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HOT TOPICS, TRENDS & ISSUES FOR COMMUNITY ASSOCIATIONS

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by **Pamela Dittmer McKuen**

Hot Topics, Trends and Issues for Community Associations

The 2023 Condo Lifestyles State-of-the-Industry brought together association professionals, homeowners and volunteers for an enlightening program of education, networking and camaraderie.

Now celebrating its 28th year, the annual State-of-the-Industry is the signature production of MCD Media, publisher of Condo Lifestyles and Chicagoland Buildings & Environments magazines and websites. The luncheon program brings together community association professionals, business partners, homeowners and volunteers, most recently at the historic Chicago Cultural Center on Thursday, November 16.

Upon their arrival, attendees were greeted with information tables where industry partners provided expertise on topics such as fire protection and life safety, disaster restoration, exterior building maintenance and restoration, association law, window and door replacement, and more.

After a catered lunch buffet, the welcome message and opening remarks were delivered by Michael C. Davids, president and founder of MCD Media.

"The purpose of this program is to exchange information and share our knowledge and resources with each other," he said. "As most of you know all too well, there are many significant issues that are affecting our industry and communities. MCD Media is pleased to provide a forum for idea exchange and communications through our publications and events like this. It's really what we are all about."

Among the topics addressed were capital projects, decarbonization, banking and finance, property taxes, inflation, social media and technology.

"Legislation and government issues are always an important component of this program," Davids said. "This year did not produce a lot of new legislation, but we'll talk about what is new as well as some notable legal issues. Inflation and other economic conditions continue to challenge us, so we'll discuss those as well. These topics and others, in large part, reflect the current state of the community association industry."

He also thanked attendees, event organizers, media guests and MCD Media Advisory Board members for their continued support and participation. Special recognition was given to event sponsors and presenters.

LEGAL AND LEGISLATIVE UPDATE

Once again, association attorney Gabriella Comstock of Keough & Moody presented an update on recent legislative changes and court decisions impacting community associations. As she reviewed the year's high--and low--points, she identified emerging themes and offered her recommended responses. Huge among them are increased challenges by unit owners to management and boards.

"What we need to do as we walk into 2024 is go back to the basics," she said. "Make sure we are complying with our documents and dotting our i's and crossing our t's."

Comstock's presentation is covered elsewhere in this issue along with the full text of her in-depth handout.

PANEL DISCUSSION: HOT TOPICS, TRENDS AND CHALLENGES

Another State-of-the-Industry tradition is the panel discussion during which leading professionals offer their insights and views on the most pertinent issues facing practitioners, board members and associations. Serving as moderator was John Santoro, executive vice president at FirstService Residential Illinois.

The 2023 panelists were: Hans Kiefer, senior principal at Kellermeyer Godfryt Hart; Kevin Marcus, vice president for condominium management at Chicagoland Community Management; Adam Sanders, project engineer and team leader, Elara Engineering; Thomas Flynn, architect and senior associate at Klein and Hoffman; Peter Santangelo, president at Wintrust Community Advantage, a division of Barrington Bank and Trust Co.; Adam Kahn, partner, Levenfeld Pearlstein LLC.; Matt Panush, senior property tax analyst at Worsek and Vihon; and Marshall Dickler, association attorney and senior partner at Dickler, Khan, Slowikowski and Zavell.

An edited version of the panel discussion follows:

Q: What are the most common types of capital projects you are working on this year and plan for next year?

Thomas Flynn: Our most common types of projects are exterior facade restoration and maintenance, roofing/rooftop deck evaluations and replacements, and property condition assessments such as leak investigations, reserve studies and due diligence. There has been an increase in the property condition assessment area related to the building envelope and garages. This type of work is aligned with some of the structural evaluation work that has also been on the rise, following the Surfside Condominium collapse a few years ago.

Hans Kiefer: We perform all those same services, but the most common are exterior facade restoration and maintenance. Chicago has a maintenance requirement for high rises, and for that we're doing ongoing facade examinations. We hear a lot of structural concerns and how well the building is holding up.

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Adam Sanders: We're seeing quite a few projects in the condo world right now. Some of the dominant ones are kitchen waste-pipe replacements, fan coil replacement projects and plumbing riser replacements. During the last couple of years, we've been doing more electrical vehicle (EV) charger studies, EV charger implementations, and then typical equipment replacements we've done historically.

We're having more conversations about kitchen waste-pipe deterioration in regards to garbage disposals in units.

A lot of these projects are invasive, which require a much higher level of coordination and scheduling. Those projects have started to incorporate more general contractors and more project managers. The amount of coordination and invasiveness is really difficult for existing building staff to accommodate that level of work on top of what their normal day-to-day jobs are. It's important to engage project managers along with general contractors to make sure the building general public is informed and knows what's coming and the level of invasiveness the project requires.

↗ *Shown here (LtoR) are John Santoro, Hans Kiefer, Kevin Marcus, Adam Sanders and Thomas Flynn.*

↗ *Among the most common projects at Chicago condos are kitchen waste-pipe replacements, fan coil replacements, EV charging stations and plumbing riser pipes.*

Q: Are you seeing an increase in the number of projects this year versus the pandemic years when people were sitting on the sidelines somewhat?

Sanders: Obviously, during covid, 2020 and 2021, a lot of associations didn't want to be pursuing work inside the units. During those years we were doing a lot more studies. After covid, we are doing more implementations inside the units.

Flynn: We had a slowdown during the covid years. Most of our work is outside the building. We are seeing an increase in the last year or so.

Kiefer: It's about the same as well. A little less for something, a little bit more for others.

Q: Pete, what are the most common types of projects that you have seen at buildings this year and planned for next year? Are you seeing an increase in loan requests to fund these projects?

Peter Santangelo: Most of our loan requests have been for projects related to plumbing riser pipes, exterior facade, roofs, garage repairs, and hallway or entryway renovations. In the South and on the East Coast, we had a lot of requests for facade and roof

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↗ *Pictured above (from L to R) are Pete Santangelo, Adam Kahn, Matt Panush and Marshall Dickler.*

repairs based on the hurricanes that hit this year. We feel that for the next year, with an aging infrastructure in the Midwest, requests for risers, facade restoration and maintenance, and HVAC repairs will continue.

The volume has been consistent with last year. There was a slight slowdown when the rates spiked, but the volume has returned. I think we will see a continued request for financing throughout the end of the year. If rates start to move downward, we may see a heavier request for financing than we had in 2023.

Q: How has technology impacted these projects versus a few years ago? Are there any new innovations you are adopting?

Sanders: On the riser projects, with the 360-degree cameras, you can take a picture of the whole room in one snapshot. We've been requiring contractors to start taking pictures before they do the work. Then, a lot of contractors are taking pictures every day they do work there, so when the project is done, and someone makes a claim or says something is incomplete, we have good visual evidence as to what occurred in those units step-by-step.

That, along with software to track the highly invasive nature of these projects, helps track what's taking place on a daily basis, when it occurred and things like that. That's been helping us out quite a bit with conversations with property managers, project managers and the general public.

Kiefer: There are lasers that will scan the outside of a building and generate images, which is helpful because you don't have drawings all the time. There is also ground-penetrating radar that helps us identify reinforcing bars in concrete. Then the phone is pretty miraculous for everybody, and also for us in terms of documenting conditions and tagging those photos.

Flynn: Photography in general has come a long way. When we first started working, we had Polaroids. Now drone technology and 3-D imaging have become prevalent. These are very useful tools when putting plans together.

Adam Kahn: Virtual and hybrid meetings are here to stay. Some associations are "modernizing" their voting and communications by adopting electronic voting and communications/notice rules. Email communications and updates on ongoing projects and association matters, with paper copies for unit owners and residents who prefer the "old-fashioned" way.

Q: Are we still experiencing supply chain issues that impact inflation on projects? Is lack of qualified labor still a challenge?

Sanders: We've been seeing lead times come down a lot from covid. Certain pieces of equipment require long lead items, but those were long before covid. Everything is kind of settling back to where it was before, but there are exceptions. There are also

swings from manufacturer to manufacturer. When we are doing projects, we are checking with manufacturers for lead times instead of making assumptions as to when something is readily available.

As for labor, everybody in the industry seems to be particularly busy. Most of the contractors we are working with have major labor shortages, and that affects pricing. Labor shortages have not had a major impact on our projects.

Clients should make sure they bring bidders to the table who are hungry and want to come out for the project.

Kiefer: In the architectural community, lead times have gotten better, but it depends on the product we are looking for. Sometimes we might need to go to a different manufacturer.

Labor, everybody I think who wants a job can get a job because we are very busy. With that in mind, with some areas such as roofing, there is a quality of labor issue as well.

Q: Are any of the recent changes to the Chicago Building Code or other ordinances having an impact on these projects?

Sanders: Everybody here is aware the Chicago Code is going through updates and modernization. A lot of those updates are related to new construction or large renovation projects to existing buildings, and they are aligning heavily with decarbonization measures. On existing buildings, we are not seeing that level of impact; however, there is some. We anticipate decarbonization intervention is coming to existing buildings. We are encouraging clients to think about that when we are replacing equipment.

We are seeing a change in attitude about code enforcement. Inspectors are starting to enforce code sections that maybe they wouldn't have enforced in the past. We are having to do some extra diligence by talking to those inspectors during the design phase to make sure we will have their approval.

Kiefer: The new express permit program should allow, hopefully, permits to go quicker, but we don't have history with it yet..

Flynn: The thing that comes to mind for us in code changes is increasing the insulation on roofing and the height of the insulation, and sometimes depending on where the doors are at, how much insulation you put in.

Rooftop decks seem to be a subject with what is allowed and what is not allowed. There are stricter requirements on allowing that, relative to wind load, materials and tie-down systems.

Q: From a management standpoint, with more people working from home during these major projects, what advice or insights can you give as to bettering the communication with owners and vendors?

Kevin Marcus: You want to ensure everyone knows what is happening. If you have an interior project going and unit owners are working from home, you want to make space available as best is possible. I know many buildings rent out their party room or hospitality room. It's important to make room, especially with wi-fi, to have a place to go to.

Social media may or may not be an appropriate venue to use to inform residents. I try to steer away from that, though. You don't want to inadvertently be a decision-maker without a quorum. Use email to inform, not to make decisions. Sometimes old school ways are the best ways. We want to encourage people to go to open meetings, or for boards to have town halls where you can discuss a project.

Kahn: Riser pipe replacement in particular requires extensive planning, coordination and communication with unit owners with regard to access, temporary water shutoff and the like. We recommend ample, clearly written communications to unit owners and residents as well as town hall presentations with professionals to provide information and answer unit owner questions about the project.

There may be questions on cost allocation and responsibility for various components, like risers versus branch lines. We recommend having legal counsel opine on unit owner versus association responsibility and cost to educate owners and set expectations appropriately.

Q: Let's switch topics here for a second. Matt, what can you tell us about the property tax situation?

Matt Panush: Cook County is the second-largest county in America. For property taxation, it is divided into three sections: the city of Chicago proper; the south suburbs; and the north suburbs. Each section is valued every three years.

The south is being hammered right now. If you live in the south suburbs, your average increase is probably around 58 percent in assessed value. One of my colleagues saw a 101 percent increase on a condominium building in Worth Township. These are not downtown buildings. These are basic 40-year-old and 50-year-old buildings. There are no workout facilities. There are no baristas. You're just talking cookie-cutter, run of the mill buildings.

The problem is, many older folks have moved into these buildings. They've sold their houses, whether for the ease of condo living or the freedom from maintenance and overhead or other reasons. I really am nervous for them.

Just leading up to 2024 to the great reassessment of the city of Chicago, this will be the first time since the pandemic that they will be able to see what has gone on in terms of sale prices. Sale prices are what is really supposed to determine your values. That's how it is supposed to work. What we saw in the north suburbs with the pandemic, a lot of people left the city and went to the suburbs. You saw prices rise in suburban areas, although I'm not sure they rose 101 percent, and I'm not sure you are seeing that in the majority of Chicago condos or townhomes or co-ops. It will be interesting to see what the new assessor does in the city of Chicago next year.

Q: Switching gears to something less controversial, let's talk about electric vehicle charging. What are you seeing, and what kinds of requests are you getting from owners in high-rise buildings?

Kahn: The demand is there, and we need to be prepared. Help your boards make rational, informed decisions: What is our capacity load right now? What can we support? How much is it going to cost to increase that capacity? Then you make an informed decision. Really smart boards are getting ahead of this.

What gives me heart palpitations is when a board says, "Someone asked about this a couple of years ago, and we just let them do it, and we don't have any records."

Marcus: Another issue related to EV charging stations is buildings with deeded parking. How do you allocate the stations? Are you going to let people get their own stations? What if your wiring and capacity doesn't cover it?

When you rent out spaces, it's easier to dedicate space. We're going to be leaning on the engineers and architects when it comes to figuring out how to do this with deeded parking.

Sanders: If you don't have a road map, I strongly suggest you do that with an EV charging study: What can be done in the short term? What is the long-term game plan? What are the costs? What is possible? We've been doing a lot of those, and the frequency keepings increasing.

We've also seen an increase in implementations. We've got multiple buildings right now where we are installing en masse EV chargers. We just finished a design and implementation in a 100-space garage to put an EV charger in every space. We've also got

a lot of clients who in the past put in 3, 4, 5 or 6 EV chargers, and are starting to get enough electric vehicles to pursue more.

To comment about deeded parking spaces and the allocation of electricity, that's where we recommend getting a hold of your attorneys. Start talking about your declaration and what the laws say, so as to design something and implement it in a correct manner.

Marshall Dickler: What I have been telling associations we deal with is get ahead of it. Get your energy policy in place. Get your rules and regulations modified. Deal with it now, not down the road. If you don't have an energy policy, they can pretty much do what they want as long as it applies to code.

Your rules and regulations basically have to comply with code, construction cannot go through common elements, owners have to put in their own sub-meters, and so on.

Q: How will decarbonization affect existing buildings, including condominiums, and how will they meet future decarbonization regulations?

Sanders: First of all, I'm sorry to scare everyone last year about decarbonization. I know I freaked a lot of people. Last year at this time we had an election coming up. Everyone was expecting that, pre- or post-election, a decarbonization policy would be released in Chicago. The election came and went, and still no decarbonization policy.

We are doing projects actively in other cities where decarbonization has been issued in ordinances and codes, and we are replacing equipment to decarbonize those buildings to comply. Here in Chicago, where nothing has been issued, we will have conversations with you to be sure you understand the potential future impacts of your decisions. We would anticipate that when something is issued, it needs to be voted on and go through all the proper channels, and then there's a grace period of a couple of years before those buildings have to be in compliance.

As I mentioned last year, like in other cities, there is a step-down measure. The first thing they do is go after larger or more energy-intensive buildings that are producing more carbon. They likely target those largest offenders first and set a goal they have to achieve by a certain date, then another goal and another goal and another goal to move toward net-zero sustainability.

Right now, in Chicago, our best guess is there will be another couple of years, perhaps three to five years before something will be issued.

Q: Pete, let's shift over to banking and finance. Can you give us an overview of how rising interest rates are affecting associations, and also any advice for associations seeking financing for a project?

Santangelo: Rising rates obviously increase the cost of the overall project. The interest rate increases this year has made it difficult for some associations to qualify for a line of credit and must go directly into a term loan, which means having to special-assess and start collections immediately.

Boards should plan ahead with their management team. They should look to their reserve study or capital plan and build in a financing rate cushion.

Q: Can you talk about Form 1076, the Condominium Project Questionnaire, for Fannie Mae and Freddie Mac financing, and how to respond?

Santangelo: Wintrust Community Advantage does not deal with Fannie Mae and

Freddie Mac; however, our mortgage company, which has worked with associations, has advised borrowers to be honest when filling out Form 1076. Fannie and Freddie seem to know what projects are ongoing by reports and minutes previously submitted.

I would advise any board to seek the advice of counsel or management if they are unsure how to complete the form. Our mortgage department did confirm that to date there are 59 projects ongoing in Illinois associations that have been placed on their "Unavailable" list. This makes the association non-warrantable, which excludes them from Fannie or Freddie financing.

To be removed from the list will take providing information, depending on the issue, that will satisfy Fannie or Freddie that the work has been completed satisfactorily, and there are no outstanding defects.

Kahn: Form 1076 is a requirement by Fannie Mae and Freddie Mac, in essence, an additional disclosure in the wake of the tragic Surfside Condominium building collapse. They want to make sure projects are being done to make buildings safe and habitable and structurally sound.

Is it legally required that you fill this out? No. Nothing in the Condo Act says you must. Practically speaking, the better answer is it really is required because Fannie and Freddie are behind so many loans. If your association says, no, we're not going to do it, all of a sudden financing sources dry up, sales dry up, and you've got angry homeowners.

When filling out these forms, you want to be truthful, and you want to be honest. Work with your counsel and management. We don't want the possibility of a lawsuit. It's just not worth it.

Dickler: Fannie Mae and Freddie Mac are now requiring very complete questionnaires on all condos and HOAs because of what has happened in Florida. It will not be going away, and it will be difficult getting loans on buildings where there are problems. Units will become unsellable. Insurance companies will limit coverage or not offer coverage for buildings that are not showing good maintenance and repair.

Managers will have an affirmative duty to identify problems and require board action to resolve, or they will be on the line going forward for liability for failure to address and remediate. Companies can and will lose their licenses to provide management services. At the same time, managers will not be forced to provide legal or accounting services or advice.

These documents are federal documents. At the bottom of the form, they say your answer is subject to perjury. If you misrepresent the facts in any way, you may suffer the consequences of perjury, whatever they may be, and in some circumstances, they may be criminal.

With Question No. 3, "Are you aware of any deficiencies in the structure?", you can't say yes unless you know and have a report. If you have a report from an engineer that says there are deficiencies, say yes and attach it. That's your response.

If you see a crack in the wall, does that mean there is a deficiency? We don't know what that crack means. You can't say yes, and you can't say no. We advise boards to say, "Neither the board nor management are qualified to make such representations." At least, you have provided an answer and not let it be blank. It's kind of like taking the 5th Amendment. ✠

Artificial Intelligence and Associations?

At the end of the Hot Topics, Trends & Challenges panel discussion, an audience member asked the panel: **Have you used Artificial Intelligence in any form to help your day-to-day operations, and if so, what have you done?**

The answers varied greatly and included a chuckle or two. Here's a sampling:

Kevin Marcus: Our operating software is about to introduce an AI function to help with work orders or answering resident questions. I'm not at the point where I feel comfortable using it. I need to dive into it a little more. I do think it will be part of what we do.

Adam Sanders: We've used ChatGPT a little here and there, but not regarding report or client relationships. We read a lot of reports and gather a lot of information together. It might be a way to facilitate and lessen some of the raw typing we have to do. We would still have to review everything.

Thomas Flynn: I was just talking about Polaroids. (The room erupted in laughter.)

Hans Kiefer: We've played with large language models a little bit, like asking, "If you want to write a report about this brick, how would you write it?" And we do see AI in various everyday applications.

Matt Panush: A property manager asked me if there were any signs of intelligence at the tax assessor's office. (More laughter.)

John Santoro: It's like a freight train coming down the tracks, faster than anyone expected. We're spending some time studying how we can enhance customer service levels without losing the personal touch. I don't know that anyone is comfortable fully embracing it yet, but we have to be ready.

Marshall Dickler: There is already a case where a law firm used large language models. The brief they wrote created cases that didn't exist to support their arguments. The court figured it out, and they got really whacked.

I think it has lots of utilizations and processes for the things we do, but a lot of our processes require decision-making and thought. Let's say forcible cases. Can most of them be done with AI? Yes. But sometimes it's not so straightforward. We can spend hours trying to find out who the owner is. It's not always obvious.

Simon Fox, regional director at Associa Chicagoland and a member of the Condo Lifestyles State of the Industry committee, wrapped up the discussion: We are all using AI more than we realize. It's more than ChatGPT. It is everywhere we work.

When you are learning how to price a loan, what is happening out there, how do we model that, how do we forecast what we should set our rate at? That is AI. When you put in automated systems and the engineer gets a text message at 3 a.m. that Boiler Number One is down, and the water being supplied to it is no longer up to the proper temperature, that is AI.

We need to start looking at ways we have already been using it and understand this has been around for 20 or 30 years, and it is going to continue to evolve and to get smarter. We are going to see a lot more integration within our systems. ■

(Note: The full text of Comstock's handout, "Legislative and Case Law Update for the 2023 Condo Lifestyles State-of-the-Industry Seminar," is reprinted elsewhere in this issue.)

by Pamela Dittmer McKuen

2023 STATE of the INDUSTRY
LEGAL & CASE LAW UPDATE

Head Back to the Basics to Prepare for Even More Challenges Ahead

Association attorney Gabriella Comstock of Keough & Moody, P.C., delivered the Community Association Legal and Case Law Update at the 2023 Condo Lifestyles State-of-the-Industry on November 16.

↗ *Gabriella Comstock - Keough & Moody, P.C.*

One of the highlights at each year's State-of-the-Industry seminar is the Legal and Case Study Update. Each year's report is different, depending on the actions of lawmakers and decisions of judges. Association attorney Gabriella Comstock traditionally presents an update on new and amended laws that impact the community association industry as well as significant court decisions. Some situations are even amusing. The attorney also makes practical recommendations for boards and managers moving forward.

"That's my favorite part--how to get ready for next year," she told the attentive audience.

CORPORATE TRANSPARENCY

The Corporate Transparency Act is federal legislation that mandates companies to file reports that identify its beneficial owners with the Financial Crimes Enforcement Network. A "beneficial owner" is one who has substantial control or at least 25 percent ownership interest in an entity. Community associations and their board members are included among those who are required to report. The legislation goes into

effect January 1, 2024, and initial reports are due within one year.

The legislation is, in part, an attempt by the government to identify shell corporations that could potentially be used to cover up financial crimes.

Concerns within the community association industry are why they should be included at all, and that board members will be reluctant to turn over personal information such as drivers' licenses and passports.

For now, Comstock advises taking a wait-and-see position because of the possibility that community associations might be exempted. "We want you to be aware of the legislation, but I don't think you have to put policies and procedures into place until at least the middle to the end of next year," she said. "We'll be letting you know what needs to be done."

NEW LAW TAKES ON ELECTRIC VEHICLE CHARGING

The new Electric Vehicle Charging Act applies to newly constructed single-family homes and multi-unit residential buildings that are constructed after January 1, 2024. It establishes baseline requirements for EV-capable parking spaces, and includes additional requirements for both associations and owners. The law also provides that any restrictions that prevent or unreasonably restrict the installation of an EV charging system within the owner's unit or parking space are void and unenforceable.

Boards for existing associations should anticipate an increase in requests for EV charging abilities, and should be looking at if and how they can reasonably and fairly accommodate them, Comstock said.

"More than just a few owners are going to want to charge their electric vehicles in our garages," she said. "I have some boards that say, 'We don't need to worry about that. It's their problem if they buy an electrical vehicle.' I tell them, 'No, (not addressing the requests) will affect their marketability and cause other issues as well.'"

NEW RULES FOR MANAGEMENT FIRMS

The Community Association Manager Licensing and Disciplinary Act was amended to require licensing of Community Association Management Firms. The requirements are designed to ensure better quality control within management companies in regard to the supervision of employees and to establish default standards for such actions as transition of accounts to boards upon termination of the relationships.

"I have noticed boards are paying more attention to the Act, which is good," Comstock said. "I think so often they were ignoring the fact that managers had to be licensed. Now managers are reminding their boards, 'We need direction from you. We need written authority. We are not going to go outside of our lane.' It's important for managers to be familiar with what those rules are."

A LATE ADDITION

A legislative change that came about after Comstock drew up her handout affects Public Act 103-0563. The act extended the repeal date of the Condominium and Common Interest Community Ombudsperson Act to January 1, 2026. It also amended Section 35 of the Illinois Condominium Property Act and Section 1090 of the Common Interest Community Association Act, which state that associations bound by each Act are subject to all provisions of the Condominium and Common Interest Community Ombudsperson Act, subject to repeal January 1, 2026.

COURTROOM THEMES

"I like to go through the case law and find a theme," Comstock said as a prelude to this portion of her presentation. "I found two categories we are seeing: We found people suing the managers and board members for comments made, this time in writing. Then we are seeing more and more cases where unit owners are suing the association. We're going to go through a few cases where not only were they suing the association, they were filing what is called a 'derivative action.'"

"Derivative action," she explained, is where an owner files a lawsuit and says to the judge, "I want to stand in the shoes of the association because the association was harmed, and I'm trying to protect the association's rights."

If a derivative action is successful, the unit owner doesn't recover. Any recovery goes to the entity or the association.

THINK BEFORE YOU HIT 'SEND'

In a court case shortened to Carey v. Pritzker, the plaintiff sued the management company and some of its employees for defamation, false light and intentional infliction of emotional distress as a result of verbiage used in emails. In an email to the association president, the manager referred to the plaintiff as having "certain religious zeal" in her efforts to make the building smoke-free. In another email, the management wrote that if anyone wants to meet with this particular person, one's "head will spin like the exorcist."

Plaintiff took direct offense to such statements, alleging in her complaint that the comments were a direct reference to the fact she is a reverend. Both the trial and appellate courts dismissed her case, saying the writings were mere opinion and legally distinct from statements of fact.

"We chuckle, right?" Comstock said. "But it's a good reminder to be careful what you put in your emails, even if it's not actionable."

In a similar case, Kay v. Plymouth Court, a board member sued the board and specifically one board member who sent three email newsletters to residents in the building. In the newsletters, he accused the plaintiff of sending "illegal emails," "hijacking the proceedings," and stated that "she is not to be trusted." The plaintiff alleged she was publicly defamed. All defendants except the one who wrote the newsletters were dismissed.

The trial court dismissed her claim based on the defendant's right to free speech, and the appellate court agreed. The court acknowledged that the defendant's emails come off as "intentionally insulting and demeaning," but do not rise to the level of actionable offense.

"It may not be actionable, but all these people still had to defend themselves," Comstock said. "I often hear board members say, 'That's why we have D&O,' but don't be so quick. (Lawsuits) affect the community, and they affect our insurance premiums."

A DERIVATIVE ACTION FAILS

Lara v. Naper Place began when the village required the association to replace its 179 balcony railings for safety reasons. Unit owners were responsible for the cost of railing replacement for their individual balconies. Plaintiffs refused to pay invoices for the new railing and later brought a derivative action against the board and association. The trial court dismissed the motion, saying the plaintiffs' derivative action was invalid.

The appellate court affirmed the trial court's

ruling. For condominium owners to assert a valid derivative claim, the association must suffer the alleged harm, not the unit owners.

"The unit owners may have had their own individual action, but you can't stand in the shoes of the association when the association has no harm or injury," Comstock said. "It was just such an example of owners trying to go so far to challenge the actions of the association, and it didn't work."

EXPECT MORE CHALLENGES

The gist of Kim v. Hemingway House is that a new board refuses to pay an attorney hired by a previous board because they essentially wanted to blame the attorney for the decisions made by the old board.

The defendants hired the plaintiff to advise them how to address a water intrusion problem and to represent the association's interest in legal matters related to the water intrusion. After engaging the expertise of professionals, the board chose the most expensive option to stop the water infiltration problem, which they believed was the best long-term solution. They also adopted a special assessment. At the next annual meeting, board members who voted in favor of the project were replaced by new board members who wanted a less expensive option. The new board fired the attorney and refused to pay his bill. The plaintiff sued for non-payment.

In turn, the defendant filed a counterclaim that alleged breach of fiduciary duty, aiding and abetting a scheme to defraud, and several other counts.

Trial and appellate courts sided with the attorney, citing that the unit owners and current board did not suffer from the repair project solely because it cost more than the alternative. He was awarded his money plus interest.

In Barbarotta v. Goldman, plaintiffs attempted to stop their garage association from requiring them to move their vehicles and belongings during a comprehensive repair and restoration of the entire garage. They alleged requiring them to do so constituted trespass and eviction. Trial and appellate courts disagreed, affirming the right of the association to access units as necessary to make needed repairs the board was authorized to make.

"Here's the common theme: Owners are challenging the actions of boards," Comstock said. "I've been doing this for 26 years, and the number of special assessments being challenged, budgets being challenged, annual elections being challenged in the last two years is amazing. I never saw them before, and now it's part of the norm. That's why we need to go back to the basics. Go back to really making sure we are complying with our documents, not just following how we've done it in the past. Go back to the basics with communication as well--open meetings, less in emails, more in our meetings with owners, more communication that is vetted and coming from the board as a whole,--not just one board member and not just management."

LAST WORDS

"It's important to remember we are about to go into an election year, and we want to be ready for that," Comstock said. "Now is a good time to look at your rules as they are related to signs. We are going to see more owners wanting to put up political signs. We want to make sure boards are doing everything properly and not exceeding what their power and authority is. If you can go back to some of these basics, it will help all of us as we move ahead into 2024." ✠

INDUSTRY HAPPENINGS

ABOMA

↗ *Shown above is the 2024 ABOMA Board of Directors*

The Apartment Building Owners and Managers Association of Illinois held their 86th annual meeting and holiday party on December 1, 2023 and elected as Officers for 2024: **President Jaime Sartin,** Community Specialists, 1st Vice President **Timothy Kramer**, Draper and Kramer, Inc., 2nd Vice President **Shruti Kumar**, The Habitat Company, 3rd Vice president **Tairre Dever-Sutto**n of Tairre Management, Treasurer Jo**hn Bieg**, and appointed as Secretary, **Christine Friend,** ABOMA.

Directors elected at the meeting were **Sheila Byrne, Jennie Kobzarev, Brian Lozell, Milena Radjenovich, Judy Rowe, Irma Ruz-Collins, Tom Skweres,** and **Jim Watts.**

Directors continuing to serve are **Dean Andrews, Tony Briskovic, Gene Gaudio, Robert Graf, Dean Lerner, and Asa Sherwood.** Outgoing President **Dean Lerner,** Sudler Property Management was recognized for his service and Special Recognition was bestowed on **Bob & Christy Wiggs** for their outstanding service to ABOMA. A special event to further recognize Bob & Christy Wiggs will be held this spring in Chicago to celebrate Christy's over 12-years of service to ABOMA and Bob's almost 60-years of service to ABOMA.

For more information visit www.aboma.com

Community Specialists

↗ *Marguerite Batau*

Community Specialists recently announced that **Marguerite Batau** has been named Chief Operating Officer and Director of Supervisors for the company. The announcement was made by Ron Hickman of Community Specialists. In this role, she oversees the Community Specialists' Senior Supervisor team responsible for nearly 50 luxury condominium properties, totaling nearly 14,000 units across the city of Chicago. Additional responsibilities include developing the company's growth strategy and managing day-to-day operations to ensure efficiencies.

Marguerite has more than 35 years of property management experience and has served in luxury condominium property management roles both in and out of the Community Specialists organization since 2011. In addition to her Community Association License from the State of Illinois, Marguerite holds the highly respected Certified Manager of Community Associations (CMCA) designation from Community Associations Institute (CAI).

Since 1988, Community Specialists has built a reputation for premium property management services offered throughout Chicago's luxury lake shore condominium community. With a deep understanding of the nuances of the Chicago management landscape and a steadfast commitment to service, Community Specialists offers a variety of services to assist condominium associations including association governance, community building, business and financial services and more.

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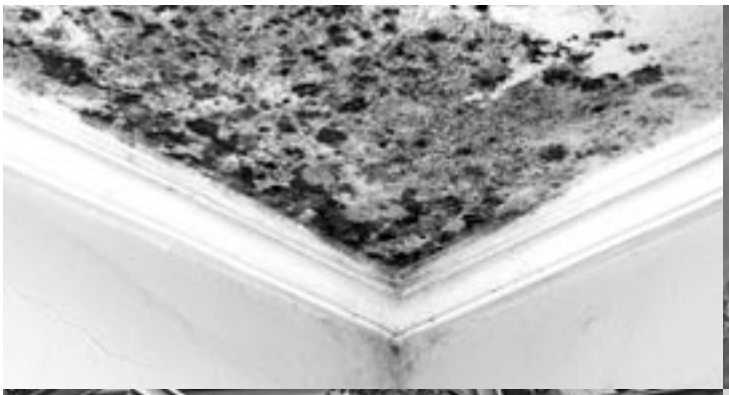

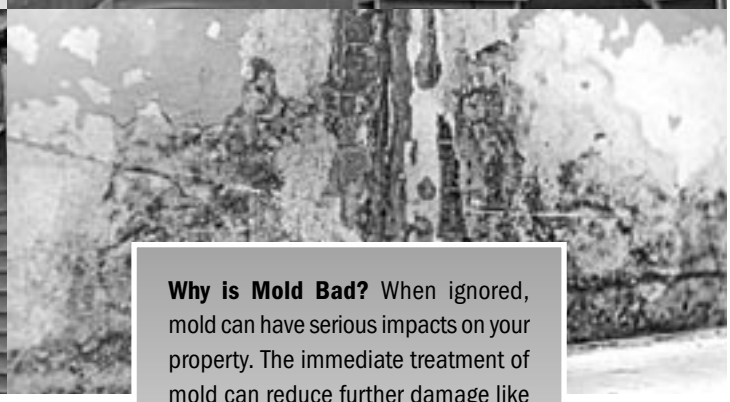

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Condo Lifestyles attempts to provide its readership with a wide range of information on community associations, and when appropriate, differing opinions on community association issues.

From the Editor

↗ *Mike Davids*

We have had a relatively mild start to the winter with very little snowfall. An El Nino weather pattern is currently in effect which typically tend to be a little warmer and a little wetter than average in Illinois. Although it is still early in the Winter season and there is still plenty of time for colder temperatures and snow events to show up. Whatever weather comes our way, it is best to be prepared for the worst-case scenario.

Our cover story is a report on our annual "Condo Lifestyles State of the Industry" (SOI) program which was held in November of 2022 at The Chicago Cultural Center. Attorney Gabriella Comstock gave a legal update presentation for attendees. An expert panel consisting of attorneys, architect/engineers, property managers, a banker and a property tax specialist shared their perspectives on current hot topics.

In addition to façade, roofing, balcony, and parking garage work, the most common projects being seen by our panel at community association properties include kitchen waste-pipe replacements, fan coil replacement projects, EV charging stations and plumbing riser replacements. Our panel also discussed reserve & property condition studies, funding & financing for capital projects, property taxes, communication, technology, and artificial intelligence at the SOI event. Our cover story features the highlights of the information shared by our expert panel at the SOI program.

Our second story provides an overview and summary presented by Ms. Comstock of new laws and several court cases that directly impact community associations. We have also included her summary of all the recent legislation and court cases that you should be aware of as a separate article in this issue (some of which were not discussed at the SOI program). You can also view all the event photos from this event at Facebook.com/mcd media.

Our regular Industry Happenings column also appears in this edition as is customary.

MCD Pool Party to feature Condolympics Games

Our annual Condolympics event is planned for March 8, 2024 at The Pyramid Club in Addison. Tournaments will be held for 8-ball (billiards) and darts. Other events for Condolympics competition will also be held at the MCD Pool Party. The Condo Lifestyles Condolympics donations will benefit Special Olympics.

Other upcoming MCD special events include our golf & bocce outing, which will be held on July 19 at Eaglewood Resort in Itasca and our Meet Me at Rivers Casino event in August. We will provide more information on these events as more details are available via email and at www.condolifestyles.net.

Special thanks to the firms, associations and groups that are subscribers and/or Authorized Distributors of Condo Lifestyles. Those of you who are not current subscribers can obtain subscription information on our website www.condolifestyles.net or by contacting our office.

As we welcome in another new year, we encourage you to make your association and your community all it can be. If you have an idea that would benefit other Community Associations, a story to share, or some advice on how to avoid a problem or failure, please call our office at 630-932-5551 or send us an e-mail (mdavids@condolifestyles.net). ■

Warm Regards,
Mike
Michael C. Davids, Editor & Publisher

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INDUSTRY HAPPENINGS

FirstService Residential

↗ *Pictured above is the legal panel with moderator Brian Butler of FirstService Residential.*

FirstService Residential hosted their Illinois Board Forum at the Eaglewood Resort & Spa in Itasca, Illinois. The event centered on board member education and building peer connections. A number of board members from local suburban communities attended the event and were able to learn from a prestigious panel of lawyers. Other industry professionals provided valuable knowledge on risk, insurance and lifestyle programming. The event also provided opportunities for board members to connect with vendors. FirstService Residential is grateful to Barry Roofing, Yellowstone Landscaping and Reserve Advisors for their partnership in the Illinois Board Forum.

↗ *Shown above are the organizers and participants from FirstService Residential at their Illinois Board Forum held on November 8th at Eaglewood Resort, Itasca.*

Attorneys **Gabrella Comstock,** Keough & Moody, **Nicholas Bartzen,** Bartzen, Roseland, Kasten LLC, **Elizabeth Thompson,** Saul Ewing LLP and **Joshua Weinstein** with KSN comprised a prestigious legal panel that provided information and answered a number of questions from attendees. FirstService Residential's own **Sean Gaynor** and **Todd Harcharik** provided valuable insights on risk and insurance while **Laura Nicolini** spoke on lifestyle programming.

↗ *Ian Novak*

↗ *Jackie Abraham*

FirstService Residential's **Jackie Abraham,** Regional Director and **Ian Novak,** Vice President were installed as board members for the IREM Chicago Chapter. Mr. Novak will serve at the Chapter's President again in 2024. Both Jackie and Ian are proud of their commitment to being ambassadors to their professional peers and overall public view of the real estate management profession. As representatives of the Chicago Chapter, they will be examples of the ethical conduct and professional excellence that their CPM and FirstService Residential's AMO certifications represent. FirstService Residential takes great pride in their commitment and involvement with the Institute of Real Estate Management (IREM).

by Gabriella Comstock - Keough & Moody, P.C.

LEGISLATIVE & CASE LAW UPDATE
from the 2023 CONDO LIFESTYLES STATE-OF-THE-INDUSTRY SEMINAR

LEGISLATIVE UPDATE

Corporate Transparency Act, H.R. 2513 — 116th Congress: Corporate Transparency Act of 2019

The Corporate Transparency Act is federal legislation that mandates reporting companies to file reports that identify the company's beneficial owners with the Financial Crimes Enforcement Network ("FinCEN"). The Corporate Transparency Act applies to individuals. A "beneficial owner" means one who has substantial control or at least 25% ownership interest in the entity, whether indirect or direct interest. For community associations, this means members of the board of directors and/or unit owners who own a unit that has a percentage of ownership assigned to it that is at least 25%. Reporting companies that are in existence on January 1, 2024, must file an initial report with FinCEN within one (1) year. Those created after January 1, 2024, have thirty (30) days after receiving notice of their creation to file a report. Each report must identify the company and for each beneficial owner: 1.) name; 2.) date of birth; 3.) address; and 4.) a unique identifying number and issuing jurisdiction from an acceptable identification document (with a scanned image of the document), i.e., driver's license or passport. Reports must be updated within thirty (30) days of a change to the beneficial ownership or of becoming aware of a change to information that was previously reported.

The Homeowners' Energy Policy Statement Act

The Homeowners' Energy Policy Statement Act was amended to provide that a property owner may not be required to utilize specific technology, i.e., solar shingles instead of solar panels. It was also amended to require the community association to adopt a written energy policy statement and when adopted, the statement shall explicitly include the terms of the Act as its minimum standards, in addition to other allowed standards. It also provides that no such statement may condition an application's approval on the adjacent property owner's approval. In addition, the association cannot 1.) inquire about a property owner's energy usage; 2.) impose conditions impairing the operation of the solar energy system; 3.) impose conditions negatively impacting any component industry standard warranty; or 4.) require post-installation reporting. An owner cannot be denied permission to install based on system ownership or the owner's financing method. However, the statement may impose reasonable conditions concerning maintenance, repair, replacement and ultimate removal of damaged systems so long as the conditions are not more onerous than the association's analogous conditions for non-solar projects.

The Homeowners' Energy Policy Statement Act was also amended to specifically state that any solar energy system must comply with the standards and requirements of the state and local authorities and those of the community association. Further, associations must make the applicable form to be completed by an

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owner available in a hard copy form, if so requested, or through the association's website. The association may not impose a fee for the application in an amount greater than what is assessed for other requests for changes to the property by the owner and the same form can be used for all requests for changes. An owner can request that the community association communicate with the solar energy system's contractor. Language was also added about the consequences if an association fails to adopt a policy or fails to process an application for approval within the specified time. The consequences include the owner being allowed to proceed with installation, after the owner gives the association notice that it will install if the association continues to fail to act as required. Lastly, an owner may resubmit an application if it is denied.

The Homeowner's Energy Policy Statement Act in its entirety can be found by scanning this QR code.

Electric Vehicle Charging Act 765 ILCS 1085/1, et seq.,

The Electric Vehicle Charging Act is new and applies to newly constructed single-family homes and multi-unit residential buildings, which are constructed after January 1, 2024. The Electric Vehicle Charging Act establishes baseline requirements for EV-capable parking spaces in new construction. It also provides that restrictions that prevent or unreasonably restrict the installation of an EV charging system within the owner's unit or parking space are void and unenforceable. It further includes additional requirements, which the association and owner must follow with respect to installation of EV charging systems.

The Electric Vehicle Charging Act in its entirety can be found by scanning this QR code.

Amendments to the Illinois Condominium Property Act and Illinois Common Interest Community Association Act

Public Act 103-161

This Public Act amends the Common Interest Community Association Act, 765 ILCS 160/1-71, the Illinois Condominium Property Act, 765 ILCS 605/18.11, and the Landlord and Tenant Act effective January 1, 2024, to establish minimum heating and cooling standards for those buildings, which have a cooling or heating system, which services the entire building, including the individual units, and in which declaration limits ownership of a Unit to persons 55 years of age or older. If the community does not have a building-wide cooling system, which serves the individual units, the association must provide an indoor common gathering space where a cooling system is operational when the heat index exceeds 80 degrees. Buildings without an indoor common gathering space, such as a meeting room, lounge, conference room, are exempt from this provision.

Section 1-71 of the Common Interest Community Association Act can be found by scanning this QR code.

Section18.11of the Illinois Condominium Property Act can be found by scanning this QR code.

Public Act 103-0486

This Public Act amends Section 1-30(k) of the Common Interest Community Association Act to provide the Board with the authority to contract with the highway commissioner of a road district to furnish materials for the maintenance or repair of roads within the association when the association compromises 50% or more of the township's or road district's population. Any such purchase of materials must be accounted for in the Board's financial reporting as required by Section 1-45. This Public Act is effective January 1, 2024.

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Section 1-30 of the Common Interest Community Association Act can be found by scanning this QR code.

Public Act 103-409

This Public Act amends Section 18.6 of the Illinois Condominium Property Act to include within the definition of a military flag, the Honor and Remember Flag. This amendment was effective as of June 2, 2023.

Section 18.6 of the Illinois Condominium Property Act can be found by scanning this QR code.

Illinois Administrative Code Title 68: Part 1445: Community Association Manager Licensing and Disciplinary Act

New Illinois Community Association Manager Rules went into effect June 2, 2023. Several provisions were added and amended. Community Association Management Firms ("CAM Firms") (management companies) must now be licensed. These new licensure requirements are designed to ensure better quality control within CAM Firms by requiring designated supervision of all CAM and administrative employees, by requiring certain training and oversight, by implementing insurance and deposit standards, and by making the firms themselves – rather than just their employees – accountable. These new CAM Firm rules also provide default standards for certain things like transition of accounts to the board upon termination of the relationship, and for compliance with relevant statutes and governing documents, even if not explicitly addressed on the management contract.

The new rules can be found in their entirety can be found by scanning this QR code.

CASE LAW UPDATE

Reverend Patricia A. Carey v. Phillip Pritzker, et al.

2023 IL App (1st) 210977-U

Plaintiff sued the management company of her condominium building and two employees of the management company for defamation, false light, and intentional infliction of emotional distress. Plaintiff alleged that the causes of actions related to her efforts to create a smoke-free building for her association. At one time, the management company's general manager sent an email to the president for the condominium association's board of directors and referred to Plaintiff's "certain religious zeal" in her efforts to make the building smoke-free. Additional emails were sent by management stating what awaited them should they choose to meet with Plaintiff. These emails included a warning that one's "head will spin like the Exorcist should [someone] actually meet with this person." Plaintiff took direct offense to such statements, alleging in her complaint that such were in "direct reference" to the fact that she is indeed a reverend. Further, Plaintiff accused Defendants of claiming that she had deliberately caused water to leak from her unit and she did not allow the association to investigate. After the association sued Plaintiff, she filed her own complaint alleging Defendants sought to damage her reputation and cause her emotional stress. Defendants moved to dismiss Plaintiff's complaint. The trial court dismissed Plaintiff's claims for defamation, false lights or intentional infliction of emotional distress. The trial court stated that such statements regarding the Exorcist were not only intended as "non-factual, sarcastic, hyperbole," but also privileged communications given the "quasi- judicial" setting in which they took place. Plaintiff appealed.

The appellate court affirmed the trial court's dismissal. The appellate court held statements of one's opinion are legally distinct from statements of fact. The

appellate court also held that the First Amendment did not prevent the condominium association or its management company's employees from communicating their opinions. The statements made against Plaintiff and her "religious zeal" related to creating a smoke-free building were nonactionable. Because "[n]o reasonable person would consider [the statement about one's head spinning 360 degrees] to be communicating an actual fact . . ." Hence, the appellate court held that Plaintiff had no valid claim against the Defendants. Further, Plaintiff had no claim for defamation per se by arguing that her role as a member of the clergy granted her further protection against disparaging comments.

Lakeview East Cooperative v. Esther Ohiku, et al.

2023 IL App (1st) 220130-U

Plaintiff, a cooperative housing association, attempted to evict its board president and her son, on claims that Defendant failed to use the building as her primary residence, which is a violation of the occupancy agreement. Defendant denied that she violated the agreement. The parties filed cross-motions for summary judgment, both submitting documents to support their positions. Plaintiff submitted Defendant's mortgage agreement and statements she made when Defendant spoke to the Office of the Inspector General for the Department of Housing and Urban Development, which were part of an unauthenticated report prepared by the employees of HUD. The court considered the evidence submitted, determined that Plaintiff submitted a statement that was not admissible evidence, and that there was no question of fact regarding Defendant's residency. Hence, judgment was entered in favor of the Defendant and against the Plaintiff. Plaintiff appealed.

The appellate court agreed with the trial court that such an occupancy agreement only required physical occupancy. The appellate court noted that "occupancy" per the parties' agreement only required one to live in that property as one's main residence, even if Defendant stated to a third party that she was going to live somewhere else. The appellate court held that Plaintiff could not present any admissible evidence that Defendant did anything more than potentially make conflicting promises to multiple parties as to where she would make her primary residence. Accordingly, the appellate court affirmed the trial court's ruling.

Jaime Lara and Joseph Lezon, as Trustee for the Joseph L. Lezon Declaration of Trust, on Behalf of Themselves and Condominium Unit Owners of the Naper Place Condominium Association v. Naper Place Condominium Association, a/k/a Lisle Place Condominium Association, et al.

2023 IL App (3d) 220097-U

Plaintiffs filed a derivative action seeking declaratory and injunctive relief against Defendants for the installation of balcony railings in multiple condominium units. The Village of Lisle asserted that 179 balcony railings within the association were in violation of its safety ordinance. The Village and Association agreed that unit owners would be responsible for the cost of replacing the railings. Plaintiffs refused to pay invoices for the new railing, later bringing legal action against the board of directors and the association. The circuit court granted Defendants' motion to dismiss with prejudice, stating that Plaintiffs failed to validly bring a derivative action against the board of directors and the Defendant association.

The appellate court affirmed the trial court's ruling. The appellate court held that in order for condominium unit owners to assert a valid derivative claim the

association itself must suffer the alleged harm, not the unit owners. The appellate court held that the Plaintiffs should have filed their own claim and not a derivative action, since the association did not suffer any injury from the replacement of the balcony railings. Plaintiffs argued they had the authority to bring the derivative claim pursuant to the Illinois Condominium Property Act and the Illinois General Not for Profit Corporation Act. The appellate court held that the Illinois Condominium Property Act does not grant unit owners standing to file a derivative action. Similarly, the court held that the Not for Profit Act provides that a not-for-profit corporation may file suit on behalf of its shareholders, but it does not alter the requirements for bringing a derivative suit against third parties on the corporation's behalf. As the Plaintiffs were seeking to hold the condominium association's board of directors liable for wrongs they committed against the condominium association, the court held the derivative suit was "nonsensical" to allow Plaintiffs to step into the shoes of the condominium association and file a lawsuit against the condominium association. Further, such an action failed when there was no harm to the condominium association. Hence, the appellate court affirmed the circuit court's judgment in favor of Defendants.

Michael C. Kim, Doing Business as Michael C. Kim & Associates v. Hemingway House Condominium Association,

2023 IL App (1st) 211115-U

Defendant hired Plaintiff to represent its interests in several legal matters, including that to address a water intrusion problem. The Defendant experienced significant leadership change in its board over the years, due to internal strife regarding how best to remedy this issue. Professional advice was sought by Defendant as to how to address and solve the problem and it hired Plaintiff to provide legal counsel. In addition, the City of Chicago filed a complaint against Defendant in housing court, as it received a complaint from a resident about water intrusion. After meeting with consultants, the board of directors at the time chose a more expensive (but believed to be longer- lasting) option. Orders were entered in the housing court case related to the Defendant's requirement to begin the work and perform repairs.

Disgruntled unit owners filed a derivative action in opposition to the board's decision., but were not successful. The repairs were then performed on the majority of the exterior of the building. Then, an annual meeting occurred and the board members who supported the more expensive repair, were removed. One of the disgruntled unit owners was elected as President of the Association. The board then terminated Plaintiff and Plaintiff sought payment for his legal services. Plaintiff sued the association for non-payment of attorney's fees. In response, Defendant filed a counterclaim alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, aiding and abetting a scheme to defraud, civil conspiracy, and accounting. Plaintiff filed a motion for summary judgment which was granted and which dismissed all counterclaims against the attorney. Plaintiff was also awarded his claims for unpaid legal fees in the amount of $41,614, plus interest.

The appellate court agreed with the trial court that the unit owners and current board did not suffer from the repair project solely because it cost more than the alternative that the unit owners preferred. The lack of injury to the Defendant prevented it from being able to bring a viable counterclaim against the Plaintiff as counsel for the association. Despite the court's concern for the way in which the previous Board (and Plaintiff as its attorney) failed to notify unit owners in a timely matter of special meetings and purported attempts to "preclude participation" in the voting process, the court concluded that the unit owners failed to show any harm derived from the more expensive but overall beneficial repair project the building needed.

Carolyn Kay
v. 801 South Plymouth Court Master Association Board of Directors, et al.

2023 IL App (1st) 221007-U

Plaintiff served as a volunteer board member on both the master association board of directors and the board of directors for the condominium association. The individual Defendant sent out three (3) newsletters via email to the residents of the building. In the emails, Defendant repeatedly accused Plaintiff of sending "illegal emails" seeking votes regarding railing projects and "hijack[ing] the proceedings" in furtherance of her goals, and that "she is not to be trusted." This led to Plaintiff alleging that the individual Defendant and others had publicly defamed her. All Defendants, except the individual Defendant, were dismissed. In response to the third amended complaint, the individual Defendant filed a motion to strike and dismiss portions of Plaintiff's complaint. Defendant argued, in part, Plaintiff could not recover on a claim based on speech protected by the First Amendment. The trial court granted Defendant's motion to dismiss and agreed that such speech was protected. Plaintiff appealed.

The appellate court affirmed the ruling of the trial court. The appellate court held the First Amendment serves to protect expressions of opinion such as the ones made by Defendant in his newsletters, which expressed stark opposition to Plaintiff's actions. The court noted that Defendant's newsletters were indicative of his own opinions and were not presented as being factual statements regarding Plaintiff's actions and statements. While the court acknowledged that Defendant's emails "come off as intentionally insulting and demeaning," they do not rise to that of an actionable offense, resulting in the court affirming the trial court's ruling.

Nationwide Mutual Insurance Company v. Beverly Glen Homeowners' Association, et al.

2023 IL App (3d) 220089-U

Plaintiff, an insurance company, filed a declaratory action against its insured, which included the association and members of the association's board of directors. Plaintiff asked the court to declare that it had no duty to defend or indemnify the Defendants against claims made by the residents of the association in a derivative action. The trial court granted Plaintiff's motion for judgment on the pleadings finding that Defendants were barred from seeking a defense in the derivative suit, where judgment in a prior action was rendered and stated that Plaintiff had no duty to defend. Defendants filed a motion to reconsider and Plaintiff filed a request for sanctions. Both motions were denied. Defendants appealed.

The appellate court rejected Defendants' argument that Plaintiff's claim was unripe, since the judgment entered in the prior action had not been entered until after Plaintiff's lawsuit was filed. The

appellate court rejected this argument and held that the Plaintiff's claim was ripe based on the filing of the derivative suit and request to defend. The appellate court also rejected Defendants' argument that the Plaintiff's action was moot. The appellate court also rejected Defendants' argument that Plaintiff's claim was not barred by res judicata and collateral estoppel. The appellate court found that the elements of both res judicata and collateral estoppel were met. Hence, the judgment of the trial court was affirmed, including the trial court's denial of the Plaintiff's "unsubstantiated" claims for sanctions against Defendants.

KEK, LLC, an Illinois Limited Liability Company v. 1120 Club Condominium Association

2023 IL App (1st) 230782-U

Plaintiff, as the owner of a building in Oak Park, filed suit against the condominium association alleging that it was not required to make certain payments under the Defendant's declaration because it expired. Plaintiff also alleged that Defendant was required to provide an accounting as to all common expenses. Plaintiff also alleged that Defendant committed slander of title for recording two liens against Plaintiff's condominium units. Defendant asserted that Plaintiff was required to arbitrate its claim against the Defendant, based on the terms of the association's declaration. Plaintiff argued that the association's declaration of covenants, conditions, restrictions and reciprocal easements which applied to the parties, had expired; thus, it no longer was required to pay certain common expenses. Defendant moved to stay the proceedings and compel arbitration. The trial court granted the Defendant's motion. Plaintiff appealed arguing that the claims fall outside of the scope of arbitration.

The appellate court held that an arbitration agreement is a matter of contract and that if the court finds a valid arbitration agreement exists, it must compel arbitration. Hence, the appellate court reviewed each count of Plaintiff's complaint to determine whether its central issue pertained to "the allocation for the cost for the work or services provided" and therefore was a claim to be arbitrated pursuant to the terms of the parties' declaration. The appellate court determined that the entirety of Plaintiff's claims were to be arbitrated. The court noted that it is not how the disagreement is classified, but what is the central issue of each count that must be analyzed to determine if the arbitration clause applies. Hence, the appellate court affirmed the circuit court's order of staying the proceedings and compelling arbitration for all of Plaintiff's claims.

Doreen Colletti Muhs v. Fox Point Homeowners Association, et al.

2023 IL App (2d) 220408-U

Plaintiff filed a complaint against the association and an individual. Plaintiff alleged that she suffered injuries during a party at the association's premises, when the individual Defendant knocked Plaintiff to the ground, when she was trying to encourage Plaintiff and others to jump into the association's swimming pool. Plaintiff alleged negligence and that the association was vicariously liable for the individual Defendant's negligence. Plaintiff also alleged that the individual Defendant was negligent against Plaintiff for causing her fall. The association moved for summary judgment. The association argued that before the party, it notified all attendees through the party organizer that the event did not include swimming. The individual Defendant was a volunteer who planned and organized the party. The association argued it did not expect, instruct, or require the individual Defendant to have unwanted physical contact with the Plaintiff. The individual Defendant also testified at her deposition that she was not instructed by the association or its board of directors to jump in the pool or to push, tackle or encourage others to jump in. The trial court granted summary judgment in favor of Defendant Association, as despite the co-defendant's role as a volunteer for the Association, she was not acting within the scope of her role as a volunteer nor was she "motivated by a purpose to serve [Defendant Association]." After the

trial court granted the summary judgment motion, the individual Defendant settled with the Plaintiff. Plaintiff only appealed the trial court's granting of summary judgment on Count II, which was a claim for vicarious liability.

The appellate court concluded that when Plaintiff settled her claim against the individual Defendant, Plaintiff's claim of vicarious liability against the association was extinguished. Even so, the appellate court reviewed the matter and concluded that the trial court properly entered summary judgment on Count II. The court held that no reasonable person could conclude that the individual Defendant acted in a way that is of the kind the employee was employed to perform and that the action was performed, at least in part, by a purpose to serve the employer. Even though the association encouraged its volunteers to plan parties and host said events, the Defendant Association made it clear in advance of the party that no swimming was to take place. Further, Plaintiff could not prove that the Defendant Association was in any way in support of a motivation behind the individual Defendant's actions of attempting to get party guests to enter the pool.

Swati Patel and Jyotsha K. Patel v. Prairie Lakes Homeowners Association of Illinois, Inc.

2023 IL App (2d) 230158-U

Plaintiffs owned property within the Defendant association, seeking approval of their application to build their new home in the subdivision. The architectural review board provided 23 items for the Plaintiffs and their hired homebuilder to address in their application. The management company for the Defendant and the Plaintiffs' homebuilder experienced communication issues and various back-and-forth regarding when and how the home could be built. Defendant sent the homebuilder a cease-and-desist as well as having its legal counsel reach out to Plaintiffs regarding multiple additional matters that needed addressing. Plaintiffs filed a complaint for declaratory relief, asking the court to approve their homebuilding application "as- is" and to limit the number of improvements required in the Defendant's list of necessary changes to the home building plan. Plaintiffs also filed a motion for expedited briefing schooled and hearing on the complaint for declaratory relief. A hearing was conducted and the trial court entered an order finding in favor Plaintiffs and the order included specific declarations as to what the Plaintiffs were not required to do during the construction. Defendant appealed.

The appellate court rejected Defendant's argument that Plaintiff was not entitled to an expedited hearing, based on the agreement of the parties; thus, Defendant waived the argument. The appellate court also rejected the remaining argument by Defendant related to the trial court's finding. The appellate court notes that while restrictive covenants are enforceable by homeowners associations, this exercise of power "must be reasonable and not arbitrary." The appellate court looked at what required of other owners within the association and since more than 20 homes nearby were not required to possess copper roofs, such a restriction could not be enforced against the Plaintiffs. Further, some of the requirements made by Defendant were "a bit nit-picky" and did not have any basis in the governing documents of the association. Because the Plaintiffs' new home was in compliance with the Defendant's contractual requirements, the appellate court affirmed the circuit court's judgment in favor of Plaintiffs' approving their plans and allowing for further construction.

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Lucio Barbarotta, Santo Barbarotta, Giuseppe Barbarotta, Cesar Ceballos, and Nancy Slagg, Ph.D.
v. David T. Goldman, et al.

2023 IL App (1st) 221468-U

Plaintiffs are owners of condominium units (parking and storage spaces) in a parking garage that is the sole property comprising the Defendant condominium association. The board of directors of the Defendant association executed a contract for a comprehensive repair and restoration project of the entire garage. To allow the project to proceed, unit owners were required to remove their vehicles and other property from the garage during the pendency of the work. Plaintiffs filed a lawsuit seeking declaratory and injunctive relief against the condominium association and its individual board members. The suit alleged that requiring Plaintiffs to vacate the garage during the repair project constituted trespass and eviction. Defendants filed a motion to dismiss, and the trial court dismissed the eviction and trespass claims with prejudice. In doing so, the trial court concluded that the Condominium Property Act grants the Board "a right to access each unit to make necessary repairs," and requiring owners to remove their vehicles and other property was a valid exercise of this right. Plaintiffs appealed.

The appellate court affirmed dismissal of the trespass and eviction counts. In so doing, the appellate court held that, while requiring that vehicles and property be removed to allow for repair work may have been inconvenient for unit owners, both the Illinois Condominium Property Act and the Association's bylaws granted the board the right to access units as necessary to make repairs the board was authorized to make. Therefore, a claim of trespass could not be asserted against the condominium association and the individual board members, because they had the legal right to enter the parking units and storage spaces. Further, because the project was completed and all unit owners were again able to fully utilize the garage when the appellate court rendered its decision, appeal of the dismissal of the eviction counts was deemed moot ■.

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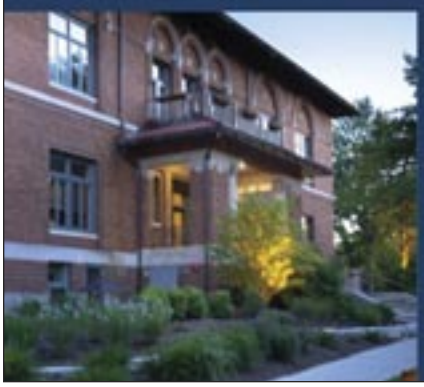

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