The Pros & Cons Of Association Lawsuits

Recent Cases and Resolutions

While in certain situations litigation is a necessary tool to assist in the governance of a community, it is a tool that should be used with the understanding that escalating conflicts into litigation is almost always detrimental for both sides in association disputes, including those who eventually prevail in the matter. This month at the Community Association Network Group, I spoke one-on-one with local attorneys to discuss the pros and cons of an association lawsuit, recent cases, and resolutions.

Litigation is a common way to resolve disputes in an association, given the complex nature of managing shared common spaces and amenities, enforcing rules and restrictions, setting annual budgets, collecting fees, and overseeing vendor contracts. But it's a good idea to consider the parameters of taking legal action in Florida. Litigation in community associations is most frequently filed by association members, and although each lawsuit is unique, they can often be categorized as one of the three most common types of HOA cases we're going to talk about today.

"YOU NEED TO FIX THAT!" LAWSUIT

This is the most common type of case filed against a community association. An owner will file a lawsuit seeking to have the association fix, repair, or replace something broken or damaged that they believe the association is responsible for fixing, but the association disputes the claim of responsibility. These claims often deal with leaking roofs, leaking pipes, sewage backups, drainage issues, and other maintenance issues.

Condominium Associations are governed by FL St. 718.113 Maintenance; (1) Maintenance of the common elements is the responsibility of the association. If damage was caused by the association or there is a grey area of who is liable, then you should first read the association documents and seek clarification from your board or management company to determine who is responsible. If the damage was caused by the unit owner or by another unit owner, then the association is generally not under an obligation to repair it. In fact, the association shouldn't repair damages they are not obligated to because they have a fiduciary duty to every resident to spend their money wisely. Anything that is damaged within the boundary of a unit, as defined by the declaration, is the owner's responsibility. If you look at the declaration of condominium and the damage is within the unit, then the unit owner is responsible for the repair or replacement of those items. The exception is if the damage comes from another unit or from something that the association was responsible to maintain in the common areas. Typically speaking, the unit owner is responsible for damages within their unit.

Case In Point: The case, Parkland Condo. Ass'n, Inc. v. Henderson, was decided by Florida's Second District Court of Appeal on November 16, 2022, and involved a lawsuit by the plaintiff against her condominium association after a water leak caused damaged to her property. Ultimately, more than a month after mediation, on February 2, 2022, the

plaintiff's attorney sent the association's attorney a settlement agreement that included all of the essential terms of settlement. The association's attorney accepted the settlement agreement by email on February 7, 2022, in which he stated that "I have received word from my client that they agree to the documents as drafted." However, the association later changed its position and its counsel refused to sign the settlement agreement. Therefore, under rule 1.730(b), even though there was an email stating both parties agreed to the settlement, without signatures, the agreement was not enforceable.

These cases involve owners filing a lawsuit against the association to pay for property or personal damages or personal injuries allegedly caused by the community association or cases the association has not addressed or ignored. These claims are often filed in tandem with "You Need To Fix That!" lawsuits.

However unimportant, irrelevant, or ridiculous a homeowner complaint may seem, condominium board members are obligated to respond to every written complaint. The board should try to address homeowner concerns amicably in order to avoid legal or monetary obligations. Complaints about animals, noise, allergies, odors, or anything that interferes with a homeowner's right to use or enjoy their property must be addressed in a timely manner. Florida Law defines a nuisance as an activity that is an annoyance to a person or the community, injures the health of the community, or becomes manifestly injurious to the morals or manners of the people.

Claims for nuisance brought by and against members of the Association are subject to common law, the provisions of the HOA (or Condominium) Acts and the specific nuisance provisions contained in the association's governing documents. There are a few things to consider when protecting your association from nuisance claims:

- Is there a specific definition for "nuisance" provided in the Declaration? Is the definition broad or are specific activities defined as a "nuisance" by the express language of the provision?
- Is there a mechanism by which the Board (or board designated committee) can make a determination as to whether an activity constitutes a "nuisance" for purposes of the Declaration?
- Is the "prevailing party" entitled to attorney's fees and costs, injunction, and monetary damages?

The association's board of directors should carefully review the current nuisance provisions contained in the association's governing documents to determine if an amendment to the language is appropriate to more specifically address certain behaviors or activities which have become a prevalent problem throughout the community. Ideally, the definition for nuisance should be broad enough to include a wide range of potentially troublesome activities but specific enough to address certain actions which may not be a "common law" nuisance but may still threaten the peace and safety of other members in the community.

THE “YOU NEED TO PAY FOR THAT!” LAWSUIT

Other Association cases that would fall under “You Need To Pay For That” are Premises liability lawsuits. Premises liability covers a number of different types of accidents and injuries. Basically, a premises liability claim is typically brought when someone dies or suffers injuries because of an unreasonably dangerous condition or hazard on the premises of a property.

Some of the more common types of injuries that occur on a property include (but are not limited to) the following:

- Slip and fall on a slippery substance or a transitory foreign substance
- Slip and fall on stairs at an apartment complex or business
- Trip and fall over uneven pavement or sidewalk maintained by a homeowner’s association (HOA)
- Negligent security or faulty security cameras at a property with prior criminal attacks
- Elevator accidents at multifamily complexes in Florida
- Exposure to mold, lead, or other chemicals in a building
- Animal attacks and dog attacks on a premise
- Accidents at swimming pools located at a multifamily location
- Playground accidents at a multifamily location

The most common type of premises liability accident listed above is a slip and fall accident, followed by trip and fall accidents. These accidents typically occur at properties with a lot of foot traffic.

The worst-case scenario would be a premises liability lawsuit that caused serious injury or death. Case in point is the most recent incident at the Spanish Lakes Fairways community in Fort Pierce last February when a grandmother was horrifically killed by an alligator lurking in a pond near her home. Gloria Serge, 85, was dragged to her death around the pond behind her Spanish Lakes Fairways home while walking her small dog. Surveillance video captured the entire tragedy of Serge being dragged underwater by the 10-foot, 700-pound beast and killed.

Her family filed a lawsuit against the Wynne Building Corp., the developer and manager of the retirement community, whom they believe are responsible for her death, saying her death was entirely preventable.

For example, the neighborhood affectionately named this particular alligator Henry, and the staff at the community, regularly fed the predator. There were no signs or warnings posted about the dangers of alligators in the lake. And finally, residents at this community were forced to walk their dogs behind in the backyard, by the retention pond, as Spanish Lakes has a rule that residents can’t walk their dogs in the streets of the community. In fact, Gloria was given a violation and eviction warning for walking her

small dog in the front yard of her house at one time. Ironically, there were multiple signs posted to inform community members they could not walk their dogs on the street.

Invitees

In Florida, an invitee is a person that is coming onto the landowner's property for the landowner's benefit. A landowner has a duty to fix known hazardous conditions or warn invitees about hazardous conditions that the landowner knows about or should know about through the exercise of reasonable care.

Licensees

A person that enters the landowner's property for the licensee's benefit. A landowner owes a duty to an invited licensee that is very similar to the duty owed to invitees above. However, a landowner owes a lesser duty to uninvited licensees. Basically, the landowner owes the uninvited licensee a duty to refrain from willfully or recklessly injuring the uninvited licensee.

Trespassers

A person that is wrongfully on the landowner's property without the landowner's permission. Under Florida law, landowners don't really owe any duty to a trespasser, other than to refrain from intentionally, willfully, or recklessly injuring the trespasser.

Child Trespassers (Attractive Nuisance Doctrine)

The exception to the trespassers rule is when he or she is a child, and the landowner knew children were likely to trespass on the landowner's property. In this circumstance, the landowner owes the child or children a duty to warn of known or existing dangers and to prevent children from being exposed to hazardous conditions. This is sometimes referred to as the "Attractive Nuisance Doctrine."

We asked our legal panelists about situations involving an injury or death on association property, whether the injured party is a resident or non-resident, what is the duty of the landowner to provide safety?

The duty a property owner owes to a person on the premises depends upon that person's classification under Florida law. The relevant classifications are:

What should an association do if someone brings a Premises Liability Claim?

A premises liability claim typically involves proving the four elements of negligence: Duty, Breach, Causation, and Damages. Basically, an injured person has the burden of proving (1) that the landowner had a duty to do something or not do something; that (2) the landowner breached that duty by not doing (or by doing) something; that (3) the

breach of duty caused injury to the victim; and (4) that the victim suffered some type of damage, like medical bills, pain and suffering, and lost wages.

An example of a premises liability claim may be an issue like a lip of concrete on the sidewalk in front of the Clubhouse that some old tree roots have forced to rise about 2 inches higher than the adjoining pieces of the sidewalk, causing a trip hazard. Regular inspections have made note of the issue and a few residents have complained about it to management. Eventually, someone trips over the risen edge of concrete, and the victim suffered a broken knee that required surgery. In addition to medical bills and pain and suffering, the victim was forced to miss months of work. Therefore, the victim has damages that if not resolved amicably, may force the association into dispute resolution.

A Condominium association would follow guidelines under FL St. 718.1255 Alternative dispute resolution; mediation; nonbinding arbitration; applicability. An HOA would follow guidelines under 720.311- Dispute resolution.

THE "YOU CAN'T DO THAT!" LAWSUIT

This type of litigation ensues when an owner files a lawsuit challenging an association's act or omission. These claims of litigation often involve board actions, like a breach of fiduciary duty, which can include requests to invalidate budgets or special assessments, requests to provide transparent financials, or requests to force the board to follow a specific procedure.

A breach in fiduciary duty would trigger a lawsuit against a board member for improper board behavior. Fl St 718.111 governs condominium associations and their fiduciary relationship to unit owners. Under Florida law, a claimant must provide that a fiduciary relationship exists and that there was a breach of that fiduciary duty which caused damages. Further, in order to be subject to liability, the director must have not only breached his or her duties as a director, but that action needs to rise to the level of criminal activity, fraud, self-dealing, unjust enrichment, or other improper personal benefit.

Also known as the "business judgment rule," a breach would involve actions taken contrary his or her fiduciary duty to the shareholders (or homeowners) of the association. To determine if a director's actions fall under the business judgment rule, Florida Courts look at (1) whether the association has the contractual or statutory authority to perform the relevant act and (2) the decision is reasonable. The business judgment rule will protect association board of directors, as long those directors act in a reasonable manner.

Breach of fiduciary duty can include negligence, gross negligence, or negligent misrepresentation. Examples of gross negligence would be: board members exceeding their power by acts of discrimination, severe deferred maintenance of common elements, and theft, embezzlement, or the misappropriation of association funds.

If an owner or another party tries to file suit against an individual board member when there is an issue of negligence, Florida law states that only the association as a whole can potentially be held liable because it is the association that has an obligation to keep the premises in good working repair.

Pros & Cons of Association Lawsuits

What can you do if your association is facing a dispute of any kind?

Bring the lawsuit to your association attorney immediately!

All litigation, including HOA litigation, is subject to strict filing deadlines required by the court. Typically, an answer to a lawsuit must be filed within thirty (30) days of service. As a result, it is extremely important to get any lawsuit to your attorney as soon as it is received.

Submit the lawsuit to insurance

Notify your insurance carrier immediately upon service of the lawsuit. Some types of HOA litigation are covered by one or more types of insurance the association carries. The sooner the insurance receives the lawsuit, the sooner insurance can make a coverage decision. Not providing timely notice can also prejudice the association and its defense.

Start gathering information

The 30-day period between receiving a lawsuit and filing the answer is very important. The association must evaluate its defenses and potential counterclaims. As a result, the association should immediately start gathering information relevant to the litigation. Likewise, when an association is planning to file suit, it should gather all information and documents relevant to the dispute. This usually will include the governing documents, correspondence and communication between the parties, transaction history of the litigant, and other relevant documents.

By taking these necessary steps, you can better protect the interests of your association and work towards a favorable resolution.