COURT OF APPEALS
DECISION
DATED AND FILED

January 26, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP2537

Cir. Ct. No. 2000CV1
2000CV2
2001CV2

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC.,

PLAINTIFF-RESPONDENT,

V.

DAVID E. LEMAY,

DEFENDANT-APPELLANT.

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC.,

PLAINTIFF-RESPONDENT,

V.

GORDON P. BROCKMAN AND PATRICIA M. BROCKMAN,

DEFENDANTS-APPELLANTS.

DAVID A. GLOSS,

PLAINTIFF-APPELLANT,

V.

LEGEND LAKE PROPERTY OWNERS ASSOCIATION, INC.,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Menominee County: JAMES R. HABECK, Judge. *Affirmed*.

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Several property owners appeal from a judgment in favor of the Legend Lake Property Owners Association, Inc. The issues are whether the restrictive covenant remains partially in effect and whether certain lots should have been considered as lots eligible to vote. We affirm.

¶2 The appealing property owners are David Lemay, Gordon Brockman, Patricia Brockman and David Gloss. Their cases followed different routes but all were eventually consolidated for a determination of their rights and obligations with respect to the Association. The circuit court granted the Association's motion for summary judgment. Summary judgment methodology is well established and need not be repeated here. *See, e.g.,* ***Grams v. Boss***, 97 Wis. 2d 332, 338-39, 294 N.W.2d 473 (1980). On review, we apply the same standard the circuit court is to apply. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). The essence of the dispute is that the property owners argue that the relevant restrictive covenants expired in 1999 and

with them went the Association's authority to regulate the owners' property or collect mandatory dues. The property owners further argue that the Association's attempts to perpetuate itself and continue to regulate their property are invalid because the relevant articles of incorporation and by-laws were not adopted through proper procedures.

¶3 The first issue concerns the effect of an expiration clause in the covenant documents. According to the property owners, the Gloss property is subject to one covenant document, while the other properties were subject to a different covenant document. The Association does not appear to dispute that point. These two documents each contain a list of property regulations and then provide that "[t]hese conditions and restrictions" shall be binding on all owners. They each further provide "These restrictions shall expire July 1, 1999." Each also contains a provision authorizing creation of a property owners' association. As to the Gloss property, membership in the association would be at the owner's request, while in the other document membership would be mandatory.

¶4 The property owners' argument about the expiration clause appears to proceed along these lines: the covenant authorized creation of the Association, partly for the purpose of enforcing the covenant. It was the covenant that gave the Association its legal authority. When the covenant expired in 1999, the Association no longer had the legal authority that had been created by the covenant. In response, the Association argues, and we agree, that the entire covenant document did not expire in 1999. On its face, the covenant states that the "restrictions" expire in 1999. It does not state that the entire covenant expires at that time. According to the covenant, the property owners are bound by its "conditions and restrictions." While the restrictions expired in 1999, the conditions remain in effect. For instance, one of the conditions is that an owners

association may be created, and may create by-laws. That condition remains in effect. Therefore, the Association could, through its by-law process, properly re-create and expand the property restrictions that expired in 1999 and can continue to maintain itself as a perpetual organization.

¶5 The second issue is whether the amended articles of incorporation and certain by-law changes are invalid because an insufficient number of votes were obtained to make the changes or because a quorum was not present at the relevant Association meetings. The dispositive question is whether certain lots should have been included in the calculation of whether a quorum existed and whether a sufficient proportion of votes were obtained. The parties appear to agree that the lots in question were owned by the Menominee Indian Tribe and held in trust for the tribe by the United States. They appear to further agree that voting membership was limited to persons or entities owing "a fee or undivided fee interest …." The Association argues, and we agree, that the lots held in trust for the Indians were not in fee ownership. Fee ownership includes the freedom to encumber, alienate, or otherwise dispose of real property without restriction. Because of their federal trust status, these lots do not have that quality.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.