

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: May 21, 2020

527604

HIDDEN RIDGE AT KUTSHER'S
COUNTRY CLUB HOME OWNERS
ASSOCIATION, INC.,
Respondent,

MEMORANDUM AND ORDER

v

HARVEY LEVINE et al.,
Appellants.

Calendar Date: March 25, 2020

Before: Lynch, J.P., Mulvey, Devine, Aarons and Colangelo, JJ.

The Yitzhak Law Group, Great Neck (Lavinia A. Acaru of
counsel), for appellants.

Shawn Law Offices, Monticello (Thomas H. Cragan of
counsel), for respondent.

Aarons, J.

Appeal from an order of the Supreme Court (Schick, J.),
entered September 12, 2018 in Sullivan County, which, among
other things, granted plaintiff partial summary judgment.

Plaintiff, a homeowners' association, commenced this
action against defendants seeking, as relevant here, the
recovery of unpaid assessments that were due for a unit owned by
them. Following joinder of issue, defendants moved for summary
judgment dismissing the complaint. Plaintiff opposed the motion
and also requested that Supreme Court search the record and

grant it summary judgment on its cause of action for the unpaid assessments. In a September 2018 order, the court, among other things, granted partial summary judgment in favor of plaintiff. Defendants appeal. We affirm.

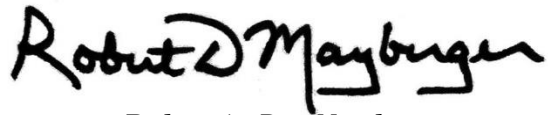
Contrary to defendants' assertion, plaintiff was entitled to summary judgment on its cause of action for unpaid assessments (see CPLR 3212 [b]). According to plaintiff's declaration of covenants, restrictions, easements, charges and liens, unit owners, such as defendants, were personally obligated to pay assessments and, if not paid by the due date, plaintiff could commence an action against the owners to recover any unpaid assessments. Furthermore, it is undisputed that defendants owed plaintiff money for the unpaid assessments. In view of the foregoing, partial summary judgment was correctly granted in plaintiff's favor (see Board of Directors of Squire Green at Pawling Homeowners Assn., Inc. v Bell, 89 AD3d 657, 658 [2011]; cf. Walker v Windsor Ct. Homeowners Assn., 35 AD3d 725, 726-727 [2006]).

Defendants argue that the proof failed to establish the specific amount owed to plaintiff. At oral argument, however, plaintiff's counsel stated on the record what the final amount due was, and defendants' counsel noted that such amount was undisputed. To the extent that defendants contend that plaintiff delayed in prosecuting this action, such claim is without merit (see generally Chase v Scavuzzo, 87 NY2d 228, 233 [1995]). Finally, defendants' reliance on Real Property Law § 339-z is unavailing.

Lynch, J.P., Mulvey, Devine and Colangelo, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court