

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: November 21, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Margo A. DuVal, Senior Attorney, Office of the General Counsel *MD*

RE: Docket No. 20180142-WS - Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.

Please place the attached letter, dated November 12, 2018, and enclosure in the Documents section of Docket No. 20180142-WS. Please let me know if you have any questions.

RICHARD A. HARRISON, P.A.

ATTORNEYS AT LAW

RICHARD A. HARRISON
◆ Board Certified, City, County
& Local Government Law
rah@harrisonpa.com

LISA FERRARA
◆ Florida Registered Paralegal
Lisa@harrisonpa.com

DANIELA N. LEAVITT
dnl@harrisonpa.com

November 12, 2018

VIA EMAIL ONLY

Keith Hetrick, Esq., General Counsel, khetrick@psc.state.fl.us
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Docket No. 20180142-WS
Palm Tree Acres Mobile Home Park (Pasco County, FL)

Dear Mr. Hetrick:

I wanted to bring to your attention the recent order issued by the Circuit Court in Pasco County in the ongoing Palm Tree Acres litigation. In the Order Granting In Part and Denying In Part Plaintiffs' Motion for Summary Judgment as to Count I dated October 15, 2018, the trial court specifically found that: (1) the lot owners are not a "mobile home owner," "mobile homeowner," "home owner," or "homeowner" as those terms are defined in Fla. Stat. §723.003(11); (2) Ch. 723 does not authorize the Park to impose any lien upon the lot owners' property; (3) Ch. 723 does not authorize the Park to evict the lot owners for failure to pay any "lot rental amount," "maintenance fee," or other fees or charges; and (4) the lot owners are not parties to any "mobile home lot rental agreement" as that term is defined in Fla. Stat. §723.003(10).

The trial court expressly made "no finding, adjudication, or declaration as to whether the Plaintiffs are a "tenant" or the Defendant Palm Tree Acres Mobile Home Park is a "landlord" as those terms are used in §367.022(5), Fla. Stat." As the trial court previously held, the determination of whether the landlord-tenant exemption applies here is a matter within the exclusive jurisdiction of the PSC.

While appropriately leaving the question of the landlord-tenant exemption to the PSC, the trial court's rulings do bear on the matter to the extent they negate the claim of any landlord-tenant relationship between the Park and the lot owners. For example, the landlord's right to evict a non-paying tenant is an essential attribute of the landlord-tenant relationship. Yet, no such right exists between these parties.

This is all consistent with the simple and undisputed fact that the lot owners own their own lots. They do not rent any real property (lots) or other property (mobile homes) from the Park.

On these facts, as the PSC has previously determined, the landlord-tenant exemption of Fla. Stat. §367.022(5) cannot apply. There is no landlord, and there is no tenant. The agency has previously rejected the same contention under identical circumstances. *In re: Request for Exemption from Florida Public Service Commission Regulation for Provision of Water Service by GEM Estates Water System in Pasco County*, PSC Docket No. 920281-EU, Order No. PSC-92-0746-FOF-WU, 1992 WL 12597081 (Fla. Pub. Serv. Comm'n August 4, 1992) ("Because the mobile home owners own their own land, the utility's owners are not landlords. If the utility's owners are not landlords for the customers served by Gem Estates, the landlord-tenant exemption cannot apply.")

A copy of the trial court's recent order is attached. We request that this letter and the order be made a part of the official record in these proceedings. We have copied counsel for the Park on this correspondence.

Thank you.

Very truly yours,

RICHARD A. HARRISON, P.A.



Richard A. Harrison

Board Certified in City, County &
Local Government Law

cc: Margo A. DuVal, mduval@psc.state.fl.us
D. Bruce May, Jr., bruce.may@hklaw.com
J. Allen Bobo, jabobo@lutzbobobob.com, jbgabel@lutzbobobob.com

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY

2017 – CA – 1696

NELSON P. SCHWOB, et al.,
Plaintiffs,

V.

JAMES C. GOSS; EDWARD HEVERAN;
MARGARET E. HEVERAN; and PALM
TREE ACRES MOBILE HOME PARK,
Defendants.

**ORDER GRANTING IN PART, DENYING IN PART PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AS TO COUNT ONE**

This Cause having come before the Court on Plaintiffs' Motion for Summary Judgment as to Count One, and the Court having considered the motion, the response by the Defendants, and the summary judgment evidence, this Court enters this Order and Judgment as to Count I of Plaintiffs' Third Amended Complaint:

FINDINGS OF FACT

The Court finds that there is no genuine issue of material fact to the following:

1. The Plaintiffs are fee simple owners of lots within the Palm Tree Acres Mobile Home Park. They also own the mobile home that exists on their respective lots.
2. The Defendant Palm Tree Acres Mobile Home Park (hereinafter "Palm Tree Acres") owns in fee simple 183 of the 244 lots. These lots are leased to other residents.
3. Palm Tree Acres offers certain amenities to include water and sewer service and access to other recreational areas. These amenities are offered in a single package for a single fee; there is no *a la carte* pricing for any particular amenity.
4. When the Plaintiffs purchased their lots from the developer, there was a deed restriction that required Palm Tree Acres to provide water and sewer service to the Plaintiffs. Subsequent to the Plaintiffs purchasing their lots, Palm Tree Acres purchased the remaining lots from the developer. A predecessor court has adjudicated that these deed restrictions

expired by operation of the Marketable Record Title Act and are no longer in force or effect.

5. There is presently no other written contractual agreement between the Plaintiffs and Palm Tree Acres to provide any amenities, and more specifically, there is no written contractual agreement for Palm Tree Acres to provide water and sewer service to the Plaintiffs. However, for many years, the Plaintiffs had been paying the fee that Palm Tree Acres charged to its other residents for water, sewer, and recreational amenities.
6. The water that is provided to all of the residents of Palm Tree Acres, including the Plaintiffs, is pumped from a well that exists on property owned in fee simple by Palm Tree Acres.

ANALYSIS AND CONCLUSIONS OF LAW

The Plaintiffs have sought declaratory judgment as to the following issues:

1. Whether the Plaintiffs are a “mobile home owner,” “mobile homeowner,” “home owner,” or “homeowner” as those terms are defined in Chapter 723, Fla. Stat.;
2. Whether the Plaintiffs are parties to any “mobile home lot rental agreement” as that term is defined in Chapter 723, Fla. Stat.;
3. Whether the Plaintiffs are parties to any “tenancy” within the meaning or scope of Chapter 723, Fla. Stat.;
4. Whether the Plaintiffs are subject to payment of any “lot rental amount” as that term is defined in Chapter 723, Fla. Stat.;
5. Whether Chapter 723, Fla. Stat. authorizes the Defendant Palm Tree Acres Mobile Home Park to collect any “maintenance fee” from the Plaintiffs;
6. Whether the Defendant Palm Tree Acres Mobile Home Park is authorized to impose any lien upon the property of the Plaintiffs;
7. Whether Chapter 723, Fla. Stat. authorizes the Defendant Palm Tree Acres Mobile Home Park to evict the Plaintiffs for failure to pay any “lot rental amount,” “maintenance fee,” or other fees or charges; and
8. Whether Chapter 723, Fla. Stat. applies to the relationship between the Plaintiffs and Defendant Palm Trees Acres Mobile Home Park.

The Court finds that the Plaintiffs and the Defendant Palm Trees Acres Mobile Home Park are in doubt as to the affect of Chapter 723, Fla. Stat. to their rights, obligations, status, or other equitable or legal relations, and that declaratory judgment is appropriate.

The Plaintiffs and Defendant Palm Tree Acres Mobile Home Park agree to the following:

1. The Plaintiffs are not a “mobile home owner,” “mobile homeowner,” “home owner,” or “homeowner” as those terms are defined in §723.003(11), Fla. Stat.
2. Chapter 723, Fla. Stat. does not authorize the Defendant Palm Tree Acres Mobile Home Park to impose any lien upon the property of the Plaintiffs.
3. Chapter 723, Fla. State does not authorize the Defendant Palm Tree Acres Mobile Home Park to evict the Plaintiffs for failure to any “lot rental amount,” “maintenance fee,” or other fees or charges.

While Defendant did not stipulate that the Plaintiffs are not parties to any “mobile home lot rental agreement” as that term is defined in Chapter 723, Fla. Stat, the Court finds that the definition of the term applies only to “mobile home owner.” Therefore, given the stipulation that the Plaintiffs are not a “mobile home owner,” the Court finds that the Plaintiffs are not parties to a “mobile home lot rental agreement.”

The remaining issues require a determination of the status of the Defendant Palm Tree Acres as a “mobile home subdivision.” Palm Tree Acres argues that it is a hybrid of a “mobile home park” and “mobile home subdivision” as those terms are defined in §723.003, Fla. Stat. Palm Tree Acres states that it is a “mobile home park” as it relates to the lots that it owns and leases to residents other than the Plaintiffs, and it is a “mobile home subdivision” as it pertains to the Plaintiffs. The Plaintiffs have argued that Chapter 723, Florida Statutes does not expressly define such a hybrid; therefore, one cannot exist. The Court disagrees with the Plaintiffs’ argument.

First, the term “hybrid” is a misnomer. In a general sense, “hybrid” implies that an entity has been created by putting together parts of one thing and parts of another thing to create something that is new and different, and is not fully one or the other. Palm Tree Acres’ argument, and the Plaintiffs’ rebuttal, is not that it is a little bit of a park and a little bit of a subdivision, but that it is both entirely a park and entirely a subdivision. The Defendant argues it can operate in this manner, the Plaintiffs say it must be one or the other.

A “mobile home subdivision” is defined as a “subdivision of mobile homes where individual lots are owned by the owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.” §723.003(14), Fla.

Stat. A “mobile home park” is defined as “a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.” §723.003(12), Fla. Stat. Nothing in these definitions would prevent a “mobile home park” and “mobile home subdivision” from co-existing because the definition is focused on the status of the possession of the lot. If the lot is owned by the possessor, then the community is a “mobile home subdivision.” If the lot is leased by the possessor, then the community is a “mobile home park.” Additionally, Chapter 723 does not present any conflict in maintenance or governance of the community whether it is a “mobile home subdivision” or “mobile home park.” The legislature has also stated that a “mobile home subdivision” should follow many of the same rules as a “mobile home park,” indicating an intent that subdivisions and parks be managed in a consistent manner. See §723.002(2), Fla. Stat. The Court also agrees with the Defendant that §723.0751 contemplates the existence of an entity being both at the same time where owners have organized into an association and can be represented by the association in park meetings about the amenities and fees charged. Florida Statute §723.074 also contemplates the existence of a community where both a subdivision and a park co-exist. That statute states that “[a] mobile home subdivision in which no more than 30 percent of the total lots are leased will not be deemed to be a mobile home park...” and infers the existence of a blended community where some lots are owned and some are leased. Factually, the evidence shows that Palm Tree Acres has historically governed the use of the amenities consistent with the requirements of Chapter 723 as it would apply to both lessees and owners. Therefore, the Court finds that a mobile home park, such as the Defendant, can operate simultaneously as a mobile home park with respect to its lessees and as a mobile home subdivision with respect to its owners.

Whether Palm Tree Acres is in fact a “mobile home subdivision” requires a two part analysis: first, “are the individual lots owned by owners?” and second, “did the developer retain any portion of the subdivision or the amenities exclusively serving the subdivision?” There is no genuine issue of material fact that the Plaintiffs own their respective lots in fee simple. There is also no genuine issue of material fact that the developer retained both portions of the subdivision and the amenities, and conveyed this interest to the Defendant Palm Tree Acres Mobile Home Park. Therefore, the Court finds that Palm Tree Acres Mobile Home Park is a “mobile home subdivision” as that term is defined by §723.003(14), Fla. Stat., and those portions of Chapter 723 that apply to mobile home subdivisions apply to the relationship between the Plaintiffs and Defendant Palm Tree Acres Mobile Home Park.

It is hereby **ORDERED, ADJUDGED, and DECLARED** that:

1. The Plaintiffs are not a “mobile home owner,” “mobile homeowner,” “home owner,” or “homeowner” as those terms are defined in §723.003(11), Fla. Stat.
2. Chapter 723, Fla. Stat. does not authorize the Defendant Palm Tree Acres Mobile Home Park to impose any lien upon the property of the Plaintiffs.
3. Chapter 723, Fla. State does not authorize the Defendant Palm Tree Acres Mobile Home Park to evict the Plaintiffs for failure to pay any “lot rental amount,” “maintenance fee,” or other fees or charges.
4. The Plaintiffs are not parties to a “mobile home lot rental agreement” as that term is defined in §723.003(10), Fla. Stat.

It is further **ORDERED, ADJUDGED, and DECLARED** that those portions of Chapter 723, Florida Statutes, that relate to mobile home subdivisions apply to the relationship between the Plaintiffs and Defendant Palm Tree Acres Mobile Home Park. This includes §723.035, §723.037, §723.038, §723.054, §723.055, §723.056, §723.058, and §723.068 by operation of §723.002(2). It also includes §723.058 and §723.074. To the extent the terms “tenancy,” “lot rental amount,” and “maintenance fee” are used in these statutes, those terms apply to the Plaintiffs and the Defendant Palm Tree Acres Mobile Home Park. The Court specifically makes no finding, adjudication, or declaration as to whether the Plaintiffs are a “tenant” or the Defendant Palm Trees Acres Mobile Home Park is a “landlord” as those terms are used in § 367.022(5), Fla. Stat. The application of these terms to the Plaintiffs and Defendant Palm Trees Acres Mobile Home Park under Chapter 367, Florida Statutes, is exclusively within the jurisdiction of the Public Service Commission.

DONE and ORDERED in Dade City, Pasco County, Florida this 15 day of October, 2018.

Electronically Conformed 10/15/2018

Hon. Gregory G. Groger
Circuit Court Judge

CC:
Richard Harrison
J. Allen Bobo
Jody B. Gabel