

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

1905 ASSOCIATES, LLC, a
Florida limited liability company;
and HTA-1905 CLINT MOORE
ROAD, LLC, a Delaware limited
liability company,
Plaintiffs,

v.
COUNTRY CLUB MAINTENANCE
ASSOCIATION, INC. d/b/a BROKEN
SOUND MASTER ASSOCIATION,
Defendant.

Case No.: 2021-CA-012280

**Order Granting Plaintiff's Motion for Final
Summary Judgment, Denying Defendant's Motion
For Final Summary Judgment and Entering Final Judgment**

THIS MATTER having come before the Court on December 1, 2022, on the parties' cross-motions for summary judgment,¹ and the Court, having reviewed the parties' respective motions, supporting factual positions, and responses, considered the arguments of counsel, and being otherwise fully advised of the premises, hereby sets forth the following findings of fact and conclusions of law:

INTRODUCTION

1. This matter involves a platted subdivision in Boca Raton, Palm Beach County, Florida, known as Broken Sound. Broken Sound is a gated

¹ Specifically, on Plaintiffs' Motion for Final Summary Judgment filed October 31, 2022 [Dkt. No. 63], and Defendant's Motion for Final Summary Judgment filed November 1, 2022 [Dkt. No. 62]. By stipulation of the parties dated November 4, 2022, and by Agreed Order Approving Stipulation for Order Concerning Timing for Scheduling Hearing on the Parties' Motions for Summary Judgment and Briefing Schedule entered November 9, 2022 [Dkt. No. 68], the parties and this Court agreed to have both motions heard on December 1, 2022.

community developed in the early 1980s, consisting primarily of residential properties, with a few commercial properties.

2. Defendant Country Club Maintenance Association, Inc. d/b/a Broken Sound Master Association (Association)² owns and maintains common areas including certain drainage areas, pursuant to a Declaration of Maintenance Covenants recorded September 24, 1985, in Official Records Book 4659, Page 1117 of the Official Records of Palm Beach County, Florida, as thereafter amended (Declaration).

3. In 2004, Plaintiff 1905 Associates, LLC (1905) purchased a parcel of commercial property in Broken Sound (Property). 1905 owned the Property from 2004 until 2021.

4. In 2021, 1905 conveyed the Property to Plaintiff 1905-HTA Clint Moore Road, LLC (HTA). HTA is the current owner of the Property.

5. The dispute in this case is whether the Association has the right, pursuant to the Declaration, to assess the Property, collect assessments as the personal obligation of the owner of the Property, and lien the Property for unpaid assessments.

6. Plaintiffs seek a final summary judgment declaring that the Association has no authority to assess or lien the Property because 1905 took title to the Property in 2004 as a bona fide purchaser for value without notice of

² At the time of the Declaration, the Association was known as Arvida Country Club Maintenance Association, Inc.

the Association's claims. Thus, 1905 took title free and clear of the claims of the Association, and transferred free and clear title to the Property to HTA in 2021.

7. Plaintiffs also seek a final summary judgment quieting title to the Property in the name of HTA, free and clear of any assessment and lien rights claimed by the Association, because of 1905's status as a bona fide purchaser.

8. Defendant seeks a final summary judgment in its favor on Plaintiffs' Complaint [Dkt. No. 3], declaring that the Association is entitled to assess and lien the Property commencing January 1, 2021.

UNDISPUTED FACTS

9. On September 24, 1985, the developer of Broken Sound recorded the Declaration.

10. Pursuant to the Declaration, the developer established the Association to maintain common areas including certain drainage areas.

11. The Property at issue in this case is a commercial property.

12. Pursuant to Article V, Section 1 of the Declaration, the Association has the right to assess each "Lot" in Broken Sound. Under this section, assessments are a personal obligation of each Lot owner, secured by a "continuing lien" on each Lot.

13. On January 25, 2002, the Association recorded an amendment to the Declaration in Official Records Book 13347, Page 139 of the Official Records of Palm Beach County, Florida (2002 Amendment).

14. In the preamble to the 2002 Amendment, the Association recites that the amendment was "validly adopted by [the Association] in accordance with

the requirements of the Declaration and of [the Association's] governing documents.”

15. The Association further recites, “[the Association] desires that [the] amendments to the Declaration, attached hereto and incorporated herein as Exhibit ‘A’ dated 12/19/01, be certified of record as notice to all current and future owners of property subject to the Declaration of the contents of said amendments.”

16. Among other things, the 2002 Amendment modified the definition of the term “Lot,” as used throughout the Declaration. The 2002 Amendment defines “Lot” to mean only the residential property in Broken Sound:

Article I, Section 4 of the Declaration shall be modified as follows:

4. “Lot” shall mean and refer to any platted subdivision residential lot or residential parcel or any dwelling unit or condominium unit in any of the Property described in Article II hereinbelow, the Owner of which Lot being deemed a Class A member of the Association pursuant to the Articles of Incorporation.

Additions indicated by underlining in original.

17. Since recording the 2002 Amendment, the Association has not further amended or modified the definition of “Lot” in the Declaration.

18. The Property is not a “residential lot or residential parcel” or “dwelling unit or condominium unit” in Broken Sound. The Property is a commercial property. Thus, the Property is not a “Lot” as defined in the Declaration, as amended by the 2002 Amendment.

19. On December 17, 2004, 1905 purchased the Property via Special Warranty Deed recorded December 20, 2004, in Official Records Book 17909, Page 1350 of the public records of Palm Beach County, Florida.

20. At the time of 1905's purchase in 2004, the Association had never—in the 19 years since recording of the Declaration in 1985—assessed the Property.

21. Indeed, for the 16 years following 1905's purchase, the Association never attempted to assess the Property.

22. However, on October 29, 2020, the Association gave 1905 written notice that the Association intended to assess the Property for the first time ever in the 35-year history of Broken Sound, beginning January 1, 2021, and going forward.

23. In response, 1905 denied the Association's right to assess the Property pursuant to the Declaration and refused to pay the purported assessments.

24. On September 8, 2021, 1905 conveyed the Property to HTA, via Special Warranty Deed recorded on September 8, 2021, in Official Records Book 32847, Page 1056 of the public records of Palm Beach County, Florida.

25. After its purchase, HTA likewise denied that the Property was subject to any right of the Association to assess the Property pursuant to the Declaration and refused to pay the purported assessments.

CONCLUSIONS OF LAW

Summary Judgment Standard

26. Pursuant to the Florida Supreme Court's recent opinion in *In re: Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72 (Fla. 2021), Florida's summary judgment standard is to be construed and applied in accordance with the federal summary judgment standard.

27. Per the new Rule 1.510, the court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*

28. Moreover, the "correct test for the existence of a genuine factual dispute is whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* (quotation omitted).

29. No longer is it plausible to maintain that "the existence of *any* competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the 'slightest doubt' is raised." *Id.* (quotation omitted).

30. In their cross-motions, and at the hearing, both parties agreed that this case is one that is properly determined on summary judgment.

1905 is a Bona Fide Purchaser

31. A purchaser of real property in Florida is a bona fide purchaser (BFP) where the purchaser, at the time of the purchase: (i) obtains valid title to the property; (ii) pays value for the property; and (iii) has no notice of the claims or

interests of another in the property. *Schlossberg v. Estate of Kaporovsky*, 303 So. 3d 982, 988-89 (Fla. 4th DCA 2020).

32. If a purchaser is a bona fide purchaser, it takes title to the property in question free and clear of the claims or interests of which it had no notice. *Id.* (declaring BFP, who took title to condominium without notice of estate's undivided one-half interest in condominium, rightful owner of entire interest in condominium, thereby *extinguishing* estate's interest).

33. Both Plaintiffs and Defendant agreed in their summary judgment papers, and during the summary judgment hearing, that 1905 meets the first two elements required for 1905 to be a bona fide purchaser. The parties disagreed on the third element: *notice*.

34. The parties also agreed that the key document for determining whether 1905 had notice of the Association's claimed right to assess and lien the Property is the 2002 Amendment. There is no genuine dispute as to the plain language of the 2002 Amendment. The parties simply disagreed on the correct interpretation of the 2002 Amendment, the application of Florida law to the amendment, and the result.

Plaintiffs' Arguments

35. Plaintiffs argue that the recorded Declaration (including the 2002 Amendment) does not give the Association the right to assess and lien the Property. Plaintiffs argue that through the 2002 Amendment the Association gave affirmative notice to all the world that it had no such right.

36. Specifically, Plaintiffs assert that the Association, by redefining the term “Lot” in the 2002 Amendment, gave notice to all the world that its right to assess and lien property in Broken Sound is limited to the “residential lot[s] or residential parcel[s]” in Broken Sound.

37. Plaintiffs argue that because the Property is a commercial property, the Association does not have a right to assess or lien the Property under the plain terms of the Declaration (including the 2002 Amendment).

38. Accordingly, Plaintiffs argue that 1905 was a bona fide purchaser when it purchased the Property in 2004, that it took title free and clear, and subsequently transferred the same title it received to HTA in 2021, free and clear of the Association’s claimed rights to assess and lien the Property.

The Association’s Arguments

39. The Association conceded that 1905 did not have “actual” notice of the Association’s claimed right to assess and lien the Property when it purchased the Property in 2004. However, the Association argued that 1905 had “implied” or “inquiry” notice that the 2002 Amendment could not do what the Association stated on the face of the amendment it did.

40. Specifically, the Association argued that the 2002 Amendment did not exempt commercial owners, such as Plaintiffs, from paying assessments because that amendment was in violation of Section 720.306(1)(c), Florida Statutes, as it did not contain the joinder of all the property owners and lienors in Broken Sound.

41. The Association relied heavily on a trial court ruling from 2018 in *Mizner Court Holdings, LLC v. Country Club Maintenance Association, Inc. d/b/a Broken Sound Master Association*, No. 50-2015-CA-00864-XXX-MD (Dkt. No. 932) (15th Jud. Cir. Ct. July 13, 2018) (*Mizner*), which the Association argued is persuasive authority for this Court to reject 1905's interpretation of "Lot" as exempting commercial property from assessments and liens.

42. Finally, the Association argues that even if 1905 were a BFP in 2004, there is no such thing as "derivative" BFP status. Because HTA admitted it had actual notice of the Association's claims when it purchased the Property in 2021, the Association argues 1905's BFP status is irrelevant and HTA took title subject to the Association's claims.

**Because 1905 is a BFP, Both 1905 and HTA
Took Title Free and Clear of the Association's Claims**

43. The Association's argument that the 2002 Amendment gave 1905 "implied" or "inquiry" notice to investigate whether the 2002 Amendment had been validly adopted and recorded ignores that it was the Association, with assistance of counsel (as shown on the face of the amendment), who adopted and recorded the 2002 Amendment in the first place.

44. The 2002 Amendment recites on its face that it was "validly adopted by [the Association] in accordance with the requirements of the Declaration and of [the Association's] governing documents."

45. The 2002 Amendment further recites that the Association "desires that [the] amendments to the Declaration, attached hereto and incorporated herein as Exhibit 'A' dated 12/19/01, be certified of record as notice to all

current and future owners of property subject to the Declaration of the contents of said amendments.”

46. A party is estopped from disputing record title when, by his own negligence, he has held the title out to the world by means of the public record as being a good title. *Reasoner v. Fisikelli*, 153 So. 98, 99 (Fla. 1934). Where one of two innocent parties must suffer, the one whose negligence was the cause of the other’s misfortune must bear the burden. *Id.* at 98.

47. Moreover, “those who by their conduct or neglect in permitting the record to mislead others must bear any consequent loss rather than the one who in good faith may have acted with reference to the record as being in accord with actual facts”. *Rabinowitz v. Houk*, 129 So. 501, 511 (Fla. 1930). “[I]n the absence of actual notice to the contrary one who relies on the public record is entitled to regard” a recorded document as correctly defining the state of title. *Roberts v. Bass*, 111 So. 2d 455, 456 (Fla. 1st DCA 1959) (citation omitted).

48. Based on these longstanding principles of Florida law, the Association’s argument that 1905 and HTA must suffer the consequences of the Association’s won failure to adopt a valid amendment (or to timely correct it) places the burden on the wrong party.

49. If the Association failed to validly adopt the 2002 Amendment because it failed to obtain unanimous consent and joinder as it claims was required, then it is the Association who is estopped from denying the validity of the 2002 Amendment and who must bear any consequent loss as against third parties without notice. *See Reasoner v. Fisikelli*, 153 So. 98, 98-99 (Fla. 1934);

Rabinowitz v. Houk, 129 So. 501, 511 (Fla. 1930); *Roberts v. Bass*, 111 So. 2d 455, 456 (Fla. 1st DCA 1959).

50. The Association's reliance on the trial court's reasoning in *Mizner* is also misplaced. That ruling was issued in a case to which Plaintiffs were not parties and which involved a different property. Moreover, the ruling was not made until 2018, some 14 years after 1905 purchased the Property. Thus, even if *Mizner* stood for the proposition the Association urges, that would not change the fact that in 2004, when 1905 purchased the Property, 1905 had no notice that the 2002 Amendment might not be valid, or that the Association claimed any right to assess and lien the Property.

51. Thus, the Court concludes based on the undisputed record that 1905 had no notice of the Association's claimed right to assess and lien the Property when it purchased the Property in 2004 and, as such, 1905 is a BFP who took title to the Property free and clear of the Association's claims.

52. The Association's argument that there is no such thing as "derivative" BFP ignores the effect that 1905's BFP status had on the Property in 2004. Because 1905 was a BFP when it purchased the Property in 2004, it took title to the Property free and clear of the Association's claims.

53. To conclude otherwise, and allow the Association to claim assessments against the Property after 1905's transfer to HTA in 2021, would eliminate or diminish 1905's status as a BFP and the resulting fee simple title it acquired in 2004.

54. A BFP, such as 1905, receives and has the necessary right and ability to transfer the same fee simple title, free and clear of any claims or interests of which it took title without notice. *See, e.g., Schlossberg v. Estate of Kaporovsky*, 303 So. 3d 982, 988-89 (Fla. 4th DCA 2020) (declaring BFP, who took title to condominium without notice of estate's undivided one-half interest in condominium, rightful owner of entire interest in condominium, thereby *extinguishing* estate's interest).

55. To accept the Association's argument that HTA's title is not free and clear of the Association's right to assess or lien the Property, notwithstanding the fact that its predecessor in title, 1905, is a BFP, would defeat 1905's status under Florida law as a bona fide purchaser.

56. If 1905's status were to last only so long as it owned the Property, then it would not be able to realize the full value of the sale because it would be subject to the Association's claims. In other words, 1905 would still be subject to the Association's claims and that result would be contrary to established Florida law that provides that a bona fide purchaser takes "free and clear" of such claims, not partially free and clear of such claims.

57. Once a party's BFP status operates to extinguish an interest or right, that interest or right does not revive upon a subsequent transfer. *See id.* (holding that BFP received fee simple title to entire interest in condominium, free and clear of estate's undivided one-half interest); *see also Omohundro v. Talley*, 131 So. 398, 400 (Fla. 1930) (recognizing that one who receives fee simple title to property has "full right and authority to convey a fee-simple title").

**Defendant's Affirmative Defenses and
Defendant's Motion for Final Summary Judgment**

58. The Court's determination that 1905 is a BFP, and that both 1905 and HTA took title to the Property free and clear of the Association's claimed right to assess and lien the Property, disposes of Plaintiffs' declaratory judgment and quiet title causes of action set forth in the Complaint, which are herein granted.

59. Defendant's affirmative defenses to Plaintiff's Complaint fail as a matter of law, and all of the grounds set forth in Defendant's Motion for Final Summary Judgment are moot and are herein denied, in light of the Court's determination that 1905 is a bona fide purchaser.

60. With all of the claims and defenses adjudicated or otherwise disposed of, there is no further judicial labor for the Court in this matter and, accordingly, the Court hereby enters final judgment as follows:

WHEREFORE, it is **ORDERED, ADJUDGED**, and **DECREED** that:

1. Plaintiff's Motion for Final Summary Judgment is hereby **GRANTED**.
2. Defendant's Motion for Final Summary Judgment is hereby **DENIED** as moot.
3. The Court hereby **DECLARES** as follows:
 - (a) The Declaration, as amended by the 2002 Amendment, does not give Defendant authority to assess or lien the Property or to collect assessments as a personal obligation of 1905, HTA, or any future owner of the Property.

(b) 1905 is a bona fide purchaser, who took title to the Property without notice of any claimed right of the Defendant to assess or lien the Property or to collect assessments as a personal obligation of the owner of the Property.

(c) As a bona fide purchaser, 1905 received in 2004, and subsequently conveyed to HTA in 2021, title to the Property in fee simple, free and clear of any claimed right of the Defendant to assess or lien the Property or to collect assessments as a personal obligation of the owner of the Property.

(d) Defendant is estopped from denying the validity of the recorded 2002 Amendment vis-à-vis 1905, HTA, or any future owner of the Property and from asserting a right to assess or lien the Property and from collecting assessments as a personal obligation of the owner of the Property.

4. Judgment quieting title is hereby **ENTERED** in favor of each of the Plaintiffs, and their respective successors in title, as against any right of Defendant, and anyone claiming by, through, or under Defendant, to assess or lien the Property pursuant to the Declaration or otherwise, and title to the Property is forever quieted and confirmed in the respective Plaintiffs free and clear of any such claimed right. Defendant is perpetually enjoined from asserting any right to assess or lien the Property.

5. Full and final judgment is hereby **ENTERED** in favor of Plaintiffs against Defendant, and Defendant shall take nothing in this action and Plaintiffs shall go henceforth without day. The Court reserves jurisdiction to award taxable costs in favor of Plaintiffs.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida.

 THE
502021CA012280XXXMB 01/27/2023 CIRCUIT
Luis Delgado Circuit Judge
ADMINISTRATIVE OFFICE OF THE COURT

502021CA012280XXXMB 01/27/2023
Luis Delgado
Circuit Judge

Copies furnished to:

Dane R. Blunt, Esquire
Carlton Fields, P.A.
P. O. Box 3239
Tampa, Florida 33601
Telephone: 813-223-7000
Facsimile: 813-229-4133
dblunt@carltonfields.com
snovell@carltonfields.com
Counsel for Plaintiffs

Allen M. Levine, Esquire
Becker & Poliakoff, P.A.
1 East Broward Blvd., Suite 1800
Ft. Lauderdale, FL 33301
Telephone: 954.985.4141
Facsimile: 954.985.4176
alevine@beckerlawyers.com
ecuellar@beckerlawyers.com
Counsel for Defendant