

HOUSING COOPERATIVE LAW BLOG

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NATIONAL HOUSING COOPERATIVES CASE LAW SURVEY (5/15/15-PRESENT)

August 30, 2016 · by Coop Law · in Uncategorized · Leave a comment

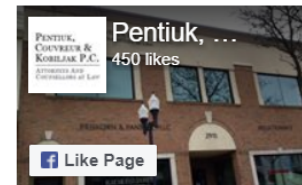
***City of Iowa City v. Iowa City Bd. of Review*, 863 N.W.2d 663 (Iowa 2015)**

Petitioner City of Iowa City's board of review reclassified 18 properties held by eleven multiple housing cooperatives from commercial to residential for property tax purposes. The Iowa Code permits the classification of residential property to include all land and buildings of multiple housing cooperatives organized thereunder. In 2012, the City Board of Review sent notices to 18 properties indicating that the Board changed the classification for these properties from commercial to residential for property tax purposes. The properties were then reclassified because they had been recently organized as multiple housing cooperatives. The parties agreed that two Iowa corporations organized each of the multiple housing cooperatives for the purpose of owning residential property in a cooperative.

Iowa City filed a notice of appeal with the district court, objecting to the Board's reclassification. The City argued that the Board's reclassification of the properties as residential was improper because two "natural persons," not two corporations, must organize multiple housing cooperatives under the Code. They also argued that the Code requires a one-apartment-unit-per-member ownership ratio for a multiple housing cooperative to be properly organized. The district court allowed the multiple housing cooperatives, Myrtle Grove Housing, Inc., to intervene in the action.

The Board argued that two corporations can organize a multiple housing cooperative because the Iowa Code defines a "corporation" as a person. The City countered that at least two of the organizers were required to be natural persons for the cooperative to be properly organized. Additionally, the City argued the organizers did not properly organize the cooperatives because each cooperative has more apartment units than members and the Iowa Code requires a one-to-one ratio. The intervenors argued that the Code specifically permits two corporations to come together to form a cooperative, not just natural persons, and that it does not limit membership to only one member per apartment unit.

The district court granted summary judgment in favor of the Board and the intervenors. The district court held that the Iowa Code defines persons to include corporations—therefore, the general assembly intended corporations to be able to act as organizers of a multiple housing cooperative. The district court further

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concluded nothing in the relevant Code section was relevant to the determination of whether the cooperative was properly organized. The City appealed the board's decision to the district court. The district court affirmed the board's decision. Iowa City then appealed to the Iowa Supreme Court.

The first issue presented to the Supreme Court is whether the Board correctly classified the cooperatives as residential properties when two Iowa corporations organized them. The second issue is whether the Iowa Code requires a one-apartment-unit-per-member ownership ratio for a multiple housing cooperative to be properly organized.

The Court ruled that the proper test for determining if a property could be classified as residential pursuant to the Code is whether the multiple housing cooperative was properly organized, not the actual use of the property. Thus, its task was to determine whether the issues the City raised on appeal lead to the conclusion that the multiple housing cooperatives were not properly organized. The City claimed the Code section requires the organizers of a multiple housing cooperative to have at least two natural persons. The Board and the intervenors argued that two corporations can organize a multiple housing cooperative without natural persons.

The Court maintained that "We believe the legislative intent with the enactment of chapter 499A was to allow two corporations to organize a multiple housing cooperative. We also believe the intent of the general assembly at the time it enacted section 499A.1 was to put the same restrictions on corporate organizers as it did on persons who organized multiple housing cooperatives—the corporate organizers must have the authority to organize a multiple housing cooperative and a majority of the corporate organizers must be Iowa corporations." Thus, it found the City's arguments unconvincing as to the general assembly's intent.

It then reasoned that "The City makes no claim that the organizers of these multiple housing cooperatives were not duly organized Iowa corporations with the legal capacity to enter into a contract to organize a multiple housing cooperative." Consequently, it ruled that the district court was correct in finding as a matter of law that the Board was correct in holding two corporations can organize a multiple housing cooperative. The Supreme Court thus held that the Board and the district court were correct in finding that the organizers properly organized the 11 multiple housing cooperatives under Iowa law.

Finally, with regard to the City's argument that the organizers did not properly organize the cooperatives because the Iowa Code requires a one-to-one ratio, the Court said that such a position would require that it revive the "actual use" test—which it had specifically rejected in a previous case decision: "The organizational process necessarily takes place before the cooperative issues membership certificates and before the cooperative identifies all of its members...Looking beyond what is required to properly organize the cooperative to how the membership certificates are held meanders into the actual use of the property—how many apartments each member holds relates to the use of the property. This inquiry is not permitted under our decision in *Krupp*."

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Accordingly, the Supreme Court held that the district court was correct in finding “as a matter of law the Board did not err in holding the Code does not require a one-apartment-unit-per-member ownership ratio for a multiple housing cooperative to be properly organized.” Therefore, it affirmed the judgment of the district court, which upheld the decision of the Board in classifying the property held by the cooperatives as residential for purposes of property taxes.

Batista v. Cooperativa de Vivienda Jardines de San Ignacio, No. CIV. 10-1953 CVR, 2015 WL 5511748 (D.P.R. Sept. 17, 2015)

Plaintiff Priscilla Batista brought this suit alleging violations to the Fair Housing Act, among other state law tort and anti-trust claims. Cooperativa de Vivienda Jardines de San Ignacio is a housing cooperative that owns and administers a cooperative project where members like Plaintiff reside. Plaintiff also sued eight individual Defendants who comprised the Cooperativa’s Board of Directors. Plaintiff’s complaint was originally comprised of several causes of action, all of which were dismissed by the District Court on summary judgment. Before the Court was Defendants’ Motion to Dismiss the Retaliation Claim that Plaintiff made.

Plaintiff argued that summary disposition is unwarranted, as her Complaint contained specific instances of retaliation, and because issues of fact remain as to the date the retaliatory conduct began. Plaintiff argued that the issue of the dates served to establish that the reasons given by Defendants for their actions were a mere pretext to retaliate against Plaintiff and evict her from her home.

Defendants argued that Plaintiff fails to state the actual retaliatory acts and their effects, and that she fails to sufficiently identify the protected activity which forms the basis for her retaliation claim. However, the Court did not agree. It recognized that “The FHA protects against discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling ... because of race, color, religion, sex, familial status, or national origin,” 42 U.S.C. § 3604(b), and renders it unlawful “to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by [§ 3604].”

In her Complaint, Plaintiff avers that, after she emerged victorious from her Department of Housing and Urban Development (“HUD”) claim, “the retaliation by the San Ignacio Cooperative and its Board of Directors against Mrs. Batista was swift and immediately (sic). Defendants engaged in a definite pattern of discriminatory actions against Mrs. Batista in a concerted effort to evict her from the housing cooperative. This pattern of retaliatory and discriminatory conduct manifested itself in two-fold fashion: First, by initiating collection proceedings against Mrs. Batista for amounts she allegedly owed since 1998, when in fact Mrs.

Batista did not owe said amounts or had paid the same; and second, by demanding that Mrs. Batista move to a two bedroom apartment, denying her request for reasonable accommodations and ignoring her need to remain in her present three bedroom apartment due to her multiple health conditions.”

In support of her allegations, Plaintiff proffered the following facts:

- Immediately after the administrative process with HUD culminated, on or about February 2009, Cooperativa requested that Plaintiff move to a two bedroom unit, or if she elected to remain in the three bedroom unit she occupied since 1983, to forego her Section 8 benefits and pay market rent thereafter.
- Plaintiff was summoned to a hearing wherein Cooperativa attempted to illegally collect \$129.50 allegedly owed by her since 1998, charges which she disputes.
- Cooperativa held two hearings on March 25 and July 29, 2009, where Plaintiff was declared a non-member of the cooperative and was granted thirty days to abandon her apartment and ordered to pay the \$132.50 she owed.
- Plaintiff was denied her rights and privileges during member’s meetings, including her right to vote.
- On January 3, 2011, Cooperativa sent another notice to Plaintiff insisting she vacate her apartment and move to a smaller unit, and informing her that Cooperativa would not recognize her benefits under Section 8 and would charge her a monthly “market rent” of \$359.00.
- On February 11, 2011, Cooperativa again summoned Plaintiff to a hearing in order to collect the alleged market rent unilaterally imposed on January 2011.

The Court ruled that Plaintiff should have the opportunity to carry her case forward to a jury trial: “These facts, if taken as true, make a colorable claim for retaliation under the motion to dismiss standard. That is all the Court needs to consider under this more relaxed standard to deny this motion... Whether the facts actually evidence retaliatory conduct is a factual issue that is only proper for the jury to resolve at the trial.” In light of the above, the Court denied Defendants’ Motion to Dismiss.

Success Village Apartments, Inc. is the property owner and association of a residential cooperative located in Bridgeport and Stratford, Connecticut. Ownership of an apartment unit in Success Village is expressed in an Apartment Leasehold for 99, with Rights to Renew. The Success Village Bylaws provide that one of the persons signing an Apartment Leasehold is eligible to receive a membership certificate, except that a husband and wife may own a membership certificate jointly. The bylaws also provide that each member shall be entitled to a membership certificate. Danuta Dabrowska signed a Leasehold Agreement together with her husband, Pawel Ochman, and was thereby eligible to receive a membership certificate herself, or jointly with her husband. Dabrowska requested that a membership certificate be issued to her in April 2015. Dabrowska was elected to a two-year term on the Success Village board of directors on or about April 2013. It is further found that John Gula and James Capuzziello were also elected to the board of directors in 2013.

The Cooperative's bylaws designate certain committees by name, but do not designate a bylaws committee. At a meeting of the Board of Directors, a motion was made and seconded to abolish the by-laws committee. The motion carried and a letter was sent by the President of the Board of Directors to the plaintiff, Loser Lane, directing him to cease and desist from representing himself as chairman of the bylaws committee in light of the vote to disband them.

At a later meeting of the board of directors on, a motion was made and seconded to present an amendment to the bylaws to the membership for a vote. The existing Article II, section 12.E. provided for a review by the nominating committee of candidates for election to the board of directors to ascertain if they were "in good standing." That motion also carried, and a notice was sent to the membership of a meeting for the membership vote on the proposed bylaws amendment. The total vote in favor of the amendment exceeded the required two-thirds of members voting, and a notice of the amendment was sent to the membership. The new amendments were published in a revised version of the complete Success Village Bylaws.

Plaintiffs Tyreke Bird, Loser Lane, and Betty Aquino, were then nominated for the Board of Directors election, but had not obtained or submitted a nominee package, nor submitted the required forms to the nominating committee. Plaintiff Ivan Perez was not nominated for the board of directors, but he was nominated as one of the nine members of the nominating committee, and he accepted a position thereon. At the next meeting of the nominating committee, he requested to be excused from the nominating committee and he presented a nominating petition as a nominee for election to the board of directors. After consultation with the acting President of the Board, John Gula, the nominating committee determined that Perez could not withdraw from the nominating committee in order to be a candidate for election, and Mr. Perez accepted this determination.

Plaintiff Amy Espinosa was nominated for the board of directors, received a

nominee's package, and returned the required forms to the nominating committee. However, the nominating committee determined that she did not meet the qualifications for candidacy in the new bylaw amendments because she was not compliant with the Success Village rules and regulations pertaining to registration of her dogs. Espinosa was informed of her lack of "compliance" by the nominating committee, and urged to achieve compliance by registering her dogs. However, she still did not register her dogs—and was therefore deemed by the nominating committee to be disqualified from a candidacy for the board of directors election.

The nominating committee then prepared a ballot for the annual board election with the names of the four candidates who had complied with the aforementioned qualifications, and Danuta Dabrowska, John Gula and Irena Waluk were elected to the three open seats on the board of directors, and Abraham Peck was elected as an alternate. The Cooperative's bylaws provide that at the annual election of directors, five alternates shall be elected to fill such vacancies as occur on the board of directors. They also provide that vacancies shall be filled from the elected alternates in the order of the vote received by the elected alternates. At the court-monitored election or the Board of Directors held in 2014, the five candidates receiving votes as alternates in the order of votes received were Eula Sutton, Richard Hyder, Lucy Bolivar, Tyreke Bird and Leeann Istvan. Thus, the plaintiff Bird would have been the fourth alternate in line to fill any vacancy on the board of Directors.

At some point in March 2015, the President of the Board of Directors, Andy Weiglein, learned that Blanche Mierzejewski might resign from the board for health reasons. A letter was sent to Mierzejewski by the new President and secretary of the Board of Directors requesting that she submit a written resignation if she intended to resign. Thereafter, board member Jim Capuzziello resigned from the Board of Directors. If an alternate had been needed to fill a vacancy for the following board meeting, the order of alternates would have been Sutton, Hyder, Bolivar, the Plaintiff Tyreke Bird, and Istvan. The Success Village Bylaws provide at Article III, section 7 that an alternate elected to fill a vacancy holds office until the next annual membership meeting. The next annual membership meeting was the election of May 26, 2015, at which time any alternate member of the Board of Directors who may have been serving out the balance of a term of a resigned member, would have expired.

As the Board of Directors conducted no business subsequent to the resignation of Capuzziello or prior to the election of the new Board of Directors on May 26, 2015, no alternate was selected to serve the unexpired portion of Capuzziello's term. *If* an alternate had been selected to fill this vacancy, the plaintiff Bird would not have been the first, second or even third choice for this vacancy, as he was the fourth alternate director elected.

The plaintiffs sought a declaratory judgment that the defendants' action in denying the plaintiffs a place on the election ballot was illegal. The plaintiffs further sought a preliminary and permanent injunction restraining and enjoining the defendants from further proceeding and seating the Board of Directors that was elected on May 26, 2015. They also requested: that the Court

restrain and enjoin the defendant Paniccia from further involvement in the election process; that it appoint a commission to oversee a new election process, and to replace the present Board, “which is acting illegally;” a court appointed forensic audit of the finances of the Cooperative; and that it remove the defendant Paniccia, as an employee and/or manager of Success Village Apartments, Inc. (The Court decided that it would rule on these requests at a later date.)

Count One of Plaintiffs’ complaint called into question the procedural conduct of the April 7, 2015 special meeting of the membership that was held to allow the membership to vote on the proposed amendment to the bylaws’ section regarding new qualifications for candidates to the Board of Directors. The plaintiffs argued that the conduct of that meeting violated the bylaws and Robert’s Rules of Order. They thus asked the Court for injunctive relief to prevent the candidates for the Board of Directors, who were elected on May 26, 2015, from being seated in their positions. The plaintiffs also sought a declaratory judgment declaring that the actions of the defendants preventing the plaintiffs from having their names included on the ballot was illegal. The Court ruled that “The merits of the claim for a declaratory judgment will be determined at the trial. However, the plaintiffs have now withdrawn their claim for a new election. By doing that, they have in effect, assented to the seating of those candidates who were elected on May 26, 2015.” Therefore, it denied Plaintiffs’ request for relief regarding a temporary injunction.

Count Two of the complaint was Plaintiff Bird’s claims that he was a candidate for the Board of Directors for the 2014 to 2015 term, and as a result of that election, he was elected to the position of next alternate to be appointed. By April 15, 2015, Bird claims that several members of the Board of Directors had resigned their positions, and Bird, as the next alternate, should be appointed to the Board of Directors. (As noted, in the court’s findings of fact, Bird was elected as a fourth alternate to the Board of Directors for the 2014–2015 term, which was the court-monitored election.) There was one resignation during that term in April 2015.

Consequently, the Court reasoned that “Bird was not first, second or third in line to be appointed to that vacancy. In addition, if an alternate was to be appointed to fill the balance of the unexpired term of a resigning Board member, the term would have expired with the election of the new Board of Directors who were elected to serve from May 26, 2015 until the next annual general membership meeting in 2016.” In any event, Bird was not elected as an alternate during the subject election for the 2015–2016 term for the Board of Directors. Additionally, the plaintiffs withdrew their claim that the court order a new election for the 2015–2016 term of office. Therefore, according to the Court, “there is no prohibition by the court or claim by the plaintiffs that those candidates elected on May 26, 2015 should not be seated as the current Board of Directors. Accordingly, the court cannot offer any practical relief.” It ruled that temporary injunctive relief pursuant to the claims in Count Two were also denied.

Defendant was a corporation that owns a housing cooperative building in Manhattan, and Plaintiffs were the tenants and owners of shares allocated to apartment 4B of the building under a proprietary lease. As a result of litigation dating back to 1992, Defendant's shareholders voted to terminate Plaintiffs' proprietary lease in 2005. Following litigation to eject the plaintiffs from the apartment, the sheriff officially ejected the plaintiffs in 2007.

In 2008, Defendant entered into a contract to sell the apartment for the sum of \$4.2 million. Later, the defendant sent an accounting of the sale to the plaintiffs' attorney with a check for \$2,401,471.29, representing the plaintiffs' "net amount payable to them, after deducting amounts due from them to the cooperative and other parties as shown on the accounting." Plaintiffs then filed this action, alleging that the defendants converted a total of \$901,270.61 from the plaintiffs by improperly withholding certain funds from the proceeds of the sale.

The New York Supreme (trial) Court granted the part plaintiffs' motion which was for summary judgment on the cause of action to recover damages for the conversion of \$250,000 allegedly withheld by the defendant as a "claimed litigation reserve," but denied the remainder of their claims. Plaintiffs now contend that the Supreme Court erred when, upon granting that branch of their motion which was for summary judgment on the cause of action to recover damages for the conversion of \$250,000 allegedly withheld by the defendant as a claimed litigation reserve, it stayed entry of judgment pending resolution of the remaining causes of action and counterclaims.

The Appellate Court opined that the trial court "improvidently exercised its discretion in staying entry of a judgment pending resolution of the remaining causes of action and counterclaims....In addition, upon granting that branch of the plaintiffs' motion which was for summary judgment on the cause of action to recover damages for the conversion of \$250,000, the court should have awarded interest on that sum running from June 10, 2008, and should have granted that branch of the plaintiffs' motion which was for summary judgment dismissing so much of the second counterclaim as was for a declaration that the sum of \$250,000 was properly withheld by the defendant as a litigation reserve."

Plaintiffs also contended that the Supreme Court erred in denying that branch of their motion which was for summary on the cause of action to recover damages for the conversion of \$491,541.99 allegedly withheld by the defendant as offsets for certain attorneys' fees. However, the evidence submitted by the plaintiffs established that *they* were contractually liable for any attorneys' fees involved in the sale of the co-op building. Thus, Plaintiffs failed to demonstrate, that Defendant improperly withheld the relevant funds for this purpose.

The plaintiffs further argued that the Supreme Court erred in denying that branch of their motion which was for summary judgment on the cause of action to recover damages for the conversion of \$81,077.07, allegedly withheld by the defendant as offsets for unpaid maintenance charges plus interest. However, the

defendant as offsets for unpaid maintenance charges plus interest. However, the plaintiffs' evidence failed to back up their claims for such maintenance charges.

The plaintiffs then argued that the Supreme Court erred in denying the portion of their summary judgment motion to recover damages for the conversion of \$84,000—which were allegedly withheld by Defendant as offsets for a certain unpaid “flip” tax. However, the plaintiffs again failed to establish the requisite evidence with respect to this cause of action. Accordingly, the Court held that this part of the plaintiffs' motion was properly denied.

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***Robbins v. Penn Ctr. House, Inc.*, 138 A.3d 734, 736–39 (Pa. Commw. Ct. 2016)**

This case arose out of a policy enacted by Defendant Penn Center House, Inc. (“PCH”)’s board of directors limiting the number of dwelling units that a member may own in its housing cooperative building, and PCH’s rejection of the Robbinses’ purchase of an additional unit from the Estate based on that policy. The trial court held that a limitation on the number of units that a member may own can be imposed only by amendment of PCH’s bylaws—and therefore granted a declaratory judgment in Plaintiffs’ favor that the Board’s policy was void.

PCH’s articles of incorporation do not define who may become a member or acquire an interest in a unit and do not set forth any rights or restrictions concerning sale or transfer of memberships or units, but provide that “[t]o the extent not addressed in these Articles of Incorporation, Members shall have such qualifications, rights and privileges as set forth in the by-laws.” PCH’s bylaws provide with respect to membership:

“Eligibility. Any natural person approved by the Board of Directors shall be eligible for membership, provided that he or she executes a Subscription Agreement and an Occupancy Agreement in the usual form employed by the Corporation covering a specific unit in the cooperative.”

The bylaws can be amended only by a two-thirds vote of the members, not by a vote of the Board, and restrict transfer of units and provide that PCH has an option to purchase a member’s membership and right of occupancy before he or she may sell it to a third party. They also provide that if PCH does not exercise that option, *“the member may sell his/her membership to any person who (i) fulfills the Corporation’s membership eligibility requirements, (ii) is duly approved by the Corporation as a member, (iii) executes a Subscription Agreement and an Occupancy Agreement with the Corporation, and (iv) pays the Administrative Transfer Fee and such other charges as may be established from time to time by the Board.”*

PCH’s occupancy agreements in effect at the time of these events provided that if PCH did not exercise its option to purchase the unit, *“the Member may sell his membership to any person, but such sale shall not entitle the purchaser to any right of occupancy unless he has been duly approved by the Corporation as an*

occupant.”

PCH’s bylaws neither restrict the number of units that an individual may own, nor do they state that a member has a right to own more than one unit or purchase an interest in additional units. The bylaws contain language addressing the situation where an individual owns more than one unit, providing that such individuals count as a member for each unit that he or she owns in membership meetings and votes. These provisions include a reference to possible ownership of three units, stating with respect to annual meetings and special meetings of the members: “For illustrative purposes, should a member have interest in three Units, such member shall count as three members for purposes of determining whether a quorum is present.”

In a crucial point, the Commonwealth Court of Pennsylvania noted that nothing in the occupancy agreements addresses ownership of multiple units. With respect to the powers of its board of directors, PCH’s bylaws provide:

“Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Corporation and may do all such acts and things as are not by law or these Bylaws directed to be exercised and done by the members. The power of the Board shall include but not be limited:

- (a) To accept or reject all applications for membership and admission to occupancy of a Unit in the cooperative, either directly or through an authorized representative;
- (b) To establish monthly carrying charges prescribed in the Occupancy Agreement, based on an annual operating budget formally adopted by such Board;
- (c) To promulgate such rules and regulations pertaining to use and occupancy of the premises as may be deemed proper and which are consistent with these Bylaws and the Articles of Incorporation.”

The Board’s policies concerning membership applications in effect at the time of these events provided that when a unit became available, it was to be offered first to the members occupying the adjacent units. (They also required income and financial condition minimums for approval of memberships and transfers, which are based on the sale price of the unit and the amount of the monthly charges to which the unit is subject, and provided for criminal background checks.)

Plaintiff Robbinses own and occupy Penn Center House Units 1001 and 1013, which they had merged internally into a single, combined dwelling. In December 2012, the Robbinses notified PCH’s general manager that they had learned that the occupant of Unit 1015, which is adjacent to their Unit 1013, had passed away and that they wished to purchase it if it became available. The Robbinses intended to merge Unit 1015 with their combined Units 1001 and 1013.

In March of 2013, the Board enacted the following policy:

“As a new policy, any one member may not own more than two units. Further, the name(s) on the certificate(s) for these unit(s) must be identical on both unit’s [sic] certificates. Lastly, any name(s) on these certificate(s) may not appear on any other Unit certificate. The only exception to this rule would be if additional unit(s) are to be purchased by an existing Member or Members and their original unit(s) are under agreement of intent to vacate and sell. Adjoining Units are to be defined as being on the same floor, are physically connected internally, and do not breach the floor slabs of building fire walls.”

In May of 2013, co-Plaintiff Estate of Shirley Braverman (the deceased occupant of Unit 1015) gave notice to PCH that Unit 1015 was available. In November 2013, the Plaintiffs entered into an Agreement of Sale to sell the Estate’s interest in Unit 1015 to the Robbinses, subject to PCH’s approval of the transfer and issuance of a membership certificate and occupancy agreement for Unit 1015 to the Robbinses. On December 9, 2013, the Estate submitted to PCH the Robbinses’ application to purchase Unit 1015 and requested approval of the transfer of Unit 1015 to the Robbinses. (Estate Letter to PCH, R.R. at 66a.) On December 16, 2013, PCH rejected the application for transfer of Unit 1015 to the Robbinses based on the two-unit limitation enacted by the Board. (PCH Letter to Estate, R.R. at 68a.) Although Plaintiffs submitted financial information and a release for criminal background check, the Board did not make a determination whether the Robbinses satisfied the other requirements for approval.

The Robbinses commenced this action against PCH on September 16, 2013. On February 26, 2014, the Robbinses and the Estate filed an Amended Complaint asserting claims for tortious interference with contract, breach of contract and declaratory judgment, contending that a limitation on the number of units that a member may own can be imposed only by amendment of PCH’s bylaws, not by Board action. PCH filed a counterclaim, asserting that Plaintiffs’ action was a violation of PCH’s bylaws and the occupancy agreements that the Robbinses and the Estate’s decedent signed.

Defendant PCH argued that its Board has the power under PCH’s governing documents to impose a restriction on the number of units that a member may own by policy *without* a vote of the members to amend the bylaws. The Court did not agree, ruling that under Maryland law—this case was governed by the law of the state under which PCH was incorporated, Maryland—regarding articles of incorporation (specifically, the qualifications, rights, and privileges of its members), Defendant’s restrictions on ownership and on transfer of units had to be set forth in its corporate bylaws. Therefore, the board of directors lacked the authority to enact the above policy limiting ownership to two units.

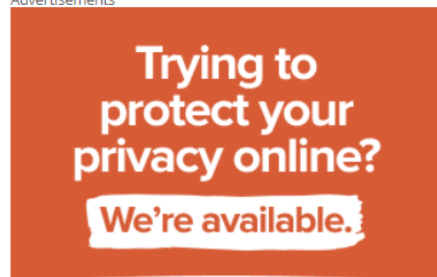
The Court opined that the cooperative’s bylaws granting its Board a general power to “do all such acts and things as are not by law or these Bylaws directed to be exercised and done by the members” did not give its the authority to limit the number of units that its members could own: “Such a grant of power authorizes the Board to manage PCH’s business and act on matters that neither law nor its articles of incorporation require be addressed in the bylaws. Limiting member ownership rights is not the management of PCH’s business as a housing

cooperative; it is a regulation of the rights and privileges of PCH's members, which, under PCH's articles of incorporation, must be set forth in its bylaws."

PCH then argued that "the nature of housing cooperatives gives its Board the power to limit the number of units a member may own." The Court pointed out that "PCH is correct that its members do not hold fee simple title to their units and are in a landlord-tenant relationship with respect to occupancy of the units." However, it qualified this statement by opining that the threshold issue "is not whether PCH may limit ownership to two units, but how it may impose that limitation. None of the cases cited by PCH suggest that restrictions on the number of units that members own may be imposed by board of directors' action rather than by bylaw." In that regard, the Court held that "a housing cooperative's board of directors lacks authority to impose substantive restrictions on transfer and ownership rights that are not set forth in the bylaws or the proprietary lease."

Finally, Defendant argued that the Board's policy limiting ownership to two units is protected by the business judgment rule. The Court disagreed, holding that that the business judgment rule—which protects decisions of a corporation's board of directors from judicial review where it is not shown that the board's actions were in bad faith, arbitrary, or fraudulent—had no applicability to the instant issue of authority of a co-op's board to limit the number of units that could be owned by any individual owner, where board lacked the authority as described above to so limit. It therefore ruled in Plaintiffs' favor: "Because the Board lacked authority to limit unit ownership by policy, the business judgment rule has no applicability here."

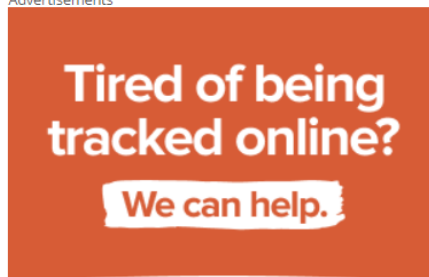
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