

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2019-CA-012472-XXXX-MB

STEPHEN J. BYERS,

Plaintiff/Petitioner,

-vs-

ANTIQUERS AERODROME INC.,

Defendant/Respondent.

_____/

Proceedings had and taken place before the
Honorable Judge G. Joseph Curley Jr., one of the Judges
of said Court, at 205 North Dixie Highway, West Palm
Beach, Florida 33401 on the 9th day of December 2022,
commencing at the hour of 2:21 p.m., and being a
Hearing.

APPEARANCES:

On Behalf of the Plaintiff/Petitioner:

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JONATHAN A. YELLIN, ESQUIRE

1 (Thereupon, the following proceedings were had:)

2 THE COURT: Okay. Looks like everybody's here
3 and ready so we can begin. Let me turn that down a
4 little bit. All right. Let's see if that's
5 better. Okay.

6 So, Kim, are you ready? Can you hear us?

7 COURT REPORTER: Yes. Good afternoon, Your
8 Honor.

9 THE COURT: Good afternoon. Good to see you.
10 Let's have the attorneys make their appearances and
11 then we'll begin.

12 MR. BYERS: Hello, Your Honor. My name is
13 Steven Byers, the Plaintiff.

14 MR. YELLIN: Good afternoon, Judge. Jonathan
15 Yellin for the Defendant, Antiquers Aerodrome.

16 THE COURT: All right. Welcome, gentlemen.

17 So we're here on the Motion for Summary
18 Judgment. Mr. Byers, it's your motion. So I read
19 some, but not all of the papers, but I think I've
20 got a pretty good idea of the gist of the issues,
21 but feel free to hit as much as you think is
22 helpful and I'll follow along with you.

23 MR. BYERS: I'd really like to do that, Judge.

24 THE COURT: Okay.

25 MR. BYERS: I appreciate that.

1 THE COURT: No problem.

2 MR. BYERS: I know it's a lot to read. I read
3 it like a great story book.

4 THE COURT: Okay.

5 MR. BYERS: And so hopefully you find it not
6 too painful to follow along. And let me share and
7 then maybe then have the confidence that you follow
8 and understand what I'm trying to protect.

9 First, this is an action for declaratory
10 relief, as you know. We're looking for a judicial
11 determination. And if I use we, that's me, myself
12 and I.

13 THE COURT: Okay. That's the imperial we. I
14 got you.

15 MR. BYERS: Okay. Judicial determination on
16 four points. First and foremost is whether the
17 Defendant corporation has or had authority to
18 impose covenants and restrictions at any time. I
19 think that's relevant here. And whether the
20 covenants and deed restrictions described in this
21 complaint apply to impose restrictions on my
22 property. And whether the statutes in which these
23 restrictions are controlled by unconstitutionally
24 apply to me and whether the allegations of these
25 restrictions and covenants deprive me of --

1 unconstitutionally of property rights.

2 The first and foremost is looking at the
3 Defendant corporation. That's the foundation of
4 this. And once the foundation is looked at,
5 everything else falls away. The first is to kind
6 of delve into the history of this and I'll tell you
7 this has never been an issue before. This has
8 never been adjudicated. It's a history that's
9 never been brought up in front of the courts in any
10 of the cases as much as somebody might want to say.
11 This is just a new discovery in application of the
12 law.

13 First of all, Antiquers Aerodrome Inc., which
14 I'd like to abbreviate as AAI, the Defendant, likes
15 to put the word association in as their name
16 replacer. And I don't think that's appropriate
17 because that is rolling out an assumption and word
18 snipping and -- as if you were in a criminal trial
19 calling an innocent bystander when he's under trial
20 for a crime. Okay. And that is what's being
21 determined. So to throw that out there constantly
22 in front of the Court and the finders of facts, I
23 point that out as not being so forthright.

24 Well, AAI, or Antiquers Aerodrome Inc., was a
25 for profit corporation formed back in 1967. This

1 is before I was born. It was to sale real property.
2 And Exhibit 1, which, Judge, to put in the
3 exhibits, would you like me to put -- offer to put
4 them in now and see if there's any objections? Is
5 that needed?

6 THE COURT: Well, on a summary judgment, I'm
7 not sure it's necessary. You should have filed
8 them, right?

9 MR. BYERS: Yeah, they're part of it. Yeah,
10 and I'm just asking --

11 THE COURT: They're part of the record. Yeah.
12 So, no, you don't have to but I'm going to -- when
13 you go through the exhibits, I've got your notebook
14 here, so let me know which ones you're dealing
15 with, and I'll follow along with you.

16 MR. BYERS: Okay. Sounds good. They're
17 all -- they are all a part -- and there may be one
18 I can offer in addition of that if it pleases the
19 Court. But in -- so Exhibit 1 is the original
20 incorporation. There are three incorporators: Jim
21 Weck, Barry Stone and Cecilia Dunlavey. And in
22 that exhibit, there's -- in the Articles of
23 Incorporation, there's a purpose set forth and it's
24 to buy, sell, build, develop and construct real
25 estate and buildings, and engage in construction.

1 There was no stated purpose to become a homeowner's
2 association.

3 The Articles of Incorporation called for an
4 issuance of stock of 50 shares. They then amended
5 that pretty soon, months later in 1968, to be 74
6 shares of stock. That's the only amendment on file
7 at the Department of State.

8 The last lots of this development were
9 developed within three years and sold within three
10 years by 1971. In 1972, Exhibit Number 3 --

11 THE COURT: Number 3, okay.

12 MR. BYERS: -- we have a tax return and block
13 number 2, the general purpose is stated there as
14 well, owner of real estate. Okay.

15 In 1974, the corporation was dissolved by
16 proclamation and that's in Exhibit Number 4. I'd
17 like to bring up this Exhibit Number 4 because it
18 must have been the last document in there for them
19 to stand in 1974. In October of 1974, it was
20 dissolved by proclamation. But this document
21 actually shows it had been dissolved once before.
22 It had been dissolved for nonpayment of taxes in
23 1971. But yet, they figured that out about a year
24 later. And then in 1972, the corporate officers
25 realized that and had it reinstated. Two years

1 after that reinstated, it's dissolved a second
2 time by proclamation.

3 So I'd like to point out that because the
4 operators of this corporation were not unfamiliar
5 with a dissolution. In fact, they cured the
6 dissolution once in 19- -- and got reinstated in
7 1972. And here they're dissolved again in 1974.

8 What happens is that -- actually, six years
9 pass after the dissolution and in 1980, a reported
10 reinstatement happened and Antiquers -- and a
11 filing was filed here, which is Exhibit 5, rein- --
12 to reinstate the corporation. Paid a \$15
13 reinstatement fee and I paid eight years of back
14 taxes listing out the year numbers on the first
15 page of Exhibit 5. The second page of Exhibit 5
16 lists out who did this. Seven people. These seven
17 people are clearly listed as Ludington, Weir -- I'm
18 using their last names -- Clute, Powell, Array,
19 Michel and Abrams. They all carried an address on
20 the same street, except the last one, Abrams was
21 one in Hollywood, Florida. Seven different people.
22 None of these people were directors or officers of
23 the dissolved corporation called Antiquers
24 Aerodrome Inc.

25 The closest thing we have to look back to who

1 was the last operating board members and
2 officers of the corporation is offered here as
3 Exhibit Number 6. This was August 1974. August is
4 about two months before their dissolution, and we
5 have a recorded document that is signed by Vernes
6 (phonetic) and Lumley as president and secretary.
7 So that's the last understanding of what was
8 happening in 1974. At that point, business must
9 have wrapped up and there was no -- and they
10 allowed it to be administrative dissolved. Again,
11 looking back at Exhibit 3, the exact date was
12 October -- Exhibit 4, that is, exact date was
13 October 21st, 1974.

14 It says -- the next is we got to look at the
15 law and presented here is a 1979 the law that
16 governed the dissolution and reinstatement of
17 corporations was Florida Statute 607. I'm
18 providing herein as Exhibit Number 7 607.271,
19 paragraph 5. "Any corporation dissolved by the
20 State under the provisions of this section or prior
21 law may be reinstated at any time upon approval of
22 application for reinstatement signed by an officer
23 or director of the dissolved corporation." It
24 doesn't seem to allow for an officer or for any
25 eight -- seven other people to reinstate it. It

1 has to be a previous officer.

2 There's two issues here. There's one that
3 there weren't previous officers and then there's
4 two -- there's a second issue will be that it was
5 six years later and that is supposed to be limited
6 to three years.

7 One little side concern too as well is pointed
8 out here with Exhibit Number 8 is that the Articles
9 of Incorporation and their purpose are defined by
10 it's Articles of Incorporation. And unless
11 otherwise provided by the Articles of
12 Incorporation, they are limited in their powers.
13 And this corporation that they're attempting to
14 revive six years later still didn't have any powers
15 beyond its original incorporation. And there's
16 been no amendment to change that purpose if this
17 corporation were to move forward with a different
18 purpose.

19 Let's take a look at Exhibit 11 and 12.

20 THE COURT: Okay.

21 MR. BYERS: Exhibit 11 brings up Florida
22 Statute from 1973, 608.30. That first paragraph
23 says every dissolved or expired corporation shall
24 continue as a body corporate for three years after
25 dissolution or expiration for the purpose of

1 satisfying its liabilities and so on but for no
2 other purposes. Okay. Satisfying its liabilities,
3 selling and conveying its property, and dividing
4 the net remaining assets among the stockholders but
5 for no other purpose for those three years.

6 Again, in the 1979 statutes, which are now for
7 the 1980, six years later, 607.297, paragraph 3.
8 It's Exhibit 12. Right here it says that a
9 dissolution of a corporation by either expiration
10 of its period of duration, and that such -- let's
11 see, it talks about within three years after the
12 date of such dissolution, they have to wrap up all
13 their business. So, again, three years is in the
14 wall.

15 The -- this is six years later after
16 dissolution, eight years of unpaid taxes, and eight
17 years, at least of not filing a -- and this is
18 important, not filing an annual report. The annual
19 report is actually required to reinstate a
20 corporation, typically. In this case, there was a
21 mistake made and it was not -- those weren't
22 required. There's no continuity of the officers
23 over those six years and -- or even the three years
24 afterwards and that makes it an invalid
25 corporation. It's a void organization that should

1 have never been nor acknowledged as a valid
2 corporation today.

3 I have added and have a discussion of the case
4 law with regards to all this and I'd like to --

5 THE COURT: Okay.

6 MR. BYERS: -- go over that.

7 THE COURT: All right.

8 MR. BYERS: First of all, you have to
9 understand in the first case is that state agencies
10 are not infallible. They can make mistakes. They
11 can take steps beyond their own power. And when
12 pointed out to the courts, the courts can rule on
13 them.

14 THE COURT: Yeah.

15 MR. BYERS: And the first authority in your
16 big blue binder --

17 THE COURT: Okay.

18 MR. BYERS: -- points to that, and this is the
19 -- Department of -- DEP made --

20 THE COURT: Mistakes, I -- I'll --

21 MR. BYERS: What's that?

22 THE COURT: I'll stipulate that states can
23 make mistakes. Nobody's perfect.

24 MR. BYERS: Nobody's perfect.

25 And this is a case where they found that the

1 DEP overstepped its authority and entered into
2 a role of receivership when they really only have
3 the authority to hire a receiver. And the
4 conclusion was the DEP is a creature of statute and
5 is governed by the statute. And it can exercise
6 only the powers granted to it by the legislature.
7 So in my case, the Department of State can exercise
8 only the powers granted by the legislator and the
9 legislation says it can only go for three more
10 years and then they can't say, well, six years is
11 fine.

12 THE COURT: Okay.

13 MR. BYERS: And that's what we call an ultra-
14 vires action to reinstate them.

15 THE COURT: Okay.

16 MR. BYERS: Okay. Another example of an ultra
17 vires action is the next half on Dade County versus
18 Pan Am when it's a discussion of taxes being
19 assessed against the leasehold interest. And that
20 is clearly an ultra vires outside the powers of the
21 court authority as by the government.

22 Let's see. So Antiquers, AAI, is a nonentity.
23 However, because it seeks to enforce its actions
24 and its had as a nonentity and in the covenants
25 against the Plaintiff, there is no other option but

1 to name them as a Defendant here in this action.

2 So another thing to think about is that even
3 if the proper officers and the proper parties
4 signed for this reinstatement, it -- that has
5 passed three years, which the Florida statutes
6 allow for the lining up of a business. And the
7 authorities here discuss that in tab number 4 in
8 Nelson versus Miller and it brings up that -- what
9 I had mentioned before is that the corporation
10 could function for no other purpose during those
11 three years but to sell, convey and divide
12 remaining assets. Okay.

13 And similarly in Florida Statute 608.35, any
14 corporation failing to file its annual report with
15 the state, they shall pay the capital stock as
16 required within six months of the date it's
17 required of filing the return and paying the taxes.
18 Shall not be permitted to defend any action in
19 court of this state until such reports are filed
20 and all taxes are due. Well, there's no reports
21 filed. That's the important thing here. The
22 reports aren't even filed to bring continuity. The
23 annual reports from 1972 through 1980.

24 Furthermore, the statute limits the dissolved
25 corporation and its ability to do anything to three

1 years and the statute must be strictly construed.
2 And as the corporation is, for all purposes,
3 extinct in that finding number 4.

4 The -- tab number 6 is Hassan Ventures versus
5 Bernard (phonetic) Rozenski (phonetic) and this too
6 goes to the three-year grace period contained in
7 the Florida statutes limiting the ability of that
8 grace period to that three years and not beyond.
9 It says we hold that the trial court properly
10 denied the motion to intervene since the automatic
11 reinstatement provision is limited to the three-year
12 grace period contained in Section 607.297.

13 In another case on tab number 6, The Photonics
14 (phonetic), a Hollywood Corp, versus Barnett Bank.
15 It also references the Hassan Ventures and
16 Rozenski. And it says -- as we've added in there,
17 it says that if a corporation is reinstated within
18 three years, it has remedies available for rights
19 and claims. However, a corporation reinstated
20 after the three years does not have such remedies.

21 Antiquers Aerodrome, as a voided organization,
22 lacks the authority to impose restrictions against
23 my property. And truth the acts of the Division of
24 Corporations acting ultra vires to reinstate the
25 entity, its interest cannot be established because

1 it is a nonentity. And again, referencing a legal
2 reference for you there in Citizens versus
3 Mayberry.

4 And so all the acts of the entity known as
5 Antiquers Aerodrome Inc. that have taken since its
6 dissolution in 1974 are voided and of no effect,
7 including these instant covenants that it seeks to
8 enforce for the same reasons. They're all --
9 they're doing it without legal authority, including
10 the covenants -- the current covenants.

11 I just want to pause right there. And a lot
12 of corporations get dissolved and are historically
13 still on the records at the Department of State.
14 And for a number of people to say, hey, that one's
15 eight years old and dead, let's go resurrect it
16 because we think it has rights to a bank account to
17 a piece of property to enforce a contract against
18 somebody. Those eight people just can't pick up
19 and file for the reinstatement case eight years of
20 back with courts. Who also were not even filing
21 the annual reports and then move forward. I don't
22 know how this happened back then, but it needs to
23 be acknowledged today as a fact of law.

24 Some things that have happened that there was
25 an instant confusion when this was reinstated.

1 They took the identity of the corporation from a
2 profit corporation to a nonprofit corporation. The
3 first documents that this group of individuals,
4 seven people, that reinstated this corporation,
5 filed on the county records stating Antiquers
6 Aerodrome as a nonprofit corporation giving an
7 easement. So there's your first step of confusion.

8 The second step of confusion -- or there's
9 probably many in between but the next step of
10 confusion was in a 1998. It was required by law
11 that homeowner's associations were to report their
12 governing documents, including their Articles of
13 Incorporation, in the county of which the community
14 that the HOA governed. That was never done.
15 Again, that goes to the fact that they never were
16 or didn't intend to be a homeowner's association.
17 There are internal documents to that same effect
18 that there was no intent to be a homeowner's
19 association. In fact, when I came and bought the
20 property four years -- or six years later after
21 1998, there was no Articles of Incorporation for me
22 to find with the County. They weren't recorded.
23 And I purchased this, and I had been told
24 specifically that this is not a homeowner's
25 association. We just have a runway that we all

1 work and take care of together. And I was familiar
2 with something like that because I came from a
3 flight club in Pennsylvania. I'm like, okay,
4 that's fine. And even when other people came into
5 the neighborhood in 2005, 2006, 2007, and they were
6 asking, is this a homeowner's association. I was
7 vehemently told it's not, we're just a corporation,
8 and I never looked at it further than that.

9 I was asked to serve on the board. There was
10 no historical lesson on where they came from or
11 where they went. And within months of being on the
12 board, I was the goat that they wanted to get out.
13 And so I was not real privileged to any other
14 information from that point. But if anything, that
15 service on the board had given me -- gives me
16 authority to say that there was not a formal
17 understanding of where the corporation came from
18 and what its authority was, except that that was
19 impressed that we're now a homeowner's association.

20 The homeowner's association came about in
21 2007-2008. And after I left the board, there was a
22 person who came on and he says, hey, if we're a
23 homeowner's association, we trump the mortgage
24 companies in foreclosure. And that's when this
25 idea of well, maybe it's nice to be a homeowner's

1 association came around and where the homeowner's
2 association certainly adding into our -- the
3 corporate documents and efforts and appearances and
4 foreclosures. And -- but to the objection of a lot
5 of people there, but it went ahead. Then it was
6 pointed out, hey, well, there isn't -- the
7 covenants expired that were put on this land in
8 '68. They expired ten years ago. Ten plus years
9 ago in 1998. They need to be revitalized. Well,
10 the revitalization went forward with the attorneys
11 and the attorneys should have known if they had
12 done their research, better than anyone else, that
13 this wasn't a valid organization in order to put
14 forth a revitalization of the covenants.

15 So as a -- when you look at it, there is a
16 legal mistake. There is a legal malpractice to say
17 that that was a valid organization that was
18 reformed, or I'm going to say was just an
19 organization that was hijacked. That it was
20 actually the developers run in to do whatever they
21 wanted to do with the neighborhood, which was an
22 easement right at first to cross the land, and now
23 morphed into a homeowner's association by just
24 saying that's what we're going to call ourselves
25 but never changing -- even if implied corporation,

1 didn't even attempt to change the purpose in its
2 Articles of Corporation.

3 One thing to -- that goes forward is that the
4 Palm Point Property Owners versus Robert Pisarksi
5 points out and answers the following question about
6 absent of a specific rule of procedure. As a
7 property owners association, that's not a direct
8 assessor to the interest of the developers. A
9 provision for which it does not appear in the
10 grantor's original subdivision scheme have standing
11 to maintain an action to enforce restrictive
12 covenants. And that's answered in the negative
13 because this entity, was a void entity, is not the
14 original entity. This group of whoever put it
15 together first call themself a nonprofit as soon as
16 they put themselves together. Then called
17 themselves a homeowner's association. Never was in
18 direct assignment or successor of the covenants.

19 THE COURT: Okay.

20 MR. BYERS: And I'm just going to point out
21 one other thing because we brought it up as a
22 nonprofit confusion that happened the instant that
23 this was revitalized in 1980. That was about the
24 only thing that many people started catching
25 because when they look, hey, the department states

1 that it's a for profit corporation but you're filing
2 legal documents, complaints, answers to complaints
3 and saying Antiquers Aerodrome Inc., a nonprofit
4 corporation. And so that became before the Court,
5 and that actually is part of the Defendant's last
6 exhibit, where that question was answered.

7 Wondering if a homeowner's association can be a
8 profit corporation. It was simply said, well, a
9 profit corporation can be a homeowner's association
10 if it's not otherwise barred. If it's not
11 otherwise barred is a pretty broad spectrum. And
12 this concerned it being an improperly hijacked
13 corporation would be in that otherwise barred. So
14 you can't say that that exhibit or that Court's
15 view of nonprofit versus profit and its ability to
16 be a homeowner's association overcomes the problem
17 that this historic entity has.

18 So I want you to understand that what's
19 demonstrated by the facts here is that certain
20 persons paid six years back filing fees, two more
21 years on top of that that were the unpaid filing
22 fees that called the dissolution, and that is --
23 those people are -- and that entity being revived
24 after six years cannot seek the reinstatement of
25 these covenants. In its own Articles of

1 Incorporation (inaudible) don't even have the
2 authority to do that.

3 Let's see.

4 THE COURT: So you're suggesting -- let me ask
5 you a couple of things because you're about out of
6 time.

7 MR. BYERS: Okay.

8 THE COURT: You're suggesting that if you had
9 an opportunity and wanted to challenge this, you
10 could have filed something, I forget what the time
11 frame is, but it's back in in the early 2000s, I
12 think.

13 MR. BYERS: That actually goes to the next
14 points of declaration that this action seeks for.

15 THE COURT: Right.

16 MR. BYERS: And that is the declaration of
17 freeing the land from the covenants.

18 THE COURT: That's right.

19 MR. BYERS: And it doesn't have to with when
20 you can bring up whether or not it was a valid
21 corporation or whether or not the state acted by
22 ultra vires. But with regards to that, it was --
23 the legislations open two one-year periods between
24 2004 and 2005, and again in 2018 to 2019, where a
25 property owner can say, hey, there's no covenants

1 on my land, I want to keep it that way. I don't
2 want a covenants to be revitalized against me. And
3 that's what I find in review of this can find, Your
4 Honor, that it is unconstitutional to limit
5 somebody to a one-year constitutional right. It's
6 like having the Second Amendment, the right to bear
7 arms, only last for one year. So the right to
8 protect your property -- so I find that that is
9 what the legislation is getting to is that you
10 can't limit it to just a year window. But let's
11 say even if we were to follow that, the legislation
12 opened up another window in 2018 to '19, and that
13 said, hey, if they have, at any point, not governed
14 your land, you can declare them unable to get a
15 judgment like this. Unable to reinstate per
16 statements or reinstate the covenants. It's
17 actually Page 13 of my motion, Your Honor, at the
18 top.

19 THE COURT: Okay.

20 MR. BYERS: So the -- and to me that -- the
21 language above this law is open to interpretation
22 because the previous 720.12, paragraph 3, talks
23 about, you know, determination as to did the land
24 ever cease to be governed by the covenants? Is
25 that interpreting it to the date of October 1, 19-

1 -- or 2018, or is it any time prior to that? Is it
2 just the morning, or can it be the evening, or was
3 it all day on the 18th? So it's just an arbitrary
4 date thrown out there that doesn't seem
5 constitutional. But if we have a void organization
6 here, which I think is the foundational problem
7 that really needs to get addressed, and I'll be
8 completely honored if there was a review of this --
9 a discussion that can go forward and set a standard
10 that corporations can't just be willy-nilly revived
11 by people six years later that have no connection
12 to the previous board, previous officers.

13 So my point is that, yeah, okay, why bother
14 going into all the date issues. If it's a void
15 corporation, it was a void revitalization. The
16 covenants do not apply. If they -- then my action
17 is open to saying -- getting a declaration, the
18 covenants do not apply. The -- if they're going to
19 be revitalized, they have to do it without Mr.
20 Byers because 7/12/12 allows him and he could be
21 granted paragraph 4. The revived covenants in the
22 future, restrictions do not apply or affect the
23 rights of the parcel owner. Okay. Which are
24 recognized by any court, that would be here, or a
25 judgment in an action commenced by that October

1 1st. I did commence this by October 1, 2019.

2 So that is the next issue to be resolved.

3 Their argument is oh, no, we revitalized it and I
4 don't know what they're going to say to the voiding
5 of this organization. The response, Your Honor, is
6 only six sentences and it says that I cite no
7 authority. There's a whole blue book full of
8 authority that I can tell you. And so -- and in
9 conclusion -- and if there's any questions,
10 discussion will be open for that but what we're
11 looking is a determination whether or not Antiquers
12 is a valid corporation under Florida law and how
13 that would be accomplished. I say no, it's not.
14 It's -- and it -- in its own Articles of
15 Incorporation, it's a real estate development as
16 opposed to being a homeowner's association. Is
17 that clear enough for the judge to say, yes, it's
18 just limited to real estate development and not
19 being a homeowner's association? I believe it is.

20 And the -- should the Department of State have
21 reinstated this corporation? I believe the answer
22 to that is no. Reinstatement was an ultra vires
23 beyond its powers granted to it by Florida
24 statutes. The acts by Antiquers Aerodrome Inc.,
25 they found, were void. I think it's very clear,

1 they're void. And then we can decide if we need
2 to get into the uncons- -- the constitutionality of
3 the covenants on my land and the constitutionality
4 of me to have the covenants declared never to be
5 revitalized against it. There's a possibility that
6 the neighbors, as individual parcel owners, could
7 all get together and make an association but it's
8 not this Antiquers Aerodrome (inaudible) and
9 revitalize the covenants but its not this
10 corporation. And the covenants can be revitalized
11 and then anyone can create an association with an
12 agreement of the landowners who then would set and
13 grant an ability to a new entity to enforce any
14 kind of covenants upon them.

15 THE COURT: All right. Let me hear from Mr.
16 Yellin.

17 MR. YELLIN: Okay. Thank you, Judge. So just
18 housekeeping. So the Court knows, we have filed
19 our own Motion for Summary Judgment, Your Honor.
20 The Court, at the last hearing, asked us to discuss
21 amongst ourselves whether we would agree to
22 argument both now --

23 THE COURT: Yeah.

24 MR. YELLING: -- because there are really two
25 sides to the same point. You know, both sides are

1 agreeing the facts are what they are, but do they
2 support, you know, one side or the other. Mr.
3 Byers wasn't agreeable to arguing our motion today,
4 which is his choice. It's 37 days since we filed
5 it, so we couldn't really cram it in today. But he
6 also wouldn't agree to even select a date for our
7 Motion for Summary Judgment.

8 We -- I would -- if the Court -- the Court
9 could say, look, if we have a pending Motion for
10 Summary Judgment, and it is the same arguments
11 about the viability of the association, and
12 applicability of the statutes, if the Court wants
13 to reset this and continue it to hear both motions,
14 then we don't have to do this twice.

15 THE COURT: Well, this hearing was set for 45
16 minutes today.

17 MR. YELLIN: Yeah.

18 THE COURT: We're getting up on 45 minutes,
19 so.

20 MR. YELLIN: I -- yeah, that's actually a
21 great point. So we're almost there anyway, and if
22 I get my hearing scheduled, if the Court will order
23 it because they won't do it voluntarily.

24 THE COURT: Yeah. Well, okay, I will do that,
25 but let me ask you to address a few points, if you

1 would.

2 MR. YELLIN: Sure.

3 THE COURT: There was -- in your papers, you
4 make reference to Mr. Byers having prior -- there
5 was some prior litigation over these issues. Can
6 you walk me through that and explain what -- tell
7 me about that.

8 MR. YELLING: Sure. There has been, I think
9 no fewer than seven legal matters where Mr. Byers
10 and the association have been litigants. You know,
11 he has fought our efforts to -- he has refused to
12 pay dues since the revitalization effort. Before
13 that, he paid dues. You know, remember, when he
14 took a deed in the community in 2004, the deed says
15 that he agrees and, you know, will abide by the
16 covenants. You know, there was an approval, you
17 know, attached to the deed. And, you know, in all
18 these years, in 18 years, he has never moved, you
19 know, to file anything, you know, refuting that he
20 is, in fact, subject to these covenants. Also,
21 it's important to note, you know, he mentions that
22 he served on the board. He wasn't going to tell
23 you that until I told the Court that in our
24 opposition. The board of what. You know, he
25 doesn't want to call us an association but in his

1 campaign letters, he calls us a community. He
2 calls us a neighborhood. We know there are
3 covenants because the deed he accepted references
4 the covenants.

5 So, look, the Department of -- you can't
6 revitalize covenants surrounded with an approval by
7 the Department of Economic Opportunity. You have
8 to file these documents with them.

9 THE COURT: Right.

10 MR. YELLIN: The DEO, after a trial, because
11 Mr. Byers and another owner resisted our effort --

12 THE COURT: Yeah, that's what I wanted you to
13 tell me about because I'm unfamiliar with that
14 process. And so I do want to learn a little bit
15 more about that but go ahead.

16 MR. YELLIN: So you file with the DEO, the DEO
17 reviews the covenants to make sure that they are --
18 you know, nothing new is being added or amendments
19 are being -- nothing has changed, you're just
20 trying to re- -- you know, to bring them back to
21 life. The -- you know, the -- while we were in
22 that process, we had received an initial approval
23 and then Mr. Byers objected to the approval. There
24 was a trial with an ALJ and --

25 THE COURT: When you file -- when you go

1 through this process, the filing process, do you
2 have to identify the properties that are subject to
3 the -- you want to be subject to the homeowner's
4 association covenants or the (inaudible).

5 MR. YELLIN: Yeah, no. That -- yeah, but
6 he -- he was a part of the process where we were
7 attempting to revitalize. Now he said seven owners
8 or seven folks on a board revitalized. Let's be
9 clear. You don't revitalize unless you have a
10 majority of the lots in the community.

11 THE COURT: Yeah.

12 MR. BYERS: Your Honor, that's a misrep. It
13 was seven people reinstated the corporation. It
14 had nothing to do with the covenants.
15 Reinstatement of the seven people. It was 1980.

16 THE COURT: Mr. Byers, Mr. Yellin was very
17 quiet while you made your argument, and I'd like
18 you to let him make his. Okay. You'll --

19 MR. BYERS: Okay.

20 THE COURT: You'll learn, if you haven't
21 already, I promise you, you'll get an opportunity.
22 I will not -- you're the move --

23 MR. BYERS: I'm sorry.

24 THE COURT: -- you're the move -- I -- so
25 we'll -- I'll get back to you. Just make a note.

1 I know it's a little -- there's a lot going on
2 here. So make a note to remind me of that. Okay?

3 MR. BYERS: Okay.

4 THE COURT: Go ahead, Mr. Yellin.

5 MR. YELLIN: Sure. And if I misheard him, I
6 apologize. I thought he was suggesting that, you
7 know, a minority of owners voted to revitalize. So
8 the process there is that, you know, at the
9 revitalization filings, his lot was identified
10 as -- you know, he was identified as an "affected
11 parcel owner". So there was a trial. At that
12 time, I think he was represented and the ALJ ruled
13 that the association is entitled to revitalization.
14 That its papers were in order and all of his
15 objections were overruled.

16 Because of that dispute, because he filed
17 objections to that order, it then went to, I guess,
18 the highest person at the DEO, the secretary, and I
19 can share the screen with the Court. You're
20 looking at the final order that was issued by the
21 DEO.

22 THE COURT: What is the impact of that order
23 on the Motions for Summary Judgment, if any?

24 MR. YELLIN: Well, look, I mean, it's sort of
25 just drawing the Court's attention to the fact that

1 we've been here, we've done that, we've argued, he's
2 made the argument that we're not a real HOA. It --
3 that the only novel argument that I have -- I mean,
4 I know because I handled the appeal, he appealed
5 this order and then that went to the fourth and we
6 won that appeal. So the only thing that I haven't
7 heard or that maybe is somewhat novel in my view is
8 this argument that the association was dissolved
9 and therefore couldn't do anything. Was impotent,
10 for lack of a better
11 word --

12 THE COURT: Right.

13 MR. YELLIN: -- after dissolution, so. But
14 the orders are -- the reason why I reference them
15 in my opposition is because it's important to know
16 about the history of litigation. And again, the
17 sister court is the last page in my opposition,
18 Judge. The sister court, which did find that, you
19 know, POAs, and for-profit corporations, and other
20 corporations, are associations too. Right. I'm
21 trying to think of a cute way to say it but, you
22 know, not all associations have the word
23 association in the title. Its super, super narrow
24 to interpret that. And, in fact, the legislature
25 also agrees with me. Don't make my word for it.

1 It's actually, you know, right there in the
2 definitions. In 2018, Your Honor, the Court
3 amended the definition of association to clarify
4 that an association, an HOA, is not just, you know,
5 an entity with the name association in it. And it
6 can include not for profit. And my papers really
7 drill down on that as far as not for profits. Even
8 condo associations. You know, the case law that we
9 cited, I think it's In Re: Heather Hills talks
10 about other kinds of associations that get
11 revitalized.

12 THE COURT: Yeah.

13 MR. YELLIN: Because Mirta (phonetic) wants --
14 you know, the legislature and it's important -- I
15 think I want to say this too. I've got so much in
16 my papers on opposition, but I just want to drill
17 down on sort of this point.

18 THE COURT: Yeah.

19 MR. YELLIN: The legislature has stated that
20 it is an important governmental interest to
21 preserve covenants. You know, it is a -- always
22 been a -- you know, a somewhat conservative
23 legislature both in 2004 and certainly in 2018. I
24 promise you it was. You know, there -- the
25 legislature has recognized that you can over -- as

1 far as the constitutional challenges, it's not
2 willy-nilly. I mean, the legislature has found it
3 important to preserve covenants. So that
4 importance overrides and actually provided a
5 window, which I think is so important. He had a
6 window where he purchased -- the legislature had
7 just passed in 2004, this one-year window, which
8 was in place for 11 months, I think, as he bought
9 it maybe a month after it passed. And then, of
10 course, again, in 2018, but by the time that went
11 back, statute had been -- would have been relevant
12 or helpful to him, but, of course, our covenants
13 had already been revitalized.

14 THE COURT: Right.

15 MR. YELLIN: So I don't want to go on and on.
16 I would rather say to the Court perhaps we can --
17 perhaps -- and I could go on and on but, again, my
18 motion really is the other side of the coin. And
19 there's a statute of limitation issue, Judge. He's
20 talking about things that happened well, well, well
21 over five years ago. You know, there's a five-year
22 statute of limitations on a dec action.

23 THE COURT: Well -- okay.

24 MR. YELLIN: So now we're talking about
25 something that happened, you know, he didn't just

1 discover it within five years. I mean --

2 THE COURT: Right.

3 MR. YELLIN: -- he doesn't even deny that he's
4 known that -- you know, known that there were --

5 THE COURT: Well, is there a statute of
6 limitations if an action is ultra vires?

7 MR. YELLIN: Yeah, of course. Sure. Yeah. I
8 mean, to go to the ultra vires argument, and I want
9 this to be clear. Notwithstanding case law that
10 addresses ultra vires, you have to look at the
11 statute itself, which has now been repealed and I
12 think it's been --

13 THE COURT: Yeah.

14 MR. YELLIN: -- you know, it's --

15 THE COURT: You're talking about Merta?

16 MR. YELLIN: No, I'm talking about the statute
17 that he says -- that Mr. Byers alleges somehow
18 prevents the association from operating. I just
19 want to be very clear. There is no case law cited
20 anywhere by Mr. Byers that an association or a
21 corporation -- it's called a corporation --

22 THE COURT: Yeah.

23 MR. YELLIN: -- there's no corporate -- that
24 says a corporation cannot be reinstated -- well,
25 let me say the right -- there's no case law that

1 says that a corporation must be reinstated by the
2 directors that were sitting on the board when it
3 was dissolved. That's absolutely wrong. There's
4 nothing that supports that. The suggestion that
5 they have to be identical directors or anything
6 like that is not right. And, of course, in an HOA
7 or an association, directors change all the time.

8 THE COURT: All right.

9 MR. YELLIN: So how can that be true? I mean,
10 you have someone that's a corporation that you've
11 got a corporate -- you know, corporate officer,
12 maybe there's one director, maybe there's one
13 president, vice president, secretary, treasurer.
14 That person dies, will the corporation --

15 THE COURT: Well, I hear what you're saying,
16 and I think you're probably right, but the argument
17 in the law how can it be true is often not a good
18 argument. The law is a strange thing sometimes. I
19 am astounded from time to time, but I say that
20 tongue and cheek.

21 So the -- let me ask -- I'm going to circle
22 back to final order for a minute. That -- are --
23 is there any preclusive affect as a result of that?
24 I mean, any kind of estoppel or res judicata or
25 collateral estoppel, estoppel by afar, anything

1 that applies here, or is that -- you're just
2 giving me that for -- if --

3 MR. YELLIN: All of the above apply, Judge,
4 and we've argued both in our -- within our
5 opposition and we've affirmatively argued them in
6 our Motion for Summary Judgment.

7 THE COURT: All right.

8 MR. YELLIN: The service on the board, the
9 campaign letters, the acknowledgment. You know,
10 the taking of the deed and recording of the deed.
11 You know, all of that is an estoppel and waiver in
12 our view and --

13 THE COURT: Okay.

14 MR. YELLIN: -- and also, you know, res
15 judicata by order of the DEO and the ALJ.

16 THE COURT: All right. Okay.

17 MR. YELLIN: Yes.

18 THE COURT: So, Mr. Byers, I am -- I do want
19 to do this all at one time so I can get all of the
20 arguments but I don't want -- I know you've got
21 something you want to tell me now. So I'm not
22 going to cut you off. Although I have other things
23 that I have to attend to shortly --

24 MR. BYERS: I'll try to make it short.

25 THE COURT: -- so take a few minutes. I got

1 ten minutes easy. So take ten minutes and -- but
2 I'm not going to make any rulings today. All
3 right. None of that.

4 MR. BYERS: I appreciate that.

5 THE COURT: And if you feel like it's better
6 to keep your powder dry, keep it dry. On the other
7 hand, if you think I need -- you need to plant some
8 seeds, go ahead.

9 MR. BYERS: Let me plant some seeds while
10 they're current in my mind.

11 THE COURT: Okay.

12 MR. BYERS: I think that if we look to the DEO
13 final order. If we look to the ALJ, the
14 administrative law, Judge. To validate this void
15 corporation and its improper reinstatement in 1980,
16 we are adding fuel to the fire, we are doubling up
17 on the ultra vires. The DEO nor the ALJ has the
18 authority to say -- to validate a corporate
19 reinstatement six years -- three years passed the
20 limit.

21 THE COURT: Do you have any authority for that
22 you want me to look at?

23 MR. BYERS: I think it's here, Your Honor.
24 It's in this --

25 THE COURT: And I remember -- I read that in

1 your arguments when I was --

2 MR. BYERS: Yeah.

3 THE COURT: -- getting ready for the hearing
4 and --

5 MR. BYERS: Yeah, I mean, even --

6 THE COURT: -- it's an interesting argument to
7 me because the ultra vires issue, sometimes they
8 beg the question of if you have no power to do it
9 from the get-go, you really can't -- how can you --
10 unless the people with power circle back and say
11 we're going to ratify that or something to that
12 effect, it could be problematic. But that being
13 said, I didn't see anything that --

14 MR. BYERS: Well, to first answer your
15 question though, on Page 7 of my motion it talks
16 about case law where it says that the corporation
17 reinstated after three years does not have such
18 remedies. So reinstated after three years doesn't
19 have such remedies. It's in the case law that's
20 quoted that -- I believe it's Page 5 and 6. And
21 there may be others. And I've also --

22 THE COURT: That's reinstatement. Yeah.

23 MR. BYERS: What's that?

24 THE COURT: That's reinstatement you're
25 talking about.

1 MR. BYERS: Oh, okay.

2 THE COURT: What if the corporation you
3 reinstated and they come back and then they go
4 ratifying or -- you know, to use the words that
5 apply here, you know, what is it reinvigorating or
6 something? I forget the --

7 MR. BYERS: Revitalizing covenants --

8 THE COURT: Revitalizing.

9 MR. BYERS: -- from --

10 THE COURT: Thank you.

11 MR. BYERS: -- reinstating the corporation.

12 THE COURT: Yes.

13 MR. BYERS: That's a very brief change of
14 words.

15 THE COURT: Two different -- no, I'm
16 suggesting they might be two different things.
17 What if you reinstate and then you revitalize?
18 Does that cure any deficiencies?

19 MR. BYERS: Well, if it was properly
20 reinstated, I wouldn't have an argument.

21 THE COURT: Okay.

22 MR. BYERS: But it wasn't properly reinstated.

23 THE COURT: Yeah. I don't know. I haven't
24 looked at that. I just --

25 MR. BYERS: I'm going to offer this. And I

1 wish it were here, and if I need to this will be where
2 I keep my powder dry, but I'll introduce it.

3 THE COURT: All right.

4 MR. BYERS: Because I entered it --

5 THE COURT: You have. You filed it.

6 MR. BYERS: This --

7 THE COURT: I have it.

8 MR. BYERS: No this is -- this here --

9 THE COURT: Yeah.

10 MR. BYERS: -- is a certified copy of the
11 records at the Department of State.

12 THE COURT: Okay.

13 MR. BYERS: And I can go get a fresh copy of
14 this next week. I'll be up near Tallahassee and I
15 think that's --

16 THE COURT: Yeah, you can file it if you've
17 got it and then everybody will be on notice. Just
18 make --

19 MR. BYERS: If we looked at the exhibit that
20 talks about the -- Exhibit --

21 THE COURT: This is your motion.

22 MR. BYERS: Yeah, my motion Exhibit 4.

23 THE COURT: Okay. Go ahead. Got it. I like
24 this one. It's a short exhibit.

25 MR. BYERS: Yeah. It's just -- it says here

1 that C, it was dissolved for nonpayment in 1971.

2 THE COURT: Right.

3 MR. BYERS: D, it was reinstated in '72.

4 THE COURT: No issues with that, I take it?

5 MR. BYERS: Yeah, no issues with that. And
6 that reinstatement is in this document right here.

7 THE COURT: Right.

8 MR. BYERS: And in this document, they filed
9 the two year -- the two years of annual reports
10 that they had missed. So they brought up to speed
11 who were the officers on the first year where we
12 didn't pay the taxes, who were the officers on the
13 second year we didn't pay the taxes, and here, here
14 we are, the officers this year paying the taxes for
15 those last two years, please reinstate us.

16 THE COURT: Yeah.

17 MR. BYERS: The rein- -- then they do a little
18 bit of business in '74. They let it be dissolved
19 in late '74. Six years later --

20 THE COURT: And your position is no --

21 MR. BYERS: They could have --

22 THE COURT: Well --

23 MR. BYERS: If there was an historical record
24 of --

25 THE COURT: That's not what I was going to

1 say. Your position is it wasn't intended to be a
2 homeowner's association anyway so that's not
3 surprising.

4 MR. BYERS: Right. They finished their
5 building and selling land. They were done.

6 THE COURT: Right.

7 MR. BYERS: And then what -- you know, and
8 then the reinstatement that took place in 1980.

9 THE COURT: By that time, they are -- they
10 intend to be a homeowner's association though,
11 right?

12 MR. BYERS: Well, I think the purpose of that
13 was they needed to deed -- or they wanted to create
14 an easement because right after reinstatement,
15 there's an easement recorded --

16 THE COURT: Yeah.

17 MR. BYERS: -- here in the county --

18 THE COURT: Yeah.

19 MR. BYERS: -- saying water company you can
20 cross over this piece of land.

21 THE COURT: Yeah.

22 MR. BYERS: And -- but --

23 THE COURT: This is still before your time,
24 though.

25 MR. BYERS: Yeah, so.

1 THE COURT: You said you were born in '67?

2 MR. BYERS: What's that?

3 THE COURT: '67 you said you were born in,
4 right?

5 MR. BYERS: I was born in '68, yeah.

6 THE COURT: '68, so you're only 32, 22? 22,
7 no.

8 MR. BYERS: Yeah.

9 THE COURT: '70, '80. 12 -- that'd be --
10 you'd be 12 years old. You'd be too young to be on
11 the board, I would think.

12 MR. BYERS: I would like to say that this
13 neighborhood was created for me on my birthday --

14 THE COURT: All right.

15 MR. BYERS: -- because I really love this
16 neighborhood. It's really a cool place to live.

17 THE COURT: What neighborhood is it?

18 MR. BYERS: It's Antiquers Aerodrome is the
19 neighborhood.

20 THE COURT: Is that out in the acreage? Where
21 is it?

22 MR. BYERS: No, it's Hagen Ranch Road and Lake
23 Ida Road. It's kind of the --

24 THE COURT: I know where it is.

25 MR. BYERS: And --

1 THE COURT: I used to play there. There's a golf
2 course out there.

3 MR. BYERS: The Tivoli.

4 THE COURT: Yeah, that's one of them. Now I
5 didn't play -- there's a different -- maybe they
6 renamed it but anyway, yeah, I know the area.

7 MR. BYERS: So -- and I like the neighborhood.
8 I don't mind paying for using it. The dues that
9 haven't been paid is because we had a settlement
10 agreement and it got so botched that we're back in
11 it.

12 THE COURT: Yeah, the homeowners are not
13 happy. At least one of them is not. That's not
14 altogether unusual though.

15 MR. BYERS: But -- and just in the banter that
16 we're having now. There are communities and
17 nonprofits that do get along.

18 THE COURT: Yeah.

19 MR. BYERS: And that they do things right.

20 THE COURT: They're like families.

21 MR. BYERS: And they're foundationally set up
22 correct.

23 THE COURT: Yeah.

24 MR. BYERS: If the foundation is wrong and
25 everyone's looking weird why and how come names are

1 changing and purposes don't match. There's a
2 problem. We can start again. It's not something
3 that we got to keep pushing forward the cart that's
4 got square wheels.

5 THE COURT: Have you guys tried to get in a
6 room and just talk gently and resolve your
7 differences?

8 MR. BYERS: That would be awesome. You
9 actually said after this hearing which got
10 postponed because a hurricane came through --

11 THE COURT: Yeah.

12 MR. BYERS: -- we should be sitting down with
13 a wise person. You mentioned his name. I forget
14 the name.

15 THE COURT: Probably Judge Blanc.

16 MR. YELLIN: Al LaSorte, I think.

17 THE COURT: Al LaSorte.

18 MR. BYERS: Al LaSorte.

19 THE COURT: Oh, yeah, Al's fantastic and he's
20 a gentle, smart, smart guy. Yeah.

21 MR. BYERS: I would love Judge Blanc if he's
22 available.

23 THE COURT: Judge Blanc or Al, either one of
24 those two would be terrific.

25 MR. BYERS: Yeah. Maybe we can work a date

1 out. But that is -- that's why I haven't given
2 him a date as of two days ago on hearing his Motion
3 for Summary Judgment because I wanted to say, hey,
4 you know, we were supposed to do this one, and then
5 sit down and then take it forward from there. So
6 hopefully, you know, before we have to even finish
7 this --

8 THE COURT: Yeah.

9 MR. BYERS: -- if you want to bring his in
10 before you make a decision, I'm not going to say
11 no.

12 THE COURT: Okay.

13 MR. BYERS: So that's the next step in my mind
14 is to sit down and have that --

15 THE COURT: All right.

16 MR. BYERS: -- communication.

17 THE COURT: Tis the season. You know, maybe
18 you guys can --

19 MR. BYERS: Tis the season.

20 THE COURT: Yeah, that's easy.

21 MR. BYERS: Well, and then the New Year
22 there's all new beginnings and resolutions.

23 THE COURT: That too. I like the thought.

24 Okay. So I am going to set it. I'm not going
25 to rule on this today because I -- we're not

1 finished. I'm going to set the next one for a
2 couple of hours so we have plenty of time. This
3 was not enough time for this. This is too
4 complicated for me to get -- wrap my mind around in
5 45 minutes. And I did -- I'm in the middle of a
6 jury trial. This is the third one in a row. Not
7 to say I didn't spend a lot of time on this, I did,
8 but I have a lot of distractions, you know, because
9 I'm in the middle of a trial and a hearing right
10 before yours, a matter of fact. So this requires
11 more time on my part than I was able to give it
12 today. So I think that's the right thing to do.

13 Mr. Yellin, I am inclined to order you guys go
14 mediate. Do you have -- is there -- do you want to
15 oppose that? Is there an issue with that?

16 MR. YELLIN: Okay. So just -- I certainly
17 never oppose mediation. It's just the parties have
18 mediated seven times over across these various, you
19 know, pieces of litigation. And my understanding
20 is that, you know, it always goes very similarly
21 with a party taking a position, and I won't say who
22 takes what, but that the other says that's a
23 nonstarter for me. But having said that, of
24 course, we will go to mediation. You know, the
25 Court has ordered it, it's a part of the

1 (inaudible) order, he's the Plaintiff. I -- you
2 know, there's only so much I can do as far as
3 scheduling or coordinating but we're totally
4 interested. We would even do a global mediation,
5 but I know the Court can't grab other cases and
6 compel us to do --

7 THE COURT: Who are the other judges?

8 MR. YELLIN: Judge Harper.

9 THE COURT: All right. I'll get that one.

10 MR. YELLIN: Okay.

11 THE COURT: What else?

12 MR. YELLIN: Mr. Byers, is there anything else
13 at this moment? I don't think we need -- those are
14 -- these are the only two left. This case and the
15 one before Judge Harper, I think.

16 THE COURT: So Judge Harper is going to order
17 you to mediate. Plan on it.

18 MR. YELLIN: Yes.

19 THE COURT: Probably this afternoon if I can
20 get ahold of him.

21 MR. YELLIN: Okay.

22 THE COURT: Okay.

23 MR. YELLIN: I would ask that, you know, the
24 Court offer January 10th, 11th or 12th for a two-
25 hour special set. And we can just grab one of

1 those and get mine set in case we can't get the
2 case mediated.

3 THE COURT: Yeah.

4 MR. BYERS: Can I offer -- can I say that we
5 use that week to find a mediation date?

6 THE COURT: You can but you'd be unsuccessful.
7 That's plenty of time. You guys can find
8 yourself --

9 MR. BYERS: Yes.

10 THE COURT: That's a month from now.

11 MR. BYERS: Yes.

12 THE COURT: You are well entrenched at this
13 point. You guys -- I bet you could show up in ten
14 minutes and be ready to go.

15 MR. BYERS: It's a trial, a trip, and a
16 holiday -- two holidays away. It's a lot in this
17 month for me, honestly.

18 THE COURT: That would honor well for settling
19 it. Then you wouldn't have to worry about it.

20 MR. BYERS: Well --

21 THE COURT: Takes two to tango, I know.

22 MR. BYERS: Yeah.

23 THE COURT: I got you.

24 MR. BYERS: No, it's just a scheduling
25 consideration, Your Honor.

1 THE COURT: It's a good way to get rid of
2 those problems.

3 MR. BYERS: Well, I want to get rid of it.
4 Let's do it the first week of January.

5 THE COURT: I'm just teasing you.

6 MR. BYERS: Yeah.

7 THE COURT: Okay.

8 MR. BYERS: Yeah.

9 THE COURT: All right. So I'll find some time
10 on the 10th, 11th or 12th for you guys. You can
11 choose whoever you want as a mediator. I think
12 either one of those two would be really good for
13 this -- these issues. And both of them are capable
14 of digging -- probably be very interested in these
15 issues, frankly. Mr. LaSorte in particular. If
16 you looked into his background, he was a -- he
17 worked for -- I think he worked for Tykr for a
18 long, long time. Title insurance, title issues.
19 Then he gravitated into real estate and land use
20 disputes. He worked for -- I'm having a senior
21 moment but one of the big law firms that
22 specializes in that area. Both -- in both sides.
23 Plaintiff and the defense side. So he'd have the
24 qualifications. And Judge Blanc, he's just -- he's
25 a sharp guy. He'd be very good. Have you had

1 experience with him?

2 MR. BYERS: Yeah, I did. Actually, the
3 subject on our settlement agreement.

4 THE COURT: Oh, really. Is that --

5 MR. BYERS: Yeah, his interpretation of a
6 settlement agreement.

7 THE COURT: Is that good or bad?

8 MR. BYERS: His interpretation of the
9 settlement agreement is what I stood on, but the
10 judge didn't want to be here to talk today at the
11 hearing.

12 THE COURT: What judge?

13 MR. BYERS: We had an agreement for settlement
14 hearing, which was right at the beginning of COVID.
15 It wasn't even Zoom. Those weren't even set up.
16 We did a conference call and it was -- it just
17 didn't go well. But the -- that ruling denied my
18 motion to enforce settlement agreement. And it
19 didn't give any real clear explanation.

20 THE COURT: That's a shame. Okay.

21 MR. BYERS: But he was quoted in my motion for
22 settlement agreement.

23 THE COURT: Judge Blanc favored you. So
24 you're okay with him is what I'm asking?

25 MR. BYERS: I think he gets it.

1 THE COURT: Okay.

2 MR. BYERS: He's seen it before.

3 THE COURT: He does. So but you guys have to
4 agree on somebody. You want both sides to be
5 comfortable with your mediator obviously.

6 MR. BYERS: Yeah.

7 THE COURT: Okay. So this hearing is
8 adjourned and I will -- we'll be back. I'll
9 have -- I'll talk to Judge Harper and get him to
10 issue a mediation order as well so you can have two
11 of those that will -- I would like you all to
12 mediate before summary judgment. I think that
13 would be a good idea but that's up to you guys. I
14 can't -- with the holidays and all the problems
15 you're suggesting, I can't force you to do that.
16 But if you could, I think it would be helpful, but
17 I'll leave that to you guys.

18 MR. BYERS: Let's see what our schedule --

19 THE COURT: Yeah.

20 MR. YELLIN: I will do everything I can do but
21 I'll make sure that at least, you know, one of my
22 representatives are present to mediate. I just
23 would love to leave knowing that we've got a date
24 set for our Motion for Summary Judgment so if all
25 else fails, then we at least know there's --

1 THE COURT: Well, I have to go talk to
2 Lucille.

3 MR. YELLIN: Okay.

4 THE COURT: I'll talk to her. We'll set a
5 time and --

6 MR. YELLIN: Okay.

7 THE COURT: -- if the time that we set doesn't
8 work for you, Mr. Byers, or you, Mr. Yellin, then
9 you guys talk, call Lucille back, and we'll move it
10 to a time that is convenient for you. Okay.

11 MR. YELLIN: Because she had offered --
12 Lucille had offered the 10th, 11th, or 12th, or --

13 THE COURT: Any time?

14 MR. YELLIN: Let me screen share, Your Honor.

15 THE COURT: Wow, she must really like you
16 guys. That's pretty good. Wow. Okay. Is that --
17 so Mr. Byers -- wow. Okay.

18 MR. BYERS: Are we -- are those two-hour
19 windows or what -- how long is she offering?

20 THE COURT: It looks like if you do 1:30 it's
21 one hour but we'll have to -- let me see what she's
22 got there. Any one of those -- I don't have my
23 calendar in front of me. Is the 10th, 11th or 12th
24 -- is the 10th a Monday or is the 12th a Friday?

25 MR. YELLIN: Let me have a look.

1 THE COURT: Yeah. Yeah.

2 MR. BYERS: I wouldn't mind waiting until we
3 know for sure we've got a two-hour window because
4 it would have to be --

5 THE COURT: Yeah, that's why -- well, you will
6 if I -- if one of them is a Monday or one of them
7 is a Friday, then you will because I can play
8 around with that.

9 MR. YELLIN: January 10th is a Tuesday, Your
10 Honor.

11 THE COURT: Oh, she's -- okay. All right.
12 What about the 27th?

13 MR. YELLIN: Let's see. Works for me, Your
14 Honor.

15 THE COURT: Is that a -- no, what day of the
16 week is it on?

17 MR. YELLIN: Oh, I'm sorry. That's a Friday,
18 Judge.

19 THE COURT: That's a Friday. Okay. 27th,
20 9:00 a.m., two hours. There you go. You got extra
21 time.

22 MR. BYERS: There you go.

23 THE COURT: It all worked out. You will
24 mediate before then.

25 MR. BYERS: Yes.

1 MR. YELLIN: We will.

2 THE COURT: Okay. All right. Thank you all.
3 Mr. Yellin have a nice weekend. Kim, thanks for
4 your help. And Mr. Byers, good to see you. Take
5 care. Hopefully the next time I see you guys,
6 you'll say, you know, Judge, after all that, we've
7 managed to find a way to work through the issues.

8 MR. YELLIN: Okay.

9 THE COURT: A Christmas present for me.

10 MR. YELLIN: I'm going -- we'll try.

11 THE COURT: All right. Thanks.

12 MR. YELLIN: Thank you.

13 THE COURT: Hearing's adjourned.

14 (Thereupon, the hearing was concluded at 3:31
15 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Samantha Giarratana, Court Reporter, certify that I was authorized to and did report the hearing of Stephen J. Byers vs. Antiquers Aerodrome Inc.; and that the transcript is a true and correct record of my notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 19th day of December 2022.

Samantha Giarratana

Samantha Giarratana, Court Reporter