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CONGRESS STREET CONDOMINIUM ASSOCIATION,
INC. v. FREDERICK L. ANDERSON, ET AL.
(AC 32580)

Gruendel, Alvord and Bishop, Js.

Argued September 15—officially released December 20, 2011

(Appeal from Superior Court. Judicial district of
Hartford, Aurigemma, J.)

Eric D. Coleman, for the appellant (defendant).

Thompson G. Page, for the appellee (plaintiff).

Opinion

BISHOP, J. In this action to foreclose a statutory lien, the defendant, Frederick L. Anderson, appeals from the summary judgment rendered by the trial court in favor of the plaintiff, Congress Street Condominium Association, Inc., as to liability only, based on the nonpayment of common charges and fines.¹ On appeal, the defendant claims that the court improperly granted the plaintiff's motion for summary judgment regarding the imposition of fines.² The defendant claims, as well, that his special defense of equitable estoppel was properly before the court and created a genuine issue of material fact as to whether the plaintiff validly levied fines against him.³ We agree and accordingly reverse the judgment of the trial court.⁴

The following factual and procedural history is relevant to this appeal. On June 10, 2009, the plaintiff filed an action to foreclose a lien pursuant to General Statutes § 47-258⁵ for common charges, assessments and fines⁶ levied against the defendant, a condominium unit owner. On July 20, 2009, the defendant filed an answer, in which he responded to the allegations in the complaint, and later filed a request to amend with an amended answer on February 2, 2010, in which he included special defenses and a counterclaim. In his amended answer, the defendant alleged that the plaintiff did not provide some of its requisite services as a condominium association and that the plaintiff engaged in inconsistent practices that resulted in the arbitrary and discriminatory application of the bylaws, rules and procedures. Additionally, the defendant counterclaimed that he was entitled to reimbursement for money that he expended to repair dangerous conditions on his property. On February 23, 2010, the plaintiff filed a motion to strike the defendant's special defenses and counterclaim, which the trial court granted on March 30, 2010, without objection.

On March 29, 2010, the plaintiff reclaimed its motion for summary judgment as to liability only.⁷ On April 12, 2010, the parties participated in a hearing on the motion for summary judgment, at which time the court inquired about the defendant's failure to respond to the plaintiff's motion. The defendant stated that he would file an opposition to the motion for summary judgment by the end of the next day. The following day, however, the defendant did not file a response to the motion for summary judgment; rather, he filed a second request for leave to amend his answer. His second amended answer contained a special defense alleging that the plaintiff should be equitably estopped from asserting that the defendant violated the condominium bylaws, rules or procedures, thereby precluding any assessment of fines against him. The defendant also filed an amended counterclaim, alleging that he had suffered emotional distress from the plaintiff's arbitrary and

capricious treatment of him. The plaintiff objected to the second request for leave to amend his answer as untimely. On April 16, 2010, the defendant filed a memorandum of law in opposition to the plaintiff's motion for summary judgment in which he raised the same issues as those alleged in his second amended answer.

On April 26, 2010, the court sustained the plaintiff's objection to the defendant's second request for leave to amend his answer and granted the plaintiff's motion for summary judgment as to liability only, finding that the issues raised in the defendant's memorandum in opposition to the motion for summary judgment did not defeat the plaintiff's right to collect common charges and fines from the defendant.⁸ The plaintiff then filed a motion for judgment of strict foreclosure, which was granted. The court determined that the debt was \$10,808.75, \$5400 of which was attributed to fines, with \$1814.20 of priority debt. This appeal followed.

On appeal, the defendant claims that summary judgment was improper because the court failed to credit the special defense of equitable estoppel as a legally viable basis for his claim that the plaintiff invalidly levied fines against him. We agree.

The applicable standard of review is well settled. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact and that the party is, therefore, entitled to judgment as a matter of law. . . . The test is whether the party moving for summary judgment would be entitled to a directed verdict on the same facts. . . . Our review of the trial court's decision to grant [a] motion for summary judgment is plenary." (Internal quotation marks omitted.) *Allstate Life Ins. Co. v. BFA Ltd. Partnership*, 287 Conn. 307, 312, 948 A.2d 318 (2008).

"Only one of the . . . defenses needs to be valid in order to overcome the motion for summary judgment. [S]ince a single valid defense may defeat recovery, [a] motion for summary judgment should be denied when any defense presents significant fact issues that should be tried. 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* (2d Ed. 1983) § 2734." (Internal quotation marks omitted.) *Union Trust Co. v. Jackson*, 42 Conn. App. 413, 417, 679 A.2d 421 (1996).

Although we have discovered no statutory or appellate authority regarding the admissibility of special defenses in an action to foreclose a statutory lien insti-

tuted by a condominium association based on a unit owner's nonpayment of fines, several trial court decisions have held that special defenses and counterclaims will not lie in an action brought by a condominium association to foreclose liens based on a unit owner's failure to pay common charges.⁹ In granting summary judgment, the court explicitly relied on *Commodore Commons Condominium Assn. v. Austin*, Superior Court, judicial district of Ansonia-Milford, Docket No. 058025 (March 4, 1999) (24 Conn. L. Rptr. 116), (*Commodore Commons*) in its finding that equitable estoppel was not a valid defense to the defendant's nonpayment of the amount due to the condominium association. On the basis of the holding of *Commodore Commons*, the court concluded, instead, that such a claim would be more appropriately raised in a separate action. *Commodore Commons*, however, only addressed the payment of *common charges*, and articulated a limitation of defenses for nonpayment of such charges. *Id.*, 117. The reasoning of *Commodore Commons* or similar trial court decisions regarding the nonpayment of common charges neither logically nor necessarily applies to the nonpayment of fines.

The court in *Commodore Commons* reasoned that "the nonpayment [of common charges] jeopardizes the continued existence of the entire condominium community and shifts the need for payment to other innocent unit owners." *Id.* With respect to common charges, our trial courts also have determined that, if the defendant wishes to pursue his grievance against the association, it must be done in a separate action, not by a refusal to pay his common charges. Otherwise, courts have reasoned, the other unit owners, who are entitled to have the budget funded by all of the unit owners, would have their economic welfare threatened. See *Breakwater Key Assn., Inc. v. Monaco*, Superior Court, judicial district of Fairfield, Docket No. CV-93-0301263-S (March 7, 1996) (16 Conn. L. Rptr. 282); *Casagmo Condominium Assn., Inc., Phase II v. Kaufman*, Superior Court, judicial district of Danbury, Docket No. 303889 (March 15, 1993).

Thus, although, as noted, trial courts consistently have precluded the pleading of special defenses and counterclaims in actions to foreclose statutory liens based on the nonpayment of common charges in order to safeguard the economic welfare of the condominium community, this reasoning is not necessarily applicable to the nonpayment of fines. Because fines are an unpredictable source of income for the condominium association and, therefore, not a fixed component of the association's budget, there is no reason to conclude that their payment or nonpayment directly impacts the condominium community's economic welfare. For this reason, the type of expedited proceedings embraced by our trial courts in actions to foreclose statutory liens based on the nonpayment of common charges is

unnecessary in actions for the nonpayment of fines.

We conclude, therefore, that due to the inherent differences in the application and function of fines and common charges, they should not be treated interchangeably in a foreclosure action. Rather, the permissible special defenses and counterclaims in an action to foreclose a statutory lien based on the imposition of fines by a condominium association should be determined in light of traditional mortgage foreclosure standards, which permit the assertion of certain special defenses, including that of equitable estoppel. See *Barasso v. Rear Still Hill Road, LLC*, 81 Conn. App. 798, 805, 842 A.2d 1134 (2004); *LaSalle National Bank v. Freshfield Meadows, LLC*, 69 Conn. App. 824, 838, 798 A.2d 445 (2002). In an action by a condominium association to foreclose a lien based on the nonpayment of fines, the defendant unit owner, therefore, should not be required to file a separate action to assert a special defense relating to the validity of the imposition of fines. Accordingly, in the present case, the court improperly rendered summary judgment on the basis that the special defense of equitable estoppel was not properly before it, and the court should have considered the special defense in determining whether the plaintiff was entitled to judgment as a matter of law.¹⁰

The judgment is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion.

In this opinion GRUENDEL, J., concurred.

¹ The condominium unit at issue also was subject to two mortgages at the time of the action. The mortgagors, as subsequent encumbrancers, also were named as defendants in this action, but they are not parties to this appeal. We therefore refer in this opinion to Anderson as the defendant.

² The record reflects that the court disallowed a counterclaim filed by the defendant in which he alleged that he had endured emotional distress as a result of the plaintiff's discriminatory treatment of him. As set forth more fully in this opinion, we look to traditional mortgage foreclosure standards to determine the applicable special defenses and counterclaims in an action to foreclose a statutory lien based on the nonpayment of fines. On the basis of those principles, we find no fault with the court's determination regarding the counterclaim.

³ In the defendant's brief to this court, he concedes that he was obligated to pay the common charges that the plaintiff levied against him.

⁴ The defendant also claims that the plaintiff failed to conduct a hearing prior to levying fines against him in violation of the plaintiff's bylaws and that the plaintiff's complaint was legally insufficient with regard to its alleged bases for levying said fines. The plaintiff argues that these claims were not properly preserved for review. We agree with the plaintiff, and accordingly, decline to address those claims. See Practice Book § 60-5.

⁵ General Statutes § 47-258 provides in relevant part: "(a) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorneys' fees and costs, other fees, charges, late charges, fines and interest charged pursuant to subdivisions (10), (11) and (12) of subsection (a) of section 47-244 and any other sums due to the association under the declaration, this chapter, or as a result of an administrative, arbitration, mediation or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

"(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation

of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to, (2) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of (A) an amount equal to the common expense assessments based on the periodic budget adopted by the association pursuant to subsection (a) of section 47-257 which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce either the association's lien or a security interest described in subdivision (2) of this subsection and (B) the association's costs and attorney's fees in enforcing its lien. A lien for any assessment or fine specified in subsection (a) of this section shall have the priority provided for in this subsection in an amount not to exceed the amount specified in subparagraph (A) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association"

⁶ The plaintiff claims that it levied fines against the defendant because he replaced a window in his unit with a door in violation of the plaintiff's bylaws, rules and procedures.

⁷ The original motion for summary judgment as to liability only was filed on January 20, 2010.

⁸ As we understand this record, it appears that although the court denied the defendant's request to amend his answer, special defense, and counterclaim, the court nevertheless considered the adequacy of the allegations contained in these pleadings in conjunction with granting the plaintiff's motion for summary judgment.

⁹ See, e.g., *Commodore Commons Condominium Assn. v. Austin*, Superior Court, judicial district of Ansonia-Milford, Docket No. 058025 (March 4, 1999) (24 Conn. L. Rptr. 116) (special defenses not allowed because they did not relate directly to payment, discharge, release, satisfaction or invalidity nor were they allegations of mistake, accident, or fraud); *Heritage Sound Condominium Assn. v. Nucifora*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-98-061169-S (March 13, 2000) (special defense not allowed because it did not arise from same transaction); *Bayview Condominium Assn. v. Skibitcky*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-97-0060615-S (April 2, 1998) (21 Conn. L. Rptr. 625) (special defense not allowed because it did not arise from same transaction); *Broad Street School Condominium Corp. v. Minneman*, Superior Court, judicial district of New London at Norwich, Docket No. 0111179 (April 23, 1997) (special defense not allowed for policy reason that common charges are for good of condominium community); *Mountain View Condominium Assn. of Vernon, Connecticut, Inc. v. Rumford Associates, IV*, Superior Court, judicial district of Tolland at Rockville, Docket No. CV-94-55693-S (March 4, 1997) (counterclaim not allowed because it did not arise from same transaction; special defense not allowed for policy reason that common charges are for good of condominium community); *Watch Hill Condominium, Inc. v. Van Eck*, Superior Court, judicial district of New Haven, Docket No. CV-93-0344796-S (June 14, 1996) (17 Conn. L. Rptr. 198) (special defenses and counterclaims not allowed because they did not arise from same transaction); *Breakwater Key Assn., Inc. v. Monaco*, Superior Court, judicial district of Fairfield, Docket No. CV-93-0301263-S (March 7, 1996) (16 Conn. L. Rptr. 282) (special defense not allowed for policy reason that common charges are for good of condominium community); see also *First Seabreeze Assn., Inc. v. Barnett*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-94-0138851-S (March 29, 1995) (special defenses and counterclaim not allowed because they did not arise from same transaction); *Wilton Crest Condominium v. Stern*, Superior Court, judicial district of Fairfield, Docket No. CV-92-0300406-S (August 13, 1993) (8 C.S.C.R. 955) (special defenses not allowed because they did not arise from same transaction); but see *Colonial Court Homeowners Assn. v. Cole*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV-96-0560458-S (October 11, 1996) (18 Conn. L. Rptr. 113) (denying motion to strike defendant's special defense on grounds that court disagreed with other trial courts' findings that special defenses should be struck for either not arising from same transaction or for policy reason that common charges are for good of condominium community).

¹⁰ In coming to this conclusion, we do not reach the question of whether the pleading, as proffered by the defendant, adequately sets forth the claim

of equitable estoppel. We conclude only that such a defense, if properly pleaded, may be raised in defense of an action by a condominium association to foreclose liens based on the imposition of fines.