

**IN THE COUNTY COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA CIVIL ACTION**

DAVID BENOIT MECH,

Plaintiff,

Vs.

Case No. 19-SC-3498

CRESCENT BEACH CONDOMINIUM
ASSOCIATION, INC.,

Defendant.

FINAL JUDGMENT

THIS CAUSE came on to be heard on the Statement of Claim filed by the Plaintiff, David Benoit Mech, on the 3rd day of June, 2020, before the Honorable Tamara Lynne Nicola. The Plaintiff was present *pro se* and the Defendant appeared through its attorney, Steven M. Falk, Esquire. The Court, having heard the testimony of the parties and their witnesses, the evidence presented, the argument of the parties and counsel and otherwise being fully advised in the premises, the Court makes the following findings of fact:

FINDINGS OF FACT

1. The Plaintiff, David Benoit Mech, together with his partner, Katarina Paljusevic, entered into an Agreement for the purchase of real property located at 100 N. Collier Blvd., Unit 504, Marco Island, Florida on the 28th day of October, 2019. The contract included a Rider, which referenced the condominium association and its approval as a condition precedent. If approval was not had, the Buyer had the right to terminate the contract and obtain a refund of the deposit. See Plaintiff's Exhibit "A".
2. The condominium association is the Defendant, Crescent Beach Condominium Association, Inc., (hereinafter "Crescent Beach").

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3. The contract provided that the Plaintiff pay cash for the condominium and put down a \$10,000.00 initial deposit. See Plaintiff's Exhibit "B".
4. On October 28, 2019, the Plaintiff was provided with the condominium documents, which included the Declaration of Condominium, Articles of Incorporation, Bylaws, Rules & Regulations, most recent year-end financial information, a question and answer form and a governance form. See Plaintiff's Exhibit "C".
5. At about the same time, the Plaintiff provided to his current landlord a "Notice of Intent to Vacate". In accordance with that landlord's policy, in order to break the lease, the Plaintiff was required to pay a lease termination fee of \$3,070.00. The Plaintiff paid that fee. See Plaintiff's Exhibit "D".
6. The Plaintiff additionally received the Application for Certificate of Approval for Purchase of Said Unit (Plaintiff's Exhibit "E") and a series of emails occurred between the Plaintiff and CBDMarco@gmail.com regarding the various questions posed by the Plaintiff. Because the emails were signed "Pam", the Court interprets the CBDMarco email to be from Pam Carey, the manager at Crescent Beach.
7. Despite being nowhere within the condominium documents, the application to the Board required that the applicant provide two years of tax returns with the application.
8. The Plaintiff sent an email to the Board voicing his concerns about the tax return requirement, among other things, on October 30, 2019. From that point on, from October 30, 2019 through November 8, 2019, there was dialogue between the parties regarding the requirement of the two years of tax returns from the Plaintiff. The Defendant refused to waive the requirement but would allow for some limited inspection; the Plaintiff refused to produce the returns in any form citing his good credit record and the lack of reference to the production of said documents in the condominium documents.

9. On November 8, 2019, the parties reached an impasse and Plaintiff canceled the contract.
10. Thereafter, the Plaintiff filed this action, and alleges as follows:
 - a. That the Defendant should be enjoined from forcing the Plaintiff to provide tax returns in order to be approved by the Board;
 - b. That the Court should declare that the Board's requirement to provide tax returns is unreasonable and, therefore, unlawful; and
 - c. That the Court should find that the Board tortiously interfered with the Defendant's ability to purchase the condominium, forcing him to cancel the contract, and that the Defendant was damaged as a result.
11. The Plaintiff is seeking damages for the fees he incurred to break his lease, the costs of this action and some other miscellaneous costs.
12. There was no mention at trial regarding the Plaintiff's down payment on the contract nor that the funds were, or were not, returned to the Plaintiff; as a result, the Court finds those funds were returned.
13. On March 20, 2020, the condominium Board amended its documents to provide that all applicants must provide complete tax returns.

ANALYSIS

- A. Injunctive Relief: The Plaintiff seeks to enjoin the Defendant from behavior which has already occurred. The purpose of injunctive relief is to prevent something from happening prospectively, not to remedy something which has already been done. As a result, the Court cannot grant to the Plaintiff injunctive relief.
- B. Declaratory Relief: The Plaintiff's request for declaratory relief will more fully be discussed in connection with the Plaintiff's claim for tortious interference with a contract, as outlined below.

C. Tortious Interference with a contract: In order for the Plaintiff to prevail on a claim for tortious interference with a contract, the Court must find the following:

- i. that there was a valid contract between the Plaintiff and a third party;
- ii. that the Defendant knew of the contract;
- iii. that the Defendant took actions intended to induce a breach or disruption of the contract;
- iv. that there was no legal justification for the Defendant's actions; and
- v. Damages resulted.

In this regard, the testimony was clear that the Plaintiff had entered into a contract with a third party and that the Defendant knew about it. However, the Court cannot find that the Defendant took actions intended to induce a breach or a disruption of the contract. The undisputed testimony of the witnesses was that Crescent Beach's policy of obtaining two years of tax returns (only the first 3 pages of the return when the Plaintiff intended to purchase and, most recently, a new requirement for the entire return) had been in effect since at least 2009. In order for this Court to find that the Defendant took action against this Plaintiff, there would need to be some evidence that the Defendant specifically targeted this Plaintiff in order to defeat his contract. To the contrary, the Defendant was simply holding firm on its policy of obtaining tax returns prior to approval. As a result, the Plaintiff's claim for tortious interference with contract, and the resulting damages, is denied.

Declaratory Relief: The Court may enter a declaratory Judgment in the following circumstances:

1. There is a bona fide, actual, practical need for the declaration;
2. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts;

3. Some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts;
4. There is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law;
5. The antagonistic and adverse interests are all before the Court by proper process or class representation; and
6. The relief sought is not merely the giving of legal advice by the Courts or to answer questions propounded from curiosity.

The Board's treasurer, Ronald Rebner, testified that the requirement for tax returns was implemented after a downturn in the market, back in 2009, which caused the Board to require returns in addition to the credit report. He testified that the Board suffered losses which occurred when individuals abandoned their financial responsibilities. There was no indication, from Mr. Rebner, that the losses were caused, or even exacerbated, by people who were dishonest in their applications for approval to the association.

After Mr. Rebner, testified, the Court became concerned that the request for an applicant's tax return is merely a "fishing expedition" rather than that which is tied to some reasonable requirement for applicants to provide information which would assist the Board in determining whether an applicant was acceptable for membership at Crescent Beach. The Board used to require only the first few pages of a return, which reference income and liabilities; however, the Board now requires the entire return, which may include information about third parties and other interests. The Court can find NO justification for the invasive requirement that a full, or even partial, return would be required when, in fact, the Board already requires a full background check and credit check. It is persuasive to the Court that the Realtor, Stacy Witthoff, who sold the property to the Plaintiff, testified

that in her more than 20 years of experience as a Realtor, the requirement to provide tax returns is unusual; she testified that a background check and a credit check is the norm.

While the Court understands that the requirement for tax returns came at a time when the economy was weak (2009), the clear testimony was that units in Crescent Beach are selling at between \$400,000 and \$800,000, perhaps more. The Plaintiff provided, without dispute, that he had a clean credit report and a score of 800; in addition, he was paying more than \$400,000.00 in cash to purchase the home. There just can be no justification to require the intrusive production of a confidential tax return other than the fact that the Defendant wants it.

In reviewing the Defendant's condominium documents, which were in effect at the time of the transaction, two provisions come to light:

Section 16.09, which provides that the condominium association may require "such other information concerning the intended purchaser as the Association may reasonably require";

Section 16.05 provides the means with which the Association may disapprove an application. The section contemplates:

- * a person who is convicted of a felony involving violence or moral turpitude, a record of financial irresponsibility, such as bankruptcies, foreclosures or bad debts;
- * a finding that the person intends to conduct himself/herself in a manner inconsistent with the Condominium documents;
- * a person with a history of disruptive behavior;
- * the person failed to provide the information, fees or interviews in a timely manner or provided false information; or
- * the contract was terminated.

Reading the condominium documents as a whole, it is reasonable to assume that the documents which would be required would be those only to satisfy the Board's concerns that the purchaser has a history of financial irresponsibility, violent or disruptive behavior such that the person would either cause difficulties with the owners of the condominium units as a whole or would likely ignore his or her financial responsibilities to both pay the association dues and maintain his or her unit in accordance with the condominium complex requirements.

In Mr. Mech's Complaint, he points out that "the BOARD demanding tax returns as some additional form of "credit/background", as permitted or under the DOCUMENTS, is tantamount to the BOARD demanding medical records as some form of "safety/background". In this regard, while the analogy is extreme, so is the Board's requirement that the purchasers provide tax returns when the purchaser's background check and credit report have been run and nothing in those reports show a red flag. Asking for tax returns is an invasive, and unnecessary, request from a Board to a potential purchaser.

The fact that everyone else, other than Mr. Mech, has provided tax returns to the Defendant in connection with a sale is not persuasive. People who have entered into a sales agreement for the purchase of a home, whether it is a primary residence or a vacation home, have invested time, effort and emotions into finding that perfect location and place for them to call home. When a condominium Board tells a person to "provide tax returns or we will reject your application", most, if not all, people would provide the tax returns to the Board, although reluctant to do so. Unlike a lending institution, which is neutral and provides loans to strangers, a Board at a condominium association is mostly made up of the people who live there. What person wants the people who share the condominium complex with him or her to know their financial business? Answer: Nobody. As the Court indicated to the Defendant during the trial, the requirement for applicants to Crescent Beach to provide tax returns is shocking.

With respect to element 1, there is a bona fide need for this Court to issue a declaration with respect to whether Crescent Beach may require tax returns as part of its condominium documents. Mr. Mech was ready, willing and able to close the transaction to purchase the unit in Crescent Beach but for the requirement to provide tax returns from the condominium association.

There is also a present, ascertainable, controversy as to the facts. The condominium association asserts that it is well within its right to require tax returns as part of its application

process; the Plaintiff disagrees and contends that he should not be required to disclose this information.

The right of the Plaintiff is dependent upon the facts, or the law applicable to the facts. The Plaintiff testified that he intends to purchase other unit(s) in Crescent Beach but for the requirement to provide tax returns. It is his position that this draconian measure of obtaining personal financial information prevents him, and perhaps others, from moving forward to purchase a water-front condominium within the complex.

The Plaintiff and Defendant clearly have an antagonistic interest in the subject matter. When the contact was pending, both parties dug in their heels and refused to budge. The Plaintiff refused to provide the returns, citing his good credit score, lack of history of bad debts and clean background check. The Defendant demanded the returns from the Plaintiff regardless of whether the background check and credit report were clean. The Court declares that it is necessary for this Court to making a declaratory finding regarding the condominium association's requirement that ALL applicants provide tax returns as a condition of their approval for membership to the condominium association.¹

The Defendant is correct when it points out, in its Memorandum of Law, that “[r]estrictions in a Declaration of Condominium are ... clothed with a very strong presumption of validity”. Defendant's Memorandum of Law, citing Hidden Harbor Estates v. Basso, 393 So.2d 637 (Fla. 4th DCA 1981); Beachwood Villas v. Poor, 448 So.2d 1143 (Fla. 4th DCA 1984). In fact, condo declarations may have some degree of unreasonableness within which would withstand an attack in the Courts. In his Complaint, the Plaintiff seems to aver that there are many seemingly unreasonable provisions within the rules at Crescent Beach; however, notwithstanding his feelings

¹ The Condominium association modified its condominium documents, on March 12, 2020, to direct that all applicants provide tax returns as part of the application process and that failure to do so is grounds for rejection.

about those rules, he was prepared to move forward². That is, until he was directed to produce his tax returns.

Without discussing the differences between Category 1 and Category 2 restrictions, this Court finds that these are Category 1 restrictions. Particularly in light of the fact that Crescent Beach amended its documents to more clearly state that it is requiring tax returns, and not just “such information concerning the purchaser as the Association may reasonably require”, it is clear that the provisions must be reasonable and must not violate public policy or abrogate some fundamental constitutional right.

The cases cited by the Defendant and the cases regarding a condominium association’s right, in general, to create rules for its members are usually related to the health and welfare of its members or some need to create uniformity within the community. In Hidden Harbor, citing Sterling Village Condominium, Inc. v. Breitenbach, 251 So.2d 685 (Fla. 4th DCA 1971), the Court noted that “[e]very man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others.” Simply stated, condominium associations can make provisions which inure to the benefit of the community as a whole, regardless of whether the individual property owners like them or not.

“Certainly, the association is not at liberty to adopt arbitrary or capricious rules bearing no relationship to the health, happiness and enjoyment of life of the various unit owners”. Hidden Harbor Estates, Inc. v. Norman, 309 So.2d 180 (Fla. 4th DCA 1975). In the case at hand, this is exactly what Crescent Beach did. They want the owner’s tax returns and they created a rule with which to obtain them. Nothing about this requirement has anything to do with the health, happiness or enjoyment of life of any of the owners.

² Plaintiff asserts in his Complaint that rules such as those against having pets, hardwood flooring or cell phones at the pool are “silly and archaic”.

Public policy: A contract is void as against public policy when it either contravenes an interest of society, is without lawful consideration or is injurious to the interest of the public. That being said, Courts are hesitant to direct the production of tax returns from parties unless they are relevant and there is some compelling interest requiring the production of deeply personal information. With respect to condominium associations, the Court should not strike, or declare void, a provision in the condominium documents unless the Board acted outside of its authority and said action was unreasonable, arbitrary or capricious.

In the case at hand, the Board clearly amended its condominium documents in the face of a lawsuit by the Plaintiff. At the time the Board amended its documents, it knew the Plaintiff's argument was that the condominium documents did not allow for the production of tax returns or that, if they did, the provisions were so clearly unreasonable as to be stricken by this Court. The argument from the Board is that the production of tax returns will provide more information about an individual than just his or her credit report. It will show not only income, but will show assets, interest income and partnership/corporate interests. When pressed regarding why it needed this information, the response was that, due to the downturn in the economy in 2009, many individuals stopped paying their mortgages, association dues and other financial obligations causing financial difficulties for the association. With the production of tax returns, the association could ensure that the potential buyer is a good credit risk.

This argument is, to the Court, nonsensical. Neither the production of a credit report, nor the production of a tax return, is indicative of what will happen in our economy nor is it indicative of what will happen with a person's financial outlook prospectively. The best indicator of a person's financial history is his or her credit report. The credit report will show not only the present loans for an individual but also his or her history of paying. In the condominium documents themselves, the association is concerned with the applicant's past history of paying debts. While

that concern is completely reasonable, the suggestion that disclosing personal tax returns is an indicator of someone's future ability to pay is absurd.

No person should ever be required to provide personal tax returns to a condominium Board unless there is a valid, reasonable, reason to do so. Had Mr. Mech's credit report shown a history of bankruptcies, bad debts and/or significant delinquencies in his obligations to creditors, requesting "additional information" to support his application may have been warranted. To take a position that "every person" who applies to be a member at Crescent Beach is patently unreasonable and shall be stricken.

NOW, WHEREFORE, it is hereby;

ORDERED:

1. That the Plaintiff's Complaint for Injunctive relief is DENIED;
2. That the Plaintiff's Complaint for Tortious Interference with Contract is DENIED;
3. That the Plaintiff's Complaint for a Declaratory Judgment is GRANTED as follows:
Crescent Beach Condominium Association, Inc. shall strike all reference in its condominium documents, including its application, which requires the furnishing of tax returns from individuals seeking membership unless the association, after having been provided the individual's background information and credit check, can show good cause to request said information.
4. The Plaintiff is awarded the costs of this action. The Court reserves jurisdiction to determine the amount.
5. This Court reserves jurisdiction to enforce and/or modify the terms and provisions of this Judgment.

DONE AND ORDERED in Chambers on this the 12 day of June, 2020 at Naples, Collier County, Florida.



TAMARA LYNNE NICOLA
COUNTY COURT JUDGE

**Cc: Plaintiff
Defendant**