

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SANDRA LAKE, individually,)	No. 59211-4-1
)	
Appellant,)	
)	
v.)	
)	
WOODCREEK HOMEOWNERS)	PUBLISHED OPINION
ASSOCIATION, a Washington)	
homeowners association; GLEN R.)	
CLAUSING, a single man,)	
)	
Respondents.)	FILED: December 31, 2007

ELLINGTON, J. — With permission of the condominium board of directors, a unit owner built a second story “bonus room” above his garage. This both converted common area (air space) into apartment area, and created new common area (e.g., walls), thus changing the character of the property and altering all of the owners’ undivided percentage interests in the common areas. Under the condominium declaration, such a change requires unanimous consent of all owners, which was not obtained. The board’s authorization of the bonus room was therefore improper. We reverse the superior court and remand for further proceedings.

BACKGROUND

Glen Clausing and Sandra Lake own townhomes in Woodcreek Condominiums in Bellevue. When the development was built in 1972 through 1977, the developer

offered an option with certain types of units for a bonus room—an extra room above the garage.¹ Some purchasers opted for bonus rooms at the time of construction. As required by law, at the end of construction, the developer declared the value of each unit and the total value of the development. The ratio of each unit's value to the total determined each owner's undivided percentage interest in the common areas.

Clausing's unit is one of those for which a bonus room was originally an option. In mid-May 2004, Clausing obtained approval from the board of directors of the Woodcreek Homeowners Association to build a bonus room. When construction began, Lake, who lives across from Clausing, realized the new room would affect her natural light and block part of her territorial view. She complained immediately to two board members and at the next board meeting a few days later, she formally objected. The board refused to withdraw its approval. Within four weeks, the bonus room's siding was up and the roof was complete.

Lake consulted her attorney, who wrote to the board on August 26 contending the board's action was unauthorized and seeking withdrawal of the board's approval and removal of the new room. The board again refused.

As of September 1, the board increased Clausing's dues to cover the common expenses associated with the new structure.

¹ The original declaration provided: "[T]here is designated in the plans for Type C and D units a room designated as the 'Bonus Room.' Upon the option of the purchaser, the second floor plans for the Type C and D Units will include an additional area to be situated directly above the two car garage which is incorporated within the basic structure of the apartment unit. The Bonus Room will consist of one of four alternate floor plans. The Bonus Room will increase the square footage of said units by 415 square feet." Clerk's Papers at 222. The declaration included this language each time it was amended to reflect a new phase of construction.

In December 2005, Lake filed this action against the Woodcreek Homeowners Association and Clausing. She moved for partial summary judgment, arguing that approval and construction of a bonus room violated the Horizontal Property Regimes Act, chapter 64.32 RCW, and the condominium declaration. Clausing and Woodcreek also moved for summary judgment, contending the Board's action was proper. The trial court agreed with Clausing and Woodcreek, awarded fees and costs against Lake, and dismissed. Lake appeals.

ANALYSIS

The usual standard for summary judgment applies.²

“All condominiums are statutorily created.”³ The rights and duties of condominium unit owners are not the same as those of real property owners at common law, and are instead determined by the governing statutes, the condominium declaration, and the bylaws of the condominium association.⁴ In exchange for the benefits of association with other owners, condominium purchasers “give up a certain degree of freedom of choice which [they] might otherwise enjoy in separate, privately owned property.”⁵ The Horizontal Property Regimes Act, Washington's first law

² We review a grant of summary judgment de novo, engaging in the same inquiry as the trial court and viewing the facts and the reasonable inferences from those facts in the light most favorable to the nonmoving party. Overton v. Consol. Ins. Co., 145 Wn.2d 417, 429, 38 P.3d 322 (2002). Summary judgment is appropriate where “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” CR 56(c).

³ Shorewood West Condo. Ass'n v. Sadri, 140 Wn.2d 47, 52, 992 P.2d 1008 (2000).

⁴ Id.

⁵ Id. (quoting Noble v. Murphy, 34 Mass. App. Ct. 452, 456, 612 N.E.2d 266 (1993)).

