MONTGOMERY COUNTY, STATE OF MARYLAND

KIA JACOBSON		:	COMMISSION ON COMMON OWNERSHIP COMMUNITIES
Complainant		:	Case No. 32-08
vs.		:	Panel Hearing Date: December 12, 2008
		:	Decision Issued: February 19, 2009
SLIGO STATION CONDOMINIUM		:	
Respondent		:	
Panel Members:	Mitchell I. Alkon	:	
	Vicki Vergagni	:	
	Staci Gelfound	:	

MEMORANDUM DECISION AND ORDER

The above captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing pursuant to Chapter 10B of the Montgomery County Code, 1994, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record, and finds, determines and orders as follows:

I. BACKGROUND

This is a dispute filed by Kia Jacobson ("Complainant") against her condominium association, Sligo Station Condominium Association ("Respondent"). Complainant alleged that the Respondent acted without authority when it caused its contractor to perform repair work to the Complainant's balcony, which is her limited common element. Respondent seeks to charge Complainant for the cost of this work, accrued interest and certain administrative costs incurred in connection with this pending matter.

II. FINDINGS OF FACT

1. Complainant Kia Jacobson is a unit owner in the condominium known as Sligo Station Condominium Association.

2. Respondent is a condominium association organized under the Maryland Condominium Act (Annotated Code of Maryland, Real Property Article, Title 11).

3. On August 11, 2004, a representative of Montgomery County's Department of Housing and Community Affairs inspected the Sligo Station Condominium and, citing violations of Montgomery County Code, found, *inter alia*, that the balconies needed to be repaired "to be free of loose concrete, exposed rebar and rusted support lentils." Further, the inspector required that a report from a certified structural engineer be forwarded "stating that the balconies are structurally sound."

4. The Respondent retained Thomas Downey, Ltd, ("Downey") an engineering firm, which issued two letters dated November 8, 2004. Downey opined that the balconies were structurally sound and recommended that maintenance be performed on the balconies. Each balcony unit owner was assessed $100 for a pro rata portion of Downey's fee.

5. Pursuant to Article XIII, Section 4, of the Respondent's Bylaws, the owner of any condominium unit shall, at his or her own expense, maintain the interior of his or her condominium unit and any and all appurtenances, including without limitation, any balcony or the like appurtenant to such condominium unit and

designated as a limited common element reserved for exclusive use by the unit owner.

6. Article XIII, Section 1(g) provides that the Council of Unit Owners, through its Board of Directors ("Board"), shall pay out of the common expense fund the cost of maintenance or repair of any condominium unit in the event such maintenance or repair is reasonably necessary, in the discretion of the Board to protect the common elements or preserve the appearance or value of the condominium project. Under this section, such an action requires a resolution by the Board and notice to the unit owner.

7. The Association, through its Board, issued an undated letter to Sligo Station Balcony Owners advising of the county citation, that the balconies were limited common elements and that all expenses connected to their repair and maintenance were the responsibility of the particular balcony owner. The letter advised balcony owners that the Board was willing to handle the balcony repair and if an owner was interested, he or she should contact the management company. Conversely, balcony owners were asked to contact the management company if the owner preferred to handle the balcony repairs by him/her self.

8. Complainant paid her $100 assessment (See Paragraph 4 above) and, by a letter dated February 7, 2005, Complainant advised Respondent that she would not be participating in the group cost of repairs "unless legally obligated to do so."

9. By an e-mail from Complainant to Karen Mendez, a member of Respondent's Board, dated June 6, 2006, Complainant reiterated that she did not want to participate in the balcony repairs unless legally forced to do so. Complainant

advised that she had stated her position in her "letter of last year", that she had not received a response to that letter, and that she felt "pretty strongly about this."

10. By a responsive e-mail of the same date, Ms. Mendez acknowledged Complainant's June 6, 2006 e-mail and assured Complainant that Complainant would "make the right decision." On or about June 22, 2006, Ms. Mendez advised the Board and Williams Community Management, Inc. ("Management") that "Kia does not want any work done on her balcony."

11. A memorandum dated July 25, 2006 from Management advised of a preconstruction meeting for balcony repairs on July 31, 2006, and a subsequent memorandum dated July 31, 2006 from Management advised that the balcony repairs were to begin August 14, 2006. Complainant testified she was out of the area on the dates of these notices.

12. By an e-mail dated August 4, 2006, Ms. Mendez asked Complainant to provide written notice to Management and the Board regarding Complainant's plan not to participate in the group balcony maintenance project. Ms. Mendez further advised that anyone not participating in the group effort would be required to get a structural engineer's statement that the balcony is fine and/or be required to get the work done on his/her own. Lastly, Ms. Mendez advised that a lot of negotiations had taken place to keep the County at bay while the project was being set up, and that the Board looked forward to satisfying the County. Ms. Mendez did not put a deadline in her e-mail as to when Complainant should provide her notice, or the date by which the engineer's statement or work had to be done.

13. By a letter dated August 14, 2006 to Management, the Complainant advised that she would not be participating in the group balcony repairs and that she did not give permission for any work to be done to her balcony. Management asserted receipt of this letter on August 22, 2006.

14. On or about August 14, 2006, repairs to the balconies, including Complainant's, were commenced with the work proceeding for approximately a week prior to receipt of Complainant's letter dated August 14, 2006. Complainant testified that she was out of town when the work commenced and while it was proceeding.

15. Balcony owners were advised to remove items from their balconies to prepare for the work. It was undisputed that Complainant did not remove any items from her balcony, although a Board member did so without authorization from Complainant.

16. The Respondent, through Management, issued an invoice to Complainant dated November 20, 2006 in the amount of $1,652.50 for Complainant's balcony repairs. Complainant refused to pay this bill and by a letter to Management, dated December 11, 2006, (i) requested that the Respondent issue a full explanation as to why the Complainant's instructions were ignored and (ii) complained about the quality of the work.

17. Further demands for payment were made by Respondent with Complainant reiterating her objections.

18. Complainant filed her Complaint with the Montgomery County Office of Consumer Protection for adjudications by the Commission on Common Ownership Communities ("CCOC") on June 9, 2008.

III. ANALYSIS AND CONCLUSIONS OF LAW

The Bylaws, as described above in paragraph 5 of this Decision and Order, clearly reserve unto unit owners the responsibility for balcony maintenance. The Respondent pointed to Article XIII(g), which allows Respondent to pay from the common fund and assess against unit owners maintenance or repair costs reasonably necessary in the discretion of the Board to protect common elements. However, as stated above, such an action requires a resolution by the Board and notice to the unit owner. No such resolution was introduced into evidence and, in fact, one of Respondent's witnesses, on cross examination, acknowledged that a resolution had not passed and that Complainant had the option to be responsible for her own repairs. One of Respondent's witnesses testified that if the Complainant did not want to proceed with the group balcony repairs, then the Complainant should have knocked on her door. The Complainant had no obligation to do this. The Panel recognizes the temptation, especially in a relatively small association, to attend to Condominium business on an informal level. Acknowledging what the Panel believes are the best of intentions of Respondent, this case illustrates the pitfalls for Management, the Board, and unit owners of operating on such an informal basis. The Panel strongly suggests that the Board revise its minutes-taking procedure and, henceforth, list Board actions in a proper resolution format.

In light of the testimony and evidence, the Panel is satisfied that the Complainant clearly indicated to Respondent her intention to be responsible for her own balcony repairs and thus the Respondent had no authority to effectuate same.

Notwithstanding the foregoing, the Panel is troubled by the fact that there was no testimony that the balcony work done was not required. Further, in the approximately 21

month period between the dissemination of Downey's report and the commencement of the work, Complainant did not attempt to get the work done or even tender a proposal to have the work done. The work that has been done, albeit without authorization, cannot be undone, and there is no testimony that the work was not required to be done. While a formal resolution in accordance with the Bylaws satisfying Article XIII(g) was not passed, the testimony from Respondent's witnesses leaves little doubt that such a resolution, if properly noticed, would have passed. We recognize that to the extent a balcony owner does not pay his or share, all of the other balcony owners, or the association as a whole, may be obligated to cover this cost.

Under Maryland law, a claim of unjust enrichment is established when: (1) a party confers a benefit upon another; (2) the benefiting party knows or appreciates the benefit; and (3) the benefiting party's acceptance or retention of the benefit under the circumstances is such that it would be inequitable to allow him or her to retain the benefit without the paying of value in return. *Benson v. State*, 389 Md. 615, 651-52 (2005), quoted in *Jackson v. 2019 Brandywine, LLC*, 180 Md. App. 535 (2007). "The doctrine of unjust enrichment is applicable where a party, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money, and give rise to the policy of restitution as a remedy." *Hill v. Cross Country Settlements, LLC*, 172 Md. App. 350 (2007) (citations omitted); *Jackson, supra.*

The testimony indicates that a benefit was conferred upon Complainant, and that the Complainant knew or should have reasonably known of the benefit. To allow the Complainant to accept the benefit of the work, without paying any cost for it, would be inequitable. Consequently, the test for unjust enrichment is satisfied in this matter.

Complainant asserted that certain top floor balcony owners were billed in the $7,500-plus range, but settled their obligations by paying $4,000. Consequently, the Respondent has accepted payments of approximately fifty percent (50%) of the charged amount in satisfaction of the balance due for balcony repair work. As such, it seems reasonable and equitable to the Panel that the Complainant pay to the Respondent the sum of $831.25, which is one half of the amount sought by Respondent, without any cost or interest, and within sixty (60) days from the date of this Order.

There was no testimony to contradict or support Complainant's claim that work was substandard. Consequently, Complainant will have sixty (60) days from the date of this Order to present Respondent with an opinion from a qualified vendor or consultant opining that the work performed was substandard and specifying the required curative work. Subject to the foregoing, and further subject to Complainant's $831.25 payment, Respondent shall, at its cost, attend to such follow-up work as reasonably required. The Panel notes that Respondent's contractor made promises to correct workmanship errors, although we recognize that considerable time has passed since the work was done.

IV. ORDER

Based upon the foregoing Findings of Fact and the Analysis and Conclusions of Law it is this 19th day of February, 2009:

ORDERED as follows:

1. That the Complainant's request for relief is granted, in part; and further that:

2. Within sixty (60) days from the effective date of this Order, Complainant shall pay to Respondent the sum of $831.25; and further that:

3. Within sixty (60) days from the effective date of this Order, Complainant may present Respondent with an opinion from a qualified vendor or consultant opining that the work performed was substandard and specifying the required curative work, and subject to the foregoing, and further subject to Complainant's $831.25 payment, Respondent shall, at its cost, attend to such follow-up work as reasonably required; and further that:

4. Respondent shall refund Complainant's $50.00 filing fee and, except for same, each party shall bear its own costs; and further that:

5. Respondent shall, at its own cost, distribute this Decision and Order to all unit owners of record.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

Panel members Vicki Vergagni and Staci Gelfound concur in this decision.

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Mitchell I. Alkon, Panel Chair