Weaver v. Goro

145 Wash.App. 1014 (2008) | Cited 0 times | Court of Appeals of Washington | June 17, 2008

UNPUBLISHED OPINION

John Bichler[1] appeals the trial court's order granting summary judgment in favor of Ryderwood Improvement and Service Association, Inc. (RISA), permanently enjoining him from certain actions and awarding attorney fees to RISA. He contends that the trial court erred by finding that RISA could enforce certain covenants, conditions, and restrictions against his real property and that RISA's bylaws applied to his property. He seeks reversal and dismissal based on RISA's lack of standing. We affirm.[2]

FACTS

Ryderwood is a 55-and-over residential community located in Cowlitz County. The Ryderwood plat was recorded in the 1950s. In 1953, Ryderwood homeowners formed RISA to provide public services to residents and to act as a homeowners' association for its members. In the 1970s, RISA recorded bylaws that in part restricted certain property uses within Ryderwood.

In the 1980s, Wildwood International Corporation purchased multiple lots in Ryderwood and 21 additional properties surrounding and abutting the Ryderwood plat (the perimeter properties). Wildwood expressed to Ryderwood homeowners its intent to maintain the community's "present unique condition," 55-year-old occupancy restriction, and "most other existing protective convenience [sic] so vital to Ryderwood." Clerk's Papers (CP) at 262.

In February 1989, Wildwood recorded covenants, conditions, and restrictions (CC&Rs) on the perimeter properties that mirrored the existing covenants on Ryderwood. In 1992, RISA updated its bylaws; the revised bylaws likewise closely tracked the CC&Rs, including their stated purpose to maintain the community's residential status.[3]

Later perimeter property purchasers did not automatically become RISA members, but RISA ultimately offered those property owners membership in order to integrate the entire community. According to Ryderwood resident and RISA board of trustee member Charles Weaver, at the time of these proceedings, RISA comprised 271 Ryderwood owners and 6 perimeter property owners. Twelve additional perimeter property owners were also expected to join RISA after developing their properties.

In 1993, perimeter property owner Gabriel Goro accepted RISA's membership offer and entered into

a written agreement to join "with all of the protection and amenities provided by the by-laws" (Goro Agreement).[4] CP at 124. The Goro Agreement set forth that the RISA bylaws would "be a permanent part and encumbrance on said deed," to be removed "only by the consent of both the owners of record, and [RISA]." CP at 124.

On May 23, 2001, Goro sold his property to Bichler. The real estate contract stated that Goro's property was subject to "covenants, conditions, restrictions, reservations, easements and agreements of record, if any," but the contract did not specifically refer to the CC&Rs or RISA bylaws. CP at 10 (7.). Bichler's title insurance document for the property, effective May 14, listed the CC&Rs and the recorded agreement between Goro and future owners with respect to "participation in [RISA] [and RISA] by laws" as special exceptions. CP at 130 (16.). Goro executed a statutory warranty deed to Bichler for the property on May 23.

After purchasing Goro's property, Bichler established a hunting camp on it and allowed family and friends to keep multiple recreational vehicles on the property. He also erected a sign that read "Little Ryderwood Nudist Camp and Shooting Club." CP at 96. Ryderwood residents believed that Bichler's use of the property violated the CC&Rs and RISA bylaws. In July 2005, Weaver and his wife filed a pro se complaint to enforce the covenants, naming Goro and Bichler. In December, on stipulation of the parties, the trial court granted RISA leave to intervene as a third party plaintiff.[5]

In July 2006, RISA moved for summary judgment against Bichler, arguing that the CC&Rs and RISA bylaws applied to his property and the trial court should enjoin him from any use that violated both sets of restrictions. RISA also argued that the CC&Rs entitled it to reasonable attorney fees if it prevailed. On August 11, RISA member and perimeter property owner Ronald Morris assigned his individual cause of action against Bichler to RISA by written declaration appended to RISA's summary judgment reply.[6]

The trial court determined that RISA's bylaws did not constitute a real covenant on Bichler's property. But it decided that a genuine issue of material fact remained whether they constituted an equitable servitude. It requested additional briefing on RISA's standing to enforce the CC&Rs against Bichler.

Following additional briefing, the trial court determined that RISA had standing to enforce the CC&Rs based on Morris's assignment of his claim. It enjoined Bichler from maintaining recreational vehicles and a sign on his property and awarded RISA $12,197.17 in attorney fees under CC&R section 13.

Bichler unsuccessfully moved for reconsideration, arguing that Morris could not transfer his claim until RISA acquired a legal interest in the perimeter properties the CC&Rs governed. The trial court denied the motion after deciding that Morris transferred a chose in action created and governed by the restrictive covenants, and nothing in the CC&Rs prohibited assignment of his claim.

The trial court entered amended findings of fact and conclusions of law[7] that (1) Morris validly assigned his claim to RISA, giving RISA standing under RCW 4.08.080; (2) genuine issues of material fact remained as to whether RISA had independent association standing; (3) RISA was entitled to summary judgment on its claim that Bichler violated the CC&Rs; and (4) RISA was entitled to attorney fees of $13,472.12.

Bichler moved for reconsideration, asking the trial court to adjudicate RISA's bylaws claim on the record before it. The trial court granted summary judgment for RISA on its bylaws claim. It ruled that the Goro Agreement constituted an equitable servitude on Bichler's property and that Bichler's use of the property violated the servitude, thereby warranting an injunction.[8]

RISA sought a supplemental judgment for additional attorney fees in the amount of $8,298.30. The trial court awarded RISA an additional $6,808.30 in attorney fees. Bichler appeals the trial court's second amended judgment and supplemental judgment.[9]

ANALYSIS

Standard of Review We review an order of summary judgment de novo and perform the same inquiry as the trial court. Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 860, 93 P.3d 108 (2004). We consider summary judgment appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). We consider all facts in the light most favorable to the nonmoving party. Hisle, 151 Wn.2d at 860. The moving party bears the burden of demonstrating that there is no genuine issue of material fact. Atherton Condo. Apartment-Owners Ass'n Bd. of Directors v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990). "If the moving party satisfies its burden, the nonmoving party must present evidence that demonstrates that material facts are in dispute." Atherton, 115 Wn.2d at 516. If the nonmoving party fails to do so, then the trial court properly grants summary judgment. Atherton, 115 Wn.2d at 516.

Assignment of Morris's Claim as Right to Enforce CC&RS Because we resolve the matter on this basis, we first address the issue whether Morris validly assigned his cause of action as a chose in action under RCW 4.08.080. Bichler contends that the trial court erred in deciding that Morris complied with the requirements of RCW 4.08.080 to assign a cause of action as a chose in action and that RISA may not enforce the CC&Rs against him based on Morris's invalid assignment of his claim. He argues that RCW 4.08.080 requires assignment of claims in writing and only allows assignment of claims for payment of money and that neither the statute nor the CC&Rs authorize assignment of the right to enforce real covenants or equitable servitudes. He also argues that because actions for enforcement of equitable servitudes are interests in real property, their conveyance must satisfy the Statute of Frauds.

RCW 4.08.080 states that "[a]ny assignee . . . of any . . . chose in action, for the payment of money, by assignment in writing, signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligor or . . . debtor . . . named in such . . . chose in action." The statute does not define what causes of action are assignable as a chose in action. See also State v. Blake, 107 Wash. 294, 297-98, 181 P. 685 (1919); 3A Karl B. Tegland, Washington Practice: Rules Practice CR 17, author's cmt. 13 at 382 (5th ed. 2006) (noting that CR 17(d) is a cross-reference to RCW 4.08.080 and stating that, although the classic example of an assignable claim under RCW 4.08.080 is assignment to a collection agency for collection, many other scenarios are possible).

The traditional test for whether a cause of action may be assigned as a chose in action is whether it would survive to the assignor's personal representative. Cooper v. Runnels, 48 Wn.2d 108, 110, 114-15, 291 P.2d 657 (1955) (finding tort claims for property damage assignable and citing Seward v. Spokane, Portland & Seattle Ry. Co., 64 Wash. 516, 117 P. 263 (1911), holding that an administrator was permitted to sue for damages resulting from a trespass to the decedent owner's real property that occurred before the owner's death). Less formal, unincorporated associations also usually have the capacity to sue on behalf of affected members, subject to other requirements, such as standing. See Tegland, supra, cmt. 10 at 379; Loveless v. Yantis, 82 Wn.2d 754, 758, 513 P.2d 1023 (1973) (citing NAACP v. Button, 371 U.S. 415, 428, 83 S.Ct. 328, 9 L.Ed. 2d 405 (1963), for the proposition that an organization whose members are injured may represent those members in proceedings for judicial review). Nothing in RCW 4.08.080 precludes assignment of a cause of action for a real property interest as a chose in action to an association on behalf on its member.

RCW 4.08.080 also does not define or limit the requirement that the assignment of a claim be "for the payment of money." Bichler's interpretation that RCW 4.08.080 only permits assignment of claims for monetary collection conflicts with our recognition that an association may litigate on behalf of affected members. In establishing associational standing, individual members need not prove individual monetary damages to seek relief, nor must the association seek monetary damages for injury to itself, but it may seek a declaration, injunction, or some other form of prospective relief. Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed. 2d 383 (1977); Warth v. Seldin, 422 U.S. 490, 515, 95 S.Ct. 2197, 45 L.Ed. 2d 343 (1975). As a RISA member, Morris paid monthly dues to the association "for services rendered," including "any service or services the [a]ssociation may be called upon to perform or render." CP at 26. This qualifies Morris's assignment of his claim for the payment of money in exchange for RISA's performance of the service of litigation on his behalf.[10]

The statute also states that assignment of a claim must be in writing and signed by the person authorized to assign but contains no other requirement as to the form and manner of assignment. Here, Morris filed a signed declaration stating that he was a perimeter property owner and RISA member and that he authorized RISA, as his homeowners' association, to institute litigation against Bichler for violation of the CC&Rs. Again, nothing in RCW 4.08.080 precludes Morris's assignment

of his claim in this manner; he assigned his claim in writing to an association of which he was a member, for a cause of action that fell within the broad description of the association's stated purpose to perform any service called upon on behalf of its members.[11]

Here, there is no issue of material fact that the CC&Rs applied to Bichler's property or that his property use violated those restrictions. The only issues are whether RISA may enforce the CC&Rs against Bichler and whether it is entitled recover attorney fees for the same. Morris validly assigned his claim to RISA under RCW 4.08.080 such that RISA had standing to enforce the CC&Rs. Thus, we affirm the trial court's grant of summary judgment in RISA's favor. Because we affirm the trial court's grant of summary judgment based on Bichler's violation of the CC&Rs, entitling RISA to all relief it sought, we do not address Bichler's remaining arguments.[12]

Attorney Fees

Both parties seek attorney fees on appeal under RAP 18.1(a).[13] Having properly granted summary judgment, the trial court also properly awarded RISA its attorney fees under CC&R section 13. Because RISA prevails on appeal, we likewise award it reasonable attorney fees and costs on appeal under RAP 18.1(a).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, P.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.

1. Marianne Southworth is now deceased.

2. Because we affirm, we do not address issues raised in RISA's cross appeal.

3. The CC&Rs' preamble stated that their purpose was "to insure the use of the property for attractive residential sites only, to prevent nuisances, to prevent the impairment of the attractiveness of the property, and to maintain the desired tone of the area, and thereby to secure to each site owner the full benefit and enjoyment of his site." CP at 14. The CC&Rs restricted the use of temporary structures as temporary or permanent residences, required residences to be a minimum of 700 square feet, and restricted the erection or display of large signs or billboards. RISA's bylaws set forth like restrictions

on temporary dwellings, billboards and signs, and nonresidential uses. CC&R section 13 provided for attorney fees to the prevailing party in a dispute. RISA's bylaws contained no provision for attorney fees.

4. Goro and then-RISA vice president Carl Latsch signed and recorded the Goro Agreement in 1993. The document is also referred to as the "Goro Statement of Desire." Appellant's Br. at 5.

5. The trial court later dismissed the Weavers from the lawsuit on their motion. In June 2006, the trial court granted RISA an order of default against Goro.

6. Morris testified at his deposition that he assigned his claim to RISA because he was "part of the group." CP at 304 (p. 12, l. 21).

7. We review summary judgment orders de novo. Wagg v. Estate of Dunham, 107 Wn. App. 35, 39, 26 P.3d 287 (2001), aff'd, 145 Wn.2d 1007, 37 P.3d 968 (2002). We set forth the trial court's findings and conclusions to clarify the procedural history here.

8. The trial court found that the Goro Agreement constituted a mutual written agreement between RISA and Goro in writing; it touched and concerned the property; the parties (RISA and Goro) intended to bind successors; RISA was an original party seeking to enforce the Goro Agreement against Bichler as Goro's successor in possession; Bichler had notice of the Goro Agreement before purchasing the property; and Bichler's property use violated the RISA bylaws.

9. In appealing the trial court's second amended judgment and supplemental judgment, Bichler does not dispute the method the trial court used as a basis for its award or the amount of the award, instead he appeals the fact that any award was entered.

10. We also note that the trial court granted $13,472.17 in damages in RISA's favor against Bichler, rendering RISA a creditor (for which Morris otherwise would have been creditor) and Bichler a debtor on the claim. This scenario also arguably lies within the classic example of assignment of a claim for purposes of collection.

11. To the extent Bichler argues that Morris's assignment of his claim was not valid because it did not comply with the Statute of Frauds, we note that there is no requirement that assignment of a cause of action as a chose in action under RCW 4.08.080 comply with the Statute of Frauds but only that it be in writing and describe the subject matter of the assignment with sufficient particularity so as to render it capable of identification. Demopolis v. Galvin, 57 Wn. App. 47, 53, 786 P.2d 804 (1990).

12. Because we find RISA had standing to enforce the CC&Rs based on Morris's assignment of his claim, entitling RISA to all relief sought, we do not address Bichler's remaining arguments whether the RISA bylaws violated the Statute of Frauds or whether RISA otherwise had standing. But we note that the trial court determined that the RISA bylaws were an equitable servitude on Bichler's property and not a real covenant, a finding to which Bichler assigns no error.As noted, we also do not address RISA's cross appeal, except to comment that at argument, RISA dropped any cross appeal claim based on the amount of the attorney fee award.

13. RAP 18.1(a) states: "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review . . . the party must request the fees or expenses as provided in this rule."