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IN THE CIRCUIT COURT OF THE 20th JUDICIAL CIRCUIT, IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION

COLONY COMMUNICATIONS, INC.,

Plaintiff,

vs.

CASE NO. 95-1686-CA-01

BEACH VIEW CONDOMINIUM ASSOCIATION, INC., and MARCO ISLAND CABLE, INC.,

2110684 OR: 2241 PG: 1202
RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
10/22/96 at 08:20AM DWIGHT B. BROCK, CLERK
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Defendants.

Retn:
CIVIL

FINAL JUDGMENT FOR DEFENDANTS

THIS ACTION, having been tried before this Court non-jury, and after hearing witnesses, legal argument from counsel, and receiving this Court enters Final Judgment for Plaintiff, Colony Communications, Inc., d/b/a Continental Cablevision of Southwest Florida ("Colony"), based upon the following Findings of Facts and Conclusions of Law:

I. FINDINGS OF FACT

1. Plaintiff, Colony, owns and operates a franchised cable television system in Collier County, Florida, where the instant claims arose. Colony is the successor-in-interest to Palmer Communications, Inc. ("Palmer"), Telesat Cablevision, Inc. ("Telesat"), and Colony Cablevision of Florida, a division of Providence Journal Company.

2. Beach View owns and/or manages the Beach View Condominium in Collier County, Florida. Beach View owns and/or operates the common elements of the property.

3. MIC is a provider of cable television services in Collier County, Florida.

4. In or about 1977 or 1978, the Beach View Condominium was constructed.

During the construction of the Beach View Condominium, Palmer installed coaxial cable

connections in the various units of the Condominium, for the purposes of providing cable television service to the condominium unit owners.

5. From 1978 to 1989, Palmer provided cable television service to the residents of the Beach View Condominium on an individual basis, meaning that if a resident of the Condominium desired to receive cable service, he or she would call Palmer directly and subscribe to its service.

6. In April, 1989, Beach View entered into an agreement for the provision of cable service with Telesat on a bulk basis, meaning that Beach View paid a discounted rate in order to allow all of the residents to receive cable service. Sometime prior to August, 1989, Telesat sold and assigned, among other things, the Agreement with Beach View to Palmer.

7. On March 31, 1994, Colony and Beach View entered into a Cable Television Service Bulk Agreement, and Colony supplied cable service to the residents of the Beach View Condominium pursuant to the Agreement, and the Beach View paid for Colony's cable services in accordance with the Agreement for approximately one (1) year.

8. Beach View, by letter dated March 10, 1995, canceled the March, 1994 Agreement with Colony.

9. Beach View entered into an agreement with MIC for the provision of cable service to all of the residents of the Condominium and informed the residents that they would be able to receive such services from MIC or to continue with Colony.

10. MIC connected its cable service to the various units of Beach View by locating the point at the outside of each building ^{within 12" of TB} where the coaxial cable wires previously installed in the condominium buildings entered each building in an area referred to as the meter room. MIC

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installed a security box, disconnected each individual unit's cable wire from the Colony security box, and connected the individual cables to its security box.

II. CONCLUSIONS OF LAW

11. The Court first concludes that the issues in controversy in this matter are controlled under federal law by the Cable Television Consumer Protection and Competition Act of 1992, codified as 47 U.S.C. 544(1), et al. Pursuant to that law, which has since been repealed but which was in effect at the times relevant to this action, the Federal Communications Commission enacted rules regarding the Act at 47 CFR 76.5

12. Under 47 CFR 76.5, there is defined a "demarcation point." Any cable wire before the demarcation point belongs to the cable company, and any wire after the demarcation point belongs to the individual unit owner. Section 47 CFR 76.5(mm)(2) defines the demarcation point for a multi-dwelling unit as follows:

(2) For new and existing multiple unit installations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, but shall not include loop through or other similar series cable wire.

13. Neither the Statute nor the Rule define with specificity the term "dwelling unit," although the initial comments to Rule 47 CFR 76.5 uses the following language, "we set the demarcation point for multi-dwelling units at (or about) twelve inches outside of where the cable wire enters the outside wall of the subscriber's individual dwelling unit"¹

14. As this regulation applies to the facts presented in this case, the Court must

¹ *Report and Order* of the Federal Communications Commission, issued: In the Matter of Implementation of the Cable Television Consumer Protection Act of 1992 Cable Home Wiring, FCC MM Docket No. 92-260, issued February 2, 1993.

determine where in the condominium units the demarcation point exists. As noted at trial, in the case of the Beach View Condominium units, a main cable from the cable television provider enters a meter room of each building. Here the cable is split and connected to an individual cable wire running to each individual unit in the building. These separate cables run from each residence through a conduit which ends in the meter room, where the individual units are connected to the main cable wire. The Plaintiff argues, in summation, that the demarcation point for each individual unit extends up each unit's conduit and ends at a point 12 inches from where the individual cable enters the wall of each unit. The Defendant argues that the demarcation point for each unit is at a point 12 inches from where each cable exits the conduit into the meter room.

15. In reading the letter and spirit of 47 CFR 76.5, the Court finds that the demarcation point for each unit's cable wire is a point 12 inches from where each cable exits the conduit into the meter room. The Court concludes that the conduit which carries the cable wire for each individual dwelling unit is an extension of that dwelling unit, and that the demarcation point is a point 12 inches out from where the cable wire enters the conduit that carries it to the unit. This point where the cable wire enters the conduit also happens to be the outside wall. All other walls between the units are inside walls.

16. Colony did have the right under 47 CFR 76.802, to remove the cable wire from each individual unit. However, in order to do so it must first have given each unit owner the option of purchasing the cable wire. Pursuant to the *Report and Order* of the Federal Communications Commission, referenced above, at Paragraph 19 of the *Report*, the cable company must advise the unit owner of its intention to remove the cable wire at the time that the subscriber notifies the company of his intention to terminate the cable service. As Plaintiff Colony

did not do so, they have waived their right to remove the cable wire under this Regulation.

17. The Court finds that the Plaintiff, Colony Communications, has failed to demonstrate by a preponderance of the evidence that the Defendants, or any of them, engaged in tortious interference with the contract between Colony and Beach View.

18. The Court finds that the Plaintiff, Colony Communications, has failed to demonstrate by a preponderance of the evidence that the Defendants, or any of them, committed a breach of the contract between Colony and Beach View.

19. The Court finds that the Plaintiff, Colony Communications, has failed to demonstrate by a preponderance of the evidence that the Defendants, or any of them, improperly converted to their own use any property owned by Colony.

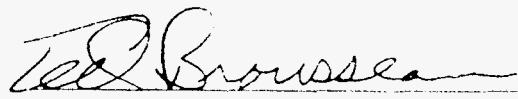
20. The Court finds that the Plaintiff, Colony Communications, has failed to demonstrate by a preponderance of the evidence any entitlement to injunctive relief. It is therefore:

ORDERED AND ADJUDGED that judgment in this matter is entered on behalf of the DEFENDANTS, who shall go henceforth without Day.

Jurisdiction is reserved by the Court for the purposes of any post trial motions, and for the determination of entitlement to and amount of attorney's fees and costs.

DONE AND ORDERED in Chambers at Naples, Collier County, Florida, this 17 day of

OCT, 1996


TED BROUSSEAU
Circuit Court Judge

Conformed copies to: 10/18/96
[Handwritten signatures and initials]

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