

STATE OF MISSOURI )  
 ) SS  
 CITY OF ST. LOUIS )

**FILED**  
 JAN 21 2015

22<sup>ND</sup> JUDICIAL CIRCUIT  
 CIRCUIT CLERK'S OFFICE  
 BY JR DEPUTY

MISSOURI CIRCUIT COURT  
 TWENTY-SECOND JUDICIAL CIRCUIT  
 (City of St. Louis)

ENTERED  
 JAN 21 2015

\_\_\_\_\_ and \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 \_\_\_\_\_ INCORPORATED, and )  
 \_\_\_\_\_ CONDOMINIUM )  
 ASSOCIATION, )  
 )  
 Defendants. )

Case No.1322-AC03151  
 Division No. 26

ORDER AND JUDGMENT

The Court has before it Defendant \_\_\_\_\_ Incorporated's Motion for Summary Judgment. The Court has reviewed the submissions of the parties, the relevant authorities, and the arguments of counsel, and now rules as follows.

Plaintiffs brought this breach of contract case alleging that Defendant \_\_\_\_\_ Incorporated (John Beal) breached an agreement to perform work on property Plaintiffs claim they own. Plaintiffs allege \_\_\_\_\_ failed to perform work specified in the agreement and left the work area in disarray. Plaintiffs also bring claims against Defendant \_\_\_\_\_ Condominium

Association alleging that "by failing to respond to Plaintiffs' request to join the suit and failing to protect Plaintiffs' interests in the common elements, RCA has breached its fiduciary duty to protect the interests of the property owner's interest Plaintiffs' have been damaged".

Defendant ██████████ argues that it is entitled to summary judgment because Plaintiffs' lack standing to bring their claims against ██████████, which can only be brought by Defendant ██████████ Condominium Association.

The following pertinent facts are uncontroverted, either by Plaintiffs' admission or by Plaintiffs' failure to adequately support their denial under Rule 74.04(c) (2) with specific references to exhibits or affidavits that show a genuine issue for trial:

1. Plaintiffs ██████████ and ██████████ collectively own condominium Unit 1 at 5323 Pershing.
2. Defendant ██████████ Condominium Association is a corporation.
3. The tuck pointing work at issue was not part of Plaintiffs' Unit 1.
4. ██████████ Condominium Association is solely responsible for repair and maintenance of the common areas of the

condominium under Articles III, VII and XVII of the Declarations of Ownership.

5. The Board of Managers of [REDACTED] Condominium Association solely has the right to enforce, interpret and implement the Declarations of Ownership.

6. [REDACTED] Condominium Association was authorized to enter into the underlying contract with John Beal by a majority vote of its Board of Managers.

7. Plaintiffs pay fees to [REDACTED] Condominium Association to cover expenses for the common areas.

8. Plaintiffs did not write a check or money order or wire money to [REDACTED].

9. Plaintiffs did not sign any contract with [REDACTED].

10. The contract at issue was entered into between [REDACTED] and [REDACTED] Condominium Association.

11. Plaintiffs are not a party to the contract between Raymon Condominium Association and [REDACTED].

12. [REDACTED] only performed work on common areas of the condominium and did not perform any work on condominium Unit 1 at 5323 Pershing.

When ruling on a motion for summary judgment, the Court must determine whether the moving party has the "undisputed

right to judgment as a matter of law," on the basis of the facts about which there is no genuine dispute. ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corporation, 854 S.W.2d 371, 380 (Mo. banc 1993). The party moving for summary judgment bears the burden of establishing a right to judgment as a matter of law. Id. at 378.

Where the movant is a defending party, the movant may establish a right to judgment by showing facts that negate any one of claimant's elements' facts, that the non-movant after an adequate period of discovery has not been able to produce or will not be able to produce evidence sufficient to allow the trier of fact to find the existence of any one of claimant's elements, or that there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly pleaded affirmative defense. Id.

Once the moving party has met the burden imposed by Rule 74.04(c) by establishing the right to judgment, the non-movant's only recourse is to show by affidavit, depositions, answers to interrogatories, or admissions on file, that one or more of the material facts shown by movant is in fact genuinely disputed. Id.

"Standing is the requisite interest that a person must have in a controversy before the court." Cook v. Cook, 143 S.W.3d 709, 711 (Mo. App. W.D. 2004) (citing State ex rel. Mink v. Wallace, 84 S.W.3d 127, 129 (Mo. App. E.D. 2002)). "Standing requires that a party seeking relief have a legally cognizable interest in the subject matter and that he has a threatened or actual injury." Id. "Absent standing, the court lacks the power to grant the relief requested." Id. (citing Aufenkamp v. Grabill, 112 S.W.3d 455, 458 (Mo. App. W.D. 2003)).

"A shareholder is without standing to sue in his individual capacity for damages to the corporation." Cook, 143 S.W.3d at 711; See also K-O Enters. v. O'Brien, 166 S.W.3d 122, 129 (Mo. App. E.D. 2005); 21 West v. Meadowgreen Trails, 913 S.W.2d 858, 871 (Mo. App. E.D. 1995).

"Condominium bylaws constitute the rules and regulations that govern the internal administration of the condominium complex." Randol v. Atkinson, 965 S.W.2d 338, 341 (Mo. App. W.D. 1998) (citing Wescott v. Burtonwood Manor Condominium Ass'n Bd. of Managers, 743 S.W.2d 555, 558 (Mo. App. E.D. 1987)). "The bylaws must be strictly construed." Id.; See also Reed v. Sunset Cove Condo. Owners Ass'n, 199 S.W.3d 875, 879-880 (Mo. App. S.D. 2006).

In this case, Plaintiffs' lack standing to bring their claims against Defendant [REDACTED]. Plaintiffs have shown no legally cognizable interest herein. Plaintiffs claim no damage to their property, Unit 1. Plaintiffs are not a party to the contract at issue. Plaintiffs do not have the authority to unilaterally bring claims on behalf of the [REDACTED] Condominium Association. Plaintiffs have no damages.

Defendant [REDACTED] has shown that it is entitled to summary judgment on the basis of undisputed material facts. Plaintiffs are unable to show that any disputed facts preclude entry of summary judgment. Accordingly, this Court will grant John Beal's motion for summary judgment.

Defendant [REDACTED] Condominium Association has not filed a motion to dismiss or motion for summary judgment at this time. This case remains pending against [REDACTED] Condominium Association.

THEREFORE, it is Ordered, Adjudged and Decreed that Defendant [REDACTED] Incorporated's Motion for Summary Judgment is hereby GRANTED.

SO ORDERED:

  
\_\_\_\_\_