ATTACH B

CCOC CASE SUMMARY

#21-08, Salzman v. The Whitehall (January 16, 2009) (Panel: Shontz, Dubin, Vergagni)

The new owner of a townhome condominium refused to pay a $300 "move-in fee" on the grounds that such a fee only applied to people moving into one of the units of the high-rise building that was part of the same association.He presented his complaint to the president of the condominium, and was informed two weeks thereafter that the board had considered and rejected his complaint and that therefore the board was revoking his privileges (permanent parking sticker, automated key fob, access to storage bin) until he paid.

The disputed move-in rule said that "a one-time move-in fee will be charged for any move-in whether by an owner or renter....All moving must be through the freight elevators and freight entrances.Movers must take care to avoid damage to elevators, walls, floors, etc....Moving vans are only permitted at the loading platform in the rear of the West Building, at the freight entrance at the rear of the North Building and at the parking lot behind the townhouses."The condominium applied this rule to all new residents since it was originally adopted.The rule was modified in 2004 to increase the fee.

The Hearing Panel held that the rule applied to residents moving into townhouses and that the owner must pay the $300 fee.However, they also found that the condominium violated Section 11-113 of the Maryland Condominium Act.That law states that a condominium association "may not impose a fine, suspend voting, or infringe upon any other rights of a unit owner or other occupant for violations of rules" until the association has followed specific procedures.In this case, the condominium immediately denied certain privileges to the new owner without following any of the mandatory procedures.Therefore, the Panel denied the condominium's request for attorney's fees.

The Panel ordered the owner to pay the $300 move-in fee within 30 days.The Panel ordered the condominium to restore all the owner's privileges immediately, to review its rule violation procedures and to ensure that they comply with the Condominium Act, and to provide a copy of its decision to all its members.

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CCOC CASE SUMMARY

Lee v. UniversityTowers Condominium, #52-08 (April 8, 2009) (Panel: Fleischer, Gelfound, Kali)

The board of directors of the University Towers Condominium (UTC) voted to adopt a special assessment of $1,933,000 to pay for lining the copper water pipes in its two high-rise buildings with epoxy in order to solve its chronic problems with pinhole leaks in the pipes.Lee, a unit owner, filed a complaint claiming that under UTC's own bylaws, any "additions, alterations or improvements in excess of $25,000" had to be approved by a majority vote of the members.

The facts at the hearing were not in dispute.For several years, UTC had suffered from pinhole leaks due to corrosion in its copper water-supply pipes.The cost of replacing the pipes was estimated at $6-9 million dollars, and the board opted for the cheaper alternative of coating the interior of the existing system with epoxy.This plan also called for the installation of new cut-off valves in each unit so that plumbing repairs inside each unit could be made without shutting off water to the entire area of the building.

The panel upheld the board's actions.The panel first noted that under Article III of the UTC bylaws, the board of directors had the power to adopt "repairs, additions, replacements and improvements or alterations" of the common elements.However, Article V stated that "additions, alterations or improvements" in excess of $25,000 required the majority vote of the membership.The panel found no Maryland appellate cases on this issue, but said that the common definitions of the words clearly distinguished "repairs" from "improvements": to "repair" was to "restore to a sound or healthy state" whereas to "improve" was to add something new "that enhances value." The purpose of the repairs here was not to add a new plumbing system where none had existed but "to keep up the domestic water supply and restore it to a sound state."Although the overall contract did call for some additions in the form of new valves and access panels, "these were minor, incidental changes made either to enable [the contractor] to do its work, or as required by Code.More than ninety-nine percent of the original plumbing system remains and the overall appearance and functionality of the system is substantially the same."Because the work was not an "improvement", Article V of the bylaws did not apply and the board did not need the approval of the membership for the work or the increased assessment.The panel dismissed the complaint.

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ATTACH B

CCOC CASE SUMMARY

#15-08, Cheryl Prentice v. Sierra Landing Condominium (February 6, 2009) (Panel: McCabe, Alkon, Kali)

The condominium unit owner complained that the condominium had failed to halt the repeated flooding of her below-grade unit and asked for damages and repairs.The condominium claimed that it had undertaken and completed major repairs at a cost of over $1 million and therefore had properly responded; it also claimed that its Bylaws contained a complete disclaimer of all damages caused by water.

The hearing panel found that the owner's complaints of flooding dated back to 1992, and that she experienced flooding from under the slab and from the ground-floor window wells at least through 2006.In 2007 the condominium performed extensive repairs.In spite of these repairs, on at least 3 occasions in 2008 the living room window well overflowed into the unit, damaging carpets and flooring and causing an infestation of mold.As of the date of the hearing, the mold persisted.The cost of replacing flooring and carpeting was $9577.The unit owner brought her problems to the attention of the board in 2007.In addition, the condo had been sued by the unit owner's neighbor in 2006 for the same problem and settled with that person.The window wells were common elements under the rules.The condominium could not explain why the living room window well still overflowed and therefore it has not corrected that problem.

The hearing panel found that the condominium had breached its fiduciary duty to maintain the common elements because it was on notice of the problems, had an opportunity to fix them, and failed to fix them properly."If this duty is breached and as a proximate cause of that breach a unit owner suffers property damage, the Condominium should be held responsible," said the panel.

The panel then held that the disclaimer of liability for water damage did not apply to water damage caused by the condominium's own negligence.It said the clause conflicted with the duties imposed by the Maryland Condominium Act and by the condominium's own governing documents to maintain the common areas.Furthermore, it conflicted with the condominium's documents that required the condominium to have insurance to cover its own liability, and with a rule that stated that if any unit was damaged by a leak from the common elements the condominium would fix the damages.

The panel ordered the condominium to pay the unit owner $9577 in damages under Section 10B-13(e) of the CountyCode, and within 30 days both determine the cause of the continued flooding and remove the mold infestation from the unit.

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