

IN THE CIRCUIT COURT FOR THE THIRTEENTH  
JUDICIAL CIRCUIT, IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL LAW DIVISION

EAGLES MASTER ASSOCIATION, INC.,  
Plaintiff,

CASE NO.: 06-CA-011801  
Division G

vs.

ARTHURE J. VIZZI, individually, and  
DOREE D. VIZZI, individually,  
Defendants.

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**ORDER ON ENTITLEMENT TO ATTORNEY FEES**

**THIS CAUSE** came to be heard on August 24, 2009, regarding the parties' respective motions for entitlement to attorney fees and costs.<sup>1</sup> The Court, having considered arguments of counsel for the parties, reviewed the motions and memoranda of law, and being otherwise advised in the premises, hereby finds:

**Summary of Facts and Background**

1. Plaintiff, Eagles Master Association, Inc., ("Eagles") is a master homeowners' association formed for the purpose of governing the affairs of a planned development known as "The Eagles." The Eagles is comprised of nine villages, each village having its own governing body and association, and its own separate Declaration of Covenants. Defendants, Mr. and Mrs. Vizzi ("the Vizzis"), owned a home in one of the nine villages known as Windsor Park.
2. In 2006, Eagles' Board sued the Vizzis seeking to enforce a provision in the Master Declaration, which purportedly prohibited them from parking their personal truck in

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<sup>1</sup> The issue of reasonableness of fees was not the subject of this hearing; the Court ordered that two separate hearings would be conducted. The first hearing was to address the entitlement issue, and the second would address the reasonableness of fees and costs due to the prevailing party, if any. This hearing dealt solely with the issue of entitlement.

their own driveway.<sup>2</sup> The Vizzis filed an answer and affirmative defenses contending that their village, Windsor Park, had a Declaration that contained no such restriction, and that they should be permitted to park their personal truck in their driveway. The Vizzis also asserted (both as an affirmative defense and a counterclaim) that Eagles lacked proper authority to enforce the Master Declaration because the current Board of directors illegally held power, and thus could not sue on behalf of the Master Association. The Vizzis contend that even if the Master Declaration could be read to prohibit them from parking their truck in the driveway, the Eagles' Board lacked standing to enforce the provision.

3. In ruling upon the partial summary judgment the Court stated in paragraphs 3 through 6 of its order:

- 3) It is undisputed that the original Master Declaration was recorded in December of 1987. The Declaration of Covenants, Conditions and Restrictions for Windsor Park at The Eagles was recorded on September 20, 1994. The Vizzis purchased their home on August 5, 1997, and at closing they were given a copy of the Windsor Park Declaration, but were not provided with a copy of the 1987 Eagles Master Declaration. On December 23, 1999, the Amended Eagles Master Declaration was recorded (the Amended Declaration did not change the parking provisions at issue in this case). Years after their purchase of their home, the Vizzis received a copy of the Amended Eagles Master Declaration, which is the subject of this enforcement action.
- 4) In this suit the Plaintiff, acting *solely* for the Master Association, seeks to prohibit Defendants from parking their personal truck in their driveway. The Windsor Park Association is not a party to this action and did not take any action to enforce such restriction, as will be explained below.
- 5) The Windsor Park Declaration provides:  
“[V]ehicles. No motor vehicles shall be parked on the Properties except on paved or concrete driveway or in a garage. No motor

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<sup>2</sup> It was undisputed at the summary judgment hearing that Vizzis' truck could not fit into their garage.

vehicles which are *primarily used for commercial purposes*, other than those present on business, nor any trailers, may be parked on the Properties unless inside a garage and concealed from public view. Boats, trailers, *commercial trucks, commercial vans*, motorcycles and other recreational vehicles shall be parked inside of garages and concealed from public view.” (Article VIII, Section 9 of the Windsor Park Declaration) (Emphasis supplied)

- 6) The Eagles Master Declaration states:  
“[V]ehicles and Parking. No vehicles shall be regularly parked in The Eagles except on a paved driveway or inside a garage. No trucks or vehicles *which are used for commercial purposes*, other than those present on business may be parked in The Eagles unless inside a garage and concealed from public view. Pick-up trucks, boats, trailers, campers, vans, motorcycles and other recreational vehicles and any vehicles not in operable condition shall not be permitted to be parked in The Eagles *except while loading or unloading the contents thereof* or while parked inside a garage and concealed from public view.” (Article III, Section 17 of the Master Declaration) (Emphasis supplied)

4. The issue that gave rise to the initial lawsuit was the enforceability of the Master Declaration’s provision regarding parking and the interpretation of that document in light of the Windsor Park Declaration (upon which the Vizzis said they relied when purchasing their home). Ultimately the Court resolved matter by granting a partial summary judgment in the Vizzis’ favor<sup>3</sup> (entered December 12, 2008), and interpreting the two Declarations in such a manner as to reconcile the apparent conflict.

5. The partial summary judgment exhaustively examined the language of the two declarations involved and held:

A better interpretation of these documents is that the Windsor Park Declaration and the Amended Master Declaration be read to prohibit the parking of *commercial trucks and commercial vans* in the driveway and requiring *commercial vehicles* to be garaged and out of public view. This

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<sup>3</sup> This decision, it should be noted, is presently on appeal. There has been no stay of proceedings that prevents this Court from making findings regarding attorney fees entitlement based upon the outcome of this suit.

reading does not necessitate finding either document unenforceable and in fact is consistent with the first paragraph of Article III, Section 17 of the Master Declaration...

Clearly, the Vizzis were the prevailing parties on the original complaint, a fact which the Plaintiff does not dispute.<sup>4</sup>

6. The Court declined to rule on the Vizzis' counterclaim, instead staying it until the matter could be presented to the Department of Business Regulation, Division of Florida Condominiums, Timeshares and Mobile Homes, (which the Eagles maintained possessed *sole* jurisdiction to consider the issue of whether the Board was duly elected and thus, had standing to act for the Master Association):

The Court's reading of Section 720.306(9) suggests that such disputes "must be submitted" to the Department for "mandatory arbitration" and that either party may proceed to file a petition with the Department to address this election dispute issue. Based upon the reading of Section 720.306(9) these proceedings shall be stayed effective December 10, 2008, in order to allow either party to file the appropriate petition with the Department. The petition shall be filed within sixty (60) days of this order. Upon proper notice of a final decision by the Department's arbitrator, the Court shall lift the stay and proceed to address any remaining issues in this case. No final judgment shall issue until the Department renders a final decision in the administrative action or declines in writing to take jurisdiction of the matter and the Court enters an order lifting the stay.

7. After the entry of the partial summary judgment, neither party chose to submit this issue for arbitration. At the conclusion of the sixty day stay period, the Vizzis then voluntarily dismissed their counterclaim.<sup>5</sup> The Court entered final judgment reserving the issue of which party, if any, was entitled to an award of attorneys' fees and costs.

The Declarations at issue provide for an award of attorney's fees and costs to the

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<sup>4</sup> The Eagles appealed and seeks reversal of this Court's partial summary judgment.

<sup>5</sup> The Defendants testified their reason for voluntarily dismissing the counterclaim was the prevailed on the parking issue.

“prevailing party.” Hence, the Court must now address whether either party is entitled to prevailing party status.

Analysis of the “Significant Issues”

8. In Moritz v. Hoyt Enterprises, Inc., 604 So.2d 807 (Fla.1992), the Florida Supreme Court held that the test for determining who is the prevailing party for purposes of awarding attorney's fees in a contract action is “to allow the trial judge to determine from the record which party has in fact prevailed on the significant issues tried before the court.” Id. at 810. This test was also implemented by the Florida Supreme Court in Prosperi v. Code, Inc., 626 So.2d 1360 (Fla.1993), which refined the concept even further: “The fact that a claimant recovers a net judgment is significant but does not necessarily control the determination of the ‘prevailing party’ and the trial court must have flexibility to consider the equities and determine which party prevailed on the significant issues.” Id. at 1363.
9. Most recently, this question was addressed in the Florida Supreme Court case Trytek v. Gale Industries, Inc., 3 So.3d 1194 (Fla. 2009). The Supreme Court rephrased the certified question asking whether the significant issues test articulated in Prosperi, applies where a lienor has obtained a judgment on his or her lien claim.<sup>6</sup> The Supreme Court stated: “The specific issue raised by this case is whether the trial court is vested with discretion, or is even required to consider, which party prevailed on the significant issues; or whether the trial court is bound by an inflexible bright-line rule

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<sup>6</sup> The fee dispute involved a contractor who sued a homeowner to enforce its lien, the amount of which was not disputed. The homeowner countersued for damages to the electrical system incurred when the contractor installed insulation. The parties stipulated that the contractor’s lien was for \$12,725. The homeowner tried the issue of damages, prevailed on it countersuit and was awarded damages of \$11,200 as a set off to the lien. The trial court found the homeowners prevailed and awarded \$55,982 in fees and \$4,016.67 in costs. The Fifth District Court reversed and remanded, holding that the contractor was the “prevailing party.” The appellate court then certified the question to the Supreme Court.

that a prevailing party must be determined [by the party's ability to] obtain a judgment [in their favor]." Id. at 1198. The main issue in the case is what factors enter into a determination of "prevailing party." Id. at 1998. The Court said, "Together, Prosperi and its predecessor, Moritz require that the trial Court's determination of a prevailing party rest on **whether the parties 'succeed [ed] on any significant issue in the litigation which achieves some of the benefit the parties sought in bringing suit'.**" (Emphasis supplied) Id. at 1200, citing Moritz, 604 So.2d at 809-810.

10. The Supreme Court in Trytek went on to state that it was replacing the net judgment rule with the significant issues test in order to allow the courts to reach an equitable result with respect to the determination of prevailing party. Trytek, 3 So.3d at 1202. Clearly this Court has the discretion to now consider whether either party prevailed on the significant issues in this case. In making that determination the Court must apply equitable principles and is not bound by any bright-line rule. Instead the Court should consider whether either party achieved some of the benefit sought in bringing the suit (or in defending against it).
11. The Eagles concedes that the Vizzis were the "prevailing party" on the complaint. The Eagles argues that it, too, should be awarded prevailing party status because the Vizzis *voluntarily dismissed* their counterclaim after the Court entered partial summary judgment in their favor. The Eagles argues that the significant issue in this case for them was whether the Board had authority to act for the Master Association<sup>7</sup>.

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<sup>7</sup> However, Eagles also argued that this Court "lacked subject matter jurisdiction" to decide this very issue. Although the Court did not agree, it deferred this issue to arbitration as the primary claim had been resolved. However, the Eagles could have elected early in the case to voluntarily stay its enforcement action against the Vizzis and seek an administrative ruling on the issue if it

However, the Eagles' Board consistently maintained its authority to litigate this case for almost three years and did not seek any administrative review of that issue prior to the first day of trial in this case.

12. Therefore, despite any potential outcome regarding the legality of the Eagles' Board, the central issue in this case remained the parties' conflicting interpretations of the two Declarations governing the Vizzis' parking rights as homeowners. The Court determined that it could properly resolve that issue, because it was "a question of law" fully within the scope of this Court's jurisdiction.<sup>8</sup> Having resolved the dispute as a matter of law, the Court then stayed the case in order to give the parties the option, at Eagles' request, to raise the authority issue with the Department. However, given the Court's ruling, the authority issue to enforce the Master Declaration (as a general matter) was no longer of primary concern to the Vizzis, because the Board could no longer prohibit them from parking their personal vehicle in the driveway of their home, even if it possessed the requisite authority to act for the Master Association.

13. At all times, the Eagles maintained that it had the requisite standing to bring this action. The issue of standing was raised as an affirmative defense to the Eagles suit and by way of counterclaim because the Vizzis thought it to be a compulsory counterclaim. When the Court ruled that the apparent conflict between the Declarations could be resolved in the Vizzis' favor, the Vizzis determined that they

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was of critical concern. Instead the case proceeded through to the first day of trial, when the Court ruled on the Vizzis' pending summary judgment motion regarding the interpretation of the homeowner declarations.

<sup>8</sup> Whitley v. Royal Trails Property Owners' Association, 910 So2d 381 (Fla. 5<sup>th</sup> DCA 2005).

had won on the merits and the issue of the Eagles Board's *standing* became insignificant, as the Vizzis had achieved the benefit they sought in the litigation.

14. The Eagles argues that it is entitled to fees as the prevailing party because the Vizzis voluntarily dismissed the counterclaim. The “significant issue” in this case was the Eagles’ suit to prohibit the Vizzis from parking their personal truck in their own driveway. The voluntary dismissal of the counterclaim did not confer any benefit to the Board (and according the Eagles, this Court lacked jurisdiction to decide the issue of the Board legitimacy to act for the Master Association). It is undisputed that the Eagles **lost this issue on its merits**, and the voluntary dismissal of the remaining counterclaim was merely a technical victory that came only after the Court had interpreted these Declarations in a manner favorable to the Vizzis. Accordingly, awarding the Eagles prevailing party status under the facts of this case would be inequitable and be tantamount to applying the type of inflexible, bright-line rule that the Supreme Court in Trytek said the Court should avoid.

15. Alternatively, Eagles argues that neither party is a “prevailing party” and that each should bear their own costs and fees in this case. The Vizzis disagree and argue that to deny them fees would be akin to “punishing” them for voluntarily dismissing their counterclaim. The Court agrees. While the case law contemplates that it is possible in certain cases for neither party to be considered a “prevailing party,”<sup>9</sup> in this case, the Court does not find it to be an *equitable solution* as clearly the Vizzis, who were sued and forced to defend themselves, prevailed on the significant issue of the case. It would be most unfair to force the Vizzis to forego entitlement to their fees and costs

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<sup>9</sup> Trytek, 3 So.3d at 1203

solely because they elected to dismiss their counterclaim. For the reasons stated above, the Court hereby finds that it is:

**ORDERED AND ADJUDGED** that: 1) the Vizzis are the prevailing party in this action and are entitled to an award of attorney's fees and costs; 2) the Vizzis' motion for attorney's fees and costs is **GRANTED**; and 3) the Court **RESERVES JURISDICTION** to determine the reasonableness and amount of those fees and costs at a subsequent hearing.

**IT IS FURTHER ORDERED AND ADJUDGED** that, for the reasons stated above, the Eagles is not the prevailing party in this action and its motion for attorney's fees and costs is **DENIED**.

**DONE AND ORDERED** this 17<sup>th</sup> day of September, 2009.

ORIGINAL SIGNED

SEP 17 2009

MARTHA J. COOK  
CIRCUIT JUDGE

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Martha J. Cook  
Circuit Judge

Copies to:

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