TWENTY-FIFTH JUDICIAL CIRCUIT
OF VIRGINIA

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July 20, 2017

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Re: *Mark M. Roebuck and Julie H. Roebuck*
v. The Old Y Condominium Association, et als.
Staunton Circuit Court Case No. CL16-57

Gentlemen:

Defendant filed a Motion for Summary Judgment and Plaintiffs have filed a Cross-Motion for Partial Summary Judgment in the above-captioned case. Oral arguments on the motion were heard by this court on July 13, 2017.

A trial court may grant summary judgment when "no material fact is genuinely in dispute on a controlling issue and the moving party is entitled to such judgment as a matter of law." *Mount Aldie, LLC v. Land Trust of Va.*,796 S.E.2d 549, 553 (Va. 2017). To determine whether material facts are genuinely in dispute, the court looks to "the parties' pleadings, requests for

admission, and interrogatories," and "accept as true those inferences from the facts that are most favorable to the nonmoving party." *Hansen v. Stanley Martin Co.*, 266 Va. 345, 351 (2003).

Plaintiffs' claims of Breach of Contract (Count I) and Declaratory Judgment (Count V) are based upon the contention that the Governing Documents of the agreement required Old Y Condominium Association to purchase and maintain a master flood insurance policy that covered all of the condominium units.

At argument, both parties stipulated that there are no material facts in dispute, and Summary Judgment should be granted based upon the court's interpretation of § 6.4(b) of the Old Y Condominium Association Governing Documents. Defendant cited *Babcock & Wilcox Co. v. Areva NP, Inc.* for the assertion: "It is the court's duty to declare what the instrument itself says it says." *Babcock & Wilcox Co. v. Areva NP, Inc.*, 292 Va. 165, 189 (2016) (quoting *Bentley Funding Grp. v. SK&R Grp.*, 269 Va. 315, 330 (2005)). Because of the parties' stipulations, and the issue being confined to interpretation of one provision in the Governing Documents, the court agrees that there are no material facts in dispute and that the only issue in the case is a purely legal one.

Plaintiffs and Defendant both cite the same language from the Governing Documents in support of their argument: "§ 6.4(b) of the Bylaws provides that *the Association* shall obtain and maintain a master flood insurance policy in accordance with then-applicable regulations "if required by any governmental or quasi-governmental agency."" Plaintiffs' Brief in Opposition to Defendant's Motion For Summary Judgment, at 2 (emphasis added).

Defendant argues that the quoted language of the by-laws should be interpreted as stating that a master flood insurance policy should be obtained and maintained by the Association if any governmental or quasi-governmental agency requires it *of the Association itself.*

Plaintiffs argue the language quoted above should be interpreted as stating that if *any* governmental or quasi-governmental agency requires a master flood insurance policy, the Association is bound to purchase and maintain such a policy. Plaintiff cites the National Flood Insurance Program (NFIP) for the assertion: "The General crux of the NFIP is that regulated lending institutions and federal lenders simply cannot lend on real property in a flood zone without adequate flood insurance." Plaintiff's Brief in Opposition at 8 (citing 42 U.S.C. § 4012a). Plaintiffs also argue: "Defendant seeks to hang its hat on the hollow distinction that the NFIP regulates lenders (which are critical to mortgages) not condominium associations. The distinction is mere form over substance." Plaintiff's Brief in Opposition at 9.

This court disagrees, and finds the distinction is not "hollow" at all. On the contrary, it is the only issue at stake in this case. It is understood that there are regulations that place requirements upon *lenders*, but Plaintiffs admit: "Defendant is correct that there is no federal law commanding the Association to maintain a master flood insurance policy". Plaintiff's Brief in Opposition at 6.

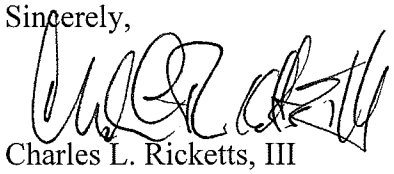
"Courts have neither the duty nor the inclination to creatively construe an unambiguous contractual phrase "so as to conform it to the court's notion of the contract the parties should have made under the circumstances."" *Babcock & Wilcox Co. v. Areva NP, Inc.*, 292 Va. 165, 189 (2016) (quoting *Bentley Funding Grp. v. SK&R Grp.*, 269 Va. 315, 330 (2005)). "Courts are aware of the temptation" of courts to "indulge in artificial interpretations or abnormal implications in order to save a party from a bad bargain." *Babcock & Wilcox Co. v. Areva NP, Inc.*, 292 Va. 165, 189 (quoting Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts*, note 6, § 32:11, at 771-72 (4th ed. 2012). "Courts resist this temptation with the observation that their interpretative task is far simpler: "It is a court's duty to declare what the instrument itself says it says. What the parties claim they might have said, or should have said, cannot alter what they actually said."" *Babcock & Wilcox Co. v. Areva NP, Inc.*, 292 Va. at 189 (2016) (quoting *Bentley Funding Grp.* 269 Va. at 330).

In the court's opinion, § 6.4(b) of the Bylaws provides that a governmental or quasi-governmental agency must require the *Association* to obtain and maintain a master flood insurance policy in order to trigger the provision. The language "if required by any governmental agency" in subsection (b) cannot be separated from the phrase it modifies at the beginning of § 6.4: "The Board of Directors shall obtain and maintain:" They must be read together as one sentence: "The Board of Directors shall obtain and maintain: if required by any governmental or quasi-governmental agency, flood insurance in accordance with the then applicable regulations of such agency." Read properly, the provision is unambiguous and clearly places the need for a governmental requirement upon the Board of Directors, the governing body of the Old Y Condominium Association. All other governmental requirements placed upon lenders do not fall under the scope of § 6.4(b), the provision at issue.

Plaintiffs argue that §10.2 of the By-laws should be read in conjunction with § 6.4. However, §10.2 deals only with the amendment of the By-laws and is not relevant to determining the meaning of and obligations established by § 6.4. The section simply recites that there are certain rights and obligations established in the By-laws and that no amendment shall be enacted which would affect mortgage holders who made loans relying on those rights and obligations.

For the reasons stated above, Plaintiffs' Cross Motion is denied and Defendant's Motion for Summary Judgment as to Counts I and V is hereby GRANTED.

Sincerely,



Charles L. Ricketts, III

CLR, III/epl