



KLF Legal Briefs

SPECIAL POINTS OF INTEREST:

- Voluntary homeowners associations run the risk of being considered "private clubs".
- Homeowners Associations are defined under the UPCA.
- Brian Koeberle negotiates numerous athlete endorsement agreements.

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Homeowners Association or Private Club?

The recent PA Commonwealth Court case of *Rybarchyk v. Pocono Summit Lake Property Owners Association Inc., No. 2370 C.D. 2011 (July 24, 2012)* addressed that very same question. 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 lot owners. In 1960 the township accepted dedication of the private roads in the development. In 1962 the developer conveyed three parcels which lead to or abut 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. A 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 development 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 development, 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 costs 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



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The Koeberle Law firm is a boutique firm catering to the legal needs of both small businesses and individuals. We concentrate our practice in the following areas:

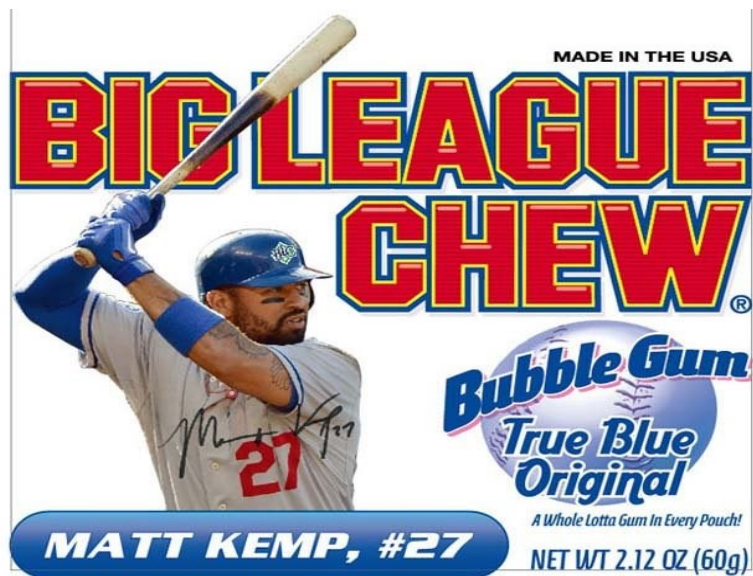
- Small Business Representation
- Estate Planning/Wills & Trusts
- Real Estate Law
- Sports & Entertainment Law

For further information, please contact Brian Koeberle at 412-788-9554 or email me at brian@koeberlelaw.com.

Recent Athlete Endorsement Agreements!

Attorney Brian Koeberle has been busy negotiating a number of endorsement agreements this Spring Training with prominent Major League Baseball players, most notably:

- Matt Kemp, Dodgers
- Cole Hamels, Phillies
- Neil Walker, Pirates
- Miguel Cabrera, Tigers



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