

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 24, 2008 Session

**MICHAEL LLOYD MEIER, ET AL. v. HUNTINGTON RIDGE
TOWNHOUSE HOMEOWNERS ASSOCIATION, INC.**

**Appeal from the Circuit Court for Davidson County
No. 06C2346 Walter Kurtz, Judge**

No. M2007-02511-COA-R3-CV - Filed October 23, 2008

Homeowners association appeals the grant of summary judgment in favor of owners who sued for a declaration that the Association was responsible for the cost of repair of defective floor trusses. The trial court found that the defective floor trusses were considered “common elements” under the covenants of the Association. We affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and ANDY D. BENNETT, J. joined.

Darrell Gene Townsend, Nashville, Tennessee, for the appellant, Huntington Ridge Townhouse Homeowners Association, Inc.

C. Bennett Harrison, Jr., Nashville, Tennessee, for the appellee, Michael Lloyd Meier.

MEMORANDUM OPINION¹

The facts pertinent to this appeal are not disputed. Jane C. Cates (“Ms. Cates”) and Michael Lloyd Meier and his wife, Lisa Ann Meier (“the Meiers”) own adjoining units in a residential development in Davidson County known as Huntington Ridge. In the spring of 2004, Ms. Cates noticed structural defects in her unit causing her walls to deflect and her unit’s floors to sag. She notified the Huntington Ridge Townhouse Homeowners Association, Inc. (“the Association”) which

¹ Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

initially took responsibility and obtained bids for repairs. In January of 2006, the Meiers began experiencing the same structural defects to their unit as Ms. Cates. Similar to Ms. Cates, the Association found the same structural defects were affecting the Meiers' unit.

No repairs were undertaken, however, and, following a turnover in the composition of its board of directors, the Association took the position that, while it was the Association's responsibility to make the repairs to the units, the cost of repairs could be charged back to the owners. The Association's basis for its position was that the structural defects were problems with the "limited common elements" within the meaning of the Second Amendment to the Declaration of Covenants, Conditions and Restrictions ("Declaration of Covenants") governing the development, rather than "common elements."

Robert Warren, a structural engineer, found that the structural defects resulted from the improper handling and installation of the floor truss system during the building's initial construction. He also found the floor trusses themselves to be defective. Warren determined that the floor trusses were progressively failing producing the inability of the truss system to sustain the loads applied by the walls and roofing system. He determined that the rate of failure, if unabated, would eventually cause the collapse of the units as well as having an adverse effect on the adjacent units within the same building structure which could eventually lead to catastrophic collapse.

Ms. Cates and the Meiers instituted suit seeking, *inter alia*, to have the court "declar[e] the obligation of the Association to affect the repairs upon the plaintiff's townhomes. . .". Plaintiffs moved for partial summary judgment and, by agreement of the parties, the Association's response to the motion was considered by the court as a cross motion for partial summary judgment. The trial court held that the floor trusses were "common elements" within the meaning of the Declaration of Covenants and that, consequently, the Association was obligated to make the necessary repairs. The trial court directed its order be a final order. The sole issue in this appeal is whether floor trusses are "common elements" or "limited common elements" as defined in the Declaration Of Covenants.²

STANDARD OF REVIEW

The interpretation of a written instrument is a question of law. *Rodgers v. Burnett*, 108 Tenn. 173, 184, 65 S.W. 408, 411 (1901); *City of Memphis v. Wait*, 102 Tenn. 274, 277, 52 S.W.161, 162 (1899); *Brown v. Brown*, 45 Tenn. App. 78, 95-96, 320 S.W.2d 721, 728 (1958). Because the interpretation of a written instrument is a question of law, interpretational issues are particularly suited to disposition by summary judgment. *See, e.g., Browder v. Logistics Mgmt., Inc.*, No. 02A01-9502-CH-00016, 1996 WL 181435, at *2 (Tenn. Ct. App. Apr. 17, 1996) *Denton v. Hahn*, 2004 WL 2083711 (Tenn. Ct. App.).

² Previous counsel for the Meiers was allowed to withdraw at the trial court level and they have not filed a brief or otherwise participated in this appeal.

A trial court’s decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *Draper v. Westerfield*, 181 S.W.3d 283, 288 (Tenn. 2005); *BellSouth Advertising & Publishing Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003); *Scott v. Ashland Healthcare Ctr., Inc.*, 49 S.W.3d 281, 284 (Tenn. 2001); *Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000). We review the summary judgment decision as a question of law. *Finister v. Humboldt Gen. Hosp., Inc.*, 970 S.W.2d 435, 437 (Tenn.1998); *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn.1997). Accordingly, this court must review the record *de novo* and make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been met. *Eadie v. Complete Co., Inc.*, 142 S.W.3d 288, 291 (Tenn. 2004); *Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Staples v. CBL & Assoc.*, 15 S.W.3d 83, 88 (Tenn. 2000).

ANALYSIS

The Declaration of Covenants defines “common elements” in part pertinent to this appeal as follows:

... all of the property, except for the Units, and, without limiting the generality of the foregoing, shall include those items defined as “General Common Elements” in the Act³, including the following:

...
(b) All foundations, bearing walls and columns, roofs, carports, halls, lobbies, stairways, and entrances and exits or communication ways;

...
(h) All other elements of the buildings desirable or rationally of common use or necessary to the existence, upkeep and safety of the property.

“Limited Common Elements” is defined to mean:

... all Common Elements contiguous to and serving exclusively a single Unit or one or more adjoining Units as an inseparable appurtenance thereto, the enjoyment, benefit or use of which is reserved to the lawful occupants of such Unit or Units. Said Limited Common Elements shall include, but shall not be limited to, the separate furnace, air conditioner and water heater located within or adjacent to a Unit and serving only such Unit, pipes, ducts, electrical wiring and conduits located entirely within a Unit or adjoining Unit and serving only such Unit or Units, any balconies and patios and such portions of the perimeter walls, floors and ceilings, doors, vestibules, windows, entryways and all associated fixtures and structures therein, as lie outside the Unit boundaries.

³ Although not clear from the record, this appears to be a reference to the Tennessee Horizontal Property Act, Tenn. Code Ann. § 66-27-101, *et. seq.*

The Association contends that the trusses fall under the subcategory of “limited common elements” because they are not part of individually owned units but are appurtenant to such units⁴ and their benefit is only to the owners of adjoining units and not all unit owners at Huntington Ridge. It asserts that the trusses are outside of the units, are an adjunct to the units, and “simply fit the classic legal definition of appurtenance.”

Taking the relevant provisions of the Declaration of Covenants as a whole, as well as the testimony of Mr. Warren, we conclude that the trusses are “common elements,” as defined. They are part of the foundation and bearing wall system and are an element “necessary to the existence, upkeep and safety” of the property. In reaching this conclusion, we note the importance of construing the words and terms of the Declaration of Covenants in context and to construe them such as to avoid a conflict. *See Dickson County v. Bomar Constr. Co., Inc.*, 935 S.W.2d 413 (Tenn. Ct. App. 1996).

Mr. Warren explained at length that the floor trusses are a part of the bearing wall system and that, while they are not a part of the foundation as might be understood by a layperson, they are a part of the foundation. As explained by Mr. Warren:

It is important to understand that the foundation does rely on the floor trusses because this is a restrained foundation wall. The front part of the foundation in particular is retaining soil so it is by that definition a retaining wall; and the more specific definition of that particular retaining wall is it is a restrained retaining wall, restrained at the bottom of the slab and at the top by the floor which has to act as a diaphragm to prevent overturning at the top. . . . The floor trusses sit on top of the foundation wall, which [sic] then the floor trusses support the front and rear exterior load-bearing walls, which in turn support the roof framing system, which is also a truss, and those trusses are laterally integrated into the roof system over the whole building which consists of - - as we talked about earlier, several units.

We do not find language in the Declaration of Covenants sufficient to hold that floor trusses should fall within the definition of “limited common elements,” particularly as that definition incorporates those elements included within the definition of “common elements.” Being a part of the foundation and bearing wall systems, the trusses do not “serv[e] exclusively a single Unit or one or more adjoining units, the benefit or use of which is reserved to the lawful occupants of the Unit

⁴ “Unit” is defined in the Declaration of Covenants as:

...an enclosed space consisting of one or more rooms occupying all or part of a floor or floors in the Buildings, which enclosed space is not owned in common with the Unit Owners of other Units. Each Unit is numbered as shown on the Plat, and the boundaries of each Unit shall be and are the interior surfaces of its perimeter walls, floors and ceilings, and a Unit includes both the portion of the Buildings so described and the air space so encompassed, excepting the Common Elements.

or Units”; rather they serve the entire building containing the units.⁵ In addition, the characterization of the trusses as “appurtenances” to each unit is contrary to their function as part of the foundation, which is clearly a “common element.” The specific structural defects at issue affect the entire structure.

CONCLUSION

For the foregoing reasons, we affirm the decision of the trial court and remand this case for such other further proceedings as may be appropriate. Costs are assessed to the Huntington Ridge Townhouse Homeowners’ Association, Inc., for which execution may issue if necessary.

RICHARD H. DINKINS, JUDGE

⁵ Huntington Ridge comprises a number of townhouses. Most of these buildings contain six (6) units. Each unit is three floors high and are contiguous to each other.