

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D26840
Y/prt

_____AD3d_____

Submitted - February 23, 2010

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RANDALL T. ENG
SHERI S. ROMAN, JJ.

2008-10866

DECISION & ORDER

Bay Crest Association, Inc., respondent,
v Louis Paar, et al., appellants.

(Index No. 31111/07)

Louis Paar and Suzanne De Lisi, Huntington Bay, N.Y., appellants pro se.

Hamburger, Maxson, Yaffe Wishod & Knauer, LLP, Melville, N.Y. (Richard
Hamburger and William P. Caffrey, Jr., of counsel), for respondent.

In an action to collect unpaid annual assessments, the defendants appeal from a judgment of the Supreme Court, Suffolk County (Spinner, J.), entered December 16, 2008, which, upon an order of the same court dated October 23, 2008, denying their motion to dismiss the complaint and separate motion for summary judgment and granting the plaintiff's cross motion for summary judgment, is in favor of the plaintiff and against the defendant Louis Paar in the principal sum of \$16,462.65, and is in favor of the plaintiff and against the defendant Suzanne DeLisi in the principal sum of \$5,487.55. The defendants' notices of appeal from the order are deemed to be premature notices of appeal from the judgment (*see* CPLR 5510[c]).

ORDERED that the judgment is affirmed, with costs.

The Bay Crest Association, Inc. (hereinafter the Association), was incorporated in 1905 to own and operate a private community known as Bay Crest, which is located in the Village of Huntington Bay in Suffolk County. In 2007 the Association commenced this collection action against two homeowners in the community who refused to pay the annual assessments.

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The Association established prima facie that it acted within the scope of its authority and in good faith to further its legitimate interests when it imposed the challenged assessments. Under these circumstances, the business judgment rule precluded the court from interfering with the board's decision (*see 40 W. 67th St. v Pullman*, 100 NY2d 147; *Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75 NY2d 530; *Martino v Board of Mgrs. of Heron Pointe on Beach Condominium*, 6 AD3d 505). In opposition to the Association's cross motion for summary judgment, the defendants' conclusory and speculative allegations of bad faith, self-dealing, and other wrongdoing were not sufficient to raise a triable issue of fact (*see Pelton v 77 Park Ave. Condominium*, 38 AD3d 1; *Captain's Walk Homeowners Assn. v Penney*, 17 AD3d 617). Accordingly, the Supreme Court properly granted the Association's cross motion for summary judgment, and properly denied the defendants' motions.

We decline to address the defendants' remaining contentions because they were improperly raised for the first time on appeal (*see Mann v All Waste Sys.*, 293 AD2d 656; *Antler v Jamaica 163 Location Corp.*, 241 AD2d 437).

MASTRO, J.P., SKELOS, ENG and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court