

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.

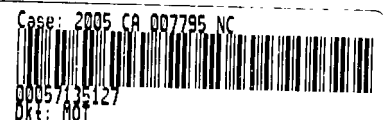
FILED FOR RECORD
2005 SEP 15 AM 8:51
KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY FLORIDA

**MOTION TO ABATE PROCEEDING, REFER TO MEDIATION, AND DENY
PLAINTIFF ATTORNEY'S FEES FOR ALL MATTERS INVOLVED IN THIS
PROCEEDING PRIOR TO THE FILING OF THIS MOTION**

Defendant, MARK GARRISON, moves to abate this proceeding, refer to mediation, and deny Plaintiff attorney's fees for all matters involved in this proceeding prior to the filing of this motion, on the grounds that Plaintiff has circumvented the Alternative Dispute Resolution procedures established by the Florida Legislature in enacting § 718.1255, *Fla. Stat.*, and has thereby deprived Defendant of the opportunity to resolve this matter through mediation and all other remedies afforded to Defendant pursuant to § 718.1255, *Fla. Stat.* In support of this motion, Defendant alleges that:

1. As stated in § 718.1255(3), *Fla. Stat.*, the intent of the legislature in enacting a procedure for Alternative Dispute Resolution of disputes between condominium associations and condominium unit owners is:

"§ 718.1255(3), *Fla. Stat.*, LEGISLATIVE FINDINGS.--



(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that the courts are becoming overcrowded with condominium and other disputes, and further finds that alternative dispute resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney's fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law."

2. As further reinforcement of this intent, the Florida Legislature stated in Section 718.1255(2), Florida Statutes:

F.S. 718.12555 (2) "VOLUNTARY MEDIATION.--Voluntary mediation through Citizen Dispute Settlement Centers as provided for in s. 44.201 is encouraged."

3. In an effort to circumvent the clear intent of the Florida Legislature, and thereby create the litigation disadvantage for the defending unit owner that the Legislature sought to ameliorate, Plaintiff took the following actions:

a. Filed an Ex-Parte proceeding with the State of Florida's Department of Business and Professional Regulation, without notice to Defendant, in an effort to obtain an Order that eliminated Defendant's right to seek an Alternative Dispute Resolution of this matter, without affording Defendant any due process ability to defend or rebut the contentions of Plaintiff, or to seek mediation during the period that mediation could have been sought pursuant to § 718.1556(4)(e), *Fla. Stat.*

b. Until service of the summons and complaint upon Defendant, Plaintiff failed to provide Defendant with a copy of or any notice that the Ex-Parte administrative determination (which cites no case law for its authority to exclude this matter from Alternative Dispute Resolution) had been entered, during the thirty-day period allowed prior to the filing of this lawsuit, for seeking de novo review of the administrative determination.

4. A de novo review of the department's Ex-Parte exclusion of this matter from Alternative Dispute Resolution would have been likely to reverse the department's decision, in that:

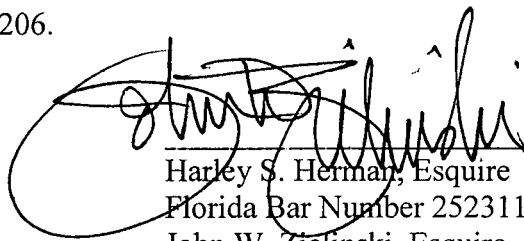
a. This is a "dispute" as defined by § 718.1556(1) (a)(1), *Fla. Stat.*, involving disagreement between the Association and an owner in which the Association seeks to require the owner to take any action, or not to take any action, involving that owner's unit, rather than a dispute involving the issue of who holds title to Defendant's units.

b. There is no case law determining that this type of dispute does not qualify for the types of Alternative Dispute Resolution afforded to the parties pursuant to § 718.1556(3), *Fla. Stat.*

5. In view of the clear intent of the Legislature to encourage mediation, and alternative dispute resolution of disputes between Condominium Association and their Unit Owners, to eliminate unnecessary court congestion, and offset the ability of Condominium Associations to utilize superior resources to prevail in court through use of its access to virtually unlimited financial resources, this matter should be referred to mediation and abated until mediation has concluded.

6. In view of the Association's actions to circumvent § 718.1556(3), *Fla. Stat.*, and preclude Defendant from availing himself of the Alternative Dispute Resolution options afforded to him pursuant to that Statute, Plaintiff should be denied attorney's fees for all actions taken to date in either the Ex-Parte administrative proceeding or this lawsuit.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail and Facsimile on September 13, 2005 to Mary R. Hawk, Esquire, P.O.Box 9320, 1205 Manatee Ave. West, Bradenton, FL 34206.



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