

New Jersey Supreme Court Holds that Homeowners Association Policies Must Be Reasonable to Avoid Constitutional Scrutiny

July 26, 2007

In a highly anticipated decision, the New Jersey Supreme Court unanimously held on July 26, 2007 that the internal membership rules and regulations of private homeowners' associations must be reasonable, and are generally not subject to scrutiny under the state Constitution. **Barry S. Goodman**, a member of the firm, and associate, **Jane J. Felton**, represented the prevailing Twin Rivers Homeowners' Association in the case, which is known as *Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association*.

The *Twin Rivers* case involved the challenge by a handful of residents to three rules of the Twin Rivers' Homeowners' Association, which is a private nonprofit association with more than 10,000 residents located in East Windsor. They argued that the free speech and certain other provisions in the State Constitution should be applied to the Association because it operates like a municipality in the way it governs its members. The first rule provides that residents can only place one sign in each window in their home, as well as in the gardenbeds around their residence. Signs are prohibited on commonly owned lawns, which is where these residents wanted to place their political signs. The second rule requires residents to pay a \$165 rental fee and post a refundable security deposit to use the Association's community room, which they contended violated their freedom of assembly rights. The third involved the Association's newsletter, which features a prominent message from the Association's president, whose opinions often were critical of plaintiffs.

The Court held that it would "not interfere lightly with private property rights," and, applying the State's traditional balancing test, held it would not invalidate Twin Rivers' rules because (1) Twin Rivers' property primarily is used for private, not public, purposes, (2) Twin Rivers does not invite the public to use its property, and (3) the challenged policies did not unreasonably restrict the expressive activities of Twin Rivers' residents. Importantly, the Court stated, "Twin Rivers is a private, residential community whose residents have contractually agreed to abide by the common rules and regulations of the Association. The mutual benefit and reciprocal nature of those rules and regulations, and their enforcement, is essential to the fundamental nature of the communal living arrangement that Twin Rivers residents enjoy."

However, the Supreme Court reaffirmed that New Jersey grants its residents an "affirmative right" of free expression that is "broader than practically all others in the nation." In addition the Court cited numerous statutes and common law principles that protect association residents from unreasonable rules. As a result, the Court did not close the door entirely to allowing residents to bring constitutional challenges against homeowners' associations that "unreasonably infringe their free speech rights."

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Although associations can now be assured that their purely private internal membership rules generally will not be subjected to the heightened standards of the state Constitution, the Court emphasized that residents of homeowners' associations have free speech rights and that, in other settings, an association's policies could be held unconstitutional or struck down on statutory or common law grounds. Homeowners' associations therefore should review their policies in light of this decision.

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