 2014-2015 assessments, beginning on April 7 of each respective year.

This brings the Court to the parties' final dispute; Lavine argues the interest rate is 6 percent rather than the 8 percent prescribed by the August 1972 Declaration. Lavine relies on unrecorded Sea Villa bylaws and on a recorded December 1972 Sea Colony, Inc., Declaration. However, the Court does not find Lavine has met the burden of persuasion required to show a material issue of fact exists regarding the applicable interest rate, which is plainly defined by the August 1972 Declaration. The documents cited by Lavine do not apply.²² Therefore, the Court finds the HOA is entitled to an 8 percent interest rate on the delinquent assessments.

Finally on or about February 11, 2016, well after the time given the parties to brief and argue this case-dispositive motion, Defendant Lavine filed one or more Motions for "Leave to file Motions." Notwithstanding the lateness of these motions, the Court has reviewed each of them, and finds all of the proffered motions to be either

²² The interest rate proffered by the December 1972 Declaration applies to "The Properties," which is defined as real property described in Exhibit A of the Declaration; Sea Villa is described in Exhibit C. Moreover, it is clear from Article IV Section 6 that the property described in Exhibit C is not considered to be part of "The Properties."

irrelevant, repetitive, outside of the Court's jurisdiction, or otherwise without merit. The Court will not entertain any of the proffered motions.

Conclusion

Appellant-Defendant has an unconditional obligation to pay the annual assessments owed to Appellee-Plaintiff as a matter of law. Appellee-Plaintiff's claim is not time-barred, and there is no triable issue as to the unpaid amount; therefore Appellee-Plaintiff's Motion for Summary Judgment is **GRANTED**. Judgment is entered in favor of the Sea Villa Homeowners Association, Inc. in the principal in the amount of \$ 2,870.00, with pre-judgment interest at the contract rate of 8 percent from the due date of each annual assessment, plus post-judgment interest at the contract rate upon the principal amount. Counsel for the HOA shall submit an accurate calculation of the total prejudgment interest due within fifteen (15) days, which shall be incorporated into this judgment. Counsel for the HOA also shall submit an affidavit of reasonable attorneys' fees within fifteen (15) days, which amount may be incorporated in this judgment.

IT IS SO ORDERED, this _____ day of February, 2016.

Kenneth S. Clark, Jr., Judge