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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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

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

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Appellate Case No. 2025-002042

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Marshall Griffin .....Respondent,

v.

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

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**PETITIONERS' REPLY TO RESPONDENT'S BRIEF**

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## **COUNTER STATEMENT TO RESPONDENT'S STATEMENT**

The erroneous verdict that the Shoreham Towers Master Deed is ambiguous, cannot be taken lightly due to its long lasting, harmful consequences. The Shoreham Towers Master Deed was created to provide structural integrity and preservation of the building, and ownership stability to the forty (40) unit owners at Shoreham. Now, uncertainty and havoc exist at Shoreham Towers. Common elements, such as the rooftop, roof elevator, tenth floor elevator lobby, and the planters on each side of the roof, require frequent maintenance and on occasion, significant repair, especially since this is ocean front property. The current status is that these building components are now under the control of one (1) dwelling unit owner. No where in the Master Deed is this intent evident.

The Master Deed was recorded January 22, 1983, in accordance with the South Carolina Horizontal Property Regime act. (App. pp. 001106-001161), with the Building Plans being a part of the Master Deed (App. pp. 001185-001198). Respondent, in the deed to his Shoreham Dwelling Unit, by accepting this deed, agreed his was subject to "...all of the provisions of the Master Deed...", and specifically agreed "to observe and perform their obligations under said Master Deed and Exhibits..., including, but not limited to, payment of assessments for the maintenance and operation of the dwelling and condominium." (App. p. 001199).

Disregarding his obligations to adhere to the Master Deed, Respondent, during his years as the President of Shoreham Towers Association, did the following:

1. Remodeled the Tenth Floor Elevator Lobby and Foyer, without obtaining any approval from the Board of Directors. The Master Deed requires approval for any modifications to Dwelling Units and Common Areas. Articles XVIII and XIX. (App. p. 001115). Respondent testified that he never informed the Board of this remodeling. (App. p. 0000351, lines 7-24).

2. Installing turtle tile on the roof terrace without any Board approval or even Board knowledge. (App. p. 0000363, lines 3-4).
3. Placing access restriction signs on the doors to the building's stairs even though the stairwells to the tenth floor are both common elements, as he admitted in his trial testimony. And he admitted the signs were posted without permission from the Association. (App. p. 0000379, line 13 – p. 0000380, line 2).

**I. The Respondent's Argument that the Master Deed is Ambiguous is Convolutd and Not Based on the Language in the Master Deed.**

The Respondent states, on page 8 of his Brief, that the "...Master Deed explicitly delineates which parts of the property are Common Element and does not list the Rooftop Terrace as a common element.". Meaning that since there is no notation on the Building Plans that the rooftop terrace is a common element, then it is a Dwelling Unit. This assumption is totally ludicrous. The Master Deed, in Article III, has a simple approach – if a part of the horizontal property regime is not included in a dwelling, then it is a common element. (App. p. 001110). Nothing ambiguous about this Master Deed statement. Contrary to Respondent's flawed assertion, nothing in the Master Deed requires that in order to be a common element, there must be a written designation of such. Many parts of the Shoreham regime are not designated as common elements in the Master Deed even though these parts are common elements: a few examples are the sea wall, lobby area on the first floor, mechanical rooms, meeting room, swimming pool, the pool deck, and the parking lot. Nowhere in the Building Plans, or elsewhere in the Master Deed, are these parts of the regime noted as being common elements other than they are not part of a dwelling, ergo, they are common elements.

As to the roof terrace not being a part of Respondent's Dwelling, Respondent testified that it is outside of his Dwelling Unit:

Q: Now when we read it at the beginning of this cross-examination, we read your deed. We read the master deed. The master deed says there is two things at Shoreham Towers: Dwelling units and common elements, right?

A: That's correct.

Q: So the roof terrace is not part of your dwelling unit, is it?

MR. GRANTLAND: Objection.

THE COURT: Sustained.

A: It's outside space.

Q: (MS. GOLDING) So it's outside your dwelling unit?

A: That's right. It is not heated, and it's not cooled.

(App. 0000374, lines 2-16).

The Respondent's argument that the roof terrace is a balcony, is not consistent with the Master Deed. The Master Deed, in the Building Plans, identifies thirty-nine (39) balconies. In the plans, the Balconies are each attached to a Dwelling. All the balconies are below the tenth floor. (App. p. 001197). No balcony is shown on the tenth floor.

Consistent with the Master Deed, the roof top terrace, being approximately 2,072 square feet<sup>1</sup>, was never calculated by the Association as being part of Respondent's dwelling. If it had, then Respondent's unit would have been in excess of 4,000 square feet instead of the 2,630 square feet - the unit size in Exhibit A of the Master Deed. (App. p. 001135).

The Master Deed unambitiously provides that the Association can levy assessments on the unit owners for the upkeep of common elements. These assessments must be calculated based on the square footage of each dwelling. A unit owner's assessments are based on the square footage of the owner's unit. (App. p. 0000638, line 17 – p. 0000639, line 7).

In spite of Respondent's argument in his Brief that the rooftop terrace was at all times treated as belonging to the Respondent, the Association never included the rooftop terrace square footage in the calculation of the regular and special assessments. Had the Association ever

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<sup>1</sup> The surveyor calculated the rooftop terrace as being approximately 2,072 square feet. (App. p. 0000786, line 21 – p. 0000787, line 4).

considered the rooftop terrace as belonging to Respondent, its square footage would have been included in calculating the dollar amount of assessments due by Respondent to the Association.

**II. The Planters are Common Elements.**

Apparently, Respondent ignores the reality that he testified that the planters are common elements. In fact, he testified on three (3) different occasions that they were common elements. (App. p. 0000276, line 24 – p. 0000277, line 3; p. 0000369, lines 15-17; and p. 0000372, lines 10-12). Of course, his testimony is in addition to the Master Deed which states that “the rooftop area contains planters which are common elements”. (App. p. 001135). No evidence exists that the planters are part of Respondent’s Dwelling.

**III. The Tenth Floor Elevator Lobby is a Common Element.**

In addition to the Master Deed stating that the Tenth Floor Elevator lobby is a common element (App p. 001135), the Respondent’s actions in remodeling this space to convert it for his private use, is an admission that it was common area. Respondent’s remodeling was done without approval of the Association – as required by the Master Deed, in Articles XVIII and XIX (App. p. 001115).

The following is Respondent’s testimony of the remodeling done to enclose the elevator lobby and foyer to become part of his Dwelling:

Q: And this elevator lobby is not part of the square footage in your – for 2,630 square feet, is it?

A: I am not sure. I don’t think it is.

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Q: You didn’t take the wall away?

A: I moved the door.

Q: And you put ceramic tile down?

A: That’s correct.

Q: And in doing that, you never got permission from the association or the board of directors?

A: That’s correct.

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Question: "Well, the foyer that is shown on this plan, that square footage in the foyer is not encompassed within your penthouse unit, is it?"

What is your answer?

"I'm not aware of that."

Q: Now, you never paid for any type of elevator maintenance, have you?

A: No, I have not.

Q: And the reason you made this remodel, you converted this elevator lobby into your own is because you found it more aesthetically pleasing to help your renters; is that correct?

A: It gave more room to get luggage carts off of the elevator, because it was rather small and cumbersome.

**IV. While Respondent's Brief Misconstrues the Law, and Much of the Evidence, There Are Several Examples of Arguments Made Without Evidentiary Support.**

A. Respondent, in his Brief, states that there was a Board meeting in which the Petitioner Defendant Association Board "...explicitly outlined in a meeting in 1992 that the terrace was to be treated a balcony, which is private." (Respondent's Brief, p. 2). This is not correct. The Board Minutes of the July 31, 1992 meeting refer to a statement of an attorney, Jim Pike, that the area around the top penthouse would be handled the same as other balconies. (App. p. 001162). There was no motion, no action, taken by the Board. In fact, never was the area around the penthouse handled like balconies, for the square foot of each balcony for the thirty-nine (39) units was used for calculating homeowners' assessments while the square footage rooftop terrace was never used to calculate the assessments Respondent had to pay.

B. Contrary to the statement on page 3 of his Brief, that the Rules and Regulations were implemented without Respondent's involvement, Respondent, through his legal counsel, had significant input in the Rules and Regulations. Respondent's attorney engaged with the Association's legal counsel, Roger Roy, as to the Rules

and Regulations. In addition to communications between the two, Mr. Grantland drafted proposed Rules. (App. pp. 001213-001215). In fact, Mr. Grantland's first rule states that "1. The rooftop terrace surrounding the RTPH is a **roof element.**" (emphasis added).

C. In his Brief, Respondent states on page 4, that the repair "...was primarily to the center roof over Griffin's unit." This statement is wrong and has no evidentiary support. The roof repair project undertaken in 2019, was to the entire roof terrace. In addition, he states that not returning the tile to the roof terrace was a targeting attack on Respondent. The roofing contractor testified that in order to install a new roof membrane, the turtle tile on the roof terrace was removed. (App. p. 0000738, line 6 - p. 0000739, line 6). Upon the completion of the roof project, the contractor recommended, in a letter to the Homeowners Association, that the turtle tile not be reinstalled. (App. p. 001216).

D. In Respondent's Brief, on pages 4 and 20, he states the safety inspector was hired in clear retaliation against Respondent. He also states, in his Brief, that "...the safety inspector did not inspect a single other unit on the property...". The inspector did not inspect the Respondent's unit; in fact, he did not inspect any dwelling unit, and no evidence exists to the contrary.

As stated in the Report, the inspection was to assess the safety of the furnishings on the rooftop and the vegetation along the perimeter. (App. pp. 001174-001175).

As testified by Bill West, and depicted in various pictures, the rooftop terrace abuts the rooftop edge and there was a real concern of a catastrophe occurring if a person fell over while using a highchair. (App. p. 0000680, line 17 – p. 0000681, line 18).

## CONCLUSION

The absurdity of a roof in a high-rise condominium being now under the control of one (1) unit owner, not the Association, is hard to fathom. It is obvious that the fact, told to the jury over thirty (30) times, that a state judge issued a temporary restraining order which barred the Association from any access to the rooftop terrace played a crucial, dramatic role in this trial and prejudicially impacted the Petitioners. The jury verdict must be set aside by declaring that the rooftop terrace, the planters, and the elevator lobby are common elements. The integrity of this horizontal property regime needs to be restored.

Respectfully submitted,

s/Henrietta U. Golding

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