

IN THE CIRCUIT COURT FOR THE
TWELFTH JUDICIAL CIRCUIT IN AND
FOR SARASOTA COUNTY, FLORIDA

CASE NUMBER: 2005-CA-7795 NC

SUNSET TOWERS CONDOMINIUM
ASSOCIATION, INC.,
Plaintiff,

v.

MARK GARRISON,
Defendant.

**ANSWER, AFFIRMATIVE DEFENSES AND
DEMAND FOR JURY TRIAL OF ISSUES SO TRIABLE**

Defendant MARK GARRISON, answers the complaint and says:

1. Paragraph 1 is admitted for jurisdictional purposes, and is otherwise denied.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted.
6. Paragraph 6 is denied, except Defendant admits that on May 31, 2001 Sunset Towers passed an amendment to the Declaration; that the quotation of Section 12.1(a) of that amendment is quoted verbatim in Paragraph 6 of the Complaint and that Plaintiff has attached a copy of the Amendment to its Complaint as Exhibit B..
7. Paragraph 7 is admitted.
8. Paragraph 8 is admitted.
9. Paragraph 9 is denied to the extent that David E. Garrison provided notice through Mark Garrison's lawyer acting as agent for the parties.

FILED FOR RECORD
2005 DEC -6 AM 9:48
KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY FLORIDA

Case: 2005 CA 007795 NC
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Dkt: ANSWERJRY

10. Paragraph 10 is denied, except that Defendant admits that due to a timing gap of approximately one week, for the conclusion and closing of pending and approved transactions, Defendant temporarily held legal title to Unit 805, until the closing of the approved sale of that unit was completed.
11. Paragraph 11 is admitted.
12. Paragraph 12 is admitted, except Defendant denies that some of the units described in Paragraph 12 are not the same units owned as of the effective date of the Amendment.
13. Paragraph 13 is denied.
14. Paragraph 14 is denied.
15. Paragraph 15 is denied, except Defendant admits that the quoted section of the Declaration (as amended) correctly quotes that section, and speaks for itself.
16. Paragraph 16 is denied, except Defendant admits that Exhibit E was delivered and received by Defendant, and the terms of Exhibit E speak for themselves.
17. Paragraph 17 is denied, except Defendant admits that the terms of Exhibit E speak for themselves.
18. Paragraph 18 is admitted.
19. Paragraph 19 is admitted, but denies Paragraph 19, to the extent that its admission would constitute agreement as to validity of the Order or the manner in which it was procured.
20. Defendant realleges and incorporates by reference his responses to Paragraphs 1 – 19 as his response to Paragraph 20.
21. Paragraph 21 is admitted for jurisdictional purposes and is otherwise denied.
22. Paragraph 22 is admitted.

23. Defendant is without knowledge as to the allegations of Paragraph 23 except
Defendant admits that the terms of the Declaration speak for themselves.
24. Paragraph 24 is denied.
25. Paragraph 25 is denied.
26. Paragraph 26 is denied.
27. Paragraph 27 is denied.
28. Defendant realleges and incorporates by reference his responses to Paragraphs 1 – 19
as his response to Paragraph 28.
29. Defendant is without knowledge as to the allegations of Paragraph 29.
30. Paragraph 30 is denied, except Defendant admits that the provisions of Chapter 718,
Florida Statutes speak for themselves.
31. Defendant is without knowledge as to the allegations of Paragraph 31, except
Defendant admits that the provisions of Sections 718.1255 and 718.303, Florida
Statutes speak for themselves.

FIRST AFFIRMATIVE DEFENSE

32. As a first affirmative defense to Plaintiff's Complaint, Defendant alleges that he is not
in violation of Sunset Towers' Declarations drafted by Plaintiff in that:
- a. Section 12.1(a) (as amended) provides in part that:

"Any natural person, persons, or individual or family trust owning more than
(sic) two (2) units at the time of recording of this amendment may continue to
do so, but may not thereafter acquire an additional unit or units . . ."
 - b. At the time of the recording of the amendment of Section 12.1(a), Defendant
Mark Garrison owned four units, and his right to continue to own four units is
grandfathered in under the terms of the amendment of Section 12.1(a).

- c. Defendant Mark currently owns four units, and may continue to do so under the terms of Section 12.1(a) as amended.

SECOND AFFIRMATIVE DEFENSE

33. As a second and alternative affirmative defense to Plaintiff's Complaint, Defendant alleges that he is not in violation of Sunset Towers' Declarations drafted by Plaintiff in that:

- a. Prior to the transfer of legal title to Unit 201 from David Garrison to his son, Defendant Mark Garrison, notice of the intended transfer was provided to Sunset Towers on several occasions including, but not limited to the notice provided through counsel in Richard A. Ulrich, Esq.'s May 6, 2003 letter to Stephen W. Thompson, Esq., counsel for Sunset Towers, a copy of which is attached to this pleading as Defendant's Exhibit A, and the April 4, 2005 notice provided by Defendant, a copy of which is attached to this pleading as Defendant's Exhibit B.
- b. As memorialized in Richard A. Ulrich, Esq.'s letter, counsel for the parties agreed that Defendant Mark Garrison could acquire Unit 201 through a transfer of legal title from David Garrison to Mark Garrison, and such agreement constitutes approval of the transfer by Sunset Towers.
- c. Alternatively, pursuant to the provisions of Section 12, Sunset Towers' failure to tender an agreement to purchase Unit 201, by an approved purchaser or by Sunset Towers, within thirty (30) days of notice of the transfer to title constitutes approval of transfer by Sunset Towers.

THIRD AFFIRMATIVE DEFENSE

34. As a third and alternative affirmative defense to Plaintiff's Complaint, Defendant alleges that any alleged breach of the amended Section 12, that may have resulted from the overlap of approximately one-week between the acquisition of Unit 201 and the sale of Unit 805, was cured through the sale of Unit 805.

FOURTH AFFIRMATIVE DEFENSE

35. As a fourth and alternative affirmative defense to Plaintiff's Complaint, Defendant alleges that Section 12 (as Amended) of the Declaration is void, in that:

a. Plaintiff states in paragraph 23 of its Complaint:

"The terms of the Declaration as amended, are binding on all members of Sunset Towers, and Sunset Towers cannot allow Defendant to violate the Amendment while other members are held to the edicts of the Amendment. Such allowance would result in Sunset Towers **selectively allowing breach of the Amendment** by Defendant, and could **render the Amendment null and void as against other members.**" (*emphasis added*).

b. Plaintiff has on at least one occasion since the Amendment of Section 12, allowed an owner to breach the Amendment by allowing a transfer to a corporation of to an interest in a Sunset Tower unit, in violation of the terms of the Amendment.

c. Plaintiff's decision to bring this action against Defendant while selectively allowing and authorizing other unit owners to breach the Amendment to Section 12 renders the Amendment null and void as against Defendant and other members.

FIFTH AFFIRMATIVE DEFENSE

36. As a fifth and alternative affirmative defense to Plaintiff's Complaint, Defendant alleges that the amendment of Section 12 is null and void was adopted in violation of Sunset Towers' Declaration, and Chapter 718 in that:

- a. The relevant provisions of Section 19.3 of Sunset Towers' Declaration provides that:

 "Proviso. Provided, however, that no amendment shall discriminate against any condominium owner nor against any unit or class or group of units, unless the condominium unit owners so affected shall consent"
- b. At the time of the amendment of Section 12, Defendant Mark Garrison was the only unit owner who owned more than two (2) units.
- c. At the time of the amendment of Section 12, Defendant Mark Garrison had challenged actions of the Board of Sunset Towers through litigation and other legally authorized actions.
- d. At no time, either before, during or after the amendment of Section 12, did Defendant Mark Garrison consent to the amendment.
- e. In retaliation for Defendant Mark Garrison's litigation and challenges to the actions of the Board, the amendment which only had application to Defendant Mark Garrison's ownership of Sunset Tower units, was adopted with the primary intent of harming Defendant and taking action to discriminate against Defendant Garrison.
- f. In addition to the Amendment being enacted for the sole purpose of discriminating against Defendant Garrison, the Amendment is discriminatory

against a class of owners, as banks and other mortgage holders are not precluded from acquiring ownership of more than two units, while the Amendment prevents individuals such as Defendant Garrison from obtaining similar rights of ownership.

DEMAND FOR ATTORNEY'S FEES

37. Defendant has retained the law firm of de Beaubien, Knight, Simmons, Mantzaris & Neal, L.L.P. to represent him in this action, is obligated to pay his counsel a reasonable fee for their services, and is entitled to recover these fees and costs incurred in this action, in the event he is the prevailing party.

DEMAND FOR JURY TRIAL

38. Defendant demands a jury trial on all issues so triable.

I HEREBY CERTIFY that on on December 3, 2005, a true and correct copy of the foregoing has been furnished by U.S. Mail to Mary R. Hawk, Proges, Hamlin, Knowles & Prouty, PA, Attorneys for Plaintiff, P.O.Box 9320 1205 Manatee Ave. West, Bradenton, FL 34206.



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*Board Certified Real Estate Lawyer
**Board Certified Business Litigation Lawyer
***Circuit Mediator
§ Family Mediator
Of Counsel

May 6, 2003

Via Facsimile - 746-4160; and
Regular U.S. Mail

Stephen W. Thompson, Esq.
Porges, Hamlin, Knowles & Prouty, P.A.
1205 Manatee Avenue West
Bradenton, Florida 34205

Re: Sunset Towers Condominium Association, Inc./Mark Garrison

Dear Steve:

I want to take this opportunity to thank you for discussing certain issues regarding my client, Mark Garrison, and Sunset Towers Condominium Association, Inc. I believe that all of my client's issues will be able to be worked out with the Association for the benefit of all unit owners at Sunset Towers. As you know, my client owns four units at the Association and, as such, has a substantial investment in the success and operation of this condominium.

With that in mind, my client is concerned that the Association is not following Chapter 718, the declaration of condominium and bylaws for Sunset Towers. Specifically, my client believes that the recent decision to replace windows at the condominium building has not been properly accomplished despite the fact that you have sent a letter to the Association indicating that the change of the windows is a material alteration and thus would need to be approved by the membership. I understand from my client that the process you set out for them is not being followed. I would appreciate it if you would investigate this situation and advise me accordingly.

My client has indicated he paid in excess of \$1,000.00 in interest and late fees for a special assessment that had been passed by the board. My client has investigated this situation as best he can and believes that the proper notification for the board meeting was not delivered to the unit owners. If this is the case, as you and I discussed, my client would be entitled to a refund of the late fees and interest charges. It is not the fact that a special assessment was passed that concerns my client, but that it was done improperly thus leaving the board open to potential arbitration issues from other unit owners. This of course would increase the likelihood that my client would be required to pay attorney's fees and costs and, since he owns four units, this could be substantial. Please advise as to your investigation of this matter.

**DEFENDANT'S
EXHIBIT**

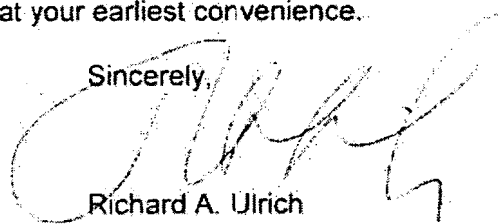
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Page 2
May 6, 2003

Finally, it is my understanding that the Association recently passed an amendment prohibiting multiple ownership of units at the condominium. While my client is grand fathered in with the four units he already owns since he owned these units at the time of the passage of the amendment, he wishes to trade a unit with his father. Again, as we discussed, this would not increase the number of units my client owns and it was both of our opinions that my client could do this. Please confirm our understanding.

I appreciate the professional manner in which you have agreed to deal with these issues and look forward to receiving your response at your earliest convenience.

Sincerely,



Richard A. Ulrich

RAU:lcr

cc: Mr. Mark Garrison



306 Whitfield Avenue, Sarasota, Florida 34243

Phone: (941) 355-5936

Fax: (941) 355-1050

FAX COVER SHEET

DATE: April 4, 2005
TO: Jo
COMPANY: Advanced Management, Inc.
FAX NUMBER: 359-1089
FROM: Karen Kuhlman
RE: Mark Garrison
NUMBER OF PAGES: 3

Jo, attached to this cover sheet you will find the following documents: Quitclaim Deed, and the Letter of Transfer showing that the referenced property Unit 201 was gifted on March 28, 2005. If you need any additional information or have any questions, please do not hesitate to give me a call. Thank you.

The information contained in this transmission is privileged and/or confidential. It is intended only for the use of the individuals or entities named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or fax and return the original message to us at the above address.

Thank you.

FAXCOVER

DEFENDANT'S
EXHIBIT

B

Kuhlman & Associates, Inc.
306 Whitfield Avenue, Sarasota, Florida 34243
Phone (941) 355-5936 Fax (941) 355-1050

April 4th, 2005

**Sunset Towers
c/o AMI
9031 Town Center Parkway
Bradenton, Fl. 34202**

Dear Jo:

Per our conversations back on February 9th, 2005 this letter is to inform the Home Owners Association for Sunset Towers that your existing member Mark Garrison has been gifted Unit 201 by his father David Garrison. Legal Description is as follows: Unit No. 201, Sunset towers, a Condominium, according to the declaration of Condominium recorded in O.R. Book 1380, Page 1411, as per plat thereof recorded in Condominium Book 14, Pages 41-41G, and amendments thereto, of the Public Records of Sarasota County, Florida. I spoke with you regarding the transfer of this property in early February. I have also been in contact with Stephan Thompson as well as Roberta Maxfield.

I have also attached a copy of the Quitclaim Deed from the transfer. Thank you for your cooperation as assistance in this matter. If you should have any questions concerning the documents or the closing, please do not hesitate to contact our office.

Sincerely yours,



Karen Kuhlman

Encl.