

Recent North Carolina Court of Appeals Decision Serves as Reminder to Owners Associations

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December 2, 2015



A recent decision by the North Carolina Court of Appeals serves as a reminder that owners associations must deal fairly with their members at all times and board members must not let past disputes or personal issues cloud their judgment, or they could pay a hefty cost. See Faucette v. 6303 Carmel Road, LLC (N.C. App., 2015). In *Faucette*, the trial court found the acts of an owner of several condominium units and president of the condominium owners association to be unfair and deceptive trade practices in violation of Chapter 75 in the North Carolina General Statutes and therefore trebled the award (which means the award was tripled) in favor of the plaintiff, a unit owner named Mr. Faucette.

Mr. Faucette owned a commercial condominium unit. 6303 Carmel Road, LLC (the "LLC") owned several adjacent condominium units and its manager, Mr. Winer, was the president of the condominium owners association (the association was dissolved earlier for failure to pay taxes and was not a party to the litigation). A pipe burst in one of the LLC's units, and the flooding caused damage to Mr. Faucette's unit. Mr. Faucette's insurance company covered the damage, but he had to pay a \$5,000.00 deductible. The LLC made a claim on the condominium owners association's insurance policy and received a settlement that included \$5,000.00 to reimburse Mr. Faucette for his deductible. The LLC did not release the money to Mr. Faucette and instead decided to use that money as leverage in a dispute with Mr. Faucette over unpaid association dues. Mr. Faucette filed a lawsuit against the LLC and Mr. Winer. The trial court found in favor of Mr. Faucette and awarded him \$5,000.00 and then trebled the award to \$15,000.00. Mr. Faucette also was awarded \$27,000.00 in attorney's fees. The LLC appealed the decision to the Court of Appeals.

The Court of Appeals found that Mr. Winer obtained the \$5,000.00 payment from the insurance company because of his position as president of the condominium owners association. He then "abused [his] position of power" as president of the condominium owners association to withhold payment of the money to Mr. Faucette. Mr. Winer withheld the money "solely to pressure Faucette to resolve several unrelated disputes between the parties, including an ongoing dispute involving payment of condominium association dues." The Court of Appeals agreed with the trial court and found that these acts were unfair and deceptive within the meaning of Chapter 75 of the North Carolina General Statutes. The Court of Appeals therefore upheld the trial court's order.

Although the association was not a party to this lawsuit, Mr. Winer was acting as president of the condominium owners association when he decided to withhold the insurance proceeds from Mr. Faucette for unrelated reasons and in a similar situation an owners associations certainly could be included in the lawsuit. Regardless of the issue, whether it's reimbursement of a member for an insurance deductible or deciding whether to grant architectural approval, a board member always must act in the best interest of the association and must not let unrelated disputes or personal issues get in the way. As we learned in this case, a little bad judgment can result in a big loss for the association.

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