JUDGING DIRECTORS

HOW COURTS THROUGHOUT THE NATION EVALUATE BOARD AND ASSOCIATION DECISION MAKING AND HOW TO "BULLET-PROOF" THOSE DECISIONS

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INTRODUCTION

Associations and their counsel draft, adopt and debate governing documents, amendments and rules. Legislatures debate, adopt and impose community association laws. Directors interpret all this, make decisions and "act." Finally, it comes down to this: will judges uphold the way directors operate their communities; will they defer to boards that act in good faith after proper inquiry, or, instead, second guess their decisions. Put another way, will judges apply the business judgment rule or reject it?

Why should people committed to working with Associations care? The recent spate of legislation affecting association operations and the developing case law in the area reflects a growing public scrutiny of how directors make decisions for their fellow owners. Legislation requiring more disclosure and due process necessarily results in more claims and disputes, some of which results in political and legal challenges culminating in recalls of directors, insurance claims, arbitrations and litigation. Sooner or later, almost every type of dispute gets litigated and directors, managers and owners aware of how objective, neutral judges evaluate those disputes can enhance community operations and benefit all who live in and serve them.

OUR APPROACH

The topic we've chosen to discuss here is huge and covers CC&R enforcement, interpretation, maintenance, budgeting, disclosures, elections – in short, the whole gamut of Association operations. Beyond that, the topic is sophisticated and we've handled it in a way that reflects our respect for our readers' capacity to understand the sometimes complicated (and periodically conflicting) principles animating the manner in which community association operations are analyzed.

THE BUSINESS JUDGMENT RULE STANDARD

As Association counsel, we are regularly called upon to help clients determine whether their processes, decisions and conduct are "proper," "legal," "defensible" or "likely to be upheld" if subjected to judicial scrutiny. As the cases show, guiding Associations requires an assessment of the contexts in which challenges to board authority arise and the legal standards courts will apply to sustain, "reverse" or penalize the exercise of that authority.

The most famous standard is the business judgment rule. This rule, typically applied to "for profit" corporate operations, essentially says that business decisions made in good faith by sufficiently

informed, disinterested directors should not be undone by subsequent judicial review. This principle sometimes fits awkwardly into the community association model where decision making involves more than the assessment of commercial risks with consequences frequently different than financial gain or loss and where those making the decisions lack specialized expertise or complete "disinterest" in an outcome. Further, while it may make sense to apply a business risk/benefit model to maintenance or financial challenges facing a board, the judicial deference that might otherwise apply is not necessarily compatible with the way courts construe Association rules or CC&Rs.

Our series of articles explore current statutory and judicial trends dealing with the business judgment rule, "judicial deference" and to a lesser extent "reasonableness" limitations on community association and board conduct, business or otherwise. As we'll see, the cases, depending on the facts and jurisdictions, apply several standards for deferring or not to association and board behavior. All suggest practical considerations which can be used to help association leaders be better prepared for challenges inherent in making decisions for their communities. These practical tips will be addressed in the last installment of this series of articles.

STATUTORY FRAMEWORK

The "business judgment rule" is codified in numerous statutes. The Restatement of Real Property, for example, requires Association directors and officers to act in good faith, in compliance with state laws and the Association's governing documents; directors are also required to "deal fairly" with the Association and its members and to "use ordinary care and prudence in performing their functions." Under the Uniform Common Interest Development Act of 1994 ("UCIOA") directors are subject to the traditional corporate model: "Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty required of an officer or director of a corporation organized… (under the state non profit corporation law in the state which adopts the Act)."[1] Comments to UCIOA Section 3-103(a) explain that the duty should parallel that applicable to state standards imposed on directors of non profit corporations which garners for the members the "benefits of the business judgment rule" now commonly applied by courts in the non profit context.

California has not embraced UCIOA but instead adopted its own extensive regulatory scheme, the Davis-Stirling Common Interest Development Act.[2] It approaches the issue somewhat differently than does UCIOA by coupling adhesion to a specified standard of care with its reward: qualified, limited immunity for volunteer directors (but not the Association itself). Immunity from tort damage awards to the extent of insurance is given so long as conduct is made in good faith, within the scope of the director's duties and provided mandated levels of insurance are maintained.[3] Like UCIOA, the California statute is not intended to protect decisions or conduct made by declarant directors.[4] Unlike the California statutory scheme, UCIOA does not explicitly vest directors with immunity for claims arising out of their "business judgment" or otherwise.

JUDICIAL PHILOSOPHY

Historically, courts applied the business judgment rule in a relatively narrow context:

> ***"The business judgment rule insulates an officer or director of a corporation from liability for a business decision made in good faith if he is not interested in the subject matter of the business judgment, is informed with respect to the subject of the business judgment to the extent he reasonably believes to be appropriate under the circumstances, and rationally believes that the business judgment is in the best interests of the corporation."***[5]

In community association jurisprudence, the rule is construed more comprehensively. It serves not only as a "shield" to protect *directors* but it and the related business judgment "doctrine" have been expanded to justify board decisions and to defend the *associations* on whose behalf those decisions are made.[6] Decisions referenced in this article thus involve claims against directors, unincorporated associations and their members and those concerning the implementation and interpretation of recorded covenants and rules.

Given the many approaches taken by judges throughout the country, it is hard to articulate one guiding principle that determines whether a particular court will expressly or implicitly adopt a "business judgment" rule deference. According to the Restatement Reporter:

"Case law governing the liability of associations to members and the ability of common interest community members to challenge actions of the association tends to be somewhat confusing and unsatisfactory, in part because there is a tendency to lump together several different questions for treatment under a single rule. In recent years, a number of state courts have decided community association cases by adopting either the "reasonableness rule" or the "business judgment rule." Although these two "rules" are discussed as if they were substantively different, they appear to allow the same challenges to association actions. Under either rule, common interest community members are entitled to judicial review of claims that association actions are ultra vires, are made in bad faith, or are made by interested directors, or that the actions are arbitrary, capricious, or discriminatory."[7]

The trend of the cases reveals that where their resolution depends on questions involving the type of expertise judges are trained for and familiar with, they will not defer to conduct or interpretations engaged in or adopted by boards of directors; on the other hand, where the issues turn on questions within the purview of the expertise or experience of lay directors or involve the execution of authorization properly and fairly given the association by governing documents, statutes or membership approval, courts will not interfere based on either a board's "business judgment," notions of "judicial deference" or because the conduct challenged is characterized as "reasonable."

BUSINESS JUDGMENT, DEFERENCE AND "REASONABLENESS" APPLIED

Board conduct is most likely to be upheld in situations where directors implement maintenance authority given the Association by the governing documents. This was illustrated in a case involving an unincorporated condominium association afflicted with termites, *Lamden v La Jolla Shores Clubdominium Association*.[8] There, the Supreme Court adopted a judicial deference standard which did not weigh whether the board's limited spot spraying treatment plan was better than the global "tenting" approach urged by a member (and supported by her experts); instead the court

held that deference was appropriate where the board's exercise of discretion in selecting repair methodologies was "clearly" within the scope of its authority and directors acted in good faith, upon reasonable investigation and with regard to the best interests of the community.[9]

When the authority to act is clear, whether in the "business" or "architectural" context, courts are less likely to interfere with an association's internal operations. In a case cited (though not always followed) through the United States, *Levandusky v One Fifth Avenue Apartment Corp.*, the highest New York court adopted the business judgment doctrine by refusing to overturn the board's refusal to permit an internal architectural building modification requested by an owner. The plan to relocate heating pipes was prohibited by rule and rejected by the board (no exceptions to the rule had previously been made); prior to denying the proposed modification, the directors conferred with a qualified engineer who confirmed that while relocation was feasible and would not necessarily cause problems, any change in old piping systems presented risks that should be avoided where possible.[10] Presumably the board could have approved relocation (perhaps coupled with the posting of a deposit and an indemnity agreement for damage resulting from the modification) but its decision not to do so was within its discretionary power: "…the responsibility for business judgments must rest with the corporate directors; their individual capabilities and experience peculiarly qualify them for the discharge of that responsibility."[11] These capabilities and experience relate, in part, to an awareness of the sensitivities and politics of a community that would be undermined if subject to judicial interference.[12]

Judicial interference is also less likely where no abuse of day to day business operations is demonstrated. For example, in *Ostayan v Nordhoff Townhomes Homeowners Association*,[13] the association was sued for breach of fiduciary duty for failing to timely disclose the filing of suit against its earthquake insurer which had improperly denied policy benefits (though notice of the dispute had been well documented). Plaintiff argued there was such a duty and sued for his share of the recovery distributed to members after his property was sold. In noting that neither the association's governing documents nor California's comprehensive statutory disclosure scheme required specific disclosure of this type of lawsuit, the Court, citing business judgment cases and denying the claim, held, that "whether and when" to give notice was within the discretion of the board.[14] Likewise, in *40 West 67th Street Corporation v Pullman*,[15] the Court applied the business judgment rationale to sustain eviction of an unruly housing cooperative member where the documents permitted eviction. New York's highest court did not particularly evaluate whether there was a substantial basis for the eviction per se but rather focused on the fact that the association ("unfailingly") complied with governing document due process requirements, authorized action that was consistent with legitimate corporate purposes and was not shown to have acted in bad faith or with improper "favoritism." Pullman also neatly shows that even though the tenant had harassed the Association's president, the decision to litigate the eviction was not motivated by improper bias or "interest."[16]

Where the operations are discretionary, many jurisdictions impose a level of review more exacting

than the business judgment deference cases discussed above; courts will want to determine whether rules are "reasonable" or board and committee action is a reasonable exercise of authority given under and consistent with the governing documents and their purposes.[17] Unrecorded rules adopted after the covenants were first recorded are not entitled to the same deference as the original covenants;[18] also, when broad discretion vests in a committee (with, for example the power to approve or disprove plans based on "harmony of external design, location and relation to surrounding structures and topography") it cannot exercise that power arbitrarily (to deny an owner's plans where the community aesthetic is a "cacophony" of house styles)[19] or discriminatorily (where permitted homes have a similar look to the one prohibited).[20] And, whether or not business judgment deference is applied liberally or not at all, courts are available to redress improper board conduct.[21] Thus in *Franklin Valley Chateau Blanc Homeowners Association v Department of Veterans Affairs*,[22] an elderly member with Hotchkins disease was permitted to pursue a cross complaint for damages arising out of a board's unreasonable suit seeking relief for the possession of too many books and papers which the board claimed was a nuisance and (without expert support) a fire hazard.

GOOD FAITH AND DUE PROCESS

The willingness to avoid "second guessing" board decisions, the point of business judgment defense principles, is based on the (rebuttable) presumption that directors' actions are made in good faith, authorized by corporate documents and reflect the experience or expertise of the directors.[23] To take advantage of the defenses, directors must actually "act:" "The business judgment rule may apply to a deliberate decision not to act, but it has no bearing on a claim that directors' inaction was the result of ignorance."[24]

The "action" taken must be made in "good faith" and not for the purpose of providing a director a direct benefit (though it is obvious that, as owners, directors will inevitably be affected, *qua* owner, by decisions made and acted upon by the board). Directors must, prior to making decisions, acquire and evaluate relevant data, including input from experts. This obligation is particularly apt in the community association environment where board service requires no expertise and typically the only qualifications are that a person volunteers, is an owner of record and has timely paid their assessments.

While the business judgment rule lends no protection to conduct deliberately singling out for disparate treatment an owner,[25] or a class of owners,[26] or arbitrary action,[27] the typical inquiry is more about whether directors' decisions are intended to serve goals consistent with the Association's purposes and are not shown to reflect bad faith, arbitrariness, favoritism, discrimination or malice.[28]

The "good faith" aspect of a director's obligation also consists of assuring procedural fairness in the decision making process which includes abiding by the bylaws or covenants. Thus, a Montana association was denied summary judgment in *Edgewater Townhouse Homeowners Association v Holtman* where the board could not, in a suit to collect an unpaid $3,900 special assessment to finance installation of a new heating system where the board could not demonstrate the membership approval required by the documents.[29] Even where the violation is obvious and undisputed, as in the

case of an owner's failure to submit architectural plans prior to a lot alteration, summary judgment can be denied where the board cannot demonstrate compliance with its own governing documents.[30] "Hearings," or at least the opportunity to be heard, must be afforded prior to the imposition of sanctions by the body authorized to dispense discipline, whether it be the board[31] or the association.[32] On the other hand, where the declaration fails to vest in the association the authority to take a particular action, such as the denial of a building application unsupported by narrowly drawn architectural covenants, no amount of "due process" will transform the action to make it lawful.[33]

COVENANT DISPUTES

In contrast to "business" judgment, that needed for the interpretation of recorded covenants is a task familiar to judges and one for which they are trained. Additionally, the meaning of CC&Rs, whether characterized as "contracts" or "deed restrictions" is subject to common law standards based on the statutes and cases of a particular jurisdiction and generally not the circumstances of a specific community, board or individual. Likewise, while business decisions concern how corporate-like tasks are performed, CC&R enforcement deals with the touchier and perhaps deeper subject of private property regulation. These are some of the reasons why a board's interpretation of CC&Rs, whether directly or indirectly resting on a business judgment rationale, may not generally be deferred to by a trial or appellate court.

In *Riss v Angel,*[34] for example, the board of an unincorporated Washington state association refused to permit construction of a home whose height was lower than the maximum permitted by the CC&Rs, larger than the minimum square footage required and consistent with set back prohibitions. The CC&Rs contained no other objective criteria though the association had the generic authority to deny architectural applications for any, including, aesthetic reasons. Whether the application met the CC&Rs was, in the court's opinion, a question of judicial interpretation and not subject to deference to board discretion.

An Oregon board's determination about the meaning of CC&R architectural provisions was also rejected in *Littlewhale Cove Homeowners Association v Harmon*.[35] The board claimed the CC&Rs required the owner to submit an architectural request to the association before applying to the City for a needed variance; when the owner first applied to the City, the board levied a fine of $11,025 and recorded a lien against the owner's property to secure payment. On the owner's challenge, the court sidestepped the deference question by noting that the CC&Rs vested architectural authority in the architectural committee and not the board; since the board violated the CC&Rs by making the decision instead of the committee, the court deemed deference inappropriate. Then, itself construing the CC&Rs, the court concluded the timing requirements of the CC&Rs did not compel owners to make initial architectural submissions to the association.

On the other hand, where architectural "aesthetic" controls are at issue, the "internal" determination of an association is likely to be affirmed. Thus, one Arizona court found (albeit without reference to deference or the exercise of business judgment) that a CC&R provision prohibiting a "trailer, camper, boat or similar equipment" could be read to include "customized bus" even though Arizona covenants are strictly construed to be subordinate to the "free

use and enjoyment" of property.[36] Another case permitted enforcement of a ban on vinyl siding where the owner failed to show that the architectural committee acted in bad faith or unreasonably.[37] In a case involving fences and windows, a California appellate court, discussing different relevant review standards sustained aesthetic conclusions reached by the "art jury" not based on "business deference" but because the committee had the power to decide and was not shown by the disappointed applicant to have acted unreasonably or arbitrarily.[38]

In *Johnson v The Pointe Community Association, Inc.*[39] an Arizona appellate court found wrongful a board's failure to require an owner to comply with the CC&Rs pre-approval requirements applicable to an exterior building modification. The court distinguished *Lamden and Levandusky*, saying deference was not required in a CC&R interpretation case and that neither decision barred owner challenges where board action was without consideration of the relevant facts or beyond the scope of board authority. These distinctions are not (in my view) particularly persuasive and the case illustrates that "bad facts" can make bad law:" the record failed to reveal why the board refused to require an architectural application or whether it considered any series of graduated enforcement steps.

Where a board refuses, without reason, to enforce an affirmative covenant, courts will intervene as in *The Pointe* and another Arizona case, *Gfeller v Scottsdale Vista North*.[40] There, the board refused to enforce a CC&R prohibition against improper drainage affecting a neighbor's lot; the court conducted a "de novo" review of the board's responsibilities and concluded that the CC&R provision stating that the board had the "right and duty" to enforce required it to do so. On the other hand, in *Beehan v Lido Isle Association*[41] on business judgment grounds, a California appellate court refused to penalize an association that failed to enforce a recorded construction set-back provision where the record showed the board evaluated the difficulty, expense and benefits of enforcement and then refused to purse the violation.

ADVISING COMMUNITY ASSOCIATION CLIENTS

The holding and rationale arising out of challenges to association authority vary depending on jurisdiction, relevant statutory language, and idiosyncratic fact patterns and in some cases whether the dispute focuses on the original declaration or amendments or board adopted "house rules." Still, it is possible to distill from the cases concerns which, properly addressed, can significantly enhance the likelihood that board association conduct will withstand scrutiny. In no particular order, these include:

1. COMPLIANCE WITH VOTING RULES

It is imperative that timing and content rules concerning notices and ballots dealing with adoption of a member approved CC&R amendment or a "house rule" by the board[42] comport with relevant statutes and governing document requirements.

2. COMPLIANCE WITH GOVERNING DOCUMENTS

Whether relating to voting, notices, enforce procedures, or substantive requirements, it is essential that the association follow its own governing documents.

3. DUE PROCESS

Relevant timing requirements must be met prior to imposition of discipline (fines, suspension of other membership rights) or the rejection of architectural applications. Further, the nature of the disciplinary charges or the bases of the use restriction or architectural objections should be identified in a manner that tracks the requirements of the bylaws, CC&Rs or rules. For example, where the CC&Rs allow a building modification unless the design review committee finds the proposal will not be consistent with "community standards" and "aesthetics", a rejection should identify those standards and set forth why the application failed to comply or was inconsistent with the "look" of the community. Likewise, where a board intends to impose discipline, the hearing notice should cite the factual basis (and documents supporting) the claim as should the resolution concluding discipline was warranted.

4. INQUIRY AND INVESTIGATION

The "informed" board is one which asks questions – of management, counsel, architects or other experts — before concluding how to spend money, enforce CC&Rs, make repairs, etc. Many times, alternative courses of conduct will present themselves; boards should consider alternatives taking into account answers to questions received, budgetary issues, political considerations and other factors. Arbitrary decision making is not likely to withstand challenge.

5. VET ISSUES; CONSIDER AMENDMENTS

Enlisting members in the decision making process by keeping them reasonably informed and providing an outlet for contemplated courses of action is a prudent method of blunting criticism, thereby reducing the risk of challenge and the possible claim a board has not acted "in good faith." Where membership input suggests alternative approaches, or where the solution to a problem might be an amendment expanding or diminishing the power of the board or the association, these options should be given proper attention. "Giving proper attention" to member concerns is not the same, of course, as saying a board should always defer to member view points but only that these should be acknowledged and considered.

6. EXPERTS

Since directors may not have relevant training or expertise, they can and should rely on the advice of experts. The advice does not necessarily have to be followed but whether it is or is not, the basis for whatever action is taken on expert advice should be clearly spelled out.

7. CONFIDENTIAL COMMUNICATIONS

Where boards rely on the advice of counsel or other experts to support their business judgment, that advice can sometimes be disgorged in discovery. Even the "executive session" cloak may be ineffective to shield otherwise privileged communications where those communications form the basis of a business judgment defense. Counsel and clients should both be aware of the possibility discovery may lead to the disclosure of such communications and early on address the issue in a manner calculated to protect the association's interests.

8. LOOK AHEAD

Before embarking on a path that may predictably culminate in litigation, counsel and client should project how board conduct will be viewed by objective observers at some point in the future. Few

directors are used to the scrutiny that accompanies litigation and this simple "looking glass" test can prevent or minimize significant problems before they arise.

9. DOCUMENT PROPERLY

Volunteer directors and paid managers "come and go" and those on the board, when a decision is made, may not be available when challenges result. Proper documentation (not just casual electronic mail communications) can enhance a board's "business credibility" and the potential success of a claim or defense. Properly adopted, signed minutes revealing quorums, decisions and their basis; documentation showing the basis for the exercise of board or committee discretion; paper trails clearly revealing how an issue and the board's response to it evolved; writings presenting the context--political, practical, economic or otherwise--in which decisions are made; notices of meetings with agendas; newsletters reporting the consequences of board actions or tentative decisions; architectural applications properly executed by committee or board members as required by the governing documents; and other types of documentation all serve the purpose of helping support and defend board and community decision and action.

A PEEK INTO THE FUTURE

It is likely the next few years will witness more cases and statutes dealing with standards of review of board and community association conduct. We have seen an explosion of law review articles dealing with these standards and a few high profile cases that have not met with universal approval. Further, legislators seem inclined to enact laws based on apocryphal complaints about board behavior driven by websites and email trees authored by those who may be uninformed, or worse, whose interests may be incompatible with a "common interest" of association members. The evolution of "business judgment" rule and deference cases will necessarily be affected by these developments and so bear watching and analyzing in the years to come.

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1 Section 3-103(a). As of 2000, the Act or its predecessors, was operative in twenty-three states. See Note, *Remedies for Common Interest Development Rule Violations* Colum. L. Rev 1958, 1973, n. 103 (2001).

2 California Civil Code Sections 1350 et. seq.

3 California Civil Code Section 1365.7.

4 California Civil Section 1365.7(c). For that matter, the immunity does not protect owners of more than 2 separate interests in the development. Under UCIOA, declarant directors are subject to a "trustee" (i.e., higher) standard of care and not merely the business judgment standard. See Section 3-103(a).
California Civil Code Section 1365.7. The statute notably strikes a balance between encouraging volunteerism, a "good faith" standard of care and the compensation of victims (by requiring the Association to maintain $500,000 or for communities larger than 100 separate interests) injured by negligent, but not grossly negligent, director error.

5 *Cuker v Mikalauskas*, 692 A2d 1042, 1045 (1997) quoted by Wayne S. Hyatt, *The Business Judgment Rule and Community Associations: Recasting the Imperfect Analogy, 1 Journal of Community Association Law* 2, 3 (1998).

6 Wayne S. Hyatt, Condominium and Homeowner Association Practice: Community Association Law (3rd Ed.) Section 5.03(b); Note, Judicial Review of Condominium Rulemaking, 94 Harv. L. Rev 647, 665 (1981).

7 Restatement Third Property: Servitudes, Section 6.13, com. a pp. 328-329. Perhaps it is the complex nature of the relationship between the association, board and members that creates the lack of clarity and easy to follow standards: "On the one hand, each individual owner has an economic interest in the proper business management of the development as a whole for the sake of maximizing the value of his or her investment. In this aspect, the relationship between homeowner and association is somewhat analogous to that between shareholder and corporation. On the other hand, each individual owner,

at least while residing in the development, has a personal, not strictly economic, interest in the appropriate management of the development for the sake of maintaining its security against criminal conduct and other foreseeable risks of physical injury. In this aspect, the relationship between owner and association is somewhat analogous to that between tenant and landlord." All citations omitted. Also see *Ostayan v Norhoff Townhomes Homeowners Association* (2003) 110 Cal. App 4th 120, 127-128, discussed infra.

[8] *Lamden v La Jolla Shores Clubdominium Association*, 980 P. 2d. 940 (Cal. 1999). In another "pest eradication" case, an Ohio appellate court refused to engage in the "de novo" review of a board's decision to access a unit to exterminate cockroaches where doing so was permitted by the Association's governing documents. *River Terrace Condominium Association*, 514 N.E. 2d 732 (Ohio App. 1986).

[9] Also see *Agassiz West Condominium Association v Solum*, 527 N.W. 2d 244 (N.D. 1995) (adopting the business judgment rule but not prohibiting an owner for suing for violation of the bylaws); cf. *Schoninger v Yardarm Beach Homeowners Association*, 523 N.Y.S. 2d 523 (App Div.1987).

[10] *Levandusky v One Fifth Avenue Apartment Corp.,* 553 N.E. 2d 1317 (N.Y. App. Div. 1990).

[11] *Levandusky, supra*, 553 N.E. 2d at 1322 (citation omitted).

[12] Id.; also see *Lamden*, 980 P. 2d at 942 (deference is proper given the "relative competence, over that of courts, possessed by owners and directors of common interest developments to make the detailed and peculiar economic decisions necessary in the maintenance of those developments.").

[13] *Ostayan v Nordhoff Townhomes Homeowners Association* (2003) 110 Cal. App 4th 120.

[14] *Ostayan, supra*, 110 Cal. App 4th at 129. The Association had, while plaintiff still was a member, distributed to all members three letters describing the insurer's refusal to pay policy benefits and the board's determination to "take further legal action" should it be necessary.

[15] *40 West 67th Street Corporation v Pullman*, 790 N.E. 2d 1174 (N.Y. 2003); reported in the August 2003 *Community Association Law Reporter.*

[16] The member claimed his upstairs neighbor and the President's wife were having an affair; the member had commenced four lawsuits against the President and the Association's management and had tried to file another 3 more. It belies logic to say the President was not "interested" in the outcome; the point however is that propriety of the eviction stood on its own and was not shown to have been motivated by specific, personal relations between the President and the evictee.

[17] *Hidden Harbor Estates v Norman*, 209 So. 2d 180 (Fla. App 1975) (rule prohibiting alcohol in common area was reasonable and not arbitrary); Ryan v Baptiste, 565 S.W. 2d 196 (Mo. App. 1978) (installation of door locks deemed reasonable).

[18] *Hidden Harbour Estates v. Basso* 393 So.2d 637, 640 (Fla.App. 1981). Compare *Villa De Las Palmas Homeowners Association v Terifaj* (Cal. Sup. Ct. June 14, 2004) holding enforceable a CC&R pet-ban amendment recorded after defendant acquired title.

[19] *Town & Country Estates Association v. Slater* 740 P.2d 668, 669 (Mont. 1987).

[20] *Ashelford v. Baltrusaitis*, 600 S.W.2d 581, 588 (Mo. App. 1980).

[21] *40 West 67th Street v Pullman, supra*, 790 N.E. 2d 1174, 1180-1181 ("[D]espite this deferential standard, there are instances when courts should undertake a review of board decisions).

[22] *Franklin Valley Chateau Blanc Homeowners Association v Department of Veterans Affairs* (1998) 67 Cal. App 4th 743.

[23] *Levandusky, supra*, 553 N.E. 2d 1317; *Papalexiou v Tower W. Condominums*, 410 A. 2d 260, 286 (N.J. Super. Ct. Ch. Div. 1979) *Lamden, supra*, 980 P. 2d at 942.

[24] *Rabkin, etc. v Hunt* 547 A. 2d 963, 972-973 (Del. Court of Chancery 1986) (business judgment rule does not protect directors' failure to learn about the terms of a stock purchase agreement which may have resulted in economic loss to minority shareholders).

[25] *Smukler v 12 Lofts Realty, Inc.* 546 N.Y.S. 2d 862, 863 (App. Div. 1993); this case has a vituperative history; see *Smukler v 12 Lofts Realty, Inc.* 528 N.Y.S. 2d 437 (App. Div. 1989) (permitting tortuous interference claims arising out of board's alleged refusal to permit sale unless seller agreed to expand use of roof to other association members).

[26] *Country Square Condominium Association v Halpern* 436 A. 2d 580) (N. J. Super 1981) (holding unreasonable a board adopted rule charging rental fees only to non resident owners).

[27] *In Re Croton River Club* 52 F3d 41 (2 Cir. 1995) (refusing to invoke rule to permit unfair, arbitrary allocation of special assessment).

[28] *40 West 67th Street Corporation v Pullman, supra*, 790 N. E. 2d 1174, 1181-1182.

[29] *Edgewater Townhouse Homeowners Association v Holtman* 845 P.2d 1224 (Mont. 1993).

[30] *Ironwood Owners Association IX v Solomon* (1978) 178 Cal. App 3d 766, 772 ("When a homeowners' association seeks to enforce the provisions of its CC&Rs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious").

[31] California Civil Code Section 1363(h); UCIOA Section 3-116.

[32] *40 West 67th Street Corporation, supra*, 790 N. E. 2d 11744 (sustaining, on business judgment grounds, eviction of a "nuisance" approved by the members at a duly noticed membership meeting).

[33] *Riss v Angel*, 912 P2d. 1028, 1034 (Ct. App. Wash 1996) (in rejecting architectural application, unincorporated association acted outside its authority).

[34] *Riss v Angel*, 934 P. 2d 669 (Wash. 1997).

[35] *Littlewhale Cove Homeowners Association v Harmon*, 986 P. 2d 616 (Or. App 1999).

[36] *Arizona Biltmore Estates Association v Tezak* 868 P. 2d 1030, 1032 citations omitted (Ariz. App. 1993).

[37] *Raintree Homeowners Association v Bleima*, 463 S.E. 2d 72 (N.C. 1995).

[38] *Dolan-King v Rancho Santa Fe Association* (2000) 81 Cal. App 4th 965).

[39] *Johnson v The Pointe Community Association*, Inc. 73 P.3d 616 (Ariz. App. 2003).

[40] *Gfeller v Scottsdale Vista North* 969 P2d 658, 660 (Ariz. App 1998).

[41] *Beehan v Lido Isle Association* (1978) 70 Cal. App 3d 858 The court said "For purposes of this decision we shall assume Association was obligated in appropriate circumstances to take action to enforce the declaration of restrictions" and accepted that the case at issue was not one of those "appropriate circumstances." 72 Cal. App 3d at 865.

[42] California Civil Code Sections 1357.100, et seq., effective January 1, 2004, require notice to members before the board can adopt a rule and by majority vote allows members to "reverse" rule changes proposed to be adopted by the board.