

COMMUNITY COUNSEL

NOVEMBER, 2013

A PUBLICATION OF WEAN & MALCHOW, P.A.

VOLUME 17, ISSUE 11

RECENT CASES

- ◆ COURT DETERMINED THAT WHEN A CONDO BUYS A UNIT AT FORECLOSURE IT IS JOINTLY LIABLE WITH THE PRIOR OWNER FOR ASSESSMENTS DUE UP TO THE DATE OF THE PRIOR OWNER'S PURCHASE.
- ◆ JURY AWARD OF DAMAGES AGAINST COMMUNITY SECURITY CONTRACTOR UPHeld WHERE EVIDENCE SHOWED GUARD WAS NOT PATROLLING PER CONTRACT REQUIREMENTS DURING COMMISSION OF A MURDER.

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.

SAYING AULD LANG SYNE TO LEADERSHIP

No one lives forever, and in the case of officers and directors of community associations, that's probably a lucky thing for them. While most people who serve in community leadership roles are good, hard-working and community-spirited volunteers, the workload and psychic burden the job entails can result in burnout among those who stay around for a while. The wise ones understand when it is time to go and rely on others to assume the reins of governance.

Sometimes the community populace is relieved when the old guard goes away. More often, there is a general feeling of thanks and gratitude and sometimes a consensus arises that some recognition is due to officers and directors who have labored so hard for the betterment of their neighborhoods. In such circumstances we are often asked about the appropriateness of recognizing these efforts.

The first impulse always seems to be to hold a party, with the Association picking up the tab for food and drink. While we have no problem with a social function in honor of the retiring leaders, we discourage use of common funds as the source of payment. We would much prefer to see such social events handled on an ad hoc, pot luck basis, where residents volunteer to bring refreshments. This is to avoid complaints of excess, lavish or inappropriate expenditures of common funds. Many people don't drink alcohol or eat meat, for example, and a barbecue with cold beer is lost on such people and considered a

waste of funds if it excludes some members but not others. By allowing residents to bring their own creations to share with others, this contentiousness is avoided.

So what is an appropriate way for a Florida corporation not for profit, which acts as a community association to recognize a civic contribution? We tend to recommend

more symbolic and possibly more meaningful methods. For example, presenting the retiree with a plaque or inscribed trophy is an excellent way to recognize volunteer efforts. Further, naming a location in the common amenities, like a clubhouse,

after the retiree, together with installation of a commemorative name plate would be a very touching and appreciated tribute to recognize significant contributions to the community. Making a charitable contribution in the name of a supporter of a particular cause both recognizes and rewards the same civic spirit that resulted in community service to begin with. It also sets an excellent tone and tradition for such occasions in the future. Perhaps even endowing a small scholarship at a local school or civic organization in the name of the person, to reward students with similar skills or interests as the former leader would also be meaningful.

In any event, rather than settling for merely satiating the senses at common expense, a symbolic recognition sets a far better tone and will ultimately be more appreciated by anyone who was compelled and drawn to serve the community.



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RECENT CASE SUMMARIES

In **Park West Professional Center Condominium Association, Inc., vs. Londono**, 38 Fla. L. Weekly D2510c (Fla. 3rd DCA, November 27, 2013) Association filed suit to foreclose an assessment lien against two (2) condominium units. Prior to Association filing suit to foreclose its liens, bank filed an action to foreclose its mortgage on the same two condominium units. Association was joined as a defendant in the bank's foreclosure action. Although bank filed its foreclosure action first, Association was the first to complete its foreclosure and Association took title to the two condominium units in January 2012. Subsequently, bank's foreclosure action concluded and Londono took title to the property by purchase at the bank's foreclosure sale on April 18, 2012. On July 17, 2012, Londono filed a motion for determination of priority with the trial court. Londono argued that his responsibility for unpaid assessments related back to the time that he took title to the property and no further. Association argues that Londono has joint and several liability with Association for any unpaid assessments, and because Association is deemed to have joint and several liability for unpaid assessments with the prior owner, then Londono's responsibility for unpaid assessments relates back to those that were owed by the former owner of the unit. In citing to prior case law, the appellate court noted that prior rulings stated that "the prior owner is jointly and severally liable with the current owner for all past due assessments up to the time of transfer of title." On the facts of this case, that means that Association is jointly and severally liable with former owner back to the time when title to the subject property was transferred to former owner. Londono is responsible for unpaid assessments back to the time when Association took title to the subject property. Therefore, Londono was liable only for assessments coming due from and after January 2012, i.e. when Association took title to the two condominium units through the foreclosure of its assessment lien.

In **50 State Security Service, Inc., vs. Giangrandi**, 38 Fla. L. Weekly D2515a (Fla. 3rd DCA, November 27, 2013) Owner was murdered in her home by a burglar. Owner's estate brought an action against Security Company for wrongful death. Owner lived in a gated community with security services provided pursuant to a special taxing district. The community is a neighborhood of six streets that is surrounded by a golf course and a lake, such that vehicular entry to the community is provided by a single access road. A guardhouse is located on the access road. Two guards are stationed at the community twenty-four hours a day, seven days a week. One guard is posted at the guardhouse, and another roving guard patrols in a vehicle with overhead flashing lights. The roving guard's instructions require that "patrolling shall be done continuously." During the patrol, the roving guard clocks into four different checkpoints (called "Deggy" points) distributed at various locations in the community to ensure he is actively patrolling. One such checkpoint is located at the guardhouse; another near Owner's home, and two others are located elsewhere in the community. The murderer was quickly caught and convicted of the crime. Although he did not testify at the trial, the murderer's sworn statement confessing to the crime was admitted into evidence. He testified that he entered the gated community on a bicycle through an open pedestrian gate. While touring the community, he noticed a small window on the side of a home that was open several inches. For two hours, from 1:00 a.m. to 3:00 a.m., he waited outside of the home trying to decide whether to break in. After making the decision to break in, he cut the screen, entered the home, and in the course of stealing credit cards and other items, unexpectedly encountered Owner and strangled her to keep her silent. The murder occurred at approximately 3:00 a.m. The "Deggy" points showed that the roving security officer dropped off the check point system entirely from 2:29 a.m. until 4:19 a.m. The jury found the Security Company at fault and awarded damages totaling \$4,780,000. Following the verdict, Security Company moved for a new trial. The motion was denied and this appeal followed. On appeal to the Third District Court of Appeal, the appellate court found that the jury's findings of a breach of duty was not against the manifest weight of the evidence. The jury could have concluded from the evidence presented that (1) the roving guard was in the guardhouse and not patrolling from approximately 1:00 a.m. to 1:35 a.m.; (2) the roving guard disappeared from the checkpoint system entirely from 2:29 a.m. to 4:19 a.m.; and (3) the roving guard patrolled past Owner's home only twice during the crucial two-hour period, even though he should have patrolled past the home at least eight times if he had been patrolling "continuously." Owner's estate also submitted sufficient evidence to prove causation, i.e., that the Security Company's failures resulted in the death of Owner. Based upon all of the evidence, the appellate court affirmed the rulings of the trial court and upheld the award of damages.

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