IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR LAKE COUNTY, FLORIDA

KINGS RIDGE COMMUNITY ASSOCIATION, INC.; et. al.,

CASE NO : 2005-CA-2718

Plaintiffs,

vs.

LENNAR LAND PARTNERS; et. al.,

Defendants.
_____/

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

THIS CAUSE came before the Court on Class Plaintiffs' Motion for Class Certification. A hearing was held on February 6, 2007. The Court has read Plaintiffs' motion, Defendants' memorandum in opposition, and Plaintiffs' response, considered the arguments of counsel, reviewed the file, consulted the relevant authority and has otherwise been fully advised.

I. FACTS

This suit arises from an alleged violation of a right to acquire clause contained in the Community Declaration of Restrictive Covenants (hereinafter "Declaration") for Kings Ridge, an adult community located in Clermont, Florida.[1] Article VI, Section 24 of the Declaration states the "Club Owner grants to the Club Members the rights to acquire the Club Facilities pursuant to the

[1]The Declaration was recorded in February 1996

provision of F S 617 31 " On August 31 2000, the Club Owner, Lennar Land Properties, conveyed the Club Facilities by Special Warranty Deed to a third party, Kings Ridge LLC The Club members were not given prior notice of the sale nor were they afforded a first right of refusal to purchase the property The conveyance was recorded on October 9, 2000 Additionally, on October 9, 2000, Lennar recorded an amendment to the Declaration, known as the Sixth Amendment, which modified Section 24 to state the "Club Owner grants to the Club members the right to acquire, *following the Community Completion Date* "

Thereafter, Kings Ridge Community Association, which is made up of all residents of Kings Ridge, and the nine Class Plaintiffs filed suit against the various Defendants alleging the following: cancellation/ recission of deeds, declaratory judgment, breach of contract, breach of fiduciary duty, tortious interference against the third party purchaser and relates parties, tortious interference against Lennar Homes, Inc and the Lennar Defendants, civil conspiracy and specific performance.[2] The Class Plaintiffs break down into approximately three groups: (1) those whose homes were purchased from Lennar prior to the August 31 conveyance: Mr Floyd, Mr Holzman, Mr Campbell, Mr Randall and Mr Polk; (2) those whose homes were purchased from Lennar after August 31 2000, but before October 9, 2000: Mr Gordon and Mr Santee; and (3) current club members whose homes were purchased after October 9, 2000: Mr Tirrell and Mr Fowler The nine Class Plaintiffs are seeking class certification on the counts listed above on behalf of the approximately 2100 Club Members

[2] These counts are outlined in Plaintiffs' Amended Complaint

II. FLORIDA RULE OF CIVIL PROCEDURE 1.220

Florida Rule of Civil Procedure 1.220(a) and 1.220(b) outline the requirements that must be met to maintain a class action. Rule 1.220(a) lists the four prerequisites that must be found by the court to exist before a claim or defense may be maintained. These four prerequisites are as follows:

(1) the members of the class are so numerous that separate joinder of each member is impracticable,

(2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class,

(3) the claim or defense of the representative party is typical of the claim or defense of each member of the class, and

(4) the representative party can fairly and adequately protect and represent the interest of each member of the class.

In addition to the four prerequisites set forth in subsection (a), the court must also find that one of the three conditions set forth in subsection (b) has been satisfied for the class action to be maintained. Subsection (b) requires that either (1) the prosecution of separate claims by individual members of the class would create a risk of either inconsistent or varying adjudications or adjudications concerning individual members of the class would be dispositive of other members of the class who are not parties or would impede the ability of non party class members to protect their interests, or (2) the party opposing the class has acted or refused to act on grounds applicable to all members of the class, thereby making final injunctive or declaratory relief concerning the whole class appropriate, or (3) neither b(1) nor b(2) applies, but the common questions of law or fact predominate over individual ones and class representation is superior to other methods of

adjudication. The burden is on the plaintiff to satisfy each of the prerequisites set forth in 1.220(a) and at least one of the requirements set forth in 1.220(b).

III. ANALYSIS

A. 1.220(a)(1): Numerosity

In their memorandum, Plaintiffs assert that the numerosity requirement is met because there are currently more than 2,000 Club Members. As evidence of this, Plaintiffs' submitted affidavit by the President of Sentry Management, Inc., the property management company of the Kings Ridge Community Association, stating that he was responsible for billing Club Members and maintaining homeowner listings for the Kings Ridge community. Attached to the affidavit were numerous pages kept by Sentry Management listing individual Club Members and the amount owed for Club Membership fees. Defendants did not refute the deposition or attached exhibits either in their motion or at hearing. Therefore, the Court finds that Plaintiffs' evidence sufficiently establishes that numerosity exist. Furthermore, the Court finds it would be impracticable to attempt to individually join the more than 2,000 Club Members.

Another tenet of class action law that has been established by Florida courts is that the class must not be overbroad. Since this requirement is often intertwined with the numerosity requirement, this Court will address it as such. See,e.g., Hoyte v. Stauffer Chemical Company, 2002 WL 31892830 (Fla. Cir. Ct. 2002) Defendant argues that Plaintiffs' proposed class is overbroad because it includes both homeowners who bought prior to the recording of the Sixth Amendment and those who bought after. Defendants' claim that these after-recording Plaintiffs had notice and therefore "do not have claims against the Defendants." However, as Defendants state in their own memorandum

"the class certification hearing is not the time to determine whether plaintiff or defendant will prevail on the merits." It would be improper, at this stage, for the Court to make a determination that homeowners who acquired their property after the recording of the Sixth Amendment have no claim against Defendants. Furthermore, the affidavits and exhibits provided by Sentry Management and entered into evidence by Plaintiffs clearly show that the proposed class is adequately defined and clearly ascertainable

B. 1.220(a)(2): Commonality

Both Plaintiffs and Defendants agree that the commonality prong is more easily satisfied than other prongs set forth under the rule. Nonetheless, Defendants argue that Black Diamond Properties v. Haines, in which the 5th DCA found commonality did not exist and reversed class certification, should control. 940 So.2d 1176 (Fla. 5th DCA 2006). However, Black Diamond is distinguishable. There, the trial court certified a class of Plaintiffs who alleged various misrepresentations occurred that induced them to purchase memberships in a not-for-profit corporation. Id. at 1177. The Fifth DCA reversed the certification stating that the "core of plaintiffs' complaint" revolved around hundreds of alleged misrepresentations made both orally and in writing taking place over many years and involving numerous sales people. Id. The facts at hand are clearly distinguishable. Here, Plaintiffs are alleging a breach of the right to acquire provision when Defendants conveyed the property to a third party without affording the Club Members prior notice of the sale or the right to acquire the property. Therefore, the cause of action revolves around a single transaction, not numerous ones as in Black Diamond.

As the Plaintiffs state in their memorandum, the main factor to be considered when determining whether or not commonality exists is "whether the representative members' claims arise

from the same course of conduct that gave rise to the other claims and whether the claims are based on the same legal theory." Terry L. Braun v. Campbell, 827 So 2d 261, 267 (Fla. 5th DCA 2002) Plaintiff presented numerous affidavits and documents relating to the August 2000 transfer of the Club Facilities. As such, the Court finds that Plaintiffs have submitted sufficient evidence to prove commonality exist because the claims of all Plaintiffs stem from the same course of conduct engaged in by Defendants

C. 1.220(a)(3): Typicality

To prove typicality it must be shown that the class representatives claims are typical of the claim of each member of the class. As discussed above, this suit revolves around a single transaction that occurred in August 2000 and whether or not that transaction violated a right granted to all Club Members in the Declaration. Though Defendants argue that certain events occurred subsequent to the conveyance that situate the various Plaintiffs differently depending on when they bought their property, the crux of this case revolves around the single transaction. Furthermore, Plaintiffs have offered evidence regarding three different "types" of class representatives: members whose house was bought before the conveyance occurred, members whose house was bought after the conveyance but prior to the recording of the conveyance and the Sixth Amendment, and members whose home was bought after the recordings. As such, any current Club Member would have a claim typical to the claim of the class representatives. Therefore, Plaintiffs have offered satisfactory evidence to prove typicality exists.

D. 1.220(a)(4): Adequacy

Both parties presented lengthy arguments at hearing relating to the adequacy prong. Defendants claim that Class Plaintiffs' counsel cannot adequately represent the interests of the class

because of a long standing attorney-client relationship between the firm and Sentry Management, the management company in place when the conveyance of the Club Facilities occurred Defendants assert that a possible reason that Sentry Management was not joined as a defendant was due to the prior relationship existing between Sentry and counsel's firm, and that decisions made by counsel with regards to Sentry Management's possible knowledge or involvement in the transaction could be "at odds" with the interests of some class members. Counsel, however, asserts that full disclosure of the relationship was made to their clients and that the Class Plaintiffs knowingly waived any conflict that might exist. Additionally, Plaintiffs submitted depositions and affidavits of both Sentry employees and counsel themselves stating that no actual or potential conflict currently exists and that Defendants' arguments are purely speculative.

At this point in the litigation the Court is not in a position to find that an actual conflict exists with regard to Sentry Management, because Sentry is not a party to the litigation. Therefore, the Court finds that Plaintiffs have submitted sufficient evidence to show, at this point, that Plaintiffs can fairly and adequately protect and represent the interests of the class. However, if after discovery resumes, evidence surfaces regarding an actual or potential conflict with regard to Sentry Management, either party may readdress the issue. Additionally, counsel must obtain written consent by each individual Class Member regarding the conflict as part of the notice requirement discussed below.

E. 1.220(b)(1)

In order to satisfy subsection (b)(1) Plaintiffs must show that the prosecution of separate claims would create a risk of: (a) inconsistent adjudications which would establish incompatible standards of conduct for the opposing party or (b) adjudications concerning individual members

would be dispositive of the interests of other members who are not parties or would substantially impair ability of non-parties to protect their interests. Plaintiffs submit that Count 2 for cancellation/ recission, Count 4, declaratory judgment, and Count 16 for specific performance are proper under subsection (b)(1). Plaintiffs have presented evidence that over 2000 Club Members exist and that there is a substantial risk of inconsistent judgments if the claims are tried separately.

The Court finds that a risk of inconsistent judgment does exist that would not only establish incompatible standards of conduct for Defendants but also could impair the ability of non-party class members to protect their own interests Because the right that was allegedly breached was granted to all "Club Members" and the alleged breach happened during a single transaction, the ultimate remedy belongs to all Club Members and the adjudication of the claim by one member would certainly affect the rights of the rest of the members. For example, if the claims of all 2,000 Club Members were individually adjudicated it is possible that one tribunal would find for Plaintiffs and order recission of the August 2000 sale and specific performance, while another tribunal may find for Defendants.[3] Therefore, incompatible standards would be established for Defendants and those not a party to the suit would be hindered in protecting their own interests.

F. 1.220(b)(3)

In order to satisfy subsection (b)(3) common questions of law or fact must predominate over individual questions of law or fact and class representation must be superior to other available methods of adjudication. Defendants argue that numerous individual issues exist that would preclude a finding that common questions predominate the dispute or that class representation is the superior form of adjudication. However, Plaintiffs offered proof that predominance and superiority exist by

[3]Plaintiffs outline several possibly inconsistent scenarios in their response brief

submitting a list of sixty-eight common questions that exist in the dispute.

In order to find predominance it is not necessary that every single issue be exact but rather the group seeking to be certified as a class has a common legal grievance. See e.g., In Re Florida Microsoft Antitrust Litigation, 2002 WL 31423620 (Fla. Cir. Ct. 2002) quoting, Lockwood Motors Inc. v. General Motors Corp., 162 F.R.D 569 (D. Minn. 1995). As discussed there are more than 2,000 Club Members at the present time. The Declaration granted the right in question to all Club Members and the alleged breach of the right came from a single transaction entered into by Defendants. Therefore, Club Members are seeking a common legal grievance with a common remedy. Furthermore, class representation is the superior method of adjudication. As expressed in Florida Microsoft Antitrust Litigation, where the court found class certification superior to other methods, "[t]he court is convinced that individual actions by claimants would impose a strangling harness on the judiciary, as well as the parties. Separate actions would produce similar duplication of effort, increase the cost of litigation, create the risk of inconsistent results for parties who are similarly situated and consume judicial resources to wasteful levels." 2002 WL 31423620 quoting In Re Catfish Antitrust Litigation, 826 F. Supp. 1019, 1044 (N.D. Miss. 1993). If the more than 2,000 Club Members were forced to individually litigate the same claim a strangling harness on the judiciary would occur here as well. Based on the foregoing the Court finds that Plaintiffs have proven both predominance and superiority exist.

G. Notice

Since the Court has determined that Plaintiffs have met the requirements set forth in Rule 1.220 to certify a class, notice must be given to all members of the class. Plaintiffs agreed in their motion and memorandum to provide notice to all class members and inform them of their ability to

opt out of the class and the consequences of doing so Therefore, the Court orders Plaintiffs to bear the costs of providing such notice Additionally, counsel must obtain written consent by every member waiving conflict regarding Sentry Management as part of the notice given [4]

H. Conclusion

The Court finds the requirements set forth in Rule 1 220 have been met by the Plaintiffs through the evidence presented both at hearing and within their motion and memorandum As such, the Court certifies the class to exist of all Club Members under both b(1) and b(3) The Plaintiffs are required to serve notice and obtain written informed consent as outlined above

ORDERED AND ADJUDGED that Plaintiffs' Motion for Class Certification is GRANTED

DONE AND ORDERED in chambers at Tavares, Lake County, Florida this 13 day of FEB, 2007

Don F. Briggs, Circuit Judge

[4] If counsel cannot obtain written consent waiving the conflict from all class members the Court will hold another hearing in the matter

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order and any attachments have been sent via U.S. Mail this 13 day of Feb 2006 to the following:

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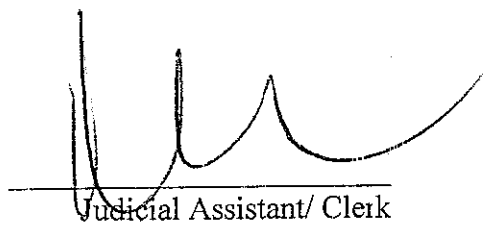

Judicial Assistant/ Clerk