

Time's Up for Condo Owners Attacking Developer's Amendment

Michael L. Hyman, Daily Business Review



An opinion filed June 24 by the First District Court of Appeal sends an important message to new communities with a prolonged build-out of multiple buildings, each with their own condominium association that is overseen by a master association.

The appellate court overturned the lower court's decision and ruled that the five-year statute of limitations had expired for the condominium association to challenge an amendment by the developer, which still maintained control of the master association as construction on the last of the six towers in the community remained unfinished.

The First DCA's decision in the case of *Silver Shells v. St. Maarten at Silver Shells Condominium Association* stems from a lawsuit by the Destin condominium association for one of the towers in a multi-building property against the developer.

The suit sought to require the developer to turn over control of the master association to the unit owners and convey a "beach property" that was initially included in the common properties which it was required to convey to the master association at the time of turnover.

The appellate court found that the association's claim that the developer improperly amended restrictive covenants to effectively remove the beach property in question from the common properties is barred by the statute of limitations.

The opinion held that the five-year limitations period began to run when the association for the building was turned over to the unit owners, and the association's action had not been filed within five years of that date.

Additionally, while the condominium's covenants required the developer to turn over control of the master association to the unit owners 90 days after its conveyance of 90 percent of all of the units owned by the developer within the property, the appellate panel also found that the trial court erred in requiring the developer to turn over control of the master association after 90

percent of the units in the five completed towers had been conveyed but the sixth tower had not yet been completed.

It concluded that the turnover requirement is not triggered until 90 percent of the units in all of the towers that are to be located within the property have been conveyed.

Power Of The Pen

The takeaway from this ruling for this condominium association as well as other new condo associations in similar master-association communities is that the clock starts ticking on their limitations period to challenge any of the developer's actions on the date in which their building's association is turned over by the developer to the unit owners.

The developer will continue to have the "power of the pen" to implement any amendments that it sees fit to the covenants for the master association while it maintains control during the build out of the community, so it is incumbent on the associations for the individual towers that have already been turned over to the unit owners to maintain a careful eye on all of the developer's amendments and, when necessary, challenge them before their limitation periods expire.

In this case, the association's challenge to the developer's amendment that enabled it to retain ownership of the beach property, which apparently included a lucrative ongoing revenue stream for the rental of beach chairs and umbrellas, may have prevailed had it been filed before the five-year limitations period had expired.

The association and others in similar circumstances as well as their legal counsel would be well advised to remain vigilant of all of their developer's actions and amendments while the developer maintains control of the master association and construction remains incomplete. Otherwise, their rights to pursue legal remedies may expire due to the absolute nature of the five-year statute of limitations.

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