

DATE 8-19-93
CLERK D. Irwin for
B. Hava

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

In Re: Petition for Declaratory Statement
Margaret M. Irwin; The Royal St.
Andrew Association, Inc.

DBR DOCKET NO. DS93001

DECLARATORY STATEMENT

COMES NOW, the undersigned as Director of the Division of Florida Land Sales, Condominiums, and Mobile Homes, and issues this Declaratory Statement as follows.

FINDINGS OF FACT

1. On January 5, 1993, the Division received a Petition for Declaratory Statement filed by Margaret M. Irwin, a unit owner at the Royal St. Andrew Condominium located in Sarasota, Florida. By her Petition, the unit owner seeks to challenge certain action taken by the board of administration of the condominium association.

2. Petitioner's unit is situated in a high-rise building. Access to the building is restricted to the main entrance doors to the building. In February of 1992, the board determined to change the locks on the main entrance doors and to issue special security keys, which cannot be reproduced, to the unit owners. The number of keys issued per unit depends on the number of people residing in a particular unit. The issue presented is whether the board rule is lawful, reasonable, and within the scope of Section 718.112, Florida Statutes.

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3. Further, according to the Petition, Petitioner travels extensively, and on occasion, requires access to her unit while away to take care of matters pertaining to the unit. Prior to the Board's action complained of, Petitioner typically made arrangements with friends to have access to the unit. In the past, keys were provided to friends which would afford them access to the main entrance doors to her building.

4. Petitioner takes the position that the board, in the exercise of its authority in the instant case, acted unreasonably, and that the action of the board unreasonably restricts the use and enjoyment of Petitioner's unit.

5. There is a voice box at the main entrance to the building which permits a visitor to call a unit owner who is at home and who can admit the visitor electronically.

6. Receipt of the Petition for Declaratory Statement was noticed in the Florida Administrative Weekly, and in response thereto, the condominium association on March 24, 1993 filed a Request to Intervene. The Motion was granted, and the parties were given to and including April 16, 1993 in which to file with the Division any legal arguments on the issues presented in this case. The association filed its Memorandum of Law on April 14, 1993; the Petitioner filed a Memorandum of Law on April 16, 1993.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to Section 718.501, Florida Statutes and Section 120.565, Florida Statutes.

2. In the Association's Memorandum of Law, a chronology of events is presented whereby the board of administration, in response to recent burglaries occurring within units situated in the high-rise building, explored various security alternatives and ultimately decided on the security key option in dispute here. It is the association's position that pursuant to Section 718.111(3), Florida Statutes, the association is empowered to maintain, manage, and operate the condominium property including, in this case, the common element doors to the high-rise building. Also, pursuant to the bylaws, the board is empowered to adopt administrative rules governing the details of the operation of the condominium including restrictions and requirements respecting the use and maintenance of the units and of the common elements as may be deemed necessary and appropriate from time to time. It is the position of the association that the association rule is reasonable in achieving the objectives set by the board in preventing further burglaries.

3. Petitioner takes the position that the association has unlawfully and unreasonably restricted access to the Petitioner's unit. Rather than a restriction on the use of the common elements, Petitioner views the rule as an unlawful restriction on the right of access to the unit. Petitioner concedes that security concerns constitute a legitimate purpose for rulemaking, but claims that the method chosen is unreasonable.

4. Pursuant to Section 718.112(3)(c), Florida Statutes, the bylaws may provide for restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements. In this case, the bylaws provide

that the board is empowered to make rules as may be deemed necessary respecting the use of the common elements. Subject to certain exceptions not made evident here, whether a board rule is valid depends on whether the board exceeded its scope of authority and whether the rule is reasonable or is instead arbitrary and capricious. Hidden Harbour Estates, Inc. v. Basso, 393 So.2d 637 (Fla. 4th DCA 1981); Beachwood Villas Condominium v. Poor, 448 So.2d 1143 (Fla. 4th DCA 1984); Pines of Boca Barwood Condominium Association, Inc. v. Cavouti, 605 So.2d 985 (Fla. 4th DCA 1992). The standard for review of the board rule is whether the rule is reasonably related to the promotion of the health, happiness and peace of mind of all the unit owners. Id.

5. The bylaws permit the board of administration to pass rules and regulations for the governance of the common elements. It is accordingly found that the board, in its exercise of rulemaking authority, acted within valid authority given to it by the bylaws.

6. Secondly, it has not been shown that the rule is not reasonably related to the promotion of the well-being of the unit owners. Rather, it appears that the particular security option chosen by the board is reasonably related and calculated to enhance security at the building. The rule in its terms and operation is neither arbitrary nor unreasonable. Although access to the unit has been affected by the security measure, it cannot be said that a security system wherein the number of keys dispensed depends on the number of occupants per unit, does not bear a measure of rationality. While it may or may not be within the judgment and discretion of the

board to grant a hardship exemption to the unit owner in this case, the fact that no hardship exemption has been forthcoming does not reflect an arbitrary decision. Association exceptions previously made for a legally blind unit owner and a unit owner requiring 24-hour nursing care may be rationally distinguished by the board from the case of a unit owner who frequently travels and who, for a convenience sake, would prefer to have an additional key.

7. In summary, there has been no showing that the subject rule is unreasonable; instead, the rule is reasonable as it bears a reasonable relationship to the well-being of the unit owners. In the case of Hidden Harbour Estates, Inc. v. Norman, 309 So.2d 180 (Fla. 4th DCA 1975), the court stated:

. . . It appears to us that inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately-owned property. Condominium unit owners comprise a little demographic sub-society of necessity more restrictive as it pertains to use of the condominium property than may be existent outside the condominium organization. . . .

Certainly, the association is not at liberty to adopt arbitrary or capricious rules bearing no relationship to the health, happiness and enjoyment of life of the various unit owners. On the contrary, we believe the test is reasonableness. If a rule is reasonable the association can adopt it; if not, it cannot. . . . [id. at 181-2].

Accordingly, for the foregoing reasons, it is judged that the board acted within its authority and did not promulgate an arbitrary rule.

DONE AND ORDERED this 19th day of August, 1993.



Henry M. Solares
HENRY M. SOLARES, DIRECTOR
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business Regulation
725 South Bronough Street
Tallahassee, Florida 32399-1030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Ward E. Dahlgren, Attorney for Petitioner, Dickinson & Gibbons, P.A., 1750 Ringling Boulevard, Post Office Box 3979, Sarasota, Florida 34230 and James R. DeFurio, Becker & Poliakoff, P.A., 630 South Orange Avenue, Third Floor, Post Office Box 49675, Sarasota, Florida 34230-6675, this 19th day of August, 1993.

Carolyn Howard
CAROLYN HOWARD, DOCKET CLERK

IRWIN.KMS