

VERMONT SUPERIOR
COURT
Chittenden Unit
175 Main Street, PO Box 187
Burlington VT 05402
802-863-3467
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 325-4-20 Cncv

Watson vs. Marmelstein et al

**DECISION ON DEFENDANT WHITCOMB'S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff Roy Watson, a homeowner at the Village at Northshore I in Burlington and a member of its homeowners' association, has sued the association and over a dozen of its board members, alleging a panoply of violations in the conduct of the association's business. Included among his targets is Defendant Phyliss Whitcomb, who served one term on the board from 2018-2020. Ms. Whitcomb moves for summary judgment, arguing both that the various claims fail on their merits and that in any event she is protected from personal liability for actions taken in her capacity as a board member. The court grants the motion.

Mr. Watson's Complaint runs to 31 pages and his opposition to Ms. Whitcomb's motion, 66. Conspicuous in this torrent of words is the complete lack of proof of any action that Ms. Whitcomb took or outside her role as a director of the association. *See* V.R.C.P. 56(c)(2), (4); *Gross v. Turner*, 2018 VT 80, ¶ 8, 208 Vt. 112 ("Once a claim is challenged by a properly supported motion for summary judgment, the nonmoving party may not rest upon the allegations in the pleadings, but must come forward with admissible evidence to raise a dispute regarding the facts."). Instead, Mr. Watson's papers set forth a litany of wrongs effected by association's board. The only wrongs he even alleged against Ms. Whitcomb were her supposed failures to prevent the board from taking its actions. There is no allegation, much less proof, that Ms. Whitcomb undertook any obligation to Mr. Watson individually. Rather, any obligation she undertook was with respect to the association. Equally, the various breaches Mr. Watson alleges were breaches, if at all, by the association.¹ As such, the

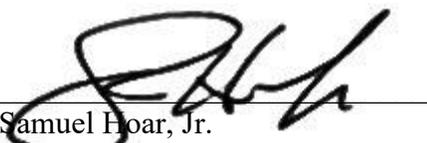
¹ The court notes that on the facts properly established for purposes of this motion by the parties' respective Rule 56(c) submissions it seems highly unlikely that any of these claims have substantive merit. That is a determination, however, that
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association alone is a proper target of this lawsuit. *See* 27A V.S.A. § 3-111(b)(1) (“An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, must be brought only against the association and not against any unit owner.”); *see also Weinstein v. Harmon*, No. 139-3-13 Bncv, 2013 WL 7346960 (Vt. Super. Ct. Sep 26, 2013) (“The statutes [under Title 27A] suggest this action may not be brought against the officers of the Homeowners' Association.”); *Watson v. The Village at Northshore I Ass’n, Inc.*, No. 835-8-13 Cncv, 2016 WL 6661785 (Vt. Super. Ct. Feb. 5, 2016) (“Not only does the plain language of [27A V.S.A. § 3-111(b)(1)] require Watson to bring the action solely against the Association; it also restricts him from filing against other unit owners.”) (reversed in part on unrelated grounds).²

ORDER

The court grants Ms. Whitcomb’s motion for summary judgment. All claims against her are dismissed with prejudice.

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Samuel Hoar, Jr.
Superior Court Judge

must await another motion by another Defendant. The clear lack of any individual obligation running from Ms. Whitcomb to Mr. Watson obviates the necessity of wading into the merits of the various claims at this time.

² The Court is not convinced by Mr. Watson’s citation of *Griffith v. Faltz*, 785 P.2d 119 (Ariz. Ct. App 1990) for the principle that § 3-111(b)(1) does not shield officers from tort liability. In *Griffith*, the defendant was the president of a condo association who, while acting in his individual capacity as a homeowner, got plaintiff’s car towed. *Id.*, 119. Here, the undisputed facts show that Ms. Whitcomb was operating solely in her role as a board member and not in her personal capacity, and is thereby shielded by § 3-111(b)(1). To the extent that *Griffith* stands for the proposition that an agent acting on behalf of a principal may still be personally sued for violating duties independently owed to third parties, none of the undisputed facts indicate that Ms. Whitcomb violated any independent duties toward Mr. Watson—all of Mr. Watson’s claims concern actions or policies of the Association or the collective board, none by Ms. Whitcomb as an individual.