

NOTICE

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FILED

December 6, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 160145-U

NO. 4-16-0145

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

BOARD OF MANAGERS, BLACKBRIAR, a)	Appeal from
Condominium Organized Under the Illinois)	Circuit Court of
Condominium Act,)	Vermilion County
Plaintiff-Appellee,)	No. 15LM317
v.)	
LINWOOD, LLC, an Illinois Limited Liability)	Honorable
Company; and UNKNOWN OCCUPANTS,)	Derek J. Girton,
Defendants-Appellants.)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.

Justice Steigmann concurred in the judgment.

Justice Pope dissented.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding plaintiff was entitled to recover attorney fees under the Condominium Property Act and the condominium's governing documents.

¶ 2 Following an October 2015 bench trial, the trial court entered judgment in favor of plaintiff, the Board of Managers (Board) of a condominium in Danville, Illinois, commonly known as 51 Blackbriar (Blackbriar). In February 2015, the court's written order stated defendant Linwood, LLC (Linwood), was liable for the \$180 legal bill under dispute and the subsequent \$7,780 in attorney fees and other costs incurred while litigating it.

¶ 3 On appeal, defendants argue that the trial court erred by entering judgment in favor of plaintiff because there was no legal basis to hold defendants liable for the \$180 legal bill under either the Condominium Property Act (Act) (765 ILCS 605/1 to 35) (West 2014) or the

condominium's governing documents. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 Blackbriar is comprised of six units, the owners of which make up the six-member board. Linwood is the owner of unit "D" of Blackbriar.

¶ 6 Beginning in 2012, the Board passed a series of four resolutions to replace the building's siding. The replacement project entailed four phases: phase one consisted of installing siding on the south side of the building; phase two consisted of installing siding on the east side of the building; phase three consisted of installing siding on the north side of the building; and phase four consisted of installing siding on the west side of the building. In October 2012, the Board met and approved the assessment for phase one. In July 2013, the Board met and approved the assessment for phase two. In December 2013, the Board approved the assessment for phase three by written consent in lieu of a meeting.

¶ 7 Linwood, through its agent, Nathan Byram, only participated in the second of the three proceedings for the approval of the first three phases, during which he was present but abstained from voting. Linwood paid the assessments for the first three phases in a timely manner.

¶ 8 In May 2014, the Board approved the assessment for phase four of the siding project on the west side of Blackbriar. This time, the Board divided the phase into two assessments: one assessment of \$3,145 due on July 20, 2014; and a second assessment of \$3,717 due on February 20, 2015. Before the July 20 assessment came due, Steve Sims, president of the Board, e-mailed a reminder to Byram concerning Linwood's upcoming payment. Linwood failed to make the July 20 payment on time.

¶ 9 On July 28, Sims called the Board's attorney, Gilbert Saikley, to discuss

Linwood's ongoing delinquency. Saikley informed Sims he could not represent the Board in any matter between it and Linwood, as Byram was also a client of Saikley's firm. Saikley did, however, offer to call Byram and discuss Linwood's delinquency, which Sims accepted. On July 31, 2014, Saikley called Byram and relayed Sims' call regarding Linwood's outstanding payment for the July 20 assessment. Within days of the call, Byram mailed Linwood's payment for the July 20 assessment. After Linwood paid the July 20 assessment, Linwood still owed a \$100 late fee pursuant to the graduated scale of late-payment fees in its "Third Amended Declaration of Condominium."

¶ 10 In August 2014, Saikley sent the Board a \$180 bill for the calls with Sims directly and the call he made on behalf of the Board to Byram. In October 2014, Sims wrote to Byram, notifying him Linwood owed an additional \$280 for both the \$100 late fee and Saikley's \$180 bill. In November 2014, Linwood paid the \$100 late fee but did not pay the \$180 Saikley bill. In January 2015, the Board began charging Linwood monthly late fees due to its ongoing delinquency in paying the \$180 Saikley bill.

¶ 11 In February 2015, Sims emailed Byram, notifying him \$3,717 for the second phase-four assessment would be due February 20. Linwood failed to make the February payment on time, triggering a \$100 late fee. On March 25, 2015, Linwood paid the February 20 assessment and the \$100 late fee, but not the \$180 Saikley bill or the late fees which continued to accrue due to the bill's ongoing delinquency. That same day, the Board sent notice pursuant to section 9-104.1 of the Code of Civil Procedure (Code) (735 ILCS 5/9-104.1 (West 2014)), demanding Linwood pay \$2,104—the the sum of the \$180 Saikley bill, plus \$75 in late fees having resulted therefrom, and a \$1,849 a bill for legal services provided by the law firm it had hired to address Linwood's payment issues, Davis and Delanois. Linwood failed to respond.

¶ 12 In June 2015, the Board filed its complaint in forcible entry and detainer under section 9-102(7) of the Code (735 ILCS 5/9-102(7) (West 2014)). Following an October 2015 bench trial, the trial court entered a judgment in favor of the Board. The court ordered defendant to pay the Board \$7,780, which included attorney fees and late fees.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Linwood argues the Board's attempt to collect the \$180 Saikley bill is not authorized under either the Act or Blackbriar's governing documents. Specifically, it argues the Board cannot recover attorney fees under (1) subsection 9.2(b) of the Act because the Saikley bill did not "arise out of a default" or (2) the "Declaration of Condominium" because the Saikley bill was not "incurred in enforcing" any provision of Blackbriar's governing documents. We disagree and affirm.

¶ 16 A. Standard of Review

¶ 17 Our review of the parties' arguments and the legal issues before us requires consideration of the Act (765 ILCS 605/1 to 35) (West 2014)). The construction of a statute is a question of law that is reviewed *de novo*. *In re Andrew B.*, 237 Ill. 2d 340, 348, 930 N.E.2d 934, 939 (2010). The primary goal in construing a statute is to ascertain and give effect to the intent of the legislature. *Slepicka v. Illinois Department of Public Health*, 2014 IL 116927, ¶ 14, 21 N.E.3d 368. The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning. *Id.* Further, when a statute defines the very terms it uses, those terms must be construed according to the definitions contained in the statute. *State Farm Mutual Automobile Insurance Co. v. Universal Underwriters Group*, 182 Ill. 2d 240, 244, 695 N.E.2d 848, 850 (1998). Also, a court presumes the General Assembly, in its enactment of legislation,

did not intend absurdity, inconvenience, or injustice. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 422, 781 N.E.2d 249, 255 (2002).

¶ 18 B. The Act

¶ 19 Subsection 9 of the Act governs the allocation of common expenses among unit owners. Specifically, subsection 9(g)(1) provides:

"If any unit owner shall fail or refuse to make any payment of the common expenses or the amount of any unpaid fine when due, the amount thereof together with any interest, late charges, reasonable attorney fees incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers, or any applicable statute or ordinance, and costs of collections shall constitute a lien ***." 765 ILCS 605/9(g)(1) (2014).

¶ 20 Subsection 9.2(b) of the Act expands on the definition of "common expenses":

"Any attorneys' fees incurred by the Association arising out of a default by any unit owner, his tenant, invitee or guest in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense." 765 ILCS 605/9.2(b) (West 2014).

¶ 21 C. "Arising Out of a Default"

¶ 22 Linwood first argues the trial court erred in granting attorney fees because it did not owe any common expenses under subsection 9.2(b) of the Act, as "the circuit court did not

find[] that [Linwood] was 'in default' of any of the condominium instruments, rules and regulations or any applicable statute or ordinance such that the [Saikley] bill could be laid to [Linwood's] account." According to Linwood, the court merely found Linwood's payment of the July 20 assessment was late and it asserts " 'being late' *** is not the same as being 'in default.' "

¶ 23 The plain, ordinary, and popular meaning of the word "default" is: "The omission or failure to perform a legal or contractual duty; esp[ecially], the failure to pay a debt when due." Black's Law Dictionary 428 (10th ed. 2014). Linwood does not dispute it was required to pay \$3,145 by or on July 20, 2014, as a part of an ongoing project to replace siding on Blackbriar. It also does not dispute it failed to pay that amount when it came due on July 20. The trial court recognized as much in its written order when it stated Linwood "failed to pay expenses lawfully agreed upon under the Condominium By-Laws and Declarations as amended and in November 2014 was in default in the sum of \$180."

¶ 24 Accordingly, we find the trial court properly found Linwood was in default under subsection 9.2(b) of the Act when it did not pay its July 20 bill when due and, therefore, the Board was authorized to recover legal expenses and other costs arising therefrom.

¶ 25 D. "Enforcing the Covenants"

¶ 26 Linwood also argues the Board could not recover the \$180 Saikley bill because the bill did not qualify as "attorney fees incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers" under the "Second Amended Declaration" as "no lawsuit was filed to collect either the July 2014 payment, or a later payment due in February 2015." We disagree.

¶ 27 A condominium declaration is a contract, *Streams Club, Ltd. v. Thompson*, 180 Ill. App. 3d 830, 838, 536 N.E.2d 459, 464 (1989), and it is undisputed that the 1972

Declaration, as amended in 1979, 2011, and 2013, is the contract governing the dispute over the liability for attorney fees in this case. Specifically, the "Second Amended Declaration" states in subparagraph 11(f):

"In the event the Condominium Association incurs attorney fees in enforcing the provisions of [the Declarations or Bylaws], the Condominium Association shall be permitted to charge the violator reasonable attorney fees incurred by the Association, which shall become a lien against the Unit owned by the violator."

¶ 28 The American Heritage Dictionary defines "enforce" as "1. To compel observance of or obedience to ***. 2. To impose (a kind of behavior, for example) ***. 3. To give force to; reinforce ***." American Heritage Dictionary (5th ed. 2011). Black's Law Dictionary defines "enforce" as "1. To give force or effect to (a law, etc.); to compel obedience to. 2. Loosely, to compel a person to pay damages for not complying with (a contract)." Black's Law Dictionary 569 (9th ed. 2009).

¶ 29 The Board's attorney fees in this matter were incurred in an attempt to enforce the condominium rules and regulations by which Linwood agreed to abide. Linwood disputes neither that it agreed to pay the July 20 assessment for phase four of the siding project, nor that it failed to pay that assessment on time. Byram's testimony confirms he did not pay the July 20 assessment until Saikley called him after speaking with Sims. To conclude the plain and ordinary meaning of "enforce" includes hiring an attorney to inquire of a defaulting party's intent to comply with a contract is well within any definition "enforcing the provisions" of the governing documents. As such, we conclude the "Declarations and Bylaws" authorized plaintiff to recover the legal fees incurred in this case.

¶ 30 Linwood analogizes the facts in this case with those in *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1039-40, 918 N.E.2d 1276, 1279-80 (2009), in which this court concluded attorney fees sought by the defendant-lessee were not authorized by a lease agreement with wording similar to the language in the matter before us. *Id.* Under the terms of the lease in *Lyles*, a nondefaulting party could recover reasonable attorney fees incurred in enforcing the lease. *Id.* In reversing the trial court's award of attorney fees to the defendant-lessee, this court held that because the defendant-lessee merely defended against a forcible entry and detainer suit, the lease did not allow an award of attorney fees. *Id.* This court determined that given the defendant-lessee did not attempt to enforce any covenant of the lease, the trial court's award of attorney fees to the defendant-lessee could not stand. *Id.* Unlike in *Lyles*, here, the party seeking to recover incurred the fees and costs in an attempt to enforce the "Declarations and Bylaws" after an alleged breach—a breach the trial court found occurred. Thus, *Lyles* is inapplicable.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm trial court's order awarding attorney fees, other fees, and costs to plaintiff in the amount of \$7,780.

¶ 33 Affirmed.

¶ 34 JUSTICE POPE, dissenting:

¶ 35 I respectfully dissent. This dispute arose over a bill for \$180 in attorney fees which, frankly, should have been disputed by Sims and Blackbriar. When Sims contacted attorney Saikley about Byram's tardy payment of the siding assessment, Saikley told him he *could not* represent him or Blackbriar, as his firm also represented Byram. Saikley offered to

give Byram a call to remind him payment was due. Then Saikley billed Blackbriar for both calls.

¶ 36 While Byram is correct plaintiff failed to prove the amount and reasonableness of the attorney fees at trial, the trial judge allowed attorney Delanois to prove up her fees at a hearing on February 9, 2016. At that point, the Board's attorney fees totaled \$23,000 in attempting to collect \$180. As reflected in the majority decision, the trial court allowed \$7,780, which included attorney fees and late fees that accumulated for nonpayment of the \$180.

¶ 37 While it is clear from reading the transcripts the trial court had issues with the way Byram defended the case, it is also clear once Byram was notified of the tardiness of his payment of the siding assessments, he paid promptly and paid the late fees due as a result of his tardiness. No lawsuit was ever filed to collect the siding assessments or late fees on the siding assessments because those amounts were paid in full.

¶ 38 If Blackbriar had questioned or disputed Saikley's bill, as it should have, this case never would have existed. Because the underlying basis for this lawsuit, a bill from an attorney who stated he could not represent Blackbriar in its dispute with Byram, in my opinion, is not legitimate, the attempts to collect it were not legitimate.