

4/14/2015 10:46 AM

~~IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT~~
~~IN AND FOR SARASOTA COUNTY, FLORIDA~~ ~~RECEIVING~~
IN AND FOR SARASOTA COUNTY, FLORIDA
SARASOTA COUNTY, FLORIDA

VILLAGE PLAZA CONDOMINIUM
ASSOCIATION, INC.,

CIVIL COURTS

Receipt # 1849131

Plaintiff(s)

vs.

CASE NO: 2012 CA 010171 NC

PHILIP E. PRINCIPE, as Trustee of the
PHILIP E. PRINCIPE TRUST 2002,
DATED APRIL 10, 2002

Defendant(s).

FINAL ORDER

THIS CASE came before the Court on a Non-Jury Trial on the Plaintiff's
Complaint for Declaratory and Injunctive Relief Against the Defendant.

The Plaintiff is a Florida Non-Profit Corporation and Condominium Association formed under Florida Statutes §617.01011 and §718.101. The Defendant Principe owns a condominium at the subject property and is subject to the Declaration of Condominiums. It is undisputed that in approximately January 2012, the Defendant, without obtaining written consent or approval of the Board of Directors of the Plaintiff's association, made changes to the front doorway area of his unit. Specifically, he added double French doors. Although the Plaintiff previously took the position that this area was a limited common element as defined in the Declaration, it abandoned this argument at trial, and instead argued that the Defendant's actions violated section 14(g) of the Declaration and was also inconsistent with provisions of section 11(g).

Section 14(g) states as follows:

- No wire, antenna, clothes lines, garbage or refuse receptacle, or other equipment or structures shall be erected, constructed, or maintained on the exterior of the building or on or in any of the common elements except upon the written consent of the association Board of Directors.

Section 11(g) states, “All exterior windows and screening shall be maintained in such manner as to preserve a uniform appearance to the exterior of the building.”

In addition to asserting various defenses, the Defendant also maintained that the Plaintiff engaged in selective enforcement of the subject Declaration. Additionally, he points to the enactment of Florida Statute §720.3035, which requires that exterior appearance restrictions in condominium Declarations must contain specific standards. Finally, the Defendant points out that, throughout the history of the Plaintiff Association, there is not a single scrap of paper evidencing that that the Board of Directors ever approved the type of alteration at issue in this case, or for that matter, any other type of alteration. Rather, the “approval” process described by the Plaintiff’s witnesses was ad hoc and largely undocumented.

The Plaintiff contends that the Defendant was required by the Declaration to obtain board approval, and that his failure to do so, albeit through a process that was informal to the point of being nonexistent, nonetheless justifies declaratory and injunctive relief.¹

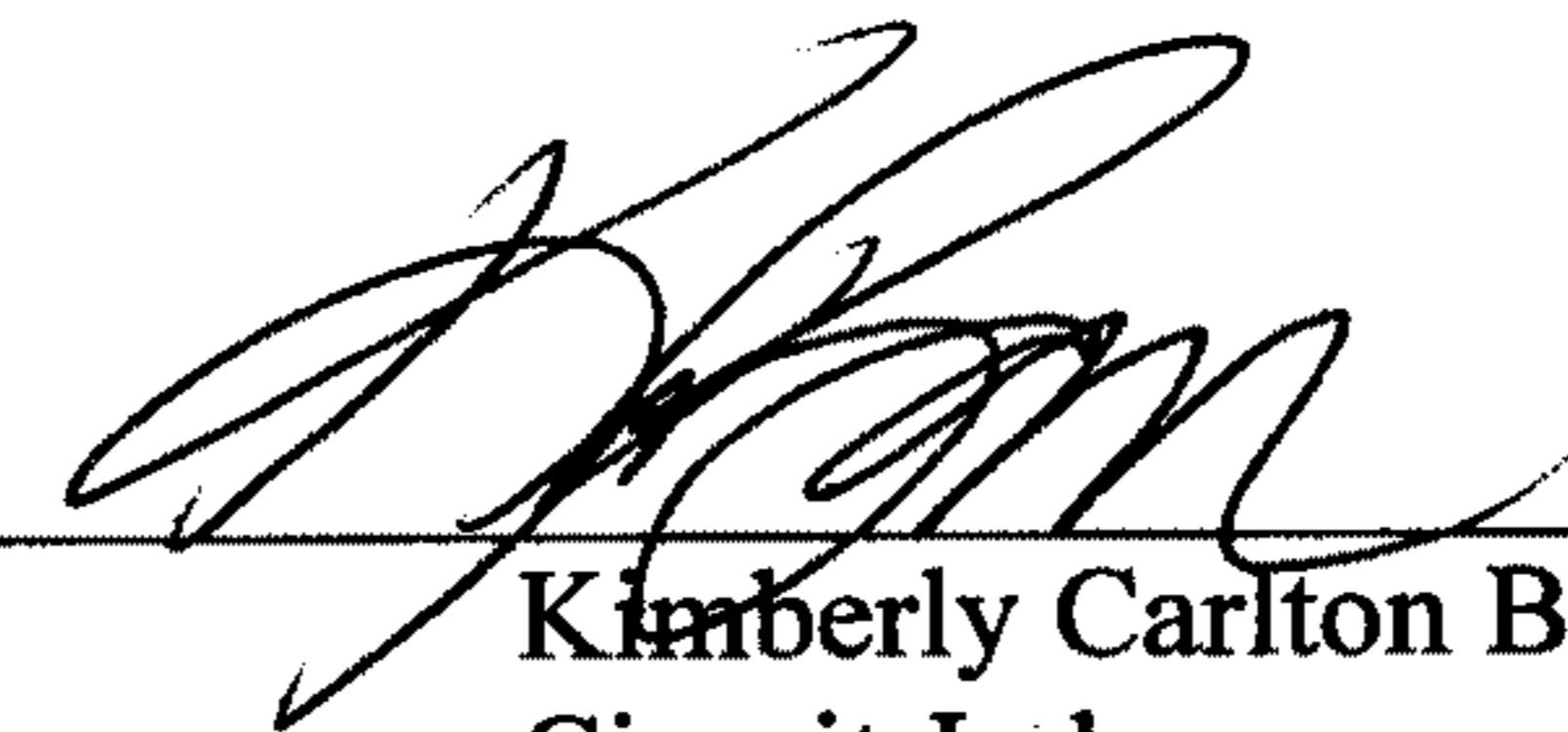
Upon consideration of the testimony and other evidence in the case, and upon review of the subject provisions of the Declaration, the Court finds that the alterations made by the Defendant do not fall within the purview of Section 14(g). This section refers to items such as wires, clothes lines, or other equipment or structures on the exterior of the building or in any of the common elements. The Plaintiff did not argue,

¹ The fact that the Defendant at one time also believed that approval was necessary is of no moment.

nor does the Court conclude, that the location of the door in this case is part of a common element or a limited common element of the association. Moreover, it appears that this provision of the Declaration applies to free standing structures that would create eye sores within the neighborhood. In construing a Declaration of Condominium, the Court must give words of common usage their plain and ordinary meaning. *Berkovich v. Casa Paradiso North, Inc.*, 125 So. 3d. 938 (Fla. 4th DCA 2013). It cannot fairly be said that a door is “equipment” or a “structure.” The Plaintiff’s reliance upon Section 11(g), the uniform appearance provision, is likewise misplaced. This section only references exterior windows and screening and cannot be expanded to include other areas.²

The Court therefore finds the Plaintiff has failed to meet its burden of proof on the subject claim and enters judgment in favor of the Defendant, who shall go hence without day. The Court reserves jurisdiction to address any issues of attorney’s fees and costs.

DONE AND ORDERED in chambers at the Judge Lynn N. Silvertooth Judicial Center, 2002 Ringling Blvd., Sarasota County Judicial Center, Sarasota, Florida on this 13 day of April, 2014.



Kimberly Carlton Bonner
Circuit Judge

cc:

James Essenson, Esq.
2071 Main St.
Sarasota, Florida 34237

Scott McKay, Esq.
1904 Manatee Avenue W, Ste 300
Bradenton, FL 34205

² Based on the Court’s determination it is unnecessary to further address the claim of selective enforcement.