[Cite as *Mangano v. 1033 Water St., L.L.C.*, 2018-Ohio-5349.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106861

WILLIAM MANGANO

PLAINTIFF-APPELLEE

vs.

1033 WATER STREET, L.L.C., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-870370

BEFORE: Boyle, P.J., Jones, J., and Keough, J.

RELEASED AND JOURNALIZED: December 27, 2018

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MARY J. BOYLE, P.J.:

{¶1} Defendants-appellants, 1033 Water Street, L.L.C. and Robert Rains (collectively "appellants"), appeal a trial court judgment granting a permanent injunction to plaintiff-appellee, William Mangano, ordering defendant-appellee, Water Street Condominium Owners' Association ("Association"), to conduct a special election of its board of directors within 30 days and barring appellants from "participating, voting in or otherwise influencing the special election" as well as any future election of the Association's board of directors. Appellants raise three assignments of error for our review:

> 1. The trial court abused its discretion in granting the plaintiff/appellee's motion for permanent injunction.
>
> 2. The trial court erred in finding that *Belvedere* [*Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.*, 67 Ohio St.3d 274, 617 N.E.2d 1075 (1993)] bars a condominium developer, who is also a unit owner, from participating in elections of the board of directors.
>
> 3. The trial court abused its discretion in granting the plaintiff/appellee's motion to substitute parties.

{¶2} Finding no merit to appellants' arguments, we affirm.

I. Procedural History and Factual Background

{¶3} Mangano is the trustee of the William J. Mangano Trust ("Mangano"), which owns one unit at the Water Street Condominiums. In October 2016, Mangano filed a complaint for declaratory judgment and injunctive relief against 1033 Water Street, Rains, John Carney, and the Association, claiming that the defendants impermissibly exercised developer control over the Water Street Condominiums.[1]

{¶4} 1033 Water Street is the developer of Water Street Condominiums, which consists of 99 condominium units located in downtown Cleveland. Rains is the manager of 1033 Water

[1]Mangano later voluntarily dismissed Carney from the case without prejudice.

Street and has been a member of the board of directors since its inception. Rains is also a manager of Landmark Management, which manages the Water Street Condominiums. According to the parties' joint stipulations, 1033 Water Street owns "not more than 42 of the 99 units."

{¶5} The Association is the condominium unit owners' association of the Water Street Condominiums as defined by R.C. 5311.01(DD). The Association and the Water Street Condominiums are subject to covenants, conditions, and restrictions contained in the Declaration of Condominium Ownership for the Water Street Condominiums ("Declaration") and the "Code of Regulations (Bylaws)" of the Association ("Bylaws"), which were originally recorded with the Cuyahoga County Recorder in June 2006. An amended version of the Declaration and Bylaws were filed in June 2007 and is part of the record on appeal. Rains acknowledged the Declaration on behalf of 1033 Water Street as the developer.

{¶6} The Bylaws specify that there shall be three or five members of the board of directors. According to the joint stipulations, the Association's board of directors has always been comprised of three members. Further, since 2008, one member of the board of directors has not been affiliated with defendants.

{¶7} All unit owners are members of the Association pursuant to R.C. 5311.08(C)(1). Mangano is a "unit owner" as defined by R.C. 5311.01(C)(C), and therefore, Mangano is a member of the Association.

{¶8} In February 2017, Mangano filed a motion for permanent injunction, seeking to permanently enjoin defendants from "participating, voting, or otherwise influencing any owners' election regarding the Board of Directors." He also sought an order mandating that the Association hold "an immediate election for the board of directors to replace Robert Rains and

any other board member appointed by defendants" and preventing the defendants from "participating in said election." The defendants opposed Mangano's motion. The parties filed joint stipulations, and the trial court heard oral arguments on the parties' respective positions.

{¶9} In February 2018, the trial court issued a judgment with findings of fact and conclusions of law granting Mangano a permanent injunction. The trial court ordered the Association to conduct a special election of its board of directors within 30 days and barred appellants from "participating, voting in or otherwise influencing the special election" as well as any future election of the Association's board of directors.

{¶10} Appellants appealed the trial court's judgment granting a permanent injunction. Appellants also moved for a stay of the judgment pending appeal in the trial court, which the trial court denied. Appellants then moved for a stay pending appeal to this court. We granted appellants' motion to stay pending appeal, but limited it to that portion of the trial court's order directing a special election of the board of directors.

II. Permanent Injunction

A. Standard of Review

{¶11} Generally, the decision to grant or deny an injunction is a matter within the discretion of the trial court, and a reviewing court will not disturb the judgment of the trial court absent an abuse of discretion. *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988); *Perkins v. Quaker City*, 165 Ohio St. 120, 125, 133 N.E.2d 595 (1956). An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Ginn v. Stonecreek Dental Care*, 12th Dist. Fayette Nos. CA2015-01-001 and CA2015-01-002, 2015-Ohio-4452, ¶ 11.

{¶12} When the question of whether a trial court properly granted an injunction involves issues of law, however, we employ a de novo standard of review. *See W. Branch Local School Dist. Bd. of Edn. v. W. Branch Edn. Assn.*, 2015-Ohio-2753, 35 N.E.3d 551, ¶ 13-14 (7th Dist.) (whether the trial court properly granted the permanent injunction involved matters of contract interpretation and was therefore reviewed de novo). This case requires us to interpret provisions of the Ohio Condominium Act, which is a question of law that we will review de novo.

B. Requirements for a Permanent Injunction

{¶13} Injunctive relief is an equitable remedy that is available only where there is no adequate remedy at law. *Haig v. Ohio State Bd. of Edn.*, 62 Ohio St.3d 507, 510, 584 N.E.2d 704 (1992). The party seeking a permanent injunction must demonstrate by clear and convincing evidence that (1) they are entitled to relief under applicable statutory law, (2) an injunction is necessary to prevent irreparable harm, and (3) no adequate remedy at law exists. *Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 268, 747 N.E.2d 268 (1st Dist.2000). Irreparable harm is an injury for which there is no plain, adequate, and complete remedy at law and for which money damages would be impossible, difficult, or incomplete. *1st Natl. Bank v. Mountain Agency, L.L.C.*, 12th Dist. Clermont No. CA2008-05-056, 2009-Ohio-2202, ¶ 47.

{¶14} In an action for a temporary or permanent injunction, the plaintiff must prove his or her case by clear and convincing evidence. *Franklin Cty. Dist. Bd. of Health v. Paxon*, 152 Ohio App.3d 193, 202, 2003-Ohio-1331, 787 N.E.2d 59 (10th Dist.). The Ohio Supreme Court has defined clear and convincing evidence as that measure or degree of proof that will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

C. Irreparable Harm and Entitled to Relief

{¶15} In their first assignment of error, appellants argue that the trial court erred when it granted a permanent injunction in favor of Mangano because Mangano did not establish two of "the most basic elements" of a permanent injunction. First, appellants contend that Mangano failed to show that he would suffer irreparable harm if his motion for permanent injunction was not granted. Specifically, appellants point to the fact that because Mangano did not testify or attach an affidavit to his motion, he failed to offer "evidence" that he would suffer irreparable harm.

{¶16} We disagree with this argument. The parties filed joint stipulations of fact with the Declaration and Bylaws attached as well as the minutes from several meetings of the board of directors and the Association. The stipulations contained sufficient facts for the trial court to determine whether Mangano would suffer irreparable harm under the Condominium Act. That is, if Mangano proved that he was entitled to relief under the Act (discussed next), then he established that he would suffer irreparable harm if his motion was not granted.

{¶17} Next, appellants argue that Mangano did not prove that he was entitled to relief (i.e., the merits of his claim) because he did not establish that appellants violated the relevant provisions of the Ohio Condominium Act by *participating in the elections* of the Association's board of directors. Essentially, the crux of appellants' argument regarding this issue is that after the three-year period set forth in R.C. 5311.08(D)(1) passed, the Ohio Condominium Act prevented them (i.e., the developer) from *appointing* board members to the Association but *not voting* for board members. Inextricably intertwined with the merits of Mangano's claim is appellants' argument in their second assigned error, namely, that the trial court misapplied

Belvedere Condominium Unit Owners' Assn., 67 Ohio St.3d 274, 617 N.E.2d 1075. Thus, we will address these issues in tandem.

{¶18} In *Belvedere*, the Ohio Supreme Court was presented with the issue of whether condominium developers owe a fiduciary duty to condominium owners' associations under the Ohio Condominium Act. Appellants maintain that the relevant language in *Belvedere* was only dicta, and thus, the trial court erred in relying on the case at all. Mangano, however, asserts that *Belvedere* is "persuasive authority." The Association maintains "dicta or not," *Belvedere's* "comments are the only meaningful interpretation of R.C. 5311.08 and therefore should be followed in the absence of any other guidance."

{¶19} The General Assembly enacted Ohio's Condominium Act in 1963. Am.Sub.S.B. No. 18, 130 Ohio Laws 1425. Under this act, Ohio law recognized for the first time "the condominium as a form of real property." *Belvedere* at 279, citing S.B. 18 and Note, *Ohio Amends It's* [sic] *Condominium Act*, 4 U.Dayton L.Rev. 503 (1979). The Condominium Act required "the creation of unit owners' associations to administer condominium property." *Id*. at 280.

> Under the 1963 Act, the developer, as owner of the majority of units during the infancy of the development, controlled the unit owners' association for an indefinite period of time. The effect was "that the developer during the period [in which it controls the association] has two separate and distinct loyalties: the operation of the association and the development and marketing of the project. There is an inherent conflict of interest in this situation, for some decisions will of necessity have to be made that benefit one loyalty at the expense of the other."

Belvedere at 280, quoting Hyatt & Rhoads, *Concepts of Liability in the Dev. and Administration of Condominium and Home Owners Assns.*, 12 Wake Forest L.Rev. 915, 973 (1976).

{¶20} The Supreme Court further explained:

> Recognizing this absolutely unavoidable conflict of interest, the General Assembly took specific steps in 1978 to protect condominium unit owners by

amending the Act. Am.Sub.H.B. No. 404, 137 Ohio Laws, Part II, 2594. Among other improvements, the amendments added three new provisions, R.C. 5311.25, 5311.26, and 5311.27, and amended one existing provision, R.C. 5311.08. 137 Ohio Laws, Part II, 2606-2621. These new and newly amended sections were intended to protect condominium owners and purchasers from developer abuse. *See* Blackburn & Melia, supra, 29 Case W.Res.L.Rev. at 148. "The amendments strike a balance between preservation of the developer's investment and the protection of unit owners from unfair management practices. This is done primarily through the establishment of a time requirement for the initial owners meeting and a timetable for the gradual transfer of control from the developer to the other unit owners." *Id.* at 182. *See, also*, [Note, Ohio Amends It's [sic] Condominium Act, 4 U.Dayton L.Rev. 503, 504 (1979)] ("the legislation is an attempt to walk the fine line between providing protection for the potential condominium purchaser and not unduly restricting the condominium developer's ability to shape his project as he sees fit").

Even after the 1978 amendments, the developer controls the owners' association in its infancy. Initially, the developer has the right to appoint members of the board and to exercise the powers of the association. R.C. 5311.08(D). Amended R.C. 5311.08, however, imposes a timetable for relinquishing control of the association to individual unit owners other than the developer. Pursuant to R.C. 5311.08(C) when units controlling at least twenty-five percent of the common areas have been sold, unit owners other than the developer must elect at least twenty-five percent of the association board. When fifty percent of the control over the common areas has been sold, unit owners other than the developer must elect at least one third of the board. The developer's control of the owners' association ends and the unit owners are entitled to elect the entire board three years after the formation of the owners' association or thirty days after the sale of seventy-five percent of the condominium instruments, whichever comes first. R.C. 5311.08(D).

The three new sections added by the 1978 amendments, R.C. 5311.25, 5311.26, and 5311.27, are essentially consumer protection provisions and delimit and describe the authority of the developer. R.C. 5311.25 requires the developer to place certain information in the condominium instruments and prohibits the sale of a condominium unit unless the instruments contain the required information.

* * *

It is clear that the Ohio Condominium Act and the 1978 amendments to the Act created relationships, rights, and remedies that did not exist at common law. The scope of the Act convinces us that it was meant to comprehensively define and

> regulate the law of condominium development, including the legal relationship between condominium developers and unit owners' associations.

Belvedere at 280-282.

{¶21} The above-quoted language from *Belvedere* provides the extent of the Supreme Court's opinion that is relevant to the present case. While this language describes the legislative history and purpose of the Act and reviews the provisions of R.C. 5311.08, 5311.25, 5311.26, and 5311.27, it does not answer the question presented here — that is, whether the developer was able to vote for members of the board of directors because it still owns 42 units. Stated another way, the issue is whether "relinquishing control" just means that a developer can no longer appoint board members or that it means a developer can no longer vote for board members or participate in elections in any way.

{¶22} Interpretation of R.C. 5311.08(C), and more specifically (D), is at the heart of this case. Thus, it is necessary for this court to dissect the relevant portions of R.C. 5311.08(C) and (D) to determine the requirements of the statute. First, however, we will set forth the relevant definitions of the Condominium Act, which are delineated in R.C. 5311.01.

{¶23} "Condominium" is defined as:

> [A] form of real property ownership in which a declaration has been filed submitting the property to the condominium form of ownership pursuant to this chapter and under which each owner has an individual ownership interest in a unit with the right to exclusive possession of that unit and an undivided ownership interest with the other unit owners in the common elements of the condominium property.

R.C. 5311.01(K).

{¶24} "Condominium development" is defined as "a condominium property in which two or more individual residential or water slip units, together with their undivided interests in the

common elements of the property, are offered for sale pursuant to a common promotional plan." R.C. 5311.01(L).

{¶25} "Condominium ownership interest" is defined as "a fee simple estate or a ninety-nine-year leasehold estate, renewable forever, in a unit, together with an appurtenant undivided interest in the common elements." R.C. 5311.01(N).

{¶26} "Condominium property" is defined as:

> [A]ll real and personal property submitted to the provisions of this chapter, including land, the buildings, improvements, and structures on that land, the land under a water slip, the buildings, improvements, and structures that form or that are utilized in connection with that water slip, and all easements, rights, and appurtenances belonging to the land or to the land under a water slip.

R.C. 5311.01(O).

{¶27} "Developer" is defined as "any person who directly or indirectly sells or offers for sale condominium ownership interests in a condominium development. 'Developer' includes the declarant of a condominium development and any successor to that declarant who stands in the same relation to the condominium development as the declarant." R.C. 5311.01(S).

{¶28} "Purchaser" is defined as "a person who purchases a condominium ownership interest for consideration pursuant to an agreement for the conveyance or transfer of that interest for consideration." R.C. 5311.01(Z).

{¶29} "Sale of a condominium ownership interest" is defined as:

> the execution by both parties of an agreement for the conveyance or transfer for consideration of a condominium ownership interest. "Sale of a condominium ownership interest" does not include a transfer of one or more units from the developer to another developer, a subsidiary of the developer, or a financial institution for the purpose of facilitating the sale or development of the remaining or unsold portion of the condominium property or additional property.

R.C. 5311.01(AA).

{¶30} "Unit" is defined as "the part of the condominium property that is designated as a unit in the declaration, is delineated as a unit on the drawings prepared pursuant to section 5311.07 of the Revised Code, and is one of the following:

> (1) A residential unit, in which the designated part of the condominium property is devoted in whole or in part to use as a residential dwelling consisting of one or more rooms on one or more floors of a building. A "residential unit" may include exterior portions of the building, spaces in a carport, and parking spaces as described and designated in the declaration and drawings.
>
> (2) A water slip unit, which consists of the land that is under the water in a water slip and the land that is under the piers or wharves that form the water slip, and that is used for the mooring of watercraft.
>
> (3) A commercial unit in which the property is designated for separate ownership or occupancy solely for commercial purposes, industrial purposes, or other nonresidential or nonwater slip use.

R.C. 5311.01(BB).

{¶31} "Unit owner" is defined as "a person who owns a condominium ownership interest in a unit." R.C. 5311.01(CC).

{¶32} "Unit owners association" means the organization that administers the condominium property and that consists of all the owners of units in a condominium property. R.C. 5311.01(DD).

{¶33} With these definitions in mind, we turn to R.C. 5311.08(C)(1). The beginning of this subsection provides in pertinent part:

> The unit owners association shall be established not later than the date that the deed or other evidence of ownership is filed for record following the first sale of a condominium ownership interest in a condominium development. Membership in the unit owners association shall be limited to unit owners, and all unit owners shall be members.

{¶34} This language is unambiguous. When the first condominium unit is sold, the Association must be established. All condominium unit owners must be in the Association.

{¶35} R.C. 5311.08(C)(1) then states, "Until the unit owners association is established, the developer shall act in all instances in which action of the unit owners association or its officers is authorized or required by law or the declaration." Put simply, the developer will act as the unit owners' association until one is established.

{¶36} Once the first "condominium ownership interest" is sold, however, the unit owners' association shall be established. According to the Declaration in this case, the "Declarant" — "1033 Water Street, LLC" — formed the Association. Article IV, Section (A). We know from the joint stipulations that the Declaration was filed in the county recorder's office in June 2006 (a June 2007 amended version is in the record before us). The Declaration further states that "[e]ach unit owner, upon acquisition of title to a condominium unit, shall automatically become a member of the Association." Article IV, Section (A). Under the Bylaws and in accordance with the Condominium Act, the developer initially had "the right to elect or designate all three board members." Article II, Section 3.

{¶37} R.C. 5311.08(C)(2)(a) then provides in relevant part that no later than "sixty days after the developer has sold and conveyed" 25 percent of the condominium property, "the unit owners association shall meet, and the unit owners other than the developer shall elect not less than one-third of the members of the board of directors." There is no dispute between the parties that, under this language, when the developer sells 25 percent of the condominium property but still owns 75 percent of the property, the unit owners *other than the developer* will elect at least one-third of the board members. This means that even though the developer still owns 75 percent of the condominium property, nondeveloper unit owners will elect one-third of the board members. At this point, the developer can still appoint two-thirds of the board members.

{¶38} R.C. 5311.08 (D)(1) then provides:

> Except as provided in division (C) of this section, the declaration or bylaws of a condominium development may authorize the developer or persons the developer designates to appoint and remove members of the board of directors of the unit owners association and to exercise the powers and responsibilities otherwise assigned by law, the declaration, or the bylaws to the unit owners association or to the board of directors. The authorization for developer control may extend from the date the unit owners association is established until sixty days after the sale and conveyance to purchasers in good faith for value of condominium ownership interests to which seventy-five per cent of the undivided interests in the common elements appertain, except that in no case may the authorization extend for more than five years after the unit owners association is established if the declaration includes expandable condominium property or more than three years after the unit owners association is established if the declaration does not include expandable condominium property.

{¶39} The parties agree that under the first half of this provision, the Declaration or Bylaws *may authorize* the developer to appoint and designate members of the board of directors of the Association and "to exercise the powers and responsibilities otherwise assigned by law, the declaration, or the bylaws to the unit owners association or to the board of directors." As we stated, that occurred in this case. The Bylaws gave the power to the developer to initially appoint the members of the board of directors. Article II, Section 3.

{¶40} The second portion of R.C. 5311.08 (D)(1) then states in pertinent part that "[t]he authorization for developer control may extend from the date the unit owners association is established until sixty days" after 75 percent of the condominium property has been sold and conveyed to "purchasers in good faith" — "except that in no case may the authorization extend for more than * * * three years after the unit owners association is established[.]"

{¶41} Interpretation of this provision, i.e., the second portion of R.C. 5311.08(D)(1), is at the crux of this appeal. Specifically, the issue is what the legislature meant by the phrase "developer control."

{¶42} Mangano argued and the trial court agreed that this provision means that after 75 percent of the property has been sold or after three years from the time the Association was established, the developer may no longer "exercise the powers and responsibilities otherwise assigned by law, the declaration, or the bylaws to the unit owners association or to the board of directors." According to Mangano, this means that the developer may no longer serve on the board of directors in any capacity or participate in the election of the board of directors in any way. Mangano contends that appellants cannot be correct that "giving up appointment power is all that is required to give up 'control' because "where a developer controls enough votes to determine the outcome of an election, the developer has not relinquished control."

{¶43} Appellants maintain, however, that this provision only means that the "developer control" that ends after 75 percent of the property has been sold or a maximum of three years is the power to appoint board members, not the power to elect board members or serve on the board of directors. Appellants point to the fact that R.C. 5311.08(D)(3) goes on to state that "[w]ithin sixty days after the expiration of the period during which the developer has control pursuant to division (D)(1) of this section, the unit owners association shall meet and elect all members of the board of directors of the association." Appellants contend that because this subsection does not state "the unit owners association shall meet, and the unit owners *other than the developer*" shall elect the board members as it does in subsection (C)(2)(a), that it means that the developer — as a unit owner — may still participate in the election of the board of directors and participate on the board if elected.

{¶44} Appellants maintain that

> unlike the subpart (C)(2)(a), nothing contained in subsection (D)(3) requires the developer to be excluded from this election. In addition, nothing contained in subpart C or D prohibits the developer or a representative of the developer from serving on the Board of Directors. If the legislature had intended to exclude the

developer from voting or serving on the Board of Directors, it could have included the same exclusionary language employed by 5311.08(C).

{¶45} We disagree with appellants' interpretation regarding subsection (D)(3). The reason subsection (D)(3) might not include "other than the developer" is because at this point, it is 60 days after the "developer control" set forth in (D)(1) has ended, and thus, the legislature did not feel the need to add this language (versus subsection (C)(2)(a) where the developer still controlled two-thirds of the board). Under subsection (D)(3), "developer control" ends 60 days after 75 percent of the property has been sold or a maximum of three years (five year if expandible condominium property) and members of the Association will elect all members of the board.

{¶46} The Association separately argues that appellants are incorrect that they only have to give up appointment power. The Association contends that in addition to the Supreme Court's comments in *Belvedere* supporting Mangano's and the Association's position, other provisions in the Condominium Act also support their position. The Association points to R.C. 5311.25(C), which states that "[t]he owners of condominium ownership interests that have been sold by the developer or an agent shall assume control of the common elements and of the unit owners association as prescribed in divisions (C) and (D) of section 5311.08 of the Revised Code."

{¶47} Specifically, the Association contends that "R.C. 5311.25(C) * * * makes clear that appellants' narrow interpretation of Section R.C. 5311.08(D) must be rejected and control of the Association is for those ownership interests that have been sold by the developer."

{¶48} The Association maintains that appellants' argument that "if the legislature had intended to exclude the developer from voting or serving on the Board of Directors, it certainly could have included the same exclusionary language employed by Section 5311.08(C)," is

misplaced. The Association contends that the legislature did include this language —"it is just in Section R.C. 5311.25(C)."

{¶49} We agree with the Association that R.C. 5311.25(C) sheds light on the issue presented in this case. Under R.C. 5311.25(C), owners of "condominium ownership interests" that have been "*sold by the developer*" shall assume control of the common elements and of the Association. "Condominium ownership interest" is defined as "a fee simple estate." R.C. 5311.01(N). Thus, only the owners who purchased condominium units from the developer can "control" the Association, which means that only these owners can vote for members of the board of directors and likewise serve on the board. As a result, R.C. 5311.25(C) bars a developer from voting for members of the board or serving on the board because the developer did not acquire condominium ownership interests as promulgated under the statute.

{¶50} We further find that although *Belvedere* does not directly answer the question presented in this case, it is instructive. The Supreme Court explained in *Belvedere*, 67 Ohio St.3d 274, 617 N.E.2d 1075, that the 1978 amendments to the Condominium Act were enacted to protect purchasers of condominiums from developer abuse. *Id.* at 280. As the Supreme Court explained, there is an inherent conflict of interest between the developer of a condominium complex and those who purchase units within the complex. A developer who invests in the project wants to protect its investment. In doing so, a developer will understandably make certain decisions with that interest in mind. Sometimes, however, those decisions may be made at the expense (literally and figuratively) of condominium unit owners' needs and wishes.

{¶51} "Recognizing this absolutely unavoidable conflict," the 1978 amendments to the Condominium Act "strike a balance" between these competing interests. *Id*., citing Am.Sub.H.B. No. 404, 137 Ohio Laws, Part II, and 2594 Blackburn & Melia, 29 Case

W.Res.L.Rev. at 148. The General Assembly took into consideration the fact that in the beginning of the project, the developer necessarily controls the condominium owners' association. With these amendments, the General Assembly created a gradual relinquishment of power and control from the developer to the owners' association, specifically limiting a developer's authority to a maximum of three or five years (depending upon whether a condominium complex is expandible). In this case, the trial court found that there was nothing in the Association's Declaration or Bylaws that indicated the complex was expandible, and thus, three years was the maximum amount of time that the developer could control the Association. We agree.

{¶52} Moreover, the legislative history of the Condominium Act and the purpose behind the 1978 amendments support our conclusion here that the developer can no longer participate in the election of the board of directors in any way or serve on the board.

{¶53} It is because of the 1978 legislative amendments and the purpose and policy behind them that we also disagree with appellants that R.C. 5311.03 and 5311.22 support their argument that a developer, as an owner of units not yet sold, retains voting rights to vote for members of the board. To adopt appellants' reasoning would contravene the purposes behind the 1978 amendments.

{¶54} Accordingly, we conclude that Mangano established that he was entitled to relief under the Condominium Act because 1033 Water Street and Rains were violating the Act.

{¶55} Appellants' first and second assignments of error are overruled.

III. Substitution of Parties

{¶56} In their third assignment of error, appellants argue that the trial court erred when it permitted Mangano to substitute the William J. Mangano Trust as the plaintiff more than nine

months after Mangano originally filed the complaint. Appellants contend that the trial court erred in permitting Mangano to substitute the trust nine months later because Civ.R. 15(C) only contemplates amending the complaint to change the party defendant, not the party plaintiff. It is not Civ.R. 15(C) that is at issue, however; it is Civ.R. 17(A).

{¶57} Civ.R. 17(A) provides:

> Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his name as such representative without joining with him the party for whose benefit the action is brought. When a statute of this state so provides, an action for the use or benefit of another shall be brought in the name of this state. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

{¶58} The purpose behind Civ.R. 17 is "'to enable the defendant to avail himself of evidence and defenses that the defendant has against the real party in interest, and to assure him finality of the judgment, and that he will be protected against another suit brought by the real party in interest on the same matter.'" *Shealy v. Campbell*, 20 Ohio St.3d 23, 24-25, 485 N.E.2d 701 (1985), quoting *In re Highland Holiday Subdivision*, 27 Ohio App.2d 237, 273 N.E.2d 903 (4th Dist.1971). "'The real party in interest is the party who will directly be helped or harmed by the outcome of the action.'" *Ohio Cent. RR. Sys. v. Mason Law Firm Co., L.P.A.*, 182 Ohio App.3d 814, 2009-Ohio-3238, 915 N.E.2d 397 (10th Dist.), ¶ 34, quoting *Zuckerman v. Gray*, 11th Dist. Trumbull No. 2008-T-0022, 2009-Ohio-1319.

> A trustee technically is not a real party in interest as the trustee does not have a direct interest in the outcome of an action involving a trust; but by virtue of Civ. R. 17, for purposes of simplification, etc., the trustee is permitted to bring the action. Therefore, pursuant to Civ. R. 17 the trustee is an exception to the rule that an action must be prosecuted in the name of the real party in interest.

Sec. Trust Co. v. Gross, 12th Dist. Butler Nos. CA83-06-054, CA83-06-058, and CA83-06-069, 1985 Ohio App. LEXIS 9653, 13-14 (Dec. 16, 1985), citing *DeGarza v. Chetister*, 62 Ohio App.2d 149, 405 N.E.2d 331 (6th Dist.1978).

{¶59} In this case, the William J. Mangano Trust owns a condominium unit at the Water Street Condominiums, and thus, is the real party in interest. However, under Civ.R. 17(A), Mangano, as the trustee of the William J. Mangano Trust, could properly bring the action against appellants even though he does not own a condominium unit. Thus, although Mangano did not need to substitute the trust as a party, we find no error on the part of the trial court in permitting Mangano to substitute the trust as the party plaintiff.

{¶60} Accordingly, appellants' third assignment of error is overruled.

{¶61} Having thoroughly considered appellants' three assignments of error and the applicable law, we conclude that the trial court properly allowed Mangano to substitute the trust as a party plaintiff and properly granted a permanent injunction to Mangano barring 1033 Water Street or any of its agents from voting for members of the Association's board, participating in or influencing the election in any way, or from serving on the board.

{¶62} Judgment affirmed.

It is ordered that appellee recover from appellants the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, PRESIDING JUDGE

LARRY A. JONES, SR., J., and
KATHLEEN ANN KEOUGH, J., CONCUR