NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MEADOW RUN / MOUNTAIN LAKE PARK ASSOCIATION Appellee v. ROBERT MEGATULSKI Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 572 MDA 2012

Appeal from the Judgment Entered April 12, 2012
In the Court of Common Pleas of Luzerne County
Civil Division at No(s): 7439-C of 2004

BEFORE: SHOGAN, J., LAZARUS, J., and OTT, J.

MEMORANDUM BY LAZARUS, J. Filed: April 2, 2013

Robert Megatulski appeals from the judgment entered in the Court of Common Pleas of Luzerne County after the Honorable Thomas F. Burke, Jr., in a nonjury trial, found in favor of Appellee, Meadow Run/Mountain Lake Park Association ("Meadow Run") and against Megatulski in a dispute involving unpaid lot dues and assessments. After careful review, we affirm.

Meadow Run is an association of lot owners in a development duly formed under the laws of Pennsylvania and governed by a nine-member board of directors. Megatulski is a lot owner at Meadow Run and, as such, a member of the association. In 1982, Meadow Run acquired ownership of the development's lakes, dams, roads and other common areas. Between 1982 and 1984, Meadow Run relied upon voluntary contributions from the lot owners for the maintenance expenses of the common areas. However, in

1984, Meadow Run passed a resolution assessing each lot owner $300 per year for the repair of dams and roads in the development. The current annual assessment is $1,500. A prior deed in Megatulski's chain of title contains a restriction, applicable to "grantee, his, her or their heirs or assigns," which provides as follows:

> [I]n the event of the formation or incorporation of an association of the lot owners on above mentioned plot of lots of Mountain Lake Park, the occupants of the above described premises shall be bound by such rules and regulations concerning the use of Mountain Lake as to boating, bathing, ice skating and fishing, as may be duly formulated and adopted by such association or incorporation.

Deed from Taylor, et ux., to Megatulski, et ux., 1/24/55 (attached as Exhibit A to Complaint).

In ***Meadow Run and Mountain Lake Park Assoc. v. Berkel***, 598 A.2d 1024 (Pa. Super. 1991), this Court held that identical language contained in the deeds of other Meadow Run lot holders granted Meadow Run the authority to "impose reasonable assessments on the property owners" to fund the maintenance of the development's common areas.

On November 12, 2004, Meadow Run filed a complaint against Megatulski seeking $8,959.66 in unpaid dues and assessments, plus interest at a rate of 6%, as well as a $2.00 per month service charge beginning in 1994. Megatulski responded and, in new matter, asserted, *inter alia*, as defenses: (1) the applicable statute of limitations; (2) the doctrines of

collateral estoppel and *res judicata*, applicable by virtue of the dismissal of an earlier action instituted by Meadow Run against him, also for unpaid dues and assessments.

After a non-jury trial before Judge Burke, followed by the denial of Megatulski's post-trial motions, judgment was entered in favor of Meadow Run and against Megatulski in the amount of $21,637.75. Megatulski filed this timely appeal, in which he raises the following issues for our review:

> 1. DID THE LEARNED TRIAL JUDGE ERR BY REASON THAT, APPELLEE'S CLAIM IS LIMITED BY THE THREE (3) YEAR STATUTE OF LIMITATIONS PURSUANT TO 68 PA.C.S.A. § 5315(E)?
>
> 2. DID THE LEARNED TRIAL JUDGE ERR BY REASON THAT, APPELLEE'S CLAIM IS BARRED BY VIRTUE OF THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL BY REASON THAT, THE PREVIOUS ACTION FILED TO NO. 1670-C OF 1996, INVOLVING THE IDENTICAL PARTIES AND ISSUES, WAS TERMINATED ON DECEMBER 31, 2002, PURSUANT TO LUZERNE COUNTY LOCAL RULE 1901?

Brief of Appellant, at 4.

We begin by noting:

> Our appellate role in cases arising from non-jury trial verdicts is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its

> findings of fact are not supported by competent evidence in the record or if its findings are premised on an error of law. However, where the issue concerns a question of law, our scope of review is plenary.

Health Care & Ret. Corp. of Am. v. Pittas, 46 A.3d 719, 721 (Pa. Super. 2012).

Megatulski's first argument is premised on his wholly-unsupported assertion that Meadow Run is a "planned community" pursuant to section 5103 of the Planned Communities Act[1] and, as such, the trial court erred in failing to find the association's claim for assessments subject to the three-year statute of limitations applicable to such communities pursuant to section 5315(e) of the Act.

Section 5103 of the Act defines "planned community" as follows:

> Real estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person. The term excludes a cooperative and a condominium, but a condominium or cooperative may be part of a planned community. For purposes of this definition, "ownership" includes holding a leasehold interest of more than 20 years, including renewal options, in real estate. The term includes nonresidential campground communities.

---

[1] 68 Pa.C.S.A. §§ 5101-5414.

68 Pa.C.S.A. § 5103. Section 5201 governs the creation of planned communities and provides as follows:

> **A planned community may be created pursuant to this subpart only by recording a declaration** executed in the same manner as a deed by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease, the expiration or termination of which will terminate the planned community or reduce its size. . . . **The declaration must be recorded in every county in which any portion of the planned community is located**, must be indexed in the same records as are notarized for the recording of a deed and shall identify each declarant as the grantor and the name of the planned community as grantee.

68 Pa.C.S.A. § 5201 (emphasis added).

Instantly, Megatulski has not demonstrated that the community filed a declaration as required under section 5201. Such a declaration is required for an association to be deemed a "planned community." ***See*** 68 Pa.C.S.A. § 5201 ("A planned community may be created pursuant to this subpart **only** by recording a declaration[.] . . . The declaration **must** be recorded in every county in which any portion of the planned community is located[.]") (emphasis added).

Moreover, this Court has previously held in ***Berkel***, ***supra***, that Meadow Run's authority to impose assessments upon its member property owners arises from the restrictive covenants contained in the members' deeds. Pursuant to section 5529(b)(1) of the Judicial Code, 42 Pa.C.S. § 5529(b)(1), a twenty-year statute of limitations applies to actions

commenced upon an instrument in writing under seal. Here, because the deed in issue is "an instrument in writing under seal," it is subject to the twenty-year statute of limitations under section 5529. An instrument is "a written legal document that defines rights, duties, entitlements, or liabilities, such as a contract, will, promissory note," or "in fact, any written or printed document that may have to be interpreted by the Courts." ***In re Estate of Snyder***, 13 A.3d 509, 513 (Pa. Super. 2011), quoting ***Black's Law Dictionary***, 813 (8th ed. 2004). In addition, "this Court has held, in accord with many cases written by our Supreme Court, that when a party signs an instrument which contains a pre-printed word 'SEAL,' that party has presumptively signed an instrument under seal." ***Id.***, quoting ***Beneficial Consumer Discount v. Dailey***, 644 A.2d 789, 790 (Pa. Super. 1994). Here, the deed in question bears the pre-printed word 'SEAL.' As Megatulski has not rebutted the presumption that the grantor of the deed adopted the seal, it is presumed to have been signed under seal. ***Klein v. Reid***, 422 A.2d 1143, 1144 (Pa. Super. 1980). Accordingly, the twenty-year statute of limitation applies and Megatulski's claim is without merit.[2]

---

[2] Although not binding authority, the decision of our Commonwealth Court in ***Meadow Run/Mountain Lake Park Association v. Bantell***, 985 A.2d 989 (Pa. Cmwlth. 2009), is in accord with our holding here. There, addressing a factual scenario nearly identical to the matter *sub judice*, the Court concluded that the statute of limitations under section 5529(b)(1) of the Judicial Code applies to claims by the association for unpaid assessments.

Finally, Megatulski asserts that the doctrines of collateral estoppel and *res judicata* should apply to bar Meadow Run's cause of action as a result of the termination of a previous lawsuit filed against him by Meadow Run. These claims are meritless.

The doctrines of collateral estoppel and *res judicata* preclude parties from contesting matters that they have had a full and fair opportunity to litigate. ***In re Stevenson***, 40 A.3d 1212, 1222 (Pa. 2012) (citation omitted). "Under *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action[.]" ***Id.*** This doctrine is also referred to as "claim preclusion" and requires the concurrence of four elements: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; (4) identity of the quality in the persons for or against whom the claim is made. ***Pittsburgh v. Zoning Bd. of Adjustment***, 559 A.2d 896, 901 (Pa. 1989).

"Under the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action." ***Stevenson***, 40 A.3d at 1222. Collateral estoppel is also known as "issue preclusion" and applies when the following four conditions are present: (1) the issue decided in a prior adjudication is identical to the one presented in the current action; (2) there was a final

judgment on the merits in the prior action; (3) the party to the current action was a party or in privity with a party to the prior adjudication; and (4) the party against whom a claim of collateral estoppel is asserted had a full and fair opportunity to litigate the issue in question in the prior adjudication. ***Daley v. A.W. Chesterton, Inc.***, 37 A.3d 1175, 1190 n.22 (Pa. 2012).

Here, neither doctrine applies for the simple reason that the issues raised in the prior suit were never adjudicated. Rather, Meadow Run's complaint was administratively terminated for failure to prosecute pursuant to Luzerne County Local Rule of Civil Procedure 1901. Accordingly, there was no "final judgment on the merits" that would preclude the prosecution of the instant matter under either the doctrine of *res judicata* or collateral estoppel.[3] ***See Zoning Bd. of Adjustment***, ***supra***; ***Daley***, ***supra***. ***See also Hatchigian v. Koch***, 553 A.2d 1018, 1020 (Pa. Super. 1989) ("It is settled law that where plaintiff has suffered a judgment of *non pros*, he may later commence a new action between the [same] parties and alleging the [same] cause of action so long as the second action is commenced within the applicable statute of limitations. . . . Since a *non pros* is not a judgment on the merits, it cannot have *res judicata* effect."); ***Gutman v. Giordano***,

---

[3] Meadow Run also asserts that the doctrines are inapplicable because the second suit does not involve unpaid assessments for the same time period as the first suit. Because the record does not include documentation regarding the earlier action, we cannot determine whether Meadow Run's claim is accurate. However, if the earlier suit sought assessments from a different period of time, Meadow Run's claim would certainly not be barred.

557 A.2d 782, 784 (Pa. Super. 1989) ("[W]hen a case is dismissed on the basis of a *non pros* it does not bar a subsequent suit for the same cause of action so long as filed within the applicable statute of limitations."); ***Brower v. Berlo Vending Co.***, 386 A.2d 11, 13 (Pa. Super. 1978) (order of *non pros* may not support plea of collateral estoppel, since it does not involve final judgment on merits).

Accordingly, the trial court did not err in failing to find Meadow Run's claims barred by the doctrines of *res judicata* or collateral estoppel.

Judgment affirmed.