

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-043

SEPTEMBER TERM, 2006

Chester HOA, Inc. d/b/a Chester Knoll	}	APPEALED FROM:
Home Owner Association	}	
	}	
v.	}	Bennington Superior Court
	}	
Deborah Federhen	}	
	}	DOCKET NO. 263-7-04 Bncv

Trial Judge: Karen R. Carroll

In the above-entitled cause, the Clerk will enter:

Homeowner appeals a decision of the superior court concluding that she was unjustly enriched by maintenance work performed by the Home Owner Association when she did not pay assessments levied by the HOA. The HOA cross-appeals, challenging the superior court's conclusion that damages could only be collected from homeowner under a theory of unjust enrichment, rather than by operation of the planned unit development's declaration and HOA bylaws. We affirm in part and reverse in part.

The following facts are undisputed. Homeowner owns a unit in the Chester Knoll Planned Unit Development. The PUD was originally governed by a declaration of covenants. Under the declaration, the PUD developer (referred to as the declarant) had certain responsibilities in terms of maintaining the PUD, and also had governing authority over the PUD, including the authority to levy assessments. The declaration contemplates that an HOA will eventually take the place of the developer in governing the PUD. At this point, the HOA would obtain the authority to levy assessments and governance of the PUD would be guided by the HOA's bylaws.

In addition to establishing the rights and responsibilities of the developer, the declaration also establishes the rights and responsibilities of the homeowners with respect to shared or common property within the PUD. Thus, the declaration defines *A*limited common areas,[@] which are areas assigned to a unit and allow access only to the owners of that unit; *A*shared common areas,[@] which are assigned to two or more units and allow access only to the owners of those units; and general *A*common areas,[@] which are assigned to the entire PUD and allow access to all homeowners. The declaration further provides that maintenance of *A*limited common areas[@] is the responsibility of the homeowner to which the area is assigned; maintenance of *A*shared common areas[@] is a responsibility of the assigned units; and maintenance of general *A*common areas[@] is a responsibility and expense shared by all the homeowners.

The HOA purportedly took over governance of the Chester Knoll PUD in December 1998, although the HOA did not follow requirements that homeowners vote on amendments to the declaration and the bylaws. Nonetheless, the HOA began levying annual assessments. Homeowner initially paid the assessments but then ceased. The HOA initiated this action against homeowner to recover the unpaid assessments. Among the activities for which the HOA is seeking to collect fees are the construction of certain retaining walls in the PUD and other maintenance activities. Homeowner refuses to pay these fees because she alleges the work was done to improve the limited common areas of particular homeowners and that under the declaration, these costs should not be shared among all homeowners. The HOA maintains that its work in the limited common areas benefits all homeowners because it protects the aesthetic value of the development and thus the value of individual homes within the development.

The superior court determined that the HOA lacked the authority to collect assessments from homeowner by operation of the declaration and bylaws. The declaration required that any amendments—including the amendment transferring authority from the developer to the HOA—be supported by a 67% vote of the homeowners. The HOA could produce no evidence that such a vote had taken place. Thus, the authority to levy assessments remained with the developer under the terms of the declaration and not with the HOA under the terms of the bylaws.

Nonetheless, the superior court determined that homeowner had benefitted from the work performed by the HOA, and that homeowner had been unjustly enriched by accepting the HOA services. Under a quasi contract theory of unjust enrichment, the law implies a promise to pay when a party receives a benefit and retention of the benefit would be inequitable. @ Brookside Memorials, Inc. v. Barre City, 167 Vt. 558, 559 (1997) (mem.). The court found that homeowner has never requested that the work not be done and has accepted all of these services without comment, @ and that retention of the benefit of those services would be unjust. Accordingly, the court awarded the HOA damages in the amount of the unpaid assessments, which represent costs to the [HOA] for maintenance of all areas of the development, including limited, shared and common areas, and for general administrative costs. @ The court declined to exclude costs incurred in maintaining areas other than homeowner=s own limited common area and the general common area, concluding that the work on other limited common and shared common areas benefitted the PUD as a whole and therefore benefitted all the individual homeowners as well. Because the superior court=s judgment was based on the equitable principle of unjust enrichment rather than on a statute or contract, it declined to award attorney fees to the HOA.

On appeal, homeowner argues that she was not unjustly enriched by HOA=s maintenance work on shared and limited common areas assigned to other units in the PUD. In its cross-appeal, the HOA argues that the superior court erred in concluding that the declaration was not successfully amended to transfer authority from the developer to the HOA. Specifically, the HOA argues that the absence of evidence of a vote should not defeat the amendment because (1) it was the developer (i.e., the party with governing power under the declaration) who drafted the bylaws purporting to transfer power to the HOA (for which the developer served as Secretary), and (2) it is unreasonable to expect there to be documentary evidence of the homeowner vote

permitting the amendment.

We first address the HOA=s arguments on cross-appeal because this will establish the proper framework for analyzing the issues on appeal. The superior court=s interpretation of the agreements governing the PUD is a question of law that we review de novo. See Four Oaks Conservation Trust v. Bianco, 2006 VT 6, & 5 (reviewing de novo trial court=s construction of parties= agreement). Here, the superior court concluded that the process for transferring governing authority to the HOA did not conform to the requirements set forth in the declaration, that is, a vote in which 67% of the homeowners supported the amendment. As the superior court reasoned, the unilateral intent of the developer to transfer authority cannot overcome this requirement. The HOA offers no evidence that the voting requirement was, in fact, met. The superior court=s conclusion on this point is affirmed.

Accordingly, the HOA cannot assert a claim against homeowner under the bylaws, as they were not validly enacted. Neither can the HOA assert a claim under the declaration, as the declaration vests authority in the developer (the developer is not a party to this case). This leaves the HOA with the theory of unjust enrichment.

To succeed on a claim of unjust enrichment, the HOA must show: (1) a benefit was conferred on homeowner; (2) homeowner accepted the benefit; and (3) homeowner retained the benefit under such circumstances that it would be inequitable not to compensate the HOA for the value. Center v. Mad River Corp., 151 Vt. 408, 412-13 (1989). It is difficult to disagree with the superior court=s conclusion that maintenance of the shared and limited common areas in the PUD benefitted all homeowners; it is common knowledge that property values are affected by the aesthetic quality of their surroundings.

The crux of the issue in this case is whether the circumstances were such that it would be inequitable for homeowner to retain these benefits without compensating the HOA. See DJ Painting, Inc. v. Baraw Enters., Inc., 172 Vt. 239, 243 (2001) (holding that most significant requirement for recovery under theory of quasi contract is that retention of benefit is unjust). Whether the circumstances demonstrate inequity is a finding of fact which we will affirm so long it is supported by some credible evidence in the record. See Center, 151 Vt. at

413 (reversing judgment for plaintiff where there was no evidence to support a finding of inequity under the circumstances); Guibord v. Scholtz, 2006 VT 22, & 4 (mem.) (holding that trial court's findings of fact will be sustained on appeal if supported by credible evidence).

While direct operation of the declaration cannot resolve the dispute between the HOA and homeowner, as the HOA was not a party to that document, the declaration nonetheless provides important guidance regarding the parties' expectations and whether homeowner's retention of the benefits conferred by the HOA's services was unjust. See DJ Painting, 172 Vt. at 243 (holding that, where no contract existed between subcontractor and property owner, terms of contract between prime contractor and property owner were highly relevant to issue of equity).

In this case, the declaration in effect at the time homeowner purchased her unit stated that costs for maintaining limited and shared common areas would not be spread among all homeowners. The superior court should have looked at the rights and responsibilities of homeowners under the declaration in determining whether any benefit conferred on homeowner was unjust or inequitable. Along the same lines, as homeowner argues, any damages award should be calculated solely on the basis of that portion of the HOA's expenditure that unjustly benefitted homeowner. See In re Estate of Elliott, 149 Vt. 248, 253 n. 2 (1988) (Unjust enrichment focuses on the value of the benefit actually conferred upon the defendant.). While this should be developed on a factual level upon remand, in general, a distinction should be made between services the HOA performed on homeowner's limited or shared common areas as well as the general common area, versus the limited or shared common areas associated with other units. That is, the categories of property set forth in the declaration and the rights and responsibilities associated with them should guide both the determination of liability and the award of damages.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this decision.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice