

SUPREME COURT OF VERMONT

Sarita and Nafis Khan, Eric and Katherine Gadpaille, Judith LaPointe & Robert Earley v. Alpine Haven Property Owners’ Association, Inc.

203 Vt. 251 (2016) · No. 2015-303 · Decided September 2, 2016

SUMMARY

The Vermont Supreme Court considers whether Alpine Haven, a residential subdivision, constituted a preexisting common interest community under the Vermont Common Interest Ownership Act. The Court holds that the series of deeds relied upon by the trial court did not suffice to create a common interest community and reverses and remands for further proceedings. The opinion also addresses the validity and procedural defects of later declarations and bylaws adopted by the property owners’ association.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Skoglund, J.; Robinson, J.; Eaton, J.
JURISDICTION	Vermont
DECIDED	September 2, 2016
DOCKET	2015-303
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from stipulated questions following the trial court’s summary-judgment ruling that Alpine Haven’s chalet lots constituted a preexisting common interest community under the Vermont Common Interest Ownership Act.
STANDARD OF REVIEW	The Supreme Court reviewed the summary-judgment ruling de novo, applying the same standard as the trial court. Summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, with reasonable doubts and inferences given to the nonmoving party.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential

PARTIES

Alpine Haven Property Owners' Association, Inc. v. Sarita and Nafis Khan, Eric and Katherine Gadpaille, Judith LaPointe, Robert Earley

TOPICS

real estate

statutory interpretation

interlocutory appeal

appellate procedure

standard of review

PRACTICE AREAS

Real estate

Common-interest communities

Property servitudes

Statutory interpretation

Appellate procedure

QUESTIONS PRESENTED

1. Whether a series of deeds with inconsistent provisions concerning services and payment obligations created a preexisting common interest community under the Vermont Common Interest Ownership Act.
2. Whether an equitable obligation to contribute to the cost of commonly used roads or services is sufficient to create a common interest community.
3. What fees, if any, AHPOA may charge for deeded services and rights-of-way after the court determines that Alpine Haven is not a common interest community.

HOLDINGS

1. A series of deeds does not constitute a declaration creating a common interest community unless all of the deeds impose the common burden requiring unit owners, by virtue of ownership, to pay for maintenance, improvement, services, or other expenses related to common property or facilities. Because numerous Alpine Haven deeds, including the first deed, lacked such a payment obligation, the deeds did not create a common interest community.
2. An equitable obligation to contribute to the cost of a commonly used road or service is not equivalent to a servitude requiring payment by virtue of ownership, regardless of use, and therefore does not create a common interest community.

KEY QUOTATIONS

“Just as covenants must be included in all deeds to create a general-plan development, so too must all of the deeds include a “common burden” imposed on all lot owners in order to establish a CIC.” (¶ 35)

“An equitable obligation to contribute based on use of the road, or use of certain services, is not the same as a servitude that obligates a homeowner to pay regardless of use.” (¶ 36)

“The distinctive feature of a CIC, by contrast, is an obligation by virtue of a servitude “that binds owners of individual lots or units to contribute to the support of common property, or other facilities, or to support the activities of an association, whether or not the owner uses the common property or facilities, or agrees to join the association.”” (¶ 36)

“Unlike the trial court, we do not find here a “series of deeds” that “create[d] the relationship which constitutes a common interest community,” nor can we conclude that each purchaser had sufficient notice of this relationship from the “series of deeds” to satisfy procedural fairness concerns.” (¶ 39)

FACTUAL BACKGROUND

Alpine Haven is a large subdivision developed during the 1960s and 1970s in Montgomery and Westfield, Vermont. The development had no master plan, contemporaneous subdivision plat, or recorded declaration or bylaws when development began. The deeds were inconsistent: many included promises concerning roads, water, garbage removal, and streetlights, but numerous deeds, including the first deed, lacked any obligation requiring the grantee to pay for services. AHPOA later assumed responsibility for common roads and services, recorded a declaration in 2002, and recorded an amended declaration in 2011.

PROCEDURAL HISTORY

Plaintiffs filed suit in 2011 seeking declarations that their properties were not part of a common interest community and that their deeds did not require membership in AHPOA or payment of various assessments. AHPOA counterclaimed for declarations concerning membership and fee obligations. The trial court initially held that a series of deeds created a preexisting common interest community, later found AHPOA’s amended declaration and bylaws procedurally defective, and found a factual dispute concerning the reasonableness of fees. The parties brought an interlocutory appeal based on stipulated questions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine the basis for calculating fees for deeded services provided to the plaintiffs’ properties and the amount, if any, that AHPOA may charge owners of the three Montgomery parcels conveyed by Northeast Land and Trading Co. The Supreme Court declined to decide those questions in the first instance.

CASES CITED

- Hubbard v. Bolieau, 144 Vt. 373, 477 A.2d 972 (1984)
- Patch v. Springfield School District, 2009 VT 117, 187 Vt. 21, 989 A.2d 500
- Sabia v. Neville, 165 Vt. 515, 687 A.2d 469 (1996)
- Evergreen Highlands Ass’n v. West, 73 P.3d 1 (Colo. 2003)
- Wise v. Harrington Grove Community Ass’n, Inc., 584 S.E.2d 731 (N.C. 2003)
- Roper v. Camuso, 829 A.2d 589 (Md. 2003)
- Alpine Haven Property Owners Ass’n, Inc. v. Deptula, 2003 VT 51, 175 Vt. 559, 830 A.2d 78 (mem.)
- Nahrstedt v. Lakeside Village Condominium Ass’n, 878 P.2d 1275 (Cal. 1994)

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