

COURT OF APPEALS OF GEORGIA

Thunderbolt Harbour Phase II Condominium Ass'n v. Ryan

326 Ga. App. 580 (Ga. Ct. App. 2014) · Decided March 27, 2014

SUMMARY

The Georgia Court of Appeals held that a condominium homeowners' association could pursue a breach-of-fiduciary-duty claim against its former sole officer and director concerning construction defects and maintenance of common areas. The court reversed summary judgment for the defendant, concluding that the alleged fiduciary relationship presented a cognizable claim and declining to consider an alternative statute-of-limitations argument that was not preserved by cross-appeal.

CASE DETAILS

COURT	Court of Appeals of Georgia
WRITING FOR THE COURT	Miller; Barnes, P. J.; Ray
JURISDICTION	Georgia
DECIDED	March 27, 2014
DISPOSITION	reversed
PROCEDURAL POSTURE	The condominium association appealed the trial court's grant of summary judgment to Ryan on the association's breach-of-fiduciary-duty claim.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The appellate court views the evidence in the light most favorable to the nonmovant and determines whether a genuine issue of material fact exists and whether the movant was entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Thunderbolt Harbour Phase II Condominium Association, Inc. v. Michael R. Ryan, in his capacity as officer and director of Phase II HOA

TOPICS

construction defects

breach of fiduciary duty

corporate governance

standard of review

appellate procedure

PRACTICE AREAS

construction law

condominium and homeowners association law

fiduciary duty

appellate procedure

QUESTIONS PRESENTED

1. Whether Georgia law recognizes a breach-of-fiduciary-duty claim against the sole officer and director of a homeowners' or condominium association based on alleged failures to protect and maintain association property.
2. Whether the appellate court could affirm the summary judgment under the right-for-any-reason rule based on Ryan's asserted failure to establish the elements of breach of fiduciary duty.
3. Whether Ryan's statute-of-limitations argument could be considered absent a cross-appeal from the trial court's ruling adverse to him on that issue.

HOLDINGS

1. Georgia law recognizes a cognizable breach-of-fiduciary-duty claim against the sole officer and director of a homeowners' association where the officer had authority over association property and affairs and allegedly failed to protect, maintain, or repair that property.
2. The right-for-any-reason rule did not permit affirmance on the asserted failure to establish the elements of breach because Ryan did not raise that issue in his summary-judgment motion.
3. The court would not consider Ryan's statute-of-limitations argument because the trial court had ruled adversely to him on that issue and he did not file a cross-appeal.

KEY QUOTATIONS

“On appeal from the grant or denial of a motion for summary judgment, we conduct a de novo review of the law and evidence, viewing the evidence in the light most favorable to the nonmovant, to determine whether a genuine issue of material fact exists and whether the moving party was entitled to judgment as a matter of law.” (326 Ga. App. at 580)

“A fiduciary or confidential relationship may be created by law, contract, or the facts of a particular case.” (326 Ga. App. at 582)

“Under these circumstances, the trial court erred in concluding that Phase II HOA had no cognizable claim for breach of fiduciary duty.” (326 Ga. App. at 583)

FACTUAL BACKGROUND

Ryan Builders developed and served as general contractor for Phase II of the Thunderbolt Harbour condominium complex, constructed between 2001 and 2003. Ryan Builders conveyed Phase II's common areas to the condominium association, and Ryan served as the association's sole officer and director from its inception until July 2006. During that period, Ryan selected insurance coverage, assessed and controlled association fees, and allegedly failed to inspect, maintain, repair, or pursue subcontractors concerning construction defects in the building's roof and exterior cladding.

PROCEDURAL HISTORY

The trial court granted Ryan summary judgment, concluding that Georgia law did not recognize a fiduciary-duty claim against him for failing to turn over the condominium common areas in good repair. The Court of Appeals reversed, holding that the association had a cognizable breach-of-fiduciary-duty claim and declining to affirm on alternative grounds that Ryan had not properly preserved or cross-appealed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The trial court's grant of summary judgment to Ryan was reversed. The opinion does not state additional express remand instructions.

CASES CITED

- Holbrook v. Stansell, 254 Ga. App. 553, 562 S.E.2d 731 (2002)
- Cochran v. Murrah, 235 Ga. 304, 219 S.E.2d 421 (1975)
- Wright v. Apartment Investment & Mgmt. Co., 315 Ga. App. 587, 726 S.E.2d 779 (2012)
- Enchanted Valley RV Park Resort, Ltd. v. Weese, 241 Ga. App. 415, 526 S.E.2d 124 (1999)
- Clarence L. Martin, P.C. v. Chatham County Tax Comm'r, 258 Ga. App. 349, 574 S.E.2d 407 (2002)
- Bailey v. Stonecrest Condominium Ass'n, 304 Ga. App. 484, 696 S.E.2d 462 (2010)
- Georgia-Pacific, LLC v. Fields, 293 Ga. 499, 748 S.E.2d 407 (2013)
- Ga. Society of Plastic Surgeons v. Anderson, 257 Ga. 710, 363 S.E.2d 140 (1987)
- Truelove v. Buckley, 318 Ga. App. 207, 733 S.E.2d 499 (2012)
- St. Claire Townhome Ass'n, Inc. v. D.R. Horton, Inc., Civil Action File No. 1:07CV2712 (N.D. Ga. Apr. 15, 2009)

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