STATE OF MICHIGAN

COURT OF APPEALS

NOTTINGHAM VILLAGE CONDOMINIUM ASSOCIATION, a Michigan Nonprofit Corporation, Plaintiff-Appellee,	UNPUBLISHED March 24, 2015
v	No. 319552 Wayne Circuit Court
JOHN PENSOM and JANE DOE PENSOM, Defendants-Appellants.	LC No. 12-013643-CH

Before: DONOFRIO, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendants appeal as of the right the trial court order denying their motion for summary disposition and granting plaintiff's motion for summary disposition in this condominium law dispute involving the payment of an assessment collected to file suit against the developer of the condominium project. Defendants also appeal as of right the trial court's amended judgment of attorney fees and costs to plaintiff. We reverse the order of the trial court granting plaintiff summary disposition and vacate the amended judgment awarding plaintiff its attorney fees and costs. We remand for an order granting defendants summary disposition and for an evidentiary hearing as to defendants' reasonable attorney fees and costs.

I. BACKGROUND

Defendants are husband and wife and owners of a condominium unit in the Nottingham Village Condominium project. Plaintiff is the Nottingham Village Condominium Association, a non-profit corporation composed of the owners of the condominium units, of which defendants are members.

In February 2012, plaintiff's board of directors held a closed meeting during which litigation was authorized against the developer of the condominium project for construction defects. Plaintiff, also, levied a three month $1000 per member assessment to fund the litigation and rescinded the then-current $160 monthly member assessment. While defendants made some assessment payments, they did not pay the full amount and sent plaintiff a letter protesting the $1000 assessment on the grounds that it was levied in contravention of the By-Laws.

Plaintiff recorded a lien for non-payment of the assessments against defendants' property. Subsequently, in October 2012, it filed the instant lawsuit seeking foreclosure of the lien, money damages, costs and attorneys fees. Shortly after the defendants filed their answer, in which they admitted that they did not pay the contested assessment in full, plaintiff filed for summary disposition under MCR 2.116(C)(9) and (10) relying on Article II, Sections 4 and 6 of the condominium's Bylaws. Defendants filed an MCR 2.116(C)(10) motion and argued they were entitled to judgment because the special assessment was invalid pursuant to Article XXIII of the Bylaws.

The court granted plaintiff's motion in an order in which the court found that Article XXIII of the Bylaws, upon which defendants based their defense and their counter-motion, violated both the Michigan Condominium Act (the MCA) and the Michigan Nonprofit Corporation Act due to placing unreasonable restrictions on plaintiff's right to undertake litigation. The court reserved the issues of damages, costs and attorneys fees and denied defendants' motion.

After a hearing on damages, costs and attorneys fees, the court issued a judgment for plaintiff in the amount of $19,954.75. Defendants filed for reconsideration or relief from that judgment and the court issued an amended judgment, subtracting assessment payments made by defendants thereby reducing the amount owed to $19,111.55. The court entered a stipulated stay order and this appeal ensued.

II. STANDARD OF REVIEW

This Court reviews a trial court's grant of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The trial court did not cite any specific subsection of MCR 2.116 in its decision to grant plaintiff summary disposition, but did state the language found in MCR 2.116(C)(10) that "except as to the issue of damages, there's no questions of fact."

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id*. at 120. When reviewing a motion granted under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence in a light most favorable to the nonmoving party. *Reed v Breton*, 475 Mich 531, 537; 718 NW2d 770 (2006); MCR 2.116(G). Summary disposition under MCR 2.116(C)(10) is appropriate when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

We also review a trial court's interpretation of statutory language and corporate Bylaws de novo. *Slatterly v Malidol*, 257 Mich App 242, 250–251; 668 NW2d 154 (2003). Whether Bylaws are reasonable or not is a question this Court reviews de novo. *Dozier v Automobile Club of Michigan*, 69 Mich App 114, 123; 244 NW2d 376 (1976).

III. ANALYSIS OF THE ASSESSMENT

Defendants argue that the assessment is a special assessment for litigation which the Bylaws required, among other things, the association members authorize with a 60% vote.

Plaintiff counters that the assessment was an additional assessment and that no membership authorization was required. Plaintiff adds further, that the voting requirement and other pre-suit provisions in the Bylaws are unreasonable and in conflict with the MCA and Nonprofit Corporation Act and should be rendered void for those reasons. The trial court agreed with plaintiff finding that the assessment was an additional assessment, that the voting requirement was an unenforceable restraint on the board's authority, and that the pre-suit provisions found in Article XXIII were unreasonable. We disagree both with the characterization of the assessment and the finding that Article XXIII in its entirety is in conflict with state law or public policy for the reasons stated below.

Our analysis of Article XXIII's validity and application to the levy in this instance is governed by the principles applied to contract interpretation because plaintiff is a nonprofit corporation. "The bylaws of a corporation ... constitute a binding contract between the corporation and its shareholders." *Allied Supermarkets, Inc v Grocer's Dairy Co*, 45 Mich App 310, 315; 206 NW2d 490 (1973), aff'd 391 Mich 729 (1974). A contract that conflicts with a statute is void. *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 599; 648 NW2d 591 (2002). Therefore, bylaws that conflict with a statute or policy of the state are also void. See MCL 450.2231(2); see also *Dozier v Automobile Club of Michigan*, 69 Mich App 114, 132; 244 NW2d 376 (1976). "Bylaws are generally construed in accordance with the same rules used for statutory construction." *Slatterly*, 257 Mich App at 250, 255. Courts must look at the specific language of the bylaws. *Id*. at 255. "If the language is unambiguous, the drafters are presumed to have intended the meaning plainly expressed." *Id*. at 255-256

A. NATURE OF THE ASSESSMENT

Our review of the Bylaw provisions does not support plaintiff's argument and the trial court's determination that the assessment levied in this case was an additional assessment. The plain language of Articles II and XXIII require the characterization of a levy for legal fees as a special assessment.

Article II, Section 3 of the Bylaws, controls how assessments are to be levied.[1] There are two types of assessments in Section 3: (a) Budget and (b) Special Assessments. Budget assessments result from an annual budget approved by the co-owners and result in monthly assessments. Under subsection (a), an annual assessment, and therefore, the monthly assessment, can be changed or an additional assessment can be levied in the sole discretion of the board of directors under four circumstances:

> (1) [when] the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium,
>
> (2) to provide replacements of existing Common Elements,

[1] "Assessments shall be determined in accordance with the following provisions." Bylaws, Article II, Section 3.

(3) to provide additions to the Common Elements not exceeding $1,000.00 annually for the entire Condominium Project, or

(4) in the event of emergencies . . .[Bylaws, Article II, Section 3(a).]

The board of director's purported to create and levy an additional assessment in a February 2012 resolution after a special meeting. The resolution plainly stated the purpose of the assessment:

> WHEREAS, at a special meeting of the Board of Directors *called for the purpose of discussing the lawsuit* with attorney Robert M. Meisner, held at his offices on February 29, 2012, and the Board *having discussed* with Mr. Meisner and Kevin M. Hirzel, an associate attorney of the firm, *the need to raise additional funds in order to properly fund the lawsuit* and to otherwise meet the safety, maintenance, repair and replacement responsibilities at the condominium. After a further and thorough discussion, it was resolved as follows, to wit:
>
> 1. That the additional assessment of $160.00 per month effective March 15, 2012 is hereby rescinded.
>
> 2. An additional assessment in the amount of $3,000.00, to be payable as follows, has been levied:
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> $1,000.00 payable by each unit on or before April 15, 2012;
>
> $1,000.00 payable by each unit on or before May 15, 2012; and
>
> $1,000.00 payable by each unit on or before June 15, 2012;
>
> Additionally, the Delinquent Assessment Collection Procedure in place by the Association shall apply to the payment of this additional assessment.
>
> The additional assessment was made in accordance with the authority vested in the Board of Directors pursuant to Article II, Section 3(a) of the Bylaws (Exhibit "A" of the Master Deed) of Nottingham Village Condominium. [Nottingham Village Condominium Association Board of Directors Resolution, 2/29/2012. Emphasis added.]

The language of the resolution clearly states that the assessment was being collected for the purpose of funding a law suit. Plaintiff's brief on appeal states that its attorney was retained on June 11, 2011, and the suit against the developer was filed June 14, 2011.[2] The record is silent as to whether the members were aware of the suit before the February 29, 2012 resolution which authorized the levy at issue. In support of its argument to characterize this levy as an additional assessment under either Article II Section 3(a)(1) or (4) the plaintiff writes that "Admittedly, the deficiency in the Association's budget resulted largely from the fact that the Board, acting in

[2] Plaintiff's Brief on Appeal, 5/6/2014, p. 2 n 1.

good faith, in the best interests of the Association, elected, on the eve of the running of the statute of limitations, to preserve the Association's rights and file suit against the Developer of the project for various construction defects and deficiencies."[3]

Despite the argument on appeal, the resolution does not purport that the assessment was levied because the then current assessment was insufficient to pay the costs of operation and management of the condominium project. The language of the resolution is that plaintiff could not operate, maintain and manage the condominium project *plus* pursue litigation with the then current annual budget. Neither plaintiff's brief, nor anything in the record, offers any proof that absent the litigation, the annual budget was insufficient to meet the safety, maintenance, repair and replacement responsibilities at the condominium. Lastly, the resolution did not state the assessment was being created as a matter of emergency. By its own language the levy was to "properly fund" a lawsuit that was filed six months before plaintiff resolved to authorize the $3000 per member levy. The best plaintiff could argue is that the litigation it authorized cost more than anticipated. Plaintiff's failure to plan, monitor, or limit its litigation cost, while unfortunate, does not constitute a situation that should not have been reasonably anticipated by a prudent fiduciary. Moreover, plaintiff's brief cites Article II, Sections 3(a)(1) and (4) and characterizes the levy as an additional assessment but presents no support for its assertion. This Court will not search for arguments not raised. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). We note that plaintiff abandoned its argument made at the trial level, "That the Association has duly assessed the Subject Premises for the expenses of administration, maintenance and repair of the common areas."[4]

This Court cannot find support for the trial court's finding that the assessment was an additional assessment under Article II, Section 3(a).

Under Article II Section 3(b), the bylaws define special assessments as "assessments in addition to those listed in subsection (a)." These assessments are made by the board of directors and require approval of more than 60% of all co-owners in number and in value before they can be levied. They are "provided to meet other needs or requirements of the Association, *including but not limited to*:"

> (1) assessments for additions to the Common Elements or a cost exceeding $1,000.00 for the entire Condominium Project per year,
>
> (2) assessments to purchase a Unit upon foreclosure of the lien for assessments described in Section 6 thereof, or
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> (3) assessments for any other appropriate purpose not elsewhere herein described. [Bylaws, Article II, Section 3(b) (emphasis added).]

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[3] Plaintiff's Brief on Appeal, 5/6/2014, p. 2.

[4] Plaintiff's Motion for Summary Disposition, Pursuant to MCR 2.116(C)(9) and (10) and to Strike Defendants' Affirmative Defenses, 6/10/2013, p. 2, ¶ 6.

Litigation funding is discussed in Article XXIII of the Bylaws. Article XXIII contains several pre-suit requirements, including that approval by the super-majority of members "shall govern the Association's commencement and conduct of any civil action except for actions to enforce the Bylaws of the Association or collect delinquent assessments." Article XXIII, Section 1(f) provides that "[a]ll legal fees incurred in pursuit of any civil action that is subject to this Article XXIII shall be paid by special assessment of the members of the Association ("litigation special assessment")." These unambiguous contractual provisions "are not open to judicial construction and must be *enforced as written*." *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005). The board was not authorized to levy the assessment in its sole discretion as an additional assessment under Article II Section 3(a) and was instead required to follow the processes in Article II, Section 3(b) and Article XXIII.

B. THE BYLAWS, THE MCA AND THE NONPROFIT CORPORATION ACT

Plaintiff argues that Article XXIII is in conflict with MCL 559.156 and MCL 559.160 of the MCA, MCL 450.2261and MCL 450.2501 of the Nonprofit Corporation Act, MCL 450.2101 et seq., and is unreasonable in light of the board's fiduciary duty to the association of members. Again, we disagree.

In pertinent part, MCL 559.156 provides "[t]he bylaws may contain provisions: . . . [a]s are deemed appropriate for the administration of the condominium project not inconsistent with this act or any other applicable laws." MCL 559.156(a).

MCL 559.160 states:

> Actions on behalf of and against the co-owners shall be brought in the name of the association of co-owners. The association of co-owners may assert, defend, or settle claims on behalf of all co-owners in connection with the common elements of the condominium project.

MCL 450.2261 provides in part:

> (1) A corporation, subject to any limitation provided in this act, in any other statute of this state, in its articles of incorporation, or otherwise by law, has the power in furtherance of its corporate purposes to do any of the following:
>
> (b) Sue and be sued in all courts and participate in actions and proceedings judicial, administrative, arbitrative, or otherwise, in the same manner as a natural person. [MCL 450.2261(1)(b)]

MCL 450.2501, in part, provides that "[t]he business and affairs of a corporation shall be managed by its board, except as otherwise provided in this act."

Plaintiff argues that the language in MCL 559.160 and MCL 450.2501 evidences the Legislature's intent to grant plaintiff "absolute and unfettered authority to pursue legal action on behalf of the co-owners of the Condominium." Plaintiff further argues that any voting

requirement in the Bylaws restricts this authority and is therefore, in conflict with the MCA and the Nonprofit Corporation Act in violation of MCL 559.156(a). First, we reject plaintiff's assertion of legislative intent. Legislative intent "may reasonably be inferred from the words expressed in the statute, which requires courts to consider the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme." *In re AJR*, 496 Mich 346, 353; 852 NW2d 760 (2014) (citations and quotation marks omitted). While MCL 559.160 demands that any action brought on behalf of or against the co-owners be in the association's name, it does not grant an exclusive right to the association to "assert, defend, or settle claims on behalf of the co-owners."[5] The word "may", which is placed directly before the words "assert, defend, or settle claims," is permissive and not mandatory. *Manuel v Gill*, 481 637, 647; 753 NW2d 48 (2008).

Plaintiff also contends that because there are no statutory or other restrictions on its authority to pursue claims, its authority to pursue claims is unfettered. We note that MCL 559.160 addresses the breadth of plaintiff's authority by description. MCL 559.160 contains a description of plaintiff's authority by specifically granting plaintiff the authority to "assert, defend or settle" claims "in connection with the common elements of the condominium project." "Common elements" are defined by the MCA as "the portions of the condominium project other than the condominium units." MCL 559.103(7). The board minutes of the March 2012 meeting note that many of the structural problems that led to the litigation were inside the condominium units. Therefore, the MCA does not grant exclusive authority to plaintiff to initiate, defend or settle the claims which gave rise to the levy at issue here.

Plaintiff also argues that the Bylaws pre-suit requirements and Article XXIII are in direct conflict with the Nonprofit Corporation Act. Plaintiff accurately cites MCL 450.2501 that, "[t]he business and affairs of a corporation shall be managed by its board." MCL 450.2261 also states that boards of directors, like plaintiff, have the authority to sue and be sued in the same manner as a natural person, MCL 450.2261(1)(b). However that authority is "*subject to* any limitation provided in this act, in any other statute of this state, in its articles of incorporation, or otherwise by law." MCL 450.2261(1) (emphasis added). Further, MCL 559.153 provides that "[t]he administration of a condominium project shall be governed by bylaws recorded as part of the master deed," which would be a limitation otherwise provided by law. We will not read into a statute language that is not there and nowhere in the Nonprofit Corporation Act do we find language that grants plaintiff the exclusive or unfettered right to institute, defend or manage the litigation which gave rise to this levy. Such an interpretation would be contrary to MCL 450.2103 which states that the Nonprofit Corporation Act is to be construed liberally with the purpose of providing "a general corporate form for the conduct of lawful nonprofit activities."

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[5] See *Lighthouse Place Development, LLC v Moorings Ass'n*, unpublished per curiam of the Court of Appeals, issued April 28, 2009 (Docket No. 280863), p. 8 (MCL 559.160 "confers standing on a co-owners association, which "*may* " take action to assert, defend, or settle claims on behalf of all co-owners in connection with the common elements of the condominium project.") "Although unpublished opinions of this Court are not binding precedent, they may, however, be considered instructive or persuasive." *Paris Meadows, LLC, v Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010) (citations omitted).

In finding no conflict between the pre-suit requirements of the Bylaws and either the MCA or the Nonprofit Corporation Act, we adopt the reasoning of another panel of this Court in *Tuscany Grove Ass'n v Gasperoni*, an unpublished per curiam opinion of the Court of Appeals, issued June 24, 2014 (Docket No. 314663). In *Tuscany*, the Court addressed arguments that pre-suit bylaw requirements which included a supermajority vote of the members conflicted with the MCA and the Nonprofit Corporation Act and cited the same sections of the statutes that plaintiff here cites. The *Tuscany* Court held that the bylaw provision was a "limitation provided . . . otherwise by law" as prescribed in MCL 450.2261. *Id*. at 5. Upholding the bylaw provisions, the Court pointed out that "nothing in the MCA precludes an association and its composite condominium owners from negotiating conditions for filing such suits." *Id*. In response to the association's assertion that it had a fiduciary duty to its members to ensure uniform enforcement of the bylaws, the Court stated that the owners had the freedom to contract and that "someone in the drafting process decided it was important for the owners to have control over litigation spending." *Id*. The analysis in *Tuscany*, although not binding, is persuasive. The Bylaws are a binding contract between the association and the co-owners. Plaintiff is required to follow its Bylaws. None of the statutes cited by plaintiff indicate a legislative intent to limit or eliminate the parties' freedom to contract. If discontent arises, the process for amending Article XXIII is also contained therein.[6] Where the plain and unambiguous language of the Bylaws provides that the co-owners must approve the commencement of litigation and the special litigation assessment, that language must be enforced.

Accordingly, we reverse the trial court's order granting summary disposition to plaintiff and remand for an order to be entered granting summary disposition to defendants instead.

IV. SEVERANCE

The trial court not only found the voting provision unenforceable, but also struck the entire Article XXIII for containing provisions it determined to be unreasonable in toto. Hence, the trial court did not make findings regarding specific provisions. Defendants argue that upon closer inspection not all the provisions in Article XXIII are unreasonable and that the trial court should have employed the severability clause in Article XXII short of striking the entire Article XXIII. Plaintiff counters that none of Article XXIII can be saved.

After reviewing all the pre-suit provisions in Article XXIII, we can only find one that is unreasonable: the requirement that trial counsel provide detailed information about all prior litigation on behalf of a condominium or homeowners association for which he or she provided representation. We further find that the lone provision was capable of being severed while maintaining the full force of the rest of the article.

The bylaws of any corporation must be reasonable. *Dozier*, 69 Mich App at 123. "Reasonableness is the primary consideration in deciding whether a contract clause is enforceable." *Sands Appliance Services v Wilson*, 231 Mich App 405, 419; 587 NW2d 814 (1998) rev'd on other grounds 463 Mich 231; 615 NW2d 241 (2000). "A general rule of contract

[6] Article XXIII, Section 1(k) provides that the article "may be amended, altered or repealed by a vote of not less than 66-2/3% of all members of the Association."

law is that the failure of a distinct part of a contract does not void valid, severable provisions." *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 641; 534 NW2d 217 (1995). "The primary consideration in determining whether a contractual provision is severable is the intent of the parties." *Professional Rehabilitation Associates v State Farm Mut Auto Ins Co*, 228 Mich App 167, 174; 577 NW2d 909 (1998).

Article XXIII lists the procedures to be followed for the commencement and pursuit of civil litigation on behalf of the Association. The article provides that the purpose of the procedures is to "ensure that the members of the Association are fully informed regarding the prospects to engage in, as well as the ongoing status of any civil actions actually filed by the association." (Bylaws, Article XXIII, Section 1.) Further, "to reduce both the cost of litigation and the risk of improvident litigation, and . . . to avoid the waste of the Association's assets in litigation where reasonable and prudent alternatives to the litigation exist." (Bylaws, Article XXIII, Section 1.)

Plaintiff calls the procedures artificially created hoops that are "grossly unreasonable" and "violative of public policy." To begin, plaintiff's statement that the provisions in Article XXIII are in violation of public policy is apparently just a statement and nothing more. Plaintiff's brief provides no argument or authority on this point. Nevertheless, of all the requirements listed in Article XXIII, plaintiff, by example, argues that three are "patently unreasonable".

First, plaintiff states that the requirement that a membership meeting to "evaluate the merits" of the litigation is unreasonable because it would waive the attorney-client privilege. We disagree with plaintiff's hypothetical speculation that a meeting with the co-owners could not be accomplished without revealing all the weak points and strategy of the litigation. Plaintiff is also concerned that a developer could attend the meeting, as he or she would have the right to do if he or she owned a unit in the condominium project. This is a valid concern, but it does not validate keeping every other member in the dark regarding litigation that will affect the place where they live and the monthly assessments they pay. The developer will eventually learn, by way of the complaint filing, every allegation against him or her.

Second, plaintiff states that the requirement that a proposed attorney provide "the name and address of every condominium and/or homeowner association for which the attorney has filed a civil action in any court, together with the case number, county and court in which civil action was filed" is unreasonable because it would be overly burdensome. We agree that this provision is unreasonable, not because it is onerous, but because of its impracticality. "Bylaws must be reasonable in themselves as well as in their practical application." *Slatterly*, 257 Mich App at 256. Plaintiff points out that its counsel has over 45 years of experience and it would be practically impossible for him to provide such information. The provision is inartfully drafted where it is clear that the members are merely seeking a resume of experience from the proposed attorney.

Third, plaintiff states that the requirement that the Board seek an independent opinion is unreasonable. Plaintiff unfortunately misreads the provision and then argues from its misinterpretation. Plaintiff erroneously states that the provision requires the association to obtain

an independent opinion as to "alternative approaches to litigation". The actual wording however, is:

> If the lawsuit relates to the condition of any of the Common Elements, the Board shall obtain a written independent expert opinion as to reasonable and practical *alternative approaches to repairing the problems with the Common Elements*, which shall set forth the estimated costs and expected viability of each alternative. [Article XXIII, Section 1(c) (emphasis added).]

In essence, the provision requires that someone else, independent from the proposed attorney and the association, provide an estimate for the costs of repair to the Common Elements so that the members have the opportunity to evaluate whether it is less costly to just repair the Common Elements instead of filing suit. We find this provision to be prudent and not unreasonable.

Our review of the other provisions in Article XXIII does not reveal anything "grossly unreasonable." Taken in sum, the provisions illustrate the members desire to know what the litigation is about, who is going to handle it and how much it is going to cost them.

Article XXII provides that

> In the event that any of the terms, provisions or covenants of these Bylaws or the Condominium Documents are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants of such documents or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

Given that only one provision appears to be unreasonable in Article XXIII, the trial court could have severed that provision in accord with Article XXII and gave effect to the remainder of Article XXIII. Absent the provision for a list of every condominium client of the proposed attorney, the members' desire to know the experience of the proposed attorney is satisfied by the two preceding provisions which request the number of years the attorney has practiced law and a written summary of the relevant experience of the attorney. A complete voiding of the entire Article XXIII, without reason for why the other provisions were unreasonable, was error.[7]

V. ATTORNEY FEES AND COSTS

[7] Plaintiff also argues that the procedural requirements were material information about the condominium project that should have been in a disclosure statement to co-owners as required under MCL 559.242 of the MCA. We decline to review this argument because it was not raised in the trial court and refers to a document – the disclosure statement – that is not a part of the record before this Court. This Court will not consider unpreserved arguments that were not considered by the trial court and that are without supportive documentation to facilitate a review. *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 344-346, 345 n 3; 852 NW2d 180 (2014).

Defendants contend that plaintiff is not entitled to fees and costs when the assessment was invalid. We agree. When the assessment is invalid, attorney fees and costs are not authorized.

"The decision to award attorney fees, and the determination of the reasonableness of the fees requested, is within the discretion of the trial court." *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). This Court reviews a trial court's award of attorney fees and costs for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Generally, attorney fees are not recoverable unless specifically authorized by court rule, statute or another exception. *Burnside v State Farm Mutual Fire & Casualty Co*, 208 Mich App 422, 430-431; 528 NW2d 749 (1995). Plaintiff argued before the trial court that it was entitled to attorney fees and costs under the MCA as the prevailing party and under the provisions of the Bylaws.

In relevant part, the MCA provides that

> (b) In a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide.
>
> (c) Such other reasonable remedies the condominium documents may provide including but without limitation the levying of fines against co-owners after notice and hearing thereon and the imposition of late charges for nonpayment of assessments as provided in the condominium bylaws or rules and regulations of the condominium. [MCL 559.206(b) and (c)].

Because we found that the assessment was invalid for failure to comport with the Bylaws, plaintiff's position as the prevailing party is displaced. Consequently, fees and costs are not due under MCL 559.206. The trial court's decision to award plaintiff its costs and fees was based on its theory that this was "basically a collection case under the terms of the Bylaws for an unpaid assessment." Under the Bylaws

> The expenses incurred in collecting unpaid assessments, including interests, costs, actual attorneys' fees (not limited to statutory fees) and advances for taxes or other liens paid by the Association to protect its lien, shall be chargeable to the Co-owner in default and shall be secured by the lien on his Unit. [Article II, Section 6(d)]

The Bylaw provision, unlike MCL 559.206, grants plaintiff its costs and fees independent of whether it prevailed in litigation or not. However, because plaintiff did not have a right to collect the assessment in this case without first obtaining a vote from its members to approve the assessment, fees and costs are not afforded to plaintiff under the Bylaws either.

We reverse the order of the trial court granting plaintiff summary disposition and remand for an order granting summary disposition to defendants. We vacate the trial court's November 21, 2013 amended judgment of attorney fees and costs in favor of plaintiff and remand for an evidentiary hearing to determine those reasonable attorney fees and costs due defendants. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens