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WINTER 2012

REAL ESTATE PRACTICE

Condominium/Homeowner's Associations and Alternate Dispute Resolution

On January 12, 2012, an opinion of the Superior Court of New Jersey, Appellate Division was approved for publication, meaning the decision will have statewide impact. The case is entitled, *Bell Tower Condominium v. Pat Haffert, et al.*

The facts of the case are simple. The Plaintiff is a condominium association consisting of five units in Sea Isle City, New Jersey. The common areas of the condominium required extensive repairs and replacements, and the association had not set aside a reserve for this work. At a meeting of the Board of Trustees, four of the five elected board members were present, and at that time, approved a special assessment of \$80,000.00 to make the necessary repairs. Four of the five units were assessed at \$14,400.00, and the Defendants, owning the largest unit, were assessed at \$22,400.00. The Defendants refused to pay the special assessment claiming that the Board failed to follow proper procedures and that they had concerns about how the money would be allocated for the repairs. Specifically, repairs to a certain portion of the common elements that directly affected the Defendants' unit was not included in the work to be done. The Defendants further asserted that the annual audit of the association funds had not been conducted for years.

As a result of the Defendants' failure to pay the assessment, the Board filed suit against the Defendants demanding judgment in favor of the association in the amount of the unpaid assessment. The Defendant counterclaimed asserting violations of the master deed, by-laws and applicable statutes concerning the governance of the Association and sought an order requiring arbitration or mediation of the dispute among other relief. The trial court found in favor of the Association and entered judgment against the Defendants in the amount of the unpaid special assessments. The trial court rejected the Defendants demand for alternative dispute resolution, which was presented under N.J.S.A. 45:22A-44(c), the Planned Real Estate Development and Full Disclosure Act (PREDFDA). The rights to alternative dispute resolution under the New Jersey Condominium Act, N.J.S.A. 46:8B-1 et seq., was not presented to the trial court. While homeowner associations are not subject to the Condominium Act, they do fall under PREDFDA, and while the alternative dispute resolution language is not identical between the two, they are very similar.

On appeal, the Defendant's raised a single claim that the trial court erred by refusing to dismiss the matter in favor of alternative dispute as required by the New Jersey Condominium Act and specifically N.J.S.A. 46:8B-14(k).

By: Kenneth D. Roth



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Alternate Dispute Resolution continued...

The association argued that that specific statute required alternative dispute resolution in all “housing related disputes”. They asserted that the refusal to pay a special assessment imposed by the Association did not constitute a “housing related dispute” and therefore alternative dispute resolution was not required.

Unfortunately, the Appellate Division did not agree with the position of the Association. Citing the strong public policy in the State of New Jersey favoring arbitration as a mechanism for resolving disputes, the Appellate Division concluded that a right to alternate dispute resolution will be found where there is authority to do so. Following its decision in *Findererne Heights Condominium Association, Inc. vs. Rabinowitz*, 390 N.J. Super.154 (App. Div.2007), the court held that qualifying disputes must be sent to arbitration if, after suit is filed, either party chooses to invoke the alternative dispute remedy that must be made available under the Act. As there is no definition of “housing-related dispute” the court chose to apply a broad definition and refused to carve out an exception for disputes over special assessments. It went on to state that “the term ‘housing-related disputes’ signifies that only disputes that arise from the parties condominium relationship are subject to the arbitration provisions of N.J.S.A. 46:8B-14(k).” The practical affect of this is that any dispute, regardless of its nature, that arises between the Association and a resident could be held to be a “housing related dispute” and, as such, will be subject to arbitration upon the demand of either party to that dispute. It is my opinion that the “housing related dispute” language in N.J.S.A. 46:8B-14(k) and the “disputes between individual owners and the association” language found in PREDFDA is sufficiently similar and has the similar goal of supporting alternate dispute resolution, that the courts will come to the same conclusion as the *Bell Tower* court and find that almost any dispute between an owner and a homeowner association is subject to alternate dispute resolution.

While this decision casts a broad net over what constitutes a dispute that is subject to an alternative dispute resolution in the condominium context, it does not prevent the Association from filing suit against a unit owner. It merely requires that if, in response to that suit, the unit owner demands an alternative dispute resolution, and the court will order arbitration and dismiss the law suit.

For more information about this decision and its potential impact on the state, contact Kenneth D. Roth of Becker Meisel LLC at 856-779-8700.

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