COMMUNITY COUNSEL

May, 2003 | A Publication of Wean & Malchow, P.A. | Volume 7, Issue 5

RECENT CASES

- **In Foolish Court Decision of the Year (so far) Court rules that boat parking and storage are different; but just how so is not stated.**
- **Prevailing Owner loses right to fees and costs when attorney fails to file a timely formal Motion requesting the Award.**

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

"Equitable Estoppel" – A Case in Point?

In a departure from the bright line rule of law announced by the 5th DCA in the case of **Brown vs. Rice**, 716 So. 2nd 807 (Fla. 5th DCA 1998), the Circuit Court of Brevard County has ruled in favor of the purchaser of a limited common element garage space, allowing the buyer to keep the space. In **Brown vs. Rice**, the appellate court announced an absolute rule of law that the transfer, sale, or assignment by a unit owner of a limited common element appurtenant to that owner's unit is prohibited. In **Brown**, the 5th DCA invalidated the transfer or sale of a limited common element garage space appurtenant to a condominium unit.

In the case of **Harris vs. Fine**, Case No. 05-2001-CA-6188, Brevard Circuit Court (Final Judgment, May 30, 2003), the trial court ruled that equitable considerations precluded the application of the rule announced in **Brown vs. Rice**. In **Harris vs. Fine**, Fine purchased his unit in 1992 and this purchase included an appurtenant limited common element garage space. Soon after his purchase of the unit, Fine purchased a second garage space in the condominium for $7,000.00. Fine hoped to one day trade this second garage space for a garage space adjacent and contiguous to his first garage space. Fine wanted two garage spaces immediately next to each other because the condominium association allowed a unit owner to construct a concrete block wall around spaces in the garage area so that the unit owner can have both additional storage space and additional security for the vehicle. In 1996 Fine became aware that Theodore and Noreen Hasle might be willing to sell their garage space which was located immediately adjacent to Fine's original garage space. After some negotiation, Fine purchased the Hasles' garage space. In 1997, the Hasles sold their unit to Harris without any reference in the deed to the subject garage space which had been sold to Fine.

After his purchase of the Hasles' space, Fine made substantial improvements to the garage space, including construction of concrete block walls around the spaces and the installation of garage doors. The trial court noted that it would be impossible for Fine and Harris to share the subject garage space.

At trial, Fine argued that "equitable estoppel" would prevent the Hasles (the prior space owners) from asserting the same claim against Fine that Harris was asserting. Equitable estoppel is a doctrine by which a party is prevented from asserting legal title to or the use of property because through his acts, words or silence he has led another to take the position such that the subsequent assertion of the use of the property by the first party would be contrary to equity and good conscience.

Subsequent Owners Can Be Estopped by Actions of Prior Owners

For monetary and other consideration the Hasles granted exclusive use of the subject garage space to Fine. Under the doctrine of equitable estoppel, the Hasles would be estopped to bring the type of claim that Harris is now bringing against Fine. As the trial court noted, the question then becomes whether Harris is bound by the estoppel which exists against the prior owner. The trial court held that Harris, as a person in "privity" with the Hasles, was equally estopped from bringing the instant claim against Fine seeking recovery of the subject garage unit

It should be noted that the events giving rise to this cause of action all occurred in 1996 when the subject garage space was sold by the Hasles to Fine. In 2000, the Florida Legislature (in apparent response to the decision of the appellate court in **Brown vs. Rice**), amended Section 718.106(2)(b), F.S., to provide that if the declaration as recorded or amended permits it, a unit owner may transfer the right to exclusive use of a limited common element.

WEAN & MALCHOW, P.A.
646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803
TEL: (407) 999-7780 FAX: (407) 999-LAW1
W-M@WMLO.COM

RECENT CASE SUMMARIES

In **Castro vs. Miami-Dade Count Code Enforcement, County Clerk Division**, 28 Fla. L. Weekly D1168a (Fla. 3rd DCA 5/14/2003), a county code enforcement officer ticketed Owner for "storing" a boat illegally by parking the boat in front of Owner's house on two separate occasions. Owner is a member of the Coast Guard Auxillary. Ordinarily, the boat was parked at the Coast Guard facility. However, on the two days in question, Owner claimed that he needed to park the boat so as to be available for Owner's rapid deployment on Coast Guard orders. The county ordinance which Owner was accused of violating prohibited boats from being stored forward of the front building line of the residence. The county contended that on the two days in question, Owner "stored" the boat in front of the front building line of Owner's home in violation of the county ordinance. Owner admitted that the boat was "parked" in front of the front building line, but not "stored" or "in storage" as alleged by the county. The trial court held in favor of the county and ruled that the boat was being stored illegally on Owner's lot. In reversing the trial court, the 3rd District Court of Appeal noted that the county code does not contain a definition of the term "stored," nor "in storage." As such, the appellate court ruled that these words must be given their plain and ordinary meanings. The appellate court found that the term "to store" means "to reserve or put away for future use" while the term "storage" means "the act of storing goods, as in a warehouse for safekeeping." Based on these definitions, the court determined that the terms "stored" or "in storage" contemplate a certain degree of permanency. Additionally, the appellate court cited to Ohio case law which held that the term "parking" denotes transience. Additionally, the appellate court relied upon a Georgia Supreme Court case which concluded that "parking" does not equate to "storing." In reversing the trial court, the 3rd District Court of Appeal concluded that the boat was not "stored" or "in storage" but rather that the boat was "parked" on the dates in question.

In **Gulf Landings Association, Inc. vs. Hershberger**, 28 Fla. L. Weekly D1265 (Fla. 2nd DCA 5/23/2003) Owner brought an action against Association for declaratory judgment for a determination that a cover Owner had installed on his boat lift did not violate a prohibition against "covered docks" contained in the declaration. In his complaint for declaratory judgment, Owner also sought recovery of his attorney's fees and costs in bringing the action. In response to Owner's complaint, Association brought a counter-petition for declaratory judgment seeking to force Owner to remove the boat lift cover. On January 18, 2003, the trial court entered a judgment in favor of Owner. In the judgment, the trial court reserved jurisdiction to determine entitlement to and the amount of attorneys' fees and costs to be awarded to Owner. After the oral pronouncement of the trial judge's ruling, but before entry of the judgment, Owner's attorney sent opposing counsel copies of all of his bills and invoices. The parties were not able to amicably resolve the attorneys' fee dispute. Therefore, within a week of the entry of the judgment, counsel for Owner served a notice of hearing scheduling a final hearing on the issue of attorneys' fees. Just prior to the hearing, Association filed a memorandum of law in which it argued that Owner had failed to file a motion for attorneys' fees and costs within thirty (30) days as required by the rules of civil procedure. Association argued that no award of attorneys' fees or costs could be made without a timely filed motion. The trial court ruled in favor of Owner and entered a judgment awarding Owner all of his attorneys' fees and costs incurred in the action. With reluctance, the Second District Court of Appeal reversed the trial court. The appellate court noted that there was no surprise or prejudice to Association because Association was always on notice of the intention of the owner to seek recovery of attorneys' fees and the legal basis for the owner's request. However, the appellate court noted that rule 1.525 of the Florida Rules of Civil Procedure establishes a "bright line test" for the timely filing of a motion for attorneys' fees. This motion must be filed within thirty (30) days after the rendition of the judgment. The fact that Owner pled a basis for attorneys' fees, and that the court reserved jurisdiction to award attorneys' fees, is no longer sufficient. A party must also timely file a motion for attorneys' fees. Accordingly, the appellate court strictly enforced rule 1.525 and reversed the award of attorneys' fees and costs to Owner.

WEAN & MALCHOW, P.A.
646 EAST COLONIAL DRIVE, ORLANDO, FLORIDA 32803
TEL: (407) 999-7780 FAX: (407) 999-LAW1
W-M@WMLO.COM