SUPREME COURT SHOULD NOT HAVE GRANTED SUMMARY JUDGMENT FINDING THAT THE VALUE OF COMMON AREAS OF A DEVELOPMENT OWNED AND MAINTAINED BY PETITIONER HOMEOWNERS' ASSOCIATION WAS ZERO FOR PROPERTY TAX PURPOSES BECAUSE OF ENCUMBRANCES AND RESTRICTIONS, QUESTIONS OF FACT ABOUT THE VALUE OF THE COMMON AREAS HAD BEEN RAISED (THIRD DEPT).

The Third Department, reversing Supreme Court, determined questions of fact precluded summary judgment finding that the value of the common areas of a development owned and maintained by petitioner homeowners' association was zero because of encumbrances and restrictions on the property. Petitioner sought a reduction of the tax assessments pursuant to Real Property Tax Law (RPTL) article 7. The town and the village had assessed the value of the common areas in the millions of dollars:

> ... [T]he declaration of protective covenants purports to impose a servitude upon the common area parcels in the nature of an easement or covenant that runs with the land; however, petitioner's bylaws specifically state that individual lot owners "shall have a license to use the [c]ommon [a]reas." To the extent that the corresponding deeds to the individual lot owners recite that each conveyance was made subject to both the declaration of protective covenants and petitioner's bylaws, we now reiterate that "[s]uch a conflict in terminology does not lend itself to summary relief" ... .
>
> ... [P]etitioner failed to demonstrate, as a matter of law, that the assessed property values of the individual lot owners within the development already include an enhanced value or premium sufficient to cover or offset the value of petitioner's common area parcels. ...
>
> Nor did petitioner sufficiently establish that the subject common area parcels have zero or only nominal value. Indeed, "[i]t is possible that a parcel is so interwoven with a dominant estate that it has no extrinsic value that is available for tax purposes. If, however, it is shown that a servient parcel[, i.e., the common area parcels,] has substantial value, the land can be taxed despite its relationship to a dominant estate owned by a member of a community development" ... . Matter of The Assn. of Prop. Owners of Sleepy Hollow Lake, Inc. v McBride, 2019 NY Slip Op 05371, Third Dept 7-3-19

COVENANT TO BUILD A WALKWAY LINKING PARTS OF A RESIDENTIAL COMMUNITY RAN WITH THE LAND AND WAS THEREFORE ENFORCEABLE BY THE HOMEOWNERS ASSOCIATION AGAINST A SUBSEQUENT PURCHASER OF THE PROPERTY (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that the plaintiff homeowners association (HOA) was entitled to enforce an agreement made with the prior owners of the residential community to construct a walkway linking the newly constructed area to the existing areas of the community. The walkway covenant was deemed to run with the land:

> As stated by the Court of Appeals, "[i]n Neponsit [Neponsit Prop. Owners' Assn. v Emigrant Indus. Sav. Bank, 278 NY 248] we articulated three conditions . . . that must be met in order for a covenant to run with the land: (1) it must appear that grantor and grantee intended that the covenant should run with the land; (2) it must appear that the covenant is one touching or concerning the land with which it runs; [and] (3) it must appear that there is privity of estate between the promisee or party claiming the benefit of the covenant and the right to enforce it, and the promisor or party who rests under the burden of the covenant" ... .
>
> The contract entered into in 2000, and the 2002 Amendment, as well as the circumstances of the transaction, demonstrate that the grantor and grantee intended that the walkway covenant should run with the land, thus satisfying the first Neponsit condition ... . Indeed, the walkway covenant was expressly deemed an "inducement" for the HOA to sell the property ... .
>
> The second Neponsit condition, that the walkway covenant touches and concerns the land, is easily met here, since the walkway covenant requires construction of a walkway linking the property with the Bay Street Landing community, and construction of common amenities. Thus, it "directly affects the uses to which the land may be put and substantially affects its value" ... .
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> The third Neponsit condition is satisfied by the undisputed facts establishing the requisite privity ... . Bay St. Landing Homeowners Assn., Inc. v Meadow Partners, LLC, 2019 NY Slip Op 01384, Second Dept 2-27-19

NAMING THE PRESIDENT OF AN UNINCORPORATED ASSOCIATION AS A DEFENDANT PROPERLY JOINED THE ASSOCIATION.

The Second Department determined an association was properly sued by naming the president as a defendant. An unincorporated association cannot sue or be sued solely in the association name:

> An unincorporated association such as the Condominium has "no legal existence separate and apart from its individual members" (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C1025:2 at 341). "Unlike a partnership, an unincorporated association may not sue or be sued solely in the association name" ... . General Associations Law § 13 provides:
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> > "An action or special proceeding may be maintained, against the president or treasurer of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or in common, or their liability therefor, either jointly or severally."
>
> Thus, by commencing the action against Fogarty, as president of the Condominium, the plaintiffs joined the Condominium ... . Pascual v Rustic Woods Homeowners Assn., Inc., 2015 NY Slip Op 09415, 2nd Dept 12-23-15

CIVIL PROCEDURE (UNINCORPORATED ASSOCIATION PROPERLY JOINED BY NAMING PRESIDENT AS DEFENDANT)/ASSOCIATIONS (UNINCORPORATED ASSOCIATION PROPERLY JOINED BY NAMING PRESIDENT AS DEFENDANT)

The Martin Rule, Which Prohibits Actions Against Unincorporated Associations Unless the Actions Complained of Were Authorized or Ratified, Does Not Prohibit Actions Against Individual Association Members

The Second Department, over a dissent, determined that, although the Martin rule prohibited the "defamation/tortious interference with business relations" actions against the union, the actions against individual union members were not prohibited. The Martin rule bars suit against unincorporated voluntary membership associations (here the union) unless the actions complained of were authorized or ratified by the union. But the Martin rule does not bar suit against union members in their individual capacities:

> ... [T]he Martin rule (see Martin v Curran, 303 NY 276...) ... bars all actions against an unincorporated voluntary membership association, and bars claims against the officers of such an association in their representative capacities where there is no allegation that the members of the association authorized or ratified the wrongful conduct complained of.
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> However, neither the Martin rule nor any other authority precludes causes of action from being asserted against individual members of the union defendants in their individual capacities ... . In Martin, only the claims asserted against union members in their representative capacities as officers of the union were dismissed. Notably, the Court of Appeals specifically allowed the libel claims in that action to proceed against the same defendant union members, in their individual capacities ... . Cablevision Sys. Corp. v Communications Workers of Am. Dist. 1, 2015 NY Slip Op 06873, 2nd Dept 9-23-15

Suit Against an Unincorporated Association Must Allege Every Member of the Association Ratified the Conduct Complained Of

In affirming the dismissal of a cause of action against unions brought by a probationary teacher who had been terminated, the Second Department noted that a suit against an unincorporated association must allege that the conduct complained of was ratified by every member of the association:

> The Supreme Court ... properly granted the union defendants' cross motion pursuant to CPLR 3211(a) to dismiss the amended complaint insofar as asserted against them. Because the union defendants were unincorporated associations, and because the amended complaint failed to allege that the conduct complained of on the part of the union defendants was authorized or ratified by every one of their respective members, the amended complaint failed to state a cause of action against the union defendants ... . Sweeny v Millbrook Cent. Sch. Dist., 2015 NY Slip Op 06331, 2nd Dept 7-29-15

Absent a Private Right of Action Expressly Granted by Statute, An Association Created by Statute Does Not Have the Capacity to Sue

The Second Department determined a nonprofit association created by statute (Insurance Law 2130), the Excess Line Association of New York (ELANY), did not have the capacity to sue based upon the defendants' alleged failure to comply with the Insurance Law. Only the Superintendent of Insurance can enforce the Insurance Law. Because the legislature did not provide ELANY with a statutory private right of action, the association did not have the capacity to bring the suit:

> ... ELANY both lacked capacity to commence this action and failed to state a cause of action. Capacity to sue "concerns a litigant's power to appear and bring its grievance before the court" ... . Entities created by statute "have neither an inherent nor a common-law right to sue. Rather, their right to sue, if it exists at all, must be derived from the relevant enabling legislation or some other concrete statutory predicate" ... Such an entity " has no power other than that given it by the Legislature, either explicitly or by necessary implication'" ... .
>
> ELANY was created by Insurance Law § 2130. The statute gives ELANY certain duties, mostly relating to receipt of records and preparation of reports, and provides that the services ELANY performs are to be funded by a stamping fee assessed for premium bearing documents submitted to it in accordance with Insurance Law § 2118 (see Insurance Law § 2130[a], [f]). Brokers' records are to be open to examination by ELANY and the Superintendent of Insurance (now the Deputy for Insurance; hereinafter the Superintendent) (see Insurance Law § 2118[c]; Financial Services Law § 203). ELANY must perform its functions under the plan of operation established and approved by the Superintendent and "shall be supervised by the superintendent" (Insurance Law § 2130[a]; see Insurance Law § 2130[c]). The Superintendent may impose fines and may suspend or revoke an excess line broker's license for noncompliance with the Insurance Law (see Insurance Law §§ 109, 2105[a]). Contrary to ELANY's contention, none of the provisions of the statute confers upon it by necessary implication the capacity to sue to enforce the provisions of the Insurance Law. Rather, the broad enforcement powers of the Superintendent, the lack of enforcement powers granted to ELANY, and the requirement that ELANY function under the supervision of the Superintendent "negate[ ] any inference of a legislative intent to confer that power" ... . Excess Line Assn. of N.Y. (ELANY) v Waldorf & Assoc., 2015 NY Slip Op 05637, 2nd Dept 7-1-15

Townhouse Residents, Members of a Community Homeowners' Association, Entered an Implied Contract to Pay a Proportionate Share of the Fees for Authorized and Necessary Services in Connection with the Maintenance of the Townhouse Facilities

The Third Department affirmed Supreme Court's ruling that defendants (townhouse residents) had entered an implied contract to pay a proportionate share of the full cost of maintaining the facilities. The defendants had refused to pay membership fees after a dispute with other residents arose. The Third Department, applying the "business judgment rule," determined the fees assessed by the plaintiffs were for authorized and necessary services provided by the plaintiff:

> ... [T]he Court of Appeals has made clear that an implied contract for a community homeowners' association "includes the obligation to pay a proportionate share of the full cost of maintaining . . . facilities and services, not merely the reasonable value of those actually used by any particular resident" ... . We review plaintiff's action in undertaking such expenditures under the business judgment rule, which, in the absence of "claims of fraud, self-dealing, unconscionability, or other misconduct," is limited to an inquiry of "whether the action was authorized and whether it was taken in good faith and in furtherance of the legitimate interests of the corporation" ... . Bluff Point Townhouse Owners Assn., Inc. v Kapsokefalos, 2015 NY Slip Op 04905, 3rd Dept 6-11-15

A Union Is Not an Entity Separate from Its Members—A Union, Therefore, Can Not Be Sued By a Member Unless Every Member Participated In the Action Which Gave Rise to the Suit

The Court of Appeals, in a full-fledged opinion by Judge Abdus-Salaam, over a dissent, upheld the so-called "Martin" rule (Martin v Curran, 303 NY 276 [1951]) which prohibits a suit against an unincorporated association, here a union, unless the suit can be maintained against every member of the association. The executive board of the union decided against taking plaintiff's grievance to arbitration. Because only the executive board participated in the decision, plaintiff's suit against the union was prohibited by statute:

In a 4-3 decision authored by Judge Desmond, this Court held in Martin that a voluntary unincorporated association "is neither a partnership nor a corporation. It is not an artificial person, and has no existence independent of its members" (303 NY at 280). The Court determined that "for better or worse, wisely or otherwise, the Legislature has limited . . . suits against association officers, whether for breaches of agreements or for tortious wrongs, to cases where the individual liability of every single member can be alleged and proven" (id. at 282). Although there were policy considerations that might suggest a different result, the Martin Court was "under the command of a plainly stated, plainly applicable statute, uniformly held by this court, for many years, to require pleading and proof of authorization or ratification by all the members of the group" (id. at 280). That statute, General Associations Law § 13, is entitled "Action or proceeding against unincorporated association" and provides:"An action or special proceeding may be maintained, against the president or treasurer of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or in common, or their liability therefor, either jointly or severally. Any partnership, or other company of persons, which has a president or treasurer, is deemed an association within the meaning of this section."The Martin Court also noted that McCabe v Longfellow (133 NY 89 [1892]), the leading case on the right to maintain an action against an unincorporated association, held that a plaintiff could not maintain an action against the officer of an unincorporated association "unless the debt which he seeks to recover is one upon which he could maintain an action against all the associates by reason of their liability therefor" (303 NY at 281…), and that there had been a "line of consistent decisions to that effect" since McCabe. Ultimately, the Martin Court concluded that, because a labor union is a voluntary unincorporated association, the plaintiff was required to plead and prove that each member of the union authorized or ratified the alleged wrongful conduct. Palladino v CNY Centro Inc, 2014 NY Slip Po 02378, CtApp 4-8-14