

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

APELLATE DIVISION: 06-11-AP
Lower Case No: 02-CC-937-20S

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

Appellant(s),

vs.

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

Appellee(s).

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Opinion filed this 18th day of February, 2008

Appeal from County Court
Seminole County, Florida
Honorable John R. Sloop,

Peter R. McGrath, Esquire,
for Appellant.

Frederick H. Nelson, Esquire,
for Appellee.

DICKEY, A.,

The appellant, Judith Crago and Magnetic Real Estate Network, appeal an order entering final summary judgment in favor of the Appellee, Brantley Harbor Homeowner's Association. This Court affirms.

This action involved activity being conducted at a residential property in violation of the homeowner's association covenants. Pursuant to the covenants, the subject property was required to be used only for residential purposes; however, the subject property was being used as an Internet business wherein individuals moved into the

residence and webcams emanated images and activities at the residence onto the Internet to subscribers. The residence was owned by the Appellant, Crago,¹ and the Appellee, Brantley Harbor Homeowner's Association, filed the action against Crago for the covenant violations.

In June 2001, Crago entered a contract for the sale and purchase of the subject property with C.B.L., whose principal was Charles Foulk.² As part of the purchase agreement, Crago agreed to lease the subject property to C.B.L., and Crago would credit a portion of the rent payment towards the purchase price. Charles Foulk advised Crago that he was a web designer and intended to work from the subject property on the Internet using his computer.³ The lease, drafted by Crago and signed by Foulk, indicated:

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 Homeowner's Association and agrees to abide by all the rules and regulations contained therein.

Despite the terms of the lease wherein Foulk agreed to abide by the terms of the covenants, which include land use terms requiring the property to be used for residential purposes, Foulk modified the property to maintain and install various electronic and broadband lines from the property to record the daily activities of the residents who were living at the subject property which were put on the Internet for subscribers to view. The residents of the property were considered, "roommates" and were required to first sign a contract with Foulk's corporation prior to moving into the subject property. If the

¹ The subject property at issue was initially purchased by Crago through her company, Magnetic Real Estate Network, but it was subsequently refinanced in her name. At the time that the suit was filed on March 14, 2002, Crago was the sole owner.

² Foulk, owned College Boys Live and College Boys Live Online, Inc., and the property was leased to College Boys Live, Inc.

³ Crago testified at her deposition that she would not have rented the property to Foulk had she known that he planned to install web cameras throughout the property to broadcast images over the Internet.

roommate failed to abide by the contract, Foulk would evict the person from the property.⁴ The roommates were required to engage in live interactive communication via the computer a minimum of two hours per day, six days per week. The roommates were required to remain at the subject property for certain periods of time and prohibited from engaging in similar activities within three months after leaving the subject property. Depending upon the level of subscription, Internet subscribers could view the daily activities of the roommates at the subject property. The higher the subscription fee, the more activities a subscriber could view. Pursuant to the activities occurring on the subject property and the web activities, the neighborhood wherein the subject property is located experienced increased vehicle traffic and numerous individuals moving in and out of the property.

Brantley Harbor Homeowner's Association communicated with the Crago in several letters indicating that the activity being conducted on the property was in direct conflict with the covenants and demanded that the activities cease. On March 5, 2002, the Appellee filed an action against the Appellants for declaratory relief, alleging that Crago, a member of the Brantley Harbor Homeowner's Association, violated certain covenants, particularly Article VIII, Section I, which provides:

1) Land Use. No Parcel shall be used except for residential purposes. No building shall be erected upon any parcel without prior approval thereof by the ARB as hereinabove set forth.

During discovery, Crago admitted in her deposition that she was aware that Foulk was operating a business at the property and that had she known that Foulk was operating a webcam website out of the subject property, she would not have leased the property to

⁴ Between August 2001 and August 2002, Foulk recorded 15 different people moving into or out of the subject property.

Foulk.⁵ Additionally, Crago testified that she was aware that the covenants and restrictions prohibited the operation of a business from the property

Brantley Harbor Homeowner's Association moved for summary judgment requesting declaratory relief that the court find that Crago violated the covenants and restrictions and that the court issue injunctive relief. The court entered a final judgment in favor of Brantley Harbor Homeowner's Association. The court ruled that there were no genuine issues of material fact because Crago admitted that the covenants prohibit the operation of a business and that Foulk was operating a business on the subject property. Thereafter, Crago filed a motion for rehearing, of which the court denied, and this appeal ensued.

On appeal, the Appellant contends that the trial court erred in entering final summary judgment for several reasons. However one issue merits discussion: Whether the issues before the lower court were rendered moot.

The Appellant contends that the Appellee's failure to name Foulk as an indispensable party rendered the issues before the court moot because the declaratory and injunctive relief impacted the rights of parties who were not before the court. The Appellant argues that Charles Foulk was an indispensable party because he leased the premises and because she lacked control over the activities of the tenants; however, the facts of the case rebut the Appellant's argument. First, the Appellant leased the premises to Foulk and served as landlord to Foulk. As landlord, the Appellant could evict Foulk based on a violation of the lease terms.⁶ Additionally, the Appellant drafted a lease

⁵ The lease also noted that Foulk may work out of the residence for C.B.I., Inc,

⁶ The lease and agreement also stated that the subject property could only be occupied by the listed individuals, which named only one other occupant other than Foulk. Despite this lease term, approximately 15 people resided at the residence over the period of time at issue.

wherein Charles Foulk was required to abide by the terms of the homeowner's association. The lease, drafted by Crago and signed by Foulk, indicated:

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 Homeowner's Association and agrees to abide by all the rules and regulations contained therein.

Furthermore, section 720.305(1), Florida Statutes, provides:

Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions *may be* brought by the association or by any member against:

- (a) The association;
- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

Therefore, because of the permissive language of section 720.305, the tenant, Charles Foulk, was not an indispensable party.⁷

Next, the Appellant argues that Foulk vacating the premises rendered the case moot because there were no issues in controversy and the alleged violations ceased once Foulk vacated the premises. There is case law to support the Appellant's contention that when a party ceases the alleged violations during litigation, the case becomes moot. See *Burch v. Polynesian Villas Condominium, Inc.*, 491 So. 2d 1264 (Fla. 4th DCA 1986) (the issue between the parties became moot when the counterclaimants ceased being unit owners); see also *Breslof v. The Pines Delray North Association, Inc.*, 583 So. 2d 810

⁷ Additionally, Foulk vacated the premises prior to the hearing on the motion for summary judgment, and therefore no longer was a "tenant" pursuant to section 720.305, and therefore, the homeowner's association could only bring an action against Crago, as a member, who was still the owner of the premises.

(Fla. 4th DCA 1991) (questioning whether final judgment should have been entered when the case was moot after owner ceased the conduct violating the rules and opining that dismissal was the appropriate disposition). However after review of the record, this Court notes that pursuant to the August 27, 2003 hearing, the parties alerted the court that Foulk vacated the premises. The court inquired several times as to whether the issues were moot and whether any further judicial labor was necessary. The parties agreed that they wanted the court to rule on the issues.⁸ Apparently, neither party moved to dismiss the action as moot nor contested the court ruling on the issues. Therefore, the Appellant has waived raising such an argument.

Furthermore, this Court finds *51 Island Way Condominium Association, Inc. v. Williams*, 458 So. 2d 364 (Fla. 2d DCA 1984), persuasive concerning a homeowner's association filing an action for violation of the terms of the covenants, and the violating party subsequently complying with the terms:

The association herein was compelled to bring suit for relief, prepare for trial, and had to participate up to the point of engaging in litigation. Appellees had maintained certain affirmative defenses and a counterclaim for a period of almost a year. Rather than act on an earlier date, they made their oral motion of dismissal on the day of trial, evincing their deliberate choice not to contest the association's position. One clear result of their timing was to seek to avoid the possible imposition of the association's costs and attorney's fees. Yet, in essence, the association had prevailed because the effect of appellees' reconveyance was to accede to the association's request for relief. Thus, we hold that the association was entitled to attorney's fees under the applicable statute and declaration provision.

* * *

⁸ Crago continued to argue that the case should be dismissed because the Brantley Harbor Homeowner's Association failed to include Foulk as an indispensable party, and Brantley Harbor Homeowner's Association argued that Crago still owned the property, and a judgment could be rendered against Crago.