IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR POLK COUNTY.
IN CHANCERY.

SPECIAL INVESTMENTS, INC., a corporation organized under the laws of the District of Columbia,

Plaintiff,

vs.

NO. 54238-71-532

INDIAN LAKE ESTATES, INC., a corporation organized and existing under the laws of the State of Florida, and CAROLINE T. ZAPPA, also known as CAROLINE T. MAISANO,

Defendants.

INDIAN LAKE CLUB, a non-profit corporation organized and existing under the laws of the State of Florida; JOHN H. GRAY and PHYLLIS GRAY, his wife; GEORGE SCHEDLER and LYNDA T. SCHEDLER, his wife, JOHN L. PARSONS and EVELYN K. PARSONS, his wife; and HAROLD B. WILLEY and VIRGINIA M. WILLEY, his wife,

Plaintiffs.

vs.

CASE NO. 56401-74-135

INDIAN LAKE ESTATES, INC., a corporation organized and existing under the laws of the State of Florida,

Defendant.

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FINAL DECREE

I am here concerned with the rights of the various persons, firms and corporations having an interest in lands included in a subdivision designated Indian Lake Estates - comprising some 6,900 acres divided into many thousands of residential

lots, and containing certain community improvements. Approximately 4000 of the lots in the subdivision have been sold. A great majority of the lots have been deeded to purchasers; the remainder are still being paid for under lot purchase contracts. Approximately 3500 of the lots are unsold and remain the property of the Defendant, Indian Lake Estates, Inc.

The entire project, begun on a financial shoestring, by an ambitious developer, progressed very favorably and with every indication and prospect of success, until the harsh, impractical, and inadequate system of financing led to the present litigation and determination of proof. A history of the development is in part set forth in a previous decree entered in one of these cases under date of October 6, 1961, and in the opinion of the Court of Appeals of the Second District of the State of Florida wherein said decree was affirmed. See 134 So. 2nd 883.

I shall first discuss the obligation of Indian Lake Estates, Inc., to make certain improvements as set forth in the various deeds and contracts of sale for the lots.

It is significant to note that the plat of the subdivision recorded in Plat Book 39, at pages 1, 14, 18, 30, 31, 34, 46, 47 and 48, and in Plat Book 40, at pages 14, 15, 19, 20, 21, 41, 42, 48, 49 and 50, public records of Polk County, Florida, discloses certain avenues, drives, parkways, parks, [illegible], beaches, yacht basin, golf course, [illegible] and recreation area, recreation area (baseball, football, polo, gymnasium, etc.), golf course, and parking lot. These would indicate a planned area and location of such improvements.

On all lots contracted to be sold from the inception of the subdivision until April 1, 1957, the Defendant,

Indian Lake Estates, Inc., covenanted in the contracts that it would install "streets and roads on the property, a golf course, clubhouse, beach areas, and other recreational facilities, at no additional expense to the purchaser." The deeds thereafter issued on such contracts contained the same covenants.

For lots sold or contracted to be sold from April 1, 1957, until October 15, 1957, the above covenant was enlarged to include the construction of "a central water and sewage disposal plant, paved streets and dual lane avenues on the property, an 18-hole golf course, a clubhouse, pier, beach and recreational facilities - - - ." Since October 15, 1957, the contracts and deeds have contained the covenants last above set forth with the exception that instead of providing that the Defendant would construct such installations that it would "cause to be constructed" such installations and provided further that the facilities would be for the exclusive use, enjoyment and pleasure of the members of the Indian Lake Club, and at no additional assessment to the purchasers by Indian Lake Estates, Inc.

The Plaintiffs in case no. 56401-74-135 and the Intervenors in case no. 54238-71-532 (which cases were subsequently consolidated) sought relief for themselves and as representatives of the class of several thousand persons who own or who have contracted to purchase lots at Indian Lake Estates, Inc. They allege a failure to comply with or to perform these covenants and seek a specific performance thereof. For simplicity, these parties will hereinafter be called Intervenors. Defendant, Indian Lake Estates, Inc., ably and forcefully argues in defense that the Court should not decree specific performance on such construction contracts, or to attempt to enforce specific performance where there exists such vagueness and uncertainty. Intervenors have attempted to bolster their

position and make more certain demands by offering into evidence various advertisements, brochures, and statements (including a report submitted by the Defendant to the Florida Real Estate Commission) which were published by the Defendant or made by its representatives. This evidence is admissible not for the purpose of establishing promises which would be enforceable against Indian Lake Estates, Inc., nor for varying the terms of the written covenants but rather for the purpose of explaining and making more certain what was meant by these covenants, and the objection to the admission of such evidence is, therefore, overruled.

With respect to these matters, the Court having heard the testimony presented, and having viewed the premises, makes the following findings:

I. The Intervenors are proper representatives of that large class of persons who own or who have contracted to purchase lots at Indian Lake Estates. The lot owners and purchasers have a community of interest in the issues involved and the relief sought in this case. To deny the use of a class suit here would necessarily result in a multiplicity of suits, prohibitive expense and such relief, if any, which might be obtained from individual suits would be wholly inadequate.

II. The Intervenors are entitled to specific performance of certain of the aforesaid covenants. They have no other adequate remedy. The covenants are sufficiently definite to be specifically performed. The completion of the promised improvements was not dependent upon the payment in full for the lots, though in fact, the majority of the lots sold have now been fully paid for. Performance of those covenants was independent of the closing of the transactions, the payment in full of the contract price, or the delivery of deeds, as it was

contemplated by the parties thereto that the covenanted improvements would be provided by Indian Lake Estates, Inc. (or caused to be provided by Indian Lake Estates, Inc.) within a reasonable time thereafter. Indian Lake Estates, Inc., has now had a reasonable time within which to perform the improvements. However, there are some improvements to which the Defendant is bound under the covenants which the Defendant should not be required to perform until the number of persons residing in the subdivision justify the expenditure for the same.

III. A clubhouse, form and size as indicated on the sales brochures, and constructed according to the plans of the architect, is in place and substantially complete. The second floor has not been finished out, but the finished interior area of the building is more than adequate to serve the present number of residents of the development. It is not heated or air conditioned. The Court does not consider this a matter which is required. I find no present requirement that additional work be performed on the clubhouse at this time and there will be no such requirement until same is utilized by sufficient residents or lot owners to require the completion of the interior of the second floor.

IV. The pier has been constructed and is adequate.

V. An 18-hole golf course has been constructed and this course is now playable. There remain, however, certain needed installations and work to make it complete; namely, the removal of large mounds of fresh dirt excavated in the course of constructing water holes, and the installation of irrigation facilities. The dirt should be utilized, according to the present club professional, in the working of tees, bunkers and the like. There is a need for additional maintenance equipment, such as mowers, but these should be provided from the fees or other income realized from the patrons of the golf course.

VI. Many of the streets and avenues in the subdivision are now paved, using a mixed asphalt construction which is acceptable in this area. Although there is an absence of specification as to the details of construction, the Court finds that the standard utilized and specifications followed in the construction of the existing streets paved discloses the intention of the parties. I find that each owner of property with a home constructed thereon is entitled to have paved access to the main entrance of the subdivision. A very few of the some 170 homes now constructed in the development are upon unpaved streets and the owners of such improved property are entitled to have the street before their homes and access thereto from the nearest presently paved street to be paved in accord with the present standard. As residences are constructed in the future, the Defendant, Indian Lake Estates, Inc., should provide such paved access to the property. The Court finds little reason, however, to require the pavement of all streets throughout the development at the present time, only to deteriorate from lack of use, and the specific performance of any other paving will be delayed pending a real requirement, without prejudice to a later application thereto.

VII. A beach was established and the Court finds no need to require further beach construction.

VIII. Except as herein set forth, the Defendant should not be required to construct any other recreational facilities.

IX. Central water and sewage disposal plants - Indian Lake Estates, Inc., has constructed and installed a sewage disposal plant (adequate to serve a small portion of the development) and a large water tower. These have been transferred to an organization known as Consolidated Utility Services, Inc., a corporation which is franchised by Polk County, Florida, to provide water and sewer services to the area of

the development. Under the terms of the transfer of the facilities, the Utility has contracted to provide sewage disposal service and water service to any eight contiguous blocks of the subdivision if there are as many as fifty connections ready to be made. A copy of this agreement has been admitted into evidence and this contract provides that in the event the Defendant is required by a Court of competent jurisdiction to furnish at its expense water and sewer connections to lots, then said Defendant shall pay to the Utility for making such connections a tie-in charge in the amount of $425.00 for each sewer connection and a tie-in charge of $275.00 for each water connection. I do not construe the covenants of the contracts and deeds to require the Defendant to provide tie-in sewer and water service to each of the homes. I do construe that it is the obligation of Indian Lake Estates, Inc., to provide a central water and sewage system available to the individual lots upon a reasonable charge for such tie-in service. This charge is now within the reasonable control of the Board of County Commissioners of Polk County, Florida, under the terms of the franchise. I do not consider it reasonable or financially feasible that a sewer and water line or main should be extended into a sparsely settled area and, therefore, will not require the Defendant to perform its covenant to provide such lines to an individual lot until the density of population of residences is such that there are at least fifty connections to be made in such eight-block area. The Court finds that this provision is reasonable and fair.

There has arisen the question of the title to the golf course, recreation area, clubhouse, pier and beach. I find that such facilities were established for the exclusive use of the owners of property in such subdivision who were members of

the Indian Lake Club; that it was the expressed intention of the developers to convey said premises to the said club for the exclusive use of owners of property in Indian Lake Estates who are members in good standing of Indian Lake Club; and, indeed, at one time such conveyance was made and then re-conveyed. The representative of the Defendant, Indian Lake Estates, Inc., states that it is the intention of the present ownership to so convey said premises when the sale of property in the development has been completed. I find that title to such premises is held by the Defendant, Indian Lake Estates, Inc., in trust for Indian Lake Club, a non-profit corporation for the purposes hereinbefore expressed.

I now turn to the matters relating to the maintenance fees. A question is raised regarding the obligation of Special Investments, Inc., Indian Lake Estates Trustee, Inc., and other property owners for the maintenance fee established in the amount of $20.00 per year for residential lots and $30.00 per year for commercial lots under the terms of the covenants of the various lot purchase contracts and deeds. Where the lots have been conveyed to private individuals there is no question of this obligation, but it appears that in connection with the financing arrangements from time to time between the Defendant, Indian Lake Estates, Inc., the various joint ventures, and their predecessor, Special Investments, Inc., when contracts for the purchase and sale of the lots were sold and assigned and transferred into the various groups that the lots covered by these contracts were conveyed to a corporation known as Indian Lake Estates Trustee, Inc., which held the lots subject to its contractual obligation to re-convey the same as and when the individual lot purchases were paid in full. Each of these conveyances to Indian Lake Estates, Inc., copies of which have been admitted into evidence as Indian Lake Estates Accounting Exhibit

No. 2A through 2T, both inclusive, were specifically subject to those certain covenants set forth on the reverse side and which were incorporated in the deed by reference thereto. These were the same covenants included in the deeds and referred to in the contracts of purchase and sale to individual lot purchases and one of the covenants provided:

> "The purchaser covenants to pay to Indian Lake Estates, Inc., its nominees, successors or assigns on January 15th of each year the sum of $20.00 for each and every lot purchased to be used for general maintenance. This maintenance fee cannot be changed without written approval of the owners of the majority of the lots as shown on the recorded plats of Indian Lake Estates, Inc."

It is the contention of the Defendant, Indian Lake Estates, Inc., that Indian Lake Estates Trustee, Inc., is obligated to pay said maintenance fees from time of the conveyance to it of the properties, with credit for any of said sums collected by Indian Lake Estates, Inc., on the contract purchases. I find this contention to be correct. Maintenance funds are required and the amount due, in this accounting action, to Indian Lake Estates, Inc., upon contracts and conveyances held by Special Investments, Inc., or Indian Lake Estates Trustee, Inc. is the sum of $36,456.25 upon which I will allow a credit for the sums collected and improperly allocated to maintenance rather than to purchase prices in the amount of $3,102.26, and for which they are entitled to reimbursement from the individual lot purchasers. I further find that such funds paid hereunto to Indian Lake Estates, Inc., and all maintenance fees hereafter collected by Indian Lake Estates, Inc., from lot purchasers or any of the parties to this suit are to be used solely for the purposes of maintenance of Indian Lake Estates and to be held by Indian Lake Estates, Inc., in trust for such purposes. There is great need for such sums in the maintenance

of the banks of drainage ditches, the clearing of the ditches, the repair of pot-holes in certain of the roads, the mowing and other maintenance of recreational areas and boulevards, etc. I require that Defendant, Indian Lake Estates, Inc., do present to this Court suitable petitions to provide for the disbursement of maintenance funds. Such funds should not be spent for the performance of the aforesaid covenanted improvements or for capital improvements, nor should such funds be used for the maintenance of such facilities as would principally benefit the unsold lots since the maintenance funds are being paid only by persons owning or purchasing the sold lots.

The Intervenors have moved for the appointment of a Receiver for Indian Lake Estates, Inc. The Court is of the opinion that the establishment of safeguards for the use of maintenance funds as provided herein and the retaining of jurisdiction to provide for orderly and reasonable completion of the improvements in accordance with this decree will, for the present, sufficiently protect the rights of the Intervenors and at the same time give Indian Lake Estates, Inc., an opportunity to sell the remainder of its lots. The Court feels that its cooperation between the Intervenors and Indian Lake Estates, Inc., and by working in harmony under the provisions of this decree, this subdivision can ultimately be completed in a manner that many thousands of new Florida residents will be pleased to call it their home.

Spector Investments, Inc., is entitled to have certain costs taxed against Indian Lake Estates, Inc., which were incurred in connection with the matters concluded in the decree which was entered herein on October 6, 1961. These parties, through their attorneys, have agreed that the amount of such taxable costs is $780.00.

IT IS, THEREFORE, ORDERED AND DECREED AS FOLLOWS:

1. That the Intervenors' claim for specific performance of further construction of the clubhouse is denied, without prejudice to their right to require the completion of the interior of the second floor thereof, in accordance with the architectural plans therefor at such time as there are a sufficient number of residents or lot owners using the clubhouse to justify it.

2. The Indian Lake Estates, Inc., shall promptly cause the large mounds of fresh dirt to be removed from the fairways and the roughs of the golf course and utilize them as directed by its club professional in the working and improving of tees, bunkers and similar playing areas, and Indian Lake Estates, Inc., shall promptly install a suitable irrigation system on that portion of the golf course where no such system has been installed.

3. That Indian Lake Estates, Inc., shall promptly construct streets of the standard and quality of existing streets in the subdivision in front of each house in the subdivision built on lots sold prior to the date of this decree which does not have such paving and promptly pave according to the same standard such streets as necessary to give these houses reasonably direct paved access to the main entrance of the subdivision. As houses are constructed in the future on any lot sold prior to the date of this decree, Indian Lake Estates, Inc., shall promptly provide similar paving with respect to these lots if the same is not already in existence.

4. That Indian Lake Estates, Inc., is obligated to provide a central water and sewage system available to the individual lots in Indian Lake Estates upon payment of a reasonable charge for tie-in service. At such time as there are

ready to be made fifty connections in any eight contiguous blocks of the subdivision for either water or sewer, Indian Lake Estates, Inc., shall cause such service to be made available upon the payment of a reasonable tie-in charge. So long as the Board of County Commissioners of Polk County, Florida, or some other public regulatory agency has jurisdiction over and is regulating the tie-in charges for sewer and water service at Indian Lakes Estates, such tie-in charges as approved and authorized by such public agency for the supplying of sewer and water service at Indian Lake Estates shall be considered reasonable for purposes of the decree. In absence of the approval and authorization of these tie-in charges by such public agency, a tie-in charge of $425.00 for each sewer connection and $275.00 for each water connection shall be considered to be reasonable charges.

5. That legal title to those areas specified on the recorded plats of Indian Lake Estates as a "golf course, clubhouse site and recreation area," "recreation area (baseball, softball, polo, gymnasium, etc.)," "golf course," "beaches," and "yacht basin" is held by Indian Lake Estates, Inc., in trust for Indian Lake Club, a non-profit corporation.

6. That judgment is hereby entered in favor of Indian Lake Estates, Inc., and against Special Investments, Inc., and Indian Lake Estates Trustee, Inc., in the amount of $33,353.99, and E. Snow Martin, as trustee under order of the Court dated May 11, 1964, is hereby directed to pay said judgment from the funds he holds under the said order, and upon payment and satisfaction of such judgment, the balance of said funds held by E. Snow Martin as said trustee shall be paid over to himself as attorney for Special Investments, Inc., and he shall be fully discharged of all trust responsibilities in this case. The

funds collected upon this judgment shall be held by Indian Lake Estates, Inc., in trust for use in maintenance at Indian Lake Estates.

7. That judgment is hereby entered in favor of Special Investments, Inc., against Indian Lake Estates, Inc., in the amount of $780.00 for which let execution issue. The amount of the judgment shall not be withheld from the monies to be paid by E. Snow Martin, as trustee to Indian Lake Estates, Inc., pursuant to this decree because those monies are trust monies which are to be used for maintenance.

8. That monies paid to Indian Lake Estates, Inc., by E. Snow Martin, as trustee, as directed herein and all maintenance fees hereafter collected by Indian Lake Estates, Inc., shall be used by Indian Lake Estates, Inc., solely for purposes of maintenance at Indian Lake Estates. Before the expenditure of any such monies, Indian Lake Estates, Inc., shall present to the Court with notice to the Intervenors, a suitable petition setting forth how Indian Lake Estates, Inc., intends to spend such monies, and upon approval of such petition or other order of the Court, Indian Lake Estates, Inc., shall expend such monies accordingly. Indian Lake Estates, Inc., shall make quarterly reports to the Court showing the amount of maintenance fees collected and how such fees were spent.

9. The Court shall retain jurisdiction of this case for the purpose of taking such further action as may be necessary to effectuate the provisions of this decree.

Done and ordered in chambers at Lakeland, Florida, this 31st day of July, 1964.

/s/ William A. Gillen
As Circuit Judge

cc: E. Snow Martin, Esq.
William A. Gillen, Esq.
Stephen H. Grimes, Esq.