[Cite as *Bloomfield Hills Subdivision Assn. v. Awwiller*, 2026-Ohio-4389.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

BLOOMFIELD HILLS SUBDIVISION ASSOCIATION,	:	
Plaintiff-Appellant,	:	Case No. 25CA29
v.	:	
ALICIA AWWILLER,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellee.	:	

APPEARANCES:

David A. Dye, Esq., David A. Dye Co., LPA, Grove City, Ohio, for appellant.

Alicia Awwiller, South Bloomfield, Ohio, appellee pro se.

Smith, P.J.

{¶1} Appellant Bloomfield Hills Subdivision Association (hereinafter, "the Association") appeals a September 16, 2025 Decision and Entry of the Circleville Municipal Court, Small Claims Division granting judgment in favor of Alicia Awwiller, appellee. The Association filed a small-claims petition for assessments, late fees, interest, collection costs, and attorney fees relating to appellee's installation of a fence on her property in 2012. Having reviewed the record, we find the trial court did not abuse its discretion. The judgment of the trial court is affirmed.

Factual and Procedural Background

{¶2} Appellee is the owner of a residence located within the Bloomfield Hills Subdivision in Pickaway County, Ohio. The Bloomfield Hills Subdivision operates as a homeowner's association. The subdivision, including appellee's property, is subject to the terms and provisions found in the Declaration of Covenants, Easements, Restrictions, Assessments, and Assessment Liens for Bloomfield Hills ("the Declaration"), prepared in 2003, and the Second Supplement to Declaration of Covenants, Easements, Restrictions and Assessments, and Assessment Liens for Bloomfield Hills Subdivision, prepared in 2005.

{¶3 } Article III of the Declaration at Part E provides:

> The Community Association shall have all the rights, powers and duties established, invested or imposed in it pursuant to the Governing Documents, and the laws of the State of Ohio applicable with respect to Ohio non-profit corporations. Among other things, the Community Association, through its Board of Directors, shall have the power to "enforce and administer the restrictions and covenants applicable to all or any part of Bloomfield Hills, levy and collect assessments…and take such other actions as it deems appropriate to its purposes.

At Article III, Part F, the Declaration provides, "the Community Association through its Board may make and enforce reasonable Rules governing . . . the levying and collections of administrative charges for the infraction of Rules . . ."

{¶4} Article V of the Declaration provides for operating assessments, special assessments, and individual unit/lot assessments. Article V(D) provides that "Upon its determination to levy an Individual Unit/Lot Assessment, the Board of Directors shall give the affected Owner written notice and the right to be heard by the Board of Directors or a duly appointed committee thereof in connection with such Individual Unit/Lot Assessment ten days prior to the effective date of the levy . . ."

{¶5} Article I, Paragraph 15 of the Declaration provides that "Improvements" include "fences." On October 16, 2012, appellee submitted a Design Review Board Application to OMNI Community Association Managers, "OMNI," in which she requested permission for a "6 ft white vinyl privacy fence for back yard."[1] Appellee disclosed that Lowe's would build the fence.[2] On the application, appellee verified, by check mark, that she had attached a "plan view" and "elevation drawing."

{¶6} On or about October 31, 2012, appellee's application to build her fence was

> "CONDITIONALLY APPROVED . . . subject to GENERAL CONDITIONS described below and attached SCHEDULE F." The conditional approval letter further stated that "[t]he fence is

[1] It appears that OMNI manages the Bloomfield Hills Subdivision.
[2] John Chmielewski's name was written next to Lowe's. The evidence does not indicate whether this person is a subcontractor for Lowe's or whether this is Lowe's representative or contact person for the project.

> CONDITIONALLY APPROVED if and only if the fence height is reduced from six (6) feet to four (4) feet." [3]

According to appellee's testimony, her contractor built a four-foot tall fence one or two months later in 2012.

{¶7} On March 31, 2025, the Association filed a small-claims petition in the Circleville Municipal Court naming appellee as defendant. The Association alleged that appellee is a member of the subdivision association with an obligation to pay recurring fees. The Association further alleged that appellee owed $3,852.06 in assessments, late fees, interest, collection costs, reasonable attorney's fees, and court costs. The matter was scheduled for a trial on May 21, 2025.

{¶8} Upon service of the small claims petition, appellee requested a continuance. The rescheduled trial date was July 30, 2025. At trial, the Association's sole witness was Amy Tryon. Ms. Tryon testified that she has the care, custody, and control of the business records of the Association. She testified that the subdivision is a deed-restricted community.

{¶9} Ms. Tryon further testified that all owners are obligated to pay periodic assessments to the Association. If assessments are not timely and fully paid, the Association is entitled to charge late fees and interest. The restrictions also provide for payment of reasonable attorney fees. Ms. Tryon identified appellant's

[3] The height restriction is referenced in Paragraph 8 of Schedule F.

amended Exhibit A, an account ledger showing the balance due and owing of $5,056.22 from appellee. At this point, the Association indicated it had presented its case but reserved the right to recall Ms. Tryon if necessary.[4]

{¶10} Appellee testified that she moved to Bloomfield Hills in 2012. Her house was built in October 2012. Appellee testified that she completed an application for permission to install a six-foot fence. Appellee testified that, along with the application, she was required to attach a drawing with measurements from the builder. Appellee testified that the plan she submitted to the Design Review Board showed the measurements of the fence and the outboxing of utility boxes. Appellee testified that at the time she was given conditional improvement from the Design Review Board, the board had notice of the measurements and design for the fence contained within her plan.

{¶11} Appellee next testified that she first received notice in April 2023, over 10.5 years later, about the additional fence deed restrictions she had allegedly violated. The violations she is now charged with are the location ("build line") of her fence and the enclosure ("outboxing") of her utility boxes.[5] Appellee testified

[4] We use this juncture to emphasize the possible dangers of self-representation. At this point, counsel for the homeowners' association had proven only that there was the printout of an account for appellee. While counsel later admitted into evidence a copy of the Declaration and Supplement, at the time counsel rested, the Association had not proven that the charges were linked to appellee's violation of the deed restrictions contained in the Declaration and Supplement. Had appellee chosen not to testify, the magistrate may have rendered judgment in favor of appellee at that stage of the proceedings. It was appellee's testimony that forged the connection between the alleged violations and the assessments and fees the Association sought.

[5] The fence location or "build line" is referenced in Paragraphs One and Four of Schedule F. The enclosure of utility boxes is referenced in Paragraph Eight of Schedule F.

that the Association routinely patrols and notifies the homeowners about violations for porchlights, garbage cans, etc. Appellee testified that in an April 2023 email, she was advised to submit another application.

{¶12} Appellee directed the court's attention to the 2012 application, stating that if the Design Review Board had disapproved her application, she could have made an informed decision about whether she should proceed to build her fence. Appellee testified that she spent $8,000 on a vinyl fence that she would not have built had she been fully informed. Appellee also testified that if she had to move her fence, it would be too expensive for her, given inflation. She testified that inconsistencies in the Conditional Approval and the approval process itself confused her.

{¶13} Appellee admitted that the Schedule F restrictions conflicted with the measurements she provided from Lowes. Appellee admitted that Lowes had been provided with Schedule F and built the fence in violation of the restrictions anyway. However, she argued that the Association gave her conditional approval and never mentioned the other issues for 10.5 years.

{¶14} The Association recalled Amy Tryon who testified that property managers inspect for violations every 10-14 days. Tryon testified that as of April 25, 2023, it had been reported that appellee's fence was built over the build line. Tryon testified there was no Design Review Board Application on file.

{¶15} The magistrate admitted all exhibits submitted by the parties. We summarize the exhibits as follows:

> The Association:
> Exhibit A, account ledger showing assessments and fees appellee allegedly owed appellant.
>
> Exhibit B, record is unclear but may have consisted of the above-described letters sent from OMNI to appellee.
>
> Exhibit C, copy of the Declaration and supplement.
>
> Appellee:
> Exhibit 1, packet which included appellee's application to the Design Review Board and the conditional approval.
>
> Exhibit 2, unclear but may have consisted of emails between OMNI's representative and appellee.
>
> Exhibit 3, unclear but may have consisted of pictures of other homes which appellee claimed showed similar violations.

{¶16} At the close of the hearing, the magistrate stated:

> [T]he key point here is that this fence was installed in November or possibly December of 2012 and there was never any complaint or administrative action pursued for almost 11 years. It was at some point in 2023 when the Plaintiff first brought it to the Defendant's attention that there might be a problem with the fence. Whether it's a failure to meet a statute of limitation or a laches problem, quite simply, I feel that the plaintiff waited far too long to take any remedial action or steps to address this matter I believe the plaintiff as a Homeowner's Association was in existence for all times relevant in this matter, and I think it would have been incumbent on them to be on top of this matter in late 2012 when the fence was installed, and to see that it was installed correctly. They failed to do that and instead actually took no action, until apparently another homeowner in the community raised a concern, again, almost 11

> years later. So the Court's going to find that the Plaintiff waited too long in order to pursue this matter, and as a result, their assessment for fines, including interest, late fees, legal expenses, court costs, attorney fees, and everything that followed are not well-taken…The Plaintiff's claim is not correct, and the Court will deny Plaintiff's claim and grant judgment for the Defendant with costs to the Plaintiff.

On the same date, the Magistrate's Decision issued, finding judgment in favor of appellee and ordering costs to plaintiff.

{¶17} The Association filed a Request for Findings of Fact and Conclusions of Law. The magistrate obliged and on August 7, 2025 filed an Entry which stated as follows:

> Action taken: Plaintiff's request is pursuant to Civil Rule 53. This is a small claims action. As set forth in Civil Rule 1(C)(4), the Civil Rules are generally not applicable to small claims actions.
> Other: Further, at the conclusion of the hearing, an explanation of the basis of the magistrate's Decision was stated in the record, in the presence of the parties and counsel. This would constitute a sufficient explanation of the findings of fact and conclusions of law which were the basis of the Decision. For these reasons, Plaintiff's request is denied.

{¶18} On August 12, 2025, the Association filed Plaintiff's Objections to Magistrate's Decision. The Association primarily argued that there was no dispute that a violation of the deed restrictions had occurred. Appellant also asserted, as here on appeal that (1) appellee had expressly waived the affirmative defenses of laches and the applicable statute of limitations; and (2) appellee had not followed the proper procedures to challenge the assessments of fines and other charges.

On September 16, 2025, the trial court issued its Decision and Entry.

{¶19} The Decision and Entry found no error of law in the magistrate's decision. The trial court noted as relevant fact that appellee's property was subject to the deed restrictions. The court also noted that appellee had received conditional approval, subject to the GENERAL CONDITIONS and SCHEDULE F. Specifically, the court found:

> Defendant's fence was conditionally approved in writing on October 31, 2012…The height requirement is referenced in Schedule F,#8. Since the height modification was set forth in the conditional approval but no other provisions specifically referenced, it was reasonable for Defendant to interpret that the fence height was the only problem. Relying on that, she went forward with her project. There was no communication from Plaintiff counteracting that reliance until ten and one-half (10 ½) years later. As such, the Court finds that Defendant's project was approved and thus, she is not subject to any of the claimed fees, assessment, etc., levied by Plaintiff.

{¶20} This timely appeal followed. Additional facts are set forth below.

ASSIGNMENTS OF ERROR

> I. THE TRIAL COURT ERRED IN DETERMINING THAT THE DEFENDANT-APPELLEE'S FENCE WAS BUILT IN ACCORDANCE WITH THE CONDITIONAL APPROVAL GRANTED BY THE PLAINTIFF-APPELLANT.
>
> II. THE TRIAL COURT ERRED IN DETERMINING THAT APPELLANT'S CLAIM IS BARRED BY THE DOCTRINE OF LACHES AND THE STATUTE OF LIMITATIONS IN DIRECT CONTRADICTION TO THE WAIVER OF SAID DEFENSES BY APPELLEE AS RECORDED IN THE RESTRICTIVE COVENANTS.

III. THE TRIAL COURT ERRED IN FAILING TO ADDRESS THAT APPELLEE HAD WAIVED THE RIGHT TO CHALLENGE THE VALIDITY OF THE FINES IN CONTRADICTION TO BOTH THE RESTRICTIVE COVENANTS AND OHIO REVISED CODE SECTION 5312.119(C) AND (D).

ASSIGNMENT OF ERROR I

{¶21} The Association argues that in concluding that appellee conformed to the requirements of the Conditional Approval, the court focused only on the height provision. The Association directs us to Schedule F, which clearly provides in Sections One, Four, and Five that the alignment of appellee's fence as installed, and the "outboxing" of utility boxes, is not permitted. The Association points out that during trial, appellee acknowledged that the Deed Restrictions and Conditional Approval are a "contract." The Association argues that the language in the Deed Restrictions and Schedule F is clear and unambiguous. Thus, it is undisputed that appellee's fence violates both additional restrictions. The Association concludes that appellee failed to comply with the conditions set forth in the Conditional Approval and does not get to "rewrite" contract terms after the fact, just because she thought "some terms were more emphasized than others."

Legal Analysis

{¶22} The construction of written contracts and instruments is a matter of law. *See Long Beach Assn., Inc. v. Jones,* 82 Ohio St.3d 574, 576 (1998); *Inland*

Refuse Transfer Co. v. Browning–Ferris Industries of Ohio, Inc., 15 Ohio St.3d 321, 322 (1984). Questions of law are reviewed de novo. *Ohio Bell Tel. Co. v. Pub. Util. Comm.,* 64 Ohio St.3d 145, 147 (1992).

{¶23} Common words in a written contract will be given their ordinary meaning unless manifest absurdity results or unless some other meaning is clearly evidenced from the face or overall content of the contract. *See Alexander v. Buckeye Pipeline Co*., 53 Ohio St.2d 241 (1978), paragraph two of the syllabus; *Blosser v. Enderlin,* 113 Ohio St. 121 (1925), paragraph one of the syllabus; *Clay v. Shriver*, 2018-Ohio-3371, at ¶ 107 (7th Dist.); *Estate of Coppick,* 2023-Ohio-2279, at ¶ 15 (4th Dist.). If language in a contract is clear and unambiguous, the court cannot create a new contract by finding an intent not expressed in the clear language employed by the parties. *Alexander, supra,* at 246.

{¶24} At the small claims trial, the "conditional approval letter" from OMNI to appellee dated October 31, 2012, was introduced. The letter states in pertinent part:

> Dear Property Owner,
>
> We are in receipt of your application for approval of the erection of Improvements on your above-referenced property. A copy of your Application is attached to this transmittal. This letter is sent to advise you that your Application has been **CONDITIONALLY APPROVED. Approval is subject to the GENERAL CONDITIONS described below and attached SCHEDULE F.**

> **The proposed fence is DISAPPROVED. The Deed Restrictions for Bloomfield Hills state that NO fence or wall shall be constructed in excess of four (4) feet above finished grade. The fence is CONDITIONALLY APPROVED, if and only if the fence eight is reduced from six (6) feet to four (4) feet.**

{¶25} Schedule F is additionally captioned "CONDITIONS TO FENCE APPROVALS." It states, "Unless otherwise provided specifically and in writing, all fence approvals are subject to the following conditions." Thereafter, nine conditions are set forth in paragraph form. Pertinent to this appeal are conditions listed in Paragraphs One, Four, and Five.

{¶26} Paragraph One states: "All fences must be located on a property owner's line(s) or set-back a minimum of twenty-four inches ("24") from the property line." Paragraph Four states: "No fence may be erected closer to any street than the platted building, set-back line relative to such street." Paragraph Five states:

> Fences may not be erected to "clip a corner" or otherwise "box out" utility junction boxes that are located on the lot on which the fence is being erected. An application that has been "Conditionally Approved" and which shows a fence alignment that results in such junction boxes being "outside of the fenced area of the yard are understood to require a change in alignment, such that the proposed fence follows property lines around the junction boxes or runs parallel to property lines and is adequately set back from property lines to meet all of the foregoing requirements . . ."

{¶27} Paragraph Eight states: "Fences are required to comply with any and all height limitations established in the deed restrictions." The Declaration provides at Article IX, "Use Restrictions," Part S(2), that "no fence or wall constructed shall be constructed in excess of four feet above finished grade."

{¶28} Essentially, after 10.5 years, the Association asserts that appellee must have performed two additional conditions set forth in Schedule F before her fence construction project could be approved as in compliance with subdivision restrictions. Conditions precedent are conditions "which must be performed before the obligations in the contract become effective." *Adkins v. Bratcher*, 2009-Ohio-42, at ¶ 31 (4th Dist.) (Additional citations omitted). "Conditions precedent are not favored by the law, and whenever possible courts will avoid construing provisions to be such unless the intent of the agreement is plainly to the contrary." *Adkins* at ¶ 32. The determination of whether a contractual provision "is a condition precedent or merely a promise to perform is a question of the parties' intent." *Id.* Intent is best determined "by considering the language of a particular provision, the language of an entire agreement, or the subject matter of an agreement." *Id.*

{¶29} In *Mollett v. Lawrence County Board of Developmental Disabilities,* 2024-Ohio-1434, (4th Dist.), Mollett, a former school superintendent, filed a complaint alleging that his employer, the Board, breached his employment contract by failing to pay him his accrued but unused sick leave credit after he retired. The

trial court eventually dismissed Mollett's breach of contract claim, granted the Board's counterclaim, and dismissed the Board's remaining claims. Whether or not a third condition precedent existed to bar Mollett's right to payment was one of the issues on appeal.

{¶30} Mollett argued that his contract had only two conditions precedent, which he satisfied. He argued that the trial court improperly "read in" an additional condition precedent into his contract which required him to request payment of his sick leave before (or contemporaneously with) his retirement. Specifically, Mollett relied on the emphasized language that "[u]pon separation or retirement from employment with the Board, and after 10 years of service, the Superintendent *will be paid* in accordance with current board policy at the time of separation." (Emphasis added). He argued that the language "in accordance with board policy" addressed only the "manner" in which his sick leave was to be paid. Mollett argued that the contract contained no requirement to request payment of his sick leave at the time of retirement and before he is entitled to receive it.

{¶31} The Board responded that Mollett's employment contract incorporated the Board's policy 5.6.10 and R.C. 124.39(B), which created a third condition precedent. Specifically, the Board argued that "Section I of [policy 5.6.10] states " '[t]he employee must request payment of unused sick leave' in order to be entitled to it." The Board further claimed "[t]he requirement that an

employee must request payment upon retirement, not a retiree, is to comply with R.C. 124.39(B)." The Board also argued that such an interpretation as Mollett proffered effectively "read the Board's policies out of Mollett's contract and rendered the in accordance with language 'utterly meaningless.' "

{¶32} Upon this court's analysis of Mollett's employment contract, we found:

> The language in Part V. Section B.1. of Mollett's contract unambiguously creates two conditions precedent that must be satisfied for Mollett to be entitled to payment of his sick leave. Specifically, it states: "[1] Upon separation or retirement from employment with the Board, and [2] after 10 years of service, the Superintendent will be paid for accrued, but unused sick leave in accordance with current board policy at the time of separation." (Emphasis added.) In other words, once Mollett retired with at least "10 years of service[,]" the contract provided that Mollett "will be paid" his accrued but unused sick leave credit, and the Board would be obligated to pay it.

Mollett at ¶ 54.

{¶33} We reasoned:

> The Board unilaterally drafted this contract specifically for its superintendent. Had it intended the superintendent to be subject to an additional condition precedent requiring him to request that payment at the time of his retirement, it should have included that precise language with the other two conditions precedent and immediately prior to the "will be paid" language in Part V., Section B.1., of Mollett's contract. The absence of such language here supports the conclusion that the Board did not "plainly" intend such a third condition precedent requiring Mollett to request payment of his accrued but unused sick leave "at the time of his retirement." This conclusion is even more compelling considering that interpreting Mollett's contract as containing a

> third condition precedent would result in Mollett forfeiting his accrued but unused sick leave, which pursuant to his contract was part of his compensation as superintendent. (Citations omitted.)

Mollett at ¶ 55.

{¶34} Finally, we observed that,

> The trial court determined that the "in accordance with" language in Part V., Section B.1., of Mollett's contract incorporated Board policy 5.6.10, which contained a third condition precedent requiring Mollett to request payment of his sick leave at the time of his retirement. While we agree that Mollett's contract must be interpreted "in accordance with" existing board policies, we do not find that it sets forth a third condition precedent requiring Mollett to expressly request accrued unused sick leave at the time of his retirement. As we stated above, if the Board intended such a condition precedent, it would have placed it in the contract along with the other two conditions precedent, but it did not.

Mollett at ¶ 56.

{¶35} Turning to the matter herein, we concur with the trial court's interpretation of the conditional approval letter issued to appellee. As noted above, the trial court found that "[s]ince the height modification was set forth in the conditional approval, but no other provisions specifically referenced, it was reasonable for Defendant to interpret that the fence height was the only problem. Relying on that, she went forward with her project." As in *Mollett*, we recognize that the Association's representative OMNI drafted the conditional approval letter. If the Association's intent was to place appellee on notice that she needed to comply not only with the height restriction but also to comply with other

restrictions regarding the location of the build line of her fence and the enclosure of her utility boxes, it could easily have done so by setting forth the precise additional conditions needed for compliance.

{¶36} As drafted, the language clearly provides that appellee's fence was conditionally approved, **"<u>if and only if the fence height is reduced from six (6) to four (4) feet.</u>"** The common meaning of this language and the only reasonable interpretation is that the height restriction set forth in Schedule F at Paragraph Eight is the only restriction with which the Association's design review board was concerned with when it gave conditional approval in 2012. *See generally Moody v. Ohio Rehabilitation Services Commn*., 2002-Ohio-6965, (10th Dist.). The trial court's interpretation does not lead to a manifestly absurd result, nor is there some other meaning that can be reasonably discerned from the language used. *Id. See also Deming IX, LLC v. Millonzi Internatl. Prods. Group, Inc.,* 2008-Ohio-6992, at ¶ 22 (11th Dist.) (Language in Article 31 of lease clearly provided that lease could be treated as void if, and only if, certain services were used and if parties had intended that lease would be void for alternate reason, that could have been written into relevant Article).

{¶37} Furthermore, there was no other meaning of the boldface, underlined language used that can be reasonably discerned. If the Association intended that the other conditions for compliance and approval must be remedied before

approval was granted, it could have also listed the restrictions contained in Paragraphs Four and Five in boldface and underlined each. That did not occur.

{¶38} As in *Mollett,* while the conditional approval letter incorporated the General Conditions and Schedule F, nothing supports the contention that now, 10.5 years later, the Association's simple reference to the General Conditions and Schedule F was supposed to somehow put appellee on notice to "read between the lines" and interpret that the Association expected two additional conditions to be performed in order to obtain approval. This is especially true in light of the fact that appellee attached the plan to her application and made no effort to hide the dimensions/build line.

{¶39} Accordingly, we find no merit to the Association's first assignment of error. Accordingly, it is hereby overruled.

Assignment of Error II

{¶40} Under the second assignment of error, appellant argues that the trial court erred by finding that its claims are barred under the applicable statute of limitations for written contracts and the doctrine of laches. Appellant directs us to the following language contained in the Declarations:

Article VII, Miscellaneous, provides at Part B:

> The provisions hereof may be enforced by any proceeding at law or in equity by the Declarant, any Owner, the Community Association, . . . against any Person(s) violating or attempting to violate, any covenant, restriction, or rule to restrain and/or to

> enjoy in violation . . . The failure or forbearance to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of these rights.

Furthermore, Part I, Enforcement; Waiver, provides:

> Failure of Declarant, the Community . . . or any Owner to enforce any provision of this Declaration, Rules, or the Governing Documents in any matter shall not constitute a waiver of any right to enforce any violation of such provisions. By accepting a deed to a lot or Unit, each Owner there is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement of the provisions hereof, or other Governing Documents.

{¶41} At least one Ohio court has "declined to accept the proposition that parties may contract away their right to raise the affirmative defenses of laches and the statute of limitations as authorized by Civ.R. 8(C)." *Junkins v. Spinnaker Bay Condominium Ass'n*., 2002-Ohio-872, at *6 (6th Dist.). The *Junkins* court observed:

> The purpose of any statute of limitations is to prevent the assertion of stale claims due to the difficulty involved in asserting, and defending, a legal claim after a substantial lapse of time from the point the claim arose. *Olnik v. Nationwide Mut. Ins. Co.,* 133 Ohio App.3d 200, 211 (7th Dist.1999). Likewise, the purpose of the doctrine of laches is to prevent the enforcement of stale demands in those instances where " 'a party has slept upon his rights or acquiesced for a great length of time. * * * ' ". *State ex rel. Case v. Industrial Comm. of Ohio*, 28 Ohio St.3d 383, 385 (1986), quoting *Piatt v. Vattier*, 34 U.S. 405, 416 (1835). To allow parties to eliminate these defenses contractually would effectively leave all unadjudicated controversies open for future lawsuits in the uncertain and even infinite future. Olnik, supra, 133 Ohio App.3d at 211. This would entirely defeat the very purpose of those defenses.

{¶42} However, given that we have found that the trial court's judgment was correct and the first assignment of error is without merit, we need not consider appellant's second assignment of error as it has been rendered moot.

Assignment of Error III

{¶43} Under the third assignment of error, appellant argues that the evidence introduced at trial clearly showed that appellant complied with the requirements of R.C. 5312.11(C) which sets forth the requirements a homeowners' association must take prior to assessing charges and levying fines for enforcement of rules and restrictions. However, again, given our resolution of the first assignment of error, the third has now been rendered moot and we need not consider it.

Conclusion

{¶44} Having found no merit to appellant's first assignment of error and having found assignments of error two and three to be moot, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Circleville Municipal Court, Pickaway County, 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.

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.