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LAW of the LAND

Owner Learns Lesson After Brazen Unit Expansion

Common Area Expansion Runs Afoul Of Law

BY CHRISTOPHER R. VACCARO
SPECIAL TO BANKER & TRADESMAN

It is too often said that one can more easily obtain forgiveness than permission, but a Cape Cod condominium owner recently suffered dire consequences when she expanded her unit into the condominium's common areas, without receiving permission or forgiveness from her fellow unit owners.



CHRIS VACCARO

The Tall Pines Condominium in Dennis consists of two residential units located 32 feet apart. Manuel and Brenda Calvao owned Unit 1 and Kathleen Raspallo owned Unit 2. The

master deed assigned a 46 percent interest in the condominium's common areas to Unit 1, and a 54 percent interest to Unit 2. It designated most of the common area for the exclusive use of the individual units. The master deed prohibited use of Unit 2 as a year-round residence, but Raspallo had ignored this prohibition since 2003 when she purchased the unit. In contrast, the master deed allowed year-round use of the Calvaos' unit.

Raspallo began renovating her unit in 2011, when the original developer was the sole condominium trustee. Raspallo persuaded the developer to unilaterally ap-

point her as his successor trustee, so she could secure permits from the town to expand her unit into her exclusive use common area. She boldly proceeded to build an addition to her unit, despite the Calvaos' objections.

The Calvaos sued her in Superior Court for the expansion, both on their own behalf and derivatively on behalf of the condominium board of trustees. They also sued her for residing in her unit year-round in violation of the master deed. The judge ruled that Raspallo's appointment as sole trustee was ineffective without the Calvaos' consent, found Raspallo liable

for her unilateral actions, urged the parties to discuss a remedy and appointed a mutually acceptable condominium trustee. The parties' discussions proved fruitless, so the judge ordered Raspallo to remove the addition, cease using her unit as a year-round residence, and pay the Calvaos \$36,291.53 in attorney's fees. Raspallo appealed.

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Court Sides With Neighbor

The Appeals Court disagreed with Raspallo, surmising that her view of condominium law would allow condominium trustees to negate the essence of condominium ownership. The court instead reaffirmed that all unit owners have legal ownership of all common areas, even those

dedicated to the exclusive use of a single unit, and that unit owners cannot be deprived of that ownership without their consent. According to the court, although there was little practical benefit to the Calvaos' legal interest in Raspallo's exclusive use common area, Raspallo could not unilaterally seize ownership of the common area by building her addition on it.

The court upheld the lower court's order requiring Raspallo to remove the addition,

noting that the removal cost would be less than \$30,000. The court also upheld the lower court's order forbidding Raspallo from using her unit as a year-round residence, as well as the assessment of attorney's fees against her.

The court's ruling against Raspallo serves as a teaching moment to those who would push forward with real estate projects over objections from other stakeholders. If one cannot secure permission before building,

one should not assume that he or she can gain forgiveness after the fact, especially from neighbors in a condominium. Without permission or forgiveness, new construction can end up as a court ordered tear-down. In Raspallo's case, it also resulted in the loss of her year-round housing. ■

Christopher R. Vaccaro is a partner at Dalton & Finegold in Andover. His email address is cvaccaro@dflp.com.
