

GRAND OAKS HOMEOWNERS ASSOCIATION, INC.

Petitioner,

v.

Case No.: 04-CA-3409

NORM AND CAROLYN LEONPACHER,

Respondents.

FINAL ORDER

This action was tried before the Court on January 12, 2007. At the close of Petitioner's case, Respondents moved the Court to enter judgment for Respondents based upon the legal authority presented in Court and in Respondents' Trial Memorandum that: (I) Petitioner failed to comply with Chapter 720, *Florida Statutes*, (ii) Petitioner failed to comply with its governing documents, and (iii) Petitioner failed to disapprove Respondents' request to install a gate in the brick wall within 30 days.

THE COURT FINDS that:

1. Respondents Norm and Carolyn Leonpacher submitted a request for the installation of a gate in the brick fence (wall) at the Grand Oaks Subdivision in accordance with the requirements of the Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") and the Bylaws of Grand Oaks Homeowners Association, Inc. (the "Association").

2. There was no binding disapproval of the Leonpachers' request for the installation of the gate by the Association to the Leonpachers within 30 days. Therefore, under Article V, Section 3 of the Declaration, the Leonpachers had the right to install the gate in the brick fence (wall).

3. The entire process involving board of directors meetings for this Association were not in accordance with Florida law. Such actions were not as a result of any intentional act by any person or any group of persons on behalf of the Association. Therefore, under Article V, Section 3 of the Declaration, the Leonpachers had the right to install the gate in the brick fence (wall).

4. The Court strongly suggest a change in the policies and procedures for future Association meetings. However, while the Court does not find that there was intentional violation of any notice requirements, the Court finds that the actions of the board of directors were in fact not in accordance with Florida law and violated the provisions of Section 720, *Florida Statutes*.

5. As a result of those findings, the Court finds that it has no choice but to grant Respondents' well-founded motion for judgment because Petitioner has not supported its case, and the Court finds that Respondents are entitled to judgment as a matter of law.

IT IS HEREBY ORDERED and ADJUDGED that:

1. There is no issue of material fact in dispute.
2. Respondents Norm and Carolyn Leonpacher are entitled to judgment as a matter of law.
3. Petitioner Grand Oaks Homeowners Association, Inc. shall take nothing by this action.

The Court reserves jurisdiction to determine whether or not an attorneys' fee award is appropriate, and if so, for whom and in what amount.

HEREBY ENTERED at Shalimar, Okaloosa County, Florida, on ~~October~~ ^{Nov} 28,

2007.

G. ROBERT BARRON

Circuit Court Judge G. Robert Barron

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Dec
On October 5, 2007.

Don W. Howard
Clerk of Circuit Court

By: 
Deputy Clerk

