Community Counsel

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Recent Cases

- **4th DCA puts out another illogical decision, determining that protest signs posted on the inside of a car's windows are not "thereon." The court also strains to find disputed facts to avoid judgment for the Association.**
- **4th DCA denies Association judgment where owners made unapproved material changes in exterior renovations.**

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New Law Update for May, 2004

As of May 26, 2004, neither SB 1184 nor SB 2984, the major community association bills had received attention from the Governor. Only one bill directly related to community associations - in this case condominiums and cooperatives - has been the subject of executive action.

On May 21, 2004 the Governor signed the SB 1728, which becomes law on July 1, 2004. The bill expands on the concept, started last year, of allowing community associations to vote to exempt themselves from certain retrofitting requirements related to their physical facilities. In 2003 the issue addressed was retrofitting for fire safety via installation of sprinklers. This year the issue is handrails.

Is that a member of the 4th DCA after this month's association Decisions?

In order to conform with current zoning, as balcony repairs are undertaken many older associations are faced with the prospect of having to make expensive retrofits to each balcony's handrails systems to reduce the size of the opening between rails. The new law is limited, however, to condos and coops that also qualify as "housing for older persons" under federal and state law.

As with sprinkler systems, the vote to forego retrofitting must either be by a vote personally cast by the members at a meeting or by execution of a written consent. Voting by proxy, limited or general, is not permitted, and no vote can be taken to avoid retrofitting the common areas (stairwells and exposed outdoor walkways and corridors) of high-rise buildings, i.e. buildings greater than 75 feet in height. Otherwise, retrofitting can be avoided by a two-thirds vote of all members of the affected condominiums or cooperatives.

To be effective, a certificate attesting to the approval must be recorded in the public record. A 16 point type notice must be sent to each owner by certified mail within 20 days of the vote, and each owner is responsible for passing that notice on to subsequent owners of the unit.

Finally, the Division is again called upon to report to the state Fire Marshall the number of successful votes taken to avoid hand rail retrofitting and the per unit cost paid by associations that do undertake such work, although no governmental entity may compel retrofitting before December 31, 2014.

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RECENT CASE SUMMARIES

In **Shields vs. Andros Isle Property Owners Association, Inc.**, 29 Fla. L. Weekly D1162a (Fla. 4th DCA, 5/12/04), Association brought suit against Owner for violation of the governing documents. Owner purchased a home in the subdivision but became dissatisfied with Builder. Owner installed a sign in her front yard advertising the sale of her house and criticizing Builder. Owner also placed other signs complaining about her home and Builder inside the windows of Owner's automobile. Association sent Owner a demand letter regarding the size of the sign in the front yard. Pursuant to the governing documents, the sign could be no larger than two square feet in area. Owner reduced the size of the sign in the front yard to conform with the rules and regulations. Then Association again sent notices to Owner demanding that all signs be removed because the signs were in violation of the rules of Association. When Owner refused, Association filed suit seeking injunctive relief requiring removal of the signs. After a hearing, the trial court granted a temporary injunction with respect to the sign on the lot, but denied relief with respect to the signs posted inside Owner's automobile window. Both Owner and Association sought the entry of summary judgment. The trial court denied Owner's motion for summary judgment and granted Association's motion for summary judgment. The trial court held that the declaration which provided that ". . . . no sign of any kind shall be displayed to public view on any lot. . . ." encompasses the signs displayed inside Owner's vehicle and on Owner's lot. Additionally, the trial court held that the declaration's prohibition against signage on vehicles also encompassed the signs displayed by Owner in her vehicle. The Fourth District Court of Appeal reversed in part and affirmed in part the decisions of the trial court. The appellate court noted that the language of the declaration referred to "signs on any lot." Owner argued that the signs displayed in her automobile were not displayed "on any lot" because the signs were located within her vehicle. The appellate court agreed with Owner and held that the clear and obvious meaning of the declaration was to prohibit signs on lots and did not include signs displayed in vehicles. The declaration provided with respect to vehicles that ".... no letting or signage thereon...." shall be parked on any lot. The appellate court held in favor of Owner and ruled that Owner's signs, which were located entirely "within" the vehicle did not violate the declaration. The clear and ordinary meaning of the term "thereon" suggests that the signs located "within" the interior of the owner's car did not violate the terms of the declaration. The appellate court agreed with Association that the declaration clearly and unambiguously applied to the sign displayed by the owner in her front yard. However, the appellate court nonetheless reversed the entry of summary judgment due to the possible existence of material issues of fact related to Owner's defense of selective enforcement.

In **Gonzalez vs. Flamingo Estates Maintenance Association, Inc.**, 29 Fla. L. Weekly D1157a (Fla. 4th DCA, 5/12/04), Association brought suit against Owners for deviating from approved plans for modifications Owners made to the exterior of their home. The trial court granted summary judgment in favor of Association and ordered Owners to alter the dimensions of their patio, relocate their hot tub, remove unapproved landscaping, and enclose a screen over the hot tub and Tiki hut in order to comply with the architectural plans approved by Association. Owners argued that Association's actions in denying a request for deviation from the approved plan were arbitrary, capricious, and unreasonable. The Fourth District Court of Appeal reversed the entry of summary judgment and the injunctive relief granted to Association. The appellate court held that disputed issues of material fact exist as to the Owners' defense of unreasonable and arbitrary enforcement and remanded the case to the trial court to permit Owners to present evidence related to this defense.

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