IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RG INSURANCE TRUST,
Appellant,
vs.
ROMA HILLS OWNERS' ASSOCIATION,
Respondent.

No. 88010-COA

ORDER OF AFFIRMANCE

RG Insurance Trust (RG) appeals from a district court order denying a motion for a preliminary injunction in a civil action involving a homeowners' association. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

This matter concerns a lot within a homeowners' association, respondent Roma Hills Owners' Association (Roma Hills). The units within Roma Hills are subject to the declaration of covenants, conditions, and restrictions (CC&Rs). The CC&Rs provide, at Article 6.11, certain timelines for an owner of a lot to begin and end construction of a residence. Article 6.11 specifically provides that those timelines run from when the declarant of the CC&Rs originally transfers title to the lot to a party other than the declarant. Article 6.11 further states that "all [o]wners, by acquiring title to any interest in a [l]ot, agree that" the other owners of units in the association and Roma Hills itself suffer damage based on any failure to comply with the construction timelines. In addition, Article 6.11 states that Roma Hills may assess a penalty against an owner of up to sixty dollars each day for violations of the construction timeline. Article 6.11 also states that "each [o]wner by acquiring title to any interest in a [l]ot" acknowledges

that the sixty-dollar-per-day assessment is a reasonable estimation of the damages to the other unit owners and Roma Hills.

The lot was first transferred by Integrity Foothills, LLC, the declarant, to a different party in 2004, which triggered the CC&Rs' two-year timeline for submission of plans and specifications for construction of a residence, a three-year timeline for commencement of construction, and a four-year timeline for completion of construction. The lot was subsequently transferred to other owners but none of the owners completed construction on the lot. A lender foreclosed on a deed of trust, and the lot was sold at a foreclosure sale to RG in February 2022. After the foreclosure sale, Roma Hills recorded a relinquishment and satisfaction of a notice of delinquent assessment for a lien that had been recorded prior to the February 2022 foreclosure sale to RG.

After it obtained title to the lot, RG sought to obtain construction permits from the City of Henderson but it was unable to obtain those permits in a timely manner and it did not begin construction on the lot. Roma Hills later assessed construction penalties based on RG's failure to comply with Article 6.11 of the CC&Rs, and sent a collection notice to RG in October 2022, seeking to collect assessments in the amount of $3,974.56. RG failed to pay the assessed construction penalties and Roma Hills later assessed additional construction penalties. In April 2023, Roma Hills recorded a notice of delinquent construction penalty lien, in which it stated that the total amount of unpaid penalties, late charges, interest, collection fees, costs, and charges owed to Roma Hills were $19,931.34. The notice further explained that Roma Hills may assess additional construction penalties at the rate of sixty dollars per day pursuant to Article 6.11 of the CC&Rs. In June 2023, Roma Hills recorded a notice of default and election

to sell the property to satisfy the notice of delinquent construction penalty lien. Roma Hills later recorded a notice of foreclosure sale, stating that the sale was set for February 8, 2024.

RG filed suit against Roma Hills. In its complaint, RG claimed that it was entitled to declaratory and injunctive relief, arguing the assessed construction penalties were unreasonable and Roma Hills violated NRS 116.1113 by breaching its duty of good faith. In addition, RG filed a motion requesting both a temporary restraining order and a preliminary injunction to stop Roma Hills from proceeding with the foreclosure sale. In its motion, RG contended that an injunction was appropriate because the construction penalties were not reasonable, the CC&Rs were ambiguous, Roma Hills beached its duty of good faith set forth in NRS 116.1113, and Roma Hills failed to give RG the proper notices of potential construction penalties as required by NRS 116.310305(2)(b). The district court subsequently issued a temporary restraining order precluding Roma Hills from moving forward with a foreclosure sale pending a hearing concerning RG's request for a preliminary injunction.

Roma Hills answered the complaint and opposed the request for injunctive relief. In its opposition to the request for injunctive relief, Roma Hills argued the construction penalties were permitted by the CC&Rs and that it did not breach any duty of good faith, as the publicly recorded CC&Rs explain that the other owners in the association suffer damages as a result of construction delays and RG had constructive notice of the CC&Rs before it purchased the property. It also argued that, as RG was an owner and had not complied with the construction timelines set forth in the CC&Rs, it was subject to the construction penalties from Article 6.11. Roma Hills also provided an affidavit from the community manager stating that Roma Hills

had considered the issues RG faced with the City of Henderson when RG attempted to obtain construction permits and it accordingly assessed construction penalties for several months well under what the CC&Rs permitted. Roma Hills further argued that it did not violate NRS 116.310305(2)(b), as it contended that statute only applies when there is a public offering of the property or a resale package, and it does not apply when a property is sold at a foreclosure sale.

The district court held a hearing concerning the matter and later issued an order denying RG's request for a preliminary injunction and dissolving the temporary restraining order. It found that the CC&Rs were not ambiguous, and the construction timelines and associated penalties for failing to follow the timelines discussed in the CC&Rs apply to RG as a lot owner. In addition, the court found Roma Hills was therefore authorized to assess penalties to RG for failing to begin construction. It further found Roma Hills' board members owe a duty to act in the best interest of the association and, in assessing penalties authorized by the CC&Rs, Roma Hills did not breach any duty of good faith or violate NRS 116.1113. The court further found Roma Hills was not required to provide RG with notice of potential construction penalties pursuant to NRS 116.310305(2)(b) because that statute did not apply to the foreclosure sale where RG acquired its interest in the property. The district court accordingly concluded that RG failed to demonstrate a reasonably likelihood of success on the merits of its underlying claims and therefore denied its request for injunctive relief and dissolved the temporary restraining order. This appeal follows.

RG argues the district court abused its discretion by denying its request for injunctive relief. "A preliminary injunction is proper where the moving party can demonstrate that it has a reasonable likelihood of success

on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice." *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. 347, 350-51, 351 P.3d 720, 722 (2015). Moreover, when evaluating whether to issue a preliminary injunction, "courts also weigh the potential hardships to the relative parties and others, and the public interest." *Univ & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). "Because the district court has discretion in determining whether to grant a preliminary injunction, [appellate courts] will only reverse the district court's decision when the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Excellence Cmty. Mgmt.*, 131 Nev. at 351, 351 P.3d at 722 (quotation marks omitted). However, "this court reviews questions of law de novo." *Id.*

First, RG argues the district court abused its discretion by finding that Roma Hills was permitted by the CC&Rs to assess construction penalties against it. RG contends that the timelines and related penalties in the CC&Rs concern the party first transferred an ownership interest by Integrity Foothills, LLC as the declarant of the CC&Rs and do not apply to any subsequent owner. RG further asserts that the construction timelines in the CC&Rs and associated penalties for the failure to comply with those timelines are not reasonable.

"The rules of construction governing the interpretation of contracts apply to the interpretation of restrictive covenants for real property." *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665-66 (2004). "Words in a restrictive covenant, like those in a contract, are construed according to their plain and popular meaning." *Id.* at 73, 84 P.3d at 666. Moreover, "restrictive covenants are strictly construed and enforceable, if

the original purpose for the covenant continues to result in a substantial benefit to the restricted subdivision." *Id.* (internal quotation marks, brackets, and footnotes omitted). "When there is no dispute of fact, a contract's interpretation is a legal question subject to de novo review." *Id.*

As stated previously, Article 6.11 of the CC&Rs states all owners that acquire title to a lot agree that the failure to comply with the construction timelines causes damage to the other owners and to Roma Hills and that each owner acquiring an interest in a lot acknowledges Roma Hills may assess a penalty for failure to comply with the construction timelines. By its plain meaning, Article 6.11 applies to all owners of lots within the association, not just the owner that first was transferred an interest by the declarant of the CC&Rs.

Because Article 6.11 applies to all owners of lots within the association, Roma Hills may properly assess penalties under that article for RG's failure to begin construction. Moreover, because restrictive covenants are strictly construed and enforceable, *see id.*, RG, by purchasing a lot subject to the CC&Rs, must comply with its restrictions even if it believes such restrictions are unreasonable. Accordingly, it is not entitled to relief based upon its argument that Article 6.11 is unreasonable. In light of the foregoing, we conclude the district court did not abuse its discretion by ruling that RG failed to meet its burden of demonstrating a reasonable likelihood of success concerning this issue. *See Excellence Cmty. Mgmt.*, 131 Nev. at 351, 351 P.3d at 722.

Second, RG argues the district court abused its discretion by rejecting its contention that Roma Hills breached the duty of good faith set forth in NRS 116.1113 and asserts the duty of good faith overrides any provisions in the CC&Rs. RG asserts Roma Hills should not have assessed

construction penalties until after it obtained approved building plans and obtained a building permit, and that it should have been afforded the same time period to begin construction as that provided in Article 6.11 for an owner that obtained title from the declarant.

NRS 116.1113 states "[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." "The term 'good faith' has been defined as an honest, lawful intent, and as the opposite of fraud and bad faith." *Hulse v. Sheriff, Clark Cnty.*, 88 Nev. 393, 398, 498 P.2d 1317, 1320 (1972); *see also Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 234, 808 P.2d 919, 923 (1991) (noting the breach of the implied covenant of good faith and fair dealing may occur "[w]hen one party performs a contract in a manner that is unfaithful to the purpose of the contract and the justified expectations of the other party are thus denied").

RG does not contend Roma Hills acted without an honest, lawful intent or that RG's justified expectations were denied. Rather, RG asserts that Roma Hills simply should not have enforced the provisions of Article 6.11 or assessed penalties for RG's failure to comply with the plain language of Article 6.11 in light of its difficulties in obtaining the necessary permits. However, the community manager of Roma Hills filed an affidavit explaining that RG's difficulties in obtaining a permit from the City of Henderson were taken into consideration and resulted in substantially reduced assessed penalties than were permitted under Article 6.11. While RG disagrees with Roma Hills's decision to impose penalties in the face of its permitting difficulties, RG does not demonstrate that Roma Hills's decision to impose construction penalties amounted to a bad-faith act, *cf. Hulse*, 88 Nev. at 398, 498 P.2d at 1320 ("Mere errors of judgment are not

evidence of bad faith."), or that Roma Hills performed in a manner unfaithful to the purpose of the CC&Rs, *see Hilton Hotels Corp., Inc.*, 107 Nev. at 234, 808 P.2d at 923. In light of the foregoing, we conclude the district court did not abuse its discretion by determining that RG failed to meet its burden of demonstrating a reasonable likelihood of success concerning this issue. *See Excellence Cmty. Mgmt.*, 131 Nev. at 351, 351 P.3d at 722.

Third, RG argues the district court abused its discretion by rejecting its contention that Roma Hills violated NRS 116.310305(2)(b) by failing to provide RG with a notice of the maximum potential construction penalty it faced by failing to comply with the construction timelines.

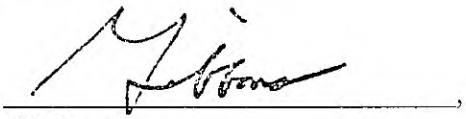
NRS 116.310305(2)(b) states that the board of a homeowners' association may assess and collect construction penalties when a unit owner fails to adhere to a construction schedule if "[t]he association has included notice of the maximum amount of the construction penalty and schedule as part of any public offering statement or resale package required by this chapter." However, "[n]either a public offering statement nor a resale package . . . need be prepared or delivered in the case of a . . . disposition by foreclosure or deed in lieu of foreclosure." NRS 116.4101(2)(d).

Here, Roma Hills was not required by NRS Chapter 116 to provide RG with a public offering statement or a resale package because RG purchased the lot at a foreclosure sale. Thus, Roma Hills was not required to provide RG with a notice of the maximum potential construction penalty pursuant to NRS 116.310305(2)(b) when RG purchased the property. In light of the foregoing, we conclude the district court did not abuse its discretion by finding that RG failed to meet its burden of demonstrating a

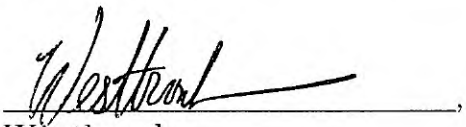
reasonable likelihood of success concerning this issue. *See Excellence Cmty. Mgmt.*, 131 Nev. at 351, 351 P.3d at 722. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Bulla



_____, J.
Gibbons



_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Law Offices of Michael F. Bohn, Ltd.
Leach Kern Gruchow Anderson Song/Las Vegas
Eighth District Court Clerk

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[1]RG also argues that Roma Hills failed to provide it with notice that it had a right to a hearing concerning its violation of the construction timelines in violation of NRS 116.310305(2)(c). However, RG did not raise this issue in its motion seeking a preliminary injunction. As a result, this issue is not properly before us in this appeal and we decline to consider it. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

In addition, this court previously entered an order granting RG's request for an injunction pending appeal. *RG Ins. Tr. v. Roma Hills Owners' Ass'n*, Docket No. 88010-COA (Nev. Ct. App. Apr. 23, 2024) (Order Granting Injunction). In light of our disposition, we dissolve the aforementioned injunction.