COMMUNITY COUNSEL

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RECENT CASES

- U.S. Supreme Court limits meaning of "disability" under the Americans with Disabilities Act, which uses the same language as Fair Housing Amendments Act of 1988.
- Owner of property not immunized from liability for injury caused by independent Contractor negligently hired.
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"Woodside Village" Decision - a Victory for All?

Argued Last April, on January 3, 2002, the Florida Supreme Court unanimously upheld the right of condominiums and cooperatives to amend their documents to make substantial changes to the rights of owners, including their right to rent their units.

In this case, the Association members properly voted to adopt an amendment to the Declaration of Condominium that restricted rentals to no more than 3/4 of any year and prohibited all rentals during the first year of ownership. Two unit owners who owned multiple units for rental purposes raised several challenges to the amendment, and were successful in the trial court and the District Court of Appeals.

The Supreme Court's long awaited decision turned out to be a complete victory for Associations and completely vindicated the right of the members to amend their documents to accomplish new objectives. However, because of the court's reasoning, it is open to debate as to whether the ruling has equal applicability to homeowner associations. Indeed, the law governing those associations may require a different result.

CONDOS CAN CELEBRATE A COMPLETE VICTORY, BUT HOAS NEED TO START LOOKING CAREFULLY AT THEIR SITUATIONS.

The Court's analysis starts with the oft quoted observation that condominiums are creations of statute. As a result, the rights of the members and associations are strictly governed by the Declaration. Relying on cases that have upheld restrictions on use and occupancy of condominiums in the past, the court had no problem ruling that Declarations may regulate rentals. As to the right to change schemes by amendment, the court relied on language in Section 718.110(1)(a), F.S. which states:

If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those listed in subsection (4) or subsection (8)

. . . .

Amendments approved by members are entitled to great deference by the courts, and purchasers acquire their interests with knowledge that the documents are subject to amendment.

The court's main decision, and a special concurring opinion by Justice Quince, both made the point that any limits on the right of members to change their declarations by amendment should come from the Legislature, not the courts.

Homeowner associations are not wholly creatures of statute, and Section 720.306(1)c, F.S. already provides in part:

Unless otherwise provided in the governing documents as originally recorded, an amendment may not affect vested rights ...

It appears, therefore, that a very different result could be required in HOA cases by

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RECENT CASE SUMMARIES

In **Toyota Motor Manufacturing Kentucky, Inc., vs. Williams,** 224 F.3d 840 (U.S., 1/8/2002), Williams sued Toyota, claiming to be disabled by virtue of carpal tunnel syndrome and related impairments and unable to perform her automobile assembly line job. Williams alleged that Toyota failed to provide her with reasonable accommodations as required by the Americans with Disabilities Act of 1990 [the "ADA"]. The trial court granted summary judgment for Toyota, holding that William's impairment did not qualify as a disability under the ADA because it had not substantially limited any major life activity. The Sixth Circuit reversed the trial court, finding that the impairments substantially limited Williams in the major activity of performing manual tasks. According to the Sixth Circuit, in order to demonstrate that Williams was so limited Williams had to show that her manual disability involved a class of manual activities affecting the ability to perform tasks at work. According the Sixth Circuit, Williams satisfied this test because her ailments prevented her from doing the tasks associated with certain types of manual jobs that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time. However, Williams was able to tend to her personal hygiene and carry out personal or household chores. The United States Supreme Court reversed the Sixth Circuit and held that it did not apply the proper standard in determining whether Williams was disabled under the ADA because the Sixth Circuit analyzed only a limited class of manual tasks and failed to ask whether William's impairments prevented or restricted Williams from performing tasks that are of central importance to most people's daily lives. The Court's consideration of what an individual must prove to demonstrate a substantial limitation in the major life activity of performing manual tasks is guided by the ADA's disability definitions. The Court held that it is insufficient for individuals attempting to prove disability status under this test to merely submit evidence of a medical diagnosis of an impairment. Instead, the ADA requires a person to offer evidence that the extent of the limitation caused by the impairment in terms of the individual's own experience is substantial. *The central inquiry must be whether the person is unable to perform the variety of tasks central to most people's daily lives*. Manual tasks unique to any particular job are not necessarily important parts of most people's lives. Therefore, occupation-specific tasks may have only limited relevance to the manual task inquiry. In this case, repetitive work with hands and arms extended at or above shoulder levels for extended periods is not an important part of most people's daily lives. Household chores, bathing, and brushing one's teeth, in contrast, are among the types of manual tasks of central importance to people's daily lives. Because Williams was able to perform these types of household chores, she was not disabled within the meaning of the ADA and

In **Suarez vs. Gonzalez**, 27 Fla. L. Weekly D104 (Fla. 4th DCA 2002), Tenant lived in an apartment owned by Owner. Tenant was seriously injured when a kitchen cabinet fell from the wall and struck him on the head. A jury returned a verdict awarding Tenant $2,728,559.90 in compensatory damages and further found that Owner was 55% at fault for the injuries suffered by Tenant. Owner did not know the name of the contractor who installed the cabinets. A relative of Owner hired the contractor off the street and Owner paid the contractor in cash. Owner argued on appeal that because the kitchen cabinet was installed by an independent contractor, Owner could not be held liable for Tenant's injuries. In affirming the jury award, the Fourth District Court of Appeal agreed that generally the employer of an independent contractor is not liable for the negligence of the independent contractor because the employer has no control over the manner in which the work is performed. However, this "general rule" is subject to many exceptions. One such exception to the general rule is where the employer is negligent ". . . . in selecting, instructing, or supervising the contractor." The Fourth District Court of Appeal adopted the rule established by the First District Court of Appeal in the case of McCall vs. Alabama Bruno's, Inc., 647 So. 2d 175 (Fla. 1st DCA 1994) and held that "where there is a foreseeable risk of harm to others, it is the duty of an employer of an independent contractor to exercise reasonable care to employ only

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