Joint Exhibit 10

IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

Heron Creek Associates, Ltd.
A Florida limited partnership

Plaintiff,

v. Case No.: 2020 CA 4364 NC

Steve Dsupin, et. al.,

Defendants,

And

Heron Creek Community Association, Inc.,
A Florida corporation not for profit,

Nominal Defendant.

_____/

Steve Dsupin, et. al.,

Counter-claim Plaintiffs/Cross-claim Plaintiffs,

v.

Heron Creek Associates, Ltd.,
A Florida limited partnership,

Counter-claim Defendant

And

Heron Creek Community Association, Inc.,
A Florida corporation not for profit,

Cross-claim Defendant.

_____/

ORDER ON DEFENDANTS/COUTERCLAIM PLAINTIFFS' AMENDED MOTION FOR PARTIAL FINAL SUMMARY JUDGMENT ON COUNTER-CLAIM AND CROSS-CLAIM

On July 18, 2022, the Defendants/Counter-claim Plaintiffs' (movants) Amended Motion for Partial Final Summary Judgment on Counter-claim and Cross-claim was heard by this court. The court heard the argument of counsel, reviewed the memorandums of law submitted, and the extensive history of the pleadings filed in this matter. The movants state that there is no genuine dispute as to any material fact and that the movants are entitled to a Partial Summary Final Judgment as to Count I and II of its Counterclaim Complaint and Crossclaim Complaint for Declaratory and Injunctive Relief against Plaintiff/Counterclaim Defendant HERON CREEK ASSOCIATES, LTD, A Florida limited partnership ("the Developer"), and Nominal Defendant/Crossclaim Defendant HERON CREEK COMMUNITY ASSOCIATION, INC. ("the Association").

Background

As stated previously, this litigation has an extensive history with multiple parties and numerous pleadings and filings. The court incorporates all of the pleadings filed in this case by reference and shall not recite in this order the entire factual background leading up to this motion and this order by the court.

The major issue in this motion is the allegation that the Developer has failed to comply with its obligation under section 720.307 Florida Statutes to turn over control of the Association to the non-developer members by allowing them to elect the Association's Board of Directors. This is tied to section of F.S. 720.307 which reads in pertinent part;

> (1) Members other than the Developer are entitled to elect at least a majority of the members of the board of directors of the homeowners' association when the earlier of the following events occurs;
>
> (a) Three months after 90% of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members other than the Developer

The movants allege that the failure of the Developer to comply with its obligation under section 720.301, Florida Statutes to turn over control of the Association to the non-developer members by allowing them to elect the Association's Board of Directors, upon conveyance to members the Association of 90% of the parcels which will be operated by the Association, and to cease the appointment of any Directors of the Association when it no longer holds and offers at least 5% of the parcels operated by the Association for sale in the ordinary course of business, are continuing violations of the obligations of state statute and Articles of Incorporation which give rise to a continuing cause of action, with each day of the continuing violation giving rise to a cause of action. Alternatively, they allege each annual election of the Association in which the non-developer members are denied their right to elect a majority or all of the Directors gives rise to a separate cause of action.

The Developer feels the Homeowners' Motion for Partial Summary Judgment should be denied because the Developer has the legal right and physical ability to build a sufficient number of residential parcels on the land at issue, such that the 90% turnover threshold has not been triggered.

The Developer also alleges that the Movants have failed to comply with Administrative Order No. 2021-19.1 along with relying on inadmissible hearsay.

The Developer has also asserted that the Movants rely on inadmissible hearsay within their motion.

The summary judgment motion standard

On May 1, 2021, the Florida Supreme Court changed the summary judgment standard provided for in Rule 1.510, Florida Rules of Civil Procedure, to be constructed and applied in Florida in accordance with the federal summary judgment standard set in *Celotex Corp. v. Catrett,* 477 U.S. 242 (1986).

The new standard in Florida for the denial of summary judgment requires evidence that "a reasonable jury could return a verdict for the nonmoving party". See *Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)*

To prevail at summary judgment, the non-moving party "must offer more than a mere scintilla of evidence for its position; indeed, the nonmoving party must make a showing sufficient to permit the jury to reasonably find on its behalf." *Urquilla-Diaz v. Kaplan Univ.,* 780 F.3d 1039, 1050 (11th Cir. 2015).

Rule 1.150 makes it mandatory for the trial court to state the reasons for granting or denying a motion for summary judgment, and to do so with particularity sufficient to prove useful guidance to the parties, and if necessary, the reviewing appellate court. *In re: Amendments to Florida Rule of Civil Procedure 1.510,* 317 So.3d 72. 78 (Fla. 2021)

Documents, evidence and filings reviewed by the court

There are numerous items of evidence introduced into the court file by the parties including exhibits documents, statutes and ordinances, administrative orders, and items attached to all the pleadings. All introduced and admitted items of evidence, pleadings and corresponding exhibits have been considered by the court. The court additionally considered the following items in its analysis;

1. Ordinance 2000-13, Development Order for Heron Creek
2. Heron Creek master Plan
3. Record of Boundary Survey
4. Parcels D, E, F – 30 Unit Multi-Family Heron Creek Town Center
5. Affidavit Composite of Ron York and James Bevillard
6. Ordinance 2011-33, Development Order for Heron Creek
7. Heron Creek Notice of Extension dated April 28, 2022

8. Heron Creek October 13, 2021, letter
9. City of North port February 22, 2021 letter
10. Bryan Miller Olive October 15, 2022 letter
11. Heron Creek may 23, 2022 letter
12. The Governing Documents for the Heron Creek Community Association
13. Ordinance 2013-16 Development order for heron Creek
14. F.S. 720.307
15. Articles of Incorporation for the Association (as referred to in the various pleadings)
16. Pleadings filed by all parties including any affirmative defenses
17. Case law and statutes cited in support of the party's positions in pleadings and memorandums in support.

Ruling and Findings

A central issue in this dispute is the question of how many additional residences can be built on parcels currently under developmental control by the developer.

This court finds that upon a review of the evidence, pleadings, answers and affirmative defenses, statutes, case law and documents introduced into evidence, the court makes findings and rules as follows;

(1) The Developer's plans and/or phases include the flexibility to make different types of uses between plans.

(2) The Development Order permits the Developer to modify the land uses within the relevant four phases of development without amendment to the Development Order.

(3) The Developer's right to modify the Land Use Table pertinent to this case, includes the right to shift land uses from prior phases into the current phase (Phase IV).

(4) By virtue of extensions and Executive Orders issued in response to Covid-19 – the current and relevant build out date is November 8, 2024.

(5) In Phase IV, the Developer is entitled to build additional single family residential and multi-family units, among other non-residential uses.

(6) Phase IV is continuing in development and has not yet expired.

(7) The Developer is continuing to develop the Heron Creek Community pursuant to its existing rights and entitlements under the Development Order.

(8) The Developer is still within the legally defined benchmarks as defined and noted in the relevant documents reviewed and considered by the court.

(9) The relevant documents indicate the Developer still maintains the authority to appoint a majority of the Heron Creek Community Association, Inc., Board of Directors.

The court further finds that the movants have not met their burden to disprove all of the Developer's affirmative defenses, particularly the affirmative defense of failure to state a cause of action, with sufficient evidence for the court to grant Movant's motion for summary judgment.

In evaluating the Movant's motion and consideration of all of the above and the admitted summary judgment evidence in the record, the court finds that at this stage of the proceedings, at a minimum, the case is not ripe for a consideration of a Motion for Partial Summary Judgment.

The Developers have likewise failed to establish any entitlement to a temporary injunction based on the same court analysis and rationale.

The Motion for Summary Judgment is **Denied.**

The Court reserves on all matters related to this order and this ruling.

Done and ordered this 24th **day of July 2022, in Sarasota, Sarasota County, Florida.**

Charles E. Williams
Circuit Court Judge

cc.

Attorneys of record