637 F.3d 1169, 22 Fla. L. Weekly Fed. C 1946
(Cite as: 637 F.3d 1169)

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United States Court of Appeals,
Eleventh Circuit.
DOUBLE AA INTERNATIONAL INVESTMENT GROUP, INC., Daymi Rodriguez, Plaintiffs–Counter–Defendants–Appellees,
v.
SWIRE PACIFIC HOLDINGS, INC., a Delaware corporation, Defendant–Counter–Defendant–Appellant,
Lawyers Title Insurance Corporation, Defendant–Counter–Claimant–Appellee.
Double AA International Investment Group, Inc., Daymi Rodriguez, Plaintiffs–Counter–Defendants–Appellees,
v.
Swire Pacific Holdings, Inc., a Delaware corporation, Defendant–Counter–Defendant,
Lawyers Title Insurance Corporation, Defendant–Counter–Claimant–Appellant.

Nos. 10–12505, 10-12573.
April 4, 2011.

Background: Buyers sought determination that contract for construction and purchase of condominium was voidable, based on developer's failure to comply with its escrow obligations under Florida law, and also sought to recover from escrow agent. The United States District Court for the Southern District of Florida, No. 1:08-cv-23444-CMA, Cecilia M. Altonaga, J., 2010 WL 1258086, entered judgment in favor of buyers, and developer and escrow agent appealed.

Holdings: The Court of Appeals held that:
(1) district court did not clearly err in finding that developer had failed to provide separate accounting, as required under Florida law, such that purchase agreement was voidable, but
(2) Florida statute requiring the establishment of escrow account to protect buyer in connection with contract for sale of any condominium parcel on which construction had not been substantially completed did not authorize private cause of action against escrow agent.

Affirmed in part, vacated in part, and remanded.

West Headnotes

[1] Deposits and Escrows 122A 13

122A Deposits and Escrows
122AII Conditional Deposits or Escrows
122Ak13 k. Depositaries. Most Cited Cases

Even if developer was not required to establish two separate escrow accounts for deposits that it received from buyers for construction and purchase of condominium units, and could satisfy its obligations under Florida law by keeping all deposits in single account and simply providing a separate accounting of funds that it was prohibited from spending and those funds in excess of ten percent of purchase price that it could withdraw when construction began, district court did not clearly err in finding that developer had failed to provide such a separate accounting, so as to make purchase agreement voidable, where escrow agent, while maintaining a separate buyer's transaction log for

each condominium unit, did not separate protected ten percent deposit from second ten percent deposit that could be withdrawn to pay for construction costs. West's F.S.A. § 718.202(5).

[2] Action 13 ⚿3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory rights of action. Most Cited Cases

Common Interest Communities 83T ⚿118

83T Common Interest Communities
83TVI Unit Purchases and Other Voluntary Transfers
83Tk117 Restrictions or Conditions on Transfer of Unit
83Tk118 k. In general. Most Cited Cases

Deposits and Escrows 122A ⚿13

122A Deposits and Escrows
122AII Conditional Deposits or Escrows
122Ak13 k. Depositaries. Most Cited Cases

Florida statute requiring the establishment of escrow account to protect buyer in connection with contract for sale of any condominium parcel on which construction has not been substantially completed does not authorize private cause of action against escrow agent; statute provides for no remedy against escrow agent, but provides simply that failure to comply with statutory requirements will render voidable the purchase agreement between buyer and developer. West's F.S.A. § 718.202(5).

***1170** Alexander Oscar Lian, Lian & Associates, Miami, FL, for Plaintiffs.

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Appeals from the United States District Court for the Southern District of Florida.

Before BARKETT and HULL, Circuit Judges, and SCHLESINGER,[FN*] District Judge.

FN* Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

PER CURIAM:

Swire Pacific Holdings, Inc. ("Swire") and Lawyers Title Insurance Corporation ("Lawyers Title") appeal the district court's final judgment finding that the contract between Plaintiffs Double AA International Investment Group, Inc. and Daymi Rodriguez and Defendant Swire for the construction and purchase of a condominium was voidable because Swire and Lawyers Title failed to establish two separate escrow accounts for certain monetary deposits made by Plaintiffs, as required by the Florida Condominium Act, Fla. Stat. § 718.202.

[1] Swire and Lawyers Title argue that the district court erred in concluding that § 718.202 requires the establishment of two separate escrow accounts.[FN1] They argue that the requirements of § 718.202 ***1171** are met by a "separate accounting" of the funds placed in escrow in excess of ten percent of the purchase price, even if all of the deposited funds are kept in a single account. However, even if a separate accounting of the escrowed deposits satisfies the requirements of § 718.202, the district court found that the accounting practices here failed to meet even this standard. On this record, we cannot say this finding was clearly erroneous. The record reflects that only a single escrow account was opened to hold all of the contract deposits made by purchasers of Asia condominium units. While Lawyers Title maintained a separate buyer's transaction log for each condominium unit, this log does not separate the buyer's protected ten percent deposit from the second ten percent deposit that could be withdrawn to pay for construction costs. We note that the buyer's transaction log in evidence contains two distinct columns that allow the escrow agent to distinguish deposits in the first ten percent from deposits in the second ten percent, but those columns simply were not utilized to keep track of the deposits at issue in this case. Instead, the log contains a single listing of all deposits and withdrawals on the account, without indicating which funds are protected under § 718.202(1). Thus, regardless of whether the statute requires one escrow account or two,[FN2] the district court did not err in finding the contract voidable under § 718.202(5) for failure to maintain a separate accounting, and therefore did not err in ordering the full return of Plaintiffs' deposits plus interest. Swire's argument that this issue was not before the district court lacks merit as the issue was raised before the district court, evidence about the separate accounting was presented, and we see no error in the district court's reaching this issue.

> FN1. We review the district court's conclusions of law *de novo,* and its findings of fact for clear error. *United States v. Diaz,* 630 F.3d 1314, 1330 (11th Cir.2011).
>
> FN2. Since there was no separate accounting, we need not and do not reach the issues regarding the statutory construction of § 718.202, the effect of the Department of Business and Professional Regulation's informal legal opinion, or the new amendment to § 718.202.

[2] However, we find reversible error in the district court's final judgment against the escrow agent, Lawyers Title, for violating § 718.202. That statute does not authorize a private cause of action against an escrow agent. *See United Auto. Ins. Co. v. A 1st Choice Healthcare Sys.,* 21 So.3d 124, 128 (Fla.3rd Dist.Ct.App.2009) ("Absent a specific expression of [legislative] intent, a private right of action may not be implied."). The statute clearly sets forth the rights and obligations of only developers, not escrow agents, regarding the treatment of deposits made by condominium buyers. *See, e.g.,* Fla. Stat. § 718.202(1) ("the developer shall pay into an escrow account"); § 718.202(6) ("[t]he developer shall maintain separate records"); § 718.202(7) ("[a]ny developer who willfully fails to comply with the provisions of this section ... is guilty of a felony"). In addition, the statute provides for no remedy against the escrow agent, but provides

only that failure to comply with the statutory requirements renders the purchase agreement between the buyer and developer voidable.[FN3] *See* § 718.202(5).

> FN3. We do not disturb the district court's final judgment on Lawyers Title's counterclaim for interpleader directing Lawyers Title to return all of the Plaintiffs' deposits currently held in escrow with accumulated interest to Plaintiffs.

For the foregoing reasons, we affirm the district court's final judgment in favor of Plaintiffs against Swire on Count II of Plaintiffs' Amended Complaint, but we vacate the district court's final judgment in favor of Plaintiffs against Lawyers Title on Count II of Plaintiffs' Amended Complaint, and remand the case for further proceedings consistent herewith.

***1172** AFFIRMED in part; VACATED in part, and REMANDED.

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