UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2665

September Term, 2014

MOSES H. KARKENNY

v.

COUNCIL OF UNIT OWNERS OF GLEN WAYE GARDENS CONDOMINIUM

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Berger, J.

Filed: January 22, 2016

This appeal arises out of a judgment in favor of the Council of Unit Owners of Glen Waye Gardens Condominium ("the Council") against Moses Karkenny ("Karkenny") following a bench trial in the Circuit Court for Montgomery County.

Karkenny, *pro se*, challenges the judgment of the circuit court and the dismissal of his counterclaim. We have modified the issues on appeal as follows:[1]

1. Whether the trial court erred in finding Karkenny in violation of the Council's Amended Bylaws; and

2. Whether the trial court erred in dismissing Karkenny's counterclaim.

For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Council is the condominium association for Glen Waye Gardens, a residential condominium complex. Karkenny, who is 91 years old, purchased his first Glen Waye Gardens condominium unit in 1979 ("the first unit") and his second Glen Waye Gardens condominium unit in 2006 ("the second unit"). On August 11, 2009, the Council recorded

[1] The appellant phrased the questions as:

1. Did the court err by not complying with the Maryland of foreclosure sale?

2. Did the court err [sic] the doctrine of priority and seniority according to the Article UCC-9, priority over and ADA act 1973?

its Second Amendment to the Bylaws of the Council of Unit Owners, which provided in Paragraph 9, Article VII, Section 1 (a):[2]

> The ownership interest in residential units owned by an individual or business entity shall be limited to a maximum of One Percent (1%) of the total percentage interests (100%) of residential units within Glen Waye Gardens Condominium, irrespective of whether the individual or entity owns the unit independently or jointly. No individual or entity may have an ownership interest in more than One Percent (1%) of the total percentage interests (100%) in Glen Waye Gardens Condominium Units directly or indirectly through ownership interests in an entity or entities that have ownership interests in Glen Waye Gardens Condominium Units.

("the 2009 bylaw amendment").

Karkenny's ownership of the first unit represented an ownership interest of .463 percent. Karkenny's ownership of the second unit represented an ownership interest of .523 percent. Karkenny's total ownership interest prior to August of 2013 was .986 percent. On August 5, 2013, Karkenny was the highest bidder at a foreclosure sale of Glen Waye condominium unit 2211-103, a unit representing a total ownership interest of .548 percent ("the third unit"). Karkenny's purchase of the third unit increased his total ownership interest in Glen Waye Condominium from .986 to 1.534%, causing him to exceed the 1% maximum allowable ownership interest established by the 2009 bylaw amendment. The Council notified Karkenny that he was in violation of the 2009 bylaw amendment and directed him to sell or otherwise convey his interest in the third unit to

[2] Appellee's Second Amendment to By-Laws were recorded in the Land Records for Montgomery County on August 11, 2009, at Liber 37846, Page 320.

another person or entity. In the alternative, the Council informed Karkenny that if he chose to keep the third unit (which constituted a .548 percent ownership interest), he would then be required to sell or otherwise convey both his first and second units because either of those units in combination with the third unit would still exceed the total 1% limit.

Karkenny lives in the unit he purchased in 1979, which is located on the third floor. Karkenny purchased the third unit because it is located on the first floor. His daughter lives in the unit he purchased in 2006. The record reflects that Karkenny does not want to convey his interest in the 2006 unit to his daughter. Karkenny maintains that he is not subject to the 2009 bylaw amendment and has failed to comply with the Council's requests that he sell either his unit purchased in 2014 or both his units purchased in 1979 and 2006.

The Council filed a complaint against Karkenny in circuit court seeking an order requiring Karkenny to comply with the Council's 2009 bylaw amendment restriction and enjoining him from further violation of the 2009 amendment. Karkenny filed a counterclaim against the Council alleging that the Council had refused to deliver the keys to the third condominium unit in violation of the "Maryland Foreclosure law",[3] that the Council violated the "common rule of reason" because his purchase of the two condominiums prior to the 2009 bylaw amendment "supersedes" the amendment, and that

[3] In Maryland, foreclosure sales are governed by § 7-105 of the Real Property Article of the Md. Code (1974, 1996 Repl. Vol., 1999 Supp.) and the Maryland Rules. Karkenny was presumably referring to the Maryland Condominium Act, set forth in Real Prop §§11-101 – 11-143 (2007, 2015 Replacement).

the Council violated the Sherman Anti-Trust Act[4] by bidding against him at the foreclosure auction.

The Council moved to dismiss the counterclaim for failing to state a claim upon which relief could be granted. The Council disputed that it had any legal obligation to provide keys to the foreclosed unit to Karkenny, as the Council was not the owner of the unit, nor was it the entity foreclosing on the unit. The trial court granted the Council's motion to dismiss the counterclaim. Following a trial on the Council's complaint, the court awarded judgment in favor of the Council.[5] This appeal followed.

DISCUSSION

I. Standard of Review

The case was tried by the circuit court without a jury. Therefore, our review is governed by Maryland Rule 8-131(c), which provides:

> When an action has been tried without a jury, the appellate court will review the case on both the law and evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

[4] Karkenny was presumably referring to the Sherman Antitrust Act, 15 U.S.C. §§ 1-7. Nevertheless, in his response to the Council's motion to dismiss his counterclaim, Karkenny withdrew the Sherman Act allegation from the court's consideration, stating that he plans to pursue that claim in federal court. That issue, therefore, is not before us on appeal.

[5] The court awarded attorney's fees and costs in the amount of $1,550.00. The award of attorney's fees was not raised by Karkenny on appeal, and we shall therefore, not consider it.

Moreover, "[u]nder the clearly erroneous standard, this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *L.W. Wolfe Enterprises, Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 338, 343 (2005) (citation omitted). If substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed. *Id.* (citations omitted). "The clearly erroneous standard does not apply to the circuit court's legal conclusions, however, to which we accord no deference and which we review to determine whether they are legally correct." *Cattail Assocs., v. Sass*, 170 Md. App. 474, 486 (2006) (citation omitted).

II. Analysis

It is undisputed that Karkenny owns three Glen Waye Gardens condominium units. He purchased the first two units prior to the Council's 2009 bylaw amendment. Subsequent to the recording of the 2009 bylaw amendment, Karkenny was subject to the bylaw's restriction against owning more than one percent (1%) of the total one hundred percent (100%) ownership interest in the condominiums.

Karkenny claims that the court failed to apply the doctrine of "priority" and "superiority" according to "Article UCC-9." Karkenny is presumably referring to Article 9 of the Maryland Uniform Commercial Code, codified at Commercial Law Article 9 of the Maryland Code (1974, 2013 Repl. Vol., 2015 Supp.). Article 9 governs secured transactions and provides the rules governing any transaction pertaining to a debt that is secured by a creditor's interest in personal property. "Priority" and "superiority" in the UCC refer to the interest of a creditor that is superior to other creditors in the same personal

property. *See* Md. Code Comm. Law §§ 9-101 *et. seq*. Karkenny's condominium units, however, are real property which is not governed by Article 9 of the Maryland UCC. Karkenny fails to cite to any legal theory that provides him with "priority" or "superiority" over the 2009 bylaw amendment.

Once the bylaws were amended in 2009, the 1% ownership restriction in the bylaws applied to new purchasers of units at Glen Waye Gardens Condominium. Therefore, all of Karkenny's ownership, including the units purchased prior to 2009, counted toward the maximum 1% ownership interest. There is no claim of prior right that exempts Karkenny's pre-2009 condominium purchases from the 1% maximum ownership restriction established by the 2009 bylaw amendment. Accordingly, the court did not err in finding Karkenny in violation of the 2009 bylaw amendment.

Karkenny also argues that the Americans with Disabilities Act (ADA) of 1990,[6] which imposes obligations on employers and the public to accommodate individuals with disabilities, should apply to "protect" him from the Council based on his "disability and seniority." The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation.[7] To the extent that Karkenny asserts that the Council violated the ADA, we observe that Karkenny has pled no facts which would establish discriminatory motive or action on the part of the Council.

[6] *See* 42 U.S.C.A. §§ 12101 et seq. (Lexis 2009, 2015 Supp.).

[7] *See id.*

Finally, the court did not err in dismissing Karkenny's counterclaim. Karkenny complains that he has paid condominium fees associated with the third unit that he purchased in foreclosure, but that he has not yet been permitted to occupy the unit and the Council has refused to provide him with keys to the unit and to the building. Pursuant to Real. Prop. § 11-110(c), a purchaser is responsible for condominium assessments and fees beginning on the date of the foreclosure sale. *See Campbell v. Council of Unit Owners of Bayside Condominium*, 202 Md. App. 241, 250 (2011). Accordingly, Karkenny is not entitled to a refund from the Council for the condominium fees he has paid on the foreclosed unit. With respect to the issues relating to keys, the Council was not the seller of the unit and therefore had no obligation to prove Karkenny with unit keys. Furthermore, the Council advised Karkenny that there is a $4.00 charge to obtain a building key, which Karkenny has refused to pay. The court's dismissal of his counterclaim, therefore, was proper.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.