COMMUNITY COUNSEL

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RECENT CASES

- BANK'S DISMISSAL OF ITS FORECLOSURE DID NOT PREVENT IT FROM FILING ANOTHER FORECLOSURE CASE BASED ON LATER DEFAULT BY LOT OWNER EVEN THOUGH BETWEEN CASES ASSOCIATION HAD ACQUIRED TITLE.
- PRIVATE ROAD ON PLAT BECAME PUBLIC ROAD WHEN TRANSFERRED BY DEVELOPER TO CITY NOTWITHSTANDING CLEAR LIMITING LANGUAGE OF DEDICATION ON THE PLAT CALLING IT PRIVATE .

HERE'S TO A GREAT LOCAL INSTITUTION

Recently I was asked to write a few short paragraphs to honor the upcoming 40th anniversary (in 2015) of the founding of the Space Coast Condominiums Association, Inc. As a good lawyer, I have elected to take the opportunity to write something short and turn it into something longer than what was requested.

When I arrived in the Orlando area in 1989 – 1990 color was just being invented. Compuserve and Prodigy were still on the horizon. Computers were the size of refrigerators, and an Apple was something perishable that was kept inside a refrigerator, bitten, chewed and swallowed - not put in a pocket and bent.

The world was different and so were the issues we were facing. In those days one big issue involved the Fair Housing Amendments Act of 1988 and what was meant by the requirement of "significant services and facilities designed to meet the physical and social needs of older persons," a requirement that no longer exists in the law. The Telecommunications Act and envelopes-within-envelopes had yet to be inflicted upon us.

Yet this organization had already been up and running for fifteen years; created by and for local people as a resource for quality education, information and political organizing. Although it now calls itself the "Space Coast Communities Association" (SCCA) - a recognition of its expanded mission to serve community associations of all stripes up and down the east coast of Central Florida - when I arrived it was then presenting quality programs on Saturdays mornings under the auspices of then President John Anderson.

Through the past twenty-five years of my involvement with SCCA, travelling first up the Beeline Expressway, and then down the Beachline Expressway, I have been fortunate to consistently deal with quality people in positions of leadership; from John Anderson to Sharon Cisewski, to Harry and Virginia Charles, to Roger Kesselbach and Gary Ritterstein ("Kitchen"), to name but a few of the people I have met over the years.

Some time ago, as a member of CAI-FLA, we needed a home/unit owner member to add to our board. I suggested that we consider recruiting a gentlemen I knew named Harry Charles. In retrospect it was a good choice, as it created a natural synergy between two compatible organizations, while drawing on the estimable talents of one fine gentleman. It also allowed SCCA to keep its members better informed about the legislative happenings in Tallahassee and—I believe— ultimately opened a more independent and active role for SCCA in legislative affairs impacting community associations, under the watchful eye of Roger Kesselbach.

I have invariably enjoyed my times speaking for SCCA. I have been fortunate to have well-attended programs and to have received smart questions from informed listeners. This indicates to me that the rank-and-file membership of SCCA continues to profit from the organization and remains active in its operation. Thus, the future looks bright for SCCA on its 40th birthday. It is a unique asset to the Space Coast and Central Florida, one that deserves to see many more years of service.

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RECENT CASE SUMMARIES

In **2010-3 SFR Venture, LLC vs. Boca Gardens Homeowners' Association, Inc**., 39 Fla. L. Weekly D2044b (Fla. 4th DCA, September 24, 2014) Bank held a note and mortgage executed by Owner to enable Owner to purchase the property. The note and mortgage were executed in October 2006 and had a maturity date of 2036. Owner defaulted on the note and mortgage soon thereafter. Owner also failed to pay assessments to Association. Bank's predecessor in interest filed a suit to foreclose the mortgage in 2007, alleging a default in the payment due April 1, 2007 and accelerating the balance due. This foreclosure complaint named Association as a defendant in the action because of Association's junior interest. Because Bank delayed the prosecution of its foreclosure action, the trial court dismissed the suit. Bank filed a second foreclosure action as a result of the trial court's involuntary dismissal of the first foreclosure action. Between the dismissal of the first action and Bank's second foreclosure action, Association obtained title to the subject property by foreclosing its own lien and purchasing the property at the court-ordered foreclosure sale. As to the second Bank foreclosure action, the complaint again alleged a default on a scheduled payment; indicated that all payments due and owing were accelerated; and named Association as a co-defendant in an effort to foreclose its inferior homeowner association fee lien. Association moved for final summary judgment, arguing that the involuntary dismissal of Bank's first foreclosure action operated as an adjudication on the merits pursuant to the Florida rules of civil procedure and thus, Bank was barred from relitigating the claim. The trial court granted Association's summary judgment motion. In addition to filing its motion for summary judgment, Association also filed a counterclaim to quiet title on the basis of res judicata, seeking a court order removing Bank's mortgage as an encumbrance on the property. At trial on Association's counterclaim, Association argued that, because res judicata barred Bank from filing further foreclosure suits, Bank's first mortgage was no longer enforceable as a lien on the property. Following trial, the trial court entered judgment on the counterclaim in favor of Association and quieted title against Bank's claim. On appeal to the Fourth District Court of Appeal, the appellate court noted that neither the acceleration of the debt nor the adjudication on the merits in Bank's first foreclosure action triggered the application of res judicata to bar actions based on ***subsequent*** defaults. The appellate court noted that it had recently held that "*while a foreclosure action with an acceleration of the debt may bar a subsequent foreclosure action based on the same event of default, it does not bar subsequent actions and acceleration based upon different events of default*." Because Bank's mortgage may be enforced through an action alleging a subsequent default, it is a valid lien and does not constitute a cloud on title to support a quiet title claim. Thus the appellate court reversed the trial court.

In **Bellizzi, et al., vs. Islamorada, Village of Islands, Florida, et al.**, 39 Fla. L. Weekly D2047c (Fla. 3d DCA, September 24, 2014) Owners sought to determine their ownership rights in three roadways in a platted subdivision known as "Venetian Shores." Subdivision was initially platted in 1956. Five additional plats were recorded through 1982, but the determination of this appeal turns on the first three plats. The first plat laid out 130 residential lots and four roads. Pertinent here, Venetian Boulevard was divided into two segments; that portion of the road joining the Overseas Highway was depicted as a "Dedicated Road" and the second (interior) part of Venetian Boulevard was depicted as a "Private Road." The first portion was dedicated to the perpetual use of the public. The second portion was "*reserved for the **exclusive use** of owners of property in this subdivision*." In 1961 developer turned over its rights to operate and manage the subdivision to Association. Owners filed suit alleging that based upon the "Private Road" language, they owned the roads to the centerline of the road. City and Association moved for summary judgment regarding ownership of the roads and alleged that Owners did not "own" the roads, only the "use" of the roads. The trial court agreed and granted judgment in favor of City—which claimed the roads to be public and not private—and Association. On appeal to the Third District Court of Appeal, the appellate court agreed and found that the trial court carefully and correctly reviewed the plats, deeds, declaration of restrictions and other record evidence regarding the lots and roadways and thus affirmed the ruling of the trial court, finding the roads to be public and not private.

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