

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES**

IN RE: PETITION FOR ARBITRATION - HOA

**STRATFORD PLACE MASTER
ASSOCIATION, INC.,**

Petitioner,

v.

Case No. 2009-02-7236

HOMEOWNERS OWNERS VOTING FOR RECALL,

Respondent.

_____ /

SUMMARY FINAL ORDER

Statement of Issue

The issue presented for determination by the arbitrator is whether the written recall agreement served on the Stratford Place Master Association's board of directors on May 12, 2009, should have been certified.

Findings of Fact

1. On May 21, 2009, the Stratford Place Master Association filed a recall arbitration petition.
2. There are 430 voting interests in the master association.
3. The Stratford Place Master Association consists of the Coventry Neighborhood, Sections I - IV (condominiums), and Pinehurst Neighborhood, Sections I - IV (HOA).
4. The Coventry Neighborhood (condominiums) consists of Section I with 50 voting interests, Section II with 56 voting interests, Section III with 56 voting interests,

and Section IV with 56 voting interests. The total number of voting interests in the Coventry Neighborhood is 218.

5. The Pinehurst Neighborhood (HOA) consists of Section I with 66 members, Section II with 68 members, Section III with 62 members, and Section IV with 34 members. The total number of voting interests in the Pinehurst Neighborhood is 230 voting interests.

6. All 448 members of the Coventry Neighborhood and the Pinehurst Neighborhood are members of the Stratford Place Master Association.

7. The total number of seats on the Master Association board is 5.

8. The members of the Master Association Board are appointed by the Neighborhood Association Boards.

9. Article II of the Declaration of Condominium, defines the following terms:

Section 4. "Master Association" shall mean and refer to Stratford Place Master Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

Section 6. "Board of Directors" shall mean and refer to the Board of Directors of the Master Association.

Section 7. "By-Laws" shall mean and refer to the By-Laws of the Master Association, as the same may be amended from time to time.

Section 16. "Member" shall mean and refer to a Person entitled to membership in the Master Association, as provided herein.

Section 23. "Neighborhood Association and Recreation Association" shall mean and refer to any not-for-profit corporation established for a Neighborhood in accordance with Neighborhood Documents and may include without limitation a homeowners association created pursuant to Chapter 720, Florida Statutes. "Recreation Association" shall mean and refer to any not-for-profit corporation

established for the maintenance of the recreational facilities, lawns, and landscaping of Pinehurst at Stratford Place or Coventry at Stratford Place.

Section 3. "Pinehurst at Stratford Place" shall mean...and may also be referred herein as the "Pinehurst at Stratford Place Recreation Association."

Section 36. "Coventry at Stratford Place" shall mean...may also be referred herein as the "Coventry at Stratford Place Recreation Association."

10. Article V, Section 1 of the Declaration of Condominium, provides as follows:

Membership Every Owner, other than the Developer, shall be deemed to have a Class "A" Membership in the Master Association, as provided in Section 2 below. No Owner, whether one (1) or other Persons, shall have more than (1) membership per Unit owned. Votes of the Class "A" Members shall be cast by the "Neighborhood Voting Representatives" (as defined and in the manner set forth in Section 2.2 of the Bylaws).

11. Article XI, Section 1 of the Declaration of Condominium, provides as follows:

General. Every Unit shall be located within the Coventry at Stratford Place Recreation Association or the Pinehurst at Stratford Place Recreation Association, there will be specific Neighborhoods (for example, "Pinehurst at Stratford Place Section 1" and the like). The Units within a particular Neighborhood shall be subject to additional covenants and the Unit Owners shall all be members of a Neighborhood Association in addition to being members of a Recreation Association and the Master Association.

12. Section 2.2 of the Bylaws of the Stratford Master Association, provides, in pertinent part, as follows:

On all matters in which a vote of the Class "A" Members is required or permitted, the votes of the Class "A" members shall be cast by the Neighborhood Voting

Representatives. The President of each Neighborhood Association shall serve as the Neighborhood Voting Representative and the Vice President shall serve as the Alternate. In the event that either the President or Vice President of the Neighborhood Association cannot attend a meeting of the Neighborhood Voting Representative, and they do not wish to vote by proxy, then the Board of directors of the Neighborhood Association shall provide the Master Association with a written designation of another member of the Neighborhood Association's Board of Directors who shall act as the Alternative Neighborhood Voting Representative for that meeting. ...Votes of the "Class A" member shall be cast on their behalf by the Neighborhood Voting Representatives in 1 of 2 alternate methods, in the discretion of the Neighborhood Voting Representative for that Neighborhood: (a) "in a block"; or (b) "as cast"... . "In a block" shall mean, for example, that if the Coventry at Stratford Place Section 1 Neighborhood has 48 Units, then the Neighborhood Voting Representative is authorized to vote all 48 Units in favor or opposed to the item to be voted upon... .

13. Section 3.4 of the Bylaws of the Stratford Master Association, provides, in pertinent part, as follows:

The administration of the affairs of the Master Association shall be by a Board of Directors. All powers and duties granted to the Master Association by Chapter 617 and 720, Florida Statutes, as modified and explained in the Governing Documents, shall be exercised by the Board, subject to the approval or consent of the Neighborhood Voting Representatives only when specifically required.

14. Section 4 of the Bylaws of the Stratford Master Association, provides as follows:

4. BOARD OF DIRECTORS: The administration of the affairs of the Master Association shall be by a Board of Directors. All powers and duties granted to the Master Association by Chapter 617 and 720, Florida Statutes, as modified and explained in the Governing Documents, shall be exercised by the Board, subject to the approval or consent of the Neighborhood Voting Representatives only when such is specifically required.

4.1 Number and Terms of Service: The Class “A” members...shall not directly elect their Directors. Rather, the Board of Directors for the Recreation Associations shall be entitled to appoint that particular individual who shall serve on the Board of Directors for the Pinehurst at Stratford Place Recreation Association and the Coventry at Stratford Place Recreation Association. ...In addition, staggered terms shall be implemented at the turnover date, by having 2 Directors from Coventry at Stratford Place Recreation Association and 2 Directors from Pinehurst at Stratford Place Recreation Association appointed to initial 2 year terms; and 1 Director from the Coventry at Stratford Place Recreation Association appointed to an initial 1 year term. At the next annual election, the fifth Director shall be appointed from the Pinehurst at Stratford Place Recreation Associations, at the subsequent annual election, the fifth Director shall be appointed from the Coventry at Stratford Place Recreation Associations. It is the intent hereof that the respective Board of Directors of the 2 Recreation Associations shall alternative, on an annual basis, have the right to appoint the fifth Director. A Director’s term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in 4.4 below.

4.4 Removal of Directors. Except for Directors appointed by the Developer, any Director may be removed with or without cause by vote of majority of the Board of Directors of the applicable Recreation Association that appointed that Director, either by written petition or at any meeting called for that purpose, in the manner required by Florida law.

13. Subparagraph 720.303(10)(a)2., Florida Statutes, provides as follows:

When the governing documents, including the declaration, articles of incorporation, or bylaws, provide that only a specific class of members is entitled to elect a board director or directors, only that class of members may vote to recall those board directors so elected.

14. Rule 61B-81.001(4), Florida Administrative Code, provides as follows:

Class Voting. When the governing documents provide that a specific class of homeowners is entitled to elect a director or directors to the board, the class of homeowners electing such

director or directors to the board shall constitute all the voting interests that may recall or remove such director or directors.

15. On May 12, 2009, the Master Association was served with a written recall agreement consisting 4 ballots from the Pinehurst Neighborhood and representing 236 voting interests.

- a. Pinehurst Section I representing 66 votes.
- b. Pinehurst Section II representing 68 votes.
- c. Pinehurst Section III representing 62 votes.
- d. Pinehurst Section IV representing 34 votes

Along with the written recall agreement were 4 Voting Representative Certificates, as follows:

- a. Dated May 6, 2009 - Board of Directors of Pinehurst I appointed Chad Phillips to cast the votes for the 66 homeowners in Pinehurst I.
- b. Dated May 4, 2009 - Board of Directors of Pinehurst II appointed Bob Bobowski to cast the votes for the 68 homeowners in Pinehurst II.
- c. Dated May 4, 2009 – Board of Directors of Pinehurst III appointed Ronnie Dunnigan to cast the votes for the 62 homeowners in Pinehurst III.
- d. Dated May 4, 2009 – Board of Directors of Pinehurst IV appointed Dick Schaa to cast the votes for the 34 homeowners of Pinehurst IV.

16. The names of the Stratford Master board members against whom the written recall agreement was directed and the total number of votes to recall each board members as claimed by Respondent are as follows: Greg Smith (4 ballots), Tom Caliguire (4 ballots), and Deborah Craft (4 ballots).

17. Each of the board members who are the subject of the recall agreement submitted by the Pinehurst Neighborhoods are representatives of Coventry Neighborhood Associations.

18. Each of the ballots submitted to recall the board members were cast by designated voters representing Pinehurst at Stratford Neighborhood Associations.

19. The names of the proposed replacement candidates are as follows: John Cain (4 ballots), Ronnie Dunnigan (4 ballots), and Guy Devono (4 ballots).

20. The Stratford Master Association held a meeting to consider the recall on May 18, 2009. The only item on the agenda was the recall. Based on the board's review of the Resolution of the Board of Directors¹, the Board voted to reject the recall petition as follows:

a. Improper Class of Members Attempting Recall, voting representatives are not of the same class as the directors sought to be recalled.²

b. Insufficient votes to constitute a majority of voting interests. Class "A" members are entitled to 1 vote per fee title to each unit. There are 448 total voting interests in Stratford Place. Two hundred twenty-five votes are needed to recall a board member. Four ballots were submitted, alleged to represent the total voting interests in each Pinehurst Section. The four ballots submitted were rejected as representing only the four unit owners who signed the ballots.

Conclusions of Law

¹ The resolution was attached to the minutes of the May 18, 2009 board meeting.

² The directors subject to the recall were elected by Coventry at Stratford Place, Sections I – IV, and the recall ballots consisted of designated voters for Pinehurst at Stratford Place, Sections I – IV.

Rule 61B-80.114(1), Fla. Admin. Code requires the arbitrator, at any time after the filing of the petition, to enter a final order affirming the board's decision not to certify the recall if the arbitrator finds that no meritorious defense exists, or if substantial compliance with the requirements of the rules and statutes relating to recall has not been demonstrated, and the petition is otherwise appropriate for relief. Section 720.303(10), Fla. Stat., provides the authority and requirements for recall of directors of a homeowners association.

In the case at hand, Stratford Place is a planned unit of development (PUD) consisting of Pinehurst at Stratford Place and Coventry at Stratford Place. Pinehurst at Stratford Place consists of Pinehurst Sections I – IV and Coventry at Stratford Place consists of Coventry Sections I – IV. Stratford Place PUD is governed by the Stratford Place Master Association. The Master Association is comprised of five directors. Two directors, serving two-year terms, are elected by Pinehurst at Stratford Place, Sections I – IV, two directors, serving two-year terms, are elected by Coventry at Stratford Place, Sections I – IV. The remaining director serves a one-year term and is appointed by the Pinehurst and Coventry Neighborhoods in alternating years. The 2009 Board consists of three directors appointed by the Coventry Neighborhood Associations.

Pursuant to Section 720.303(10)(a)2., Florida Statutes, as well as Rule 61B-81.001(4), Florida Administrative Code, only class members entitled to select a board member may vote to recall the board member. See *Townhomes Neighborhood v. Homeowners Voting for Recall*, Arb. Case No. 2006-02-3783, Summary Final Order (June 12, 2006)(Where the board of a community association is composed of one member from each of five neighborhoods, the recall effort is fatally invalid where the

homeowners voted to recall various board members on the community association board without regard to whether the particular board member sought to be recalled was voted onto the board by his particular neighborhood, such that members of one neighborhood voted to recall the representative of a different neighborhood.)³ The statute and the rules each require the recall follows the vote, so that only those entitled to recall a given board member are those owners entitled in the first instance to vote the board member into office. Accordingly, the recall was flawed in that owners were allowed to cast their votes in favor of board members that they did not vote into office.

Based upon the foregoing, it is **ORDERED**:

The board's decision not to certify the recall of board members Greg Smith, Tom Caliguire, and Debora Craft is hereby **AFFIRMED**.

DONE AND ORDERED this 23rd day of September, 2009, at Tallahassee, Leon County, Florida.

Tonya S. Chavis, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029
Telephone: 850.414.6867
FAX: 850.487.0870

³ The same result exists under the condominium statute, upon which the HOA recall provision is based. *See, for example, Sea Ranch Club Condo. Association, Inc. v. Patti*, Arb. Case No. 99-2142, Final Order (November 25, 1997), holding that where the documents provide for class voting, only members electing a director would count towards calculating a majority required for recall.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing summary final order has been sent by U.S. Mail to the following persons on this _____ day September, 2009.

Alfred F. Gal, Jr., Esquire
5405 Pak Central Court
Naples, Florida 34109

FAX: 239.596.9523

Homeowners Voting for Recall
c/o Barry Postman, Esquire
Ron Campbell, Esquire
1645 Palm Beach Lakes Blvd.
2nd Floor
West Palm Beach, FL 33401

FAX: 561.683.8977

Tonya S. Chavis, Arbitrator