

COMMUNITY ASSOCIATION COMMITTEE

WHEN THE STATUTE SAYS “14 DAYS” IT MEANS 14 DAYS! *



Barbara Kreitz Cook
Comm. Member

The Appellate Court dispensed with oral argument on the matter summarized below by Barb Cook.* It should be noted that while the court decided this case based on strict compliance with statutory lien conditions precedent, no discussion appears as to whether or not the lien and fines were otherwise authorized under the HOA's Declarations, removing the them from being “strictly creatures of statute” and instead analyzing them as “creatures of contract”.



J. Henry Cartwright
Chair

The Executive Estates of Boynton Beach Homeowner Association (HOA) levied fines against resident Jonathan Dwork for dirty roof, driveway, and deteriorated fencing after notice and opportunity to cure delivered by certified mail twice sent and twice unresponded, and after notice of the hearing 13 days later to levy the fines sent by regular and certified mail unclaimed and posted on the development's bulletin board. Dwork did not appear at the hearing when the fines were levied, nor did he respond to the HOA's attorney's letters demanding payment of the fines or notice of filing a lien on Dwork's property in the amount of \$7,500. So the attorney filed the HOA's complaint against Dwork for foreclosure and money damages.

At trial, the Court denied foreclosure because section 720.305(2)(b), F.S., provides that a fine may not be imposed “without at least 14 days' notice and an opportunity for hearing”. The trial court did however award the HOA money damages (fines) citing equities of the case were in favor of the HOA. Dwork appealed the money judgment. The HOA attorney argued, as he had in the trial court, that substantial compliance was sufficient because Dwork didn't show up at the hearing anyway, so there was no prejudice. The Fourth DCA rejected the prejudice argument. The appellate court held that strict compliance with the 14 day notice was required for both the lien claim and the monetary damage claims on 1) due process grounds, and 2) the express lack of exceptions in the statutory scheme. In essence, that 14 days means 14 days. The case was remanded for judgment in favor of Dwork.

*Summary submitted by COA Committee Member, Barbara A. Kreitz Cook, Esq. Board Certified Admiralty & Maritime Law.