

Restriction Wording can be Loophole

Homeowners Often Win Battles with Associations

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By Joe Adams

jadams@becker-poliakoff.com

TEL (941) 433-7707

FAX (941) 433-5933

Among the most often-waged battles between homeowners and their governing boards is the interpretation and application of vehicle parking restrictions. As the old saying goes, one person's junker is another's classic. Further complicating the mix, any shopping trip to buy a new vehicle will quickly teach you that the line between "cars" and "trucks" has become rather blurred in modern-day society.

Today's column involves the saga of a typical neighborhood parking dispute which wound its way through the Florida courts.

The Wilsons and the Vignas are residents in the Crown Pointe subdivision, located in Polk County, Florida. Both families moved into the community in 1997.

Mr. Wilson drives a Chevy Astrovan that bear, in several places, the words "Enjoy Coca-Cola", painted in red. Mr. Vigna drives a Chevrolet S-10 pick-up truck, bearing the words "Precision Termite & Pest Control" followed by "679-BUGS".

The deed restrictions for Crown Pointe provide that "no sign of any kind shall be displayed to the public view on any lot." The restriction contains exceptions for one "professional sign" of not more than one square foot, and one for sale/for rent sign, of not more than five square feet.

Another clause in the deed restrictions provides that "no commercial trucks (except small pick-up trucks) shall be permitted".

The Association sued the Vignas and Wilsons over their right to park these vehicles in the driveways of their homes. The trial court ruled in favor of the

Association. The court found that although there might be conflicting interpretations on the "no commercial truck" rule, the sign rule was a sufficient basis for the Association to ban both vehicles from parking in the driveways.

The case was appealed to the Second District Court of Appeal, which has jurisdiction over Southwest Florida, and is highest appellate court "of right" in Florida (appeals to the Florida Supreme Court are discretionary with the Court in cases of this nature).

The appeals court reversed the trial judge, and ruled in favor of the homeowners (against the association). The court started its opinion by quoting the often-cited rule in association covenant enforcement cases. The court said: "Any doubt as to the meaning of words must be resolved against those seeking enforcement". The court also noted Florida's general rule that: "Restrictive covenants are not favored and are to be strictly construed in favor of the free and unrestricted use of real property".

The appeals court found that the deed restriction's prohibition against signs "on lots" did not apply to signs "on vehicles".

With respect to the "no commercial truck" rule, the court found that "commercial vehicles" were not prohibited, only certain "commercial trucks". Therefore, in the court's eyes, no prohibition against the van's parking existed. With respect to the pick-up truck, the court found that the "except small pick-up trucks" language qualified the restriction against commercial truck parking, thus permitting this vehicle as well.

This is one of those cases where the “intent” of the community was fairly plain to see. However, because courts tend to disfavor restrictions on the free use of property, the appellate court microscopically examined the wording of the covenants and came down on the side of the owner.

While many athletic endeavors are referred to as games of inches, it seems that enforcement of association restrictions can be characterized as a game of parentheses and commas. The lesson of this case, consistent with most other holdings from Florida courts, is that if there is any doubt as to the intention of the restriction, it will not be enforced. ⚖️

Free Course on Florida Condominium Association Operations to be Held in Ft. Myers

A free course on Florida Condominium Association Operations will be held on Thursday, September 11, 2003 from 1:00 pm until 4:00 pm at the Seven Lakes Condo Association, 1965 Seven Lakes Blvd. in Ft. Myers (across from the Bell Tower Shops). The course will be taught by Community Associations Institute (CAI), the designated condominium and cooperative educational provider of the State of Florida’s Department of Professional and Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes.

The course focuses on the core responsibilities of associations. It touches on practical operational needs such as self-management, the bidding process for outside service providers, maintenance issues, accounting and legal services and how to plan for and conduct board meetings. Please note that this course does not count for CEUs.

Registration is not required, but space is limited. To reserve a space, please call Laura Hagan at 727-525-0962 or e-mail FLeducation@caionline.org. To see a complete list of classes in your area, visit www.caionline.org/florida.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.