

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
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Granted Appeal Summary

Case

DULLES PROFESSIONAL CENTER CONDOMINIUM UNIT OWNERS ASSOCIATION, ET AL. v. BOARD OF SUPERVISORS OF FAIRFAX COUNTY, ET AL.
(Record Number 200105)

From

The Circuit Court of Fairfax County; R. Smith, Judge.

Counsel

Craig J. Blakely (Alliance Law Group, LLC) for appellants.

Elizabeth D. Teare, T. David Stoner and Sara G. Silverman (Office of the County Attorney) and Robert T. Cahill, Mark Looney and Scott W. Stemetzki (Cooley LLP) for appellees.

Assignments of Error

2. The Circuit Court erred in sustaining Defendants' pleas in bar with respect to the Dulles Association's right to sue in the name of the Association solely on the basis of Section 3.10 of the Condominium By-Laws. Virginia law requires that the instant action, which, in part, concerned alleged harm to the condominium common elements, be brought in the name of the Dulles Association.

3. The Circuit Court erred in sustaining Defendants' pleas in bar with respect to the individual unit owners' standing to sue because their claims were not for harms to the common elements or limited common elements.

4. The Circuit Court erred in sustaining Defendants' demurrers to Plaintiffs' standing in Count I of the amended complaint, which alleged that the County had violated the Virginia Stormwater Management Act and the Fairfax County, Stormwater Management Ordinance in adopting the 2018 approval, because:

- a. In its Memorandum Order of March 22, 2019 ("Mem, Order"), as affirmed by its Order of April 30, 2019 ("April 30 Order"), the Circuit Court erroneously concluded that the Plaintiffs did not satisfy the requirement for land use standing set forth in *Friends of Rappahannock v. Caroline Cty. Bd. of Supervisors*, 286 Va. 38 (2013).

- b. In its Mem, Order, as affirmed by its April 30 Order, the Court erroneously concluded that Plaintiffs lacked standing as to Count I of the amended complaint because the immediate \$3 million diminution in the value of their property that Plaintiffs alleged resulted from the 2018 approval, was not sufficient to support standing as to count I.

Assignments of Cross-Error

By Board of Supervisors of Fairfax County:

1. The trial court erred in refusing to consider the County's demurrer to Count II of the amended complaint based upon the court's erroneous application of *Federal Land Bank of Baltimore v. Worrell*, 170 S.E. 567, 567-68 (Va. 1933).

2. The trial court erred in failing to sustain the County's demurrer to Count II of the amended complaint on the grounds that:

- a. Dulles lacks standing as its claim is not based on any present, non-speculative facts over which the Court may exercise jurisdiction.

- b. Dulles fails to allege any justiciable and redressable claims, because even a reversal of the 2018 Approval would not reverse the 2017 Approval, which approved the Extension.

3. The trial court erred in failing to sustain the County's demurrer to Count II of the original complaint based on the following grounds:

- a. Dulles fails to allege a justiciable controversy based on an assertion and denial of right based on present, non-speculative facts over which the Court can exercise jurisdiction; as such, the original complaint seeks an advisory opinion.

- b. Count II is barred by Dulles's failure to appeal or challenge the County's 2015 and 2017 Approvals, which included approval of the Extension.

By Stanley Martin Companies, LLC and JLB Dulles Tech LLC:

The trial court erred in denying the Developers' demurrer to Count II of the amended complaint. Dulles failed to allege facts sufficient to show that Dulles had standing to bring Count II, as the allegations pleaded showed that Dulles's rights would not [be] affected by the outcome of this proceeding.