IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

GEORGE CHISMARK; CARMEN BOWMAN; JOSEPH CARBIA; DANIEL CARLSON; PATRICIA A. CONNORS; MAURICE FRIED; GLENN J. MALOOF; SANDRA BRIAND MERINO; JERRY D. NELSON; LAURIE A. SALAMON; and JOLINE VAN TILBURG,
Plaintiffs,
v.

IRONHORSE PROPERTY OWNERS ASSOCIATION, INC., a Florida Corporation; and IRONHORSE COUNTRY CLUB, INC., a Florida Corporation,
Defendants.

Case No. 50 2005 CA 006728 XXXX MB AE

FINAL SUMMARY JUDGMENT For PLAINTIFFS

THIS CAUSE came on before the Court for hearing on January 18, 2008 upon Plaintiffs' Motion for Summary Judgment against Defendants, IRONHORSE PROPERTY OWNERS ASSOCIATION, INC., ("Association"), and IRONHORSE COUNTRY CLUB, (the "Club").

The Court having considered arguments of counsel and having reviewed the law and the file and being duly apprised, it is hereby Adjudged and Ordered, that the said Motion be, and it hereby is, Granted, for the reasons set forth in the following findings of fact and conclusions of law.

Findings of Fact

1. Plaintiffs own property located within the Ironhorse community, and thus are members of Association. As such, Plaintiffs are bound by, governed by, and must adhere to the terms, conditions, and restrictions of the Declaration of Covenants, the Articles of Incorporation, the By-Laws and Rules and Regulations of Association, as amended from time to time (the "Governing Documents").

2. Defendant, Ironhorse Property Owners Association, Inc. is a homeowners association, subject to the Governing Documents and Florida Statutes, Chapter 720.

3. On July 17, 1990, Ironhorse, Ltd., the developer of the Ironhorse community, filed in the Public Records of Palm Beach County, Florida, among other things, the Master Declaration of Covenants, Conditions, and Restrictions, (the "Master Declaration").

4. The Master Declaration outlined the developer's intent to create a planned residential community consisting of residential neighborhoods and Common Areas, comprised of recreation facilities, roads, entranceways and water areas.

5. As part of that general scheme of development, the developer pledged to create "recreational facilities, including a Country Club comprising a luxury clubhouse, one championship golf course, tennis courts, swimming pool and other amenities." (Master Declaration, Art. II - Development Concept).

6. Under the Master Declaration, membership in the Club was purely voluntary and available to owners, i.e., members of Association and other individual non-owners, subject to

availability and subject to internal rules and regulations of the Club, as outlined in the Club's own separate governing documents.

7. Under the Master Declaration, the Club is a Class B Member of Association; upon turnover of control to its membership, the Club is required to pay Association a Base Assessment[1] and is entitled to one vote for every four (4) members of the Club.

8. The covenants of the Master Declaration, as well as other provisions in Association's governing documents may be amended from time to time, provided that the amendment satisfies the requirements as set forth in the Master Declaration or as otherwise provided by law.

9. In addition, no amendment to the Master Declaration may be made such as to destroy or substantially impair the plan of development. In other words, when the Developer created the community, it recognized the expectation of owners who took ownership of the property in reliance on the Governing Documents as originally recorded, including the provision that membership in the Club was voluntary.

10. Under the Governing Documents, the amendment process is dependent upon turnover. For example, until turnover, the developer may amend without Association's consent, but Association may join in any such amendment and execute such instruments to evidence the joinder. After turnover, the amendment must be approved by sixty-six percent (66 %) of the

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[1] Article VI, Master Declaration provides that "Base Assessments shall be determined annually for the purpose of maintenance and management of the Association, the Common Property...[shall be computed after Association] annually estimate the expenses it expects to incur....All Parcels shall be assessed at a uniform rate...the County Club shall be assessed at a rate of one (1) Base Assessment for every four (4) members of the Country Club."

Class A members and, after turnover of the control of the Club to its members, by the Class B members, together with the ratification of the Board of Directors of Association.

11. In addition to the requirement that the amendment must not destroy or substantially impair the general scheme, any and all amendments must comply with §720.306, Fla. Stats., which prohibits amendments which "materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment." See F.S. §720.306.[2]

12. After Plaintiffs purchased their properties in the Ironhorse community and before turnover, the Club found itself in a bad financial situation, one that was exacerbated more by the developer's failure to set aside the equity contributions of the Club's existing members in the Club's reserve account.

13. In order to resolve the financial concerns, and realizing that the time was approaching for the developer to turn over control of the Association and the Club to their respective members, the developer created a series of amendments, which compelled each

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[2] **720.306 Meetings of members; voting and election procedures; amendments.--**

(1) QUORUM; AMENDMENTS.--

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting interests.

member of Association, including Plaintiffs, to become members of the Club. Membership in the Club was now to be mandatory not only for subsequent purchasers of homes, but also for the existing members of the Association.

14. The developer amended the Master Declaration, as follows:

a) Third Amendment- Amending Section 4(A)(ii) of Art. IV
(ii) ~~Until and subject to the turnover of its ownership and control to its membership,~~ The Class B members shall be the fee simple title holder to the Country Club Property. The Class B members shall not be required to pay the Association's Base Assessment or be entitled to vote until ownership and control of the Country Club Property is turned over to its membership. ~~Upon turnover of the Country Club Property to its membership, Class B members shall be required to pay the Association's Base Assessment and~~ The Class B members shall be entitled to one (1) vote for every four (4) members of the Country Club.... (Emphasis added.)

b) Fourth Amendment.

Art. V, Sec. 2. Acquisition and Sale of Property. The Association shall have the power and authority to acquire such interests in real and personal property...[and] shall acquire non-equity memberships in the Country Club for each Parcel that has a Dwelling or Patio Home on it which has been issued a certificate of occupancy....Each Association Member and Improved Parcel Owner shall be entitled to approval of a non-equity membership in the Country Club as a matter of right.... Country Club dues and assessments for the Association Country Club Memberships shall be deemed a common expense of the Association to be paid by the Improved Parcels. As a condition to membership in the Association, each Association Member and Improved Parcel Owner shall be required to maintain its Association Country Club Membership in good-standing of the Country Club as a condition for residence in the Property. The Association Country Club Membership shall be appurtenant to and may not be separated from ownership of any Improved Parcel...The Country Club agrees that the initial annual dues for the Association Country Club Memberships shall be Twenty-Five Hundred Dollars ($2,500). (Emphasis added.)

Art. VI, Sec. 2. Base Assessments. ...Base Assessments for Improved Parcels shall also include annual dues for Association Country Club Memberships. Unimproved Parcels shall not be assessed for the Association Country Club Membership.

c) Fifth Amendment

Art. VI, Sec. 3. Computation and Collection of Base Assessments. The Association shall annually estimate the expenses it expects to incur in the period of time involved therein and assess its Members sufficient monies to meet this estimate. All Parcels shall be assessed at a uniform rate to be determined by the Association so that all Parcels subject to a Base Assessment shall be assessed equally; provided, however, that all vacant Lots shall be assessed at the rate of one quarter (1/4) of the Base Assessment until the first day of the first calendar month after a certificate of occupancy for a Dwelling on said Lot has been issued, at which time the full Base Assessment shall apply. .... ~~Subsequent to the turnover of the ownership and control of the Country Club Property to its members, the Country Club shall be assessed at a rate of one (1) Base Assessment for every four (4) members of the Country Club.~~ In consideration for the Country Club in maintaining the golf course and other facilities within the Country Club Property, the Country Club and the Country Club Property shall not be subject to nor obligated to pay any Base Assessment, Special Assessment or any other assessment levied by the Association. (Emphasis added.)

15. Thereafter, the developer created two other amendments: the Sixth Amendment, dated December 3, 2003—adopting the Amendment to the Amended and Restated Articles of Incorporation, which same added section (F) to grant power to Association to provide for recreation, recreational facilities or recreation use rights for the Members; and the Seventh Amendment, dated December 15, 2003—changing the definition of the Lot and Parcel to specifically define Lot, vacant Lot, and Unimproved Parcel as the site where a dwelling is intended, and to specifically defined Parcel, improved Lot, and Improved Parcel as one where the certificate of occupancy have been issued by the city.

16. While all amendments set in place this mandatory scheme, and after it recorded said amendments on November 3, 2003, the developer sought to obtain the approval of the members of the Association through a special meeting held on November 17, 2003.

17. During that meeting, the developer proposed the benefits of his already accomplished plan, without ever discussing his obligation to obtain the approval of the entire membership. As a result of a "straw vote" taken during the meeting on November 17, 2003, the developer proclaimed that the agreement between the Association and the Club, which had been approved by a vote of less than the entire membership, compelled all existing members and prospective members to become members of the Club.

18. Thereafter, developer turned over control of Association to its members on or about December 17, 2003 and turned over control of the Club to its members on or about December 28, 2003.

19. Since December, 2003, Plaintiffs have been compelled to become members of the Club and have paid additional sums in assessments for the mandatory membership.

20. Furthermore, because of the Club's elimination of payment of base assessment, Plaintiffs have been compelled to pay additional sums in the form of assessments to cover for the portion of lost assessments from the Club.

21. Lastly, because of the elimination by the developer of its responsibility to pay assessments for all parcels, without regard to either being improved or obtaining the Certificate of Occupancy, Plaintiffs have incurred damages in the form of additional assessments.

Conclusions of Law

22. Summary judgment is appropriate where the moving party proves the absence of any genuine issue of material fact. Pritchard v. Peppercorn & Peppercorn, Inc., 96 So. 2d 769, 770-71 (Fla. 1957); Holl v. Talcott, 191 So. 2d 40, 43-44 (Fla. 1966). Once the movant meets that burden, the party opposing the motion for summary judgment may not avoid such relief without presenting evidence showing the existence of a dispute as to a material fact. Turner Produce Company v. Lake Shore Growers Company, 217 So. 2d 856, 861 (Fla. 1969), writ of cert. discharged, 228 So. 2d 276 (Fla. 1969).

23. The first issue to be decided by this Court is whether the amendments created by the developer to impose a mandatory condition upon membership of the Club are invalid and unlawful because they destroy or substantially impair the common scheme of the Ironhorse Community as originally outlined by the Master Declaration.

24. Plaintiffs have asked this Court to invalidate the amendments adopted by developer on October 29, 2003, and recorded on November 3, 2003 because they were intended to accomplish one goal: to make the membership in the Club mandatory. This scheme contravenes what was outlined in Article II and intended by the developer when it recorded its Master Declaration, that is, the developer intended to construct a country club where "[m]embership ...**may** be made available to Owners within Ironhorse [and] ... to individuals who are not Owners within Ironhorse."

25. This permissive scheme was destroyed: Plaintiffs, who had once justifiably relied upon the recorded covenants and restrictions, were now required to obtain membership and pay more dues and fees in the form of common assessments to Association, originally set at $2,500.

26. In support of their argument, Plaintiffs rely upon such authorities as Holiday Pines Property Owners Assn' Inc. v. Wetherington, 596 So.2d 84, 87 (Fla. 4th DCA 1992) and Flamingo Ranch Estates, Inc. v. Sunshine Ranches Homeowners, Inc., 303 So.2d 665, 666 (Fla. 4th DCA 1974), as well as other authorities relating to the power to amend.

27. This Court finds the rationale of Holiday Pines applicable and controlling. In that case, a set of amendments was created where the homeowners' association and the developer agreed to make membership in the association, formerly voluntary, mandatory. This created for the first time a requirement to pay membership dues, fees, and other charges and assessments. [3] The Fourth District held, as had the trial court, that this amendment was void, because the new mandatory requirement of membership in the association destroyed the owners' freedom of choice which they had formerly enjoyed. Id. at 87 quoting from, and citing, Hidden Harbor Estates, Inc. v. Norman, 309 So.2d 180, 181-82 (Fla. 4th DCA 1975). The Court in Holiday Pines noted that the imposition of these requirements constituted

> not a continuation of a scheme of development but a radical change of plans, altering the relationship of the owners to each other and the right of individual control over one's property. Thus, the trial court did not abuse its discretion in determining that the 1987 amendments were unreasonable and not consistent with the general scheme of development.

[3] The amendments also provided for burdens customarily associated with associations with enforcement rights, including the right to create and enforce liens, and subjecting homeowners to attorneys' fee judgments in enforcement actions.

Id., 596 So.2d at 88. The Court further compared the imposition of the mandatory membership requirement and its concomitant burdens and restrictions as having the effect of turning the association into a condominium-like association, and noted that "[p]eople elect not to purchase in condominiums because they do not want to restrict their control over their own property." Similarly, in the case at bar, Plaintiffs chose to buy in a community which did not require membership in a golf and country club, even though such a club was physically part of the area encompassed by the Association. The Plaintiffs here are in the same position as the plaintiffs-appellees in Holiday Pines, and are as entitled as the latter to a declaratory judgment that the unauthorized and onerous amendments are void and unenforceable.

28. Moreover, this Court notes that Flamingo Ranch and other authorities hold that there are limits on a developer's power to amend, even when such power is reserved to the developer's sole discretion. Flamingo Ranch, 303 So.2d at 666. In those situations, courts have consistently read into a reservation clause a reasonableness requirement. Id. at 666. No amendment is reasonable if it destroys the general scheme. Id. In Flamingo Ranch, the successor to the developer unilaterally amended the Declaration of Restrictions to permit a portion of the property to be used for both business and residential purposes. Id. The court quoted approvingly from 7 Thompson, Real Property, Section 3171, at p. 188, the following precept: "A court of equity will not enforce restrictions where there are circumstances which render their enforcement inequitable ... ." Id. That precept is manifestly appropriate in the case at bar.

29. Plaintiffs also maintain that the amendments created by the developer of the Ironhorse community violate F.S. §306(1)(c) because Plaintiffs have to pay an additional $2,500 for being forced to join the Club. The language of the statute must be given a reasonable interpretation and no ambiguity has been raised in this matter by the parties. Therefore, the Court may simply look at the language of the amendment to reach its conclusion. A comparison between the original covenant and the amendment reveals that Plaintiffs' share of their common expenses increased substantially. For example,

Master Declaration	Amendment
a) Art. VI, Sec. 2. <u>Base Assessments</u>. Base Assessments shall be determined annually for the purpose of maintenance of the Association, the Common Property, and for the purpose of promoting the safety and welfare of the Owners. (The Club membership is not enumerated as a purpose for which the assessment may be used.)	 ...Base Assessments for Improved Parcels shall also include annual dues for Association Country Club Memberships. Unimproved Parcels shall not be assessed for the Association Country Club Membership. (Via the Fourth Amendment)
b) Art. VI, Sec. 3. <u>Computation and Collection of Base Assessments</u>. All Parcels shall be assessed at a uniform rate to be determined by the Association so that all Parcels subject to a Base Assessment shall be assessed equally.	 All Parcels shall be assessed at a uniform rate to be determined by the Association so that all Parcels subject to a Base Assessment shall be assessed equally; <u>provided, however, that all vacant Lots shall be assessed at the rate of one quarter (1/4) of the Base Assessment—i.e., the developer—until the first day of the first calendar month after a certificate of occupancy for a Dwelling on said Lot has been issued, at which time the full Base Assessment shall apply.</u> (Via the Fifth Amendment)

Master Declaration	Amendment
b) Art. VI, Sec. 3. Computation and Collection of Base Assessments. Subsequent to the turnover of the ownership and control of the Country Club Property to its members, the Country Club shall be assessed at a rate of one (1) Base Assessment for every four (4) members of the Country Club.	In consideration for the Country Club in maintaining the golf course and other facilities within the Country Club Property, the Country Club and the Country Club Property shall not be subject to nor obligated to pay any Base Assessment, Special Assessment or any other assessment levied by the Association. (Via the Fifth Amendment)

30. Association opposed Plaintiffs' Motion for Summary Judgment and challenged the appropriateness of the entry of same on the existence of disputed facts. The Court does not agree that material facts are disputed and finds this case ripe for a decision at this stage.

31. Moreover, Association's opposition centers mostly upon the reasonableness of the amendments. Association contends that this issue must be resolved by the trier of fact. While Association is correct in noting that the issue of reasonableness is a question for the trier of fact, that argument ignores the holding of Flamingo Ranch. An amendment, or a covenant for that matter, is unreasonable as a matter of law if it destroys or substantially impairs the scheme of the development. Since this Court hereby finds that mandatory membership in the Club destroys and impairs the scheme of Ironhorse community as originally intended by the developer and relied upon by the Plaintiffs, then no question need be reserved for the trier of fact. While the developer may have had its best intentions in providing for amenities and recreational facilities, such considerations must not, and should not, trump an individual's right to rely on previously recorded documents and promises as was done here.

32. Finally, Association cites to Woodside Village Condominium Association, Inc. vs. Jahren, 806 So.2d 452 (Fla. 2002), a case where the Florida Supreme Court upheld an amendment by two-thirds of the membership which restricted leasing in the condominium. This Court finds Woodside, a condominium case, not applicable here. It is one thing to say that restrictions can be imposed which have financial consequences, and another thing to say that developers can change owners' expectations by destroying and substantially impairing the general scheme of the community. Lastly, this case does not involve that "greater degree of restrictions" which is inherent in condominium living. Id.

WHEREFORE, IT IS HEREBY ADJUDGED AND ORDERED THAT

A. Final Summary Judgment is hereby entered in favor of Plaintiffs and against Defendants.

B. The Third Amendment, Fourth Amendment, Fifth Amendment, the Sixth Amendment and the Seventh Amendment to the Master Declaration, as those amendments relate, concern, or affect, the imposition of the mandatory membership in the Club and the levy of membership fees and dues to the Club, are hereby declared invalid, unenforceable, and void *ab initio*.

C. Defendants shall make restitution to Plaintiffs for

   i. All monies paid by Plaintiffs in the form of assessments, special assessments, dues, or other fees to the Association or the Club for anything relating to the membership, operation, organization of the Club.

ii. Any monies paid by Plaintiffs for repairs and maintenance of the Club, or any Club amenities.

iii. If the parties are unable to determine the correct amounts of the sums to be reimbursed to Plaintiffs, this Court reserves jurisdiction to set an evidentiary hearing to determine the correct amounts.

D. The Court hereby finds, and declares, that Plaintiffs are the prevailing parties in this matter, and reserves jurisdiction for any post-judgment matters, and for an award of attorney's fees and costs to Plaintiffs.

DONE AND ORDERED this 8th day of February, 2008 in Chambers, at West Palm Beach, Palm Beach County, Florida.

KENNETH D. STERN
CIRCUIT JUDGE

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