IN THE COURT OF APPEALS OF IOWA

465

WINDSOR PARK HOMEOWNERS ASSOCIATION, Plaintiff-Appellee, vs. **COOPER HOMES, INC., JAMES H. COOPER and ALLENE A. COOPER,** Defendants-Appellants.	)))))	Filed August 26, 1982 2-232 2-67389

Appeal from Polk District Court - Ray Hanrahan, Judge.

Defendants appeal from the trial court's determination, after reversal and remand by the Court of Appeals, of the amount of assessments and penalties due from them for lots they owned in a housing development administered by plaintiff. On appeal, defendants assert that the trial court misconstrued the decision of the Court of Appeals on remand and, therefore, erred in automatically imposing a penalty of $3.00 per day per lot for nonpayment of contested assessments without considering the reasonableness of the penalty. REVERSED AND REMANDED.

William J. Lillis and Eugene E. Olson of Connolly, O'Malley, Lillis & Hansen, Des Moines, for defendants-appellants.

Eugene Davis and Donald Gonnerman of Davis, Grace, Horvath, Gonnerman & Rouwenhorst, Des Moines, for plaintiff-appellee.

Considered en banc.

PER CURIAM

Defendants appeal from the trial court's determination, after reversal and remand by the Court of Appeals, of the amount of assessments and penalties due from them for lots they owned in a housing development administered by plaintiff. On appeal, defendants assert that the trial court misconstrued the decision of the Court of Appeals on remand and, therefore, erred in automatically imposing a penalty of $3.00 per day per lot for nonpayment of contested assessments without considering the reasonableness of the penalty. We reverse and remand.

Because this action was originally tried in equity, our review is de novo. Iowa R. App. P. 4; Wyckoff v. A & J. Home Benevolent Ass'n., 254 Iowa 653, 654, 119 N.W.2d 126, 127 (1963).

I.

Plaintiff, Windsor Park Homeowners Association, brought an action against defendants, Cooper Homes, Inc., James Cooper and Allene Cooper, for monies allegedly owed them for past-due assessments under a convenant governing the administration and maintenance of a housing complex in Windsor Heights, Iowa. Defendants contended that the assessments were unlawful and contrary to the homeowners' covenants.

Among the issues litigated in the initial trial was whether a penalty should be imposed on defendants for nonpayment of assessments during the time the assessments were being contested and litigated. The trial court ruled that no such penalty could be considered. On appeal of this issue, the Court of Appeals reversed and remanded to the trial court for a determination of the penalties owing the Homeowners' Association. In the relevant portion of that decision we said:

> Finally, plaintiff claims that the trial court erred in not imposing on defendants a penalty of $3 per day per lot for failure to pay assessments past due.

> The covenants clearly provide for such penalties; however, the trial court concluded that no such penalties would be allowed prior to the date of its decree. Again, we agree with plaintiff. We have already concluded that the increase in assessments from $38 to $50 per month was valid. Although defendants paid the assessments for the period up to and including March, 1979, they gave no reason for refusing to pay any assessments thereafter. We see no reason why plaintiff should not recover penalties for nonpayment accruing from April 1, 1979, the time defendants ceased paying the assessments.

On remand, the court ruled that defendants owed plaintiff a penalty of $3.00 per day per living unit for failure to pay assessments. Defendants filed a resistance to plaintiff's motion for judgment which placed in issue the meaning of the Court of Appeals' ruling as to the amount of penalties owed. The trial court ruled that the decision of the Court of Appeals meant that a $3.00 per day per unit was to be assessed against defendants on remand and that the trial court had no discretion to determine the reasonableness of this amount. Judgment was entered in accordance with this ruling and defendants instituted this appeal.

II.

The only issue presented is whether the trial court correctly interpreted our decision in the previous appeal. The plaintiff asserts that the trial court was correct in ruling that the Court of Appeals' opinion made clear the amount of the penalty, and that the remand was simply to make the arithmetical calculation and enter judgment. This was not our intention. We reversed the court's ruling that no penalties would be allowed prior to the decision that the assessments were due and owing. We did not, however, mean to intimate the amount of the penalty to be awarded. We believe the trial court should have considered the reasonableness of the amount of the penalty sought in plaintiff's petition.

A member of an association may be penalized for breach of a covenant, but the amount of the penalty must fall within the fair limits of liquidated damages.

See, Continental Turpentine & Rosin Co. v. Gulf Naval Stores Co., 244 Miss. 465, 142 So.2d 200 (1962) (fines levied under association article for breach of agreement held unenforceable when such fines bore no relation to actual damages). Such damages must be found reasonable in order to be enforceable. Engel v. Vernon, 215 N.W.2d 506, 516 (Iowa 1974). We reverse and remand to the trial court for a determination, in accordance with this opinion, of the amount of penalties due.

REVERSED AND REMANDED.