

Continental case returns to the courts for clarification

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WILDWOOD

A lawyer for owners of Continental Country Club said Monday he has asked the 5th District Court of Appeals to clarify its decision last month that upheld a lower court ruling in favor of Continental homeowners.

On Friday, David Eastman, the lawyer for Continental's owners, asked for a rehearing on several points which he said are not clear in the decision.

The favorable lower court decision by Lake County Circuit Judge Ernest Aulls left the homeowners optimistic about getting most of a \$1.35 million trust created when homeown-

ers sued then-owner Donald Freeman in 1985, saying that maintenance and operating fee increases were too high. When Redman Homes bought the park in 1986, it inherited the lawsuit.

The increased fees were put into a fund to be distributed after the case is settled.

Eastman said he will decide whether to appeal the case to the Florida Supreme Court after he has cleared up several questions about the state appeals court decision.

One question Eastman said the state appeals court did not specifically address is whether Continental could establish reserve accounts to pay for major repairs such as sewer or water systems. In his 1987 decision, Aulls ruled the country

club could not establish the accounts.

This means Continental must pay the costs of repair and then collect the money to pay for the repairs afterward, Eastman said.

"It was not explained to us by the trial court and it was not dealt with by the appellate court," Eastman said.

However, Chris Jayson, a lawyer for the homeowners, said that although the appeals court did not specifically address the question, "they certainly ruled on it by implication."

Eastman also has asked the appeals court to have Aulls recalculate maintenance fees charged to homeowners during the time — from February 1985 to September 1986 — that the

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country club was in bankruptcy.

Aulls ruled in 1987 that for different time periods different maintenance fee charges were appropriate. For example, from June 1985 until August 1986, an appropriate fee was \$57.93 each month, Aulls ruled. After that, an appropriate fee was \$84 each month, Aulls ruled. But he did not rule on maintenance fees from February 1985 until May 1985, part of the bankruptcy period in

question.

Jayson said the matter has also been resolved. "They (the appeals court) affirmed the amounts found by Judge Aulls," Jayson said.

Eastman said he also has asked the appeals court to cite the rule of law from which the court based its decision upholding the lower court. The rule of law would come from previous cases with questions raised that were similar to the ones raised in the Continental case. In essence, Eastman said, "Tell us how you arrived at this decision."

Jayson said he could not comment on the request until he sees it.