NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0146

HIGHLAND OAKS ESTATES
HOMEOWNERS ASSOCIATION, INC.

VERSUS

SUSAN ESTAPA

Judgment Rendered: June 11, 2010

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2009-13799

Honorable Peter J. Garcia, Judge

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BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

Highland Oaks Estates Homeowner's Association, Inc. ("HOEHAI"), through its purported president, A. David Aymond, and Aymond Development, L.L.C. ("Aymond Development") appeal a summary judgment granted in favor of Susan Estapa, dismissing HOEHAI's suit against her for conversion and rendering its request for a preliminary injunction moot. Finding no error in the judgment rendered by the trial court, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

David Aymond is the owner of Aymond Development, which developed Highland Oaks Estates, a residential community in St. Tammany Parish. Highland Oaks Estates is comprised of approximately 84 lots. On October 28, 2003, a document titled "Dedication of Servitudes, Easements and Restrictive Covenants" ("the restrictive covenant document") was filed in the public records of St. Tammany Parish with regard to the 84 lots in Highland Oaks Estates. The restrictive covenant document provided that Aymond Development was developing Highland Oaks Estates and that it had formed or intended to form the HOEHAI as a non-profit corporation for the purpose of carrying out the powers and duties afforded it by the restrictive covenants and dedications contained in the document. With regard to the HOEHAI, Article V of the restrictive covenant document provided as follows:

> Section 1. For the purpose of controlling, regulating and maintaining the common facilities for the general use and benefit of all Lot Owners, each and every Lot Owner, by accepting a deed and purchasing a Lot or entering into a contract with regard to any Lot in HIGHLAND OAKS ESTATES does agree to and binds himself to be a Member of and be subject to the obligations and du[l]y enacted By-Laws and rules, if any, of the Association. The Association is specifically authorized and empowered to assess individual Lot Owners, and to provide for the collection of said assessments in accordance with LSA 9:1145 et seq.
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> Section 2. Membership. The Association shall have two classes of voting membership:

A) Every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who becomes a record owner of a fee interest in any Lot by transfer from the Developer which is or becomes subject to this act of dedication shall be a Class A member of the Association. Each Class A member of the Association shall be entitled to one (1) vote for each Lot to which Class A membership is appurtenant, and the vote shall be cast in accordance with the bylaws of the Association.

B) There shall be Eighty-four (84) Class B memberships, all of which shall be issued to the Developer or its nominee or nominees. The Class B members shall be entitled to one (1) vote for each Class B membership so held, however, each Class B membership shall lapse and become a nullity upon the occurrence of any one of the following events:

i) thirty (30) days following the date upon which the total authorized issued and outstanding Class A memberships equal eighty-four (84); or

ii) on January 1, 2015; or

iii) Upon surrender of said Class B memberships by the then holders thereof for cancellation on the books of the Association.

Upon the lapse and/or surrender of all the Class B memberships, as provided for in this Article, the Developer shall continue to be a Class A member of the Association as to each and every Lot in which the Developer holds the interest otherwise required for such Class A membership.

On April 12, 2007, Susan Estapa and her husband purchased a lot in Highland Oaks Estates. There is no dispute that by the end of April 2007, Aymond Development had completed the sales of the 84 lots in Highland Oaks Estates. In April 2008, Susan Estapa was elected president of HOEHAI. On May 15, 2009, a meeting of the HOEHAI was held. Susan Estapa, as president, attended the meeting, as well as Kathleen Piccolo, the vice-president. David Aymond also attended the meeting. According to the minutes of that meeting, David Aymond announced that he was in control of the HOEHAI and the subdivision and would appoint directors and officers to the HOEHAI at his discretion with no input from the homeowners. Thereafter, he nominated himself and his daughter to the board,

and indicated that he wanted Susan Estapa and Kathleen Piccolo to stay involved in the HOEHAI. At a subsequent meeting of the board of directors, David Aymond appointed himself as president of HOEHAI.

Apparently, without the knowledge of or notice to the lot owners in Highland Oaks Estates, on July 19, 2005, Aymond Development filed, with the Secretary of State, the Articles of Incorporation for HOEHAI.[1] With regard to membership in HOEHAI, paragraph A of the articles of incorporation (which provided for Class A membership in the HOEHAI), was almost identical to section 2(A) of the restrictive covenant document. However, paragraph B of the articles of incorporation (which provided for Class B membership in the HOEHAI) was vastly different than section 2(B) of the restrictive covenant document. Specifically, paragraph B of the articles of incorporation provided:

> B. There shall be two hundred (200) class B memberships, all of which shall be issued to the Developer or its nominee or nominees. The class B members shall be entitled to one (1) vote for each class B membership so held, however, each class B membership shall lapse and become a nullity upon the occurrence of any one of the following events:
>
> (i) On January 1, 2015; or
>
> (ii) Upon surrender of said class B memberships by the then holders thereof for cancellation on the books of the Association.

Thus, the articles of incorporation changed the number of Class B memberships (and votes) to be issued to the developer from eighty-four to two hundred. Additionally, the provisions contained in section 2(B)(i) of the restrictive covenant document, which concerned the lapse and nullification of Class B memberships thirty days following the date upon which the total authorized issued and outstanding Class A memberships equaled eighty-four, was eliminated in its entirety.

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[1] Prior to that time, the homeowners association existed and functioned, but was not registered as a legal entity with the Secretary of State.

As the purported president of HOEHAI, David Aymond demanded that Susan Estapa turn over the corporate checking account to him. However, Susan Estapa refused, contending that she was still the president of HOEHAI. She then moved the funds from that checking account to another bank. David Aymond then instituted this action against Susan Estapa for conversion and sought a preliminary injunction seeking to prohibit Susan Estapa from transferring, moving, or disposing of the assets of HOEHAI. Susan Estapa responded by filing an answer and a third party demand against Aymond Development and David Aymond for breach of the restrictive covenants, fraud, misrepresentation, unfair trade practices, and defamation. She thereafter filed a motion for summary judgment seeking the dismissal of the suit against her on the basis that David Aymond was not entitled to vote at the May 15, 2009 meeting, (because he had no voting rights after May 2007), that his attempt to take over the board and/or the presidency of HOEHAI was illegal, and that she was still the president, and therefore, the suit brought against her was without authority from the governing body of the HOEHAI and should be dismissed. By judgment signed on October 26, 2009, the trial court granted Susan Estapa's motion for summary judgment and dismissed the suit, thereby rendering the request for preliminary injunction moot. From this judgment, HOEHAI, through its purported president David Aymond, and Aymond Development appeal.

II. LAW AND DISCUSSION

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact, and the summary judgment procedure is favored and designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966(A)(2); **Power Marketing Direct, Inc. v. Foster**, 2005-2023, p. 8 (La. 9/6/06), 938 So.2d 662, 668. A motion for summary judgment will be granted if the pleadings,

depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. *Id.;* La. C.C.P. art. 966(B).

Summary judgments are reviewed on appeal *de novo,* with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate: whether there is any genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. **Power Marketing Direct, Inc.**, 2005-2023 at p. 9, 938 So.2d at 669.

In this case, since the material facts are not in dispute, we look solely to the legal question presented by Susan Estapa's motion for summary judgment, *i.e.,* whether David Aymond and/or Aymond Development was entitled, as a matter of law, to vote at the meeting of the HOEHAI on May 15, 2009.[2] We find that he was not.

Building restrictions are real rights inuring to the benefit of all other lots within a subdivision under a general plan of developments. La. C.C. art. 777. In the case of building restrictions imposed on a subdivision, the restrictions may be likened to a *contract among the property owners and the developer.* **Woodland Ridge Association v. Cangelosi**, 94-2604, p. 5 (La. App. 1st Cir. 10/6/95), 671 So.2d 508, 511. A contract is the law between the parties and is read for its plain meaning. **Chailland Business Consultants v. Duplantis**, 2003-2508, p. 7 (La. App. 1st Cir. 10/29/04), 897 So.2d 117, 123, writ denied, 2004-2922 (La. 2/4/05), 893 So.2d 878. Agreements legally entered into have the effect of law upon the parties thereto, and courts are bound to give legal effect to these agreements according to the true intent of the parties, as generally determined by the words of the contract when the words are clear and specific. **Rosenkrantz v. Baton Rouge**

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[2] See **Diamond B Construction Company, Inc. v. City of Plaquemine**, 95-1979, p. 6 (La. App. 1st Cir. 4/30/96), 673 So.2d 636, 640 (when a contract is to be interpreted by the court as a matter of law, a motion for summary judgment is a proper procedural vehicle to present the question to the court).

Psychological Associates, 94-2340, pp. 5-6 (La. App. 1st Cir. 6/23/95), 657 So.2d 1353, 1356, writ denied, 95-2251 (La. 11/17/95), 663 So.2d 707 and writ not considered, 95-2392 (La. 11/17/95), 663 So.2d 707. Thus, regardless of the membership provisions set forth in the articles of incorporation for HOEHAI, as between the lot/property owners of Highland Oaks Estates and the developer, Aymond Development, the restrictive covenant document is the law between them.

"Interpretation of a contract is the determination of the common intent of the parties." La. C.C. art. 2045. Louisiana Civil Code article 2046 provides that "[w]hen the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." Based on our review of the restrictive covenant document, we find that the intent with regard to membership in the HOEHAI is clear—that each lot owner shall be a Class A member of HOEHAI and shall be entitled to one vote for each lot to which Class A membership is applicable. Additionally, it is clear that Aymond Development, as the developer, was entitled to be issued eighty-four Class B memberships in the HOEHAI and that each of these Class B memberships would lapse and become a nullity upon the following events: (1) 30 days following the date upon which the total authorized issued and outstanding Class A memberships equaled 84; (2) on January 1, 2015; or (3) upon the surrender of the Class B memberships by the then holder for cancellation on the books of the HOEHAI.

According to the affidavit of Susan Estapa, by April 2007, Aymond Development had completed the sales of all 84 lots in Highland Oaks Estates. Thus, by the terms of the restrictive covenant document, Aymond Development's Class B memberships (and its right to vote) lapsed and became null 30 days thereafter (or by May 2007). Accordingly, at the meeting of the HOEHAI on May 15, 2009, neither Aymond Development nor David Aymond held any Class B

memberships. As there was no evidence offered to establish that either Aymond Development or David Aymond held any Class A membership in HOEHAI, neither Aymond Development nor David Aymond was entitled to vote at that meeting; therefore, David Aymond was not entitled to appoint himself to the board of directors of HOEHAI or to appoint himself as its president. Therefore, we find, as did the trial court, that David Aymond was without authority to bring this suit against Susan Estapa on behalf of the HOEHAI.

After a *de novo* review of the record, we find that the trial court properly granted summary judgment in favor of Susan Estapa, dismissing this suit brought by HOEHAI, through its purported president David Aymond and rendering its request for a preliminary injunction moot.

CONCLUSION

For all of the above and foregoing reasons, the October 26, 2009 judgment of the trial court is affirmed.

All costs of this appeal are assessed equally to David Aymond and Aymond Development, L.L.C.

AFFIRMED.