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Condominium Unit Owner Not Defamed by Association Board Member

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"The inmates are running the asylum." Many times that is how condominium associations are viewed and described by disgruntled unit owners. Most unit owners, who take time out of their busy lives to serve on the board of directors of a condominium association, do so to make sure that their building is managed smoothly and efficiently. However, which is the case in all walks of life, there are those who have agendas which go beyond the call of duty.

In *Pacitti v. Durr*, the U.S. District Court for the Western District of Pennsylvania confronted a situation where a unit owner believed that he was being unfairly treated and targeted by a board member of a condominium association.

Although the complaint against the board member was dismissed at the summary judgment stage, the underlying facts of *Pacitti* serve as a cautionary tale of how a board member could find himself on the wrong end of a lawsuit.

The animosity between the unit owner in *Pacitti* and the condominium association stemmed from his continual failure to pay the monthly condominium assessments due on account of his unit. The condominium association even went so far as to commence legal proceedings against the unit owner on several occasions. Each time, the litigation was dismissed when the delinquent amount was paid in full.

The condominium association, which provided unit owners with written updates about various items of interest, eventually alerted the other unit owners that the unit owner was delinquent in his monetary obligations. The written updates were authored by one of the members of the board of directors of the condominium association.

Soon thereafter, a number of disputes sprung up between the condominium association and the unit owner about renovations which the unit owner planned to perform on the unit, how the unit owner's contractor allegedly caused physical damage to the building during the ongoing unit renovations and

how the unit owner's guests were otherwise disruptive to other unit owners in the building.

The other unit owners were periodically informed of these disputes in writing by the condominium association, which was authored by the same board member.

The unit owner then went on the offensive against that board member by filing a complaint based upon defamation of character, among other things.

At the summary judgment stage, the federal district court dismissed the defamation claim against the board member primarily based upon the defenses of truth and

privilege.

"With respect to truth as a defense, a defendant can meet his burden of proving the truth of the communication as long as he proves the statement to be substantially true. Pennsylvania has determined proof of substantial truth must go to the gist or sting of the alleged defamatory matter.

"In addition to showing that a subject statement is true, a defendant may defend a defamation action by showing that he made a statement pursuant to a conditional privilege. 'An occasion is conditionally privileged when the circumstances are such as to lead any one of several persons having a common interest in a particular subject matter correctly or reasonably to believe that facts exist which another sharing such common interest is entitled to know.'

"In other words, 'if the publisher reasonably believes that the recipient shares a common interest in the subject matter and is entitled to know,' the publisher may have a conditional privilege." That privilege may be waived, however, if, among other things, "a publication of misinformation ... is actuated by malice or negligence."

The federal district court ultimately found that the written statements made by the board member were substantially true and thus were not actionable under Pennsylvania law.

Moreover, the federal district court believed that the defense of conditional privilege applied because the unit owners shared a common interest in making sure that the rules and regulations of the condominium association were followed by all owners because failure to do so potentially affects all of them. As such, the written statements made by the board member about the unit owner only advanced that purpose by informing the unit owners of any deviations from these rules and regulations.

The federal district court flatly rejected the unit owner's assertion that the privilege was waived by the board member's negligent or malicious conduct toward the unit owner. In doing so, the federal district court merely pointed out that, prior to disseminating the information to the other unit owners, the board member took reasonable steps to ensure the accuracy of the information and, while the tone of these written communications conveyed the condominium association's obvious frustration with the unit owner, the board member was merely enforcing the rules and regulations which applied to all of the unit owners in the building and thus the board member's conduct did not rise to the level necessary to waive the privilege.

LESSON LEARNED

Although the board member in *Pacitti* was not found liable, the federal district court's ruling should be read closely by individuals who serve as board members for condominium associations and for attorneys who represent condominium associations in general.

Emotions clearly run high when unit owners and their condominium associations squabble. If, for instance, the unit owner does not pay his assessments, the burden could fall on the other unit owners in the building. Unit owners who serve on the board of directors of the condominium association not only have to deal with the troublesome unit owner in a position of authority but through their very own self-survival. On the flip side, that unit owner may either feel embarrassed or victimized when one of his neighbors exerts that authority on him.

Either way, it is not surprising that some of these conflicts escalate and become rather personal. For that reason alone, unit owners representing condominium associations must not only learn to become emotionally detached from the situation but also to protect themselves from legal liability by doing their due diligence under the circumstances and by strictly following and enforcing the condominium rules and regulations.

In *Pacitti*, the federal district court dismissed the defamation action not only because the unit owner actually owed the money, etc., but also because the board member, on behalf of the condominium association, dotted all of his "i's" and crossed all of its "t's." The federal district court's ruling in *Pacitti*, therefore, should not be interpreted as an open invitation by condominium associations and board members to victimize innocent unit owners but rather as a guide on how to deal with troublesome unit owners.

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