

Cats Are Cats and Dogs Are Dogs But Neither Is A Fish or a Bird

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“Neither a cat nor a dog is a fish or a bird” is the latest pearl of wisdom handed down by the Fourth District Court of Appeal in the case *Prisco v. Forrest Villas Condominium Apartments, Inc.*, 28 FLA.L.WEEKLY D1065a (Fla. 4th DCA 2003). In this case, Forrest Villas Condominium filed a complaint against Loretta Prisco seeking to enjoin her from keeping dogs in violation of the Condominium Association’s pet restrictions. Apparently Prisco’s dogs had a habit of loud barking, and a neighbor complained to the Board. The Board demanded that Prisco remove the dogs but she refused and the Board filed suit. As part of her defense, Prisco filed the affidavit of her neighbor, Patricia Devon, who stated that she has had a cat at her residence for eight of the last nine years, and the very Board member who complained against Prisco gave her permission to keep it. In addition, there was evidence offered that cats were common in Forrest Villas. Prisco argued that forcing her to get rid of her dogs was selective enforcement when cats were so prevalent.

The trial court, following well-established tendencies in the arbitration decisions, held that “cats are not the same as dogs, and the condo-

minium allowing a cat on the premises [is] not equal to disallowing a dog” because “dogs clearly bark, cats do not, dogs need to be walked outside of their home, cats do not.” The court acknowledged that the restrictions allow only fish and birds and no other animal of any kind, but agreed with prior arbitration decisions in that cats and dogs are not similarly alike.

On appeal, the Fourth District Court of Appeals disagreed with the arbitrators and the lower court and stated that “the restriction was clear and unambiguous. The restriction provided that other than fish and birds, no pets whatsoever” shall be allowed. “The fact that cats are different from dogs makes no difference. What does matter is that neither a cat nor a dog is a fish or a bird, so both should be prohibited.” Since the clear purpose of the restriction was to prohibit all types of pets except fish and birds, permitting cats while excluding dogs amounted to selective enforcement of the restriction and summary judgment in favor of the Condominium Board was reversed.

This decision overrules the prevailing view of many arbitrators that “cats and dogs are fundamentally different pets for purposes of the selec-

tive enforcement analysis.” See, e.g., *Palm Beach Hampton Condo. Ass’n, Inc.*, Arb. Case No. 99-0942 (Jan. 2000). Under the *Prisco* decision, boards may no longer exercise their business judgment to enforce no pet rules against one class of animals and not against another, as arbitrators have often permitted. See, e.g., *Naples Four Winds, Inc. v. Twiddy*, Arb. Case No. 93-0069 (Sep. 1993); *Windward Isle Homeowners, Inc. v. Birchler*, Arb. Case No. 95-0424 (Jan. 1997); *Beaches of Longboat Key v. Goldreyer*, Arb. Case No. 96-0158 (Mar. 1997); *Lyme Bay Colony Condo. Ass’n, Inc. v. Forget*, Arb. Case No. 97-1884 (Oct. 1998). Accordingly, it appears that, at least with regard to cats vs. dogs, it is no longer within an Association’s business judgment to “refrain from enforcing a restriction against an insignificant violation as contrasted to a significant violation.” If a board does so, it risks rendering the underlying rule wholly unenforceable.

This decision should also prompt Association boards to review the existing pet restrictions in the governing documents, and seek counsel from the Association’s attorney as to whether revision of same is advisable.

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