

CCI vs HSVPOA Victory

Description

Monday, July 8, 2019, will go down in the annals of history as a huge victory for [Cooper Communities, Inc.](#) and the Hot Springs Village Property Owners as Judge Herzfeld formally rendered his decision in the CCI vs HSVPOA lawsuit. Details of the decision are documented in the email below. This is an email from Judge Herzfeld to the attorneys on June 26, 2019, and is not the formal ruling. Judge Herzfeld was hoping that by making all parties aware of his formal ruling ahead of time, that CCI and HSVPOA might conduct negotiations which would include the POA agreeing to not to file an appeal. As this did not happen, the Judge issued his formal ruling today, July 8, 2019.

All attorneys involved have known since June 26 how the judge was going to rule. The attorneys would have been obligated to tell their clients, meaning CCI's attorneys would have told CCI and HSVPOA attorneys would have notified the POA (meaning the CEO). Were the HSVPOA Board Directors notified when the judge's decision was informally made available? Were the Directors notified on June 26 or was it on July 8th? Ask our Directors. We really don't know the answer, but consider this to be a legitimate question.

Judge Robert Herzfeld's June 26, 2019 email to the attorneys (retyped)

From: Robert Herzfeld

Date: June 26, 2019 at 5:59:59 PM MDT

To: (the attorneys)

Subject: Re: Cooper Communities v. HSVPOA 63CV-18-1513

Gentlemen,

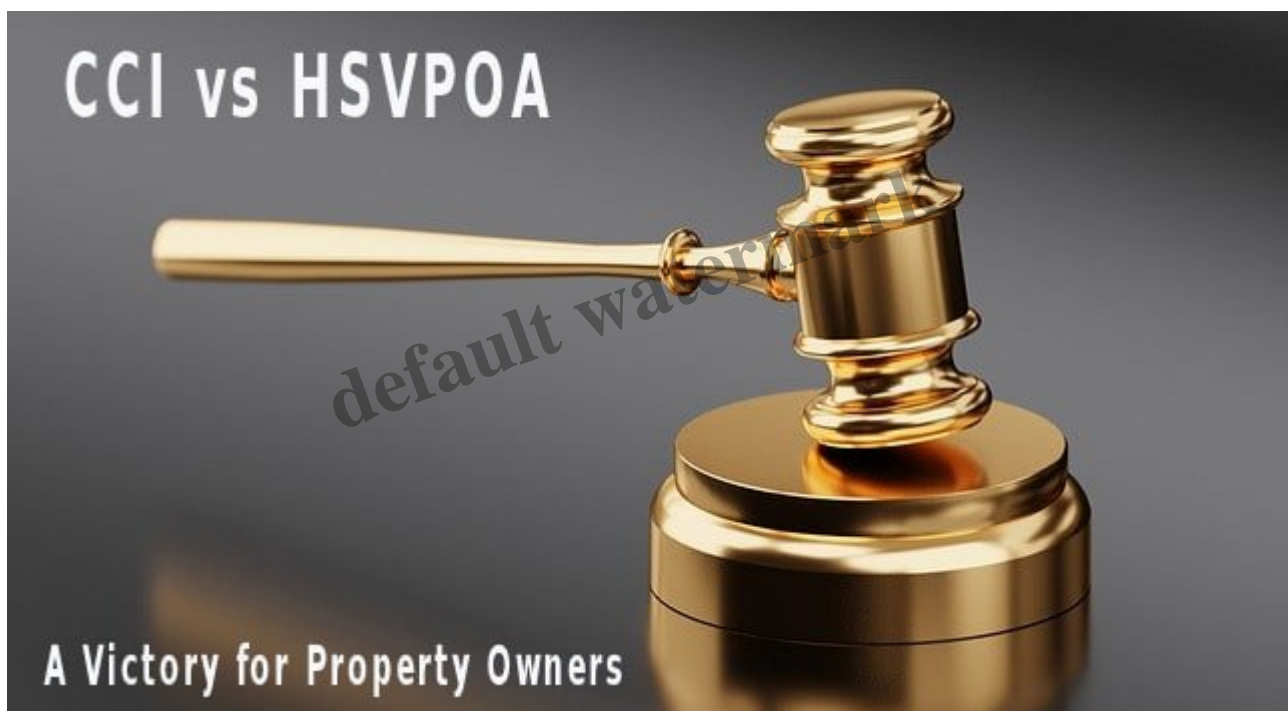
I had intended to issue a formal ruling this afternoon. However, I have been the subject of a series of relatively unfortunate events and have had substantially less time to devote to crafting my opinion than I would have liked. I could be out of town for several days, and while I expect that I will be able to send

out the opinion sometime in the next 10 days, in the meantime I assume on many levels that you all are like me and do not like to wait on news (be it good or bad). Therefore, I am giving you all a heads-up as to where I expect to come down. I'll send out the opinion when I can – probably no later than the middle of July.

However, if your clients are able to reach an agreement moving forward which would waive the right to appeal, I can certainly get it out faster since I can enter a consent decree easier and faster than **drafting an ironclad ruling** which will withstand any and all assault at the Supreme Court (which is my current intent).

Thanks,

Judge Robert Herzfeld



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The decision emailed to the attorneys on June 26

- A. Whether Arkansas Code Annotated 4-28-218(e) is unconstitutionally vague. **NO**
- B. Whether there is a need for an evidentiary hearing/trial regarding the term "Proper Purpose" from 4-28-218(e). **NO** The purposes stated in the letters to the P.O.A. are proper on their face.
- C. What the term "inspected" means as applied in this case. That the **Plaintiffs may inspect all of the requested documents** (or any additional requested documents constituting books and records of the corporation (with an expansive view of "records" at any reasonable time **using any technology of their choosing to aid in their inspections including but not limited to: pencils, pens, calculators, laptop computers, scanners, or portable copiers.** It does not mean that the P.O.A. is mandated to provide the information in electronic format or make copies for Cooper. However, if the P.O.A. is truly

concerned about the privacy of its members then it seems that providing the information in an easily usable format would be subject ripe for negotiations including a possible agreements limiting the use or access by third parties after they have been used by Cooper for their stated purposes – these restrictions are not required by statute.

Happy 4th of July!

Ironclad ruling

As Judge Herzfeld worked to craft in his own words, “**an iron-clad ruling**,” we hope HSVPOA will not appeal this case. That would be the commonsense approach by the POA. An appeal would be a **tremendous waste of property owner money**. This would be akin to throwing even more good money after bad, which in our opinion is what has already transpired. Please contact your Directors to let them know you do not support an appeal.

By Cheryl Dowden, July 8, 2019

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