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**by Charles Homler**  
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# in the courts

## PHILADELPHIA'S COURT OF COMMON PLEAS UPHOLDS ASSOCIATION'S RIGHT TO COLLECT REASONABLE ATTORNEYS' FEES IN LEGAL PROCEEDINGS

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Even though the UCA and UPCA and most association governing documents provide for the award of reasonable attorney's fees and costs to associations in successful collection actions, unfortunately our courts have inconsistently upheld this requirement. Moreover, association boards of directors have grown increasingly wary of "throwing good money after bad" by paying attorney's fees and costs to pursue delinquent unit owners or smaller debts.

A recent case arising out of the Court of Common Pleas of Philadelphia County may just give boards of directors some much needed (and more current) legal ammunition in their battles to collect much needed assessment revenue for their communities.

The case is significant because it arose out of Philadelphia County and the trial court awarded the association \$26,206.68 of attorneys' fees where the underlying, original debt that caused the dispute was less than \$1,200.

### THE CASE

Lawrence Robinson (the "defendant") owns a unit in "The Arches," a condominium association located in Center City Philadelphia. He defaulted in his obligation to make payments to the Arches Condominium Association (the "association") for regular monthly assessments, a special assessment, a snow assessment, and late fees (collectively the "debt"). After repeatedly notifying the defendant of his debt, in May 2011, the association was forced to file a complaint in Philadelphia Municipal Court to recover the debt. The Philadelphia Municipal Court found in favor of the association and the defendant appealed to the Philadelphia County Court of Common Pleas.

On May 15, 2014, after a one day bench trial before the Honorable Alice Beck Dubow, the judge found in favor of the association and against the defendant and entered a verdict for the association in the amount of \$27,355.68. Of the verdict, \$1,143.00 was apportioned toward delinquent assessments, fees and late fees, and the remaining \$26,206.68 was awarded as the full amount of attorneys' fees incurred by the association in pursuing the debt. At trial, the defendant did not dispute that the unpaid assessments were owed, but challenged the amount and reasonableness of the attorneys' fees. After his Motion for Reconsideration was denied, defendant filed a Notice of Appeal to the Superior Court of Pennsylvania.

On January 15, 2015, Judge Dubow filed an opinion in response

to the defendant's appeal. The opinion stated:

### The attorneys' fees were properly awarded

The court found that, being a unit owner, the defendant had agreed to comply with the Pennsylvania Uniform Condominium Act and the association's Declaration—both of which provide the prevailing party the right to collect attorneys' fees. As for the "reasonableness" of the fees, the court reasoned <sup>1</sup> that the matter rests within the sound discretion of the trial court and that in the instant case, the court had found the firm's hourly rates and services provided to be reasonable and competitive.

### The Defendant unduly prolonged litigation

The court dispelled defendant's argument that the award granting full attorneys' fees was unreasonable because the amount was "disproportionate to the principal balance owed". The court held <sup>2</sup> that it is inconsequential if the legal fees far exceed the amount of

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delinquent assessments. In light of the defendant choosing to fight the association every step of the way and for several years, the amount of time and legal work expended by the attorneys for the association was "most certainly reasonable."

It is unfair to force other unit owners to bear costs of protracted litigation

The court also opined that the defendant must pay for the entirety of the attorneys' fees as it would be egregious to impose such expenses on the other unit owners in the community who had no involvement in the dispute.

**THE OUTCOME**

The Superior Court of Pennsylvania recently transferred the defendant's appeal to the Commonwealth Court of Pennsylvania and the final outcome of this matter has yet to be determined. That said, the trial verdict and the opinion of Judge Dubow have caught the eye of local community association attorneys and property managers across the region.

All too often boards of directors are reluctant to pursue delinquent unit owners, even though failure to do so *could* arguably be construed as a breach of their fiduciary duty. Cases such as *The Arches v. Robinson* provide valuable and current legal authority and support to associations who depend on assessment income as the "lifeblood" of their communities.

By citing and relying upon the Commonwealth Court's 1999 *Mountain View* decision, the Philadelphia Court of Common Pleas has hopefully established a clear precedent for the future. The more that a delinquent unit owner "fights" with the association over a delinquency, the greater the association's attorneys' fees and costs. The longer the battle, the higher the fees. Although early resolution of disputes is always preferred, this verdict should serve as fair warning to delinquent unit owners that our courts are more frequently understanding and upholding the UCA, UPCA, and association governing document provisions when it comes to awarding reasonable attorneys' fees to prevailing associations in Pennsylvania.

**FOOTNOTES**

<sup>1</sup> Relying on the Superior Court's decision in *Wrenfield Homeowners Ass'n, Inc. v. DeYoung*, 410 Pa. Super. 621, 630, 600 A.2d 960, 964 (1991)

<sup>2</sup> Citing the Commonwealth Court in *Mountain View Condominium Ass'n v. Bomersbach*, 768 A.2d 1104, 564 Pa. 433 (1999)

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