Affirmed and Opinion filed December 30, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-01254-CV

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BATYA KATZMAN, Appellant

V.

BRAEBURN VALLEY HOMEOWNERS ASSOCIATION, Appellee

On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 95-49081

O P I N I O N

Appellant, Batya Katzman, appeals a judgment of $2,784.30 for delinquent maintenance fees and $6,000 attorney's fees awarded to appellee, Braeburn Valley Homeowners Association (BVHOA). She contends the evidence was legally and factually insufficient to support the finding of liability, damages, and attorney's fees for trial and appeal. She further asserts she is entitled to a judgment for $6,000 in attorney's fees. We affirm.

Katzman has been a homeowner is Braeburn Valley, Section 4 since 1979. She and BVHOA fell into a dispute over the validity of the maintenance fees charged for 1990 through 1998 and she refused to pay all those years except 1994.[1] BVHOA sued.

The trial was to the bench. The following documents, among others, were stipulated and admitted into evidence:

- The business records of BVHOA showing that Katzman was indebted to it in the amount of $2,784.30 for past due maintenance fees;
- Original restrictions for Braeburn Valley, Section 4, dated September 9, 1960;
- Amended restrictions for Braeburn Valley, Sections 3 and 4, dated August 8, 1983;
- Amended restrictions for Braeburn Valley, Sections 3 and 4, dated January 28, 1987;
- Amended restrictions for Braeburn Valley, Sections 3, 4, 5, 6, and 7 dated October 13, 1993.[2]

Legal Insufficiency

Katzman claims the evidence was legally insufficient to support the judgment. Specifically, she argues that none of the amendments to the original restrictions are valid because there was no evidence that a majority of the owners of Section 4 voted to amend the restrictions, as is required by the original restrictions. This, she says, is because the amendments state that they were approved by a majority of the lot owners in Section 4 and other sections in Braeburn Valley. Katzman argues this is impermissible because the lot owners of one section have no right to vote on amending restrictions on another section. While she makes a correct general statement of the law, she submits no independent evidence showing that this is how the votes were in fact conducted or that a majority of Section 4 did not vote to amend the restrictions.

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[1] No explanation was given for Katzman's paying 1994.

[2] The amended restrictions for Braeburn Valley, Sections 3 and 4, dated October 19, 1979 were not admitted into evidence and therefore are not considered on this appeal. However, we note that the 1979 amendments were of no consequence. The amendments for the years the maintenance fees were disputed were admitted and are not dependent on the admission or validity of the 1979 amendments.

The 1987 amendment, applicable to disputed years 1990 through 1993, states it had been approved by "a majority of the record owners of the lots in Section Three (3) and Section Four (4)" of Braeburn Valley. The 1993 amendment, applicable to disputed years 1995 through 1998, states it had been approved by "a majority of the record owners of the lots in Section Three (3), Section Four (4), Section Five (5), Section Six (6) and Section Seven (7)" of Braeburn Valley. Though not clearly briefed, Katzman's implicit argument appears to be that the inclusion of other sections with Section 4 together means that a majority of the these sections approving the amendments is, as a matter of law, legally insufficient proof that a majority of Section 4 voted for them.

In reviewing legal sufficiency of the evidence, the appellate court considers only the evidence and inferences that tend to support the finding, ignoring all evidence and inferences to the contrary. *Leitch v. Hornsby*, 935 S.W.2d 114, 118 (Tex.1996). If there is any evidence of probative force to support the finding, the point of error must be overruled. *Id*.

While, by the language in the amendments, there is a possibility a majority of Section 4 did not vote for the amendments, it by no means follows that is the only conclusion that may be drawn from it. The question here is not whether BVHOA could show, to the exclusion of all other possibilities, a majority of Section 4 voted for the amendment. Under the legal sufficiency standard of review, we are to determine whether the amendments gave the trial court a sufficient evidentiary basis to find by a preponderance that a majority of owners of Section 4 voted in favor of the amendments. We hold the plain language of the amendments can be read to state that a majority of the owners in *each* of the referenced sections approved the amendment and thus allowed the trial court to have made such a finding.

Katzman also contends the evidence was legally insufficient for the court to enter judgment for $2,784.30 for the assessments and collection costs. We disagree. The amounts authorized to be collected under the amended restrictions for the applicable years and the business records of BVHOA, all of which were stipulated, provide legally sufficient evidence of its entitlement to judgment in that amount.

Factual Sufficiency

Katzman next claims the evidence submitted at trial is not factually sufficient to support the judgment. In reviewing the factual sufficiency of the evidence, we must consider all the evidence and should set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex.1986) (per curiam). As noted, the evidence showed Katzman was obligated to pay BVHOA for properly assessed maintenance fees. Katzman provided no competent evidence to show she did not owe the fees. The trial court therefore did not err in finding for BVHOA and awarding it the amounts Katzman owed.

Attorney's Fees

Katzman contends BVHOA is not entitled to collect $6,000 attorney's fees at the trial level because it was not entitled to prevail on the underlying issues. Because BVHOA prevailed, it is entitled to attorney's fees under TEX. PROP. CODE ANN. § 204.010(a)(11) and under the restrictions. The parties stipulated the prevailing party would be entitled to $6,000 attorney's fees. Because of this, the court did not err in granting $6,000 attorney's fees to BVHOA. BVHOA is also entitled under these authorities to attorney's fees on appeal and the trial court did not err in awarding them. Because Katzman did not prevail, she is of course not entitled to attorney's fees.

The judgment of the trial court is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed December 30, 1999.

Panel consists of Justices Edelman, Wittig, and Lee.[3]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[3] Senior Justice Norman R. Lee sitting by assignment.