

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

GRAND VENEZIA COA, INC.,

Plaintiff,

VS

CASE NO: 16-001584-CI

CLEARWATER CAY COMMUNITY
DEVELOPMENT DISTRICT, et al,

Defendants.

TRIAL RULING PROCEEDINGS BEFORE
THE HONORABLE GEORGE M. JIROTKA

DATE: April 26, 2018

TIME: 3:30 - 4:00 P.M.

LOCATION: CLEARWATER COURTHOUSE
315 Court Street
Courtroom C
Clearwater, Florida

REPORTED BY: CYNTHIA A. CIANCIOLO

Integra Reporting Group, LLC

Court Reporter

Notary Public

Commission No. GG 172623

Expires: 2/28/22

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APPEARANCES:

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- AND -

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BRIAN CRUMBAKER, ESQUIRE
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Attorney for Oppenheimer Rochester

ALSO PRESENT:

Michael Malinowski, COA Rep
Oppenheimer Rep, Rene Vecka *via phone
District Rep, Trevor Davison

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1 BAILIFF: All rise.

2 THE COURT: Good afternoon. Thank you. So have a
3 seat.

4 I think we've got Mr. Barnes.

5 MR. BARNES: Yes, Your Honor.

6 THE COURT: Mr. Buford.

7 MR. BUFORD: Yes, sir.

8 THE COURT: Plus Plaintiff's representative.

9 We have Mr. Jackson (sic), right?

10 MR. JOHNSON: Correct, Judge, together with Trevor
11 Davison who is the Chairman of the District.

12 THE COURT: Right, the CDD. And next to you is...

13 MR. CRUMBAKER: Brian Crumbaker, Judge, and my
14 client. We spoke with your assistant about possibly
15 calling our client to listen to the verdict.

16 THE COURT: Yes. Do you want to set that up or how
17 do you want to do that?

18 MR. CRUMBAKER: If it's okay if I go ahead and call
19 him.

20 THE COURT: That's fine.

21 Was it your client or Mr. Smith's? It makes no
22 difference.

23 MR. CRUMBAKER: Mr. Smith is my partner.

24 THE COURT: Who is calling in, Mr. Smith?

25 MR. CRUMBAKER: Rene Vecka.

1 THE COURT: Fine, go ahead.

2 And obviously the Court Reporter.

3 THE COURT REPORTER: Uh-hum.

4 MR. CRUMBAKER: Rene, I'm going to put you on
5 speaker phone. Thank you, Judge.

6 THE COURT: We are here in what's commonly known as
7 the Grand Venezia case. We all know the style and
8 everything else, so I'm not going to repeat that.

9 I would like to first of all congratulate the
10 attorneys on both sides on both their professionalism
11 and their presentation of their particular client's
12 arguments.

13 As I see it we had two issues for me to resolve at
14 this point. We had an issue regarding should the
15 Community Development District be dissolved. I'll get
16 into that in a minute. And then the issue of certain
17 assessments.

18 What transpired last week was in effect a non-jury
19 type trial, which made the Judge, that's me, the trier
20 of both the facts and the law.

21 Obviously I have to follow Florida law. There are
22 certain things that sort of like a jury I am allowed to
23 consider as well.

24 If this were a jury trial, I would advise the jury
25 in some detail, some greater detail as to law to follow

1 and how they must approach the case. These are commonly
2 known as jury instructions.

3 A particular jury instruction which I try to follow
4 and I try to make sure my jurors follow is commonly
5 referred to as Standard Jury Instruction No. 601.2(1),
6 deals with believability of witnesses and by definition,
7 evidence. It says in part, and I'm basically
8 paraphrasing here, "I may evaluate the witnesses and by
9 extension the evidence as to reasonableness in light of
10 the case's evidence and in the light of personal
11 experience and common sense".

12 I do not do any independent research on these
13 facts. I am basically given what I'm given by the
14 jurors and witnesses -- by the attorneys and the
15 witnesses, and that's what I go with.

16 We had as I said two sort of basic issues to
17 resolve. We had some additional issues which I will
18 call side issues. By saying side issues, I don't mean
19 that they are minor compared to other issues which are
20 major, but they need to be dealt with nonetheless.

21 One of them that was raised by the Defendants was
22 the standing of the Petitioner to bring this lawsuit, or
23 the Plaintiff to bring this lawsuit.

24 I think that was addressed by Mr. Barnes's
25 statement on the record as an officer of the Court that

1 among other various reasons the Grand Venezia
2 Condominium Owners Association owned, I believe it was
3 two properties, two units in the development known as
4 Grand Venezia so I don't think standing is an issue. In
5 any event I find there was standing for the Plaintiff to
6 bring this suit.

7 We also had a discussion regarding -- by the
8 Plaintiff -- by the Defendant -- I'm sorry -- regarding
9 indispensable parties. Basically that boiled down to
10 the Property Appraiser and Tax Collector of Pinellas
11 County and the Trustee of the bond situation.

12 Regarding the Pinellas County Property Appraiser
13 and the Tax Collector, it came out in evidence that in
14 essence, the Property Appraiser and Tax Collector were
15 conduits for tax collection. They waited and would wait
16 until they received certification from the Community
17 Development District before they acted. So I think that
18 they are not for our particular purposes indispensable
19 parties to this lawsuit.

20 We also had raised again very briefly by Defendants
21 was the issue of the bond trustee. I reviewed the
22 evidence that was presented. Specifically there was a
23 letter from the bond trustee's attorneys, I believe that
24 was Holland & Knight, directed to the Community
25 Development District, one of the Defendants here,

1 telling them to go and defend the case, et cetera. I'm
2 paraphrasing that. That's not exactly what was said.

3 In any event, I don't think because of what will
4 happen here in my ruling that they are at this point
5 indispensable parties. So we can let that slide for the
6 minute.

7 We also had a third sort of side issue dealt with
8 Statute of Limitations. I will address the Statute of
9 Limitations in particular as it applies to each of my
10 rulings.

11 First two prior rulings in this case in the prior
12 bond validation proceeding known as the final judgment
13 issued by the honorable Judge Shames, I will not be
14 ruling on the matters previously ruled on or not
15 challenged, and specifically without limitation, I will
16 not be ruling on the bonds' validity, the initial
17 maximum annual assessment of \$3,850 per unit in Grand
18 Venezia, that is sometimes known as the 2005 assessment,
19 and the actual annual initial assessment of \$1,750 per
20 Grand Venezia unit, which came up in 2006.

21 Remaining issues then. Should I dissolve the
22 Community Development District pursuant to Florida
23 Statutes because the Community Development District did
24 not "pull" or receive timely, 5 years, a development
25 permit?

1 My ruling is 2-fold. One, the Statute of
2 Limitations applies to anything that may challenge the
3 creation of that Community Development District, so I'm
4 not going to rule on it on that standpoint.

5 As far as dissolution for not pulling a development
6 permit, I'm going to rule that they did pull what for
7 Florida law is a development permit, namely a demolition
8 permit, and therefore I will not be dissolving the
9 Development District.

10 We now tackle the validity of two assessments. One
11 is commonly referred to as the bond collapse assessment,
12 which had set assessment in 2008 of \$1,212 per unit.
13 There, after careful review of the evidence, argument of
14 counsel, testimony of witnesses, I find that again
15 2-fold. I think the Statute of Limitations applies to
16 that 2008 assessment.

17 In any event, even if it didn't apply, I think that
18 under Florida law my review of Florida case law, et
19 cetera, that assessment of \$1,212 was proper, was
20 applied properly, and should have and will remain for
21 the time period that was applied.

22 I will note in dicta without blaspheming, thank God
23 there was no further borrowing or development that took
24 place then, or we'd have another empty shell shopping
25 center with an annual assessment on these homeowners

1 possibly as high as \$3,850.

2 So I'm not setting that aside.

3 Next and finally comes what I will refer to as the
4 current assessment of \$1,032 per unit annually and this
5 was set up in the 2015 timeframe.

6 This assessment resulted from a \$2.6 million
7 adjustment to the outstanding amount due to the transfer
8 of the shopping center parcel to a Special Purpose
9 Entity. And then next year, 2016, conveyance by the
10 Special Purpose Entity of the shopping center parcel
11 along with some additional property to the apartment
12 developer.

13 I note in reaching these conclusions, reaching the
14 conclusion that the shopping center parcel, the Levitz
15 parcel, whatever it's called, is now gone from ownership
16 by the CDD. There's no more developable land in the
17 CDD.

18 There was testimony from Mr. Crumbaker, among
19 others, that there was a credit to Grand Venezia of 50%
20 of some figure and that apparently was a figure of 50%
21 that was calculated by what the value of the property,
22 the shopping center property was when it went into the
23 CDD.

24 There was no appraisal done. Upon questioning by
25 both counsel and myself of Mr. Crumbaker, there is, as

1 Mr. Crumbaker correctly pointed out, no legal
2 requirement that there be an appraisal. However, in
3 totality, in review of the evidence, I believe that what
4 happened at that point was that the adjustments that
5 resulted in the current assessment of \$1,032 was not
6 done in a non-arbitrary fashion.

7 In other words, it was arbitrary.

8 I don't think the Statute of Limitations applies to
9 the 2015 and subsequent assessment. Therefore, I can
10 hear this issue and rule on it.

11 Looks to me like in 2016 the shopping center and
12 some other parcels were sold to the apartment developer,
13 as I stated, for a figure of somewhere in the
14 neighborhood of \$6 million, plus.

15 I didn't hear anything regarding allocation of
16 values, even though all of this took place within a
17 one-year period.

18 So I find under Florida law, the bond documents,
19 Florida case law as well as statutory law, that the 2015
20 assessment was arbitrary and accordingly there needs to
21 be your reassessment of the 2015 and subsequent
22 assessments.

23 Now, before everybody in the audience gets all
24 excited, I inquired of Mr. Barnes, some would say I
25 warned Mr. Barnes, because I didn't have any values for

1 this 2015 special assessment, that a reassessment could
2 result in a higher assessment.

3 Mr. Barnes stated that he was not concerned with
4 that happening, in effect, I'm paraphrasing, we'll see
5 what happens.

6 In reaching my conclusions I have, as I said again,
7 looked to Florida law, case law statutory, heard all of
8 the evidence and considered all of the evidence, both
9 documentary as well as witness testimony.

10 Possibly some might argue that, well, you got the
11 right result but you didn't do it the right way. That's
12 what's called the Topsy Coachman rule and I'll leave
13 that aside for another day.

14 I would like to retain jurisdiction and will and
15 see how we go forward on this reassessment process.

16 I don't see, going back to the trustee issue, that
17 I have in any way at this point impaired any of the
18 bonds. The bonds stay out there. The debt is what it
19 is. I have not adjusted any of the debt upward or
20 downward. I have not extended the term of the bonds or
21 bond payment.

22 So I don't think the trustee in this particular
23 issue either needed to be a indispensable party. Going
24 forward, I'll leave that up to the attorneys to resolve.

25 So how do we handle the reassessment?

1 First of all, in my opinion the incorrect
2 assessment was in 2015. We are now in 2017, '18. We'll
3 soon be in 2018, '19.

4 No manner was suggested to me as to how to handle
5 that. I'm not going to do any clawback, because if I
6 understand this correctly, I am not doing any clawback
7 at this point I should say, because if I understand this
8 correctly, the bond payments were required to be made
9 through the year 2035. So I think we can adjust that if
10 necessary if we go along.

11 We could have the complete absurdity that I do a
12 clawback and then the adjustment is found to be valid
13 later on down the road, the new assessment is found to
14 be valid, and then we'll have the people paying super
15 annuitized sums of money. I don't think that's fair to
16 anybody. I don't think it accomplishes anything.

17 What I'd like to do here is have the reassessment
18 done by the Community Development District by no later
19 than the end of August of this year. Again, this really
20 wasn't testified to, but I can use my common sense and
21 prior experience, I think there's a date sometime in
22 September or early October when the tax rolls have to be
23 certified by the particular district, or municipal
24 government which obviously the Community Development
25 District is as both sides conceded.

1 And I'd like to see if we can resolve that before
2 then, go through the appropriate hearings, follow the
3 reassessment process and make sure every homeowner gets
4 personal written notice of what's going on.

5 And we'll go forward from there.

6 If at that point the bond trustee feels that they
7 want to join the case, I'm not going to rule on that at
8 this point.

9 If somebody wants to join the bond trustee at that
10 point, I'm also not going to rule on that.

11 Probably what we should do at this point is really
12 sort of split the judgment, the order in two ways.

13 I would suggest to Mr. Jackson, prepare the partial
14 judgment, partial order regarding the issues that the
15 Defendants prevailed on, i.e., non-dissolution of the
16 District and validity of the assessments prior to the,
17 what I will call, the 2015 assessment.

18 Mr. Barnes should prepare the partial order
19 regarding the invalidity of the 2015 assessment.

20 And in both orders reserve on attorneys fees and
21 costs, both as to entitlement as well as to amount due,
22 which clearly we did not rule on.

23 Yes, sir.

24 MR. JOHNSON: I don't think there was any claim on
25 either side for fees.

1 THE COURT: Well, I'm not ruling on it in any
2 event. There might be a statutory provision or there
3 might be something buried in the bond documents that I
4 missed. I'm not ruling on that in any event.

5 Anything further for me to rule on today or give
6 you guidance on?

7 MR. BARNES: Not from Plaintiff, Your Honor.

8 MR. CRUMBAKER: One question, Your Honor.

9 THE COURT: Yes. Well, let's do first Mr. Jackson.
10 That's how we were doing it.

11 MR. JOHNSON: No, let me defer to Mr. Crumbaker.

12 THE COURT: Yes, sir.

13 MR. CRUMBAKER: Just for point of clarity on my
14 end, the assessment associated with what the District
15 currently owns, is that from the validation to 2015 or
16 today, does that remain the same, or we're only talking
17 about the \$2.675 or are we talking about the entire
18 assessment despite validation? I just want clarity on
19 that issue.

20 THE COURT: No. I think what I'm talking about is
21 the amounts that the Grand Venezia Plaintiff or
22 Plaintiffs are being charged.

23 MR. CRUMBAKER: Okay.

24 THE COURT: If you need to examine -- again, I'm
25 not going to tell you how to do this. That was not at

1 issue. There was no dispute as to how to do it in front
2 of me.

3 I just want something shown to them, to the
4 Plaintiffs in the proper fashion through your regular
5 annual process for this as to how you arrived at a
6 assessment that is not arbitrary.

7 If you have to make additional adjustments, that's
8 your call. I can't talk into that.

9 MR. CRUMBAKER: Thank you, Judge.

10 THE COURT: Okay. Anything else I need to do
11 today?

12 MR. BARNES: No thank you, Your Honor.

13 THE COURT: Why don't we do this.

14 Would it be possible for me to impose upon the
15 respective preparers of the orders that they get this
16 done within 10, 15 days. Is that possible?

17 MR. JOHNSON: 10 days is fine.

18 THE COURT: 10 days is fine?

19 MR. BARNES: 10 days is fine.

20 THE COURT: So why don't we say that the orders
21 would be ready by, or at least sent to the other side
22 for review by Monday, I believe that's May 7, if I'm not
23 mistaken. Am I correct in that?

24 MR. JOHNSON: Monday is May 7.

25 THE COURT: Monday. May 7 is a Monday.

1 MR. BARNES: Correct.

2 MR. JOHNSON: May we extend that to May 8, Judge,
3 just because May 7 I'm unavailable on that day.

4 THE COURT: I have no particular problems with
5 that. Mr. Barnes, do you have any concerns there?

6 MR. BARNES: Not at all, Your Honor.

7 THE COURT: Let's go ahead and extend that to May
8 8, and if there are any arguments that need to be
9 resolved regarding the drafting of the orders, the
10 content of the orders, I will do that at the appropriate
11 time.

12 If there is none, you're requested, through my
13 practice preferences, to send me the original of your
14 proposed order, multiple copies, stamped addressed
15 envelopes and a cover letter telling me that the other
16 side agrees with the order as compared to my ruling.

17 Okay. Anything else we need to do today?

18 MR. BARNES: No thank you, Your Honor.

19 THE COURT: Mr. Jackson?

20 MR. JOHNSON: No.

21 THE COURT: Mr. Crumbaker?

22 MR. CRUMBAKER: No, Judge.

23 THE COURT: We are adjourned. Thank you.

24 BAILIFF: All rise, please.

25 (Hearing proceedings concluded at 4:00 P.M.)

CERTIFICATE OF REPORTER

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I, Cynthia A. Cianciolo, Court Reporter, Notary Public for the State of Florida at large, do hereby certify I stenographically reported the proceedings at the time and place so indicated and that my notes were hereinafter reduced to a computer-generated transcript.

I further certify that I am not an employee or relative of any of the parties and am not an employee or relative of either counsel, and further certify that I am not financially interested in the outcome of this litigation.

I hereby affix my signature this 30th day of April 2018, in Tampa, Hillsborough County, Florida.

CYNTHIA A. CIANCIOLO
Court Reporter