

000-8-343



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009
(703) 246-2221 Fax (703) 385-6632

COUNTY OF FAIRFAX

CITY OF FAIRFAX

F BRUCE BACH
MICHAEL P McWEENEY
MARCOUS D. WILLIAMS
STANLEY P. KLEIN
ROBERT W. WOOLDRIDGE, JR.
ARTHUR B. VIEREGG
JANE MARLUM ROUSH
M. LANGHORNE KEITH
DENNIS J. SMITH
DAVID T. STITT
LESLIE M. ALDEN
KATHLEEN H. MACRAE
JONATHAN C. THACHER
HENRY E. HUDSON
K. TERRANCE NEY
JUDGES

JAMES KEITH
LEWIS D. MORRIS
BURCH HILLSAP
BARNARD F. JENNINGS
WILLIAM G. FLUMBER
THOMAS J. MIDDLTON
THOMAS A. FORTKORT
QUINLAN M. HANCOCK
RICHARD J. JAMBORSKY
JACK B. STEVENS
J. HOWE BROWN
RETIRED JUDGES

March 24, 2000

William A. Marr, Jr.
3861 Plaza Drive
Fairfax, Virginia
22030

Geoffrey S. Gaven
122 South Royal Street
P.O. Box 1417
Suite 327
Alexandria, Virginia
22313

RE: Brun v. Tivoli at Cardinal Forest Condominium Owners Ass'n, et al.; C155001

Dear Counsel:

Plaintiff, Kimberly A. Brun ("Brun") owns a condominium unit in Springfield, Virginia. The condominium complex known as "The Tivoli at Cardinal Forest."

Brun, who has occupied the unit since late 1990, alleges that commencing in December 1991 she has been disturbed by "excessive noise" emanating from the condominium unit directly above hers. Brun lodged complainants about the noise and brought this litigation action contending that because of the noise, the value of her condominium has diminished. Brun asserts this diminution in value was caused by the "maintenance practices" of the Association and the Condominium Board. Brun further asserts that she has consequently suffered "sleep deprivation, nervousness, and other physical problems."

Brun filed her suit against the Tivoli at Cardinal Forest Condominium Forest Owner's Association ("Association") and its Board of Trustees ("Board"), alleged to be the executive

OPINION LETTER

organ of the Association. On Motion of the Board, and after due consideration, the court concludes that the Board, however, is not a proper party to the suit.

Pursuant to Virginia's Condominium Act and § 55.79.80(B) of the Virginia Code, the Board holds irrevocable power as attorney-in-fact. See Va. Code Ann. § 55-79.39 et seq. (Michie 1995 & Supp. 1999). Thus with respect to the common elements of Brun's claim, the Board is empowered to act on behalf of the Association. This code provision creates no liability on the part of the Board for Association actions.

Further, the Condominium Act specifically provides that actions are to be brought against the Association. § 55-79.80:1(A) states, "An action for tort alleging a wrong done (1) by any agent or employee of the declarant or of the unit owners' association, or (2) in connection with the condition of any portion of the condominium which the declarant or the association has the responsibility to maintain, shall be brought against the declarant or the association, as the case may be." Va. Code Ann. § 55-79.80:1 (Michie 1995 & Supp. 1999). Accordingly, the Board of Trustees is dismissed from this action.

Sincerely,



Judge Dennis J. Smith

DJS/cf

OPINION LETTER