

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

K. EARL DURDEN, JOHN S. POPPELL, SR.,  
DAVID ALLEN SPENCER, LUCY N. HILTON,  
TOMMY MILLIGAN, CLIFFORD C. MYERS,  
HARRY B. SIPPLE, III, UNAL TUTAK, M.D.,  
WILLIAM F. FUSSELMAN, DAVID W. HILL,  
GERALDINE CRANE, and JOHN W. HULEN,

Plaintiffs,

v.

✓ BAY POINT CLUB, INC. *IS*

Defendant.

CASE NO: 00 -

HAROLD BAZZEL  
CLERK OF CIRCUIT COURT  
BAY COUNTY, FLORIDA

2000 MAR 31 A 11:46

FILED

**COMPLAINT**

Plaintiffs, K. EARL DURDEN, JOHN S. POPPELL, SR., DAVID ALLEN SPENCER, LUCY N. HILTON, TOMMY MILLIGAN, CLIFFORD C. MYERS, HARRY B. SIPPLE, III, UNAL TUTAK, M.D., WILLIAM F. FUSSELMAN, DAVID W. HILL, GERALDINE CRANE and JOHN W. HULEN, by and through the undersigned attorneys, sue Defendant, BAY POINT CLUB, INC., and state:

1. This is an action for declaratory judgment and injunctive relief.
2. Plaintiffs are all owners of residential property within Bay Point, an area approved as a Development of Regional Impact (hereinafter Plaintiffs are at times referenced as "Homeowners").
3. Defendant, BAY POINT CLUB, INC., is a corporation organized and existing under the laws of the State of Florida with its principal place of business in Bay County, Florida, and is the owner of real property within Bay Point the use of which is in dispute. The property in dispute

000001

is better described on Exhibit "A".

4. In 1972, Defendant's predecessors in title began developing and selling lots and residential properties within a yacht and country club resort named Bay Point. All property was advertised and sold as having access to a pool and a clubhouse overlooking Bay Point's private marina and as having access to all weather clay tennis courts.

5. Many home sites were advertised and sold overlooking Bay Point's championship golf course(s), and condominiums were sold overlooking an outstanding lighted tennis complex including 12 all-weather clay courts.

6. A swimming pool, hot tub, and various smaller eating establishments were all a part of the tropical setting of the yacht and country club development.

7. From the earliest years until the Developer sold all of the properties it had available, it continued to advertise the clubhouse, marina, golf course, tennis courts, and swimming pool amenities (hereinafter "Amenities") of the development.

8. These Amenities were dedicated to recreational, social and community uses, and purchasers/property owners relied on these dedicated uses.

9. Advertisements specifically stated that "when fully developed Bay Point will appear to those who live here or visit to be more of a quiet village than a sprawling resort. Building heights are limited and overall land density has been held to about three units per acre. Most of Bay Point's 1,100 acres are dedicated to resort amenities such as golf courses, landscaped areas, tennis courts, marina, and other recreational and open areas....the club is to be 'village core' with club life as the common ground for residents."

10. From the development's earliest inception until the time when all of the Developer's

properties were sold out, numerous advertisements in the form of maps, brochures, newsletters, and mail-outs set forth the qualities listed in paragraphs 4 through 8. Representative examples are attached as Exhibit "B".

11. In December 1985, an Application for approval for a Development of Regional Impact (hereinafter Application) was submitted. This Application sought a development order permitting further development on the property, and a part of the Application stated that 14 tennis courts, a clubhouse, swimming pools, boardwalks, park areas and marina would all be and remain a part of the complex. The Application specifically states that the four acre main clubhouse site which was substantially completed prior to July 1, 1973, was in a vested area and that it would remain a part of the development. These amenities are noted on maps submitted with the application and on numerous maps given out to lot purchasers over the entire time. They are further described on Exhibit "C".

12. The Application specifically stated:

"Recreational facilities at Bay Point will include three 18 hole golf courses (the second is currently under construction), a marina for recreational watercraft, tennis courts, swimming pools and a family recreation park which is located adjacent to the Pub Quarterdeck. The facilities are available to residents, property owners, guests using rental property and club members. The facilities are available to the general public within one of the categorical use areas described above." Map "H" attached to the Application noted the Clubhouse facilities already in place. Exhibit "D".

13. On July 22, 1986, the Application was approved and a development order issued for a development of regional impact. The Bureau of State Planning, Department of Community Affairs, and Bay County both approved the development plans. See Resolution 1328, Board of

County Commissioners, Bay County, Florida. Exhibit "E" and "F" (hereinafter "Order"). This approval was given only based on the representations of Defendants' predecessor in interest that the Amenities were complete and available to this resort community.

14. All developers who are, or who hereafter may become, successors to the original developer of the DRI shall be and are bound by all terms and conditions of the Development Order. Defendant is such a successor in interest.

15. This Order allowed parcel 12 to be used only as a clubhouse and the entire order is premised on the provision of a clubhouse, pool, tennis, open space and related amenities. See Map H. Also, this order anticipated that homeowners documents would require a contribution for maintenance of the improved recreational facilities. Exhibit "E" and "F".

16. An amendment to the development order to permit the addition of a large hotel/motel at the site was requested and approved, based on the concept that the development would remain a yacht and country club resort. This amendment is referenced as the hotel agreement and pertinent parts are Exhibit "G".

17. All amenities mentioned above, including the clubhouse, swimming pools, tennis courts, marina, golf course and related facilities are and have been completed since the 1970's.

18. On or about December 8, 1988, the developer deeded the roads, storm sewers, canals, security gates, street lighting and some small common areas to the homeowners' association. All property conveyed requires significant maintenance. Exhibit "H". Developer conveyed nothing that was revenue producing or had recreational or social value.

19. By letter of August 21, 1992, Defendant's predecessor in interest acknowledged that it was committed to abide by the terms of the DRI Order, that it had obligations respecting the

Clubhouse, and that it was obligated to provide and operate a first class resort tennis facility. Spann letter to Gurney, Exhibit "I".

20. In 1993, Bay County allowed a change in the development of Tract M which had been permitted based on the representation that it would have a pool, tennis courts and play area. The change allowed deletion of these amenities and their replacement with a membership in the amenities and recreational facilities of Bay Point Yacht & Country Club. Resolution 1746, Exhibit "J". The additional development was conditioned on the availability of the facilities at Bay Point Yacht & Country Club.

21. Defendant or its predecessor in interest did not deed the club facilities, golf courses, tennis facilities, marina, or swimming pools to the homeowners' association, although those were acknowledged in the same homeowners/developer agreement to be a part of the yacht and country club resort known as Bay Point.

22. Homeowners purchasing their property and obtaining title insurance were required to note that the development order and the hotel agreement constituted good notice of the land use restriction placed on certain areas of the development.

23. Defendant or defendant's predecessor in title acknowledged that it is subject to the Development Order and that it would pay the Homeowners for certain maintenance needs of the Bay Point development based on the number of club memberships. See BPIA and Development Agreement of December 8, 1988.

24. On July 8, 1999, Bay Point Club, Inc. filed an application to amend the DRI and allow the destruction of the tennis court, swimming pool, and country club building, and the construction of a 17 story cluster of residential buildings. Exhibit "K".

25. The homeowners' association voiced their "extreme opposition" and the plan was withdrawn. Exhibit "L".

26. The Bay Point Club, Inc. is a successor to the original developers, but as all of the facilities and amenities were in place and completely operational at the time this successor purchased the property, it was fully on notice of the uses to which the property had been dedicated.

27. The original development order and the basis on which the entire project was permitted dedicated the clubhouse area to that use. No other use was approved or contemplated

28. The development review order and the numerous orders of the Bay County Commission would have given further notice to the Bay Point Club, Inc. of the dedication and use of this area.

29. Members of the community have received notice that as of April 1<sup>st</sup>, 2000, the tennis courts will be closed. Exhibit "M". However, guests of the Marriott Hotel will still be allowed to play tennis on the same courts. The clubhouse has been closed, and the swimming pool is only marginally maintained.

30. These properties should have been dedicated to the homeowners' association at the time when the project was substantially sold out.

31. Developers should not be allowed to entice purchasers by offering alluring improvements and benefits and then allow all of those benefits to be removed after lot sales are complete or substantially complete. If the Defendant, a successor in interest, is allowed to now destroy the Amenities, all sales were obtained by fraud.

32. A successor developer should not be allowed to close the facilities, tear down the dedicated and permitted uses of these areas, and build for its own benefit and to the extreme

detriment of the community. These amenities constitute common areas for the development. These rights and uses have been recognized to induce the sale of lots, and an implied covenant has been granted and should be enforced by this court.

33. These rights and uses have been recognized to induce the sale of lots, and a common law dedication has been granted and should be enforced by this court.

34. These rights and uses have been recognized to induce the sale of lots, and a private easement has been granted and should be enforced by this court.

35. Property owners and any successive developer was or should have been on notice of the uses to which the clubhouse, pool and tennis parcels had been committed, as these uses were recorded in the public records of Bay County at Book 1146, Page 1039 and Book 1221, Page 638 among others, and by the dedicated uses obvious by looking at the parcels.

36. An agreement had been reached to allow the tennis facilities only to be moved, but in that event, developer was required to rebuild tennis to agreed specifications. Exhibit "N", OR Book 1221, Page 638.

37. Plaintiffs seek a declaration that the uses to which the clubhouse, tennis courts, and swimming pools have been dedicated are vested in the community and should have been turned over to the property owners association.

38. Plaintiffs and the entire Bay Point community will be irreparably harmed if the Defendant is allowed to destroy their community common areas, amenities and clubhouse.

39. The relief sought is not merely the giving of legal advice but is to resolve a bona fide present need for a declaration of rights.

WHEREFORE, Plaintiffs, K. EARL DURDEN, JOHN S. POPPELL, SR., DAVID ALLEN SPENCER, LUCY N. HILTON, TOMMY MILLIGAN, CLIFFORD C. MYERS, HARRY B. SIPPLE, III, UNAL TUTAK, M.D., WILLIAM F. FUSSELMAN, DAVID W. HILL, GERALDINE CRANE and JOHN W. HULEN, request that the Court:

A. Enjoin Defendant both temporarily and permanently from changing the use of the clubhouse, tennis courts, swimming pool or common areas surrounding these amenities as described on Exhibit "A".

B. Declare that an implied covenant has been granted as to the use of the property described on Exhibit "A" and should be enforced by this court.

C. Declare that a private easement has been granted to Bay Point property owners for the use of the property on Exhibit "A" and should be enforced by this court.

D. Declare that a common law dedication as to the use of the property described on Exhibit "A" has been granted and should be enforced by this court.

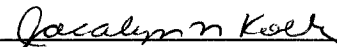
E. Declare that the property described on Exhibit "A" must be used by the Defendant or its successor only for the clubhouse, pool, tennis and open space purposes for which they were intended or that such lands shall be turned over to the community association to be used and operated for their intended purposes only.



- F. Award attorneys' fees and costs to Plaintiffs.
- G. Grant such other relief as the Court may deem just.

DATED this 31<sup>st</sup> day of March, 2000.

HILTON, HILTON, KOLK & ROESCH, P.A.

  
\_\_\_\_\_  
JACALYN N. KOLK  
Florida Bar No. 341053  
1610 Beck Avenue  
Panama City, FL 32405  
PH: 850 / 785-0535  
ATTORNEYS FOR PLAINTIFFS