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ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-1456

	Opinion Delivered 23 SEPTEMBER 2009
E. STANTON MAXEY, APPELLANT	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. CIV2007-1198-4]
V.	THE HONORABLE MARY ANN GUNN, JUDGE
DAVID KOSSOVER, APPELLEE	AFFIRMED IN PART; REVERSED IN PART; AND REMANDED

D.P. MARSHALL JR., Judge

Work on the gutters at the Paradise Valley condominium complex in Fayetteville raises interesting questions under the condominiums' master deed. The facts are undisputed. And the master deed is unambiguous. This writing's meaning, therefore, is a question of law. *Artman v. Hoy*, 370 Ark. 131, 136, 257 S.W.3d 864, 869 (2007). Our review is *de novo*. *Curley v. Old Reliable Cas. Co.*, 85 Ark. App. 395, 400, 155 S.W.3d 711, 715 (2004). Was the disputed gutter work a maintenance/repair/replacement, an alteration/improvement, or both?

Dr. E. Stanton Maxey owned a condominium in the complex. David Kossover was Maxey's neighbor and the president of the property owners' association. Gutters

on sixteen of the twenty units in the complex needed repairing or replacing. Kossover got several bids. He then recommended replacing all the gutters in the complex with new gutters that included a Gutter Helmet—a screen-like flap that keeps leaves and debris out of the gutters. It was an optional component. The association approved replacing all the gutters and installing the Gutter Helmet. Maxey was the lone dissenter. He refused to pay the assessment for his share of the work and sued Kossover.

The issue before the circuit court was whether installing the new gutters with the Gutter Helmet was a matter of maintaining, repairing, and replacing the gutters versus altering or improving them. This distinction mattered. The association's master deed imposes a more rigorous approval procedure for alterations or improvements. The circuit court held that this gutter work was maintenance by replacement. It ordered Maxey to pay the assessment with interest and attorney's fees. Maxey appeals.

Maxey argues that the circuit court erred in categorizing the installation of the new gutters with the Gutter Helmet as solely maintenance/repair/replacement. We agree. Kossover testified that it cost $480.00 to have the gutters cleaned. With many cleanings needed each year, the annual cost exceeded $3,500.00. This expense prompted Kossover's recommendation about adding the Gutter Helmet—it would keep leaves and debris out of the gutters and alleviate the need for frequent cleanings.

Adding the Gutter Helmet thus improved and altered the previously uncovered gutters. The circuit court erred in reading the master deed otherwise.

But our analysis does not end here. The parties argued the case as if it were an either/or dispute. The circuit court decided the case the same way. This is a false choice. This gutter work was both a maintenance/repair/replacement *and* an alteration/improvement.

Installing new gutters substantially similar to the existing gutters was a matter of maintaining the status quo—a gutter-for-gutter exchange. Under the master deed, this part of the project was maintenance, a routine and communal cost to be shared by all the owners without the need for any super-majority vote in writing by the association members. It was undisputed that removing the old gutters and downspouts and installing new ones cost $12,168.00. Dr. Maxey owes the association his share of this work with interest.

It was likewise undisputed that the total bill for the gutter project was $22,870.00. The extra expense beyond the $12,168.00 altered and improved the condominium's gutter system. The Gutter Helmet, according to its seller, would solve the condominiums' leaf and debris problems. This expense was therefore subject to the master deed's super-majority provisions.

The circuit court also held that, even if the gutter work was an alteration or

improvement, the association had properly complied with section 5.2(b) of the master deed. This provision requires at least seventy-five percent of the owners to approve any alteration or improvement in writing. The circuit court based its decision on the fact that seventy-five percent of the record owners voted in favor of the new gutter system at the association's annual meeting. But section 5.2(b) requires written approval of the members, not just a vote. The master deed's requirements of a super-majority and a writing by the association members reflect the magnitude of this kind of project: the status quo at the condominiums will be changed and the change will likely cost more than routine maintenance. The minutes from the association's annual meeting—the only contemporaneous document—do not satisfy the master deed's requirements.

Even if section 5.2(b)'s procedures had been satisfied, the master deed relieves any dissenter from having to share the initial cost of the disputed alteration or improvement. Maxey voted against the project. The circuit court therefore erred by ordering Maxey to pay part of the cost of adding the Gutter Helmet on the new gutters.

We affirm in part, reverse in part, and remand. We direct the circuit court to enter a new judgment consistent with our opinion: the association is entitled to recover, with interest, Maxey's share of the cost of the new gutters alone, but not his

share of the cost of the Gutter Helmet.

HART and GLOVER, JJ., agree.