

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION "AD"  
CASE NO. 502005CA012002XXXXMB

BRISTOL LAKES HOMEOWNERS  
ASSOCIATION, INC.,  
A Florida not-for-profit corporation,

Plaintiff,

v.

ABERDEEN PROPERTY OWNERS  
ASSOCIATION, INC.,  
A Florida not-for-profit corporation,

Defendant.

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**ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL SUMMARY  
JUDGMENT**

**THIS CAUSE** came before the Court on a Motion for Summary Judgment filed by the Defendant Aberdeen Property Owners Association, Inc. ("Aberdeen POA") and the Cross-Motion for Summary Judgment filed by the Plaintiff Bristol Lakes Homeowners' Association ("Bristol Lakes HOA"). Having considered the arguments of counsel and having reviewed the law and the file and being duly apprised, this Court hereby finds as follows:

### Finding of Facts

Plaintiff Bristol Lakes HOA is a homeowners association representing homeowners located in Bristol Lakes, a subdivision within the greater Aberdeen Planned Unit Development and Aberdeen Planned Commercial Development (the "Aberdeen Community") located in Boynton Beach, Florida.

Defendant Aberdeen Property Owners Association, Inc. ("Aberdeen POA") is the master homeowners association of the Aberdeen Community. Bristol Lakes HOA is a sub-association of the Aberdeen POA.

On June 17, 1983, Sunbelt Properties, Ltd. (the "Developer") filed a Declaration of Covenants and Restrictions for Parkwalk Planned Unit Development and Parkwalk Planned Commercial Development (collectively the "Original Declaration") in the Public Records of Palm Beach County, Florida. In the Original Declaration, the Developer outlined the general plan and scheme of development for the Aberdeen Community.<sup>1</sup> As part of the general plan and scheme of development, the Developer provided for the creation of a master association and sub-associations. Upon incorporation, sub-associations become automatic members of the master association. (See Original Declaration, Art. 3.2).

When the Original Declaration was filed, the Aberdeen Community did not have a golf course or clubhouse; however, the Original Declaration provided that in the event such facilities were built, "no golf course or other recreational facilities shall be owned by the Master Association." (See Original Declaration, Art. 9 "Recreational Facilities"). Moreover, the facilities were to be available to all members of the Aberdeen

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<sup>1</sup> The Preamble to the Original Declaration acknowledges the Developer's "intent . . . to establish a general plan and uniform scheme of development and improvement of the Sunbelt Property . . . ."

Community "on the same terms, conditions and costs." (Id.). No mention was made of requiring mandatory club membership to residents or prospective residents of the Aberdeen Community.

In 1986, the Developer amended the Original Declaration (the "1986 Amended Declaration"). The 1986 Amended Declaration, among other things, divided the Aberdeen Community into the Eastern Residential Area and the Western Residential Area. In addition, new terms and definitions were added. "Club Facilities" referred to "the golf course and such other properties, improvements and related amenities located in Aberdeen . . . and owned by the Club Owner." (Fifth Amendment, sect. 2(n)). The "Club Owner" referred to the Aberdeen Golf and Country Club, Inc., a Florida Not For Profit Corporation. (Fifth Amendment, sect. 2(o)). Furthermore, the 1986 Amended Declaration made clear that "[o]wnership of a Parcel [did] not confer any membership or ownership rights in the Club." (Fifth Amendment ¶ 28).

In July 2000, the Aberdeen POA again amended the Declaration (the "2000 Amended Declaration"). The 2000 Amended Declaration provided that the rights to use the Country Club facilities were determined by the Club Owner, Aberdeen Golf and Country Club, Inc. (See 2000 Amended Declaration, Art. 9, sect. 9.2). Furthermore, "[t]he costs of maintenance, operation, staffing and improvements of the Aberdeen Golf and Country Club" was the responsibility of the Country Club's equity members. The Aberdeen POA was specifically excluded from bearing the responsibility of "support and maintenance of the Club . . . ." (Id.).

Subsequently, in February and March of 2004, the Aberdeen POA passed two amendments to the Declaration. The amendments set forth the process by which the

Eastern Residential Area and the Western Residential Area could create "area amendments" that affected their respective areas only. Soon thereafter, the First Area Amendment was passed on June 14, 2004. The First Area Amendment reads as follows:

9.2.1. Membership in the Club for Western Area Owners.

A person or a corporation, partnership, trust or other entity obtaining title to a Western Area Residential Unit is required, as a use restriction incident to residential ownership in the Western Area, to become a member of the Club. The terms of membership in the Club shall be as set forth in the Club's governing documents.

9.2.1.1. Non-Applicability to Eastern Area Owners.

Notwithstanding any term herein to the contrary, no person or corporation, partnership, trust or other entity obtaining title to an Eastern Area Residential Unit shall be required, as a use restriction incident to residential ownership in the Eastern Area, to become a member of the Club. This sub-paragraph 9.2.1.1. may not be amended other than by adoption by the Eastern Area Owners of an Area Amendment to such effect.

As a result of the First Area Amendment, home ownership in the Western Residential Area is markedly different from homeownership in the Eastern Residential Area. That is, Western Area residents now own homes burdened by mandatory Country Club membership for future owners.

Conclusions of Law

Summary judgment is appropriate where the moving party proves that no genuine issue of material fact exists. Moore v. Moore, 475 So. 2d 666, 668 (Fla. 1985). Once the movant meets its burden, the party who opposes the summary judgment motion may not avoid such relief without presenting evidence demonstrating the existence of a dispute as to a material fact. Turner Produce Co. v. Lake Shore Growers Co., 217 So. 2d 856, 861 (Fla. 4th DCA 1969), writ of cert. discharged, 228 So. 2d 276 (Fla. 1969).

The Court must determine whether the First Area Amendment requiring

mandatory Country Club membership for individuals taking title to property in the Western Residential Area after October 30, 2004 destroys the general scheme and scope of development of the Aberdeen Community as delineated in the Original Declaration. The Court finds that it does.<sup>2</sup>

The reservation of a right to amend a declaration is not without limitation. Rather, the exercise of power to amend a declaration must be reasonable. Nelle v. Loch Haven Homeowners' Ass'n, 413 So. 2d 28 (Fla. 1982)(noting that "courts have begun to require that the reserved power be exercised in a reasonable manner so as not to destroy the general plan")(citing Flamingo Ranch Estates, Inc. v. Sunshine Ranches Homeowners', Inc., 303 So. 2d 665 (Fla. 4th DCA 1974)). An exercise of power is unreasonable when the general scheme and scope of a development as outlined by its developer is destroyed. See Flamingo Ranch Estates, Inc., 303 So. 2d at 666 (holding that "the right to alter, amend, repeal or modify these restrictions at any time in its sole discretion is a valid clause so long as it is exercised in a reasonable manner as not to destroy the general scheme or plan of development"); see also Armstrong v. The Ledges Homeowners Ass'n, 633 S.E.2d 78 (N.C. 2006)(noting the rationale in Holiday Pines Property Owners Ass'n v. Wetherington, 596 So. 2d 84 (Fla. 4th DCA 1992) and holding that "a provision authorizing a homeowners' association to amend a declaration of covenants does not permit amendments of unlimited scope; rather, every amendment must be *reasonable* in light of the contracting parties' original intent")(emphasis in original).

In Holiday Pines, *supra*, the Fourth District Court of Appeals held

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<sup>2</sup> The Court limits its ruling to the First Area Amendment enacted on June 14, 2004. As such, plaintiff's claims are timely.

unenforceable an amendment requiring mandatory membership in a homeowners' association where membership was previously voluntary. Id. at 87. In its analysis, the court stated that restrictive covenants are enforceable if they are reasonable. Id. Moreover, the "reserved power to modify restrictions must be exercised in a reasonable manner so as not to destroy the general plan of development." Id. As such, the court determined that the amendment requiring mandatory membership to the homeowners' association was unreasonable and thus unenforceable because it "created a fundamental change in the scheme of development." Id. Specifically, the court stated that:

[T]he mandatory nature of the homeowner's association together with their increased powers of regulation, management, and liening authority, have significantly restricted the lot owner's use of his or her property. People elect not to purchase in condominiums because they do not want to restrict their control over their own property. This is not a continuation of a scheme of development but a radical change of plans, altering the relationship of lot owners to each other and the right of individual control over one's own property.

Id. at 87,88.

In this matter, the First Area Amendment enacted by the Aberdeen POA has created a fundamental change in the Aberdeen Community's scheme of development. Prior to the First Area Amendment, Country Club membership was optional for all current and prospective residents. Neither the 1986 Amended Declaration nor the 2000 Amended Declaration imposed mandatory Country Club membership on the residents of the Aberdeen Community. This scheme of elective membership was maintained and has been relied on by residents for over two decades.

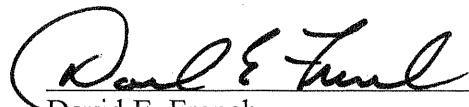
As a result of the 2004 First Area Amendment, Western Area homeowners have acquired a new restriction to the use and sale of their property. While Western Area

homeowners are limited to those prospective purchasers who are willing to accept the financial burden of mandatory membership, Eastern Area homeowners are free to sell their homes without any such encumbrance. Thus, the First Area Amendment achieves the result that Holiday Pines cautioned against; it "alter[s] the relationship of lot owners to each other and the right of individual control over one's own property." Holiday Pines, 596 So. 2d at 88.

Based on the foregoing, the Court finds that the First Area Amendment destroys the general scheme and scope of development as outlined by the Developer. The First Area Amendment is therefore unreasonable and unenforceable as it relates to the requirement of mandatory Country Club membership for new or prospective buyers taking title to property in the Western Residential Area. Accordingly, it is

**ORDERED AND ADJUDGED** that Defendant's Motion for Summary Judgment is DENIED, and Plaintiff's Motion for Summary Judgment is GRANTED.

**DONE AND ORDERED** in Chambers at Palm Beach County, Florida this 15 day of September 2008.

  
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David E. French  
Circuit Judge

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