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Dept. of Business and Professional Regulation

AGENCY CLERK

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By: *Brandon Linn*

1/13/97

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

IN RE: PETITION FOR DECLARATORY STATEMENT

ROY C. GRAYSON and
FREDIA B. GRAYSON,

DS95519

Petitioners.

_____ /

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to Sections 718.501 and 120 565, Florida Statutes.

FINDINGS OF FACT

1. On December 6, 1995, the Division received a petition for declaratory statement from Roy C. Grayson and Fredia B. Grayson, owners of a unit at Las Casas Condominiums, Section II, A Condominium (Petitioners). Petitioners question whether a board's removal of a storage shed from the common elements without approval of 75% of the unit owners violates Section 718.113(2), Florida Statutes (1993), where the shed had been installed by the board about six years earlier without a unit owner vote and where the declaration restricts the erection of structures on the common elements without association approval.

2. On January 26, 1996, the Division duly published notice of its receipt of the petition for declaratory statement in the Florida Administrative Weekly.

3. Petitioners are "unit owners" as that term is defined in Section 718.103(25), Florida Statutes (1995).

4. Las Casas South Owners Association, Inc. (Association) is an "association" as that term is defined in Section 718 103(2), Florida Statutes (1995). The Association is a multi-condominium

association responsible for maintaining and operating the common elements of both condominiums of Las Casas. Art. I, §§ 22 & 23, amended declaration (2/1/90). The Association filed its request to intervene in this proceeding on January 23, 1996. The Association has been made a party to this proceeding. The Association stated that "the petition correctly states the facts" and that it is also desirous of an answer to the question posed by Petitioners

5. Las Casas Condominiums, Section II, A Condominium (Condominium) consists of 22 single-story, individual villas, all of which share one or two common fire walls with neighboring villas. Each unit owner is responsible for maintaining the structure of his or her building, but not the exterior stucco or paint. The board has historically permitted each unit owner to maintain the landscaping surrounding his or her villa

6. In the summer of 1988 or 1989, the board of directors installed a 10' by 12', double door, two window out-building on the common elements for the purpose of storing association landscaping tools, equipment, and official records. The shed is anchored to the ground in a manner similar to the anchoring of a mobile home. The total approximate cost of the shed installed was \$1,800. The board took this action without a vote of the unit owners.

7. The unit owners have been permitted to use the tools and equipment stored in the shed for the maintenance of their units and gardens.

8. On September 6, 1995, the board voted "to dispose of by sale of the shed and contents" without a vote of the unit owners

9. Petitioners did not cite to any provision of the declaration, articles, or bylaws that empowered the board to make material alterations or substantial additions to the common elements. A review of these documents indicates that the association is responsible for maintaining, repairing, and replacing the common elements, but has no authority to make material alterations or substantial additions to the common elements or association property. Article XI of the declaration, which was amended on August 7, 1989, provides in pertinent part, as follows:

(j) Each unit owner, lessee or occupant shall maintain at all times in good condition and repair and replacement, subject to regulation by the Association, all portions of their unit. The obligation of owners to maintain their Unit shall not include roofs, exterior walls, lawn, or shrubbery, all of which are included within the common elements and which maintenance, repair, and replacement shall be done by the

Association as a common expense.

10. Article XI(l) of the declaration places the following restrictions on the condominium and condominium property:

Without the prior permission of the Association, no wires, TV antennae, air conditioners, aerials or structures of any sort shall be erected, constructed or maintained on the exterior of the building, except for those structures that form a part of the original building, and no Unit owner shall permit or maintain any exposed or outside storage or storage containers.

11. Section 718.113(2), Florida Statutes (1995) provides as follows:

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. If the declaration does not specify the procedure for approval of alterations or additions, 75 percent of the total voting interests of the association must approve the alterations or additions.

CONCLUSIONS OF LAW

The Division has jurisdiction over this matter pursuant to Sections 718.501 and 120.565, Florida Statutes.

Petitioners question whether the board may remove the shed without approval of 75% of the unit owners.

The shed is association property that was placed on the common elements of the condominium. If the declaration does not provide a method of making material alterations to the common elements and association property, Section 718.113(2), Florida Statutes (1995), requires the vote of 75% of the unit owners to approve such a change.

The first question then is whether the condominium documents authorize the board to make material alterations or substantial additions to the common elements and association property. The answer is no. Article XI(j) of the amended declaration does not authorize the board to make material alterations or substantial additions to the common elements or association property. This article only

authorizes the board to maintain, repair, and replace the existing common elements and condominium property. Article XI(l) of the declaration prohibits unit owners from placing storage containers or structures on the common elements without the approval of the association. This article prohibits unit owners from installing storage sheds on the common elements, but does not authorize the association to install sheds. This provision does not apply. Therefore, Section 718.113(2), Florida Statutes, is applicable.

The next question is whether the removal of the shed can be considered a material alteration or substantial addition to the common elements or association property. When applied to buildings, a material alteration or substantial 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." *Sterling Village Condominium, Inc. v. Breitenbach*, 251 So. 2d 685, 687 (Fla. 4th DCA 1971), *cert. denied*, 254 So. 2d 789 (Fla. 1971). While this definition applies specifically to buildings, e.g. condominium buildings, it has some application to changes made to the common element lawns and open areas. The following changes have been found to be material alterations or substantial additions to the common elements: painting the exterior of the building a different color;¹ substituting glass jalousies for screen on the porch of a unit;² installation of hurricane shutters;³ construction of a patio on the common elements;⁴ and the installation of sliding glass windows on balconies.⁵ Therefore, the placement of the shed on the common elements was a material alteration of the common elements as they existed.

Since the installation of the shed materially altered the common elements as they then existed, the board should have obtained a vote of approval of 75% of the unit owners prior to installing the

¹ *Islandia Condominium Association, Inc. v. Vermut*, 501 So. 2d 74 (Fla. 4th DCA 1987).

² *Sterling Village Condominium, Inc.*, 251 So. 2d at 687.

³ *Schmeck v. Sea Oats Condominium Association, Inc.*, 441 So. 2d 1092 (Fla. 5th DCA 1983).

⁴ *Fountains of Palm Beach Condominium, Inc., No. 5 v. Farkas*, 356 So. 2d 163 (Fla. 4th DCA 1978).

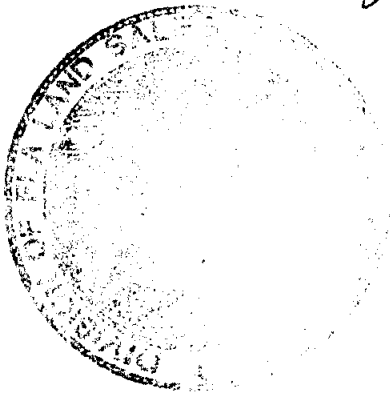
⁵ *Schmidt v. Sherrill*, 442 So. 2d 963 (Fla. 4th DCA 1983).

shed. This was not done. Hence, the shed is an unlawful addition to the common elements.

In cases where unit owners have challenged a board's unlawful alteration of the common elements, courts have required the removal of the alteration or ratification of the alteration by the requisite unit owner vote. *E.g., Islandia Condominium Association, Inc. v. Vermut*, 501 So. 2d 741 (Fla. 4th DCA 1987). The removal of the shed will restore the common elements to their original condition, not materially alter the common elements. The removal is not a material alteration or substantial addition to the common elements in this case. Therefore, the association is not required to obtain the approval of 75% of the unit owners to remove the unauthorized shed.

It is hereby ORDERED that the association's removal of an unauthorized shed that was initially placed on the common elements without a vote of the unit owners as required by Section 718.113(2), Florida Statutes, is not a material alteration or substantial addition to the common elements requiring approval of 75% of the unit owners, but a restoration of the common elements to their original condition.

DONE this 10th day of January, 1996, at Tallahassee, Leon County, Florida.



Robert H. Ellzey, Jr.
ROBERT H. ELLZEY, JR., Division Director
Division of Florida Land Sales, Condominiums
and Mobile Homes
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1030

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER 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 OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES, AND WITH THE DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to William D. Clark, FBN 0365807, P.O. Box 206 Venice, Florida 34284-0206, attorney for petitioners, and Tina G. DiMaria, President of Las Casas South Owners Association, Inc., P.O. Box 1280, Venice, Florida 34284-1280, intervenors, this ____ day of _____, 1996.

KRISTIE HARRIS, Docket Clerk

Copies furnished to:

Janis Sue Richardson,
Senior Attorney

Faye Mayberry, Chief
Bureau of Condominiums

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