Summary of SC98772, *Arrowhead Lake Estates Homeowners Association, Inc. v. Ajay Aggarwal and Megha Garg*

Appeal from the Boone County circuit court, Judge Kimberly Shaw
Argued and submitted March 30, 2021; opinion issued June 15, 2021

Attorneys: The homeowners association was represented by Thomas M. Harrison, Joshua J. Sieg and Brian R. Hajicek of Van Matre Law Firm PC in Columbia, (573) 874-7777. The residents were represented by Susan Ford Robertson and J. Zachary Bickel of The Robertson Law Group LLC in Kansas City, (816) 221-7010.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A homeowners association appeals from a judgment entered in its favor but not awarding it attorney fees. In a 4-2 decision written by Chief Justice George W. Draper III, the Supreme Court of Missouri affirms the judgment. The homeowners association was not entitled to attorney fees under the declaration's provision allowing for an award of attorney fees to the prevailing party because the qualifying language "as deemed appropriate by a court" gave the circuit court discretion in awarding attorney fees. Additionally, because the homeowners association did not show it was a "lot owner," it was not entitled to attorney fees under a separate provision of the declaration entitling lot owners to attorney fees when they prevailed in litigation.

Judge Paul C. Wilson dissents. He would find the only reasonable construction of the declaration's provision awarding attorney fees to the prevailing party is that the language regarding "as deemed appropriate by a court" gives the circuit court discretion in determining the amount of attorney fees to award to the prevailing party, not whether to make such an award.

Facts: Residents Ajay Aggarwal and Megha Garg own property in the Arrowhead Lake Estates subdivision in Columbia. The property is subject to a set of restrictions, declarations and covenants (collectively, the declaration). The Arrowhead Lake Estates Homeowners Association Inc. is tasked with enforcing the declaration. In 2017, the residents submitted plans to the homeowners association to construct a pool, hot tub, fire pit, decking and fence on their property. The homeowners association approved the construction. During construction, it was discovered the residents also were building an unapproved outbuilding structure on the property. The homeowners association demanded the residents cease construction of the unapproved structure and remove it from the property. When the residents refused to do so, the homeowners association filed suit, seeking a temporary restraining order, injunction, and attorney fees and costs. The circuit court ultimately entered judgment in the homeowners association's favor but did not award the association attorney fees. The homeowners association appeals.

AFFIRMED.

Court en banc holds: The homeowners association was not entitled to attorney fees under either provision of the declaration upon which it relies. While the first provision allows for an award of attorney fees to the prevailing party, it qualifies such language by stating "as deemed appropriate

by a court." Such qualifying language granted the circuit court discretion to award attorney fees, which it declined to award after careful consideration of the record. The second provision entitled lot owners to be awarded attorney fees if they were required to bring suit to enforce their rights. Because the homeowners association did not show it is a "lot owner," it was not entitled to attorney fees under the provision.

Dissenting opinion by Judge Wilson: The author disagrees with the principal opinion's holding that the circuit court had discretion under the declaration whether to award the homeowners association attorney fees. He would find the declaration's plain language requires an award of attorney fees to the prevailing party and the "deems appropriate" language gave the circuit court discretion only as to the amount of attorney fees to award. Accordingly, he would reverse the circuit court's judgment and remand (send back) the case for a determination as to the amount of attorney fees.