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

MARINA SOUTH SHORE CONDOMINIUM  
ASSOCIATION, INC., a Florida corporation  
not-for-profit,

Plaintiff,

v.

Case No. 07-CA-005132

PUNTA GORDA ISLES, SECTION 22  
HOMEOWNERS ASSOCIATION, INC., a  
Florida corporation not-for-profit,

Defendant.

**AMENDED JUDGMENT ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

**THESE CAUSES** came before the Court for hearing on November 26, 2007, and were continued for further hearing to Friday, November 30, 2007, for rehearing on February 25, 2008, and came before the Court again for hearing on August 25, 2008, on Plaintiff's Motion for Summary Judgment, Defendant's Motion for Partial Summary Judgment, Defendant's Motion For Rehearing and the parties' Stipulation For Approval of Settlement Agreement. Having reviewed the Motions, the arguments of counsel and being otherwise fully advised in the premises, the Court hereby finds that there is no undisputed material issue of fact or law concerning the following:

1. Plaintiff, MARINA SOUTH SHORE CONDOMINIUM ASSOCIATION, INC., is a condominium association pursuant to Chapter 718 of the Florida Statutes.

2. Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., is a homeowners association pursuant to Chapter 720 of the Florida Statutes.

3. Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., is the homeowners association that maintains the common and other areas which are located throughout the Burnt Store Marina and Country Club Development.

4. Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., entered into the following agreements which were attached as Composite Exhibit "1" to Plaintiff's Motion for Summary Judgment: a) The Golf Course Lease; b) Golf Carts Lease Agreement; c) Independent Contractor Agreement; and d) Irrigation Services Agreement. The golf course which is the subject of the above-referenced agreements is hereinafter referred to as the "Golf Course."

5. On May 30, 2007, Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., called a Special Meeting of its members for the stated purpose of adjusting its 2007 budget and requiring an increase in annual assessments for the year 2007 in the amount of \$300.00 per unit for the operation of the Golf Course.

6. Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., further anticipates an additional assessment relating to the Golf Course in 2008 of \$400.00 per unit.

7. As evidenced by the Proxy Form, 2008 Projected Assessment Information and Section 22 2007 Budget Forecast attached to the Complaint filed in the instant action as Composite Exhibit "E," and Defendant's Answer to paragraph 12A of the Complaint, the above-referenced \$400.00 increase in the assessment for 2008 would represent twice the amount of the

current amount assessed by Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., to Plaintiff's members who are also members of Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC.

8. Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., intends to levy additional and increased assessments for 2007 against its members for costs solely relating to the Golf Course.

9. These additional costs which Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., intends to assess against its members related to the Golf Course include but are not limited to the following expenditures: utilities, maintenance, management, insurance, taxes, infrastructure, grounds keeping and operations.

10. As evidenced by Defendant's Answer to paragraph 13 of the Complaint, Defendant, PUNTA GORDA ISLES, SECTION 22 HOMEOWNERS ASSOCIATION, INC., anticipates that increased assessments will continue throughout the term of the Lease Agreement for the Golf Course.

11. The payment of any assessments related to the Golf Course does not afford Plaintiff's members with any rights to play golf on the Golf Course.

12. In accordance with the unrefuted statements contained within the Affidavit of Jim Murphy, the Burnt Store Marina and Country Club development was, prior to the imposition of the assessment for the Golf Course, operated on a "pay as you go" basis wherein individual members of Defendant did not pay assessments associated with the amenities available within the development. The amenities within the development consisted of restaurants, golf course, health club, racquet club and marina. These amenities, prior to institution of this action, were owned, operated and controlled by an entity other than Defendant.

13. The Court finds that the above-referenced assessments, both past and anticipated, and the execution of the Lease and associated documents (See paragraph 5, supra), by the Defendant has fundamentally changed the nature of the Burnt Store Marina and Country Club Development by making every owner responsible for funding the leasing, operations, and maintenance of the Golf Course, Club House and related systems and facilities.

14. This Court finds that Defendant was without the authority to take the above-referenced actions because they fundamentally changed the general plan of development for Burnt Store Marina and Country Club by shifting the burden of funding the leasing, operation, and maintenance of the Golf Course and related facilities to the owners through an assessment. Holiday Pines Property Owners Association, Inc. v. Wetherington, 596 So.2d 84 (Fla. 4th DCA 1982).

15. This Court finds that Defendant's action regarding the leasing, operating and maintenance of the Golf Course and related facilities for which it seeks to assess its members was ultra vires. S&T Anchorage, Inc. v. Lewis, 575 So.2d 696 (Fla. 3d DCA 1991).

**IT IS THEREFORE ORDERED AND ADJUDGED THAT**

16. Defendant's Motion for Partial Summary Judgment is hereby Denied.

17. Plaintiff's Motion for Summary Judgment is hereby Granted, and as to Count II of the Complaint, the Court hereby declares that:

a) Defendant has exceeded its authority in pursuing the lease, operation and maintenance of the Golf Course and all activities and facilities related thereto, including the execution of: a) the Golf Course Lease; b) the Golf Carts Lease Agreement; c) the Independent Contractor Agreement; and d) Irrigation Services Agreement.

b) Any attempt by the Defendant to assess Plaintiff's members for the leasing, management or operation of the Golf Course, or any activities or facilities related thereto, is a violation of Defendant's governing documents in that it would constitute a radical and fundamental change in the development.

c) Defendant's actions to lease, manage or operate the Golf Course and related facilities, exceed the scope and purpose of Defendant's governing documents.

d) Any attempt by Defendant to levy any assessments on Plaintiff's members that are associated with the leasing, maintenance, or operation of the Golf Course, or for any activity or facility related thereto, is a violation of Defendant's governing documents as they pertain to Plaintiff's operation of the Golf Course and Plaintiff's members.

e) Defendant does not have the authority to continue to assess Plaintiff's members for costs associated with the Golf Course regardless of the duration of the Lease Agreement.

18. Plaintiff, as the prevailing party, is entitled to an award of its costs pursuant to Chapter 86, Florida Statutes.

19. In accordance with Florida Statutes section 720.305, this Court finds that Plaintiff is the prevailing party in this litigation as it pertains to Count II and is entitled to recover its reasonable attorneys fees and costs. This Court reserves jurisdiction to determine the amount of Plaintiff's attorneys fees and costs as well as any additional amounts as determined by the Court to be necessary to reimburse Plaintiff's members for assessments levied by Defendant to fund its expenses of the litigation.

20. The Order on Plaintiff's Motion for Summary Judgment and Defendant's Motion for Partial Summary Judgment entered by this Court on January 24, 2008, which was recorded

on January 25, 2008, as Instrument Number 2008000022901 in the Public Records of Lee County, Florida, is hereby vacated in its entirety and replaced by this Amended Judgment.

21. This Court hereby reserves jurisdiction to determine any remaining issues contained within Count I of the Complaint.

**DONE AND ORDERED** in Fort Myers, Lee County, Florida on this \_\_\_\_\_ day of August, 2008.

**ORIGINAL SIGNED**

The Honorable Michael T. McHugh  
Circuit Court Judge

**AUG 25 2008**

**MICHAEL T. MCHUGH  
CIRCUIT JUDGE**

Conformed copies to:

Andrew I. Solis, Esq.  
Mark H. Muller, Esq.