KEOUGH MOODY

NAPERVILLE
114 East Van Buren Avenue
Naperville, IL 60540
phone 630 369 2700
facsimile 630 369 9279

CHICAGO
161 North Clark Street, Suite 1600
Chicago, IL 60601
phone 312 899 9989
www.kmlegal.com

Writer's Direct Dial (630) 369-2700 x 209
Writer's Email grc@kmlegal.com

Correspondence response to be sent to Naperville office.

2018 Case Law and Legislative Update
Presented by Gabriella R. Comstock

LEGISLATIVE UPDATE

Changes to the Common Interest Community Association Act

765 ILCS 160/1-20(e): This Section is amended to state that if an association's governing documents require the approval of any mortgagee or lienholder of record when amending the association's governing documents, the approval is deemed given unless the mortgagee or lienholder delivers a negative response within 60 days after the association mailed the request. The request to the mortgagee or lienholder must be sent by certified mail.

765 ILCS 160/1-45(i): Associations with 100 units or more must use Generally Accepted Accounting Principals when fulfilling its accounting obligations.

Changes to the Illinois Condominium Property Act

765 ILCS 605/9(c)-(5): This is a **new** provision to the Act which provides that at the end of an association's fiscal year and after the association has approved any end-of-year fiscal audit, if the fiscal year ended with a surplus of funds over actual expenses, so long as there are no contrary provisions in the association's governing documents, the Board, in its discretion, shall dispose of the surplus in one or more of the following ways:

(i) contribute the surplus to the association's reserve fund;
(ii) return the surplus to the Unit Owners as a credit against the remaining monthly assessments for the current fiscal year;
(iii) return the surplus to the Unit Owners in the form of a direct payment to the unit owners; or
(iv) maintain the funds in the operating account, in which case the funds shall be applied as a credit when calculating the following year's annual budget.

This provision also provides that if the fiscal year ends in a deficit, then, to the extent that there are not any contrary provisions in the association's governing documents, the Board, in its discretion, may address the deficit by incorporating it into the following year's annual budget. This provision also allows, within 30 days after notice of the Board's decision, 20% of the Unit Owners to deliver a petition to the Board objecting to the action. Within 30 days of the date of the delivery of this petition, the Board shall call a meeting of the Unit Owners to allow the Owners to vote to

select a different option as to how to address the deficit. A majority of the total votes of the Unit Owners is needed to reject the Board's decision and if a majority is not obtained at the meeting, the Board's decision is ratified.

765 ILCS 605/15(a): This Section is amended to permit Unit Owner(s) who object to the sale of the Property within the Association the option of receiving the value of his/her unit less unpaid assessments **or** the outstanding balance of bonafide debts secured by the unit less unpaid assessments. An objecting Owner is also entitled to reasonable relocation costs. The amendment to this Section applies to all pending and commenced sales as of the date of amendment.

765 ILCS 605/18(a)(8)(iv): This Section is amended to extend the amount of time from 14 to 21 days that 20% of the Unit Owners must submit a petition to begin the process to challenge a Board's decision to adopt a budget or any separate assessment that results in the sum of all regular and separate assessments payable in the current fiscal year to exceed 115% of the sum of all regular and separate assessments payable during the preceding fiscal year.

765 ILCS 605/18:

1. Section 18 (a)(16) is amended to extend the amount of time from 20 to 30 days that 20% of the Unit Owners must submit a petition to begin the process to challenge a Board's action to enter into a contract with a Board member or a member of the Board Member's immediate family, when the person has 25% or more of an interest in corporation or partnership contracting with the association.

2. Section 18(b)(9)(c) is amended to extend the amount of time from 14 to 30 days that 20% of the Unit Owners must deliver a petition to begin the process to challenge a Board's decision to adopt a rule that prohibits proxy voting at an election meeting and only allows voting by ballot, as outlined in Section 18(b)(9)(B) or (B-5).

765 ILCS 605/18.4(a): This Section is amended to extend the amount of time from 14 to 21 days that 20% of the Unit Owners must deliver a petition to begin the process to challenge a Board's decision to make a replacement to the common elements that results in an improvement over the original quality, when the expenditure exceeds 5% of the annual budget and is not an improvement mandated by law or in response to an emergency as defined in Section 18.

765 ILCS 605/18.10: This is a **new** Section that requires a condominium association which consists of 100 or more units to use Generally Accepted Accounting Principles in fulfilling any accounting obligations under the Condominium Property Act.

765 ILCS 605/19:

1. Section 19(a)(7) requires the Board to maintain in its books and records the e-mail address and telephone number of each member.

2. Section 19(b) does not require an Owner to state a proper purpose when requesting to inspect contracts and other agreements pursuant to 19(a)(6) or the financial records pursuant to 19(a)(9). It also requires the Board to make available all records requested within **10 business days**, instead of 30.

3. "Commercial purpose" is defined as the use of any part of a record described in 19(a)(7) and (8) or information derived from such records in any form for sale, resale, solicitation or advertisement for sales or services. (This definition is relevant to further changes to Section 19(e).

4. Section 19(e) is amended to state that when an Owner requests to inspect documents as provided for in Section 19(a)(7) and (8), the Owner must state a purpose that relates to the association. It also provides that the Board may require the Owner to certify in writing the information within the records obtained by the member will not be used for any commercial purposes, as defined in Section 19(d-5). It also allows the Board to impose a fine on a person who makes a false certification. This Section also requires the Board to respond to a request within **10 business days** instead of 30. This Section deletes the language that the Owner has the burden of proving that the request states a proper purpose.

5. Section 19(f) is amended to state that the Board **may** charge the requesting member the cost to make records available for inspection and the actual cost to reproduce the records.

765 ILCS 605/27(a)(ii): This Section is amended to state that if an association's governing documents require the approval of any mortgagee or lienholder of record when amending the association's governing documents, the approval is deemed given unless the mortgagee or lienholder delivers a negative response within 60 days after the association mailed the request. The request to the mortgagee or lienholder must be sent by certified mail.

765 ILCS 605/31:

1. Section 31(a) now includes a definition for the phrase "combination of any units" as used in Section 31, to mean any 2 or more residential units to be used as a single unit which may involve exclusive use of a portion of the common elements which are adjacent to the combined unit, i.e. a portion of an adjacent common hallway.

2. Section 31(e) was added to provide that when units are combined if they are granted an exclusive right to use as a limited common element a portion of the common elements, which are not necessary or practical for use by any other Unit Owners, such a granting is not a diminution of the ownership interests of all other Unit Owners. Therefore, 100% Unit Owner approval is not needed.

3. Section 31(f) was added to provide that for an amendment pursuant to this Section to be effective all of the requirements of this Section must be met.

CASE LAW UPDATE

5510 Sheridan Road Condominium Association v. U.S. Bank, 2017 IL App (1st) 160279 (1st Dist. 2017)

Condominium Association filed a lawsuit under the Forcible Entry and Detainer Act against a bank who purchased a unit at a foreclosure sale. The Association sent a demand to the bank seeking both pre and post foreclosure amounts, and the bank failed to promptly pay all of the assessments due after the sale. The Court held that Section 9(g)(3) of the Illinois Condominium Property Act did not create a timing requirement for the payment of current assessments. Rather, it merely outlined when the purchaser became responsible for the payment of post-sale common expenses.

Andersonville South Condominium Association v. Federal National Mortgage Company, 2017 IL App (1st) 161875 (1st Dist. 2017)

In this case, plaintiff, Condominium Association brought a forcible entry and detainer action against defendant, Federal National Mortgage Company (Fannie Mae). Fannie Mae filed an emergency motion for continuance of trial date but failed to appear for presentment of motion. As a result, the Court ordered the original trial date would stand, and at the bench trial, the Court entered judgment for the Condominium Association. Upon appeal, the Court held that "Fannie Mae," which purchased condominium unit at the judicial foreclosure sale, was responsible for pre-foreclosure assessments, including delinquent late charges, by virtue of the fact that it failed to pay any post-sale assessments so as to confirm the extinguishment of the condominium association's lien on the unit.

Blackstone Condominium Association v. Speights-Carnegie, 2017 IL App (1st) 153516 (1st Dist. 2017)

Condominium Association brought an action against Unit Owner to recover for breach of contract by failing to pay assessments. The Appellate Court held that the Association was unable to recover attorneys fees under the Condominium Property Act in a breach of contract suit. Breach of contract is not a theory of recovery under the Condominium Property Act or the Forcible Entry and Detainer Act.

Board of Managers of Inverrary Condominium Association v. Karaganis, 2017 IL App (1st) 160271 (2nd Dist. 2017)

This is a case between plaintiff, Association, and defendant, Unit Owner in regards to the defendants failure to pay common expenses. Defendant filed a counterclaim relating to the maintenance of the common areas. The parties reached a settlement as to the counterclaim, and the issue turned to whether the plaintiff was entitled to attorney fees.

The Appellate Court held that Section 9-111(a) of the Forcible Entry and Detainer Act allows a condominium association to obtain judgment for possession of the premises, as well as money judgment. Moreover, Section 9-111(a) does not impose any particular limitations on an association's

mechanisms for enforcing its money judgment, and in regards to the reasonableness of attorney's fees, defendant raised a number of defenses, however, the Appellate Court found that the defendant's affirmative defenses were not relevant to the forcible entry and detainer action. Moreover, a condominium association's failure to repair or maintain the common elements is not germane to the proceedings and cannot be raised as a defense. Thus, rejecting defendants contentions, the Appellate Court affirmed the Trial Court's decision to award attorney fees as they are reasonable and just.

Chiurato v. Dayton Estates Dam & Water Company, 2017 IL App (3rd) 160102 (3rd Dist. 2017)

Homeowners brought an action against a not-for-profit corporation for the corporation's failure to rebuild the dam. The corporation was the developer of a residential association, the Declaration was amended to create a not-for-profit corporation known as the "Dayton Estates Dam & Water Company". The newly created corporation was responsible for the maintenance of a dam and lake that was situated between the subdivisions known as Dayton Estates and Dayton Estates West. When the dam failed, the homeowners alleged that the corporation had breached the contract when it failed to rebuild the dam, and that the corporation's board had breached its fiduciary duty when it failed to rebuild the dam. The Trial Court granted summary judgment in favor of the corporation and the homeowners appealed.

The Appellate Court held that there was no contractual obligation because under the subdivisions' governing documents, there was no contractual obligation for the corporation to replace the dam, the governing documents only state the corporation is responsible for "maintaining the dam," and thus, there is no breach of contract in the absence of a contractual duty. Moreover, the Court held that the corporation did not qualify as a "homeowners association" because the governing documents do not refer to the corporation as a "homeowners association" or a "common interest community," and homeowners do not own the real estate owned by the corporation.

Lastly, the corporation's board members did not breach their fiduciary duty. Homeowners alleged that the corporation's board "failed to take the necessary steps to repair the dam." However, as previously stated, there was no duty to repair, and the board took immediate action in regards to repairing and rebuilding the dam by hiring an engineer to do a study, contacting the Illinois Department of Natural Resources for specifications for newly constructed dams, and securing financing for engineering services. Thus, the fiduciary duty was not breached, and the Trial Court's decision was affirmed.

Country Club Estates Condominium Association v. Bayview Loan Servicing LLC, 2017 IL App (1st) 162459 (1st Dist. 2017)

The Court held that *1010 Lake Shore* required that purchasers submit *prompt* payment of post-sale common expenses in order to terminate the lien. Otherwise, there would be no incentive for purchasers to promptly pay common expenses following a foreclosure, which would adversely impact condominium associations and their members. The determination of what constitutes prompt payment would depend upon the facts and circumstances of each case. The Appellate Court further held that to the extent that *5510 Sheridan Road* seemed to imply that there was no timing requirement

for the payment of post-sale common expenses, it was inconsistent with the binding Illinois Supreme Court decision in *1010 Lake Shore.*

Gelinas v. Barry Quadrangle Condominium Association, 2017 IL App (1st) 160826 (1st Dist. 2017)

This case arises from a dispute between Unit Owner, plaintiff, and Condominium Association, defendant, as a result of a fire that originated in Unit Owner's unit and caused damage to the building including the common areas. The Association made a claim with the Association's insurance and the claim was accepted. As a result, the Association received $192,000.00 to repair and replace the fire-damaged property, and the $10,000.00 deductible was assessed to the Unit Owner. The final cost to repair and replace the fire-damaged property was $152,000.00, which resulted in a $40,000.00 surplus. The Unit Owner alleged that because of the surplus of funds, the Association was never permitted to assess a $10,000.00 deductible against him.

The Appellate Court affirmed the Trial Court's ruling and found for the Association. The Court reasoned that "the Association," through unambiguous language, evidenced its intent to place the burden of payment on the Unit Owner for any amount not covered, or paid for, by insurance, whether that amount be in the form of a deductible, an amount in excess of the policy limits, or an amount for damages resulting from an occurrence for which the insurer denied coverage." The court then cited to Black's Law Dictionary for the definition of deductible as "[u]nder an insurance policy, the portion of the loss to be borne by the insured before the insurer becomes liable for payment." Therefore because, by definition, an insurer would never cover or pay for the amount of a deductible, because the insurer does not have a duty to pay the insured until the insured pays the deductible, the Unit Owner was responsible to pay the amount of the deductible. Thus, by definition, the amount of the deductible is always borne by the insured, which in this case is the Association.

Groves of Palatine Condominium Association v. Walsh Construction Company, 2017 IL App (1st) 161036 (1st Dist. 2017)

Plaintiff, Condominium Association, brought an action against defendant, general contractor, for alleged construction defects in construction of condominium buildings. Contractor filed a third-party complaint against a limited liability company ("LLC") that was an alleged continuation of corporate subcontractor. While the LLC chose to operate out of the same facilities, that does not transform it into a mere continuation of the corporation. Thus, the Appellate Court found that the LLC was not the continuation of the corporation such that it would be liable for the corporation's actions and, consequently, the Trial Court properly dismissed plaintiff's third-party complaint against the LLC.

In Re Application of the County Treasurer and Ex Officio County Collector of Jersey County, 2017 IL App (4th) 160707 (4th Dist. 2017)

The issue on appeal was whether the trial court erred in dismissing the petitioners petition for the issuance of a tax deed. Assignee of tax purchase certificates filed petition for issuance of tax deed. The respondents whom each had an interest in the subject property, filed motions to dismiss the

petition. The respondents both filed motions to dismiss claiming a marital interest in the property at issue "by virtue of a divorce" that was filed, which was consolidated with a foreclosure action involving the property "and a *lis pendens*" filed against the property.

The Appellate Court affixed the lower courts ruling. The Court ruled that a lienor may not obtain a tax deed and thereby cut off the interest of other lienors or mortgagees. The Court stated that although the Petitioners interest in the property began after January 1 of the year the taxes on the property were sold, the petitioner was precluded from petitioning for a tax deed because of its prior interest in the property. The Appellate Court found that the principle set forth in previous case law applies to the facts in the case at hand and affirmed the Trial Court's ruling.

Jaworski v. Skassa, 2017 IL. App (2nd) 160466 (2nd Dist. 2017)

This case presented a dispute between Unit Owners as to who owned garage space within a condominium association. Ultimately, the Trial Court resolved the issue by stating "what controls here legally is the plat of survey, which is incorporated into the deed." The plaintiff, was advised of her right to appeal, but rather than appealing the Trial Court's ruling, the plaintiff filed a complaint to quiet title to the garage. Defendant moved to dismiss the case arguing *res judicata* barred plaintiff's action. The Trial Court granted defendants motion and the complaint was dismissed. Plaintiff appealed and the Appellate Court affirmed.

The Appellate Court found that, "quiet title action, brought by neighbor against garage owner, and filed after ownership of garage was granted to garage owner in a previous forcible entry and detainer action, was barred on the grounds of res judicata; although forcible entry and detainer action was a summary proceeding to adjudicate right to possession, it was a final judgment, and the question of garage's ownership was at issue in both the forcible entry and detainer action, and the quiet title action."

Lake Point Tower Condominium Association v. Waller, 2017 IL App (1st) 162072 (1st Dist. 2017)

This case arises out of a Condominium Association bringing a forcible entry and detainer action against Unit Owner. The Association's case was dismissed with prejudice by the Trial Court because they found the Board had failed to vote at an open meeting regarding whether to initiate legal action against defendant. In this case, the Association's attorney commenced the action upon the direction of the Association's management company. The Association appealed the Trial Court's ruling. Upon appeal, the Association contends that the method used to initiate action against the defendant was proper.

The Appellate Court found that the Trial Court had abused its discretion by dismissing with prejudice the Association's forcible entry and detainer action. The Association held an open meeting and voted to pursue action against defendant prior to the Trial Court's ruling. Because of this fact, the court stated that the vote "eliminated unit owner's basis for asserting the association had no authority to pursue collections litigation against her."

Madden v. Scott, 2017 IL App (1st) 162149 (1st Dist. 2017)

This case involves a dispute between a dominant estate condominium owner and a servient condominium owner regarding an express easement. Within the condominium association, Unit 50 and Unit 60 is adjoined by a vestibule area. Unit 60 is owned by the plaintiff. The front door to Unit 60 is located within the vestibule, thus to enter through the front door of Unit 60, one must enter through and cross through the vestibule.

Defendant, Owner of Unit 50, obtained a permit to build a wall in the vestibule, said wall would restrict access to the front of Unit 60's door through the vestibule. The Trial Court's ruling for the plaintiff was upheld by the Appellate Court, because the plaintiff had an implied easement. The use of the vestibule was continuous and uninterrupted, as well as adverse. Furthermore, the Court was permitted to find an easement, either implied or by prescription, over vestibule area, despite the vestibule area being within a condominium unit. Although area was located within the boundaries of a servient condominium unit, it was located outside of the unit's living space, and was still an easement over real property.

North Spaulding Condominium Association v. Cavanaugh, 2017 IL App (1st) 160870 (1st Dist. 2017)

Condominium Association brought Forcible Entry and Detainer Action against condominium Unit Owners for unpaid assessments. Unit Owners filed counterclaim against the Association and a third-party complaint against the property management company. Unit Owners argued that in order to prove a *prima facie* case for recovery of unpaid assessments and for possession under the Forcible Entry and Detainer Act, the Association was required to prove that a meeting was held to consider whether or not to institute collection proceedings against the defendant, that a vote was taken during an open portion of that meeting, and that the Association gave defendant proper notice of said meeting within 48 hours before meeting commenced. Furthermore, defendants argued that Section 18(a)(9) of the Illinois Condominium Property Act ("Condo Act") requires all meetings of the board of managers for a condominium association must be open to any Unit Owner with proper notice, and that all votes must be made at an open meeting. Lastly, defendants argued that in *Palm v. 2800 Lake Shore Drive Condo*, in order to pursue litigation a condominium association must show that it held a meeting, voted, and gave proper notice to Unit Owners.

Upon review, the Appellate Court stated that neither the Condo Act nor the Forcible Entry and Detainer Act require an Association to prove as an element of recovery that the litigation was authorized by a board vote at a properly noticed meeting open to all Unit Owners. In addition, defendants had issue with the attorneys fees awarded by the Trial Court. Specifically, that the fees awarded were improper and excessive. The judgment for possession was in the amount of $3,204.26, plus costs of $926.26, and attorney fees of $23,117.50. The defendants argued that the attorney fees sought by plaintiff were incurred defending the property management company, the third-party defendant. The Appellate Court stated that the fees were not excessive, however, they were improper. The Association did not establish that it was entitled to recover attorney fees and costs incurred on behalf of the third-party defendant. Moreover, the Court stated that there is no language within the Condo Act or the Forcible Entry and Detainer act that expressly permits a party from

recovering fees and costs incurred by a third-party defendant, and that neither Act contains a "prevailing party" attorney fees and costs provision. Thus, the Appellate Court affirmed the awarded attorney fees to plaintiff, but vacated the order granting attorney fees on behalf of the third-party defendant.

Siena at Old Orchard Condominium Association v. Siena at Old Orchard, L.L.C., 2017 IL App (1st) 151846 (1st Dist. 2017)

Plaintiff, Association, brought a claim against defendant, Developer and the board president for latent defects on the Common Elements. The Association's Declaration provided for mandatory arbitration and for the parties to provide notice in order to begin the arbitration process. This provision sets forth the requirements for what an arbitration notice must contain. Initially, the plaintiff's attorney sent a letter to defendant which in no way met the requirements set forth in the Declaration. Defendants argued that although the requirements were not specifically met, the plaintiff's letter was sufficient to provide actual notice, and thus, begin the arbitration process. The Appellate Court found for the plaintiff's because the requirements within the Declaration were not met.

Furthermore, The Appellate Court also found that while the plaintiff did not trigger the mandatory arbitration process, the plaintiff would still be required to submit its claims to arbitration, if not for the fact that the Association amended the Declaration prior and removed the arbitration section entirely. The Appellate Court found the Amendment to be invalid as it was inconsistent with the language in the Illinois Condominium Property Act "Act." The defendant Board president's amendment to the Declaration had inserted a term that is more onerous than the Act allows. Thus, the Appellate Court ruled for the plaintiff, and mandatory arbitration was not required.

Lastly, defendant, acting alone and within his position as Board president, had executed releases on behalf of the Association, which released and discharged defendant, developer. The Appellate Court found these releases to be invalid, as the Board president did not have the authority as required by the Association's Bylaws. The Association's Bylaws required a release to be approved by a majority of the directors at a meeting in which a quorum is present. Thus, the defendant was without the requisite authority.

Sienna Court Condominium Association v. Champion Aluminum Corporation, 2017 IL App (1st) 143364 (1st Dist. 2017)

A Condominium Association brought an action against developer, architects, engineering firms, general contractor, material suppliers, and subcontractors, asserting claims for breach of implied warranty of habitability. The suit alleged defects in design and construction of the condo development. The Trial Court dismissed. Upon review by the Appellate Court, the Court found that the matter was properly dismissed for claims of breach of implied warranty of habitability, as such claims may not be asserted against design professionals and materials suppliers who did not actually perform construction work. A property owner is not barred from asserting a claim of breach of implied warranty of habitability against subcontractor of insolvent developer or general contractor. Court properly dismissed counterclaims of the condominium development's general contractor

(which is insolvent and has been dissolved), as counterclaims were not asserted within a reasonable time after its dissolution.

Timber Court, L.L.C. v. Cahnman, 2017 IL App (1st) 170356-U (1st Dist. 2017) (Unpublished Opinion)

This case involved a two-building condominium complex with 72 residential units. 48 of the 72 units were not sold, and as a result were leased by the developer to tenants. An issue arose as to who is entitled to vote on behalf of the 48 leased units. As a result, the Trial Court ordered that no party was permitted to take an action that would "change the composition of the board." Intervenors, who consist of 18 individuals who own 16 of the 72 units in the complex, filed a "Motion to Lift Stay of Association Elections." The motion was denied and intervenors appealed. The Appellate Court affirmed the Trial Court's ruling because the court must first determine who has control of the Association and therefore the Trial Court did not abuse its discretion.

832 Oakdale Condominium Association v. McBride, 2017 IL App (1st) 151528-U (1st Dist. 2017) (Unpublished Opinion)

Plaintiff, Condominium Association, filed a forcible entry and detainer action against defendant, Unit Owner. The Trial Court dismissed the action, without prejudice, for failing to comply with the holding in *Palm v. 2800 Lake Shore Drive Condominium Association,* 2014 IL App (1st) 111290, which requires that the board of managers of a condominium association must vote at an open meeting to authorize the filing of a forcible entry and detainer action, without prejudice, against defendant. Here, the Association did not meet the requirements set forth in *Palm* and proceeded with filing a forcible entry and detainer without a proper vote. Thus, the Trial Court ordered that the forcible entry and detainer be dismissed without prejudice. Following this ruling, the Association appealed, however, the appeal was dismissed because the Trial Court order was "without prejudice" and therefore, not a final and appealable matter.

Adamek v. Honey Bee Homeowners' Association, 2017 IL App (1st) 152442-U (1st Dist. 2017) (Unpublished Opinion)

Adamek, a Unit Owner, sued the Association and the contractor hired to perform snow removal services for the Association, for the injuries Unit Owner sustained while exiting her vehicle in the parking lot. Unit Owner alleges that the Association, as well as the contractor were negligent in removing the snow. The contractor plowed the parking lot and shoveled snow from the sidewalks. Contractor did not shovel or remove snow that had accumulated between the vehicles in the parking lot. Unit Owner alleged that the contractor had a duty to exercise reasonable care to maintain the parking lots premises in a reasonably safe condition. Unit Owner alleged that this failure to remove snow between the vehicles created an unsafe condition between the vehicles in the parking lot and these allegedly negligent acts were the proximate cause of her injuries. The Trial Court granted summary judgment in favor of the contractor, Plaintiff appealed.

On appeal, the Appellate Court affirmed the Trial Court's ruling in favor of the contractor. The Appellate Court adopted the Trial Court's reasoning that, the agreement between the contractor

and the Association only required the contractor to plow the parking lot; the contractor was not required to shovel or remove snow from between the vehicles. Furthermore, the Appellate Court explained that, there was no evidence in the record to show the snow between the vehicles was the result of an unnatural accumulation. Thus, the ruling was affirmed.

Astor Plaza Condominium Association v. Travelers Casualty and Surety Company of America, 2017 IL App (1st) 152546-U (1st Dist. 2017) (Unpublished Opinion)

This case involves a declaratory judgment as to whether Merrimack Mutual Fire Insurance Company had a duty to defend and indemnify the Association under a directors and officers endorsement to an insurance policy. The Appellate Court affirmed that there was a duty to defend Mohen, Cochran, Krishnamurthi, and Loder (the officers and directors of the Association) under the directors and officers endorsement, however, there was no duty to defend the Association. The insurance policy states that Merrimack "will pay those sums that the "insured" becomes legally obligated to pay as damages." "Insured" is defined as "all Directors and Officers" of the "Named Insured." Thus, the policy did not cover the Association, only the Directors and Officers of the Association.

Bhutani v. Courts of Northbrook Condominium Association, 2017 IL App (1st) 162378-U (1st Dist. 2017) (Unpublished Opinion)

The Association brought a forcible entry and detainer action against the Unit Owner for failure to pay monthly assessments. As a result, Unit Owner was evicted from his condominium. Over a year later, the Association had Unit Owner's personal property removed from the Unit. Shortly thereafter, the Unit Owner was arrested and convicted for criminal trespass for entering the condominium. Unit Owner then filed a complaint against the Association for false arrest and imprisonment, breach of fiduciary duty, conversion of personal property, and replevin of personal property. The Trial Court dismissed all counts against the Association and an appeal followed.

The Appellate Court found that the false imprisonment claim was barred by the statute of limitations and correctly dismissed by the Trial Court. The claim of breach of fiduciary duty was also properly dismissed because it was barred by the doctrines of *res judicata* and collateral estoppel. Moreover, the underlying factual allegations plaintiff alleged were adjudicated in the forcible entry and detainer action. Additionally, the Association did not commit conversion by failing to return possession of the personal property to Unit Owner because it was abandoned, Unit Owner had ample time and opportunity to remove his personal belongings, but chose not to. Lastly, replevin may not be sought against Association because the Association is no longer in control of the Unit Owner's personal property.

Dahn v. Regal Chateaux Condominium Association, 2017 IL App (1st) 152343-U (1st Dist. 2017) (Unpublished Opinion)

This is a negligence case that arises out of a Unit Owner, who fell down a small flight of stairs outside the entrance to the building. The door knob to the main exterior door broke off when the Unit Owner attempted to pull the door open. As a result, the Unit Owner fell, suffered a subarachnoid hemorrhage, and died.

The Appellate Court affirmed the Trial Courts ruling because the plaintiff was unable to demonstrate that the defendant, Association, was negligent. Through fact finding and depositions, it was determined that there were no observations of unsafe conditions prior to the fall. Plaintiff alleged that the doorhandle had exceeded the duration of its life and it should have been replaced, and the failure to do so, resulted in the injury to plaintiff. However, the Court stated that because the structure was not obviously dangerous and had been used daily for an extended period of time and had proven adequate, safe, and convenient for the purposes to which it was being put, it may be further continued in use without the imputation of negligence.

Freemont Junction Condominium Association v. Peisker, 2017 IL App (2nd) 151231-U (2nd Dist. 2017) (Unpublished Opinion)

Defendant, Unit Owner, appealed the Trial Court's ruling which entered a forcible entry and detainer judgment for the plaintiff. The defendant claimed in his appeal that the Trial Court erred (1) in not honoring his timely jury demand; (2) in finding that plaintiff had standing and the capacity to sue; (3) in allowing plaintiff to proceed without having filed its affidavit of service before the hearing date set forth on the summons served upon defendant. The defendant also argued that he was denied due process when the Court threatened, intimidated, and bullied him during the trial.

The Appellate Court affirmed the Trial Court's ruling. First, regarding the jury demand, the Court found that the late jury demand was inexcusable as the defendant was over two weeks late in making his demand for a jury trial, and the defendant failed to demonstrate the lack of any inconvenience or prejudice to plaintiff. Second, regarding plaintiffs standing and capacity to sue, the defendant argued that the Association lacked standing to sue because it had not been incorporated on November 4, 2004, the date when the restated declaration of covenants was transferred. However, in this case, the Trial Court took judicial notice of a recorded document which indicated that the Association had a restatement of the declaration recorded on November 4, 2004. Third, as for the affidavit of service, the Appellate Court stated that failure to return the summons or file proof of service does not invalidate the summons or the service. Lastly, in regards to the denial of due process, the Appellate Court found there was no violation as the defendant was given a bench trial, at which he was afforded ample opportunity to present his defenses, as well as, permitted to cross-examine the Association's witness, the Court ruled on the merits of the case, and there was nothing in the record to validate the defendant's claims he was intimidated, threatened, or bullied. For these reasons the Appellate Court affirmed the Trial Courts ruling.

Geraci v. Union Square Condominium Association, 2017 IL App (1st) 162856-U (1st Dist. July 17, 2017)(Unpublished Opinion)

This appeal arises from an altercation on an elevator between plaintiff Holly Geraci and defendant Robin Di Buono. Mrs. Geraci's amended complaint charged Ms. Di Buono with battery based on this incident. She claimed the remaining defendants—managers and board members of the condominium association (Association Defendants)—breached fiduciary duties by failing to propound and enforce appropriate rules for dog handling that would have prevented the alleged battery. The Trial Court dismissed the Association Defendants under section 2–615 of the Illinois Code of Civil Procedure (Code). Ms. Di Buono filed her own counterclaim for battery and claim for intentional infliction of emotional distress (IIED). After a three-day trial, the Trial Court directed a verdict in favor of Mrs. Geraci on the IIED claim and the jury found Mrs. Geraci liable for battery,

awarding Ms. Di Buono $275,000.00 for pain and suffering, emotional distress, and punitive damages. On appeal, Mrs. Geraci seeks review of the Judge's decision to dismiss the claim for breach of fiduciary duty against the Association. The Appellate Court affirmed the judges decision reasoning that the Association Defendants cannot breach a fiduciary duty to prevent a battery that, per the jury's verdict, never occurred.

Geraci v. Cramer, 2017 IL App (1st) 151555-U (1st Dist. 2017) (Unpublished Opinion)

On appeal, plaintiffs contend that the Trial Court erred because: (1) their complaint properly alleged demand futility as a prerequisite to their derivative action; (2) their complaint properly alleged individual claims for property damage and constructive eviction; (3) contrary to the Trial Court's ruling, shareholders are permitted to bring derivative actions against a corporation's lawyer; and (4) the action against the Association's attorney was not barred by any statute of limitations.

The Appellate Court affirmed the Trial Court's ruling. First, as to the claim for demand futility and breach of fiduciary duties, the plaintiffs needed to plead facts relating to the manner in which the alleged erroneous decisions were reached. In the case at hand, plaintiffs failed to do so, and as a result, the Court presumed that the Board had acted in good faith and with due care.

Next, the Court dismissed any claims against individual members of the Association for breach of fiduciary duty. In the case at hand, the Association was the client, and the plaintiffs did not have an attorney client relationship with or owe a duty to the individual members of the Association. Without a fiduciary relationship, there are no fiduciary duties and no basis for a cause of action alleging breach of fiduciary duties.

Lastly, the Court addressed whether the claims were properly time barred by the statute of limitations. The Court found that Mr. Geraci possessed sufficient information to reasonably put them on inquiry notice, and when a plaintiff has sufficient information to be on inquiry notice, the statute of limitations begins to run. Thus, the plaintiff's claims were time barred.

Museum Pointe Condominium Association v. Tower Residences Condominium Association, 2017 IL App (1st) 152929-U (1st Dist. 2017) (Unpublished Opinion)

This is a case between two condominium associations in regards to an easement between the two. Museum Pointe, the plaintiff, owned the servient parcel, and Tower, the defendant, owned the dominant parcel. Museum Pointe filed a complaint against tower for violating the easement agreement by allowing garbage trucks that weight more than 6,000 pounds to use the easement parcel. Additionally, Museum Pointe filed a motion for summary judgment. In opposition, Tower filed a request for additional discovery, which it supported with affidavits from the president of Tower's board of directors and from Tower's property manager. The request for additional discovery was denied by the Trial Court. The Appellate Court upheld the Trial Court's decision because the affidavits provided by Tower in support of their request for additional discovery did not meet the requirements of Supreme Court Rule 191. Specifically, the affidavits failed to state that the material facts regarding the intentions of the parties when negotiating the easement agreement were known by the affiant chosen for the affidavit.

Newport Condominium Association v. Blackhall Corporation 401(k) PSP, 2017 IL App (1st) 161629-U (1st Dist. 2017) (Unpublished Opinion)

The plaintiff, Association in this matter was awarded possession of the property in question for unpaid assessments. Subsequently, Blackhall (defendant), was permitted to intervene as a mortgagee. Blackhall obtained a quitclaim deed in lieu of foreclosure. Blackhall contended that as a mortgagee they had no duty to pay any portion of the unpaid assessments prior to taking possession of the Unit. The Association responded by stating that there was a lien on the property arising from unpaid assessments and by receiving the quitclaim deed to the property, Blackhall was responsible for satisfying the lien amount. The Trial Court, entered judgment in favor the of Association for possession of the subject property, as well as unpaid assessments, attorney fees, and costs. This decision was upheld by the Appellate Court as Section 9(g)(1) and 9(g)(3) of the Condominium Act set forth the procedure to extinguish a lien on any unpaid assessments incurred by the previous property owner.

Nuchjare v. Barrington Square V, 2017 IL App (1st) 152332-U (1st Dist. 2017) (Unpublished Opinion)

Plaintiff brought a negligence claim after plaintiff slipped and fell on snow while walking on the common elements of a townhome complex. The Trial Court issued summary judgment in favor of defendants and denied plaintiff leave to amend her complaint to add a breach of contract claim. Upon appeal, the ruling was affirmed. The Appellate Court, found that the Trial Court did not abuse its discretion in denying her leave to amend her complaint.

RRRR, Inc. v. Plaza 440 Private Residences Condominium Association, 2017 IL App (1st) 160194-U (1st Dist. 2017) (Unpublished Opinion)

Plaintiff, restaurant operator, brought a claim against defendant, condominium association. The plaintiff and defendant shared space within the same building. The plaintiff leased street-level commercial space within a mixed-use high-rise building. The plaintiff's space is not part of the condominium property.

Defendant hired a contractor to perform repair work on the facade of the building, the work required that a protective canopy be placed on the sidewalk in front of plaintiff's business, and as a result, prevented plaintiff from offering sidewalk seating. Plaintiff brought a breach of contract claim and a tortious interference claim against defendant.

In regards to the breach of contract claim, the Appellate Court upheld the Trial Court's ruling that the plaintiff lacked standing. The plaintiff does not own any of the parcels of the property and is not a party to the Sub-declaration. However, plaintiff contended that even though it does not hold fee simple ownership of the first floor retail property, it holds a leasehold interest under the Sub-declaration and combined with the Landlord's interest, to equal a fee simple ownership. The Appellate Court disagreed with plaintiff because plaintiff failed to present any case law to establish that a lessee holds any portion of the title as an owner of real estate in fee simple. A tenant leasehold interest does not equal a fee simple, or any portion thereof. Moreover, the Sub-declaration has a provision which explicitly states that it is not intended to benefit non-parties, such as the plaintiff. Plaintiff then alleged in its appeal that it held an interest because it was in privity of contract with the

Landlord. The Appellate Court did not address this as it was first brought up upon appeal. Because this argument was not raised in the Trial Court, the argument was forfeited. Thus, the plaintiff did not have standing.

Next, in regards to the tortious interference claim. The Appellate Court found that the plaintiff did not establish that the defendant acted intentionally with the purpose of injuring the plaintiff's expectancy. The Sub-declaration required defendant to perform repair work on the facade, thus, the defendant was justified in doing so.

Saluja & Saluja, LLC v. Park 1500 Lofts Condominium Association, 2017 IL App (1st) 162328-U (1st Dist. 2017) (Unpublished Opinion)

Plaintiff, Saluja, owns ground-floor commercial space and brought a claim against defendant, condominium association, demanding that the association was obligated to add plaintiff as an additional insured on the Association's insurance policy. The Declaration states that upon Owner request, the Owner shall be a named insured on the policy and shall pay one (1%) of the cost of insurance. The association denied plaintiff's request to be a named insured because the insurance taken out by the association did not cover commercial property. Subsequently, the plaintiff brought an action seeking a declaratory judgment that the association was obligated to add it as an additional insured. However, there is a section in the Declaration that sets forth a 120-day limitation period to enforce any right under the Declaration. Based on the timing of the action, the Trial Court dismissed plaintiff's case with prejudice as it found the 120-day provision barred the claim.

Upon appeal, plaintiff contended that the claim is subject to the 10-year statute of limitations period for written contracts, rather than the 120-day provision, and that the Declaration is a "continuing contract" such that each denial of insurance coverage establishes a fresh claim. The Appellate court disagreed and found that the language of the contract was clear to establish a 120-day limitation period for "actions to enforce any right" under the agreement. Moreover, the Court disagreed with plaintiff's "continuing contract" argument as it is inapplicable to claims for breach of contract unless the contract involves continuous performance. Thus, the court affirmed the Trial Courts judgment dismissing the complaint as time-barred.

Sarkisian v. Bahramis 2017 IL App (1st) 161483-U (1st Dist. 2017) (Unpublished Opinion)

Plaintiff, Unit Owner, brought a declaratory judgment action against defendant, Owner of a different unit, asserting that plaintiff possessed a superior right of first refusal concerning the sale of two additional units. The Association's Declaration provides that, "The Unit Owner contiguous to the Unit to be sold shall at all times have the first right and option for a ten-day period to purchase such Unit Ownership, and if there are two Unit Owners contiguous to the Unit to be sold, the Unit Owner whose Unit has less square feet area shall have the first right and option to purchase for a ten-day period, and the larger Unit Owner shall have the Second right and option to purchase for a ten-day period."

The parties agreed that defendant's Unit 17 had less square footage than plaintiff's Unit 8, however, plaintiff contended that he possessed the superior right because his Unit 8 occupied less square footage than the combined total square footage of defendant's Units 15 and 17. Defendant maintained that his right was superior because his Unit 17 had less square footage than plaintiff's Unit.

Ultimately, the issue before the Appellate Court was whether the rule articulated in the Declaration applies to the square footage of a unit individually, or the combined square footage of all contiguous units belonging to a single owner. The Court cited to Black's Law Dictionary which defines a "unit" as a singular thing of any kind, and does not contain any language which would support plaintiff's contention that the square footage of multiple units should be combined. Furthermore, the Court stated, "the relevant provision of the Declaration reads that the first right and option to purchase belongs to "the Unit Owner whose Unit has less square feet area." It does not read, "the Unit Owner whose Units have less square feet area." Thus, the Appellate Court affirmed the Trial Court's ruling in favor of the defendant.