

Trustees of Cambridge Point Condominium Trust v. Cambridge Point, LLC

November 2, 2017

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In *Trustees of Cambridge Point Condominium Trust v. Cambridge Point, LLC*, No. MICV-2014-03136, 2016 WL 9753783 (Mass. Super. Nov. 18, 2016), *appeal argued*, SJC No. 2017-P-0113 (Mass. 2017), the trustees ("Trustees") of the Cambridge Point Condominium ("Condominium") Trust filed an action against the developers that built the Condominium, Cambridge Point, LLC and others (collectively, the "Developer"), seeking damages for common area construction defects. The Superior Court dismissed the action because the Trustees failed to comply with the provision of the Condominium bylaws ("Bylaws") concerning filing lawsuits on behalf of the Condominium Trust (the "Litigation Provision"), and rejected the Trustees' assertion that the Litigation Provision was unenforceable. The Massachusetts Supreme Judicial Court agreed to hear the Trustees' appeal of the Superior Court decision on direct review, and held oral arguments on October 5, 2017. Its decision is currently pending.

Background & Superior Court Decision

On April 3, 2014, the Trustees filed their complaint ("Complaint"), seeking \$2 million in damages from the Developer for alleged construction defects to the Condominium common areas. Under the Litigation Provision of the Bylaws, the Trustees were not authorized to bring the lawsuit on behalf of the Condominium Trust unless 80% of the unit owners reviewed the Complaint and a proposed "not to exceed" budget for the lawsuit, and, within 60 days, approved filing the lawsuit. The Trustees had received the approval of 27 of the 42 unit owners before filing the lawsuit, which did not reach the 80% threshold. The Trustees claim that the Developer, its associates, entities and/or family members retained control of 10 of the units, making it impossible to receive the required approval, a claim that was challenged by the Developer.

The Trustees asserted that the Litigation Provision is unenforceable because it: (i) is contrary to M.G.L. c. 183A (the "Condominium Act"); and (ii) is a violation of public policy and/or the Massachusetts Declaration of Rights. On November 18, 2016, the Superior court issued its order ("Order"), dismissing the Complaint because the Trustees failed to obtain the approval of 80% of the unit owners before filing the Complaint. The Order held that all unit owners were aware of the Bylaws upon purchasing their units, and were therefore bound by the Litigation Provision. The Court rejected the Trustees' claim that the Litigation Provision was unenforceable. The Massachusetts Supreme Judicial Court accepted the Trustees' appeal for direct review, and held oral arguments on October 5, 2017.

Appeal before the SJC

In the Appeal, the Trustees assert that the Litigation Provision is invalid as contrary to the Condominium Act, § 10(b)(4), which they claim gives condominium boards, not unit owners, the exclusive authority to litigate matters concerning common areas. The Developer disputes this and asserts, as the Superior Court held, that unit owners and developers can contract as to the details of condominium management unless expressly prohibited by the Condominium Act. The Developer argues that § 10(b)(4) of the Condominium Act does not expressly prohibit the Litigation Provision of the Bylaws.

The Trustees further assert that the Litigation Provision is void for public policy reasons because it was designed to shield the Developer from liability. The Trustees argue that the Litigation Provision also interferes with the attorney/client relationship because it requires the Trustees to present a potential complaint to all unit owners, including parties related to the Developer, before it is filed. Additionally, the Trustees assert that the Litigation Provision violates the Massachusetts Declaration of Rights by effectively blocking access to the Courts. The Developer counters that the Trustees simply need to obtain the approval of 80% of the unit owners in order to bring suit, and that the Litigation Provision validly protects unit owners' interests by ensuring that they are not forced to pay for costly litigation unless a sound majority of unit owners agree to pursue a lawsuit.

REBA, the Real Estate Bar Association for Massachusetts, and the Community Associations Institute submitted Amicus Briefs in support of the Trustees, both asserting that the Litigation Provision improperly shields the Developer from liability, and should be invalidated by the Court.

At oral argument, the Justices asked the attorneys questions regarding the practical effects of the Litigation Provision, and inquired as to what limits on pursuing litigation could potentially be invalid. They asked the Trustees' attorney, among other questions, how, absent the Litigation Provision, unit owners could protect themselves from being dragged into expensive lawsuits, who responded that unit owners could vote out condominium board members who pursued unpopular litigation. The Justices asked the Developer's attorney, among other questions, whether a provision requiring 99% approval to bring a lawsuit would violate public policy. He conceded that a 99% provision could potentially be unenforceable, but emphasized that the 80% requirement in the Litigation Provision is not much higher than the 75% voting threshold mandated by the Condominium Act for other condominium matters, including common area improvements.

The Takeaway

The pending SJC decision will provide valuable insight regarding legal limits on condominium governance documents. The decision could potentially limit any provision in a condominium document that generally serves as a barrier to bringing lawsuits, or the decision could narrowly carve out an exception for lawsuits that seek to recover from condominium developers for alleged construction defects. Alternatively, the SJC could further endorse current case law, which has generally held that condominium governance documents, like other contracts, will be valid unless they clearly contradict underlying law. The SJC has taken the matter under advisement, and we will provide an update when it publishes its decision.