

BP

BUTLER PAPPAS

William P. Schoel, Esq.
Senior Associate
Tampa
wschoel@butlerpappas.com

FAX TRANSMISSION COVER SHEET

To: Maurice J. Baumgarten, Esq. - 305/373-6914
Albert E. Acuna, Esq. -305/381-8627
James D. Gassenheimer, Esq. - 305/714-4340
Berger Singerman, Esq. - 305/714-4340

From: William P. Schoel, Senior Associate
BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP

Date: September 22, 2009

Subject: Alex Bistricher, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Keith Novak, individually, and Unifirst Mortgage Corporation

Our File Number: 3159-0808061

YOU SHOULD RECEIVE 22 PAGE(S), INCLUDING THIS COVER SHEET.
IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL
CARLA LAURY AT 813/281-1900 EXT. 478.

MESSAGE: Please see attached Defendant Keith Novak's Motion to Consolidate.

UNLESS OTHERWISE INDICATED, THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS A PRIVILEGED ATTORNEY-CLIENT COMMUNICATION OR ATTORNEY WORK PRODUCT, AND IS CONFIDENTIAL IN NATURE AND INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR OR ARE NOT SURE WHETHER IT IS PRIVILEGED, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE OFFICE VIA THE U.S. POSTAL SERVICE AT OUR EXPENSE. THANK YOU.

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP

CELEBRATING 30 YEARS OF SERVICE, 1979 - 2009

Tampa	777 South Harbour Island Blvd., Suite 500, Tampa, Florida 33602	Telephone: (813) 281-1900	Facsimile: (813) 281-0900
Tallahassee	3600 Maclay Boulevard, Suite 101, Tallahassee, Florida 32312	Telephone: (850) 894-4111	Facsimile: (850) 894-4999
Miami	80 Southwest 8th Street, Suite 3300, Miami, Florida 33130	Telephone: (305) 416-9998	Facsimile: (305) 416-6848
Mobile	1110 Montclair Drive, Suite 1050, Mobile, Alabama 36609	Telephone: (251) 338-3801	Facsimile: (251) 338-3805
Charlotte	11620 N. Community House Road, Charlotte, North Carolina 28277	Telephone: (704) 543-2321	Facsimile: (704) 543-2324

www.butlerpappas.com

**IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA**

ALEX BISTRICER, as limited partner of
GULF ISLAND RESORT, L.P., and
GULF ISLAND RESORT, L.P.,

Case No.: 09-51034-CA-01

Plaintiffs,

vs.

KEITH NOVAK, individually, and
UNIFIRST MORTGAGE CORPORATION,
a Florida corporation,

Defendants.

DEFENDANT, KEITH NOVAK'S MOTION TO CONSOLIDATE

COMES NOW Defendant, KEITH NOVAK, by and through his undersigned counsel, and pursuant to Fla. R. Civ. P. 1.270(a) moves this Court to consolidate this action with this Court's action styled Alex Bistricer, as limited partner of Gulf Island Resort, L.P., and Gulf Island Resort, L.P., Plaintiffs v. Coastal Real Estate Associates, Inc., a Florida Corporation; et al., Case No. 08-79169 CA (09), which is pending before Judge Thomas Wilson in Miami-Dade Circuit Court, Florida. Specifically, Defendant NOVAK requests that this file be consolidated into the afore-referenced action wherein the Court is already well versed in the facts and circumstances of this case.

Background

I. This is an action to quit title and certain property brought by Plaintiffs' Acquisitions. Title to the property that is subject to this lawsuit, however, has already been quieted in favor of Defendant KEITH NOVAK's predecessor in interest, Ocean Side

Acquisitions, LLC, a Florida Limited Liability Company which is a Defendant in Case No.: 08-79169 CA (09).

II. The identical issues regarding the identical real property have already been fully adjudicated by Judge Cobb in the case styled Alex Bistricher, as limited partner of Gulf Island Resort, L.P., and Gulf Island Resort, L.P., Plaintiffs v. Coastal Real Estate Associates, et al., Case No.: 51-2003-CA-942 ES. A copy of the Court's "Order Granting Defendants' Motion for Contempt and Sanctions" is attached as Acquisitions Exhibit 1. A copy of the Court's "Partial Final Judgment on Action to Quit Title", confirming quiet title in favor of Ocean Side Acquisitions, LLC (of which Mr. Novak is a member), is attached hereto as Exhibit 2.

III. Subsequent to entry to the afore-referenced Order and Judgment, the Bistricher v. Coastal Real Estate Associates case was transferred from Pasco County to this Court and Judge Wilson, and was designated Case No.: 2008-79169-CA-01. Thus, presently jurisdiction relating to this quit title action should properly vest in and be consolidated with Case No.: 2008-79169-CA-01.

IV. The quiet title issues in the case are identical to the issues pending in the first case, and in fact, include condominium units already at issue in the first case. Consolidating this matter with the first case, wherein Judge Wilson is already aware of the parties, facts, and issues would avoid unnecessary costs and delays in the adjudication of this matter.

Therefore, Defendant NOVAK respectfully requests that this Court consolidate this action within Case No.: 2008-79169-CA-01 as identified more completely herein above for all future proceedings.

Respectfully submitted,

BUTLER PAPPAS WEIHMULLER KATZ CRAIG LLP



LEWIS F. COLLINS, JR., ESQ.
Florida Bar No.: 267422
WILLIAM P. SCHOEL, ESQ.
Florida Bar No.: 0014673
777 S. Harbour Island Boulevard
Suite 500
Tampa, Florida 33602
Telephone: (813) 281-1900
Facsimile: (813) 281-0900
lcollins@butlerpappas.com
wschoel@butlerpappas.com
Attorneys for Defendant, KEITH NOVAK

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:

Maurice J. Baumgarten, Esq.
Anania Bandklayder Baumgarten
Torricella & Stein
Bank of America Tower
100 Southeast 2nd Street, Suite 4300
Miami, FL 33131

James D. Gassenheimer, Esq.
Berger Singerman, Esq.
Oceanside Acquisitions, LLC
Berger Singerman Attorneys at Law
1000 Wachovia Bank Building
200 South Biscayne Boulevard, Suite 100
Miami, FL 33131-5308

Albert E. Acuna, Esq.
Joseph H. Ganguzza & Associates, P.A.
SunTrust International Center
1 SE 3rd Avenue, Suite 2150
Miami, FL 33131

by U.S. Mail and Facsimile on September 22, 2009.



WILLIAM P. SCHOEL, ESQ.

03/03/2008 14:35

(FAX)

P.005/030

15

2006106350

Rept: 1002268 Recd: 129.00
 DS: 0.00 IT: 0.00
 09/12/06 Duty Clerk

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

ALEX BISTRICER, as limited partner of
 GULF ISLAND RESORT, L.P., et al.,

Plaintiffs/Counterclaim Defendants,

vs.

COASTAL REAL ESTATE ASSOCIATES,
 INC., etc., et al.,

Defendants/Counterclaim Plaintiff,

COASTAL REAL ESTATE ASSOCIATES,
 INC., etc., et al.,

Defendants/Counterclaim Plaintiff/
 Third-Party Plaintiff,

vs.

CANDY SMITH, etc., et al.,

Third-Party Defendants.

JED PITTMAN PASCO COUNTY CLERK
 09/12/06 01:14pm 1 of 15
 OR BK 7177 PG 366 ✓

CASE NO 51-2003-CA-942ES

BAUER CRONIG GASSENHEIMER LLP.

3250 MARY STREET, STE 307

MIAMI, FLORIDA 33133

FILED FOR RECORD
 PASCO COUNTY FLORIDA
 2006 AUG 31 AM 11:23
 CLERK OF CIRCUIT
 AND COUNTY COURTS

ORDER GRANTING
DEFENDANT'S MOTION FOR CONTEMPT AND SANCTIONS

This matter came before the Court for evidentiary hearing on August 8, 2006, upon Defendants' Motion for Contempt and Sanctions dated July 14, 2006. The Court has considered the motion, the record in this case, the evidence presented at the hearing, the arguments of counsel, and has been otherwise fully advised. The Court makes the following findings of fact and conclusions of law:

EXHIBIT A

EXHIBIT
 1

03/03/2008 14:35

(FAX)

P.006/030

DR BK 7177 PG 367
2 OF 25I. FINDINGS OF FACT

- A. This is a case involving a protracted history of discovery abuses by Plaintiffs. Defendants have been required to obtain numerous rulings requiring Plaintiffs and their representatives to produce documents and appear at properly noticed depositions.
- B. Twice this Court has withheld ruling on a motion by Defendants seeking sanctions for refusal of Plaintiffs and their representatives to comply with discovery orders of this Court. On January 9, 2006, this Court held Plaintiff, Alex Bistricher ("Bistricher"), in contempt of two (2) prior discovery orders dated May 28, 2004 and September 1, 2005. At that time, the Court withheld ruling as to any sanctions that were appropriate for Plaintiff's contempt of the prior Court orders. On May 28, 2004, this Court ordered Plaintiff Bistricher to produce documents in order to comply with this Court's October 8, 2003 discovery order with which Plaintiff had failed to comply previously. On May 28, 2004, the Court withheld ruling on Defendants Motion for Contempt and Sanctions as a result of Plaintiff's refusal to comply with the Court's October 8, 2003 Discovery Order.
- C. The most recent violation of this Court's discovery rulings and the Rules of Civil Procedure relating to discovery, and the gravamen of Defendants' Motion for Contempt and Sanctions, involves Plaintiffs' production of 68,111 documents to Defendants after discovery had been completed and after five days of a bench trial had already transpired. Defendants contend that the failure of Plaintiffs and their records custodian to produce these documents timely during discovery constitutes a willful violation of prior discovery orders of this Court and demonstrates a callous disregard for the authority of the Court and the discovery process.

03/03/2008 14:36

(FAX)

P.007/030

OR BK 7177 PG 368
3 of 25

Defendants also argue that the 58,111 newly produced documents establish that Plaintiffs and their representatives have repeatedly and consistently testified falsely to this Court on material issues in the case, thereby perpetrating a fraud upon the Court.

D. The evidence at the hearing established the following facts:

1. During discovery in the instant case, Plaintiffs and their representatives identified Third Party Defendant Candy Smith ("Smith") as the records custodian for Plaintiff Gulf Island Resort, L.P. ("GIRL") and GIRL's corporate general partner, Gulf Island Resort, Inc. ("GIRI"). Smith was also identified by Plaintiffs at trial as an officer of Plaintiff GIRL.

2. On September 18, 2003 - at the outset of discovery - Defendants served an Amended Notice of Deposition ("Amended Notice") *Duces Tecum* upon Smith. As part of this notice *duces tecum*, Defendants included an instruction to Smith such that all "documents requested herein are those maintained or controlled by you, individually, as well as those maintained or controlled by you for GIRL (or any of its general or limited partners), or GIRI (or any of its shareholders)."

3. The document request Defendants directed to Smith in the Amended Notice was very broad, and included virtually every non-privileged document relating to GIRL (and any of its general or limited partners). For example, the request sought all communications between GIRL representatives, as well as "all documents evidencing, referring, or relating to any action(s) taken by or on behalf of GIRL (or any of its general or limited partners), or GIRI, (or any of its shareholders)."

4. Smith, the records custodian for Plaintiff GIRL and GIRI, and - - according to Plaintiffs - - an officer of Plaintiff GIRL, was and is represented in the instant case by R. Nathan

03/03/2008 14:37

(FAX)

P.008/030

OR BK 7177 PG 369
4 of 15

Hightower, Esq. ("Hightower"). Hightower was identified by Plaintiffs as the partnership attorney for Plaintiff GIRL, and is currently counsel of record for Plaintiffs GIRL and Bistricec in the instant case. Smith, by and through her counsel, Hightower, sought a protective order regarding the documents requested by Defendants in the Amended Notice. At a hearing on September 29, 2003, before the Honorable Lynn Tepper, the Court ordered that Smith must produce at the deposition scheduled for September 30, 2003, "all documents created on or after February 10, 1993, that are responsive to the September 18, 2003 Amended Notice," except for a few documents not relevant to the requests referenced above.

5. Smith appeared for deposition on September 30, 2003, represented by Hightower. Plaintiff Bistricec was also present at this deposition. At that deposition, Scott McLaren ("McLaren"), counsel for Defendants, asked Smith if she was producing documents on that date that were responsive to the requests in the Amended Notice and the Court's discovery order. Smith answered that question in the affirmative, and indicated that the documents being produced were voluminous.

6. On October 1, 2003, and again on October 10, 2003, McLaren sent letters to Hightower, by facsimile and by mail, communicating that the Defendants demanded from Plaintiffs that all documents produced at Ms. Smith's deposition in accordance with the Court's September 29, 2003 ruling be copied, with the copies being delivered to McLaren's office. Hightower responded by letter to McLaren on October 15, 2003, stating that the documents requested were to be picked up by a copy service on October 15, 2003, for copying and delivery in accordance with McLaren's requests.

7. Plaintiffs also requested documents from all other GIRL representatives who might have any discoverable documents. Multiple sets of document requests and/or subpoenas

03/03/2008 14:37

(FAX)

P.009/030

OR BK 7177 PG 370
8 of 15

were served on Smith, Bistricek, Robert Fireworker (identified as GIRL's corporate representative at trial) and GIRL employee and Third Party Defendant Barry Pedersen.

8. On October 29, 2003, Plaintiff Bistricek, through his counsel Hightower, filed a response to Defendants' first request for production to Plaintiffs. In responding to Defendants' request for "any document or files evidencing, referring or relating to any action taken by or on behalf of GIRL or GIRL." Plaintiff Bistricek represented that notwithstanding certain objections, material responsive to the request had been produced, with the exception of telephone bills and materials relating to litigation of other matters. The same response was repeated in responding to Defendants' requests for any documents relating to the subject property, and "any aspect of or issue affecting GIRL (its general and/or limited partners, employees, agents, or representatives); any aspect of or issues affecting GIRL (its shareholders, employees, agents, or representatives)."

9. Plaintiff Bistricek appeared at a deposition on October 29, 2003, represented by counsel Hightower. When asked by counsel for Defendants about requested documents, Bistricek responded, "Candy Smith being the custodian of records, we told her to give you all of these things."

10. On November 17, 2003, Smith appeared for the continuation of her deposition. During this deposition, Smith confirmed that she kept the books and records of the business, GIRL. She further indicated that she had located and produced to Defendants all GIRL documents in her possession.

11. On December 15, 2003, McLaren sent a letter by facsimile and by mail to Hightower. In this letter, McLaren indicated that after his review of the documents produced by counsel for Plaintiffs and Smith, it had become apparent at the November 17, 2003 deposition of Smith that she and Plaintiff Bistricek had not produced all of the documents and information

03/03/2008 14:38

(FAX)

P.010/030

OR BK 7177 PG 371
6 of 25

required by prior discovery orders of the Court. McLaren advised that he would seek judicial intervention if all documents were not produced by December 22, 2003.

12. Hightower responded to McLaren by letter on December 18, 2003, indicating that he was unaware of any documents, other than emails, that had not been produced. Hightower requested that McLaren specify documents that he felt had not been produced. The next day, McLaren responded by letter to Hightower and specified several categories of documents he believed Bistricec and Smith had failed to produce.

13. After additional letters from McLaren to Hightower requesting that Plaintiff and Smith produce the documents they had been ordered to produce proved futile, Defendants filed a Motion for Contempt, for Sanctions, and to Compel Discovery as against Smith and Plaintiff Bistricec seeking compliance with the Court's prior discovery orders.

14. A hearing was held on May 20, 2004, on Defendants Motion for Contempt, for Sanctions, and to Compel Discovery. At that hearing, Hightower represented to the Court on the record that, "when Ms. Smith appeared at her deposition day two [September 30, 2003], went through the documents that the subpoena had addressed, all the documents had been produced with the exception of one account." Later in the May 20, 2004 hearing, Hightower agreed to produce the documents relating to the aforementioned "one account." The Court entered an Order dated May 28, 2004 granting Defendants' Motion to Compel and requiring compliance with the Court's prior discovery orders - and setting a specific deadline for compliance. Further, the May 28, 2004 Order specifically withheld any ruling on Defendants' Motion for Contempt and Sanctions for Plaintiff's violation of the prior discovery Orders.

03/03/2008 14:38

(FAX)

P.011/030

OR BK 7177 PG 372
7 of 25

15. Plaintiff Bistricec appeared at a continuation of his deposition on June 9, 2004. During this deposition Bistricec again confirmed that "Ms. Smith, she keeps the books and records. She's the custodian."

16. On June 16, 2004, McLaren sent another letter to Hightower by facsimile and by mail explaining that Plaintiffs still had not produced all of the documents which the Court had ordered produced in the prior discovery Orders, including the May 28, 2004 Order. McLaren described particular documents remaining to be produced. Hightower responded to McLaren by letter on June 18, 2004, informing him that all requested documents had been produced.

17. Plaintiff Bistricec appeared at a continuation of his deposition on December 13, 2005. McLaren asked Bistricec whether he had spoken to Smith regarding the production of documents. Bistricec responded affirmatively, and further testified that "My understanding the last time we visited this issue is that you requested and received 17 boxes, effectively every piece of paper that the partnership [GRL] had in its possession and Candy Smith was the custodian of all the records and I think - I recall she told me and I can testify that she gave you every document that she had."

18. After discovery had expired and exhibit lists had been exchanged, a nonjury trial on the merits of this matter commenced on May 30, 2006.

19. Plaintiff Bistricec was called as the first witness in Plaintiffs' case. Bistricec testified that certain documents were executed for each of eight (8) transactions that Plaintiffs were involved in that were important to the merits of the case. During cross-examination of Plaintiff Bistricec on June 6, 2006, Defendants pointed out that despite Bistricec's testimony and Defendants' discovery requests, Plaintiff had failed to produce the referenced documents for three (3) of the eight (8) transactions in question.

03/03/2008 14:39

(FAX)

P.012/030

OR BK 7177 PG 373
8 of 15

20. Within a few days after the June 6 trial day, Plaintiffs' counsel produced to Defendants, for the first time, alleged copies of the previously missing documents for the three (3) transactions. On June 15, 2006, the next scheduled day of trial, Plaintiffs attempted to introduce these three documents into evidence. Counsel for Defendants objected to their introduction based upon the failure to produce them in response to discovery requests and discovery Orders of the Court, or otherwise disclose them prior to trial.

21. Plaintiffs' counsel argued that these three (3) documents had been located by Plaintiffs after the June 6 trial day. Hightower gave testimony confirming that during discovery, the "10 to 20 bankers boxes" of documents produced at Smith's September, 2003 deposition were copied, reproduced, and delivered to counsel for Defendants. Hightower further testified that the three (3) new documents were not produced during discovery. Hightower testified that after the June 6 trial date, he obtained the keys to the GIRL office maintained by Smith from co-counsel for Plaintiffs, Maurice Baumgarten ("Baumgarten"), went to that office, and found two of the three missing documents.¹

22. Although Plaintiff moved for these three (3) previously "missing" documents to be introduced into evidence at trial on June 15, 2006, neither Plaintiffs nor their counsel made mention of any additional documents that: (a) were responsive to prior discovery requests and orders; (b) were located in GIRL's offices; and (c) had not been produced previously.

23. Subsequently, counsel for Defendants requested from the Court an opportunity to review any additional documents that: (a) were located in GIRL's offices; (b) were responsive to prior discovery requests and orders of the Court; and (c) had not been previously produced in discovery. In response, on June 29, 2006, Plaintiffs produced to Defendants 46 bankers boxes of

¹ Counsel for Plaintiffs testified that the third missing document was obtained from a Miami attorney, Louis Zaretsky, Esq. Mr. Zaretsky was identified by Plaintiffs and their representatives as another attorney for Plaintiff GIRL.

03/03/2008 14:39

(FAX)

P.013/030

OR BK 7177 PG 374
9 of 15

documents, containing 68,111 pages of materials. The Court finds, based on the evidence presented, that a small percentage of these documents were produced previously in discovery, and that some of these documents were not responsive to prior discovery requests and orders of the Court. However, the Court also finds that a substantial amount of the 68,111 documents produced during the trial were: (a) required to be produced by prior discovery Orders of this Court, and (b) were not produced during discovery in violation of these discovery Orders.

24. The Court finds that a number of the 68,111 documents are quite relevant to the cross examination of key witnesses in the case, and to rulings that the Court is required to make on the issue of title to the disputed properties. Three (3) years of discovery and dozens of depositions have been taken subsequent to the time that the documents should have been produced. Therefore, Defendants have been prejudiced greatly by Plaintiffs' failure to timely produce these documents.

25. Also contained within the 46 boxes/68,111 documents produced during trial are certain letters and other documents relating to the instant case dated after the September 30, 2003 document production and after Plaintiffs' representations that all documents had been produced. The existence of these documents within the 46 newly produced boxes establishes that Plaintiffs and their representatives were aware of the existence of these boxes during discovery and before trial, yet failed to produce these documents as required.

26. Among the materials produced for the first time on June 29, 2006 were documents establishing facts directly inconsistent with those testified to at trial and in deposition by Plaintiff Bistrick, Smith and Plaintiff GIRL's corporate representative, Robert Fineworke, concerning issues material to the case. One such issue involved their knowledge and involvement relating to a 1999 quit claim deed ("1999 Deed") from GIRL to Gulf of Mexico

03/03/2008 14:40

(FAX)

P.014/030

OR BX 7177 PG 375
18 of 18

Enterprises, Inc. ("GME")² which is critical in determining the validity of Defendants' Defenses of estoppel, laches and waiver.

27. In March of 2006, Plaintiff Bistrice filed an affidavit in this action asserting under oath that he "did not even become aware that Markovitz had executed the 1999 Deed until sometime in 2002, when GIRL's attorney, Nathan Hightower received documents from Old Republic Title Insurance Company."

28. During trial Plaintiff Bistrice was shown a copy of the 1999 Deed and was asked whether he had ever seen the document before 2002. Bistrice testified unequivocally that he had never seen it, nor was he aware of its existence, prior to 2002. He further testified that he was not aware that Markovitz had purported to quit claim the vacant land prior to 2002:

29. In the course of reviewing the 68,111 newly produced documents, counsel for Defendants located an Affidavit which had a facsimile date/time stamp of August 4, 2000, and had the signature of Plaintiff Bistrice dated the same day. In this Affidavit, Plaintiff Bistrice testified that he was aware of the 1999 Deed in August, 2000 -- a fact very important to Defendants' defenses of laches, estoppel, and waiver.

30. GIRL's corporate representative, Fireworker, testified repeatedly in a deposition taken February 25, 2004 that he had never seen the 1999 Deed. Counsel for Defendants located in the newly produced documents an Affidavit signed by Fireworker, dated August 4, 2000, with a facsimile time/date stamp of the same date, which established Fireworker's knowledge of the 1999 Deed directly contrary to his sworn testimony.

31. Smith, who according to Plaintiffs was an officer of GIRL and was GIRL's records custodian, testified at a deposition taken November 17, 2003, that she "didn't have

² Defendant DBKH Golf, Incorporated acquired a portion of the disputed property directly from GME in 2003. Plaintiffs dispute the validity of the GIRL to GME transaction. Therefore, Plaintiffs' knowledge and involvement concerning GME's acquisition of the property goes to the heart of the title claim in this case.

03/03/2008 14:40

(FAX)

P.015/030

OR BK 7177 PG 376
11 of 15

anything to do with preparing it [the 1999 Deed], or recording it." A copy of a check signed by Smith, made out to the Pasco County Clerk of Court, and used to record the 1999 Deed in the public records, was located in the newly produced documents. Counsel for Plaintiffs and Smith even conceded that Smith wrote the check to record the 1999 Deed at the evidentiary hearing on August 8, 2006.

32. Although Plaintiffs argue that GIRL representatives Bistricez, Smith and Firewanker were merely "mistaken" concerning their knowledge of and involvement with the 1999 Deed, the Court finds that this is not a reasonable explanation for the false testimony given by all three representatives of Plaintiff GIRL on this important issue.

33. In addition to the testimony concerning the 1999 Deed, Plaintiffs and their representatives repeatedly (and falsely) assured Defendants and the Court that all requested documents had been produced to Defendants.

34. The Court finds that the collective effect of the false testimony provided by Plaintiffs and their representatives constitutes a fraud upon the Court resulting in the loss of evidence to the Defense.

35. The Court finds that there were voluminous records in the possession, custody, and control of Plaintiffs that had been requested by Defendants during discovery which Plaintiffs' records custodian had been ordered to produce, but that were not produced prior to trial. Plaintiffs and their officers/representatives misled Defendants and the Court with repeated assurances that all requested documents had been produced. The existence of the 68,111 documents was not disclosed by Plaintiffs until several days into the trial when Plaintiffs found it to their advantage to offer into evidence some of the previously undisclosed documents in

03/03/2008 14:41

(FAX)

P.016/030

OR BK 7177 PG 377
12 OF 15

support of their claims. Only after another request was made by Defendants at trial was this large volume of previously undisclosed documents made known and available to Defendants.

36. Defendants were effectively denied the opportunity to examine the documents and determine their relevance at a time when they could incorporate them into their discovery planning, case preparation, trial strategy, and use at trial for cross-examination and other purposes. The documents produced for the first time during the trial included relevant and important documents bearing on central issues in the case.

II. CONCLUSIONS OF LAW

A. On July 14, 2006, Defendants filed their Motion for Sanctions and Contempt. Defendants' motion sought relief based upon Plaintiffs' abuses and violations of the discovery process and false testimony constituting a fraud upon the Court. The evidence presented at the August 3 hearing and in the record support Defendants' request for the imposition of the most severe sanctions on these grounds.

B. Plaintiffs' actions constitute a violation of prior discovery Orders of this Court, and demonstrate deliberate and contumacious disregard of this court's authority, as well as behavior evincing deliberate callousness in the discovery process. *Mercer v. Raine*, 443 So.2d 944 (Fla. 1983); *Marr v. State of Florida*, 614 So.2d 619 (Fla. 2d DCA 1993).

C. Defendants have presented clear and convincing evidence of actions on the part of Plaintiffs and their representatives intended to interfere with the judicial system's ability to impartially adjudicate this matter by improperly influencing the trier of fact and by unfairly

03/03/2008 14:41

(FAX)

P.017/030

DR BK 7177 PG 378
13 of 25

hampering the presentation of the Defendants' claims and defenses. *Hutchinson v. Plantation Bay Apartments*, 931 So.2d 957 (Fla. 1st DCA 2006); *Cox v. Burns*, 706 So.2d 43 (Fla. 5th DCA 1998).

D. Plaintiffs' discovery abuses and violations of the Court's orders were egregious. Plaintiffs are responsible for creating a situation during the trial, which has made striking their pleadings and entering judgment in favor of the Defendants, the only practical alternative available to resolve this matter. *Montage Group Ltd. v. Athletech Computer Systems, Inc.*, 839 So.2d 180 (Fla. 2d DCA 2004).

E. Additionally, the false testimony provided to this Court by Plaintiffs and their representatives, constituting a fraud on the Court, warrants the severe sanction of striking the pleadings in this case. *Morgan v. Campbell*, 816 So.2d 251 (Fla. 3d DCA 2002); *Austin v. Liquid Distributors*, 928 So.2d 521 (Fla. 3d DCA 2006); *Hutchinson v. Plantation Bay Apartments*, 931 So.2d 957 (Fla. 1st DCA 2006).

Based on the foregoing findings and conclusions, it is

ORDERED AND ADJUDGED as follows:

1. Defendant's Motion for Contempt and Sanctions is hereby **GRANTED** on the grounds set forth therein as more specifically stated below.

03/03/2008 14:42

(FAX)

P.018/030

OR BK 7177 PG 379
14 of 15

2. The Pleadings filed on behalf of Plaintiffs Bistrick and GRL as to the Quiet Title in Count I of Plaintiff's Second Amended Complaint and Count I of Defendants Counterclaim are hereby stricken with prejudice.

3. Good and marketable title to the properties that are the subject of the instant case (the "Subject Property") is hereby quieted in Defendants. Defendants shall be entitled to immediate possession of the Subject Property and entry of judgment in their favor as to the issues of quiet title to the Subject Property, specifically:

A. Oceanside Acquisitions LLC shall be entitled to immediate possession and the entry of a judgment quieting title in its favor as to Condominium Units 104-A, 105-A, 111-A, 202-A, 210-A, 301-A, 302-A, 308-A, 311-A, 401-A, 406-A, 408-A, 510-A, 601-A, 704-A, 706-A, 803-A, and 804-A, of GULF ISLAND BEACH AND TENNIS CLUB I, A CONDOMINIUM, according to the Declaration of Condominium thereof filed for record in Official Records Book 1381 at Page 932 of the Public Records of Pasco County, Florida, together with all dock spaces, parking spaces and other limited common elements appurtenant therein, and Condominium Unit 201-W of GULF ISLAND BEACH AND TENNIS CLUB II, A CONDOMINIUM according to the Declaration of Condominium thereof filed for record in Official Records Book 3300 at Page 208 of the Public Records of Pasco County, Florida; and

B. DBKN Gulf Incorporated shall be entitled to immediate possession and the entry of judgment quieting title in its favor as to a parcel of land lying in SECTION 32, TOWNSHIP

03/03/2008 14:43

(FAX)

P.019/030

OR BK 7177 PB 380
15 of 15

24 SOUTH, RANGE 16 EAST, Pasco County, Florida, being more particularly described as follows:

Commence at the Northwest corner of the Northeast one-quarter (1/4) of Section 33, Township 24 South, Range 16 East; thence run South 29° 36' 30" West a distance of 3170.03 feet to the POINT OF BEGINNING; thence run due South a distance of 883.80 feet; thence run South 83° 03' 23" West a distance of 33.41 feet; thence run South 08° 30' 58" East a distance of 319.09 feet; thence run South 03° 00' 00" West a distance of 563.3 feet; thence run North 87° 00' 00" West a distance of 91.27 feet; thence run South 03° 00' 00" a distance of 134.74 feet; thence run South 89° 29' 25" West a distance of 175.97 feet; thence run due North a distance of 1341.45 feet; and thence run North 39° 36' 30" East a distance of 257.99 feet to the POINT OF BEGINNING.

4. This Court retains jurisdiction and reserves ruling as to the entitlement to, and the amount of, any damages, costs, attorneys' fees, and any other relief sought by Defendants' Motion for Contempt and Sanctions.

DONE AND ORDERED in Chambers at Dade City, Pasco County, Florida, on this 30 day of Aug - 2006.

[Signature]
Wayne L. Cobb
Circuit Court Judge

Copies furnished to:

- Scott A. McLaren, Esquire
- Eric E. Page, Esquire
- P. Hutchinson Brock, II, Esquire
- William S. Dufre, Esquire
- Robert W. Lang, Esquire
- Maurice Banngarten, Esquire
- R. Nathan Hightower, Esquire
- Deborah P. Fitzgerald, Esquire
- Peter Valori, Esquire

STATE OF FLORIDA
 COUNTY OF PASCO
 THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE OR OF PUBLIC RECORD IN THIS OFFICE, WITNESSED BY HAND AND OFFICIAL SEAL THIS 6th DAY OF SEPTEMBER 2006
 JUDITH M. BAKER, CLERK OF CIRCUIT COURT
 BY *[Signature]* DEPUTY CLERK

03/03/2008 14:43

(FAX)

P.020/030

RECORDING; SEE BODY FOR SPECIFIC PARTIES

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

GENERAL JURISDICTION DIVISION B

CASE NO: 51-2003-CA -942ES

JUDGE: WAYNE L. COBB

ALEX BISTRICER, as limited Partner of GULF ISLAND RESORT L.P., et al.,

Plaintiffs/Counterclaim Defendants,

vs.

COASTAL REAL ESTATE ASSOCIATES, INC., etc., et al.,

Defendants/Counterclaim Plaintiffs.

COASTAL REAL ESTATE ASSOCIATES, INC., etc., et al.,

Defendants/Counterclaim Plaintiffs/ Third-Party Plaintiffs,

vs.

CANDY SMITH, etc., et al.,

Third-Party Defendants.



RED PITTMAN, PASCO COUNTY CLERK 06/27/07 03:07 PM OR BK 7549 PG 1610

FILED FOR RECORD PASCO COUNTY FLORIDA 2007 MAY -9 PM 2:55

PARTIAL FINAL JUDGEMENT ON ACTION TO QUIET TITLE

This action was tried before the Court. Matters arose during trial, which resulted in an Evidentiary Hearing on August 8, 2006, upon a Motion for Contempt and Sanctions. This Court granted Defendants' Motion for Contempt and Sanctions in an Order dated August 30, 2006. Therefore, pursuant to Defendants, (Oceanside)

R•FM•DC

EXHIBIT B

EXHIBIT

2

03/03/2008 14:44

(FAX)

P.021/030

CASE NO: 51-2003-CA-942ES

Acquisitions, LLC) and (DBKN Gulf Incorporated's) Motion for Entry of Final Judgment
as to Quiet Title and Slender of Title Actions, it is

OR BK 7549 PG 1611
2 of 3

ADJUDGED that:

1. Good and marketable title to Units 104-A, 105-A, 111-A, 202-A, 210-A, 301-A, 302-A, 308-A, 311-A, 401-A, 406-A, 408-A, 510-A, 601-A, 704-A, 706-A, 803-A, and 804-A, of GULD ISLAND BEACH AND TENNIS CLUB I, A CONDOMINIUM, according to the Declaration of Condominium thereof filed for record in Official Records Book 1381, at Page 992, of the Public Records of Pasco County, Florida, together with all dock spaces, parking spaces and other limited common elements appurtenant thereto, and Condominium Unit 201-W of GULD ISLAND BEACH AND TENNIS CLUB II, A CONDOMINIUM, according to the Declaration of Condominium thereof filed for record in Official Records Book 3300, at Page 208, of the Public Records of Pasco County, Florida, is quieted in favor of Oceanside Acquisitions, LLC, which shall be entitled to immediate possession thereon.

2. Good and marketable title to the property known as, SECTION 32, TOWNSHIP 24 SOUTH, RANGE 16 EAST, Pasco County, Florida, being more particularly described as follows:

Commence at the Northeast corner of the Northeast one-quarter (1/4) of Section 33, Township 24 South, Range 16 East; thence 89° 36' 30" West a distance of 3170.03 feet to the POINT OF BEGINNING; thence run due South a distance of 883.80 feet; thence run South 83° 03' 23" West a distance of 33.41 feet; thence run South 06° 30' 58" East a distance of 319.09 feet; thence run South 03° 00' 00" West a distance of 5.63 feet; thence run North 87° 00' 00" West a distance of 91.87 feet; thence run South 03° 00' 00" a distance of 134.74 feet; thence run South 89° 29' 25" West a distance of 175.92 feet; thence run due North a distance of 1341.45 feet; and thence run North 89° 36' 30" East a distance of 287.99 feet to the POINT OF BEGINNING.

03/03/2008 14:44

(FAX)

P.022/030

CASE NO: 51-2003-CA -942ES

Is quieted in favor of DBKN Golf Incorporated and said Defendant shall be entitled to immediate possession of the subject property and entry thereon.

3. This Court retains jurisdiction over this action to award attorney's fees and costs pursuant to Defendant's pending Motion for Attorney's Fees and Costs.

DONE AND ORDERED in Chambers, at Pasco County, Florida, this 9 day of

May, 2007.

[Signature]
CIRCUIT JUDGE

Copies furnished to:

ATTORNEYS FOR PLAINTIFF/COUNTER-DEFENDANT AND THIRD-PARTY DEFENDANTS

Maurice Baumgarten, Esquire
ANANIA, BANDELAIDER, BLACKWELL, BAUMGARTEN, TORRICELLA & STEIN
Bank of America Tower - Suite 4300
100 SE 2nd St.
Miami, FL 33131

CO-COUNSEL FOR PLAINTIFF/COUNTER-DEFENDANT AND THIRD-PARTY DEFENDANTS

Charles L. Neustein, Esquire
Charles L. Neustein, P.A.
777 Arthur Godfrey Road, 2nd Fl.
Miami Beach, FL 33140

Scott A. McLaren, Esquire
HILL, WARD AND HENDERSON, P.A.
101 East Kennedy Boulevard, Suite 3700
Tampa, FL 33602

ATTORNEYS FOR DEFENDANT STEVEN CARLYLE CRONIG

Deborah Poore Fitzgerald, Esquire
WALTON LANLAFF, SCHROEDER & CARSON, LLP
Corporate Center - Suite 2000
100 E. Broward Blvd.
Ft. Lauderdale, FL 33301-3503

D ALEX BISTRICEZ, Individually as limited partner of GULF ISLAND RESORT, L.P., and Individually as shareholder of GULF ISLAND RESORT, INC.

PARTIES TO FS PER AMM.
JAMES GANSEHEIMER. 6-27-07
JGA

OR. BK 1049 PM 1012
3 of 3