

STATE OF MICHIGAN  
COURT OF APPEALS

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ALLEN PUEBLO, DEBBY PUEBLO, STEPHEN  
RYDER, and SHEILA RYDER,

UNPUBLISHED  
February 13, 2007

Plaintiffs-Appellants,

v

CRYSTAL LAKE IMPROVEMENT  
ASSOCIATION,

No. 263231  
Barry Circuit Court  
LC No. 03-000626-CH

Defendant-Appellee.

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Before: Murray, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiffs Allen and Debby Pueblo, and Stephen and Sheila Ryder, appeal as of right from a final judgment entered in favor of defendant Crystal Lake Improvement Association, Inc., following a bench trial. We affirm, but in part for reasons not articulated by the trial court.

This case involves a dispute concerning the legality of bylaws adopted by defendant regarding the use of residential property within its subdivision, the dues payable to defendant, and whether additional lots could be made part of defendant by vote of its members, without amending the subdivision's plat.

Plaintiffs first argue that the trial court erred in refusing to apply the continuing wrong doctrine to find that their challenge to defendant's 1979 bylaws was not time-barred. Defendant argues that not only is the continuing wrong doctrine inapplicable, but that all of plaintiffs' claims are barred by the six-year statute of limitations applicable to contract actions, MCL 600.5807(8). We agree with defendant.

Whether the continuing wrong doctrine applies is a question of law that is reviewed *de novo*. *Garg v Macomb Co Mental Health Services*, 472 Mich 263, 272; 696 NW2d 646 (2005), amended 473 Mich 1205 (2005). The continuing wrong doctrine was created by federal courts to overcome the harsh effects of the statute of limitations in civil rights cases. See *Garg, supra* at 278-281. As the Supreme Court stated in *Garg*, however, "whatever the merits of the policy" behind the continuing wrong doctrine, "[f]undamental canons of statutory construction" require that courts apply clear and unambiguous statutes as written. *Id.* at 281. In *Garg*, the Court determined that application of the continuing wrong doctrine would extend the limitations period beyond that intended by the Legislature. *Id.* at 282. Because the doctrine would conflict with

the clear requirements of the statute, it cannot apply. *Id.* at 283-285. Thus, the Court overruled *Sumner v Goodyear Tire & Rubber Co*, 427 Mich 505; 398 NW2d 368 (1986), and held that the continuing wrong doctrine no longer applies to Michigan civil rights cases. *Id.* at 284.

In the present case, the trial court determined that plaintiffs' claims were governed by MCL 600.5801, which provides:

*No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.*

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(4) In all other cases under this section, the period of limitation is 15 years. [Emphasis added.]

We agree with defendant, however, that this is not an action to recover possession of land or one involving entry upon land. Therefore, by its plain language, MCL 600.5801 does not apply.

Rather, this is an action challenging the validity of defendant's bylaws. Bylaws are a contract between a corporation and its shareholders. *Allied Supermarkets, Inc v Grocer's Dairy Co*, 45 Mich App 310, 315; 206 NW2d 490 (1973), *aff'd* 391 Mich 729 (1974). Therefore, we conclude that this action is governed by the six-year limitations period applicable to contract actions, MCL 600.5807(8).

The applicable accrual statute, MCL 600.5827, states:

*Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.* [Emphasis added.]

Thus, the statute of limitations applicable to plaintiffs' claims is six years. Because this action was not filed until 2003, plaintiffs' challenges to defendant's 1992 and 1996 bylaws are time-barred. The trial court erred in allowing those claims to proceed, and in striking the 1992 and 1996 bylaws as improperly adopted.

With respect to the continuing wrong doctrine, we note that the pertinent language in § 5807 is substantively identical to the statute of limitations considered by the Supreme Court in *Garg*, and that the accrual statute is also the same. Accordingly, as in *Garg*, applying the

continuing wrong doctrine to plaintiffs' claims would extend the statute of limitations beyond the period intended by the Legislature. Thus, the trial court did not err in refusing to apply it.<sup>1</sup>

Plaintiffs next argue that the trial court erred in applying the doctrines of laches and estoppel to bar plaintiffs' challenge to defendant's decision to allow the Terburg lot owners to vote on association matters.

Although defendant's articles of incorporation authorize only 55 shares, and have never been amended, the Terburg lot owners have voted and paid dues since 1985. Thus, allowing the Terburg lot owners to vote violates defendant's articles of incorporation. However, defendant's 1992 and 1996 bylaws, as well as a 1992 resolution (effective nunc pro tunc to 1985), formally provide that the Terburg lot owners are voting/dues-paying members of the association. As plaintiffs note, MCL 450.2231(2) provides that a corporation's bylaws may only contain provisions that are consistent with the articles of incorporation. As we previously concluded, however, plaintiffs' challenges to the 1992 and the 1996 bylaws are barred by the statute of limitations. For this reason, it is unnecessary to reach the applicability of the doctrines of laches and estoppel.

Plaintiffs next argue that the Land Division Act, MCL 560.101 *et seq.*, required defendant to file a circuit court action every time it sought to amend its bylaws to modify the applicable restrictive covenants. We disagree.

To the extent that plaintiffs attack defendant's bylaws, or the 1992 resolution, their challenges are time-barred. Nonetheless, we note that the Land Division Act defines a "plat" as "a *map or chart* of a subdivision of land." MCL 560.102(a) (emphasis added). Plats must be topographic, and must include any lots, public streets and highways, drainage and floodplains, and may include private dedications such as private parks, private streets, and the like. See MCL 560.111; see also *Little v Hirschman*, 469 Mich 553, 562; 677 NW2d 319 (2004).

MCL 560.222 provides that in order "[t]o vacate, correct, or revise a recorded plat or any part of a recorded plat, a complaint shall be filed in the circuit court . . . ." An action under the Land Division Act is "the *exclusive means available* when seeking to vacate, correct, or revise a *dedication* in a recorded plat." *Martin v Beldean*, 469 Mich 541, 542-543; 677 NW2d 312 (2004) (emphasis added); see also *Williams v City of Troy*, 269 Mich App 670, 676; 713 NW2d 805 (2005) (a Land Division Act action is necessary to change the boundaries of a plat).

The bylaws and restrictive covenants at issue in this case are *not* maps or charts, and are not contained in a plat. Therefore, contrary to plaintiffs' argument, defendant was not required to file an action under the Land Division Act in order to amend them. Rather, a restrictive

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<sup>1</sup> The trial court properly precluded plaintiffs' challenge to the 1979 bylaws, albeit under the wrong statute of limitations.

covenant generally can be amended as provided in the covenant itself. *Maat v Dead River Campers, Inc*, 263 Mich App 604, 609; 689 NW2d 491 (2004).<sup>2</sup>

Additionally, defendant association and the recorded plat have separate legal identities. As provided by the Land Division Act, the plat is the recorded chart or map of the Crystal Lake Estates subdivision. Conversely, defendant is a nonprofit corporation created years after the subdivision was platted. In holding that the owners of the Terburg lots are voting members of the association, as provided by defendant's bylaws, the trial court did not change the recorded Crystal Lake Estates subdivision plat.

Lastly, plaintiffs argue that the Terburg termination agreement prohibits defendant from imposing dues greater than \$12.00 a year. We again disagree.

An action to enforce a restrictive covenant sounds in contract. *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997). The meaning and scope of a restrictive covenant is a question of law to be reviewed de novo. *Terrien v Zwit*, 467 Mich 56, 60-61; 648 NW2d 602 (2002).

Contrary to plaintiffs' argument, the Tamarack termination agreement does not remove the provision allowing adjustments for inflation contained in the Tamarack covenant. Rather, the Tamarack termination agreement merely lists which of the restrictions contained in the Tamarack covenant would be applicable to any additional lands bordering on Crystal Lake that may later be platted by the signators to the agreement. Thus, the dues provision contained in the Tamarack covenant remained unchanged.

The 1979 bylaws explicitly allow defendant's board of directors to set the annual assessments imposed on each lot. That provision is repeated in the 1992 and the 1996 bylaws. Because plaintiffs' challenges to the bylaws are time-barred, defendant may impose assessments as permitted by the bylaws, and plaintiffs may not rely on the Tamarack covenant or the termination agreement to avoid paying them.

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<sup>2</sup> Plaintiffs' reliance on *Polcyn v Turner*, unpublished opinion per curiam of the Court of Appeals, issued November 26, 2004 (Docket No. 230960), and *Novi v Nanda Enterprises, Inc*, unpublished opinion per curiam of the Court of Appeals, issued February 17, 2005 (Docket No. 256389), is misplaced. Setting aside the fact that they have no precedential value whatsoever, unlike this case, those cases involved attempts to change dedications contained in recorded plats. Similarly, *Eveleth v Best*, 322 Mich 637, 639, 641-643; 34 NW2d 504 (1948), is inapposite because, in the present case, the original owner and grantor of all the lots in the subdivision, the Tamarack Corporation, recorded a restrictive covenant specifically providing that all landowners of the Crystal Lake Estates subdivision would automatically become members of the association and "shall be subject to all the rules, regulations, bylaws and charter provisions of said association."

Affirmed as modified.

/s/ Christopher M. Murray

/s/ E. Thomas Fitzgerald

/s/ Donald S. Owens