[Cite as *Olentangy Condominium Assn. v. Lusk*, 2010-Ohio-1023.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Olentangy Condominium Association,	:	
Plaintiff-Appellee,	:	
		No. 09AP-568
v.	:	(C.P.C. No. 07CVE10-14433)
Jeffrey W. Lusk,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 16, 2010

Allen Kuehnle Stovall & Neuman LLP, *Lisa L. Norris* and *Kenton L. Kuehnle*, for appellee.

Jeffrey W. Lusk, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Jeffrey W. Lusk, appeals from a judgment in favor of plaintiff-appellee, the Olentangy Condominium Association ("Olentangy"). For the following reasons, we affirm in part and reverse in part.

{¶2} Olentangy, the Condominium, is a condominium complex consisting of 237 units. Lusk is the owner of one of those units. Sterling Realty Associates, LLC ("Sterling") is the property manager for the condominium complex.

{¶3} Beginning January 1, 2004, Olentangy increased each condominium owner's monthly fee. Lusk's monthly fee rose from $176 to $185 per month. Lusk, however, continued to submit $176 payments throughout 2004. Olentangy mailed Lusk late notices, informing him that his monthly payments were $9 deficient. In response to the notices, Lusk sent Olentangy letters stating that he refused to pay the additional $9 per month because Olentangy had failed to notify him that the Olentangy Board of Directors ("board") had approved the increase.

{¶4} On April 22, 2004, Olentangy held a board meeting, wherein the board and attending condominium owners discussed whether to impose a special assessment to repair carport roofs and repave the complex's roads. The proposed special assessment would require each condominium owner to pay an average of $1,000, depending on the condominium owner's percentage of ownership. The first payment, in the amount of 50 percent of the total assessment, would be due on June 1, 2004; the second payment, in the amount of 25 percent of the total assessment, would be due on July 1, 2004; and the third payment, in the amount of 25 percent of the total assessment, would be due August 1, 2004. If a condominium owner did not make timely payments, Olentangy would charge that condominium owner $30 per month in late fees. The board and condominium owners voted to approve the special assessment.

{¶5} In a letter dated April 26, 2004, the board informed Lusk that his proportionate share of the special assessment totaled $783. The letter indicated that 50 percent of the special assessment, or $391.50, was due on June 1, 2004; 25 percent of the special assessment, or $195.75, was due on July 1, 2004; and the final 25 percent of the special assessment was due on August 1, 2004. The letter also stated that if

Olentangy did not receive the payments by the tenth of each month, it would charge Lusk $30 per month in late fees.

{¶6} Lusk refused to pay the special assessment. In correspondence to Olentangy, Lusk maintained that the special assessment was invalid because it had not received approval from a majority of the condominium owners. Olentangy responded that the bylaws permitted the board to levy assessments against the condominium owners, and it added the amount of the special assessment, plus $30 for each month it went unpaid, to Lusk's growing past-due balance.

{¶7} Sometime in January 2005, Lusk received a coupon book from Olentangy to facilitate the payment of his monthly condominium fee. Each payment stub in the coupon book listed the monthly fee at $201. Beginning with the February 2005 payment, Lusk remitted the full amount of his monthly fee, albeit under protest because Olentangy still had not verified that the board had approved the increase.

{¶8} In April 2007, Olentangy prepared a certificate of lien against Lusk. The lien listed the amount due and owing as $1,756. Olentangy filed the lien with the Franklin County Recorder on August 23, 2007.

{¶9} On October 23, 2007, Olentangy filed an action seeking foreclosure on its lien and judgment in its favor in the amount of the unpaid special assessment and accumulated fees. In response, Lusk asserted a counterclaim against Olentangy and a third party complaint against Sterling.[1]

[1] Ultimately, the trial court dismissed Sterling under Civ.R. 41(B)(2) because Lusk presented no evidence at trial demonstrating a right to relief against Sterling.

{¶10} The trial court conducted a bench trial on December 29, 2008, and it subsequently rendered judgment in Olentangy's favor. The trial court then referred the matter to a magistrate for a hearing on attorney fees. After conducting an evidentiary hearing, the magistrate recommended that the trial court award Olentangy $23,153.85 in attorney fees. Lusk objected to the magistrate's recommendation. On June 1, 2009, the trial court issued a decision and judgment entry overruling Lusk's objections and adopting the magistrate's decision. Additionally, the trial court entered judgment against Lusk, awarded Olentangy damages in the amount of $2,266 and attorney fees in the amount of $23,153.85, and ordered the foreclosure of Lusk's property.

{¶11} Lusk now appeals from the June 1, 2009 judgment and assigns the following errors:

> [1.] TRIAL COURT ERRED IN ENTERING JUDGMENT IN FAVOR OF PLAINTIFF AND AWARDING PLAINTIFF THE SUM OF $2,266 VOID FINDING 2004 AND 2005 ANNUAL OPERATING ASSESSMENT INCREASES, APRIL 22, 2004 SPECIAL ASSESSMENT AND LATE FEES (3 PILLARS FORM AWARD) VALID, ACCURATE, OWED AND PAST DUE; VOID FINDING 2004 AND 2005 ANNUAL OPERATING ASSESSMENT VALID; VOID FINDING 2004 AND 2005 ANNUAL BUDGET WAS PREPARED AND/OR MAILED AND/OR DELIVERED TO APPELLANT; IN ENTERING "IMPLICIT" FINDING APRIL 22, 2004 SPECIAL ASSESSMENT APPROVED BY A MAJORITY VOTE OF THE BOARD VOID EVIDENCE IN SUPPORT THEREOF VOID A RECORD OF THE VOTE TAKEN; VOID FINDING APPELLANT BILLED ACCURATELY FOR APRIL 22, 2004 SPECIAL ASSESSMENT AND BASED ON FINDINGS OF FACT AND CONCLUSIONS OF LAW VOID EVIDENCE IN SUPPORT THEREOF.
>
> [2.] TRIAL COURT ERRED IN ORDERING EQUITY OF REDEMPTION OF APPELLANT FORECLOSED AND PREMISES OF APPELLANT SOLD VOID DETERMINING MERITS OF LIEN.

> [3.] TRIAL COURT ERRED IN DENYING AFFIRMATIVE DEFENSES OF APPELLANT VOID DETERMINING THEIR MERIT.
>
> [4.] TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES VOID FINDING STATUTORY EXCEPTION TO AMERICAN RULE AS LAW OF CASE; APPLYING R.C. 5311.19(A) AND INTERPRETATION ATTORNEY'S FEES PORTION OF R.C. 5311.19(A) IS MANDATORY AND RETROSPECTIVE TO CASE AND ADOPTING MAGISTRATE'S DECISION AWARDING ATTORNEY'S FEES IN SUM OF $23,153.85 AS ITS OWN VOID EVIDENCE IN SUPPORT OF OVERRULING OBJECTIONS OF APPELLANT TO SAID DECISION.
>
> [5.] TRIAL COURT ERRED IN DENYING MOTION TO EXTEND DISPOSITIVE MOTION DEADLINE OF APPELLANT BY ABUSING ITS DISCRETION IN SO DOING AND STRIKING COMBINED MOTION FOR SUMMARY JUDGMENT OF APPELLANT AS A MATTER OF LAW.

{¶12} By his first assignment of error, Lusk challenges Olentangy's ability to impose the special assessment and to collect the increased monthly condominium fee, as well as the sufficiency of the evidence establishing the amount of his proportionate share of the special assessment. We find all these arguments unavailing.

{¶13} With regard to the special assessment, Lusk first argues that R.C. 5311.081(A)(1) prohibits a condominium association from levying any one-time, lump-sum special assessment. Pursuant to R.C. 5311.081(A):

> Unless otherwise provided in the declaration or bylaws, the unit owners association, through the board of directors, shall do * * * the following:
>
> (1) Adopt and amend budgets for revenues, expenditures, and reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments * * *.

R.C. 5311.081(A)(1) thus obligates a condominium board to budget sufficient reserves so that it need not resort to a special assessment to repair and replace major capital items. However, R.C. 5311.081(A)(1) does not bar the levying of a special assessment. The provision leaves open the possibly that if, despite careful budgeting, a special assessment becomes necessary, a condominium board may impose that assessment. We thus reject Lusk's argument to the contrary.

{¶14} Lusk next argues that the special assessment is invalid because a majority of the condominium owners did not approve it. According to Article IV, Section 3 of Olentangy's Bylaws:

> Whenever in the judgment of the Board the Common Areas and Facilities shall require additions, alterations or improvements (as opposed to maintenance, repair and replacement) costing in excess of $20,000 and the making of such additions, alterations or improvements shall have been approved by Unit Owners entitled to exercise not less than a majority of the voting power, the Board shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a Common Expense.

Thus, if the board seeks to impose a special assessment of more than $20,000 for "additions, alterations, or improvements" to the complex's common areas and facilities, it must first secure the approval of a majority of the condominium owners. If the proposed special assessment is less than $20,000 or for "maintenance, repair, and replacement" of the common areas and facilities, then the board may levy the special assessment without the condominium owners' approval. Bylaws, Article II, Section 10(E) (empowering the board to "levy Assessments against Unit Owners").

{¶15} The parties do not dispute that the April 22, 2004 special assessment exceeded $20,000, and that the board failed to put the special assessment to a vote of

the majority of the condominium owners. However, the parties disagree about whether Olentangy used the money from the special assessment to make "improvements" or accomplish "maintenance" and "repair." Although the bylaws do not separately define "improvements," Article IV, Section 3 specifies that "improvements" do not include "maintenance, repair, and replacement." Consequently, if Olentangy spent the funds from the special assessment on "maintenance, repair, and replacement" then that expenditure did not result in "improvements." The trial court found that Olentangy expended the money from the special assessment to repair and maintain the carports and the complex's roads. Pursuant to this factual finding, the trial court concluded that the bylaws entitled the board to levy the special assessment without the approval of the majority of the condominium owners.

{¶16} Where a decision in a case turns upon the credibility of testimony, and where there exists competent, credible evidence supporting the findings of the trial court, an appellate court must defer to the trial court's findings. *Myers v. Garson*, 66 Ohio St.3d 610, 614, 1993-Ohio-9. "A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 81. If the evidence is susceptible to more than one interpretation, we must construe it consistently with the trial court's judgment. *Cent. Motors Corp. v. Pepper Pike*, 73 Ohio St.3d. 581, 584, 1995-Ohio-289.

{¶17} Here, Ellen Moore, an Olentangy homeowner and current president of the board, testified that prior to the levying of the special assessment, the carport roofs were leaking and the complex's roads were "in bad shape." (December 29, 2008 Tr. 26.)

Moore stated that Olentangy used the money from the special assessment to repair and maintain the roofs and roads. Given this testimony, we conclude that competent, credible evidence supports the trial court's finding, and thus, the bylaws did not require approval of the majority of the condominium owners for the April 22, 2004 special assessment.

{¶18} Lusk next argues that the special assessment is invalid because Olentangy failed to submit evidence showing that the board approved it. In response, Olentangy points to the testimony of Moore, who was present at the April 22, 2004 board meeting. At trial, Moore stated that the board voted on and passed the special assessment at that meeting. Lusk discounts Moore's testimony because the minutes of the April 22, 2004 board meeting do not reflect the board's vote. Lusk contends that the minutes are the best evidence of the board's vote because R.C. 1702.15 requires non-profit corporations such as Olentangy to keep minutes of the proceedings of its directors.

{¶19} Potentially, the trial court could have found that the omission of the board's vote from the minutes adversely impacted Moore's credibility and lessened the weight of her testimony. The trial court, however, chose to rely upon Moore's testimony. We cannot second guess that decision. Given Moore's testimony, we conclude that competent, credible evidence establishes that the board approved the special assessment.

{¶20} Lusk also takes issue with the amount of his proportionate share of the special assessment. Lusk points to the statement contained in the minutes that reads, "[e]ach homeowner w[ill] be assessed an average of $1,00.00 (depending on homeowner's percentage of ownership)." Extrapolating from the $100 average, Lusk argues that he only owes $78.29—not $783—as his share of the special assessment. In

response, Olentangy argues that the reference to "$1,00.00" is a scrivener's error, and the board intended the average amount of each assessment to be $1,000.

{¶21} Regardless of whether "$1,00.00" constitutes a typographical error or not, the record contains evidence that Lusk's proportionate share of the special assessment was $783. In the April 26, 2004 letter from the board to Lusk, the board stated, "[y]our proportionate share of the assessment is **$783.00**." (Emphasis sic.) Lusk understood that he owed $783, writing in a May 21, 2004 letter to Olentangy, "I am in receipt of your letter dated April 26, 2004 in which you state * * * that * * * you are charging me a new assessment of $783.00." Moreover, the late notices Olentangy sent Lusk notifying him of his unpaid special assessment listed amounts due totaling $783. We therefore conclude that competent, credible evidence establishes that Lusk owed $783 as his share of the special assessment.

{¶22} Turning to the issue of his deficient monthly condominium fee, Lusk contends that Olentangy could not charge him an increased fee in 2004 and 2005 because it did not provide him with its 2004 and 2005 annual budgets. Lusk relies on two provisions in the bylaws to support his argument. First, Lusk points to Article V, Section 1, which requires Olentangy to "estimate the total amount necessary to pay all the Common Expenses for the next calendar year together with a reasonable amount * * * necessary for a reserve for contingencies and replacements" and to "notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemization thereof." Article V, Section 4 of the Bylaws then states:

> [I]n the absence of any annual estimate or adjusted estimate, the Unit Owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period until the monthly maintenance

> payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Thus, Article V, Section 4 allows a homeowner to avoid paying an increase in the monthly condominium fee until Olentangy mails the homeowner an annual budget estimate. Lusk maintains that because Olentangy never sent him its 2004 or 2005 annual budgets, Article V, Section 4 excuses his failure to pay the increased monthly condominium fee in 2004 and 2005.

{¶23} Lusk, however, never asserted or proved this affirmative defense at trial. "It is well settled in Ohio that the defendant asserting an affirmative defense has the burden of proof in establishing such defense." *MatchMaker Internatl., Inc. v. Long* (1995), 100 Ohio App.3d 406, 408. Here, the record is devoid of any evidence establishing that Olentangy failed to mail its 2004 and/or 2005 annual budgets to Lusk. At best, Lusk only proved that Olentangy never notified him that the board had approved the increase in the monthly condominium fee that became effective January 1, 2004. As Lusk did not carry his burden at trial, his belated attempt to raise his defense before this court must fail.

{¶24} Finally, Lusk argues that the trial court erred in allowing the substitution of "Olentangy, The Condominium, Unit Owners' Association" for "Olentangy" absent a finding of a transfer of interest. What Lusk characterizes as a substitution, Olentangy calls a name change. On February 26, 2008, Olentangy filed a pleading entitled "Notice of Change of Plaintiff's Name," wherein it informed the trial court that it had filed new Articles of Incorporation with the Ohio Secretary of State and changed its name to "Olentangy, The Condominium, Unit Owners' Association."

{¶25} We need not sort out the legal implications of the alleged substitution, however, because Lusk failed to assign any error regarding it or identify any trial court ruling on it. Pursuant to App.R. 12(A)(1)(b), appellate courts "[d]etermine [an] appeal on its merits on the assignments of error set forth in the briefs under App.R. 16 * * *." Accordingly, as a general matter, this court rules on assignments of error only, and will not address mere arguments. *In re Taris*, 10th Dist. No. 04AP-1264, 2005-Ohio-1516, ¶5. Nevertheless, in the interest of justice, we note that the trial court never made any ruling on the alleged substitution of Olentangy, The Condominium, Unit Owners' Association for Olentangy. Without a ruling to review, we cannot find any error.

{¶26} In sum, we conclude that all of the arguments set forth under Lusk's first assignment of error lack merit. Therefore, we overrule Lusk's first assignment of error.

{¶27} By his second assignment of error, Lusk argues that Olentangy's failure to properly pass its 2004 and 2005 annual budgets invalidates the lien on his property. We reject this argument for three reasons. First, Lusk failed to present any evidence that the board did not compile and/or approve a budget for 2004 and 2005. Second, assuming such evidence existed, Lusk does not explain to this court how the board's failure to properly pass the 2004 and 2005 annual budgets affected the amount of unpaid charges he owed or invalidated the lien. Third, Lusk failed to raise this defense at trial. Accordingly, we overrule Lusk's second assignment of error.

{¶28} By his third assignment of error, Lusk argues that the trial court erred in not entering judgment in his favor based on his affirmative defenses of breach of contract, laches, and due process. We disagree.

{¶29} Lusk's "breach of contract" affirmative defense arises from Olentangy's failure to comply with Article V, Section 4 of the bylaws. As we concluded above, Lusk neither pursued nor proved this affirmative defense at trial.

{¶30} Next, Lusk contends that laches prevents Olentangy from collecting the special assessment from him because Olentangy unduly delayed informing him of the assessment. We find this argument unavailing.

{¶31} "Laches is 'an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party.' " *State ex rel. Eaton Corp. v. Indus. Comm. of Ohio*, 80 Ohio St.3d 352, 356, 1997-Ohio-36 (quoting *Connin v. Bailey* (1984), 15 Ohio St.3d 34, 35). Because laches is predominately a factual question for a trial court to resolve according to the circumstances of each case, an appellate court will only reverse a trial court's decision regarding the application of laches if the trial court abuses its discretion. *Lewis & Michael Moving and Storage, Inc. v. Stofcheck Ambulance Serv., Inc.*, 10th Dist. No. 05AP-662, 2006-Ohio-3810, ¶40-41; *Thomas v. Thomas*, 10th Dist. No. 03AP-1106, 2004-Ohio-2136, ¶14.

{¶32} Here, the board approved the special assessment on April 22, 2004 and informed Lusk about it in a letter dated April 26, 2004. Thus, the board asserted its right to payment of the special assessment within four days of the assessment's passage. As four days is not an unreasonable length of time, we conclude that the trial court properly exercised its discretion in rejecting Lusk's laches affirmative defense.

{¶33} Finally, Lusk argues that Olentangy cannot recover against him because it did not comply with the notice and hearing provisions of R.C. 5311.081(C). Pursuant to R.C. 5311.081(C), prior to imposing a charge for damages or an enforcement

assessment for violations of the declarations, bylaws, or rules of a condominium association, a board of directors must provide the condominium owner with notice and an opportunity for a hearing. Assuming, without deciding, that failure to follow R.C. 5311.081(C) constitutes an affirmative defense, we conclude that Lusk did not assert that defense in his answer.

{¶34} If a party fails to raise an affirmative defense in its responsive pleading, courts will deem the affirmative defense waived. *Jim's Steak House, Inc. v. Cleveland*, 81 Ohio St.3d 18, 20, 1998-Ohio-440. Here, although Lusk's answer to the second amended complaint includes a "due process" affirmative defense, it does not mention R.C. 5311.081(C). We find that a broad reference to due process is insufficient to put Olentangy on notice that Lusk intended to pursue an affirmative defense based on R.C. 5311.081(C). See *Viox v. Weinberg*, 169 Ohio App.3d 79, 2006-Ohio-5075, ¶18 ("A party must have sufficient notice of a proposed affirmative defense to dispute the 'new matter.' "). Consequently, we conclude that Lusk waived any affirmative defense arising from Olentangy's noncompliance with R.C. 5311.081(C).

{¶35} In sum, none of Lusk's affirmative defenses are viable. Accordingly, we overrule Lusk's third assignment of error.

{¶36} By his fourth assignment of error, Lusk attacks the validity of the trial court's award of attorney fees to Olentangy under R.C. 5311.19(A). Pursuant to R.C. 5311.19(A):

> All unit owners * * * of a condominium property shall comply with all covenants, conditions, and restrictions set forth in a deed to which they are subject or in the declaration, the bylaws, or the rules of the unit owners association, as lawfully amended. Violations of those covenants, conditions, or restrictions shall be grounds for the unit owners association

> * * * to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action.

Thus, a condominium owner must abide by all restrictions contained in the condominium declarations and bylaws. If a condominium owner violates any of those restrictions, the condominium association may bring an action for damages, and if it prevails, it can recover its reasonable attorney fees from the condominium owner.[2] *Acacia on the Green Condominium Assn., Inc. v. Gottlieb*, 8th Dist. No. 92145, 2009-Ohio-4878, ¶49; *Montgomery Towne Homeowners' Assn., Inc. v. Greene*, 1st Dist. No. C-070568, 2008-Ohio-6905, ¶10, 22.

{¶37} Prior to 2004, R.C. 5311.19(A) did not authorize an award of attorney fees. The General Assembly amended R.C. 5311.19(A) to allow the recovery of attorney fees as part of a comprehensive scheme to revise condominium law. That scheme, including the R.C. 5311.19(A) amendments, became effective on July 20, 2004. Lusk contends that because he violated Olentangy's Declaration prior to July 20, 2004, the trial court applied amended R.C. 5311.19(A) retroactively in awarding Olentangy its attorney fees.

{¶38} "[A] retroactive law is defined as one that 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.' " *State ex rel. Jordan v. Indus. Comm. of Ohio*, 120 Ohio St.3d 412, 2008-Ohio-6137, ¶8 (quoting *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100, 106). See also *Bielat v. Bielat*, 87 Ohio St.3d 350, 353, 2000-Ohio-451 (holding that a retroactive law is

[2] Lusk also argues that a trial court can only award attorney fees in the event of a lien foreclosure under R.C. 5311.18. The plain language of R.C. 5311.19(A) contradicts this argument.

one "that is 'made to affect acts or facts occurring, or rights accruing, before it came into force' ") (quoting Black's Law Dictionary (6th ed. 1990)). The prohibition against retroactive laws " 'is a bar against the state's imposing new duties and obligations upon a person's past conduct and transactions, and it is a protection for the individual who is assured that he may rely upon the law as it is written and not later be subject to new obligations thereby.' " *Personal Serv. Ins. Co. v. Mamone* (1986), 22 Ohio St.3d 107, 109 (quoting *Lakengren v. Kosydar* (1975), 44 Ohio St.2d 199, 201) (emphasis omitted).

{¶39} By authorizing the recovery of attorney fees, amended R.C. 5311.19(A) created the possibility of a new obligation for any condominium owner who violates the condominium declaration, bylaws, or rules. Before the amendment, a violation would not expose a condominium owner to a statutory obligation to pay the condominium association's reasonable attorney fees. After the amendment, a violation could render the condominium owner statutorily liable for such attorney fees. Thus, amended R.C. 5311.19(A) would operate retroactively if applied to award attorney fees in a lawsuit arising from a violation that occurred prior to the amendment's effective date.

{¶40} In the case at bar, Olentangy's Declaration states that, "[e]very Unit Owner shall pay his proportionate share of Common Assessments * * *." Declaration, Article XII, Section 1. "Common Assessments" are "[a]ssessments levied proportionately against all Units for Common Expenses, including Special Assessments." Declaration, Article I. Lusk committed multiple violations of Article XII, Section 1 of the Declaration. Some of those violations occurred prior to July 20, 2004, and some occurred after. Specifically, after July 20, 2004, Lusk withheld payment of the final 25 percent of the special assessment due on August 1, 2004, and he refused to make full monthly condominium

payments from August 2004 through January 2005. An award of attorney fees for the prosecution of these violations is not a retroactive application of R.C. 5311.19(A) because they occurred after the effective date of the amended statute. Logically, then, the trial court could award Olentangy any reasonable attorney fees expended in litigation against Lusk for damages arising from the violations that occurred after July 20, 2004.

{¶41} Olentangy, however, litigated all the violations in one action. Due to the nature of legal work, it is an impossible task to parse between work performed pursuing damages for pre-July 20, 2004 violations and work performed pursuing damages for post-July 20, 2004 violations. Because Olentangy's attorneys pursued both categories of violations simultaneously, their fees cannot be separately ascribed to either category. Rather, all their fees must be attributed to both categories. Therefore, the trial court did not err in awarding Olentangy all its litigation-related attorney fees pursuant to R.C. 5311.19(A).

{¶42} Lusk next argues that the trial court erred in requiring him to pay Sterling's reasonable attorney fees, as well as Olentangy's reasonable attorney fees. We agree.

{¶43} Olentangy and Sterling executed a management agreement when Olentangy engaged Sterling as the condominium complex's property manager. In that agreement, Olentangy agreed to indemnify Sterling for any expenses Sterling incurred in connection with its work for Olentangy, including attorney fees. When Lusk sued Sterling in a third party complaint, Sterling hired attorneys and sought recovery for their fees from Olentangy. At the evidentiary hearing on attorney fees, Olentangy introduced into evidence the management agreement and bills establishing that Sterling's attorney fees

amounted to $5,966.99. The trial court included Sterling's attorney fees in its award of attorney fees to Olentangy.

{¶44} R.C. 5311.19(A) authorizes an award of reasonable attorney fees, not indemnity payments. Here, Olentangy received both its reasonable attorney fees and the cost of the indemnity payments it made to Sterling. Because R.C. 5311.19(A) does not countenance the latter, the trial court erred when including it in the attorney fee award.

{¶45} In sum, we conclude that the trial court did not apply R.C. 5311.19(A) retroactively in awarding Olentangy attorney fees. However, we find that the trial court erred in adding Sterling's attorney fees to the attorney fees award. Accordingly, we overrule Lusk's fourth assignment of error to the extent that it argues that the trial court applied R.C. 5311.19(A) retroactively, but we sustain that assignment of error to the extent that it argues that the attorney fees award impermissibly included Sterling's attorney fees.

{¶46} By his fifth assignment of error, Lusk argues that the trial court erred in denying his motion to extend the dispositive motion deadline and striking his untimely motion for summary judgment. We disagree.

{¶47} Trial courts have inherent power to manage their own dockets and the progress of the proceedings before them. *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, ¶23; *Basha v. Ghalib*, 10th Dist. No. 07AP-963, 2008-Ohio-3999, ¶28. Whether to grant or deny a motion to extend a court-ordered deadline or a motion to strike an untimely filed motion is a decision committed to the trial court's sound discretion. Civ.R. 6(B) (allowing the trial court to extend deadlines "in its discretion"); *Pilz v. Dept. of Rehab. and Corr.*, 10th Dist. No. 04AP-240, 2004-Ohio-4040, ¶6 (holding that the trial

court's decision to strike an untimely motion for summary judgment was within the court's discretion).

{¶48} Here, the trial court denied Lusk's motion to extend the dispositive motion deadline, and it struck the motion for summary judgment that Lusk filed over a month after that deadline had elapsed. Lusk argues that the trial court abused its discretion in so ruling because it prevented him from prevailing on his unopposed summary judgment motion. Lusk errs when he presumes that the lack of a memoranda contra or evidence from Olentangy entitled him to summary judgment. Moreover, not only is the premise underlying Lusk's argument faulty, but also, Lusk fails to explain or excuse his failure to timely file his dispositive motion. Accordingly, we overrule Lusk's fifth assignment of error.

{¶49} For the foregoing reasons, we overrule Lusk's first, second, third, and fifth assignments of error. As set forth above, we overrule in part and sustain in part Lusk's fourth assignment of error. Consequently, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, and we remand this matter to that court for further proceedings consistent with law and this opinion.

Judgment affirmed in part, reversed in part, and cause remanded.

McGRATH and CONNOR, JJ., concur.