



Virginia State Bar
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The FEE TAIL

The Real Property Section's
email supplement to
The FEE SIMPLE

The Real Property Section is pleased to provide its members with a new offering: ***The Fee Tail***, a newsletter with timely cases and statutes of interest to the practice of real estate law in the Commonwealth. We welcome all of our members to submit ideas for future *Fee Tail* issues to Heather Steele at hsteele@pesner.com. We prefer to draw these cases from our members, so if you have recently litigated (or are aware of) a current real estate case, either at the trial court or appeals level or a recent statute of interest to the section, please contact us.

Below are a few recent cases of interest and new statutes and rulings of note, with links to the decisions and actual opinions from the Supreme Court of Virginia.

Cases of Interest

[Mountain Valley Pipeline LLC v. 8.37 acres of land, owned by Frank H. Terry Jr. \(WDVA\) — Decided April 14, 2023](#)

Court lowered the amount of the jury's award of condemnation damages, stating that the amount awarded by the jury was not supported by the evidence. Jury had added together the before and after numbers.

[Oreze Healthcare v. Eastern Shore Community Services Bd. Virginia Supreme Court — Decided May 4, 2023](#)

Transfer of ownership did not extinguish right to sue for property damage arising from breach of lease

ESCSB and Oreze entered into a commercial lease agreement under which ESCSB agreed to lease the four buildings comprising an assisted living facility whose license had been suspended and to provide interim care to its residents until a permanent solution was reached. When water damaged the buildings and no remedy was reached before ESCSB terminated the lease, Oreze brought this complaint for breach of contract. While the lawsuit was pending, Oreze conveyed the property to a third party by general warranty deed. The circuit court granted summary judgment for ESCSB, ruling that Oreze failed to reserve its claims in the deed. The Supreme Court reversed, holding that the deed did not extinguish or transfer Oreze's right to sue ESCSB for property damage arising from an alleged breach of the lease.

The Supreme Court reversed the order of the circuit court entering summary judgment favor of Eastern Shore Community Services Board (ESCSB) and holding that Oreze Healthcare LLC's conveyance of real property to a third party prohibited Oreze from pursuing its breach of contract claim against ESCSB, holding that ESCSB was not entitled to summary judgment as a matter of law.

New Statutes and Rulings of Note

[Telegraph Square II, A Condominium Unit Owners Association v. 7205 Telegraph Square, LLC \(Court of Appeals\) – April 25, 2023](#)

Association violated Condo Act by giving exclusive use of common element parking spaces to only one phase of condominium owners.

Where appellant condominium association reallocated parking spaces, the trial court correctly concluded that appellant breached its contract with appellee and violated Virginia's Condominium Act and a county zoning law.

"The trial court held that the Condominium Association breached its contract with 7205 Telegraph, violated the Condominium Act, Code §§ 55.1-1900 through 55.1-1995, and violated Fairfax County zoning ordinances when it excluded 7205 Telegraph from all common elements in Phase I of the Condominium—including the parking lot—by assigning all common elements in Phase I exclusively to Phase I unit owners."

[Landfall Trust LLC v. Fidelity National Title Insurance Company\(EDVA\) – May 11, 2023](#)

HOA not necessary party in title insurance dispute.

Where a title insurer was sued because of a dispute over who holds title to certain real estate, the homeowners' association who currently owns the property was not a necessary party. The dispute could be resolved based on the various insurance documents and title binders before the court. The court found that the plaintiff is potentially capable of succeeding on the merits of its breach of contract suit based on the various insurance documents and title binders before the court, without delving into the actual ownership of the drainfield areas. However, having determined that the HOA is not a necessary party under Rule 19(a), the court need not address the issue of whether the HOA is an indispensable party under Rule 19(b).



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