

Eden Harbour Condominium Association v. Eden Harbour, LLC, 120710 CTSUP,  
MMXCV094010447S

**Eden Harbour Condominium Association**

**v.**

**Eden Harbour, LLC**

**No. MMXCV094010447S**

**No.113762**

**Superior Court of Connecticut**

**December 7, 2010**

Caption Date: December 7, 2010.

Judicial District of Middlesex at Middletown

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Holzberg, Robert L., J.

**MEMORANDUM OF DECISION RE DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT(#203)**

ROBERT HOLZBERG, JUDGE.

**FACTS**

The defendants Eden Harbour, LLC (the LLC) and MDC Corp. (MDC) move for summary judgment on count one of the plaintiffs' corrected amended verified complaint. In that count, the plaintiffs allege the following relevant facts.<sup>[1]</sup> The LLC promised to remedy various workmanship and design defects that caused water leaks in several of the condominium units. The LLC determined that the cantilevered decks, which are limited common elements that the plaintiffs own and have the exclusive right to use, caused the leaks and hired MDC to tear down the cantilevered decks and replace them with posted decks. The plaintiffs did not consent to these repairs and seek an injunction to prevent the defendants from demolishing, repairing or reconstructing the balconies.

On November 24, 2009, the court, Burgdorff, J., commenced a hearing on the limited issue of determining which of the parties is authorized to repair the decks. On April 1, 2010, Judge Burgdorff ruled that "the LLC has the right to repair the water intrusion problem relating to the second floor decks at issue. Nevertheless... the issue of the exact nature and extent of the repair work to be done will be determined separately after a hearing on that issue is held." *Eden Harbour Condominium Assn., Inc. v. Eden Harbour, LLC*, Superior Court, judicial district of Middlesex, Docket No. CV 09 4010447 (April 1, 2010, Burgdorff, J.) (49 Conn. L. Rptr. 615, 620). To date, no hearing has been held to determine the nature and extent of the repairs.

On June 22, 2010, the LLC and MDC filed the motion for summary judgment presently before the court, supported by a memorandum of law and documentary evidence. On August 26, 2010, the plaintiffs filed their objection and the court heard the matter at the short calendar on August 30, 2010.

**DISCUSSION**

"Practice Book §[17-49] requires that judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A material fact is a fact that

will make a difference in the result of the case... The facts at issue are those alleged in the pleadings... The party seeking summary judgment has the burden of showing the absence of any genuine issue as to all material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law... The party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact... In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party... The test is whether a party would be entitled to a directed verdict on the same facts... A motion for summary judgment is properly granted if it raises at least one legally sufficient defense that would bar the plaintiff's claim and involves no triable issue of fact." (Citation omitted; internal quotation marks omitted.) *Washington v. Blackmore*, 119 Conn.App. 218, 220-21, 986 A.2d 356, cert. denied, 296 Conn. 903, 991 A.2d 1104 (2010).<sup>[2]</sup>

The defendants argue that pursuant to Judge Burgdorff's ruling they have the right to repair the decks, and furthermore that there is no dispute as to the nature of the repairs. Specifically, they contend that all of the experts agree that the cantilevered decks must be removed, that the posted deck design is the only permanent repair option and that the plaintiffs have not offered any alternative to the posted deck design. Therefore, the defendants argue, as their authority to repair the decks has already been adjudicated and because there is no genuine issue of material fact relating the nature and extent of the repairs, the court should grant the defendants' motion for summary judgment as to count one of the complaint.

In response, the plaintiffs counter that a genuine issue of material fact exists as to whether the plan for posted decks is the only repair option. Specifically, the plaintiffs argue that while the experts agree that the existing cantilever beams must be removed, they did not agree that installing posted decks is the only viable repair option. Furthermore, the plaintiffs point out that Judge Burgdorff's ruling was limited to the issue of which party had the authority to make repairs, and that she expressly ruled that the nature and extent of the repairs is to be determined at a separate hearing. The plaintiffs assert that they have not had an opportunity to present an alternative building plan and that they plan to do so at the hearing. Finally, the plaintiffs question whether replacing the decks is a "repair" within the scope of Judge Burgdorff's ruling because it "deviates too far from the existing design to be a simple repair."

"The law of the case doctrine provides that '[w]here a matter has previously been ruled upon interlocutorily, the court in a subsequent proceeding in the case may treat that decision as the law of the case, if it is of the opinion that the issue was correctly decided, in the absence of some new or overriding circumstance.' " *Signore v. Signore*, 110 Conn.App. 126, 133, 954 A.2d 245 (2008). Judge Burgdorff has ruled that the issue of the nature and extent of the repairs is to be determined at a separate hearing, and the summary judgment motion presently before the court addresses issues that will be determined at that hearing. Furthermore, the defendants have not raised any new or overriding circumstances that would cause the court to reconsider Judge Burgdorff's ruling. Accordingly, the court denies the defendants' motion for summary judgment on count one of the operative complaint.

#### CONCLUSION

For the foregoing reasons, the defendants' motion for summary judgment is denied.

SO ORDERED.

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Notes:

[1] See *Eden Harbour Condominium Assn., Inc. v. Eden Harbour, LLC*, Superior Court judicial district of Middlesex, Docket No. CV 09 4010447 (April 1, 2010, Burgdorff, J.) (49 Conn. L. Rptr. 615) for a detailed procedural and factual history of this case.

[2] Practice Book §17-49 provides: "The judgment sought shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

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