DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LUCAS G. HOGG and DOMINIC BROWNE-CASON,

Appellants,

v.

VILLAGES OF BLOOMINGDALE I HOMEOWNERS ASSOCIATION, INC., and ARAVIND ALE,

Appellees.

No. 2D21-3724

March 17, 2023

Appeal from the Circuit Court for Hillsborough County; Jennifer X. Gabbard, Judge.

Julia Kapusta, (withdrew after briefing) and Courtney L. Fernald of Englander and Fischer, LLP, Saint Petersburg, for Appellants.

Karen Cox of Appleton Reiss, PLLC, Tampa, for Appellee, Villages of Bloomingdale I Homeowners Association, Inc.

No appearance for Appellee Aravind Ale.

LUCAS, Judge.

Lucas Hogg and Dominic Browne-Cason own homes in the Villages of Bloomingdale, a deed-restricted community. But as it turned out, their properties were never included in the Villages of Bloomingdale's

recorded declaration. Some fifteen years after the declaration had been recorded, the circuit court entered a final judgment of reformation in favor of the Villages of Bloomingdale I Homeowners Association, Inc. (the Association), which effectively brought the appellants' properties into the declaration's restrictions. Because the circuit court failed to apply section 95.11(2)(b), Florida Statutes (2020), to the Association's lawsuit, we reverse and remand.

I.

In 2004, Villages of Bloomingdale Developers, Inc. (the Developer), established a plan to develop the Villages of Bloomingdale residential community in three phases, Phases 1, 2, and 3. On April 27, 2005, prior to construction, the Developer recorded a declaration imposing various easements, covenants, and restrictions on the property that would eventually become the Villages of Bloomingdale. The declaration stated that the Developer was the owner of property described in "Exhibit A" and that only the property described in "Exhibit A" was subject to the declaration. "Exhibit A" depicted plats located in the Phase 1 portion of the Villages of Bloomingdale. The plats of Phases 2 and 3, however, were not identified in "Exhibit A" or anywhere else in the declaration. After recording the declaration, the Developer began selling properties, including those located within Phases 2 and 3. Mr. Hogg and Ms. Browne-Cason eventually bought houses located in the latter two Phases.

In January of 2019, the Association discovered that Phases 2 and 3 were not included in the declaration. The Association asked homeowners within those two phases to consent to having their property submitted to the declaration retroactive to the date the declaration was originally recorded. Many owners obliged; Mr. Hogg, Ms. Browne-Cason, and several others did not. Ultimately, the Association commenced a

reformation action seeking to reform the declaration so that it included Phases 2 and 3 of the community.

The case proceeded to an evidentiary hearing in September of 2020. At that time, Mr. Hogg and Ms. Browne-Cason were the only remaining defendants contesting the Association's proposed reformation. After the conclusion of the hearing, the circuit court entered a partial final judgment reforming the declaration to include Phases 2 and 3. However, the judgment was entered "without prejudice" for the court to later decide Mr. Hogg's and Ms. Browne-Cason's affirmative defenses, which asserted that the Association's reformation action was barred by (1) the statute of limitations under section 95.11(2)(b), (2) laches, and (3) waiver.

As to the statute of limitations, Mr. Hogg and Ms. Browne-Cason argued that the Association's reformation action accrued at the time the Developer recorded the declaration. They maintained that since section 95.11(2)(b) requires "[a] legal or equitable action on a contract, obligation, or liability founded on a written instrument" be brought within five years of accrual, the Association had until April 27, 2010, to bring its reformation action. According to Mr. Hogg and Ms. Browne-Cason, because the Association did not bring its lawsuit until October of 2019, the applicable statute of limitations had long since expired.

Both the Association and Mr. Hogg and Ms. Browne-Cason moved for summary judgment. The court held a hearing on the motions, after which it entered an order granting summary judgment in favor of the Association. With respect to the statute of limitations defense, the court ruled that section 95.11(2)(b) was inapplicable because that section only applied to actions seeking to "enforce" a contract or written instrument. According to the circuit court, the Association's action sought "to reform documents to adequate[ly] reflect the intentions of the parties," which,

under the court's reading of *Corinthian Investments, Inc. v. Reeder*, 555 So. 2d 871 (Fla. 2d DCA 1989), and *Silver Shells Corp. v. St. Maarten at Silver Shells Condominium Ass'n*, 169 So. 3d 197 (Fla. 1st DCA 2015), fell outside of section 95.11(2)(b)'s ambit. The circuit court also ruled that neither laches nor waiver barred the Association's lawsuit.[1]

Mr. Hogg and Ms. Browne-Cason now seek our review, raising three issues about the adjudication of their statute of limitations defense. The first of which is whether the circuit court erred by concluding that section 95.11(2)(b) did not apply to the Association's reformation action. Under Florida law, that is the appropriate statute of limitations for a reformation action of a recorded property declaration, and so we must reverse the circuit court's judgment.[2]

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[1] The circuit court never opined which alternative statute of limitations did apply to the Association's lawsuit. Although that is a seemingly odd way to leave a statute of limitations issue, *accord Halkey-Roberts Corp. v. Mackal*, 641 So. 2d 445, 447 (Fla. 2d DCA 1994) ("In addressing this issue, it is first necessary to identify the causes of action set forth in the complaint and the applicable statute of limitations as to each."), in fairness to the court, section 95.11(2)(b) was the only statute of limitations Mr. Hogg or Ms. Browne-Cason ever identified in their arguments.

Turning, then, to the remaining affirmative defenses, the court found that the Association never waived its right to reform the declaration and that Mr. Hogg and Ms. Browne-Cason suffered no prejudice from the fifteen-year delay in bringing the lawsuit (and, hence, laches did not apply). We do not address these aspects of the circuit court's judgment because Mr. Hogg and Ms. Browne-Cason did not raise either issue in this appeal. *Cf. Filomia v. Celebrity Cruises Inc.*, 271 So. 3d 1199, 1200 (Fla. 3d DCA 2019) ("[A]n issue not raised in an initial brief is deemed abandoned." (alteration in original) (quoting *J.A.B. Enters. v. Gibbons*, 596 So. 2d 1247, 1250 (Fla. 4th DCA 1992))).

[2] Because of the legal error identified in the first issue on appeal, we need not address appellants' remaining issues concerning whether

II.

"Appellate courts review orders granting summary judgment de novo." *Greeley v. Wal-Mart Stores E., LP*, 337 So. 3d 478, 480 (Fla. 2d DCA 2022). A trial court's application of a statute of limitations to an action is a question of statutory interpretation; thus, the substantive issue before us is one we review de novo. *See, e.g.*, *D.H. v. Adept Cmty. Servs., Inc.*, 271 So. 3d 870, 877 (Fla. 2018) ("The application of section 95.051(1)(h) to this case is a question of statutory interpretation, which we review de novo." (citing *Borden v. E.-Eur. Ins. Co.*, 921 So. 2d 587, 591 (Fla. 2006))); *Hamilton v. Tanner*, 962 So. 2d 997, 1000 (Fla. 2d DCA 2007) ("A legal issue surrounding a statute of limitations question is an issue of law subject to de novo review.").

III.

Section 95.11(2)(b) provides a five-year limitation to bring "[a] legal or equitable action on a contract, obligation, or liability founded on a written instrument." Where, as here, we are called upon to interpret and apply statutory text, our inquiry centers on the text itself. *See Ham v. Portfolio Recovery Assocs.*, 308 So. 3d 942, 946 (Fla. 2020) ("In interpreting the statute, we follow the 'supremacy-of-text principle'—namely, the principle that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.' " (alteration in original) (quoting Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012))); *Hatten v. State*, 203 So. 3d 142, 144 (Fla. 2016) ("The court must begin with the 'actual language used in the statute' . . . because legislative intent is

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there were genuine issues of material fact in dispute and the sufficiency of the summary judgment evidence.

determined primarily from the statute's text." (quoting *Mendenhall v. State*, 48 So. 3d 740, 747-48 (Fla. 2010))).

We can readily apply the text of section 95.11(2)(b) to the Association's claim. First, as the circuit court observed, a reformation action is a claim that sounds in equity. *See, e.g.*, *Providence Square Ass'n v. Biancardi*, 507 So. 2d 1366, 1369 (Fla. 1987) ("A court of equity has the power to reform a written instrument where, due to a mutual mistake, the instrument as drawn does not accurately express the true intention or agreement of the parties to the instrument."); *Resort of Indian Spring, Inc. v. Indian Spring Country Club, Inc.*, 747 So. 2d 974, 976-77 (Fla. 4th DCA 1999) ("In an equitable action for reformation of a contract, the plaintiff must prove by clear and convincing evidence that a mutual mistake occurred to overcome the strong presumption that a contract expresses the intent of the parties." (citing *Canal Ins. Co. v. Hartford Ins. Co.*, 415 So. 2d 1295, 1297 (Fla. 1st DCA 1982))). But section 95.11(2)(b) covers both legal and equitable actions, so that poses no impediment.

Reading further on in the subsection's text, we see no reason why an action to reform a recorded declaration could not be deemed an action "on [an] obligation . . . founded on a written instrument." Recorded property declarations are written instruments. Typically, they impose obligations. *Cf.* Paul Boudreaux, *Homes, Rights, and Private Communities*, 20 U. Fla. J.L. & Pub. Pol'y, 479, 491-92 (2009) ("Today, however, sets of HOA covenants have grown increasingly complex and have intruded more deeply into the 'castle' of the homeowner. . . . It is common for HOA covenants to restrict many varieties of conduct that might annoy neighbors or potentially decrease the neighbor's property value."). Indeed, one could say the *raison d'être* of property declarations

is to provide a publicly recorded document that anyone can read that will explain what obligations are or may be imposed on a subject property's owners. The specific obligation at the center of the present controversy appears to be the continued payment of a homeowner association's assessments—which would seem to be as good an example as any of an "obligation . . . founded on a written instrument." *Cf.* § 720.308, Fla. Stat. (2020) (governing imposition of assessments by homeowner associations); .3085 (authorizing the imposition of a lien on property for unpaid homeowner association assessments when provided in a homeowner association's governing documents); *Real Est. Sols. Home Sellers, LLC v. Viera E. Golf Course Dist. Ass'n*, 288 So. 3d 1228, 1230-31 (Fla. 5th DCA 2020) (holding that the purchaser of a foreclosed property could be subject to joint and several liability for the prior owner's unpaid homeowners association's assessments).[3] Reading and applying the statute's text to the Association's reformation claim, we conclude that the five-year limitation of section 95.11(2)(b) should have been applied to this lawsuit filed, as it was, fifteen years after the declaration's recordation.[4]

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[3] Were it necessary to consult a dictionary to further illuminate what an "obligation" under section 95.11(2)(b) entails, we would find that a recorded property declaration falls neatly within the definition of a written obligation. *See Obligation*, Black's Law Dictionary (11th ed. 2019) ("A legal or moral duty to do or not do something. . . . It may refer to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness, or morality.").

[4] The circuit court made no ruling (and thus, the parties have advanced no arguments in this appeal) concerning when the Association's claim accrued for purposes of section 95.11(2)(b). The courts of our sister states have weighed in on this issue. *See generally Young v. Verizon's Bell Atl. Cash Balance Plan*, 667 F. Supp. 2d 850, 888 (N.D. Ill. 2009) (noting that under Pennsylvania law, an action for reformation accrues at the time the error is committed and explaining

Neither of the cases cited in the circuit court's summary judgment order supplant the plain meaning and application of section 95.11(2)(b) to the Association's claim. Although our court's opinion in *Corinthian*, 555 So. 2d at 874, did state that section 95.11(2)(b) "appears to connote an action to *enforce* a contract" as opposed to an equitable action to "*change* the stated terms of a contract," that offhanded remark must be understood as dicta: section 95.11(2)(b) wasn't at issue in *Corinthian* (the court was endeavoring to analogize a prior holding from another district); and neither of the statutes *Corinthian* was analyzing, statutory laches under section 95.11(6) or actions "on a contract . . . not founded on a written instrument" under section 95.11(3)(k), are applicable to the case at bar. Since *Corinthian*'s actual holding—that statutory laches did not bar a reformation lawsuit—has nothing to do with the issue before us, the circuit court was not bound to follow that stray comment in the opinion. *See Thourtman v. Junior*, 338 So. 3d 207, 212 (Fla. 2022) ("A holding consists of those propositions along the chosen decisional path or paths of reasoning that (1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment. If not a holding, a proposition stated in a case counts as dicta." (quoting *State v. Yule*, 905

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that this rule runs counter to the federal rule that a statute of limitations begins to run when a claimant knew or should have known of the facts giving rise to the cause of action); *Rely-On-Us, Inc. v. Torres*, 165 A.D.3d 719, 721 (N.Y. App. Div. 2018) (holding that a cause of action seeking reformation of an instrument on the basis of a mistake accrued at the time the mistake was made); *Bank of Am., N.A. v. Darkadakis*, 76 N.E.3d 577, 592 (Ohio Ct. App. 2016) (holding that a cause of action for reformation of a written instrument accrued upon execution of the instrument). However, because the circuit court never had an opportunity to rule on this issue in the first instance, we do not decide it today.

So. 2d 251, 259 n.10 (Fla. 2d DCA 2005) (Canady, J., specially concurring))).[5]

The other case cited in the summary judgment order, *Silver Shells*, is a bit closer to the mark, and it supports our application of section 95.11(2)(b). In *Silver Shells*, 169 So. 3d at 199-200, a dispute between a condominium developer and an association arose over turnover of the condominium's common properties under a recorded declaration. The developer had attempted to parcel out some beach property by recording an amendment to the declaration. *Id.* at 199. The association sought a declaratory judgment to determine its ownership in that property. *Id.* On appeal, the Third District held that the association's declaratory judgment action was time-barred:

> The Association's claims regarding the Beach Property arise from the Developer's alleged violation of the Restrictive Covenants, which is akin to a breach of contract action. The fact that the remedy sought by the Association for the alleged breach was the "equitable reformation" of the Restrictive Covenants through the invalidation of the amendment does not change the nature of the underlying claim. . . . Accordingly, we agree with the developer that *the Association's claims related to the Beach Property are subject to the five-year statute of limitations in section 95.11(2)(b).*

Id. at 201 (emphasis added).

We construe the Association's reformation action similarly to the condominium association's declaratory judgment action in *Silver Shells* and hold that section 95.11(2)(b) applies to this lawsuit. *Cf. Ranucci v. City of Palmetto*, 317 So. 3d 270, 275 (Fla. 2d DCA 2021) (holding that

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[5] Given *Corinthian*'s somewhat unobvious (and perhaps even strained) interpretation of state statutes and the Florida Supreme Court's recent pronouncements about applying the supremacy-of-text principle when construing legislation, *Corinthian* should be confined to the facts of the case and the time it was decided.

section 95.11(2)(b) applied to equitable action for declaratory judgment on meaning of a written instrument); *Harris v. Aberdeen Prop. Owners Ass'n*, 135 So. 3d 365, 367 (Fla. 4th DCA 2014) (noting that section 95.11(2)(b) applied to equitable action for declaratory judgment on meaning of homeowners association's governing documents); *Fox v. Madsen*, 12 So. 3d 1261, 1262 (Fla. 4th DCA 2009) (holding that section 95.11(2)(b) applied to equitable action for injunctive relief premised on a restrictive covenant); *Bott v. City of Marathon*, 949 So. 2d 295, 296-97 (Fla. 3d DCA 2007) (holding that section 95.11(2)(b) applied to equitable action for declaratory judgment on the meaning of a restrictive covenant). Accordingly, we reverse the summary judgment below and remand this case for further proceedings consistent with this opinion.

Reversed and remanded with instructions.

SILBERMAN and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.