



Case Comment: Free Speech v. Defamation/Harassment

By Jason Rivait February 07, 2012

In a recent case out of Orleans, Massachusetts, the trial and appeals court found that an owner's right to free speech trumped the by-laws of a condo association.

Steven Preu, an owner at Old Colonial Village Condominium Association, had a long-standing history of erratic and disruptive behaviour, which translated into a strained relationship with the board. Things came to a head when Mr. Preu believed that the president of the board allowed his dog to defecate in a 'no-dumping zone' of the common elements. In response, Mr. Preu left bags of feces in the no-dumping zone and labeled these bags with the president's name. On other occasions, Mr. Preu flipped-off management (ie: one finger salute), wrote inappropriate comments on his monthly common element fee cheques, posted signs in the condo stating that it was dirty and wedged open fire doors.



The condo association subsequently brought an action against Mr. Preu, claiming that his actions violated the by-laws of the condo. The court shockingly found that not all of Mr. Preu's actions violated the by-laws of the condo association. The opening of fire doors and placement of bags of dog feces in the common elements were considered breaches of the by-laws however, the inappropriate notes, signs and hand gestures were not. The court found that some of Mr. Preu's actions were considered to be "pure speech" and covered by the First Amendment (ie: freedom of speech). The condo association appealed the trial court decision but to no avail. The appeals court, more or less, agreed with the decision of the trial court.

We should point out that the above-noted case was decided in the United States. A different result may have occurred if the case was tried in a Canadian court. That said, the case demonstrates the need to balance the fundamental rights of owners to express their displeasure with the board with the social responsibilities of residing in a shared space. Boards should be mindful that owners have the right to publicly express their discontent with the board and management of the condo however, this right cannot be invoked carte blanche. If an owner's behaviour is defamatory or constitutes harassment (and a harassment rule has been created), the board may have recourse to address this behaviour. Each situation should be dealt with on a case-by-case basis, but the rule of thumb is, if an owner gives you the one finger salute, do not return the favour.

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