

# **Third District Court of Appeal**

**State of Florida, July Term, A.D. 2010**

Opinion filed January 5, 2011.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D10-973  
Lower Tribunal No. 09-92880

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**Intracoastal Point Condominium Association, a Condominium  
Association,**  
Appellant,

vs.

**Lisa Horowitz, individually; Nancy Teske, individually; and Robert  
Judd, individually.,**  
Appellees.

An Appeal from a non-final order from the Circuit Court for Miami-Dade  
County, Valerie Manno Schurr, Judge.

Litchfield Cavo and Geralyn M. Passaro and Thomas J. Jerla, Jr. (Fort  
Lauderdale), for appellant.

Marva L. Wiley , for appellees.

Before, RAMIREZ, C.J., and SUAREZ and CORTIÑAS, JJ.

CORTIÑAS, J.

Lisa Horowitz, Nancy Teske, and Robert Judd (collectively the “Unit Owners”) filed an action for declaratory judgment against the Intracoastal Point Condominium Association (the “Association”) asserting the invalidity of a “special meeting” held in January 2009 and seeking the appointment of a receiver. The Unit Owners alleged, in part, that three specific members of the Association “did not receive appropriate notice as the owners of the record at the time of the purported ‘special meeting.’” The Association, in turn, filed a motion to dismiss the complaint because the Unit Owners failed to first seek arbitration as required by section 718.1255. The trial court denied the motion.

Section 718.1255(4)(a), Florida Statutes, requires that “[p]rior to the institution of court litigation, a party to a dispute shall petition the [Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business] for nonbinding arbitration.” § 718.1255(4)(a), Fla. Stat. (2009). As set forth in the statute,

(1) . . . “dispute” means any disagreement between two or more parties that involves:

.....

(b) The failure of a governing body, when required by this chapter or an association document to:

.....

2. Give adequate notice of meetings or other actions.

§718.1255(1)(b)(2), Fla. Stat. (2009).

Under the facts of this case, we agree with the Association that the motion to dismiss should have been granted because the Unit Owners failed to comply with the arbitration requirement of section 718.1255. See Neate v. Cypress Club Condo., Inc., 718 So. 2d 390 (Fla. 4th DCA 1998). Accordingly, we reverse.

Reversed and remanded.

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RAMIREZ, C.J., concurring.

I concur with our reversal in this case. Upon remand, the trial court should dismiss the action without prejudice to comply with section 718.1255, Florida Statutes (2009).