

Good News for Management Agents

Managers and Companies not Bound by Cost Caps

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A recent appellate court case *Sabina C. Brown v. Professional Community Management*, published on March 11, 2005, stands for the proposition that management agents are not bound by the cost cap limitations of Civil Code 1366.1 as are associations.

Dismissal of Complaint and Affirmed Appeal

In the Orange County case, Ms. Brown sued her homeowners association, Lake Forest Keys, and its management company, Professional Community Management, claiming she had been charged assessments or fees exceeding the amount necessary to defray the costs for which they were levied. The trial court ruled in favor of dismissing the complaint against the management company, and Ms. Brown appealed. The appellate court agreed with the trial court and affirmed the judgment.

Imposing or Collecting Excessive Fees

Civil Code Section 1366.1 provides "An association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied" and is part of the Davis-Stirling Common Interest Development Act (the Act), section 1350 et seq. Under the Act, an "association" means a nonprofit corporation or unincorporated

association created for the purpose of managing a common interest development." Most importantly, the Act does not require a managing agent to be a nonprofit entity. It is clear from the definitions that the Legislature meant "association," and not "managing agent," when it used that term.

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Allegations and Court Holdings

Ms. Brown alleged that the management company levied various fees, fines, liens and charges against thousands of homeowners, including preparing late letters and lien letters for which it charged fees. She alleged that the management company profited from these fees, and that these fees exceeded the amount allowable under Section 1366.1.

The appellate court held that Section 1366.1 does not limit the management company's fees. Section 1366.1 applies to associations not management companies. Associations are restricted from levying fees or assessments that exceed the cost to the Association for providing the service. Even though the association may

have volunteer directors, they cannot be expected to do all the work themselves. Accordingly, they hire companies to do this work. For example, an association may hire companies to mow the common area grass, paint the clubhouse, or replace the pool deck. The statute restricts associations from assessing owners amounts over and above the contract price for those services.

Court Believes Competitive Forces Limit Vendor Fees and Charges

The court stated that management companies, and other vendors contracting with homeowner associations, are not similarly restricted. However, the court noted the economic reality that such vendors are not free to charge whatever rates they choose. The court stated that "Competitive forces, not the statute, will constrain the vendors' fees and charges" acknowledging that homeowner associations have the ability to shop for services.

See, every once in a while there is good news for Management Agents! ■