RECENT DEVELOPMENTS IN CONNECTICUT SUPERIOR COURT CASE LAW REGARDING CONDOMINIUM ASSOCIATIONS

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Two recent decisions handed down by Connecticut Superior Court judges have raised issues which are likely to be of interest to Connecticut Condominium Associations, and those attorneys, property managers, board members and unit owners who devote their time to the operation of condominiums within the state.

The first such case, *New Section-Glen Oaks Condominium Association* v. *Timber Ridge Condominium Association*, Superior Court, judicial district of Hartford, Docket No. HHD CV 17-6075369-S (March 11, 2019, *Shapiro, J.T.R.*), concerns the applicability of Robert's Rules of Order to meetings of "small boards" under Connecticut General Statutes § 47-250. Among other rulings, the Court discussed the procedure by which a "small board", i.e., a board which meets with less than a dozen members present, can operate without some of the formalities required in larger meetings.

Specifically, the trial court cited General Statutes § 47-250 (c), which provides in part that "Meetings of the association shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised unless (1) the declaration, bylaws or other law otherwise provides, or (2) two-thirds of the votes allocated to owners present at the meeting are cast to suspend those rules."

It then confirmed that the most current edition of Robert's Rules is the Eleventh Edition, which provides, among others, two particular rules for the operation of "small boards". On page 487-88, Robert's Rules states, "In a board meeting where there are not more than about a dozen members present, some of the formality that is necessary in a large assembly would hinder business. The rules governing such meetings are different from the rules that hold in other assemblies, in the following respects: . . . Motions need not be seconded."

Also on page 488, Robert's Rules states, "When a proposal is perfectly clear to all present, a vote can be taken without a motion's having been introduced. Unless agreed by unanimous consent, however, all proposed actions must be approved by vote under the same rules as in larger meetings, except that a vote can be taken by a show of hands, which is often a better method in small meetings."

Although the Plaintiff in this case argued that the second passage prohibited the suspension of certain formalities, as provided by the first passage without unanimous consent, the trial court, utilizing long-standing rules of statutory interpretation, found that these provisions were not inconsistent, and could be read together in order to give effect to both. It stated: "The second above-quoted reference on page 488 of Robert's Rules, concerning taking a vote without a motion's having been introduced, is clearly inapplicable where a motion is presented. The provision concerning unanimous consent would apply only where a proposed action is informally presented." Therefore, in a meeting of a "small board", a vote may be taken without a motion provided there is unanimous consent of the members entitled to vote. Where unanimous

consent is lacking, a motion to put the issue in question to a vote is still required, but need not be seconded.

In the *Glen Oaks* case, the ruling was particularly important because a single member held a majority of the voting interest in the Mast Association, and therefore did not require that his motion be seconded before he could cast his vote and, in doing so, "railroad" the other board members. The *Glen Oaks* case has a more general value, however, to Boards where that particular majority vote problem does not exist: specifically, the value of familiarizing yourself with Robert's Rules, because the procedures contained therein can be as important as those enshrined in the Common Interest Ownership Act and an Association's Declaration, By-laws and Rules. Further, the applicability of Robert's Rules to streamline the procedures for "small boards", which likely comprise a majority of boards operating in Connecticut, will certainly save your association time and effort in the future.

The second case, *West Farms Condominium Association No. 1, Inc.* v. *Amaio*, Superior Court, judicial district of New Britain, Docket No. HHB CV 18-6041842 (March 27, 2019, *Aurigemma, J.*), concerns an Association's potential exposure to attorney's fees upon the voluntary withdrawal of an action to foreclose on a Unit for failure to pay common charges.

In *West Farms*, the Association voluntarily withdrew their action, brought pursuant to Connecticut General Statutes § 47-258, after attending a pre-trial with counsel in chambers. At the time, Defendant Unit Owner's attorney did not raise the issue of attorney's fees or object to the withdrawal, but subsequently filed a claim for attorney's fees pursuant to General Statutes § 42-150bb. That section states in relevant part:

> "Whenever any contract or lease entered into on or after October 1, 1979, to which a *consumer* is a party provides for the attorneys fee of the *commercial party* to be paid by the consumer, an attorneys fee shall be awarded as a matter of law to the consumer who *successfully prosecutes or defends an action or a counterclaim based upon the contract or lease* . . . For the purposes of this section, 'commercial party' means the seller, creditor, lessor or assignee of any of them, and 'consumer' means the buyer, debtor, lessee or personal representative of any of them. *The provisions of this section shall apply only to contracts or leases in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes.*" (Emphasis added.)

The trial court noted first that this argument had been raised recently in the context of a mortgage foreclosure in *Connecticut Housing Finance Authority* v. *Alfaro*, 328 Conn. 134, 176 A.3d 1146 (2018), in which the Supreme Court rejected the argument, finding that a Plaintiff's voluntary withdrawal of the action did not constitute "successful defense" of the action within the meaning of § 42-150bb.

The trial court applied the *Alfaro* Court's reasoning in rejecting the Defendant's motion for attorneys fees, and also added that § 42-150bb was inapplicable to condominium foreclosures

because "[t]he plaintiff and defendant do not come within the meaning of consumer and commercial entity . . .."

There are two important caveats to consider when seeking to apply the trial court's ruling to subsequent condominium lien foreclosure actions. First, the trial court neglected to mention whether a provision existed in the plaintiff Association's Declaration regarding awards of attorneys fees to successful litigants. Oftentimes, a Declaration includes a provision that the *Association* will be awarded attorneys fees, and in the context of a foreclosure, such an award is provided by statute, but some Association's governing documents include language that merely states that a "successful party" shall be awarded fees. Because this language could equally apply to an Association or Unit Owner, it bears consideration in a similar situation to that presented in *West Farms*.

Second, it is not clear the extent to which the *West Farms* decision can be read in conjunction with prior trial court decisions finding that a Condominium Association can be liable for a claim under the Connecticut Unfair Trade Practices Act ("CUTPA"), General Statutes § 42-110 *et seq*. In *O'Sullivan* v. *Glen,* Superior Court, judicial district of Danbury, Docket No. DBD CV 14-6012450-S (May 1, 2014, *Doherty, J.*), the Court, hybridizing prior cases in which the relationship between a condominium association and its Unit Owners was likened to that between a landlord and tenant, and cases in which landlords have been held liable for CUTPA claims, found that a CUTPA claim could stand when raised by a unit owner against a condominium association. Because CUTPA is a consumer protection statute that arises from transactions regarding the sale of goods or services for personal or household use, the applicability of CUTPA to a condominium association may be in direct conflict with the *West Farm* court's decision that a unit owner is not a *consumer* and an association is not a *commercial party* for the purposes of § 42-150bb.

The *West Farms'* decision should generally be seen as a positive outcome for condominium associations, who are rightfully concerned with the possibility of attorneys fees being awarded against them. However, all Connecticut associations should be cautions with this issue, which appears ripe for appellate interpretation.

If you have any questions with regards to the cases cited herein, or other issues of condominium law in Connecticut, please contact an attorney at Collins Hannafin, P.C., 148 Deer Hill Avenue, Danbury, CT 06810, (203) 744-2150.