Exhibit 1

(Order dated December 5, 2023)

ELECTRONICALLY FILED - 2023 Dec 05 9:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4006509

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
The Lofts at Printers Square Condominium Association, Inc.,	)	C/A No. 2022-CP-40-06509
	)	
Plaintiffs,	)	
	)	
v.	)	**ORDER**
	)	
M Gourmet Group, LLC,	)	
	)	
Defendant.	)	

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SC Court of Appeals

THIS MATTER came before the undersigned by way of a motion for judgment on the pleadings or, in the alternative, for summary judgment filed by the Plaintiff, The Lofts at Printers Square Condominium Association, Inc. ("Plaintiff" or "the Association") filed on March 13, 2023. At a hearing before the undersigned by Webex on September 7, 2023, Benjamin C. Bruner, Esquire appeared on behalf of the Plaintiff, and Tobias Gavin Ward, Jr., Esquire appeared on behalf of the Defendant M Gourmet Group, LLC ("Defendant" or "MGM"), along with representatives from the parties. Having carefully considered the record in this case, along with the arguments and submissions of the parties and their counsel, I find the Plaintiff's motion should be granted for the reasons set forth below.

This is a dispute between a condominium association and the owner of the commercial units on the first floor of the four-story condominium building. The top three floors of the building contain residential units. The Association commenced this action on December 13, 2022, asserting a single cause of action for a declaratory judgment seeking an order declaring the following regime documents valid and enforceable against MGM:

- The Master Deed and Declaration of Covenants, Conditions, Restrictions, Easements, Charges, and Liens for The Lofts at Printers Square Horizontal

Property Regime and Bylaws of The Lofts at Printers Square Condominium Association, Inc. recorded July 7, 2011 in the Office of the Richland County Register of Deeds at Book 1693, Pages 1072 to 1158 (collectively, "Master Deed");

- The First Amendment to the Master Deed and Declaration of Covenants, Conditions, Restrictions, Easements, Charges, and Liens for The Lofts at Printers Square Horizontal Property Regime and Bylaws of The Lofts at Printers Square Condominium Association, Inc. recorded April 6, 2012 in the Office of the Richland County Register of Deeds at Book 3021, Page 3021 ("First Amendment");

- The Second Amendment to the Master Deed and Declaration of Covenants, Conditions, Restrictions, Easements, Charges, and Liens for The Lofts at Printers Square Horizontal Property Regime recorded July 27, 2016 in the Office of the Richland County Register of Deeds at Book 2132, Page 3334 ("Second Amendment"); and

- The Rules and Regulations and Rules Enforcement and Fine Policy for The Lofts at Printers Square Condominium Association, Inc. dated December 29, 202 and recorded January 5, 2022 in the Office of the Richland County Register of Deeds at Book 2703, Page 3858 ("Rules and Regulations").

In the complaint, the Association alleges the Master Deed, First Amendment, Second Amendment, and Rules and Regulations are valid and enforceable against the commercial units and against MGM.

On February 16, 2023, MGM filed an answer to the complaint in which it admitted the commercial units are subject to the Master Deed, the First Amendment, the Second Amendment, and the Rules and Regulations. Specifically, MGM admitted the allegations that "The First Amendment to Master Deed is enforceable, and thus Defendant and Commercial Units "A" and "B" are bound by it," (Compl. ¶16, Ans. ¶ 16), and that "The Second Amendment to Master Deed is enforceable, and thus Defendant and Commercial Units "A" and "B" are bound by it." (Compl. ¶18, Ans. ¶ 18.) In its answer, MGM only disputed that it was in violation of the regime documents.

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MGM also served responses to the Association's Rule 36 requests for admissions on February 16, 2023. Among its responses, MGM admitted the authenticity of the exhibits to the complaint, which consisted of the Master Deed, Deed to MGM, First Amendment, Second Amendment, and Rules and Regulations. (Def.'s Resp. to Pl.'s Rule 36 Requests for Admission, filed March 13, 2023 as Exhibit A to Mot. for Judgment on Pleadings or, in the alternative, for Summary Judgment.) MGM also admitted that the regime documents are all valid and enforceable. Id. As in its answer, however, MGM denied that it had violated the regime documents. Id.

On March 13, 2023, the Association filed the motion at bar based upon MGM's answer and MGM's responses to the requests for admissions. (Mot. for Judgment on Pleadings or, in the alternative, for Summary Judgment.) The admissions were attached as an exhibit to the motion.

Three days later, MGM's attorney moved to be relieved as counsel of record. The Court granted that motion the following day. (Consent Order, March 17, 2023.)

On August 18, 2023, MGM moved this Court pursuant to Rule 15, SCRCP, for leave to amend its answer and pursuant to Rule 36, SCRCP for leave to serve amended Rule 36 responses. (Mot. to Amend, August 18, 2023.) In its proposed answer, MGM seeks to dispute the validity of the Second Amendment because, MGM contends, that amendment "takes away" parking spaces in the Additional Parking Area that the First Amendment assigned to the commercial suites. (Def.'s Proposed Am. Ans. ¶ 8.) Similarly, MGM's proposed amended responses to the Association's Rule 36 requests admit the validity and enforceability of the regime documents, save the Second Amendment. (Def.'s Proposed Am. Resp. to Pl.'s Rule 36 Request, ¶¶ 1-9.)

In advance of the September 7, 2023 hearing in this matter, MGM also filed a return to Plaintiff's motion in which it argued entry of judgment in favor of the Association would be

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improper because (i) the Second Amendment is unenforceable insofar as it "took" parking spaces that were integral to MGM's decision to purchase the commercial units, and (ii) the Court should grant MGM's motion for leave to amend its answer and for leave to serve amended responses to the Association's Rule 36 requests.

DISCUSSION

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c), SCRCP. While a judgment on the pleadings is a drastic measure, it is proper where the allegations and responses in the pleadings raise no issue of fact preventing the moving party from relief. See Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009) ("A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor."); and Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991).

In this case, the pleadings raise no dispute regarding the validity and enforceability of the Master Deed, First Amendment and Rules and Regulations. MGM's filed answer, its responses to the Rule 36 requests for admissions, and the proposed amended answer and responses all readily admit the Association's allegations that the Master Deed, First Amendment and Rules and Regulations are valid and enforceable against the commercial units and MGM as their owner. While MGM disputes allegations that it violated the regime documents, that issue is not before this Court because the relief the Association seeks is limited to a declaratory judgment that the regime documents are valid and enforceable. I therefore grant the Association's motion for judgment on the pleadings as to the enforceability of the Master Deed, the First Amendment, and the Rules and Regulations.

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Regarding the Second Amendment, MGM admits in its initial answer and in its responses to the Rule 36 requests that the Second Amendment is enforceable. MGM also admits the authenticity of the exhibits to the complaint, consisting of the Master Deed, Deed to MGM, First Amendment, Second Amendment, and Rules and Regulations. As noted above, MGM contends the Second Amendment is unenforceable because it alleges that amendment "takes" parking spaces in the area that were integral to MGM's decision to buy the commercial spaces. However, that argument overlooks several undisputed facts. First, all the parking spaces in the Additional Parking Area were used on a first come, first served basis under the Master Deed, and they remained so when the residential units were sold under a license with the developer. The First Amendment purported to make eleven (11) spaces in the additional parking area limited common elements of the commercial units, and eleven (11) spaces limited common elements of the residential units. At that time, the additional parking area was still owned by the developer and had not been conveyed to the Association. Furthermore, the Second Amendment did not remove or take away any spaces. On its face, the Second Amendment made nine (9) of the parking spaces in the Additional Parking Area available on a first come, first served basis. The commercial units still have use of the spaces as they did before. Notably, neither the Master Deed, the deed to MGM, nor any of the amendments give any unit owner an ownership interest in the parking spaces in the Additional Parking Area. Furthermore, it is undisputed that when MGM purchased the commercial units, it did so with actual knowledge that the Master Deed could be amended at a later time. MGM admits it acknowledged the Master Deed and terms therein as part of its purchase of the commercial units. Finally, MGM has raised no allegation or dispute that the Association failed to follow the protocols outlined in the Master Deed when it gave notice of and voted on the Second Amendment. Even considering MGM changing attorneys, it has had ample time to

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conduct discovery and provide some evidence to avoid summary judgment, yet MGM has failed to point to any genuine issue of material fact regarding the adoption and validity of the Second Amendment. See, e.g., Rule 56(c), SCRCP, and Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 463–64, 892 S.E.2d 297, 301 (2023) ("[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.") (internal citation and quotation omitted). After considering the pleadings, exhibits incorporated into the pleadings, the admissions on record, and even the proposed admissions, I find no genuine dispute of fact that the regime documents, including the Second Amendment, are valid and enforceable. The Association is entitled to summary judgment, as requested in its original motion. See Rule 12(c), SCRCP ("If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."), and Rule 56(c), SCRCP.

In its return and during the hearing, counsel for MGM argued that granting the Association motion for judgment on the pleading would be improper because MGM has a pending motion for leave to amend its answer to assert additional counterclaims and for leave to serve amended responses to the requests for admissions. While leave to amend should be freely granted when justice so requires and does not prejudice the other party, MGM's motion to amend falls short and fails to create any genuine dispute of material fact. The proposed amendments are not based upon any newly discovered fact or evidence but rather on MGM's desire to change its position to avoid the legal effect of its admissions after switching attorneys. As noted above, even if the amendments were allowed, they would not create a genuine dispute of material fact regarding the validity and enforceability of the regime documents. Furthermore, allowing the amendments now

would unduly prejudice the Association because the amendments introduce new claims and defenses (based on facts MGM knew all along) which would require the Association to introduce additional and different evidence to prevail in the amended action at a time when the case is subject to being called to trial. See 24 S.C. Jur. § 15.2 (citing Ball v. Canadian Am. Exp. Co., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994)). "Rule 36 serves two vital purposes, both of which are designed to reduce trial time. Admissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from the case, and secondly, to narrow the issues by eliminating those that can be." Scott v. Greenville Hous. Auth., 353 S.C. 639, 649, 579 S.E.2d 151, 156 (Ct. App. 2003) (internal quotation omitted); Id. at 652, 579 S.E.2d at 158 ("Discovery is the quintessence of preparation for trial and, when discovery rights are trampled, prejudice must be presumed."). MGM clearly appreciated that the admissions in its original answer and requests to admit entitled the Association to the declaratory judgment it sought. It sought new counsel within days of the Association filing its motion for judgment on the pleadings. Despite having ample time to conduct discovery, MGM has pointed to no evidence from which a fact-finder could reasonably find a triable issue exists as to the enforceability of the regime documents.

Finally, our courts have recognized that in rare cases, denying leave to amend a pleading is proper where allowing the amendment would be futile. See, e.g., Santos v. Harris Inv. Holdings, LLC, 439 S.C. 214, 221, 886 S.E.2d 483, 486–87 (Ct. App. 2023), *reh'g denied* (May 15, 2023). That is the case here. The proposed amendments admit the validity and enforceability of the Master Deed, First Amendment, and Rules and Regulations. As noted in MGM's return filed on August 30, 2023, the proposed amendments are "not substantially different than the original pleadings." As noted above, while MGM seeks leave to amend to challenge the enforceability of the Second Amendment on the grounds that MGM never consented to it, clearly the Master Deed

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allows for amendments without MGM's consent. (See Master Deed at 37, Article 12 (allowing for amendments to the master deed "upon the vote of the Owners holding a Majority of the Total Percentage Interests," and for amendments to the bylaws upon a vote of "Owners holding as least sixty-seven percent (67%) of the Total Percentage Interests."). Stated otherwise, if MGM is correct that her consent was required for the Second Amendment, then logic would dictate the consent of the residential unit owners would have been required for the First Amendment to be valid. That is not the law. For these reasons, the Court finds MGM's motion to amend should be denied and, in addition, that even if the motion were granted the Association would be entitled to judgment as a matter of law that the regime documents are valid and enforceable.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's motion shall be and hereby is **GRANTED**.

IT IS FURTHER ORDERED that the regime documents for The Lofts at Printers Square Horizontal Property Regime are hereby declared valid, proper, and enforceable, such regime documents consisting of (i) the Master Deed and Bylaws filed July 7, 2011, in the Office of the Richland County Register of Deeds at Book 1693, Page 1072; (ii) the First Amendment to the Master Deed filed on April 6, 2012, in the Office of the Richland County Register of Deeds at Book 1755, Page 3021; (iii) the Second Amendment to the Master Deed filed on July 27, 2016, in the Office of the Richland County Register of Deeds at Book 2132, Page 3334; and (iv) the Rules and Regulations dated December 29, 2021.

AND IT IS SO ORDERED.

[Judge's Electronic Signature on Following Page]

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Richland Common Pleas

Case Caption:	Lofts At Printers Square Condominium Association Inc vs M Gourmet Group Llc
Case Number:	2022CP4006509
Type:	Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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