

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 7, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-1748
STATE OF WISCONSIN**

Cir. Ct. No. 01CV001122

**IN COURT OF APPEALS
DISTRICT II**

**PRAIRIE HARBOR YACHT CLUB CONDOMINIUM OWNERS'
ASSOCIATION, INC.,**

PLAINTIFF-RESPONDENT,

v.

THE MARINE GROUP, LLC,

**DEFENDANT-THIRD-
PARTY PLAINTIFF-APPELLANT,**

v.

WARREN R. FULLER,

**THIRD-PARTY DEFENDANT-
RESPONDENT.**

APPEAL from a judgment of the circuit court for Kenosha County:
S. MICHAEL WILK, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. The Marine Group, LLC, appeals from the judgment entered against it after a trial. It argues on appeal that the trial court erred when it allowed the Prairie Harbor Yacht Club Condominium Owners' Association, Inc., to foreclose on the lien it had filed against The Marine Group. Because we conclude that the lien filed by Prairie Harbor was valid, and that the trial court properly granted the foreclosure action, we affirm.

¶2 Prairie Harbor is a condominium owners' association charged with setting the budget and assessments for the association. The condominium units consist of parking spaces and boat slips. The Marine Group owns a large number of units in the condominium. In the spring of 2001, the Condominium Association Board needed to revise its budget because a loan was coming due and it needed to pay for the harbor channel to be dredged. It also determined that the Association was going to have a significant cash flow shortfall by June of that year. Consequently, the Board voted an increase in the assessment for that year, and decided to accelerate the date for the payment of the assessment installment.

¶3 The Marine Group did not pay the increased assessment by the deadline set. Prairie Harbor then filed a single lien against all of the units owned by The Marine Group, and subsequently filed a foreclosure action. The Marine Group countered by filing a slander of title action against Prairie Harbor and the Association president. The trial court granted foreclosure to Prairie Harbor and dismissed the slander of title action. The Marine Group appeals.

¶4 We sustain a trial court's findings of fact unless they are clearly erroneous. *Klinefelter v. Dutch*, 161 Wis. 2d 28, 33, 467 N.W.2d 192 (Ct. App. 1991). The legal significance of those facts, however, is a question of law which

we review de novo. *Id.* The Marine Group argues that the assessment issued by the Association Board was invalid under the Association’s declarations and bylaws, and consequently the ensuing lien was also invalid. The bylaws provide for four installment payments of the annual assessment. In practice, however, the Association had payments made in two installments, one in January and one in July.

¶5 Article II, sec. 3 (a) of the Association Bylaws states: “Should the Board of Directors at any time determine, in the sole discretion of the Board of Directors” that, among other things, the assessments levied are insufficient to cover its costs, “the Board of Directors shall have authority to increase the general assessment or to levy such additional assessment or assessments as it shall deem to be necessary.” The Board determined that additional assessments were necessary because it needed additional money to pay for the loan that was coming due, and to cover the cost of having the harbor dredged. In doing so, the Board acted under this authority specifically granted by the bylaws.

¶6 The Marine Group argues that the assessment was not valid because an assessment was not due at the date set by the Board. The bylaws, however, provide that the Board may increase or levy an additional assessment when it determines that the current assessments are inadequate and it may do so “at any time.” We conclude that the Board acted pursuant to the power granted to it by the bylaws when it levied the additional assessment. Since the assessment was valid, the lien was also valid.¹

¹ Since we conclude that the action was valid under the Association’s bylaws, we need not address whether a conflict exists between the bylaws and the declarations.

¶7 The Marine Group also argues that the single lien filed by Prairie Harbor was invalid because it covered multiple units, and that the foreclosure was improper because Prairie Harbor did not identify the amount due on each of the Marine Group's units. We disagree. While the lien covered multiple units, the lien expressly recited the amount of the lien allocated to each unit. Since the lien recited the amount allocated to each unit, then foreclosure was appropriate.

¶8 The Marine Group also argues that the foreclosure was inappropriate because Prairie Harbor did not allocate a partial payment that Marine made. After trial, the court issued an interim decision finding that the foreclosure was appropriate but directing an allocation to be made. The parties then reached an agreement on the allocation, and a stipulation and order was entered effectuating that agreement. The agreement released fifty-five of The Marine Group's units from the lien. The trial court then ordered a judgment of foreclosure against the remaining units. That judgment expressly allocates the amount of the assessment among the twenty remaining units. The trial court made the determination and the evidence supports that determination. Consequently, we affirm the trial court's judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

