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RECENT RULING BY THE APPELLATE COURT REMINDS ASSOCIATIONS THAT PALM v. 2800 LAKE SHORE DRIVE IS HERE TO STAY

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Following *Palm v. 2800 Lake Shore Drive Condominium Association*, the Illinois Appellate Court recently ruled that a Board of Directors must strictly comply with the association's bylaws and that the authority vested to a Board of Directors is limited to that granted to it by the Illinois Condominium Property Act and/or the association's governing documents. *Alliance Property Management, Ltd. v. Forest Villa of Countryside Condominium Association*, 2015 IL App (1st) 150169.

Alliance Property Management entered into a management agreement with Forest Villa of Countryside Condominium Association. The term of the agreement was for three (3) years. The management agreement provided that Alliance would handle the day-to-day management of the building, prepare financial reports, organize association meetings, oversee Board elections and perform periodic inspections of the property. It also provided that Alliance would guide and assist the Board in their fiduciary duties and obligations and assist in the administration of the association's governing documents. After managing the Association for approximately two (2) years, but prior to the expiration of the original term of the management agreement, Alliance and Forest Villas extended their agreement for another three (3) year term. All other terms of the agreement remained the same.

Sometime thereafter, the Association advised Alliance that it had materially breached the parties' agreement. Alliance did not cure the cited breaches; hence the Association terminated the agreement and hired a new management company. Alliance sued the Association alleging the Association improperly breached the agreement. The case proceeded to a bench trial and the judge ruled in favor of the Association who argued that the parties' renewal agreement was void because the Association's declaration did not authorize the Board of Directors to enter into a management agreement in excess of two (2) years and the renewal agreement was for a term of three (3) years. The appellate court agreed that this provision within the Association's declaration rendered the contract with the management company for a period of three years, was void.

The Appellate Court considered the terms of the Condominium Property Act and that an association is subject to the terms of the Condominium Property Act and the Association's declaration. The Court held that the scope of a board's authority is determined by the terms of the Condominium Property Act, the declaration and the bylaws—all of which must be construed as a whole. Alliance argued that the Board has the authority to enter into a contract for a term of thirty-six (36) months because it was in the best interest of the association and that the Board can deviate from the bylaws. The Appellate Court rejected this argument. It held “. . . [whether a board acted in the best interests of the its association is a relevant consideration when the governing documents

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are ambiguous and a board makes a discretionary decision.” 2015 IL App (1st) 150169, ¶ 31. Yet, the Court held that a court cannot apply the business judgment rule (i.e. whether the Board acted in the best interest of the association) when “. . .there is an overt violation to the bylaws.” *Id.* Because the language in Forest Villa’s bylaws was clear, the Appellate Court held that the Board was ***obligated*** to strictly comply with the bylaws. The Court relied on other Illinois cases to reach this conclusion, including *Palm v. 2800 Lake Shore Drive Condominium Association*, 2014 IL App (1st) 111290. Following the court’s reasoning, even Board of Directors for non-condominium associations have a duty to strictly comply with the terms of their association’s governing documents and relevant Illinois statutes.

This recent ruling reminds us that prior to entering into and terminating a contract with a third party, the advice of legal counsel should be sought. It is important for the Board to confirm that not only are the terms of the contract in the best interest of the association but also that the association has the authority to enter into the agreement. Similarly, it is important for a contract to be properly terminated so as not to expose the association to liability.

Finally, the Court’s ruling is a reminder that judges in Illinois expect the board of directors for condominium associations to strictly comply with the plain language of the association’s governing documents and the Illinois Condominium Property Act. This was a breach of contract case that turned into an example of the affects of *Palm*. Judges are familiar with and following *Palm*, just as we in the industry must.