

De Soleil S. Beach Residential Condo. Ass'n, Inc. v. De Soleil S. Beach Ass'n, Inc., No. 3D19-2013, 2021 WL 2212867 (Fla. 3d DCA June 2, 2021).

Third DCA Holds that Amendments to the Florida Statutes on Condominiums Do Not Apply Retroactively Without Express Statutory Intent

This dispute arose out of the operation of the Z Ocean Hotel (the “Building”) which is made up of three parcels: a garage parcel, a commercial parcel, and a residential parcel. In 2006, the South Beach Resort Development, LLC and Louis Taic (the “Developers”) constructed the Building, which was subsequently operated in part by De Soleil Beach Residential Condominium Association, Inc. (the “Condo Association”). The Developers then recorded a Master Declaration and created the De Soleil South Beach Association, Inc. (the “Master Association”). The Master Association’s board consisted solely of the owners of the three parcels: the Developers, as owner of *both* the garage *and* commercial parcels; and the Condo Association, which was governed by a board and a membership consisting of the owners of the eighty condo units. The Developer owned twelve of the eighty units and was, therefore, also a member of the Condo Association. The Developers also recorded a Declaration of Condominium which made Condo Association responsible for collecting assessments on the Master Association’s behalf. In 2016, the Developers amended the Master Declaration to allow the Master Association to collect assessments directly. The Condo Association held a board meeting and purported to suspend voting rights of most of its members (including the Developers) for non-payment of assessments to eliminate the need to satisfy the 75% membership approval required to file a lawsuit.

In 2018, the Condo Association sued the Developers and the Master Association, alleging a conflict of interest between the Condo Association and the Master Association. The Condo Association asked the court to find that the Developers reached around the Condo Association’s “purportedly exclusive statutory and contractual power” to collect assessments from the Condo Association’s members. The lower court ruled in the Developers’ favor, reasoning that the Condo Association lacked the power to suspend the Developer’s voting rights for non-payment of assessments and, therefore, lacked the 75% membership approval needed to file a lawsuit.

On appeal, the Third DCA affirmed the lower court’s decision. It reasoned that: (1) because condominium declarations are “creatures of contract, amendments to the Condominium Act, Ch. 718, Florida Statutes, do not apply retroactively without express statutory intent;” (2) the Declaration of Condominium in this case was recorded and became effective in 2006, while section 718.303, Florida Statutes, was not amended to permit an association to “suspend the voting rights of a member due to nonpayment of any monetary obligation” until 2010; and (3) the Declaration provided for specific remedies when a unit owner became delinquent in payment of fees, and voting rights suspension was *not* among them.