

Hey! You're My Lawyer, Too! (a tale of misinformed unit owners)

Most community association attorneys have been scolded by unit owners more than once when an owner claims “I pay your bills, you work for me!” or “you can’t sue me, I am a member of this association! You have a conflict of interest!” Even though attorneys at the receiving end of such comments are usually prepared to explain that the association’s legal counsel represents the corporate entity and answers to the board of directors, not the unit owners, there remain some who simply cannot (or will not) acknowledge this reality.

In a recent appellate court decision from the Florida Third District Court of Appeals (the court that hears appeals from trial courts in Miami-Dade and Monroe Counties), the court explicitly held that an association attorney owes no duty to unit owners.

A unit owner filed suit against the association’s attorney alleging that the attorney improperly counseled the board of directors about how something might be accomplished without needing a vote of the owners. The owner alleged that it was improper for the attorney to provide advice that would cut them out of the decision-making. The trial court dismissed the unit owner’s claim against the attorney and the unit owner appealed.

On appeal, the court held the association’s general counsel had a contractual fiduciary relationship with the association’s *board* which did not extend to the individual unit owners “who can and often do have interests adverse to the interests of the board.” The court relied on another case where it was held “[W]here an attorney represents a closely held corporation, the attorney is not in privity with and therefore owes no separate duty of diligence and care to an individual shareholder absent special circumstances or an agreement to also represent the shareholder individually.”

Will this case end owners’ claims that the association’s attorney needs to consider the interests of each of the many divergent interests of the owners in an association when providing legal counsel to the board and finally put that argument to rest? Probably not, but it is important that yet another Florida court has clarified the issue.



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