

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

ELAN ESTATES SUBDIVISION
HOMEOWNERS' ASSOCIATION,
a Michigan non-profit corporation,

Plaintiff,

vs.

Case No. 2014-1958-CH

ELAN ESTATES CORPORATION,
a Michigan for-profit corporation,
MICHELE VENTIMIGLIA, and
JOHN CAVALIERE, jointly and severally,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response and request that the motion be denied. In addition, both sides have filed reply briefs in support of their positions.

I. Facts and Procedural History

On September 22, 2006, Defendants Michele Ventimiglia ("Defendant Ventimiglia") and John Cavaliere ("Defendant Cavaliere") (jointly, "Individual Defendants") recorded a "Declaration of Covenants and Restrictions" ("Declaration") for Elan Estates Subdivision. The Individual Defendants are identified in the Declaration as being the owners of land comprising 116 lots within the Elan Estates Subdivision ("Subdivision").

On October 1, 2007, the Individual Defendants recorded an "Amended Declaration of Covenants and Restrictions" for the Subdivision ("Amended Declaration").

On May 18, 2009, the Individual Defendants and Elan Estates Corporation ("EEC") executed an "Assignment of Developer's Rights", which was subsequently recorded on September 2, 2009 ("Assignment"). The Assignment assigned all rights, title and interest as the Developer to S.E. Michigan Development, LLC.

On June 10, 2009, the Individual Defendants and EEC executed a "First Amendment to the "Amended Declaration" ("Second Amended Declaration"). The Second Amended Declaration was recorded on July 9, 2009. The Second Amended Declaration, among other things, alters certain restrictive covenants pertaining to fences, pools and storage sheds.

On May 15, 2014, Plaintiff filed its complaint in this matter seeking to rescind the Amended Declaration and Second Amended Declaration.

On March 4, 2015, Plaintiff filed its instant motion for summary disposition pursuant to MCR 2.116(C)(10). On May 4, 2015, Defendants filed their response requesting that the motion be denied. On May 6, 2015, Plaintiff filed a reply brief in support of its motion. On May 8, 2015, Defendants filed their sur-reply in support of their response. On May 11, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a

trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments

Plaintiff homeowner's association contends that Defendants lacked the authority to amend the Declaration and thus seeks rescission of the Amended Declaration and Second Amended Declaration (collectively, "Amendments"). In response, Defendants contend among other things that Plaintiff lacks standing to challenge the Amendments. In its reply, Plaintiff contends that it is expressly entitled to initiate this lawsuit pursuant to MCL 450.2261 and Article II(h) of its Articles of Incorporation.

IV. Law and Analysis

Elan Estates subdivision is located in Macomb Township. It is composed of 116 lots. The developer of Elan Estates recorded the Declaration which sets forth covenants and restrictions to provide for among other things the "preservation and enhancement of the property values, amenities, aesthetics and opportunities in each subdivision, and for maintenance of the improvements". The Declaration additionally provides for the creation of a Landscape Common Area for the benefit of all the lot owners in the subdivision. (See Exhibit 1 to Plaintiff's Motion for Summary Disposition, Statement of Intent and Purpose.) An easement for the subdivision Landscape

Common Area is provided for in section 14 of the Declaration. (Ex 1.)

The creation of Plaintiff homeowners' association is authorized by section 21 of the Declaration, which states as follows:

The Developer shall create a Homeowners Association and shall be members of and represented by the Homeowners Association, which shall have the authority to make assessments and impose liens upon lots for the obligation to maintain the Landscape Common Area. Additionally, the Homeowners Association of ELAN ESTATES SUBDIVISION , Lots 1 through 116 shall be responsible for any costs of maintenance, repair and safeguarding of the Landscape Common Area (including, but not limited to costs and replacement fences, landscaping, utility bills, insurance premiums, taxes, attorney fees; salary and personal expenses and all costs incurred by Developer, Township of Macomb, County of Macomb or the Macomb County Public Works Commission) in performance of their respective obligations which shall be borne by Owners by payment disbursement of assets as herein provided.

(*Id.*) The lot owners in the subdivision are responsible for the maintenance and repair of the Landscape Common Area on a pro rata basis. (*Id.*, section 14.) Thus, pursuant to the Declaration, Plaintiff homeowners association was established for the purpose of maintaining, repairing and safeguarding the Landscape Common Area with the authority to make assessments and impose liens upon lots in order to carry out its obligation.

Plaintiff homeowners' association is a nonprofit organization. MCL 450.2261 provides in relevant part:

(1) A corporation, subject to any limitation provided in this act, in any other statute of this state, in its articles of incorporation, or otherwise by law, has the power in furtherance of its corporate purposes to do any of the following:

(b) Sue and be sued in all courts and participate in actions and proceedings judicial, administrative, arbitative, or otherwise, in the same manner as a natural person.

Plaintiff's Articles of Incorporation sets forth the purpose(s) for which the Plaintiff homeowner association is organized. (See Exhibit 2 attached to Plaintiff's Motion for Summary Disposition, Articles of Incorporation of Elan Estates Subdivision Homeowners' Association.) Plaintiff contends that it is authorized pursuant to Article II(h) to bring this lawsuit. However, Article II(h) unambiguously provides that one of Plaintiff's purposes is to sue or assert claims on behalf of the members with respect to its property, not with respect to the property owned by the individual members. The claims asserted by Plaintiff in this matter do not involve claims related to property Plaintiff owns; rather, it relates to Defendants' alleged violation of the Declaration, a claim belonging to the individual property owners. Neither the Articles of Incorporation nor the Declaration grant Plaintiff the authority to prosecute its instant claims. As a result, MCL 450.2261 does not grant Plaintiff standing to pursue its instant claim as the authority granted by the statute is limited to empowering a corporation to sue in furtherance of its corporate purposes.

In its reply, Plaintiff also relies on its bylaws ("Bylaws") in support of its contention that it has the authority to maintain this matter. However, bylaws may not be inconsistent with articles of incorporation. MCL 450.2231. The Articles set forth specific purposes Plaintiff was organized to advance. For the reasons set forth above, prosecuting claims related to Defendants' alleged violation of the Declaration is not one of those purposes. Consequently, the Bylaws may not be used to expand Plaintiff's authority.

IV. Conclusion

Based upon the reasons set forth above, Plaintiff's motion for summary

disposition is DENIED. Further, Defendants' request for summary disposition based on Plaintiff's lack of standing to bring its claims is GRANTED.

Pursuant to MCR 2.602(A)(3), this Opinion and Order resolves the last claim and CLOSES the case.

IT IS SO ORDERED.

Date: JUL 09 2015

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge