

SPRING 2018 NEWSLETTER

HOMEOWNERS ASSOCIATION LAW UPDATE

By Caroline Sileo

Texas Court of Appeals

***Reed v. Lake Country Property Owners Association Inc.*, No. 02-17-00136-CV (December 28, 2017)**

Renting a property for less than ninety days will constitute a violation of a property owners association's restrictive covenant restricting the use of property for residential purposes only.

Neighboring homeowners brought suit for alleged violations of homeowners association's deed restrictions ("Deed Restrictions") against a company, which purchased a property in their homeowners association and used this property as a vacation rental. The company admitted to using the property for "weekend rental or vacation rentals." The trial court granted summary judgment and a permanent injunction in favor of the neighboring homeowners. The company appealed.

The Court examined the deed restrictions to ascertain the parties' intent as expressed in the language of the deed. The Deed Restrictions provides that the use of property is limited to "residential purposes only." The provision further expressly provides that "[t]he term 'residential purposes' as used herein shall be held and construed to exclude hospitals, clinics, duplex houses, apartment houses, boarding houses, hotels, and all other commercial uses and all such uses of said property are hereby expressly prohibited." For purposes of the hotel occupancy tax, the Texas Tax Code defines "hotel" to include "a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or bed and breakfast." The statute also provides that "hotel" includes short-term rentals of all or part of a residential property to a person who is not a permanent resident.

Relying on previous precedent, the Court concluded that because the company's short term rental of the property amounted to a non-residential purpose, these rentals constituted the operation of a hotel or other commercial use. Thus, the company was in violation of the Deed Restriction that limited use to "single-family residence purposes." As a result, the Court held that the trial court did not err in determining that the company's use of the property was prohibited by the Deed Restrictions or in granting the injunctive relief as requested by the neighboring homeowners

***Walls v. Capella Park Homeowners' Association, Inc.*, No. 05-16-00783-CV (November 30, 2017)**

A homeowners' association must accommodate disabled residents.

A homeowners' association filed a lawsuit against two operators of a for-profit housing

program that served disabled individuals. The association asserted that the operators breached the Association's restrictive covenants and sought a declaratory judgment and permanent injunction. The operators filed a counterclaim, asserting that Association violated the Texas and Federal Fair Housing Acts.

The Texas Fair Housing Act ("TFHA") requires automatic accommodation for disabled group homes that are owned and operated by the government or a nonprofit entity. For this reason, the trial court held that because the operators were operating a for-profit group home, the TFHA did not apply. The trial court held that the operators' group home violated the restrictive covenants and granted the permanent injunction. The operators appealed, arguing that the Association failed to grant the operators a reasonable accommodation necessary to afford them an opportunity to use and enjoy a dwelling.

Both the Fair Housing Act ("FHA") and the TFHA broadly prohibit discrimination in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap, or disability, of that buyer or renter or a person residing in that dwelling. The FHA and the TFHA define discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." The FHA's reasonable accommodation provision prohibits (1) refusal to make (2) reasonable accommodations in rules policies, practices, or services, when such accommodations (3) may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

The Court examined the three elements of a reasonable accommodation claim. Under the "refusal" element, the Court found that (1) the operators made a request for reasonable accommodation when they requested that the Association not enforce its restrictive covenants against them; and (2) the Association refused their request by filing this lawsuit enforcing its restrictive covenants against the operators. Under the "reasonableness" element, the Court engaged in a highly fact-specific analysis and found that Association's restrictive covenants permitted property owners to lease their homes to unrelated people. Therefore, the only difference between the operators and other property owners was that the operators leased their homes to unrelated, disabled people. Under the "necessity" requirement, the Court found that it is necessary for the Association to refrain from enforcing its restrictive covenants so that the group home's residents would have the same opportunity as non-disabled persons to reside on the lots within the Association. As a result, the Court reversed the trial court's judgment and dissolved the permanent injunction.

402 Lone Star Property, L.L.C. v. Bradford, No. 04-16-00721-CV (November 29, 2017)

If a purchaser of a residential property that was sold to satisfy a homeowners association ("HOA") lien inflates redemption costs, the purchaser will be held liable for damages and attorney's fees.

A HOA foreclosed on a homeowner's property because he failed to pay his HOA, and a purchaser and his company purchased the home in a foreclosure sale. The homeowner exercised

his right to redemption pursuant to Section 209.011 of the Texas Property Code and paid the company the amount requested in their property payoff statement. A homeowner brought suit against the company for common law fraud, alleging that the purchaser and his company made a fraudulent lien against his property. The Court of Appeals ruled in favor of a homeowner who was awarded statutory and punitive damages by a jury because the jury determined that the company exaggerated the price to redeem the foreclosed property.

The redemption price for a home foreclosed by an HOA is established by Section 209.011 of the Texas Property Code. That statute specifies charges that the homeowner must pay and distinguishes between properties purchased by the property owners association and those posted by third parties.

The court examined the proper calculation of charges permitted under Section 209.011 and analyzed state law as it relates to fraudulent liens or claims against real estate in violation of Section 12.002(a) of the Texas Civil Practice and Remedies Code. The court upheld the jury's findings that the foreclosure purchaser made a fraudulent lien or claim against the homeowner's property and affirmed an award of \$20,000 in damages and \$25,000 in exemplary damages. The Court based its award of \$20,000 in damages on Section 12.002(b) of the Texas Civil Practice and Remedies Code. Section 12.002(b) provides the amount a plaintiff is entitled to recover in damages for a claim asserting a person made a fraudulent lien or claim. Additionally, Section 12.002(b)(1) provides that a person who violates Section 12.002(a) by making a fraudulent lien or claim is liable to each injured person for the greater of: (A) \$10,000; or (B) the actual damages caused by the violation.

The Court held that the homeowner was entitled to the statutory award of \$10,000 multiplied by two because the jury found that the homeowner's actual financial damages were \$1,359.22. This award was assessed against the purchaser, individually, and the company. As a result, the purchaser and his company was required to pay more than \$50,000 in addition to their own court costs and attorneys' fees because they fraudulently requested an additional \$1,359.22 from the homeowner seeking to redeem his property.

***Landing Community Improvement Association, Inc. v. Young*, No. 01-15-00816, 2017 WL 3910893 (Tex.App.—Houston [1st Dist.] Sept. 7, 2017)**

The Landing Community Improvement Association, Inc. ("Association") filed suit against a homeowner for violating the Association's Declaration of Covenants, Conditions, and Restrictions ("Declaration") and their Architectural Control Committee ("ACC") guidelines. The homeowner brought counterclaims against the Association for breach of fiduciary duty, breach of contract, intentional infliction of emotional distress, and a declaratory judgment. After a jury trial and judgment in favor of the homeowner on the issues of breach of fiduciary duty and intentional infliction of emotional distress, the Association appealed the trial court's judgment, contending that (1) the evidence is legally and factually insufficient to support the trial court's judgment, (2) the trial court erred in declaring "void" the Association's Exterior Maintenance Guidelines, and (3) the trial court erred in awarding Young attorney's fees and costs.

A Texas appellate court held that a property owner cannot maintain a claim for

intentional infliction of emotional distress against a homeowners' association based on its efforts to collect assessments and fees because intentional infliction of emotional distress is only applicable when a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress. Here, the common law tort of unreasonable collection practices could provide the proper remedy for the homeowner, not intentional infliction of emotional distress. As to the enforcement of restrictions and architectural control guidelines, the evidence did not show the Association had intentionally caused any distress.

The appellate court then reviewed a jury instruction that essentially asked the jury to determine whether or not the ACC guidelines constituted an unauthorized amendment to the Declaration. The Association argued that the ACC guidelines were not amendments to the Declaration but community standards adopted in accordance with the Texas Property Code. After interpreting the language from the Declaration and other Association documents, the appellate court agreed, holding that because the architectural control guidelines did not amend the homeowners' association's restrictions, Tex. Prop. Code Sec. 204.003 was inapplicable. The appellate court also found that disregarding Tex. Prop. Code Ann. § 204.010 and submitting an improper jury question was reversible error to the extent the trial court declared the ACC guidelines invalid.

Furthermore, the appellate court held that the trial court improperly awarded the homeowner attorneys' fees because the homeowner was not entitled to attorney's fees under Tex. Civ. Prac. & Rem. Code §§ 37.009, 38.001(8), or Tex. Prop. Code § 5.006. As a result, the appellate court reversed, rendered in part and remanded in part.

***Twin Creeks Golf Group, L.P. v. Sunset Ridge Owners Association, Inc.*, No. 03-16-00653-CV, 2017 WL 3902610 (Tex. App.—Austin August 25, 2017)**

In this case of first impression, Sunset Ridge Owners Association (“Sunset Ridge”) sued Twin Creeks Golf Group (“Twin Creeks”) seeking a declaration that an amended restrictive covenant filed by Twin Creeks that required club membership was invalid as to condominium owners under the Uniform Condominium Act § 82.0675(a) due to appellant's failure to renew the covenant after the ninth anniversary. Section 82.0675 provides that a provision of a declaration or recorded contract that requires condominium owners to maintain a membership in a private club is not valid after the tenth anniversary of the date that the provision is recorded or renewed unless it is renewed after the ninth anniversary of that date in the manner provided by the declaration or recorded contract.

After Sunset Ridge filed a motion for summary judgment, the trial court granted the motion, holding that Section 82.0675 applied to the amended restrictive covenant, that the restrictive covenant was not renewed after the ninth anniversary of the date it was filed, and that any provision of the restrictive covenant requiring condominium owners to maintain club members was invalid. Twin Creeks appealed, arguing that Section 82.0675 was inapplicable because the legislature did not intend the section to apply to restrictions that were for both condominium and other types of real property. Twin Creeks further contended that the amendment did not trigger Section 82.0675 because the restrictive covenant was in effect prior to the statutory date.

The appellate court disagreed with Twin Creeks' argument, holding that Section 82.0675 expressly applies to condominium owners; however, the statute contains "no exception for membership requirements applicable to condominium owners that also apply to owners of other types of real property." Furthermore, "if the legislature had intended to exempt club membership requirements applying to both condominium and other types of real property from § 82.0675, it could have done so expressly." Moreover, the issue here is the application of statutory provision that invalidates the requirement that condominium owners pay club membership dues in certain circumstances. Sunset Ridge did not seek a declaration as to the rights and interests of the non-condominium owners. Thus, the non-condominium homeowners' property interests arising from mutual restrictive covenants do not apply in this case. Furthermore, "reasonableness is not the standard for eschewing plain statutory language," regardless if the application of a statutory provision would lead to unreasonable results.

The appellate court further held that the language of the amended covenant provided that its effective date superseded the original covenant and thus is governed by Section 82.0675. Finally, the court affirmed the trial court's denial of Twin Creek's plea to the abatement as the non-condominium homeowners were not necessary parties. Accordingly, the court affirmed the trial court's decision.