

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND
FOR PUTNAM COUNTY, FLORIDA

CASE NO. 09-020 CA 53

MELROSE AREA PROPERTY OWNERS ASSOCIATION, INC.,
A Florida Corporation,

Plaintiff,

vs.

MELROSE LANDING AIR PARK, INC.,
A Florida Corporation, and
BILL GREGG, TERRY WILMOTTE, and CONSTANCE OSTROWSKI,

Defendants.

JUDGMENT AND ORDER

THIS CAUSE having come before the Court upon the "Complaint for Declaratory Judgment and other relief" filed herein on behalf of Plaintiff; and, the Court having considered the matters and issues raised within said Complaint, together with those matters and issues raised within the "Amended Answer and Counter Claim" filed herein by the Defendants/Counter-Claimants; and, the Court having further considered that document entitled "Agreement and Stipulation in Settlement of Disputed Issues" filed herein and signed/executed by all of the parties; it is now,

DETERMINED that this Court has jurisdiction over the parties and over the subject matter herein. It is further,

DETERMINED that the Agreement and Stipulation in Settlement of Disputed Issues filed herein and executed by the parties is intended by the parties to settle and resolve all issues raised within the pleadings filed by the respective parties and/or otherwise before the Court in this proceeding. It is accordingly,

ORDERED AND ADJUDGED that the Agreement and Stipulation be and is hereby accepted by the Court and adopted by reference into this Judgment and Order as fully as if the operative terms of same were set forth verbatim herein. For the convenience of the parties, but

not for the purpose of emphasizing some of the terms of the Settlement and Stipulation over others, the Court recites the following terms. It is accordingly,

ORDERED AND ADJUDGED that that corporation known as Melrose Landing Airpark, Inc., organized and existing under the laws of the State of Florida with principal offices located at 126 Melrose Landing Drive, Hawthorne, FL, has no authority or standing to perform any role or function assigned to the Executive Committee or the Airstrip Committee or on behalf of the Property Owners Association, except as stated in sub-paragraph (g) below, as all of said entities are defined within the Protective Covenants.¹ More specifically, Melrose Landing Airpark, Inc.:

- a) Has no authority, derived from the Protective Covenants, to establish or collect assessments from the owners of any lots located in Melrose Landing Subdivision or Long Lakes Estates Subdivision;
 - b) Has no authority, derived from the Protective Covenants, to hold or retain funds collected as a result of assessments made pursuant to the Protective Covenants against owners of lots within the Melrose Landing Subdivision or Long Lake Estates Subdivision;
 - c) Has no authority, derived from the Protective Covenants, to directly expend money collected as a result of assessments made pursuant to the Protective Covenants against owners of lots located within Melrose Landing Subdivision or Long Lake Estates Subdivision.
 - d) Has no authority, pursuant to the Protective Covenants, to adopt, publish, or enforce rules pertaining to the operation of the airstrip, taxi-ways, or easements.
 - e) Has no authority, derived from the Protective Covenants, to select, nominate, or appoint any person to serve on the Board of Directors of the Property Owners Association.
 - f) Has no authority or power whatsoever with respect to the Property Owners Association or the owners of lots located within the Melrose Landing Subdivision or the owners of lots located within Long Lake Estates Subdivision except that power or authority voluntarily given it by lot owners or the Property Owners Association.
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1 Whenever used in this document, "the Protective Covenants" shall refer to the Declaration of Restrictions and Protective Covenants dated December 15, 1983, copy of which are recorded at book 443, page 1216, Official Records of Putnam County, Florida, as supplemented and amended on January 26, 1984, and April 2, 1984, amendments which are recorded at book 445, page 384, and book 448, page 653, respectively, Official Records of Putnam County, Florida.

g) Melrose Landing Airpark, Inc. is permitted to act as one and the same as the Airstrip Executive Committee strictly for the purpose of obtaining the insurance for which the Airstrip Executive Committee is responsible, due to the requirements of the insurance underwriter. This action is permitted only until such time as the insurance underwriter utilized recognizes the Airstrip Executive Committee as an entity authorized to obtain insurance for the airstrip. No other actions by Melrose Landing Airpark, Inc. are authorized or permitted.

It is further,

ORDERED AND ADJUDGED that the Property Owners Association has both the sole authority and the non-discretionary obligation to collect any assessments authorized under the terms of the Protective Covenants and shall have the sole authority to take enforcement action aimed at collecting said assessments, including the filing of and/or foreclosure of liens relating to the non-payment of assessments. The Property Owners Association shall retain any and all late fees, including late fees for Airstrip assessments. All money collected on behalf of the Airstrip Committee in accord with and under the authority of the terms of the Protective Covenants will be transferred to the Airstrip Executive Committee within 30 calendar days. The Airstrip Executive Committee has the sole authority to determine whether, when, how, and in what manner to utilize such funds, subject only to the requirements of the governing documents.

It is further,

ORDERED AND ADJUDGED that the Airstrip Executive Committee, as defined within the Protective Covenants, is vested with the sole responsibility and authority of adopting regulations relating to or governing the use of the airstrip, taxi-ways, tie-down and hangar areas, and aircraft-related facilities, and to establish penalties as defined in Article XI, Section 4, of the Protective Covenants. However, the Property Owners Association, acting by and through its Board of Directors, shall retain the sole and exclusive authority and the non-discretionary obligation to enforce the regulations adopted by the Airstrip Executive Committee, all in accord with State Statutes.

It is further,

ORDERED AND ADJUDGED that the facilities commonly known as runways and taxiways within the subdivision are located within easements depicted within and upon the plat of the subdivision. Said easements encumber and modify the rights of the owners of the land upon which said easements are located. While the owner of the land which is encumbered by the easement holds "title" to the property located within the easement, the easement guarantees others the right to utilize the land within the easement for its intended purposes. As a result, while the owners of lots P-1 through P-49, L-13 and L-14 within Melrose Landing Subdivision own the land on which the runway is located, an easement across said lots allows the use of the easement area for runway purposes and prevents the lot owner from controlling or utilizing that portion of his/her lot located within the easement area in any manner which is inconsistent with the rights conferred by the easement. The easements located upon lots P-1 through P-49, L-13 and L-14 shall be deemed as being for the use and benefit of the lot owners of Melrose Landing Subdivision for aircraft-related purposes but subject to regulations adopted by the Airstrip Executive Committee and enforced by the Property Owners Association as described in paragraph 6 above. To this extent, said easement shall not be considered "common areas" as defined in Article II, Section 1, of the Protective Covenants.

It is further,

ORDERED AND ADJUDGED that the Airstrip Committee shall be recognized as having the sole authority to call and conduct its own meetings and to elect from its membership those who shall comprise the Airstrip Executive Committee. Any and all members of the Airstrip Committee shall be eligible for nomination and election to the Airstrip Executive Committee.

It is further,

ORDERED AND ADJUDGED that to the extent that the Property Owners Association or the parties can control or provide input, the license issued by the Federal Aviation Administration, and all future licenses, approving and designating the runway and related facilities located within the Melrose Landing Subdivision as a "private airport" shall reflect that the airport is owned and operated in the same name in which the original airport license was issued by the Federal Aviation Administration.

It is further,

ORDERED AND ADJUDGED that for purposes of Article XI, Section 2, of the Protective Covenants, insurance premiums attributable to insurance coverage applicable to the airstrip and taxi-ways shall be considered a necessary cost of "maintaining" the airstrip and taxi-ways. Accordingly, the cost of said insurance may be satisfied from those funds described within Article XI, Section 2, if authorized and designated by the Executive Committee of the Airstrip Committee.

It is further,

ORDERED AND ADJUDGED that in defining and declaring the rights of the Property Owners Association, and in order to avoid future controversies regarding same, it shall be determined and declared that the signatures of two persons will be required on all checks written for the purpose of withdrawing or designating the payments of funds from the bank accounts of either the Melrose Area Property Owners Association or the Airstrip Executive Committee.

It is further,

ORDERED AND ADJUDGED that Lot P-35, also described as 126 Melrose Landing Drive, Hawthorne, Florida, 32640, and the building located thereon, may be utilized for community meetings and other gatherings, including community meals. However, reasonable regulations governing the use of the building but in keeping with the spirit of the preceding sentence, may be adopted by the Airstrip Executive Committee and shall then be enforced by The Property Owners Association. Notwithstanding anything set forth within this paragraph, all kitchen facilities located within the building constructed on lot P-35 shall be removed, and no food will be stored, prepared, or cooked on-site. No additional structures, or structural additions will be located on lot P-35 which do not conform with the restrictions contained within the deed by which said lot was conveyed to the Property Owners Association.

It is further,

ORDERED AND ADJUDGED that this judgment shall be deemed an interpretation of the Declarations of Restrictions and Protective Covenants which govern and apply to the Melrose Landing Subdivision and which are more particularly identified within the Agreement and Stipulation upon which this Judgment is based. This Judgment shall not be deemed a modification of said Declaration of Restrictions and Protective Covenants which the Court

would ordinarily not be empowered to effect but which instead would be accomplished in accord with the procedures established within said Declaration of Restrictions and Protective Covenants and in accord with applicable law.

It is further,

ORDERED AND ADJUDGED that in the event that any term or provision of this Declaratory Judgment is declared to be invalid or unenforceable for any reason, the remainder of this Judgment shall remain valid and binding upon the parties.

It is further,

ORDERED and ADJUDGED that except to the extent that it is addressed within the Agreement and Stipulation, any claim or request for relief asserted by any party in this proceeding be and is hereby deemed to have been denied by this Court. Said denial shall be deemed an adjudication of the issue, subject to applicable principles of res judicata and collateral estoppel.

It is finally,

ORDERED AND ADJUDGED that this Court shall retain jurisdiction over this matter for the purposes of enforcing the terms of the Agreement and Stipulation which form the basis of this Judgment, and/or for the purpose of enforcing this Judgment, to the full extent permitted by law.

DONE AND ORDERED this 21 day of Jan, 2012, in chambers in Putnam County, Florida.

PATTI A. CHRISTENSEN
Circuit Judge

cc: Donald E. Holmes, Esq
William W. Deem, Esq