



East Naples Condo Owners Win Battle to Take Over Association, Track Spending

BY AISLING SWIFT

NAPLES — Homeowners at South Bay Plantation Condominiums will take over their association tonight and then begin the task of tracking down how their developer spent their association fees during the past five years.

The meeting follows an emergency hearing Friday in which Collier Circuit Judge Hugh Hayes denied receiver Marika Tolz's attempt to block homeowners Joseph P. Sheehan and Jose L. Nolasco from meeting tonight to take over and elect a majority, themselves, to the three-member board.

"Basically, we will have a hostile takeover tonight," said attorney Ben Solomon of Association Law Group of Miami, which represented the homeowners of the 240-unit development off Rookery Bay Drive in East Naples. "The unit owners finally got what they're entitled to, which is to control the development. (Tolz) ran it for nearly a year by herself.

"Tomorrow (Tuesday), we're going to look at the bank records. We'll get a court order if we have to," Solomon said. "The purpose of the meeting tonight is to get majority control of the board. My client is alleging millions of dollars are missing, uncollected or unaccounted for."

Developer Robert Wolfarth, managing partner of South Bay Plantation Associates LLC, had refused to provide homeowners with any financial records, he said, adding that Tolz also hadn't provided them with that information. The 130 units that Wolfarth didn't sell have been under Tolz's control since January, county records show.

Ocean Bank began foreclosure proceedings in November against Wolfarth's company, which borrowed \$27 million in 2005 for a condo con-

version in 2005 and still owes about \$12 million.

Over the years, Wolfarth racked up liens for not paying pool firms, landscapers and other maintenance costs.

South Bay Plantation is one of three developments that Wolfarth abandoned, according to Solomon, whose firm won a lawsuit in September, when a Miami-Dade circuit judge ordered Wolfarth to turn 15 units over to the Village at Dadeland Condo Association so they can be rented out and to hand over rent checks he'd collected.

Solomon had argued that Tolz exacerbated the situation by trying to control the association alone without the help of a full three-member board, as required by law.

She also didn't pursue huge debts due to the association by the developer and other unit owners for nearly a year, he said.

As a result, Solomon contended, South Bay is suffering huge financial losses and property values have plunged.

Tolz, who had filed an emergency motion for a temporary injunction to block tonight's meeting, contended the takeover would be improper because she wasn't a receiver for the developer, but for the unsold units.

By law, homeowners can take over an association under several conditions, including after a developer has been under receivership for 30 days.

Hayes denied her motion for an injunction.

"For the receiver to turn around and sue them was appalling," Solomon said. "That's why we stepped up to the plate. This receiver really tried to prevent our clients from getting obvious legal rights. This is not a gray issue."

Attorney Maurice "Manny" Gar-

cia of Greenspoon Marder in Fort Lauderdale, which represented Tolz, declined comment on the case, which is still pending -- although the main issue was control.

In September, S3 Association Management had filed a motion to appoint a receiver, but that didn't move forward, although the company is now managing the development.

They'd intended to use the law to lock the doors of units that weren't paying fees, to renovate units, rent and sell them.

Michael Sagara, one of S3's managing partners, said his firm will probably resign because the homeowners won't be able to afford to pay it to manage the development.

"They've got only 20 homeowners paying HOA fees," Sagara said. "How are they going to pay their bills? That property is short almost \$20,000 a month."

Sagara said S3 is taking over management of Briar Landings at the Enclave after another company closes on the purchase on Nov. 30.

Sheehan said once the takeover occurs, homeowners plan to hire a new management company and seek landscapers, pool companies and others to maintain the property.

He expects about 40 residents will attend tonight's meeting, when there will be a vote to elect a board.

Sheehan said Solomon's firm worked mostly pro bono, without charge, but he did have to collect money from homeowners, who were asked for \$100, but gave him what they could afford for the takeover.

Once there is a new board, he will go to the bank Tuesday to try to review the books.

"That means we should have control over the bank accounts and spending for the first time in five years," Sheehan said.