2024 IL App (1st) 231693

No. 1-23-1693

Opinion filed September 30, 2024

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

BURENKHUU PUREVDORI, Individually and as Independent Administrator of the Estate of Tengis Burenkhuu, a Deceased Minor,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 21 L 7106
MISSION HILLS CONDOMINIUM T-2 ASSOCIATION; MISSION HILLS T-3 CONDOMINIUM ASSOCIATION; MISSION HILLS HOMEOWNERS ASSOCIATION; CHICAGOLAND COMMUNITY MANAGEMENT INC.; PROVENANCE TOWNHOME ASSOCIATION; PROVENANCE MASTER ASSOCIATION; MPERIAL ASSET MANAGEMENT LLC; RED SEAL DEVELOPMENT CORPORATION, d/b/a Red Seal Homes; RSD MISSION HILLS LLC; and RSD MISSION HILLS II LLC,	)	Honorable Nichole C. Patton, Judge, presiding.
Defendants-Appellees.	)	

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Justices Martin and D.B. Walker concurred in the judgment and opinion.

OPINION

¶ 1 Action was brought by the father of a deceased four-year-old boy against homeowners' associations, developers, and property management companies under theories of breach of fiduciary duty, violation of the Wrongful Death Act (740 ILCS 180/0.01 *et seq.* (West 2020)) and Survival Act (755 ILCS 5/27-6 (West 2020)), willful and wanton conduct, and breach of contract to recover damages from when the minor left his yard, went through a broken fence, and drowned in a retention pond. The circuit court granted defendants' motions to dismiss with prejudice for failure to state a cause of action.

¶ 2 On appeal, plaintiff argues that the circuit court erred when it dismissed his common law and statutory claims based on the court's ruling that defendants owed no duty of care to plaintiff due to the open and obvious danger of the retention pond, even though plaintiff alleged that defendants voluntarily undertook a duty to protect against the pond's dangers and the distraction exception precluded application of the open and obvious danger defense.

¶ 3 For the reasons that follow, we affirm the judgment of the circuit court.[1]

¶ 4 I. BACKGROUND

¶ 5 Plaintiff Burenkhuu Purevdori, individually and as administrator of the estate of his son, Tengis Burenkhuu, brought suit for breach of fiduciary duty, Wrongful Death Act and Survival Act claims, willful and wanton conduct, and breach of contract against defendants Mission Hills Condominium T-2 Association (T-2), Mission Hills T-3 Condominium Association (T-3), Mission

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

Hills Homeowners Association (Mission Hills HOA), Chicagoland Community Management Inc. (Chicagoland), Provenance Townhome Association (Provenance), Provenance Master Association (Provenance Master), Mperial Asset Management LLC (Mperial), Red Seal Development Corporation, d/b/a Red Seal Homes (Red Seal), RSD Mission Hills LLC (RSD), and RSD Mission Hills II LLC (RSD II). The circuit court granted defendants' motions to dismiss under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2020)), and plaintiff appeals.

¶ 6 This case arises from the tragic drowning of plaintiff's four-year-old son, Tengis, in a retention pond located on the other side of a fence that ran adjacent to plaintiff's backyard. According to plaintiff's third-amended complaint (the operative complaint), he resided with his family at Mission Hills, a gated community of townhomes and condominiums with a golf course, swimming pools, and tennis courts. Defendants T-2, T-3, and Mission Hills HOA owned, operated, managed, maintained, or controlled the Mission Hills residential community. Furthermore, T-2, T-3, or Mission Hills HOA contracted with defendant property manager Chicagoland to operate, manage, maintain, repair, or control the common elements of the Mission Hills development.

¶ 7 Defendants Red Seal, RSD, and RSD II were housing building developers that entered a joint venture to develop and build the Provenance community, which was located adjacent to Mission Hills. Red Seal, RSD, and RSD II entered into a joint venture agreement to buy golf course property on the southeast side of Mission Hills from Mission Hills HOA.

¶ 8 Defendant Provenance owned, operated, managed, maintained, or controlled the Provenance property. Defendant Provenance Master owned, operated, managed, maintained, or controlled the Provenance community. Red Seal, RSD, RSD II, Provenance, or Provenance

Masters contracted with defendant property manager Mperial to operate, manage, maintain, repair, or control the common elements of the Provenance development.

¶ 9 T-2, T-3, Mission Hills HOA, Red Seal, RSD, RSD II, Provenance, and Provenance Master (the homeowners association and developer defendants) built a retention pond on the Provenance property. The retention pond had a large fountain in the middle. The homeowners association and developer defendants erected a six-foot-tall fence separating the Mission Hills property from the property being sold to Red Seal, RSD, RSD II, Provenance, and Provenance Master.

¶ 10 Plaintiff's townhouse had a small backyard. The fence separating the Mission Hills property from the Provenance property ran directly behind plaintiff's house. On June 28, 2021, part of the fence had been knocked down, permitting access to the Provenance property and the retention pond. Four-year old Tengis was playing in his backyard with a minor friend while their mothers watched them. The mothers did not notice Tengis and his friend leave the yard via the knocked down portion of the fence. Tengis entered the retention pond and drowned.

¶ 11 In his 50-count operative complaint, plaintiff alleged that the eight homeowners association and developer defendants breached their fiduciary duties to plaintiff, which arose under (1) common law, (2) section 18.4 of the Condominium Property Act (Condominium Act) (765 ILCS 605/18.4 (West 2020)), or their status as joint venturers, or (3) their common law duty of ordinary care by failing to discover the broken fence, maintain it, repair it, or notify plaintiff that it was broken. Plaintiff also alleged against all 10 defendants theories of recovery that sounded in negligence and willful and wanton negligence, based on a voluntarily assumed duty to maintain the fence that separated the Mission Hills and Provenance developments. Specifically, plaintiff

alleged that defendants erected the fence to protect minor children from the reasonably foreseeable danger presented by the retention pond, and it was reasonably foreseeable that Tengis would be distracted by the knocked-down portion of the fence, a new environment, and the large fountain in the middle of the pond. Further, plaintiff alleged breach of contract claims against the two property management companies, defendants Chicagoland and Mperial, based on their failure to (1) fulfill the delegated fiduciary duties of the homeowners' association and developer defendants, (2) maintain and repair the fence, and (3) warn plaintiff that it was broken.

¶ 12 Defendants filed similar section 2-615 motions to dismiss the counts of the operative complaint directed against them. Plaintiff filed a consolidated response in opposition, and defendants filed replies.

¶ 13 On August 23, 2023, the circuit court granted the section 2-615 motions and dismissed the action with prejudice in a written order, ruling that plaintiff failed to allege a duty owed because the pond is a body of water and is considered, as a matter of law, an open and obvious condition for which no duty of care is owed. Specifically, the court concluded that the retention pond presented an open and obvious danger that children of Tengis's age were expected to appreciate and avoid. The court noted that parents are responsible for their children's safety and defendants had no duty to anticipate that the mothers would fail to see Tengis and his friend leave the yard via the broken fence. The court also noted that the distraction exception was not applicable here and plaintiff's argument actually fit the attractive nuisance doctrine, which has long been abolished. Nevertheless, the court rejected plaintiff's claim that he had adequately alleged the distraction exception, noting that he did not allege that Tengis had inadvertently stepped or fell

into the pond. The court rejected plaintiff's claim that he adequately alleged willful and wanton conduct, noting again that defendants owed no duty to guard against the open and obvious danger of the retention pond. The court also concluded that plaintiff failed to plead sufficient facts to satisfy the claim that defendants voluntarily undertook to build and maintain the fence to protect minor children and others from the pond, noting that voluntary undertaking claims are narrowly construed. Finally, the court concluded that plaintiff's breach of fiduciary duty and breach of contract claims also failed because the proximate cause of the injury was the open and obvious danger of the retention pond, against which defendants owed no duty to guard.

¶ 14 Plaintiff appealed.

¶ 15 II. ANALYSIS

¶ 16 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. 735 ILCS 5/2-615 (West 2020); *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In ruling on a section 2-615 motion to dismiss, all well-pleaded facts and all reasonable inferences that may be drawn from those facts are accepted as true. *Rockford Memorial Hospital v. Havrilesko*, 368 Ill. App. 3d 115, 120 (2006). However, a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). The critical inquiry is whether the allegations of the complaint are sufficient to establish a cause of action under which relief may be granted. *Malinksi v. Grayslake Community High School District 127*, 2014 IL App (2d) 130685, ¶ 6. "A section 2-615 motion should not be granted unless it clearly appears that no set of facts could ever be proved that would entitle the plaintiff to recover." *Mt. Zion State Bank & Trust v.*

Consolidated Communications, Inc., 169 Ill. 2d 110, 115 (1995). Our review under section 2-615 of the Code is *de novo. Hadley v. Doe*, 2015 IL 118000, ¶ 29. Further, we may affirm the trial court's judgment on any basis in the record, regardless of the court's reasoning. *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 17.

¶ 17 Plaintiff argues that the circuit court erroneously dismissed his operative complaint for failure to state a claim because he alleged sufficient facts to support his claim that defendants owed him and Tengis a nondelegable fiduciary duty, pursuant to section 18.4 of the Condominium Act, to repair the knocked-down fence that provided a protective barrier to the retention pond. Plaintiff contends that the open and obvious danger defense should not apply to his claims of willful and wanton conduct, voluntary undertaking, breach of fiduciary duty, and breach of contract against defendants because common law tort defenses do not apply to statutory causes of action, Tengis was only four years old, and the distraction exception precludes application of the open and obvious danger defense.

¶ 18 A. Open and Obvious Risk of Danger

¶ 19 Generally, a landowner owes no duty of care to a trespasser except not to cause injury willfully or wantonly. *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 116. Children have no greater right than adults to enter the land of another, and their minority, in and of itself, imposes no duty upon an occupier of property either to expect them or prepare for their safety. *Id.* As the supreme court has long recognized, the responsibility for a child's safety rests primarily with his or her parents, whose duty it is to see that the child is not placed in danger. *Id.*

¶ 20 Illinois law imposes a duty upon the owner or other person in possession and control of the premises to exercise due care to remedy a dangerous condition on the land or to otherwise protect children from injury resulting from it where (1) the owner or occupier of the land knew or should have known that children habitually frequent the property, (2) a defective structure or dangerous condition was present on the property, (3) the defective structure or dangerous condition was likely to injure children because they are incapable, because of age and immaturity, of appreciating the risk involved, and (4) the expense and inconvenience of remedying the defective structure or dangerous condition was slight when compared to the risk to children. *Id.* at 116-17. With the elimination of the common law attractive nuisance doctrine in *Kahn v. James Burton Co.*, 5 Ill. 2d 614 (1955), the reasonable foreseeability of harm test determines liability in negligence actions involving injury to children. *Cope v. Doe*, 102 Ill. 2d 278, 286 (1984).

¶ 21 In applying these factors to determine whether a duty exists, the supreme court has held that "[e]ven if an owner or occupier knows that children frequent his premises, he is not required to protect against the ever-present possibility that children will injure themselves on obvious or common conditions." (Internal quotation marks omitted.) *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 117. Obvious dangers include fire, drowning in water, or falling from a height. *Bucheleres v. Chicago Park District*, 171 Ill. 2d 435, 448 (1996). "The open and obvious nature of the condition itself gives caution and therefore the risk of harm is considered slight; people are expected to appreciate and avoid obvious risks." *Id.* A possessor of the land is free to assume that any child old enough to be allowed "at large" will appreciate obvious dangers. *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 117, 126-27.

¶ 22 Illinois courts have held that the risk of drowning is open and obvious to children even younger than Tengis. See, *e.g.*, *Perez v. Heffron*, 2016 IL App (2d) 160015, ¶ 26 (danger of drowning in swimming pool was obvious to 34-month-old child); *Mostafa v. City of Hickory Hills*, 287 Ill. App. 3d 160, 167 (1997) (danger of drowning in lagoon was obvious to two unattended children ages two and three); *Englund v. Englund*, 246 Ill. App. 3d 468, 476 (1993) (danger of drowning in swimming pool was obvious to three-year-old child); *Stevens v. Riley*, 219 Ill. App. 3d 823, 831 (1991) (danger of drowning was obvious to 17½-month-old child); *Spencer v. City of Chicago*, 192 Ill. App. 3d 150, 156-57 (1989) (defendant owed no duty to three-year-old child who drowned in lagoon). These cases are controlling here.

¶ 23 The open and obvious doctrine has been applied to drowning or diving whether the body of water was natural (*Bucheleres*, 171 Ill. 2d at 455-56 (Lake Michigan); *Dowen v. Hall*, 191 Ill. App. 3d 903, 907 (1989) (Fox Lake); *Stevens*, 219 Ill. App. 3d at 830-31 (creek)), or artificial (*Mt. Zion State Bank & Trust*, 169 Ill. 2d at 118 (above-ground pool); *Cope*, 102 Ill. 2d at 286 (partially ice-covered retention pond); *Osborne v. Claydon*, 266 Ill. App. 3d 434, 436-37 (1994) (in-ground pool)), and regardless of whether the water was clear or murky (*Mostafa*, 287 Ill. App. 3d at 167 (danger posed by lagoon was open and obvious even though murkiness prevented two-year-old and three-year-old children from ascertaining its depth)) or partially ice-covered (*Yacoub v. Chicago Park District*, 248 Ill. App. 3d 958, 961 (1993) (Chicago River partially ice-covered); *Wingate v. Camelot Swim Club, Inc.*, 193 Ill. App. 3d 963, 965 (1990) (partially frozen man-made duck pond)).

¶ 24 Plaintiff did not allege that the retention pond was concealed from view. Although plaintiff argues that "[n]othing is known about the condition of the pond," plaintiff, who resided a short distance away, knew enough to allege that the pond had a large fountain in the middle. Plaintiff did not allege any well-pled facts suggesting that the condition of the pond was for some reason unknown or that the pond was somehow hidden from view despite the size of the fountain. Plaintiff could not plead around the open and obvious risks presented by the pond. The circuit court properly rejected plaintiff's argument that the open and obvious nature of the retention pond could not be decided on the pleadings as a matter of law.

¶ 25 Tengis's parents had the primary responsibility for his safety at all times, both before and after he left the backyard on the Mission Hills side unseen and went through an opening in the fence. Plaintiff argues that Tengis was incapable of being contributorily negligent based on the tender years doctrine and that he was not "at large" when his mother and his playmate's mother did not see him leave the backyard. Plaintiff's argument, which parallels the lone dissent of Justice Harrison in *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 128-31 (Harrison, J., dissenting), lacks merit. Notably, no subsequent opinion from the supreme court has adopted the dissent's analysis. Indeed, *Perez*, 2016 IL App (2d) 160015, ¶ 28, declined the plaintiff's invitation to adopt Justice Harrison's dissent, and this court does likewise. This case turns on the lack of foreseeability of a lapse of parental supervision, which not only relieved defendants of a duty but was also the sole proximate cause of Tengis's tragic death. See *id.*

¶ 26 Plaintiff's allegations establish, for purposes of the open and obvious rule, that Tengis was allowed to be "at large" because he was unattended when he left the backyard unseen, went north

along the fence line and through the opening in the fence, and drowned in the pond. See, *e.g.*, *Stevens*, 219 Ill. App. 3d at 831 (17½-month-old child "old enough to be out and about and unattended could be expected to avoid [water] even here, where the water was partially obscured by weeds"); *Wingate*, 193 Ill. App. 3d at 965 (five-year-old child was " 'of an age to be allowed at large' and therefore should have been aware of" obvious risk of drowning in partially frozen duck pond even though he was left in care of sitter); *Spencer*, 192 Ill. App. 3d at 156-57 (three-year-old child who wandered from house unattended, crossed street, and drowned in unfenced lagoon was "allowed" to be at large). To be allowed "at large" in these cases simply means the child is unattended or " 'beyond the watchful eye of his parent' " (*Mostafa*, 287 Ill. App. 3d at 166 (quoting *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 126)). When this happens, courts have expressed a preference as a matter of public policy that the consequences that result from an encounter with an open and obvious condition should not fall on the owner or occupier of the property. See *Englund*, 246 Ill. App. 3d at 476 ("it is more desirable to place the substantial burden of supervising plaintiff's daughter upon plaintiff rather than the [defendants]").

¶ 27 Despite this court's application of the open and obvious danger doctrine to children of very young years, even to toddlers, plaintiff argues that those cases cannot be reconciled with over 100 years of supreme court precedent directing that children of tender years cannot be barred from seeking redress. Plaintiff asserts that a four-year-old child cannot reasonably be expected to appreciate the danger of a retention pond and that either the open and obvious nature of the pond cannot be determined as a matter of law or, at the very least, a question of fact is presented for the jury. We disagree. As reflected in *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 126-27, this matter

is a policy determination that the supreme court has already made, and *stare decisis* does not leave it open to reconsideration.

¶ 28 The exception for open and obvious dangers is not a matter of a child's contributory negligence or assumption of risk, as plaintiff asserts. Instead, the exception is based on the absence of duty that owners and occupiers of property owe to children for open and obvious conditions on the land. *Id.* at 117-18. The law does not require a landowner to foresee a parent's failure to supervise the child and guard against open and obvious conditions. *Id.* at 118; *Perez*, 2016 IL App (2d) 160015, ¶ 13. The rationale "is that in a civilization based on private ownership, it is considered a socially desirable policy to permit a person use of his land in his own way, without the burden of watching for and protecting those who come there without permission or right." *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 122. Contributory negligence and the tender years doctrine are irrelevant to whether defendants owed a duty to guard against the open and obvious nature of the pond.

¶ 29 Plaintiff also refers to the contribution claims that some defendants filed against the parents before the trial court granted defendants' motions to dismiss. Plaintiff argues that by filing these claims, defendants somehow admitted that Tengis did not knowingly confront and then disregard the alleged open and obvious dangers presented by the pond. Plaintiff cites no pertinent authority for this argument and, thus, has forfeited it. See *Campbell v. Wagner*, 303 Ill. App. 3d 609, 613 (1999). Bare contentions do not satisfy Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) and may be rejected for that reason alone. *Bachman v. General Motors Corp.*, 332 Ill. App. 3d 760, 803 (2002).

¶ 30 Forfeiture aside, the filing of a contribution claim against the parents but not the minor is not an admission of some sort, as plaintiff argues. Section 2-613(b) of the Code (735 ILCS 5/2-613(b) (West 2020)) allows for pleading in the alternative. Thus, a defendant can deny that it owes a duty to a plaintiff but still file contribution claims against other parties in the alternative. Furthermore, the Joint Tortfeasor Contribution Act (740 ILCS 100/0.01 *et seq.* (West 2020)) does not affect the threshold determination of whether defendants owed a tort duty. The open and obvious doctrine concerns whether a defendant owner or occupier of land can be held negligent for a condition on the land in the first instance. Contribution arises only once the court determines that a defendant owed and breached a duty of care and pays more than its *pro rata* share of a common liability. *Antonicelli v. Rodriguez*, 2018 IL 121943, ¶ 18.

¶ 31 Plaintiff suggests that whether a condition of the land is open and obvious depends on a four-year-old's subjective understanding, arguing that "[a]t a minimum, a jury, not a court as a matter of law, should determine whether the decedent possessed the mental acuity to appreciate the condition of the pond and the risks presented." We disagree. In cases involving open and obvious conditions, the issue is not whether the child does in fact understand it, but rather what the owner or possessor may reasonably expect of those who come upon the land. See *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 126; *Bucheleres*, 171 Ill. 2d at 448.

¶ 32 Here, defendants owed no duty to anticipate that the mothers would fail to see Tengis leave plaintiff's backyard, go north along the fence line, and pass though the opening in the fence before drowning. In granting the section 2-615 motions, the circuit court applied well-settled law in finding the allegations in the operative complaint were not actionable. Illinois law does not impose

a legal duty on owners and occupiers of property to safeguard children who encounter open and obvious risks on the property.

¶ 33 Plaintiff's allegations of wrongdoing against defendants relate to the condition of the fence located on the property line between the Mission Hills and Provenance communities. Plaintiff, however, did not and could not allege that a condition of the fence caused Tengis any harm by itself. Regardless of whether defendants owed a duty to repair the fence, as the circuit court concluded, the sole proximate cause of the drowning was the mothers' unforeseeable failure to adequately supervise Tengis and his playmate. See *Perez,* 2016 IL App (2d) 160015, ¶ 27 (the fact that the deck gate had no latch was a condition that merely made the minor's drowning possible, and even if the court were to find a duty, the court would be constrained to hold that the sole proximate cause of the minor's death was the father's unforeseeable failure to supervise the child adequately); *O'Clair v. Dumelle,* 735 F. Supp. 1344, 1352 (N.D. Ill. 1990) (the objectively unforeseeable failure of the minor's mother to lock the door leading to the pool or take other precautions was the cause of the minor's drowning, not the alleged defective conditions of the swimming pool as alleged by plaintiff). Here, while the opening in the fence may have made the drowning possible in this case, it did not make the risk of the retention pond any less open and obvious. See *Mt. Zion State Bank & Trust,* 169 Ill. 2d at 120-21, 126 (no facts suggested that the placement of the pedestal next to the fence rendered the danger of the pool less obvious, so "it would be incongruous to conclude that the pedestal, in combination with the fence, which merely provided access to the pool, gave rise to a duty"); *Yacoub,* 248 Ill. App. 3d at 962 ("The fact that the Yacoub children gained access to the river through a hole in the fence does not make the

dangers associated with the river less open and obvious."); *Englund*, 246 Ill. App. 3d at 478 (the condition of the pool deck and the unlocked gate that provided access to the swimming pool merely made the minor's death possible, but it was not the proximate cause of the drowning). Here, as in the cases above, the circuit court's focus properly remained on the open and obvious nature of the risks of the pond in dismissing the action. The retention pond itself was an open and obvious danger regardless of the condition of the fence, and the parental duty to supervise was the sole proximate cause of the drowning.

¶ 34 Although plaintiff attempted to plead around the open and obvious nature of the risk by relying on the distraction exception to the open and obvious rule, plaintiff failed to allege well-pled facts to support the distraction exception. A property owner owes a duty of care if it is reasonably foreseeable that plaintiff's attention might be distracted so that he or she would not discover the obvious, dangerous condition on the land. *Perez*, 2016 IL App (2d) 160015, ¶ 19. The exception exists in "limited" form. *Sandoval v. City of Chicago*, 357 Ill. App. 3d 1023, 1028 (2005). "The mere possibility that someone might be distracted does not mean that the particular distraction is foreseeable in a legal sense." *Negron v. City of Chicago*, 2016 IL App (1st) 143432, ¶¶ 16-17 (not reasonably foreseeable that pedestrian would be distracted from seeing two-inch crack in sidewalk by "alarming shouts" from someone in the area). To hold otherwise, as the courts have recognized, would saddle owners and occupiers of land with the impossible burden of making their land injury proof and child-proof. *Id.* ¶ 17. The distraction is foreseeable only if there are "special circumstances" of which a reasonable landowner would be aware that would cause persons to be distracted at the site of the accident, "as opposed to the world at large." *Id.* ¶ 18.

¶ 35 Here, plaintiff alleged no well-pled facts that showed that it was reasonably foreseeable that the fence, the fountain, and the surrounding environment diverted Tengis's attention from the open and obvious nature of the pond and made him forget where he was when he "entered" the pond. Plaintiff did not allege that the distraction caused Tengis to inadvertently step, stumble, or fall into the pond. The possibility that someone, including an unattended and inadequately supervised four-year-old child, could be distracted by any number of things around him does not require owners and occupiers of property to anticipate such an occurrence and guard against it. See *id.* ¶ 22.

¶ 36 Plaintiff's allegations did not meet the fact-pleading standards required to defeat a section 2-615 motion to dismiss. The bare allegations about four-year-old Tengis's possible inattention to his surroundings at the time he "entered" the pond are speculative, devoid of specific facts, and conclusory and are, thus, disregarded by this court. See *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 735 (2009) (under section 2-615, conclusions of law and conclusory factual allegations unsupported by specific facts are not deemed admitted). Plaintiff did not support his theory that it was reasonably foreseeable that Tengis was distracted with well-pled facts.

¶ 37 B. Voluntary Undertaking Theory

¶ 38 In support of his voluntary undertaking theory, plaintiff's allegations focused on the condition of the knocked-down border fence. Plaintiff alleged that the fence was erected to prevent children and other persons foreseeably on the premises from the reasonably foreseeable danger presented by the retention pond. Plaintiff's allegation that the border fence was protective is conclusory. See *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 119 ("Of particular note in the

complaint before us is the complete absence of any facts which would support plaintiff's conclusory characterization of the fence surrounding the pool as protective."). That deficiency is sufficient grounds by itself for rejecting plaintiff's theory of a voluntary undertaking. See *Alpha School Bus Co.*, 391 Ill. App. at 735.

¶ 39 Plaintiff alleged that Provenance, Provenance Master, Red Seal, RSD, and RSD II entered a joint venture with Mission Hills HOA, T-2, and T-3 and contracted with a fence company to erect the fence, and that Tengis drowned due to defendants' failure to maintain the fence. Plaintiff's voluntary undertaking theory does not withstand dismissal under the fact-pleading standards used in deciding a section 2-615 motion to dismiss for failure to state a cause of action.

¶ 40 Plaintiff cites sections 323 and 324A of the Restatement (Second) of Torts as the source of the voluntary undertaking.[2] Restatement (Second) of Torts §§ 323, 324A (1965). Plaintiff cites

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[2]The sections of the Restatement asserted by plaintiff state:

"§ 323. Negligent Performance of Undertaking to Render Services

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

(a) his failure to exercise such care increases the risk of such harm, or

(b) the harm is suffered because of the other's reliance upon the undertaking."

"§ 324A. Liability to Third Person for Negligent Performance of Undertaking

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if

(a) his failure to exercise reasonable care increases the risk of such harm, or

(b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance on the other or the third person upon the undertaking." Restatement (Second) of Torts §§ 323, 324A (1965).

section 323 in passing twice, while citing section 324A once. Without further developing an argument regarding sections 323 and 324A, plaintiff has forfeited the voluntary undertaking theory on appeal. See *Campbell*, 303 Ill. App. 3d at 613. Bare contentions and arguments by a party that do not satisfy Rule 341(h)(7) may be rejected for that reason alone. *Bachman*, 332 Ill. App. 3d at 803.

¶ 41 Forfeiture aside, plaintiff's voluntary undertaking theory lacks merit. Like other issues involving the existence of a duty, whether a defendant has voluntarily undertaken a duty to plaintiff presents a question of law for the court. *Jakubowski v. Alden-Bennett Construction Co.*, 327 Ill. App. 3d 627, 639 (2002). Under this theory, the scope of a voluntarily assumed undertaking "is limited to the extent of the undertaking" and narrowly construed. (Internal quotation marks omitted.) *Jablonski v. Ford Motor Co.*, 2011 IL 110096, ¶ 123. Plaintiff must allege well-pled facts showing breach and proximate cause to recover when a voluntary undertaking is alleged. See *Buerkett v. Illinois Power Co.*, 384 Ill. App. 3d 418, 428 (2008). Plaintiff did not make that showing here.

¶ 42 Plaintiff did not allege any well-pled facts to show that a failure on defendants' part to repair the fence increased the risk of harm from the open and obvious condition presented by the pond. See *Lange v. Fisher Real Estate Development Corp.*, 358 Ill. App. 3d 962, 973 (2005) ("plaintiff has failed to show how any failure on the part of defendants *increased* the risk of the harm of the open and obvious condition" (emphasis in original)); *Jakubowski*, 327 Ill. App. 3d at 639-40 (same). Moreover, plaintiff alleged no facts establishing that any undertaking to maintain the fence gave rise to an undertaking to protect against the pond itself when the fence merely

marked the boundary line between the two parcels of real estate. Plaintiff did not allege that the fence encircled the entire pond. The pond presented the same open and obvious risk of drowning with or without an opening in the fence. As discussed above, in accordance with *Mt. Zion State Bank & Trust*, *Englund*, and *Yacoub*, the opening in the fence was nothing more than a condition that made the drowning possible. See *Lange*, 358 Ill. App. 3d at 974 ("The lack of a barricade did not make the hole inherently more dangerous or *increase* the dangerous propensity of the hole." (Emphasis in original.)).

¶ 43 At most, plaintiff argues that the risk of harm was increased because the knocked-down fence was the sole source of Tengis gaining access to the pond. Further, plaintiff asserts that he and Tengis's mother relied on the fence to prevent Tengis from leaving the backyard. The issue here, however, is not whether one or more defendants assumed a duty to maintain the fence within the common elements. Rather, the issue is the scope of the undertaking and whether the alleged failure to maintain the fence proximately caused the drowning. Even if plaintiff's conclusory allegations are accepted as true for the moment—as *Mt. Zion State Bank & Trust*, *Englund*, and *Yacoub* clearly hold—the failure to maintain the fence did not make the risks of the pond any less open and obvious and, under the case law, it was not reasonably foreseeable to defendants that the parents, who had the primary responsibility for the care of their children, would leave Tengis and his playmate unsupervised or unattended in the backyard.

¶ 44 Courts draw an important distinction between misfeasance and nonfeasance with respect to the applicability of sections 323 and 324A of the Restatement. See *Lange*, 358 Ill. App. 3d at 974; *Jakubowski*, 327 Ill. App. 3d at 640. Even where a voluntary undertaking gives rise to a duty,

a breach can be found only where there is misfeasance rather than nonfeasance. *Lange*, 358 Ill. App. 3d at 974. " 'Misfeasance' is the *improper performance* of an act that a person may lawfully do, and 'nonfeasance' is the omission of an act which a person ought to do." (Emphasis in original and internal quotation marks omitted.) *Id.*; see *Jakubowski,* 327 Ill. App. 3d at 640. This distinction is relevant to plaintiff's voluntary undertaking theory in this case.

¶ 45 Plaintiff's allegations of wrongdoing related only to nonfeasance—by defendants' failure "to discover the broken fence, maintain the fence, repair the broken fence, and/or notify plaintiff of the broken fence on or before June 28, 2021." These omissions constitute nonfeasance, which is not actionable as misfeasance. *Jakubowski*, 327 Ill. App. 3d at 640 ("plaintiff *** alleged only acts of nonfeasance, such as allowing or permitting conditions to exist unguarded or unprotected, failing to implement safety measures, failing to institute safeguards, failing to post warnings and failing to place fencing or barricades around the premises"). By alleging only nonfeasance, plaintiff did not establish an actionable breach of an alleged voluntary undertaking.

¶ 46 Furthermore, because plaintiff based defendants' negligent performance claim only on allegations of nonfeasance, plaintiff also did not adequately state a claim for willful and wanton performance. See *Mostafa*, 287 Ill. App. 3d at 170 ("If plaintiffs cannot establish the existence of a common law duty as part of their negligence claims, then their claims for willful and wanton conduct also must fail.").

¶ 47 "The bare characterization of certain acts as willful and wanton misconduct is not sufficient to withstand a motion to dismiss because such misconduct must be manifested by the facts alleged

in the complaint." (Internal quotation marks omitted.) *Callaghan v. Village of Clarendon Hills*, 401 Ill. App. 3d 287, 300 (2010). To survive a motion to dismiss,

> "a willful and wanton conduct claim must allege that the defendant owed a duty to the plaintiff, the defendant breached the duty, the breach was the proximate cause of the plaintiff's injury, and the defendant exhibited either a deliberate intent to cause harm or an utter indifference or conscious disregard for the welfare of the plaintiff." *Lorenc v. Forest Preserve District of Will County*, 2016 IL App (3d) 150424, ¶ 19.

Because plaintiff cannot establish, as part of his negligence claims, the existence of a common law duty to protect against the danger of falling into an open and obvious body of water, his claims for willful and wanton conduct also must fail. See *Mostafa*, 287 Ill. App. 3d at 170.

¶ 48 Finally, even if plaintiff could have alleged a duty based on a voluntary undertaking, plaintiff failed to allege the well-pled facts satisfying proximate causation when the opening in the fence did not make the open and obvious condition of the pond any less open and obvious. We conclude that the circuit court properly dismissed the operative complaint for failure to state causes of action for negligent and willful and wanton negligent performance of a voluntary undertaking.

¶ 49 C. Breach of Fiduciary Duty/Joint Venture

¶ 50 Plaintiff alleged claims for breach of fiduciary duty against the eight homeowners' association and developer defendants, which required him to set forth well-pled factual allegations establishing (1) the existence of a fiduciary duty on the part of the homeowners' association and developer defendants, (2) their breach of that duty, and (3) damages proximately resulting therefrom. See *Romanek v. Connelly*, 324 Ill. App. 3d 393, 404 (2001).

¶ 51 Plaintiff alleged that he resided in the Mission Hills community and was "a member in good standing" of Mission Hills HOA, T-2, and T-3. Plaintiff, however, did not allege that he paid any assessment fees to Provenance, Provenance Master, Red Seal, RSD, or RSD II. Rather, plaintiff's breach of fiduciary claims against Provenance, Provenance Master, Red Seal, RSD, and RSD II were predicated only on their participation in an alleged joint venture to build and maintain the border fence with Mission Hills HOA, T-2 and T-3. Thus, to state a cause of action imposing vicarious liability on Provenance, Provenance Master, Red Seal, RSD, and RSD II, plaintiff needed to allege well-pled facts establishing both the existence of a joint venture and a fiduciary duty owed to Tengis arising as a result of that joint venture.

¶ 52 Plaintiff alleged three different joint ventures in the operative complaint, and only in the most conclusory of terms. Specifically, he alleged one joint venture among Red Seal, RSD, and RSD II to develop and build Provenance beginning in February 2015. Plaintiff also alleged a second joint venture where Mission Hills HOA, T-2, and T-3 entered a joint venture with Red Seal, RSD, and RSD II to sell a golf course property located on the southeast side of the Mission Hills property for the joint venture development of what became known as Provenance. Finally, plaintiff alleged a third joint venture where Red Seal, RSD, RSD II, Provenance, and Provenance Masters, with Mission Hills HOA, T-2, and T-3, entered a joint venture to build and maintain the border fence between the Mission Hills and Provenance communities prior to June 28, 2021. Plaintiff, however, did not allege any of the elements of a joint venture, let alone set forth well-pled facts supporting each element, for any of these different joint ventures.

¶ 53 A joint venture is an association of two or more persons to carry out a single enterprise for profit. *Id.* at 405. The existence of a joint venture is shown by allegations demonstrating (1) a community of interest in the purpose of the joint association, (2) a right of each member to direct and govern the policy and conduct of the other members, (3) a right to joint control and management of the property used in the enterprise, and (4) a sharing in both profits and losses. *Kaporovskiy v. Grecian Delight Foods, Inc.*, 338 Ill. App. 3d 206, 211 (2003); *Romanek*, 324 Ill. App. 3d at 405. Members of a joint venture are vicariously liable for the joint venturers' negligence committed in the course of the venture. *Andrews v. Marriott International, Inc.*, 2016 IL App (1st) 122731, ¶ 23. In the absence of any one of these elements, no joint venture exists. *O'Brien v. Cacciatore*, 227 Ill. App. 3d 836, 843 (1992).

¶ 54 Plaintiff failed to allege well-pled facts supporting each element of a joint venture. "A bald assertion that a partnership or joint venture exists is not sufficient to plead the existence of such a relationship." *Landers-Scelfo v. Corporate Office Systems, Inc.*, 356 Ill. App. 3d 1060, 1066 (2005). Fact-pleading required plaintiff to allege facts sufficient to bring the claims within the scope of the cause of action asserted. *Vernon v. Schuster*, 179 Ill. 2d 338, 344 (1997).

¶ 55 Plaintiff did not allege the facts necessary to give rise to a cause of action for breach of fiduciary duty based on a joint venture. "While the existence of an agency relationship is generally a question for the trier of fact, 'a plaintiff must still plead facts, which, if proved, could establish the existence of an agency relationship.' " *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 72 (quoting *Knapp v. Hill*, 276 Ill. App. 3d 376, 382 (1995) (rejecting as insufficient to establish a principal-agency relationship a factual allegation that a school district, through its shop teacher,

was responsible for directing the method and manner of removing automobiles from the shop area, and thus exercised the requisite control over a defendant student). Plaintiff's bare joint venture allegations are similar to the allegations that were held inadequate to allege agency in *Coghlan* and *Knapp*. Without well-pled facts showing the existence of a joint venture, plaintiff did not even allege the requisite foundation to establish a potential claim for vicarious liability against Red Seal, RSD, RSD II, Provenance, and Provenance Master based on Mission Hills HOA's, T-2's and T-3's alleged breach of fiduciary duty to maintain the fence within the common elements of the Mission Hills condominium property. Further, because plaintiff's own allegations establish that the injury at issue—a drowning—did not occur on the Mission Hills premises and was not proximately caused by a common element of the Mission Hills property, no breach of fiduciary duty is stated here against defendants.

¶ 56 The homeowners' association and developer defendants owed plaintiff and four-year-old Tengis no fiduciary duty when Tengis left the Mission Hills community unsupervised and unattended through an opening in the border fence. Owners and occupiers generally owe a duty to exercise reasonable care with respect to the unreasonable risk of physical harm from conditions off the land and can be held liable for negligent breach of this duty.[3] The same rule has been

[3]Section 365 of the Restatement (Second) of Torts, titled "Dangerous Disrepair," provides:

> "A possessor of land is subject to liability to others outside of the land for physical harm caused by the disrepair of a structure or other artificial condition thereon, if the exercise of reasonable care by the possessor or by any person to whom he entrusts the maintenance and repair thereof
>
> (a) would have disclosed the disrepair and the unreasonable risk involved therein, and
>
> (b) would have made it reasonably safe by repair or otherwise." Restatement (Second) of Torts § 365 (1965).

When the condition is open and obvious, the risk of physical harm is not considered unreasonable. *Bucheleres*, 171 Ill. 2d at 448; *Mt. Zion State Bank & Trust*, 169 Ill. 2d at 117.

applied to condominium associations with respect to the maintenance of their property. See *Ladis v. Olcott Vista Condominium Ass'n*, 205 Ill. App. 3d 218, 221 (1990) (condominium association owed common law duty of ordinary care with respect to its fence next to public sidewalk). Condominium associations, like other owners and occupiers, are permitted to assert that a condition is open and obvious. See *Belluomini v. Stratford Green Condominium Ass'n*, 346 Ill. App. 3d 687, 695-96 (2004) (in a negligence action brought by unit owner for injuries sustained when owner tripped over bicycle left in hallway, a condominium association owed no common law duty of ordinary care when bicycle was open and obvious).

¶ 57 Plaintiff has cited no case imposing a common law or statutory fiduciary duty on a condominium association for death or injuries occurring off the condominium association's premises as the result of an alleged failure to maintain a common element, such as a border fence. Plaintiff cites section 18.4 of the Condominium Act (765 ILCS 605/18.4 (West 2020)) as the source of a statutory duty. However, the plain language of section 18.4 does not support plaintiff's argument.

¶ 58 Plaintiff alleged that he was a "resident of Mission Hills and a member in good standing of" Mission Hills HOA, T-2, and/or T-3. Section 18.3 of the Condominium Act provides that "Each unit owner shall be a member of the [unit owner's] association." *Id.* § 18.3. Section 18.4, titled "Powers and duties of board of managers," states that the officers and members of the board of managers, "[i]n the performance of their duties *** shall exercise the care required of a fiduciary of the unit owners" with respect to the powers and duties listed in section 18.4. *Id.* § 18.4. The

powers and duties listed in section 18.4(a) of the Condominium Act, states that the officers and board of managers have the power and duty to provide for "the operation, care, upkeep, maintenance, replacement and improvement of the common elements." *Id.* § 18.4(a). While section 18.4(a) provides that the officers and members of the board of managers shall exercise these powers and duties for the association, nothing in the language suggests that the condominium association and its board of managers are subject to the liability of a fiduciary for injury or death taking place as result of a condition off the condominium premises. A court must enforce a statute as written and may not annex new provisions or substitute different ones which the legislature did not express under the guise of statutory construction. *In re Mary Ann P.*, 202 Ill. 2d 393, 409 (2002). Section 18.4 does not provide a basis for the homeowners' association and developer defendants to be held to the duty of a fiduciary for the drowning of plaintiff's son in the pond off the Mission Hills premises.

¶ 59 The cases that plaintiff cites do not support the imposition of a fiduciary duty under section 18.4. Plaintiff argues that *Glickman v. Teglia*, 388 Ill. App. 3d 141 (2009), stands for the proposition that a unit owner may recover for injuries sustained on stairs located within the common elements based on a breach of fiduciary duty under section 18.4(a). Plaintiff, however, overstates the *Glickman* court's holding. In *Glickman*, the complaint alleged negligent design and construction against the developer and the association's failure to maintain the premises in a reasonably safe condition. *Id.* at 144. The court held that the developer owed the same duties to the plaintiff under section 18.2(a) of the Condominium Act (765 ILCS 605/18.2(a) (West 2006)) as the appointed board of managers did prior to the election of the first board. *Glickman*, 388 Ill.

App. 3d at 147-50. In passing, the court referred to section 18.4(a) and observed that the board of managers had a fiduciary duty to the unit owners, regardless of whether the board was elected by the unit owners or appointed by the developer. *Id.* at 146. The court was not holding that the developer or the association owed a fiduciary duty in the negligence action—the complaint made no such allegation. Further, the case did not suggest that a condominium association, developer, or property manager could be subject to liability for breach of fiduciary duties based upon their alleged failure to maintain their own property's common elements.

¶ 60 In *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL App (1st) 113577, ¶¶ 21-27, the court held that a unit owner stated a cause of action against the association and individual board members for breach of fiduciary duty, based on their knowing and willful failure to start repairs to her unit for more than a year. The plaintiff's claim was based on the property damage her unit sustained because of settlement of the soil beneath and around her unit. *Id.* ¶ 9. The court was not holding that the plaintiff stated a cause of action for personal injuries sustained off the condominium association premises. The plaintiff's claim was limited to property damage to her own unit, not an injury occurring outside the boundaries of the condominium association property and involving a body of water that was not part of the condominium association's common elements.

¶ 61 Plaintiff relies on cases that have nothing to do with section 18.4(a) of the Condominium Act. *Kai v. Board of Directors of Spring Hill Building 1 Condominium Ass'n*, 2020 IL App (2d) 190642, for example, involved the forced bulk sale of condominium units, whereas *Boucher v. 111 East Chestnut Condominium Ass'n*, 2018 IL App (1st) 162233, involved a unit owner's request for

a disciplinary hearing. A third case, *Wolinsky v. Kadison*, 114 Ill. App. 3d 527 (1983), involved a board's exercise of a right of first refusal. *Bear Medicine v. United States*, 192 F. Supp. 2d 1053 (D. Mont. 2002), which analyzed Montana law, pertained to safety training when the Bureau of Indian Affairs entered a timber contract under which certain tribal members were hired as sawyers. The analysis pertained to employment in the context of an inherently dangerous activity.

¶ 62 Still other cases cited by plaintiff do not even involve condominium associations or fiduciary duties. *Springer v. Ford*, 189 Ill. 430, 434 (1901), for example, involved the common law duty of care owed by a common carrier. Likewise, *Mann v. Kemper Financial Cos.*, 247 Ill. App. 3d 966 (1992), arose from a shareholder's fraud complaint in connection with the management of a mutual fund. These cases do not apply here.

¶ 63 In the absence of any pertinent case authority, plaintiff would have this court impose a sweeping fiduciary duty that goes well beyond the holdings in the above cases and that is in direct conflict with the many cases holding that injuries resulting from open and obvious bodies of water are not actionable under Illinois law. Plaintiff's cases do not support imposing a fiduciary duty on a condominium association and its board of managers with respect to open and obvious conditions off the condominium association premises.

¶ 64 In this case, the instrumentality that caused Tengis's drowning was not the fence within the common elements on the Mission Hills side of the property line. Instead, it was the pond located outside the Mission Hills condominium premises. The proximate cause of death was the parental failure to supervise and attend to Tengis at the time he left the backyard. Plaintiff's cases

do not support the imposition of a fiduciary duty on the homeowners' association and developer defendants under the circumstances of this case.

¶ 65 Plaintiff essentially argues that, in any premises liability case where an association is involved, the highest degree of care is owed to protect owners, their families, and guests. But extending the highest degree of care that homeowners' associations owe concerning governance to the protection of members from every possible hazard that could possibly exist on a day-to-day basis, including but not limited to open and obvious dangers, would create an unsustainable framework. The provisions of the Condominium Act regarding the maintenance of common areas cannot be interpreted to be expanded as plaintiff would argue. Otherwise, the highest degree of care would be owed to people who trip on a sidewalk, fall on a patch of ice, or trip on a step of stairs. This is contrary to premises liability law in Illinois.

¶ 66 Finally, wholly apart from whether plaintiff adequately alleged a fiduciary duty based on either the Condominium Act or a joint venture, plaintiff did not allege well-pled facts satisfying proximate causation when the opening in the fence did not make the risk of the pond any less obvious. Because plaintiff was unable to allege facts showing (1) a joint venture by Red Seal, RSD, RSD II, Provenance, and Provenance Master; (2) a fiduciary duty owed to Tengis by the homeowners association and developer defendants; and (3) proximate causation, the trial court properly dismissed with prejudice the claims alleging breach of fiduciary duty against Mission Hills HOA, T-2, T-3, Red Seal, RSD, RSD II, Provenance, and Provenance Master.

¶ 67 D. Breach of Contract

¶ 68 As to Chicagoland and Mperial, plaintiff alleges claims of breach of contract, rather than breach of any fiduciary duty. Plaintiff, however, cannot avoid longstanding case law pertaining to the issues in this care merely by disguising a negligence cause of action with a different label. As set forth in *Jakubowski*, "even assuming *arguendo* that [the defendant] contractually undertook to perform any duty ***, [the defendant] had no duty to remedy conditions involving obvious risks that children generally would be expected to appreciate and avoid." *Jakubowski*, 327 Ill. App. 3d at 640 (rejecting the argument of the plaintiff, who was not a party to the contract, that the defendant was liable for breach of contract under a voluntary undertaking theory).

¶ 69 Plaintiff's breach of contract claims against Chicagoland and Mperial are conclusory allegations, and plaintiff has failed to attach to the operative complaint any relevant copy of a contract. See 735 ILCS 5/2-606 (West 2020). Furthermore, even if a copy of a contract was attached, it would not change the outcome because, as discussed above, the retention pond presents an open and obvious danger.

¶ 70 III. CONCLUSION

¶ 71 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 72 Affirmed.

***Purevdori v. Mission Hills Condominium T-2 Ass'n*, 2024 IL App (1st) 231693**

Decision Under Review:	Appeal from the Circuit Cout of Cook County, No. 21-L-7106; the Hon. Nichole C. Patton, Judge, presiding.
Attorneys for Appellant:	Kevin J. Golden, of Dudley & Lake, of Chicago, and Lynn D. Dowd, of Naperville, for appellant.
Attorneys for Appellee:	Kelly Lynn Ferron, of Kopka Pinkus Dolin, P.C., Byron Mitchell, of Barnes & Mitchell, and James Branit, of Litchfield Cavo, all of Chicago, and Mara Weinstein and Anthony Ritrovato, of Marzullo & Associates, of St. Paul, Minnesota, for appellants Mission Hills Condominium T-2 Association, Mission Hills T-3 Condominium Association, Mission Hills Homeowners Association, and Chicagoland Community Management, Inc. Stephen Kolodziej, Scott Britton, and Neha Tannan, of Ford & Britton, P.C., and Michael Resis and Jaime Lane, of Amundsen Davis, LLC, both of Chicago, for other appellees.