



Written Notice of Reconvened Annual Meeting Not Required for Vote to Commence Litigation

Lake Forest Master Community Assn, Inc. v. Orlando Lake Forest Joint Venture, No. 5D08-2096, Fla. App. Ct., April 3, 2009

Association Operations/State and Local Legislation and Regulations: A Florida appeals court reversed a grant of summary judgment in favor of a developer, finding that the association obtained proper authorization from members to commence litigation.

Lake Forest Master Community Association sued Orlando Lake Forest Joint Venture, Orlando Lake Forest, Inc., and NTS Mortgage Income Fund (collectively, "developer") for alleged construction defects in the common areas, seeking damages in excess of \$4 million. The developer denied that any construction defects existed at the time the common area was turned over to the association and moved for summary judgment based on its contention that the association failed to meet the condition precedent of approval by a majority of the association's voting members required under Sec. 720.303 of the Florida Homeowners' Associations statute. The trial court ruled in favor of the developer, concluding that proper notice was not given to all residents entitled to vote.

The statute provides that, "before commencing litigation . . . in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of the majority of voting interests at a meeting of the membership at which a quorum has been attained." Notice of the association's annual meeting held Jan. 9, 2007, was properly mailed to each lot owner on Dec. 22, 2006. According to association documents, a quorum is 30 percent of the membership, or 220 owners. The quorum at the Jan. 9, 2007, meeting consisted of 290 members. At that meeting, members elected persons to fill vacancies on the board of directors, but the meeting was recessed to reconvene on Feb. 13, 2007, in order to elect members of the architectural review committee ("ARC"). In the interim, a board meeting was conducted at which the board determined that the Feb. 13, 2007, meeting to elect members of the ARC would be adjourned and reconvened once again on March 13, 2007, for the purpose of asking residents to vote on pursuing action against the developer for alleged construction deficiencies.

More than 367 lot owners attended the Feb. 13, 2007, meeting by person or proxy and, after the election of ARC members was conducted, the president announced that the annual meeting would reconvene at 7 p.m. on March 17, 2007, at the clubhouse, for the purpose of allowing residents to vote for or against pursuing legal remedies against the developer for construction defects in the common areas. Notice was mailed to the lot owners with the March newsletter, and a notice was posted on the clubhouse bulletin board.

The developer argued that the association's bylaws required that written notice of the February and March meetings be provided to the owners. The appeals court rejected this argument, noting that the statute contemplated that a temporary suspension of a previously noticed meeting could be continued at a different date, time and place without further written notice when the information was announced prior to adjournment of the meeting. Because the association's bylaws did not provide otherwise, the court found that the meetings were properly conducted without additional notice to the members.

The court reversed the trial court's decision and remanded the case for proceedings on the association's cause of action.

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