

IN THE COUNTY COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT IN  
AND FOR SEMINOLE COUNTY,  
FLORIDA

BRANTLEY HARBOR HOMEOWNERS' )  
ASSOCIATION, INC., a Florida non-profit )  
corporation, )

Plaintiff, )

vs. )

JUDITH T. CRAGO, )  
an individual, and )  
MAGNETIC REAL ESTATE NETWORK, )  
INC., a Florida for-profit corporation, )

Defendants. )  
\_\_\_\_\_ )

Case No.02-CC-937-20S

**FINAL JUDGMENT**

This matter came before this Court upon Plaintiff's Motion for Summary Judgment and/or in the Alternative Plaintiff's Motion for Declaratory Judgment and Injunction. Hearings were held on July 31, 2003, August 27, 2003. and July 9, 2004. After reviewing arguments of counsel on file, and being otherwise fully advised, this Court makes the following findings and conclusions.

**INTRODUCTION**

The Plaintiff, BRANTLEY HARBOR HOMEOWNERS' ASSOCIATION (hereinafter "Plaintiff"), communicated to JUDITH T. CRAGO and MAGNETIC REAL ESTATE NETWORK, INC., (hereinafter "Defendants") that the business activity being conducted on the residential property located at 103 Cherry Hill Circle, Longwood, Seminole County, Florida, (hereinafter "property") was in violation of the Brantley Harbor Homeowners' Associations'

Declaration of Covenants and Restrictions (hereinafter “Covenants and Restrictions”).

Defendants admitted that the Covenants and Restrictions prohibit the operation of a business from the property. Defendants also admitted that a business was operating on the property. After making numerous attempts to resolve the controversy between the parties without litigation, Plaintiff filed this an action.

### **FINDINGS OF FACT**

Plaintiff has the authority to bring this action on behalf of Plaintiff’s members pursuant to Article XIII, Section 1, of the Covenants and Restrictions and Florida Statute § 720.305. The property is owned subject to the Covenants and Restrictions. Defendants are members of the Brantley Harbor Homeowners’ Association pursuant to Article III, Section 1, of the Covenants and Restrictions.

Article VIII, Section (1), of the Covenants and Restrictions states: “Land Use. No Parcel shall be used except for residential purposes.” Pursuant to the Covenants and Restrictions, Defendants have the contractual duty to assure the property is used for residential purposes only.

On June 26, 2001, the property was leased to the corporation, College Boys Live, Inc. Charles Foulk (hereinafter “Foulk”) is the sole owner and shareholder of the corporation of College Boys Live, Inc. Foulk is also the sole owner and shareholder of the corporation of CBL Online, Inc.<sup>1</sup>

Upon moving into the property on August 15, 2001, Foulk modified the property by hiring companies to install and maintain various electronic and hyper-broadband lines to

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<sup>1</sup> The monthly lease payment paid by Foulk to Defendants was \$2,875. The monthly mortgage payment paid by Defendants was \$2,107.46.

broadcast from the property. Between the dates of August 15, 2001, and August 12, 2002, Foulk recorded fifteen (15) different people either moving into or out of the property. The period of time varied for the fifteen (15) people from two (2) months to four (4) months for six (6) of the people. One person had been on the property for one (1) month and another for two (2) months, while no person other than Foulk had stayed longer than eight (8) months.<sup>2</sup> Foulk labels the people staying at the property as “roommates.” No person may move into the property unless the person first signs a contract between Foulk’s corporation and the roommate. If a roommate fails to abide by the contract between Foulk’s corporation and the roommate, Foulk may evict the person from the property. Pursuant to the contract between Foulk’s corporation and the roommates, roommates are required to:

- 1) engage in live interactive communication via a computer a minimum of two hours per day, six days per week.
- 2) post their activities on the Internet broadcast every day.
- 3) maintain a diary that member subscribers may access.
- 4) waive all rights and royalties derived from the sale of print media, advertising, merchandise/promotional materials, electronic retrieval systems, etc.
- 5) be on the property without absence until the roommates have stayed at least two (2) months. After every two (2) months, the roommates may be absent from the property for no more than one (1) week for each two (2) month cycle.

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<sup>2</sup> Following a Motion to Compel, subsequent discovery revealed eight (8) additional roommate contracts.

Additionally, the contract between Foulk's corporation and the roommates, contained non-compete clauses stating that roommates are prohibited from engaging in any similar activities for a period of three (3) months after termination of the contract. The contract allowed Foulk to immediately evict any roommate if they revealed any trade secrets of Foulk's corporations.

On August 12, 2002, Foulk testified that neither he individually nor any of his corporations had ever been involved in any type of legal proceedings. When asked a second time later in the same deposition, Foulk again swore that neither he individually nor any of his corporations had ever been involved in any type of legal proceedings and he had no documents responsive to Plaintiff's production request.

On October 3, 2002, Foulk testified that his corporation, College Boys Live, Inc., had filed a legal proceeding against a former roommate named Jeff Anderson. Foulk instituted the lawsuit against Jeff Anderson because Anderson was a former roommate on Foulk's property located at 839 Pond Cypress Court, Orlando, Florida. The lawsuit alleged that Anderson had violated the contract between Foulk's corporation and Anderson because Anderson had sold a videotape of the activities occurring inside the property to a rival company. Anderson had entered a contract with Foulk's corporation pursuant to the same contract terms between Foulk's corporation and the roommates on the property at issue in this case. Foulk pursued the case against Anderson so that Anderson could not obtain royalties from the recorded activities on Foulk's property located at 839 Pond Cypress Court, Orlando, Florida, in violation of the roommate contract. Foulk pursued the case to the point of obtaining a Temporary Injunction against Anderson.

Subscribers to Foulk's business may become member by paying various fees to enter the Internet broadcast's restricted access areas. Foulk testified that the membership is "Definitely into the thousands." Two membership levels allow various degrees of access to the Internet broadcast with prices ranging from Level 1 for \$9.99 per month up to Level 2 for \$17.95 per month which increases to \$24.95 if the member signs up through the 900 number. Foulk has no source of income or employment other than his activities on the property.

Kenneth Long, a roommate on the property, testified that members have access to various photo galleries of the roommates based upon the amount the members are willing to pay. Members willing to pay higher fees have access to more cameras on the property. Those members willing to pay the highest fees are allowed access to cameras in the showers, bedrooms, pool area and spa. Paying members of other sites such as Bedfellows.com and Dudedorm.com may also access the Internet broadcast from the property under a fee sharing agreement created by Foulk. As part of the business activities at the property, a person comes to the property every Sunday to conduct a live radio show with the roommates. Pursuant to the contract between Foulk's corporation and Long, Long receives "free room and board." Long knew many of the roommates from Foulk's property located at 839 Pond Cypress Court, Orlando, Florida, who then moved with Foulk into the property.

Other irreparable harm to the residential neighborhood includes:

- 1) exposing nudity in public;
- 2) parties advertised through the website bringing people into the neighborhood;
- 3) increased vehicular traffic;
- 4) increased number of cars parked at the property;

- 5) visitors to the property speeding and driving recklessly through the neighborhood;
- 6) visitors to the property squealing tires while traveling through the neighborhood;
- 7) noise related to parties advertised through the website;
- 8) numerous unrelated people moving in and out of the property in short periods of time;
- 9) security and safety concerns related to transient nature of numerous unrelated people moving in and out of the property in short periods of time;
- 10) security and safety concerns for children related to visitors to the property speeding and driving recklessly through the neighborhood;
- 11) increased activity at the property causing stress upon homeowners seeking solitude and peace.

On September 17, 2001, Plaintiff sent a letter to Defendants requiring compliance with the Covenants and Restrictions. Crago first asserted she did not know the property was subject to the Covenants and Restrictions prior to receiving the September 17, 2001, letter. The documentation provided to Crago prior to closing in August 2000 states the property is subject to a Homeowners' Association Fee and is subject to "Restrictions, covenants and conditions as set forth in that instrument recorded in Official Records Book 247, Page 482; amended in Official Records Book 936, Page 238." The lease written by Crago and signed by Foulk on June 26, 2001, states that "Resident, residents' guests, and occupants will comply with all written rules and regulations, as addressed in this lease. Furthermore, residents have received a copy of the Covenants, Codes and Regulations as written, imposed and enforced by Brantley Harbor Homeowners' Association and agrees to abide by all rules and regulations contained therein."

Crago additionally attached to the June 26, 2001, lease a copy of the Homeowners' Association Disclosure. Defendant Crago has been a real estate agent for more than fifteen (15) years and she is the sole owner of the corporation Magnetic Real Estate Network, Inc.

Crago later admitted that the Covenants and Restrictions prohibit the operation of a business from the property. Crago further admitted that she knew Foulk was operating a business on the property. Defendants' counsel stipulated that in August 2003, Foulk and his roommates voluntarily vacated the property.

## **CONCLUSIONS OF LAW**

### **I. SUMMARY JUDGEMENT STANDARD**

Summary judgment shall be rendered in favor of the moving party if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fla. R. Civ. P. 1.510 ©. This Court has the power to decide questions of law on motion for summary judgment where basic facts are clear and undisputed. *Richmond v. Florida Power & Light*, 58 So.2d 687 (1963). Further, if this Court finds that an asserted defense to summary judgment is without merit either in law or fact, and nothing could be accomplished in submitting immaterial issues to a jury, then summary judgment should be entered. *Rawls v. Ziegler*, 107 So.2d 601 (Fla. 1958).

### **II. PLAINTIFF'S PROOF OF OPERATION OF A BUSINESS AT THE PROPERTY**

\_\_\_\_\_ There are no genuine issues of material fact. Rather, the material facts are admitted by Defendants. Crago admitted that the Covenants and Restrictions prohibit the operation of a business from the property. Crago further admitted that she knew Foulk was operating a business on the

property. The lease written by Crago and signed by Foulk on June 26, 2001, states that “Resident, residents’ guests, and occupants will comply with all written rules and regulations, as addressed in this lease. Furthermore, residents have received a copy of the Covenants, Codes and Regulations as written, imposed and enforced by Brantley Harbor Homeowners’ Association and agrees to abide by all rules and regulations contained therein.” Crago attached to the June 26, 2001, lease a copy of the Homeowners’ Association Disclosure. Crago is not an unformed, unsophisticated buyer. Rather, Crago has been a real estate agent for more than fifteen (15) years and she is the sole owner of the real estate corporation Magnetic Real Estate Network, Inc.

Where a party seeks an injunction to prevent a violation of a restrictive covenant, the party establishes a *prima facie* case by presenting evidence showing the violation. *See, e.g. Europoco Management Co. of America vs. Smith*, 572 So. 2d 963 (Fla. 1st DCA 1990); citing *Stephl vs. Moore*, 94 Fla. 313, 114 So. 455 (Fla. 1927). The facts admitted by Defendants prove Defendants’ knowingly and willfully violated the Covenants and Restrictions through the operation of a business at the property. The Plaintiff has met its burden of proof in its *prima facie* case for enforcement of the Covenants and Restrictions against Defendants.

### **III. DEFENDANTS’ REBUTTAL TO PLAINTIFF’S PROOF OF OPERATION OF A BUSINESS AT THE PROPERTY**

The party challenging enforcement of a covenant or restriction has the burden to prove defensive matters that preclude enforcement, such as that the enforcing authority has acted in an unreasonable or arbitrary manner. *See, Killearn Acres Homeowners vs. Kever*, 595 So. 2d 1019 (Fla. 1st DCA 1992). The burden of proving that the party seeking enforcement has abused its discretion is a heavy one. *Id.* at 1021.

**A. Defendants failed to prove their asserted defenses**

Defendants combined the doctrines of estoppel and waiver into one lump defense against the Plaintiff's enforcement of the Covenants and Restrictions. The two, however, are distinct doctrines with separate elements that must be shown for each. Estoppel depends upon what a party causes his adversary to do, while waiver is dependent upon what the party himself intends to do and has done. *See Myers v. Ross*, 10 F. Supp. 409 (S.D. Fla. 1935). Defendants have failed to meet the burden of proving the elements of their asserted defenses.

**1. Defendants failed to prove the defense of estoppel**

It is well settled that the "doctrine of estoppel should be applied with great caution and is applied only where to refuse its application would be virtually to sanction a fraud." *Pelican Island Property Owners v. Murphy*, 554 So.2d 1179, 1181 (Fla. 2d DCA 1989) (citing *Brickell Bay Club Condominium Ass'n, Inc. v. Hernstadt*, 512 So.2d 994, 996 (Fla. 3d DCA 1987)). A party asserting estoppel must show that: (1) the party to be estopped made a representation of material fact and later took a position contrary to that representation; (2) the party claiming estoppel relied upon this representation; and (3) that party suffered a detrimental change in position as a result of this reliance. *Enegren v. Marathon Country Club Condominium West Ass'n, Inc.*, 525 So.2d 488, 489 (Fla. 3d DCA 1988).

Estoppel is inappropriate where the party seeking to assert it has not been misled or has not relied "upon the prior inconsistent conduct." *Pelican Island Property Owners*, 554 So.2d at 1181 (holding that estoppel was unjustified where property owners did not rely upon inaction to their detriment). Additionally, estoppel is not justified "where the parties have equal knowledge of the facts or the same means of ascertaining that knowledge." *Id.* (holding that estoppel was

inappropriate where the property owners knew they had to obtain permission from the association to erect a structure) (citing *Overstreet v. Bishop*, 343 So.2d 958, 960 (Fla. 1st DCA 1977)). Furthermore, if the conduct complained of is “ambiguous and thus susceptible of two constructions, one of which is inconsistent with the right asserted by the party sought to be estopped, there is no estoppel.” 22 Fla. Jur. 2d *Estoppel and Waiver* § 36 (2003) (citing *In Re Adoption of R.M.H.*, 538 So.2d 477, 480 (Fla. 2d DCA 1989)).

First, Defendants have failed to show that Plaintiff made a representation and later took a position contrary to that representation. Plaintiff has always maintained that homes within the homeowners’ association shall only be used for residential purposes. On September 17, 2001, Plaintiff sent a letter to Defendants requiring compliance with the Covenants and Restrictions. The documentation provided to Crago prior to closing in August 2000 states the property is subject to a Homeowners’ Association Fee and is subject to “Restrictions, covenants and conditions as set forth in that instrument recorded in Official Records Book 247, Page 482; amended in Official Records Book 936, Page 238.” Furthermore, the minutes of Brantley Harbor Homeowners’ Association meetings reveal that a letter was to be sent to “all homeowners re: covenant enforcement, as well as our intention to enforce” and that another letter sent to all homeowners would state that “no parcel shall be used for anything but residential purposes.”

Second, Defendants have failed to demonstrate they relied upon the alleged misconduct of Plaintiff to their detriment. The court in *Mizell v. Deal*, 654 So.2d 659 (Fla. 5th DCA 1995), refused to affirm an estoppel claim in that the property owner failed to demonstrate that they had relied upon the associations conduct to their detriment. Defendants have not demonstrated that they knew of any other alleged business activities within the association and then relied upon that knowledge when

deciding to buy or rent the property. In fact, at one time Defendants claimed they did not even know the property was subject to the Covenants and Restrictions prior to receiving the September 17, 2001, letter. If Defendants allegedly did not know the Covenants and Restrictions existed, then Defendants could not have relied upon other homeowners allegedly violating the provisions to Defendants' detriment.

Furthermore, the court in *Mizell* held that because the property owners knew about the covenant from the date of the purchase, estoppel was not justified. *Mizell*, 654 So.2d at 663. Estoppel is not justified here because Defendants indeed had equal knowledge of the facts or the same means of ascertaining that knowledge. *Id.* Although Defendants (at first) alleged that they were unaware of the Covenants and Restrictions, the documentation provided to Crago prior to closing in August 2000 states the property is subject to a Homeowners' Association Fee and is subject to "Restrictions, covenants and conditions as set forth in that instrument recorded in Official Records Book 247, Page 482; amended in Official Records Book 936, Page 238. The lease written by Crago and signed by Foulk on June 26, 2001, states that "Resident, residents' guests, and occupants will comply with all written rules and regulations, as addressed in this lease. Furthermore, residents have received a copy of the Covenants, Codes and Regulations as written, imposed and enforced by Brantley Harbor Homeowners' Association and agrees to abide by all rules and regulations contained therein." Crago additionally attached to the June 26, 2001, lease a copy of the Homeowners' Association Disclosure.

Under Florida law no estoppel by silence can arise unless the party asserting the estoppel claim is ignorant of the truth. *Brickell Bay Club Condominium vs. Hernstadt*, 512 So. 2d 994 (Fla. 3rd DCA 1987). Defendants were aware that the Covenants and Restrictions prohibit the operation

of a business from the property. Therefore, Defendants cannot claim ignorance of the requirements of the Covenants and Restrictions. Silence cannot form the basis of an estoppel defense due to Defendants' knowing and willful violation the Covenants and Restrictions through the operation of a business at the property.

Defendants have also failed to meet the third element necessary for estoppel. Defendants have failed to offer any evidence that Defendants suffered a detrimental change in position as a result of any reliance. What is more compelling against a finding of estoppel is that Crago testified she knows Foulk operates a business from the property, and Crago knows businesses are prohibited. The business continued to operate without restraint and no change in the business operation occurred until Foulk and the roommates voluntarily vacated the property in August 2003.

## **2. Defendants failed to prove the defense of waiver**

The elements of waiver are also outlined in *Mizell*. First, *Mizell* points out that in dealing with restrictive covenant enforcement there must be (1) the existence, at the time of the waiver, of a right which may be waived; (2) knowledge of the right; and (3) the intent to relinquish the right. *Mizell*, 654 So.2d at 663 (citing *Taylor v. Kenco Chemical & Mfg. Corp.*, 465 So.2d 581 (Fla. 1st DCA 1985)). There also must be a "long-continued waiver or acquiescence in the violation of the covenant" and "conscious acquiescence in persistent, obvious and widespread violations for waiver or abandonment to occur." *Id.* (quoting *Siering v. Bronson*, 564 So.2d 247, 248 (Fla. 5th DCA 1990)). The *Mizell* court found that the property owner was unable to meet this burden by just demonstrating that the association failed to act. *Id.* at 663.

The Defendants have failed to meet the requirements of proving waiver. With respect to the waiver defense, there is no dispute that Plaintiff possessed the right to enforce its Covenants and

Restrictions against Defendants according to Article XIII, Section 1, of the Covenants and Restrictions. However, Defendants have not shown that the Plaintiff had knowledge of the right to enforce its covenants and restrictions against other homeowners and failed to act. In other words, Defendants have failed to show that Plaintiff had knowledge that other homeowners were conducting alleged businesses within the Brantley Harbor Homeowners' Association.

Michael Towers, the president of the Brantley Harbor Homeowners' Association, was unaware that any alleged businesses were being conducted such as a daycare, a carwash, or nail services. The minutes of the meetings for the Brantley Harbor Homeowners' Association reflect that Plaintiff did not know of any alleged businesses until they were alerted. *See, e.g., Firemans' Fund Ins. Co. vs. Vogel*, 195 So. 2d 20 (Fla. 2nd DCA 1967) (holding that there can be no waiver unless the party against whom the waiver is invoked was in possession of all the material facts); *See also Mizell*, 654 So. 2d at 663.

The minutes reveal that Plaintiff was alerted to the problem and began the process of addressing the violations in a sequential fashion which is the acceptable practice under the law. The court in *Killearn Acres Homeowners Ass'n, Inc. v. Kever*, 595 So.2d 1019, 1021 (Fla. 1st DCA 1992), ruled that the fact that the homeowners' association was addressing the violations in a sequential order did not justify a ruling of selective enforcement. *See, e.g., Spring Hill Civic Ass'n, Inc. v. Paolella*, 728 So.2d 376, 378 (Fla. 5th DCA 1999) (Griffin, C.J., dissenting) (holding that to allow an unknowing, or even a knowing lack of enforcement in a few instances to invalidate the restrictive covenants would represent a serious mutation of the law of restrictive covenants); *Miami Lakes Civic Ass'n, Inc. v. Encinosa*, 699 So.2d 271, 272 (Fla 3d DCA 1997) (holding that there was no selective enforcement because the association only brought suit against one property owner).

Defendants claim a “long history” of selective enforcement based on letter that was written in 1996 dealing with an uncut lawn issue. However, when dealing with restrictive covenant enforcement, substantially similar violations must be compared when claiming selective enforcement. *See, e.g., Scarfone vs. Culverhouse*, 443 So. 2d 122 (Fla. 2nd DCA 1983) (holding that in order to assert the defense of selective enforcement, a defendant must show that the association has allowed violations of the declaration that are of a comparable nature); *Schmidt v. Sherrill*, 442 So.2d 963, 966 (Fla. 4th DCA 1983) (same). The Fifth Circuit held in *McMillan v. Oaks of Spring Hill Homeowner’s Ass’n, Inc.*, 754 So.2d 160, 162 (Fla. 5th DCA 2000):

It is obvious to us, as it was to the trial court, that the plain purpose of paragraph 8 was to prevent homeowners from maintaining sheds and similar structures on their property. This conclusion is not diluted by Appellants’ intricate explanation regarding the subtle nuances attaching to the definitive verbs “to place” and “to erect.” Although restrictive covenants should be narrowly construed, “[restrictive covenants] should never be construed in a manner that would defeat the plain and obvious purpose and intent of the restriction.” *Brower v. Hubbard*, 643 So.2d 28, 29 (Fla. 4th DCA 1994). Regardless of whether they are built by a carpenter on site or deposited by a truck in a preassembled condition, the plain and obvious purpose of the restriction is to keep sheds out of the neighborhood.

Defendants also failed to show that Plaintiff had the intention of relinquishing the right to enforce the Covenants and Restrictions. The facts prove that Plaintiff had no intention of relinquishing the right to enforce the Covenants and Restrictions. First, the waiver defense is contractually precluded by the specific language of the Covenants and Restrictions. Article XIII, Section 1, of the Covenants and Restrictions states:

The failure of the Developer, its successors or assigns, or the Association, to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto.

Second, the minutes of Plaintiff's meetings cut against Defendants' argument. Plaintiff at all times maintained that homes within the homeowners' association should be used only for residential purposes. Plaintiff also took steps to notify homeowners in the form of a letter that Plaintiff had no intention of relinquishing the right to enforce the Covenants and Restrictions. *See Pelican Island Property Owners Association, Inc., vs. Murphy*, 554 So. 2d 1179 (Fla. 2nd DCA 1989).

### **3. Defendants failed to prove the defense of "unclean hands"**

Defendants assert that Plaintiff has "unclean hands" because they claim that Plaintiff violated the same restriction which Plaintiff now seeks to enforce. However, the alleged "disreputable nature of a party's conduct is irrelevant if the party seeking unclean hands has taken no action in reliance on that conduct." 22 Fla. Jur. 2d *Equity* § 79 (2003) (citing *McIntosh v. Hough*, 601 So.2d 1170, 1172 (Fla. 1992)). Defendants took no reliance on the alleged conduct that Plaintiff allowed other alleged businesses to be conducted without argument. In any event, it is not mandatory that the Plaintiff "lead a life" free from blemishes. *See Pennington v. Pennington*, 390 So.2d 809, 810 (Fla. 5th DCA 1980).

## **FINAL JUDGMENT**

Plaintiff has demonstrated irreparable harm stemming from violations of the Covenants and Restrictions entitling it to a Final Judgment in its favor. *See, Europco vs. Smith*, 572 So. 2d 963 (Fla. 1st DCA 1990); *See also, Killearn vs. Keever*, 595 So. 2d 1019 (Fla. 1st DCA 1992).

Based upon the findings of fact and conclusions of law, it is hereby **ORDERED AND ADJUDGED** as follows:

- 1) Defendants' Motion for Partial Summary Judgment is **DENIED**;

- 2) Defendants' Motion for Judgment on the Pleadings is **DENIED**;
- 3) Plaintiff's Motion for Summary Judgment and/or in the Alternative Plaintiff's Motion for Declaratory Judgment and Injunction is **GRANTED** as follows:
  - a. Pursuant to Article VIII, Section (1), of the Brantley Harbor Homeowners' Associations' Declaration of Covenants and Restrictions "Land Use. No Parcel shall be used except for residential purposes", Defendants have the contractual duty to assure Defendants' property described as 103 Cherry Hill Circle, Longwood, Seminole County, Florida, with a legal description of LEG E 46 FT OF LOT 5 + W 47 FT OF LOT 6 + N 10 FT OF W 47 FT OF LOT 14 + N 10 FT OF E 46 FT OF LOT 15 BLK B BRANTLEY HALL ESTATES PB 13 PG 16, is used for residential purposes only;
  - b. Pursuant to Article VIII, Section (1), of the Brantley Harbor Homeowners' Associations' Declaration of Covenants and Restrictions "Land Use. No Parcel shall be used except for residential purposes", Defendants have breached their contractual duty to assure Defendants' property described as 103 Cherry Hill Circle, Longwood, Seminole County, Florida, with a legal description of LEG E 46 FT OF LOT 5 + W 47 FT OF LOT 6 + N 10 FT OF W 47 FT OF LOT 14 + N 10 FT OF E 46 FT OF LOT 15 BLK B BRANTLEY HALL ESTATES PB 13 PG 16, is used for residential purposes only by knowingly allowing a business to be operated from the property;

- c. As a direct and proximate result and cause of Defendants having breached their duty to assure Defendants' property described as 103 Cherry Hill Circle, Longwood, Seminole County, Florida, with a legal description of LEG E 46 FT OF LOT 5 + W 47 FT OF LOT 6 + N 10 FT OF W 47 FT OF LOT 14 + N 10 FT OF E 46 FT OF LOT 15 BLK B BRANTLEY HALL ESTATES PB 13 PG 16, is used for residential purposes only, Plaintiff has suffered irreparable harm stemming from violations of the Covenants and Restrictions by said breach of contractual duty;
- d. As a direct and proximate result and cause of Defendants having breached their duty to assure Defendants' property described as 103 Cherry Hill Circle, Longwood, Seminole County, Florida, with a legal description of LEG E 46 FT OF LOT 5 + W 47 FT OF LOT 6 + N 10 FT OF W 47 FT OF LOT 14 + N 10 FT OF E 46 FT OF LOT 15 BLK B BRANTLEY HALL ESTATES PB 13 PG 16, is used for residential purposes only, Plaintiff has no adequate remedy at law for said breach of contractual duty;
- e. As a direct and proximate result and cause of Defendants having breached their duty to assure Defendants' property described as 103 Cherry Hill Circle, Longwood, Seminole County, Florida, with a legal description of LEG E 46 FT OF LOT 5 + W 47 FT OF LOT 6 + N 10 FT OF W 47 FT OF LOT 14 + N 10 FT OF E 46 FT OF LOT 15 BLK B BRANTLEY HALL ESTATES PB 13 PG 16, is used for residential purposes only, the public interest is best served by granting injunctive relief for Defendants'

breach of the contractual duty mandated under the Covenants and Restrictions;

- f. Based upon the foregoing, the Defendants shall fully comply with the Brantley Harbor Homeowners' Associations' Declaration of Covenants and Restrictions by:
1. Ceasing and desisting from using the property for any use other than for residential purposes; and
  2. Ceasing and desisting from permitting or doing on the property any business activities.
- g. The Court finds that the Plaintiff is the "prevailing party" in this cause by virtue of the fact that Defendants, having been given ample notice and opportunity to cure the violations of the Brantley Harbor Homeowners' Associations' Declaration of Covenants and Restrictions prior to suit being filed, failed and/or refused to do so;
- h. The court hereby awards to the Plaintiff its "entitlement" to reasonable attorneys' fees and costs as the "prevailing party" in this litigation. However, the Court reserves jurisdiction to establish the "amount" of reasonable attorneys' fees and costs to be awarded to Plaintiff's counsel;
- i. Pursuant to Section (5) of the First Amendment to Brantley Harbor Homeowner's Associations' Declaration of Covenants and Restrictions voted on and agreed to on November 13, 1989, and Florida Statute § 720.305, Plaintiff is entitled to recover its court costs, expenses, and attorneys' fees against Defendants;

j. The Court further reserves jurisdiction over the parties and the subject matter of this lawsuit for the purpose of the enforcement and/or modification of this judgment.

The Court hereby enters this Final Judgment awarding Declaratory and Injunctive Relief in favor of Plaintiff and awarding Plaintiff the reasonable costs and expenses of this action, including attorneys' fees, to be determined in a hearing separately conducted for which let execution issue. The Court retains jurisdiction of this matter for the purpose of conducting a hearing on awarding Plaintiff the reasonable costs and expenses of this action, including attorneys' fees.

**DONE and ORDERED** in chambers in Sanford, Seminole County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Honorable John R. Sloop

Copies to:

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By \_\_\_\_\_ Judicial Assistant/Attorney