

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ALICE GUAN,

Appellant,

v.

Case No. 5D18-3633

ELLINGSWORTH RESIDENTIAL
COMMUNITY ASSOCIATION, INC.,

Appellee.

_____ /

Opinion filed August 23, 2019

Nonfinal Appeal from the Circuit
Court for Seminole County,
Debra S. Nelson, Judge.

Dorothy F. Easley, of Easley Appellate
Practice PLLC, Miami, and John W.
Zielinski, of NeJame Law, P.A., Orlando, for
Appellant.

Matthew B. Bernstein and Timothy S.
Kazee, of Vernis & Bowling of Central
Florida, P.A., Deland, and Carlos R. Arias,
and Laura M. Ballard, of Arias
Bosinger, Altamonte Springs, for Appellee.

PER CURIAM.

Appellant, Alice Guan, timely appeals the trial court's order that Appellee,
Ellingsworth Residential Community Association, Inc., is entitled to proceed with its claim

against Appellant despite the binding arbitration requirement contained in the Declaration of Covenants, Conditions and Restrictions for Ellingsworth.¹ We reverse.

Appellant modified the landscaping surrounding her home without authorization from Appellee, the homeowners' association for the Ellingsworth neighborhood in which Appellant resides. Appellee demanded by letter that Appellant restore her landscaping.

The Declaration required disputes between the parties to be subject to negotiation in good faith, mediation, and then a demand for arbitration within thirty days after termination of the mediation proceeding, otherwise the dispute is waived.² Appellant

¹ This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).

² Specifically, the Declaration provides:

ARTICLE XII
CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that all disputes and claims regarding alleged defects ("Alleged Defects") in any Improvements on any Lot or Common Area will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers (including Declarant), the Association, the Board, and all Owners shall be bound by the following claim resolution procedures.

. . . .

Section 12.3. Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 11.4 [re: Approval of Litigation] and Section 12.4 of this Declaration. . . .

Section 12.4. Alternative Dispute Resolution. Any dispute or claim between or among . . . (c) the Association and any Owner, regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration . . . (collectively a "Dispute"), shall be

declined to restore her landscaping, and the parties proceeded to negotiation and mediation. The mediator declared an impasse, and Appellee sought to resolve the

subject first to negotiation, then mediation, and then arbitration as set forth in this Section 12.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

Section 12.4.1. Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. . . .

Section 12.4.2. Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 12.4.1 above within such time period as may be agreed upon by such parties . . . , the party instituting the Dispute (the “Disputing Party”) shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation

. . . .

Section 12.4.3. Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 12.4.2 above, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 12.4. If the Disputing Party does not submit the Dispute to arbitration within thirty days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings. . . . Subject to the limitations imposed in this Section 12.4, the arbitrator shall have the authority to try all issues, whether of fact or law.

dispute in court, rather than submitting the dispute to binding arbitration as required by the Declaration.

Appellant argues that the Declaration required Appellee to submit the dispute to binding arbitration, and that Appellee's claim is now waived because it failed to do so within thirty days. Based upon the clear terms of the Declaration, we agree that Appellee was required to arbitrate the dispute within thirty days after termination of mediation.

Despite the clear terms of the Declaration, Appellee argues that it was nevertheless entitled to pursue its remedy in court pursuant to section 720.311, Florida Statutes (2015). The plain language of section 720.311(2)(c), however, does not support Appellee's position.

Section 720.311(2)(c) provides that if a dispute is not resolved at mediation, "the parties may file the unresolved dispute in a court of competent jurisdiction or elect to enter into binding or nonbinding arbitration." Thus, section 720.311 does not prohibit the parties from agreeing to arbitration. Rather, that statute expressly authorizes the parties to arbitrate, and the parties agreed to do so in the Declaration here.

Given the clear language in both the Declaration and section 720.311, we conclude that Appellee waived its claims against Appellant when it failed to submit the dispute to arbitration within thirty days after termination of mediation. We therefore reverse the trial court's order, and remand with directions that Appellee's claim against Appellant be dismissed with prejudice and that judgment be entered in favor of Appellant.

REVERSED and REMANDED.

EDWARDS and EISNAUGLE, JJ., and JACOBUS, B.W., Senior Judge, concur.