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

IN RE: PETITION FOR ARBITRATION

Diane Bersani and Debra Case,

Petitioners,

v. **Case No. 2016-00-8453**

Crystal Tower, Inc.,

Respondent.

_____/

FINAL ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On February 16, 2016, Diane Bersani and Debra Case (Petitioners) filed a petition for mandatory non-binding arbitration naming as Respondent Crystal Tower, Inc. (the Association). The petition alleges that the Association has seized the limited common element parking space belonging to each Petitioner's unit by adopting a rule in 2011 which states as follows:

> 1. All unit owners have one space except those who have temporary assignment of two spaces. When a unit owner dies, sells, transfers or change [sic] title to his or her unit, the parking spaces comes back to the building as a guest space. Spaces are non-transferrable.

In part, the Declaration of Condominium provides:

> III
> IDENTIFICATION OF UNITS; SURVEY; SHARES IN COMMON ELEMENTS; PROPORTIONS OF COMMON EXPENSES
> . . .
> D. The Common Elements include parking areas for automobiles of unit owners. Parking areas will be available for use pursuant to this Declaration and the regulations of the Association.
> . . .
> VIII
> DESIGNATION AND ASSIGNMENT OF PARKING SPACES BY DEVELOPER
> Each unit owner shall have the right at no charge to the exclusive use of

> one automobile parking space, the exact location and designation of which shall be assigned and established by Developer at the time of the initial conveyance of title to a unit owner by Developer to such unit owner. The grant of the right to the exclusive use of one automobile parking space shall be evidenced by separate instrument executed by Developer in non-recordable form and delivered to the unit owner at the time such owner acquires fee title to his condominium unit. An executed copy of the instrument granting such shall be maintained by the Association. The Developer shall designate 35 parking spaces which the Developer in its own discretion may assign to unit owners in addition to the exclusive use of the one parking space previously referred to herein and such second parking space shall be considered as a limited common element appurtenant to such condominium unit owner.

As relief, Petitioners request, in part, the following:

> 1. Order that ASSOCIATION is permanently and forever enjoined from bifurcating second parking spaces from those units assigned the same.
> 2. Enjoin the ASSOCIATION from changing spaces between units, arbitrarily separating any assigned spaces from the units designated under the developer's original parking scheme.
> 3. Enjoin the ASSOCIATION from assigning or categorizing any of the common element parking spaces, or limited common element second parking spaces, at the property as "guest" parking spaces given the Declaration does not contemplate "guest" parking.
> 4. Order that the parking assignments as existed in 2006 are the proper limited common element parking scheme of the units as expressed by the developer.
> 5. Order that any limited common element second parking spaces taken and separated by the ASSOCIATION from its appurtenant unit be immediately returned to the appropriately assigned unit and that the ASSOCIATION be responsible within 20 days from such order to have prepared and execute and deliver to the affected unit, at the ASSOCIATION'S sole cost, any such revisionist documentation necessary to return said second parking spaces.

Section 718.1255(1), Florida Statutes, specifies disputes that are subject to arbitration as follows:

> (1) DEFINITIONS.--As used in this section, the term "dispute" means any disagreement between two or more parties that involves:
> (a) The authority of the board of directors, under this chapter or association document to:
> 1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.
(b) The failure of a governing body, when required by this chapter or an association document, to:
1. Properly conduct elections.
2. Give adequate notice of meetings or other actions.
3. Properly conduct meetings.
4. Allow inspection of books and records.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(emphasis added). In *Florida Tower Condo., Inc. v. Mindes*, 770 So. 2d 210 (Fla. 3rd DCA 2000), the District Court of Appeal affirmed the trial court stating that "a dispute over title to and the right to use particular condominium parking spaces, which are by definition, 'limited common elements,' is not subject to the non-binding arbitration provisions of section 718.1255, Florida Statutes (1999)." *See also Netherland of South Beach Condo. Ass'n, Inc. v. 1502 Panoramic View, Inc.*, Arb. Case No. 2015-02-2299, Final Order Dismissing Petition for Lack of Jurisdiction (Aug. 12, 2015)(applying *Mindes* in the context of limited common element storage spaces); *Mirador 1200 Condo. Ass'n, Inc. v. Stankoff*, Arb. Case No. 2014-00-6909, Final Order of Dismissal for Lack of Jurisdiction (April 22, 2014)("disputes involving title include all legal interests in real property, including possessory interests"); *Surf House Condo. Ass'n, Inc. v. Universidad de las Americas, A.C.*, Arb. Case No. 2013-01-6946, Final Order of Dismissal for Lack of Jurisdiction (Sept. 24, 2013). Thus, the dispute alleged in the instant petition is not subject to arbitration under the statute. Accordingly, it is

ORDERED:

Arbitration Case No. 2016-00-8453 is **DISMISSED** for lack of jurisdiction. Petitioners may seek relief in a court of competent jurisdiction.

DONE AND ORDERED this 29th day of February, 2016, at Tallahassee, Leon County, Florida.

_____
Glenn Lang, Senior Attorney
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1030
Phone: 850-414-6867 / Fax: 850-487-0870

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing final order has been sent by facsimile and by U.S. mail, postage prepaid, to the following person this 29th day of February, 2016:

Mitchell B. Haller, Esq.
Katzman Garfinkel, P.A.
5297 W. Copans Road
Margate, Florida 33063
Facsimile: 954-486-7782
Attorneys for Petitioners

_____
Glenn Lang, Arbitrator