IN THE CIRCUIT COURT FOR THE THIRTEENTH
JUDICIAL CIRCUIT, IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

EAGLES MASTER ASSOCIATION, INC.,

Plaintiff,

vs. CASE NO.: 06-11801 Div. "G"

ARTHURE J. VIZZI, individually, and
DOREE D. VIZZI, individually,

Defendants.
_____________________________________/

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND STAYING CASE PENDING ARBITRATION UNDER CHAPTER 720

This cause came on to be heard on Defendants' motions for summary judgment and on Plaintiff's motions for summary judgment. The Court, having considered arguments of counsel for the parties, reviewed the motions and memoranda of law, and being otherwise advised in the premises, hereby finds:

Summary of Facts and Interpretation of the Declarations

1. Plaintiff, Eagles Master Association, Inc. is a master homeowners association formed for the purpose of governing the affairs of a planned development known as "The Eagles." The Eagles is comprised of nine villages, each having their own governing body and association, and Declaration of Covenants. The Defendants, Mr. and Mrs. Vizzi (the "Vizzis"), own property in the village known as Windsor Park.

2. The Plaintiff seeks to enforce a portion of a provision of the Master Declaration which purports to prohibit homeowners from parking non-commercial, personal trucks in their own driveways. The Plaintiff contends that all such trucks must be parked inside the homeowner's garage and out of view. The Vizzis contend that the Windsor Park Declaration contains no such restriction and that they should be allowed to park their personal truck in the driveway as permitted under the Windsor Park Declarations.

3. It is undisputed that the original Master Declaration was recorded in December of 1987. The Declaration of Covenants, Conditions and Restrictions for Windsor Park at The Eagles was recorded on September 20, 1994. The Vizzis purchased their home on August 5, 1997, and at closing they were given a copy of the Windsor Park Declaration, but were not provided with a copy of the 1987 Eagles Master Declaration. On December 23, 1999, the Amended Eagles Master Declaration was recorded (the Amended Declaration did not change the parking provisions at issue in this case). Years after their purchase of their home, the Vizzis received a copy of the Amended Eagles Master Declaration, which is the subject of this enforcement action.

4. In this suit the Plaintiff, acting *solely* for the Master Association, seeks to prohibit Defendants from parking their personal truck in their driveway. The Windsor Park Association is not a party to this action and did not take any action to enforce such restriction, as will be explained below.

5. The Windsor Park Declaration provides:

"[V]ehicles. No motor vehicles shall be parked on the Properties except on paved or concrete driveway or in a garage. No motor vehicles which are *primarily used*

for commercial purposes, other than those present on business, nor any trailers, may *be parked on the Properties unless inside a garage and concealed from public view.* Boats, trailers, *commercial trucks*, *commercial* vans, motorcycles and other recreational vehicles shall be parked inside of garages and concealed from public view." (Article VIII, Section 9 of the Windsor Park Declaration) (Emphasis supplied)

6. The Eagles Master Declaration states:

   "[V]ehicles and Parking. No vehicles shall be regularly parked in The Eagles except on a paved driveway or inside a garage. No trucks or vehicles *which are used for commercial purposes*, other than those present on business may be parked in The Eagles unless inside a garage and concealed from public view. Pick-up trucks, boats, trailers, campers, vans, motorcycles and other recreational vehicles and any vehicles not in operable condition shall not be permitted to be parked in The Eagles *except while loading or unloading the contents thereof* or while parked inside a garage and concealed from public view." (Article III, Section 17 of the Master Declaration) (Emphasis supplied)

7. The declarations and bylaws of both The Eagles Master Association and the Windsor Park Association constitute contracts with the homeowners who reside in The Eagles and Windsor Park (citations omitted). In this case the dispute centers upon which contract applies (the Eagle Master Declaration or the Windsor Park Declaration) and whether these can be interpreted in such a way to reconcile any perceived conflict.

8. First, interpretation of contracts is a question of law. *Whitley v. Royal Trails Property Owners' Association*, 910 So2d 381 (Fla. 5th DCA 2005). Generally speaking such interpretation is governed by the parties' intention when entering the contract; when determining intent, the best evidence is the plain language of the contract. *Royal Oak Landing Homeowner's Association v. Pelletier*, 620 So.2d 786 (Fla. 4th DCA 1993).

9. Secondly, when provisions in a contract appear to be in conflict, they should be reconciled, if possible. *Seabreeze Restaurant, Inc. v. Paumgardhen*, 639 So.2d 69

(Fla. 2nd DCA 1994). Moreover, courts have held that an interpretation of a contract which gives a reasonable, lawful and effective meaning to all of the terms is preferred to an interpretation which leaves a part unreasonable, unlawful or of no effect. Id. (citing *Herian v. Southeast Bank, M.S.*, 564 So.2d 213, 214 (Fla. 4th DCA 1990).

10. It is undisputed that the purpose of The Eagle's Rules and Regulations is to carry out the provision of the covenants which are *to be kept to a minimum, and applied with discretion and only as necessary for the protection for the interest of the entire community.* (See Rule 3 of Eagles Rules and Regulations) (Emphasis supplied)

11. Defendants argue multiple grounds for relief in their motion for summary judgment. First they argue that they are entitled to summary judgment because Plaintiff failed to meet conditions precedent to taking enforcement action by failing to provide Defendants with due process as required by the rules and regulations of the association. Secondly, they argue that summary judgment should issue in their favor because the individuals purporting to act as officer and directors of the association were not properly elected and therefore have no authority to act for The Eagles Master Association (this issue is the subject of the Defendants' counterclaim, as shall be addressed later in this decision). Third, the Defendants argue that they are entitled to summary judgment because the provision of the Master Declaration purportedly restricting the parking of all trucks is unreasonable and unenforceable. Fourth, Defendants argue that the Windsor Park Declaration controls as a matter of law because the developer had

sole discretion to determine the content of the Windsor Park Declaration, upon which the Defendants now rely. Fifth, Defendants argue that the only record notice available to them to them permitted non-commercial truck to be parked in the driveway of the Windsor Park subdivision, and that any conflict between the Amended Master Declaration and the Windsor Park Declaration should be resolved in their favor.

12. Article II, Section 2, of the Master Declaration, states:

    "[A]s to Villages being developed and/or acquired by U.S. Home, its successors or assigns, the size and configuration of the Villages and the type and content of the Declaration governing each Village shall be determined in the sole discretion of U.S. Home, its successors or assigns."

13. It is undisputed that Defendants' warranty deed shows U.S. Home as grantor and it is undisputed that the Windsor Park Declaration was made by U.S. Home. Accordingly U.S. Home had the sole discretion to determine the parking provisions contained in the Windsor Park Declaration. The Master Declaration does not limit U.S. Home's authority. Accordingly, if the Windsor Park Declaration controls the parking of Defendant's vehicle, then non-commercial trucks would not specifically prohibited from being parked in the driveways of homes located within the Windsor Park subdivision.

14. The Defendants argue that in 1987, when the original Master Declaration was recorded, pick up trucks were used primarily for commercial purposes. By 1995, when the Windsor Declaration was recorded, trucks and vans had become family vehicles and the documents were clarified to limit parking of *commercial* trucks, and *commercial* vans, in keeping with these changes. Interestingly, in 1999 when the original Eagles Master Declaration was amended no changes were made to the

vehicle/parking provisions, nor did the amendment declare a method to resolve any apparent conflicts between the Master documents and the Windsor Park documents.

15. Plaintiff reads the Master Declaration to prohibit parking of *any* truck or van in the homeowner's driveway. Taken at face value, if true, then no homeowner in The Eagles may regularly park their family SUV, truck, van, or minivan in their driveway and may park for a limited time in their driveway only "*while loading or unloading the contents thereof*" (referring to the contents of their vehicle). A literal reading of this provision, which the Plaintiff espouses, means that homeowners and family members may only park their SUVs, family trucks, minivans, and vans in their driveway while unloading their children, groceries, and other such "contents." Otherwise family trucks, SUVs, vans and minivans must be parked in the homeowner's garage. Clearly this was not the developer's intention in creating this provision because such a result would be unreasonable, and would impose severe restrictions upon homeowners' use of their private property.

16. In *Wilson v. Rex Quality Corp.*, 839 So. 2d 928 (Fla. 2d DCA 2003) the Second District Court of Appeal considered a case where the trial court evaluated two conflicting provisions in a declaration applicable to commercial signage. In that case the homeowner's association sued the homeowners because they were parking vehicles equipped with commercial signage on their property. The trial court held the declaration provision restricting commercial signage controlled over the provision governing parking of vehicles on the property. Id. at 930. In

reversing the Second District stated, "[r]estrictive covenants are not favored and are to be strictly construed in favor of the free and unrestricted use of real property" and "[a]ny doubt as to the meaning of the words used must be resolved against those seeking enforcement." Id. at 930. The Court finds that the parking restriction *as interpreted by the Plaintiff* is unreasonable as applied to personal, non-commercial truck, SUVs, vans, and minivans and impairs the Vizzis' (and all other homeowners in the Eagles) free and unrestricted use of their real property.

17. The Court agrees that it is an unreasonable interpretation of these two provisions to find that the Master Declaration prohibits the parking of personal non-commercial trucks (or SUVs, vans or minivans) anywhere within The Eagles. A better interpretation of these documents is that the Windsor Park Declaration and the Amended Master Declaration be read to prohibit the parking of *commercial trucks and commercial vans* in the driveway and requiring *commercial vehicles* to be garaged and out of public view. This reading does not necessitate finding either document unenforceable and in fact is consistent with the first paragraph of Article III, Section 17 of the Master Declaration which states:

    "No vehicles shall be regularly parked in The Eagles except on a paved driveway or inside a garage. No trucks or vehicles *which are used for commercial purposes*, other than those present on business may be parked in The Eagles unless inside a garage and concealed from public view."

    Likewise,, this reading is consistent with the first part of paragraph of Article VIII, Section 9 of the Windsor Park Declaration which states:

    "No motor vehicles shall be parked on the Properties except on paved or concrete driveway or in a garage. No motor vehicles which are *primarily used for commercial purposes*, other than those present on business, nor any trailers, may be parked on the Properties unless inside a garage and concealed from public view."

Clearly the intent of both documents was to permit personal trucks, SUV's, minivans, and vans to be regularly parked in the driveway and to require commercial vehicles, which were deemed unsightly in a residential environment, to be garaged and out of the public's view. This is a more rational interpretation of these Declarations, reconciles provisions which have been argued by the parties as being in conflict, and gives a reasonable, lawful, and effective meaning to all of the terms of both Declarations.

18. Plaintiff argues that only the Master Declaration is at issue here and that the only interpretation possible (without looking at the Windsor Declaration) is that all trucks must be garaged. Yet, Plaintiff's reading would require that all personal vans, minivans, and SUVs – vehicles registered as "trucks" – be garaged as well. Furthermore, the Plaintiff's proposed reading fails to take the entire paragraph in context. The clear intent of the original Master Declaration was to limit the parking of *commercial vehicles*, not to restrict personal, non-commercial vans, minivans, trucks, and SUVs that are used for the family's daily transportation.

19. Although the Court does not agree that the Master Declaration should be considered without reference to the Windsor Park Declaration (which in this instance also governs the Vizzis' property), the Court finds the Plaintiff's interpretation of the Master Declaration to be utterly unreasonable and inconsistent with the plain intent of the developer. The Court's conclusion is further supported by the Rule 2 of The Eagles' Rules and Regulations which requires *uniform and fair enforcement* of the governing documents and Rule 3 which requires the rules to "be applied with discretion and only as necessary for

the protection of the interest of the entire community." If Plaintiff's interpretation was enforceable, then all homeowners in the nine villages of The Eagles would be prohibited from regularly parking their personal truck, van, minivan, or SUV in their driveways.

20. The Plaintiff has failed to set forth any other valid interpretation of the contract that would allow the Master Association to pick and choose which personal vehicles registered as "trucks" under the law – be it a pick-up, SUV, van or minivan – could be parked in the homeowner's driveway and which personal pick-ups, SUVs, vans, and minivans would have to be garaged. Without such a provision, application of this reading would lead to inconsistent and potentially arbitrary enforcement of the Master Declaration by subjective rather than objective standards. Moreover, despite what Plaintiff calls his "plain reading" of the Master Declaration, the Plaintiff has never actually contended that the full implications of this interpretation – namely, that *all* non-commercial vans, SUVs, and minivans be garaged – should be implemented.

The Counterclaim

21. The Defendants filed what they term an compulsory counterclaim challenging the authority of these directors, who purport to act for The Eagles Master Association, from bringing this action on the grounds that they were never duly elected under the Master Declaration, Bylaws, and Rules and Regulations. Plaintiff belatedly contends that this Court lacks jurisdiction to consider the matter. Plaintiff argues that the issue as to whether the directors are legally elected and empowered to act

for the association is governed under Section 720.306(9), Florida Statutes. That provision provides in pertinent part:

> 9) ELECTIONS.--Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. **Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division.** Such proceedings shall be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. (Emphasis added)

22. Plaintiff contends that if the Defendants wish to contest the authority of these directors to bring suit to enforce these Declarations, then they must file a petition with the Department of Business and Professional Regulation, Division of Florida Condominiums and submit the issue to binding arbitration. The Defendants argue that this is not an election dispute between a member and an association, but a claim that Plaintiff failed to elect directors at all, and thus the persons purportedly acting for the Plaintiff are unauthorized to bring this or any action on behalf of the Master Association.

23. The Court's reading of Section 720.306(9) suggests that such disputes "must be submitted" to the Department for "mandatory arbitration" and that either party may proceed to file a petition with the Department to address this election dispute issue.

24. Based upon the reading of Section 720.306(9) these proceedings shall be stayed effective December 10, 2008, in order to allow either party to file the appropriate petition with the Department. The petition shall be filed within sixty (60) days of

Deadline
2/12/08

this order. Upon proper notice of a final decision by the Department's arbitrator, the Court shall lift the stay and proceed to address any remaining issues in this case. No final judgment shall issue until the Department renders a final decision in the administrative action or declines in writing to take jurisdiction of the matter and the Court enters an order lifting the stay.

Accordingly, for the reasons stated above, Defendants' motion for summary judgment is GRANTED in part. These proceedings are stayed until a resolution of the administrative proceedings under Chapter 720, Florida Statutes. The parties shall notify the Court of the status of those proceedings.

DONE AND ORDERED this 12th day of December, 2008.

ORIGINAL SIGNED

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Martha J. Cook MARTHA J. COOK CIRCUIT JUDGE

Copies to:

Daniel Anderson, Esq.
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