IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JEFFREY YOUNGHEIM, *Plaintiff,* v. HERITAGE SPRINGS OWNERS ASSOCIATION, *Defendant.*	Case No. 23 CH 09411 Judge Celia Gamrath Calendar 6

ORDER

This matter comes on Defendant Heritage Springs Owners Association's Motion to Dismiss Counts I, II, and III of Plaintiff Jeffrey Youngheim's Complaint for Declaratory Judgment and for Other Relief. For the following reasons, the court denies the Motion.

BACKGROUND

At issue here are delinquent assessments and legal fees from a time prior to Plaintiff Jeffrey Youngheim's ownership of property located at 5509 Heritage Court in Western Springs, Illinois. On and before September 29, 2021, the property was owned by Raymond J. Topps, III and was encumbered by a mortgage. Mr. Topps defaulted on the mortgage and foreclosure proceedings commenced. Defendant Heritage Springs Owners Association ("HSOA") was named in the proceedings due to a claim for unpaid assessments on the property.

On February 22, 2022, the court entered an order of summary judgment against HSOA and a judgment of foreclosure and sale terminating all defendants' interests in the foreclosure. The judgment terminated "any right, title, interest, claim, lien, or right to redeem in and to the mortgaged real estate (Property)."

On May 24, 2022, the property was sold to Mr. Youngheim at a judicial sale. The sale was confirmed on June 21, 2022, by an order approving the judicial sale. The deed memorializing the sale was issued on July 15, 2022.

On July 6, 2022, HSOA demanded payment from Mr. Youngheim in the amount of $21,575.14 for delinquent monthly homeowners' association assessments from January 2021 to June 2022 ($8,357.95) plus legal fees for the attempted collection of the assessments ($13,217.19). On July 8, 2022, Mr. Youngheim sent payment for the initial monthly assessment for June 2022. Mr. Youngheim has paid all the monthly assessments due thereafter.

On August 30, 2022, HSOA recorded a notice and claim of lien against Mr. Youngheim and the property. On October 5, 2022, Mr. Youngheim sent payment of $2,580, representing 6 months of pre-foreclosure sale monthly assessments, along with a letter objecting to the request

for 18 months and the reasonableness of the attorney fees. On November 4, 2022, HSOA tendered itemized attorney fee invoices that included charges totaling $18,290.91, thereby increasing the demand for attorney fees. On January 4, 2023, Mr. Youngheim notified HSOA that, upon review, the Condominium Property Act did not apply and, thus, the assessments and fees could not be collected.

Count I of Mr. Youngheim's Complaint seeks a declaratory judgment that all assessments and legal fees prior to his ownership of the property are invalid, and that the $2,580 he paid on October 5, 2022, for 6 months of assessments should be credited. It further seeks a declaration that the lien is null and void and shall be released. Count II is for slander of title due to the allegedly false lien. Count III is for fraud. Count IV is for an accounting, in the alternative. HSOA seeks to dismiss Counts I, II, and III under 735 ILCS 5/2-615.

LEGAL STANDARD

A motion to dismiss under 735 ILCS 5/2-615 challenges the legal sufficiency of a complaint, posing the question of whether the allegations, when viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 382 (2004). Under Illinois fact pleading, the pleader is required to set out the ultimate facts supporting the cause of action. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 208 (1981). In considering a motion to dismiss under 735 ILCS 5/2-615, a court must construe the complaint liberally, and only grant the motion when it appears the plaintiff would be unable to recover under any set of facts. *Douglas Theater v. Chicago Title & Trust Co.*, 681 N.E.2d 564, 566 (1st Dist. 1997). The court must consider all well-pled facts to be true and draw all reasonable inferences in favor of the plaintiff. *Id.*

ANALYSIS

1. Count I (Declaratory Judgment)

As to Count I, HSOA argues it is a common interest community to which Sections 9.2 and 18.5 of the Condominium Property Act ("CPA") apply when a unit is sold at a judicial sale. As such, there is no actual controversy and Count I for declaratory judgment should be dismissed. Not so. Taking allegations in the Complaint as true, there is an actual controversy between the parties as to whether HSOA is entitled to assessments and attorney fees under the CPA; and, if so, how much.

Section 18.5(g-1) of the CPA states:

> The purchaser of a unit of a common interest community at a judicial foreclosure sale, other than a mortgagee, who takes possession of a unit of a common interest community pursuant to a court order or a purchaser who acquires title from a mortgagee shall have the duty to pay the proportionate share, if any, of the common expenses for the unit that would have become due in the absence of any assessment acceleration during the 6 months immediately preceding institution of an action to enforce the collection of assessments and the court costs incurred by the association

in an action to enforce the collection that remain unpaid by the owner during whose possession the assessments accrued. 765 ILCS 605/18.5(g-1).

Section 9.2(b) states:

Any attorneys' fees incurred by the Association arising out of a default by any unit owner, his tenant, invitee or guest in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense. 765 ILCS 605/9.2(b).

HSOA argues that, pursuant to these sections, since Mr. Youngheim was the purchaser of a unit in a common interest community at a judicial foreclosure sale, he must pay attorney fees and the common expenses for the 6-month period immediately preceding the action. In HSOA's view, the issue could not be clearer, resulting in no actual controversy.

Mr. Youngheim takes a different view, citing Section 3 of the CPA, which states: "Whenever the owner or owners in fee simple...of a parcel intend to submit such property to the provisions of this Act, they shall do so by recording a declaration, duly executed and acknowledged, expressly stating such intent and setting forth the particulars enumerated in Section 4." 765 ILCS 605/3. "If these requirements are not met, the property cannot be considered a condominium and is not subject to the provisions of the Act." *Stuart Town Homes Corp. v. Rosewell*, 176 Ill.App.3d 59, 61 (1st Dist. 1988).

At the time Mr. Youngheim purchased the property, the HSOA Declaration contained no reference, much less an express statement, that it was intended to be governed by the CPA. Given this, Mr. Youngheim believes he is not obligated to pay any of the prior owner's unpaid assessments and legal fees. He also argues the entry of the order confirming the foreclosure sale extinguished HSOA's lien, which prevents HSOA from collecting anything from him.

Perhaps recognizing the absence of any express statement in the HSOA Declaration that it was intended to be governed by the CPA, the HSOA amended the Declaration on July 6, 2022, to include such a statement. This was the very same day the HSOA made its original demand for prior assessments and attorney fees to Mr. Youngheim, and after he had purchased the property.

Mr. Youngheim argues he was entitled to rely on the documents recorded at the time of the foreclosure sale; namely, the Declaration from the year 2000 that makes no mention of the CPA. *See AAMES Capital Corp. v. Interstate Bank*, 315 Ill.App.3d 700, 704 (2d Dist. 2000) ("The purchaser of real estate may rely on the public record of conveyances and instruments affecting title..."); *see also Sylva, LLC v. Baldwin Ct. Condo. Ass'n, Inc.*, 2018 IL App (1st) 170520, ¶ 14 (discussing public policy decision that instead of the association being burdened with full cost of nonpaying owner, the foreclosure buyer who has advance notice of unpaid assessments would take on the burden). This is plausible and raises an actual controversy as to whether Mr. Youngheim is bound by the CPA when the Declaration did not expressly adopt it until after he purchased the unit. *See Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 812 (2d Dist. 1984) (where there was no covenant in the deed that the purchaser may be subject to certain assessments,

purchaser was not bound by those requirements since there was no notice). Accordingly, the court denies the Motion to Dismiss Count I because it recites in sufficient detail an actual and legal controversy between the parties and prays for a declaration to determine existing rights.

2. Count II (Slander of Title)

HSOA also moves to dismiss Count II for slander of title, which requires "(1) the defendant made a false and malicious publication; (2) the publication disparaged the plaintiff's title to property; and (3) damages due to the publication." *Chi. Title & Trust Co. v. Levine*, 333 Ill.App.3d 420, 424 (3d Dist. 2002). HSOA argues the first element is not well pleaded; hence, Count II should be dismissed. The court disagrees.

Count II alleges HSOA made a false and malicious publication by filing a false lien against Mr. Youngheim's property after claiming 18 months' assessments were owed and that the CPA applies. HSOA argues the lien makes no mention of the CPA or that assessments and attorney fees were owed pursuant to the CPA. Rather, the lien was pursuant to the Declaration, and there are no statements in the lien that are false when compared to the Declaration.

To accept this argument, the court would have to ignore Mr. Youngheim's well-pleaded facts that say he does not owe the amounts, that the amount were based on the CPA, and that the lien is not valid because any unpaid assessments and attorney fees were extinguished in the February 2022 foreclosure. In turn, the court would have to accept as true HSOA's contrary and disputed facts. Of course, the court cannot do this on a Motion to Dismiss.

Further, HSOA argues the allegations do not rise to the level of malice needed to sustain a claim. "To prove malice, a plaintiff must show that the defendant knew that the disparaging statements were false or that the statements were made with reckless disregard of their truth or falsity. A defendant acts with reckless disregard if he publishes the allegedly damaging matter despite a high degree of awareness of its probable falsity or if he has serious doubts as to its truth." *Id.* at 424.

HSOA believes none of this can be reasonably inferred from the allegations of the Complaint. At most, there is a disagreement as to how the CPA and Declaration apply to the foreclosure sale. However, malice is a question of fact, and where Mr. Youngheim has alleged facts to raise a genuine issue as to whether HSOA acted with malice, dismissal is improper.

In this case, HSOA conspicuously adopted the CPA after Mr. Youngheim's purchase of the unit and on the same day it made a demand for retroactive assessments and attorney fees. Notably, HSOA did not just demand 6 months of assessments, which at most is what they are entitled to. Rather, it demanded assessments for 18 months and undoubtedly charged extra attorney fees in conjunction with the unauthorized demand. Construing these well-pleaded facts in favor of Plaintiff, there is enough pleaded to defeat the Motion to Dismiss.

3. Count III (Fraud)

Finally, HSOA seeks dismissal of Count III for fraud, which requires (1) a false statement of material fact; (2) known or believed to be false by the party making it; (3) intent to induce the

other party to act; (4) action by the other party in justifiable reliance on the truth of the statement; and (5) damage to the other party resulting from such reliance. *Metro. Capital Bank & Trust v. Feiner*, 2020 IL App (1st) 190895, ¶ 38 (internal citation omitted). HSOA believes the first and fourth elements are insufficiently pled, but the court disagrees.

Mr. Youngheim alleges two false statements in paragraphs 37 and 38 of the Complaint. The first is that HSOA claimed that the CPA applied to the property. The second is that HSOA claimed that Mr. Youngheim owed for all past due monthly assessments from prior to his ownership and beyond the 6 months immediately preceding the institution of an action to enforce the collection of assessments.

HSOA claims these statements, even if false, are misstatements of law, not fact, and, therefore, cannot give rise to fraud. *See McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 39 ("misrepresentations or mistakes of law cannot form the basis of a claim for fraud"); *Kupper v. Powers*, 2017 IL App (3d) 160141 (same). In *Kupper*, defendant agreed to purchase a building, though in a countercomplaint alleged that plaintiffs fraudulently represented that the property was zoned for 13 units, but it was only zoned for 9 units. The court affirmed the dismissal as defendants could have discovered the zoning nonconformity through ordinary prudence by looking at the ordinance itself. The court found the misrepresentations were statements of law rather than statements of fact required for fraud.

HSOA argues that similar to *Kupper*, a review of the Declaration in the chain of title would have disclosed whether the property was subject to the CPA. At worst, any representation that the CPA applied would be a mistake of law, not fact. This argument is disingenuous given HSOA's insistence the CPA applies retroactively even though it was not expressly adopted until after Mr. Youngheim purchased the unit. Further, the timing of the amendment to the Declaration is suspect, with it being filed on the very same day HSOA demanded payment of assessments and fees.

In looking at the fourth element, HSOA contends that there is no justifiable reliance. "In determining whether there was justifiable reliance, it is necessary to consider all of the facts within a plaintiff's actual knowledge as well as those which he could have discovered by the exercise of ordinary prudence." *Neptuno Treuhand-Und Verwaltungsgesellschaft MBH v. Arbor*, 295 Ill.App.3d 567, 575 (1st Dist. 1998) (citation omitted). "If ample opportunity existed to discover the truth, then reliance is not justified." *Id.* (citation omitted).

Here, HSOA argues that any representation that the CPA applied to the property could have easily been uncovered by an inspection of the Declaration in the chain of title. This is disingenuous given HSOA's doubling down and insisting the CPA applies, demanding payment, and filing a lien. Whether Mr. Youngheim was justified in relying on HSOA's representations is a question of fact. Fraud is a fact-intensive issue, and the court finds Mr. Youngheim pleads enough facts showing he was induced into paying a portion of the outstanding assessments due from the prior owner based upon representations that the CPA applied to the property and that he was responsible for assessments beyond even the 6 months preceding the institution of an action to enforce the collection of assessments. Count III stands.

IT IS ORDERED:

1. The court denies Defendant Heritage Springs Owners Association's Motion to Dismiss Counts I, II, and III of Plaintiff Jeffrey Youngheim's Complaint for Declaratory Judgment and for Other Relief.
2. The argument date of July 24, 2024, at 10:00 AM is stricken as unnecessary, for the issues in the Motion are fully and thoroughly briefed and the court has no questions.
3. Defendant shall answer all four counts of the Complaint within 21 days of today.
4. Written discovery shall issue within 28 days of today.
5. Status on the pleadings and completion of written discovery is set for October 31, 2024, at 9:00 AM via ZOOM.

ENTERED:

Judge Celia G. Gamrath

JUL 19 2024

Circuit Court-2031

Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
County Department, Chancery Division

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