N E W S

LETTER

COMMUNITY LAW NEWSLETTER

Vol. 21 No.1

January, 2010

PAVESE LAW FIRM

Written by:

Christopher J. Shields, Esq., Christina Harris Schwinn, Esq., and Stacy L. Bennings, Esq.

Winter 2010

Case Law & Arbitration Update

1Comcast of Florida, L.P., v. L'Ambiance Beach Condominium Association, Inc., 17 So. 3d 839 (Fla. 4th DCA, August 26, 2009)

Although it has long been commonly understood, this is the first Florida Appellate Court case to confirm that bulk cable contracts entered while a condominium association is under developer control may be terminated by the Association following turnover pursuant to Section 718.302 of the Florida Statutes. That section allows for cancellation of contracts for the "operation, maintenance, repair, replacement or protection of the common elements and association property" if the cancellation is approved by at least 75 percent of the voting interests other than the voting interests owned by the developer. The court reasoned:

"Comcast installed wires and lock boxes to provide cable television services to all the unit owners. By virtue of the Agreement, Comcast operated and maintained the system that it installed. Further, (the statute) provides that the cost of cable television service obtained pursuant to a bulk rate contract is deemed a common expense. (The statute) specifically provides that common expenses include the expenses of the operation, maintenance, repair, replacement or protection of the common elements and association property . . . "

Curci Village Condominium Association, Inc. v. Santa Maria, 14 So. 3d 1175 (Fla. 4th DCA, June 17, 2009)

If permission is granted by one Board member, is the Association legally stopped from enforcing its governing documents?

In this case, an Owner in a homeowners association verbally asked the Association's president for permission to install decorative improvements in her backyard. The president stated that he "didn't see a problem with it," and the owner then installed the improvements without applying for or receiving written approval from the Association, as was required under the Declaration. The court ruled that the Association was not prohibited from seeking enforcement of the Declaration. The owner could not reasonably or justifiably rely on the president's statement, which was merely a verbal opinion from one member of a three member Board.

Costa Del Sol Association, Inc. v. State of Florida, 987 So. 2d 734 (Fla. 3rd DCA, July 2, 2008)

Who insures unit owner improvements to limited common element areas?

In this case, the court held that despite Section 718.111(11)(f) of the Florida Statutes, which provides that Associations must insure all alterations or additions to the condominium property or association property which are made pursuant to Section 718.113(2) [i.e. received required approval], the condominium association is not responsible for insuring items such as jacuzzis, trellises, and elaborate screen enclosures purchased, installed and used only by the individual unit owners. Specifically, the court stated that to hold otherwise would be "utterly unfair ... making members of the association responsible for insuring property which they do not and cannot use, and from which they derive no benefit-indeed, in which they apparently have no insurable interest which would even permit their maintenance of valid insurance."

Killeen v. S.B. Club Condominium Association, Inc., Case No. 2008-06-4403, Summary Final Order (March 6, 2009)

In this case, the Unit Owner purchased his unit shortly before the Association sent a letter to all unit owners advising that it would begin to strictly enforce provision of the Declaration prohibiting alterations of limited common elements, particularly the installation of screen and glass enclosures on lanais. Existing enclosures would be allowed to remain unless they interfered with maintenance or suffered substantial damage, in which case they could not be rebuilt. The Unit Owner sought an Order from the Division to allow a screen enclosure to be installed on his lanai or, in the alternative to require removal of all enclosures. The arbitrator held that the Association may enforce prospectively a new policy as to an existing restriction which was not previously enforced so long as it is properly adopted and implemented and uniform in application.

Karanda Village VII Condominium Association, Inc. v. Gothelf, Arb. Case No. 2009-01-1903 (August 13, 2009)

"Prescriptive pets" are a growing concern plaguing condominium associations. Boards are often forced to decide whether or not to pursue arbitration in order to require removal of the pet in light of threatened discrimination claims by the unit owner. In this arbitration case, the Division made clear that it will not arbitrate a case where the Association is seeking removal of a pet that the owner claims is necessary as a reasonable accommodation under the Fair Housing Act until the discrimination claim is filed and resolved. However, in the absence of enforcement action by the Association to compel the pet's removal, there may be no incentive for the unit owner to file a discrimination claim with the federal, state or local government agencies responsible for investigating those claims. This makes decisions even more difficult for Boards as any action to compel removal of the pet will no doubt ensure a discrimination investigation.

****REMINDER REGARDING AMENDMENTS TO GOVERNING DOCUMENTS:** Amendments to the association's governing documents are not effective until they are recorded in the public records. Until recorded, amendments are unenforceable even if they have been approved by the requisite vote of the membership. Also, it is important to timely record amendments following approval for reason of notice to potential purchasers and to avoid problems which may arise if a unit sells between the time an amendment is approved and when it is actually recorded in the public records.

****IMPORTANT NOTE REGARDING FORE-CLOSURE ON HOMESTEAD PROPERTY:** The Supreme Court of Florida issued an Administrative Order requiring all foreclosures involving most residential mortgages on homestead property to be referred to managed mediation. While this Order primarily affects lenders and homeowners, where the Association is a defendant to the mortgage foreclosure, it may be necessary for the Association to file a motion to be excused from mediation.

****TIDBIT – 2010 MINIMUM WAGE:** Florida's minimum wage for 2010 is $7.25 per hour.

and should not be relied upon as legal advice. Christopher J. Shields (christophershields@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm. Stacy L. Bennings (stacybennings@paveselaw.com) is an Associate with the Pavese Law Firm. Each attorney practices in the area of Real Estate Development and Community Association Law. Ms. Schwinn also specializes in Labor/Employment Law. Please feel free to contact them via the e-mail addresses listed above.