

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

CASE NO.: 09-237-GCS

AARON SEWARD,

Plaintiff,

vs.

THE KNOLL-CENTURY HILL  
HOMEOWNER'S ASSOCIATION, INC.,

Defendant.

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**SUMMARY FINAL JUDGMENT**

THIS CAUSE having come before the Court on April 7, 2010, on the Motion for Summary Judgment filed by Plaintiff, AARON SEWARD, and the Court, having reviewed the Court file, having heard argument of counsel, and otherwise being fully advised in the premises, does hereby

**ORDER AND ADJUDGE:**

1. The Court determines that there is no genuine issue of material fact and that Plaintiff, AARON SEWARD, is entitled to a judgment as a matter of law. Therefore, the Motion for Summary Judgment, filed by Plaintiff, is granted.

2. The development known as "The Knoll-Century Hill" is a residential manufactured home community located in or near Avon Park, Highlands County,

Florida. The area known as "The Knoll-Century Hill" is comprised of two mobile home subdivisions, one known as "Century Hill" and one known as "The Knoll". Together, the two mobile home subdivisions have approximately 122 individual residential lots, owned mostly by private individuals in fee simple. Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., is a Florida not-for-profit corporation and acts as a homeowners' association, serving both mobile home subdivisions, pursuant to *Florida Statutes* Chapter 720. Plaintiff is a resident of "The Knoll-Century Hill" area, owning a residential lot and manufactured home in the Century Hill mobile home subdivision, and is a member of Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC.

3. In 2008, Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., imposed a special assessment on the members of the homeowners' association for the purpose of purchasing a building, referred to as the "clubhouse", located on four of the platted lots within "The Knoll-Century Hill" area. This property and building had not previously been owned by Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC.

4. Plaintiff has alleged that the special assessment imposed by Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., was imposed unlawfully, in violation of the Restrictions and Covenants that apply to both the Century Hill and The Knoll mobile home subdivisions. Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., admitted that the real property owned by Plaintiff is subject to the Restrictions and Covenants attached to Plaintiff's Complaint as Exhibit "A". Further, the Declaration of Restrictions and Covenants recorded at Official Records Book 642, Page 895 for the Century Hill mobile home subdivision and the Declaration of Restrictions and Covenants recorded at Official Records Book 762, Page 776 for The Knoll mobile home subdivision, both having been recorded in the Public Records of Highlands County, Florida, are identical for the specific purpose of Plaintiff's Motion for Summary Judgment. In both Declarations of Restrictions and Covenants, at Article IV, Section 4, the Restrictions and Covenants provide as follows:

4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized hereby the HOME OWNERS ASSOCIATION may levy a special assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of any capital improvement upon the COMMON PROPERTIES which may be conveyed or assigned, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of MEMBERS.

5. The Court finds that the above-quoted covenant runs with the land, binds the landowner and the homeowners' association, is applicable to the present controversy, and operates to prohibit Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., from imposing a special assessment for the purpose of purchasing the "clubhouse" and the real property on which it sits. See *Balzer v. Indian Lake Maintenance, Inc.*, 346 So. 2d 146 (Fla. 2d DCA 1977), and *Hill v. Palm Beach Polo, Inc.*, 717 So. 2d 1080 (Fla. 4<sup>th</sup> DCA 1998). As such, the special assessment imposed by Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., in 2008 for the purpose of purchasing the "clubhouse" and the real property on which it sits is unlawful and cannot stand.

6. Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., has asserted that certain amendments to the homeowners' association's bylaws in 2007 and/or 2008 operate to supersede the covenant dealing with special assessments quoted above. Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., amended or attempted to amend the bylaws as follows, among other things:

In addition to the annual assessments, the Homeowner's Association may levy a special assessment, for the purpose of defraying, in whole or in part, the cost of purchasing Common Properties or the construction or reconstruction, unexpected repairs or replacement of any capital improvements upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that

any such assessment shall have a two-thirds majority vote of the MEMBERS. Special Assessments shall be due and payable as provided in the authorization of the Special Assessment.

The language of the amended bylaws is identical to the special assessment covenant, except for the addition of the phrase "the cost of purchasing Common Properties".

The Court finds that this single addition to the wording of the amended by laws demonstrates that the homeowners' association was aware that the absence of such language in the special assessment covenant prohibited the homeowners' association from imposing the special assessment at issue. Plaintiff has asserted that the recorded covenant governs regardless of whether the homeowners' association subsequently adopts new or amended bylaws that conflict with the recorded covenant. As the Court has determined that the quoted covenant operates to prohibit Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., from imposing a special assessment for the purpose of purchasing the "clubhouse" and the real property on which it sits, the Court also finds that Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., cannot, by amending the bylaws or adopting new bylaws, override the provisions of the recorded covenant regarding when a special assessment can be imposed. As such, the amended bylaws purporting to give the homeowners' association the right to impose a special assessment for the purpose of purchasing

the "clubhouse" and the real property on which it sits is unlawful and cannot stand.

7. Plaintiff has also asserted that the new or amended bylaws were not lawfully enacted. It is undisputed that the Articles of Incorporation of Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., provides that only the Board of Directors may amend the bylaws of the corporation. It is also undisputed that the Board of Directors of Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., did not vote to amend the bylaws at any time during calendar years 2007 and 2008. Instead, the Board of Directors requested or allowed the general membership of the corporation to amend the bylaws. Therefore, even if the new or amended bylaws could supersede the recorded covenant, which they cannot, the new or amended would be void as a matter of law since they were not adopted by the Board of Directors as required by the Articles of Incorporation. *See Fla. Stat. § 617.0206 and New Mount Moriah Missionary Baptist Church v. Dinkins*, 708 So. 2d 972 (Fla. 3d DCA 1998).

8. Based on the foregoing, summary final judgment is entered in favor of Plaintiff, AARON SEWARD, and against Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., and the Court declares as follows:

A. That neither the Board of Directors nor the general membership of Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION,

INC., has the authority under the Declaration of Restrictions and Covenants of either the Century Hill mobile home subdivision or The Knoll mobile home subdivision to impose a special assessment for the purpose of purchasing real property from private parties, including the "clubhouse" and real property on which it sits as referenced in the Complaint filed herein.

B. That any resolution, mandate, requirement, or similar action taken by the Board of Directors or the general membership of Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., by which any proposed new or amended bylaws for Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., imposing a special assessment for the purpose of purchasing real property from private parties, including the "clubhouse" and the real property on which it sits as referenced in the Complaint filed herein is declared null and void.

9. Based on the foregoing, summary final judgment is also entered in favor of Plaintiff, AARON SEWARD, and against Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., and the Court permanently enjoins Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., from placing liens on the property of members of Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION,

INC., or from foreclosing any such liens already recorded, for failure of any such members to pay the special assessment referenced in this final judgment. If requested, Defendant, THE KNOLL-CENTURY HILL HOMEOWNER'S ASSOCIATION, INC., shall satisfy of record any such lien already recorded.

10. The Court retains jurisdiction to determine Plaintiff's entitlement to taxable costs and attorneys' fees and, if appropriate, to determine the amount thereof after proper notice and hearing. The Court also retains jurisdiction to enter such other and subsequent Orders or Judgments necessary to carry out the purposes of this Summary Final Judgment.

ORDERED in Chambers at Sebring, Highlands County, Florida this \_\_\_\_\_ day of April, 2010.

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OLIN W. SHINHOLSER  
CIRCUIT JUDGE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via United States Mail delivery to ANDREW B. JACKSON, ESQUIRE, 150 North Commerce Avenue, Sebring, Florida 33870 and to JOHN E. DUBOSE, JR., ESQUIRE, Post Office Box 1609, Orlando, Florida 33802 this \_\_\_\_\_ day of April, 2010.

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Judicial Assistant