

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

JOHN BARNER, ANN BARNER, DAVID
BEWLEY, DONNA BEWLEY, BOB BROWN,
LOIS BROWN, GEORGE COLLIARD, ELLEN
COLLIARD, DONALD
FEATHERMAN, SUSAN FEATHERMAN,
HOWARD FELTMAN, ADRIENNE FELTMAN,
BOB GREENFIELD, LOUISE GREENFIELD,
DAVID JACARUSO, MARIE GRAZIOSI, JACK
KAHGAN, RUTH KAHGAN, JAMES McLELLAN,
PHYLLIS McLELLAN, JAMES STEWART,
JOAN STEWART, NANETTE TURNER, ROY
GOODWILL and NANCY GOODWILL,

Plaintiffs,

vs.

CASE NO.: 2010 CA 5791 NC

THE LANDINGS MANAGEMENT
ASSOCIATION INC., a Florida
corporation,

Defendant.

_____ /

COUNTERCLAIM

DEFENDANT, THE LANDINGS MANAGEMENT ASSOCIATION, INC. ("Defendant"),
a Florida not-for-profit corporation, by and through its undersigned counsel, files this its
COUNTERCLAIM against Plaintiffs, JOHN BARNER, ANN BARNER, DAVID BEWLEY,
DONNA BEWLEY, BOB BROWN, LOIS BROWN, GEORGE COLLIARD, ELLEN COLLIARD,
DONALD FEATHERMAN, SUSAN FEATHERMAN, HOWARD FELTMAN, ADRIENNE
FELTMAN, BOB GREENFIELD, LOUISE GREENFIFLD, DAVID JACARUSO, MARIE
GRAZIOSI, JACK KAHGAN, RUTH KAHGAN, JAMES McLELLAN, PHYLLIS McLELLAN,

JAMES STEWART, JOAN STEWART, NANETTE TURNER, ROY GOODWILL and NANCY GOODWILL (Plaintiffs) and alleges:

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.

2. In 1978, the Board of County Commissioners of Sarasota County, Florida, adopted Resolution No. 78-202 (the "Resolution"), which approved Special Exception Petition No. 675 authorizing use of The Landings development for single family detached dwellings and cluster housing. A copy of the Resolution is attached to Plaintiffs' Complaint as Exhibit "A."

3. In 1980, C & M Associates ("C&M") and Landings Development Company ("LDC") as owners of the underlying property, recorded The Landings – Unit One subdivision plat (the "Plat"). The Plat establishes the boundaries of "Tract F" as follows:

Tract F, THE LANDINGS - UNIT ONE, as per plat thereof recorded in Plat Book 27, page 12, Public Records of Sarasota County, Florida.

4. Tract F is generally circular in shape with a radius of approximately 300 feet. A portion

of Tract F abuts Landings Boulevard for approximately 100 feet along its northern boundary, and the remainder of Tract F is surrounded by single-family residential lots (the "Surrounding Lots") owned by the Plaintiffs in this action. Those lots are legally described as follows:

Lots 162, 163, 170, 171, 173 -183, and 186 - 189, THE LANDINGS - UNIT ONE, as per plat thereof recorded in Plat book 27, page 12, Public Records of Sarasota County, Florida.

5. In 1980, C&M, along with LDC as "Developer," recorded in Official Records Book 1372, page 1217, a Declaration of Maintenance Covenants and Restrictions on The Commons for The Landings (the "Declaration").

6. Paragraph 1 of the Declaration subjected all of the underlying property in The Landings to, the Declaration **other than Tract F**.

7. Paragraph 29 of the Declaration states, in part:

29. EAGLES' NEST AREA. The property described as "Tract F" in Exhibit "A" attached hereto is not subject to the provisions of this Declaration

8. Paragraph 2(h) of the Declaration states, "The Commons" or the "Common Areas" are limited to "real property (or interest therein) located in The Landings which may hereafter be specifically set aside by Developer for the common use and enjoyment of all owners in The Landings as members of [Defendant]."

9. Paragraph 7 of the Declaration states that "ownership of each portion of the Commons shall remain in Developer unless and until Developer shall transfer title thereto."

10. When the Plat and Declaration were recorded in 1980, the LDC was the "Developer," and Tract F was owned by C&M, an entity closely related to LDC with common ownership and control.

11. Tract F was not part of the common areas or subject to the terms of the Declaration at the time the Plat and Declaration were recorded.

12. On March 17, 1987, C&M, the then-owner of Tract F, quitclaimed to Defendant all of its right, title, and interest in Tract F, by deed recorded in Official Records Book 1936, page 2549, Public Records of Sarasota County, Florida.

13. As alleged in paragraph 17 of Plaintiffs' Complaint, Defendant, The Landings Management Association, Inc., was organized "for the purpose of operating, maintaining, managing

and improving the *common areas* of The Landings and for the purpose of enforcing these covenants and restrictions as such rights of enforcement may be assigned to it from time to time by the Developer."

14. Furthermore, as Plaintiffs correctly point out in paragraph 22 of their Complaint, "Defendant is only authorized to improve common areas."

15. Although Tract F was not part of the commons or the common areas of The Landings at the time the original Declaration was adopted by the Developer on January 9, 1980 and subsequently recorded on May 19, 1980 at Official Records Book 1372 Page 1217, it decidedly became a part of the commons or common areas as defined in the Declaration, as amended from time to time, by virtue of the quitclaim deed dated March 17, 1987 (Exhibits "E" and "F" to Plaintiffs' Complaint).

16. Specifically, the aforesaid quitclaim deed recites in pertinent part:

Grantee, by the acceptance of this conveyance, hereby expressly assumes the obligations of and agrees to be bound by and to comply with all of the covenants, terms, provisions and conditions contained in the Declaration of Maintenance, Covenants and Restrictions on the Commons for The Landings recorded in Official Records Book 1372, page 1217, as amended, of the Public Records of Sarasota County, Florida.

The property is conveyed to Grantee in its capacity as the management association for The Landings and is to be held and used by Grantee in accordance with its Charter and Bylaws and the Declaration of Maintenance, Covenants and Restrictions on the Commons for the Landings.

17. Defendant's charter does not contemplate or allow its ownership of property other than the commons or common areas as defined by the Declaration as amended.

18. Defendant has consistently treated Tract F as a common area since acquiring it by virtue of the aforesaid quitclaim deed, has made improvements to Tract F and has assessed its members for the expense of said improvements.

19. Furthermore, prior to filing their Complaint in this action, Plaintiffs have consistently acknowledged that Tract F is a common area within The Landings and contrary to the position they have taken in this action, have in the past demanded that Defendant improve Tract F by, among other things: improving its drainage; removing a potential fire hazard by clearing it of dead vegetation; removing invasive, non-native plant species; and insuring it against public liability exposure; all at the expense of Defendant through assessments to its members.

20. Furthermore, Plaintiffs, through their duly elected and authorized representatives, have joined in the "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs' Complaint.

21. Plaintiffs now take the position that Paragraph 29 of the original Declaration placed permanent restrictions on the use of Tract F, typically referred to as "covenants running with the land", however, the language used in the original declaration and particularly Paragraph 29 thereof is insufficient as a matter of law to have created "covenants running with the land" restricting Defendant's (and its successors and assigns) use thereof in perpetuity.

22. Only since the publication and dissemination of the "Proposed Master Plan For The Eagle's Nest Area" attached to Plaintiffs' Complaint as Exhibit "I" have Plaintiffs taken the position that Tract F is not a common area and that Defendant (and its successors and assigns) are

permanently restricted in its use thereof for the common benefit of all owners of property in the Landings.

23. Defendant has consistently, justifiably and detrimentally relied upon its understanding and belief that Tract F became a common area upon its acquisition from C&M, caused the aforesaid improvements to be made and assessed its members for the expenses thereof.

24. Plaintiffs have benefited from Defendant's treatment of Tract F as a common area and the improvements to Tract F that Plaintiffs demanded and knowingly accepted said improvements and are now estopped from taking a contrary position.

WHEREFORE, Defendant, The Landings Management Association, Inc. requests this Court to declare the following:

- a. That Tract F is a common area within The Landings.
- b. That Tract F is subject to the "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs' Complaint.
- c. That the "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs' Complaint was lawfully adopted by the members of Defendant, The Landings Management Association, Inc.
- d. That Paragraph 29 of the original Declaration did not place permanent restrictions or "covenants running with the land" on Defendant's use of Tract F.
- e. That the only restrictions on Defendant's use of Tract F are those imposed by its "Amended And Restated Declaration Of Maintenance Covenants And Restrictions On The Commons For The Landings" attached as Exhibit "H" to Plaintiffs'


Complaint as it may be amended from time to time and those imposed by the appropriate governmental authorities from time to time.

- f. And to award such other and further relief as may be just and appropriate under the circumstances, including, but not limited to taxable costs.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was furnished by email and Regular U.S. Mail to Charles J. Bartlett, Esq., 2033 Main Street, Suite 600, Sarasota, FL 34237 this 16th day of July 2010.

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BY: 
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