



Clayton & McCulloh
ATTORNEYS AT LAW

Attorneys:

Kenneth M. Clayton
Neal McCulloh

Russell E. Klemm

Kevin S. Cannon
Cheyenne R. Young

April 8, 2004

Sent via Federal Express and Certified Mail /
Return Receipt Requested - No.: 7002 1000 0005 1812 2106

Chuck Krsek, President
Sausalito Shores Homeowners Association, Inc.
654 San Pablo
Casselberry, FL 32707

RE: Sausalito Condominium Association, Inc.

Dear Mr. Krsek:

Please be advised that this firm represents the Sausalito Condominium Association, Inc. (hereinafter referred to as the "Condominium Association"). As such, we have been retained to compel compliance by the Sausalito Shores Homeowner Association, Inc. (hereinafter referred to as the "Homeowners Association") with respect to that certain Special Warranty Deed dated August 31, 1982, by and between The Greater Construction Corp. and the Homeowners Association, recorded in O.R. Book 1411, Page 1906 of the Public Records of Seminole County, Florida (hereinafter referred to as the "Special Warranty Deed") and that certain Agreement dated February 15, 1978, by and between The Greater Construction Corp. (hereinafter referred to as "Greater"), Condominium Association and unit owners of Sausalito, A Condominium Phase I (hereinafter referred to as the "Agreement").

Given the express terms of the Special Warranty Deed and the Agreement, the Condominium Association immediately demands the following:

1. Compliance with said Special Warranty Deed and the provisions thereof;
2. Compliance with all terms, provisions and conditions of said Agreement;
3. Payment of any and all damages sustained by the Association, including, but not limited to, its costs and attorneys fees associated with compelling compliance with the above referenced Specialty Warranty Deed and the Agreement as well as all damages suffered by virtue of the express violations of said Agreement and said Special Warranty Deed.

Web Site: www.clayton-mcculloh.com

Please Address Correspondence To: Main Office

Brevard County Branch Office:
Indian Harbour Beach Professional Plaza
2040 S. R. 1A, Suite 201
Indian Harbour Beach, FL 32937
Tel: (321) 777-0866
Fax: (321) 773-9681

Main Office:
The Clayton & McCulloh Building
1065 Maitland Center Commons Blvd.
Maitland, FL 32751
Tel: (407) 875-2655
Fax: (407) 875-3363

Volusia County Branch Office:
The Charles Tindall Building
406 North Wild Olive Avenue
Daytona Beach, FL 32118
Tel: (386) 947-9996
Fax: (386) 255-6148

It is this firm's understanding that William Rees, president of the Condominium Association, approached and apprised the Homeowners Association and specifically its Board of Directors of the requirement that the Homeowner Association cease and desist from its improper acts which violate the Agreement and the Special Warranty Deed. In fact, it is this firm's understanding that Mr. Rees endeavored to ensure that the Homeowners Association was aware of:

1. the existence of such Agreement as well as the provisions and requirement thereof;
2. the existence of such Special Warranty Deed as well as the provisions and requirements thereof; and
3. the impropriety of the Homeowners Association denying the Condominium Association, its owners and residents, unrestricted use of and free access to that certain recreation area as set forth in the Plat of Sausalito Section 2, recorded in Plat Book 20, Pages 44 and 45 of Seminole County, Florida.

As such, it appears inconceivable that the Homeowners Association and its Board of Directors could undertake such a blatant course of action in derogation and violation of the express provisions of said Agreement and Special Warranty Deed.

Given the terms of the Agreement and Special Warranty Deed, in conjunction with the egregiousness of the action(s) taken by the Homeowners Association, not only is the Condominium Association demanding free and unrestricted access to the boat ramp and dock located on said recreation area, but in fact the Association is demanding free and unrestricted access to each and every section and amenity within the recreation area, specifically including without limitation, the following items and areas within said recreation area:

1. the gazebo;
2. the clubhouse;
3. the playground area;
4. the 2 tennis courts; and
5. the RV parking area.

Moreover, unless and until some amicable resolution is reached with regard to all of the issues set forth herein including payment of damages by the Homeowners Association to the Condominium Association, the Condominium Association is likewise demanding that all RV parking on the recreation area immediately cease and desist and that the Homeowners Association proceed immediately to remove each and every recreational vehicle. Additionally, this firm understands that the Homeowners Association constructed a fence essentially around the perimeter of the recreation area in derogation and in violation of the Agreement. As such, demand is hereby also made for the removal of such fence. Likewise, it is our understanding that the Homeowners Association has erected a gate across the RV parking area which likewise must be removed by the Homeowners

Association. Similarly, the Homeowners Association must also remove the chain across the boat ramp as well as remove any and all locking devices of any and all facilities contained within the recreation area.

To ensure that there is no misunderstanding or miscommunication and to ensure that the Homeowners Association appreciates the express rights of the Condominium Association with respect to each and every demand set forth above, please understand that the Agreement predates the Special Warranty Deed which is the instrument by which the Homeowners Association ostensibly took title to the recreational area. Moreover, by its express terms and conditions, the Special Warranty Deed is subject to the Agreement. More specifically, Exhibit "A" to the Special Warranty Deed recites in pertinent part:

This conveyance is specifically subject to the following:

...
(2) The terms, covenants, conditions and restrictions set forth in that certain Agreement dated February 15, 1978, by and between The Greater Construction Corp., Sausalito Condominium Association, Inc., and the Unit Owners of Sausalito, A Condominium, Phase I.

As such, any and all rights and entitlements the Homeowners Association has under such Warranty Deed are inferior and subject to the Agreement. Moreover, paragraph 3 of Exhibit "A" to the Special Warranty Deed delineates that the Special Warranty Deed limits the use and enjoyment of the recreation area to use by among others "the Unit Owners of Sausalito, a Condominium, Phase I". Therefore, it is clear that even the deed by which the Homeowners Association took title to the recreation area expressly delineates that:

1. the deed is subject and inferior to said Agreement; and
2. the Unit Owners of the Condominium absolutely have the use and enjoyment of the recreation area and the Homeowners Association has no right to deny such owners access and use thereof.

Now that we have conclusively established that the deed by which the Homeowners Association took title to the recreation area is inferior and subject to the Agreement, please appreciate the express limitations contained within the Agreement which affords the Association the ability to make the extensive demands set forth herein and compel your compliance. More specifically, the Agreement provides:

2. Restriction on Recreational Land: Greater hereby covenants and agrees that the parcel of property known as the Recreational Land, as shown in the Section Two Plat, shall be and hereby is restricted exclusively to recreational uses, including, but not limited to, tennis courts, swimming pools, ball fields, club houses, docks and boat facilities and the like, and it shall not be used for any non-recreational purposes. There shall be no improvements or structures constructed upon the Recreational Land which are not reasonably related to recreational purposes. This covenant shall be a covenant running with the land and shall be and hereby is made for the benefit of, and the use and enjoyment of, (a) the Unit Owners of Sausalito, A

Condominium, Phase I, (b) the future residents (whether they be owners or tenants) of the real property presently owned by Greater which adjoins the Recreational Land (more particularly described in Exhibit "D" attached hereto), (c) Greater, and (d) the heirs, successors and assigns of each beneficiary heretofore described. The scope and details of this restriction are limited and more precisely delineated by the matters set forth in paragraph 3 of this Agreement. (Emphasis added)

As set forth above, the recreation area is expressly and exclusively limited to recreation uses. Additionally, as set forth in paragraph 2 of the Agreement reprinted above, there shall be no improvement or structures constructed upon the recreation land which are not reasonably related to recreational purposes. The enclosure and limitation of part of the recreation area's use exclusively for parking of recreation vehicles ostensibly violates this paragraph. Similarly, the fencing of all of such property as well as the erection of a chain across the boat ramp also is in derogation of the above as well as other provisions of the Agreement, especially to the extent that such barriers are being used to deny access to the Condominium Association, its owners and residents. Therefore, as suggested above, the Condominium Association demands immediate removal of all fences, gates and obstructions which in any way interfere with the unfettered and unrestricted use of all portions of the recreation area by the Condominium Association, its owners and residents. Moreover, Article 3 of said Agreement, likewise expressly reserves the use of such recreation land to recreation purposes and only allows The Greater Construction Corp., not the Homeowner Association, the right to enact reasonable rules and regulations governing same. More specifically, Article 3 of the Agreement recites in pertinent part the following:

3. Use of Recreational Land: The right to use and enjoy the Recreational Land set forth in paragraph 2 hereof is hereby limited exclusively to recreational purposes, and is and shall be further limited by such reasonable rules and regulations as **Greater** from time to time shall issue governing the use of the Recreational Land or the facilities located thereon. The rules and regulations which **Greater** may issue shall be reasonably related to the creation, maintenance, and preservation of a clean and peaceful recreation area, and shall not discriminate against Sausalito Unit Owners in favor of any other group of Recreational Land users. ... Notwithstanding anything to the contrary contained herein, however, the Unit Owners shall in all respects be treated identically the same as all other users of the Recreational Land insofar as (a) their rights to use and enjoy the Recreational Land, ... (Emphasis added)

After all of the above, if you have any doubt as to the extensive rights and entitlement that the Homeowners Association, its owners and residents have in and to the recreation area, please be advised that Article 3 of the Agreement further provides in pertinent part the following:

Nothing in this Agreement, however, shall alter the fact that Greater retains the fee simple ownership of the Recreational Land and reserves the right to regulate the recreational use of said land and to convey the Recreational Land so long as such conveyance is subject to the terms

and conditions of this Agreement and the restrictions contained herein and the use of said land is limited to use by the persons described as the beneficiaries of such restrictions in paragraph 2 hereof. (Emphasis added)

As the refusal to grant access to the dock and ramp appears to be the focal point of what generated this controversy, please be advised that Article 4 of the Agreement expressly provides in pertinent part the following:

4. Dock Facilities on Recreational Land: ... Notwithstanding the foregoing, Greater agrees to construct a boat ramp and small dock on the Recreational Land ... for the use of the Unit Owners and all others entitled to use the Recreational Land ... and the Unit Owners shall have a continuing right to use such ramp and dock without charge or fee.

Please understand that the reference to unit owners refers to and includes the Condominium unit owners. Please understand that the above in no way is meant to delineate all of the violations nor all of the egregious acts of the Homeowners Association. Nevertheless, this firm trusts that the above sufficiently and, in fact, overwhelmingly demonstrates the egregiousness of the Homeowners Association's actions, its violations and the resulting damages such violations have and are continuing to cause. Needless to say, your actions and the above violations are damaging not only the Condominium Association, but also its owners and residents. As such, please understand that in addition to all of the damages sustained by the Association to date, the Homeowners Association is ostensibly incurring significant liability and/or exposing itself to significant risk by virtue of any devaluation of Condominium Property, especially where any and all Condominium property is in the process of being sold. As such, any devaluation in property by virtue of the actions of the Homeowners Association ostensibly is likewise actionable. Of course, the value associated with the lack of use by the Association and its members on a day to day basis is escalating, actionable and recoverable. Therefore, at such time as the Homeowners Association wants to settle this matter, please contact this firm so we can have the Association aggregate the damages it has sustained and provide you with a settlement figure. Of course, compliance with all the requirements, covenants and conditions of the Agreement as well as the Special Warranty Deed must transpire immediately. To the extent that immediate compliance is not obtained, the Homeowners Association's risk and liability shall continue to escalate, which risk and liability, of course, will continue to increase each day that such violations and improprieties exist and that this matter remains unresolved.

It is hoped that you, the Homeowners Association and its Board of Directors realize that by virtue of how comprehensive this letter is, that the Condominium Association intends to compel your complete compliance. In fact, please be advised that not only has this firm already been directed to file litigation against the Homeowners Association in the event that resolution of the above matters does not transpire within 7 days of the above referenced date, but that we actually had to talk the Condominium Association into permitting us to draft this letter before filing such litigation. Stated differently, the Condominium Association's initial direction to this firm was to immediately file suit against the Homeowners Association and forgo this letter. In fact, it is only because this firm recommended providing the Homeowners Association with an opportunity to cure its

Chuck Krsek, President
Sausalito Shores Homeowners Association, Inc.
April 8, 2004
Page 6

significant violations without litigation that the 7 day time period is being afforded prior to litigation being filed. As such, if the Homeowners Association and its Board of Directors wish to avoid litigation, please ensure you contact this firm within such time period, and agree to all the terms and conditions set forth herein. Stated differently, this letter in all respects constitutes a settlement offer to resolve the above referenced issues and avoid impending litigation. However, unless complete compliance and resolution of all matters set forth herein transpires within 7 days, this firm has been directed to file litigation.

For your convenience, we have enclosed herewith a copy of said Special Warranty Deed together with a copy of said Agreement. It is hoped that you will take the time to confirm the statements set forth above as well as all of the Condominium Association's right to pursue the Homeowners Association, enjoin the Homeowners Association from its improper acts, and recover damages associated with same.

Sincerely,

CLAYTON & MCCULLOH



Neal McCulloh

NM/lam

Enclosure(s)

cc: Sausalito Condominium Association, Inc.