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December 23, 1997

Ms. Blanca S. Bayo
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Parc Corniche Condominium
Our File No.: 1631-2

971659-TP

Dear Ms. Bayo:

Pursuant to a telephone conversation with Ms. Williams of your office, enclosed please find an original plus fifteen (15) copies of a Complaint. Please file the same.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



E. Givens Goodspeed

EKG:lm

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO.: 971659-TP

FILED DECEMBER 24, 1997

ORIGINAL

RE: PARC CORNICHE CONDOMINIUM

COMPLAINT

Petitioner, PARC CORNICHE CONDOMINIUM ASSOCIATION, INC., (hereinafter "PARC CORNICHE"), hereby files a Complaint before the Florida Public Service Commission, requesting that the Florida Public Service Commission take jurisdiction over this matter pursuant to Florida Statutes § 364.01, and as grounds therefor states as follows:

1. Attached hereto as Exhibit "A" is a copy of the Verified Complaint filed by Plaintiffs, WELLINGTON PROPERTY MANAGEMENT, INC. (hereinafter "WELLINGTON") and EMERSON COMMUNICATIONS CORPORATION (hereinafter "EMERSON"), against PARC CORNICHE in Orange County, Florida, in Orange County Circuit Court, Case No. CI 96-1812.

2. The Complaint seeks declaratory and injunctive relief to declare invalid certain amendments to a Declaration adopted by PARC CORNICHE on June 17, 1996. Plaintiffs challenge Ballot Item #6 which amends the Declaration to state that the television and telephone lines are part of the common elements. Plaintiffs contend that Emerson owns the television lines and leases these lines to WELLINGTON. Plaintiffs further contend that PARC CORNICHE is illegally attempting to divest EMERSON and WELLINGTON of these lines by redesignating them as common elements.

3. PARC CORNICHE contended that the Plaintiffs were not "telecommunications companies" within the meaning of Florida Statutes § 364.02(12) and that the Plaintiffs did not obtain a Certificate of Necessity as required by Florida Statutes § 364.33 and Fla. Admin. Code R. #25-4.004, and do not have authority to claim ownership of the television and telephone lines.

4. On November 4, 1997, the Circuit Court in Orange County, Florida, entered an Order referring this matter to the Florida Public Service Commission so that the Commission can review the issues raised in the action and determine what issues, if any, it has jurisdiction over. Attached as Exhibit "B" is a copy of the Order dated November 4, 1997.

WHEREFORE, PARC CORNICHE requests that the Florida Public Service Commission take jurisdiction over this action to consider the issues raised in the action and to declare that Plaintiffs do not have authority to claim ownership of television and telephone lines at Parc Corniche Condominium.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by U.S. Mail to: **Stephanie A. Yelenosky, Esquire**, 135 W. Central Blvd., Suite 1100, Orlando, Florida 32801, on this 17 day of December, 1997.



Houston E. Short, Esq.

Florida Bar No.:717592

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Attorneys for Defendant, Parc Corniche
Condominium Association, Inc.

906
D/S

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. C-96-1812

WELLINGTON PROPERTY MANAGEMENT,
INC., a Florida corporation,
and EMERSON COMMUNICATIONS
CORPORATION, a Florida
corporation,

Plaintiffs,

vs.

PARC CORNICHE CONDOMINIUM
ASSOCIATION, INC., a Florida
not-for-profit corporation,
and ORANGE COUNTY, FLORIDA,
a political subdivision of
the State of Florida,

Defendants.

FILED IN OFFICE
CIVIL DIV.
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ERAN CARLTON
CLERK CIR. COURT
ORANGE CO., FL.

VERIFIED COMPLAINT

Plaintiffs, WELLINGTON PROPERTY MANAGEMENT, INC. (hereinafter "Wellington"), a Florida corporation, and EMERSON COMMUNICATIONS CORPORATION (hereinafter "Emerson"), a Florida corporation, by and through their undersigned counsel, sues PARC CORNICHE CONDOMINIUM ASSOCIATION, INC. (hereinafter "Association"), and ORANGE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter "Orange County"), and for a cause of action states:

Allegations Common to All Counts

1. Wellington is a Florida corporation. Wellington owns ten (10) commercial units at Parc Corniche, a condominium, which condominium is the subject of this lawsuit.
2. Plaintiff Emerson Communications Corporation owns certain telephone and cable lines located at the subject condominium.

EXHIBIT A

Wellington uses the lines subject to a license agreement that it has entered into with Emerson. Wellington has a continuing economic interest in the use of the subject lines pursuant to the license agreement.

3. The Association is a Florida not-for-profit corporation for Parc Corniche, a condominium. The Association is located in Orange County, Florida, and further, venue is proper in Orange County, Florida, by virtue of the fact that the Declaration of Condominium for Parc Corniche, a condominium, was recorded in Orange County, Florida.

4. Orange County, Florida, is a political subdivision of the State of Florida located at Orlando, Orange County, Florida.

5. The Parc Corniche Condominium was created on October 30, 1989, by the recording of the Declaration of Condominium and By-Laws and exhibits attached thereto in the Public Records of Orange County, Florida. The recorded subject condominium documents may be found at Official Records Book 4127, at page 3444. A true and correct copy of the Declaration is attached hereto as Exhibit A.

6. Pursuant to Article I, entitled "Submission Statement", Subsection "Definitions", paragraph D of the Declaration of Condominium, the common elements are defined as follows:

"Common elements and/or facilities means that portion of the condominium property not included in the units."

7. Pursuant to Article VII entitled "Methods of Amendment of Declaration" of the Declarations of Condominium:

"Except as provided below, this Declaration may be amended at any regular or special meeting of the unit owners called and convened in accordance with the by-laws by the affirmative vote of voting members casting not less than fifty-one percent (51%) of the total vote of

the members of the association. All amendments shall be recorded and certified as required by the Condominium Act.

Except as provided herein, no amendment shall impair or prejudice the rights and priorities of any mortgages or change the provisions of this Declaration with respect to institutional first mortgages without the written approval of all institutional first mortgagees of record, nor shall the provisions of Article VII of this Declaration be changed without the written approval of all institutional first mortgagees of record. No amendment shall change the rights and privileges of the developer without the developer's written approval."

8. Pursuant to Article XII entitled "Use and Occupancy", paragraph C, entitled "Common Elements" of the Declaration of Condominium:

"No person shall use the common elements and limited common elements or any part thereof or a condominium unit, or the condominium property, or any part thereof, in any manner contrary to or not in accordance with the uses permitted by this Declaration or by such rules and regulations pertaining thereto, as the same from time to time may be promulgated by the Association"

9. Pursuant to Article XIX, entitled "Miscellaneous Provisions, paragraph A:

"The owners of the respective condominium units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding their respective condominium units, nor shall the unit owners be deemed to own pipes, wires, conduits, or other public or private utility lines running through said respective condominium units which are utilized for or serve more than one condominium unit, which items with the exception of television and telephone lines are by these presents hereby made a part of the common elements"

10. Pursuant to Article XXII, entitled "Commercial Units" of the Declaration of Condominium:

"Commercial unit owners shall be entitled to all the rights and benefits otherwise provided to unit owners under this Declaration. In addition to all

appurtenances, easements and other benefits passing with units as provided hereunder, the commercial units shall each have as an appurtenance thereto the following perpetual non-exclusive easements for the use and benefit of the commercial unit owners, their successors and assigns, social guests, lessees, licensees and invitees: (a) an easement for ingress and egress over all of the common elements of the condominium as the same may exist from time to time; (b) an easement for vehicular parking upon the common elements of the condominium for the owner and owner's employees, guests, lessees, licensees and invitees; and (c) an easement for maintenance, repair, replacement, removal and relocation of any and all electrical, plumbing, water, sewer and other utility lines and pipes necessary for use of the commercial units as permitted herein. Additionally, commercial units C-1, C-2, C-3, C-4 and C-5 ('Units C-1 through C-5'), as more particularly identified in Exhibit 'A' attached hereto, shall have as an appurtenance thereto, perpetual non-exclusive easements for the use of the restrooms located in commercial units C-3 ('the restrooms') and for the use of the hallways, corridors and entryways contained within Units C-1 through C-5 as are necessary to provide access and entry into C-1 through C-5 and into the restrooms, all for the benefit of the owners of Units C-1 through C-5, their successors and assigns, social guests, lessees, licensees and invitees.

The owners of commercial units may reconfigure and alter the interior spaces of the commercial units and any limited common elements appurtenant thereto as they in their sole discretion may elect, so long as the same does not adversely affect the use rights of the other commercial unit owners. The commercial units have, as an appurtenance thereto, an undivided interest in the common elements and the common surplus of the condominium and are responsible for a portion of the common expenses of the condominium in accordance with the percentage interest set forth in Exhibit "D" attached hereto. The commercial units initially are intended for use in connection with television and telephone systems areas, in all phases, an administrative building initially consisting of a restaurant, lounge, offices, conference rooms, store, laundry, etc. in Phase I, and a cabana grill in Phase III. The initial use of the commercial units may change at any time, in the commercial unit owner's sole discretion but shall at all times remain consistent with the uses permitted herein. The developer shall retain ownership of such commercial units until such time as the developer in its sole discretion shall determine to sell or lease all or a portion of such commercial units."

11. In early January, 1996, the Association prepared and may have mailed to some of its owners a "Notice of Special Meeting of the Members of the Parc Corniche Condominium Association, Inc." and a "Limited Proxy". However, Plaintiffs were not recipients of said meeting notice. A true and correct copy of the Notice of Special Meeting of the Members of the Parc Corniche Condominium Association, Inc. and the "Limited" proxy attached thereto is attached as composite Exhibit B. Pursuant to the Notice, the meeting was called by the Association for the purpose of voting on certain amendments to the Declaration of Condominium, more particularly described as follows:

(a) "To convert the use of two (2) residential units to non-residential use, for the purposes of, but not limited to, conducting management and rental operations of and for Parc Corniche Condominium out of those units and serving breakfast to guests using units within the Parc Corniche Condominium."

(b) "To sell or lease a portion of the common elements to the management company of Parc Corniche Condominium for the purposes of housing its management and rental facilities, and incorporating that building into the Parc Corniche Condominium."

(c) "To convert certain limited common elements to common elements."

(d) "To change the parameters of the units to include television and telephone lines as common elements."

(e) "To change the use restrictions on commercial units."

12. Pursuant to Section 718.112(2)(b)(2), Florida Statutes, limited proxies must be used for amendments to the condominium documents. While the proxy attached hereto is entitled "Limited Proxy", the language of the proxy makes it, in fact, a general

proxy. Notably, in the space provided for limited power in the proxy where specific instructions are to be given, the proxy provides that "there are no issues on the agenda for the special homeowners' meeting which will require the use of a limited proxy". Accordingly, the proxy is clearly invalid to be used to vote on the proposed amendments.

13. Although the actions of the Association in conducting a special meeting with the use of limited proxies to amend the condominium documents was per se illegal, it is further apparent that the proposed changes to the condominium documents proposed by the Board for the Association were equally illegal and invalid. A true and correct copy of the ballot used by the Board at the special meeting on January 31, 1996 is attached as composite Exhibit C.

14. It is undisputed that the Association never solicited or obtained the consent or approval of Plaintiffs to any of the items set forth on the ballot for the January 31, 1996 special meeting.

15. Ballot Item 5 proposed an amendment to Article XIV, "Limited Common Elements", providing that commercial unit C-2 shall pay for any expense related to the maintenance, repair or replacement of the terrace appurtenant to such unit. It is clearly invalid because the proposed amendment violates Section 718.110(4), Florida Statutes. This amendment is invalid without the consent of the affected unit owner.

16. Ballot Item 6 proposed an amendment to Article XIX, entitled "Miscellaneous Provisions", to transfer ownership of

private television and telephone lines from the owners to the unit owners of the respective condominiums in which such lines are installed. This amendment is clearly invalid under Section 718.110(4), Florida Statutes. The Association has no right whatsoever to incorporate private property into its common elements without the consent of the affected owner of that property.

17. Ballot Item 7 is a proposal to amend Article XIX entitled "Miscellaneous Provisions" to permit the Association to alter, amend or improve the common elements upon a 51% vote of the Board of Directors. That provision is clearly illegal and invalid under Section 718.113, Florida Statutes, which specifically provided that 100% of the total voting interest of the unit members must approve alterations or additions to the common elements under the form of the statute in existence at the time the Declarations were recorded in 1989. The Board's attempt to undermine the specific statutory provision is clearly illegal, improper and unenforceable.

18. Plaintiffs were informed that these ballot items were, in fact, passed and approved at the special meeting of the Association held on January 31, 1996. Further, the Board has made application to Orange County for a non-substantial change to its development plan based upon the amendments to the Declaration adopted by the Association on January 31, 1996.

19. In conclusion, the Plaintiffs assert the following illegalities were undertaken by the Board of Directors for the Association:

(a) The use of illegal general proxies to vote on amendments and changes to the condominium documents.

(b) The attempt to use the proposed amendments set forth in the ballots to materially and detrimentally affect the rights of unit owners without seeking the consent of the unit owners as is required by Florida Statutes.

(c) The use of a proposed amendment to the condominium documents to require only a 51% majority vote to affect changes in the condominium documents, clearly in violation of Chapter 718, Florida Statutes.

(d) The approval of an application to Orange County for a non-substantial change to the development plan based upon purported amendments to the condominium documents enacted at an illegal meeting and enacted in an illegal way.

COUNT I

Declaratory Judgment as to Association

20. Plaintiffs reallege paragraphs 1 through 20.

21. This is a cause of action pursuant to Chapter 86 for declaratory relief properly before the Court in its equity jurisdiction.

22. As set forth above, Plaintiffs reasonably believe that the Board of Directors for the Defendant association has acted illegally and improperly. The Board has asserted that it has acted properly with respect to the special meeting of January 31, 1996.

Because of the Plaintiffs' interest in the actions of the Board with respect to amending the subject condominium documents and the fact that the actions of the Board have raised some doubt as to the propriety of the actions of the Board with respect to the special meeting of January 31, 1996, Plaintiffs seek a declaration of their rights and status with respect to the actions of the Board.

WHEREFORE, Plaintiffs request that the Court enter a judgment declaring that:

(a) The proxy used by the Defendant Association at the special meeting of January 31, 1996 was, in fact, a general proxy and not a limited proxy.

(b) The Court declare the use of the subject proxy by the Defendant Association at its special meeting of January 31, 1996, was illegal and that the amendments are null and void.

(c) The purported amendments to the condominium documents set forth in the ballot attached as composite Exhibit C are void, illegal and unenforceable because they were passed in violation of the relevant provisions of Chapter 718, Florida Statutes.

(d) The Association's request for non-substantial change to development plan which was submitted to Orange County for approval is invalid and illegal in that it was based upon amendment to the condominium documents which were illegally passed.

(e) The Court enter such other and further legal and equitable relief as is proper, including injunctions to give full force and effect to its findings under Count I.

COUNT II

Temporary and Permanent Injunctive
Relief as to Association and Orange County

23. Plaintiffs reallege paragraphs 1 through 20 herein.

24. This is a cause of action for temporary and permanent injunctive relief against the Association, and Orange County, Florida, and is properly before the Court in its equity jurisdiction.

25. The Association's use of illegal proxies to pass proposed amendments to the condominium documents which are clearly prohibited by Florida law demonstrate a complete and continuing lack of regard for the legitimate property rights of Plaintiffs as unit owners at Parc Corniche, a condominium.

26. The Association's effort to divest Emerson of its telephone and television lines and Wellington's use of the lines pursuant to the license agreement by redesignating them as "common elements" and otherwise to undertake activity to seize Emerson's property without the consent of Emerson and to undertake other activities clearly in violation of Florida Statutes is continuing in nature and cannot be adequately measured by damages.

27. The Association's use of the results of the illegal meeting to approve the proposed amendments to the condominium documents on January 31, 1996 as a basis to make application to

Orange County for a non-substantial change to the development plan constitutes further evidence of the Association's intent to continue to take actions to injure Plaintiffs and to disregard the Association's responsibilities under Chapter 718, Florida Statutes.

28. Without considering the illegalities of the actions of the Association, Orange County has indicated an intent to consider the request for a non-substantial change to the development plan and otherwise to process and approve same through the County's development review committee.

29. Plaintiffs are being irreparably harmed by the activities of the Association in continuing to disregard its obligations under Chapter 718, Florida Statutes, and otherwise conducting itself in a manner which injures and damages the legitimate property rights of Plaintiffs. Because the actions of the Association are continuing and ongoing, a judgment for damages cannot adequately compensate Plaintiffs and Plaintiffs are without an adequate remedy at law.

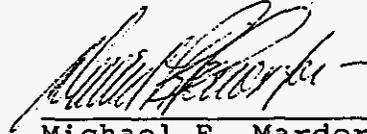
WHEREFORE, in light of the foregoing, Plaintiffs pray for the following relief:

(a) That this Court preserve the status quo by enjoining Orange County from approving any application of the Defendant Association for a non-substantial change to the development plan.

(b) That the Association be enjoined from further violations of Chapter 718, Florida Statutes, as set forth above.

(c) That the Association be enjoined from recording any alleged amendments to the condominium documents or, if the Association has proceeded to record said amendments, that the Association immediately record the appropriate documents vitiating any action it has taken with respect to the meeting of January 31, 1996.

(d) That the Association be enjoined from taking any action it claims was authorized through the vote taken at the special meeting on January 31, 1996.

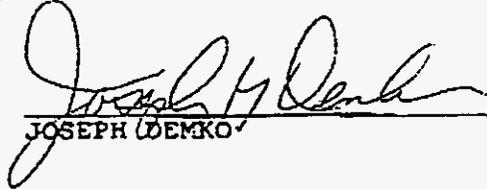


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Counsel for Plaintiff

VERIFICATION

I HEREBY CERTIFY that the above facts are true to best of my information, knowledge and belief.



JOSEPH DEMKO

g:\donias\j649.com

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CI 96-1812

WELLINGTON PROPERTY
MANAGEMENT, INC., a Florida
corporation, EMERSON
COMMUNICATIONS CORPORATION,
a Florida corporation, and
ROGER COVIELLO,

Plaintiffs,

vs.

PARC CORNICHE CONDOMINIUM
ASSOCIATION, INC., a Florida
not-for-profit corporation,

Defendant.

FRAN COVELLON
CLERK-CIRCUIT COURT
ORANGE CO., FL
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FILED IN OFFICE
CIVIL DIV.

**ORDER ON REQUEST AND MOTION FOR REFERRAL TO
FLORIDA PUBLIC SERVICE COMMISSION**

THIS CAUSE came on to be heard before the court upon the Request and Motion for Referral to The Florida Public Service Commission by Defendant, PARC CORNICHE CONDOMINIUM ASSOCIATION, INC., and the Court having argument of counsel, and being otherwise fully advised in the premises, it is ORDERED and ADJUDGED as follows:

1. The Complaint filed by Plaintiffs in this action seeks declaratory and injunctive relief to declare invalid certain amendments to the Declaration adopted by the Association on June 17, 1996. Specifically, Plaintiffs have challenged Ballot Item 6; which amends the Declaration to state that the television and telephone lines are part of the common elements. Plaintiffs contend that Emerson owns the television lines in the Condominium, and leases these

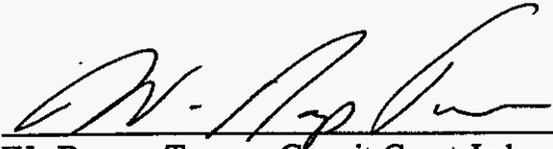
lines to Wellington. Plaintiffs further contend that the Association is illegally attempting to divest Emerson and Wellington of these lines by redesignating them as "common elements."

2. However, before reaching the issues raised by the Complaint, it must first be established that Plaintiffs have authority to own these television and telephone lines, which raises questions as to whether the Plaintiffs are "telecommunications companies" within the meaning of Florida Statutes §364.02(7), and whether the Plaintiffs obtained a Certificate of Necessity as required by Florida Statutes §364.33 and Fla. Admin. Code R. 25-4.004. These additional matters are within the exclusive jurisdiction of the Florida Public Service Commission. See Teleco Communications v. Clark, 22 F.L.W. S283 (Fla. May 22, 1997).

3. With regard to the television cable wires, the court is mindful that the Florida Public Service Commission may not have any authority to regulate the ownership of these wires. Devon-Air Villa Homeowners Association. No. 4, Inc. v. Americable Associates, Ltd., 490 So. 2d 60 (Fla. 3d DCA 1986).

4. Accordingly, the court grants the Request and Motion for Referral to the Florida Public Service Commission, and hereby abates this action so that the Florida Public Service Commission can review the issues raised in this action and to determine what issues, if any, it has jurisdiction over. If the Florida Public Service Commission does not determine it has jurisdiction over this entire action, those issues will be adjudicated by this Court.

DONE AND ORDERED in chambers this 4th day of November, 1997.


W. Rogers Turner, Circuit Court Judge

by hand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by U.S. mail to Houston E. Short, Esquire 280 W. Canton Ave., Suite 410, Winter Park, Florida 32789; Stephanie A. Yelenosky, Esquire, 135 W. Central Blvd., Suite 1100, Orlando, Florida 32801 on this 4 day of November, 1997.

Houston Short

Judicial Assistant