

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

COACH HOMES II AT GRAN
PARADISO CONDOMINIUM
ASSOCIATION INC,
Plaintiff,

v.

CASE NO. 2020 CA 003307 NC
DIVISION C CIRCUIT

LENNAR HOMES LLC,
AD-LER ROOFING INC,
BUILDER SERVICES GROUP INC,
C&C WINDOW & DOOR COMPANY
INC,
CEMEX INC,
CONDITIONED AIR COMPANY OF
NAPLES LLC,
EDMONSON ELECTRIC INC,
FALLSAFE STUCCO & EIFS LLC,
GUKY ENTERPRISES CORP,
GULF COAST PRECAST INC,
LIBERTY ALUMINUM CO,
MAH HORTICULTURAL SERVICES
LLC,
TCI CONTRACTING LLC,
WAYNE AUTOMATIC FIRE
SPRINKLERS INC,
WOOLF & ASSOCIATES INC,
CEMEX CONSTRUCTION
MATERIALS FLORIDA LLC,
KELLY AIR SYSTEMS LLC,
ELITE ELECTRICAL
CONTRACTORS LLC,
PLATINUM SERVICE
CONTRACTING LLC,
BONTRAGER PAINTING INC,
COMMERCIAL RESIDENTIAL
ALUMINUM & FABRICATING LLC,
JUNIPER LANDSCAPING OF
FLORIDA LLC,
SOUTH FLORIDA FIRE
PROTECTION LLC,
CENTRAL FIRE SPRINKLERS
CORP,

LAWSON INDUSTRIES INC,
CAST-CRETE USA LLC,
Defendants.

**ORDER GRANTING PLAINTIFF’S MOTION FOR RECONSIDERATION OR
REHEARING AND AMENDED ORDER GRANTING DEFENDANT LENNAR HOMES,
LLC’S MOTION TO DISMISS OR STAY PLAINTIFF’S AMENDED COMPLAINT
AND TO COMPEL PRE-SUIT MEDIATION AND ARBITRATION**

THIS CAUSE came before the Court on April 22, 2021 on the Motion to Dismiss or Stay Plaintiff’s Amended Complaint and to Compel Pre-Suit Mediation filed by Defendant, LENNAR HOMES, LLC (“Lennar”). The Court granted the motion on May 28, 2021 at DIN 253. Plaintiff filed a Motion for Reconsideration or Rehearing pointing out that Lennar is not entitled to attorney’s fees because Lennar is not an “Association” or “Unit Owner” as required by Paragraph 19 of the Declaration. The Court finds Plaintiff’s argument meritorious and therefore deletes the portion of the order previously entered in which the Court awarded attorney’s fees. The Court replaces the previous order with this Amended Order.

The Court having reviewed the Court file and having heard the arguments of counsel, it is hereby

ORDERED AND ADJUDGED as follows:

1. Lennar’s Motion to Dismiss or Stay Plaintiff’s Amended Complaint to Compel Pre-Suit Mediation and Arbitration is **GRANTED**. For the reasons set forth below, Plaintiff’s claims are not proper in this Court and are required to be mediated prior to resolution through binding arbitration.

2. Plaintiff’s Amended Complaint affirmatively states that it brings this action in its own right and “as a class action pursuant to F.S. Chapter 718.111(3) and Rule 1.221, Florida Rules of Civil Procedure as the lawful and adequate representative of the class of owners of the fifty-six residential units comprising the Condominium, all of whom are members of the Association.” (*Amended Complaint*, ¶6).

3. In Florida, the terms in a condominium’s declaration “are afforded a ‘very strong presumption of validity which arises from the fact that each individual [lot] owner purchases his [lot] knowing of and accepting’ the declaration’s terms.” Valencia Reserve Homeowners Ass’n, Inc. v. Boynton Beach Associates, XIX, LLLP, 278 So. 3d 714, 718 (Fla. 4th DCA 2019)

(alterations in original) (citing, Hidden Harbour Ests., Inc. v. Basso, 393 So. 2d 637, 639 (Fla. 4th DCA 1981)).

4. On or about October 19, 2016, the Plaintiff Association's Declaration of Condominium, Articles of Incorporation, Bylaws, and Rules and Regulations were filed and recorded in Sarasota County, Florida.

5. The Declaration of Condominium of Coach Homes II at Gran Paradiso (the "Declaration"), requires pre-suit mediation and binding arbitration of disputes in relevant part:

BY ACCEPTANCE OF A DEED, EACH OWNER AGREES THAT . . . ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS CLAIM, WHETHER IN CONTRACT AND/OR IN TORT . . . BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO CONDOMINIUM DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, . . . OR OMISSION OF ANY PARTY SHOULD FIRST BE SUBMITTED TO MEDIATION AND, IF NOT SETTLED BY MEDIATION, SHALL THEREAFTER BE SUBMITTED BINDING ARBITRATION AS PROVIDED BY THE FEDERAL ARBITRATION ACT . . . AND NOT BY A COURT OF LAW.

This provision of the Declaration goes on to state:

THIS SECTION REQUIRES YOU TO WAIVE YOUR RIGHT TO SUE THE DEVELOPER IN COURT AND, INSTEAD, ARBITRATE OR MEDIATE DISPUTES INCLUDING, BUT NOT LIMITED TO: DEVELOPER REPRESENTATIONS PERTAINING TO COMMONLY USED FACILITIES . . . AND WARRANTY RIGHTS.

6. With respect to issues of construction, the Declaration states at paragraph 36 in relevant part:

All Units and their appurtenant Common Elements have been or will be sold without any Developer warranties whatsoever except as provided in the Act . . . [a]s to such warranties, if any, and as to any claim arising from or connected with the design or construction of any Unit(s), Limited common Elements, or the Common elements including, without limitation, failure to build . . . or failure to comply with building or other codes, laws, ordinances or regulations (collectively, "Construction Matters"), it shall be a material condition precedent to the institution of any proceeding regarding Construction Matters that (i) the party or parties bringing same shall have first given notice to Developer or other party against whom relief or recovery is sought (the "Defendant") . . . and (ii) the Defendant shall have been given at least [120] days . . . in which to cure or correct the applicable Construction Matter . . . If any Construction Matter is not

cured or corrected as aforesaid, all applicable parties shall be bound to submit the disputes or claims regarding the Construction Matters at issue solely to binding arbitration in accordance with the Florida Arbitration Code and the rules of the American Arbitration Association . . . [w]ithout limiting the general binding effect of this Declaration, each Owner . . . shall be deemed, by virtue of the acceptance of the conveyance . . . to be fully bound by the provisions of this Section 36, **as shall the Association.** (Emphasis Added).

This section also goes on to state, in relevant part:

THIS SECTION REQUIRES YOU TO WAIVE YOUR RIGHT TO SUE THE DEVELOPER IN COURT AND, INSTEAD, ARBITRATE OR MEDIATE DISPUTES INCLUDING, BUT NOT LIMITED TO DEVELOPER REPRESENTATIONS PERTAINING TO COMMONLY USED FACILITIES . . . AND WARRANTY RIGHTS ON YOUR UNIT AND IMPROVEMENTS.

7. These provisions of the Declaration, in addition to paragraph 8.8 (Affirmative Obligation of Association), paragraph 19 (Compliance and Default), and paragraph 42 (Ratification) make clear that the pre-suit mediation and binding arbitration requirements of the Declaration apply to Plaintiff's claims against Lennar and are valid, enforceable and binding against Plaintiff in this action.

8. Additionally, paragraph 23 of the Declaration entitled "Covenants Running with Land" states that all provisions and obligations of the Declaration are perpetual and are construed as covenants running with the land binding on the developer and all subsequent owners of the condominium land.

9. In this regard, paragraph 19 of the Purchase and Sale Agreements for Coach Homes II at Gran Paradiso provide, in relevant part:

The parties to this Agreement specifically agree that . . . any Dispute. . . shall first be submitted to mediation and, if not settled during mediation, shall thereafter be submitted to binding arbitration . . . and not by or in a court of law or equity. "Disputes" (whether contract warranty tort, statutory or otherwise), shall include, but are not limited to, any and all controversies, disputes or claims (1) arising under, or related to, this Agreement, the Property, the Community or any dealings between Buyer and Seller; (2) arising by virtue of any representations, promises or warranties alleged to have been made by Seller or Seller's representative; (3) relating to personal injury or property damage alleged to have been sustained by Buyer, Buyer's children or other occupants of the Property, or in the Community; or (4) issues of formation, validity or [enforceability] of this section.

...

Unless mutually waived in writing by the parties, submission to mediation is a condition precedent to either party taking further action with regard to any matter covered hereunder. (Emphasis Added).

...

If the Dispute is not fully resolved by mediation, the Dispute shall be submitted to binding arbitration and administered by the American Arbitration Association All decisions respecting the arbitrability of any dispute shall be decided by the arbitrator(s).


10. Pursuant to Pulte Home Corp. v. Vermillion Homeowners Association, Inc., 109 So.3d 233, 235 (Fla. 2d DCA 2013) and Pulte Home Corp. v. Bay at Cypress Creek Homeowners' Association, Inc., 118 So.3d 957 (Fla. 2d DCA 2013), Plaintiff's claims are required to be decided through pre-suit mediation and binding arbitration. Since Plaintiff filed this action in its representative capacity as the "lawful and adequate representative" of all unit owners at Coach Homes II at Gran Paradiso Condominium who are also members of the Plaintiff Association, Plaintiff was essentially assigned the right to bring the action for its members, and it receives that right with an obligation to comply with the mediation and arbitration agreements signed by each of its members.

11. Because Florida has recognized that arbitration is a favored means of dispute resolution, courts should resolve all doubts or questions about waiver in favor of arbitration, rather than against it. Ibis Lakes Homeowners Association, Inc. v. Ibis Isle Homeowners Association, Inc., 102 So.3d 722, 727 (Fla. 4th DCA 2012); Roe v. Amica Mutual Insurance Company, 533 So.2d 279, 281 (Fla. 1988). The Court has done so here.

12. Plaintiff is compelled to follow the pre-suit mediation and binding arbitration requirements of the Declaration and Purchase and Sale Agreements with its members. Accordingly, this action shall be stayed pending completion of pre-suit mediation and binding arbitration of all claims between Plaintiff and Lennar.

13. The Court shall retain jurisdiction to enforce any arbitration award granted in binding arbitration.

DONE AND ORDERED in Sarasota County, Florida on this 28th day of June, 2021.


2021 1:10 PM 2020 CA
003307 NC
e-Signed 6/28/2021 1:10 PM 2020 CA 003307 NC
ANDREA MCHUGH, CIRCUIT JUDGE

SERVICE CERTIFICATE

On 6/28/21, the Court caused the foregoing document to be served via email only on the following:

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