

IN THE CIRCUIT COURT IN AND FOR THE SIXTH JUDICIAL CIRCUIT  
PINELLAS COUNTY; FLORIDA  
CIVIL DIVISION  
CASE NO. 04-000250-CI-15

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CARIBAY CONDOMINIUM ASSOCIATION, INC., :  
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:  
Plaintiff, :  
:  
:  
vs. :  
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:  
ALYSIA S. ROSS, :  
:  
:  
Defendant. :  
:  
:  
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BEFORE: Honorable Brandt C. Downey  
PLACE: Pinellas County Courthouse  
DATE: November 21, 2005  
TIME: 9:00 a.m. -- 12:45 p.m.  
REPORTED BY: Charissa Villano  
Court Reporter

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COURT'S RULING (EXCERPT)  
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**ORIGINAL**

A-P-P-E-A-R-A-N-C-E-S

HONORABLE BRANDT C. DOWNEY

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Attorney for Plaintiff, Caribay Condominium Association

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Attorney for Defendant, Alysia S. Ross

1 P-R-O-C-E-E-D-I-N-G-S

2 (THEREUPON, the excerpt of the proceedings, per  
3 request, is as follows:)

4 THE COURT: It is undisputed in this case that the  
5 Defendant made an alteration in the window. She replaced  
6 the window that was there when she moved in with which  
7 according to her testimony, which at this point has to be  
8 taken as fact, the window was inoperable and she replaced  
9 it with a window unit that was longer, that went further  
10 towards the floor than the window that was there. And the  
11 pictures that have been placed into evidence clearly show  
12 that the window that was installed looks very similar in  
13 size and shape to the window that was already there, the  
14 one that is beside the front door.

15 Much has been made by both Plaintiff and Defendant as  
16 to the meaning of the language in the condominium  
17 declaration with its attached exhibits, the surveys and the  
18 plats, et cetera. And the question does, I believe, come  
19 down to what was or is the window where it attaches to the  
20 outside a common element and, thus, did the Plaintiff --  
21 excuse me, did the Defendant need the permission of the  
22 condominium association to make such a change?

23 There certainly does, in my mind, appear to be some  
24 limited contradiction in the condominium documents as to  
25 what is a limited common element and what actually goes

1 with the condominium unit. Certainly, the Note 2 that's  
2 been made reference to over and over again on the  
3 Plaintiff's Exhibit B-2 creates some ambiguity in my mind  
4 that certainly could give a reasonable person looking at  
5 these documents some question as to, you know, exactly who  
6 owns the carport, who owns the balconies, who owns the  
7 patios and who owns the hallway that in Ms. Ross' situation  
8 has been walled off that leads from the front gate to her  
9 front door. If, certainly, it's part of the unit owner  
10 what they bought then, obviously, it's part of the unit and  
11 not a common element.

12 Much has been said with regard to other changes that  
13 have been made throughout the condominium property,  
14 additions and amendments. There's been no testimony, one  
15 way or another, as to whether or not those particular  
16 changes, be they additions or deletions or modifications,  
17 were approved by the board or not. But, certainly, it's  
18 clear to me from viewing the pictures that in this complex  
19 there have certainly been some modifications from its  
20 original building structure some 30 years ago. Most of  
21 them appear to be positive-type changes. Certainly, on one  
22 of them, on some of the first floor patios if they wanted  
23 to remove the screen enclosure that was there and enclose  
24 it in something more permanent such as glass or with  
25 sliding doors and most of the pictures that I have seen are

1 not only for the better from what was there, but are very  
2 attractive. I would maybe take some issue with the blue  
3 plexiglass picture that is there, but that's me.

4 After reviewing the documents and hearing argument of  
5 Counsel and testimony of the witnesses here, I am going to  
6 grant the Defendant's Motion for Directed Verdict in their  
7 favor and against the Plaintiff here. I don't believe that  
8 there has been any showing at all of any type of  
9 irreparable harm that would cause an injunction to issue to  
10 require the Defendant in this case to restore the window to  
11 what it was before. I think the fact in my mind anyway  
12 that the window in question is not observable and does not,  
13 in my opinion, change the uniformity, if there is any left  
14 in this complex, has a lot to do with the fact that there  
15 has been no showing of any irreparable damage to the  
16 Plaintiff.

17 With regard to the condominium documents, I am going  
18 to rule at this point that there is a sufficient ambiguity  
19 that would give a unit owner the right to question exactly  
20 who does own the carports and the balconies and the patios.  
21 Based on the pictures that have been entered into evidence,  
22 there have been all kinds of changes, both additions,  
23 modifications, and deletions in those particular  
24 structures. People have, you know, built permanent walls,  
25 be they block or just drywall from the garage door back

1           towards the unit to make their carports into garages and  
2           make them secure. Some people have installed tile in that  
3           area. Some people have installed, you know, stone in that  
4           area. Some people have removed the columns that are in the  
5           drawings that this Exhibit B has talked about so that they  
6           are totally open and the pictures certainly confirm that.

7           There is a serious question in my mind with regard to  
8           these documents as to who owns that. And that being the  
9           case and the documents as quoted by the one case by the  
10          Defendant that the documents must be construed against that  
11          person or entity seeking to enforce them, I feel I must  
12          rule as a matter of law with regard to the declaratory  
13          judgment that there has, in fact, been no violation of  
14          these condominium documents because of this ambiguity,  
15          violation by this Defendant and, therefore, will rule in  
16          her favor on that matter.

17          This Court will direct the Defendant to prepare a  
18          judgment granting the motion. Further, we'll withhold  
19          ruling and reserve jurisdiction with regard to any award of  
20          fees and costs in this matter. And the Plaintiff at this  
21          point -- and the Defendant, excuse me, at this point as it  
22          relates to the Plaintiff's claims will go hence without  
23          date. And at this point, for the purposes of the record,  
24          unless somebody else has something they want to place in  
25          the record, we are completed. Does the Plaintiff have

1 anything they would like to place in the record at this  
2 point?

3 MR. DEFURIO: Your Honor, one point of clarification  
4 for Your Honor.

5 THE COURT: Yes, sir.

6 MR. DEFURIO: Are you making a ruling as to whether or  
7 not the wall in question is a common element wall or not?

8 THE COURT: I am not making a ruling that it is, okay.  
9 I am ruling that there's sufficient ambiguity in the  
10 documents in my mind to say that you can't tell as to  
11 whether or not that particular wall, because it is totally  
12 enclosed within the carport area of this condominium, is a  
13 common element and that's my ruling.

14 MR. DEFURIO: Thank you, Your Honor.

15 THE COURT: Anything else for the Defendant at this  
16 point?

17 MR. HEIDEN: No, Your Honor.

18 THE COURT: Please prepare a judgment and send it to  
19 me.

20 (THEREUPON, the excerpt of the proceedings, per  
21 request, is concluded.)

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## 1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA )

3 COUNTY OF PINELLAS )

4 I, CHARISSA VILLANO, Court Reporter, in and for the  
5 Sixth Judicial Circuit, State of Florida:

6 DO HEREBY CERTIFY that the foregoing proceedings were  
7 had at the time and place set forth in the caption thereof; that  
8 I was authorized to and did stenographically report the said  
9 proceedings and that the foregoing pages, numbered 1 through 8,  
10 inclusive, is a true and correct transcription of said  
11 stenographic report.

12 DATED, this 22nd day of November, 2005, at Clearwater,  
13 Pinellas County, Florida.

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17 Charissa Villano

18 Court Reporter  
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