

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

IN RE: PETITION FOR DECLARATORY STATEMENT

BPR/LE No. 2003058761

JOHN POTTER, UNIT OWNER,
ROYALE TOWERS CONDOMINIUM

DS 2003-013

DECLARATORY STATEMENT

John Potter (Potter), unit owner, Royale Towers Condominium, Petitioner, filed a petition for declaratory statement requesting an opinion as to whether a contract for a major reconstruction project involving balcony repair and restoration due to salt damage is a maintenance contract under section 718.3025, Florida Statutes, which requires a party contracting with an association to provide maintenance or management services to specify a minimum number of personnel to be employed to provide maintenance or management services to the association.

STATEMENT OF FACTS

The following facts are based on information submitted by Petitioner. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this declaratory statement. Petitioner did not request a hearing and none was held.

1. Potter filed his petition with the Division on May 1, 2003. Notice of the petition was published in Florida Administrative Weekly on May 23, 2003.
2. Potter is a "unit owner" as that term is defined by section 718.103(28), Florida Statutes (2002).
3. Royale Towers Condominium Association, Inc., (Association) is an "association" as that term is defined by section 718.103(2), Florida Statutes (2002). The Association filed a response to the petition on May 23, 2003.
4. The condominium property consists of three buildings: buildings "A" and "B", facing the ocean, and building "C", facing south.

5. The prime contract for balcony restoration of buildings "A", "B", and "C" began in July 2002. The cost for major reconstruction of the balconies was estimated to be \$2,150,000. The contract is an American Institute of Architects standard form agreement approved and endorsed by The Associated General Contractors of America. The standard contract was reviewed and modified by the Association's counsel and engineer. As modified, the contract included an Addendum, one of which is to Article 3, which states work should be completed "no later than 300 days following issuance of a Notice to Proceed by the Engineer, time being of the essence." The Addendum also contained a provision that additional schedule time would be granted for delays beyond the control of the contractor. The contract does not specify the number of employees on the job at any specific time that will work for the contractor or any subcontractor.

6. The contractor used a subcontractor to do the work on building "C". Work on buildings "A" and "B" is being performed by the contractor.

7. The work on building "C" was completed in six months. Work on buildings "A" and "B" is on-going. Potter complains the work is disruptive to the residents because of the noise from jackhammers, covers being put over glass doors, and the absence of railings from the balconies. Potter complains that the work has prevented him from renting his units.

8. The Association explained the amount of overage from the original estimate of damages has, thus far, been higher on "C" than "A" or "B" buildings. However, the total amount of damage to be repaired on each building "A" and "B" has been higher than the amount of damages repaired on building "C".

CONCLUSIONS OF LAW

9. The Division has jurisdiction to enter this order in accordance with sections 120.565 and 718.501, Florida Statutes.

10. Potter is substantially affected by the contract for major reconstruction work entered into between the Association and the contractor based on his ownership of an affected condominium unit.

11. Section 718.3025, Florida Statutes (2002) provides:

(1) No written contract between a party contracting to provide maintenance or management services and an association, which contract provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be valid or enforceable unless the contract:

* * * *

(d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

12. This section speaks to the provision of services to the association, both maintenance services and management services. The definition of service includes "the help performed by one that serves." Webster's Ninth New Collegiate Dictionary 1076 (1983). An association may hire its own employees to help it perform its job of maintaining and operating the condominium or it may contract for these services. If an association contracts for these services instead of hiring its own employees, the contract must specify: (1) the "services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners"; (2) those costs that are reimbursable; (3) how frequently the service will be performed; (4) the number of personnel employed to perform the service; and (4) a disclosure of the developer's interest in the service provider if one exists. § 718.3025, Fla. Stat. In the context of a management service contract, the management company will be helping the association to perform daily operational tasks and may hire one or more employees to perform those tasks. The management employees will be on the condominium property seeing to the day to day operations. There is no set time frame for the conclusion of the tasks other than the term of the contract. In other words, the management service is not limited by completing a mailing, or preparing one agenda, or updating the unit owner roster, but the contract would specify the frequency that each of these tasks is to be performed, e.g. monthly, annually. In the same sense, the maintenance service referenced in this section is for those daily or routine services performed by the maintenance company at the condominium, such as the lawn service, the pool service, the elevator service. These maintenance services may involve some elements of repairing or restoration in addition to routine maintenance. For example, a lawn maintenance company will presumably mow the lawn every week, but it may also repair the landscaping by treating a diseased shrub or even replace a dead one. The lawn company would do the work and seek

reimbursement for the expense of the replacement shrub. The association is required to know how many employees will be covered under these service contracts as the common expense budgeted for these services comes from the operational side of the budget.

13. In contrast, a contract for major reconstruction is a one-time event or non-routine event that occurs at infrequent intervals. The contract is not for general maintenance services but for major reconstruction of a portion of the common elements and is paid for from the reserve side of the budget. The contractor may, as in this case, hire subcontractors in addition to using its own work crews. The workmen will be on the condominium property for a limited time to perform a specific task—the reconstruction of the balconies. The contract is not a maintenance service contract in the sense that the contract is being performed for a defined limited task, not a day-to-day routine operation. Section 718.3025, Florida Statutes, does not address or contemplate contracts for major renovation work because these are not routine service agreements.


14. The contract between the Association and the third party contractor was for major reconstruction of salt damaged balconies and was not a maintenance or management services contract as those terms are used in section 718.3025, Florida Statutes. Therefore, section 718.3025(1)(d), Florida Statutes, is inapplicable to this contract.

ORDER

Based upon the findings of fact and conclusions of law, it is ORDERED that section 718.3025, Florida Statutes (2002) does not apply to contracts for major construction projects such as the repair and restoration of salt damaged balconies.

DONE and ORDERED this 18 day of June, 2003.



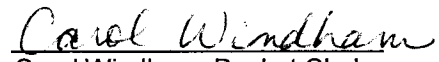

ROSS FLEETWOOD, Director
Division of Florida Land Sales,
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Department of Business and
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1940 North Monroe Street
Tallahassee, FL 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER 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(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to John Potter, Royale Towers Condominium, Units A203/A204, 1890 N. Atlantic Ave., Cocoa Beach, Florida, 32931, and Susan G. Wann, President, Royale Towers Condominium Association, Inc., 1830 North Atlantic Avenue, Cocoa Beach, FL 32931 this 24th day of June, 2003.


Carol Windham, Docket Clerk

Copies furnished to:

Ross Fleetwood, Director

Janis Sue Richardson, Chief
Assistant General Counsel