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

IN RE: PETITION FOR ARBITRATION

VILLANOVA AT HUNTER'S CREEK CONDOMINIUM ASSOCIATION, INC.,

Petitioner,

v. **Case No. 2014-00-2680**

NANCY LEISSING,

Respondent.
_____/

SUMMARY FINAL ORDER

Relevant Procedural History

On January 21, 2014, Villanova at Hunter's Creek Condominium Association, Inc. (the Association) filed a petition for arbitration naming Nancy Leissing as Respondent. On February 13, 2014, the Respondent filed an Answer. On March 7, 2014, the Association filed a reply. On April 4, 2014, the Association filed a legal memorandum. On April 29, 2014, Respondent filed a response to the Association's legal memorandum. This Order is entered after the arbitrator has considered the pleadings and the documents filed by the parties.

Findings of Fact

1. The Association is the legal entity responsible for the maintenance and operation of Villanova at Hunter's Creek, a Condominium.

2. Respondent is the owner of a unit in Villanova at Hunter's Creek, and is a member of the condominium association.

3. The petition alleges that Respondent installed air conditioning piping on the exterior of the building in which her unit is located which has altered, and caused damage to, the Association's Common Elements. The alteration was not approved by the Board of Directors or 75% of the unit owners as required by the Declaration of Condominium.

4. Respondent alleges that the alteration is a temporary repair for a leak in the copper piping supplying coolant to the interior air handler. The leak was located in the concrete slab underneath Respondent's laundry room in a PVC chase that is serving Respondent's unit and a neighboring unit. Respondent contends that it is the Association's responsibility to repair the copper piping in the chase.

5. Respondent contacted Mark Adams of Cool Zone A/C (the Association's approved air conditioning contractor) and obtained an explanation dated November 1, 2013 of what repairs were needed to the unit's air conditioning system. Mark Adams of Cool Zone A/C stated as follows:

> After the service techs came to your home to replace the copper line set that has a leak in it, we found some problems with the job and we were not able to complete the task. We found in your A/C system Freon line chase [which] also has the copper Freon lines from the unit above yours. This means that we will have to disconnect both A/C units, yours and the unit above and replace both A/C systems Freon copper line sets.
>
> Then we will have to reinstall both A/C systems. We will need access to the unit above yours on the same day as we do the work.
> The cost to replace both copper line sets and recharge both A/C systems is
>
> Price: $1,575.00
>
> The only other option is that we could reroute your Freon line down the inside of your unit and come out at the bottom of the wall where it meets the slab. Then we could connect back to your condenser unit. The copper

line would not be visible to the outside, but would be exposed on the inside of the unit.

Price: $676.00

6. On March 31, 2014, in a memorandum requested by the Association, Mark Adams clarified his November 1, 2013 memorandum as follows:

> I am writing this letter to clarify my letter to Miss Leissing dated 1-Nov-2013. In reference to her A/C systems copper Freon Line that is leaking. Miss Leissing has two A/C copper Freon lines that are installed in a PVC line chase under the concrete slab of the condominium. This PVC chase terminates in her unit under her air handler unit, in this PVC line chase also is the two A/C copper Freon lines to the condominium on the second floor above her.
>
> There is [sic] no defects or problems with the PVC line chase. The only problem is that one of Miss Lessing['s] copper lines in the PVC chase has develop [sic] a leak in it, which is caused by a defect in her copper line. Most likely cause of this defect in her copper line is a manufacture imperfection of the copper itself.
>
> In a condominium setting the PVC line chase is used by the lower and upper unit, each unit would have two copper lines in the chase. **The industry best practice would be to remove all four copper lines** in the PVC chase and install four new copper lines in that chase. But Miss Leissing does not own the copper lines going to the unit above her, so we would need permission from that owner to replace their two copper line set also.
>
> In [an] apartment setting there is only one owner of the copper lines so industry best practice would be followed, but in this setting best practice cannot be followed without the other owner's permission. There is [sic] two options to fix this issue, first we would discount both A/C units that would include Miss Leissing's and the unit above hers and then remove all four copper lines from the PVC chase and install four new copper lines in the existing PVC chase. At that time we would reconnect both A/C system and recharge both system [sic] with Freon. If this method is chosen then we would need a release from the owner of the unit above her releasing us of any damage to their A/C unit before we could begin. The cost of this repair would be $1,895.00.
>
> The second option would be to install the one copper line that is leaking inside of Miss Lessing unit and install the one copper line inside of her wall down to the concrete slab then out to her A/C condenser unit. This is not a

short cut repair but this allows the work to be done without require [sic] permission from the owner of the unit above her. This repair is still with in industry practice and is the method that is used now in her unit to get the copper lines from Miss Leissing [sic] unit up to the second floor. The cost of this repair would be $975.00 plus the drywall repair.

(Emphasis supplied).

7. Section 3.3 of the Declaration states in pertinent part:

(a) Limited Common Elements Appurtenant to All Units. To the extent applicable and subject to the provisions of this Declaration, each Unit has as Limited Common Elements appurtenant thereto such portions of the Common Elements as are defined herein ... including, but not limited to: (a) any portion(s) of the Common Elements, including, but not limited to, **conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to a particular Unit shall be a Limited Common Element appurtenant to that Unit if it only supplies that Unit, to the exclusion of all other Units.**

. . .

(b) Responsibilities of Unit Owners. Except as may be otherwise provided in this Section 3.3, all maintenance, repairs, replacements and reconstructions of, in or to any Limited Common Elements, whether structural or nonstructural, ordinary or extraordinary (including, without limitation, maintenance, repair replacement and reconstruction of any exterior wall or railing of balcony patio) **shall be performed by the Owner of such Unit at such Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein.** ... Each Unit Owner shall be responsible for the air-conditioning compressor contained within the Limited Common Elements serving and providing service to such Unit Owner's Unit.

(Emphasis supplied).

8. Section 18 of the Declaration states in pertinent part:

In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions and every Unit Owner shall (provided, however, that the provisions of the Master Declaration shall control over the following provisions in the event of conflict)

. . .

> 18.10 Make no repairs to any plumbing, air conditioning systems or electric wiring within a Unit, except by plumbers, repairmen or electricians authorized to do such work by the management of the Association. Plumbing, air conditioning and electric repairs within a Unit shall be paid for and be financial obligations of the Owner of the Unit. **The Association shall pay for and be responsible for plumbing, air conditioning repairs and electrical wiring within the Common Elements.**

(Emphasis supplied).

9. The Association alleges that Respondent could alter her unit to repair the air conditioning unit without impacting the other neighbor's unit.

Conclusions of Law

The Division has jurisdiction over this matter pursuant to Section 718.1255, Florida Statutes. Because there is no issue of material fact in dispute after the filings provided to date by the parties, this case is appropriate for summary disposition pursuant to Rule 61B-45.030, Florida Administrative Code.

It is undisputed that the copper pipe running down the exterior wall of Respondent's unit is a material alteration to the common elements. It is also undisputed that 75% of the unit owners have not approved this material alteration as required by the Association's Declaration of Condominium. The Association's request for relief is for the arbitrator to order Respondent to remove the copper piping at her expense. Respondent contends, as an affirmative defense, that the Association is required to replace the copper pipe within the PVC chase in the slab, and the exterior piping is only needed because the Association failed to abide by the Declaration of Condominium and replace the leaking copper pipe.

The Association's expert stated in his letter that in order to repair the leak in the copper Freon line that he either needs to replace all four cooper lines within the PVC

chase, or alter Respondent's unit by running the copper pipe within her unit. Pursuant to Section 3.3 of the Declaration, it is the unit owner's responsibility to repair conduits if the conduit only supplies that unit. The Association claims the "conduit" is the leaking copper pipe serving just Respondent's unit.

However, the Association's expert states that it is best practice, if one of the pipes fails then all four of the pipes within the PVC chase must be replaced at the same time. It is not advisable to replace only the one leaking pipe. Two of the copper pipes serve a neighboring unit. Therefore, the four copper pipes within the PVC chase, must be considered just one "conduit" and the separate pipes are just components of that one conduit. Since this conduit serves two units, the Association has responsibility to replace all four copper pipes within the PVC chase.

Additionally, Section 18.10 of the Declaration provides that the Association shall be responsible for air conditioning repairs within the Common Elements. The PVC chase is located within the slab. Since both the PVC chase and the slab are common elements, the Association is responsible for the repair.

Finally, the Association has filed this petition because Respondent has altered the Common Elements by temporarily running a copper pipe on the outside of the building. The Association, to avoid that the repair would affect more than one unit, argues that Respondent should alter the interior of her unit by running the pipe inside her unit. This argument is without merit. Respondent is entitled to have the common element repaired as closely to its original condition as possible. *See Newfield v. Aliki Tower Condo. Management Ass'n, Inc.*, Arb. Case No 2004-05-8013, Final Order (December 18, 2006)(Where an association could have reasonably replaced a defective

component of the common elements with one that is comparable in form and function and which would not materially alter the appearance of the common elements, it must do so unless the material changes are appropriately approved.). Indeed, the Association's expert stated that replacing all four pipes within the PVC chase was the "best practice" for this type of leak. It is the Association's responsibility to replace all four copper pipes.

Respondent cannot be expected to do without air conditioning in the state of Florida, and it was reasonable for her to temporarily alter the common elements until the Association fulfilled its responsibility to replace the copper pipes within the PVC chase. Since the Association failed to replace the copper piping in the PVC chase, it has the responsibility of removing the material alteration caused by its failure. The Association, alone, is responsible for restoring **all** of the common elements to their original condition.

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

The relief request by the Association is DENIED.

DONE AND ORDERED this 15th day of May, 2014, at Tallahassee, Leon County, Florida.

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Terri Leigh Jones, Arbitrator
Department of Business and
Professional Regulation
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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 and facsimile to the following persons on this 15th day of May, 2014:

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