

¶ 3 Plaintiff and defendants, Joseph R. Horabik, Johanna Horabik, Michael W. Dawdy, Linda J. Dawdy, Fred L. Stockton, and Penny Stockton, filed cross-motions for summary judgement. Plaintiff asserted that paragraphs 13 and 14, when construed together, gave the subdivision board the power to assess lot owners annual fees for maintenance and improvement of portions of the subdivision. For their part, defendants posited that they had no liability for maintenance and improvement of the subdivision under the plain language of the Owners Certificate because less than five subdivision lots had been sold.

¶ 4 In March 2012, the trial court granted defendants' motion for summary judgment, finding that paragraphs 13 and 14 were (1) not in conflict and (2) unambiguous in requiring plaintiff, as trustee, to pay for the maintenance and improvements within the subdivision, given that less than five subdivision lots had been sold.

¶ 5 Plaintiff appeals, arguing that the trial court erred by granting defendants' motion for summary judgment. We disagree and affirm.

¶ 6 I. BACKGROUND

¶ 7 In March 2011, plaintiff filed a complaint for declaratory judgment, seeking construction of the maintenance and improvement obligations of the owners of property within the "Oakwood Subdivision." As trustee of the trust that oversaw the subdivision, plaintiff asked the trial court to construe paragraphs 13 and 14 of the Owners Certificate, which had been filed with the plat of the subdivision. Paragraphs 13 and 14 provided as follows:

"13. The road and planting strip shown on said Plat between the dam and Lot #1 and the lake adjoining it, which lake is situated generally southeast of the lots shown on said Plat, are

hereby dedicated to the use of all the owners of lots in said OAKWOOD SUBDIVISION, and any additions thereto, and their successors in title, as a right of way for purposes of ingress and egress, for a planting beautification area and for recreational boating and fishing purposes respectively. *** An undivided one-ten[th] (1/10th) interest in said road into and adjoining said Subdivision shall be vested in the owner of each lot[.] *** Said undivided interest will pass with the sale of each lot and may not be sold separately or apart from the sale of any lot. After five (5) lots have been sold, undersigned owners shall in no manner be responsible or liable for the maintenance of roads, planting strip or the lake other than as an owner of any lot retained by them.

14. There is hereby created the Oakwood Club Board consisting of three (3) members, which shall be appointed by the undersigned. The initial board for said Club shall continue until such time as residences have been occupied on fifty (50%) percent of the lots in said OAKWOOD SUBDIVISION and any additions thereto; at any time after this period, the record owners of a majority of the lots in said OAKWOOD SUBDIVISION and any additions thereto, shall have the power to elect successor members, provided that one member shall be appointed by the undersigned so long as they or either of them own any real estate adjoining said

lake. ***

The Oakwood Club Board shall have the power and authority to manage, maintain, beautify and improve the roads and real estate adjoining said lake to assess the owners of said lots a sum not to exceed a reasonable amount annually per lot for the maintenance and improvement of said roads and real estate adjoining said lake, and to enforce such rules and regulations and the collection of such assessments."

(As plaintiff points out in its brief to this court, the "undersigned" referred to in the Owners Certificate quoted above were the creators of the Oakwood Subdivision, Richard Yates Rowe, Jr., and Cranston L. Rowe.)

¶ 8 Plaintiff and defendants thereafter filed cross-motions for summary judgement. Plaintiff asserted that paragraphs 13 and 14, when construed together, gave the subdivision board the power to assess lot owners annual fees for maintenance and improvement of portions of the subdivision. Defendants posited that they had no liability for maintenance and improvement of the subdivision under the plain language of the Owners Certificate because five lots had not yet been sold.

¶ 9 In March 2012, the trial court denied plaintiff's motion for summary judgment and granted defendants' motion for summary judgment, finding that paragraphs 13 and 14 of the Owners Certificate were (1) not in conflict and (2) unambiguous in requiring plaintiff, as trustee, to pay for the maintenance and improvements within the subdivision, given that less than five subdivision lots had been sold.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Plaintiff argues that the trial court erred by granting defendants' motion for summary judgment. Specifically, plaintiff contends that the court erred by construing paragraphs 13 and 14 of the Owners Certificate to require that it pay for the maintenance of the subdivision until five lots were sold, as follows:

"It is clear that paragraph 14 of the Owners Certificate created a mechanism under which the owners of the subdivision could appoint a three-member board which would have the power to make assessments for maintenance and improvements of the roads and real estate adjoining the lake and could prorate the costs among the lot owners. In other words, paragraph 14 created a mechanism by which each lot owner could be made responsible for expenses related to maintenance and improvements even if five (5) lots were not sold."

We disagree.

¶ 13 A. Summary Judgment and the Standard of Review

¶ 14 "Summary judgment is appropriate where the pleadings, depositions, admissions[,] and affidavits on file, viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Kajima Construction Services, Inc. v. St. Paul Fire & Marine Insurance Co.*, 227 Ill. 2d 102, 106, 879 N.E.2d 305, 308 (2007). We review *de novo* a trial

court's order granting summary judgment. *Id.*

¶ 15 B. Plaintiff's Claim That Paragraphs 13 and 14 of the
 Owners Certificate Should be Read Independently

¶ 16 The rules of construction for contracts govern the interpretation of the covenants contained in declarations such as those contained in the Owners Certificate in this case. *Forest Glen Community Homeowners Ass'n v. Bishop*, 321 Ill. App. 3d 298, 303, 746 N.E.2d 1285, 1289 (2001). "A contract is ambiguous if it is reasonably susceptible to more than one meaning, but contractual language is not rendered ambiguous simply because the parties disagree on its meaning." *Id.* The meaning of the provisions of a contract must be determined from the language, and a construction that runs contrary to the plain and ordinary meaning of the language used is improper. *Id.*

¶ 17 In this case, our review of paragraph 13 clearly shows that it establishes a condition precedent that five lots must be sold prior to the homeowners becoming responsible for maintenance of the roads, the planting strip, or the lake. Paragraph 14 merely created a board that would be vested with "the power and authority to manage, maintain, beautify and improve the roads and real estate adjoining said lake to assess the owners of said lots a sum not to exceed a reasonable amount annually per lot for the maintenance and improvement of said roads and real estate adjoining said lake[.]" Read consistently with paragraph 13, the plain language of paragraph 14 established the mechanism by which the maintenance fees would be paid after the homeowners' responsibility to pay those fees accrued—that is, when five lots were sold.

¶ 18 Accordingly, we conclude that the trial court properly granted summary judgment in favor of defendants.

III. CONCLUSION

¶ 19

¶ 20

For the reasons stated, we affirm the trial court's judgment.

¶ 21

Affirmed.