

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CITY OF RIVIERA BEACH,

Plaintiff,

CIVIL DIVISION

vs.

CASE NO.: 502006CA014100XXXXMB AA

DAWN PARDO, DIANA DIMFEO;
KATHY GROOVER; DRAGA M.
LINDBLOM; AND GORDON
ROWSE,

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**SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION**

Defendants,

and

OMRD, LLC,

Intervenor.

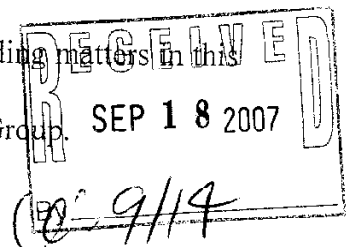
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW the Plaintiff the City of Riviera Beach (the "City"), by and through its undersigned counsel hereby files its Motion for Summary Judgment to the Intervenor, OMRD, LLC's ("OMRD") Counterclaim and Cross-Claim and in support states as follows:

GENERAL BACKGROUND

On or about December 21, 2006 the City instituted the current action. On or about January 11, 2007 the Defendants: Dawn Pardo; Diana Dimeo; Kathy Groover; Draga M. Lindblom; and Gordon Rowse (collectively the "Pardo Group"), filed their Answer and Counterclaim to the Complaint. On or about February 27, 2007 OMRD intervened in the action. On or about March 1, 2007 OMRD filed its Counterclaim and Cross-Claim.

On or about April 27, 2007 the City dismissed its Complaint. On or about June 21, 2007 the Pardo Group dismissed their Counterclaim against the City. The only outstanding matters in this action are the claims being brought by OMRD against the City and the Pardo Group.



THE PARDO GROUP'S MOTION FOR SUMMARY JUDGMENT

On or about September 5, 2007 the Pardo Group filed its Motion for Summary Judgment, a copy of which is attached to this Motion as Exhibit "1". The City hereby adopts the Pardo Group's Motion for Summary Judgment and incorporates it herein by reference.

ADDITIONAL UNDISPUTED FACTS

A Disposition and Development Agreement was executed by OMRD, the City of Riviera Beach and the Riviera Beach Community Redevelopment Agency on or about December 18, 2006 (the "Agreement"). The Agreement was attached to OMRD's Counterclaim and Cross-Claim as Exhibit "A" and incorporated herein by reference.

Article 3, Section 3.01 (d) of the Agreement specifically acknowledges that:

Subsequent to the circulation of the initial drafts of the Phase I Lease, Phase II Lease and this Agreement, various petitions were circulated challenging the ability of the City to enter into ninety-nine (99) year leases and attempting to limit the height of any buildings constructed on the beach to five (5) stories. As a result of the foregoing challenges: (i) the initial drafts of the Phase I Lease, Phase II Lease and this Agreement were modified to, among other things, limit the terms of the Phase I Lease and Phase II Lease to fifty (50) years so as to permit the Project to continue to be pursued during the period of time that the petitions were reviewed and any required referendums were held, and (ii) the Option Agreement was entered into which provides, among other things, that: (a) if the foregoing petitions were determined not to satisfy Florida law and as a result no referendum is held with respect to such petitions, or (b) referendum(s) are held as a consequence of the petitions and such referendum(s) is/are defeated or if passed deemed not applicable to the Project by a court of competent jurisdiction, then the Phase I Lease, the Phase II Lease and the Disposition and Development Agreement, would promptly be amended, by entering into written amendments, as provided in Articles 3.02, 3.03 and 3.04 of the Option Agreement. **The Developer hereby waives any claim it might have against the City or Agency as a result of the passage of the referendum described above or a court of competent jurisdiction's reversal of any determination that the petition's did not satisfy Florida law.** In addition, the Developer acknowledges that the neither the City nor Agency have a duty to challenge the procedures or result of said petitions or referendums. (Emphasis added).

ADDITIONAL LEGAL ARGUMENT

It is clear by the very terms of the Agreement that OMRD, the City and the CRA contemplated the proposed referenda and initiatives brought forth by the citizens when the Agreement was entered into. It is further evident by the very terms of the Agreement that OMRD specifically waived any claims it could have had against the City as it relates to the duration of the Phase I Lease, Phase II Lease or height limitations for the municipally-owned property.

Despite these specific waivers by OMRD as to the City, OMRD has acted in direct violation of the Agreement by adding the City to the instant action and by further seeking affirmative relief against the City in the instant action. The Agreement is clear and unambiguous in its terms and directly prohibits OMRD from pursuing this action against the City. Any argument to the contrary is in violation of the contract itself and further runs afoul of the parole evidence rule.

The parole evidence rule is a rule of substantive law that is essential to the certainty and stability of written instruments. Where there are no ambiguities, the best evidence of the intent of the parties is the contract itself, and the plain meaning of the language used in the contract controls. United States on Behalf of Small Business Admin. v. South Atlantic Production Credit Ass'n, 606 So.2d 691 (Fla. 1st DCA 1992). If the language of a document is clear, the court cannot indulge in construction or application of the contract's plain meaning. Lambert v. Berkley South, 680 So.2d 588 (Fla. 4th DCA 2000), Lakeridge Green Condominium v. Silberman, 765 So. 2d 95 (Fla. 4th DCA 2000); and, Wise v. Quina, 174 So.2d 590 (Fla. 1st DCA 1965). The rule provides that parole evidence is inadmissible for the purpose of contradicting or substantially varying the terms of a valid written agreement. "...[T]he terms of a valid written instrument cannot be varied by a verbal agreement or other extrinsic evidence where such agreement was made before or at the time of the instrument in question." Airlift International, Inc. v. Boyd, 280 So.2d 57 (Fla. 3d DCA 1973). "This rule prohibits the use of parole evidence . . . to contradict, vary, defeat, or modify a complete[,] unambiguous written instrument or to change, add to, or subtract from it, or affect its construction."

Id.

**STANDARD OF REVIEW FOR SUMMARY JUDGMENT IS NO GENUINE
ISSUE AS TO MATERIAL FACT**

Summary Judgment is appropriate where there is no genuine issue as to material fact and one of the parties is entitled to judgment as a matter of law on those undisputed facts. Jones v. Stoutenburgh, 91 So.2d 299 (Fla. 1956) and Carpineta v. Shields, 70 So.2d 573 (Fla. 1954).

CONCLUSION

Based on the foregoing, there are no genuine issues as to material facts and as such, Summary Judgment for the Counterclaim/Cross-Claim should be granted in favor of the City.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to John M. Jorgenson, Esq., Scott Harris Bryan et. al., 4400 PGA Blvd., Suite 800, Palm Beach Gardens, FL 33410 and Gary Dunkel, Esq., Greenberg Traurig, P.A. 777 So Flagler Drive, Suite 300 E, West Palm Beach, FL 33401 this 14 day of September 2007.

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