

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

IN RE: PETITION FOR ARBITRATION

**TONY DELLAGROTTA and
VIVIENNE YOUNG,**

Petitioners,

v.

Case No. 2013-02-7351

**WEST COAST VISTA
CONDOMINIUM ASSOCIATION, INC.,**

Respondent.

_____ /

SUMMARY FINAL ORDER

On July 2, 2013, Petitioners Tony Dellagrotta and Vivienne Young filed a petition for non-binding arbitration naming West Coast Vista Condominium Association, Inc. (the Association) as Respondent. The petition alleges that the Association was denying the members of the Association the right to vote on the installation of security cameras at the pool area. On July 29, 2013, the Association filed an answer. On August 28, 2013, a case management conference was held. On September 19, 2013, the Association filed a supplement to its answer.

Findings of Fact

1. West Coast Vista Condominium Association, Inc. is the corporate entity responsible for the operation of West Coast Vista, a condominium.
2. Petitioners are owners of units in West Coast Vista Condominium.

3. The Association's Board of Directors has approved the installation of security cameras on the condominium property without the vote of the members of the Association.

4. The Association alleges that the installation of security cameras was necessary to protect the condominium property from harm.

5. Article 14.05 of the Declaration of Condominium states:

Alteration and Improvement of Common Elements. After the completion of construction of the improvements on the Condominium Property, there shall be no material alterations or substantial additions to the Common Elements, unless the proposed alteration or addition shall have been approved at a duly called meeting of the Association by a vote of at least a majority of the voting interests of the Association.

6. The security cameras are not monitored live and are used only to record activity. The cameras are not intended to stop any harm or protect the common elements but to document damages. Any deterrent effect is purely speculative.

7. The Association supplied an affidavit of its property manager to explain why the Board believed it was necessary to install the security cameras. The affidavit is set forth as follows:

- 1) My name is Scott Vignery. I am over the age of eighteen and competent to make this affidavit.
- 2) I have personal knowledge of the facts set forth herein.
- 3) I am employed by Amen-Tech Realty, Inc.
- 4) I am a licensed by the State of Florida as a Community Association Manager.
- 5) I have been the Community Association Manager for West Coast Vista Condominium for five (5) years.
- 6) West Coast Vista Condominium is a beachfront property.
- 7) There are no full-time, year round, permanent residents of West Coast Vista Condominium.
- 8) The individual units located at the West Coast Vista Condominium are primarily used as vacation rentals.
- 9) I am onsite at West Coast Vista Condominium property once per week.

10) There are several private property, no trespassing signs posted around the West Coast Vista Condominium property.

11) During the entire period of time that I have been the Community Association Manager for West Coast Vista, I have routinely received complaints from owners regarding trespassers walking through the West Coast Vista Condominium property as well as complaints from owners regarding trespassers using the pool facilities.

12) There is a history of ongoing harm to the West Coast Vista Condominium property.

13) Locks and latches located in the common areas of the building are frequently completely broken or damaged. In 2012, the West Coast Vista Condominium Association, Inc. incurred expenses totaling \$1,147.00 lock and latch replacement and or repair. During the year 2011, West Coast Vista Condominium Association, Inc. [incurred] expenses totaling \$575.00 for lock and latch replacement and repairs. Receipts for repair of the locks and latches are attached hereto as Exhibit A.

14) There is a pool located at in [sic] the common area of West Coast Vista Condominium. Surrounding the pool is a variety of recreational furniture, such as tables, chairs, lounge chairs, and umbrellas which are the property of West Coast Vista Condominium.

15) On several occasion[sic], I have pulled from the public beach chairs, lounge chairs and umbrellas belonging to West Coast Vista Condominium Association, Inc.

16) In April of 2011, West Coast Vista Condominium Association, Inc. spent \$517.94 replacing two umbrellas which were missing from the pool area. The pool furniture is frequently in need of repair due to abuse and misuse. See Composite Exhibit B.

17) On a weekly basis, I receive calls from various rental companies regarding disorderly conduct at the West Coast Vista Condominium property. The complaints routinely involve loud music, behavior regarding parties by the pool, shouting and fighting as well as complaints regarding the actions of drunken persons at the West Coast Vista Condominium property.

Conclusions of Law

The Division has jurisdiction over this matter pursuant to Section 718.1255, Florida Statutes. Because there is no issue of material fact in dispute after the filings provided to date by the parties, this case is appropriate for summary disposition pursuant to Rule 61B-45.030, Florida Administrative Code.

Petitioners contend that the Board of Directors does not have the authority to install security cameras on the common elements of the Association without approval of a majority of the Association's membership. Section 718.113(2)(a), Florida Statutes, provides:

(2)(a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions.

Installation of security cameras on the common elements is a material alteration.

Hickey v. The Georgian Condo. Ass'n, Inc. Arb. Case No. 97-0201, Summary Final Order (July 23, 1997); *Terry v. Intercoastal Point Condo. Ass'n, Inc.*, Arb. Case No. 2008-06-3347, Final Order on Default (January 12, 2009).

The Association claims that the installation of the security cameras was necessary to protect the Association's common elements. Pursuant to Section 718.113(1), Florida Statutes, the Association has the responsibility to maintain the common elements of the condominium.

An association's board of directors may properly install security measures without a vote of the owners if a convincing factual predicate exists such that the board's action was necessary to protect the common elements or inhabitants from a known danger. *Southridge Homeowners Association, Inc. v. Barbieri*, Arb. Case No. 94-0382, Summary Final Order (December 27, 1994). In *Williams v. Sky Harbour Condo. Apartments, Inc.*, Arb. Case No. 93-0334, Final Order (June 24, 1994), the arbitrator

held that unit owner approval was not required for the construction of a fence on the condominium property where the condominium building, located on busy Tampa Bay, was vulnerable to intrusion by persons without any legitimate connection to the condominium. The incidents ranged from potentially serious attacks on persons, to trespass on the property and in the pool, to theft of property, and to unauthorized fishing. *See also Ortega v. Mirador 1200 Condominium Association, Inc.*, Arb. Case No. 2012-02-5636, Final Order (February 5, 2013)(Unit owner approval was not needed to install a water intrusion detection system after leaks in the condominium plumbing caused approximately \$2 million in damages).

In the instant case, the Association is claiming total actual damages of \$1,722 for broken locks and latches for the years 2011 and 2012, and \$517.94 to replace two missing umbrellas in 2011. The Association also states there is a history of loud parties and disorderly conduct. The Association has failed to establish a convincing factual predicate that the installation of security cameras was necessary without the unit owners' approval.

When there is an established history of harm being done to Association property, the Association has authority pursuant its obligation to maintain the common elements, to appropriately remedy the harm. *Id.* The harm in this case is *de minimis* compared to the harm done in the *Williams* and *Ortega* cases. Additionally, the security fence in *Williams* was intended to actually stop dangerous intrusions and the alarm system in *Ortega* was intended to promptly stop costly leaks. Other than a speculative deterrent effect, the security cameras in the instant case only record damage, and do not to stop any harm or protect the common elements. This is obvious because the damage

continues to occur. Unless the Association is able to obtain the approval of the majority of the unit owners, it will be required to remove the security cameras.

Based upon the foregoing, it is **ORDERED**:

1. No later than October 21, 2013, the Association shall send a notice of a special meeting of the membership of the Association to be held no later than November 25, 2013, for a vote of the membership to approve or reject the installation of security cameras on the exterior of the condominium building.

2. Should the membership fail to approve the installation of security cameras, the Association shall remove them within 30 days of the membership vote.

DONE AND ORDERED this 4th day of October, 2013, at Tallahassee, Leon County, Florida.

Terri Leigh Jones, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1030
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Facsimile (850) 487-0870

Trial *de novo* and Attorney's Fees

This decision shall be binding on the parties unless a complaint for trial *de novo* is filed in accordance with section 718.1255, Florida Statutes. As provided by section 718.1255, Florida Statutes, the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Fla. Admin. Code R. 61B-45.048.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail and email to the following persons on this 4th day of October, 2013:

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Petitioner

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