IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL DISTRICT
IN AND FOR ST. LUCIE COUNTY, FLORIDA

VITALIA AT TRADITION RESIDENTS' ASSOCIATION, INC., a Florida not-for-profit corporation,

Plaintiff,

v. CASE NO.: 562021CA000491AXXXHC

VITALIA AT TRADITION, LLC, a Florida limited liability company,

Defendant.
_____/

ORDER GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON COUNT IV OF THE AMENDED COMPLAINT

THIS MATTER having come before the Court on January 27, 2023, on the parties' cross-motions for summary judgment, 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. Count IV of the Amended Complaint is an action for breach of contract and violation of Section 720.303(6), Florida Statutes, against Defendant, Vitalia at Tradition, LLC ("Developer").

2. In Count IV, Plaintiff, Vitalia at Tradition Residents' Association, Inc. ("Association"), seeks $1,033,172.20 in damages against Developer for its alleged underfunding of reserves from 2015 through 2019, while Developer was in control of the Association.

3. Both parties agree there are no genuine issues of material fact as to Count IV of the Amended Complaint and that summary judgment is appropriate.

4. Moreover, the facts are not in dispute.

5. The parties simply disagree on the applicable law, and on the proper interpretation and application of that law to the undisputed facts.

UNDISPUTED FACTS

6. The Association is a homeowners association governed by the Declaration for Vitalia™ at Tradition, recorded on December 4, 2012 in Official Records Book 3459, at Page 693 of the public records of Saint Lucie County, Florida, as amended (collectively, the "Declaration")

7. Developer controlled the Association until January 7, 2020 ("Turnover").

8. Pursuant to Section 720.308(1)(b), Florida Statutes, and Section 22.9 of the Declaration, Developer elected to fund the operating deficits or shortfalls of the Association in lieu of paying monthly assessments on the property owned by Developer.

9. Beginning in 2015, Developer elected to create a reserve account for the Association.

10. Developer included a reserve contribution of $36,000 in the 2015 annual budget of the Association and funded this entire budgeted amount in fiscal year 2015, thus establishing reserves.

11. After establishing and fully funding the budgeted reserves in 2015, Developer commissioned a reserve study from an independent professional reserve analyst, Mackenzie Engineering & Planning, Inc. ("Mackenzie"), to create a funding plan for reserves in fiscal year 2016 and going forward.

12. For fiscal years 2016, 2017, and 2018, Developer budgeted for and funded reserves in amounts that exceeded the reserve contribution amounts recommended by Mackenzie.

13. At the end of 2018, Developer commissioned another reserve study from an independent professional reserve analyst, Association Reserves, to create an updated funding plan for reserves in fiscal year 2019 and going forward.

14. Both parties' experts agreed it is industry standard practice for associations to obtain updated reserve studies every 3 to 5 years.

15. For fiscal year 2019, the last fiscal year that Developer was in control of the Association, Developer again budgeted for and funded reserves in an amount that exceeded the amount recommended by its independent professional reserve analyst.

16. In total, Developer funded $857,316 in reserves from 2015 through 2019, which exceeded the amounts recommended Developer's independent professional reserve analysts during this period by more than $250,000.

CONCLUSIONS OF LAW

Summary Judgment Standard

17. 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.

18. 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.*

19. 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).

20. 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).

The Declaration Does Not Require "Full Funding" of Reserves

21. The Declaration does not require the Association to establish a reserve fund. Declaration at § 22.2.4.

22. Instead, the Declaration gives the Association discretion "to establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements." *Id.* (". . . the Board may, but shall have no obligation to, include a "Reserve for Replacement" in the Monthly Assessments . . . .").

23. Moreover, the Declaration gives the Association power to levy assessments "for the creation of reasonable reserves." *Id.*

24. Nowhere in the Declaration do the words "full funding" or "fully funded" appear. The only words used to describe reserves in the Declaration are "reasonable" or "adequate."

Section 720.303(6), Florida Statutes (2015, 2017, and 2019) Does Not Require "Full Funding" of Reserves

25. The parties dispute which version of Section 720.303(6), Florida Statutes, governs this dispute. The Association argues that the pre-2021 amendment version applies whereas Developer argues that the 2021 amendment version applies. Nevertheless, Developer argues that even if the pre-2021 amendment version applies, Developer's reserve funding complied with the statute.

26. Section 720.303(6), Florida Statutes (2015, 2017, and 2019), does not require the Association to establish a reserve fund, much less require "full funding" of reserves. *Id.* (. . . "the

budget *may* include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible.") (emphasis added).

27. Section 720.303(6) provides that if the budget of the association includes reserves, the amount to be reserved "shall be computed by means of a formula that is based upon remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item." *Id.*

28. As to the amount of contribution to reserves, Section 720.303(6)(g)(2) provides that "[i]f the association maintains a pooled account of two or more of the required reserve assets, the amount of contribution to the pooled reserve account as disclosed on the proposed budget may not be less than that required to ensure that the balance on hand at the beginning of the period the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all the assets that make up the reserve pool, based on the current reserve analysis."

29. In other words, an association that maintains a pooled account, which the Association in this case did, the annual reserve fund contribution must be sufficient to ensure the total reserve fund balance will not fall below zero, based on the association's current reserve analysis projections.

30. Nowhere in Section 720.303(6) do the words "full funding" or "fully funded" appear.

31. The Association's expert, Sharon L. Atkinson, CPA, erroneously relied on language taken from outside the four corners of Section 720.303(6) to opine that the statute

requires full funding of reserve in accordance with the National Reserve Study Standards, which is directly contrary to the language contained in Section 720.303(6)(g)(2).

32. Section 720.303(6)(g)(2) expressly allows for "baseline funding," or funding an amount sufficient to keep the reserve balance above zero at all times.

33. There is no dispute in this case that Developer funded an amount sufficient to keep the reserve balance of the Association above zero at all times, and in fact, Developer funded significantly more than the minimum amount required under Section 720.303(6)(g)(2).

34. In this case, Developer followed industry standard practice in obtaining reserve studies from independent professional reserve analysts, and actually funded reserves in amounts that exceeded their recommendations.

35. If the pre-2021 amendment version of Section 720.303(6) applies in this case, Developer certainly complied with it.

By Electing to Fund the Deficits of the Association
Developer Contributed its Appropriate Share of "Income" to Reserve Funding

36. The Association argues that Developer had an obligation to fund its proportionate share of reserves, independent of its election to fund the deficits of the Association.

37. This argument overlooks the fact that both Section 720.308(1)(b) and Section 22.9 of the Declaration provide that Developer's funding of the deficit constitutes "income" of the Association, from which the reserves were funded.

38. By electing to fund the deficit, Developer "obligated itself to pay any operating expenses incurred that exceeded the assessments receivable from other members and *other income of the association.*" Fla. Stat. § 720.308(1)(b) (emphasis added).

39. The Declaration similarly provides, "Developer shall have the option (i) to fund all or any portion of the shortfall in Monthly Assessments not raised by virtue of *income receivable by the Association* . . . ." Declaration at § 22.9 (emphasis added).

40. Developer funded reserves from the income of the Association, which necessarily included Developer's deficit funding contribution.

41. Thus, by obligating itself to fund the deficit, Developer contributed its appropriate share of income to reserve funding.

Section 720.303(6), Florida Statutes (2021)
Confirms Developers Have no Obligation to Fund Reserves

42. In 2021, Section 720.303(6) was amended in direct response to *Mackenzie v. Centex Homes*, 208 So. 3d 790 (Fla. 5th DCA 2016) (*overturned due to legislative action*, 2021 FL. S.B. 630), to overturn the decision and to clarify existing law. *See* Fla. S. Bill Analysis & Fiscal Impact Stmt. for CS/CS/CB 630, at pp. 23-24 (Mar. 31, 2021) (identifying ambiguity created by *Mackenzie v. Centex Homes* as reason to amend Section 720.303(6) "to clarify the conditions in which a developer is obligated to fund the reserve accounts of a homeowners' association").

43. Amended Section 720.303(6)(i)(1) provides:

> 1. While a developer is in control of a homeowners' association, the developer may, but is not required to, include reserves in the budget. If the developer includes reserves in the budget, the developer may determine the amount of reserves included . . . .
>
> 2. This paragraph applies to all homeowners' associations existing on or created after July 1, 2021.

44. Both as a clarification of existing law, and based on the clear legislative intent on the face of the statute and in its legislative history, this section governs in this case.

45. Accordingly, Developer had no obligation to fund reserves.

46. Nevertheless, Developer in fact funded reserves in amounts that far exceeded the recommendations of its own independent professional reserve analysts, leaving the Association in a significantly better financial position than was required at Turnover.

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

1. Defendant's Motion for Partial Summary Judgment is hereby **GRANTED**.

2. Plaintiff's Motion for Final Summary Judgment on Count IV is hereby **DENIED**.

Done and ordered in St. Lucie County, Florida, this 9 day of February, 2023.

The Honorable Robert E. Belanger
Circuit Judge

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