

IN THE COUNTY COURT FOR PASCO COUNTY, FLORIDA

DANIEL J. DICIOLLA, AUDI G. CHILDERS,
LYNN ELROD CHILDERS, ROBERT MCCASKILL
and SARAH MCCASKILL
Plaintiff,

VS.

CASE NO. 51-2013-CC-3057-ES
Division D

BAYHEAD LANDINGS PROPERTY
OWNERS ASSOCIATION, INC., a
Florida non-profit corporation
Defendant.

2014 MAR 24 AM 11:12

FILED FOR RECORD
PASCO COUNTY FLORIDA

PAUL G. S. DODD
Clerk of the County Court
Pasco County, Florida

**FINAL JUDGMENT
GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AND DECLARING THE DECLARATIONS OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF BAYHEAD LANDINGS
SUBDIVISION TO HAVE EXPIRED**

THIS CAUSE coming before the Court on the Plaintiffs' Motion for Summary Judgment; and the Court having reviewed same; and the Court having reviewed and considered the Complaint for Declaratory Relief; the Answer and Affirmative Defenses to Complaint for Declaratory Relief; Plaintiffs' Reply to Defendant's Answer and Affirmative Defenses to Complaint for Declaratory Relief And Motion to Strike Defendant's Affirmative Defenses; Defendant's Response to Plaintiffs' First Request for Admissions; the Affidavits of JAMES JARBOE; KIMBALL LEE; and OSCAR RICHARD JONES, all with attachments, and In Opposition to Plaintiffs' Motion for Summary Judgment; and, argument of Counsel; and the Court finding that:

1. There are no genuine issues as to any material fact, and Plaintiffs are entitled to summary judgment in its favor and against the Defendant as a matter of law in that Defendant implemented the incorrect voting method to preserve their deed restrictions by using a 'written consent' voting method when both their by-laws and the applicable statute, i.e., Chapter 720.306, Florida Statutes, required voting to be in person or by proxy. Thus, the deed restrictions were not properly extended and have expired.

2. Defendant's argument that Plaintiffs failed to join indispensable parties by failing to

sue each individual lot owner and/or homeowner is unpersuasive. The issue and/or controversy in this action is common to all lot and/or homeowners; and, the board of directors of the association has fiduciary duty to give notice of the lawsuit to each lot and/or homeowner. There has been nothing presented to reflect that any lot owner and/or homeowner did not have notice of this action, or that their due process rights have been compromised. See, Rule 1.221, Florida Rules of Civil Procedure; Graves v. Ciega Verde Condominium Association, 703 So. 2d 1109 (Fla. 2 DCA 1997).

Accordingly, based on the foregoing, it is hereby

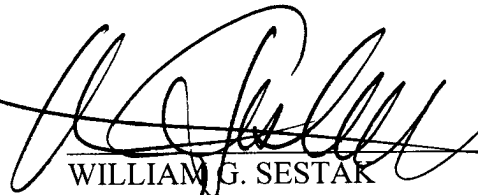
ORDERED AND ADJUDGED that the Plaintiffs' Motion for Summary Judgment is GRANTED; it is further

ORDERED AND ADJUDGED that the amendment to the Declarations of Covenants, Conditions and Restrictions for Bayhead Landings Subdivision recorded December 17, 2010 is VOID; it is further

ORDERED AND ADJUDGED that the Declarations of Covenants, Conditions and Restrictions for Bayhead Landings Subdivision have expired; it is further

ORDERED AND ADJUDGED that the Court shall retain jurisdiction to determine the amount of attorney fees, if any; and costs to be awarded to the Plaintiffs.

DONE AND ORDERED in Dade City, Pasco County, Florida, this 24 day of March, 2014.



WILLIAM G. SESTAK
County Court Judge

Copies to:
Barbara Billiot Stage, Esquire
Gary Schaaf, Esquire