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STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES
725 SOUTH BRONOUGH STREET - JOHNS BUILDING
TALLAHASSEE, FLORIDA 32399-1070

CASE NO. 89A-62

IN RE: Petition for Declaratory Statement DOCKET NO. DS89472
Paradise Park Condominium Association, Inc.,

Petitioner

DECLARATORY STATEMENT

Petitioner, Paradise Park Condominium Association, Inc., (hereinafter the Association), seeks a declaratory statement interpreting certain sections of Chapter 718, Florida Statutes. Specifically, the Association would like to know whether Paradise Park Condominium, as characterized by its documents, is in fact a phase condominium within the meaning of section 718.403, Florida Statutes.

On September 27, 1989, the Division issued a Show Cause Order requesting additional documentary information and clarification of matters contained in Paradise Park's Petition for Declaratory Statement. The Association was afforded twenty (20) days from the date of the Show Cause Order to respond or have the declaratory statement petition dismissed without further notice to Petitioner. On October 23, 1989, Petitioner's attorney was notified by letter from Alexander M. Knight, Chief,

Bureau of Condominiums, that the Association's request for additional time to respond was granted and that the Association was afforded an additional twenty (20) days from the date of that letter to provide the requested information.

The Association's response to the Show Cause Order was received by the Division on November 16, 1989. That response included a cover letter to Alexander M. Knight, a clarification of petition, and a reduced photocopy of the "Amended Plot Plan to Paradise Park Condominium," recorded March 9, 1983, in the public records of Charlotte County, Florida. It should be noted that only the 1983 Amended Plot Plan has been submitted to the Division and the original plot plan referenced in the Paradise Park Phase I Declaration of Condominium (hereinafter Phase I Declaration) has not been submitted to the Division in relation to this Petition for Declaratory Statement.

The Division makes the following Findings of Fact based on the information submitted by the Petitioner, including copies of recorded condominium documents.

FINDINGS OF FACT

The Findings of Fact contained herein are based solely on the documents filed and statements made by Petitioner.

1. Paradise Park Condominium Association, Inc., is that corporate entity charged with the responsibility for the administration and control of the Paradise Park Condominiums.

2. The Phase I Declaration was recorded in the official records of Charlotte County on November 20, 1980, at Book 649, pages 242-290.

Paragraph 2 of the Phase I Declaration states:

THE LAND -- See attached Exhibit "E" hereinafter called "the land", and upon which Developer proposes to construct 173 single-family residential units.

3. Paragraph 20 of the Phase I Declaration provides:

COMMON EXPENSES AND COMMON SURPLUS --

The percentage of sharing common expenses and the percentage of ownership of common surplus are shown on Exhibit "D" to this declaration and are based on the approximate square footage within each unit....

Exhibit "D" provides as follows:

Percentages of ownership of Common Elements

Each unit shall have a 1/173rd part of the whole.

Please note: The above percentage of ownership, does not apply to the ownership of those areas shown upon the plot plan (Exhibit "B") as Reserved to Developer." Ownership of those areas will be determined in the future according to the Formulas described in paragraph 24 of the Declaration. The areas labeled "Commercial" are not and will not be a part of any of the proposed Condominium and are and will be owned by the Developer, its successors and assigns.

Paragraph 24 of the Phase I Declaration provides:

RECREATION AREAS - RESERVED TO DEVELOPER --

Exhibit "B" to the declaration depicts those areas provided for common use of all three proposed phases of Paradise Park which if all constructed will total 466 units divided into three separate condominiums of 173, 141 and 152 units respectively. These areas will contain the water and sewage treatment plant, the auditorium, (The construction of which will be dependant upon a vote of the owners) the swimming pool, the central boulevard, visitors parking area, office and storage and shop building.

The developer hereby reserves the ownership of these areas for a period not to exceed 5 years from the date the first unit in the first phase is conveyed to an owner in the ordinary course of business and hereby grants full use rights to all unit owners during the reservation period. It will then deed to the master association all these areas, free ad clear of mortgages at no charge and each declaration will be amended pursuant to F.S. 718.110(6) to vest good title in undivided shares in each unit owner. The use rights herein granted are granted contingent upon each unit owner having his pro-rata share of the expenses of upkeep, taxes, repair and operation as a part of his assessment and by accepting a deed to his unit (subject to this declaration) he agrees to do so. This paragraph is the developer's declaration of servitude of such common areas.

The submitted copies of Exhibit "B" the Amended Plot Plan, recorded at OR Book 724, Page 574, bears the surveyor's date of November 1980. However, the reduction copy submitted by Petitioner is not legible to the extent as to provide any useful information. The Division relies on the notes and legal descriptions contained in Exhibit E.

The note to Exhibit E of the Phase I Declaration (OR Book 649, Page 285) states:

This description includes all lands shown on Page 1 of Exhibit "B", including the commercial Parcels A and B which are not part of the condominium; the areas reserved to developer which are not part of the condominium; the areas reserved to developer which are not submitted to condominium ownership at this time, and proposed Phases 2 and 3 which are not submitted to condominium ownership at this time. Detailed descriptions of the respective parcels are given later on in this Exhibit "E". This parcel, after all of the following parcels are deleted, constitutes the portions of the land reserved to the Developer.

4. On March 9, 1983, the Declaration of Condominium of Paradise Park Phases II and III (hereinafter the Phase II and III Declaration) was recorded at OR Book 724, Pages 532-581.

That document provides in paragraphs 1 and 2:

1. SUBMISSION TO CONDOMINIUM - The lands located in Charlotte County, Florida, owned by Developer and described in attached Exhibit "E" as "Description - Phase II" are by this Declaration submitted to the condominium form of ownership.

2. NAME - PLAN OF DEVELOPMENT - Developer proposes to construct a maximum of 293 single-family residential units and associated improvements designated PARADISE PARK PHASES II and III. This will be a two phase Condominium per F. S. 718.403 and the parcel of land described in Exhibit "E" as "Description Phase III" will (or may) be submitted by Amendments to this Declaration to the condominium form of ownership, and will thereby become a part of this Condominium.

Paragraph 19 of the Phase II and III Declaration describes shares of common expenses and surplus "as shown on Exhibit "D" to this Declaration and are based on an equal share for each unit."

5. Exhibit "D" to the Paradise Park Phases II and III condominium declaration states:

PERCENTAGES OF OWNERSHIP OF COMMON ELEMENTS

Phase II - 1/141st

Phase II and III together - 1/293rd

6. Exhibit E to the Phase II and III Declaration is the legal description of the total Paradise Park Condominium development area shown on the Amended Plot Plan, including several non-condominium parcels; and the legal description of Phases II and III. The note following the Phase III description states - "Not committed to condominium form of ownership at this time."

7. Petitioner states that "each unit owner is paying and responsible for a fraction of which the numerator is the number of units owned by any one individual and the denominator being the number of completed units to have either been sold or are available for sale."

8. Petitioner states that one non-profit corporation is referred to in the Declaration for administration and control of the condominium units. Paragraph 3 of the Phase I

Declaration states the name of the condominium association shall be Paradise Park Condominium Association. Paragraph 3 of the Phase II and III Declaration states the name of the condominium association is Paradise Park Condominium Association, Inc.

CONCLUSIONS OF LAW

1. The Division has jurisdiction pursuant to section 120.565 and Chapter 718, Florida Statutes, to issue a declaratory statement in response to the Association's petition as it applies to Chapter 718, Florida Statutes.

2. The Association is substantially affected by the application of Chapter 718, Florida Statutes, to the facts stated above and has standing to seek this Declaratory Statement.

3. Section 718.403, Florida Statutes, provides inter alia:

(1) Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period (which may not exceed 7 years from the date of recording the declaration of condominium) within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.

(2) The original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer, shall describe:

(a) The land which may become part of the condominium and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium. The plot plan may be modified by the developer as to unit or building types to the extent that such changes are described in the declaration. If provided in the declaration, the developer may make nonmaterial changes in the legal description of a phase.

(b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common elements within the phases actually developed and added as a part of the condominium.

(6) Notwithstanding other provisions of this chapter, any amendment by the developer which adds any land to the condominium shall be consistent with the provisions of the declaration granting such right and shall contain or provide for the following matters:

(a) A statement submitting the additional land to condominium ownership as an addition to the condominium.

(b) The legal description of the land being added to the condominium.

(c) An identification by letter, name, or number, or a combination thereof, of each unit within the land added to the condominium, to ensure that no unit in the condominium, including the additional land, will bear the same designation as any other unit.

(d) A survey of the additional land and a graphic description of the improvements in which any units are located and a plot plan thereof and a certificate of a surveyor, in conformance with s. 718.104(4)(e).

(e) The undivided share in the common elements appurtenant to each unit in the condominium, stated as a percentage or fraction which, in the aggregate, must equal the whole and must be determined in conformance with the manner of allocation set forth in the original declaration of condominium.

(f) The proportion or percentage of, and the manner of sharing, common expenses and owning common surplus, which for a residential unit must be the same as the undivided share in the common elements.

4. In order for all phases of Paradise Park to be considered one phase condominium, as defined by section 718.403, Florida Statutes, the requirements of that section must have been satisfied in the November 1980 declaration.

While the Phase I declaration mentions Phases II and III of Paradise Park, it also describes the Paradise Park development as "consisting of three separate condominiums of 173, 141 and 152 units respectively." Nothing in the Phase I

Declaration indicates the time period in which the subsequent phases would be committed to the condominium form of ownership, contrary to section 718.403(1), Florida Statutes.

The declaration for Phase I does not describe each unit's percentage ownership in the common elements as additional phases are added. The only portion of the Phase I Declaration which sets out percentage ownership of common elements is Exhibit D which states only that in Phase I "each unit shall have a 1/173rd part of the whole." Section 718.403(2)(c), Florida Statutes requires such a statement describing all proposed phases of a phase condominium.

While not dispositive of the issue of existence of a phase condominium, contrary to Association's representation in its Petition, not only did the Phase I Declaration not commit Phases II and III to condominium ownership, those phases were specifically excluded from condominium ownership in Exhibit E of the declaration at the time of recordation of the Phase I Declaration.

5. The Phase II and III Declaration clearly expresses the intent to create a phase condominium in paragraph 2. There is no reference to any attempted amendment to Phase I to create a phase condominium along with Phases II and III. Paragraph 2 specifically references section 718.403 and particularly states "[t]his will be a two phase condominium,"... and the parcel of

land described in Exhibit 'E' as "'Description Phase III' will (or may) be submitted by amendments to this Declaration to the condominium for of ownership." This statement coupled with that in paragraph 1 that the lands described in Phase II "are by this Declaration submitted to the condominium form of ownership" unquestionably contemplates a separate phase condominium consisting of but two phases - Phase II and Phase III.

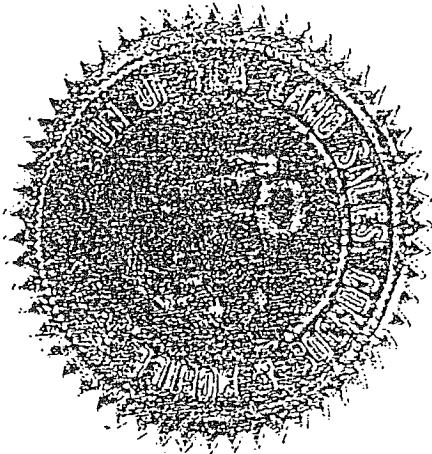
6. Exhibit D clearly describes the fraction share ownership of the common elements in Phase II and how that fraction will change should Phase III be committed to the condominium form of ownership.

7. The fact that Paradise Park Condominium Association, Inc., is responsible for the administration of Phase I and Phase II has no bearing on the phase status of these condominiums.

8. Finally, Petitioner's statement that the current denominator for calculation of payments for units is the "number of completed units to have either been sold or are available for sale," must be construed to mean all legally created units in Phase II or 1/141st. The legally created units in Phase I constitute a separate condominium and Phase III is to date not legally declared by amendment to the March 1983 declaration. The fraction ownership and responsibility for Phase I common expenses is 1/173rd.

WHEREFORE, the Division declares that, based on the application of section 718.403, Florida Statutes to the specific factual findings contained in this statement, the Paradise Park Phase I Declaration of Condominium did not create a phase condominium. The declaration of condominium for Paradise Park Phases II and III creates a phase condominium in which only Phase II has been committed to the condominium form of ownership. It is incumbent upon the Paradise Park Condominium Association, Inc., to operate each phase for which it is currently responsible, as separate and distinct condominiums.

DONE AND ORDERED this 25th day of January, 1990.



A handwritten signature in black ink, which appears to be "James Kearney", written over a horizontal line.


JAMES KEARNEY, DIRECTOR
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business Regulation
725 South Bronough Street
Tallahassee, Florida 32399-1030

RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND
MAY BE APPEALED PURSUANT TO SECTION 120.68, FLORIDA STATUTES,
AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING
A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS RULE 9.110(d),
FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE
DISTRICT COURT OF APPEAL ACCOMPANIED BY THE APPROPRIATE FILING
FEE, AND WITH CONNIE BLACKMAN, CLERK FOR THE DIVISION OF FLORIDA
LAND SALES, CONDOMINIUMS AND MOBILE HOMES, WITHIN 30 DAYS OF THE
RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by U.S. Certified Mail to STEPHEN H. KURVIN, Attorney
for Petitioner, 7 South Lime Avenue, Sarasota, Florida 34297,
this 25th day of January, 19 90.


CONNIE BLACKMAN, Docket Clerk

COPIES FURNISHED TO:

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