

ORIGINAL

MEMORANDUM

August 14, 2001

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: DIVISION OF LEGAL SERVICES (FUDGE) *df*

RE: DOCKET NO. 990374-WS - APPLICATION FOR CERTIFICATES TO OPERATE A WATER AND WASTEWATER UTILITY IN HIGHLANDS COUNTY BY THE WOODLANDS OF LAKE PLACID, L.P.

Please place the attached letter from Andrew B. Jackson, dated August 7, 2001, in the above-referenced docket file.

JKF/lw

Attachment

APP _____
CAF _____
CMP _____
COM _____
CTR _____
ECR _____
LEG _____
OPC _____
PAI _____
RGO _____
SEC _____
SER _____
JTH _____

DOCUMENT NUMBER-DATE

09988 AUG 15 2001

FPSC-COMMISSION CLERK

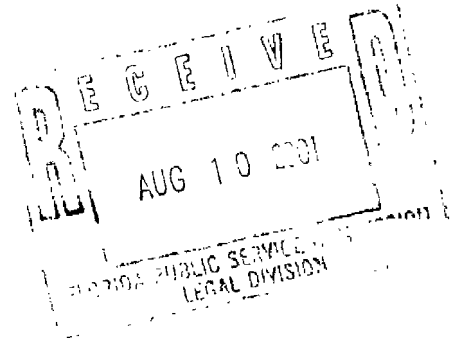
ANDREW B. JACKSON

Attorney at Law
150 NORTH COMMERCE AVENUE
P.O. BOX 2025
SEBRING, FLORIDA 33871-2025

Mailing Address
P.O. Box 2025
Sebring, FL 33871-2025

Phone (863) 382-3686
Fax (863) 382-1509
ajackson@digital.net

August 7, 2001



Jason K. Fudge, Senior Attorney
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

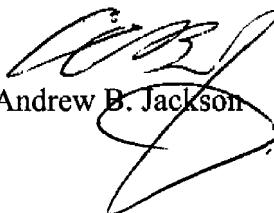
RE: The Woodlands of Lake Placid - Application for Original Certificate
Docker No. 990374-WS
Richard Perantoni, Sara Keller, et al, Plaintiffs,
vs.
CAMPER CORRAL, INC., a Florida not for profit corporation, et al
Circuit Court, Tenth Judicial Circuit, Highlands County, Fl
Case No. GC 97-240 & GC 98-158 (Consolidated)

Dear Mr. Fudge:

As per your request, I am enclosing a copy of the Final Judgement in the above referenced matter.

The Final Judgment does not appear to have anything to do with the utilities
If you need additional information, please give me a call.

Sincerely yours,


Andrew B. Jackson

ABJ:i
Enclosure

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HIGHLANDS COUNTY, FLORIDA

RICHARD PERANTONI, SARA KELLER, et al,

Plaintiffs,

vs.

CAMPER CORRAL, INC., a Florida not
for profit corporation, et al.

Defendant.

CASE NO. GC 97-240
GC 98-158
(CONSOLIDATED)

FINAL JUDGMENT

THIS MATTER came before the Court for Trial February 23 thru February 26, 2000. Plaintiffs, in the cases consolidated for Trial, sought the following relief:

1. A Declaration defining the common area of the Camp Florida Resort.
2. A Declaration as to the validity of the Use Agreement authorizing use of the recreational facilities by the Plaintiffs.
3. A Declaration of the Parties rights under the Declaration of Covenants and Restrictions concerning conveyance of the recreational facilities to the Property Owners Association, and injunctive relief directing that the recreational facilities be sold to the Property Owners Association.
4. Money damages against Defendants Cozier and Lovelette for breach of fiduciary duty.
5. A Declaration as to determining the obligation of the Developer, Camp Florida Resort L.P., to pay its share of assessments to the Property Owners Association; Whether the 1998 Budget for Camp Florida Property Owners Association, Inc. was valid and accurate.
6. Whether the Defendant Camp Florida Property Owners Association, Inc. had the authority to place liens against Plaintiffs' lots, determine that an amendment to the bylaws of the Defendant Property Owners Association was illegal, invalid and void, and determine disposition of the funds deposited into the Registry of the Court by Plaintiffs.

7. An award of reasonable Attorney's Fees and reimbursement of costs.

Based upon the evidence presented at Trial, a review of the court file, the written arguments, closing statements and memoranda of the parties, the Court makes the following findings of fact:

1. **COMMON AREA:** The Court finds that the Common Area for Camp Florida Resort is as defined in the Plat and replat of that subdivision. Specifically, the Court finds that all property not designated as lots on the Plat and Replat are to be owned by the Home Owners Association as common elements. The language contained in the Plat and Replat is not in conflict with the language contained in the Declaration of Covenants and Restrictions for the subdivision. The language is clear, unequivocal, and unambiguous and requires no construction.
2. **USE AGREEMENT:** The Use Agreement is not void nor invalid. The Use Agreement would terminate upon the conveyance of the subject described property, specifically the recreational facilities. The Use Agreement did not terminate. The Use Agreement grants the Common Recreation Association a non exclusive right to use the recreational facilities as defined in the Use Agreement for the duration of the life of the Declaration of Covenants and Restrictions upon the payment of a pro rata share of actual costs and expenses incurred by the use of the facility.
3. **SALE OF RECREATIONAL FACILITIES:** The Declaration of Covenants and Restrictions authorized the purchase of recreational facilities by the Common Recreation Association. The representatives of the association negotiated a sale in good faith. The Parties had created an enforceable contract for the sale of the property but the Defendant Cozier and the Defendant Woodlands added additional requirements and conditions to its final offer. The Defendant Cozier negotiated in bad faith and throughout the negotiation process used suspect, underhanded, unethical, and bad faith tactics to mislead the Plaintiffs to a timetable that exceeded the Statute of Limitations. As a result, the Defendants Cozier and Woodlands are equitably estopped from their reliance on the Statute of Limitations.

4. **BREACH OF FIDUCIARY DUTY:** Defendants Cozier and Lovelette breached their fiduciary duties to the Plaintiffs as members of the Property Owners Association thru a variety of acts including without limitation:
- a. Charging back rent on the recreational facilities paid to the Defendant Woodlands
 - b. Charging back office management payments and paying the Developer.
 - c. Accepting the common area as described in the Covenants and Restrictions without conveyance of the recreational facilities.
 - d. Continuously paying assessments beyond the due date.
 - e. Intentionally misrepresenting the Developer's obligation for maintenance payments to the association, advising the members that the Developer had no legal obligation to pay any assessments.
 - f. Amending the bylaws, skirting the Covenants and Restrictions, to reduce the Developer's obligation for maintenance payments.
 - g. Diverting funds that should have been reimbursed to the members to the road reserve without requiring the Developer to make any proportionate contributions to that reserve.
 - h. Entering into a Lease Agreement for the recreational facility without any authorization under the governing documents, paying the Woodlands \$63,000.00 per year.
 - i. Continuously meeting and discussing Property Owners Association business and issues including the budget without notice to the members as required by Statute.
 - j. Double charging for maintenance during the year 1998 by paying his own corporation Camper Corral by paying Cozier's own corporation Camper Corral, Inc. for maintenance that was not performed on behalf of the Property Owners Association.
5. **DEVELOPER'S OBLIGATION TO PAY ASSESSMENTS:** The Declarations of Covenants and Restrictions direct that each lot owner should pay a proportionate or pro rata share of the

maintenance assessments required to maintain the common area. The Developer agreed to use the 1/396th rule (proportionate share) in the Budget for 1997 and thereafter. The language contained in the Declaration is clear and unambiguous. The 1998 Budget, limiting the assessment payments due by the Developer is void and invalid. Plaintiffs are entitled to distribution of the funds placed into the Registry of the Court herein by them.

6. **VALIDITY OF THE AMENDMENT TO THE BYLAWS:** The bylaws of the Camp Florida Common Recreation is a Common Recreational Association and the Property Owners Association provide a procedure for amending the bylaws. There was evidence, and a lack of evidence, clearly showing that the amendment in dispute, which lowered an ultimately eliminated the Developer's obligation to pay any assessments, was not enacted according to the stated procedure. Additionally, the evidence is clear that Defendant Cozier was self dealing and not acting in the best interest of the Property Owners Association, in the enactment of the amendment to the bylaws.
7. **LIENS:** Any and all Liens placed against the property of any and all Plaintiffs by the Home Owners Association were based upon improper assessments and are therefore, void.
8. **ATTORNEY'S FEES AND COSTS:** The Declaration and Florida Statutes each contain provisions for an award of Attorney's Fees and reimbursement of costs to the prevailing party in this litigation. The Court finds the Plaintiffs to be the prevailing parties.
9. **INJUNCTIVE RELIEF:** As to Plaintiffs claims for injunctive relief, the Court finds that the Plaintiffs suffered irreparable harm and had no adequate remedy at law.

It is therefore **ORDERED AND ADJUDGED** that:

1. The common area of the subdivision known as Camp Florida Resort is declared to be that as described in the Plat of said subdivision recorded in Plat Book 15 page 52 in the Public Records of Highlands County, Florida , specifically note 5 stating that all property not shown as lots is to be considered as common elements to be owned by the Home Owners Association. This includes the property not contained in the description of common area

in the Declaration of Covenants and Restrictions, which is contiguous to US Highway 27, and all improvements thereon.

2. The Court declares that the Use Agreement between the owner of the recreational facilities, the Woodlands, and the Common Recreation Association is not void nor invalid. The Use Agreement did not terminate. The Use Agreement grants the Common Recreation Association a non exclusive right to use the recreational facilities as defined in the Use Agreement, for the duration of the life of the Declaration of Covenants and Restrictions, upon the payment of each lot owners pro rata share of actual costs and expenses incurred by the use of the facility. The Use Agreement can also be terminated by a purchase of the recreational facility as defined in the Use Agreement, by the Common Recreation Association.
3. The Court declares that the owner of the recreational facilities, Defendant Woodlands, and the Common Recreation Association created an enforceable contract for the sale of the recreational facilities as defined in the Use Agreement. The conveyance failed as a result of bad faith conduct by the Woodlands and its representative Cozier. The Common Recreation Association has the right to purchase the recreational facilities pursuant to the 1996 appraisal entered into evidence herein. Specific performance in favor of Plaintiffs and the Common Recreation Association is hereby granted.
4. **PRO RATA SHARE OF EXPENSES / BYLAW AMENDMENT:** The declaration of Covenants and Restrictions require each lot owner, including Camp Florida Resort, L.P. the Developer, to pay its Pro rata Share of expenses of maintenance of the common area, defined as 1/397th of the total expenses, per lot. The 1998 amendment to the bylaws reducing and eventually eliminating the Developer's obligation is invalid and void. The 1998 Budget is void.
5. **BREACH OF FIDUCIARY DUTY:** Both Defendants Cozier and Lovelette breached their respective fiduciary duty to the members of each association and the Plaintiffs. The Plaintiffs have suffered monetary damages as a result. Therefore, the Plaintiffs shall have and recover from Defendants Cozier and Lovelette the sum of \$289,934.23, which shall accrue interest

at the legal rate, together with \$96,274.06 in prejudgment interest, for all of which let execution issue.

6. **LIENS AND DEPOSITS IN REGISTRY OF COURT:** Any and all Liens placed against any lots in Camp Florida Resort owned by the Plaintiffs, by the Property Owners Association, or the Common Recreation Association, are void and unenforceable. Plaintiffs are entitled to disbursement of all funds deposited into the Registry of the Court, pursuant to any Court Orders entered in these proceedings.
7. **ATTORNEY'S FEES AND COSTS:** The Court reserves jurisdiction to enter an award of Attorney's fees and reimbursement of costs to Plaintiffs as the prevailing parties herein.

DONE AND ORDERED in Chambers at BARTOW Florida this 10 day of August, 2000..

J. DALE DURRANCE
J. DALE DURRANCE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U.S. Mail to the parties listed below this 10 day of August, 2000.

James V. Loboza, Jr., Esq.
329 South Commerce Avenue
Sebring, Florida 33870

Joseph T. Patsko, Esq.
P.O. Box 2151
Tampa, Florida 33601

Clifford R. Rhoades, Esq.
227 North Ridgewood Drive
Sebring, Florida 33870

Thomas L. Nunnallee, Esq..
335 S. Commerce Avenue
Sebring, Florida 33870

Mary Corrie
Judicial Assistant

