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## Case Law Update: Association Club Dues Payment Covenant

In *Conleys Creek Ltd. Partnership vs Smoky Mountain Country Club Property Owners Ass'n*, a North Carolina Court of Appeals upheld the enforceability of community covenants mandating the homeowners association to collect clubhouse dues from residential unit owners and remit them to the developer that owns a clubhouse in the community. However, the decision also included guidance of how another homeowners association might challenge a different mandatory dues payment covenant in the future. 2017 WL 3860494 (NC Ct. App 2017). The court held that the covenant is enforceable because it was not inconsistent with the North Carolina Planned Community Act. The court also noted that a homeowners association has the power to impose fees and charges for services provided to lot owners, not solely for common areas.

The court decision contains a number of cautionary warnings for North Carolina developers to carefully structure mandatory dues payment covenants. First, the court noted that the covenant binds the homeowner's association, not individual property owners. Developers may consider crafting their club dues payment covenants in the same manner to fall within the facts of the case. Second, the court noted that the association did not claim that the contractual obligation was not bona fide or was unconscionable. The state planned community act gives an association the power to terminate any contract adopted by the declarant that is not bona fide or is unconscionable. Third, the court allowed claims against association board members appointed by the developer for breach of fiduciary duty and against the developer for breaching its covenant of good faith and fair dealing to proceed, which will allow the association to

attempt to prove such claims. The court explained that the developer appointed directors have a duty to act in the best interests of the association and not in their own interests, and that a community declaration imposed a contractual relationship between the association and developer/declarant and therefore, its terms must be in good faith and fair dealing. North Carolina developers may want to consider structuring their dues payment covenant to bind the association directly, and be in a position to show that the dues payable by the association will be fair and reasonable. The decision confirms that North Carolina residential developers can impose mandatory dues paying covenants, but must be very careful in how they do it.

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