

CHAPTER SEVEN

THE BEACON ON 3RD

LAWSUITS AND LOSSES



Jill Stern Capron had moved to St. Petersburg in 1995 and rented Apartment 310 in Carlton Towers. During the conversion project she sublet a unit on the 8th floor. Despite her 5' stature and age, 90, her daughter recalls that "she was completely independent. She didn't drive any longer, but otherwise was very healthy."

"She was incredibly social, an effervescent person," remembered Rich Alexander. "Jill was just charming. A naturally nice person."

That changed in the summer of 2005 when her health declined suddenly and alarmingly.

“I saw her turning red and convulsing,” Janet painfully remembers. “Mom was in pain so she went to the doctor. She was in the hospital for a week in critical care before a doctor diagnosed the cause.”

At the August 16, 2005 board meeting, president Walt Hall reported that a resident had been rushed to the hospital and diagnosed with carbon monoxide poisoning.

“Both the health department and an environmental remediation contractor retained by the developer had been immediately brought on site and have stated the problem was isolated and has been brought under control at this time.”

“Carbon monoxide rises, and it was trapped in the highest spot—where my mother was staying,” Janet said. “A forensic engineer told us it was the highest carbon monoxide reading he had ever seen in a home.”

Unfortunately, it was too late for Mrs. Capron. She died the next day, August 17, 2005.

According to her daughter, investigators later determined that a freon leak from the air conditioning system in the building’s mechanical room caused a hot-water boiler to emit high levels of carbon monoxide.

NOTE - Gas fumes now vent through a system that terminates away from the building. Gas and refrigerant alarms have also been installed in the mechanical room. These steps prevent the possibility of a similar accident in the building.



Acting as personal representative of her mother's estate, Janet Capron then filed suit against Carlton Towers Partners, Magellan Construction, the architectural firm of Wedding, Stephenson, and Laguardia, and the homeowners association.

The lawsuit alleged that "During the installation of the internet cable in Unit 814, Magellan, by and through its employees, actual and/or apparent agents and servants, drilled holes into the chimney flue in violation of the State Minimum Building Code as adopted by Pinellas County, Florida."

In his deposition, John Marling testified

"Skyway Communications, in channeling in its new wiring into this unit, inadvertently punctured the chimney wall leaving a hole below the ceiling level of Unit 814. ... the burn from the hot water boiler created an excessively high carbon monoxide count, which went up the chimney with some of the gas escaping through the hole into Unit #814."

Following multiple court filings, depositions, and delays, the homeowners association president reported in April of 2007 that a settlement had been reached regarding the Capron lawsuit. He cited the high cost of the lawsuit; rising cost of attorneys' fees, impact on the sale of units, and the securing of financing of units. In order to free the association from litigation the board agreed to settle with the Plaintiff in the amount of \$120,000.

On July 10, 2007, Circuit Court Judge Amy Williams dismissed with prejudice the lawsuit against the homeowners association "with each party to bear its own attorneys' fees and costs."

It was another two years before the case reached its conclusion in the Circuit Court for Pinellas County, Civil Division. In the Final Judgment on August 6, 2009 Judge Amy Williams "adjudged that Plaintiff Janet Capron... recover from Defendant Carlton Towers Partners, LLC the sum of \$1,000,000.

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JANET CAPRON, as the personal representative
of the Estate of JILL S. CAPRON, deceased
Plaintiff,
vs.
TBG OF TAMPA, INC. d/b/a THE BEACON GROUP,
a Florida Corporation;
CARLTON TOWERS PARTNERS, L.L.C.,
a Florida Limited Liability Corporation; and
MAGELLAN CONSTRUCTION, L.L.C.,
A Foreign Limited Liability Corporation;
Defendants.

Case No.: 06-4327-CI
Division: 19

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FINAL JUDGMENT

THIS CAUSE having come before the Court upon the stipulation of the parties for entry of this JUDGMENT, and the Court being otherwise fully advised in the premises,

IT IS ADJUDGED that Plaintiff Janet Capron, as the personal representative of the Estate of Jill S. Capron, 290 West 12th Street, New York, NY 10014, recover from Defendant Carlton Towers Partners, L.L.C., 209 Town Center Boulevard Davenport, Florida 33896 (FEI#223877330), the sum of \$1,000,000.00 that shall bear interest at the rate of eight per cent (8%) a year, for which let execution issue.

ORDERD at St. Petersburg, Pinellas County, Florida, on August 6, 2009.

Amy Williams
Honorable Amy M. Williams
Circuit Judge

Six weeks later, on September 29, 2009 the same judge adjudged that Magellan Construction, LLC also pay the sum of \$1,000,000.

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JANET CAPRON, as the personal representative
of the Estate of JILL S. CAPRON, deceased

Plaintiff,

vs.

TBG OF TAMPA, INC. d/b/a THE BEACON GROUP,
a Florida Corporation;
CARLTON TOWERS PARTNERS, LLC,
a Florida Limited Liability Corporation; and
MAGELLAN CONSTRUCTION, LLC,
A Foreign Limited Liability Corporation,

Defendants.

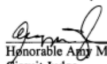
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Division: 10
KAREN BURKE
CLERK OF CIRCUIT COURT
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ST. PETERSBURG BRANCH

FINAL JUDGMENT

THIS CAUSE having come before the Court upon the stipulation of the parties for entry of this JUDGMENT, and the Court being otherwise fully advised in the premises,

IT IS ADJUDGED that Plaintiff Janet Capron, as the personal representative of the Estate of Jill S. Capron, 290 West 12th Street, New York, NY 10014, recover from Defendant Magellan Construction, LLC, whose address is 980 N. Michigan Avenue, Suite 1110, Chicago, Illinois 60611, (FEI# 320084984), the sum of \$1,000,00.00 that shall bear interest at the rate of eight per cent (8%) a year, for which let execution issue.

ORDERD at St. Petersburg, Pinellas County, Florida, on September 29, 2009.


Honorable Agnes M. Williams
Circuit Judge

HOMEOWNERS VS. DEVELOPERS

The conversion of the ten story high rise residential tower at 470 3rd Street S had taken just over a year and a half, and cost \$6 million dollars, according to the developers. Studios were selling for \$130,000, one and two bedroom condominiums for up to \$330,000.

Although Carlton Towers Partners had officially turned the building over to the homeowner association, not all condo owners were satisfied with the work that had been performed. Homeowners reported defects in the HVAC system, the roof, and the jalousie windows.

A Transition Committee reported that the main roof needed to be replaced despite its belief that the developer had promised it would be replaced as part of the conversion.

And the windows were a recurring theme.

Nick Toth remembered "... paint chips started falling off. And the windows—they started falling out."



"One (window) pane fell out while I was cleaning it," recalled Pat Garvey. "and crashed to the parking deck beneath our unit. Luckily, there was no damage to any person or property."

HOA president Walt Hall reported that no response had been received from the developer regarding the building's deficiencies, and the Association had filed legal action against the developer, the developer's architect and the developer's engineer seeking compensation for costs incurred and to be incurred for the correction of various construction deficiencies, concerning the boiler, the HVAC & ventilation system, waterproofing, and window replacement, as supported by third-party engineering and roofing reports.

"I never saw John Marling or his wife make promises about the windows," said Rich Alexander. "John was forthright. He told me, 'We wouldn't have made any money if we did the windows. It would've added \$15,000 per unit and priced them out.' I didn't like it—but it made sense. Still, the time to replace windows is when units are empty."

The Association's initial lawsuit was dismissed when Circuit Court Judge Mark Shames ruled that allegations of fraud against the developers could not be pursued collectively by the Association—each unit owner would have to file an individual claim.

In the years that followed, consultants were retained, depositions taken, and the case repeatedly amended, with motions filed, denied, and refiled.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA CIVIL ACTION

THE BEACON ON 3RD STREET
CONDOMINIUM ASSOCIATION, INC., a
Florida not-for-profit corporation

Plaintiff,

CASE NO. 07-2300-CI 13

v.

CARLTON TOWERS, LLC, a Florida
limited liability corporation, JOHN H.
MARLING, WEDDING & STEPHENSON
ARCHITECTS, INC., a Florida corporation
and MARK W. STEPHENSON


Defendants.

ORDER ON STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

THIS CAUSE having come before the Court upon the above Stipulation, it is hereby ORDERED
AND ADJUDGED as follows:

1. The Court hereby approves the Stipulation for Voluntary Dismissal entered into between the parties.
2. Each party shall bear its own attorney's fees and costs related to the prosecution and defense of this case.

DONE AND ORDERED in Chambers, at Pinellas County, Clearwater, Florida on this 23
day of July, 2008.


HONORABLE MARK I. SHAMES
CIRCUIT COURT JUDGE

Copies furnished to:
H. O. Brock, Jr., Esquire
Peter Vilmos, Esquire
V. James Dickson, Esquire
Frank Ruggieri, Esquire

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During an emergency board meeting in the summer of 2008, Adrian Langford, the board's liaison for legal matters, reported meeting with developer John Marling, who expressed a willingness to work with the Association to resolve outstanding issues. Langford emphasized that any settlement would require dropping the lawsuit and securing letters of indemnification.

A month later, then-president Deby Cassill announced that the lawsuit against the developer and architectural and engineering firms had been terminated, with all parties agreeing to bear their own legal costs and no retribution to follow. Judge Shames officially dismissed the case on July 23, 2008.

After three years, the Beacon on 3rd board of directors voted unanimously to use reserve funds—up to \$50,000—for expenditures related to a new roof. The windows were not replaced for another decade.

A RECESSION HITS THE BEACON

When the global recession struck in 2008, its impact reached every level of the housing market—including the recently converted Beacon on 3rd Street. The building, already balancing the challenges of post-conversion repairs and ongoing legal matters, was soon confronted with a wave of owner foreclosures and unpaid Association dues.

In September of 2008, Treasurer Mike Harrison reported that sixteen units were already in some stage of lien or foreclosure. The Association anticipated roughly \$15,000 in uncollected dues by

year's end—a serious shortfall for a building still finding its financial footing. To manage the strain, board members brainstormed cost-saving ideas, from installing solar panels to eliminating the building's internet service and even leasing rooftop space for a cell tower.

By 2009, things had grown worse. In October Treasurer John Rohloff reported losses exceeding \$50,000 for the year, with nearly 15% of owners unable to pay monthly fees. The Association was losing \$7,500 a month, forcing difficult choices between maintaining reserves and funding essential repairs.

A year later, the board turned to a firm specializing in condominium lien and foreclosure recovery, to handle collection efforts. At that time, fourteen units were in foreclosure and several others in bankruptcy. The unpaid assessments had swelled to nearly \$250,000.

Board President Deby Cassill and the directors began taking steps: forgiving small balances under \$20 to clarify the books, and invoking a new Florida statute that allowed the Association to collect rent directly from tenants of delinquent owners. Though the Beacon's finances remained fragile through 2010, careful management and perseverance prevented deeper losses.

Better days would surely lay ahead. Right?

