

Summary of SC91138, *DeBaliviere Place Association v. Steven Veal*

Appeal from St. Louis circuit court, Judge Robert H. Dierker
Argued and submitted Jan. 12, 2011; opinion issued April 12, 2011

Attorneys: Veal was represented by Elkin L. Kistner of Bick & Kistner PC in St. Louis, (314) 571-6823, and the association was represented by Ira M. Berkowitz and Marvin J. Nodiff of the Law Office of Marvin J. Nodiff PC in St. Louis, (314) 727-8989. The Community Associations Institute, which filed a brief as a friend of the Court, was represented by Anthony J. Soukenik of Sandberg, Phoenix & von Gontard PC in St. Louis, (314) 446-4279.

This summary is not part of the opinion of the Court. It has been prepared by the 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 man appeals the trial court’s entry of summary judgment holding that he owed a new neighborhood association unpaid assessments, interest and attorney’s fees. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri affirms the judgment in part, reverses it in part and remands (sends back) the case for further proceedings. The trial court correctly found the former association had the authority to execute an assignment to the new association. Although the new association did not have the authority to file or foreclose on liens filed before the assignment, after the assignment, the new association had the authority to collect on prior unpaid assessments. The association’s claim for relief in *quantum meruit* (request for the reasonable amount of services provided) reveals a genuine issue of material fact that bars summary judgment on that claim.

Facts: DeBaliviere Place Association incorporated in 1977 as a neighborhood association. In 1992, the secretary of state dissolved the association for failing to file its annual registrations. In 1997, Steven Veal acquired apartment buildings subject to the association’s declaration requiring owners to pay certain assessments. Veal never paid the assessments. A new association was formed in 2003. Two years later, it recorded liens against portions of Veal’s properties. In February 2006, the new association filed an action to foreclose on the liens. In June 2006, the new association obtained an assignment agreement from the former association. In 2007, the new association recorded two new liens against Veal’s properties. The trial court consolidated the actions and granted the association’s motion for summary judgment, finding Veal owed the association unpaid assessments, interest and attorney’s fees. Veal appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) Section 355.691, RSMo, granted the former association authority to execute an assignment to the new association pursuant to its “winding-up process,” and former statutory time limitations for rescission of forfeiture do not apply in this case.

(2) Before the June 2006 assignment, the new association was not the former association’s successor or assignee entitled to enforce the declaration. Therefore, the new association was not authorized to file the 2005 liens or foreclose on those liens in February 2006, and the circuit court erred in foreclosing on the liens.

(3) After the assignment, the new association had the authority to exercise any right in the declaration, including collecting prior assessments owed to the former association as well as to bill and collect for future assessments. Although the filing of two liens in 2007 by the new association was premature, thereby violating the declaration, Veal waived this non-fatal issue by not raising it at the outset.

(4) The new association's request for relief in *quantum meruit* reveals a genuine issue of material fact that bars summary judgment on that claim. Further, it is not appropriate for this Court to enter a final judgment because the new association may seek to file or enforce liens on amounts due before the 2006 assignment or to pursue its *quantum meruit* claim in the circuit court.