HARBOUR POINTE, LLC *v.* HARBOUR LANDING CONDOMINIUM ASSOCIATION, INC., ET AL.
(SC 18566)
(SC 18567)

Rogers, C. J., and Palmer, McLachlan, Eveleigh and Vertefeuille, Js.

Argued September 22, 2010—officially released February 22, 2011

Richard J. Buturla, with whom were *Brian A. Lema* and *Anthony V. Avallone*, for the appellants (named

defendant et al.).

Richard E. Castiglioni, with whom, on the brief, were *Jonathan J. Kelson* and *Paul A. Sobel*, for the appellee (plaintiff).

Opinion

McLACHLAN, J. This appeal involves the proper interpretation of the declaration[1] for Harbour Landing, an expandable condominium[2] (condominium) created pursuant to the Condominium Act of 1976 (act), General Statutes § 47-68a et seq. The defendants, Harbour Landing Condominium Association, Inc. (association)[3] and its president, David Potter, appeal[4] from the trial court's judgment in favor of the plaintiff, Harbour Pointe, LLC (Harbour Pointe). The defendants claim that the trial court improperly concluded that the declaration grants Harbour Pointe access and utility easements over the condominium property. The dispositive issue in this appeal is whether the declaration clearly and unambiguously provides that easements are terminable only if the condominium adds certain properties. We conclude that the declaration does so provide, and, accordingly, we affirm the judgment of the trial court.

The record reveals the following facts. The declaration for the condominium, which was recorded in the New Haven land records by Harbour Landing Development Corporation (declarant), sets out five different phases for expansion and development, each phase comprising a different parcel of land as described on a New Haven land records map (map). When added together, the five phases comprise approximately 9.4173 acres. Currently, the condominium is located on the property described as phases I and II on the map, and Harbour Pointe owns the adjacent property, described as phases III, IV and V on the map.[5]

With respect to the contemplated expansion of the condominium, the declaration provides that the remaining phases, or any portion of the remaining phases, can be added to the condominium at different times. The declaration also provides, however, that there is "no assurance of, or limitation on" the expansion of the condominium to add the remaining phases within the seven year period from the date of recording of the declaration.

Recognizing the uncertainty of expansion, article IIIa of the declaration grants to phases II, III, IV and V access and utility easements over phase I. These easements continue "until and unless" each phase is added to the condominium. When the original declaration was recorded in 1983, only phase I was subject to the easements created by the declaration. After the condominium added phase II, however, the declaration was amended to reflect the extension of the easements over phase II. On July 19, 1990, the condominium's right to expand expired. Harbour Pointe, therefore, is comprised of phases III, IV and V, and has not been added to the condominium.

The dispute between the parties began after Harbour Pointe hired a contractor to install utility lines over the

easements and the contractor attempted to use Harbour Close, a private roadway on the condominium property. The association denied the contractor access to the condominium property, put up "No Trespassing" signs facing Harbour Pointe and informed Harbour Pointe that it would treat the use of the alleged easements as a trespass.

In 2007, Harbour Pointe brought the present action seeking, inter alia, injunctive relief enjoining the defendants from interfering with Harbour Pointe's use and enjoyment of the access and utility easements, and an order quieting title to the easements pursuant to General Statutes § 47-31. At the commencement of trial, the parties stipulated to underlying facts, including a description of the parties, the date of the recording of the declaration, and the location of the easements. They further stipulated that "[t]he right to expand the . . . [c]ondominium expired on July 19, 1990; accordingly, no more land or units may be added and the . . . [c]ondominium is fully expanded." Harbour Pointe argued that article IIIa of the declaration clearly and unambiguously reserved the easements in favor of phases III, IV and V, and that the easements had not extinguished. The defendants, however, maintained that, upon the consideration of every article of the declaration and the circumstances surrounding the condominium's creation, the duration of the easements was ambiguous. The defendants contended that an alternate, reasonable construction of the declaration was that, because the condominium was "fully expanded," meaning its expansion rights had expired, the easements had terminated.

On January 23, 2009, the trial court rejected the defendants' claims, concluding that, because the language in the declaration was clear and unambiguous, the easements granted to Harbour Pointe "can only be extinguished . . . if the land described as phases III, IV and V were used to expand the . . . condominium . . . . That condition has not been met and therefore the easement rights granted remain in full force and effect." In accordance with this reasoning, the trial court permanently enjoined the defendants from interfering with Harbour Pointe's use and enjoyment of the easements. The court also issued an order quieting title to the easements in Harbour Pointe, and terminated any automatic stay of execution. The defendants filed separate appeals from the trial court's judgment, which were consolidated by the Appellate Court and transferred to this court.

The defendants contend that the trial court improperly concluded that the declaration clearly and unambiguously provides that the easements will expire only when the remaining phases are added to the condominium. Accordingly, the defendants argue, the declaration should be construed against the declarant[6] and interpreted consistently with the defendants' contention that

the easements have expired. We disagree.

The resolution of this issue turns on the interpretation of the declaration. "Because the [condominium] declaration operates in the nature of a contract, in that it establishes the parties' rights and obligations, we apply the rules of contract construction to the interpretation of [the declaration]." *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, 273 Conn. 724, 734, 873 A.2d 898 (2005). "It is well established that [w]here there is definitive contract language, *the determination of what the parties intended by their contractual commitments is a question of law.* . . . It is axiomatic that a matter of law is entitled to plenary review on appeal." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Crews* v. *Crews*, 295 Conn. 153, 162, 989 A.2d 1060 (2010).

"In ascertaining the contractual rights and obligations of the parties, we seek to effectuate their intent, which is derived from the language employed in the contract, taking into consideration the circumstances of the parties and the transaction. . . . We accord the language employed in the contract a rational construction based on its common, natural and ordinary meaning and usage as applied to the subject matter of the contract. . . . Where the language is unambiguous, we must give the contract effect according to its terms. . . . Where the language is ambiguous, however, we must construe those ambiguities against the drafter. . . . This approach corresponds with the general rule that [a]ny ambiguity in a declaration of condominium must be construed against the developer who authored the declaration." (Citations omitted; internal quotation marks omitted.) *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, supra, 273 Conn. 734–35.

Furthermore, "[a] contract is unambiguous when its language is clear and conveys a definite and precise intent. . . . The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Internal quotation marks omitted.) Id., 735. With these principles in mind, we turn to the defendants' claims.[7]

Article IIIa of the declaration, entitled "Declaration of Easements," deals specifically and exclusively with the creation and terms of the easements, and "establish[es] . . . for the benefit of the remainder of the land described as [p]hase II, [p]hase III, [p]hase IV and [p]hase V . . . (1) an easement for ingress and egress, by vehicles or on foot, in, to, upon and over the driveways and roadways in [p]hase 1, including Harbour Close, and . . . (2) rights to install, connect with, make use of . . . utility lines . . . over or under the driveways or other [c]ommon [e]lements of [p]hase I . . . . Said easements shall continue *until and unless* that portion of the remaining land is added to . . . [the] [c]ondominium." (Emphasis added.) In other words, article IIIa gave to "the remainder of the land," meaning phases III, IV and V, which are now owned by Harbour Pointe, easements that "shall continue until and unless" the condominium "add[s]" those properties. The only reasonable interpretation of article IIIa is that, but for the addition of the remaining phases to the condominium, Harbour Pointe enjoys easement rights; the addition to the condominium is a precondition to the termination of the easements.[8] Because the addition did not occur, and the condominium's expansion rights expired in 1990, Harbour Pointe enjoys easement rights.

Language in article V of the declaration supports this interpretation. Article V, entitled "Description of Buildings and Units," provides a broad depiction of the structures on the land—the gatehouse, residential units, parking garage, clubhouse, swimming pools, boardwalks, storage bins, flooring, kitchen equipment and available utilities. Within this context, article V provides in relevant part: "The [d]eclarant has reserved an easement in favor of the additional land for ingress, egress and for utility installations across [p]hase I and future phases, which will continue *until and unless* the [c]ondominium is *fully expanded*." (Emphasis added.) Under article V of the declaration, "[i]f the [c]ondominium is fully expanded . . . the maximum number of [u]nits to be sold or rented will be [300] [u]nits contained on a 9.4174 acre site." The declaration provides that "[t]he [300] [u]nits will be offered in five phases . . . [and] [t]he [*d*]*eclarant* intends to sell all of the [u]nits . . . ." (Emphasis added.) Put another way, the condominium is "fully expanded" within the meaning of the declaration, when it includes 300 units on a site of approximately nine acres, and encompasses all five phases of the development. Until that time, the easements continue. This limitation is consistent with the statement in article IIIa that the easements continue "until and unless" the phases are "added"; for the easements to terminate, both articles require the condominium to add all phases. As we have already noted in this opinion, the condominium's right to expand has expired. Accordingly, the easements continue. We thus conclude, based on the consistent language of articles IIIa and V, that

the declaration clearly and unambiguously grants access and utility easements that terminate only if the condominium adds all of the phases.

The defendants argue that the declaration is ambiguous because article V directly contradicts article IIIa. While the defendants agree that article IIIa provides that the easements will terminate only if the condominium adds the remaining phases, they contend that article V provides that the easements will terminate when the association is "fully expanded." The defendants further claim that the phrase "fully expanded," as used in the declaration, means the point at which the condominium can no longer add additional phases. We are unpersuaded.

The defendants rely on the parties' stipulation that "[t]he right to expand the [c]ondominium expired on July 19, 1990; accordingly, no more land or units may be added and the . . . [c]ondominium is fully expanded." The phrase "fully expanded," as used in the declaration, however, means something entirely different from the phrase "fully expanded," as used in the stipulation. The stipulation does not refer to the declaration's definition; instead, it simply uses the phrase to mean that the condominium can no longer be expanded. The stipulation, therefore, does not alter the reasoning or outcome of this case, which depends entirely on the unambiguous language of the declaration.

The defendants respond that ambiguity exists because, despite the parties' stipulation that the association is "fully expanded," they now dispute the meaning of that phrase. We disagree. "[T]he mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous." (Internal quotation marks omitted.) *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, supra, 273 Conn. 735. The simple fact that the parties have different understandings of the declaration does not compel uncertainty. Moreover, even if the declaration is ambiguous, which it is not, the trial court is only bound to consider relevant extrinsic evidence. *Il Giardino, LLC* v. *Belle Haven Land Co.*, 254 Conn. 502, 511, 757 A.2d 1103 (2000). Here, the parties' stipulation is dated August 20, 2008, more than twenty-five years after the original declaration was filed in July, 1983. The stipulation would be too far removed in time from the original declaration to be considered relevant extrinsic evidence.

The defendants next argue that the declaration is ambiguous because, while article IIIa describes phases II, III, IV and V only as the " 'remaining land,' " other articles within the declaration and the public offering statement describe those phases as the " 'remaining land,' " "'expansion parcels' " and " 'additional land.' " We disagree. These descriptive phrases are indistin-

guishable and clearly refer to the same land. General Statutes § 47-70 (b) (4) defines " 'additional land' " as "all land that may be added to the condominium . . . ." When the declaration was recorded, the condominium potentially could have added phases II, III, IV and V. Article V of the declaration provides that the easements are "in favor of the additional land"; article III of the declaration provides that the easements are "in favor of the expansion parcels *as set forth in* [*a*]*rticle IIIa* hereof"; and the public offering statement describes the units as subject to easements "in favor of the additional land *as set forth in* [a]*rticle IIIa of the* [*d*]*eclaration*."[9] (Emphasis added.) The declaration and the public offering statement consistently describe the same parcels of land and do not provide any different expiration dates for the easements; the phrases are interchangeable and do not lead to ambiguity.

The defendants also contend that the declaration is ambiguous because it grants easement rights over certain common elements, such as the roadway, Harbour Close, even though article VIII, § 2 (a) of the condominium's bylaws limits the "[u]se of the [c]ommon [e]lements . . . to the [u]nit [o]wners, their tenants and a reasonable number of their guests." We discern no ambiguity in these facts. The parties stipulated that "certain driveways and a private roadway known as Harbour Close . . . are common elements . . . ." Article VII of the declaration defines "[c]ommon [e]lements" as "all portions of the [c]ondominium except the [u]nits" and § 47-68a (e) defines "[c]ommon elements" as "all portions of the condominium other than the units." While the declaration granted Harbour Pointe easement rights over these stipulated common elements—the driveways and the roadway—the use of the rest of the common elements, meaning the rest of the condominium besides the units themselves, is restricted to unit owners, their tenants and a reasonable number of their guests. The statement in the bylaws clearly pertains to the rest of the common elements and not to the driveways and the roadway. Moreover, a landowner can restrict use of his or her property to certain individuals and still grant an easement; one action does not preclude the other. The statement in the bylaws, therefore, is not at variance with easements and does not lead to ambiguity.

We hold that the trial court properly concluded that the declaration clearly and unambiguously grants easements that terminate only if the condominium adds the remaining phases. Accordingly, we conclude that the trial court properly issued an injunction permanently enjoining the defendants from interfering with Harbour Pointe's use and enjoyment of the easements and issued an order quieting title to the easements in Harbour Pointe.

The judgment is affirmed.

In this opinion ROGERS, C. J., and PALMER and EVELEIGH, Js., concurred.

[1] A declaration is an instrument recorded and executed in the same manner as a deed for the purposes of creating a common interest community. General Statutes § 47-220.

"[T]he declaration operates in the nature of a contract, in that it establishes the parties' rights and obligations . . . ." *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, 273 Conn. 724, 734, 873 A.2d 898 (2005).

The original declaration was recorded by Harbour Landing Development Corporation in the New Haven land records on July 19, 1983. The declaration was later amended three times—in 1986, 1988 and 2002. For convenience, we refer to the original declaration and all amended declarations collectively as the "declaration."

[2] An " '[e]xpandable condominium' " is "a condominium to which additional land may be added in accordance with the provisions of the declaration . . . ." General Statutes § 47-68a (y).

[3] The association is a separate entity from the condominium. The Harbour Landing Development Corporation was the original declarant and created the condominium; the association is the unit owners' association for the condominium. The association is a nonstock corporation organized and existing under the laws of this state.

[4] The defendants appealed to the Appellate Court from the judgment of the trial court, and we transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[5] When the original declaration was recorded in 1983, the declarant owned all five phases of land, but made only phase I subject to the condominium declaration. It later mortgaged phases III, IV and V to Bank of Boston Connecticut. Subsequently, it defaulted on its mortgage, and the bank foreclosed on those properties, together with the appurtenant easement rights. In December, 2006, as a result of the foreclosure, Harbour Pointe acquired title to phases III, IV and V.

[6] The defendants argue that "since the [association] is the grantee of the [e]asement, any ambiguity contained in the [d]eclaration must be construed against [Harbour Pointe], as successor to the . . . [d]eclarant." Because the declaration is unambiguous, whether Harbour Pointe is a successor to the declarant is irrelevant.

Even if we were to conclude that the declaration language is ambiguous, we would not view the association as the grantee of the easements. Article IIIa of the declaration granted the easements "for the benefit of the remainder of the land described as [p]hase II, [p]hase III, [p]hase IV and [p]hase V. . . ." Furthermore, the defendants do not explain why we should consider Harbour Pointe to be a successor to the declarant. The mere fact that Harbour Pointe owns land that previously belonged to the declarant does not compel us to conclude that Harbour Pointe is a successor of the declarant. Pursuant to § 47-68a (m), successors of a declarant include parties "who acquire fee simple title to condominium units or title to leasehold condominium units and who come to stand in the same relation to the condominium as their predecessors . . . ." While the dissent points out that the unit purchasers played no role in drafting the declaration, Harbour Pointe also played no such role, and indeed, had even less voice than the association in drafting the declaration.

[7] The dissent states that "the [majority assumes] that a condominium declaration, like other types of contracts, is to be interpreted in the *first instance solely* based on the intent of the drafting parties, as expressed in the language of the declaration itself." (Emphasis added.) This mischaracterizes our approach to condominium declarations.

We do not *begin* to interpret a condominium declaration by reviewing *only* the language of the declaration to the exclusion of the language of the act. Condominium declarations must comply with the act, and we interpret them in accordance with contract principles. We acknowledge that "compliance with the . . . act is a condition precedent to attaining condominium legal status . . . ." (Internal quotation marks omitted.) *Celentano* v. *Oaks Condominium Assn.*, 265 Conn. 579, 592, 830 A.2d 164 (2003). It is also well settled that "[b]ecause the [condominium] declaration operates in the nature of a contract, in that it establishes the parties' rights and obligations, we apply the rules of contract construction to the interpretation of [the declaration]." *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, supra, 273 Conn. 734; see also *Southwick at Milford*

Condominium Assn., Inc. v. *523 Wheelers Farm Road, Milford, LLC*, 294 Conn. 311, 313 n.3, 984 A.2d 676 (2009).

The dissent, however, begins to interpret the declaration by reviewing the language of the act to the exclusion of the declaration. Although it concedes that "the resolution of this appeal hinges on the proper interpretation of the easement provisions of the declaration," the dissent, in fact, reviews the legislative history of the act without considering the language of the declaration. The dissent states that "before analyzing the declaration itself, I briefly consider the relevant provisions of the act . . . ."

The defendants do not claim that the act is ambiguous. Nor do they claim that any ambiguity in the act entitles them to prevail. Their primary claim, which we address, is that the declaration is ambiguous and should be construed against Harbour Pointe.

There is no need to review legislative history. General Statutes § 47-70 (d) (1) expressly permits a condominium declaration to reserve an easement "which land developers commonly convey . . . for the purpose of bringing utilities . . . or . . . access to or through the condominium . . . ." Moreover, the dissent tacitly admits that its approach is improper because it finds it necessary to provide an argument against construing condominium declarations in accordance with contract principles. In other words, the dissent argues that, if we must interpret the declaration by reviewing its language, we should not apply contract principles because condominium declarations are distinct from "more conventional forms of contracts . . . ." This statement clearly departs from *Cantonbury Heights Condominium Assn., Inc.* Furthermore, the dissent mischaracterizes the easement reservation in the declaration as a "novel method of saddling the condominium buyers with . . . unexpected and arguably unreasonable costs . . . ." There was no finding by the trial court regarding the costs associated with the easements, and certainly, no finding that any such costs were unreasonable. Indeed, the public offering statement expressly disclosed that the units were subject to "easements for access and utilities . . . in favor of the additional land as set forth in [a]rticle IIIa of the [d]eclaration."

[8] The trial court characterized the easement reservation in the declaration as "creat[ing] a condition subsequent that expressly limits the duration of the easement[s]." The question of whether the easements are determinable, defeasible or subject to condition subsequent is not before this court, and we do not address it at this time.

[9] The defendants also claim that the declarant failed to fully and accurately disclose the easements, as required by General Statutes § 47-71b, which provides in relevant part: "A public offering statement . . . shall disclose fully and accurately the characteristics of the condominium and shall make known to prospective purchasers . . . (5) the significant terms of any . . . easements . . . ." Because the public offering statement describes the units as subject to easements in favor of the additional land as set forth in article IIIa of the declaration, and because the declaration unambiguously describes easements that terminate only if the condominium adds the additional land, we conclude that the declarant properly reserved and disclosed the easements.

The defendants further claim that the declaration's easement reservation failed to comply with the requirements of the act. They cite § 47-70 (b) (3), which provides in relevant part that an expandable condominium's declaration must contain: "A time limit, not exceeding seven years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any, which will terminate that option prior to the expiration of the time limit so specified . . . ." The declaration, however, specified the circumstances in which the expansion option would terminate prior to the seven year expiration date—when "the remaining land is added to . . . [the] [c]ondominium." We conclude, therefore, that the trial court properly determined that the easement reservation complied with the requirements of the act.