IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Middleton Place Townhomes Condominium Association	:	No. 1209 C.D. 2013
	:	Submitted: February 14, 2014
v.	:	
	:	
Diane S. Tosta,	:	
	:	
Appellant	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: April 4, 2014

Diane S. Tosta appeals from the October 18, 2013, judgment entered by the Court of Common Pleas of Montgomery County (trial court) in favor of the Middleton Place Townhomes Condominium Association (Association) and against Tosta. We affirm.

Tosta owns unit 609 in the Middleton Place Townhomes Condominium complex in Norristown.[1] On November 19, 2006, Tosta notified the Association that the water level in her powder room toilet was fluctuating. The Association's property manager, Rosemary Cooper, told Tosta that all plumbing issues within a unit are the

[1] Tosta resides in building 600, which contains 10 units.

unit owner's responsibility. Tosta insisted that the Association hire a plumber to fix her toilet.

Cooper contacted Roto-Rooter, the Association's plumber, to evaluate Tosta's problem. Roto-Rooter went to Tosta's unit that day and removed the powder room toilet. Roto-Rooter cleared a clog within the unit's branch line and pushed it out to the main sewer.

Roto-Rooter sent Cooper a bill in the amount of $459.77 for the work performed in Tosta's unit. Cooper called Michael D. Horn, Roto-Rooter's production manager, and questioned the repair charge because, two weeks earlier, Roto-Rooter had jetted all of the buildings' main drains.[2] Cooper wanted to know if Tosta's plumbing repair was covered under Roto-Rooter's 30-day warranty. Horn said that he would look into the matter. Several months later, Horn called Cooper to inform her that Tosta's repair was not covered under warranty because the problem was due to a clog in her unit's branch line. Horn sent Cooper an email in March 2007 stating the same thing.

On March 13, 2007, Cooper presented the invoice to the Association's Executive Board and explained that, per Roto-Rooter's evaluation, Tosta's plumbing problem was caused by a clog in her unit's branch line. The Association determined that only Tosta benefited from the expense and, therefore, assessed Tosta $459.77 for the repair. By letter dated March 30, 2007, the Association notified Tosta of the

[2] "Jetting the drains is a preventative measure which requires the use of a high velocity machine to force out any blockage in the plumbing lines." (Trial Ct. Op. at 2 n.3.)

assessment and included with the letter copies of the Roto-Rooter invoice and Horn's March 2007 email.

On April 10, 2007, Tosta sent the Association a letter stating that she disagreed with the assessment and refused to pay. On April 18, 2007, Cooper and the Association sent Tosta a letter reiterating the Association's position that Tosta was the sole beneficiary of the plumbing repair and that she was responsible for payment. The letter also notified Tosta of her right to appeal.

On May 14, 2007, Tosta appealed via email, to which she attached written statements from Tom Abbott, a plumber, and Rachel Adamec, owner of unit 602. Abbot, who never inspected Tosta's property, stated that he believed that Tosta's plumbing problem stemmed from the main drain. Adamec stated that Roto-Rooter had removed a clog from her building's main drain after working on Tosta's unit. After considering all of the evidence, the Association again concluded that Tosta's plumbing repair benefited only her unit. Therefore, the Association denied Tosta's appeal.

In May 2008, the Association filed a complaint against Tosta to collect the $459.77 plumbing expense.[3] On February 25, 2013, after a two-day, non-jury trial, the trial court found that the Association acted reasonably and in good faith in assessing Tosta under section 3314(c)(2) of the Pennsylvania Uniform Condominium

[3] In the five years between the Association's filing of suit and the non-jury trial, the parties litigated this matter in magisterial district court and before a panel of arbitrators.

Act (Act), 68 Pa. C.S. §3314(c)(2).[4] The trial court also ruled in the Association's favor with regard to Tosta's breach of contract and bad faith counterclaims.[5]

Both parties filed post-trial motions. On July 10, 2013, after a hearing, the trial court denied Tosta's motion, granted the Association's motion, and awarded attorneys' fees and costs, totaling $26,420.89, to the Association. The trial court reduced its verdict to judgment on October 18, 2013.

On appeal,[6] Tosta asserts that the trial court erred in concluding that the November 2006 plumbing repair benefited only her unit. We disagree.

At trial, Tosta failed to present any evidence that any other unit owner benefited from the November 2006 plumbing repair. Conversely, the Association's witnesses credibly testified that Tosta was the sole beneficiary of the repair. Michael C. Clark, a unit owner in Tosta's building, testified that he did not experience any plumbing problems in November 2006 and, to his knowledge, did not receive any

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[4] Section 3314(c)(2) of the Act states, "Except as provided by the declaration . . . [a]ny common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited." 68 Pa. C.S. §3314(c)(2). "Common expenses" are any "[e]xpenditures made or liabilities incurred by or on behalf of the association . . . including general common expenses and limited common expenses." Section 3103 of the Act, 68 Pa. C.S. §3103.

[5] Section 3303(a) of the Act provides that the members of the Association's executive board "shall perform their duties . . . in good faith in a manner they reasonably believe to be in the best interests of the association and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances." 68 Pa. C.S. §3303(a).

[6] Our scope of review "is limited to determining whether the trial court committed an error of law, 'a question over which we exercise plenary review.'" *River Park House Owners Association v. Crumley*, 47 A.3d 870, 873 n.4 (Pa. Cmwlth. 2012) (citation omitted).

benefit from the repair to Tosta's unit. (N.T., 1/23/13, at 195.) Cooper testified that no other unit owners in Tosta's building had complained about plumbing issues at the time Tosta requested the repair. (*Id.* at 112.) Horn testified that the fact that Roto-Rooter removed Tosta's toilet to perform the repair indicated that the clog was within Tosta's branch line. He also explained that if there had been a clog in the main sewer line, "all [of the] units would back up." (*Id.* at 181-82.) The trial court further relied on the Association's evidence that Roto-Rooter had jetted the main sewer line two weeks before Tosta's repair, "making it even less likely [that] the clog was in the main drain [and] affecting other units." (Trial Ct. Op. at 7.)

Significantly, the trial court discredited the testimony of Tosta's three expert witnesses—engineer Paul Kwashie, engineer-in-training Necholas Noel, and plumber Matthew Butterly. After noting that these witnesses did not visit Tosta's property until four years after the incident, the trial court rejected their opinions "regarding other hypothetical beneficiaries of the plumbing repair" as not credible. (Trial Ct. Op. at 8.) The trial court also disregarded the testimony of Tosta's neighbors, Adamec and Barbara Geiger, neither of whom established that anyone other than Tosta benefited from the plumbing repair.

Although Tosta contends in her summary of argument that the trial court committed an error of law, she devotes the majority of her brief to arguing that the trial court placed insufficient weight on her witnesses' testimony. In essence, Tosta is asking this court to re-weigh the evidence presented at trial, which we cannot do. *See Giannopoulos v. Department of Transportation, Bureau of Driver Licensing*, 82 A.3d 1092, 1096 (Pa. Cmwlth. 2013) (stating that the trial court, as factfinder, shall

determine the weight and credibility of the evidence and that "'[c]onflicts in the evidence are for the trial court to resolve and are improper questions for appellate review'") (citation omitted).

Accordingly, because we conclude that the Association acted reasonably and in good faith in assessing Tosta for the November 2006 plumbing repair, we affirm.[7]

ROCHELLE S. FRIEDMAN, Senior Judge

[7] We note that, on appeal, Tosta challenges neither the trial court's award of attorneys' fees and costs nor its denial of her counterclaims. (*See* Trial Ct. Op. at 4 n.6 & 5 n.8; Tosta's Br. at 6 n.3.)

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O R D E R

AND NOW, this 4th day of April, 2014, we hereby affirm the October 18, 2013, judgment entered by the Court of Common Pleas of Montgomery County.

ROCHELLE S. FRIEDMAN, Senior Judge