

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: NORTH FORT MYERS UTILITY, INC.'S)
discontinuation of wastewater service in) Docket No. ~~000611-SU~~
Buccaneer Estates.)

981781-SU

NORTH FORT MYERS UTILITY, INC.'S ANSWER
TO PETITION FOR EMERGENCY VARIANCE OR WAIVER

RECORDS AND REPORTING

MAY 23 11:50 AM

RECEIVED-FPSC

NORTH FORT MYERS UTILITY, INC. ("NFMU"), by and through its undersigned attorneys and pursuant to Rule 28-106.203, Florida Administrative Code, files this Answer to Office of Public Counsel's ("Public Counsel") Petition for Emergency Variance or Waiver, and in opposition to that Petition states:

1. Public Counsel, through its Petition, effectively seeks a stay of this Commission's Orders PSC-99-2444-AS-SU and PSC-00-0370-FOF-SU, without providing safeguards to NFMU. As such, it is an inappropriate procedure to accomplish that result.

2. No request for a stay has been filed by the Appellants pursuant to Rule 25-22.061(2), Florida Administrative Code, or

Fla.R.App.P. 9.310. Mr. Devine did file a motion for a stay with the First District Court of Appeal, which motion was denied. Attached as Exhibit "A" is a copy of the Order denying Mr. Devine's motion for a stay.

- APP. Smith
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- SER _____
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FPSC-RECORDS/REPORTING

3. The same public health issues raised by Public Counsel were raised in a lawsuit that the owner of Buccaneer Estates filed against NFMU on May 15, 2000. A copy of that Complaint is attached hereto as Exhibit "B". After the hearing on the motion for temporary injunction to enjoin NFMU from disconnecting wastewater service to those residents of Buccaneer Estates who had not paid their wastewater bills, the motion was denied. A copy of the Order Denying Temporary Injunction is attached hereto as Exhibit "C". As the Judge noted in that hearing, the residents can avoid the adverse consequences of the disconnection by paying the bills to NFMU.

4. Subsequently, the owner of Buccaneer Estates sent a letter to each resident advising that in order to avoid any health hazard, it was going to disconnect water service to any house to which NFMU has disconnected wastewater service. Attached hereto as Exhibit "D" is a copy of that letter.

5. NFMU is sensitive to the huge cost of having to dig up the wastewater line in order to disconnect service. That is the reason why NFMU has notified customers in two separate notices that it may cost several hundred dollars to disconnect service and that the delinquent customer would be responsible for reimbursing NFMU

that cost in order to be reconnected. Apparently, many of the residents have followed Mr. Devine's erroneous advice that they do not have to pay bills from NFMU during the pendency of the appeal.

6. Since the owner of Buccaneer Estates, which controls the water service to the residents of Buccaneer Estates, will be disconnecting water service to those residents who have service from NFMU disconnected in order to avoid the health hazards asserted by Public Counsel, the customers of NFMU should be spared the enormous expense of digging up lines in order to disconnect wastewater service. This can be accomplished with a minimal expense to the customers by the owner of Buccaneer Estates agreeing to disconnect water service in lieu of, and not in addition to, NFMU digging up the sewer line in order to disconnect wastewater service.

7. Public Counsel's request that NFMU not be allowed to disconnect service to customers who do not pay their wastewater bills, without any protection to NFMU is unprecedented, and would result in irreparable injury to NFMU. On the other hand, the PSC has jurisdiction over NFMU to require it to make refunds to the customers should the PSC's Final Order be reversed.

WHEREFORE, NFMU requests the Commission deny Public Counsel's Petition, and as an alternative to require the owner of Buccaneer Estates to disconnect water service to those residents of Buccaneer Estates who are delinquent with payment to NFMU of their wastewater bills.


Respectfully submitted on this
23rd day of May, 2000, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

By: 
MARTIN S. FRIEDMAN
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Answer to Petition for Emergency Variance or Waiver has been forwarded via U.S. Mail to Steve Reilly, Esquire, Office Of Public Counsel, 111 West Madison Street, Suite 812, Tallahassee, FL 32301-1906, Jennifer Brubaker, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, Mr. Stan Durbin, 718 Brigantine Boulevard, North Fort Myers, FL 33917-2920, Mr. Ronald Ludington, 509 Avanti Way Boulevard, North Fort Myers, FL 33917, Mr. Donald Gill, 647 Brigantine Boulevard, North Fort Myers, FL 33919-2918, Mr. Joseph Devine, 688 Brigantine Boulevard, North Fort Myers, FL 33917, and David W. Fell, Esquire, Manufactured Home Communities, Inc., Two North Riverside Plaza, Chicago, IL 60606, on this 23rd day of May, 2000.


MARTIN S. FRIEDMAN

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399-1850
Telephone No. (850) 488-6151

RECEIVED

MAY 17 2000

May 16, 2000

Rose Sundstrom & Bentley, LLP

CASE NO.: 1D00-951

L.T. No. : 981781-SU

Joseph Devine, Et Al

v. North Fort Myers Utility,
Inc.

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellants' motion to stay proceedings, filed April 19, 2000, is denied.

The motions seeking to strike appellee North Ft. Myers Utility, Inc.'s response to the motion to stay proceedings, filed May 3 and May 10, 2000, are denied.

The motions seeking to strike appellee Florida Public Service Commission's response to the motion to stay proceedings, filed May 3 and May 10, 2000, are denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

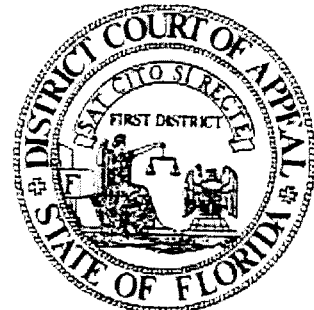
Donald Gill
Jack Shreve

Ronald Ludington
Mary Anne Helton

Joseph Devine
Martin S. Friedman

am


JOY S. WHEELER, CLERK



EXHIBIT

"A"

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

SNOWBIRDLAND VISTAS, INC., a)
foreign corporation, and MHC-DeANZA)
FINANCING LIMITED PARTNERSHIP,)
a foreign limited partnership,)
)
Plaintiffs,)
)
vs.)
)
NORTH FORT MYERS UTILITY, INC.,)
)
Defendant.)
)

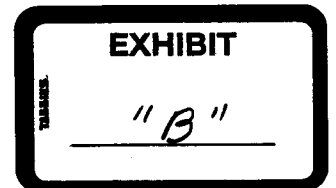
Case No.: _____

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiffs, Snowbirdland Vistas, Inc. and MHC-DeAnza Financing Limited Partnership ("Plaintiffs"), sue North Fort Myers Utility, Inc. ("NFMU") and allege:

GENERAL ALLEGATIONS

1. Plaintiff Snowbirdland Vistas, Inc. is an Illinois corporation registered and authorized to do business in the State of Florida.
2. Plaintiff MHC-DeAnza Financing Limited Partnership is an Illinois limited partnership registered and authorized to do business in the State of Florida.
3. Plaintiffs own that certain mobile home park known as Buccaneer Mobile Home Estates ("Buccaneer Estates"), consisting of 971 leased manufactured home lots, and more particularly described by the legal description attached as Exhibit "A" (the "Property")
4. Defendant NFMU is a corporation organized and existing under the laws of the State of Florida.



5. NFMU is a Class A wastewater utility providing wastewater collection, treatment, and disposal service to customers in Lee County, Florida, including the 971 manufactured home sites in Buccaneer Estates.

6. NFMU and residents of Buccaneer Estates are currently engaged in litigation pending in the Court of Appeals for the First District of Florida. Apparently related to and possibly in retaliation for that litigation, NFMU has now threatened to enter the Property and to "bring in a backhoe to dig up the sewer line and close it off with a valve" for hundreds of residents of Buccaneer Estates. A copy of the Disconnect Notice sent by NFMU to said residents is attached as Exhibit "B."

7. NFMU's threatened action threatens the health, safety and welfare of all of the residents of the 971 manufactured home sites in Buccaneer Estates, as well as of all persons living in the surrounding area, and would irreparably damage the Property and Plaintiffs' interest in the Property.

8. All conditions precedent to this action have occurred, have been satisfied, or have been waived.

COUNT I - ACTION FOR TEMPORARY AND PERMANENT INJUNCTION

9. This is an action against NFMU for a temporary and permanent injunction.

10. Plaintiffs reallege and incorporate herein by reference Paragraphs 1 through 10 above.

11. Unless enjoined by this Court, NFMU will imminently enter the Property and cause irreparable damage to Plaintiffs by destroying or rendering inoperable wastewater collection lines to the residents of Buccaneer Estates.

12. NFMU's threatened action creates a grave public health risk because the water supply to residents of Buccaneer Estates suffering such action by NFMU will not and cannot be terminated

in conjunction with the interruption of wastewater service. Raw sewage back-up containing human waste and flooding will result where residents have a water supply but no means of wastewater disposal. This action endangers the health, welfare, and safety of the residents of Buccaneer Estates by threatening them with disease and disruption of their and Plaintiffs' peaceable enjoyment of the Property. In addition, the threatened action will cause irreparable damage to the business reputation and goodwill of Buccaneer Estates.

13. Plaintiffs have no adequate remedy at law to prevent this injurious interference with their peaceful possession, use, and enjoyment of the Property and avoid a severe public health risk.

14. Public policy and the interests of justice dictate the issuance of an injunction to prevent NFMU from endangering the health, safety and welfare of the residents of Buccaneer Estates and citizens of Lee County, Florida.

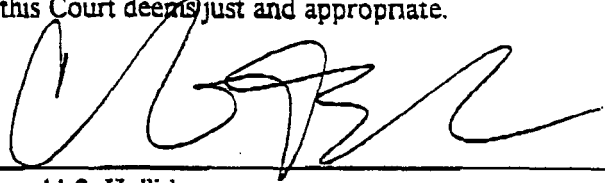
WHEREFORE, Plaintiffs, Snowbirdland Vistas, Inc. and MHC-DeAnza Financing Limited Partnership, demand:

A. An injunction temporarily restraining Defendant, North Fort Myers Utility, Inc., its agents and employees, pending final adjudication and permanent relief interrupting or discontinuing wastewater service to any resident of Buccaneer Estates;

B. An injunction permanently restraining Defendant, North Fort Myers Utility, Inc., its agents and employees from interrupting or discontinuing wastewater service to any resident of Buccaneer Estates;

C. Costs of this action; and

D. Such other and further relief as this Court deems just and appropriate.



Ronald S. Holliday
Florida Bar No. 612677
Christian C. Burden
Florida Bar No. 0065129
PIPER MARBURY RUDNICK & WOLFE LLP
101 East Kennedy Boulevard
Suite 2000
Tampa, Florida 33602
Tel. (813) 229-2111
Attorneys for Plaintiffs

Dated: May 15 2000

VERIFICATION

STATE OF ILLINOIS

COUNTY OF COOK

Before me the undersigned authority, personally appeared, David W. Fell, who after being duly sworn, stated:

- 1. His name is David W. Fell;
- 2. He is the authorized representative for Snowbirdland Vistas, Inc. and MHC-DeAnza

Financing Limited Partnership;

3. He has personal knowledge of the facts and circumstances articulated in the foregoing Verified Complaint;

4. He has read the foregoing Verified Complaint; and

5. He has freely and voluntarily executed this Verified Complaint to evidence the truth and veracity of the factual allegations as set forth therein.

David W. Fell
DAVID W. FELL

SWORN TO AND SUBSCRIBED before me this 12th day of May, 2000.



Donna J Skweres
Notary Public
My Commission Expires:

(Notarial seal)

10/27/03

EXHIBIT "A"**Legal Description of Property**

All that part of the Northwest quarter (NW 1/4) and that part of the Northeast quarter (NE 1/4) of the Southwest quarter (SW 1/4) of Section 35, Township 43 South, Range 24 East, lying Easterly of the Tamiami Trail (State Road No. 45) and lying Northerly of a line being the Northerly line of Dormier Heights according to plat recorded in Plat Book 22 at Page 28 of the Public Records of Lee County, Florida, and a Westerly prolongation of said Northerly line to the Easterly line of said Tamiami Trail.

Subject to the maintained right-of-way of Queens Road.

The Northeast quarter (NE 1/4) of said Section 35, EXCEPTING THEREFROM the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4), the South half (S 1/2) of the Southeast quarter (SE 1/4) of the Southeast quarter (SE 1/4) of the Northeast quarter (NE 1/4) and the following described parcel:

A tract or parcel of land lying in the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of Section 35, Township 43 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

From the northwest corner of the Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) of said section run South 89 Degrees 48 Minutes 43 Seconds East along the North line of said fraction of a section along the southerly line of a roadway easement 25 feet wide for 395 feet to the Point of Beginning of the herein described parcel.

From said point of beginning run North 00 Degrees 09 Minutes 33 Seconds West parallel with the west line of said fraction of a section for 495 feet; thence run South 89 Degrees 48 Minutes 43 Seconds East parallel with the north line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4) for 610 feet; thence run South 00 Degrees 09 Minutes 33 Seconds East parallel with the West line of said fraction of a section for 700 feet; thence run North 89 Degrees 48 Minutes 43 Seconds West for 340.87 feet to an intersection with the east line of said Southwest quarter (SW 1/4) of the Southwest quarter (SW 1/4) of the Northeast quarter (NE 1/4); thence run North 00 Degrees 11 Minutes 58 Seconds West along said east line for 205 feet to the Northeast corner of said fraction of a section; thence run North 89 Degrees 48 Minutes 43 Seconds West along the North line thereof for 268.98 feet to the Point of Beginning.

TOGETHER WITH the hereinabove described roadway easement 25 feet wide. Bearings hereinabove mentioned are from the centerline survey of State Road No. 45.

Save and except that portion of the foregoing land described in that certain Order of Taking recorded in O.R. Book 1848, Page 1858, Public Records of Lee County, Florida.

The above includes all of Buccaneer Mobile Home Estates, Unit 1, a Subdivision, according to the plat thereof recorded in Plat Book 29, Pages 117 through 119, inclusive, in the Public Records of Lee County, Florida.

TOTAL P.03
05/11/2000 11:50



5680 Bayshore Road, Suite 51 • North Fort Myers, Florida 33917

Mailing Address: P.O. Box 2547 • Fort Myers, Florida 33902

(941) 543-1005

DISCONNECT NOTICE

Date: 5/10/2000

Your account for Wastewater Service is now delinquent in the amount of \$ 10.98.
If full payment is not received in this office by: 5/16/00 your wastewater service
will be disconnected after: 5/17/00. This action is being taken in accordance of North
Fort Myers Utility's approved tariff and with the Rules of the Florida Public Service Commission (PSC),
Rule 25-30.320.

In order to have service reconnected you will be compelled to pay all outstanding bills, plus the
actual cost of disconnecting and reconnecting service. I would expect the later cost to be several hundred
dollars.

Delinquent status customer accounts may also be subject to a security deposit in accordance with
North Fort Myers Utility's tariff and Rule 25-36.311(7) of the PSC.

Should you have any questions regarding your account, please contact our Customer Service
Representatives at 941-543-1005. If you are dissatisfied with this action, you may contact the Florida
Public Service Commission at 1-800-342-3552.

NORTH FORT MYERS UTILITY, INC.

DISCONNECTNOTICE.DOC

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

SNOWBIRDLAND VISTAS, INC., a)
foreign corporation, and MHC-)
DeANZA FINANCING LIMITED)
PARTNERSHIP, a foreign limited)
partnership,)

Plaintiffs,)

vs.)

NORTH FORT MYERS UTILITY, INC.)

Defendant.)

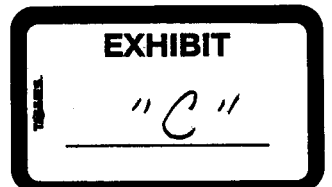
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CASE NO. ~~00-452-CA-WCM~~

FILED LEE CO. FLORIDA
CLERK OF COURTS
2009 MAY 17 AM 11:28
BY *[Signature]*
D.C.

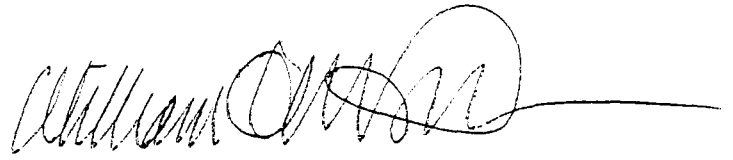
ORDER DENYING TEMPORARY INJUNCTION

THIS MATTER came before the Court on the Verified Complaint for Injunctive Relief filed by Plaintiffs, and this Court having considered the evidence presented and argument of counsel, and being otherwise advised in the premises, it is

ORDERED AND ADJUDGED that the Plaintiffs' Motion for a temporary injunction to prohibit Defendant from digging up and plugging wastewater collection lines to the residents of Buccaneer Estates is hereby DENIED *without prejudice*.



DONE AND ORDERED in Chambers in Lee County, Florida, this 17th
day of May, 2000.



Circuit Judge

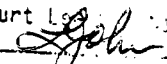
Copies forwarded to:

Ronald S. Holiday, Esquire
Daren L. Shippy, Esquire

nfm\buccanee\injunction.ord

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

MAY 18 2000

Charlie [unclear] Clerk Circuit
Court Lee County, Florida
BY:  D.C.

all

To All Residents of Buccaneer Estates

May 18, 2000

cc(fax): Marty Friedman, FYI

Dear Residents:

North Fort Myers Utility, Inc. (Utility), which provides wastewater service to Buccaneer Estates, has threatened to disconnect the sewer lines of residents who fail to pay their sewer bills. If you did not pay the bill you received from the Utility last month, you may already have received a disconnect notice from the Utility. If you did not receive a bill or are unsure whether you paid it, you should contact the Utility as soon as possible to determine the status of your account and ensure that your service is not inadvertently disconnected.

We understand that several residents have appealed the Florida Public Service Commission order granting the Utility the right to provide wastewater service to Buccaneer Estates. Some residents may not have paid their sewer bills while awaiting a decision regarding that appeal. However, the Utility's stated intention is to disconnect sewer services in the community notwithstanding the appeal.

MHC has made numerous efforts to prevent the Utility from taking this action against our residents. We have communicated with the Utility and its attorneys both orally and in writing, asking that the Utility agree to a "standstill" so that the parties can meet to discuss their differences. When this approach failed, MHC petitioned the Lee County Circuit Court to issue a temporary injunction prohibiting the Utility from disconnecting sewer services at Buccaneer Estates until the matter can be fully considered by the court. However, the court denied MHC's motion, indicating that the Utility has the right to disconnect service for non-payment. The judge also indicated that residents should consider paying their sewer bills now and seeking reimbursement later if they are successful in challenging the Utility's charges. Neither the Lee County Sheriff's office nor the Lee County Commissioners' office has given any notice to MHC or the Utility of any intention to take action to prevent the Utility from exercising its right to disconnect service.

Should the Utility proceed to disconnect your sewer service, there arises a potential liability associated with the health and safety hazards that may result from such disconnection. Consequently, water service will be shut off to any home after the sewer service to such home is disconnected, as authorized by the Rules of the Florida Public Service Commission. The facilities in the community's clubhouse will remain available for use by residents, and MHC plans to have bottled water available for residents whose water service is disconnected. Unless otherwise directed by the governmental authorities having jurisdiction over the matter, water service will not be resumed to any such home until the sewer service is reconnected.

If you choose not to pay your sewer bill, you are proceeding at your own risk and are potentially liable for all damage or injury resulting therefrom. In addition, if your acts create a situation which endangers the life, health, safety or property of other residents, this could lead to eviction proceedings under Florida law.

It is unfortunate that this dispute has progressed to this point. We continue to believe that the parties can reach a mutually-acceptable settlement to resolve their differences. To facilitate this process, MHC recently delivered to the Utility and to the community's homeowners association (through their attorneys) a proposal setting forth the framework for such a settlement.

If you have questions regarding your sewer service or any charges assessed by the Utility, please contact the Utility at (941) 543-4000. If there are any other questions, we would be happy to discuss them with you. Thank you for your consideration.

Sincerely,

Roger Maynard
Senior Vice President

cc: Lou Ann McColloch
Don Barton

