

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

THOUSAND OAKS AT CONGRESS  
MASTER ASSOCIATION, INC.,  
Appellant,

APPELLATE DIVISION (CIVIL): AY  
CASE NO.: 2014AP000037  
L.T. NO.: 2913CC003483

v.

PUDLIT JOINT VENTURE LLP,  
Appellee.

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Opinion filed: **MAY 1 - 2015**

Appeal from the County Court in and for Palm Beach County,  
Judge Edward A. Garrison

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PER CURIAM.

This appeal raises the question of the extent a homeowners' association's declaration can control over the plain terms of a statute. The County Court below determined the terms of a

declaration controlled and granted summary judgment in favor of Appellee, Pudlit Joint Venture LLP (“Pudlit”). Because we find the trial court erred in granting Pudlit’s motion for summary judgment, we reverse.

### **Background**

On September 28, 2009, Pudlit acquired legal title to property located in Riviera Beach, Florida, as a third-party purchaser after the property was sold in a foreclosure sale. Appellant, Thousand Oaks at Congress Master Association, Inc. (“Thousand Oaks”) is the homeowners’ association for the community in which the property is located. The property at issue is subject to the Declaration of Covenants, Conditions and Restrictions of Thousand Oaks at Congress (hereinafter “the Declaration”). The Declaration requires each property owner subject to its terms to pay certain annual assessments. Under Article VII, Section 12 of the Declaration, when assessments are unpaid and cannot be collected following foreclosure, the unpaid assessments “shall be treated as a common expense, collectible from all Residential Lots, including the Residential Lot as to which the foreclosure . . . took place.”

On December 11, 2009, Thousand Oaks requested payment of unpaid assessments remaining on Pudlit’s newly acquired property pursuant to section 720.3085(2)(b), Florida Statutes. Pudlit tendered a check in the amount of \$6,097.46—representing the full amount of unpaid assessments—to Thousand Oaks on December 31, 2009. This amount was remitted to Thousand Oaks under protest, as Pudlit believed the terms of article VII, section 12 of the Declaration required no such payment. On March 8, 2013, Pudlit filed the underlying action seeking to recover the assessments paid. Thousand Oaks moved for summary judgment on the grounds section 720.3085(2)(b) required payment of the assessments and Pudlit cross-moved for

summary judgment in its favor, citing to the language of the Declaration. The Honorable Edward A. Garrison granted Pudlit's motion and this timely appeal followed.

### **Standard of Review**

A homeowners' association declaration serves as a "contract between the [association] and its members." *Coral Lakes Cmty Ass'n, Inc. v. Busey Bank, N.A.*, 30 So. 3d 579, 584 (Fla. 2d DCA 2010). An appellate court reviews a trial court's interpretation of a contract de novo. *Klinow v. Island Court at Boca W. Prop. Owners' Ass'n, Inc.*, 64 So. 3d 177, 180 (Fla. 4th DCA 2011). Any factual determinations made by the trial court in examining a contract are entitled to deference if they are "supported by competent, substantial evidence." *Id.* Statutory interpretation is a question of law. *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007). Questions of law are reviewed de novo on appeal. *See, e.g., Scalice v. Orlando Reg'l Healthcare*, 129 So. 3d 215, 216 (Fla. 5th DCA 2013).

### **Analysis and Legal Conclusions**

At issue in this case are the terms of both the Declaration and section 720.3085(2)(b), Florida Statutes. Chapter 720, Florida Statutes, governs the management and operation of homeowners' associations. Section 720.3085(2)(b) provides in relevant part:

A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner.

A "parcel owner" is "the record owner of legal title to a parcel." § 720.301(12), Fla. Stat. (2014). Article VII, Section 12 of the Declaration plainly renders a parcel owner not liable for unpaid assessments on the property at the time of title transfer. Thousand Oaks appeals from the lower court's finding that the terms of the Declaration control over the statute in this case.

**A. Section 720.3085(2)(b) Mandates Payment for the Unpaid Assessments.**

When construing a statute, the Court must first look to the statute's plain language. *Edgar*, 967 So. 2d at 785. If the statute's plain language is clear, "this Court's task goes no further than applying the plain language of the statute." *Id.* Section 720.3085(2)(b) plainly states that a parcel owner "*is* jointly and severally liable" for unpaid assessments, not that the parcel owner may or can be jointly and severally liable. As written, the statute mandates a parcel owner who takes title to property "*is*" jointly and severally liable for any unpaid assessments on the property. Therefore, Pudlit is liable for unpaid assessments on the property unless it is permissible for the Declaration to state otherwise.

"[P]arties are free to contract around a state law so long as there is nothing void as to public policy or statutory law." *Franks v. Bowers*, 116 So. 3d 1240, 1247 (Fla. 2013). "A contract which violates a provision of . . . a statute is void and illegal, and will not be enforced." *Harris v. Gonzalez*, 789 So. 2d 405, 409 (Fla. 4th DCA 2001). The Declaration purports to allow Pudlit to avoid liability for unpaid assessments. This is plainly contrary to the terms of section 720.3085(2)(b), which specifically states owners such as Pudlit are liable for such assessments. Because Article VII, Section 12 of the Declaration absolves Pudlit of liability mandated by statute, it cannot be enforced.

**B. Pudlit's Counterarguments are Rejected.**

Pudlit argues enforcement of the statute infringes on the right to contract. Despite the importance of freedom of contract, courts will not enforce contractual provisions that are contrary to the law. *See Franks*, 116 So. 3d at 1247 (noting "[w]e do not take lightly the freedom of contract, but we find that the [contract] blatantly contravenes the intent provided by the Florida Legislature" when refusing to enforce contract). As discussed above, Article VII,

Section 12 clearly contravenes section 720.3085(2)(b) and therefore it cannot be enforced regardless of the “freedom of contract.” Related to this argument is Pudlit’s contention that section 720.3085(2)(b) does not trump the Declarations because the statute does not pronounce public policy. “Public policy is determined by the legislature through its statutory enactments.” *Saunders v. Saunders*, 796 So. 2d 1253, 1254 (Fla. 1st DCA 2001). The legislature here has enacted a statute mandating the liability of subsequent property owners for any unpaid assessments on the property. Pudlit’s argument regarding freedom of contract and public policy is rejected.

Pudlit argues its reliance on the terms of the Declaration at the foreclosure sale requires enforcement of the Declaration as written. Pudlit took title to the property at issue on September 28, 2009. Section 720.3085 took effect on July 1, 2007. 2007 Fla. Sess. Law Serv. Ch. 2007-183. Pudlit cannot assert reliance on a contractual provision rendered unenforceable by a statute passed before it ever contracted with Thousand Oaks. *Cf. Coral Lakes Cmty. Ass’n, Inc. v. Busey Bank, N.A.*, 30 So. 3d 579, 584 (Fla. 2d DCA 2010) (refusing to apply section 720.3085 to mortgagee where mortgagee was party to declaration before statute’s passage). Pudlit was on notice of the terms of the statute when it purchased the property and therefore its reliance argument is rejected.

Pudlit also argues section 720.3085(2)(b) cannot supersede its rights as an intended third-party beneficiary. A third-party beneficiary is entitled to enforce its vested rights under the terms of a contract. *Ecoventure WGV, Ltd. v. Saint Johns Northwest Residential Ass’n, Inc.*, 56 So. 3d 126, 127-28 (Fla. 5th DCA 2011). In *Ecoventure*, a mortgage was extended to property in 2001 and, after default, purchased by the mortgagor via foreclosure sale in 2008. *Id.* at 127. The mortgagor was then asked to pay unpaid assessments under section 720.3085(2)(b) and contrary

to the operative homeowners' association declaration. The Fifth District Court of Appeal determined the mortgagor was entitled to enforce the terms of a homeowners' declaration because "[i]mposing section 720.3085, *which was enacted after the mortgage was extended, completely alters [the mortgagor]'s vested rights* by making it jointly and severally liable with the 'previous parcel owner . . . .'" *Id.* (emphasis added). The instant case provides the converse scenario. Here, Pudlit purchased the property after the statute's enactment. Therefore, the statute cannot be said to have impermissibly impaired any of Pudlit's rights, as any rights it had in the Declaration vested well after the statute's passage.<sup>1</sup>

Section 720.3085(2)(b) mandates a successful bidder at a foreclosure auction is jointly and severally liable for any unpaid assessments remaining on the property. Because Article VII, Section 12 allows for Pudlit to avoid this liability, Article VII, Section 12 is contrary to the law. The trial court erred in granting Pudlit's cross-motion for summary judgment and denying Thousand Oak's motion for summary judgment. Accordingly, the decision of the trial court is **REVERSED** and the case **REMANDED** with instructions to enter judgment in favor of Thousand Oaks. Thousand Oaks' Motion for Attorney Fees and Costs is **GRANTED** pursuant to section 720.305, Florida Statutes, and the matter is remanded to the lower court to determine a reasonable amount thereof. Pudlit's Motion for Attorney Fees and Costs is **DENIED**.

OFTEDAL and GOODMAN, JJ., CONCUR.

BARKDULL, J., dissents without opinion.

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<sup>1</sup> Pudlit also argues the plain language of section 720.3085(2)(b) justifies the trial court's decision. This argument is rejected for the reasons set forth *supra*.