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Community Associations Can Enforce Their Own Parking Rules, Court Finds

Ruling also deems board members public figures; limits electioneering

By Mary P. Gallagher

The Appellate Division handed two victories and a defeat to community associations last Tuesday in a case testing the scope of their authority.

Associations can enforce their own parking restrictions, even if they have relinquished jurisdiction of streets to the local government, the court held in *Verna v. The Links at Valleybrook Neighborhood Association, Inc.*, A-5438-01T1.

The judges also ruled in favor of freer criticism of association board members and candidates, by treating them as public figures.

But the court limited associations' ability to try to influence board elections.

The case stemmed from a parking dispute. Joseph Verna, an electrician, parked his van in front of his home in the Links at Valleybrook, a neighborhood association in Gloucester Township, despite the association's ban on parking commercial vehicles.

Verna sued, contending that the association was attempting to enforce an invalid regulation. He later amended his complaint to add other causes of action.

Verna argued that when Valleybrook gave the town jurisdiction over its streets, it gave up power to enforce its own parking rules. He cited *State v. Panther Valley Property Owners Association*, 307 N.J. Super. 319 (1998), in which an association that ceded authority to enforce motor vehicle laws

to the state was held to have lost the power to fine speeders and reckless drivers.

A trial judge granted the association's motion for partial summary judgment declaring the parking regulations enforceable, and last week, the Appellate Division affirmed, finding that *Panther Valley* did not control because of the "significant distinction between an association's power to regulate traffic and its power to regulate parking."

The Condominium Act, N.J.S.A. 46:8B-15(f), allows associations to enforce their own rules but its explicit exception for "moving automobile violations" indicates that associations are not barred from "regulating the streets in some other manner," wrote Appellate Division Judge Clarkson Fisher Jr., joined by Donald Coburn and Stephen Skillman.

Also, parking regulations do not implicate the policy reasons against sharing authority over traffic, namely, "the need for uniform enforcement and the avoidance of the potential obstruction of lawful enforcement of the motor vehicle laws," wrote Fisher.

The parking rules were analogous to deed restrictions and enforceable under contract principles, the court added.

Association Politics

Other issues in the case grew out of Verna's run for a seat on Valleybrook's board of directors in November 1999,

during the parking dispute.

Shortly before the election, Valleybrook mailed out a "candidate audit" that said five candidates were in "good standing" and eligible to vote, while Verna was not, due to unresolved parking violations. Verna was not elected.

Camden County Judge Raymond Drozdowski found the audit permissible, based on a bylaw giving the board "power to do all things incidental and necessary" to accomplish its other enumerated powers. But the appeals court reversed, finding the audit was ultra vires absent specific authorization for it in Valleybrook's governing documents.

Actions "incidental or necessary" to conducting an election are "only those steps necessary to the casting and counting of votes, and not the providing of unsolicited information to all unit owners relating to the merits of the candidates," wrote Fisher. The court also found partisan intent behind the audit.

The business judgment rule did not protect Valleybrook because the audit was ultra vires, the panel also held.

The court affirmed the dismissal of Verna's defamation claim against Valleybrook, holding that Verna "should be deemed a limited purpose public figure since he was a candidate for a position essentially indistinguishable from a member of a town's governing body." That meant he had to prove actual malice by clear and convincing evidence.

The court upheld denial of Valleybrook's request for attorneys' fees because the bylaws authorized them only in conjunction with monetary or injunctive, but not declaratory, relief.

David Byrne of Lawrenceville's Stark & Stark, who represents Valleybrook, says "associations would be well served to further expand on certain powers in their bylaws," including those dealing with elections and fees, in

light of *Verna*.

Verna's lawyer, Moorestown solo Dennis McInerney, says he has not decided whether to seek an appeal.

These associations have a tremendous amount of power over how people live," says McInerney. "This case underscores the need for more oversight over homeowners associations."

J. David Ramsey, of Morristown's

Hersh, Ramsey & Berman, who represents associations, says the issues in *Verna* arise frequently and "associations should have the ability to control conduct that may be problematic in the community."

Lawyers on both sides agree that New Jersey's large number of community associations will grow even faster as the land available for development is

used up. Limits on building in the recently passed Highlands Protections Act will only accelerate the trend, they say.

According to estimates by the Community Associations Institute, 50 million people lived in 249,000 community associations across the United States at the end of 2003, with 6,000 to 8,000 new ones being added each year. ■