COMMUNITY COUNSEL

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I'M A LAWYER, DAMN IT!

It happens a lot; at least several times a week anyway. More so after a hurricane or other natural disaster. That's when I am confused for a member of many other professions. It seems obvious to me, but not so obvious to my clients, because of the frequency with which it happens.

I practice law. Law is a process by which the actions (and inactions) of the members of a society are categorized in detail and assigned consequences. It's that simple. Law does not deal with windows and doors, or paint and roofing tiles. I am not able to determine the cause of a water leak or draft specifications for a balcony repair. Nor am I able to evaluate said specifications, much less the qualifications of one of several bidders to perform the work described by those specifications. Why is it then that I am invariably asked to opine on these issues when my expertise stops at the consequences of the failure to perform the work, or the failure to have proper insurance or the failure to pay a subcontractor or material supplier? Is the line where my expertise stops and my incompetence begins so difficult to discern?

I suppose I should feel complemented that a client wants my advice on anything. Perhaps they think I am wise and that such wisdom generally carries over onto any matter. Really, when asked about matters beyond my competence I feel like Johnny Carson's old mindreading character, Carnac the Magnificent, holding a card to my forehead and trying to divine the answer supernaturally.

In reality, however, questions that go beyond the scope of my profession both creep me out and trouble me. Lawyers live and thrive on rules. Rules, rules, rules. Without rules a lawyer could not find his or her way home. One defining set of rules that most lawyers traditionally had hidden for reference in their wallets or the heels of their shoes (at least before smart phones and tablets and tattoos became popular) are the Rules of Professional Conduct. Rule 4-1.1 provides:

A lawyer must provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

This rule means that I am **required** by my profession to avoid freelancing and offering advice on subjects about which I have no knowledge, since these are areas in which I have no competence. I can not ethically provide representation in areas in which I have no competence. So please stop asking me questions in these areas. I hate to disappoint you but I must demur.

When this occurs my best advice is to seek advice—from an appropriate expert. The trick is to determine who or what profession is appropriate to give advice on the subject in question. Once we isolate that field of expertise, please seek out a disinterested person. This means that you should look for someone who is selling you advice and nothing more. There should be no follow-up design work or contracting work to follow—since this makes the advisor self-interested in acquiring the additional work; get advice for its own sake.

RECENT CASES

- ATTORNEYS FEES ONLY RECOVERABLE FROM A UNIT OWNER IN A CONDOMINIUM IF PURSUANT TO THE FEE PROVISION IN CONDO DOCUMENTS; THEY ARE NOT APPLICABLE TO A VISITOR.
- TOO MANY FACTUAL ISSUES REMAIN TO ENTER JUDGMENT FOR EITHER PARTY WITHOUT A TRIAL TO DETERMINE WHY A MANAGER ENTERED A UNIT, CHANGED THE DOOR LOCKS, AND SHUT OFF THE POWER TO THE UNIT.

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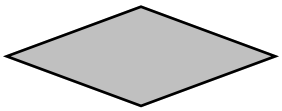
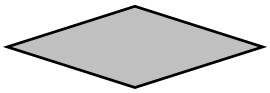
RECENT CASE SUMMARIES

In **Abdullah vs. Hypoluxo's Mariners Cay Condominium Association, Inc., et al.**, 24 Fla. L. Weekly Supp. 418a (Fla. 15th Cir. Ct., September 9, 2016) Appellant sued Association and one of its directors for defamation. Appellant was not a unit owner in the condominium and was merely an invitee of a unit owner. Appellant got into a verbal altercation with one of Association's staff members. Association's attorney sent Appellant a letter informing him about the altercation and demanded, among other things, that Appellant stop any and all harassing or intimidating conduct. It was this letter that formed the basis of Appellant's claim for defamation. The trial court ruled in favor of Association and awarded Association $9,350.00 in attorney's fees and costs. Appellant filed the appeal challenging the award of attorney's fees in favor of Association. On appeal to the Circuit Court, the appellate court noted that Florida courts have adopted the "American Rule" with respect to awarding attorney's fees to a prevailing party in litigation. Under the "American Rule", attorney's fees may be awarded only where specifically authorized by contract or by statute. Association argued that both Section 718.303, Fla. Stat., and the declaration of condominium permitted an award of attorney's fees. The appellate court reversed the trial court and found that neither Section 718.303, Fla. Stat., nor the declaration – alone or together – entitled Association to attorney's fees. The statute did not apply because the action was not for damages or for injunctive relief, or both, for failure to comply with the declaration. Secondly, attorney's fees could not be awarded against Appellant by virtue of the declaration because Appellant was not a party to the "contract" since he was not a unit owner.



In **Perekotiy, et al., vs. Akam On Site, Inc.**, 24 Fla. L. Weekly Supp. 791a (Fla. 11th Cir. Ct., February 6, 2017) Unit Owners sued Management Company for trespass, negligence, and unlawful forcible entry into their condominium unit. In June 2014 Unit Owners commenced renovating their condominium unit. One day, while they were working on the unit, they went out and left construction materials or debris on the balcony. While Unit Owners were gone, Management Company instructed an employee to enter the unit to investigate either the noise emanating from the unit, and/or dangerous debris on the balcony. No one was home at the time the Management Company employee attempted to enter the unit and the Management Company did not have a key to the unit. No one from the Management Company attempted to contact Unit Owners prior to entering the unit. The Management Company employee removed the existing lock and entered the unit. The Management Company employee then replaced the lock with a new lock prior to leaving. The Management Company employee did not leave any notice advising Unit Owners how to gain access to the unit. When Unit Owners returned later that same day they could not gain access to the unit. Unit Owners contacted the Management Company regarding entry into the unit and the change of the lock. Management claimed it offered Unit Owners a key to the new lock. Unit Owners alleged that despite repeated requests, Management Company refused to provide a key. Ultimately, Unit Owners removed the lock installed by the Management Company and replaced it with yet another new lock. Days later, Unit Owners allege that Management Company shut off the power to the unit and refused to restore the power in retaliation for their removal of the lock. The trial court ultimately entered summary judgment on all counts against Unit Owners and in favor of Management Company. On appeal to the Circuit Court, the appellate court reversed the summary judgment. The appellate court noted that summary judgment is appropriate only when there are no disputed issues of fact. In the instant case, there were numerous factual inconsistencies which could not be resolved on summary judgment, including but not limited to the ultimate question of why Management Company entered the unit in the first place. Was the entry to investigate "noise" coming from the unit, or to inspect and remove "dangerous" materials alleged to have been stored on the balcony?



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