THE GLENS AT POMPTON PLAINS CONDOMINIUM ASSOCIATION, INC., Plaintiff-Appellant,
v.
ALBERT J. VAN KLEEFF and JEANNE VAN KLEEFF, Defendants-Respondents.
DOCKET NO. A-0418-13T4
SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
Submitted October 22, 2014
May 7, 2015

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Before Judges Lihotz and St. John.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Morris County, Docket No. DC-3843-13.

Donald M. Onorato, attorney for appellant.

Albert J. Van Kleeff and Jeanne Van Kleeff, respondents pro se.

Hill Wallack, LLP, attorneys for amicus curiae Community Associations Institute - New Jersey Chapter (Ronald L. Perl, of counsel; Michael S. Karpoff, on the brief).

PER CURIAM

Plaintiff, The Glens at Pompton Plains Condominium Association, Inc., appeals from the dismissal of its complaint, on summary judgment, seeking recovery of maintenance fees and related costs from defendants Albert J. and Jeanne Van Kleeff in favor of alternative dispute resolution (ADR). On appeal, plaintiff and amicus curiae, the New Jersey Chapter of the Community Associations Institute (Institute), argue the trial court erred in determining the mandate, pursuant to N.J.S.A. 46:8B-14(k), for the provision of "a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and [condominium] association[s]" required submission of plaintiff's claims to ADR at defendants' election. Plaintiff further contends defendants waived any right to ADR by not asserting that right in Mr. Van Kleeff's prior suit against plaintiff regarding the alleged failure to adequately maintain their yard.[1] Upon our review, in light of the record and governing law, we affirm.

I.

We adduce the following facts and procedural history from the record. On appeal from summary judgment, we recite the facts in the light most favorable to plaintiff, the non-moving party, giving it the benefit of all reasonably-drawn inferences. Robinson v. Vivirito, 217 N.J. 199, 203 (2014).

Defendants own a condominium unit in The Glens at Pompton Plains Condominium (the Glens). Plaintiff is a not-for-profit corporation organized under the Condominium Act, N.J.S.A. 46:8B-1 to -38, and charged with collecting maintenance and similar fees from unit owners. A dispute arose between the parties over exterior maintenance at the Glens. In April 2012, Mr. Van Kleeff filed suit against plaintiff for breach of fiduciary duty and failure to perform, alleging plaintiff failed to adequately maintain the common area adjacent to defendants' property. Mr. Van Kleeff did not request ADR and the complaint was dismissed with prejudice for failure to state a claim. Subsequently, defendants instructed plaintiff's attorney to hold their monthly maintenance fees in escrow pending resolution of the dispute. When a resolution was not forthcoming, plaintiff charged defendants late fees and attorney's fees, and initiated this action to compel payment of the monies owed. In the interim, defendants continued to deposit the maintenance fees with plaintiff's attorney in escrow, and do not dispute their obligation to pay these assessments.

Defendants disputed the imposition of late fees and legal fees, and moved for summary judgment dismissing the complaint in favor of ADR. After the trial court granted defendants' motion, plaintiff moved for reconsideration on the ground the court failed to account for its motion in opposition to summary judgment. Upon reconsideration of its prior order and following oral argument, the court again granted defendants' motion for summary judgment to dismiss the complaint and compel ADR.

This appeal ensued. We granted the Institute's motion for leave to participate as amicus curiae.

II

.A.

On appeal, plaintiff argues the trial court erred in holding defendants were entitled under N.J.S.A. 46:8B-14(k) to compel ADR of the fees dispute. Specifically, plaintiff challenges the court's reliance upon our decision in Bell Tower Condominium Association v. Haffert, 42 3 N.J. Super. 507 (App. Div.), certif. denied, 210 N.J. 217 (2012). It contends that case is distinguishable because it dealt with "special assessments" rather than the "unconditional" monthly maintenance fees at issue here. See Glen v. June, 344 N.J. Super. 371, 376-77 (App. Div. 2001).

The Institute mounts a broader challenge, arguing the trial court's reading of the statute contradicts the legislative structure of the Condominium Act by threatening the financial health of condominium associations. Additionally, the Institute asserts the Legislature intended section 14(k)'s language to clarify, rather than broaden, the availability of ADR and did not mean for the provision to apply in all community-related disputes. Lastly, the Institute asks us to revisit our holding in Bell Tower, arguing its failure to account for our earlier decision in Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association, 383 N.J. Super. 22 (App. Div. 2006), rev'd in part on other grounds, 192 N.J. 344 (2007), where we affirmed the trial court's determination that the ADR provision in the Planned Real Estate Development Full Disclosure Act (PREDFDA), N.J.S.A. 45:22A-44(c), "was [not] meant to apply to any dispute between and individual [owner] and an association," id. at 62-65 (emphasis added) (internal quotation marks omitted), renders Bell Tower's reasoning fatally flawed.

We disagree. We conclude the trial court properly interpreted and applied N.J.S.A. 46:8B-14(k) in dismissing plaintiff's complaint without prejudice in favor of ADR.

In addressing plaintiff's and the Institute's arguments, we must interpret the scope of the ADR provision contained in section 14(k) of the Condominium Act. "[A]n issue of statutory interpretation is a question of law" and our review is therefore de novo, owing no deference to the trial court's legal determinations. McGovern v. Rutgers, 211 N.J. 94, 107-08 (2014); see also Tarabokia v. Structure Tone, 429 N.J. Super. 103, 106 (App. Div. 2012) (noting that appellate review of the "grant of summary judgment is de novo, employing the same standard used by the trial court"), certif. denied, 213 N.J. 534 (2013).

"'Our task in statutory interpretation is to determine and effectuate the Legislature's intent.'" Newfield Fire Co. No. 1 v. Borough of Newfield, 439 N.J. Super. 202, 209 (App. Div. 2015) (quoting In re Petition for Referendum on Trenton Ordinance 09-02, 201 N.J. 349, 358 (2010)). In doing so, our starting point is the plain language of the statute itself, giving that language its ordinary meaning. McGovern, supra, 211 N.J. at 108. Only where a provision's language is ambiguous do we look to extrinsic sources, such as legislative history, to glean its intended thrust. See Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553 (2009).

With those principles in mind, we turn to the statute at issue. Section 14(k) of the Condominium Act provides, in pertinent part: "A[] [condominium] association shall provide a fair and efficient procedure for the resolution of housing-related disputes between individual unit owners and the association, and between unit owners, which shall be readily available as an alternative to litigation." N.J.S.A. 46:8B-14(k). In Finderne Heights Condominium Association v. Rabinowitz, 390 N.J. Super. 154, 163-64 (App. Div. 2007), we read that language as compelling dismissal without prejudice in favor of ADR where, subsequent to the filing of a covered suit, a party "[chose] to make use of the alternate dispute remedy which must be made available to them under the [] Act."

More recently, in Bell Tower, we reaffirmed this reading of the ADR provision and, concerning its intended scope, framed the seminal question as "whether the dispute between the parties is a 'housing-related dispute[]' within the meaning of N.J.S.A. 46:8B-14(k)." Bell Tower, supra, 423 N.J. Super. at 516 (alteration in original). In light of New Jersey's strong public policy favoring ADR and "the Legislature's failure to impose any limitations or conditions upon an association's or a unit owner's right to pursue ADR to resolve 'housing-related disputes,'" we rejected the condominium association's argument "that its management of the condominium's common elements, and its imposition of special assessments [to fund improvements], should be carved out as an exception to the broad right of unit owners to demand arbitration to resolve 'housing-related disputes.'" Id. at 516-17.

We therefore held, so long as the dispute "arise[s] from the parties' condominium relationship," a unit owner may, pursuant to N.J.S.A. 46:8B-14(k), demand submission of such disputes to ADR in lieu of proceeding in court. Id. at 517. As a non-exhaustive list of examples of non-"housing related disputes" under the statute, we provided:

> an auto accident in the condominium parking lot, a commercial dispute arising from a failed business venture between two unit owners, a palimony claim asserted by one unit owner against another, a legal or medical malpractice claim against another unit owner, a crime or disorderly persons offense committed by one owner against another, or any dispute that does not arise directly from the parties' condominium relationship.
>
> [Ibid.]

Consequently, we concluded the dispute between the condominium association and the individual owners over the levying of special assessments to fund necessary improvements was a "housing-related dispute" within the ambit of the Condominium Act's ADR provision. Id. at 517-18.

Here, the trial court properly applied N.J.S.A. 46:8B-14(k) and our precedent interpreting that provision in dismissing plaintiff's suit. The provision's plain language requires that condominium associations "provide a fair and efficient procedure . . . readily available as an alternative litigation" for all "housing-related disputes." Ibid. These include any "disputes that arise from the parties' condominium relationship." Bell Tower, supra, 423 N.J. Super. at 517. Procedurally, once an association or unit owner institutes suit against the other regarding such a dispute, section 14(k) empowers the responding party to compel arbitration in lieu of proceeding in court. Finderne, supra, 390 N.J. Super. at 163.

Plaintiff's argument that Bell Tower is distinguishable is unavailing. There, we held N.J.S.A. 46:8B-14(k) applicable because the unit owners' refusal to pay the special assessment was "their contention that the [condominium board] breached the fiduciary obligations imposed upon it" by the Condominium Act. Bell Tower, supra, 423 N.J. Super. at 517. Similarly, here, defendants premised their withholding of the monthly maintenance fees on plaintiff's alleged breach of its fiduciary duty by failing to properly maintain exterior common areas. See N.J.S.A. 46:8B-14(a); N.J.S.A. 46:8B-14(j). Additionally, necessarily undergirding plaintiff's demand for payment of the fees is defendants' status as unit owners at the Glens. See N.J.S.A. 46:8B-14(b).

The nature of the parties' relationship is entirely different from the examples of non-"housing related disputes" we provided in Bell Tower. See Bell Tower, supra, 423 N.J. Super. at 517. As the present dispute is inextricably linked to the parties' relationship as condominium association and unit owners, the trial court properly relied on Bell Tower in holding section 14(k)'s ADR mandate applicable.

Moreover, the Institute's broader challenge to our interpretation of section 14(k) in Bell Tower is likewise misplaced. First, although Bell Tower did not explicitly address the Twin Rivers decision, we did acknowledge and incorporate the latter in our opinion in Finderne, upon which Bell Tower prominently relied. See Bell Tower, supra, 423 N.J. Super. at 516. In Finderne, we pointed to Twin Rivers' interpretation of PREDFDA's ADR provision in determining that, while N.J.S.A. 46:8B-14(k) empowers a party to seek dismissal of a pending suit in favor of ADR, it did not preclude either party from suing in the first instance. Finderne, supra, 390 N.J. Super. at 163 ("As the Twin Rivers case held, the 'requirement that ADR be "readily available" cannot be read outside the context of the phrase that immediately follows, "as an alternative to litigation."'" (quoting Twin Rivers, supra, 383 N.J. Super. at 63)). The contention our jurisprudence interpreting N.J.S.A. 46:8B-14(k) has failed to account for our prior decision in Twin Rivers therefore rings hollow.

Second, and of more significance, Twin Rivers is distinguishable on several important grounds. In Twin Rivers, we applied PREDFDA's ADR provision where the defendant association's own by-laws specifically excluded certain claims from arbitration. See Twin Rivers, supra, 383 N.J. Super. at 62. Furthermore, the crux of Twin River's holding rested upon the derivative nature of the unit owners' claims, in that they were brought on behalf of the corporation for ultra vires actions whose harm was to the corporation itself, not individual owners. Id. at 64. Therefore, we adopted the trial court's rationale that the claims were not covered by PREDFDA's ADR

provision, which limited its scope to "'disputes between individual unit owners and the association.'" Id. at 63-65 (quoting N.J.S.A. 45:22A-44(c)). Here, the dispute is between plaintiff, condominium association and defendants, as individual unit owners.

In enacting N.J.S.A. 46:8B-14(k), the Legislature did not see fit to provide any greater limitation upon a unit owner's right to compel arbitration than that the dispute be "housing-related."[2] The Institute's contention this phrase encompasses only those disputes regarding "the physical use of or access to the unit or lot and its amenities and relations among members" lacks any support and directly controverts New Jersey's strong public policy in favor of arbitration "as a means of settling disputes that otherwise would be litigated in a court." Badiali v. N.J. Mfrs. Ins. Grp., 220 N.J. 544, 556 (2015). The Institute's policy arguments concerning the purported inefficiency and economic cost of permitting unit owners to compel arbitration of disputes over maintenance and related fees must yield to the will of the Legislature as manifested in the statute's plain language. See Newfield Fire Co., supra, 439 N.J. Super. at 209. We therefore reject the Institute's contention that plaintiff's "management of the condominium's common elements . . . should be carved out as an exception to the broad right of unit owners to demand arbitration to resolve 'housing-related disputes.'" Bell Tower, 423 N.J. Super. at 516-17.

In light of the Legislature's decision not to limit section 14(k)'s scope, as evidenced by the provision's broad requirement that covered disputes be merely "housing-related," and New Jersey's strong policy in favor of ADR, we conclude the trial court properly applied N.J.S.A. 46:8B-14(k), determining defendants were entitled to arbitrate plaintiff's claims.

B.

Plaintiff next argues the trial court erred in holding defendants did not waive their right to arbitrate by filing the earlier lawsuit without demanding arbitration. The trial court determined the instant matter "for unpaid common expenses, late fees, and attorney's fees" was "separate and distinct from [plaintiff's] previous lawsuit" alleging breach of fiduciary duty and failure to perform adequate maintenance to exterior common areas at the Glens, which was dismissed with prejudice for failure to state a claim.[3] "The issue of whether a party waived its arbitration right is a legal determination," which we review de novo. Cole v. Jersey City Med. Ctr., 215 N.J. 265, 275 (2013).

In support of reversal, plaintiff cites Highgate Development Corp. v. Kirsh, 224 N.J. Super. 328, 333 (App. Div. 1988), where we held: "The principle of waiver is invoked to assure that a party may not get two bites of the apple: if he chooses to submit to the authority and jurisdiction of an arbitrator, he may not disavow that forum upon the return of an unfavorable reward." However, Highgate is readily distinguishable, because the parties deemed to have waived their right to challenge arbitration had "proceeded from discovery through a full litigation of all the meritorious issues over a two year period, during which they never sought to abort the arbitration" and seek judicial intervention, until after an unfavorable award was issued against them. Id. at 331-32, 334. Mr. Van Kleeff's filing the previous lawsuit, ultimately dismissed for failure to state a claim, does not rise to the level of "an election which is binding" and determinative of a party's later attempt to litigate in a different forum. See id. at 334. Rather, defendants' "litigation conduct . . . [was] consistent with [their] reserved right to arbitrate the dispute." See Cole, supra, 215 N.J. at 280.

We therefore concur with the trial court that defendants did not waive and were not otherwise precluded from availing themselves of the statutory right of arbitral review.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION

Footnotes:

[1.] Mrs. Van Kleeff was not a party to that suit.

[2.] The Institute's argument that, in passing the Condominium Act a mere three years after PREDFDA, the Legislature could not have meant to provide a different standard for arbitrating disputes for condominiums than that established for all planned real estate developments in PREDFDA must fail. The Legislature did, in fact, elect to employ a different standard when it used different language

defining the provision's scope. Compare N.J.S.A. 46:8B-14(k), with N.J.S.A. 45:22A-44(c).

[3] We note that "[o]rdinarily a dismissal for failure to state a claim is without prejudice." Pressler & Verniero, Current N.J. Court Rules, comment 4.1.1 on R. 4:6-2 (2015). But see Johnson v. Glassman, 401 N.J. Super. 222, 246-47 (App. Div. 2008) (concluding the trial court did not abuse its discretion "in rejecting [the] plaintiffs' request to re-plead and in dismissing their action with prejudice" where the plaintiffs had already filed a deficient amended complaint after a year's delay).
