

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 22nd *day of* June, 2012.

Shadowood Condominium Association, et al., Appellants,

against Record No. 111479
Circuit Court No. CL 2010-13282

Fairfax County Redevelopment and Housing Authority, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no reversible error in the judgment of the circuit court.

Shadowood Condominium Association ("SCA") appeals the circuit court's entry of summary judgment in favor of Fairfax County Redevelopment and Housing Authority ("FCRHA"). In its letter opinion, incorporated into the final order, the circuit court held that SCA lacked the power under its master deed and bylaws to levy assessments against FCRHA for (1) failure to submit certain paperwork as part of the Unit Owner's Status Report and (2) purported rules violations of one or more of FCRHA's tenants. Therefore, SCA's Policy Resolution 2009-03, which established the hearing procedures and assessment charges for rule violations, was invalid. The circuit court further held that Code § 55-79.80:2 did not apply because SCA lacked the authority under its governing instruments to levy the assessments.

On appeal, SCA argues that the circuit court erred in construing its governing instruments, particularly section (F)(6) of the master deed. That section states, in relevant part:

The administration of the Property shall be the responsibility of . . . [SCA] . . . consisting of all co-owners of "family units", which Association shall monthly assess, levy and collect against, upon and from each family unit . . . sums necessary to operate, maintain, repair, replace, restore, or improve the Property. . . . [SCA] shall function solely on a not-for-profit basis; no common expenses or other sums shall be assessed, collected, retained or expended other than for the maintenance, repair, replacement or improvement of the general common elements; and [SCA] shall undertake no activity unless it be directed to those ends.

SCA argues that section (F)(6) merely sets forth SCA's responsibility to levy assessments for maintenance of the property and does not limit its authority to levy assessments for violations of the governing documents. According to SCA, this section does not limit SCA's authority to promulgate rules and regulations and to levy assessments for violations thereof.

FCRHA responds that SCA's interpretation of section (F)(6) is contradicted by its express language. FCRHA contends that section (F)(6) prohibits the assessment of "other sums" except for those related to the general common elements. The Court agrees with FCRHA.

"The power exercised by [an] Association is contractual in nature and is the creature of the condominium documents to which all unit owners subjected themselves in purchasing their units."

Gillman v. Unit Owners Ass'n of Buildamerica-1, 223 Va. 752, 766, 292 S.E.2d 378, 385 (1982). "As with all other contracts, effect must be given to the intention of the parties." Sully Station II v. Dye, 259 Va. 282, 284, 525 S.E.2d 555, 556 (2000). The contract's meaning "is to be gathered from all its associated parts assembled as the unitary expression of the agreement of the parties." Id. (internal quotation marks and citation omitted).

Section (F)(6) of the master deed unequivocally expresses the parties' intent that "no common expenses or other sums shall be assessed . . . other than for the maintenance, repair, replacement or improvement of the general common elements; and [SCA] shall undertake no activity unless it be directed to those ends."¹ (Emphasis added.) The bylaws, read in conjunction with the master deed, do not conflict with the express limitation of SCA's power in section (F)(6) of the master deed. Rather, as the circuit court observed, the bylaws limit SCA's assessment power to that necessary for maintenance and repair of the common elements. See Bylaws Article IV, §§ 2, 3. The circuit court did not err in finding that the assessments levied against FCRHA were beyond SCA's authority as

¹ SCA does not contest that the assessments at issue in this case were not "for the maintenance, repair, replacement or improvement of the general common elements."

defined in its governing documents and that the policy resolution authorizing the assessments therefore was invalid.²

Accordingly, the judgment of the circuit court is affirmed. The appellants shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L Hamington

Clerk

² Because SCA lacked the authority in its own governing documents to levy the assessments at issue, its assignment of error regarding Code § 55-79.80:2 is moot. That statute authorizes an association to assess charges for a rule violation "to the extent the condominium instruments or rules duly adopted pursuant thereto expressly so provide." By its plain terms, the statute is permissive in nature; it does not confer authority to an association beyond that in the association's governing documents. The Court does not decide whether the statute could be applied retroactively to a condominium association whose instruments predated its enactment.