



April 29, 2021

RE: Litigation Summary Update

The Resort has sent a document called “**Order & Hearing Recap**” dated April 22, 2021, claiming that AAFPO’s Litigation Summary Update of the same date contained misrepresentations. **This is not true.**

While the Resort claims it had nothing to do with the resignation of directors in July and August of 2020, the Resort fails to mention that it refused to cooperate in any way with AAFPO because it claimed AAFPO was not a legal board after the resignation of Ginger Lagasse and the subsequent appointment of replacement directors on August 13, 2020. Examples of the correspondence from the Resort’s representatives and legal counsel that preceded the litigation are attached as exhibits to the Motion for Partial Summary Judgment. The Resort’s legal position is contained in its Response to the Motion. The Resort has maintained its position that the Board was not legally constituted until we obtained an Order granting our Motion for Partial Summary Judgment from the Court.

From the correspondence and the conduct of the Resort, including its ex officio member objecting to a Board meeting in September 2020 and leaving the meeting in protest, it is clear that the Resort refused to conduct business with the Board. Without the Resort’s cooperation, AAFPO cannot fulfill its duties to its members, including the duty to review and approve budgets and monitor compliance with the Amended Joint Plan of Reorganization’s requirements that assessments are used for the maintenance, operation and repair of the Amenities. Without a legally constituted Board, AAFPO also could not legally hold an election to fill vacancies in the Board. It is disingenuous for the Resort to suggest that AAFPO’s Board did not need to seek a legal determination from the Eighth Judicial District Court as a result of the Resort taking the position it did on the appointment of directors.

The Resort continues to complain that the members of AAFPO and the Resort were not given “notice” of the lawsuit. In the entire history of AAFPO, engaging in a lawsuit has never been put up for a vote from the membership. It’s simply not the way a Homeowner Association is meant to operate. And even if AAFPO’s Board had tried to inform the membership of the lawsuit prior to it being filed, AAFPO’s Board was not given access to the database the Resort uses to e-mail AAFPO’s members. Therefore, AAFPO was unable to communicate this kind of information to its members. We are hopeful that we will get access to database through the lawsuit.

The Resort's "notice" complaint begs the question of what the Resort would have done had it been given "notice" of the impending lawsuit? Counsel for AAFPO spoke with the Resort's Executive General Counsel, Daniel Rakes in early September 2020 to see why the Resort was taking this position. Counsel for AAFPO then set forth the legal authority for the Board's appointment of directors to fill vacancies in a letter dated September 8, 2020. The Resort's response, through Mr. Rakes, on September 16, 2020 constituted a renewed refusal to accept the legitimacy of the Board despite the clear legal authority for the board appointments. This was not the first time the Resort took the position that it would not conduct business with the Board because the Resort claimed it was not legally constituted. Nor was it the second, third, fourth or fifth time the Resort took that position in response to requests from the Board and its attorney. There is simply no question that the Resort would not have recognized this Board nor allowed the necessary conduct of the Board's business without the Court's Order.

Fortunately, Judge Chavez recognized that the Resort's legal arguments against the legitimacy of the Board were without legal merit. And we are hopeful that the Resort will now begin providing information it is legally required to provide to the AAFPO Board.

The Resort is also wrong to claim that AAFPO's last Litigation Summary Update "intentionally misstated" that the Court addressed whether AAFPO Board members are required to sign an NDA. As a result of the Motion to Compel, as granted by the Court at hearing on April 22, 2021, AAFPO's Board members do not have to sign an NDA.

The Resort also claims that AAFPO Boards have been signing NDAs for the past 23 years. This is similar to representations the Resort has made in the past that they have never had any disputes with AAFPO's Board in the past 23 years. In fact, the Board did have disputes with the Resort regarding access to information, such as the membership database, for several years. During that time there was disagreement about whether Board members would have to sign NDAs to obtain information, and whether Board members were receiving appropriate information from the Resort.

The Resort also is incorrect to state that a Protective Order is "more restrictive" than what the Resort had previously proposed, which was a Protective Order that did not contain a provision allowing AAFPO to challenge the confidentiality of documents, and to have the Board sign NDAs. Rather, the Court ordered that a Protective Order would contain a provision that allows the Board to challenge the confidential designation of any documents produced by the Resort. The Court will decide what documents are in fact confidential, and what documents are not. And the Board will be able to use the Court's decisions on documents we hope will be timely produced to determine what documents the Board may share with AAFPO's members, and what documents may be properly subject to the Protective Order.

Finally, the Resort is incorrect to claim that AAFPO is obtaining information that was offered to the Board previously. The Resort may provide summaries of what it claims it spent on Amenities in the previous year, but has never offered to provide backup

documentation of the same. The Resort has never offered to provide bank records for the segregated account in which assessments are to be held in trust for the benefit of AAFPO. The Resort has never offered to share information on what members are past due in assessments and how much from the database that it continues to refuse to share with AAFPO.

We are hopeful that the Resort will produce documents consistent with the Court's Order and not attempt to cause further delay and expense to AAFPO and its members.

Thanks!

Your AAFPO Board

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