COMMUNITY COUNSEL

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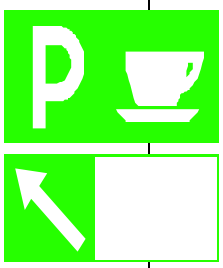
RECENT CASES

- **Summary judgment for Defense on defamation claim was improper when it failed to produce any facts to support its defense.**
- **"Just Value" rules of S. 192.042, F.S. are constitutional. Mostly built condo not valued until substantially completed.**

Parking on Public Roads

It is not uncommon for an association's governing documents to regulate parking on roads running through the association's community. When the roads are common property there is usually little controversy that parking restrictions are enforceable against the association's members. But where the roads within a community have been dedicated to the public or are otherwise owned by a governmental entity, the question becomes more problematic. Does the covenant relationship between an association and its members extend to use of public property running through an association's community, or does a government's authority to regulate the use of its roads preempt private regulation by an association?



We are unaware of any Florida case on this point. Nationally, there appears to be a split of authority, with New Jersey and Missouri courts ruling in favor of associations on this issue. In Verna v. Links at Valleybrook Neighborhood Association, Inc., a New Jersey court, citing an earlier Missouri decision, held that an association may regulate parking, even though the association's roads are part of the overall network of public roadways. The court reasoned:

There is a split of authority on regulation of parking on public streets

We view the association's parking regulation as being similar to a . . . scheme created by deed restrictions. Such a . . .scheme, like the mutual undertakings contained in the association's governing documents, is a matter of contract . . . which may, and often does, impose greater limits on an owner's use of property than governmental restrictions . . . While restrictive covenants cannot lessen or avoid the obligations imposed by ordinance . . . they can restrict the use of property otherwise uninhibited by ordinance.

. . . since there is no statutory authority prohibiting an association from enforcing its own parking regulations. . .we conclude. . .that the association was authorized to enforce its parking regulation. . .

The New Jersey (and Missouri) decisions were from intermediate appellate courts. The Virginia Supreme Court took a different view in a case brought by a homeowners' association to stop a member from parking a tow truck on the public streets within the association's subdivision. In Raintree of Albermarle Homeowners Association, Inc. v. Jones, the Virginia Supreme Court summarily held that a homeowners' association did not have authority to control, by use of restrictive covenant, access to or use of a road owned by the Commonwealth of Virginia. The Virginia Supreme Court did not provide any elaboration or discussion, but only cited to an earlier Virginia case that invalidated a city ordinance which prohibited a person from using the state roadways to solicit magazine subscriptions. While the earlier Virginia case seems more about freedom of speech than parking, the result is that associations in Virginia do not have authority to regulate use of public roadways.

It remains to be seen whether Florida courts will follow New Jersey/Missouri or Virginia on this issue. But the New Jersey and Missouri courts provided considerably more analysis on this issue - favorable to associations - than Virginia has provided to homeowners.

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RECENT CASE SUMMARIES

In **Kenyon vs. Polo Park Homeowners Association, Inc.**, 30 Fla. L. Weekly D1681a (Fla. 2nd DCA July 8, 2005), Association sued Owner to enforce certain deed restrictions. Owner purchased the home in the subdivision in 1994. Association is responsible for enforcing the covenants and restrictions applicable to the subdivision, something Association showed little interest in until March of 2000. At that time, Association notified Owner that Owner was in violation of the covenants. Association was not satisfied with Owner's response, and in July 2000, Association filed suit. Association sought a permanent injunction to prohibit Owner from continuing to violate the covenants. Owner counterclaimed for defamation and breach of contract arising from the manner in which Association enforced, or failed to enforce, the covenants. The trial court entered a partial summary judgment in favor of Association on Owner's defamation claim and the breach of contract claim. The case was tried before a jury. The jury found that Owner had violated the covenants but that Association had "unequally, arbitrarily, unreasonably, or selectively" enforced the covenants by allowing violations to exist on the property of other homeowners. On appeal, Owner contended that the trial court erred when it granted Association's motion for partial summary judgment. Specifically, Owner alleged that Association failed to meet its burden to establish the nonexistence of a genuine issue of material fact. Association filed a three-paragraph motion for summary judgment asserting that Owner had no evidence to support Owner's claims. Association filed no affidavits, admissions, interrogatory answers, depositions, or anything else to establish that Owner could not prove the claims for defamation or breach of contract. For this reason, the Second District Court of Appeal reversed the trial court on this issue. Next, Owner claimed that the trial court erred when it granted Association a permanent injunction. In light of the finding that Association had selectively enforced the declaration, the Second District Court of Appeal held that it was error for the trial court to have entered injunctive relief against Owner. Finally, the appellate court reversed the trial court's determination that Association was the prevailing party in the litigation and was entitled to an award of attorney's fees.

In **Sunset Harbour Condominium Association, Inc. vs. Robbins**, 30 Fla. L. Weekly S548a (Fla. July 7, 2005), the Florida Supreme Court reviewed a decision of the Third District Court of Appeal declaring unconstitutional Section 192.042 of the Florida Statutes. Section 192.042 requires property appraisers to assess all real property according to its just value as of January 1 of each year. However, if improvements to a parcel of property are not substantially completed on January 1, no valuation is to be placed on those improvements for that year. A condominium located in Miami was in its final stages of construction as of January 1, 1997. Property Appraiser determined that the structure was substantially complete as of January 1, 1997, and assessed the property a value in excess of $22,000,000. Association filed suit and argued that under Section 192.042, Florida Statutes, the improvements to the property should have been assessed no value because the condominium was not "substantially complete" on January 1, 1997. Property Appraiser raised as an affirmative defense that the statute violated Article VII, Section 4 of the Florida Constitution, and moved for summary judgment on this ground. The trial court agreed. The Third District Court of Appeal affirmed. The Florida Supreme Court agreed that Property Appraiser's duty in accordance with law is to assess property based upon the "just valuation" of the property. The Florida Constitution requires that by general law regulations be prescribed which secure a just valuation of all property. The phrase "just valuation" has been consistently construed by the courts to mean the "fair market value" of the property. The framers of the Florida Constitution delegated to the Legislature the responsibility for deciding the specifics of how that "just valuation" would be secured. One of these determinations was when the various types of property would be assessed. The Legislature fulfilled its constitutional obligation when it adopted Section 192.042, Florida Statutes, which states that all real property shall be assessed according to its just value as of January 1 of each year. Improvements or portions not substantially completed on January 1 shall have no value placed thereon. "Substantially completed" means that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed. The Florida Supreme Court noted that this statute reflects the Legislature's intent to delay valuation of improvements to property until such time as these improvements are substantially completed. The Court held that the statute prescribes reasonable guidelines for valuation of incomplete improvements for property tax purposes, which infuse uniformity and certainty into ad valorem taxation. The absence of a "substantial completion" statute would only promote uncertainty and encourage litigation. Based upon its analysis, the Florida Supreme Court held that the statute was constitutional.

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