

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

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	10/10/2011
File #	2011-07014

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2011035408

LUGANO VILLAGE ASSOCIATION, INC.

DS 2011-061

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes issues this Declaratory Statement under section 120.565, Florida Statutes (2010).

PRELIMINARY STATEMENT

On July 15, 2011, the division received a Petition for Declaratory Statement from Cheryl R. Kraus, counsel for Lugano Village Association, Inc., seeking an opinion on whether Lugano Village Association, Inc. is a condominium association under section 718.103(2), Florida Statutes. The division acknowledged receipt of the petition on July 18, 2011. No hearing was requested or held.

Notice of receipt of the petition was published in Florida Administrative Weekly on July 29, 2011.

FINDINGS OF FACT

The following findings of fact are based on information submitted by Lugano Village Association, Inc. (Lugano). 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 original Declaration of Covenants, Conditions and Restrictions of Lugano was recorded on January 29, 1987 in O.R. Book 1247, Page 210, of the Public Records of Collier County, Florida, as amended, for which Lugano was formed to operate the property.¹

2. There are seventeen (17) single family homes (the "villa units") within the property subject to the Lugano Village Declaration that are not subject to a condominium declaration and therefore are not condominium units.²

3. The following condominium properties are also within the property subject to the Lugano Declaration: Lugano, a Condominium; Lugano II, a Condominium; Lugano III, a Condominium; Lugano IV, a Condominium.³

4. Lugano was created on April 6, 1987, containing fifteen (15) condominium units for which Lugano Condominium Association, Inc. was created to operate; Lugano II was created on October 6, 1987, containing fifteen (15) condominium units for which Lugano II Condominium Association, Inc. was created to operate; Lugano III was created on May 11, 1988, containing twelve (12) condominium units for which Lugano III Condominium Association, Inc. was created to operate; Lugano IV was created on January 4, 1989, containing twelve (12) condominium units for which Lugano IV Condominium Association, Inc. was created to operate.⁴

5. On December 21, 1990, Articles of Merger were filed with the Florida Department of State wherein Lugano Village Association Inc. and the four condominium

¹ Pet for Decl Stmt at 1 (July 15, 2011)

² *Id*

³ *Id* at 2

⁴ *Id*

associations listed above were merged; the articles provided that Lugano Village Association, Inc., the petitioner here, was the surviving corporation.⁵

6. The members of the surviving association are the seventy-one (71) owners of record legal title to the fifty-four (54) condominium units and seventeen (17) villa units within Lugano.⁶

CONCLUSIONS OF LAW

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

8. Lugano Village, as a community association, has standing to petition for a declaratory statement.⁷

9. 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.

10. Rule 28-105.001, Florida Administrative Code (2007), 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 declaratory

⁵ *Id*

⁶ *Id*.

⁷ § 120 565, Fla Stat (2011)

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

11 Section 718.103(2), Florida Statutes (2010), provides:

“Association” means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership. (Emphasis added.)⁸

12. In *Palm Beach Leisureville v. Raines*, the Fourth District Court of Appeals issued one of the seminal judicial opinions in condominium law.⁹ In *Raines*, a maintenance management entity for a community consisting of 1803 improved lots with single-family homes and 502 condominium units, located in twenty-one separate condominium buildings (each with an underlying condominium association), was sued for imposing improper assessments against condominium unit owners.¹⁰ The unit owners argued that responsibility/cost for maintaining the single-family homes in their community should not befall them.¹¹ The unit owners prevailed and subsequently sought attorneys’ fees for prevailing in a suit against a condominium association.¹² The question presented to the Fourth District in this appeal, then, was whether the plaintiffs truly prevailed over a condominium association as the Condominium Act defined that term. The court held “the improved lot owners were not subject to condominium ownership, and therefore the association was not ‘responsible for the operation of a

⁸ Fla Stat § 718 103(2) (2011)

⁹ See *Palm Beach Leisureville Cmty. Ass’n v. Raines*, 398 So 2d 471 (Fla 4th DCA 1981)

¹⁰ *Id* at 473

¹¹ *Id*

¹² *Id*

condominium,' at least as concerned those owners."¹³ The court went on to hold that "it would be absurd and patently unfair to require the improved lot owners to pay a pro rata share of the attorneys' fees, which were assessed under the authority of a condominium statute, when those owners did not contemplate participation in the condominium way of life when they purchased their homes."¹⁴

13. Ultimately, the *Raines* court concluded that the only condominium associations which existed in the community were the twenty-one underlying associations. The appellant association was not a condominium association under the statute.¹⁵

14. The present case differs from *Raines* in only one large respect; there are no underlying associations. In the 1990 Articles of Merger, the underlying condominium associations agreed to a plan of merger which left Lugano Village Association as the sole surviving community association.¹⁶ The Amended Articles of Incorporation for Lugano Village state that the purpose of the association is to "provide an entity for the operation of a residential community which includes some property submitted to the condominium form of ownership."¹⁷ Moreover, the Plan of Merger provides that Lugano Village *shall* become the condominium association which operates the four condominiums.¹⁸ The bylaws for Lugano Village asserts that "[t]he members of the

¹³ *Id.* at

¹⁴ *Id.* at 474.

¹⁵ *Id.*

¹⁶ Articles of Merger, para 2 (Nov 15, 1990) (on file with DBPR)

¹⁷ Art II, Amended and Restated Articles of Incorporation of Lugano Village Association, Inc (as amended on Nov 15, 1990).

¹⁸ Plan of Merger, para 3 (Nov. 15, 1990)

Association shall be the record owners of legal title to the seventy-one (71) condominium and villa units within Lugano.”¹⁹

15. Though the bylaws and articles of incorporation for the underlying condominiums were replaced after the merger, the separate declarations of condominium, as amended, are still in effect for each.²⁰ Aside from the underlying declarations, each condominium is also subject to the Amended Declaration of Covenants, Conditions and Restrictions of Lugano. The declaration of covenants describes duties owed and owing from the villa units in detail, but frequently references the underlying condominium declarations for issues relating to the condominium units.²¹ Additionally, the declaration of covenants sets out an assessment payment scheme in some detail, designed to charge equal shares of assessments (1/71st) among the villa owners and the condominium unit owners for all expenses *not directly attributable* to one of the condominium or villa units.²²

16. *Raines* is controlling here. In accordance with that opinion, Lugano Village has a dual roll in the Lugano complex. It is the multicondominium association for the four underlying condominiums and a homeowners association for the several villa units. Expenses directly attributable to the condominiums are not expensed to the villa owners and expenses directly attributable to the villa owners are not expensed to the condominium unit owners. Because the former condominium associations merged into Lugano Village, its authority over the condominiums fits squarely into the definition of a

¹⁹ Amended and Restated Bylaws of Lugano Village Association, Inc , ¶ 2 1 (as amended on Nov. 15, 1990)

²⁰ See, e.g., Amended Declaration of Condominium of Lugano, a Condominium (Nov 15, 1990).

²¹ Art V, Amended Declaration of Covenants, Conditions, and Restrictions (Nov 15, 1990)

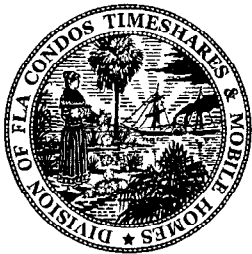
²² *Id* at art VIII

condominium association under section 718.103(2), Florida Statutes; i.e., it is an "entity responsible for the operation of common elements owned in undivided shares by unit owners."²³ The villa units however, have not been submitted to the condominium form of ownership and therefore hold a different relationship to Lugano Village than the condominium unit owners.

For the reasons stated above it is hereby:

ORDERED that Lugano Village Association, Inc. is the condominium association for the four Lugano condominiums as defined in section 718.103(2), Florida Statutes, but not the underlying villa units. The owners of the condominium units are subject to the governing documents as well as Florida's Condominium Act and the association must comply with chapter 718 and the rules and regulations of the division as to the condominium units.

DONE and **ORDERED** this 5th day of October 2011, at Tallahassee, Leon County, Florida.




MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums, Timeshares,
and Mobile Homes
Northwood Centre
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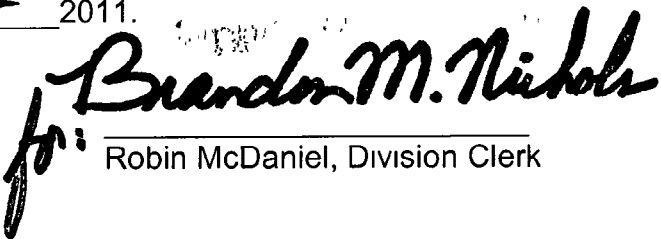
²³ § 718 103(2), Fla Stat (2011)

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 Cheryl R. Kraus, Esq.. 1072 Goodlette Road North, Naples, FL 34102, on this 10th day of October 2011.

for: 
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Attorney