OHIO CASE LAW UPDATE: PUT IT IN WRITING!

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DESIGN REVIEW DECISIONS MUST BE FORMALIZED IN WRITING IF DECIDED OUTSIDE OF A MEETING.

The Sanders sought approval from their nonprofit HOA for installation of solar panels on the rear slope of their home. They submitted their application to the HOA's three Trustees, and upon the Trustees' receipt, the evidence revealed that there were emails, telephone calls, and face-to-face meetings between the Trustees regarding the application. Eight days later, the Trustees sent the Sanders a denial letter disapproving the installation.

The Sanders filed a lawsuit against the HOA (Sander v. Country Brook Homeowners' Association, Inc., 10th Dist., 2020-Ohio-1555), seeking declaratory relief and arguing that the HOA's disapproval of their application was not in accordance with the HOA's Declaration of Covenants, Conditions, and Restrictions, because: (i) the HOA failed to establish a Design Review Committee to review the application; and (ii) the HOA failed to act in accordance with R.C. 1702.25 – the statute that sets the standards that directors of a nonprofit corporation must follow in order to take action without a formal meeting. Following a bench trial to the magistrate, judgment was awarded to the HOA. The Sanders appealed.

Reversing the trial court's decision and finding for the homeowners, the appellate court held that the HOA trustees failed to comply with R.C. 1702.25, in that: (i) the three Trustees did not affirmatively vote, in writing, on their approval/disapproval of the solar panel installation, as required under subsection (A); (ii) because there was no writing of the approval/disapproval of all three Trustees, they failed to properly file with or enter upon the records of the corporation, as required under subsection (A); and (iii) the emails, telephone calls, and face-to-face meetings held between the Trustees regarding the Application did not constitute "any transmission by authorized communications equipment" as required under subsection (B).

The Trustees' testimony did not support a finding that there was a necessary "signed writing" as required under the statute if corporate officers are to act without a formal meeting. The court held that "if an email is to constitute a 'signed writing' under R.C. 1702.25, it must contain "an affirmative vote or approval" of the corporate action to be taken." ¶ 18.

Even though all three Trustees indicated their approval of the denial letter, the record did not reflect the required "signed writings," and thus the court found they did not act in accordance with the statute.

The HOA argued that because the Trustees acted in good faith (under R.C. 1702.30(B) which requires that directors of a corporation act in good faith and in the best interests of the corporation), their disapproval of the application should be upheld. However, the Court held that acting in good faith is not a stand-alone defense- the HOA acted without adherence to R.C. 1702.25. "[T]here is nothing in the language of the statute or in the case law which provides that unauthorized corporate action be upheld because it was taken in good faith." ¶ 28.

Ultimately, because the Trustees failed to comply with R.C. 1702.25 in acting to disapprove of the homeowners' application, their disapproval was ineffective, and the homeowners were permitted to proceed with the installation of the solar panels on their home.

Should you have questions about this update and any implications to your unique circumstances, please contact Amanda Barreto at abarreto@sssb-law.com