COMMUNITY COUNSEL

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IS THERE A CONSTITUTIONAL RIGHT TO ON-STREET PARKING ?

On August 25, 2010, in a long-delayed decision from Florida's Third District Court of Appeals, the court held in the case of ***Kuvin v. City of Coral Gables***, that there is no constitutional right to on-street parking. The plaintiff, Kuvin, had argued that he had a right to park his personal pickup truck on the public streets in front of his rented home and elsewhere in the city, despite a local zoning ordinance that required such vehicles to be parked only in a closed garage between the hours of 7:00 p.m. and 7:00 a.m. His argument was that such an ordnance violated his federal constitutional right of freedom of association.

The court engaged in an extended analysis of the right of freedom of association that is implied by the provisions of the First Amendment's stated rights of speech, press, petition, and assembly. Based on prior court decisions, that right extends to both the right to engage in intimate personal relationships and to associate for the purpose of the exercise of the other expressive rights guaranteed by the First Amendment.

However, the court found that the plaintiff had failed to provide any evidence that governmental regulation of the parking of his pickup truck had any negative impact on the types of intimate personal relationships previously recognized by the courts as being protected. Nor did he have standing to complain that his friends were deprived of the right to associate with him for expressive purposes when he couldn't park his truck near their homes during certain hours.

The court found:

> … *Kuvin's* ***associations are not being restricted****. Rather, the restrictions provided in the ordinances apply solely to his* ***vehicle and the ordinances do not prohibit his ownership of a truck. The ordinances permit Kuvin to own and drive his pickup truck in the City. He simply must garage the vehicle at night****. As the prohibited activity does not impinge on a fundamental right, the trial court did not err in failing to apply strict scrutiny in its constitutional analysis.* (Emphasis in the original.)

In applying the more lenient "rational basis" analysis rather than a more rigid "strict scrutiny" approach to evaluating the City's parking ordinance, the Court was permitted to uphold the ordinance in question if it found it was at least fairly debatable that the ordinance had a rational relationship to the exercise of a legitimate governmental function. In this case the court ruled that government may regulate the aesthetics of the appearance of a community as part of its legitimate police powers.

The decision in this case bodes well for community associations – which aren't subject to the constitutional limitations imposed on municipalities and other governmental actors. This case may offer a window into the likely result of a case if a community association seeks to restrict parking on the streets within its community, even if those streets are public ways. This is especially true if the local ordinances defer to the community association.

Recent Cases

- **Failure to comply with a court order as to operation of commercial property meant loss of ownership of same.**
- **Breach of fiduciary duty claim not subject to mandatory condo arbitration requirements, and past wrongful practices of prior board cannot be the basis for an injunction where board composition and practices had changed.**

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.

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RECENT CASE SUMMARIES

In **TB Isle Marina Yacht Club, L.P. vs. Turnberry Isle Condominium Association, Inc., et al.,** 35 Fla. L. Weekly D1933a (Fla. 3rd DCA, August 25, 2010), after several years of litigation concerning the status and operation of a pool and its associated facilities currently owned by TB Isles and shared by Association pursuant to the Declaration of Condominium, the trial court issued a final order in 2003 and a final judgment in 2004, holding that the facilities were to be operated in accordance with the rules and regulations, and to the same standards as TB Isles' other facilities. Specifically, TB Isles was required to operate the pool facilities, including the operation of the Sunset Café and pool bar, and those facilities must be operated in accordance with the rules and regulations of TB Isles that apply to all other swimming pool facilities operated by TB Isles. The trial court also ruled that if TB Isles elected not to do this, then it was to deed those facilities to Association as provided in the Declaration of Condominium. This earlier judgment of the trial court was affirmed on appeal. Following that appeal, Association sued to enforce the final judgment claiming that TB Isles failed to operate the facilities in the manner required by the final judgment. After extensive evidentiary hearings, the trial court issued a detailed order which included extensive findings of fact and conclusions of law finding that TB Isles failed to operate the facilities in accordance with the final judgment and ordered that TB Isles deed the property to Association. On appeal, the Third District Court of Appeal noted that the judgment of the trial court should be affirmed unless clearly erroneous. In reviewing the record under this standard, the appellate court affirmed the decision of the trial court because the trial court's ruling were not clearly erroneous and were supported by ample evidence and findings of fact.

In **Gomes, et al., vs. Lakes of Carriage Hills Condominium Association, Inc., et al**, 35 Fla. L. Weekly D1822a (Fla. 4th DCA, August 11, 2010), Unit Owners sued Association and various members of the board of directors. Association is a complex of twelve structures organized as separate condominium buildings but governed by a single administrative board consisting of seven board members elected by the 520 condominium unit owners. The genesis of this litigation was the response by Association and its directors in the aftermath of Hurricane Wilma in 2005. On January 15, 2008, the Unit Owners filed their second amended eight count complaint containing a variety of general and specific allegations. Association and the directors successfully moved to dismiss counts II, III, IV, V & VII on the basis that the claims were "disputes" subject to mandatory non-binding arbitration through the division. Each of these counts alleged a breach of fiduciary duty related to a variety of board activities and decisions following the impact of Hurricane Wilma. On appeal, the court noted that Section 718.1255, Fla. Stat., specifically excludes breaches of fiduciary duty as "disputes" subject to mandatory non-binding arbitration. Because the allegations framed by the second amended complaint did not constitute a dispute requiring arbitration, as contemplated by the legislature, the trial court's order of dismissal as to those counts was reversed by the appellate court. The trial court further granted summary judgment as to the allegations of counts I and VI of the second amended complaint. Count I sought to enjoin Association and its directors from holding "secret" meetings without notice and involvement of Unit Owners. The directors submitted affidavits in support of their motion for summary judgment. Collectively these affidavits stated that both the individual directors named in the suit as well as the then current board of directors performed their duties in compliance with the Florida Condominium Act and the bylaws of Association. The only evidence submitted in opposition to the motion for summary judgment pertained to the actions and meetings held by *past* board members. Further, Unit Owners submitted no proof establishing a present existing violation of the Florida Condominium Act. In affirming the summary judgment, the appellate court noted that it would be difficult to discern how the Unit Owners would continue to suffer the "irreparable harm" necessary to obtain injunctive relief in that Association's board of directors had experienced an almost complete turnover in membership since the institution of the litigation. For similar reasons, the appellate court affirmed summary judgment as to count VI. Count IV alleged that Association and its directors inappropriately allocated Hurricane Wilma insurance proceeds that "belonged" to building five in the twelve building complex. In count VI, Unit Owners alleged that the members in building five suffered damages as a result of their potential exposure to future claims by the insurance company, because the remitted insurance proceeds were used to repair buildings other than building five. In support of the motion, Association and its directors submitted affidavits asserting that building five suffered minimal damages. The affidavits further asserted that the insurance carrier had become insolvent and had already been liquidated. As such, the appellate court found count VI to be theoretical and speculative and lacking in merit and summary judgment was property granted as to this claim.

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