

**IN THE COUNTY COURT IN AND FOR
SANTA ROSA COUNTY, FLORIDA**

PATRICK J. TRAYNOR,
Plaintiff(s),

v.

COPY

**HOLLY BY THE SEA IMPROVEMENT
ASSOCIATION, INC.,**
Defendant(s).

/ Case No.: 57-2007-586-SC

FINAL JUDGMENT

THIS CAUSE came before the Court for Hearing on June 27, 2007. Statement of Claim. Plaintiff and Defendant were present, pro se. Testimony was heard and evidence considered. Based on the evidence presented the Court makes the following findings of fact and conclusions of law.

Plaintiff is a homeowner and member of Holley by the Sea Improvement Association, Inc. Plaintiff claims entitlement to liquidated damages under Section 720.303(5)(b), Florida Statutes. Specifically he alleges that Defendant did not respond within ten (10) days to his request for official records of the Defendant.

At trial Plaintiff submitted documents which were admitted as Plaintiff's Composite Exhibit 1. Included in these documents was Plaintiff's written request for certain official records. The request cites to Section 720.303 and Chapter 720, Florida Statutes. The request was submitted by certified mail to Defendant and was received on February 21, 2007. Specifically the request seeks 1) copy of the bill for repairs to tennis court lighting; 2) copies of repairs to the lighting in the Valley Road Golf Course area; and 3) review of the recall election ballots.

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The request gave ten days for the Defendant to provide a response. In fact the Defendant had ten business days to respond pursuant to Section 720.303(5), Florida Statutes. A business day is typically held to be any day, Monday through Friday, not including legal holidays.

Defendant did not respond to the request within ten business days of receipt. The Defendant was apparently experiencing a great deal of turmoil at the time due to the recall election and the resignation of the general manager. It should be noted that the composition of the Board of Directors of Defendant has substantially changed as a result of the recall. However, the inspection and copying requirements in Section 720.303(5), Florida Statutes do not contain any exception excusing an association for acting when undergoing a recall or otherwise subject to disruption

Wendy Hoefflich, the financial manager and assistant general manager for the Defendant testified that the documents regarding the tennis court lighting were ultimately provided to the Plaintiff on March 8, 2007. No evidence contradicted this date and it will be used as the date these documents were provided. This is the eleventh business day after the request was received. The calculation of damages starts on the eleventh business day after receipt of the request. See Section 720.303(5)(b), Florida Statutes. As the documents related to the tennis court were provided on the eleventh day, Plaintiff is not entitled to damages on this issue. These documents were a day late, but were provided on the day when damages would otherwise start to run.

As for the repairs to lighting in the Valley Road Golf Course area, both Ms. Hoefflich and Neal Rogers, the current president of the Defendant, testified that there were no such records. Plaintiff offered no evidence to the contrary. As such, these documents do not fall under Section 720.303(4), Florida Statutes, as official records. Defendant cannot be penalized for not producing what it did not have.

Finally there is the issue of the recall ballots. A recall of directors proceeding was started in January 2007. At the time Plaintiff made the request to access the ballots binding arbitration proceedings were underway involving the Department of Business and Professional Regulation, pursuant to Section 720.303(10), Florida Statutes. Plaintiff was ultimately allowed to review the ballots after the administrative proceedings concluded and certain of the Board of Directors were recalled. This occurred only a few weeks ago and well after the eleventh business day following the request.

Mr. Rogers testified that he was serving as secretary at the time Plaintiff made his request. Mr. Rogers testified that he recommended providing Plaintiff access to the ballots. He was overruled by the then president of Defendant, acting on advice of counsel. Ms. Hoeflich also testified that the attorney for the Defendant recommended against providing the ballots while the contest of the recall election and binding arbitration was pending.

On the issue of the ballots, it should first be noted that they may not be "official records" under Section 720.303(4), Florida Statutes. At best, ballots fall under subparagraph (1) under records which requires retention of "All other written records of the association not specifically included in the foregoing which are related to the operation of the association."

The Court does not have to decide the issue as to whether the ballots were official records. In order for the Plaintiff to recover, he is required to show a willful failure to comply with the request. Failing to comply with the request within ten days creates a rebuttable presumption that the association has willfully complied. The testimony of Ms. Hoeflich and Mr. Rogers rebuts that presumption. The failure to provide the records here was not willful. A recall of the directors had just been undertaken and that recall was being challenged pursuant to Florida law regarding homeowner's associations. The ballots, even if they were "official records", were


crucial evidence in the ongoing statutorily mandated binding arbitration. Certain documents in the arbitration proceeding are subject to discovery, but pursuant to a different set of procedures per Section 718.1255, Florida Statutes. This Court does not have to decide whether Plaintiff was required to utilize these discovery procedures to access the ballots. All that matters is that the Defendant had a good faith belief in reliance on advice of counsel that the ballots should not be disclosed while the arbitration was proceeding. Based on that, the failure to supply the Plaintiff access to the ballots was not willful. Therefore it is,

ORDERED AND ADJUDGED Plaintiff shall take nothing from this action and go hence without day.

DONE AND ORDERED in chambers Milton, Santa Rosa County Florida this 28th day of June 2007.


ROSS L. BILBREY
COUNTY COURT JUDGE

Copies to:

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