

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

CARIBAY CONDOMINIUM
ASSOCIATION, INC. a not-
for-profit corporation,

Plaintiff,

vs.

Case No. 04000250-CI-015

ALYSIA S. ROSS,

Defendant.

FINAL DECLARATORY JUDGMENT

THIS CAUSE having been tried before the Court on November 21, 2005, Plaintiff and Defendant having appeared through counsel, the Court having heard testimony and received documentary evidence, IT IS HEREBY ORDERED AND ADJUDGED:

1. The Plaintiff, CARIBAY CONDOMINIUM ASSOCIATION, INC. (hereinafter the "ASSOCIATION") seeks a Declaratory Judgment and associated injunctive relief against the Defendant, ALYSIA S. ROSS (hereinafter "ROSS"), in connection with ROSS' repair and/or replacement of a window in her Apartment Unit 117 at Caribay Condominium, asserting that such repair/replacement was in violation of the Declaration of Condominium of Caribay (A Condominium) (hereinafter the "Declaration").

2. The ASSOCIATION asserts that ROSS has violated the following provision set forth in Article XVII, Section A, subparagraph 6 of the Declaration which provides as follows:

Apartment Unit Owners, their families, guests, invitees, or lessees shall in no way deface, or mar or make any alteration, repair or replacement, or change, in or to the common elements and shall be liable for damages therefor.

3. It is not disputed that the subject window is located within a covered area situated within an enclosed carport and that prior to its replacement the window was inoperable.

4. ROSS does not deny that she caused the subject window to be replaced with a window of the same width but greater depth than the window originally installed, and further



does not deny that she did not seek the permission of the ASSOCIATION in causing such replacement. However, ROSS has denied that such repair and/or replacement constituted a violation of the above-quoted provision of the Declaration cited by the ASSOCIATION.

5. The Declaration provides that windows, screens and doors are part of the “apartment unit” as defined therein and that repair and replacement of same are the responsibility of the unit owner.

6. Although the subject window is undisputedly not a common element under the Declaration, the ASSOCIATION contends that, because the enlargement of the subject window entailed removal of a portion of the wall within which said window is situated, ROSS has violated the subsection of the Declaration cited above.

7. The main thrust of the ASSOCIATION’s case presented to the Court was that the carport area within which the subject window was located constituted a limited common element, rendering the subject wall a “perimeter wall” which circumscribes the boundaries of the “apartment unit” as defined by the Declaration. The ASSOCIATION asserts that under its interpretation of the Declaration, the subject wall would constitute a common element.

8. Therefore, the legal issue to be determined at trial was whether, under the terms of the Declaration, the wall within which the subject window was located constituted a “perimeter wall” circumscribing the “apartment unit” comprising Unit 117 at the subject Condominium.

9. In presenting its case in chief the ASSOCIATION relied primarily upon Exhibit “B” attached to and incorporated into the Declaration for the proposition that the carport area constitutes a limited common element.

10. Contained within said Exhibit “B” to the Declaration are surveys, plats and other visual depictions of the condominium property containing notations which state “All dimensions shown refer to the inside dimensions of each apartment unit” and “[b]alconies, carports, and patios are included in the condominium apartments as shown.”

11. Read in *pari materia* with the text of the Declaration, the Court finds that the above-quoted notations create an ambiguity in the Declaration which may lead a reasonable

person to conclude that the carport area is not a limited common element, but is part of the apartment unit as defined in the Declaration.

12. Because the Court has found that Declaration is ambiguous with respect to whether the carport is a limited common element or part of the apartment unit, the Court must necessarily construe the Declaration in favor of ROSS and against the ASSOCIATION. White Egret Condominium, Inc. v. Franklin, 379 So. 2d 346 (Fla. 1979).

13. Based upon the foregoing analysis of the subject Declaration, the Court finds that ROSS has not violated Article XVII(a)(6) of the Declaration as a matter of law.

14. The Court further finds that the ASSOCIATION has failed to present evidence of irreparable harm to support the issuance of the injunction requested. On that basis the Court hereby grants ROSS' Motion For Involuntary Dismissal as to Count I of the Complaint.

15. Based upon the foregoing findings, it is hereby adjudged that the Plaintiff, CARIBAY CONDOMINIUM ASSOCIATION, INC. shall take nothing by this action and that Defendant, ALYSIA S. ROSS, shall go hence without day.

16. The Court hereby retains jurisdiction to award reasonable attorney's fees and costs to the Defendant.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida this ____ day of _____, 2005.

Copies provided:

Daniel A. Harris, Esquire
Richard T. Heiden, Esquire
James R. De Furio, Esquire
Joseph Cianfrone, Esquire

CIRCUIT COURT JUDGE

