

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SWEETWATER POINTE HOMEOWNERS
ASSOCIATION, INC.,

Petitioner,

Case No. 22-0773F

vs.

SAMUEL ARNOLD, TAMMY ARNOLD,
STEVEN CROWLEY, SHERRY CROWLEY,
BONNIE COWEN AND TIMOTHY COWEN,

Respondents.

ORDER DENYING SWEETWATER POINTE HOMEOWNERS ASSOCIATION, INC.'S
MOTION TO TAX ATTORNEY'S FEES AND COSTS

This cause came before the undersigned on: Petitioner Sweetwater Pointe Homeowners Association Inc.'s (Sweetwater Pointe) Motion for Summary Final Order and to Tax Attorney's Fees and Costs, filed July 23, 2021; Sweetwater Pointe's Motion to Tax Attorney's Fees and Costs, filed January 24, 2022; and Respondents' Response to Motion to Tax Attorney's Fees and Costs, filed February 8, 2022. On March 11, 2022, the undersigned entered an Order that requested additional briefing on Sweetwater Pointe's request for attorney's fees and costs pursuant to section 720.305(1), Florida Statutes. On March 28, 2022, the parties both filed supplemental memoranda in response to the Order, which the undersigned has considered.

Background

In the underlying proceeding, DOAH Case No. 21-1241, Respondents challenged whether Sweetwater Pointe properly revived its expired Declaration of Covenants and Restrictions pursuant to sections 720.403 through 720.407, Florida Statutes (2020). On July 23, 2021—prior to the final hearing—Sweetwater Pointe filed a Motion for Summary Final Order and to Tax Attorney's Fees and Costs. That same date, the undersigned issued an Order Denying Summary Final Order, which also held that “[t]he undersigned defers ruling on [Sweetwater Pointe's] motion, to the extent it seeks attorney's fees and costs pursuant to sections 120.595 and/or 720.305, Florida Statutes.”

The undersigned conducted a final hearing on the merits of the underlying matter on October 27, 2021, and issued a Recommended Order on January 5, 2022. On March 8, 2022, the Department of Economic Opportunity (Department) rendered a Final Order in this matter, which adopted the undersigned's Recommended Order in full, affirmed the Department's Determination Number 20163, and approved Sweetwater Pointe's request to revitalize its declaration of covenants. In an Order dated March 11, 2022, the undersigned denied Sweetwater Pointe's Motion to Tax Attorney's Fees and Costs, to the extent it sought attorney's fees and costs pursuant to section 120.595.

Arguments of Parties

Sweetwater Pointe seeks attorney's fees and costs, as the prevailing party in the underlying proceeding, pursuant to section 720.305(1). Section 720.305(1) provides:

- (1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:
 - (a) The association;
 - (b) A member;
 - (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
 - (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to

reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

Sweetwater Pointe's motions and pleadings point out that Respondents brought the underlying matter pursuant to chapter 720, part III, which alleged that Sweetwater Pointe's efforts in revitalizing its expired Declaration of Covenants and Restrictions failed to comply with sections 720.403 through 720.407. Sweetwater Pointe's motions and pleadings, relying on the plain language of section 720.305(1), argue that, as the prevailing party, it is entitled to reasonable attorney's fees and costs.

Respondents' responses contend that its administrative challenge to Sweetwater Pointe's revitalization efforts were not an "[a]ction[] at law or in equity," and were directed at the Department of Economic Opportunity's approval of the revitalization, and not directly against Sweetwater Pointe.

Analysis

Generally, attorney's fees and costs may only be awarded when authorized by statute or by agreement between the parties. *Dade Cnty. v. Pena*, 664 So. 2d 959 (Fla. 1995). Sweetwater Pointe, as the prevailing party below, seeks attorney's fees and costs pursuant to section 720.305(1). Because a statute that awards attorney's fees is in derogation of the common law rule that parties are responsible for their own attorney's fees, section 720.305(1) must be strictly construed. *See Campbell v. Goldman*, 959 So. 2d 223, 226 (Fla. 2007).

Section 720.305(1) provides for prevailing party attorney's fees and costs for "[a]ctions at law or in equity" brought by the "association" or "member" to redress a failure or refusal to comply with chapter 720, the "governing documents of the association, and the rules of the community." Thus, for section 720.305(1) to apply, the underlying action must have been brought by, or against, an "association" or "member."

Section 720.301(9) defines "association" as follows:

"Homeowners' association" or "association" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners

or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien upon the parcel. The term “homeowners’ association” does not include a community development district or other similar special taxing district created pursuant to statute.

Section 720.301(10) defines “member” as follows:

“Member” means a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof, and includes any person or entity obligated by the governing documents to pay an assessment or amenity fee.

In the underlying matter, the Declaration of Covenants and Restrictions for the Sweetwater Pointe Homeowners Association, Inc., had expired, as a result of the Marketable Record Title Act (MRTA). Under MRTA, restrictive covenants cease to be effective as to land parcels governed by the restrictive covenants 30 years after the restrictive covenants have been referenced in a deed that burdens each lot. § 712.02, Fla. Stat. Sweetwater Pointe conceded below that its Declaration of Covenants and Restrictions expired by operation of MRTA.

Because the Declaration of Covenants and Restrictions for Sweetwater Pointe Homeowners Association, Inc., had expired, Sweetwater Pointe sought to revive these governing documents so that, *inter alia*, its covenants and restrictions would again apply to its parcel owners. However, at the time Respondents—who alleged in their Amended Petition that they were “parcel owners,” as opposed to “members” of an association—brought this action, they were not governed by the Declaration of Covenants and Restrictions, and were not “obligated by the governing documents to pay an assessment or amenity fee[]” because there were no valid, governing documents. Further, at the time Respondents brought this action, Sweetwater Pointe could not require membership as a mandatory condition of parcel ownership, and could not impose assessments that, if unpaid, could become a lien on the parcel, because the Declaration of Covenants and Restrictions had expired.

The undersigned, who must strictly construe section 720.305(1), concludes that the underlying matter was not brought by a “member,” as that term is defined in section 720.301(1), against an “association,” as that term is defined

in section 720.301(9). Therefore, section 720.305(1) does not provide a basis for Sweetwater Pointe to recover attorney's fees and costs in the underlying matter.

Based on the foregoing, Sweetwater Pointe's Motion for Summary Final Order and to Tax Attorney's Fees and Costs, and its Motion to Tax Attorney's Fees and Costs, are hereby DENIED.

DONE AND ORDERED this 21st day of April, 2022, in Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.