

**IN THE CIRCUIT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

COPPER RIDGE/BRANDON HOMEOWNER'S
ASSOCIATION INC.,

Plaintiff/Counter-Defendant,

v.

TELISHA CATCHINGS, CARMEN GAY,
and KEVIN JEFFRIES.,

Defendants/Counter-Plaintiffs,

Case No: 22-CA-005776

Division: I

**AMENDED ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER came initially before the Court for hearing on June 28, 2023, and rehearing on August 14, 2023, on Plaintiff Copper Ridge/Brandon Homeowner's Association Inc.'s ("Copper Ridge") Motion for Summary Judgment ("Motion"), filed May 5, 2023. Defendants Telisha Catchings, Carmen Gay, and Kevin Jeffries ("Defendants") filed a Response in Opposition ("Response") on June 19, 2023. An Order Granting Plaintiff's Motion for Summary Judgment was entered on August 4, 2023. Subsequently, Defendants filed a Motion for Reconsideration on August 7, 2023. Having considered the Motion for Reconsideration, Response, court file, applicable law, and considered the arguments of counsel, the Court makes the following findings and conclusions:

I. PROCEDURAL AND FACTUAL BACKGROUND

Copper Ridge seeks an order establishing, as a matter of law, the validity, effectiveness, and enforceability of the Amendment to Copper Ridge's By-Laws (the "Amendment") as of the June 7, 2022, annual meeting. The Amendment increased the necessary percentage of members to

vote to elect Directors from 10% to 20%. It was recorded in the public records of Hillsborough County on March 22, 2022.

According to the Motion, the Copper Ridge Board of Directors (“BoD”) convened a BoD meeting on January 18, 2022. One of the items on the agenda for this meeting was a discussion with Association counsel as to “how to make this [coming] election meeting transparent and irrefutable.” (Motion, ¶ 2.8). Defendant Telisha Catchings was a member of the BoD at the time of this meeting. Article X of the Association’s By-Laws states that: “[u]pon proper notice, the By-Laws may be amended . . . by a majority of those members of the Board of Directors present at any regular meeting.” (Motion, ¶ 2.6). Defendant Gay testified that the community members were given notice before the January 18, 2022, BoD meeting through a public sign indicating the date and time of the meeting. (Motion, ¶ 2.9). One minute before the meeting, the members of the BoD received an email from the Association’s counsel titled “Election Process Evaluation and Recommendations.” (Response at 2). Community members did not receive this email. This email contained several suggested changes to the election process set forth in the By-Laws. These suggestions did not provide the specific language that would be voted upon, much less the language finally recorded in the official Hillsborough County Records. During the meeting, the Board members discussed the recommendations to amend Copper Ridges’ By-Laws to change the election process. After discussion, the Directors at the meeting unanimously passed the following recommended Amendment to the By-Laws:

VI. DIRECTORS

2. Election of Directors shall be conducted in the following manner:

...

C. At least twenty percent [20%] of the eligible votes must cast a ballot in order to have a valid election.

(Motion, ¶ 2.13) (Exhibit E) (the “Amendment”)

The record is undisputed that at the January BoD meeting, adoption of the rules found in § 718.112(2)(d)(4)(a) was discussed. This included the 20% quorum and the means of conducting the election of the directors at the annual member meeting.

Subsequently, on March 22, 2022, the Amendment was recorded in the Hillsborough County public records as “the Certificate of Amendment based upon the ‘duly adopted . . . aforementioned meeting held on January 18, 2022.’” (Motion, ¶ 2.15) (Exhibit E).

On June 7, 2022, Copper Ridges’ annual meeting of the members, including the annual election of the BoD, took place. More than 10% but less than 20% of the eligible voters of the community voted. (Motion, ¶ 2.30). The BoD deemed the election invalid because the amended By-Laws required 20% of eligible members to vote. As a result, the existing directors continued serving. (Motion, ¶ 2.30).

On June 26, 2022, the Defendants served Copper Ridge with an “Advanced Written Notice of Specific Nature of Election Dispute.” (Motion, ¶ 2.31) (Exhibit C). Defendants claimed that because Copper Ridge failed to mail the recorded copy of the Amendment to the community members within 30 days of its recordation in the public records as set forth by section 720.306(1)(b), Florida Statutes, the 20% requirement never went into effect. Therefore, the June 7, 2022, election was invalid. (Motion, ¶ 2.32); see also (Exhibit C) and (Exhibit E). As the following analysis will show, section 720.306(1)(b) is not relevant; therefore, the Defendants lose.

III. STANDARD OF REVIEW

Summary judgment shall be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fla. R. Civ. P. 1.510 (2021). A genuine dispute as to a material fact exist when “the evidence is such that a

reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “The burden on the moving party may be discharged by ‘showing’—that is, point out to the court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Additionally, “[a] movant for summary judgment need not set forth evidence when the nonmovant bears the burden of persuasion at trial.” *See, Wease v. Ocwen Loan Servicing, L.L.C.*, 915 F.3d 987, 997 (5th Cir. 2019).

“If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249-50 (citations omitted). A party opposing summary judgment “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007). After “adequate time for discovery” and upon motion, summary judgment should be entered “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322.

IV. ANALYSIS

The Defendants argue that the Amendment is invalid and unenforceable because Copper Ridge failed to give the statutorily required notice before the January 18, 2022, meeting. Here, unusually, the By-Laws state that they may be amended by a majority the members of the BoD present at any regular meeting. Because the meeting at issue was a BoD meeting, Florida Statutes § 720.303(2)(c) controls. It states as follows: “Notices of all board meetings must be posted in a

conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.” According to the testimony of Defendant Gay, a sign displaying the date and time of the upcoming meeting was publicly posted in the community. That sign did not provide any detail regarding the Amendment that was to be voted on at the meeting. Defendants argue that this lack of detail rendered the notice insufficient under the statute.

Unlike § 720.306(1)(e), which applies to member meetings and requires great detail regarding notice requirements, § 720.303(2)(c) is silent as to what language must be included in the posted notice to members. A review of Florida case law reveals that determining the meaning of notice in § 720.303(2)(c) is an issue of first impression. Accordingly, the Court turns to statutory construction to determine the extent of notice required by § 720.303(2)(c).

The Court notes that an amendment to § 720.303(2)(c) was recently approved by the Governor of Florida on June 12, 2023, and is scheduled to take effect on October 1, 2023. *See* 2023 Fla. Sess. Law Serv. Ch. 2023-228 (C.S.C.S.H.B. 919). The amendment changes the language of the statute as follows: “Notices of all board meetings must specifically identify agenda items for the meetings and must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.” (underlined portion reflects the amendment).

“The legislature's subsequent amendment of a statute may properly be used to ascertain the legislative intent behind an earlier version of the statute.” *Burgos v. State*, 765 So. 2d 967, 968 (Fla. 4th DCA 2000) (citing *Palma Del Mar Condo. Ass'n No. 5 of St. Petersburg, Inc. v. Com. Laundries of West Fla., Inc.*, 586 So.2d 315, 317 (Fla.1991)). The bill amending § 720.303(2)(c) is not a response to a recent controversy. Additionally, the original language was in effect for over 20 years before the amendment, and the title states that it is “[a]n act relating to homeowners’

associations...amending s. 720.303, F.S.; requiring that notices for board meetings specifically identify agenda items.” Accordingly, the amendment at issue is not a clarification that may be applied retroactively. *See Dean Wish, LLC v. Lee Cnty.*, 326 So. 3d 840, 852 (Fla. 2d DCA 2021), review denied, SC21-1529, 2022 WL 852956 (Fla. Mar. 23, 2022) (“There are factors the courts apply when determining whether a statutory amendment is a clarification of existing law that may be applied retroactively. They include: whether the amendment responds to a recent controversy; the span of time between enactment of the original statute and the amendment; and the contents of the title of the bill containing the amendment.”) (internal citations excluded).

Because the amendment to § 720.303(2)(c) changes the statute to require that notices include specifically identified agenda items for the meetings, it follows that the version of § 720.303(2)(c) applicable to this case did not require the inclusion of agenda items. Additionally, the Court notes that § 720.306(1)(e) contains extensive detail regarding the extent of notice required for amendments to be voted on at “member” meetings, as opposed to what was required for BoD meetings. For example, “[a] proposal to amend the governing documents must contain the full text of the provision to be amended and may not be revised or amended by reference solely to the title or number.” § 720.306(1)(e), Fla. Stat. If the legislature had intended for § 720.303(2)(c) to require a similar level of notice, it would have included language identical or similar to that included in § 720.306(1)(e).

As an aside, the amendment to § 720.303(2)(c) demonstrates that the legislature did not intend to create similarly strict notice requirements for BoD meetings because even after the October 1, 2023, statutory amendment takes effect, notice of BoD meetings will only require the inclusion of specific agenda items, not the detail required by 720.306(1)(e).

Based on the foregoing analysis, the notice provided before the January 2022 BoD meeting complied with § 720.303(2)(c).

The Defendants also contend that the Amendment is invalid because Copper Ridge violated § 720.303(1)(b), Fla. Stat., which requires that copies of the Amendment be provided to members within 30 days after it was recorded in the public records. However, § 720.306(1)(b) does not apply to amendments duly made to the By-Laws by the BoD, as opposed to changes made by the members. Because the Amendment was properly adopted, as discussed above, the failure to provide copies of the Amendment to the members within 30 days after recording did not render the Amendment invalid or unenforceable. The Amendment took effect once it was recorded in the public records of Hillsborough County on March 22, 2022. Accordingly, as a matter of law, the Amendment was valid and enforceable at the time of the June 7, 2022, election.

WHEREFORE, it is **ORDERED** and **ADJUDGED** that Plaintiff's Motion for Summary Judgment is **GRANTED**.

DONE and ORDERED, in chambers in Tampa, Hillsborough County, Florida, on the date imprinted with the judge's signature.

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22-CA-003776 8/25/2023 2:26:13 PM
Paul L. Huey
Circuit Court Judge

Electronic copies provided through JAWS