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Recent Pennsylvania Commonwealth Court Decisions

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Two recent Pennsylvania Commonwealth Court cases shed some new light on condominium association bylaws and pre-Uniform Planned Community Act (UPCA) associations. In the first case, River Park House Owners Association v. Crumley, No. 1105 C.D. 2011 (June 4, 2012), the Commonwealth Court drove home the point that condominium association executive boards need to pay attention to their own bylaws before instituting new common expenses.

In this particular case, the executive board of River Park House, a condominium development in Philadelphia, entered into a new contract for cable television which required all of the residents to purchase cable in order for the entire building to get a deep discount. The previous cable television contract did not require all residents to

purchase cable. The condo association was billed one monthly fee for all residents, and the board then added the cable charge to each unit owner's monthly common expense fees. Unit owner Crumley refused to pay the cable television portion of his monthly fees, so the association filed suit against Crumley to collect unpaid assessments, late fees and attorneys' fees. Both parties ultimately appealed the trial court's order granting judgment in favor of Crumley but permitting the ratification of the contract by a majority of unit owners, which if passed would bind Crumley for all past, present and future cable fees. On appeal, the Commonwealth Court agreed with the trial court's holding that the narrow reading of common expense fees as outlined in the association's bylaws did not permit cable television to be levied as a common expense. In essence, the executive board exceeded its authority under the association bylaws. The Commonwealth Court also agreed with the trial court's position that the association bylaws could be amended to permit bulk cable television services as a common expense, since the Uniform Condominium Act, 68 Pa.C.S. § 3101 et seq. (UCA), does not preclude cable television services from the definition of "common expenses" under the UCA. Lastly, the court reversed the trial court's determination that Crumley could be retroactively bound to pay for the cable television fee if the association bylaws are amended to permit such fee as a common expense. What does this ultimately mean for condo and HOA boards? You better study and follow your bylaws. And if your bylaws need to be amended? Follow the appropriate amendment procedures as outlined in both the UPC or UCA and your association's bylaws.

In the second case, Rybarchyk v. Pocono Summit Lake Property Owners Association Inc., No. 2370 C.D. 2011 (July 24, 2012), the association sought review of the trial court's decision granting declaratory judgment in favor of Rybarchyk and a group of property owners which prohibited the association from assessing and collecting mandatory dues, fees, fines or assessments. In this case, Pocono Summit Lakes Subdivision was created by a developer under three separate subdivision plans in 1955, 1956 and 1957. All deeds for lots conveyed by the developer contained uniform covenants that in part granted lot owners the right to utilize a lake in the development known as Pocono

Summit Lake No. 2. The covenants were silent with respect to any obligation on lot owners to pay for the upkeep, maintenance, repair and improvement of the lake property. The association was formed in 1959 as a Pennsylvania non-profit corporation that sought voluntary membership from the subdivision's lot owners. In 1960 the township accepted dedication of the private roads in the subdivision. In 1962 the developer conveyed three parcels which lead to or abutted the lake to the association, along with several residential lots. The association ultimately received title to the lake in 1979. In 1988 the association commenced nine magisterial cases against property owners to collect unpaid assessments. After several decisions in favor of the property owners the association discontinued the collection actions. In 2009 the association notified all property owners that it was instituting mandatory assessments. At all times relevant up to that point the association was a voluntary organization that did not impose mandatory fees on the home and lot owners. Rybarchyk and his group of property owners filed suit in 2009 seeking a declaratory judgment that would prohibit the association from assessing and collecting mandatory dues, fees, fines or assessments. The Commonwealth Court sided with the trial court in finding that the subdivision did not meet the definition of a "planned community" under section 5103 of the Uniform Planned Community Act (UPCA), which defines a planned community as "[r]eal estate with respect to which a person, by virtue of ownership of an interest in any portion of the real estate, is or may become obligated by covenant, easement or agreement imposed on the owner's interest to pay any amount for real property taxes, insurance, maintenance, repair, improvement, management, administration or regulation of any part of the real estate other than the portion or interest owned solely by the person."

68 Pa.C.S. § 5103. Since the deeds were silent regarding any obligation on the property owners to pay any costs or fees associated with the lake, and since the roads were public roads maintained by the township, the subdivision did not meet this definition of a "planned community." Moreover, since the association was at all times relevant a "private club with voluntary membership" which denied access to the lake to non-

members, the Commonwealth Court agreed with the trial court's holding that the association did not meet the definition of an "association" under section 5301 of the UPCA, since it was never intended to consist of all property owners in the subdivision, and in fact did not include all property owners. As such, the association would have no mandatory assessment powers under the UPCA. The Commonwealth Court also rejected the association's argument that as easement holders to the lake under common law, all property owners were required to pay for the maintenance and upkeep of the lake. According to the court, the facts of the case clearly indicated that the association acted as a private club, denied access to the lake to non-members, and therefore could not assess those non-members fees and cost for the lake's maintenance, upkeep, repair and improvement. As easement holders to the lake, the property owners had the right, but not the obligation, to exercise that easement. This ruling may pose challenges to many older pre-UPCA communities that do in fact have deed covenants that require payment of fees for the upkeep of private roads and facilities. If the developer did not create an association to manage the common areas, who collects the fees and provides the maintenance services? What if the developer refuses to collect the fees and/or provide the services, but retains legal title to the common areas? And what if a group of homeowners then bands together and collects voluntary contributions for the upkeep of the common areas, are they an "association" under the UPCA with the authority to collect mandatory assessments? This ruling could very well suggest that all "voluntary" homeowners associations are not truly "associations" under the law but merely private clubs without any mandatory assessment power. Only time will tell.

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