IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION

CAPTIVA CIVIC ASSOCIATION, INC.,

Plaintiff, Case No. 24-CA-002674

v.

LEE COUNTY, FLORIDA, a political Subdivision of the State of Florida,

Defendant.

and

WW SSIR OWNER, LLC,

Intervenor.
_____/

ORDER DENYING DEFENDANT, LEE COUNTY'S AND INTERNEVNOR'S MOTION FOR SUMMARY JUDGMENT

This cause coming before the Court on December 18, 2024, on the Defendant Lee County, Florida (the "County") and the Intervenor, WW SSIR Owner, LLC's (the "Owner") Motion For Summary Judgment, and the Court, having reviewed the Motion, the Response filed by Captiva Civic Association, Inc. ("CCA"), and the documents contained in the parties' judicial notices ("Pl. JN" or "Def. JN"), which the parties stipulated to at the hearing, and the Court, having entertained argument of counsel at the hearing, having the benefit of the hearing transcript ("Tr."), and otherwise being duly advised on the premises, it is

FACTS

1. In 1973, the prior owner of the South Seas Island Resort (the "Resort"), rezoned the Resort property. (Def. JN, Ex. A).

2. On July 30, 2002, Lee County's Director of Community Development issued Administrative Interpretation ADD 2002-0098 (the "ADD") to summarize and clarify the status of development of the Resort. (Def. JN, Ex. C).

3. The ADD provides that the County approved 912 residential units at the Resort. (Def. JN, Ex. C, p. 11).

4. In 2002, CCA filed a lawsuit against the prior owner of the Resort, Plantation Development, and the County, alleging that the ADD was invalid because it was not rendered pursuant to notice and a public hearing. (Complt., p. 2, 13; Pl. JN, Ex. E).

5. To resolve the lawsuit, CCA, Plantation Development, and the County entered into a Mediated Settlement Agreement (the "MSA") in 2003. (Complt. Ex. 1; Pl. JN, Ex. F).

6. Among other things, in paragraph 3, the MSA states:

> The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time.

7. The MSA was approved by the Lee County Board of County Commissioners on March 11th , 2003.

8. The MSA was approved by Circuit Court Judge John S. Carlin on March 20th, 2003.

9. The Owner purchased the Resort property in 2021. (Def. JN, Ex. L).

10. In 2023, the Owner filed an application to rezone the Resort property, which includes an increase in the total number of dwelling units from 912 units to 1271 units. (Pl. JN, Ex. L, p.1; Ex. M).

11. The zoning application is "pending and under review by Lee County staff." (Complt., p. 5, 23.). The parties informed the Court during the summary judgment hearing that the first hearings on the rezoning application are set for February 2025. (Tr. at 9).

CCA'S DECLARATORY JUDGMENT LAWSUIT

12. CCA filed this lawsuit asking the Court to declare that the County cannot issue building permits exceeding 912 units at the Resort based on the terms of the MSA.

13. The County filed a motion to dismiss, which the Court denied.

14. The County filed an answer and affirmative defenses, including that the MSA constitutes illegal contract zoning, the absence of jurisdiction under the separation of powers doctrine and interference with police powers, the existence of other adequate remedies at law and ripeness.

15. The Owner sought to intervene in the lawsuit on the basis that it will gain or lose by a judgment in this action. The parties stipulated to that motion and the Owner intervened.

16. The County and Owner filed a motion for summary judgment, asking the Court to reject CCA's request for a declaratory judgment because the matter is not ripe and seeks a prohibited advisory opinion; interferes with the separation of powers; and that the plaintiff has adequate remedies through the zoning process.

SUMMARY JUDGMENT FINDINGS

1. Plaintiff, Captiva Civic Association, Inc.'s ("CCA") claim for declaratory judgment is not barred by the existence of alternative relief. No such alternative relief exists. The proceeding before this Court is a proper remedy available to CCA to enforce its contractual rights under the Settlement Agreement, which cannot, as a matter of law, be enforced through Lee County's planning or zoning processes or any judicial or administrative review thereof.

Neither CCA's pending administrative challenge to the County's Land Development Code ("LDC") amendments, nor the availability of *certiorari* relief with respect to SSIR Owner's Rezoning Application, preclude CCA's claim for declaratory judgment. Even if alternative forms of relief existed, under § 86.111, Fla. Stat., "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief. *See also, Cintron v. Edison Insurance Company*, 339 So. 3d 459, 462 (Fla. 2d DCA 2022) (holding that the existence of an adequate remedy at law is not a basis for dismissal pursuant to Section 86.111, Florida Statutes); *Michael A. Marks, P.A. v. Geico Gen. Ins. Co.*, 332 So. 3d 11, 11-12 (Fla. 4th DCA 2022) (holding that pursuant to Section 86.111, the trial court erred in dismissing a declaratory judgment action merely because the plaintiff could have brought an action for breach of contract instead).

2. This matter is ripe for adjudication under Chapter 86, Florida Statutes and does not call for an advisory opinion. An actual breach is not required to enforce a contract. The Court finds that a present controversy exists between the parties regarding their respective rights, duties, and obligations *vis a vis* the Settlement Agreement. *See* Fla. Stat. § 86.031 ("A contract may be construed either before or after there has been a breach of it"); Fla. Stat. § 86.051 ("Any declaratory judgment rendered pursuant to this chapter may be rendered by way of anticipation with respect to any act not yet done or any event which has not yet happened"). SSIR Owner's Motion to Intervene concedes the ripeness of this case when it asserts that "SSIR is currently applying to the County for building permits which the CCA claims are subject to density limits, with which density limits Intervenor disagrees."

3. The allegations in CCA's Complaint are not contradicted by the terms of the Settlement Agreement incorporated therein. Paragraph 3 of the Settlement Agreement is clear and unambiguous: "The total number of units on South Seas Resort is limited to 912. No building

permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time." There is no "unless and until" or expiration clause in the Settlement Agreement as suggested by Defendant and Intervenor. Any amendments contemplated by Paragraph 2 of the Settlement Agreement are separate and distinct from, and do not apply to the 912-unit density limit and building permit issuance clause in Paragraph 3 of the Settlement Agreement. *See Sun Microsystems of California, Inc. v. Engineering and Mfg. Systems, C.A.*, 682 So. 2d 219, 220 (Fla. 3d DCA 1996) ("The public policy of the State of Florida, as articulated in numerous court decisions, highly favors settlement agreements among parties and will seek to enforce them whenever possible").

4. Judicial enforcement of the Settlement Agreement would not interfere with the County's legislative police powers or otherwise violate the separation of powers clause. CCA's claim does not ask this Court to intrude upon the County's legislative function, interfere with the County's zoning process, or preclude the County from making the myriad zoning-related decisions consistent with the County's Comprehensive Plan, vested property rights, and existing zoning approvals. This case does not involve the exercise of legislative power. *See Snyder v. Board of County Commissioners of Brevard County*, 627 So. 2d 469 (Fla. 1993) (holding that site specific development approvals, including rezoning decisions and building permits, are quasi-judicial actions, not legislative, and do not enjoy the same level of discretion that attaches to legislative changes to a comprehensive plan or land development code. *Snyder*, 627 So. 2d 469 (Fla. 1993). To the extent that this Court's enforcement of the 912–building permit limit in the Settlement Agreement might inform or impact the County's view of SSIR Owner's Rezoning Application, it is beyond the scope of this Court's purview to speculate as to any such impact, and is not a basis for dismissal of Plaintiff's claim seeking to enforce its contractual rights, which are separate and

apart from the exclusive issues which may be considered in the County zoning process – compliance with its Comprehensive Plan and Land Development Code. Moreover, the County cannot use separation of powers to unilaterally abrogate its obligations under an express Settlement Agreement. *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 673 (Fla. 1993) (The "separation of powers does not allow the unilateral and unjustified legislative abrogation of a valid contract.").

5. The Settlement Agreement does not constitute illegal contract zoning. "Contract zoning refers to an agreement between a property owner and a local government where the owner agrees to certain conditions in return for the government's rezoning or enforceable promise to rezone." *Chung v. Sarasota County*, 686 So. 2d 1358, 1359 (Fla. 2d DCA 1996). "Contract zoning is, in essence, an agreement by a governmental body with a private landowner to rezone property for consideration." *Morgran Company v. Orange County*, 818 So. 2d 640, 642 (Fla. 4th DCA 2002). The Settlement Agreement was not an agreement "to certain conditions in return for the government's rezoning or enforceable promise to rezone" and there was no agreement to "adopt" the Administrative Interpretation. Instead, the Settlement Agreement confirmed and enforced the duly-enacted rezoning that had already occurred thirty (30) years earlier via the 1973 Zoning Resolution. The Settlement Agreement does not "limit, prohibit, or eliminate" the County's obligation to comply with the applicable zoning ordinances. *See Molina v. Tradewinds Development Corp. by Kilday*, 526 So. 2d 695 (Fla. 4th DCA 1988) (holding that settlement agreement between city and developer in zoning dispute was valid and enforceable where the agreement did not "limit, prohibit, or eliminate" the city's obligation to comply with applicable zoning ordinances); *Stranahan House, Inc. v. City of Fort Lauderdale*, 967 So. 2d 1121, 1125 (Fla. 4th DCA 2007) (same).

6. The doctrine of sovereign immunity does not bar CCA's declaratory judgment claim because the Settlement Agreement is an express, written contract and the defense of sovereign immunity does not insulate a public body from an action arising from its breach of an express, written contract. *See Pan-Am Tobacco Corp. v. Department of Corrections*, 471 So. 2d 4, 6 (Fla. 1984) (holding that the defense of sovereign immunity will not protect the state from an action arising from the state's breach of an express, written contract). Additionally, the County did not raise sovereign immunity in its Answer and Affirmative Defenses, thereby waiving that defense. SSIR Owner, as Intervenor, cannot revive that waived defense. *Omni National Bank v. Georgia Banking Co.*, 951 So. 2d 1006, 1007 (Fla. 3d DCA 2007) ("The intervenor must accept the record and pleadings as they exist in the litigation and the intervenor may not raise any new issues.").

7. Whether the Settlement Agreement is or is not a restrictive covenant that runs with the land or binds or does not bind SSIR Owner, is immaterial to this case. CCA's claim is directed exclusively at the County. CCA seeks to enforce the County's obligation under Paragraph 3 of the Settlement Agreement which states that the County cannot issue building permits in excess of 912 units. CCA does not seek any relief against SSIR Owner. The County issues building permits, not SSIR Owner. Additionally, the County and SSIR Owner waived this "restrictive covenant" issue by failing to plead it as an affirmative defense.

8, CCA's claim for declaratory judgment does not constitute a common law writ of mandamus or an action for injunctive relief. Rather, as already found by this Court, CCA "asserts a statutory claim for declaratory judgment within the authority of Chapter 86, Florida Statutes." *Order Denying Motion to Dismiss* [Dkt. 18], ¶ 5.

9. In addition to the foregoing, the Court finds that the County is estopped from denying the validity of the Settlement Agreement. It is undisputed that the County and CCA voluntarily negotiated and executed the Settlement Agreement whereby the County expressly agreed not to issue building permits in excess of 912 units at any time. CCA reasonably relied on that promise and, in return, dismissed its lawsuit with prejudice. The County cannot accept the benefits of the Settlement Agreement—the dismissal of a lawsuit—and then later argue that the same agreement is unenforceable. *See Abia v. City of Opa-Locka*, 389 So. 3d 685, 686 (Fla. 3d DCA 2024) ("Opa-Locka cannot take the benefit of the settlement agreement—the dismissal of a lawsuit—and then later argue that the same agreement is unenforceable.").

It is thereupon, ORDERED AND ADJUDGED, as follows:

The County and SSIR Owner's Motion for Summary Judgment is hereby DENIED.

DONE AND ORDERED in Chambers, Lee County, Fort Myers, Florida.

James Shenko, Circuit Court Judge JXvc5uKC
24-CA-002674 01/07/2025 16:55:27

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