VERMONT SUPREME COURT
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Case No. 25-AP-390

Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

AUGUST TERM, 2026

Hawk Resort International, LLC v. Salt Ash Owners Association, Inc.*	APPEALED FROM:
	Superior Court, Windsor Unit, Civil Division
	CASE NO. 23-CV-01767
	Trial Judge: H. Dickson Corbett

In the above-entitled cause, the Clerk will enter:

Defendant Salt Ash Owners Association, Inc. (SAOA) appeals from the trial court's order in this contract dispute. The parties are involved in a development in Plymouth, Vermont. They dispute whether plaintiff Hawk Resort International (HRI) owes assessments to SAOA for HRI's undeveloped lots. The trial court determined that HRI did not presently owe any assessments. We affirm.

I. Procedural History

A. Overview

We begin with an overview of the development project as found by the trial court. In the late 1970s, the Salt Ash Mountain Corporation began developing land on both sides of Vermont Route 100 in Plymouth, Vermont. It planned to establish a common-interest community in three separate development phases and develop various infrastructure systems, including roads, a water system, a wastewater system, and various common resources including a resort hotel, restaurant, and various amenities. Salt Ash Mountain Corporation began developing and selling lots. Individual owners formed the Salt Ash Owners' Association.

The corporation experienced financial difficulties, and a small group of owners eventually acquired the development rights from the corporation. This owners' group, which became HRI, created various business entities (referred to as the Hawk entities) to operate the resort amenities and develop and sell the remaining lots. These entities operated the resort and sold most of the developed-but-unsold lots but did little to develop the rest of the community. The further build-out of the resort essentially stalled.

The resort's finances worsened due to various events. Between 2017 and 2020, SAOA became dissatisfied with the business entities that were managing the resort and acting as developers. Litigation ensued, and the parties eventually reached a comprehensive settlement agreement in December 2019, which closed in December 2020. Pursuant to the agreement, SAOA assumed responsibility for collecting assessments and providing services within the community, while HRI was to find a new resort operator to manage the amenities and a new developer to develop and sell the remaining lots. The preparation and recording of covenants in the land records (the "HRI Covenants") was one of the "matters subsequent to closing" that occurred as part of the implementation of the settlement agreement.

In 2021, SAOA sought to collect assessments from HRI for its undeveloped lots. HRI then filed this suit, seeking a declaration that it was not currently required to pay such assessments. SAOA filed a counterclaim, seeking an award for assessments on HRI's undeveloped lots from January 2021 forward.

B. Partial Summary Judgment

The parties filed cross-motions for summary judgment. In a July 2024 order, the court granted HRI's motion in part and denied SAOA's motion. The court concluded as a matter of law that HRI's undeveloped lots were not voting members of SAOA or subject to assessments unless: (1) the lot had frontage on and reasonable ability to connect a driveway to a common roadway, and (2) a reasonable ability to connect a building sewer to a resort sewer main.

In reaching this conclusion, the court cited the following undisputed facts. In the settlement agreement referenced above, HRI transferred to SAOA its interest in certain common lands and resort infrastructure, including the resort sewer and water systems. HRI retained certain development rights, including with respect to its "undeveloped lots," which were described in the settlement agreement as previously created lots "that ha[d] not been developed nor had any building or structures constructed or erected thereon."

HRI and third parties owned undeveloped lots. Pursuant to the agreement, third-party owners of undeveloped lots and third-party purchasers of undeveloped lots would become members of the SAOA. As to HRI's undeveloped lots, however, "no membership" in the SAOA would attach and "no assessments" would be due "until such time as a common roadway is extended so that it provides reasonable driveway access to the lot and until such time as a resort sewer main has been extended so that it provides a reasonable opportunity for connection of such lot to the resort sewer main through the common areas." The agreement further provided that "[a]n undeveloped lot that has frontage on and reasonable ability to connect a driveway to a common roadway and a reasonable ability to connect a building sewer to a resort sewer main shall be assessed by the SAOA for common area charges, road maintenance charges, and sewer charges to the same extent as any other undeveloped lot, and shall be entitled to vote as a member of the SAOA." In other words, the court explained, the settlement agreement unambiguously provided that undeveloped lots owned by third parties would be voting members of SAOA and pay assessments, but undeveloped lots still owned by HRI would not be voting members of SAOA or pay assessments unless and until the lot had (1) frontage on and reasonable ability to connect a driveway to a common roadway, and (2) a reasonable ability to connect a building sewer to a resort sewer main.

The court found that a very similar set of agreements were then documented in the HRI Covenants, which were recorded in the land records. In these covenants, the parties agreed that third-party purchasers of lots from HRI would become members of the SAOA, but undeveloped lots still owned by HRI would not be assessed for common area charges, road maintenance charges, or common sewer charges, and could not vote as a member of the SAOA "until such time as a common roadway is extended so that it provides reasonable driveway access to the lot and until such time as a resort sewer main has been extended so that it provides a reasonable opportunity for connection of such lot to the resort sewer main through the common areas." The parties further agreed that HRI lots would be assessed for common area charges, road maintenance charges, sewer charges, and "such other SAOA assessments as may, from time to time, be made against all [other lot owners]" if the lot had "frontage on and reasonable ability to connect a driveway to a common roadway and a reasonable ability to connect a builder sewer to a resort sewer main." The court found this language consistent with the settlement agreement.

The parties conceded at oral argument that HRI's undeveloped lots were not voting members of SAOA or subject to assessments unless the lots had (1) frontage on and reasonable ability to connect a driveway to a common roadway, and (2) a reasonable ability to connect a building sewer to a resort sewer main. Even without the parties' concession, the court found that this was the parties' clear intent as expressed in the plain and unambiguous language of the agreements.

The parties fundamentally disagreed about how the settlement documents should be interpreted to decide which of HRI's undeveloped lots, if any, met the requirements above. They agreed that HRI had not undertaken any development work since the date of the settlement and the HRI Covenants. The court concluded as a matter of law that the settlement documents were ambiguous as to whether any of the undeveloped lots currently met the required conditions, and a trial was required to resolve this disputed question of fact or mixed question of fact and law.

The court explained that the settlement agreement referred to "Attachment C" as a list of "[t]he undeveloped lots that do not currently have frontage on or the ability to connect a driveway to a common roadway or the ability to connect to a resort sewer main." The attachment contained a list of lots owned by HRI, and each lot was associated with three columns of information for "common road assessment," "common land assessment, and "common sewer assessment." The meaning of these columns was not obvious from the face of the document.

In the HRI Covenants, the parties referred to "Schedule A-1" as listing the HRI lots "that do not currently have frontage on or the ability to connect a driveway to a common roadway or the ability to connect to a resort sewer main." Schedule A-1 contained a different list of lots owned by HRI than Attachment C, and each lot was associated with different information. This list contained two columns of information for "common road access" and "common sewer access." Again, the court did not find it obvious from the face of the document what these columns meant.

SAOA argued that the lists represented the parties' agreement as to which of the undeveloped lots currently met the criteria for assessment as having reasonable access to common roads and common sewers. The court found this to be one straightforward reading of Schedule A-1, but it did not explain how Attachment C should be interpreted, and it did not explain some of the inconsistencies between the two documents, including the different information and lots identified in each list. While there might have been an explanation for the differences, the court concluded that full consideration of these explanations required rules of construction and extrinsic evidence regarding the subject matter and purposes of the agreements, the parties' situations, and the parties' subsequent conduct in performing the contracts.

HRI argued that the lists identified undeveloped lots that did not currently have reasonable road or sewer access, and that the additional information on the lists did not relate to the assessment conditions but instead tracked what assessments a third-party purchaser would have to pay when they purchased the lots. The court found that this too was another possible reading of the lists, but it also failed to explain some of the inconsistencies, and a full consideration of HRI's explanation required extrinsic evidence. At minimum, the court considered the documents ambiguous, and a trial was needed to ascertain the parties' intent.

SAOA moved for reconsideration. It argued that the December 2019 settlement agreement was not the final expression of the parties' agreement but was instead subject to various conditions that led to the filing of an addendum in March 2020. It maintained that language in the addendum supported its position that HRI would owe some assessments on undeveloped lots immediately. SAOA also asserted that the discrepancies between Attachment C to the Settlement Agreement and Schedule A-1 to the HRI Covenants did not create ambiguity. According to SAOA, these lists merely reflected the parties' refinement over time of which HRI lots would be subject to which SAOA assessments. SAOA argued that the settlement agreement and the HRI Covenants were not two drafts of the same instrument. They were instead successive agreements, and in the event of any discrepancies, the latter document controlled. SAOA maintained that the instruments on their faces reflected that Schedule A-1 superseded and replaced Attachment C. SAOA further argued that HRI's interpretation was unreasonable.

The court denied the motion. It reiterated the conclusions from its summary-judgment decision. It emphasized that there were several possible reasonable interpretations of Schedule A-1 and SAOA now advanced another interpretation. As before, the court concluded that a merits hearing was needed to resolve conflicting interpretations of the schedule. It thus denied the motion for reconsideration.

B. Merits Decision

The court then held a hearing over three days and issued a merits decision in October 2025. As indicated above, the court found that the parties' settlement allowed SAOA to assume responsibility for collecting assessments and providing services within the community, while HRI found a new resort operator to manage the amenities and a new developer to develop and sell the remaining lots. The settlement agreement accomplished these goals by transferring the resort infrastructure, common land, resort sewer system, and resort water system to SAOA, and reserving to HRI the ownership of the resort amenities within the "Valley Floor" area of the community and the right to develop the "undeveloped lots" owned by HRI "that have not been developed nor had any buildings or structures constructed or erected thereon." The recorded covenants further provided the means by which HRI (or a successor developer) could develop the "undeveloped lots." The developer would need to obtain permission from SAOA to connect the lots to the resort sewer system and water system; extend the common roadways as needed to provide access to the undeveloped lots; and extend utility services to serve the undeveloped lots. To the extent the developer built out any of these infrastructure extensions, the developer needed to transfer ownership of the infrastructure extensions to SAOA.

The recorded covenants also discussed the relationship between the undeveloped lots and SAOA. Any third-party purchaser of a lot from HRI or a successor developer would become a member of SAOA with the right to vote at association meetings and the obligation to pay assessments. In the meantime, HRI or a successive developer would not be entitled to vote at association meetings or obligated to pay assessments on the undeveloped lots "until such time" as a common roadway was extended to provide reasonable driveway access to the lot and "until such time" as a resort sewer main was extended to provide "a reasonable opportunity" for connecting the lot to the resort sewer main.

The court explained that SAOA initially sent assessments to HRI on more than sixty of its undeveloped lots. In connection with the merits hearing, SAOA hired an engineer and conceded that perhaps only seventeen of the undeveloped lots had both reasonable driveway access and a reasonable ability to connect to the resort sewer main. HRI maintained that the parties' contractual intent was that no undeveloped lot would meet the criteria for assessments "until such time" as further development was undertaken. The court agreed with HRI.

The court explained that no development had occurred since the time of the settlement agreement and the covenants and, thus, whatever understanding existed at that time remained the controlling interpretation. The covenant language strongly indicated that, at the time of the agreement, the parties understood that HRI would not pay assessments of the undeveloped lots or vote at association meetings "until such time" as common roadways were extended to the lot and sewer mains were extended to provide a reasonable opportunity to connect the lot to the resort wastewater system. This meant, in the court's view, that the obligation to pay assessments and the eligibility to vote did not exist at the time of the agreements and would not exist "until such time" as further development occurred. A similar understanding was reflected in the settlement agreement, which provided with respect to undeveloped lots that "no membership in SAOA yet attaches, and no assessments are yet due."

SAOA disputed the significance of the statement above from the settlement agreement, noting that the covenants did not include a similar statement about membership not yet attaching and assessments not yet being due. The court was unpersuaded. It explained that no development occurred between the time of the covenants and the settlement agreement and thus the documents did not reflect any change of circumstances that occurred. The court concluded that the statement did not need to be repeated in the covenants to be effective. The settlement agreement and the covenants were not identical, and they performed different functions. The preparation and recording of the covenants constituted merely one of the "matters subsequent to closing" that occurred as part of the implementation of the settlement agreement. The court considered it appropriate to view the statement in the settlement agreement as indicative of the parties' intent.

The court also found it significant that SAOA had never extended to HRI the right to vote at association meetings with respect to any of the undeveloped lots. It considered this a strong indicator that the parties understood the agreement in a way consistent with that outlined above. The court found that the obligation to pay and the right to vote were inextricably linked and requiring HRI to pay without being able to vote would be inconsistent with the parties' intent.

Additionally, the parties did not distinguish between "developed but unsold" lots and "entirely undeveloped" lots in their agreement. Both the settlement agreement and the covenants described the lots as simply "undeveloped." Both documents thus lent support for the conclusion that the parties did not intend HRI to pay assessments or vote with respect to these lots "until such time" as further development occurred.

The court further found that Attachment C to the settlement agreement contained a list of lots owned by HRI. The notations on Attachment C were not relevant to the issues in this case. The person who prepared the attachment testified that he was compiling data for different purposes related to the eventual sale of the lots. The court therefore did not consider this information useful in determining the question before it. The court further found that SAOA did not specifically negotiate with HRI about Attachment C or intend for it to have a different meaning. The question of whether HRI would pay assessments on undeveloped lots was one of many moving pieces in the settlement negotiations. The court credited the testimony of various witnesses that the question was not specifically discussed at the time that Attachment C was prepared. The primary purpose of this attachment was to identify the lots that HRI owned.

The covenants likewise contained a list of the lots HRI owned, labeled Schedule A-1. This list consisted of a row for each lot (which differed somewhat from the list in Attachment C) and a column for "common road access" and "common sewer access." The individuals who made the list did not testify that they specifically understood or agreed that they were preparing a list of what "undeveloped lots" would be assessed and eligible for voting rights. While one witness thought the list could be used that way, he did not credibly testify that he and the other preparer shared an intention in that respect.

The court found that the parties' overall situation at the time of the settlement agreement and the covenants lent further support to the interpretation that the parties did not intend for HRI to pay assessments "until such time" as further development occurred. There was no historical precedent for HRI paying assessments, and one would expect any present-tense obligation to be spelled out in detail rather than left to implication. Additionally, the Hawk entities were out of cash at the time of the settlement and had no resources available to undertake new development or pay assessments. It would not make sense to agree to a comprehensive settlement that created a new obligation for them to pay significant sums while they tried to sell the development rights to a new developer. Finally, the court explained, one goal of the settlement agreement was facilitating the sale of the resort amenities and the undeveloped lots to someone who would assume the operation of the amenities and facilitate the buildout of the undeveloped lots. This would in turn increase revenues for SAOA and increase enjoyment of the resort by individual owners. It would not make sense for the parties to have created a new liability that would make the sale more difficult or otherwise burden a successor developer. The court also credited testimony that the parties did not expressly discuss during their negotiations whether HRI would be responsible for paying assessments immediately on some or all of the undeveloped lots.

The court acknowledged an engineering report submitted by SAOA, which indicated that there were seventeen undeveloped lots that currently had reasonable driveway access and a reasonable ability to connect to the resort sewer main, at least from an engineering perspective. But the court concluded that the parties did not intend for the questions of assessments and voting to be controlled by factual engineering determinations. The conditions stated in the agreement related to ways of measuring further development progress and not differentiating between different existing undeveloped lots. The court ultimately granted declaratory relief to HRI, holding that HRI's undeveloped lots were neither voting members of the owners' association nor subject to assessments "until such time" as (1) the lot has frontage on and reasonable ability to connect a driveway to a common roadway, and (2) a reasonable ability to connect a building sewer to a resort sewer main. None of HRI's undeveloped lots "yet" met these conditions. The court issued a final judgment order to this effect, and this appeal followed.

II. Arguments on Appeal

SAOA first argues that the court erred in granting partial summary judgment to HRI and in finding an ambiguity in the parties' agreement. It maintains that this case involves successive agreements covering the same subject matter, and to the extent the two agreements are inconsistent, the earlier version is merged into the later agreement, with the latter controlling. It cites Prue v. Royer, 2013 VT 12, ¶ 37, 193 Vt. 267, and other cases in support of its position. SAOA contends that the court "failed to recognize" that certain language found in the settlement agreement was not carried forward into the covenants and contends that such language is inconsistent with the covenants.[1] SAOA further argues that the court erred in finding ambiguity based on inconsistencies between the lists of HRI lots attached to the settlement agreement and later covenants. According to SAOA, the court "failed to recognize that any inconsistency resulted in the later listing of HRI lots superseding the earlier one."

We review de novo the question of whether ambiguity exists, John A. Russell Corp. v. Bohlig, 170 Vt. 12, 16 (1999), and we conclude that there was no error. We apply well-established rules in reaching this conclusion. As we have explained:

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[1] In support of this argument, SAOA cites § 3.1.2 of the settlement agreement, entitled "Undeveloped Lots," which provides:

> "Undeveloped Lots" are Hawk Properties that have not been developed nor had any buildings or structures constructed or erected thereon. Undeveloped Lots are currently owned by HRI and Hawk Property Owners other than HRI ("Third Party Owners") that purchased Undeveloped Lots over the years but have not yet developed them. The Lot numbers of those Undeveloped Lots that are currently owned by HRI and by Third Party Owners are listed on Attachment C to this Agreement. With respect to Undeveloped Lots owned by HRI, no membership in SAOA yet attaches, and no assessments are yet due.

SAOA contends that this language is inconsistent with § 4.11.2 of the covenants. Section 4.11 is entitled "Assessment of HRI Lots" and provides:

> 4.11.1. The HRI Lots that do not currently have frontage on or the ability to connect a driveway to a Common Roadway or the ability to connect to a resort sewer main are listed in Schedule A-1 of the deed of the Common Lands from HRI to the SAOA dated of even date. Such HRI Lots shall not be assessed by the SAOA for Common Area Charges, Road Maintenance Charges, or Common Sewer Charges, and shall not be entitled to vote as a member of the SAOA until such time as a Common Roadway is extended so that it provides reasonable driveway access to the Lot and until such time as a resort sewer main has been extended so that it provides a reasonable opportunity for connection of such Lot to the resort sewer main through the Common Areas.
>
> 4.11.2. An HRI Lot that has frontage on and reasonable ability to connect a driveway to a common roadway and a reasonable ability to connect a building sewer to a resort sewer main shall be assessed by the SAOA for Common Area Charges, Road Maintenance Charges and Sewer Charges, and such other SAOA assessments as may, from time to time, be made against all Hawk Lot Owners to the same extent as any other undeveloped Salt Ash Lot, and shall be entitled to vote as a member of the SAOA. The foregoing notwithstanding, no Sewer Charges shall be assessed or due until such time as the Undeveloped HRI Lot is improved with a dwelling that is connected to the Resort Sewer System.

It is not apparent that these provisions are inconsistent, as SAOA argues.

> In construing a contract, the court seeks to implement the parties' intent. In doing so, we must consider the contract as a whole and give effect to every part contained therein to arrive at a consistent, harmonious meaning, if possible. When the language of the contract is clear on its face, we will assume that the intent of the parties is embedded in its terms. An ambiguity exists, however, when a writing in and of itself supports a different interpretation from that which appears when it is read in light of the surrounding circumstances, and both interpretations are reasonable. If an ambiguity exists, the question of what the parties intended becomes a question of fact for the factfinder to resolve.

Dep't of Corr. v. Matrix Health Sys., P.C., 2008 VT 32, ¶ 12, 183 Vt. 348 (quotations, citations, and alterations omitted). The court may consider limited extrinsic evidence in determining if an ambiguity exists, but "those circumstances may not be used to vary the terms of an unambiguous writing." O'Brien Bros.' P'ship, LLP v. Plociennik, 2007 VT 105, ¶ 9, 182 Vt. 409 (quotations omitted).

SAOA cites Prue, where we stated:

> Where two contracts are made at different times, but where the later is not intended to entirely supersede the first, but only modify it in certain particulars, the two are to be construed as parts of one contract, the later superseding the earlier one wherever it is inconsistent therewith. Courts around the country accept written modifications even if they relate only to certain terms, as long as it is clear which terms of the contract are being modified.

2013 VT 12, ¶ 37 (quotations, citations, and alterations omitted).

The settlement agreement and the HRI Covenants are largely consistent. The "lists" of HRI lots are different, as the trial court recognized. Looking solely at the HRI Covenants, there is an ambiguity as to which HRI lots, if any, meet the agreed-upon criteria. In the HRI Covenants, the parties referenced "Schedule A-1" as listing the HRI lots "that do not currently have frontage on or the ability to connect a driveway to a common roadway or the ability to connect to a resort sewer main." Schedule A-1 does not answer this question on its face. It contains a list of lots with two columns for "common road access" and "common sewer access" with various notations on the document. As the trial court found, it is not obvious from the face of the document what these columns mean, and the document does not plainly establish what HRI lots, if any, are subject to assessment. Reasonable minds could disagree on the meaning of Schedule A-1, and the court acted appropriately in holding a trial to ascertain the parties' intent as a question of fact.

The court did not revisit the threshold question of ambiguity in its merits decision. The court resolved the question of the parties' intent as a matter of fact, and our review of its decision is deferential. See Lofts Essex, LLC v. Strategis Floor & Décor Inc., 2019 VT 82, ¶ 17, 211 Vt. 204 (stating that court's findings will stand unless appellant shows that "no credible evidence" supports them, and its "conclusions will be affirmed where they are reasonably drawn from the evidence presented" (quotations omitted)). The court explained why it concluded that the parties did not intend to distinguish between different types of "undeveloped lots," an interpretation that

SAOA urges us to reject on appeal. While SAOA disagrees with the trial court's conclusions, it fails to show that the court's findings are clearly erroneous or that its findings do not support its conclusions. It also fails to show that the court relied on inappropriate information in reaching its merits decision, including whether HRI had been afforded voting rights. See Bissonnette v. Wylie, 166 Vt. 364, 371-72 (1997) (explaining that parties' understanding of agreement as reflected in their actions is relevant to interpreting ambiguous agreement). We have considered all the arguments in SAOA's brief and do not deem them persuasive.

Because we affirm the trial court's decision that no HRI lots are yet subject to assessment, we reject SAOA's remaining arguments that certain HRI lots are unambiguously subject to assessments and that, contrary to the trial court's finding, this Court should hold that the list of lots identified by SAOA's engineer are subject to assessment.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Harold E. Eaton, Jr., Associate Justice

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Nancy J. Waples, Associate Justice