



Ambiguous Condo Documents

Passing the “Duck Test”

The so-called “duck test” states that, “if it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck.” This phrase is often credited to Indiana poet James Whitcomb Riley (1849–1916), who wrote, “when I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck.” This idiom is used to say that something is most likely exactly what it seems to be and we should trust our judgment about it. In determining whether condominium declarations are ambiguous, the duck test is very useful — so much so that even the courts appear to be using it.

The Rhode Island Supreme Court recently visited the following issue¹:

A condominium declaration stated that a unit may not be leased or rented more than two times in a calendar year. A unit owner who held two separate month-to-month tenancies with two individuals, who lived in the unit at the same time, sought to enter into a third lease agreement or rental arrangement within that same calendar year for that same unit. Was the association correct to deny the unit owner this request as being in violation of the declaration?

In this case, despite the board not approving the lease, the third tenant had moved in anyway. The association then filed a declaratory judgment action against the unit owner alleging that the lease violated the condominium declaration.

Question of Semantics

The defendant attempted to dissect the subject section of the declaration to

enable a reading and interpretation in his favor. While the trial justice acknowledged the denial of the lease was a hardship for the defendant, he noted that the provision in the declaration was a fully disclosed condition prior to his purchase of the condominium. In reviewing the unique facts surrounding the tenancies, the trial justice dismissed them as inapplicable to the decision, stating that the declaration, “means what it says and it says what it means.”²

On appeal the defendant argued that the declaration is ambiguous and that the trial justice erred by ruling in the association’s favor. In affirming the decision for the association, the Court took the opportunity to review the law as it relates to the interpretation of condominium declarations and in doing so, gave a fancy rendition of the duck test.

In Rhode Island, the Court has stated that the condominium statutes and the declaration control the relationship between the parties when the administration of a condominium complex is at issue and that the laws of contract construction apply. In determining whether a declaration is ambiguous, words are given their plain, ordinary, and usual meaning. The Court will depart from the declaration’s literal language only if there is ambiguity. Ambiguity is found if the declaration is “reasonably susceptible of different constructions”³ and not simply because the parties disagree about the proper interpretation of the declaration.

In interpreting the declaration, it is considered as a whole. Words are not viewed in isolation, nor are phrases taken out of context. The subjective

intent of the parties is not considered, only the intent expressed by the language of the declaration. The Court has stated that it will “refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity into a [declaration] where none is present.”⁴

In the case at hand, the Court found no ambiguity in the declaration and thus gave the words their plain, ordinary, and usual meaning. Looking to the plain meaning of the words within the declaration, the Court found that it unequivocally stated that a unit may not be leased or rented more than two times in each calendar year. The Court stated that this sentence meant exactly what it said: that the unit may not be rented more than two times in a single calendar year.

The foregoing case shows why it is so important for associations to have clear and unambiguous documents. Associations should always consult with an attorney to ensure that association documents are drafted explicitly and unequivocally. The result will be that, as long as it looks like a duck, swims like a duck, and quacks like a duck, the Court will rule it is a duck — regardless of what any discontented unit owner wishes to call it. 

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¹*Town Houses at Bonnet Shores Condominium Association v. Langlois*, 45 A.3d 577 (RI 2012)

²*Id.* at 581

³*Id.* at 583

⁴*Id.* at 583