

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND
FOR COLLIER COUNTY, FLORIDA CIVIL DIVISION**

WILLIAM MILLER and SUSAN KELLEGHAN,
Plaintiffs,

Case No.: 23-CA-2032
Judge Joseph G. Foster

v.

**RIVERBEND OF NAPLES MOBILE HOMEOWNERS
ASSOCIATION and PHILIP J. LUTZI,**
Defendants.

ORDER GRANTING TEMPORARY INJUNCTION

THIS CAUSE having come before the Court for an evidentiary hearing on October 18, 2023, on the Plaintiff's Verified Motion for Temporary Injunction, and the Court having received testimony and evidence, having heard arguments of counsel, having reviewed the court file, and being otherwise fully advised, the Court finds as follows:

1. Defendant Riverbend of Naples Mobile Homeowners Association is a cooperative that owns and manages the Riverbend of Naples Mobile Home Park.
2. Plaintiffs, William Miller and Susan Kelleghan, own a mobile home and lease Lot 7 for their mobile home from the Defendant, and are members of the Defendant.
3. Intervenor, Philip Lutzi, also leases a lot from the Defendant, is a member of the Defendant, and is the former President of the board of directors for the Defendant.
4. During Hurricane Ian, the Riverbend of Naples Mobile Home Park experienced significant water intrusion and many of the members of the Defendant suffered significant damage to their mobile homes.
5. After the hurricane, many members of the Defendant discovered that under the new rules and regulations that have been implemented since their mobile homes were originally

purchased and placed on lots owned by the Defendant, it would be extremely expensive to repair or replace their existing mobile homes and bring them up to the now applicable building codes.

6. Because of concerns that many of the members of the Defendant would not be able to rebuild, the board of directors began exploring alternative options to bring down the costs and facilitate long-standing members being able to remain in the park. One such option that was discussed was allowing damaged mobile homes to be replaced with recreational vehicles, instead of new mobile homes.

7. The board sought and obtained a legal opinion from their counsel that allowing recreational vehicles in the park would not be prohibited under the Defendant's operating documents, and the Defendant's board of directors took steps to allow certain members, including several board members, to reconfigure their lots to accommodate recreational vehicles instead of mobile homes.

8. Plaintiffs discovered that this was happening and became concerned that the Defendant's board of directors was fundamentally and improperly altering the character of the mobile home park and ultimately brought this lawsuit and filed the motion for temporary injunction which is the subject of this Order.

9. This Court held an evidentiary hearing on this matter on October 18, 2023, and heard from a variety of witnesses and was provided several pieces of evidence to consider.

10. In order to grant a request for a temporary injunction, the Court must find the following four separate elements: 1) a substantial likelihood of success on the merits; 2) irreparable harm; 3) an inadequate remedy at law; and 4) that the injunction serves the public interest. The Court will address each element in turn.

Substantial Likelihood of Success

11. First, based on all the testimony and evidence presented at the hearing, the Court finds that the Plaintiffs have a substantial likelihood of success on the merits of their claims and finds that the Defendant's operating documents, all of which were received into evidence demonstrate that the Defendant is organized exclusively to own and operate a mobile home park, pursuant to Chapter 723 of the Florida Statutes.

12. From its Prospectus (Ex. 12), when the Defendant was first being established, to its Amended and Restated Articles of Incorporation, its Bylaws, and even its Master Form Proprietary Lease (all contained in Ex. 1), these documents clearly establish that the Defendant was organized for the sole purpose of owning and running a mobile home park. As Florida law has different provisions regarding recreational vehicles and their parks, the Court is left with the inescapable conclusion that under the current governing documents, the Defendant is not allowed to convert itself to a recreational vehicle park or even a hybrid park without first modifying its operating documents, which according to the testimony and evidence presented at the hearing has not yet happened.

13. In making this finding, the Court wants to be clear that the board of directors appear to have operated in good faith and in an effort to help the members of the Defendant to be able to remain at the park, while also trying to facilitate repairs caused by the hurricane. However, regardless of the best of intentions, without modifying the operating documents, it appears that the changes cannot be approved by the board of directors alone, which is what happened in this case.

Irreparable Harm

14. As the Court has found that the Defendant was organized and operates solely to run a mobile home community, should the conversion be allowed to occur prior to the completion of this case, there would obviously be irreparable harm done to the members of the Defendant, and

the Defendant itself, if the changes were allowed to proceed and then have to be undone. As such, the Court finds that should the Plaintiffs succeed at trial, and if no temporary injunction was issued, that they would suffer irreparable harm in this case.

Inadequate Remedy at Law

15. Much like the finding of irreparable harm, should the Plaintiffs prevail on their claims at trial, and had the Defendant been allowed to proceed with the transition from a mobile home community to a recreational vehicle park, there are no matter of damages that could be paid to the Plaintiffs or other members that are allegedly damaged. As such, the Court also finds that the Plaintiffs have an inadequate remedy at law to potentially compensate them in this case.

Public Interest

16. As the Defendant is organized as a non-profit corporation for the purpose of owning and managing a mobile home park under Chapter 723 of the Florida Statutes, the public has a strong interest in making sure that it is owned and managed properly, which is why the Florida Legislature created Chapter 723 in the first place.

Bond

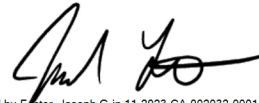
17. Rule 1.610(b) of the Florida Rules of Civil Procedure requires that no temporary injunction shall be entered unless a bond is given by the movant in an amount deemed proper by the Court to compensate the non-moving party for any costs or damages sustained by the non-moving party if the non-moving party is wrongfully enjoined.

18. There was no testimony given about the amount the Defendant sought for any bond in this case, and since the injunction is going to be limited to any new changes being made until the case is resolved, the Court fails to see how significant costs or damages will be incurred as a result of the Court maintaining the current status quo at the park. Therefore, the Court shall impose

a bond \$10,000 upon the Plaintiffs that shall be posted within five (5) days of the entry of this Order.

It is therefore, ORDERED AND ADJUDGED as follows:

1. Plaintiff's Verified Motion for Temporary Injunction is GRANTED.
2. Effective immediately, no further conversion of lots at the Defendant's property for use for recreational vehicles shall proceed forward, including, but not limited to, pouring of concrete pads, changing of water or electrical hook-ups from mobile home use to recreational vehicle use, or bringing new recreational vehicles and parking them on lots to be used as "permanent" residences at the park, until further Order of this Court.
3. Plaintiff's shall post a bond of \$10,000.00 within five (5) business days of the date of this Order. Should the Plaintiff's fail to post such a bond, the temporary injunction entered herein shall automatically cease and become null and void.



eSigned by F.ester, Joseph G in 11-2023-CA-002032-0001-XX 12/11/2023 09:49:54 5LqqtXo

Electronic Service List

Alfred F. Gal Jr. <alfredgal@sandglawfirm.com>

Charles Berkley Edwards Jr. <berk@berkedwardsmediation.com>

Christopher Jay Thornton <cthorton@swflalaw.com>, <atessier@swflalaw.com>

Ody's Professional Process <ody@odyprocess.com>

Rachel A Kerlek <rkerlek@lawfirmnaples.com>, <mtotin@lawfirmnaples.com>,

<service@lawfirmnaples.com>