

**STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES**

**IN RE: PETITION FOR ARBITRATION**

**PARADISE POINTE CONDOMINIUM ASSOCIATION,  
INC., on behalf of its members,**

**Petitioner,**

**v.**

**Case No. 2013-00-1784**

**PARADISE POINTE COMMUNITY ASSOCIATION, INC.,**

**Respondent.**

\_\_\_\_\_ /

**FINAL ORDER OF DISMISSAL**

On January 14, 2013, Paradise Pointe Condominium Association, Inc (the Condominium Association) filed a mandatory binding arbitration petition claiming that Paradise Pointe Community Association, Inc. (the Master Association) is a homeowners' association subject to the provisions of chapter 720 of the Florida Statutes, specifically as to the Master Association's elections. On February 5, 2013, the Master Association filed an answer arguing that it is a condominium association governed by chapter 718 of the Florida Statutes.

Because the undersigned has previously ruled in *Paradise Pointe Community Ass'n, Inc. v. Paradise Pointe Condo. Ass'n, Inc, Arb. Case No. 2012-02-5726*, Summary Final Order (October 1, 2012) (the prior case), that the Master Association is a condominium association governed by chapter 718, Florida Statutes, by order dated March 21, 2013, the parties were directed to submit written arguments as to whether the prior ruling requires dismissal of this case pursuant to Rule 61B-45.013(3), Florida Administrative Code. Both parties have filed legal memoranda in support of their respective positions.

Rule 61B-45.013(3), Florida Administrative Code, provides:

Except as otherwise provided by Rule 61B-45.035, F.A.C., any party who has participated as a party in a prior arbitration, administrative or court hearing shall not be allowed, consistent with the principles of res judicata and collateral estoppel, to raise identical issues in a subsequent arbitration hearing.

**Res judicata**

In order for *res judicata* to be applicable, four identities must be present:

- (1) Identity of the thing sued for;
- (2) Identity of the cause of action;
- (3) Identity of the persons and parties;
- (4) Identity of the quality or capacity of the person for or against whom the claim is made.

*Palm AFC Holdings, Inc. v. Palm Beach County*, 807 So. 2d 703, 704 (Fla. 4th DCA 2002)

In the instant case, the Condominium Association has sued the Master Association seeking, as relief, an order annulling the Master Association's January 2012 annual election and requiring the Master Association to hold its elections in accordance with section 720.306, Florida Statutes. In arbitration case number Case No. 2012-02-5726, the Master Association sued the Condominium Association seeking, as relief an order that section 718.112(2), Florida Statutes, does not apply to the exercise of its voting rights at the Condominium Association's board of directors elections and the reinstatement of the Master Association's voting rights in all future elections of the Condominium Association. Clearly the thing sued for, the requested relief, is different. See *Inter-Activ Servs., Inc. v. Heathrow Master Ass'n, Inc.*, 809 So. 2d 900 (Fla. 5th DCA 2002). Likewise, the cause of action differs because facts and evidence to maintain each action differ. *Tyson v. Viacom, Inc.*, 890 So. 2d 1205 (Fla. 4th DCA 2005). Therefore, *res judicata* is not applicable.

### **Collateral Estoppel**

Collateral estoppel applies when the parties are identical and an identical issue has been previously litigated by the parties. *Palm Beach County Holdings, Inc. v. Palm Beach County*, 807 So. 2d 703, 704 (Fla. 4th DCA 2002). Furthermore, the issue must have been fully litigated and determined in a proceeding that results in a final decision. *State of Florida v. McBride*, 848 So. 2d 287, 291 (Fla. 2003).

### **Identity of Parties**

The Condominium Association argues that the parties in the present case and previous case are not the same, contending that in the prior case, the Condominium Association was sued in its corporate capacity whereas in the present case it is suing the Master Association in a representative capacity on behalf of its members. The undersigned is not persuaded by this argument. In both cases the real parties in interest are the members of each association. See *Yacht Club Southeastern, Inc. v. Sunset Harbour North Condo. Ass'n, Inc.*, 843 So. 2d 917 (Fla. 3d DCA 2003).

### **Identity of Issues**

In the present case, the Condominium Association filed a petition claiming that Paradise Pointe Community Association, Inc. (the Master Association) is a homeowners' association subject to the provisions of chapter 720 of the Florida Statutes. In the prior case, as to the identical issue, the Condominium Association took the opposite position, arguing in its answer and memorandum of law, that the Master Association is a condominium association pursuant to the constituency and function test of section 718.103(2), Florida Statutes.<sup>1</sup> The undersigned agreed with the

---

<sup>1</sup> This subsection is a codification of the decision in *Downey v. Jungle Den Villas Recreational Ass'n*, 525 So. 2d 438 (Fla. 5th DCA 1988) which applied both the "constituency" and "function" tests to determine whether a master association is a condominium association governed by chapter 718, Florida Statutes.

Condominium Association and entered a Summary Final Order finding the Master Association to be a condominium association.

*Collateral Estoppel Is Applicable*

The parties in the present case and the prior case are identical. Additionally, the issue of whether the Master Association is a condominium association was previously fully litigated by the parties in the prior arbitration case, in which a final decision was reached. Therefore, collateral estoppel is applicable.

*Exceptions to Collateral Estoppel*

The Condominium Association argues that application of collateral estoppel in the instant case would work an injustice to the Condominium Association's members. Collateral estoppel will not be applied where its application results in manifest injustice. *See McBride* at 292.

The Condominium Association contends that not all points of law and fact were argued in the prior case. All points of fact and law offered by the Condominium Association were considered in the underlying case. The Condominium Association is simply taking an opposite position in the current case. It is difficult to conclude that manifest injustice has occurred where a party prevails on an argument it presented in a prior case and seeks to take the opposite position on the same issue in a subsequent proceeding.

“Collateral estoppel, or estoppel by judgment, is a judicial doctrine which in general terms prevents identical parties from relitigating issues that have been previously decided between them.” *Mobil Oil v. Shevin*, 354 So. 2d 372, 374 (Fla. 1997). Additionally, in *Gordon v. Gordon*, 59 So. 2d 40, 44 (Fla. 1952), the Florida Supreme Court stated, “... the ultimate purpose of estoppel by judgment is to bring litigation to an end.” To allow a party to contend that it should have argued differently in

a prior case would defeat the purpose of collateral estoppel. Therefore, the manifest injustice exception is not applicable in the current case.

### Independent Grounds

The Condominium Association argues that collateral estoppel is inapplicable because the judgment in the prior case relied upon two independent grounds. The Condominium Association relies upon *deCancino v. Eastern Airlines, Inc.*, 283 So. 2d 97 (Fla. 1973). In *deCancino*, the Florida Supreme Court found that there are multiple exceptions to the doctrine of *res judicata*<sup>2</sup> including, “that it is not applicable to a judgment which might have rested on either of two grounds, only one of which goes to the merits...” *deCancino* at 98. Where multiple theories are presented in the underlying case and it is impossible to determine on which theory the judgment relied, collateral estoppel is inapplicable. *Sun States Roofing Co., Inc. v. Cotton States Mutual Insurance Co.*, 400 So. 2d 842, 844 (Fla. 2d DCA 1981).

The exception is not applicable to the present matter. In the Summary Final Order entered in the prior case, the arbitrator clearly addressed whether the Master Association is a condominium association and relied upon such determination in reaching his final decision.

### Conclusion

Collateral estoppel bars the Condominium Association from relitigating whether the Master Association is a condominium association. Therefore, Rule 61B-45.013(3), Florida Administrative Code, is applicable. Because the only cause of action in this matter is based upon the claim that the Master Association is governed by Chapter 720, Florida Statutes, this case should be dismissed.

Based upon the foregoing, it is ORDERED:

---

<sup>2</sup> The case does not address the applicability of the exceptions to collateral estoppel.

Arbitration case number 2013-03-1784 is dismissed.<sup>3</sup>

DONE AND ORDERED this 5<sup>th</sup> day of April, 2013, at Tallahassee, Leon County,  
Florida

---

James W. Earl, Arbitrator  
Department of Business and  
Professional Regulation  
Arbitration Section  
1940 North Monroe Street  
Tallahassee, Florida 32399-1030  
Telephone: (850) 414-6867  
Facsimile: (850) 487-0870

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing Final Order of Dismissal has been sent by U.S. Mail to the following persons on this day 5<sup>th</sup> of April, 2013:

Mauri Peyton, Esq.  
PeytonBolin, PL  
4758 West Commercial Boulevard  
Fort Lauderdale, FL 33319  
Attorney for Petitioner

Ross D. Kulberg, Esq.  
Moris & Associates  
8700 West Flagler Street, Suite 120  
Miami, FL 33174  
Attorney for Respondent

---

James W. Earl, Arbitrator

---

<sup>3</sup> With its petition, the Condominium Association submitted a \$200 filing fee. Pursuant rule 61B-80.103, Florida Administrative Code, such a filing fee is required for arbitrations involving Homeowners Association election disputes. Because it was previously determined that the Master Association is a condominium association, the filing fee is governed by 61B-45.017, Florida Administrative Code, which requires a \$50.00 filing fee. A refund of the difference will be forthcoming.