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Court Strikes Down HOA's Rule Banning Personal Trainer From Fitness Center

By **Michael Toback** | January 17, 2019

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Is a personal trainer in a fitness center like a call girl sitting at a clubhouse bar? This comparison was drawn by the trial court in its decision to grant summary judgment in favor of a homeowner's association as to whether a personal trainer is an invitee or a licensee. However, the Fourth District Court of Appeal reversed the decision, concluding that neither the analogy nor the analysis was properly applied to the facts of the case.

The Fourth DCA's recent ruling in *Charterhouse Associates v. Valencia Reserve Homeowners Association* brings an added measure of clarity to the proper test for

courts to apply when determining who may be classified as a licensee by associations.

The residents of a property owned by Charterhouse within the Boynton Beach, Florida community paid and authorized a personal trainer to lead their workouts in the community fitness center. The gym is one of the amenities available for use by owners, family members, guests, invitees and tenants according to Valencia Reserve's declaration. When the association later entered into a contract with a different vendor to be the exclusive provider of personal training services in the fitness center, it banned the residents' trainer from the facility.

In response, Charterhouse filed suit against the association seeking declaratory relief, injunctive relief and damages for breach of its rights under the association's declaration. The association moved for partial summary judgment, arguing that the personal trainer retained by Charterhouse's residents was a licensee who could be excluded under the new rule it had enacted. The trial court agreed and granted a final partial summary judgment in favor of Valencia Reserve, concluding: "If [the personal trainer] is getting a dime for training [the residents], at any time, which you have basically said he is, then he is carrying on a business … as soon as [the personal trainer] starts getting paid for his services is the difference between the girlfriend sitting at the clubhouse bar and the call girl. One is getting paid, they're a licensee; the other one is an invitee. Invitees are welcome, businesses are not."

Charterhouse appealed the decision to the Fourth DCA, and the appellate panel found that Florida courts originally applied the "economic benefit test," which hinges on the question of whether a business relationship exists to determine if a visitor to a private property may be granted the status of an invitee. However, over time Florida courts began to use the "invitation test," which further

distinguishes between a public invitee and a business visitor based on the nature of a visitor's activities and their invitation by an owner.

The appellate court concluded that residents using the fitness center with their guests, regardless if they are providing companionship or workout guidance, are using the facility for its intended recreational purpose. It found that the trial court erred in applying the economic benefit test focusing solely on whether the trainer was being paid by the residents.

"Instead, the status of the personal trainer in this scenario is more akin to the invitee 'girlfriend' at a clubhouse (using the trial court's analogy), rather than the uninvited licensee 'call girl' soliciting her services to provide a 'girlfriend experience' for paying customers," reads the appellate opinion.

The Fourth DCA also cited prior rulings noting that courts which are called upon to assess the validity of rules enacted by an association board of directors must first determine whether the board acted within its scope of authority and, second, whether the rule reflects reasoned or arbitrary and capricious decision making.

In this case, the association claimed that its personal trainer exclusion rule was pursuant to the provision in its declaration authorizing the association to "provide owners with service [and] amenities … which will enhance the quality of life at Valencia Reserve." However, the appellate panel found that the rule directly conflicts with the declaration's provision granting access to the fitness center to owners' invitees, so it must be found to be invalid because it exceeded the scope of the board's authority.

The opinion concludes: "The trial court's errors arose from its failure to apply the proper test when designating the personal trainer as a licensee. That error was compounded when the trial court erroneously upheld the validity of the rule as

applied, and failed to consider whether the Association had the authority to enact the rule at all."

In light of this ruling, Florida community associations should give careful consideration together with the help of highly qualified and experienced association counsel to any proposed rules, including the banning of personal trainers from their fitness center, which may conflict with the language found in their declaration.

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