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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable William H. Seals, Jr., Circuit Court Judge

S.C. Ct. App. Case No. 2023-000451
Case No. 2019-CP-26-06550

Appellate Case No. 2025-002042

Tony Giovino, Carter Tackett, Richard Aquino,
Bill West, and Shoreham Towers Homeowners Association, ... Petitioners.

v.

Marshall Griffin, ...Respondent,

PETITIONERS' REPLY TO RESPONDENT'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

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Petitioners, Tony Giovino, Carter Tackett, Richard Aquino, Bill West, and Shoreham Towers Homeowners Association, respectfully submit this Reply to Respondent's Return[1] to the Petition for Writ of Certiorari.

ARGUMENTS

I. Any ambiguity must exist in the contract; it cannot be created as the Respondent has done.

The Respondent ignores the unambiguous statement in the Master Deed that Shoreham Towers Horizontal Property Regime consists of two (2) components: Dwellings and Common Elements. (R. pp. 01034 and 01095) Therefore, if any part of Shoreham Towers Horizontal Property Regime is not a Dwelling, it must be a common element.

Respondent purchased his Dwelling in 1995. (R. p. 01184-01186) His Dwelling never changed in size – per the Master Deed it was approximately 2,630 square feet when he purchased in 1995, and, as he testified, his Dwelling never increased in square footage. (R. p. 00345, lines 13-24). During all his years as the Dwelling's co-owner, with his wife, he paid his homeowners annual and special assessments, and county property taxes, based on his Dwelling being 2,630 square feet, not on any part of the roof terrace. Why - because the roof terrace is a common element - it never was a part of his Dwelling.

Respondent's position, that the roof terrace is a balcony, is not in the Master Deed. The Building Plans, being a part of the Master Deed, do not identify the roof terrace as a balcony. The Building Plans show 39 of the 40 Dwellings with balconies. (R. pp. 01170-01183) Per Exhibit A to the Master Deed, the square footage for each of the 39 Dwellings include their respective balcony. (R. p. 01120)

[1] This Return, consisting of 32 pages, exceeds the 25 page limit.

The machinations of Respondent in his creation of an ambiguity must be judged against the plain language in the Master Deed that there are only 2 components to Shoreham Horizontal Property Regime, one being a Dwelling and then if not a Dwelling, it is a common element.

Nothing is ambiguous about the fact that a Dwelling is not a common element. Nothing is ambiguous about the fact that a common element is not a Dwelling. The trial judge erred when he did not rule, as a matter of law, that the roof terrace, planters, and elevator lobby are common elements.

II. The use at trial of the Temporary Injunction far exceeded its purpose of preserving the status quo.

If the purpose of a temporary injunction is to preserve the status quo, then it was error for the Court of Appeals to hold that the many references to the temporary injunction, during the trial, were proper. The temporary injunction was used to cross examine the Petitioners' witnesses, was used in Respondent's opening statement, and was part of Respondent's closing statement. In his Return, Respondent states that the many references to the temporary injunction "…were made to explain the conduct of the Petitioners…".[2] This statement is a clear admission that the temporary injunction was used improperly by the Respondent. As shown in the Petition for Writ of Certiorari, the many references to the temporary injunction were for the purpose of eliciting evidence of alleged wrongdoing by the Petitioners.

III. Petitioners properly relied on the guidance of experts.

The Respondent, in his Return, presents conclusions of fact which are without support in the Record.

[2] Respondent's Return, page 12.

Contrary to the gross misstatement that the Board acted outside of Roger Roy's guidance, Roger Roy testified that he provided a legal opinion that the roof terrace was a common element, it was not a balcony. (R. p. 00749), lines 16-21) He instructed the Board of the need for rules and regulations because of safety issues, and the "great liability to the association". (R. p. 00750, line 20 – p. 00751, line 8) The Board sent him the Rules and Regulations for his review. (R. p. 00752, lines 9-16) He reviewed the Rules and Regulations, and he thought they were well thought out and appropriate. (R. p. 00766, line 16) Further, he discussed the removal of the outdoor furniture with the Board. (R. p. 00768, line 22 – p. 00769, line 7)

In addition to legal counsel advising the Petitioners that the roof terrace was a common element, they also relied upon the opinion of the roofing contractor not to return the turtle tile to the roof top. (R. p. 00734, lines 20-25). The turtle title was not returned to the roof only because of the opinion of the roofing contractor.

As to the safety consultant, his opinion as to the safety of the roof top area, was only necessitated because of the legal opinion that the roof terrace as a common element,[3] and Roger Roy's assessment that the Board had "…great liability…" for activities on the roof top terrace. (R. p. 00750, lines 20-25)

All actions of the Petitioners were premised upon the guidance provided by their experts. It is without dispute that each expert was qualified to guide the Petitioners; therefore, the Petitioners should be entitled to immunity.

[3] Respondent erroneously states the safety consultant was hired to inspect only Respondent's unit. This consultant did not inspect any units, only the roof top terrace.

CONCLUSION

Petitioners respectfully request the Court to issue a Writ of Certiorari to review the procedural and substantive questions of law raised in the Petition for Writ of Certiorari.

Respectfully submitted,

s/Henrietta U. Golding

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