

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-290

JANUARY TERM, 2018

Sandy Gordon Rounds v. Malletts Bay Club, Inc. & James McGarry	} } } } } } }	APPEALED FROM:  Superior Court, Chittenden Unit, Civil Division  DOCKET NO. 1139-10-14 Cncv
		Trial Judge: Robert A. Mello

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

Plaintiff Sandy Gordon Rounds appeals pro se from the trial court’s order granting summary judgment to defendants following a remand. We affirm.

The facts are undisputed and recounted at length in our recent decision in this case. See Rounds v. Malletts Bay Club, Inc., 2016 VT 102. This is an ongoing dispute over sixteen shares of Malletts Bay Club (MBC) stock. MBC is an association of homeowners organized to occupy and manage jointly owned property. Plaintiff’s father, George Gordon, purchased property in MBC in 1968. As part of the purchase, he received twenty-seven shares of MBC stock. In 1975, Gordon gave four shares to his children and retained the rest. Before 1992, the MBC bylaws required that an owner of real property who wished to transfer his real property to a nonmember must include in the sale at least seven shares of MBC stock. In 1992, the bylaws were amended to require that the selling member include all of his or her shares of stock in MBC in the sale. In 1997, Gordon conveyed his residence to a trust, which then sold the property to J. Douglas Johnson, along with seven shares of MBC stock. Gordon directed MBC’s president, James McGarry, to hold his remaining sixteen shares in escrow until a further directive by Gordon or a court order.

Gordon died in 2010 and left his sixteen shares to his children. In 2011, plaintiff requested that McGarry release the shares to Gordon’s children. When he refused, plaintiff and her siblings sued MBC and McGarry. The plaintiffs sought a declaration that MBC waived its right to purchase Gordon’s shares when the property was sold; they also argued that McGarry breached the Stock Transfer Agreement and breached his fiduciary duty by refusing to distribute the shares to them. In their recitation of facts, the plaintiffs also alleged that “[u]pon information and belief, the 1992 amendment was not validly voted on and approved.” The parties filed cross-motions for summary judgment. The plaintiffs did not pursue their argument that the 1992 amendment was not validly voted on and approved. Cf. Lane v. Town of Grafton, 166 Vt. 148, 153 (1997) (“Failure to raise a reason why summary judgment should not be granted at the trial level precludes raising it on

appeal.”). The trial court granted summary judgment to the plaintiffs. It found that McGarry breached the stock agreement and breached his fiduciary duty; it also found that by approving the sale with only seven shares, MBC waived the 1992 bylaw requirement that all shares be sold with the real estate.

We reversed the trial court’s decision on appeal and granted summary judgment to defendants. Rounds, 2016 VT 102, ¶¶ 1, 22. We rejected the argument that McGarry had breached the stock agreement or his fiduciary duty or that MBC had waived its right to enforce the 1992 bylaw amendment. Id. ¶¶ 19-20. We determined, however, that our decision did not fully resolve this case because “[a]s a practical matter, an order dismissing [the] plaintiffs’ complaint . . . would leave the parties back in the exact limbo they have occupied for eighteen years.” Id. ¶ 23. We noted that in their complaint, the plaintiffs “alleged that the 1992 amendment ‘was not validly voted on and approved’ and requested a declaration that the remaining sixteen shares of MBC stock belong to [the] plaintiffs.” Id. While we rejected the argument that MBC waived its right to enforce the 1992 bylaw amendment, we did not “address [the] plaintiffs’ remaining claim that the amendment was not validly voted on and approved.” Id. We stated that this claim was not the basis for the plaintiffs’ summary judgment request, and it was not resolved by our award of summary judgment to defendants on the plaintiffs’ other claims. Accordingly, we “reverse[d] the trial court’s order directing the shares be issued to plaintiffs and remand[ed] for a hearing to resolve this outstanding issue in a manner consistent with this opinion.” Id.

On remand, the trial court directed the parties to file any dispositive motions on the one issue that remained to be decided. Defendants moved for summary judgment. Plaintiff’s siblings withdrew from the case, and plaintiff filed a cross-motion for summary judgment. The court granted summary judgment to defendants. It rejected plaintiff’s assertion that the amendment had not been validly voted on and approved. Plaintiff also argued for the first time on remand that the bylaw amendment was invalid because it was contrary to MBC’s Articles of Incorporation. The court rejected this argument, as well. Plaintiff appealed.

On appeal, plaintiff argues the bylaw amendment is invalid because it conflicts with the MBC Articles of Incorporation. She also asserts for the first time on appeal that the amendment improperly created a disadvantaged class of shareholders in violation of Vermont law. These arguments fall outside the scope of our remand order. “It is axiomatic that on remand the trial court is constrained to follow our specific directions as interpreted in light of the opinion. When a case is remanded, our decision is the law of that case on the points presented throughout all the subsequent proceedings.” State v. Higgins, 156 Vt. 192, 193 (1991) (recognizing that “law-of-the-case doctrine applies in criminal as well as civil proceedings”) (quotations omitted). Here, the trial court was directed to address “[the] plaintiffs’ remaining claim that the amendment was not validly voted on and approved.” Rounds, 2016 VT 102, ¶ 23. This factual allegation was contained in the plaintiffs’ complaint. Plaintiff did not allege in her complaint that the amendment was invalid because it conflicted with the MBC Articles of Incorporation, or that the amendment improperly created a disadvantaged class of shareholders in violation of Vermont law. We did not direct that these issues were to be considered on remand. Thus, because these issues fall outside the scope of our remand, we do not address them. We are unpersuaded by plaintiff’s argument that the law-of-the-case doctrine should not apply.

Plaintiff does not, in her principal brief, raise any challenge to the court’s decision that the amendment was validly voted on and approved. She therefore waived any claim of error on this point. To the extent she tries to raise such challenges for the first time in her reply brief, that attempt is unavailing. See In re Wal-Mart Stores, Inc., 167 Vt. 75, 86 (1997) (“[I]ssues not briefed in the appellant’s . . . original briefs may not be raised for the first time in a reply brief.” (quotation omitted)).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Harold E. Eaton, Jr., Associate Justice