



Paul Sipple et al v. MRV Holdings, LLC et al

DECISION ON MOTION

The parties to this civil action are members of Valley Professional Center Owners' Association, Inc., which owns and operates the common areas to a four-unit commercial condominium in Waitsfield, Vermont. Plaintiffs Paul Sipple and Joan Rae own one of the four units, and Defendant MRV Holdings, LLC owns the other three. In their Verified Complaint, Plaintiffs allege as follows:

This is a derivative action on behalf of the Valley Professional Center Owners' Association, Inc. ("Association"). In sum, the Defendants have overstepped their authority with respect to the governance of the Association; have acted in their self-interest to the detriment of the Association, and disregarded or otherwise violated the Bylaws and Rules and Regulations, and have breached their respective fiduciary duty to the Association as a whole.

(Id., ¶ 1).

Presently before the Court is Defendants' motion to dismiss the complaint pursuant to V.R.C.P. 12(b)(1). Defendants contend that the complaint must be dismissed because the Plaintiffs "have not established an actual case or controversy between the Defendants and [the Association] and therefore do not have standing to bring a derivative action" on behalf of the Association (Motion, pp. 3-4). Defendants contend that, "[w]hile the Complaint recites alleged self-dealing, violation of By-Laws, and breach of fiduciary duty to the corporation by Defendants ..., it alleges no facts as to how the corporation suffered harm as a result of the alleged misbehavior" (Id., at 5). In addition, Defendants maintain that "any remedy of compensatory damages or other relief would accrue to Sipple and Rae alone, and not to the corporation or the other member" (Id.). Because Plaintiffs have no standing, Defendants argue that this Court does not have subject matter jurisdiction over this dispute. Plaintiffs oppose the motion.

"Vermont courts have 'subject matter jurisdiction only over actual cases or controversies with adverse interests.'" *Bischoff v. Bletz*, 2008 VT 16, ¶ 15 (citation omitted). "One element of the case or controversy requirement is that plaintiffs must have standing, that is, they must have suffered a particular injury that is attributable to the defendant that can be redressed by a court of law." *Id.* For purposes of this requirement, the "plaintiff" here is the Association, not Mr. Sipple or Ms. Rae. As owners of one-fourth of the units in the condominium, Mr. Sipple and Ms. Rae clearly have standing to bring a derivative action on behalf of the Association. See 11B V.S.A. § 6.40(a)(1) ("A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by ... any member or members having five percent or more of the voting power...."). Thus, the issue for the Court is whether their verified complaint asserts that the Association has "suffered a particular injury that is attributable to the defendant[s] that can

be redressed by a court of law.” Bischoff, ¶ 15. Though couched as a motion under Rule 12(b)(1), Defendants’ motion is in reality a motion under Rule 12(b)(6) challenging whether the complaint asserts a claim for which relief may be granted to the Association.

A complaint may be dismissed under Rule 12(b)(6) only if “it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” Amiot v. Ames, 166 Vt. 288, 292 (1997) (quotation omitted). In analyzing a motion to dismiss, “[w]e assume as true all facts as pleaded in the complaint, accept as true all reasonable inferences derived therefrom, and assume as false all contravening assertions in the defendant’s pleadings.” Birchwood Land Co. v. Krizan, 2015 VT 37, ¶ 6, 198 Vt. 420. In the course of briefing the motion, both parties have presented matters to the Court that are outside the pleadings; for example, Defendants submitted an affidavit, and Plaintiffs submitted portions of the Association’s declarations, by-laws, rules and regulations. The Court will not consider those matters at this stage of the case, however, but will restrict its analysis only to the allegations of the complaint, as contemplated by Rule 12(b).

The crux of the complaint is the allegation that, upon becoming the majority owner, MRV Holdings, LLC, acting through its owner, Stephen Gavosto, “began calling for improper board meetings to instantly, and for all intents and purposes, unilaterally make changes to the Association, including, without limitation, voting his mother [Barbara Gavosto] onto the Board of Directors, implementing rule changes designed and intended to force the other unit owners out, making changes to the notice period for board meetings, [and] misnaming types of board meetings in order to push its agenda” (Complaint, ¶ 13). These alleged actions were taken “to the detriment of the other Association members [i.e., Paul Sipple and Joan Rae]” and “had ... the natural effect of depriving other Association members [Sipple and Rae] a reasonable voice” (*Id.*, ¶¶ 14, 15).

More specifically, the complaint alleges that the Defendants “sought to levy assessments against unit owners related to alleged necessary building maintenance, though no budgets or proposals were presented....” (*Id.*, ¶ 26). Defendants allegedly “ignore[d] the Bylaws, Rules and Regulations to effectively steamroll their agenda against their co-Association Members, except where to follow them is to their benefit” (*Id.*, ¶ 27). “Using this strategy, [Defendants] enacted new payment requirements, including a substantial increase in monthly dues, [and] called for a sizeable assessment without providing any budgeting or professional estimates” (*Id.*, ¶ 29). Sipple and Rae objected to these increases in dues and assessments, and they even offered to sell their unit to the Defendants, but Defendants refused to reverse the dues and assessments and threatened to deny Sipple and Rae use of the Association Common Elements, including shared bathroom space, if they persisted in refusing to pay the dues and assessments (*Id.*, ¶¶ 28, 42) (*see, also, Id.*, ¶ 31 (alleging that Defendants “invalidly instituted sweeping changes to the Association’s payment structure and placed unreasonable demands on the remaining unit owners [i.e., Sipple and Rae] to comply”)).

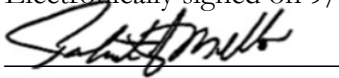
“In a derivative suit, the shareholder sues on behalf of the corporation for harm done to the corporation.” Bovee v. Lyndonville Savings Bank & Trust Co., 174 Vt. 507, 508 (2002) (mem.). None of the foregoing allegations asserts a claim on behalf of the Association. The only parties allegedly harmed by these alleged actions are Sipple and Rae, and Sipple and Rae are the only parties who would be benefitted by a judgment invalidating these alleged actions. By including these allegations in their complaint, Sipple and Rae are attempting to assert a direct action against the Defendants in the guise of a derivative action purportedly brought on behalf of the Association. *See Id.*, 174 Vt. at 508 (“[I]n a direct action, the shareholder brings suit individually, or on behalf of a class of shareholders, for injuries done to them in their individual capacities.”).

There are only three paragraphs of the complaint that can possibly be viewed as asserting a claim that the Association itself has been harmed by the Defendants' allegedly unlawful conduct. These are: ¶ 17, which asserts that the Defendants' conduct "had, and continues to have, the natural effect of allowing Defendants to misuse Association money to their benefit, without any reasonable objection oversight, or accountability"; ¶ 18, which asserts that Defendants "engaged in self-dealing to the detriment of the Association causing irreparable harm to the Association...."; and ¶ 37, which alleges that Defendant Stephen Gavosto "terminated the property management contract with Technical Management & Planning Co., Inc., and now, upon information and belief, intends to do that work himself and bill the Association for his efforts." Those three paragraphs appear in Counts One and Three of the verified complaint.

For the foregoing reasons, Defendants' motion to dismiss is GRANTED IN PART and DENIED IN PART. More specifically: the motion is GRANTED with respect to Counts Two, Four, Five and Six of the Complaint; and the motion is DENIED with respect to Counts One and Three of the Complaint.

SO ORDERED

Electronically signed on 9/28/2022 3:45 PM, pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "Robert A. Mello", is written over a horizontal line.

Robert A. Mello
Superior Judge