

STATE OF FLORIDA
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES
DEPARTMENT OF BUSINESS REGULATION
725 SOUTH BRONOUGH STREET
TALLAHASSEE, FLORIDA 32399-1007

In Re: Petition for Declaratory Statement

DOCKET NO. DS89500

RE: The Renaissance of Pompano Beach II,
Salvatore Mancuso, Petitioner;
Legal No. 89L-162

FILED
DIVISION OF FLORIDA
LAND SALES, CONDOMINIUMS
AND MOBILE HOMES

DATE 5/23/90
DOCKET CLERK C. Blaskin

DECLARATORY STATEMENT

Petitioner, Salvatore Mancuso, seeks a declaratory statement interpreting sections of Chapter 718, Florida Statutes. Specifically, the Petitioner would like to know whether costs for repairs to an individual unit for damages caused by a common element water leak is a proper common expense pursuant to section 718.115(1), Florida Statutes.

The Division makes the following findings of fact based on the information submitted by the Petitioner:

FINDINGS OF FACT

1. The Renaissance of Pompano Beach II, is a condominium as defined by Chapter 718, Florida Statutes, located in Pompano Beach, Florida.
2. Petitioner is a unit owner of the Renaissance of Pompano Beach II.
3. The Renaissance of Pompano Beach II, Inc., is a corporation not for profit organized under the laws of Florida on April 13, 1973.

4. Portions of the Declaration of Condominium for the Renaissance of Pompano Beach II, which were submitted by Petitioner provide as follows:

IX. ADMINISTRATION(c)- THE DUTIES AND POWERS OF THE ASSOCIATION ARE THOSE SET FORTH IN THE CONDOMINIUM DOCUMENTS TOGETHER WITH THOSE POWERS AND DUTIES REASONABLY IMPLIED TO EFFECT THE PURPOSE OF THE ASSOCIATION AND THE CONDOMINIUM. SUCH POWERS AND DUTIES SHALL BE EXERCISED IN A MANNER PROVIDED BY THE CONDOMINIUM DOCUMENTS.

5. On or about October/November 1987, damage occurred to the condominium unit of a Mr. McFarlin as a result of a common element water leak at the Renaissance of Pompano Beach II.

6. The Association's insurance carrier issued checks for repair of the water damage to Mr. McFarlin's unit less the Association's deductible under the insurance policy.

7. The Association paid to Mr. MacFarlin, the unit owner, the balance of repair expenses not covered by payments from the Association's insurance carrier.

CONCLUSIONS OF LAW

1. The Division of Florida Land Sales, Condominiums and Mobile Homes has jurisdiction herein pursuant to section 120.565 and Chapter 718, Florida Statutes, to issue this Declaratory Statement.

2. Petitioner Salvatore Mancuso is substantially affected by the statutory provisions cited above and has standing to seek this declaratory statement.

3. Section 718.115(1), Florida Statutes, provides in part:
Common expenses include the expenses of the operation, maintenance, repair, or replacement of the common elements, cost of carrying out the powers and duties of the

association, and any other expense designated as a common expense by this chapter, the declaration, the documents creating the condominium, or the the by-laws. Common expenses also include reasonable transportation services, insurance for directors and officer, road maintenance and operation expenses, in house communications, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium. . . .

(2) funds for the payment of common expenses shall be collected by assessments against unit owners in the proportions or percentages provided in the declaration. In a residential condominium, unit owners shares of common expenses shall be in the same proportions as their ownership interest in the common elements.

4. Based on the information submitted by Petitioner that the damage to an individual unit owner's apartment resulted from a water leak flowing from the common elements of the condominium and based on the representation of Petitioner that the Association's insurance carrier had apparently determined that a valid claim for repair to the individual unit was made, there was apparently a determination by the Association that it had a legal duty to the damaged unit owner.

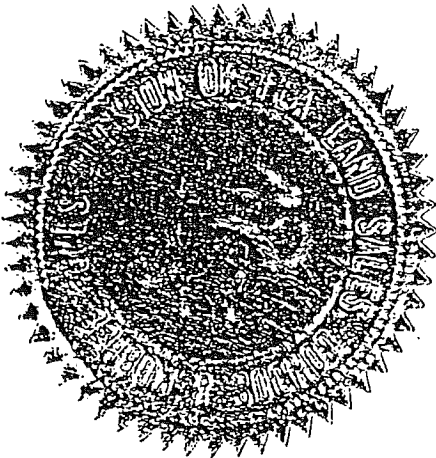
5. The Association was apparently able to partially satisfy the liability it deemed it had to unit owner McFarlin by partially covering the cost of repairs making a claim against the Association's insurance policy. The amount not covered by the policy was made up through Association funds.

6. The portions of the Declaration of Condominium. submitted by Petitioner show nothing which precludes the Association from making a decision to satisfy an apparent legal liability outside of a judicial determination of liability for property damage flowing from occurrences on the Association's land or property.

7. The Division has no authority to determine the legal liabilities of the Association or to interpret coverages under private insurance contracts.

WHEREFORE, based on the foregoing the Division determines nothing contained in the portions of the declaration of condominium submitted by Petitioner, nor anything contained in Chapter 718 precludes that the Renaissance of Pompano Beach II Association from assessing monies to satisfy Association debts and legal liabilities as a cost of carrying out the powers and duties of the Association to satisfy its apparent legal liabilities.

DATED this 23rd day of May, 1990.



A handwritten signature in black ink, appearing to read "Matthew M. Carter II". The signature is written in a cursive style and is positioned above a horizontal line.

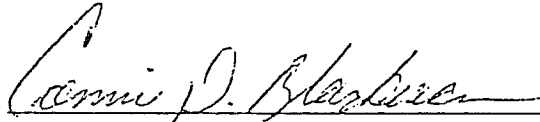
MATTHEW M. CARTER II, Director
Division of Florida Land Sales,
Condominiums and Mobile Homes
Department of Business Regulation

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND
MAY BE APPEALED BY RESPONDENT PURSUANT TO SECTION 120.68,
FLORIDA STATUTES AND RULE 1.990, FLORIDA RULES OF APPELLATE
PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE
REQUIREMENTS RULE 9.110(d), FLORIDA RULES OF APPELLATE
PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL,
ACCOMPANIED BY THE APPROPRIATE FILING FEE AND WITH CONNIE
BLACKMAN, CLERK FOR THE DIVISION OF FLORIDA LAND SALES,
CONDOMINIUMS AND MOBILE HOMES, WITHIN THIRTY (30) DAYS OF THE
RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being sent by U.S. certified mail to Salvatore Mancuso, 1370 South Ocean Boulevard, #1407, Pompano Beach, Florida 33062, this 23rd day of May, 1990.



CONNIE D. BLACKMAN

Copies furnished to:

Pamela S. Leslie
Assistant General Counsel

Alexander M. Knight, Chief
Bureau of Condominiums