



## RECENT CASE SUMMARIES

**Note:** This case report is a follow-up to a feature story appearing in our February 2006, edition (Vol. 10, No. 2). At that time we reported on the decision of the intermediate New Jersey appellate court. That decision was subsequently appealed and the report below represents a complete reversal of the first decision by the New Jersey Supreme Court. As we stated in our first report, while a New Jersey case is not precedent in Florida, the Florida Constitution contains almost identical language to the protections of the New Jersey Constitution. Thus, this decision may be a portent of how a Florida court would decide the issues.

In **Committee for a Better Twin Rivers vs. Twin Rivers Homeowners Association, Inc.** (Supreme Court of New Jersey, 7/26/2007) several owners joined together and formed a committee for the betterment of Association, which is a residential mixed use community of condominiums, duplexes, townhomes, and single family homes. Association has more than 10,000 residents, and membership is mandatory, as are payment of assessments. Association maintains the common areas, including the roads and common lands and facilities. Association also has the power to adopt rules and regulations governing the use of the community, common areas and facilities. Committee filed a complaint against Association, the thrust of which was that Association had effectively assumed the role of a municipality in the lives of its residents and, therefore, Association's internal rules and regulations should be subject to the free speech and free association clauses of the New Jersey Constitution. In count one of the complaint, Committee sought to invalidate Association's rules related to posting of signs. Association adopted a rule permitting only one sign on an owner's lawn, only one sign in a window, and no signs on light poles or other natural features throughout the community. The stated purpose of the rule was to eliminate sign clutter and to preserve the aesthetic value of the community. In count two of the complaint, Committee sought to change Association's policy regarding the use of the community room. In general, the community room was open to residents who wanted to rent the room for events. Association charged a fee for the use of the community room, and also required an owner to obtain an insurance policy naming Association as the insured. Committee asserted that Association's policy denied them equal protection of the laws and unreasonably and unconstitutionally violated their right to access the community room on a fair and equitable basis. In count three, Committee alleges that they were denied equal access to Association's monthly newspaper. The newspaper provides residents with news and information that concerns the community and the editorial committee of the newspaper selects the content of the newspaper. The newspaper is delivered to all residents but not to the general public. Committee sought access to the newspaper and an injunction prohibiting the board president from using the newspaper "as his own personal political trumpet." The trial court granted summary judgment for Association on the sign claim and the newspaper claim. However, the trial court granted partial relief to Committee on the community room access claim. Central to the trial court's decision was the determination that Association was not a quasi-municipality and was therefore not subject to the New Jersey Constitution's free speech and association clauses. The court reasoned that any impact upon the lives of the residents by Association was the result of a contractual relationship. Ultimately, the New Jersey Supreme Court upheld the trial court's decision. The Court noted that under federal law, there must be "state action" to enforce constitutional rights against private entities. The Court noted that the relationship between Association and its residents is a contractual one, formalized in reasonable covenants that appear in all deeds. The mutual benefit and reciprocal nature of the rules and regulations and their enforcement is essential to the fundamental nature of the communal living arrangement that the residents enjoy. As such, the Court held that Association's rules and regulations do not violate the free speech and right of assembly clauses of the New Jersey Constitution.