

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

CROSS POINTE HOMEOWNERS ASSOCIATION OF
PINELLAS, INC., a Florida not for profit corporation,

Plaintiff,

Case No.: 16-003110-CI
Section: 19

v.

EAST LAKE WOODLANDS COMMUNITY
ASSOCIATION, INC., a Florida not for profit
corporation,

Defendant(s).

PLAINTIFF'S MOTION FOR EMERGENCY TEMPORARY INJUNCTION

Plaintiff, CROSS POINTE HOMEOWNERS ASSOCIATION OF PINELLAS, INC., by and through its undersigned counsel, files this Motion for Emergency Temporary Injunction as to the Defendant's, EAST LAKE WOODLANDS COMMUNITY ASSOCIATION, INC., actions described herein:

BACKGROUND

1. The Plaintiff has filed this Action in part because the Defendant has in the past refused to acknowledge that it must conduct itself pursuant to the requirements set forth in Chapter 720, Florida Statutes, entitled "Homeowners' Association Act." The Defendant contends that it is merely a not-for-profit corporation under Chapter 617, Fla. Stat., and therefore does not have to abide by the requirements of Chapter 720.

2. Section 720.302, Fla. Stat., entitled "Purposes, Scope and Application," states in pertinent part

- (1) The purposes of this Chapter are to give statutory recognition to corporations not for profit that operate residential communities in this

State, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.

...

- (3) This Chapter does not apply to:
- (a) a community that is composed of property primarily intended for commercial, industrial, or other non-residential use; or
 - (b) the commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use.

...

- (5) Unless expressly stated to the contrary, corporations that operate residential homeowners' associations in this State shall be governed by and subject to Part I of Chapter 607, if the association was incorporated under that Part, or to Chapter 617, if the association was incorporated under that Chapter, and this Chapter. This Subsection is intended to clarify existing law.

3. Section 617.1703 further states that:

In the event of any conflict between the provisions of this Chapter and Chapter 718 regarding condominiums, Chapter 719 regarding co-operatives, Chapter 720 regarding homeowners' associations, Chapter 721 regarding time shares, or Chapter 723 regarding mobile home owners' associations, the provisions of such other Chapters shall apply. The provisions of ss. 617.0605-617.0608 do not apply to corporations regulated by any of the foregoing chapters or to any other corporation where membership in the corporation is required pursuant to a document recorded in the county property records.

4. The Articles of Incorporation and the By-Laws, along with all Amendments thereto, contain no language which prohibits the application of Chapter 720, Florida Statutes.

5. Section 617.0701 entitled, "meetings of members, generally; failure to hold annual meetings; special meeting; consent to corporate actions without meetings; waiver of notice of meetings," further states that certain provisions within Section 617.0701, Fla. Stat. do not apply to any corporation that is an association as defined in Section 720.301; a corporation

regulated by Chapter 718, Chapter 719, Chapter 720, Chapter 721 or Chapter 723; or a corporation where membership in such corporation is required pursuant to a document recorded in the County Public Records. These provisions which are not applicable include the handling and voting at meetings.

6. Pursuant to Chapter 720, Fla. Stat., and specifically Section 720.303(2)(b), all members have a right to attend the Board Meetings of the Board and such a right to attend includes the right to speak at the meetings as to all designated items.

7. Section 720.303(2)(c)(2) further requires that written notice of any meeting at which a special assessment will be considered "...must be mailed, delivered or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting."

8. Despite the clear statutory language contained in both Chapter 720, Fla. Stat. and Chapter 617, Fla. Stat., the Defendant has scheduled a meeting for March 6, 2017 for purposes of issuing a special assessment of the members. The Defendant has not complied with any of the requirements for properly noticing the meeting for special assessments or for purposes of adopting any special assessment.

9. The special assessment itself intends to require certain members of the Association to pay the assessment while others will not be required. However the governing documents of the Defendant and specifically Article 14 of the Articles of Incorporation has amended that:

The Association will assess each member its pro-rata share of the cost of maintaining the Community Facilities on an annual basis (based upon the total number of Units within the Association plus Units actually or contemplated to be under construction during that year, plus a usage factor reflecting the estimated usage of the Community Facilities by non-Unit Owners such as employees or country club members) with the developer

or the respective development being assessed for all Units under construction or platted and with the Developers being assessed for the usage factor as is set forth in the immediately following subparagraph.

10. Further, Article 4 of the Articles of Incorporation including the Amendments thereto states that:

Each owner of a Unit or Lot within the Community shall automatically be a Member of the Association, provided, however, that in the case of Unit or Lot owners in subdivisions which were in existence as of June 1, 1983, their subdivision condominiums or homeowners' association has a current agreement with the Association to bear its proportionate share of the assessments of the Association. Subject to the foregoing proviso regarding Unit or Lot owners in such Pre-June 1983 subdivisions, each person, upon acquisition of Title to a Unit or a Lot in the Community shall automatically become a Member of the Association; and, upon the vestiture of such Title, the membership of such person in the Association shall automatically terminate without the need for any action by the Association such acquisition and divestiture of Title shall be determined by and shall be deemed effective as of the recordation of the appropriate deed in the current Public Records of Pinellas County, Florida.

11. The Defendant is currently attempting to approve a Special Assessment without following the requirements of its governing documents or following the legislative requirements set forth in Chapter 617 and Chapter 720, Fla. Stat.

12. More specifically, the governing documents of the Defendant which include the Articles of Incorporation, By-laws, and Policies and Procedures along with the Amendments thereto, do not make reference to allowing for the adoption of a special assessment. See, **Exhibits 1, 2, and 3** attached to this Motion identified as the Articles of Third Amended Statement to the Articles of Incorporation of East Lake Woodlands Community Association, Amendment to Six (6) Amended and Restated By-laws of the East Lake Woodlands Community Association, Inc., and East Lake Woodlands Community Association Policies and Procedures.

13. If the Defendant chooses to issue a special assessment that special assessment must be pursued pursuant to the applicable Statutory Laws as set forth above which requires that

proper notice identifying the nature of the special assessment be given to all of the members of Defendant by mail, hand delivery or electronically transmitted. Such notice also must be provided 14 days before the meeting. See, Section 720.303(2)(c)(2), **Exhibit 4** is a copy of the Notice of the Special Assessment Meeting. There is no reference as to the nature of the Special Assessment as required.

14. In addition, in order to be in compliance with the governing documents, the Defendant must assess each member its Pro-Rata Share. See, Article 14 of **Exhibit 1** identified as the Articles of Incorporation.

15. The Board must also allow for the members to speak at the meeting on the agenda items as set forth in Section 720.303, (2)(b), Fla. Stat.

16. The meeting scheduled for March 6, 2017 is of great importance to the Membership in that the Defendant intends on requiring certain members to pay while other members will not be required to pay the Special Assessment. Therefore the requirement to properly notice the meeting pursuant to Chapter 720, Florida Statutes, is of utmost importance so that the Members have an opportunity to voice their objection.

17. In that the Defendant has failed to comply with its governing documents and with Due Process, the Special Assessment will be invalid and unenforceable. Section 720.305, Florida Statutes, further allows for equitable relief including an injunction for the failure of an association to comply with the governing documents or Chapter 720, Fla. Stat.

18. A violation of the requirements of Chapter 720 and Chapter 617 is in itself a harm which authorizes injunctive relief. The mere showing that the Statute has been or is clearly about to be violated satisfies the showing of irreparable harm for injunctive relief. See, *Hobbs v. Weinkauff*, 940 So.2d 1151 (Fla. 2d DCA 2006); *Mitchell v. Beach Club of Hallandale*

Condominium Association Inc., 17 So. 3d 1265 (Fla. 4th DCA 2009). In Mitchell, the Court reviewed a request by a condominium unit owner to join an association from enforcing a special Assessment because the Association failed to comply with its own rules and the Statute. The District Court found that the owner was entitled to an injunction because Plaintiff lacked any adequate remedy at law in that to allow the Association to proceed forward would allow the Association to deny Due Process to its members.

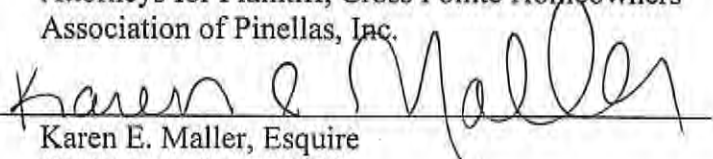
19. The likelihood of success is clear in that the Defendant has ignored its governing documents and the applicable Statutory Law. The granting of the Injunction sought herein will not disserve the Public Interest and in fact will serve the Public Interest in protecting the members of the Community.

20. As alleged in this Motion, along with the Complaint and the Affidavit filed in support of this Motion, along with the prior Affidavit filed in opposition to the Summary Judgment, the Defendant will continue to violate the governing documents of its Association as well as the controlling Statutory Law without the imposition of a Temporary Injunction.

WHEREFORE, based upon the foregoing arguments and allegations set forth in the Pleadings, the Plaintiff respectfully requests this Court to grant its Temporary Emergency Injunction prohibiting the Defendant from proceeding with the special assessment which it has no authority to implement pursuant to its documents and for which it has failed to do so under the applicable Statutory Law.

Respectfully submitted,

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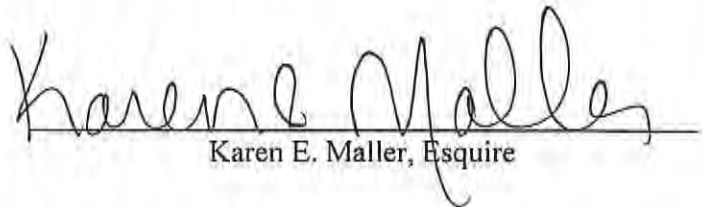
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6 day of **March 2017**, I electronically filed the foregoing with the Clerk of the Court by using the ECF system.

I HEREBY CERTIFY that on this 6 day of **March 2017**, a true and correct copy of the foregoing instrument has been furnished via U.S. mail and/or Email to:

Attorneys for Defendant, East Lake Woodlands Community Association, Inc.

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