

SUPREME COURT OF NEW HAMPSHIRE

Grenier v. Barclay Square Commercial Condominium Owners' Ass'n

150 N.H. 111 (2003) · Decided October 10, 2003

SUMMARY

The New Hampshire Supreme Court held that a condominium association was not authorized to tow vehicles under its parking rule, which provided for revocation of parking permission and was subject to existing bylaw penalty provisions. The court denied attorney's fees to both sides, vacated the denial of the plaintiff's costs for consideration under Superior Court Rule 87, and held that the defendants were responsible for storage costs arising from the unlawful towing.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, J.; Brock, C.J.; Dalianis, J.; Duggan, J.; Nadeau, J.
JURISDICTION	New Hampshire
DECIDED	October 10, 2003
DISPOSITION	other
PROCEDURAL POSTURE	The defendants appealed and the plaintiff cross-appealed from orders entered after a nonjury trial in the Superior Court concerning condominium parking restrictions, towing authority, attorney's fees, costs, and storage charges.
STANDARD OF REVIEW	Attorney's-fee rulings are reviewed for an unsustainable exercise of discretion. The court reviewed the interpretation and authorization of condominium rules and the legal responsibility for storage charges as questions of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire.
PARTIES	Barclay Square Condominium Owners' Association, New Hampshire Real Estate Management and Brokerage, Inc. v. Mark Grenier d/b/a Royalty Automotive Services

TOPICS

real estate

remedies

statutory interpretation

damages

appellate procedure

PRACTICE AREAS

condominium law

real estate law

remedies

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the condominium association and its board had authority to tow vehicles for violations of the overnight parking rule.
2. Whether the defendants were entitled to attorney's fees under RSA 356-B:15, II.
3. Whether the plaintiff was entitled to attorney's fees based on bad faith, patently unreasonable conduct, or equitable principles.
4. Whether the plaintiff's request for costs had to be reconsidered under Superior Court Rule 87.
5. Whether the plaintiff was responsible for storage charges under the mitigation-of-damages doctrine when he did not claim those charges as damages and was not legally obligated to pay them.

HOLDINGS

1. A condominium association's parking rule could not authorize towing where the condominium documents and the rule provided other sanctions, including revocation of parking permission and limited fines. The defendants therefore lacked authority to tow the plaintiff's vehicles.
2. RSA 356-B:15, II authorizes a condominium association to recover attorney's fees and costs when it prevails in litigation enforcing the lawful provisions of RSA chapter 356-B or the condominium instruments; it does not entitle the association to fees merely because it initiated or defended a proceeding.
3. The plaintiff was not entitled to attorney's fees because the defendants did not act in bad faith and did not maintain a patently unreasonable position, and the court could not create reciprocal fee entitlement absent statutory authorization.
4. The trial court's denial of the plaintiff's request for costs had to be vacated because the record did not establish that the request was considered under Superior Court Rule 87.
5. The plaintiff was not responsible for the \$4,350 in storage charges. The defendants could not invoke mitigation to shift to the plaintiff an obligation arising from the defendants' unlawful towing and storage of the vehicles.

KEY QUOTATIONS

“While a condominium association may be permitted to promulgate reasonable rules to address day-to-day concerns, the rule cannot contravene or otherwise conflict with the express language of the condominium documents.” (150 N.H. at 115)

“The defendants cannot use mitigation as a sword to protect themselves from obligations they incurred to Superior Towing through their unlawful conduct.” (150 N.H. at 120)

FACTUAL BACKGROUND

The plaintiff owned two commercial condominium units from which he operated an automobile repair and sales business requiring numerous parking spaces. The condominium association adopted a rule requiring permission for overnight parking in rear common land and limiting each business owner to four vehicles; the rule also stated that noncompliance could result in immediate revocation of parking permission. After the plaintiff parked seven vehicles, three of which were unregistered or uninspected, the defendants had the vehicles towed and they were later stored. The trial court found the parking limitation and towing unauthorized, but assigned the plaintiff responsibility for storage charges because he did not promptly reclaim the vehicles.

PROCEDURAL HISTORY

The Superior Court ruled that the condominium board lacked authority to limit overnight parking to four vehicles per business owner and to tow vehicles for violations of the parking rule. It nevertheless held the plaintiff responsible for storage costs exceeding \$300 and denied both sides' requests for attorney's fees and costs. After denying the plaintiff's motion for reconsideration, the trial court's rulings were appealed and cross-appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

The trial court must reconsider the plaintiff's request for costs within the framework and procedures of Superior Court Rule 87. The defendants, not the plaintiff, are responsible for the \$4,350 in storage costs.

CASES CITED

- Business Publications v. Stephen, 140 N.H. 145, 147 (1995)
- State v. Lambert, 147 N.H. 295, 296 (2001)
- Daigle v. City of Portsmouth, 137 N.H. 572, 574-575 (1993)
- Johnson v. City of Laconia, 141 N.H. 379, 380 (1996)
- Atwood v. Owens, 142 N.H. 396, 398 (1997)
- Town of Nottingham v. Newman, 147 N.H. 131, 137 (2001)
- Appeal of Pritchard, 137 N.H. 291, 293 (1993)
- Claremont School Dist. v. Governor (Costs and Attorney's Fees), 144 N.H. 590, 593 (1999)
- Gammans v. FHP Constructors, 146 N.H. 702, 704-05 (2001)
- Flanagan v. Prudhomme, 138 N.H. 561, 575-76 (1994)