SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D23-1213
Lower Tribunal No. 2013-CA-003839-O

TAMMIE D. MCCONICO,

Appellant,

v.

MORGAN'S MILL PROPERTY OWNERS ASSOCIATION, INC.,

Appellee.

Appeal from the Circuit Court for Orange County.
Reginald K. Whitehead, Judge.

August 25, 2023

STARGEL, J.

Appellant, Tammie McConico, appeals the entry of a Final Judgment granting injunctive relief in favor of Appellee, Morgan's Mill Property Owners Association, Inc., compelling her to perform certain maintenance and repairs to the exterior of her home and property.[1] Because we conclude that Appellee had an adequate remedy at law, we reverse.

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[1] This case was transferred from the Fifth District Court of Appeal to this Court on January 1, 2023.

Appellant's home is part of a housing subdivision known as Morgan's Mill and is subject to the restrictions and covenants dictated by the Morgan's Mill Declaration of Conditions, Covenants, Easements and Restrictions ("Declaration") and the Property Owners Association Board of Directors Rules and Procedures ("Rules"). Appellee filed the underlying action in 2013 to enforce Morgan's Mill's recorded covenants and restrictions. Appellee is a homeowners' association operating pursuant to chapter 720, Florida Statutes, and the Morgan's Mill subdivision governing documents.

Morgan's Mill is not a condominium or townhome community in which a homeowners' association maintains its homeowners' properties. Instead, each homeowner owns and is responsible for maintaining their own home and lot. The Declaration and Rules contain various homeowner maintenance obligations. The homeowners are required to maintain the exterior of their residences and lots in a "neat and attractive manner" pursuant to Section 5.6 of the Declaration and Rule 7.[2] Specifically, Section 5.6 reads as follows:

> The Owner of each Lot shall maintain the exterior of the Residence and the Lot at all times in a neat and attractive manner and as provided elsewhere herein. Upon the Owner's failure to do so, the Association may at its option, after giving the Owner written notice for a period of thirty (30) days mailed to the last known address or to the

[2] Rule 7 is titled "Landscape" and contains various requirements regarding the landscape of homeowners' properties. Those specific requirements are not included herein because they are not relevant to the analysis.

> address of the subject premises, perform such reasonable maintenance and make such repairs as may be required and deemed necessary to restore the neat and attractive appearance of the Lot and the exterior of the Residence located thereon. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an individual Assessment against the Lot on which the work was performed, collectible in a lump sum and secured by the lien against the Lot as herein provided. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole discretion.

After issuing violation notices to Appellant and providing an offer to participate in presuit mediation pursuant to section 720.311, Florida Statutes (2013), Appellee filed its lawsuit against Appellant to address her property maintenance. Appellee's amended complaint sought a mandatory injunction requiring Appellant to fix her property or "allow Appellee to enter onto the Subject Property and to perform the aforementioned maintenance to the Subject Property if the [Appellant] fails to comply with [the] Court's order, and to assess all costs associated with the maintenance against the Subject Property." Appellant moved to dismiss Appellee's amended complaint alleging, among other things, that the amended complaint failed to state a cause of action because Section 5.6 of the Declaration provides an adequate remedy at law. In an unelaborated written order, the trial court denied Appellant's motion to dismiss. Appellant subsequently filed her second amended answer and

affirmative defenses asserting that Appellee had an adequate remedy at law because it "can perform the work necessary to cure the violation . . . ."

At the non-jury trial, Appellant raised the issue of Appellee's ability under section 5.6 of the Declaration to perform the exterior maintenance for which they sought injunctive relief. Appellee admitted that it knew it had the right to perform the maintenance. In fact, the president of the board of directors for Appellee testified that the association had exercised its right to perform maintenance on other properties but chose to file this action against the Appellant. The president of the board further testified he did not know why the board chose to file an action for injunctive relief instead of performing the exterior maintenance, suggesting this approach was presented to him by the attorney for the association.

The Final Judgment found that Appellant "failed to maintain her lawn and landscaping, exterior of her home[,] and her driveway as required by Section 5.6 of the Declaration and Rules 1, 2, and 7.1 of [Appellee's] Rules and Procedures." Based on this finding, the trial court ordered Appellant to clean, maintain, and repair various aspects of her property.[3]

Section 720.305(1) authorizes "[a]ctions at law or in equity, or both, to redress alleged failure or refusal to comply with" the requirements of chapter 720, the

[3] The Final Judgment is devoid of any findings regarding Appellant's affirmative defense that Appellee has an adequate remedy at law.

governing documents, and the rules of the association. However, "[i]n order to establish entitlement to a mandatory injunction there must be a clear legal right which has been violated, irreparable harm must be threatened, and there must be a lack of an adequate remedy at law." *Amelio v. Marilyn Pines Unit II Condo. Ass'n*, 173 So. 3d 1037, 1039 (Fla. 2d DCA 2015) (citing *Shaw v. Tampa Elec. Co.*, 949 So. 2d 1066, 1069 (Fla. 2d DCA 2007)). In this case, Appellant correctly argues that because the Declaration provides Appellee the option of performing the necessary maintenance and repairs at Appellant's expense, Appellee has an adequate remedy at law. Appellee's Declaration states that Appellee "may, at its option . . . perform such reasonable maintenance and make such repairs as may be required and deemed necessary to restore the neat and attractive appearance of the Lot . . . ."

Appellee cites to *Autozone Stores, Inc. v. Northeast Plaza Venture, LLC.*, 934 So. 2d 670 (Fla. 2d DCA 2006), for the proposition that "[i]njunctive relief is normally available to redress violations of . . . restrictive covenants [affecting real property] without proof of irreparable injury or a showing that a judgment for damages would be inadequate." *Id.* at 673 (second alteration in original) (quoting Restatement (Third) of Prop. (Servitudes) § 8.3 cmt. b (Am. Law Inst. 2000)). However, this is only applicable to cases where an infringement on real property "is not readily remediable by assessment of damages of law." *Id*. at 673-74 (quoting *Daniel v. May*, 143 So. 2d 536, 538 (Fla. 2d DCA 1962)). That is not the case here.

Appellee further argues that considering the ten-year litigation history of this case, forcible entry onto Appellant's property to remedy the violations and assess the cost to her "only assured a confrontation over a longstanding dispute." This is vague and entirely speculative, and does not change the fact that Appellee in fact had an adequate remedy at law. If Appellee had utilized this option and actually been prevented from entering Appellant's property, Appellant may have been entitled to injunctive relief to enter the property. However, because Appellee chose not to attempt to utilize this option, an adequate remedy at law is left outstanding. Therefore, it was error for the trial court to resort to equity and enter a mandatory injunction. *See Digaeteno v. Perotti*, 374 So. 2d 1015, 1016 (Fla. 3d DCA 1979); *see also, e.g.*, *Mauriello v. Prop. Owners Ass'n at Lake Parker Ests., Inc*., 337 So. 3d 484, 487 (Fla. 2d DCA 2022) (holding that because an association's declaration gave it the option of remedying the alleged violation itself, assessing the owner for the cost, and, if the owner failed to pay, placing a lien on the property and foreclosing if it remained unpaid, the trial court should have dismissed the complaint).[4]

[4] The procedural posture of this case is different from *Mauriello*. The issue in *Mauriello* was whether the association was the prevailing party for purposes of attorney's fees when the lawsuit had been dismissed as moot after the Mauriellos sold the property and the new owners remedied the alleged violations. 337 So. 3d at 486-87. In ruling in the Mauriellos' favor, the Second District held that the association could not be considered a prevailing party because the trial court should have dismissed the complaint or entered summary judgment in the Mauriellos' favor as the association had an available remedy at law. *Id.* at 487.

Accordingly, the motion to dismiss should have been granted. We reverse the Final Judgment and remand for entry of an order of dismissal.

REVERSED AND REMANDED.

WOZNIAK and MIZE, JJ., concur.

Erin P. Newell and Shannon McLin, of Florida Appeals, Orlando, for Appellant.

Thomas R. Slaten, Jr., of Larsen Slaten, PLLC, of Orlando, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED