

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

CASE NO. CACE23021004 DIVISION: 04 JUDGE: Haury, William W., Jr. (04)

Eugene Carney

Plaintiff(s) / Petitioner(s)

v.

Estates at Turtle Run Homeowners Association, Inc., et al

Defendant(s) / Respondent(s)

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AGREED FINAL SUMMARY JUDGMENT OF INJUNCTION

This matter came before the Court on Plaintiff's Motion for Summary Judgment of Injunction as to Count I. The Court having been advised of the agreement of the parties, and having reviewed the Motion, the court file and being otherwise fully advised in the premises, the Court grants the Motion and finds as follows:

PROCEDURAL BACKGROUND

On November 10, 2023, Plaintiff, EUGENE CARNEY ("Carney") filed this injunctive lawsuit against Defendants, ESTATES AT TURTLE RUN HOMEOWNERS ASSOCIATION, INC. ("Association") and CHRISTOPHER KAPISH ("Kapish") (collectively referred to as "Defendants"). Plaintiff Carney and Defendant Kapish are Board Members of Defendant Association. Defendant Kapish is the President of the Association. Defendants Association and Kapish were served with the lawsuit on November 21, 2023. Count I of Plaintiff's Complaint seeks to enjoin Defendants to hold an annual meeting and election; and Count II of Plaintiff's Complaint seeks to enjoin Defendants from proceeding with the paver agreement because it was not authorized by the Board of Directors. See Complaint, *passim*. On December 19, 2023, the Board of Directors of Association approved proceeding with the paver agreement. On January 29, 2024, Defendants filed an Answer and Affirmative Defenses. On February 2, 2024, Plaintiff Carney moved for Summary Judgment as to Count I of the Complaint

and scheduled same for hearing for March 25, 2024. On March 4, 2024, the Board of Directors met and unanimously voted to schedule the annual meeting and election the week between April 29, 2024 and May 3, 2024. The parties, thereafter, agreed to entry of this Order granting Plaintiff's Motion for Summary Judgment of Injunction as to Count I. Pursuant to the parties' agreement, Plaintiff Carney has withdrawn Count II as moot. Based on the foregoing, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This is an action for injunctive relief pursuant to the governing documents, including the Declaration of Covenants and Restrictions ("Declaration") for the Association and its Bylaws.
2. Defendant Association is a homeowners' association organized under the laws of the State of Florida as a not-for-profit corporation and located in Broward County, Florida.
3. Defendant Kapish is the current president of Defendant Association.
4. Pursuant to Article II, Section 1 of the Association's Bylaws and Section 720.306, Florida Statutes, the Defendants are obligated to hold an annual meeting in December of every year, at which time the Board of Directors for the Association are to be elected.
5. Defendants failed to hold the annual meeting and election in December 2022 and December 2023, and failed to hold same thereafter.
6. Pursuant to Article III, Section 3 of the Bylaws, each Director of the Association is elected for a one-year term and serves until: (1) his/her successor is elected; (2) he/she is removed from the Board of Directors, as provided in the Bylaws or Florida Statutes; or (3) he/she resigns from the Board of Directors.
7. Plaintiff Carney has been denied his right to vote for who may serve on the Board of Directors.
8. Defendant Kapish continues to serve as President of the Association, until his replacement is elected. *Paradise Lakes RV Park Condominium Association, Inc. V. Lloyd Qualls*, Arb. Case No. 02-4832, Summary Final Order; citing 18B Am. Jur. 2D Corporations § 1418 (de facto officers serve until their replacement is elected).

9. The Court finds there is no genuine dispute of any material fact, and Plaintiff Carney is entitled to an injunction against Defendants, which requires them to schedule and conduct an annual meeting and election. This Court shall order same and retain jurisdiction to ensure that the annual meeting and election are completed.

10. This Court further finds that Plaintiff Carney is the prevailing party in this matter and is entitled to attorney's fees and costs from Defendants Association, because Plaintiff obtained the injunction sought against Defendants to schedule the annual meeting and election to take place the week between April 29, 2024 and May 3, 2024. "Their voluntary compliance with the deed restrictions was the functional equivalent of a judgment or verdict in favor of the plaintiff/association, thus making the association entitled to an award of attorney's fees and costs as the prevailing party." *Payne v. Cudjoe Gardens Prop. Owners Ass'n*, 875 So. 2d 669, 671 (Fla. 3d DCA 2004).

11. Defendant Kapish also reversed position and obtained Board approval for the paver contract, after being served with the lawsuit, therefore, mooting Count II of Plaintiff's Complaint. This is the functional equivalent of a judgment or verdict in Plaintiff's favor. *Augustin v. Health Options of South Florida, Inc.*, 580 So. 2d 314, 315 (Fla. 3d DCA 1991) (Full payment of the amounts prayed for, mooted the action; and was functionally equivalent of a judgment or verdict in favor of plaintiff, thus entitling plaintiff to attorney's fees as prevailing party. *Black v. Bedford at Lake Catherine Homeowners Ass'n*, 801 So. 2d 252, 254 (Fla. 4th DCA 2001) (Because appellants mooted and thus prevailed on every adjudicated issue in this litigation, they are the prevailing party for determining attorney's fees and costs).

ADJUDICATION

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. Final Summary Judgment of Injunction is hereby entered against Defendants, ESTATES AT TURTLE RUN HOMEOWNERS ASSOCIATION, INC. and CHRISTOPHER KAPISH, as follows:

A) Defendant Kapish is hereby enjoined to schedule, attend, and complete the annual

meeting and election of the Association, in accordance with the Association's governing documents and Florida Statutes, between April 29, 2024 and May 3, 2024; notices must be mailed out to the homeowners no later than 30 days before the annual meeting and election; and

B) Defendant Association is hereby enjoined to schedule and conduct the annual meeting and election of the Association, in accordance with the Association's governing documents and Florida Statutes, between April 29, 2024 and May 3, 2024; notices must be mailed out to the homeowners no later than 30 days before the annual meeting and election.

2. This Court retains jurisdiction of this case to enter such further orders and judgments that are necessary and proper to compel compliance with this judgment, including but not limited to: an order to show cause, order compelling compliance, order of contempt, and an award of additional attorney's fees and costs incurred in enforcement of same.

3. Plaintiff is entitled to recover his reasonable attorney's fees and costs from Defendant Association. The Court reserves jurisdiction to determine the amount of Plaintiff's award of reasonable attorney's fees and costs.

4. Count II of Plaintiff's Complaint is rendered moot and is hereby dismissed, in light of the parties' agreement.

DONE AND ORDERED in Chambers at Broward County, Florida on 24th day of March, 2024.



CACE23021004 03-24-2024 5:58 PM
Hon. William Haury Jr
CIRCUIT COURT JUDGE
Electronically Signed by William Haury Jr

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