

NO. 26826

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ASSOCIATION OF APARTMENT OWNERS OF AHUIMANU GARDENS,
by its Board of Directors, Plaintiff-Appellee,

vs.

ELIZABETH N. FLINT, Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 04-1-0100)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Defendant-Appellant Elizabeth N. Flint appeals from the Circuit Court of the First Circuit's August 19, 2004 final judgment.¹ Flint contends that the circuit court erred in granting summary judgment to Plaintiff-Appellee, Association of Apartment Owners of Ahuimanu Gardens (the Association), by its Board of Directors (the Board). Flint asserts that her right to exclusive ownership and possession of her condominium unit under Hawai'i Revised Statutes (HRS) § 514A-5 (1993) (repealed 2004)² trumps the Board's power to treat termite infestation in the common elements by tent fumigation of the building in which her unit is located. The sole issue on appeal is whether the circuit court was correct in finding no genuine issues of material fact and that the Board was entitled to judgment as a matter of law

¹ The Honorable Bert I. Ayabe presided over this matter.

² HRS § 514A-5 provides, in relevant part: "The apartment owner is entitled to the exclusive ownership and possession of the apartment."

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because the Board has the authority to treat termite infestation in the common elements of the condominium building by tent fumigation. See Coon v. City and County of Honolulu, 98 Hawai'i 233, 244-45, 47 P.3d 348, 359-60 (2002) ("We review the circuit court's grant or denial of summary judgment de novo").

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issue raised, we hold:

(1) The Bylaws are determinative of whether the Board has the authority to contract for tent fumigation services as a method of termite treatment of the common elements in this condominium building. See HRS § 514A-81 (1993) (repealed 2004) ("The operation of the property shall be governed by the bylaws."); HRS § 514A-3 (1993) (repealed 2004) ("'Operation of the property' means and includes . . . the maintenance [and] repair . . . [of] the common elements.");

(2) The Board's power and duty to maintain the common elements, in the interest of the Association, outweighs Flint's right to exclusive ownership and possession, and Flint must therefore comply with the decision of the Board. See The Bylaws, Article IV, § 2 ("the Board of Directors shall have the following powers and duties: (a) To manage, operate, care and maintain the property of this condominium property regime, the common elements and limited common elements."); Ass'n of Owners of Kukui Plaza

v. City and County of Honolulu, 7 Haw. App. 60, 74, 742 P.2d 974, 983 (1987) ("The uniqueness of the condominium concept of ownership has caused the law to recognize that each unit owner must give up some degree of freedom of choice he might otherwise enjoy in separate, privately owned property.") (Quotation marks omitted); River Terrace Condo. Ass'n v. Lewis, 514 N.E.2d 732, 735-36 (Ohio Ct. App. 1986) ("[W]hile the owner of a unit has exclusive ownership of and responsibility for his unit, . . . the owner's freedom of action is of necessity limited by the fact that the unit is one of many units"); The Declaration, Part I. ("[E]ach owner, tenant, or occupant of a family unit shall comply with the provisions of this Declaration, the Bylaws, the decisions and resolutions of the Association or its representative");

(3) Despite its lack of express authority in the Bylaws, the Board's broad authority to do all things necessary for the operation of the Association includes the authority to require Flint to temporarily vacate her unit so that termite infestation in the common elements may be treated by tent fumigation of the building in which she owns and occupies a unit. The Bylaws state:

The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the owners. Without limiting the generality of the

foregoing, the Board of Directors shall have the following powers and duties

The Bylaws, Article IV, § 2 (emphases added). Thus, the absence of any provision explicitly authorizing the Board to require a condominium unit owner to temporarily vacate her unit is not fatal to the Board's right to do so. See Beachwood Villas Condo. v. Poor, 448 So. 2d 1143, 1145 (Fla. App. 1984) ("It would be impossible to list all restrictive uses in a declaration of condominium."); O'Buck v. Cottonwood Village Condo. Ass'n, Inc., 750 P.2d 813, 816 (Alaska 1988) (quoting same);

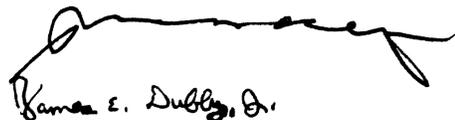
(4) The Board's decision to treat termite infestation in the common elements by tent fumigation is reasonable and made in good faith, and thus, should be upheld. See McNamee v. Bishop Trust Co., Ltd., 62 Haw. 397, 407, 616 P.2d 205, 211 (1980) (holding that the decision of a managing committee of a community association will be upheld as long as the decision is "reasonable and in good faith[.]"). Therefore,

IT IS HEREBY ORDERED that the circuit court's August 19, 2004 final judgment granting summary judgment against Flint is affirmed.

DATED: Honolulu, Hawai'i, December 2, 2005.

On the briefs:

John A. Morris and
Mi Yung C. Park
(of Ashford & Wriston)
for plaintiff-appellee
Association of Apartment
Owners of Ahuimanu Gardens



Corey Y.S. Park and
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Elizabeth N. Flint