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

VENETIAN ISLES COMMUNITY ASSOCIATION, INC.,
Appellant,

v.

CAROLE S. STEIN,
Appellee.
_____/

APPELLATE DIVISION (CIVIL): AY
CASE NO: 502014AP000009XXXXMB
L.T. No.: 502013SC008560XXXXMB

Opinion filed: APR - 2 2015

Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.

For Appellant: Neil F. McGuinness, Esq.
1000 Sawgrass Corporate Parkway, Suite 590
Sunrise, FL 33323
nmcguinness@dmc-atty.com

For Appellee: Carole S. Stein
8251 Marsala Way
Boynton Beach, FL 33472
carole@carolestein.com

PER CURIAM.

THIS CAUSE came before the Court on Appellant's Motion for Rehearing and Clarification, filed December 16, 2014. The motion was timely filed within 15 days of rendition

of the opinion in this case. *See* Fla. R. App. P. 9.330.

Appellant's Motion for Rehearing and Clarification is DENIED, however, we withdraw our prior opinion and enter the following in its place to correct a scrivener's error in our ruling on the motion for attorney's fees:

Appellant, Venetian Isles Community Association ("the Association"), appeals the trial court's judgment in favor of homeowner, Carole Stein, awarding Stein part of her 2013 monthly assessment paid to the Association. We affirm.

Venetian Isles is the homeowners' association (HOA) for the development in which Stein resides. Stein is a member of the Association and pays assessments to it monthly. She brought this action, alleging that she was entitled to recover part of her 2013 monthly assessment. The basis of her claim is the unlawful assessment of security monitoring costs by the Association based upon projected costs arising from a prior contract which, prior to assessment, the Association Board had voted to cancel and replace with a new, less costly contract. Due to the cancellation of the prior contract and approval of the new contract, the Association was obligated to use the cost of the new, lower priced contract for assessment purposes. A vote on December 5, 2012 to "put the vote on hold to change the alarm company" happened after the budget was already approved and therefore does not appear relevant to the budget approved on November 19, 2012.

The Association's "Declaration of Restrictions and Covenants for The Venetian Isles Community" ("Declaration") specifically provides that under no circumstances shall the Association be required to refund surplus Assessments to Owners. However, to be a surplus, the amount assessed has to be based upon an anticipated operating cost at the time of assessment. In

this instance, the Association based the projected security cost assessment upon the cost incurred under a prior contract, which the Board had already voted not to renew for the next year. At the same time, the Board also voted to accept a new vendor at a lower projected expense. Because the Association knew at the time it assessed the fee that it would have a lower corresponding cost for security, the amount assessed should have been based on the lower projected expense. Because it did not do so, the Association cannot now treat that excess assessment as a surplus. The Association argues that at the time the monthly fee was assessed, however, it did not know of the change in cost.

Resolving this factual issue, the trial court found as follows:

> [T]he budget for 2013 was approved on November 19, 2012, and the new contract with the Monitoring Center had been accepted per the minutes of the Association. Therefore, the Association knew that they would receive the first year of service free and should have adjusted the budget for the homeowners accordingly; reflecting the full year of free service. Instead, the Defendant left the amount budgeted for ADT's services as if they were paying for an entire year's worth of monitoring. The contract with ADT would continue for six (6) months during 2013; therefore the last six (6) months of 2013 were free. This should have been corrected when the budget was approved on November 19, 2012 since the difference was already apparent.

A trial court's factual findings are reviewed under a competent substantial evidence standard. *Ibis Lakes Homeowners Ass'n, Inc. v. Ibis Isle Homeowners Ass'n, Inc.*, 102 So. 3d 722, 727 (Fla. 4th DCA 2012). "Competent substantial evidence is tantamount to legally sufficient evidence." *Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000); *see also Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029, 1032 (Fla. 4th DCA 2002).

The November 7, 2012 meeting minutes of the Association's board meeting indicate that a motion was made to change security system providers from ADT to the Monitoring Center.

The motion was seconded, voted on, and approved 6-0. The minutes go on to indicate that this would save the Association $45,000.00. Then, on November 8, 2012, the Association received a draft contract from the Monitoring Center. On November 19, 2012, the Board approved the 2013 budget. Therefore, at the time the budget was approved, the Board had decided to change security companies. On the basis of this evidence, we find that there is competent substantial evidence to support the trial court's factual finding that the Association knew by November 19, 2012 that it would change security companies and would not have security monitoring costs for the second half of 2013. The money collected for security monitoring from July through December of 2013 was a not surplus and should be refunded to Stein.

Accordingly, we AFFIRM the trial court's judgment. Appellant's Motion for Appellate Fees and Costs is DENIED.

BLANC, SASSER, and SMALL JJ., concur.