

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

DATE 10-29-93  
CLERK O'HANNA

IN RE: PETITION FOR DECLARATORY STATEMENT  
OCEAN MONARCH CONDOMINIUM ASSOCIATION, INC.,

Petitioner.

Case No. DS93118

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DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division), issues this Declaratory Statement, based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On or about March 22, 1993, the Division received a Petition for Declaratory Statement from Ocean Monarch Condominium Association, Inc. (Petitioner or Association). The Association is responsible for operation and administration of the Ocean Monarch Condominium (Condominium).

2. The Petition stated that the Condominium contains a laundry room on every floor. The Association has been leasing washing machines and dryers through a private company for the use of the condominium unit owners. The Association now wishes to buy washing machines and dryers because the Association sees it as more economical.

3. The Association requests a Declaratory Statement on the following issue:

Whether it is a material alteration or

substantial addition to the common elements if the Association buys washing machines and dryers for the Condominium through either an outright purchase or lease-purchase agreement.

4. Section 718.113(2), Florida Statutes, provides, in pertinent part, as follows:

Except as otherwise provided in this section, there shall be no material alteration or substantial addition to the common elements or to real property which is association property, except in a manner provided in the declaration.

5. Article X of the By-laws of the Ocean Monarch Condominium Association, Inc. (By-laws) provides that the Board of Governors shall not allow alterations or substantial additions to be made to the common elements or limited common elements except upon affirmative vote of two-thirds (2/3) of the unit owners in the condominium at any regular or special meeting called for such purpose.

#### CONCLUSIONS OF LAW

The Division has jurisdiction to issue this Declaratory Statement pursuant to Section 120.565, Florida Statutes. The Petitioner is an "association" within the meaning of Section 718.103(2), Florida Statutes.

The Association alleges that it has been leasing washing machines and dryers through a private company. It now wishes to buy washing machines and dryers, either through outright purchase or through a lease-purchase arrangement. The question presented is whether the purchase would constitute a material alteration or substantial addition to the common elements, thereby requiring

approval of 2/3 of the unit owners.

Pursuant to Section 718.103(7), Florida Statutes, common elements is defined as the portions of the condominium property which are not included in the units. Condominium property includes personal property that has been submitted to condominium ownership. Section 718.103(12), Florida Statutes. Since the leased washers and dryers have not been submitted to condominium ownership, they would not be considered part of the common elements.

Pursuant to Section 718.103(3), Florida Statutes, association property includes personal property that is owned or leased by the association for the use and benefit of its members. In the instant case, the washers and dryers are leased by the association for the use and benefit of its members. Accordingly, the washers and dryers are association property, and therefore, the purchase of the washers and dryers would not be a material or substantial addition to the common elements. In addition, the purchase of washers and dryers would not constitute a material alteration or substantial addition to the association property since Section 718.113(2), Florida Statutes, only discusses material alterations and substantial additions to real property which is association property.

Furthermore, in Sterling Village Condominium, Inc. v. Breitenbach, 251 So.2d 685 (Fla. 4th DCA 1971), the court held that as applied to buildings, the term "material alteration or addition" means to "palpably or perceptively vary or change the form, shape, elements or specifications of a building from its original design

or plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance". In the instant case, the laundry rooms have been a part of the floor plan of the Condominium since its creation. Since the Association is already providing the washing machines and dryers for the use of the unit owners, a change in the way the washing machines and dryers are owned does not palpably or perceptively vary or change the building's existing conditions, nor does it affect the function, use, or appearance of the building or laundry rooms. Compare, in this regard, the declaratory statement of the Division in In re: Petition for Declaratory Statement, Southseas Northwest Condominium Apartments of Marco Island, Inc., Case No. 851-278 (August 19, 1985). Accordingly, the purchase of washing machines and dryers would not constitute a material alteration or substantial addition to the common elements.<sup>1</sup>

Lastly, Section 718.111(7), Florida Statutes, provides, in pertinent part, as follows:

TITLE TO PROPERTY.--The association has the power to acquire title to property or otherwise hold, convey, lease, and mortgage association property for the use and benefit of its members. The power to acquire personal property shall be exercised by the board of administration.

Section 718.111(7), Florida Statutes, clearly allows the board of administration to acquire property for the use and benefit of its

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<sup>1</sup> A different question would be presented if, for example, the association determined to alter or extend the rooms housing the laundry facilities.

members, subject to any applicable documentary restrictions.<sup>2</sup>

For the reasons stated above, the Division hereby declares that the purchase of washing machines and dryers by the Association is not a substantial addition or material alteration of the common elements.

DONE AND ORDERED this 29<sup>th</sup> day of October, 1993.



Henry M. Solares  
HENRY M. SOLARES, DIRECTOR  
Division of Florida Land Sales,  
Condominiums, and Mobile Homes  
Department of Business and  
Professional Regulation  
Northwood Center  
1940 North Monroe Street  
Tallahassee, Florida 32399-1007

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER OR INTERVENOR PURSUANT TO THE FLORIDA RULES OF APPELLATE PROCEDURE AND SECTION 120.68 FLORIDA STATUTES, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY THE APPROPRIATE FILING FEES AND WITH CAROLYN HOWARD, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

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<sup>2</sup> See, e.g., Article V, Section 10(3) of the Bylaws of the Ocean Monarch Condominium, Inc. which provides that expenditures not approved in the annual budget and involving expenditures in excess of \$5,000 must be approved by at least 51% of the members at a meeting called for that purpose.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true<sup>1</sup> and correct copy of the foregoing has been furnished by U.S. Certified Mail to Don Cermak, President, Ocean Monarch Condominium, Inc., 133 North Pompano Beach Boulevard, Pompano Beach, Florida 33062, this 27<sup>th</sup> day of October, 1993.

Carolyn Howard  
Carolyn Howard, Docket Clerk

Copies furnished to:

Yeline Goin  
Attorney

Faye Mayberry, Chief  
Bureau of Condominiums