

537 So.2d 657

District Court of Appeal of Florida,
Second District.

STRATHMORE GATE-EAST AT LAKE ST.
GEORGE HOMEOWNERS' ASSOCIATION
INC., and Rocco Galletta and Lucy M.
Galletta, his wife, on Behalf of themselves
and all others similarly situated, Appellants,

v.

LEVITT HOMES, INC., Appellee.

Nos. 87-2776, 87-3114. | Jan. 13,
1989. | Rehearing Denied Feb. 2, 1989.

Homeowners' association and individual homeowners brought action against developer of subdivision for alleged construction defects in common areas. The Circuit Court, Pinellas County, Harry W. Fogle, J., granted developer's motion for judgment on pleadings and dismissed purported class action. On appeal, the District Court of Appeal, Danahy, Acting C.J., held that homeowners association in fact owned common areas as defined in declaration of restriction placed of record by developer, and thus had cause of action against developer for any defects in construction of common areas of subdivision.

Reversed and remanded.

West Headnotes (1)

1 Common Interest Communities

🔑 Other planned communities

Common Interest Communities

🔑 Association and members of its board

Homeowners' association in fact owned common areas of subdivision as defined in declaration of restriction placed of record by developer, and thus had cause of action against developer for any defects in construction of common areas of subdivision.

1 Cases that cite this headnote

Attorneys and Law Firms

***657** Laura J. Rayburn and Robin M. George of Laura J. Rayburn, P.A., Dunedin, for appellants.

***658** Brian P. Battaglia of Battaglia, Ross, Hastings, Dicus and Andrews, St. Petersburg, for appellee.

Opinion

DANAHY, Acting Chief Judge.

The appellants are an association of homeowners (the Association) and two individual homeowners who appeal from adverse judgments in their effort to hold the developer of their residential community, the appellee, liable for construction defects in the common areas of the residential community. We reverse the judgment on the pleadings in favor of the developer and against the Association.

The residential community is not a condominium; it is a subdivision consisting of 186 homes. The Association is a nonprofit corporate entity under the laws of Florida and subject to a Declaration of Restrictions placed of record by the developer. All homeowners in the community are required to be members of the Association. Under the Declaration of Restrictions, the Association is required to maintain, repair and replace at its expense all "common areas." The declaration defines "common area" as all real property and personal property owned or leased by or dedicated to the Association for the common use and enjoyment of the residential homeowners.

The Association brought this action to recover damages from the developer for defects in the construction of the common areas. The developer filed a motion for judgment on the pleadings, which was ultimately granted. In anticipation of that ruling, an amended complaint was filed by individual homeowners in the community who attempted to assert a class action against the developer to recover damages for defects in the construction of the common areas. The trial judge granted the developer's motion to dismiss that class action.

We are satisfied, upon review of the pleadings and exhibits, that the Association in fact owns the common areas as defined in the Declaration of Restrictions. Obviously, the homeowners do not own the common areas and the developer has not asserted that it retains any interest in the common areas. We believe that as the owner of the common areas and with the responsibility of maintaining them-a status which the developer created for the benefit of the homeowners-

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the Association has a cause of action against the developer for any defects in the construction of the common areas. Therefore, the trial judge erred in entering a final judgment on the pleadings in favor of the developer. We reverse that judgment. We affirm the dismissal of the class action by the individual homeowners.

Reversed and remanded for further proceedings.

SCHOONOVER and PARKER, JJ., concur.

Parallel Citations

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