COMMUNITY COUNSEL

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RECENT CASES

- UNIT OWNER COULD SUE MANAGER IN TORT FOR ACTIONS TAKEN AS EMPLOYEE OF CO-DEFENDANT ASSOCIATION.
- BUYER OF UNITS AT FORECLOSURE DID NOT HAVE TO PAY BACK ASSESSMENTS WHEN UNITS HAD PREVIOUSLY BEEN OWNED BY THE ASSOCIATION , SINCE IT WAS A PRIOR OWNER AND WAS JOINTLY LIABLE FOR THE UNPAID ASSESSMENTS THAT CAME DUE PRIOR TO THIS NEW SALE.

BUSINESS FRIENDLY / CONSUMER STUPID??

On March 6, 2013, the second day of the 2013 Florida legislative session, the House Civil Justice Subcommittee passed, by a 13 — 0 vote, a committee substitute for HB 575, sponsored by Representative Kathleen Passadomo (R). That bill will give, when passed (and those in the know say it is a shoe-in to pass) individual design professionals absolute immunity from liability for economic damages for their own professional negligence.

The only conditions on this grant of immunity are: (1) that the individuals not be direct parties to the contract, but rather use a business entity as the contracting party, and (2) the contract state in large, conspicuous type that there is no personal liability, and (3) that the business entity carry whatever liability insurance, if any, is required by the contract. Once these rather paltry conditions are met, the individual design professionals are free to hide behind their corporate shell and avoid any liability for losses caused by their own incompetence, so long as innocent third parties are not also damaged.

What legitimate public policy could this bill possibly serve aside from shielding a powerful interest group from most liability? The answer, in a word is none, and that is why this bill is opposed by such diverse interests as the Associated Builders & Contractors of Florida, CAI and related community associations organizations, the Florida Fire Sprinkler Association, the Florida Home Builders Association, the Florida Justice Association, Florida's Associated General Contractors, and the Real Property, Probate and Trust Law Section of the Florida Bar. So why does this bill have such widespread legislative support?

To listen to our Governor's state of the state address, we are supposed to continue to make Florida more "business friendly." Such a rationale can, however, be used to justify some pretty awful actions that come with a high price, sooner or later, for Florida's general public. The trend toward business friendship can be used to justify a reduction in product and food safety and inspection, environmental degradation, loss of insurance coverage for workers and less safe workplaces, as well as the lower wages and benefits to workers. To see the future all one need do is think of China and its mad rush to industrialize, where domestic infants have been poisoned by baby formula tainted with melamine, an industrial chemical; foreign pets have been killed in large numbers by exported chicken jerky containing the same melamine and foul drywall has been exported world-wide.

The point is that there has to be a proper balance drawn between being friendly to business and avoiding unnecessary bureaucracy and regulation, while at the same time protecting the public interest. We are hard-pressed to understand how a blanket grant of immunity from liability for damages caused by professional negligence when the endeavor is not cutting-edge science or research serves any legitimate public interest.

If you agree, then it is time for you to speak up and tell your legislators to oppose HB 575 and its identical counterpart, SB 286, sponsored by Senator Joe Negron (R).

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RECENT CASE SUMMARIES

In **San Pedro vs. The Claridges Condominium, Inc.**, 38 Fla. L. Weekly D543a (Fla. 4th DCA, March 6, 2013) Owners filed a multicount complaint against Association and the Property Manager. Owners alleged that Association, through its employee, the Property Manager, improperly placed, installed, and operated an emergency power generator next to Owner's unit. Owners ultimately filed a fourth amended complaint alleging causes of action for private nuisance, trespass, and negligence. The counts against the Property Manager allege that "the actions of the Association were under the direction of the association and the property manager, and the actions of the property manager were all within the scope of his employment as property manager of association." The Property Manager moved to dismiss the counts against him based upon the fact that the Property Manager could not be liable for acts committed within the scope of his employment with the Association. The trial court granted the Property Manager's motion to dismiss. On appeal to the Fourth District Court of Appeal, the Property Manager again relied squarely upon the holding in *Greenacre Properties, Inc., vs. Rao*, 933 So.2d 19 (Fla. 2d DCA 2006). The Fourth District Court of Appeal distinguished the *Rao* decision on the basis that the complaint in *Rao* sought damages for breach of duties under the management contract with the association. The *Rao* court held that a person not a party to a contract cannot sue for a breach of the contract even if the person receives some incidental benefit from the contract. In the instant case, the Fourth District Court of Appeal noted that the theories of liability alleged in this case are not based on breach of contract. Therefore it was error for the trial court to dismiss the counts against the Property Manager. The appellate court reversed the decision of the trial court and reinstated the complaint against the Property Manager.

In **Barnes vs. Castle Beach Club Condominium Association, Inc.**, 38 Fla. L. Weekly D298a (Fla. 3rd DCA, February 6, 2013) Owner appealed the trial court's post-judgment order denying Owner's motion for determination of amounts due in an action involving a dispute that arose between Owner and Association. Owner was the successful bidder at a mortgage foreclosure sale of eight condominium units. All eight condominium units were owned by Association and obtained through the foreclosure of Association's lien. The trial court found that Association's lien did not merge with the Certificate of Title that was issued in connection with Association's foreclosure action. The trial court further found that Owner was obligated to pay Association the amounts owed on the subject condominium units which had accrued prior to the date Association was issued its certificate of title. On appeal to the Third District Court of Appeal, the appellate court noted that this very issue was previously resolved in the case of *Aventura Management, LLC vs. Spiaggia Ocean Condominium Association, Inc.*, 38 Fla. L. Weekly D190b (Fla. 3d DCA, January 23, 2013) in which the appellate court held that there is no exception to be made for joint and several liability for unpaid assessments that come due up to the transfer of title when the "previous owner" is the condominium association. The decision of the trial court was therefore reversed.

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