

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

IN RE: PETITION FOR ARBITRATION

STAR LAKES ASSOCIATION, INC.,

Petitioner,

v.

Case No. 2012-04-3342

JOHN BAPTISTE and PETRA JOHNSON,

Respondents.

_____ /

SUMMARY FINAL ORDER

Statement of the Issue

Whether, pursuant to Chapter 718, Florida Statutes, Respondents are required to provide access to their units to allow inspections related to the fire alarm system.

Procedural History

On October 15, 2012, Star Lakes Association, Inc. ("Association") filed a petition for non-binding arbitration naming John Baptiste and Petra Johnson as Respondents. An Order Requiring Answer was entered on October 18, 2012. Respondents filed an answer on November 8, 2012.

On November 14, 2012, the arbitrator entered an order requiring the Association to file a signed version of the petition and a qualified representative application. On December 12, 2012, the Association, by this time represented by counsel, filed an amended and signed petition. An order was entered on December 14, 2012, requiring Respondents to file an answer to the amended petition.

Respondents filed an answer to the amended petition on January 3, 2013, as

well as a request for production of documents, a subpoena duces tecum, a motion to conduct discovery, and a qualified representative application. This order is entered based upon the pleadings and attachments filed in this case.

Findings of Fact

1. Star Lakes Association, Inc, is the legal entity responsible for the maintenance and operation of Star Lakes Estates, a Condominium.

2. Respondent John Baptiste is the owner of Unit 2108 in Star Lakes Estates and a member of the condominium association.

3. Respondent Petra Johnson is the owner of Unit 2123 in Star Lakes Estates and a member of the condominium association.

4. Respondent John Baptiste filed a qualified representative application to represent Respondent Petra Johnson in this matter.

5. In 2010, the Association undertook a project to install a fire alarm system in building 21 of the condominium. The Association states that it is unable to close the permit because Miami-Dade County requires an inspection of the installation in each condominium unit.

6. After the Association's agents made verbal requests to Respondents for access, on October 21, 2010, August 24, 2012, and September 4, 2012, the Association made written requests to Respondents to access the units for the inspection by Miami-Dade County officials.

7. Respondents John Baptiste and Petra Johnson refuse to allow the Association entry to their respective condominium units: 2108 and 2123.

8. Respondents' assert multiple reasons for not permitting access to their

units: a) The Association has not produced for them a permit card and an approved plan for the fire alarm project and Respondents condition the granting of access to their units on the production of the permit card and approved plan; b) Respondents have made numerous requests for documents to the Association that have largely gone unanswered; c) Respondents assert that the Association has failed to obtain proper permits for previous projects it has undertaken; d) Respondents assert that previous work performed by the Association's contractors has failed to pass inspection.

Conclusions of Law

The Division has jurisdiction over this matter pursuant to section 718.1255, Florida Statutes. Rule 61B-45.030, Florida Administrative Code, requires entry of a summary final order when no disputed issues of material fact have been raised by the pleadings.

The authority of an Association to enter a condominium unit without the owner's permission is based upon Section 718.111(5), Florida Statutes, which provides:

(5) RIGHT OF ACCESS TO UNITS. — The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to common elements or to a unit or units.

The interest of Respondents in protecting their property behind the locked doors of their units must yield to the need for the Association to protect the condominium property. The Declaration of Condominium for Star Lakes Estates put Respondents on notice that condominium property also lies behind the locked doors to their units, including walls, pipes, wires, conduits and utility lines, and that unit owners must allow the Board of Directors and the agents/employees of the Association to enter for the

purpose of maintenance, inspection, repair, and in the event of an emergency threatening the condominium property.¹

It is a basic principle of condominium law that, by choosing to live in a condominium, individual unit owners give up certain freedoms and accept certain restrictions upon rights which could be expected in separate, privately owned property. *Woodside Village Condo. Ass'n, Inc. v. Jahren*, 806 So. 2d 452 (Fla. 2002); *Hidden Harbour Estates, Inc. v. Norman*, 309 So. 2d 180 (Fla. 4th DCA 1975). The statute provides two broad purposes for access: for maintenance or to prevent damage. *Cypress Isle at the Polo Club Condo. Ass'n, Inc. v. Shelton*, Arb Case No. 98-4090 (July 22, 1998).

Use of the word "irrevocable" in Section 718.111(5), Florida Statutes, emphasizes the legislative intent that the right of access cannot be limited by the governing documents of a condominium or by a negotiated condition in the sale of units. Access will be allowed even when a unit owner has given a written warning that the association should not enter a unit. See *Hidgon v. Seaspray Condo. Ass'n, Inc.*, Arb. Case No. 96-0430, Final Order (March 24, 1998).

Unit owners may be required to provide the Association with keys to their units, because the right of access is for the protection of all units within a building and the owner of one unit may not be available to give permission at the time of an emergency. *Costa Bella Ass'n, Inc. v. Scuteri*, Arb. Case No. 02-4624, Final Order (June 7, 2002). A common type of emergency occurs when a plumbing leak in one unit causes damage to another unit or to the common elements. See *Oceanview Towers Condo. Ass'n, Inc. v. Diaz*, Arb. Case No. 2006-01-6632, Final Order (January 3, 2007).

¹ Article 21(E) of the Declaration of Condominium for Star Lakes Estates, "Obligations of Members."

In general, issues of the timing of the entry and notification to the owners are a function of good business judgment, prudence, and civility, which are concepts that resist further enunciation and definition in the case law. *Higdon, supra*. The fact that the statute, case law and governing documents do not attempt to define emergencies demonstrates the futility of an effort to specify unexpected events or foreseeable events happening at unexpected times.

Respondents' defense that the Association has not met their conditions for entry is invalid. An impermissible denial of access occurs where a unit owner seeks to place conditions upon the association's access to his or her unit. *Park Lake Towers Condo. Ass'n, Inc. v. Halley*, Arb. Case No. 2003-08-3367, Amended Final Order on Motions for Attorney's Fees (January 28, 2004)(Where the association sought access to the respondent's unit in order to fix a plumbing assembly, and where the respondent directed that the association would only be permitted access upon providing proof of insurance and a valid building permit, the respondent was held to have denied access to the unit.); *The Marina Club of Tampa Condo. Ass'n, Inc. v. Schwartz*, Arb. Case No. 2012-01-9743, Summary Final Order (May 30, 2012)(Respondent's defense that the Association had not met his conditions for entry, specifically to provide a list of work to be performed and to properly assess the cost of repairs, was invalid; Respondent was held to have denied access to the unit.) Pursuant to Section 718.111(5), Florida Statutes, Respondents must allow the Association access to their units to inspect the common elements without any conditions.

Based upon the foregoing, it is ORDERED:

1. On or before January 21, 2013, Respondent John Baptiste shall provide access to unit 2108 of Star Lakes Estates to such persons designated by the Association to perform inspections related to the fire alarm system.

2. On or before January 21, 2013, Respondent Petra Johnson shall provide access to unit 2123 of Star Lakes Estates to such persons designated by the Association to perform inspections related to the fire alarm system.

3. If Respondents do not take affirmative steps by January 21, 2013 to provide access, a board member, contractor and/or employee of the Association, accompanied by persons designated to perform inspections related to the fire alarm system, may enter into units 2108 and 2123, without prior notice, but at a reasonable time and with proper announcement, to perform the inspections.

4. Respondents' Request for Production of Documents and Motion to Conduct Discovery are DENIED.²

DONE AND ORDERED this 9th day of January, 2013, at Tallahassee, Leon County, Florida.

Leslie O. Anderson-Adams, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
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² Respondents may, if they wish, file a separate petition for arbitration regarding their allegations that the Association has failed to provide them with access to its official records, including plans and permits. However, these documents are unnecessary to resolve the dispute regarding the Association's right of access to their units.

Trial de novo and Attorney's Fees

This decision shall be binding on the parties unless a complaint for trial de novo is filed in accordance with section 718.1255, Florida Statutes. As provided by section 718.1255, Florida Statutes, the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Fla. Admin. Code R. 61B-45.048.

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 9th day of January, 2013:

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Leslie O. Anderson-Adams, Arbitrator