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# IN THE
# COURT OF APPEALS OF INDIANA

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| GEORGE MIMMS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A02-0812-CV-1164 |
| | ) | |
| HIDDEN BAY HOMEOWNERS ASSOCIATION, INC., | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

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APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David A. Shaheed, Judge
Cause No. 49D01-0802-PL-5288

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**August 21, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

George Mimms appeals the trial court's order granting a permanent injunction in favor of Hidden Bay Homeowners Association, Inc., ("the Association") and its award of attorneys' fees. We affirm.

## Issues

We restate the issues as follows:

I. Whether members of the Association's Board of Directors may simultaneously serve on the Architectural Review Board; and

II. Whether the trial court erred in awarding attorneys' fees.

## Facts and Procedural History

Mimms owns a unit in Hidden Bay, a residential community in Indianapolis consisting of 198 residential units in thirty-five buildings. The Association is an Indiana non-profit corporation that is responsible for managing the community and providing all exterior maintenance for the residential units, except for windows and doors. Ownership of the units is controlled by the Declaration of Covenants ("the Declaration"), which is recorded in the Office of the Marion County Recorder.

Section 17 of the Declaration establishes the Architectural Review Board and requires its written approval for any improvements or alterations to the exterior of a residence. Section 17(a) states in pertinent part, "Until the Applicable Date,[1] the Architectural Review Board shall be the Initial Board of Directors. After the Applicable Date, the Architectural

Review Board shall be appointed by the Board of Directors." Appellee's App. at 2. At the time of the instant dispute, no one had volunteered to serve on the Architectural Review Board, and thus the Association's Board of Directors also served as the Architectural Review Board. Section 28 of the Declaration entitles the Association to recover reasonable attorneys' fees in connection with an owner's failure to comply with the Declaration.

Jay Bradley was president of the Association's Board of Directors. On Memorial Day weekend, 2006, Mimms approached Bradley at a neighborhood cookout. Mimms showed Bradley an elaborate set of plans to construct a deck on his property and asked Bradley to approve the project. Bradley informed Mimms that he would have to file a formal request with the Architectural Review Board. Bradley also told Mimms that, based on past experience, he did not believe that the Architectural Review Board would approve a project that was as elaborate as the one Mimms had shown him.

On July 28, 2007, Bradley discovered that Mimms was having work done on his deck. Bradley asked Mimms to stop because no Architectural Review Board approval had been obtained. On July 31, 2007, Mimms delivered an Architectural Review Board form to Bradley's home. On August 1, 2007, Mimms attended an Architectural Review Board meeting, where he was asked to stop construction until his request could be reviewed. Mimms refused. On August 28, 2007, the Architectural Review Board sent Mimms a letter informing him that it had approved the extensions of his deck and balcony, but since it did

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[1] According to the Association, the "Applicable Date" is "the date the Developer turned the property over to the Owners[.]" Appellee's Br. at 8. The record does not disclose this date, but we presume that it was prior to the events at issue.

not approve of the connecting staircase, it must be removed. Mimms did not comply with the demand.

On February 4, 2008, the Association filed a complaint for injunctive relief and attorneys' fees against Mimms to compel his removal of the staircase. A bench trial was held on November 10, 2008. In an order dated December 3, 2008, the trial court found that Mimms was subject to, and had breached, Section 17 of the Declaration. The trial court entered an injunction requiring Mimms to remove the staircase and awarded the Association $2500 in attorneys' fees pursuant to Section 28 of the Declaration. This appeal ensued.

**Discussion and Decision**

Mimms represents himself in this appeal. We remind Mimms that pro se litigants are held to the same standard regarding rule compliance as are attorneys duly admitted to the practice of law, and they must comply with the appellate rules to have their appeal determined on the merits. *Smith v. State*, 822 N.E.2d 193, 203 (Ind. Ct. App. 2005), *trans. denied*. Mimms's arguments are difficult to decipher, and he cites little, if any, relevant authority in support of his claims. Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. *Id*. at 202-03; *see also* Ind. Appellate Rule 46(A)(8)(a).[2] Waiver notwithstanding, we attempt to discern, and then address, the merits of Mimms's appeal.

[2] Indiana Appellate Rule 46(A)(8)(a) provides that the argument section of an appellant's brief must "contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and that "[e]ach contention must be supported by citations to the authorities, statutes, and the appendix or parts of the Record on Appeal relied on, in accordance with Rule 22."

### *I. Makeup of Architectural Review Board*

Mimms first argues that the Association cannot force him to comply with Section 17 of the Declaration because members of the Association's Board of Directors cannot also serve on the Architectural Review Board. Indiana Code Section 23-17-15-6(a)(2) currently provides that, unless otherwise prohibited by its bylaws, a non-profit corporation's board of directors "may create one (1) or more committees that consist of one (1) or more members of the board of directors."[3] Mimms has failed to establish that the Declaration prohibits members of the Association's Board of Directors from serving on the Architectural Review Board.[4] Accordingly, we find no error.

### *II. Attorneys' Fees*

Mimms asserts that the trial court erred in awarding the Association attorney's fees pursuant to Section 28 of the Declaration. First, he contends that the award was improper because "the [Association] did not have an [Architectural Review Board] at the time the deck stairs were built[.]" Appellant's Br. at 10-11. We take this to be a reformulation of his argument that the members of the Association's Board of Directors could not also serve on the Architectural Review Board—an argument we have already determined to be meritless. Second, Mimms contends that the award was improper because the Association "should not

[3] Prior to 2008, Indiana Code Section 23-17-15-6(a) provided that, unless otherwise prohibited by its bylaws, a non-profit corporation's board of directors "may create at least one (1) committee and appoint at least two (2) members of the board of directors to serve on the committees." For purposes of this case, we find no substantive difference between the current and revised versions of the statute.

[4] In support of his argument, Mimms cites Section 12(c) of the Declaration, which has nothing to do with the Architectural Review Board.

have entered a contract of [$]2500.00 or more, without being approved by the Homeowners of [the Association]." *Id*. at 11. Because Mimms did not present this argument at trial, it is waived. *See, e.g.*, *Sides v. State*, 693 N.E.2d 1310, 1312 (Ind. 1993) ("Because Sides failed to avail himself of this argument during trial, the issue is waived."), *abrogated on other grounds by Fajardo v. State*, 859 N.E.2d 1201 (Ind. 2007). Therefore, we affirm.[5]

Affirmed.

MAY, J., and BROWN, J., concur.

[5] In its order, the trial court also granted the Association an injunction compelling Mimms to remove exterior floodlights from his unit. Mimms's entire argument on this point is this: "The [Association] initially requested this floodlight injunction but rescinded this request after [Mimms] showed evidence of floodlights pre-existing before purchasing his property." Appellant's Br. at 10. The Association agrees with this recitation of events and states that it has informed Mimms that it will not enforce this provision of the order. As such, the issue is moot. *See Rainbow Cmty., Inc. v. Town of Burns Harbor*, 880 N.E.2d 1254, 1260-61 (Ind. Ct. App. 2008) (stating that issue is moot when "the principal questions in issue have ceased to be matters of real controversy between the parties").