

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION CASE NO. 2016-003110-CI**

CROSS POINTE HOMEOWNERS
ASSOCIATION OF PINELLAS, INC.,
A Florida Not for Profit Corporation,

Plaintiff,

vs.

EAST LAKE WOODLANDS
COMMUNITY ASSOCIATION, INC.,
A Florida Not for Profit Corporation,

Defendant.

_____ /

DECLARATORY JUDGMENT

The parties' respective motions for final summary judgment were heard by the Court on August 4, 2017. The Court has reviewed the pleadings and papers of record and considered the argument of counsel and has made the following conclusions of law. Whereupon, it is

ORDERED AND ADJUDGED as follows:

1. Declaratory relief is appropriate herein as there is a genuine dispute regarding East Lake's authority and obligations regarding "Unbound Associations"¹ and as to some of its obligations with respect to Chapter 720, Florida Statutes, the Homeowners' Association Act.

2. The contractual duties and privileges established by Unbound Agreements are wholly outside the ambit of the statutes and documents that govern the respective rights and duties between East Lake and its Bound Associations. Unbound Members are not "Members" of East Lake for all Chapter

¹ For purposes of this judgment, "Unbound Associations" are owners' associations of communities in East Lake Woodlands which existed prior to June 1, 1983. Some, but not all, Unbound Associations are parties to "Unbound Agreements" with East Lake whereby, for consideration, they receive certain benefits. Members of Unbound Associations that are party to Unbound Agreements are called "Unbound Members" - as distinct from members of Unbound Associations that have no such contracts ("Non-members").

Similarly, "Bound Associations" are those associations that came into existence after June 1, 1983, and "Bound Members" are the lot and unit owners within those associations.

720 purposes,² and although Unbound Members may attend meetings, the East Lake Board's membership is limited to Bound Members.

3. East Lake's Governing Documents (including the Articles of Third Amendment and Restatement to the Articles of Incorporation of East Lake Woodlands Community Association, Inc., East Lake Woodlands Community Association Inc. By-Laws, and East lake Woodlands Community Association Policies and Procedures and amendments thereto) require proportionate assessments of Bound Members. Because Unbound Members are not members of East Lake for assessment purposes, these proportionate assessment requirements do not apply to the members of the Unbound Associations.

4. Chapter 720 pertains to East Lake's relations with Plaintiff and its members and with all Bound Associations and Bound Members, including, without limitation, the following requirements:

- (a) Conducting Board meetings pursuant to Chapter 720 (Section 720.303(2));
- (b) Allowing members to address certain items of business by petition of twenty percent of the total voting interests (Section 720.303(2)(d));
- (c) Following statutory budget standards, including advising all owners in the event of an underfunded reserve (Section 720.303(6));
- (d) Providing for recall of directors (Section 720.303(10));
- (e) Requiring officers and directors to complete written certification or educational certification (Section 720.3033(1));
- (f) Meeting quorum requirements for amending documents and annual meetings (Section 720.3053);
- (g) Following prescribed voting procedures (Section 720.306);
- (h) Complying with statutory dispute resolution provisions (Section 720.311).

However, meetings of the Board of East Lake, or a committee thereof, with legal counsel to discuss proposed or pending litigation, meetings of the Board held to discuss personnel matters, and other meetings permitted to be closed by Section 720.303(2)(b) are recognized statutory exceptions to the open Board Meeting requirements.

5. Any assessments or charges by East Lake to a particular Unbound Association or Unbound Member for services such as providing barcode decals are a function of the terms of the relevant Unbound Agreement.

² At the same time, there may be some provisions of Chapter 720 not at issue here that do apply to the Unbound Associations. The undersigned expresses no opinion in that regard. The Court is mindful of the reference in the preface of the unbound agreements to owners in these communities becoming "members" of East Lake but does not consider this prefatory statement to rise to the level of a contract term. Unbound Members do not incur the same rights and obligations as provided for Bound Members in the Governing Documents, including monetary obligations.

6. East Lake is not precluded from using assessments, costs, or other funds, whether collected from Bound Members or Unbound Members, to provide services that indirectly benefit Non-members (owners within subdivisions or condominiums that existed prior to June 1, 1983 whose associations do not have Unbound Agreements with East Lake).

7. East Lake is not required to assess or charge Unbound Associations or Unbound Members for incurred costs related to capital improvements, alterations, repairs, replacement or maintenance of the property included in the East Lake Woodlands Community, including specifically costs related to the drainage project currently underway, other than the moneys paid pursuant to Unbound Agreements, or as allowed pursuant to Section (g), Article 3, of the Third Amended and Restated Articles of Incorporation. Unbound Associations and Unbound Members are subject only to their contractual monetary obligations to East Lake.

8. Consistent with the foregoing, with reference to the numbered demands for declaratory relief of Plaintiff's complaint:

A. Final Judgment is hereby entered for Defendant, East Lake Woodlands Community Association, Inc., on Plaintiff's demands 1, 2 & 3, and

B. Final Judgment is entered for Plaintiff, Cross Pointe Homeowners Association of Pinellas, Inc., on Plaintiff's demands 4 and 5.

Each party shall bear its own attorneys fees and costs.

DONE AND ORDERED in Chambers at Pinellas County, Florida this _____ day of December, 2017.

Electronically Conformed 12/1/2017 _____

Jack Day

Circuit Court Judge

Copies furnished to: Counsel of Record