State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 31, 2017

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk RES

FROM: Melinda Watts, Engineering Specialist, Division of Engineering

RE: Docket No. 20170151-WS-Application for authority to transfer water and wastewater Certificate Nos. 577-W and 498-S in Manatee County, from Heather Hills Estates Utilities, LLC to Heather Hills Utilities, LLC.

Please file the attached correspondence dated October 31, 2017 in the Consumer side of the Correspondence Tab in the above mentioned docket file.

Thank you.

Melinda Watts

To: Kelly, JR
Subject: RE: Complaint re: Docket # 20170151-WS

JR,

Good catch! However, she did send it to our consumer outreach staff, and the email below was sent, but with an attachment that is different from the one that is on this email. Mrs. Gunn had mentioned that she was going to try again to send it to the Commission, so I was waiting to see if it showed up in the docket file. Since it does not seem to have been sent other than via your office, I will have it added to the docket file with this email.

Thank you very much,

Melinda Watts
Florida Public Service Commission

From: Kelly, JR [mailto:KELLY.JR@leg.state.fl.us]
Sent: Tuesday, October 31, 2017 8:02 AM
To: Melinda Watts
Cc: Ponder, Virginia
Subject: FW: Complaint re: Docket # 20170151-WS

Melinda – I believe the email address below that Ms. Gunn used for you is incorrect; therefore, I'm forwarding her email.

JR

J.R. Kelly
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400
850-488-9330
850-487-6419 Fax

From: Heather Hills [mailto:heatherhills353@msn.com]
Sent: Monday, October 30, 2017 7:12 PM
To: contact@psc.state.fl.us; Kelly, JR <KELLY.JR@leg.state.fl.us>; Heather Hills <heatherhills353@msn.com>
Cc: jvoorheis@ymail.com; melanie.watts@psc.state.fl.us; watts.melanie@psc.state.fl.us
Subject: Fw: Complaint re: Docket # 20170151-WS

Dear FPSC Staff,

I am curious as to why my Complaint email dated 10/25/17 still does not appear on the DOCKET OF TRANSFER CASE 20170151 WS, according to another Complaint filer living in HHE? Other Complaints filed at a later date are on the Docket. Where is mine?

I emailed a copy to my self as per below and did receive the email. I understand that allegedly the decision is being made tomorrow as to the Certification Transfer so it is most important that my email be reviewed prior to the decision. When the FPSC was advised of some of the exact same details in 2009, of this my recent Complaint it did nothing in response. Surely the same reaction is not going to occur again this time around? Am I not entitled to a response to my email of 10/25 and a response to this one?

Thank you for your considerations.

Kenna Gunn
----- Original Message -----
From: Heather Hills
To: contact@psc.state.fl.us ; heatherhills353@msn.com
Sent: Wednesday, October 25, 2017 9:44 AM
Subject: Complaint re: Docket # 20170151-WS

Kenna Gunn 116 50th Avenue West Bradenton FL 34207-2666 941 727 2530 heatherhills353@msn.com

10-24-17

COMPLAINT TO FPSC
OBJECTION TO TRANSFER OF UTILITY FROM HHEU, LLC TO HHU, LLC

Dear FPSC Staff,

I object to the Transfer of Heather Hills Estates Utility, LLC to Heather Hills Utility, LLC filed 10-05-17 as requested within Document # 201708131.
My Complaint is based upon HHU, LLC' improper NOTIFICATION to Lot Owners; and in the A.P.A. that "Developers Agreements" as Restrictions have expired; plus various answers of HHU in its responses within the 107 Page Docket # 20170151-WS.

The only Notification received from the Utility is a single page "CUSTOMER NOTICE" dated 5-17-17, mailed 5-24-17 and received (by me) on 5-27-17.
Lot Owners still have not received the amended Notification Requirement as provided within Rule 25-30.030, FAC.; and as so ordered by this Commission in Docket 07859-2017; and to amend deficiencies # 5 thru 7.

FPSC: COMPLAINT RE: 107 PAGE DOCKET # 20170151 WS

THE PLAYERS

Mrs Mary & Mr Jack House, Esq., Developer of 4 of 5 Plats within Heather Hills Estates Subdivision; (HHES) and creator of quote "the Company" unquote as Heather Hills Estates, Inc. (HHE,INC).
Mrs Clara & Mr Keith Starkey (Starkeys) who purchased the Recreation Area plus, from HHE, Inc.
Mr Rick & Mrs Chris Stephens (RCS) Seller: who purchased the Recreation Area plus, from the Starkeys.

Mr Mike Smallridge (Smallridge) owner of Florida Utility Services 1; Buyer; *and* as ex-consultant for his clients, (RCS) during their 2009 purchase of the Utility in HHE Subdivision.
Heather Hills Property Owners' Association, Inc. (HHPOA) a voluntary Corporation created in 1968.
560 +/ - actual Lot Owners of the 353 privately owned Lots within the 40 acre HHE Subdivision.
Kenna Gunn, Lot Owner for over 11 years. I am not an attorney nor do I practice law.

PREAMBLE

It appears that no Utility Company has the legal right to trespass upon the privately owned Lots in which a Utility's privately owned meters are firmly embedded; owing to the fact that the original *and filed* Restrictions which ran with the Lots are no longer valid; with particularities, # 2 of 17: Easements and Setbacks; and # 9 of 17: Assessments. Which issues I, et al, feel should be legally resolved prior to any finalized Transfer.

FACTS RELEVANT TO THE W & S TRANSFER IN NO PARTICULAR ORDER:

1) An 8 Page Letter has been filed with Florida State Attorney Ed Brodsky by Attorney Marshall declaring the acts of RCS demanding Assessments etc , "are criminal".

2) A Complaint has been filed with the MCSO declaring that RCS have filed unlawful Liens against Lot Owners proclaiming authority under the expired Restrictions yet in fact RCS holds no Lien Rights as the Restrictions expired in year 2000 as no proper authority filed any Extension to preserve and/or revitalize them.

3) CASE 2011 CA 1375 : Multiple Lot Owner Jan Voorheis sued RCS, and Judge Gilbert Smith, Jr declared that the Restrictions to Voorheis Lots were "free and clear of the rules and restrictions and that the restrictions were "null and void"; according to FS 712 MRTA. See Docker # 11, Pages 3 & 4, specifically #'s 8., 9., 10., 11., & 12.

4) In **FPSC** DOCKET 080428, a 261 Page Joint Application for Transfer from Heather Hills Estates W & S to Ni Florida, LLC. FPSC Clerk # 05672 date stamped JUN 30 08. There languishes on Page 18 of 261, an AFFIDAVIT of Keith & Clara Starkey dated June 19, 2008; whereby they each … "do solemnly swear or affirm that the facts stated in the forgoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitute a complete statement of the matter to which they relate".

Page 169 of 261: SCHEDULE 6.1 (a) REAL PROPERTY: clearly reads, "The Real Property does not include any fee simple interests".
(**All private Lots are owned in "fee simple" so why RCS filed "an interest" via its "NOTICE" AGAINST ALL 353 LOTS**, (see Page 3 herein) thereby **creating a cloud on all our Titles, is beyond my comprehension**). Further down, it reads: "**The following provisions of each Declaration are no longer applicable and have been superseded by changes in Florida law**". Then each Declaration is positively identified by numbers of the 17 Restrictions as # 2. EASEMENTS AND SET-BACKS; and # 9 ASSESSMENTS.

(Which FYI, used to include within the 'annual fee for maintenance', the actual "sewer disposal" costs to each home; but then sewer was deleted, added to the water costs and voila, there existed a whole new separate W & S Company… yet with no recompense to the Lot Owners).
Such statement of fact could not be more expressive. It was true in 2008 when Ni attempted to purchase the Utility; (Starkeys never filed any legal amendments); and it remained true in 2009 when RCS purchased the Utlity. These facts were evident in the Ni Docket yet FPSC demanded no proper timely rectification.

FYI: The reason provided by Ni for terminating the "Purchase Agreement" is located within a 36 Page Doc. # 58, Pages 35 & 36 of 36 (filed in August 26, 2015), identified as Plaintiff's "Exhibit B" in **Case 2015 CA 0471** which reads in part as:
Section 6.1 (a) of the Purchase Agreement obligates you, the Sellers (Starkeys) to deliver to Ni Florida a commitment for Title Insurance within 15 days after the date of execution" … Despite our repeated requests for this title commitment and notice that this condition remained unfulfilled" …"As such Ni Florida is entitled to terminate the Purchase Agreement". Also, "Ni was unable to complete its due diligence review on the easements being purchased"… (Section 6.1 (a) is I believe part of the M.I.A "Exhibit "A")

BUYER BE AWARE!!

Continuing with reference to same Doc. # 58 as above, "SCHEDULE 6.1 (a) REAL PROPERTY" is attached as a 2 Page "Exhibit A"., no less. Reading in part as: "The Real Property does not include any fee simple interests, but does include the following easements. Any and all utility easements shown on, or to which reference is made, in the following Declaration of Covenants (the "Declarations") recorded in the Public records of manatee County … and recorded as follows as to each Unit or Phase of the Heather Hills community".

1) "Recorded" is the operative word here.
2) BUT HHU attached the non-recorded "Declarations" to this attempted Transfer.
3) "The Real Property does not include any fee simple interests," yet RCS did include ALL" fee simple Interests" when they filed their "NOTICE"
4) "recorded as follows as to each Unit or Phase", the page clearly shows yes, Unit or Phase 5 has been Included BUT IT ALSO SHOWS THAT UNIT 5 IS DEVOID OF ANY BOOK & PAGES NUMBERS BECAUSE as I have stated before, NO "DECLARATIONS" were ever filed against Unit 5.
5) AND, this Schedule clearly reads as: "The following provisions of each Declaration are no longer applicable and have been superseded by changes in Florida law". 2. EASEMENTS & 9. ASSESSMENTS.

Thereby proving that RCS had actual and constructive knowledge way back in August 2015 that there existed no EASEMENT provision according to the expired Declarations/Restrictions.
Therefore, it appears that such non-existent EASEMENTS cannot be assigned to HHU.

FYI: FPSC Case Docket # 100472-WS: Ex-Office of Public Council for FPSC one Stephen C. Reilly, Associate Public Council, scribed a 3 page Letter dated August 3, 2011 and bearing the Commission receipt stamp of # 05483 dated same, addressed to Shannon Hudson, Regulatory Analyst, reading in part as " 6. In the past, this utility has required its customers to sign a document agreeing to abide by the Heather Hills restrictions, reservations, easements, rules and regulations of the park prior to receiving utility services. The validity of these restrictions, reservations, easements, rules and regulations are in dispute". (Emphases added). It appears that the FPSC did not pursue this profound issue.

PAGE 9 OF 107 # (e): Wouldn't "Provisions regarding … "developer agreements" constitute as Restrictions? If so, according to HHU's answer, "THERE ARE NO CUSTOMER DEPOSITS, LEASE, DEBTS, REVENUE CONTRACTS, ETC", the "ETC" must refer to the "developer agreements" ie the Restrictions which HHU **ITSELF is herein acknowledging,' that there are none'.**

(I now cut to) **PAGE 42 & 43: EXHIBIT 9:**

Hence, whereby HHU within Exhibit 9 has filed a 2 page copy of **unrecorded** "HEATHER HILLS RULES AND REGULATIONS" which have had over 130 words deleted as were originally contained within the **recorded,** expired, 3 'legal size' page set of Restrictions which bear title of "Restrictions, Reservations, Easements, Rules and Regulations of Heather Hills Estates" … The reason, first Starkeys; then Stephens created a 'fake' set was because they physically changed the expiration date from 2000 to 2010 and again to read 2020. Line 3 reads … "to be recorded"; # 2. The first 3.5 Lines have been hi-lited by HHU as a confirmation of their alleged rights. This constitutes a radical problem to the Transfer by virtue of the issues of who actually owns legal rights, title and/or interests in the privately owned Lots in which the Utilities' water meters are firmly embedded. As HHU's restrictions have NEVER been recorded in Official Records as mandated by Statute they appear to be moot. Also, Line 1 of the text reads the "indenture date" of "20th day of January, 1967" which can only reinforce their invalidity as Plat One was not actually recorded until March 7th, 1967 hence confirming that no actual Lots/land actually existed yet for any actual restrictions to actually be "running with the land".

The Stephens illegally filed under the name of Rick & Chris Stephens, LLC a:
"**NOTICE TO PRESERVE AND PROTECT A CLAIM OF AN INTEREST IN LAND**" within M.C. Official Records Book 2322, Pages 3863 – 3871. This alleged right was claimed pursuant to **FS 712.05 and 712.06 (2009) Marketable Record Title Act.** RCS have been extremely negligent in that they never performed a Title Search on all 353 Lots to affirm whether or not Restrictions expired to each Lot according to MRTA, created in 1963, well prior to the recorded Restrictions. Perhaps RCS deemed it unnecessary as the Restrictions themselves had expired by their own terms on January 1, 2000; and by MRTA early 1999.

I assert that RCS had no legal authority to file a document of such libelous proportions, as clearly, RCS owns no rights, titles or interests in land (Lots) they do not own. See Supreme Court Case: ITT Rayonier, Inc vs Wadsworth No. 49229; 346 So.2d 1004 (1977) 1004 – 10011, whereby to claim Exceptions via FS 712 one must own the land the Exception is claimed against.

I officially request that the Commission demand of RCS that those clouds marring the Lot owners' Titles be legally lifted; and for formal recognition from RCS that the Restrictions are "invalid" and papers filed in M.C. O. R.'s effectuating these requests, prior to this Transfer being officially culminated. Such clouded Titles cannot be permitted to carry over to yet another Utility.

I can prove that RCS have actually acknowledged that the Restrictions have expired by virtue of the Mortgage Foreclosure Case caused whereby RCS stopped making their Mortgage payments to Starkeys who sued them via Case: 2015 CA 0471 and RCS (AS DEFENDANTS) hired 2 Attorneys namely Guyton & Pyles and each declared that the HHE Restrictions were "invalid" and "unenforceable".
Docket 11, Page 4 of 7, #'s 9, 10, 11 and 12. Docket 14, Pages 13 (# 17, 18, 19, 20; & page 15 (# 29) of 21.
Also Exhibit G, Page 40 of 41 filed 2/27/15.

However, in all fairness to RCS I should also mention for the Commission to review Docket 102 filed 12/22/15, Page 2, #'s 3 & 4 wherein RCS declared no less than 3 times that Starkeys committed actions of fraud against them for not informing them that the Restrictions were "unenforceable" and that the Lien Rights were "impaired".

FYI: Yet soon after the Mortgage Foreclosure Case RCS (NOW AS PLAINTIFFS) sued 206 Lot Owners (DEFENDANTS) in Case 2015 CA 5731 for non-payment of maintenance fees to upkeep RCS' privately owned real property; because once again, they are back claiming that those now infamous Restrictions, are indeed valid and enforceable!! They did not prevail however. I have a certified copy of Circuit Judge Gilbert Smith, Jr's ORDER GRANTING DEFENDANTS' MOTION TO DISMISS signed on May 5, 2016.
RCS knows no boundaries when it comes to claiming the exact opposite of a previous claim when it suits them, within a law suit. The very gall of it all …… hear Kenna sigh.

A second acknowledgement was confirmed when RCS filed a Voluntary Petition for Bankruptcy in Tampa on 11-04-16 under Case 8:16-bk-09521-CPM, declaring a Plan of Re-Organization under Chapter 11.

See Dockets #'s 69 & 70, in which they utilize language as: Doc. 69, Page 6 of 10, Para. first, "If a majority of the Lot owners agree in writing to a **revival** of the Restrictions or cast a ballot accepting this Plan and voting to **revive** the Restrictions, the Restrictions shall be **revived**" … (Emphases added).

Pray tell me why it would necessitate an attempted "revival" by RCS of Restrictions if they were still valid? One does not apply smelling salts to a lady who has not fainted. Clearly, RCS know the truth.

And further, in Doc.70, Page 8 of 21, Para. first, RCS claims: … "This is important because the original set of covenants does not mention a homeowners' association nor does it provide any third parties or future homeowners' association with the right to amend the restrictive covenants". (Emphases added).

Obviously, Starkeys and/or Stephens, are "third parties", thereby RCS has confirmed by assertion that they are not legally privy to any actions of amending or reviving the expired Restrictions, # 2 of which is the "Easements".

I believe that a LIE whether written or oral to a Court is a major offense. RCS knew in Case 2015 CA 0471 that the Restrictions were invalid and unenforceable. For them to file a reversal of a previous Declaration should be a punishable offense and RCS should be held accountable. So far they have gotten away with this egregious behaviour, I trust that the Commission will be active in the accountability.

Here, I digress, but FYI: When Chris Stephens was Deposed during same Case 2015 CA 0471, on August 24th, 2015, on Pages 52, 53, 54, and 55, she claims: …"There's nothing to enforce the deed restrictions without lien rights"; and … "we don't have any lien rights"; … "No lien rights with this business equals no business"… and … "To the best of my knowledge, we purchased the 10,000 square foot clubhouse, we purchased the rights to the restrictions, we purchased the common areas".

Her knowledge shines and wans according to needs of any given moment, in this instance, it was quite dull. Club House is 7,000 +/- sf; and how may restrictions that run with the Lots, be "purchased" if RCS didn't actually purchase those Lots?; and finally, "common areas" are defined in BLD (2009) Deluxe Edition as "areas owned in

common". There are no areas "owned in common" in the HHE Subdivision. All Lots/Parcels are privately owned in fee simple.

PAGE 15 of 107: Agreement For Purchase And Sale of Water Assets.

2. This is a purchase of assets only. The Purchased Assets shall mean (a) all of Seller's rights, title, and interest in and to all assets, business properties, and rights, both tangible and intangible, constituting the Utility System; (b) the real property and interests in real property owned and held by Seller, in fee simple, as identified in Exhibit "A" to this Agreement ("Real Property"); (c) an assignment of all rights described in any recorded restrictions, including the right to charge, collect and lien against any lot for nonpayment; (d) all easements, licenses, prescriptive rights, rights-of-way and rights to use public and private roads, highways, canals, streets and other areas owned or used by Seller for the construction, operation and maintenance of the Utility System; (e) … (Emphases above added).

I cannot locate an "Exhibit "A" contained within this "Agreement", as referenced multiple times in Pages 15, 18 & 19 also. I would like to review such. NB, (b) a 2nd reference to real property owned in fee simple in HHE. **FPSC, how may I review Exhibit "A"?**

PAGE 16 OF 107: # 9 WARRANTIES:

> 9. **Warranties.** Seller represents and warrants to Buyer that the execution and performance of this Agreement will not violate any provision of law, order of any court or agency of government applicable to Seller, the Articles of Incorporation or By-
>
> Laws of Seller, nor any indenture, agreement, or other instrument to which Seller is a party, or by which it is bound. Seller has exclusive possession and marketable title to all Real Property. The Purchased Assets are not subject to any mortgage, pledge, lien, charge, security interest, or encumbrance and Seller shall, at closing deliver title to such personal property free and clear of all debts, liens, pledges, charges or encumbrances whatsoever.

9. Issue first: Clearly warrants that … "this Agreement will not violate any provision of law," … "Any provision of law" includes Sellers promise to abide by any Florida Statute which includes FS 712.08 (2016) FILING FALSE CLAIM: and this I'll pre-emphasize by capping etc. "NO PERSON SHALL USE THE PRIVILEDGE OF FILING NOTICES HEREUNDER FOR THE PURPOSE OF ASSERTING FALSE OR FICTITIOUS CLAIMS TO LAND". Period. (See RCS "Notice to Preserve and Protect a Claim of Interest in Land" on Page 3 above). Which is precisely what RCS did in their filing of their 559 "Notices" !! Remember, such NOTICE also includes those "Easements" as hi-lighted by HHU on Page 43 & 44 of 107 in this attempted Transfer, which are expired and upon which HHU is so reliant to conduct its Utility business legally.

Issue second: Seller claims marketable title to all Real Property (as in FS 712 MRTA) , Buyer be aware ……

PAGE 19 OF 107: CLOSING # 18 (d):

Reads in part as: … "Seller shall assign its right, title and interest in those easements, licenses, etc. identified in that elusive Exhibit "A" ". Particularly what "easements" they refer to, I am not sure, not yet having been privy to said Exhibit "A", but rest assured that *this* Seller does not, and therefore cannot, assign over any such rights .

Both a Utility and all Lot owners as its customers have a right to filed documentation reflecting that all Florida Statutes have been legally complied with in addition to all Florida Administrative Codes.

PAGE 19 OF 107 MISCELLANEOUS PROVISIONS # 21:

Reads in part as: … "This Agreement shall be governed by the laws of the State of Florida with (sic) venue shall be in Manatee County, Florida". Bravo!! Let justice be served!! Hence, the Transfer must adhere to FS 712.

FLORIDA STATUTE 712 MRTA

FS 712 was created in 1963, years prior to the platting of HHE Subdivision

FS 712.301 (5) Definitions: "The term "parcel" means any real property which is used for residential purpose that is subject to exclusive ownership and which is subject to any covenant or restriction of a homeowners' association".
All Lots are privately owned in Fee Simple.

FS 712.05 (1) (2009) clearly reads: … "A person claiming an interest in land or a homeowners' association desiring to preserve a covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with this chapter". (Emphases above, added).

RCS are not now nor have they ever been an HOA and therefore do not legally qualify to file any act of preservation either as an HOA; or as an individual person filing "interests" on land they do not own; as declared in ITT Rayonier.

PAGES 25 & 26 OF 107: **HHEU**: WATER UTILITY PLANT ACCOUNTS: YEARS 2015 AND 2016

HYDRANTS: # 335: Shows a dollar figure of $1,133.00 for each year and a 2.5 Depreciation Rate. If these entries reference actual FIRE Hydrants this would appear most irregular and deceitful because there are not now and nor have there ever been any Fire Hydrants within the HHE Subdivision.

I appreciate and thank the FPSC and Office of Public Council for all considerations you bestow upon this Complaint. I believe this Complaint to be accurate as to all contentions, facts and figures to the best of my ability.

Respectfully submitted,

Kenna Gunn