

IN THE CIRCUIT COURT OF THE 19TH  
JUDICIAL CIRCUIT IN AND FOR  
MARTIN COUNTY, FLORIDA

CASE NO.: 432017CA000164CAAXMX

NORMAN ZLINKOFF AND JOHN J.  
KATSOCK, JR AS CO-TRUSTEES OF  
THE NORMAN ZLINKOFF LIVING  
REVOCABLE TRUST DATED AUGUST  
14, 2007,

Plaintiffs,

v.

PIPER'S LANDING INC, A FLORIDA  
NOT FOR PROFIT CORPORATION,

Defendant.

---

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
PARTIAL FINAL JUDGMENT AS TO COUNT I OF PLAINTIFFS' COMPLAINT**

THIS CAUSE, having come before the Court on October 10, 2017, upon Plaintiffs' Motion for Partial Summary Judgment as to Count I ("Motion"), against Defendant and the Court being advised and having reviewed the file herein, and having heard extensive argument of counsel makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. This case involves a dispute by and between Plaintiffs and Defendant over the disclosure and dissemination of a management contract by and between Defendant's Manager, Brian Reich, and Defendant ("Contract") and the budgetary or financial records which indicate the specific compensation paid to Mr. Reich as the manager of Defendant ("Compensation"). Additionally, a dispute exists as to whether Co-Plaintiff, Mr. Katsock, Jr. may inspect Defendant's official records pursuant to Fla. Stat. §720.303(5) despite official records requests made by Mr. Katsock, Jr. as his name is not listed on the

vesting deed to the property located within Defendant association.

2. Plaintiffs' filed a two (2) count complaint for declaratory relief and damages and presented the following issues to this Court for consideration at the hearing on the Motion for Summary Judgment as to count I of the Complaint:

a. Despite the Defendant's insistence that the intent of the contracting parties to the Contract was for it to be confidential, is the management contract nonetheless subject to disclosure pursuant to Fla. Stat. §720.303(4) and (5) (2017).

b. Is Mr. Katsock, Jr. entitled to make official records requests to the Defendant and is Defendant required to allow him access to its official records due to his membership in Defendant association even though he is not listed on the vesting deed to the property located in Defendant association.

3. Defendant answered the complaint and pled as an affirmative defense that John J. Katsock, Jr. does not have standing to bring this suit in his capacity as co-trustee.

4. Defendant maintains that:

a. Because the contract by and between Defendant and Brian Reich was executed in 2006, it is governed by the 2006 version of Fla. Stat. §720.303.

b. Even though the 2006 version of Fla. Stat. §720.303(4) requires Defendant to maintain all management contracts as official records and §720.303(5) requires dissemination of same to members, the Contract is not subject to disclosure because Defendant believes it is a personnel file of Defendant and is excluded from disclosure.

c. Alternatively, if this Court were to apply the 2017 version of Fla. Stat. §720.303, wherein the Florida Legislature specifically states that written employment agreements with an association or management company employee and budgetary or financial records that indicate compensation paid to same do not constitute personnel records,

making them mandatorily disclosable, it would be a retroactive impairment of contract rights in violation of the Florida Constitution, Art. I, §10 to require disclosure to Plaintiffs.

- d. Additionally, the Defendant believes that Mr. Katsock, Jr., even though a member of Defendant association and a co-trustee and beneficiary of Plaintiff trust, is not entitled to official records because he is not a parcel owner as that term is defined in Fla. Stat. §720.301 since his name is not on the face of the deed for the property located in Defendant association.
5. The essential facts in this case are not in dispute, indeed, the parties submitted a stipulation of facts for the benefit of this Court and the provisions of the stipulation are expressly incorporated herein.
6. In addition to the stipulation of facts, Plaintiff Norman Zlinkoff in his capacity as co-trustee of the Norman Zlinkoff Living Revocable Trust dated August 14, 2007 ("Trust") executed and filed an affidavit attesting to the following facts, which were not disputed by Defendant:
  - a. John J. Katsock, Jr. was appointed co-trustee of the Trust on January 21, 2014.
  - b. That Zlinkoff previously provided a copy of the Trust, as amended, to Defendant.
7. The parties agree that Plaintiffs have not been provided with the Contract at issue in this matter and no other inspection of it has occurred due to the alleged confidential intent of the parties and Defendant's refusal to release it.
8. Defendant does not dispute that both Norman Zlinkoff and John J. Katsock, Jr. are members within Defendant association. Defendant does not dispute that Norman Zlinkoff is a parcel owner as that term is defined in Fla. Stat. §720.301 (2017).
9. The Defendant is governed by Fla. Stat. §720, et seq. as it is a homeowner's association.

## **CONCLUSIONS OF LAW**

10. This Court has reviewed the case law provided by counsel for each party and has reviewed the relevant statutes, to wit Fla. Stat. §720.303 (2006), Fla. Stat. §720.303 (2017) and Fla. Stat. §720.301 and has otherwise heard extensive argument of counsel for each party to this action. This Court makes the following conclusions of law:

### **2006 Florida Statute §720.303**

11. The 2006 version of Florida Statute §720.303(4) contains the following provision:

OFFICIAL RECORDS. The association shall maintain each of the following items, when applicable, which constitute the official records of the Association.

12. Subsections (i) and (j) of §720.303(4) (2006) contain the following provisions:

(i) A current copy of all contracts to which the association is a party, including, without limitation, any management agreement...under which the association has any obligation or responsibility.

(j) The financial and accounting records of the association...[which] must include, (1) accurate, itemized and detailed records of all receipts and expenditures; (4) any other records that identify, measure, record or communicate financial information.

13. The 2006 version of Florida Statute §720.303(5) contains the following provision:

INSPECTION AND COPYING OF RECORDS. The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 days after receipt of a written request for access...

14. The 2006 version of Florida Statute §720.303(5)(c)(1) exempts the following

from disclosure:

Disciplinary, health, insurance and personnel records of the association's employees.

### **2017 Florida Statute §720.303**

15. The relevant portions of the 2017 version of Florida Statute §720.303(4), (4)(i) and (4)(j) are identical to the 2006 versions, **however** the 2017 version contains the following under §720.303(5)(c)(3):

Personnel records of association or management company employees...For purposes of this subparagraph, the term "personnel records" **does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.**

16. The 2017 version of Fla. Stat. §720.303(5) contains the following provision:

INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology

capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

17. After careful review, this Court concludes that under both the 2006 and 2017 versions of Fla. Stat. §720.303, Defendant was required by law to disclose the Contract and to specifically disclose the Compensation.
18. In reaching this conclusion, this Court has strictly interpreted the plain language of the statutes at issue and finds guidance in Romero v. Shadywood Villas Homeowners Ass'n, Inc., 657 So. 2d 1193 (Fla. 4<sup>th</sup> DCA 1995). Therein, the Fourth District Court of Appeal found it important for courts to recognize that, "...it is an elementary principle of statutory construction, that in determining the effect of a later-enacted statute, courts are required to assume that the Legislature passed the later statute with knowledge of the prior-existing laws." Romero, id at 1195.
19. Thus, it is clear to this Court that in clarifying and by further delineating the term "personnel records" under Fla. Stat. §720.303(5)(c)(3), the Legislature recognized that, in fact, a management contract and the budgetary or financial records that indicate compensation paid to an association or management company employee are subject to disclosure under Fla. Stat. §720.303 and always were subject to said disclosure. While the 2006 version of Fla. Stat. §720.303 does not include this distinct provision, the 2017 version of Fla. Stat. §720.303 provides meaningful guidance and a clear interpretation to this Court in making its ruling requiring disclosure which is contained herein.
20. Even if this Court were to apply the 2006 statutes to the issues presented herein, as Defendant has requested, rather than the 2017 version of the statutes as Plaintiff requests, the outcome is the same, mandatory disclosure of the Contract and Compensation.
21. Additionally, this Court has reviewed the relevant portions of Fla. Stat.

§720.303(5) regarding the individuals entitled to inspect and copy the official records contained in Fla. Stat. §720.303(4). This Court finds that the Florida Legislature has interchangeably used the term "parcel owner" and "member" throughout said statutory section. The terms are inextricably intertwined with each other. Of particular note, under Fla. Stat. §720.303(5)(b), the Florida Legislature has delineated a "member" as the individual entitled to damages against an association if an official records request is willfully denied. Had the Florida Legislature intended that only a "parcel owner" be allowed to make official records requests, a "parcel owner" would not be entitled to damages for the association's willful violation of a proper official records request under a strict reading of this statute. This Court finds no logic in such a conclusion. This Court specifically finds that the Florida Legislature did not intend to exclude members from the class of individuals entitled to make official records requests under Fla. Stat. §720.303(4) and (5) which is clearly supported by the Legislature's interchangeable use of "parcel owner" and "member" throughout Fla. Stat. §720.303(5).

22. Therefore, this Court necessarily finds that Defendant's argument is unpersuasive and co-plaintiff John J. Katsock, Jr., as a member of Defendant association, has standing to bring this action and is entitled to make official records requests pursuant to Fla. Stat. §720.303(4).
23. Finally, Defendant has claimed that the disclosure of Brian Reich's contract would be an impermissible retroactive impairment of a contract in violation of Art. I, §10 of the Florida Constitution. In support of this argument, Defendant primarily relies upon two cases, Assoc. of Golden Glades Condo. Club Inc. v. Security Mgmt. Corp., 557 So. 2d 1350 (Fla. 1990) and Cohn v. Grand Condo Ass'n, 62 So. 3d 1120 (Fla. 2011).
24. First, this Court notes that no retroactive impairment has occurred based upon this Court's express findings hereinabove, in particular, that even when applying the 2006 version of Fla. Stat. §720.303(4) and (5) as urged by Defendant, mandatory disclosure of the Contract and Compensation is required. It should be noted, however, that this Court has also considered the

balancing test set forth in Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978) which was later adopted by the Florida Supreme Court in Pompanio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979).

25. Despite Defendant's insistence that prior to undertaking the balancing test set forth by these cases there must be a finding that the Florida Legislature intended for a statute to apply retroactively, this Court does not find support for this argument. Instead, these cases make clear that this Court must first look to the nature of the alleged impairment and decide if "...a contract is made worse or is diminished in quality, value, excellence or strength." Lawnwood Medical Center, Inc. v. Seeger, 959 So. 2d 1222, 1223 (Fla. 4<sup>th</sup> DCA 2007) (citing Pompanio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979)).

26. In reviewing the nature of the alleged impairment, the disclosure of the Contract which was intended by Defendant and Brian Reich to be confidential, this Court understands that it must "...employ a balancing test which measures the level of impairment against the public purpose to be served." Columbia Hosp. Corp. of South Broward v. Fain, 16 So. 3d 236 (Fla. 4<sup>th</sup> DCA 2009) This Court further understands that, "An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose" and acknowledges that:

The first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at the first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

Id. (quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978)).

27. In conducting this balancing test, the Court notes that the only issue is whether the Contract by and between Brian Reich and Defendant, which was intended by those two parties to be confidential, can be impaired by



disclosure to a member and parcel owner of Defendant association.

28. This Court concludes that Defendant did not provide specific argument or evidence against disclosure of the Compensation as falling within a disclosure that would constitute a retroactive impairment of a contract and therefore no balancing of this requested disclosure by Plaintiff is required and the Compensation must be disclosed by Plaintiffs.
29. Insofar as the Contract, this Court, in employing the balancing test set forth hereinabove, finds that the disclosure of the Contract does not rise to a level of substantial impairment which would support Defendant's position.
30. This Court notes that the requirement for disclosure of the management contract and budgetary or financial records that specifically indicate the compensation paid to Brian Reich by Defendant promotes transparency for members and parcel owners in the Defendant association. Florida Statute §720.303(4) and (5), controlling on all homeowner associations throughout Florida, provides for transparency and records disclosure for homeowner association members and parcel owners throughout Florida, an important public purpose for all residents throughout this State in homeowners associations.
31. Thus, even though this Court has found hereinabove that the Contract and Compensation must be disclosed pursuant to Florida Statute, this Court also finds that even if said information was not specifically required to be disclosed by Florida Statute, the mere disclosure of the Contract and Compensation under the facts present in this case does not rise to such a substantial impairment of the Contract to prohibit its disclosure under the balancing test adopted by the courts of this State.

THEREFORE, IT IS ORDERED AND ADJUDGED THAT:

32. Defendant shall, within five (5) days of the date of this Order, turn over to Plaintiffs the full and complete management contract by and between Brian Reich and Defendant association, including any addendums thereto.
33. Defendant shall, within five (5) days of the date of this Order, turn over to

Plaintiffs the budgetary or financial records that specifically indicate the compensation paid to Brian Reich by Defendant.

34. Co-plaintiff John J. Katsock, Jr., as a member of Defendant association and as co-trustee of the trust which owns real property in Defendant association, shall be forthwith entitled to record access to Defendant's official records as set forth in Fla. Stat. §720.303(4) and all such official records requests by John J. Katsock, Jr. shall be valid and binding on Defendant.

35. This Court reserves jurisdiction to determine the prevailing party in this action and reserves jurisdiction to award the prevailing party its attorney's fees and costs at a subsequent hearing and enter a supplemental judgment on said attorney's fees and costs.

36. This Court further reserves jurisdiction to adjudicate all additional claims contained in the complaint filed in this suit.

**DONE and ORDERED** in Stuart, Martin County, Florida, this 28 day of

October, 2017.

  
\_\_\_\_\_  
WILLIAM L. ROBY  
Circuit Court Judge

*via e-service*

**Copies furnished to:**

*BT*  
✓ Alexander D. Gonano, Esq., 1600 S. Federal Highway, Suite 200, Fort Pierce, FL 34950

agonano@gh-law.com

✓ Lee Cohen, Esq. 222 Lakeview Avenue, Suite 120, West Palm Beach, FL 33401

Lee.cohen@csklegal.com