COMMUNITY COUNSEL

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RECENT CASES

- **The word "receipt" means just that for purposes of appealing administrative action.**
- **No special injury is needed to bring a declaratory judgment action, and court finds that an HOA has standing to maintain such an action on members' behalf.**

Ding Dong, the Witch is Very, Very Dead

Good things are worth waiting for. Given the speed at which our judicial world turns, this is an obvious truism. On those occasions when real justice is done the result seems to justify the wait. So let us now say a fond farewell to Taxpayers for Fairness ("TPFF").

This week the First District Court of Appeals put the hammer to this ill-conceived attempt at legal profiteering when it dismissed TPFF's appeal of the circuit court's order denying TPFF's motion to recuse the circuit judge hearing the case.

TPFF was the for-profit brain freeze of a West Palm Beach law firm. Attempting to use a *qui tam* lawsuit, by which a private party brings an action to benefit the state while keeping some of the recovery, this single purpose entity first threatened, then sued over 800 Florida community associations, alleging they had under paid document taxes on properties which had been foreclosed upon. The suit alleged that each offender had failed to pay taxes on the value of outstanding superior liens on the various properties.

TPFF WAS ILL-CONCEIVED: AN ATTEMPT AT LEGAL PROFITEERING, IT IS SATISFYING TO SEE IT RECEIVE JUSTICE.

From the start it was clear that the position advocated by TPFF was not only illogical and likely to lead to absurd and severe results, but was actually illegal to implement under federal law. Though some associations chose to settle and pay rather than be sued, it is believed that the vast majority of associations refused to pay a penny and waited for suit to be filed.

When it was, many law firms - including this one - filed motions to dismiss on a myriad of grounds.

Ultimately the judge acted on his own initiative and dismissed the case three times, each time allowing TPFF to replead its allegations. The last time, however, rather than respond, TPFF asked the judge to remove himself from the case, alleging bias against it. When the judge refused, something that rarely occurs, TPFF appealed.

The appeal linger for almost two years, during which time the legislature acted to amend the pertinent statute to revise its language, reciting that its intent was to clarify, not change existing law.

On that basis the appellate court apparently found the appeal to be moot and dismissed it. In doing so it also awarded attorney's fees to those stubborn few communities that had actively participated in the appeal. We suspect that the award was more symbolic than real, since it is doubtful that TPFF has any substantial assets.

Still it is satisfying to stop and savor the feeling of contentment that comes with justice being done. For just a minute such thoughts can linger, until we remember those for whom a far more urgent justice still remains undone.

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RECENT CASE SUMMARIES

In **Accardi vs. Department of Environmental Protection and Hillsboro Shores Improvement Association, Inc.**, 27 Fla. L. Weekly D1943a (Fla. 4th DCA August 28, 2002) Property Owner filed a petition with the Department challenging the proposed construction by the Association of a beach viewing deck and ramp on property owned by the Association. Owner's petition sought an administrative hearing to challenge the Department's issuance of a coastal construction control line permit to Association. The Department dismissed the petition on the basis that the petition was not timely filed. The Department alleged that notification was sent to Owner on November 6, 2000. The letter notified Owner that he must request an administrative hearing to challenge the issuance of the permit within 21 days from receipt of the letter. Owner alleged that he never received the letter and the first he learned of the permit was on December 14. Owner filed his petition challenging the issuance of the permit on December 30, 2000. The Department dismissed the petition on the finding that Owner was properly notified by the mailing of the notice on November 6, 2000 and therefore, Owner's petition was not timely filed. In reversing the Department, the Fourth District Court of Appeal held that the timeliness of the petition presents a disputed issue of fact that must be resolved in the administrative process. The appellate court noted that words should be given their plain and ordinary meanings. The Florida Administrative Code provides that a request for an administrative hearing shall be filed *within twenty-one days of such receipt of notice* of the proposed agency action. Therefore, Owner's allegations that he did not *receive* the notice until December 14 created a disputed issue of fact. The appellate court further held that Owner had standing to challenge the issuance of the permit by the Department because Owner owned property immediately adjacent to the proposed construction of an elevated beach viewing platform.

In **Combs and Poinciana Village Civic Association, Inc., vs. City of Naples and Royal Poinciana Golf Club, Inc.**, 27 Fla. L. Weekly D1952b (Fla. 2nd DCA August 30, 2002) the Combses and the Association filed a four count complaint against the City and the Club seeking to invalidate a development agreement the City entered into with the Club pursuant to the Florida Local Government Development Agreement Act. Count 1 of the complaint was filed pursuant to the Development Agreement Act challenging compliance of the agreement with the City's comprehensive plan. Count 2 of the complaint was an action for declaratory and injunctive relief alleging that the agreement violates article VIII, section 2 of the Florida Constitution. The trial court dismissed count 1 for failure to comply with a condition precedent - compliance with a provision of the Local Government Comprehensive Planning and Land Development Regulation Act which applies to actions challenging the consistency of a development order with a local government's comprehensive plan. The Second District Court of Appeal reversed the dismissal of count 1 on the basis that count 1 was not an action challenging a development order, but was instead an action challenging a development agreement pursuant to the Florida Development Agreement Act. As such, count 1 was not subject to the condition precedent relied upon by the trial court. The trial court further ruled that the Combses and the Association lacked standing to bring an action for declaratory and injunctive relief as alleged in count 2 because the Combses and the Association failed to establish any special injury and because the Development Agreement does not violate the U.S. or Florida Constitutions. In reversing the trial court, the Second District Court of Appeal noted that the declaratory judgment statute should be liberally construed. Furthermore, pursuant to a plain reading of the Florida statutes governing declaratory judgment actions, no allegations of special injury are required in order to bring an action for declaratory relief. The Second District Court further found that as adjacent property owners, the Combses were within the class of property owners the City determined should be provided notice of the public hearings pertaining to the approval of the development agreement. Furthermore, the Combses qualify as aggrieved or adversely affected parties as defined in the Development Agreement Act. Thus the Combses interests are sufficient to confer standing to seek a declaratory judgment on the constitutionality of the development agreement. Furthermore, the Second District Court held that the Association, as a not-for-profit corporation formed to protect the interests of homeowners in a subdivision adjacent to the Club, has standing to maintain an action for declaratory judgment under a liberal construction of that statute.

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