

State of Vermont

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
DOCKET NO: 23-CV-02770

Monika Andrzejkiwicz
Plaintiff,

v.

Old High School Condominium Association, Inc.
Defendant

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY
JUDGEMENT
TO THE HONORABLE SUPERIOR COURT JUDGE TIMOTHY B. TOMASI**

NOW COMES Plaintiff Monika Andrzejkiwicz and files this response to Defendant's Motion for Summary Judgement. In support, Monika Andrzejkiwicz offers the following for consideration by the Court:

RESPONSE ARGUMNET AND RELEVANT RECORD FACTS

Throughout their Motion, Defendant repeatedly represents that legal conclusions are "undisputed." Although it is not clear why Defendant does this, it appears to be an attempt to create a fact issue so that summary judgment could not issue in Monika Andrzejkiwicz's favor and defendant would have the case dismissed from the court.

Factual Background

I, Monika Andrzejkiwicz ("Plaintiff") purchased Unit 1 on October 14, 2021. Plaintiff filed the complaint against the Old High School Condominium Association ("Association"). The same day I was approached by June Cook, a former board member, she informed me about many issues regarding the building. The owners neglected the building for many decades and did not have financial statements nor any reserves. Throughout my time here, I have received abusive emails from the management company and a complicit board. Through the management company, I received fraudulent invoices for the Association's lawyer ("Hans Huessy") fees and late fees on other payments that I did not owe.

The week of October 14, 2021, June Cook, another owner and former board member, mentioned that Lisa Wiliams, the former president of the board, was preventing her from filing an insurance claim through the building insurance to reconstruct the floor joist that should have never been removed in the first place. *Plaintiff's Statement of Disputed Material Facts*

(“SDMF”) No.1. & SDMF No.3 The issue was just under the floor of June’s unit as stated by June Cook and was discovered before Plaintiff’s condo purchase. **SDMF No.4.** Accordingly, in February of 2022, the Association imposed a special assessment to cover the cost of repairing the joist affecting only June Cook’s and Lisa Williams’ units. **SDMF No.5.**

Neglect of the building is firstly evident from rejected or invalid past insurance claims. The association could not obtain full insurance coverage for repairs due to neglect. **SDMF No.2. & SDMF No.3.** Plaintiff experienced a kitchen sink drainage issue on February 1st, 2023, consulted plumbers that stated it was outside of her unit, requiring access to the basement main pipe. **SDMF No.9. & SDMF No.11.** Plaintiff informed the association of the issue and received a response five days later, stating the uninformed assertion of the president that it was inside her unit and to “try Draino.” After further emailing and the management company’s Ed Reed visually inspecting the sink and filling it further with water, the Association referred Plaintiff to the Kingsbury Company. **SDMF No.12.** Plaintiff had to resort to calling the police after being refused access to the basement main pipe per the request of the Kingsbury Company plumbers. Unknowingly, the plumbers consulted with Ed Reed instead of Plaintiff resulting in further abuse from Ed Reed. The police stated that they could not help and to take the issue to court. **SDMF No.15.** The Kingsbury Company did not fix the problem and caused damage, so Plaintiff was forced to independently consult with Terry Barbour and later Roto-Rooter, ultimately fixing the problem after over another week without a working kitchen sink. **SDMF No.10. & SDMF No.13.** Despite the issues with the Kingsbury Company, even they agreed that the issue was outside the unit. **SDMF No.11.** This was the responsibility of the Association and all other owners to fix. **SDMF No.14.**

The Association refused to assign parking spaces despite that the previous bylaws explicitly listed parking spaces for each unit. **SDMF No.6.** Vermont State law and the previous bylaws prohibit the removal of this section from the previous bylaws. **SDMF No.7. & SDMF No.8.** Plaintiff is entitled to assigned parking spaces or an assigned amount of parking spaces, which the Association has failed to ensure. In large summer gatherings and during the busy ski season, many out-of-state and non-owners are taking up parking. The Association’s current bylaws also prohibit short-term rentals. Many of the vehicles parked are out-of-state and seen once and never again. Plaintiff hired Justin Sherman ESQ to assist with the parking dispute with the Association to no avail. Sherman stated that it would cost Plaintiff \$20k-\$30k to take them to court, and it will take years to get justice with an uncertain outcome.

The Association contracts with a local provider to plow its parking areas. **Defendant’s Statement of Undisputed Material Facts (DSMUF) No. 11.** Multiple other members including board members have complained about the plowing, as empty spots are frequently left unplowed, and walkways are hazardous. The plow operator has on multiple occasions plowed directly into only Plaintiff’s vehicle. **SDMF No.16.**

Plaintiff was advised by previous representation, Hal Stevens, to pay all fraudulent bills under protest as part of the legal process of reclaiming funds. Plaintiff’s account was never in arrears. **SDMF No.18.** At the time of the complaint, Plaintiff previously had a lien filed against her unit for these bills. **SDMF No.17.** Multiple other owners have had accounts in arrears for up to a year of dues were never assessed late fees or had liens filed. Plaintiff has also been

discriminated against directly in recorded Association board meetings. ***SDMF No.19. & SDMF No.21.***

Plaintiff has voted against the budget and does so via email to avoid further discrimination and ridicule. ***SDMF No.20.*** In addition, the Association scheduled the meetings during my work hours. Building complaints made by Plaintiff including the leaking cistern leading to potential foundation issues, a roof that is decades overdue for a repair resulting in water damage, and a draft through the floor and wall from the new structure built on top of the original 1800s building without any rework reflect the general state of the building as being decades overdue for detailed inspection and repair. ***SDMF No.2.*** A purchase inspection of Plaintiff's unit would have been visual and would not include deeper access into the building systems, and no access has been granted by the Association for any attempted inspections. A visual inspection is not sufficient to determine structural and internal mechanical issues. Plaintiff purchased the unit with no heat and no hot water due to a failed boiler. Plaintiff only became aware of the issues after moving in. Ice accumulated on the interior side of the windows. The draft issue is also needing repair and is due to a common element that the Association is responsible for. ***SDMF No.26.*** Another Association board member, Liz Bisbee, commented that we cannot fix the issue ourselves, suggesting that it is indeed a common element. ***SDMF No.27.*** Plaintiff cannot obtain any building engineering inspections in the state as all available inspectors claim a conflict of interest from previous work with the Association. ***SDMF No.22.***

Had there been reserves in place, no special assessments would have been needed to fix the floor joist. For many years, the Association's dues were very low until they increased the dues, just after I was forced to fix and pay for the building drainage system and special assessments. Monthly dues were set at \$350 a month for Plaintiff's unit and the Association did not have any reserves at the time of purchase. ***SDMF No.23.*** Despite dues increasing, no improvements are being made to the building. Owing to the issues with the building and finances, June Cook and Chris Woods tried to convince Plaintiff to join the board as a treasurer since there wasn't one. Association's financial statements also show negligible reserves. ***SDMF No.24.***

The former Association president, Lisa Williams, sold her 500 ft² commercial space as an apartment for 200k, while being dismissive of building maintenance for her years of tenure, passing on the costs to future owners. All owners that voted, voted yes except Plaintiff to convert Lisa Williams' space from commercial to residential despite that the septic system was not up to code for the number of residential units. Michael Ketchel speculated in an email that there is most likely a bus buried under the ground serving as a septic system. ***SDMF No.25.*** According to conversations and emails with June Cook with Chris Woods were working for many months (before my purchase of my unit) to expose the fraud and negligence of the condo association board (owners). Chris Woods sadly passed away due to health complications, after attempting to purchase the commercial space and take care of the building full-time – with knowledge of the building's issues.

Response to Standard of Review

Summary judgment is inappropriate when “A nonmoving party responding to a statement of undisputed material facts and asserting that a fact is genuinely disputed, that the materials cited do not establish the absence of a genuine dispute” *Rule 56 - Summary Judgment*, Vt. R. Civ. P. 56(c)(2). The moving party may not rest on allegations or denials in its pleadings, and “The nonmoving party may survive the motion if they respond with specific facts raising a triable issue,” *State v. G.S. Blodgett Co.*, 163 Vt. 175, 656 A.2d 984 (1995). “In determining whether there is a genuine issue as to any material fact, [the court] will accept as true the allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material.” *Robertson v. Mylan Labs., Inc.*, 2004 VT 15, ¶ 15, 176 Vt. 356 (citation omitted).

Argument

I. The Association is not Entitled to Summary Judgement on the Special Assessment Claim.

Defendant claims that the Association did not discover the severed floor joist until after Plaintiff purchased her unit, making pre-purchase disclosure of the problem impossible. Plaintiff provides email documentation that this is not the case. *SDMF No.1. (Exhibit 1a)* Defendant’s claim is without merit, and pre-purchase disclosure was possible.

Second, condominiums generally have a reserve fund. The Association did not have any established reserves at the time of Plaintiff’s purchase and ignored Plaintiff’s request for financial records. *SDMF No.24. Also see Bylaws Section 5.1(e)* (“*The Board shall keep documentation of and treat all such funds as capital items on the Association books.*”) Since there were no reserves established, the Association had to pass the special assessment to cover the costs of the repair. Reserves are required to be built up and in a reasonable quantity for operations, contingencies, and replacements. *See Bylaws Section 5.1(e)* (“*The Board of Directors shall include in the budget and build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Said reserves shall be maintained at a level sufficient to meet secondary mortgage market requirements.*”) Therefore, the Association is not entitled to Summary Judgement on Plaintiff’s Special Assessment Claim.

II. The Association is not Entitled to Summary Judgement on the Assigned Parking Claim

The Association had assigned amounts of parking according to bedrooms per unit in the old bylaws. According to title 27A, the Association was not entitled to make these modifications as no amendment was duly recorded. 27 V.S.A. § 1318. *SDMF 7 & 8.* According to the old bylaws, Plaintiff is entitled to two parking spaces for her two-bedroom unit. The Association further frequently violates the short-term rental policy laid out in the bylaws, with dozens of out-of-state vehicles seen for one night and never again. *SDMF 16.* This further exaggerates the lack of allotted parking per unit. The president of the association, Sarah Morin, co-owns a unit with two other parties, taking four or more parking spaces when present. Therefore, the Association is not entitled to Summary Judgement on Plaintiff’s Assigned Parking Claim.

III. The Association is not Entitled to Summary Judgement on the Plumbing Repair Claim

Defendant claims that the clogged pipe was a Limited Common Element. Three independent plumbers, including the Kingsbury Company referred to by the Association and Ed Reed, management, agreed that it was a main pipe serving the entire building. *SDMF No.11*. According to the invoice from Roto-Rooter, there were not only blockages in the pipe 15 & 32 feet, well into the commercial basement unit and outside the boundary of Plaintiff's unit, but also corrosion due to the pipe not being maintained for several decades. *SDMF No.10.*, 27A V.S.A. § 2-102 (2). The Association is required to make such repairs to common elements and reimburse the Plaintiff for the common expenses 27 V.S.A. § 1302 (6-7). Therefore, the Association is not entitled to Summary Judgment on Plaintiff's Plumbing Repair Claim.

IV. The Association is not Entitled to Summary Judgment on the Plowing Claim

From the photo submitted by Plaintiff in support of her Complaint, it is very clear that the snow is plowed directly into her car. Snowplows generally plow snow past vehicles into a stack on the edge of a lot. Only Plaintiff's vehicle was plowed in. *DSUMF No. 14 & SDMF No. 16* Further, the plowing service frequently does not even clear empty parking spots. The Association also does not sand or salt the parking lot, resulting in hazardous icy walking conditions and making it impossible to drive out even when plowed. Therefore, the Association is not entitled to Summary Judgment on the Plaintiff's Assigned Parking Claim.

V. The Association is not Entitled to Summary Judgment on the Annual Assessment Claim

Plaintiff asserts that the annual assessment is unreasonable. None or poor financial records are kept by the association, and no reserves existed at the time of Plaintiff's purchase. *SDMF No.5. & SDMF No.24*. Assessments are not reasonable as the Association does not perform any maintenance and has not for decades as evidenced by the state of the building. Plaintiff has voted against the budget via email. *SDMF No.20*. Defendant refers to *DSUMF No.20*. in claiming that Plaintiff has never submitted comments to the budget. *DSUMF No.20*. does not exist in Defendant's Statement of Undisputed Material Facts. The annual budget and assessments were raised despite no maintenance being performed, and the Association refusing to resolve basic maintenance issues brought by Plaintiff. Plaintiff alleges unreasonable increase in the budget. Therefore, the Association is not entitled to Summary Judgment on the Annual Assessment Claim.

VI. The Association is not Entitled to Summary Judgment on the Building Related Claim

When the Unit is sold, the seller makes the typical real estate disclosure that accompanies all real estate transactions. In reality, the seller disclosed "ample parking available" but did not disclose reserves claiming lack of knowledge. *SDMF 8, Exhibit 21b*. Lack of knowledge on the part of the Association or the seller does not excuse decades of negligence to make repairs or to keep financial records and reserves. Plaintiff does not complain generally that the building is drafty, but identified specific locations where there are either significant gaps in the exterior of the building or through the floor to the downstairs commercial unit. This is a health and safety violation. On Plaintiff contacting the Association, the Association denies Plaintiff to repair the exterior gap with insulating foam as it is a Common Element yet does not make the repair

because it is not a Common Element. ***SDMF No.2***. This is a contradiction. June Cook disclosed to Plaintiff after purchase of her Unit that he had seen the seller painting over rusty columns in front of the building. This identifies a general pattern with previous owners and board members to cover up issues such as the old roof, leading to internal water damage, or the cistern that was found empty leaking into the foundation. ***SDMF No.2***. Plaintiff's Building Related Claim does not just pertain to air infiltration. Therefore, the Association is not entitled to Summary Judgement on the Building Related Claim.

For all the above reasons, Defendant's Motion for Summary Judgement should not be granted.

DATED at Waitsfield, Vermont this 27th day of April 2024.

Monika Andrzejkiewicz

Plaintiff