

FILED  
 By Judicial Administrative Assistant  
 Division 17  
 FEB - 3 2020  
 Circuit Court of Jackson Co., MO  
 By \_\_\_\_\_

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
 AT INDEPENDENCE

THE MANHATTAN CONDOMINIUM, )  
 ASSOCIATION, a not-for-profit corporation, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STEWARDSHIP PROPERTIES, LLC, )  
 )  
 Defendant, )  
 )  
 v. )  
 )  
 JEPPSON LAW OFFICE, LLC, )  
 )  
 Third-Party Defendant. )

Case No. 1916-CV12024  
 Division 17

**PARTIAL JUDGMENT**

The parties appeared for bench trial on December 4, 2019. Plaintiff The Manhattan Condominium Association appeared through a corporate representative and counsel. Defendant Stewardship Properties, LLC, appeared through a corporate representative and counsel. Defendant Jeppson Law Office, LLC, appeared through a corporate representative and counsel. The Court heard evidence and the parties submitted the case for disposition. The parties provided proposed judgments on January 3, 2020.

Following Rules 73 and 74, the Court enters the following findings and conclusions:

**THE PARTIES:**

1. Plaintiff The Manhattan Condominium Association is a Missouri non-profit corporation located in Kansas City, Jackson County, Missouri.
2. The Manhattan Condominium is a 17-story building in downtown Kansas City. In 2007, the building was converted from apartments to mixed-use condominium

units. The building consists of 229 units with adjacent surface and garage parking. The postal address of the building is 700 E. 8<sup>th</sup> St., Unit 700, Kansas City, Missouri 64106.

3. Defendant Stewardship Properties, LLC, (“Stewardship Properties”) is a Missouri Limited Liability Corporation located in Jackson County, Missouri.

4. Defendant Stewardship Properties owns Unit 700 of the Manhattan Condominium. Unit 700 is legally described as:

Unit 700, THE MANHATTAN CONDOMINIUM, a condominium subdivision in Kansas City, Jackson County, Missouri, according to the condominium plat filed February 5, 2007, under Document No. 2007E0015722, together with an undivided interest in the common elements appurtenant thereto, as described in the Declaration of Condominium filed February 5, 2007, under Document No. 2007E0015723, as amended.

5. Third-Party Defendant Jeppson Law Office, LLC, (“Jeppson Law Office”) is a Missouri Limited Liability Corporation.

6. Third-Party Defendant Jeppson Law Office is a lessee and tenant of Unit 700.

#### **PROCEDURAL BACKGROUND:**

7. In April 2019, Plaintiff filed suit against Defendant Stewardship Properties for the collection of an unpaid special assessment and to enforce liens asserted as a result of the unpaid special assessment.<sup>1</sup>

8. In September 2019, Defendant Stewardship Properties filed a Third Party Petition alleging breach of contract, and demanding specific performance and indemnification from Third Party Defendant Jeppson Law Office. Defendant Stewardship

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<sup>1</sup>This suit was initially assigned to Judge Atkins in Division 26. On December 3, 2019, the case was transferred to Division 17, subsequent to Judge Atkins' appointment to Division 17.

Properties alleged the lease agreement obligated Defendant Jeppson Law Office to satisfy the special assessment.

9. The parties appeared for bench trial on December 4, 2019. After the close of evidence and arguments, the parties agreed to submit proposed judgments on or before January 3, 2020.

**FACTUAL BACKGROUND:**

10. On January 12, 2018, Plaintiff issued a notice informing members it would be imposing a \$3.5 million *emergency assessment* “to improve the structural integrity and safety of the Manhattan Condominiums.”

11. No vote was taken by the members to approve the “emergency” assessment.

12. Plaintiff’s corporate representative testified this assessment was an “emergency assessment” to pay for parking garage repairs, a new cooling tower, security improvements, and other repairs.

13. Defendant Stewardship Properties’ share of this assessment was \$30,706.44.

14. Plaintiff demanded members to pay the emergency assessment by June 11, 2018.

15. To date, Defendant Stewardship Properties has refused to pay the “emergency” assessment.

**THE DECLARATIONS DO NOT PERMIT AN “EMERGENCY” ASSESSMENT:**

16. The Manhattan is subject to the Bylaws of the Manhattan Condominium Association (“Bylaws”) and the Declaration of Condominium (“Declarations”).

17. Declarations are a set of covenants that contractually regulate the relationship between an association and its members. *See e.g. Hellman v. Sparks*, 500 S.W.3d 252, 259 (Mo. App. 2015).

18. “That document is a restrictive covenant between the [d]eveloper, the [a]ssociation, and its members.” *Id.* (quotations and citations omitted).

19. “The rules governing construction of restrictive covenants on realty are generally the same as those applicable to any covenant or contract.” *Id.* (quotations and citations omitted).

20. “Thus, the primary rule in interpreting such documents is to ascertain the intent of the parties and to give effect to that intent. Where there is no ambiguity in the contract, the intent of the parties is to be gathered from it alone and the court will not resort to construction where the intent of the parties is expressed in clear and unambiguous language as there is nothing to construe.” *Id.* (quotations and citations omitted).

21. Plaintiff contends the assessment was an “emergency” assessment as opposed to a “regular” assessment or a “special” assessment. This distinction is important because, *according to Plaintiff*, an “emergency” assessment does not require a vote by the members unlike a “regular” or “special” assessment which requires a vote and majority approval.

22. Plaintiff argues the “emergency” assessment is valid and enforceable because Article VI of the Declarations merely mentions an “emergency” assessment:

6.01 Authority of Members. In addition to any other powers and authority provided in this Declaration and in the Bylaws, the Members of the

Association shall have the following express authority and control over actions by the Board, following the expiration of the Declarant Control Period: . . . (b) To subject an action taken by the board in levying any assessment (**other than the general monthly assessments, special assessments, and emergency assessments provided for in Article VII herein**) . . . .

(emphasis added).

23. Although it mentions an “emergency” assessment, Article 6.01(b) explicitly states that any assessment levied by the board is controlled by the provisions set forth in Article VII:

(b) To subject an action taken by the board in levying any assessment (other than the general monthly assessments, special assessments, and emergency assessments **provided for in Article VII herein**) . . . .

(emphasis added).

24. Nothing in Article VII contemplates or permits an “emergency” assessment. No provision, no language, no section in Article VII even uses the word “emergency,” let alone discusses or permits any such assessment. Following the plain language of the Declarations, Plaintiff had no authority to issue an “emergency” assessment.<sup>2</sup>

25. The assessment, then, was either a “regular” or “special” assessment. Regardless of how the assessment is characterized, it is not valid or enforceable because Plaintiff failed to obtain the votes to approve the assessment—in fact, Plaintiff failed even to submit the assessment to any vote.

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<sup>2</sup> Although the plain language of the Declarations controls this inquiry, it is telling that Plaintiff’s corporate representative admitted “It’s very vague” when asked whether “there [is] actually anything in the declaration or bylaws talking about an emergency condition[.]”

26. Specifically, section 5.08(b)(2) of Article V of the Declarations prohibits the board from incurring “aggregate expenditures for capital improvements to the Common Elements in any fiscal year in excess of ten percent of the budgeted gross expenses of the Association for the previous fiscal year,” without “the vote or written consent of a Majority of the Members of the Association.”

27. The budgeted gross expenses of the Association for 2017 were \$1,140,828.

28. Ten percent of \$1,140,828 is \$114,082.80.

29. The \$3.5 million-dollar assessment far exceeds \$114,082.80, thus requiring a vote by section 5.08(b)(2).

30. Further, Article 9.3 of the Bylaws states that, “No capital improvement over Ten Thousand Dollars (\$10,000) . . . may be made without the consent of at least sixty-seven percent of the Owners of the Units.”

31. This Court need not resolve any conflict between these provisions as no vote occurred. Again, Plaintiff imposed this assessment without *any* vote of the members.

32. Accordingly, the assessment is not valid or enforceable against Defendant Stewardship Properties.

33. Plaintiff cannot prevail on any of its claims against Defendant Stewardship Properties. The Court enters Judgment in favor of Defendant Stewardship Properties and against Plaintiff The Manhattan Condominium Association on all of Plaintiff’s claims.

**DEFENDANT’S THIRD PARTY CLAIMS FAIL:**

34. Defendant Stewardship Properties’ claims against Defendant Jeppson Law Office fail.

35. Specifically, Defendant's claims have not accrued in that a claim of indemnity against loss does not accrue until the indemnitee incurs *actual* loss. Here, the assessment is not valid and Defendant has not suffered an actual loss. *See e.g. Spalding v. Stewart Title Guar. Co.*, 463 S.W.3d 770, 776-77 (Mo. banc 2015) ("Until that determination was made, SLC did not suffer an actual monetary loss or damage and could not seek indemnification from Stewart Title. In a case involving a contract of indemnity against loss, the claim accrues when the indemnitee sustains actual loss. Therefore, the earliest that damages could have possibly been ascertained was on June 16, 2006. Until that date, SLC did not sustain any actual loss that would trigger Stewart Title's duty to indemnify. But, as previously stated, Stewart Title did not breach its contract with SLC until July 3, 2007, when it allegedly failed and refused to adequately compensate SLC for the actual monetary loss or damage as required under the policy. Spalding filed his petition with the circuit court asserting its claim against Stewart Title for breach of contract on June 9, 2011.") (citations and quotations omitted).

36. The Court enters Judgment against Defendant Stewardship Properties and in favor of Defendant Jeppson Law Office on all of Defendant's Third-Party claims.

**THE ISSUE OF ATTORNEYS FEES REQUIRES ADDITIONAL EVIDENCE:**

37. Section 16.19 of Article XVI in the Declaration of the Manhattan permits the award of attorneys' fees: "In the event the Board or any owner shall bring legal action against any other Owner or the Board to enforce the terms, covenants, conditions, and restrictions of this Declaration, the court shall award reasonable attorneys' fees and court costs to the prevailing party."

38. Accordingly, this Court will hold a hearing within the time constraints of Rule 78 and hear additional evidence solely on the issue of attorneys' fees.

In light of the foregoing, the Court enters the following JUDGMENT:

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, Plaintiff The Manhattan Condominium Association had no authority to levy an "emergency" assessment.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED Plaintiff The Manhattan Condominium Association's claims against Defendant Stewardship Properties originating from the invalid assessment fail.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED Judgment is entered in favor of Defendant Stewardship Properties and against Plaintiff The Manhattan Condominium Association on all of Plaintiff's claims.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED Defendant Stewardship Properties' claims against Third-Party Defendant Jeppson Law Office fail in that they have not accrued.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED Judgment is entered against Defendant Stewardship Properties and in favor of Defendant Jeppson Law Office on all of Defendant's Third-Party claims.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED the parties shall appear and be heard on the issue of attorneys' fees.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED all costs of this action are taxed against Plaintiff The Manhattan Condominium Association.**



