DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2013

LESLIE K. HARRIS,
Appellant,

v.

ABERDEEN PROPERTY OWNERS ASSOCIATION, INC., ABERDEEN GOLF & COUNTRY CLUB, INC., and **BRISTOL LAKES HOMEOWNERS ASSOCIATION,**
Appellees.

No. 4D12-1435

[August 21, 2013]

FORST, J.

The Appellant, Leslie Harris, challenges the final summary judgment entered by the trial court on her action for declaratory relief. The court's ruling was based on the statute of limitations. Because the court erred in finding the statute of limitations barred the suit, we reverse.

History of the Dispute

In 2006, Harris took title to property in Bristol Lakes, a residential community in the Aberdeen development. Aberdeen Property Owners Association ("Aberdeen POA") is the master association for the Aberdeen development, while Bristol Lakes Homeowners Association ("Bristol Lakes HOA") is the homeowners association for Bristol Lakes. At the time Harris took title, the governing documents of Bristol Lakes HOA, as amended in November of 2004 and recorded in December of 2004, did not require membership in the Aberdeen Golf & Country Club ("Aberdeen Club"). However, Aberdeen POA's governing documents, as amended and recorded in June of 2004, did require mandatory membership. Because of this conflict, Bristol Lakes HOA sued Aberdeen POA in 2005. Aberdeen Club intervened in the suit. In 2010, Aberdeen Club and Bristol Lakes HOA entered into a settlement agreement which provides for non-fee, non-privileges membership by Bristol Lakes homeowners, but which also contains a provision that appears to require homeowners who took title after October 30, 2004 and who have not joined Aberdeen Club to join the Club as fee-paying members *and* pay back fees.

Subsequently, in 2010, Harris brought suit against Aberdeen POA, Aberdeen Club, and Bristol Lakes HOA, seeking declaratory relief regarding membership in the Club. An amended complaint contained three counts. Count I is for declaratory relief, and requests clarification on whether Harris is required to join the Club and pay all fees and dues from 2006 onward. Count II alleges that Bristol Lakes HOA breached its fiduciary duty by entering into the settlement agreement. Count III requests supplemental relief if declaratory relief is granted, including injunctive relief.

In its answer, Aberdeen POA raised the affirmative defense of the statute of limitations. Harris filed a motion for summary judgment, apparently seeking a ruling in her favor on the defense. Aberdeen POA filed a cross-motion for summary judgment based on the statute of limitations. The court entered a final summary judgment as to Aberdeen POA, in which the court found that the five-year limitations period applied under section 95.11(2)(b), Florida Statutes (2010), that the cause of action accrued in 2004 when Aberdeen POA's mandatory membership amendment was recorded, and that Harris's claim was brought outside of the limitations period.

The Cause of Action Accrued when Harris gained title to her Property and became subject to the Aberdeen POA

On appeal, Harris raises two issues, but only one has merit. Harris argues the court erred in finding the limitations period started running when the Aberdeen POA amendment was recorded. Harris believes the cause of action did not accrue until she took title to property affected by the amendment, on October 24, 2006, less than four years prior to her filing her complaint on October 4, 2010. "Summary judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Fredrick v. N. Palm Beach Cnty. Improvement Dist.*, 971 So. 2d 974, 978 (Fla. 4th DCA 2008). "The standard of review governing a trial court's ruling on a motion for summary judgment posing a pure question of law is de novo." *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074 (Fla. 2001); *see also Briggs v. Jupiter Hills Lighthouse Marina*, 9 So. 3d 29 (Fla. 4th DCA 2009) (reviewing de novo trial court's entry of summary judgment based on statute of limitations).

The parties agreed below to the applicability of section 95.11(2)(b), Florida Statutes, which provides for a limitations period of five years for "[a] legal or equitable action on a contract, obligation, or liability founded

on a written instrument[.]" We agree this section applies to Harris's complaint. The issue for this court is when the cause of action accrued. *See* § 95.031(1), Fla. Stat. (2010). The court entered summary judgment on Counts I and III,[1] which involve, respectively, declaratory relief and related supplemental relief pursuant to sections 86.011, 86.021 and 86.061, Florida Statutes (2010). In order to be entitled to declaratory relief, a party must show:

> There is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity.

Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 404 (Fla. 1996) (quoting *Santa Rosa Cnty. v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1192-93 (Fla. 1995)).

Harris argues that all the elements of declaratory relief were not present until she took title to the property in 2006 and became subject to the mandatory membership amendment. Until she took title to property, her argument goes, she had no interest in the matter and suffered no damages. Aberdeen POA argues that the limitations period began to run, not just for Harris, but for anyone who might at some point challenge the mandatory membership amendment, at the time the amendment was recorded in 2004.

Aberdeen POA relies on cases which we find distinguishable. *Bott v. City of Marathon*, 949 So. 2d 295 (Fla. 3d DCA 2007), involved homeowners who entered into a restrictive covenant with the city. The restriction related to the sale of their home. When they sought to sell their home and inquired as to allowable sale prices, the city responded

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[1] Count II was filed against Bristol Lakes HOA and is the subject of appeal dealt with separately. *See Harris v. Bristol Lakes Homeowners Ass'n,* No. 4D12-1436 (Fla. 4th DCA Aug. 21, 2013).

that a purchaser must meet the affordable housing income criteria of the city's code. The homeowners then filed an action for declaratory relief against the city, which was dismissed based, in part, on the statute of limitations. The appellate court affirmed, finding that the cause of action accrued when the restrictive covenant was executed, and that the suit was filed outside of the limitations period. *Id.* at 296-97. The instant case is easily distinguishable, as Harris, unlike the Botts, did not agree to the mandatory membership amendment at the time it was recorded, and was not affected by it until she took title to property.

Aberdeen POA also relies on a line of cases culminating with *Fredrick v. Northern Palm Beach County Improvement District*, 971 So. 2d 974 (Fla. 4th DCA 2008), all of which involve municipal assessments. In *Keenan v. City of Edgewater*, 684 So. 2d 226, 227 (Fla. 5th DCA 1996), the court found that a challenge to the resolution imposing special assessments for the purpose of construction of a water and sewer treatment plant accrued when the resolution was passed. In *H & B Builders, Inc. v. City of Sunrise*, 727 So. 2d 1068, 1071 (Fla. 4th DCA 1999), this court rejected the argument that a challenge to interest rates on municipal assessments imposed for construction of an industrial park accrued each time an installment payment was due. The court held that, at a minimum, a challenge to interest rates on municipal assessments accrued either when the assessments were created or when the city decided to pay off the bonds. In *Fredrick,* 971 So. 2d at 979, this court found the statute of limitations on a challenge to municipal assessments imposed for expansion of a road began to run either "from the date the assessments are created or from the date the city approved . . . them . . . ."

We find these cases are not applicable, as they involve special assessments linked to a governmental entity's long-term planning. Indeed, the Third District declined to extend the holding of these cases to a challenge to a property tax imposed to fund a city's taxing district, as the taxes are changed year to year and do not involve the same "unique policy considerations regarding long-term bonds and infrastructure projects . . . ." *Milan Inv. Grp., Inc. v. City of Miami*, 50 So. 3d 662, 664 (Fla. 3d DCA 2010).

"A cause of action accrues when the last element constituting the cause of action occurs." § 95.031(1), Fla. Stat. (2005). As this court has noted, "[p]ut another way, the limitations period begins to run when the action "may be brought." *City of Riviera Beach v. Reed*, 987 So. 2d 168, 170 (Fla. 4th DCA 2008) (citing *State Farm Mut. Auto. Ins. Co. v. Lee,* 678 So. 2d 818, 821 (Fla. 1996)).

Focusing on the elements of a declaratory relief action, we find that until Harris took title in October of 2006 or (alternatively) until she was assessed membership fees, there was no "immunity, power, privilege or right of the complaining party" that was "dependent upon the facts or the law applicable to the facts." *See City of Hollywood v. Petrosino*, 864 So. 2d 1175, 1178 (Fla. 4th DCA 2004) (finding that former employee's declaratory relief action accrued when he was hired and informed he could not participate in pension plan, as all the elements of a declaratory relief action existed at that time). Because Harris filed suit within five years of taking title, it was error for the trial court to enter summary judgment based on the statute of limitations.

Reversed and remanded.

TAYLOR and LEVINE, JJ., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Donald Hafele, Judge; L.T. Case No. 50201 CA025352XXXXMB.

Leslie K. Harris, Boynton Beach, pro se.

Kristen A. Tajak of Cole Scott & Kissane, P.A., Miami, for appellee Aberdeen Property Owners Association, Inc.

Not final until disposition of timely filed motion for rehearing.