

# **2018 YEAR IN REVIEW**

## **SIGNIFICANT DECISIONS IN 2018**

### **HOMEOWNERS ASSOCIATION LAW**

**By Caroline Sileo**

***Tarr v. Timberwood Park Owners Association, Inc.*, No. 16–1005 (Tex. May 25, 2018)**

A property owner’s association (the “Association”) cannot limit a property owner from leasing his property on a short-term basis based on the Association’s restrictive covenant’s provision that homes are to be used “solely for residential purposes.”

Plaintiff bought a home in 2012 and started to rent the home out on a short-term basis when his employer transferred him to another city. The Association notified Plaintiff that the rental of his home violated two deed restrictions: (1) the residential purpose covenant and (2) the single-family-resident covenant. Plaintiff sought a declaration that the Association’s deed restrictions do not limit his ability to short-term lease his property. The trial court disagreed and granted the Association’s summary judgment motion, concluding that Plaintiff operated a business on his property and engaged in “multi-family,” short term rentals in violation of the Association’s deed restrictions. The court of appeals affirmed the trial court, holding that the Association’s deed restrictions prevented Plaintiff from leasing his property for short periods of time to individuals who did not possess intent to remain on the property.

The Supreme Court disagreed, holding that Plaintiff’s short term leases did not violate the Association’s restrictive covenants. First, the Court held that the restrictive covenant’s single-family residence restriction merely limited the structure that could be erected on homeowner’s property and is not relevant to the short term rentals at issue because the parties did not dispute that Plaintiff’s property contained a single-family residence. Second, the Court noted that the restrictive covenant’s restriction for “residential purpose” was ambiguous because the Association failed to define its meaning. The Court held that the Association’s covenants merely required that the activities on the property comport with a “residential purpose” and not a “business purpose.” The Association’s covenants failed to address leasing, use as a vacation home, short-term rentals, etc. The Court further declined to add new restrictions to the Association’s covenants by adopting an overly narrow definition of “residential.” As a result, the Court held that Plaintiff did not violate the Association’s restrictive covenants and could continue to lease his property.

***Landing Community Improvement Association, Inc. v. Young*, No. 01-15-00816-CV (Tex. App.—Houston [1st Dist.] May 3, 2018)**

A homeowner's association's (the "Association") adoption of Architectural Control Committee ("ACC") guidelines does not constitute an amendment, change to, extension of, addition to, or a modification of the Association's governing documents. Furthermore, a homeowner cannot successfully assert an intentional infliction of emotional distress claim against an Association for the Association's efforts to collect maintenance assessments and fees from the Association.

An association brought suit against a homeowner for various violations of the Association's governing documents and ACC guidelines. The homeowner brought various counterclaims against the Association, including a declaration that the Association unlawfully modified their governing documents without a vote by the majority of the homeowners and caused intentional infliction of emotional distress.

Section 204.010 of the Property Code allows an Association to regulate the use, maintenance, repair, replacement, modification, and appearance of the subdivision, implement written ACC guidelines, and modify those guidelines as the needs of the subdivision change. The Court examined the language in Association's governing documents, which provided that the ACC "may from time to time promulgate an outline of minimum acceptance construction standard," and granted the Association "the authority to establish standards, independent from those articulated in the [governing documents], to effectuate their intent and flesh out and particularize this general right." The Court held that the ACC guidelines did not constitute an amendment, change to, extension of, addition to, or a modification of the Association's governing documents. Therefore, the Association did not violated Chapter 204 of the Texas Property Code or the Association's governing documents that required amendment to be approved by ninety percent of the homeowners in the Association.

The Court also held that the homeowner's intentional infliction of emotional distress claim was improper because the homeowner based his claim on the efforts used by the Association to collect the outstanding assessments and fees, which actually constituted the common law tort of unfair collection practices. An intentional infliction of emotional distress claim is not available when another claim is available to the homeowner.

***Seeger v. Del Lago Owners Association*, No. 09-16-00450-CV (Tex. App.—Beaumont May 3, 2018)**

A property owners association cannot recover attorney's fees under the Texas Property Code for defending against a homeowner's tort claims.

A property owner's association (the "Association") brought suit against a homeowner for unpaid assessments. The homeowner brought counterclaims against the Association for negligence, intentional infliction of emotional distress, and civil conspiracy. After a jury trial, the jury found that the homeowner breached the Association's covenants and awarded the Association attorney's fees for preparation and trial and for the appeals to the Court of Appeals

and Supreme Court of Texas. The homeowner appealed and argued that the jury erred in awarding the Association attorney's fees for defending against the homeowner's counterclaims because the Association could only recover attorney's fees for prosecuting its claim to collect assessments owed.

The Court of Appeals held that "nothing in the Property Code of the [Association's] Covenants that allowed the Association to recover the attorney's fees it incurred in defending the Association against the [homeowner's] claims for negligence, intentional infliction of emotional distress, and civil conspiracy." Even though the Association's obligations to the homeowner under the Association's covenants were relevant to the jury deciding if the Association had committed any torts, the covenants did not serve the legal basis for the homeowner's tort claims. Because the Association failed to provide the trial court with no provision by statute or in the Association's covenants that allowed the Association to recover attorney's fees for defending against the homeowner's tort claims, the Association was not entitled to the attorney's fees incurred for successfully defending the Association against the homeowner's tort claims.