

IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CUIDAD DE NUESTROS ANGELES I,
LLC, a Florida limited liability company,

Plaintiff,

vs.

Case No. CACE-19-002919(02)

INVERRARY RESORT HOTEL
CONDOMINIUM ASSOCIATION, INC.,
an administratively dissolved Florida
corporation; ULYSSES ASSET SUB I,
LLC, a Delaware limited liability company,
as successor in interest to T5 UNISON SITE
MANAGEMENT LLC, a Delaware limited
liability company,

Defendants.

**ORDER GRANTING DEFENDANT ULYSSES' MOTION FOR FINAL
SUMMARY JUDGMENT AND ENTERING FINAL JUDGMENT**

THIS MATTER came before the court on May 31, 2022, on the Motion for Final Summary Judgment (**Motion**) filed by Defendant Ulysses Asset Sub I, LLC, a Delaware limited liability company, as successor in interest to T5 Unison Site Management LLC. The Court, having reviewed the Motion and Plaintiff Ciudad de Nuestrros Angeles I, LLC's May 11, 2022, consolidated opposition to Ulysses' Motion and cross-motion for summary judgment (**Response**), considered the arguments of counsel, and being otherwise fully advised of the premises, hereby sets forth the following background information, undisputed facts, and conclusions of law:

BACKGROUND

1. This matter involves certain property located in Broward County, Florida and a recorded easement granting Defendant Ulysses Asset Sub I, LLC (**Ulysses**) the right to, *inter alia*, access, maintain, and operate wireless telecommunication facilities located on the property's roof.

2. For purposes of the Motion, the primary issues are: (i) whether Plaintiff Ciudad de Nuestros Angeles I, LLC (**Cuidad**), which purchased the property in 2017, took title to the property with constructive notice of the recorded easement; and (ii) whether section 617.0304 precludes a remote purchaser, such as Ciudad, from challenging its corporate not-for-profit predecessor-in-title's power and authority to grant the easement (i.e., whether Ciudad lacks standing).

3. For the reasons herein, the Court answers both issues in the affirmative.

UNDISPUTED FACTS

4. On August 29, 2008, a Plan of Termination was executed pursuant to Florida Statutes, section 718.117, terminating the condominium form of ownership for the property known as Inverrary Resort Hotel Condominium, located at 3501 Inverrary Boulevard, Lauderhill, Florida, 33319 (**Property**), and the plan was recorded on September 2, 2008. Motion, p. 2 at ¶ 1; Response, pp. 15–16 at ¶ 6.

5. The Plan of Termination expressly provides, at paragraph 7, that the Association, through its board of directors, would serve as Termination Trustee (**Termination Trustee**), (Motion, p. 2 at ¶ 2; Response, p. 16 at ¶ 7), with, among other things, the “powers, authority and duties contained in the Condominium by-laws and in the FL. [sic] s. 718.117(6)[.]” (Motion, Ex. 1 at ¶ 7).

6. Paragraph 8 of the Plan of Termination also provides that it “is effective as of the date of recordation in the public records of Broward County,” and that, once recorded, it would constitute “the new fee simple title” for the Property. Motion, pp. 2–3 at ¶ 3; *see* Response, p. 16 at ¶ 7. Accordingly, title to the Property vested in the Termination Trustee upon the Plan of Termination's recording. Motion, pp. 2–3 at ¶ 3; *see* Response, p. 16 at ¶ 7; *see* §§ 718.117(13),

(14), FLA. STAT. (effective July 1, 2008).

7. The Termination Trustee (the Association, through its board), executed the Plan of Termination. Motion, Ex. 1 at p. 3; *see* § 718.117(9), FLA. STAT. (effective July 1, 2008) (“The plan of termination must be a written document executed . . . by the termination trustee.”).

8. On October 30, 2008, the Termination Trustee entered into and executed a Wireless Communication Easement and Assignment Agreement with T5 Unison Site Management LLC, now known as Ulysses (**Easement**), granting easements to the rooftop of the Property for, *inter alia*, the transmission and reception of wireless communications signals, as well as rights to access, maintain, and operate towers, antennas, and related facilities. Motion, Ex. 2 at pp. 1–2, ¶ 1.

9. Through the Easement, Ulysses also was assigned certain existing site agreements with communications companies, (Motion, Ex. 2 at p. 2, ¶ 2), and the Termination Trustee warranted that it had “the right, power and authority to enter into” the Easement and “to grant the [e]asements,” and that “any consents and authorizations required in connection with the execution and delivery of [the Easement] ha[d] been obtained[,]” (Motion, Ex. 2 at p. 3, ¶ 8).

10. The Easement, specifically its signature block and acknowledgement, makes clear it was signed by the board of directors of the Association, acting as the Termination Trustee, (Motion, Ex. 2 at p. 7)—consistent with the Plan of Termination, pursuant to which title to the Property already had vested in the Termination Trustee (the Association, through its board), (Motion, pp. 2–3 at ¶ 3; *see* Response, p. 16 at ¶ 7).

11. Further, the manner in which the Easement’s signature page and signature block were set forth and executed by the Termination Trustee (the Association, through its board), mirrors the manner in which the Plan of Termination’s signature page and signature block were set forth and executed by the Termination Trustee (the Association, through its board). *Compare*

Motion, Ex. 1 at p. 3, *with* Motion, Ex. 2 at p. 7.

12. The Easement was recorded on November 24, 2008, at Official Records Book 45828, Page 443, in the Official Records of Broward County, Florida. Motion, p. 3 at ¶ 5; *see* Response, p. 18 at ¶ 11. The Property’s legal description is attached to the Easement. Motion, Ex. 2 at pp. 9–10.

13. Nearly nine years later, Cuidad purchased the Property following a bankruptcy auction, and on August 20, 2017, the Chapter 11 bankruptcy trustee for the Association executed a Trustee’s Deed, granting Cuidad the Property, subject to any easements of record. Motion, pp. 3–4 at ¶¶ 6–7; *see* Response, p. 26 at ¶ 23.

PROCEDURAL BACKGROUND

14. In 2019, Cuidad sued Ulysses and the Association, seeking declaratory relief and to quiet title as to the validity and enforceability of the Easement against Cuidad.

15. Cuidad alleges (i) that it was unaware, and lacked notice, of the Easement when it purchased the Property (because, it alleges, the Easement was improperly indexed in the grantor/grantee index against “T” for “Termination Trustee” rather than against the name “Inverrary” (i.e., the Association)) (*e.g.*, 2019-11-07 Cuidad’s Amended Complaint (AC), ¶¶ 19–20, 32(c), 47(d)), (ii) that an improper and non-party within the chain of title to the Property, with no right to convey an interest in it, signed the Easement (*e.g.*, AC, ¶¶ 22, 32(b), 47(c)), and (iii) that the Association exceeded its authority under the Plan of Termination by agreeing to the Easement (*e.g.*, AC, ¶¶ 14, 17, 32(a), 47(a)).

16. Ulysses disagrees with Cuidad’s substantive allegations and asserts defenses, as well as a counterclaim seeking a declaration that the Easement is valid and enforceable.

17. Ulysses argues (i) that the Easement was properly recorded in the Official Records

of Broward County, Florida and, in turn, imparted constructive notice of its existence to all persons, including subsequent purchasers like Cuidad, pursuant to sections 695.11 and 695.01, Florida Statutes, (ii) that the Easement was properly granted and executed by the Termination Trustee (the Association, through its board), in whom title was vested at that time, and (iii) that Cuidad's claim that the Association lacked the authority to grant the Easement is precluded by section 617.0304, Florida Statutes, as Cuidad lacks standing to challenge whether the Association had the power or authority grant the Easement.

18. On February 16, 2022, Ulysses filed its Motion for Final Summary Judgment (**Motion**) directed at both Counts of Cuidad's Amended Complaint, Ulysses' seventh defense, and Ulysses' Counterclaim for declaratory judgment, arguing that Cuidad had constructive notice of the Easement and lacked standing to challenge the Association's authority to grant it.

19. On May 11, 2022, Cuidad filed a "Consolidated: A) Response in Opposition to [Ulysses' Motion], and B) Cross-Motion for Summary Judgment" (**Response**).

CONCLUSIONS OF LAW

Florida Law on Constructive Notice

1. Florida Statutes, section 695.01 provides that "[n]o conveyance, transfer, or mortgage of real property, or of any interest therein, . . . shall be good and effectual in law or equity against . . . subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law." § 695.01(1), FLA. STAT. (2008). In other words, Florida's notice recording statute provides that an interest in real property may be perfected by recording it, as the act of recording the instrument conveying the interest imparts constructive notice to others of that interest.

2. To qualify as a bona fide purchaser and prevail under section 695.01, Cuidad must have been *without notice* of Ulysses' Easement when it purchased the Property. *Mayfield v. First*

City Bank of Fla., 95 So. 3d 398, 401 (Fla. 1st DCA 2012) (“In order prevail under section 695.01,” the “purchaser must be without notice[.]”); *see Harkless v. Laubhan*, 278 So. 3d 728, 733 (Fla. 2d DCA 2019).

3. Constructive notice, the form of notice at issue in the Motion, “means knowledge that is inferred by operation of law, as under a recording statute.” *2000 Presidential Way, LLC v. Bank of New York Mellon*, 326 So. 3d 64, 68 (Fla. 4th DCA 2021) (internal citation and quotations omitted); *B.A. Mortg. LLC v. Baigorria*, 300 So. 3d 198, 200 (Fla. 4th DCA 2020); *Sapp v. Warner*, 141 So. 124, 127 (Fla. 1932).

4. Florida Statutes, section 695.11 provides that:

All instruments which are authorized or required to be recorded in the office of the clerk of the circuit court of any county in the State of Florida, and which are to be recorded in the “Official Records” as provided for under § 28.222, and which are filed for recording on or after the effective date of this act, ***shall be deemed to have been officially accepted by the said officer, and officially recorded, at the time she or he affixed thereon the consecutive official register numbers required under § 28.222, and at such time shall be notice to all persons.*** The sequence of such official numbers shall determine the priority of recordation. . . .

§ 695.11, FLA. STAT. (2008) (emphasis added).

5. Accordingly, once an instrument is recorded under section 695.11—i.e., once the official register numbers are affixed on that document—“all persons,” including subsequent purchasers, are on constructive notice of the instrument’s existence as a matter of law. *See* § 695.11, FLA. STAT.; *see, e.g., Mayfield*, 95 So. 3d at 402 (explaining that Florida courts have continually found that “constructive notice attaches upon compliance with” section 695.11); *Orix Fin. Servs. Inc. v. MacLeod*, 977 So. 2d 658, 658 (Fla. 1st DCA 2008) (“[Section 695.11] provides that official recordation occurs at such time as the office of the clerk of the circuit court affixes to an instrument the official register numbers required by law and at such time shall be notice to all persons.” (Internal citation and quotations omitted)).

6. This is so, *even if* it is improperly indexed in the Official Records, as Cuidad claims the Easement was. Nothing in section 695.11 conditions the effective recording of an instrument on it being properly indexed. And consistent with that statute’s plain language, Florida courts—including the Fourth District Court of Appeal—have explained that “[i]ndexing [i]s not an essential element of recording.” *2000 Presidential Way, LLC*, 326 So. 3d at 69–70 (quoting *Mayfield*, 95 So. 3d at 402); see *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So. 3d 796, 800–01 (Fla. 5th DCA 2010) (explaining that “[s]ection 695.11 also applies to indexing errors”); *Anderson v. N. Fla. Prod. Credit Ass’n*, 642 So. 2d 88, 89 (Fla. 1st DCA 1994) (rejecting argument “that proper indexing is an indispensable element of recordation”); *Mayfield*, 95 So. 3d at 402–03 (holding that “constructive notice attached at the time [the instruments] were recorded” in accordance with section 695.11, despite subsequent error by clerk eradicating the instruments from the Official Records 73 minutes after recording, and rejecting argument that the instruments “had to remain in the [O]fficial [R]ecords to impart constructive notice”).

**The Easement Was Properly Recorded Under Florida Law and,
Therefore, Provided Cuidad with Constructive Notice of It**

7. Here, the Easement was recorded in accordance with section 695.11 on November 24, 2008, in Broward County’s Official Records, when the Broward County Clerk’s office undisputedly affixed consecutive official register numbers on the Easement; “nothing more was required” for the Easement to be deemed recorded under section 695.11. *2000 Presidential Way, LLC*, 326 So. 3d at 69. On that date, the Easement was “recorded according to law.” § 695.01, FLA. STAT. “[A]nd at such time,” according to section 695.11, the Easement provided constructive “notice to all persons” of its existence, including subsequent purchasers of the Property, like Cuidad.

8. Cuidad’s argument that the Easement should have identified the grantor as “The