

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

IN RE PETITION FOR DECLARATORY STATEMENT

VALERIE PURPURA, Unit Owner,
CAMDEN C CONDOMINIUM ASSOCIATION, INC.,

Docket No. 2010014720

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DS 2010-025

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to section 120.565, Florida Statutes.

PRELIMINARY STATEMENT

On March 12, 2010, the Division received a Petition for Declaratory Statement from Valerie Purpura, a unit owner at Camden C, A Condominium, seeking an opinion on whether section 718.110(13), Florida Statutes, applies to owners who do not consent to a 2004 amendment to the Declaration of Camden C Condominium restricting rental of units.

The Division acknowledged the petition on March 25, 2010, and informed the association that if it wished to intervene in the petition or to otherwise respond to the petition, it may do so by sending a written response within twenty-one (21) days.

On April 7, 2010, the association responded arguing: (1) that the association approved an amendment restricting leasing of units on September 29, 2004, which was recorded in the official records of Broward County, Florida at book 17573, page 1738; (2) that the amendment was approved by over two-thirds of the owners; (3)

that Ms. Purpura voted against the amendment; (4) that the amendment was adopted before the October 1, 2004 effective date of section 718.110(13), Florida Statutes; (5) that the amendment is valid under the Condominium Act and law existing on the date of its adoption; and (6) that Ms. Purpura is, therefore, bound by it.

FINDINGS OF FACT

The following findings of fact are based on information submitted by the association and Ms. Purpura. The division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. The association operates Camden C, a condominium.¹
2. The petitioner, Ms. Purpura, is a unit owner in Camden C Condominium.²
3. Ms. Purpura rented her unit, but her tenant left the unit when the lease expired.³ She would like to rent her unit to another tenant, but the amendment restricts her from doing so.
4. The association adopted an amendment restricting leasing of units and recorded the amendment in the Broward county records on September 30, 2004.

The amendment to article XI of the Declaration of Camden C Association provides:

Provided, however, each owner shall use such apartment as a private dwelling for himself or herself and his or her immediate family, and for no other purpose including business purposes. Therefore, the leasing of apartments to others as a regular practice, for business speculative investment, or other similar purposes is not permitted. To meet special situations and to avoid undo hardship or practical difficulties the Board of Directors may grant permission to an owner to lease his or her

¹ Ass'n Response (Apr. 7, 2010).

² Pet for Decl Stmt (Mar 12, 2010)

³ Id

apartment one time during the ownership of the apartment, to a specified lessee.

The provisions of this Amendment shall not apply to leases already reviewed and approved by the Association as of the effective date of this Amendment. However, this Amendment shall apply at the expiration of any such existing leases.⁴

CONCLUSIONS OF LAW

1. The division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.

2. Ms. Purpura has standing as a unit owner to petition for a declaratory statement.⁵

3. The association has standing to intervene and respond.⁶

4. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set or circumstances.

5. Rule 28-105.001, Florida Administrative Code (2009), provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A

⁴ Art. XI, Decl of Condo. Camden C Ass'n, Inc (Sept. 29, 2004) (emphasis added).

⁵ §§ 718.103(28), 120.565, Fla Stat. (2009)

⁶ §§ 718.103(2), 120 565, Fla Stat.

declaratory statement is not the appropriate means for determining the conduct of another person.

6. Subsection 718.110(13), Florida Statutes,⁷ which was approved by the Governor and filed with the Secretary of State on June 23, 2004 with an effective date of October 1, 2004, provides:

(13) Any amendment restricting unit owners' rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment.

7. Subsection 718.110(13), Florida Statutes, was enacted in 2004 in response to the Florida Supreme Court's opinion in Woodside Village Condominium Association, Inc. v. Jahren, 806 So. 2d 452 (Fla. 2002). The supreme court noted that condominiums were a unique form of living arrangement that was subject to greater restrictions on an owner's right to lease a unit.⁸ The original declaration allowed Jahren to lease for one year or less or to lease by successive leases in excess of a year without board approval.⁹ Leases longer than a year required board approval.¹⁰ The declaration was amended to restrict all leases to 9 months in any 12 month period and to require board approval of all leases.¹¹ The supreme court held the amendment was valid because Jahren bought his unit knowing the declaration could be amended by its terms.¹²

⁷ Ch. 2004-353, §§ 1, 38, Laws of Fla (effective Oct 1, 2004).

⁸ Woodside, 806 So 2d at 456.

⁹ Id. 453.

¹⁰ Id. at 454

¹¹ Id. at 453-54.

¹² Id. at 462

8. The enactment of subsection 718.110(13), Florida Statutes, changed the holding in Woodside for all amendments restricting an owner's right to lease from October 1, 2004 onward. Generally, laws are prospective in application from the effective date.¹³ "[T]he citizens of this State cannot be charged reasonably with notice of the consequences of impending legislation before the effective date of that legislation, for it is generally accepted that a statute speaks from the time it goes into effect."¹⁴ Even where the effective date is several months after the enactment, the law is prospective in application.¹⁵ After October 1, 2004, any amendments to declarations that change an owner's right to lease his or her unit may only be applied to those existing owners who consent or those owners who purchase after the amendment is recorded in the public records.

9. Camden C adopted its amendment under the law interpreted and applied by the Florida Supreme Court in Woodside and before the effective date of subsection 718.110(13), Florida Statutes. The amendment is consistent with the law in effect on the date of its adoption as interpreted by Woodside. Subsection 718.110(13), Florida Statutes, applies to any amendments restricting leasing adopted since October 1, 2004. Since the Camden C leasing amendment was adopted before subsection 718.110(13), Florida Statutes, went into effect, it may be applied to Ms. Purpura.

For the reasons stated above it is hereby:

¹³ 48A Fla. Jur. 2d Statutes § 99 (2000), During v. Reynolds, Smith & Hills, 471 So. 2d 603, 607 (Fla. 1st DCA 1985)

¹⁴ During, 471 So. 2d at 607 (quoting Dewberry v. Auto-Owners Ins. Co., 363 So. 2d 1077, 1080 (Fla. 1978))

¹⁵ See City of St. Augustine v. Authentic Old Jail, Inc., 388 So. 2d 1044 (Fla. 5th DCA 1980) (holding that seven month delay between enactment and effective date of city ordinance did not preclude enforcement to actions occurring after the effective date)

ORDERED that subsection 718.110(13), Florida Statutes, does not apply to unit owners in Camden C Condominium who did not consent to a 2004 amendment to article XI of the declaration restricting rental of units because the leasing restriction was adopted by a majority of owners before the statute's effective date.

DONE and **ORDERED** this 21st day of May, 2010,
at Tallahassee, Leon County, Florida.



A handwritten signature in black ink, appearing to read "M. Cochran", written over a horizontal line.

MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums, Timeshares,
and Mobile Homes
Northwood Centre
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 ANY PARTY ADVERSELY AFFECTED 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: Ms. Valerie Purpura, 1424 84th Street, Brooklyn, N.Y. 11228; and Robert B. Burr, Esq., St. John, Core & Lemme, P.A., Centurion Tower, Suite 701, 1601 Forum Place, W. Palm Beach, FL 33401, on this 27th day of May, 2010.


Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Attorney