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ORIGINAL

December 28, 1999

Blanca Bayo  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Dear Ms. Bayo:

Please find enclosed the original and 15 copies of a, "Motion for Summary Final Order", in Docket No. 990975-SU, which is filed on behalf of RealNor Hallandale, Inc.

A copy of the motion has been sent by U. S. Mail, this date, to Michael J. Miceli, and a copy has been hand delivered to Commission Attorney, Tyler Van Leuven.

Sincerely,

David B. Erwin  
Young, van Assenderp, Varnadoe & Anderson, P. A.  
Attorneys for RealNor Hallandale, Inc.

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AFB 2  
APP  
CAN  
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LEG VanLeuven (2)  
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OTH

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for transfer of Certificate )  
No. 281-S in Lee County from Bonita )  
Country Club Utilities, Inc. to RealNor )  
Hallandale, Inc. )

DOCKET NO. 990975-SU

Filed: December 28, 1999

MOTION FOR SUMMARY  
FINAL ORDER

RealNor Hallandale, Inc. (RealNor), pursuant to Rule 28-106.204(4), F.A.C., moves for issuance of a summary final order in Docket No. 990975-SU, and in support of its motion states as follows:

1. Bonita Country Club Utilities, Inc. (BCCU) obtained Certificate No. 281-S from the Commission and for several years provided wastewater service in Lee County as a Class B utility.
2. BCCU obtained a loan from Northern Trust Bank of Florida, N. A. under a Mortgage and Security Agreement. BCCU failed to repay the loan as required, and the bank filed an action to foreclose the mortgage. On April 6, 1999, Twentieth Judicial Circuit Court Judge, William C. McIver, issued the court's "Amended Summary Final Judgment of Foreclosure," retaining jurisdiction of the cause for purposes of making all other orders and judgments as may be necessary and proper and granting such other relief as may be appropriate.
3. On May 13, 1999, Northern Trust Bank of Florida, N. A. was the successful bidder at a foreclosure sale and obtained the right to receive a Certificate of Title to the property described in the "Amended Summary Final Judgment of Foreclosure." Northern Trust Bank of Florida, N. A. then assigned all of its right, title and interest in the Certificate of Sale and right to Certificate of Title to RealNor Hallandale, Inc., and filed such assignment in the Twentieth Judicial Circuit Court on June 29, 1999.
4. Upon receipt of the assignment of the Certificate of Title, RealNor Hallandale, Inc. had a statutory obligation to continue to provide service to the previous customers of BCCU. See Section 367.071(6), Florida Statutes. Consequently,

RealNor Hallandale, Inc. filed an application for transfer of Certificate No. 281-S from BCCU to RealNor Hallandale, Inc. The application was filed on July 28, 1999, and was assigned Docket No. 990975-SU.

5. On September 7, 1999, Michael J. Miceli, as president of BCCU, filed a letter objecting to the application for transfer, and the Commission set the matter for an administrative hearing. The sole basis for the objection filed by Michael J. Miceli is that RealNor Hallandale, Inc. is not entitled to the entire utility. Mr. Miceli claimed that BCCU still owned the collection system and that the Certificate of Title only transferred the treatment facilities.
6. In response to the BCCU claim of ownership, Northern Trust Bank of Florida, N. A., for the benefit of RealNor Hallandale, Inc., filed its “Third Amended Emergency Motion for Supplementary Relief” on September 10, 1999, in order to resolve all ownership questions related to all the utility facilities. Specifically, the motion asked that the “Court should clarify vesting the title to the entire wastewater treatment system in RealNor Hallandale by placing RealNor Hallandale into unquestionable possession of the system through a writ of replevin.”
7. On November 23, 1999, the Court issued its “Order of Clarification and Replevin” and found among other things, as follows:

4. This Court finds that the above assets include and encompass all equipment of BCCU, including but not limited to, all sewer lines, lift stations, and lift pumps, owned or previously titled in BCCU transmitting effluent to the Property because all such equipment is “Personal Property” within the purview of the Mortgage and Security Agreement foreclosed in this action because such equipment benefits and serves the real property (the “Property”) where the wastewater treatment plant (the “Improvements”) is located and are “attached to” and “necessary” for the “complete” use of the Improvements.

A certified copy of the “Order of Clarification and Replevin” is attached hereto and made a part hereof as Exhibit A.

8. The factual basis for the objection to the transfer application of Certificate No. 281-S has been resolved by the Twentieth Judicial Circuit Court in its “Order of Clarification and Replevin.” There is no factual matter left to be resolved by the administrative hearing scheduled in this docket, and the Commission should issue its summary final order in this docket, pursuant to Rule 28-106.204(4), F. A. C.

WHEREFORE and in consideration of the above, RealNor Hallandale, Inc. moves for a summary final order in Docket No. 990975-SU, which would approve the transfer of Certificate No. 281-S from Bonita Country Club Utilities, Inc. to RealNor Hallandale, Inc.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "David B. Erwin". The signature is written in black ink and is positioned above a horizontal line.

David B. Erwin  
Attorney for RealNor Hallandale, Inc.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL ACTION


NORTHERN TRUST BANK OF FLORIDA, N.A.  
a National Banking Association

Plaintiff,


v.

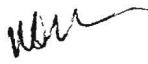
CASE NO. 98-6169-CA-WCM

BONITA COUNTRY CLUB UTILITIES, INC.  
a Florida Corporation, THOMAS HEIDKAMP,  
CHAPTER 7, TRUSTEE, and all persons having  
or claiming by, through, under, or against any of  
the above parties and all parties having any right,  
title or interest in the subject property.

BY  BCC  
98 NOV 23 AM 10:34  
CLERK OF COURT  
LEE COUNTY, FLORIDA

Defendants.

OF CLARIFICATION AND REPLEVIN  
ORDER 



THIS CAUSE having come before the Court on Plaintiff's Third Amended Emergency Motion For Supplemental Relief on November 23, 1999, the Court having heard the evidence, having heard argument of counsel, and being otherwise fully advised in the premises, the Court finds the following:

1. On April 6, 1999, this Court entered an Amended Summary Final Judgment of Foreclosure ("Final Judgment"). In paragraph 12 of the Final Judgment, this Court retained jurisdiction to make all other orders and judgments as may be necessary and proper.
2. The Defendant, Bonita Country Club Utilities, Inc., ("BCCU") did not exercise its right of redemption, and the Clerk of the Court issued a Certificate of Title on

July 15, 1999. Northern Trust assigned title to RealNor Hallandale, Inc., on June 24, 1999.

3. The Certificate of Title conveyed title to RealNor Hallandale to, among other things, the following:

All permits and licenses for maintaining and using the premises, any easements benefiting or serving the property... and the rents, issues and profits thereof....

All rents, issues, profits, revenues, royalties, rights and benefits derived from the premises...

Together with any and all improvements (collectively the "Improvements") now or hereafter attached to . . . the real property ("Property"); all fixtures, furnishings, equipment, inventory, and other articles of personal property (collectively the "Personal Property") that are now or hereafter attached to or . . . that are necessary or useful for the complete . . . use and occupancy of the Improvements for the purposes for which they were or are to be attached, . . . or that are or may be used in or related to the . . . operation of the Improvements ....

All permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property, the Improvements or the Personal Property....

All deposits . . . bank accounts, accounts receivable . . .

All right, title and interest of Bonita Country Club Utilities, Inc. in and to all streets, roads, public places, easements and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Property...

Other interests of every kind and character that Bonita Country Club Utilities, Inc. now has or at any time hereafter acquires in and to the Property, Improvements, and Personal property described herein and all property that is used or useful in connection therewith . . .

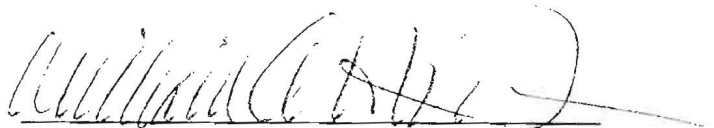
4. This Court finds that the above assets include and encompass all equipment of BCCU, including but not limited to, all sewer lines, lift stations, and lift pumps

owned or previously titled in BCCU transmitting effluent to the Property because all such equipment is "Personal Property" within the purview of the Mortgage and Security Agreement foreclosed in this action because such equipment benefits and serves the real property (the "Property") where the wastewater treatment plant (the "Improvements") is located, and are "attached to", and "necessary" for the "complete" use of the Improvements.

Accordingly, it is ORDERED AND ADJUDGED that:

A Writ of Replevin hereby issues in favor of RealNor Hallandale finding that RealNor Hallandale has the right to possession of the entire wastewater treatment system conveyed in the Certificate of Title, specifically including all equipment, [REDACTED] of BCCU. *W. C. McIver*

**DONE AND ORDERED** in Chambers, Lee County, Florida, this 23<sup>rd</sup> day of November, 1999.



Honorable William C. McIver  
Circuit Court Judge

Conformed Copies to:  
Wayde Seidensticker, Esq.  
Michael Brundage, Esq.  
D. Keith Wickenden, Esq.

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I CERTIFY THIS DOCUMENT TO BE A  
TRUE & CORRECT COPY OF THE  
ORIGINAL ON FILE IN MY OFFICE.

NOV 30 1999

Charlita Grooms, Clerk, Circuit  
Court, Lee County, Florida  
BY: *[Signature]*