SUPREME COURT OF VIRGINIA

Luria v. Board of Directors of Westbriar Condominium Unit Owners Association, 277 Va. 359

672 S.E.2d 837 (2009) · No. Record No. 080515 · Decided February 27, 2009

SUMMARY

The Supreme Court of Virginia considered whether a managing member of a limited liability company owed a fiduciary duty to a condominium association as a potential statutory warranty claimant and creditor. The court held that creditor status required actual notice of a specific potential statutory warranty claim, which was not established until March 2003, after the improper distributions had occurred. The judgment on the fiduciary-duty and illegal-distribution counts was therefore reversed and final judgment entered.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Leroy F. Millette, Jr.; Keenan, J.; Koontz, J.; Kinser, J.; Lemons, J.; Goodwyn, J.; Millette, J.; Carrico, S.J.
JURISDICTION	Virginia
DECIDED	February 27, 2009
DOCKET	Record No. 080515
DISPOSITION	reversed
PROCEDURAL POSTURE	The Supreme Court of Virginia reviewed a circuit-court judgment entered after a bench trial imposing liability on Jon Luria for breach of fiduciary duty to the condominium association as a creditor and for illegal distributions by limited liability companies.
STANDARD OF REVIEW	The issue presented a mixed question of law and fact reviewed de novo. The court deferred to the circuit court's factual findings and viewed the facts in the light most favorable to the Association.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Jon Luria, Ellen Luria, and other appellants v. Board of Directors of Westbriar Condominium Unit Owners Association

TOPICS

fiduciary duty limited liability companies construction defects real estate commercial litigation

PRACTICE AREAS

limited liability companies fiduciary duty construction law real estate commercial litigation

QUESTIONS PRESENTED

1. Whether a potential statutory warranty claimant may qualify as a creditor for purposes of imposing a fiduciary duty on a managing member of a limited liability company.
2. What type of notice is required before a potential statutory warranty claimant qualifies as a creditor.
3. Whether the evidence established that the Association was a creditor when Luria made the challenged transfers and distributions.

HOLDINGS

1. A potential statutory warranty claimant becomes a creditor only when the putative debtor has actual notice of a specific potential statutory warranty claim; constructive notice or a standard based on what the debtor should have known is insufficient.
2. The evidence was insufficient to establish that the Association was a creditor when the challenged transfers and distributions were made because Luria lacked actual notice of a specific potential statutory warranty claim at that time.
3. The circuit court's judgments against Luria on breach of fiduciary duty and illegal distributions must be reversed because the Association was not a creditor when the challenged distributions occurred.

KEY QUOTATIONS

> *"We hold that the notice required to create creditor status is actual notice of a specific potential statutory warranty claim."* (841)

> *"Accordingly, the circuit court's judgment on counts III and V will be reversed. Reversed and final judgment."* (842)

FACTUAL BACKGROUND

Jon Luria managed two limited liability companies that, along with a corporation, successively held title to and managed development of the Westbriar condominium project. During construction, Luria made transfers and distributions of entity funds for his own benefit. Although project reports identified various EIFS-related punch-list problems, the Association did not notify Luria of widespread structural defects within the scope of the statutory warranty until March 12, 2003, after the challenged distributions had occurred.

PROCEDURAL HISTORY

The Association sued the declarants, Jon Luria, Ellen Luria, and others, alleging construction defects and fraudulent transfers. After a bench trial, the circuit court found Luria liable under counts III and V and ordered him to refund $3,484,363.40. The Supreme Court of Virginia granted Luria an appeal limited to whether the Association was a creditor to whom a fiduciary duty could be owed and reversed the judgment on both counts.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand instructions; the court stated, "Reversed and final judgment."

CASES CITED

- Virginia Baptist Homes, Inc. v. Botetourt County, 276 Va. 656, 663, 668 S.E.2d 119, 122 (2008)
- The Daily Press, Inc. v. City of Newport News, 265 Va. 304, 309, 576 S.E.2d 430, 432-33 (2003)
- Caplan v. Bogard, 264 Va. 219, 225, 563 S.E.2d 719, 722 (2002)
- Marshall v. Fredericksburg Lumber Co., 162 Va. 136, 147, 173 S.E. 553, 557 (1934)
- Buchanan v. Buchanan, 266 Va. 207, 212, 585 S.E.2d 533, 535 (2003)
- Bruce v. Dean, 149 Va. 39, 46, 140 S.E. 277, 280-81 (1927)
- Johnson v. Wagner & Sons, 76 Va. 587, 590 (1882)
- Lynchburg Div. of Soc. Servs. v. Cook, 276 Va. 465, 477, 666 S.E.2d 361, 367 (2008)