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What Duty of Care Does a Homeowner Association Owe Its Members?

Attorneys in Georgia increasingly are being asked not just to defend lawsuits for unpaid assessments and fines for alleged violations, but to advise homeowners whether to sue their associations before being sued. But under what cause of action?

BY JULIE LIBERMAN

Members of homeowner associations and condominium associations frequently clash with these entities' boards of directors over the use of both private and common property in their communities. These disputes may concern, for example, responsibility for maintaining and repairing common elements in a condominium, such as roofs, swimming pools, elevators or entryways, or relatively minor matters such as the permissible color of a homeowner's front door. Regardless of the magnitude of the matter, homeowners often find themselves in the unenviable position of facing an unyielding board composed of their neighbors, and often feel they are the victims of arbitrary or draconian decisions that have very real effects on their property rights or assessment obligations without due process.

The results can be harsh. The board, for example, might require that a homeowner pay to maintain property in an area where

ownership or responsibility, or both, are in dispute, or change the way the homeowner has used his property for decades, with daily fines imposed for failure to comply. Frequently, the homeowner concludes that the board has abused its power and that the board's decision-making process lacks fairness.

Homeowners often feel a board composed of their neighbors should be held to the same standards and levels of compliance with procedures to which the homeowners are held. For example, the association can levy fines for a homeowner's failure to store a trash can in the precise location dictated by the governing documents. But Georgia law is more forgiving when it comes to a board's failure, for example, to precisely follow its own requirements for providing notices of meetings or voting procedures.

A declaration of covenants is a contract to which the association and its members are equally bound, and as such, the covenants are interpreted according to the general rules of contract interpretation.[1] Generally speaking, a board is required only to substantially comply with the procedures set forth in the community's governing documents.[2] While a homeowner may conclude that if the board fails to follow those rules and procedures, the board is in breach of contract or a duty, the conclusion might not be legally accurate. Adding to the homeowner's difficulties, most neighborhood governing documents are drafted to ensure a contractual basis for an award of attorney fees to the association, without the need to prove defendant's bad faith,[3] upon prevailing in litigation against a homeowner for collection of any unpaid assessments or fines.

Even if only as a matter of principle, homeowners are more willing than ever to stand up to their homeowner associations and to seek legal counsel when doing so. Attorneys in Georgia increasingly are being asked not just to defend lawsuits for unpaid assessments and fines for alleged violations, but to advise homeowners whether to sue their associations before being sued. But under what cause of action? When a board's failure to follow the covenants implicates property rights, or the misuse of association funds, do fiduciary duties come into play? Whether a fiduciary duty is owed by the board to the homeowners is a nuanced question and a legal issue ripe for development in Georgia.

What Is a Breach of Fiduciary Duty under Georgia Law?

The general concept of fiduciary duty under Georgia law is beyond this article's scope. However, certain cases involving homeowner associations have looked to general statutory and case law on fiduciaries. It is, therefore, useful to examine those general concepts to understand current Georgia law of fiduciary duty in the context of community associations.

Under Georgia tort law, a fiduciary duty can be established when the parties are in a "confidential relationship." This defined is by statute as follows:

> Any relationship shall be deemed confidential, whether arising from nature, created by law, or resulting from contracts, where one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith, such as the relationship between partners, principal and agent, etc.[4]

The statute sets forth business partnerships and principal and agent relationships as examples of confidential relationships. Georgia case law recognizes other confidential relationships, including relationships between a trustee and beneficiaries

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of a trust,[5] between spouses,[6] and between a clergyman and members of his church.[7] The list is not exclusive.

The statute refers to an exercise of one party's "controlling influence" over another, but the control at issue has a narrow application. It does not, for example, concern the parties' relative bargaining power. When one party clearly possesses superior control over information, and is better positioned to dictate contractual terms (such as employer to employee and creditor to debtor), no fiduciary duty exists because these and other business relationships are deemed arms-length.[8] Moreover, when bargaining power is indisputably unequal, such as when one party to a contract is illiterate and the other is not, a confidential relationship does not necessarily exist either.[9]

The statute's reference to a relationship of "mutual confidence" provides scant practical guidance. The Court of Appeals of Georgia has held that no fiduciary duty arises in a relationship of mutual trust and confidence in each other's integrity, which is presumed in arm's-length transactions.[10] Additionally, the mere fact that one party voluntarily reposed trust and confidence in another, alone, is not enough to establish the relationship.[11] The relevant inquiry is not whether (or the degree to which) one party has exercised influence over another,[12] nor the degree to which the parties have mutual confidence in one another, but whether one party is justified in reposing confidence in the other and why.[13]

The fact-specific determination of whether one party justifiably reposes confidence in the other ordinarily presents a jury question.[14] Accordingly, we might assume that with the right set of facts, a homeowner could make a convincing case that he justifiably reposed confidence in the board of directors of his homeowner association, and that the board owed him "the utmost good faith." The benefits of proving such a duty would include, for example, a heightened responsibility for the fiduciary to disclose facts, and a lessened responsibility on the plaintiff-homeowner to investigate facts.[15] However, to date, no set of facts in any reported Georgia appellate decision has definitively established a heightened duty owed by a homeowner association directly to an individual homeowner.

Is a Homeowner in a Confidential Relationship with the Board or its Directors and Officers?

The question thus becomes, for purposes of establishing fiduciary duties, could a homeowner ever be justified in "reposing confidence" in the board of his homeowner association? Two cases brought by individual homeowners in direct actions for breach of fiduciary duty provide some guidance, if not definitive answers, for the unwary litigant.

A 2010 case, *Bailey v. Stonecrest Condominium Association, Inc.*,[16] primarily concerned discrimination under the Georgia Fair Housing Act (GFHA), but also presented claims for breach of fiduciary duty against the association, its property management company and the board of directors. The plaintiff asserted two bases for these claims. First, the association had passed amendments that restricted leasing, and the restrictions allegedly constituted racial discrimination. The resulting violation of the GFHA was the first basis alleged as a breach of fiduciary duty. The plaintiff also contended that the board breached a fiduciary duty when it allegedly failed to follow proper procedures to notify homeowners of a meeting at which a vote on the amendments would take place.[17]

In addressing these claims, the Court of Appeals of Georgia began by citing the general rule governing all such claims, requiring proof of the three elements of the claim: (1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach.[18] However, the court's ruling did not turn on whether any of the elements of a breach of fiduciary duty had been proved, but instead on a different standard, routinely cited when owners challenge a homeowner association decision.[19] The standard derives from the Supreme Court of Georgia's opinion in *Saunders v. Thorn Woode Partnership, L.P.*,[20] and provides as follows:

> Where . . . the declaration delegates decision-making authority to a group and that group acts, the only judicial issues are whether the exercise of that authority was procedurally fair and reasonable, and whether the substantive decision was made in good faith, and is reasonable and not arbitrary and capricious.[21]

Unfortunately, the *Bailey* court did not analyze the plaintiff's fiduciary duty claim against the defendants individually, nor did it analyze the three elements of breach of fiduciary duty as to any of the defendants. That analysis would have been instructive, given that as a threshold matter, the first element of the general test—existence of a fiduciary duty—was at issue. Did the association itself owe a fiduciary duty to the plaintiff? Did the property management company? Did the officers or individual members of the board of directors?

The court also did not fully address the plaintiff's contention that the board failed to follow proper meeting notice and voting procedures, because the plaintiff failed to cite evidence in the record to support that contention and because the court reversed the grant of summary judgment to the defendants on the GFHA claim.[22] The court remanded the case for a factual determination as to "whether the defendants' substantive decision to adopt the leasing restriction amendments was made in good faith, was reasonable, and was not arbitrary and capricious."[23] One interpretation of this decision is that if a jury found the defendants' decision to be unreasonable or arbitrary and capricious, that finding would necessarily amount to a breach of the greater duty of a fiduciary. However, while logical, this reasoning fails to settle the question of whether the duty of "utmost good faith" is owed in this context at all, much less by whom.

A contrasting approach to the issue was taken by the Court of Appeals of Georgia in the 2011 case *Campbell v. Landings Association, Inc.*[24] In that case, the plaintiff-homeowner alleged, among other things, a breach of fiduciary duty by the homeowner association when its general manager unilaterally adopted a policy banning airboats from its marinas.[25] In the division of the opinion concerning the breach of fiduciary

duty claim, the court ruled that the board did not owe the homeowner a fiduciary duty merely by virtue of the homeowner's status as a "resident" of the association.[26] The court stated that "the burden is on the party asserting the existence of a fiduciary or confidential relationship to establish its existence. Campbell's mere reliance upon his status as a resident of the Landings, without more, fails to establish such a relationship."[27] Campbell was, in fact, a landowner and member of the association, not merely a "resident" nonmember.

The court could have, but did not, follow the *Saunders* line of inquiry into whether the general manager's decision to ban airboats was "procedurally fair and reasonable, and whether the substantive decision was made in good faith, and is reasonable and not arbitrary and capricious." It is unclear from the opinion whether the homeowner briefed the issue under that standard. As such, the *Campbell* opinion suggests that homeowner litigants need to advocate more pointedly for the application of the fiduciary standard under particular facts that justify reposing confidence in their boards. Alternatively, a homeowner can attempt to argue that the board's decisions were not reasonable under *Saunders*.

Interestingly, two subsequent opinions have referred to *Bailey* as recognizing the existence of a homeowner association board of director's fiduciary duty. In a 2013 case, *Hall v. Town Creek Neighborhood Association*,[28] the Court of Appeals of Georgia referred to *Bailey* in a string citation as "recognizing that members of a homeowners' association's board of directors may be held liable for breach of fiduciary duty."[29] However, the facts of *Hall* did not involve a claim for breach of fiduciary duty. In fact, in the *Hall* case, no board had been established.[30] The case was brought by the association against a homeowner for allegedly unpaid assessments; the homeowner defended the suit on the grounds that the association lacked authority to levy the assessments when only the board was empowered by the declaration to do so, and the board did not exist. The court agreed with the homeowner, and reversed a grant of summary judgment to the association.[31] Thus, the reference to *Bailey* in *Hall* is mere dicta. Moreover, the *Hall* opinion does not indicate to whom any fiduciary duty is owed, whether to the association itself or to the homeowners.

Bailey was cited again by the Court of Appeals of Georgia in its 2014 opinion *Thunderbolt Harbour Phase II Condominium Association v. Ryan*.[32] In *Thunderbolt Harbour*, a homeowner association board sued its sole officer and director for breach of fiduciary duty in connection with failure to adequately inspect and repair construction defects. The director moved for summary judgment, contending that Georgia law did not recognize the cause of action against a sole officer and director, and that the association lacked standing to bring the claim. The trial court granted the motion but the Court of Appeals reversed, noting that an agency relationship between the parties was at play under those facts.[33] The court cited *Bailey* as precedent "recognizing a claim for breach of fiduciary duty against the board" and found that whether a confidential relationship existed was for a jury to decide.[34]

The citation to *Bailey* in the *Hall* opinion points in the direction of the standards set forth by the Georgia Corporate Nonprofit Code.[35] That statute recognizes that the members of an association's board of directors owe, at a minimum, a quasi-fiduciary duty to the board itself, and thus to the association. It prescribes the following standard of care owed by directors to the corporation:

> Unless a different standard is prescribed by law,
> (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
> (A) In a manner the director believes in good faith to be in the best interests of the corporation; and
> (B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances . . . .[36]

A parallel standard is set forth for officers.[37] Notably, the standard for directors and officers provided by these statutes is a lower standard than the "utmost good faith" provided in the statute governing confidential relationships. However, by their own terms, the statutes governing the stan-

dard for directors and officers provide that the standard of care may be altered as "prescribed by law." The dicta in *Hall* is presumably insufficient to alter the standard for directors and officers such that it matches the standard for fiduciaries, and *Thunderbolt Harbour* was decided in part based on an agency relationship, which provides an independent basis for the fiduciary standard. But the reference to *Bailey* in the *Hall* and *Thunderbolt Harbour* opinions is still significant in that it demonstrates the importance of litigants consulting the framework found in nonprofit corporate decisions and framing their issues in terms of standing.

Fiduciaries in For-Profit Corporations and Their Nonprofit Counterparts

A for-profit corporation's officers and directors occupy a fiduciary relationship with the corporation and its shareholders, and are held to the standard of utmost good faith and loyalty.[38] The fiduciary relationship between a corporation and one of its officers arises out of the contractual or employment relationship between the two parties.[39] Corporate officers and directors owe to the corporation and its stockholders a fiduciary or quasi-fiduciary duty, which requires that they act in utmost good faith.[40] Directors and officers, in the management and use of corporate property in which they act as fiduciaries and are trustees, are charged with serving the interests of the corporation as well as the stockholders.[41] When those duties are violated, resulting in waste to the corporate assets or injury to such property, the directors and managers are liable to account.[42]

With a *nonprofit* corporation, it has been held the officers and directors also owe a fiduciary duty to the corporation, "unless they cause individual injury to an association member by the breach of their fiduciary duties."[43] Otherwise stated, the primary duty is owed by the individual officers and directors to the nonprofit corporation, but if in discharging those duties, an individual injury occurs, the individual member may have standing to sue the corporation directly. This is an exceptional situation. More frequently, an individual has standing to sue a nonprofit corporation only through a derivative action, described as follows:

> In a nonprofit derivative suit, a member asserts for the corporation's benefit rights or remedies belonging to the corporation, not to the member. The wrong which the action seeks to redress is one which the corporation, not the individual, has sustained. The member is a mere nominal party, having no right, title or interest in the claim itself. One of the primary underlying reasons for the derivative action—especially applicable to nonprofits—is to avoid a multiplicity of lawsuits.[44]

Further, the Georgia courts have held,

> [T]o have standing to sue individually, rather than derivatively on behalf

> of the corporation, the plaintiff must allege more than an injury resulting from a wrong to the corporation. [T]o set out an individual action, the plaintiff must allege either an injury which is separate and distinct from that suffered by other [members], or a wrong involving a contractual right of a [member] which exists independently of any right of the corporation.[45]

Thus, when a board of directors commits a wrong that injures the entire association, the individual homeowner may bring a derivative action against the association, and depending on the nature of the facts alleged, the claim may be properly labeled as a breach of fiduciary duty. For example, the Court of Appeals of Georgia has held that whether an association's election procedures were conducted in accordance with its bylaws is a question that concerns all the members, and breach of those procedures can create a derivative claim for a breach of fiduciary duty.[46] Likewise, a claim of misappropriated association funds is properly brought as a derivative claim.[47]

The Business Judgment Rule and Beyond

No discussion of homeowner actions against board members would be complete without considering the business judgment rule. In the context of negligence claims against board members, the Court of Appeals of Georgia often recites as follows: "No principle of law is more firmly fixed in our jurisprudence than the one which declares that the courts will not interfere in matters involving merely the judgment of the majority in exercising control over corporate affairs."[48] Thus, a case sounding in ordinary negligence for a director's or officer's malfeasance or nonfeasance will likely fail if the defendant demonstrates in some deliberative decision-making process in reaching the contested decision. Because the courts frequently look beyond the nomenclature of litigants' pleadings, actions seeking to challenge a board's judgment, whether or not alleged as "negligence," may be decided under the business judgment rule.

The 2014 Supreme Court of Georgia opinion in *FDIC v. Loudermilk*,[49] involving bank officers and directors, may shed light on future calibrations of this rule. The Court explained that

> the business judgment rule at common law forecloses claims against officers and directors that sound in ordinary negligence when the alleged negligence concerns only the wisdom of their judgment, but it does not absolutely foreclose such claims to the extent that a business decision did not involve "judgment" because it was made in a way that did not comport with the duty to exercise good faith and ordinary care.[50]

In other words, officers and directors cannot make decisions blindly, or fail to exercise any judgment, and later hide behind the business judgment rule.

The Supreme Court of Georgia and Court of Appeals have yet to apply the business judgment rule as set forth in *Loudermilk* to the board members or officers of a community association. The hope for homeowners should be that *Loudermilk* will result in more triable issues regarding an association's exercise, or lack thereof, of judgment.

Conclusion

Under current Georgia law, a homeowner association's board of directors does not owe the same duty of "utmost good faith" to the homeowner members that the officers of a for-profit corporation owe to the shareholders. The individual homeowner association board members owe a quasi-fiduciary duty, but only to their board. Consequently, when a homeowner is aggrieved by board action, he rarely will have a valid claim for breach of fiduciary duty, as Georgia precedent supports such a claim only under very limited circumstances. The homeowner properly asserts such a claim in his individual capacity only when the board's actions both negatively impact the entire association and cause the individual some special or unique harm.

As to direct negligence claims, more often than not, the business judgment rule insulates individual officers and directors from attacks on their decisions that impact the individual homeowner. As to direct, individual actions by aggrieved homeowners against an entire board, the courts have said the duty a board owes to the homeowner is merely to act reasonably and not arbitrarily and capriciously. These relatively low standards often prove difficult for a plaintiff-homeowner to overcome. Of course, as shown by *Bailey,* if a board member fails to act reasonably, or makes decisions that are arbitrary and capricious, then *ipso facto*, he has also failed to act in the "utmost good faith." But the *Bailey* court's holding that such conduct was unreasonable did not create precedent for the legal existence of a fiduciary duty in the first place.

Perhaps under some very compelling set of facts, a homeowner will be able to convince Georgia's appellate courts that he was justified in reposing confidence in his board. Moreover, following *Loudermilk*, the business judgment rule should not provide an automatic bar to negligence claims and other claims concerning a board's judgment. Nevertheless, additional precedents would be valuable in fleshing out the distinctions between these standards and further clarifying the circumstances under which each applies. Such decisions may well raise the bar for those in whom Georgia homeowners place their trust for decisions impacting both their property values and ongoing relationships with their neighbors. ●

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Endnotes

1. *See, e.g.*, Britt v. Albright, 282 Ga. App. 206, 209, 638 S.E.2d 372, 375 (2006).

2. *See, e.g.*, Rice v. Lost Mountain Homeowners Ass'n, 269 Ga. App. 351, 354, 604 S.E.2d 215, 220 (2004).
3. *See, e.g.*, O.C.G.A. § 13–6–11 (2010).
4. O.C.G.A. § 23–2–58 (2002).
5. *See, e.g.*, Smith v. SunTrust Bank, 325 Ga. App. 531, 539, 754 S.E.2d 117,124 (2014).
6. *See, e.g.*, Beller v. Tilbrook, 275 Ga. 762, 571 S.E.2d 735 (2002).
7. Bryan v. Norton, 245 Ga. 347, 348, 265 S.E.2d 282, 283–84 (1980) (dicta).
8. *See* Baxter v. Fairfield Fin. Servs., 307 Ga. App. 286, 293, 704 S.E.2d 423, 429 (2010) (no confidential relationship between creditor and debtor); Canales v. Wilson Southland Ins. Agency, 261 Ga. App. 529, 531, 583 S.E.2d 203, 204–05 (2003) (no confidential relationship between insurance agent and insured absent a special relationship of trust). However, a stockbroker and his customer have a fiduciary relationship as principal and agent. *See* Holmes v. Grubman, 286 Ga. 636, 643, 691 S.E.2d 196, 201 (2010). *But see* Tigner v. Shearson-Lehman Hutton, 201 Ga. App. 713, 715–16, 411 S.E.2d 800, 802 (1991) (where a disabled holder of a brokerage account sued his broker for mismanagement of funds, the court held that a fiduciary relationship was created because of the account holder's disabilities of which the broker was aware, rather than by analogy to principal and agent).
9. *See* Clinton v. State Farm Mut. Auto. Ins. Co., 110 Ga. App. 417, 423, 138 S.E.2d 687, 691–92 (1964) ("The fact that an unlearned and uneducated person reposes trust and confidence in another does not create a confidential relationship.").
10. Kienel v. Lanier, 190 Ga. App. 201, 203, 378 S.E.2d 359, 361 (1989).
11. *Id.* at 203, 378 S.E.2d at 361; Lewis v. Alderman, 117 Ga. App. 855, 855, 162 S.E.2d 440, 441 (1968).
12. Employers exercise influence and control over their employees, but ordinarily that does not mean an employer owes its employees a fiduciary duty. *See* Atlanta Mkt. Ctr. Mgmt. Co. v. McLane, 269 Ga. 604, 607, 503 S.E.2d 278, 281–82 (1998) (employee–employer relationship does not imply fiduciary obligations unless facts establish obligations associated with a principal–agent relationship). *See also* Physician Specialists in Anesthesia, P.C. v. Wildmon, 238 Ga. App. 730, 732–33, 521 S.E.2d 358, 360 (1999) (same).
13. A client is justified in reposing confidence in his attorney with regard to confidential information, so the attorney owes his client the utmost good faith and loyalty with regard to the confidential information. *See, e.g.,* Tante v. Herring, 264 Ga. 694, 696, 453 S.E.2d 686, 688 (1994).
14. *See* Yarbrough v. Kirkland, 249 Ga. App. 523, 527, 548 S.E.2d 670, 673 (2001).
15. Smith v. SunTrust Bank, 325 Ga. App. 531, 544, 754 S.E.2d 117, 127 (2014).
16. 304 Ga. App. 484, 696 S.E.2d 462 (2010).
17. *Id.* at 484, 696 S.E.2d at 464.
18. *Id.* at 494, 696 S.E.2d at 470.
19. *See id.* at 494, 696 S.E.2d at 470.
20. 265 Ga. 703, 462 S.E.2d 135 (1995).
21. *Id.* at 704, 462 S.E.2d at 137. In a similar formulation of the duties owed by an association to its members, the Court of Appeals of Georgia in Brockway v. Harkleroad, 273 Ga. App. 339, 341 & n.1, 615 S.E.2d 182, 185 & n.1 (2005), in dicta, citing the Restatement (Third) of "Property: Servitudes § 6.13(1), stated, In addition to duties imposed by statute and the governing documents, the association created to manage the property or affairs of a common-interest community must use ordinary care and prudence while engaged in its management duties; must treat members fairly; must act reasonably in the exercise of discretionary powers such as rulemaking, enforcement, and design-control powers; and must give members reasonable access to information about the common property and the association and its financial affairs."
22. *Bailey*, 304 Ga. App. at 494, 696 S.E.2d at 471.
23. *Id.* at 494, 696 S.E.2d at 471.
24. 311 Ga. App. 476, 716 S.E.2d 543 (2011).
25. *Id.* at 482, 716 S.E.2d at 548.
26. *Id.* at 482, 716 S.E.2d at 548.
27. *Id.* at 482, 716 S.E.2d at 548.
28. 320 Ga. App. 897, 740 S.E.2d 816 (2013).
29. *Id.* at 899–900, 740 S.E.2d at 818.
30. *Id.* at 898, 740 S.E.2d at 818.
31. *Id.* at 900, 740 S.E.2d at 818.
32. 326 Ga. App. 580, 757 S.E.2d 189 (2014).
33. *Id.* at 580, 757 S.E.2d at 190.
34. *Id.* at 582–83, 757 S.E.2d at 191. Note that while *Hall* cites *Bailey* for establishing that individual board members may be liable for a breach of fiduciary duty, *Thunderbolt Harbor* cites *Bailey* as establishing that a board, meaning the association itself, may be liable.
35. O.C.G.A. §§ 14–3–101 to –1703 (2003 & Supp. 2016).
36. O.C.G.A. § 14–3–830(1)(A) and (B) (2003).
37. *See* O.C.G.A. § 14–3–842(1) (2003 & Supp. 2016).
38. *See, e.g.*, Argentum Int'l, LLC v. Woods, 280 Ga. App. 440, 447, 634 S.E.2d 195, 203 (2006) ("It is well settled that corporate officers and directors have a fiduciary relationship to the corporation and its shareholders and must act in good faith.") (quoting Paul v. Destito, 250 Ga. App. 631, 635, 550 S.E.2d 739, 745 (2001)).
39. *See* Insight Tech., Inc. v. FreightCheck, LLC, 280 Ga. App. 19, 24, 633 S.E.2d 373, 378 (2006).
40. *Argentum Int'l*, 280 Ga. App. at 447, 634 S.E.2d at 202.
41. *See* Thunderbolt Harbour Phase II Condo. Ass'n v. Ryan, 326 Ga. App. 580, 582, 757 S.E.2d 189, 191 (2014) (quoting Enchanted Valley RV Resort v. Weese, 241 Ga. App. 415, 423, 526 S.E.2d 124, 131(2000)).
42. *Id.* at 582, 757 S.E.2d at 191.
43. *Id.* at 582, 757 S.E2d at 191. *But see* Morrell v. Wellstar Health Sys., Inc., 280 Ga. App. 1, 7–8, 633 S.E.2d 68, 74 (2006) (nonprofit hospital generally has no fiduciary duty to a patient with respect to the price the hospital charges for medical care).
44. Dunn v. Ceccarelli, 227 Ga. App. 505, 507, 489 S.E.2d 563, 566 (1997) (citations omitted).
45. *Id.* at 507, 489 S.E.2d at 566 (brackets and omitted punctuation in original) (quoting Phoenix Airline Servs. v. Metro Airlines, 260 Ga. 584, 586, 397 S.E.2d 699, 702 (1990)).
46. Crittenton v. Southland Owners Ass'n, 312 Ga. App. 521, 524, 718 S.E.2d 839, 843 (2011).
47. *Id.* at 524–25, 718 S.E.2d at 843. *But see* Hampton Ridge Homeowners Ass'n v. Marett Properties, 265 Ga. 655, 460 S.E.2d 790 (1995) (association's failure to pay property taxes on common property from assessments collected was alleged by homeowner as a direct breach of fiduciary duty claim, and failed, but not for lack of standing).
48. Rymer v. Polo Golf & Country Club Homeowners Ass'n, Inc., 335 Ga. App. 167, 174–75, 780 S.E.2d 95, 101 (2015) (quoting Vernon Bowdish Builder v. Spalding Lake Homeowners' Ass'n, 196 Ga. App. 370, 371, 396 S.E.2d 24, 25 (1990)).
49. 295 Ga. 579, 761 S.E.2d 332 (2014).
50. *Id.* at 585–86, 761 S.E.2d at 338.