STATE OF MICHIGAN

COURT OF APPEALS

HOMESTEAD SHORES ASSOCIATION,

Plaintiff-Appellant,

v

RUSSEL J. ENTWISTLE and TINA S. ENTWISTLE,

Defendants-Appellees.

UNPUBLISHED
February 11, 2021

No. 351952
Oakland Circuit Court
LC No. 2019-175524-CH

Before: FORT HOOD, P.J., and GADOLA and LETICA, JJ.

PER CURIAM.

In this appeal by right from the trial court's default judgment against defendants, plaintiff argues that the court abused its discretion by denying plaintiff's request for attorney fees. We agree and, therefore, reverse the denial of attorney fees and remand for further proceedings.

Defendants are co-owners of a unit in the Homestead Shores condominium complex in Commerce Township. Plaintiff is the owner's association for Homestead Shores. Plaintiff filed a complaint against defendants alleging violations of the condominium bylaws regarding exterior home maintenance. Plaintiff's complaint also asked for an award of attorney fees as permitted by the bylaws. When defendants failed to respond to the complaint, plaintiffs filed a motion for entry of a default judgment. The trial court granted plaintiff's motion and awarded plaintiff its litigation costs, but declined to award attorney fees.

Plaintiff argues that the trial court abused its discretion because an award of attorney fees is necessary under the Condominium Act, MCL 559.101 *et seq.*, and Article XIX, § 2 of the bylaws. We agree.

We review a trial court's decision whether to award attorney fees for an abuse of discretion. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). Further, "issues involving statutory interpretation, as well as contract interpretation, present issues of law

that are reviewed de novo." *Tuscany Grove Ass'n v Peraino*, 311 Mich App 389, 393; 875 NW2d 234 (2015) (citation omitted).

"The general 'American rule' is that 'attorney fees are not ordinarily recoverable unless a statute, court rule, or common-law exception provides the contrary.' " *Smith*, 481 Mich at 526 (citations omitted). Attorney fees are also recoverable if they are part of a contractual agreement between the parties. *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 589; 735 NW2d 644 (2007). The Condominium Act discusses an award of attorney fees in the context of litigation between a homeowners' association and co-owners, stating, "In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide." MCL 559.206(b). As used in this and other provisions within the Condominium Act, "condominium documents" include "the master deed, recorded pursuant to this act, and any other instrument referred to in the master deed or bylaws which affects the rights and obligations of a co-owner in the condominium." MCL 559.103(10). Article XIX, § 2 of the Homestead Shores bylaws states:

> In any proceeding arising because of an alleged default by any Co-owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees (not limited to statutory fees) as may be determined by the court, but in no event shall any Co-owner be entitled to recover such attorney's fees.

In a case involving an analogous bylaws provision, this Court has previously found error requiring reversal when a trial court denied an award of attorney fees to a prevailing condominium association. *Windemere Common I Ass'n*, 269 Mich App at 683-684. For the same reasons, we conclude that the trial court abused its discretion when it ignored the clear and unambiguous language of MCL 559.206(b) and Article XIX, § 2 of the bylaws. The operative language of Article XIX, § 2 calls for plaintiff's recovery of reasonable attorney fees in any "successful" proceeding arising from an alleged default by a co-owner. Plaintiff's complaint alleged that defendants were in violation of restrictions regarding exterior home maintenance, and plaintiff was successful in that it obtained a default judgment against defendants. See *Reed Estate v Reed*, 293 Mich App 168, 180; 810 NW2d 284 (2011) (comparing default judgment to adjudication following trial or settlement). Thus, plaintiff "*shall* be entitled to recover . . . reasonable attorney's fees . . . ." (Emphasis added.) In other words, the bylaws not only allow, but *require*, an award of reasonable attorney fees. See *Ellison v Dep't of State*, 320 Mich App 169, 180; 906 NW2d 221 (2017) ("The term 'shall' is mandatory."). The Condominium Act likewise refers to recovery of reasonable attorney fees in mandatory terms "to the extent the condominium documents expressly so

provide." MCL 559.206(b). Accordingly, the trial court abused its discretion by refusing to award reasonable attorney fees despite the statutory and contractual authority requiring such an award in this case.[1]

We reverse the trial court's denial of plaintiff's request for attorney fees and remand for further proceedings to determine the reasonable fees to which plaintiff is entitled. See *Windemere Commons I Ass'n*, 269 Mich App at 684. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Michael F. Gadola
/s/ Anica Letica

[1] We recognize that the lead opinion recently issued in *Highfield Beach at Lake Mich v Sanderson*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket Nos. 343968 and 345177) (opinion by MARKEY, J.); slip op at 17-18, opined that a request for attorney fees under the Condominium Act must be incorporated in a properly pleaded contract claim. But two of the three judges on the panel disagreed, reasoning that entitlement to attorney fees in these circumstances is controlled by *Windemere Commons I Ass'n*, 269 Mich App 681, and involves a straightforward application of the statute and relevant bylaws. *Highfield Beach*, ___ Mich App at ___ (GADOLA, J., and RONAYNE KRAUSE, J., concurring); slip op at 1-2.

"The clear rule in Michigan is that a majority of the Court must agree on a ground for decision in order to make that binding precedent for future cases." *Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 535; 821 NW2d 117 (2012) (quotation marks and citation omitted). When a majority agrees to a particular result, but there is no majority consensus regarding the rationale for reaching that result, the decision is binding only with respect to the parties involved in that case. *Id*. Because Judge MARKEY's discussion of this issue in *Highfield Beach* was not supported by a majority of the panel, it is not binding precedent, and we have no reason to consider whether plaintiff advanced a breach of contract claim in this case.