

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Rawcliffe Resorts, Inc.,

Plaintiff,

v.

Matt Becker and Associates, Inc. d/b/a

Ocean Breeze Beach Vacations, Matt

Becker and Karen Clark Becker,

Defendants.

IN THE COURT OF COMMONS PLEAS

FIFTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-26-00980

DEFENDANTS' MOTION FOR RELIEF
FROM ORDER OF CONTEMPT
PURSUANT TO RULE 60 (b), SCRPC

RECEIVED

APR 01 2015

SC Court of Appeals

TO: THE PLAINTIFF ABOVE NAMED, ITS COUNSEL OF RECORD JAMES L. HILLS, ESQUIRE, JENNIFER D. HILLS, ESQUIRE AND THE HONORABLE LARRY B. HYMAN, JR., PRESIDING JUDGE:

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through the undersigned, will move before the Court, now Ten (10) days hence or as soon thereafter as counsel may be heard, for an Order Granting Relief from the Order of Contempt issued by the Honorable Larry B. Hyman, Jr., Presiding Judge of the Fifteenth Judicial Circuit on May 12, 2014, at the Horry County Government and Justice Center located at 1301 Second Avenue, Conway, South Carolina, pursuant to Rule 60 (b), South Carolina Rules of Civil Procedure. The grounds for this motion are as follow:

BACKGROUND FACTS

This action was commenced by Plaintiff on February 15, 2013 by the filing of a Summons and Complaint alleging causes of action against Ocean Breeze Beach Vacations and Karen Clark Becker for Temporary and Permanent Injunction, Unfair Trade Practices, False Advertising, and Misappropriation in connection to Ms. Becker's operation of a condominium rental business at the Sand Dunes Resort. Specifically, Plaintiff alleged, *inter alia*, that Ms.

Becker and her company utilized images owned by Plaintiff in advertising her business and that the use of those images “implied” access to amenities owned by Plaintiff. The amenities referenced in this case are, according to Plaintiff, only accessible to guests who rent units in the Sand Dunes Resort, or other resorts affiliated with Plaintiff through Plaintiff’s rental program. Ms. Becker, on April 2, 2013, Ms. Becker entered into a Consent Order Granting Temporary Injunction Against Ocean Breeze Beach Vacations and Karen Becker, which in pertinent part, enjoined Ms. Becker and her company from implying access to, or describing any amenities owned by Plaintiff. The Consent Order Temporary Injunction was also signed by Matt Becker as Owner/ President of Matt Becker and Associates, Inc. of which Ocean Breeze Beach Vacations is a subsidiary.

On April 11, 2013, Plaintiff filed an Amended Complaint, which included additional causes of action for Fraud/ Intentional Misrepresentation, Violation of the Lanham Act Section 43 (a), Misappropriation of Trade Names, Copyrights, and Service Marks in Order to Confuse the Public, Theft of Services, Tortious Interference with a Contract, 2 Counts of Tortious Interference with Prospective Business Relationship, Trademark/ Mark/ Trade Name Infringement, Trademark Dilution, Slander/ Defamation of the Plaintiff, Individual Liability against both Matt Becker and Karen Becker, Trespass to Land, Trespass to Chattels, Conversion and Nuisance. Furthermore, Plaintiff added Matt Becker and Matt Becker & Associates, Inc. as party Defendants in this action. On May 23, 2013, Defendants filed an Answer and Four Counterclaims for False Advertising- Violation of Lanham Act Section 43 (a), Unfair Trade Practices, Conversion, and Fraud/ Intentional Misrepresentation. On June 25, 2013, a Consent Order Correcting/ Amending Caption and Adding Matt Becker as a Necessary Party was filed

with the Horry County Clerk of Court. Additionally, Plaintiff filed a Reply to Defendants' Counterclaims on October 2, 2013.

On August 29, 2013, Plaintiff filed an Order and Rule to Show Cause and Petition and Citation for Contempt against the Defendants specifically alleging that they had violated the terms of the Consent Order Granting Temporary Injunction by continuing to imply access to the amenities owned by Plaintiff in the advertising and representations to its clients and potential clients. The matter was tried before the Honorable Larry B. Hyman, Jr. on February 10, 2014. Subsequently, Judge Hyman entered an Order filed May 12, 2014, declaring the Defendants Becker to be in contempt of the prior Temporary Injunction and sentencing them each to Thirty (30) days incarceration which may be purged upon the payment of One Thousand and 00/100ths Dollars (\$1,000.00) to the Horry County Clerk of Court. On May 28, 2014, Defendants filed a Notice of Intent to Appeal the Order of Contempt, which has since been fully docketed with the South Carolina Court of Appeals.

During the presentation of Plaintiff's case in chief, it presented Two (2) witnesses, namely, Lee Rawcliffe, the Chief Executive Officer of Plaintiff and David Rivera, Facilities Director for Plaintiff. On cross examination, Mr. Rawcliffe testified that the homeowners association for Sand Dunes Oceanfront Resort was supposed to have access to all the units¹ at the resort pursuant to the Master Deed for Sand Dunes. (Transcript of Hearing, p. 41, lines 9-21). He further testified that Resort Association Management, Inc.² (RAM) was the property manager for the HOAs³. (Transcript of Hearing, p. 40, lines 2-12). Mr. Rawcliffe continued that several members of the HOA Board of Directors were affiliated with Plaintiff, in some capacity, as

¹ This includes units which are not part of Rawcliffe Resorts, Inc.'s rental program.

² Mr. Rawcliffe testified that he has no ownership interest in RAM, however, his children are part owners and there are several individuals who own an interest in RAM who are also affiliated with Rawcliffe Resorts, Inc. and the several HOAs at Sand Dunes Oceanfront Resort. (Transcript of Hearing, p.39, line 20- p. 40, line; line 15- p. 41, line 7).

³ There are approximately 4 homeowners associations at the Sand Dunes Oceanfront Resort according to the testimony of Mr. Rawcliffe on February 10, 2014.

employees of Plaintiff. Mr. Rawcliffe additionally testified that the HOA and RAM could only access the units in the case of emergency or for pest control purposes. (Transcript of Hearing, p. 41, lines 9-21). In fact, Mr. Rawcliffe testified:

On all of the units that we own and manage, we have SAFLOK electronic security locks which are used by a card key or an RFID and those do record who has entered on- in each case. And it maintains those records, I think for a little over a week.

(Transcript of Hearing, p. 41, line 24- p. 42, line 3). Mr. Rawcliffe continued to testify that the units managed by the Beckers would not have that type of lock. (Transcript of Hearing, p. 42, lines 5- 18).

Mr. Rivera, on cross examination, was questioned concerning whether there was access by employees and agents of the HOA, RAM or Plaintiff to units not on Plaintiff's rental program. Mr. Rivera testified that: "If they're not in the rental program, we have no way to get in because they got the keys. They got their own keys." (Transcript of Hearing, p. 57, lines 7- 12). Mr. Rivera responded in the negative regarding whether he, as Facilities Director for the Sand Dunes Oceanfront Resort could access any of the units at the resort. (Transcript of Hearing, p. 57, lines 4- 9). However, Mr. Rivera, when asked about entering specific units when searching for evidence, Mr. Rivera couldn't remember whether he had gained access to units or not. (Transcript of Hearing, p. 57, line 10- p. 58, line 1). However, Mr. Rivera concluded his testimony again, contending that unless the unit was on Plaintiff's rental program, they could not access the unit. (Transcript of Hearing, p. 57, line 24- p. 58, line 1).

Whether Plaintiff, employees of RAM and/or the HOA have available access to the units at the resort which are not part of Plaintiff's rental program is incredibly important for a number of reasons. Chiefly, the wristbands alleged to have been distributed by Defendants purportedly giving access to the amenities owned by Plaintiff are generic and bear no markings indicating

from where the wristbands came. Secondly, the wristbands were enclosed in an un-marked envelope generic envelope, which, again, did not indicate from where the wristbands originated.⁴ Thirdly, there were no witnesses which could positively identify that the Defendants supplied the wristbands to Ms. Ball, who provided Plaintiff with an affidavit which lead to the contempt proceeding. Additionally, there are other rental agents operating at the location, who had previously been accused of providing similar wristbands to their guests, however, according to Mr. Rawcliffe's testimony, agreed to stop the practice, as the Defendants herein did in the Consent Order Granting Temporary Injunction. To be clear, the finding that the Beckers were in contempt of the Temporary Injunction was predicated upon the presumption that no one else had access to the unit, aside from the guests and the Beckers. There was no direct evidence linking the Beckers to the envelopes; only circumstantial evidence, which hinged upon the theory that no one else had access to the unit aside from the Beckers, Ms. Ball and her family.

However, during the pendency of the appeal in this matter, Defendants have obtained new information which was not available at the time of the Contempt Proceeding which contradicts the testimony offered by Plaintiff's witnesses regarding access to the units at Sand Dunes Oceanfront Resort, including those not on Plaintiff's rental program. On January 9, 2015, Sand Dunes Oceanfront Tower Homeowner's Association, Inc. through RAM sent letters to the owners of units at Sand Dunes Oceanfront Resort indicating that the HOAs for Sand Dunes Oceanfront Resort had begun to change the locks on the entrance doors to the condominium units which granted access to these individual units to RAM and the HOAs. Included with the letter dated January 9, 2015, was a copy of Three (3) pages of the Master Deed, to which the letter cites, and indicates that the HOA and its management company, RAM, is entitled to access

⁴ In Ms. Ball's deposition, which was introduced as Plaintiff's Exhibit 2, she testified that the wristbands were contained in a generic, un-marked white envelope. (Deposition of Kim Ball, p. 8, lines 2-3; p. 17, lines 9- 15). However, at the Contempt Trial, the wristbands, which had not been previously produced for inspection, were contained in a Sands Resort envelope. (Transcript of Hearing, p. 52, line 13- p. 53, line 17).

to these units. The position taken in the letter dated January 9, 2015 is that this access is granted to these entities regardless of whether the unit is participating in Plaintiff's rental program. A copy of the letter dated January 9, 2015 and its enclosed attachments are attached hereto as Exhibit A.

The letter of January 9, 2015, led to a lawsuit being filed captioned *Sand Dunes Oceanfront Tower Homeowners Association, Inc. v. Bradley Bennett, et al.*, bearing Case Number 2015-CP-26-357. Pursuant to an Order of Reference signed by the Honorable Steven H. John on February 26, 2015, a hearing was held by the Honorable Cynthia Graham-Howe, Master in Equity for Horry County on March 4, 2015 on cross motions for Temporary Injunctions. During argument on the cross motions for Temporary Injunctions, Counsel for Sand Dunes Oceanfront Tower Homeowners Association, Inc. admitted that Rawcliffe Resorts, Inc., the Plaintiff in the instant case, had access to units which were not on Rawcliffe Resorts, Inc.'s rental program. In that instance, the individual owner⁵ could not gain access to his unit due to Sand Dunes Oceanfront Tower HOA and RAM changing the locks on the unit door. That individual owner went to the front desk, which is a commercial element owned by Rawcliffe Resorts, Inc., the Plaintiff herein, which provided him a key to his unit. What is peculiar is that the unit in question does not participate in Rawcliffe Resorts' rental program, but utilizes Oceanfront Guru Vacation Rentals⁶ as his rental manager. Even more interesting is that Counsel for Sand Dunes Oceanfront Tower HOA admitted that the HOA had given copies of the keys to this unit, and presumably other units, to Rawcliffe Resorts, Inc. According to counsel for Sand Dunes Oceanfront Tower HOA, this is due to the fact that the HOA, RAM and Rawcliffe

⁵ The owner referenced in the Transcript of Hearing is James Gowan. Mr. Gowan owns multiple units in the resort, but the specific unit at issue in case number 2015-CP-26-357 is Unit 1026.

⁶ This is the trade name of Bradley Bennett, the Defendant in Case Number 2015-CP-26-0357.

⁶ 

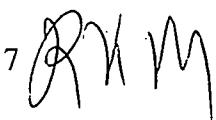
2013-CP-26-00980

Resorts view the business model for the Sand Dunes Oceanfront Resort as similar to that of a hotel, and not individually owned condominiums.

Based upon the representations of counsel and the argument heard by Judge Howe, the individual unit owners were allowed to remove the locks placed on the unit doors by Sand Dunes Oceanfront Tower HOA and RAM and Sand Dunes Oceanfront Tower HOA and RAM were enjoined from interfering with the replacement of the owner's locks, provided that the owners provide a key to the HOA and RAM. Judge Howe additionally ordered that Rawcliffe Resorts, Inc. should have no access to the units not were not on its rental program. A copy of the Transcript of Hearing in Case Number 2015-CP-26-357 is attached hereto as Exhibit B.

What is clear from the letter and the Transcript of Hearing in Case 2015-CP-26-357 is that Rawcliffe Resorts, Inc., the Plaintiff herein, did in fact have access to units not on its rental program, contrary to the testimony of Plaintiff's witnesses' testimony at the Contempt Hearing on February 10, 2014. Likewise, it adversely impacts the presumption that the Beckers were the only people, aside from the guests that had access to the unit in order to allegedly deliver the wristbands in question. Coupled with the testimony elicited from Ms. Ball, and Plaintiff's witnesses concerning the fact that in exchange for executing an affidavit concerning the matter, Ms. Ball and her family were given thousands of dollars worth of merchandise by Plaintiff, it casts sufficient doubt on the veracity of the Plaintiff's claims that the Beckers were in fact, the origin of the wristbands in question.

As such, Defendants are informed and believe that due to the newly discovered information which contradicts the testimony upon which the finding of Contempt was based, they are entitled to relief from the Order of Contempt filed May 12, 2014 pursuant to Rule 60 (b), South Carolina Rules of Civil Procedure. Defendants request that the prior finding of

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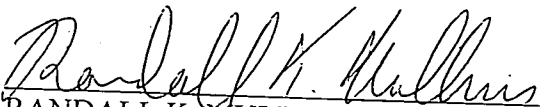
2013-CP-26-00980

contempt be set aside and that the Court convene a new hearing on the issue in light of the evidence presented.

Pursuant to Rule 11, SCRPC, counsel for Defendant has not communicated with opposing counsel as it would serve no useful purpose.

I SO MOVE.

MULLINS LAW FIRM, P.A.



RANDALL K. MULLINS, SC Bar No.: 06466

JARROD E. OWNBEY, SC Bar No.: 75417

ATTORNEYS FOR THE APPELLANTS

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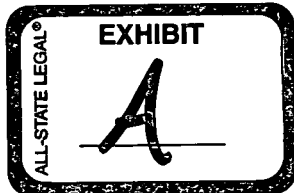
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mullinslawfirm@aol.com

Dated:

March 30, 2015

North Myrtle Beach, South Carolina



**SAND DUNES OCEANFRONT TOWER HOMEOWNERS' ASSOCIATION, INC.
C/O RESORT ASSOCIATION MANAGEMENT, INC**

**P.O. BOX 1708
NORTH MYRTLE BEACH, S.C. 29598**

January 9, 2015

Dear Homeowner:

As you may be aware, the Master Deed for your Association has provisions in it that talk about the locks that may be used on Unit doors, and makes it clear the locks belong to the Association. The reason why the Master Deed addresses this issue is that the Association has a need to access your Unit in case of emergencies (e.g. plumbing leaks) and also routine maintenance tasks such as pest control. The Association has to maintain its access in order to protect both you and your neighbors.

Recent inspection has shown that the lock on your Unit has been changed and that the Association cannot get access without drilling out and replacing the lock. We regret this is not acceptable for the safety and health reasons described above.

The Association has therefore been obliged to change the lock on your Unit to a type that the Association can access. We obviously regret any temporary inconvenience this may cause you, but enclosed with this letter are two [2] "hard" keys and two "card" keys for your unit.

While the Association has the right to assess fines for violations of the Master Deed, the Board of the Association has resolved on this occasion to waive any fine, but is obliged to pass onto you the labor costs that have been incurred in an amount of \$35.00. The retail price of the conforming locks placed by the Association is some \$300.00 but you are not being asked to pay that sum, as the Board believes that some owners have replaced locks without realizing that doing so was a violation of the Master Deed.

The Association manager – who may be contacted at 843-449-2204 – will retain the lock removed from your Unit for 30 days. If you wish it to be sent to you, please let us know and the lock will be sent to you, at your expense. If you do not wish to reclaim your own lock, or do not let us know within 30 days, we will dispose of that lock.

Again, we regret the necessity of taking this action, but the Association is responsible for the security of the building, and the Board is bound to uphold and enforce the Master Deed.

Yours truly,

THE BOARD OF DIRECTORS
SAND DUNES OCEANFRONT TOWER

XXII

MAINTENANCE AND REPAIR BY OWNERS OF UNITS

Every OWNER must perform promptly all maintenance and repair work within his UNIT which, if omitted, would affect the Condominium in its entirety or any part belonging to other OWNERS, and shall be expressly responsible for the damages and liability which his failure to do so may engender. The OWNER of each UNIT shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, sewage and sanitary service to his UNIT and which may now or hereafter be situated in his UNIT. Such OWNER shall further be responsible and liable for maintenance, repair and replacement of any and all window glass, including the glass of any sliding glass doors (but not frames, etc. of windows which shall be maintained and repaired by the ASSOCIATION), exterior surfaces of all interior ceilings, floors and walls, interior surface of the entry doors, interior painting, decorating and furnishings, and all other accessories which such OWNER may desire to place or maintain in his UNIT. Wherever the maintenance, repair and replacement of any items for which the OWNER of a UNIT is obligated to maintain, repair or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the ASSOCIATION, the proceeds of the insurance received by the ASSOCIATION, or the Insurance Trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair or replacement, except that the OWNER of such UNIT shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The entry door and lock system, porch, deck, patio or balcony floor, the walls facing the porch, deck, patio or balcony, and any porch, deck, patio or balcony railings attached thereto shall be maintained by the ASSOCIATION, and are hereby designated as LIMITED COMMON ELEMENTS for the exclusive use and benefit of the UNIT to which they are attached. No OWNER shall take any action which will alter the exterior appearance of the building, including but not limited to the entry doors. Should the OWNER fail to provide the maintenance and/or repairs as required, the ASSOCIATION shall have the right to enter the UNIT to accomplish same at the sole cost and expense of the OWNER and said cost and expense shall be charged against the OWNER, including the expense of making a key should OWNER place a lock on the entry door in violation of the requirements of Article XVII. Any such costs and expenses shall become a lien on the UNIT in like manner as an assessment.

XXIII

MAINTENANCE AND REPAIR OF COMMON ELEMENTS
BY ASSOCIATION

The ASSOCIATION, at its expense, shall be responsible for the maintenance, repair and replacement of all of the COMMON ELEMENTS (including all LIMITED COMMON ELEMENTS except certain LIMITED COMMON ELEMENTS which may be designated the responsibility of certain OWNERS), including those portions thereof which contribute to the support of the building, and all conduits, plumbing, wiring and other facilities located in the COMMON ELEMENTS for the furnishing of utility services to the UNITS and said

reports shall be prepared for the ASSOCIATION at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a variance report reflecting the status of all ASSOCIATION ledger accounts in an "actual" versus "approved" budget format;

(iii) a balance sheet as of the last day of the preceding period; and

(iv) a delinquency report listing all OWNERS who are delinquent in paying the assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board of Directors); and

(g) an annual report as of the end of the fiscal year consisting of at least the following shall be distributed to all MEMBERS within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an audited, reviewed, or unaudited basis, as determined by the Board, by an independent certified public accountant for any fiscal year in which the gross income of the ASSOCIATION exceeds Seventy-Five Thousand and No/100 (\$75,000.00) Dollars. If said report is not prepared by an independent certified public accountant, it shall be accompanied by the certificate of an authorized officer of the ASSOCIATION that the statements were prepared without audit from the books and records of the ASSOCIATION.

Section 21. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the COMMON ELEMENTS without the approval of the membership; provided, however, the Board shall obtain VOTING MEMBER approval by majority vote for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the ASSOCIATION for that fiscal year.

Section 22. Rights of the Association. With respect to the COMMON AREAS, and in accordance with the Articles of Incorporation and By-Laws of the ASSOCIATION, the ASSOCIATION shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the ASSOCIATION to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other OWNERS or residents ASSOCIATIONS, both within and without the properties. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the ASSOCIATION.

The ASSOCIATION shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) executed during the period of Class "II" control unless such contract, lease or other agreement contains a right of termination exercisable by either party without penalty at any time, with or without cause, upon not more than ninety (90) days notice to the other party.

Section 23. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating OWNER, and to suspend an OWNER'S

right to vote or to use the COMMON AREA for violation of any duty imposed under the Master Deed, these By-Laws, or any rules and regulations adopted hereunder; provided, however, nothing herein shall authorize the ASSOCIATION or the Board of Directors to limit ingress and egress to or from a UNIT. In the event that any occupant of a UNIT violates the Master Deed, By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the OWNER shall pay the fine upon notice from the ASSOCIATION. The failure of the Board to enforce any provision of the Master Deed, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, except the suspension of voting rights for nonpayment of assessments, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Covenants Committee, if any, or Board of Directors for a hearing, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the OWNER a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

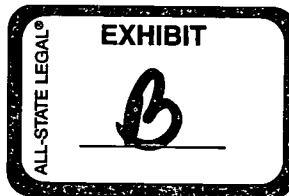
(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the ASSOCIATION within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the ASSOCIATION, acting through the Board of Directors, may elect to enforce any provision of the Master Deed, these By-Laws, or the rules and regulations of the ASSOCIATION by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the OWNER or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV

Officers

Section 1. Officers. The officers of the ASSOCIATION shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the MEMBERS of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-357

Sand Dunes Oceanfront Tower)
Homeowners' Association, Inc..)

Plaintiff,)

vs.)

Bradley Bennett, Oceanfront Guru Real)
Estate Sales & Development, Inc., and)
Oceanfront Guru Vacation Rentals, Inc.,)
Andrew Calnek, James Gowan, Rob)
Tomlinson and others.)

Defendants.)

**THE HEARING HELD BEFORE THE
HONORABLE CYNTHIA GRAHAM-HOWE,
MASTER-IN-EQUITY FOR
HORRY COUNTY, SOUTH CAROLINA**

Wednesday, March 4, 2015
3:44 p.m. --- 4:50 p.m.

The following is the hearing held before The
Honorable Cynthia Graham-Howe, Master-in-Equity for
Horry County, at the Horry County Government &
Justice Center, located at 1301 2nd Avenue, Conway,
South Carolina, on Wednesday, March 4, 2015.

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

APPEARANCES:

FOR THE PLAINTIFF:

Clifford H. Tall, Esquire
4702 Oleander Drive
Myrtle Beach, South Carolina 29577

FOR THE DEFENDANTS:

Charles B. Jordan, Jr., Esquire
THOMAS & BRITTAIN, P.A.
1314 Professional Drive
Myrtle Beach, South Carolina 29577

COURT REPORTER:

Miranda J. Burton
Verbatim Court Reporter

Prestige Court Reporting, Inc.

413 Paul Street
Conway, South Carolina 29527
(843) 248-5252

1 THE COURT: THIS IS THE CASE OF SAND
2 DUNES OCEANFRONT TOWER HOMEOWNERS' ASSOCIATION,
3 INC. VERSUS BRADLEY BENNETT, OCEANFRONT GURU
4 REAL ESTATE SALES AND DEVELOPMENT, INC., AND
5 OCEANFRONT GURU VACATION RENTALS, INC., ANDREW
6 CALNEK, JAMES GOWAN, ROB TOMLINSON AND OTHERS,
7 2015-CP-26-357. THERE IS AN ORDER OF
8 REFERENCE. IT IS SIGNED BY THE HONORABLE
9 STEVEN H. JOHN, OUR ADMINISTRATIVE JUDGE, AND
10 IT WAS JUST SIGNED FEBRUARY THE 26TH, 2015;
11 THEREFORE, THIS COURT DOES HAVE JURISDICTION OF
12 THIS MATTER. TODAY IS A MOTION FILED BY THE
13 DEFENDANTS FOR A TEMPORARY INJUNCTION.
14 MR. TALL: YOUR HONOR, WE HAVE A FIRST
15 MOTION FROM THE PLAINTIFF FOR A TEMPORARY
16 INJUNCTION, AS WELL, ---
17 THE COURT: OKAY. WELL, I ---
18 MR. TALL: --- THAT WAS FILED
19 PREVIOUSLY.
20 THE COURT: LET'S SEE IF WE CAN FIND
21 THAT ONE.
22 MR. TALL: I HAVE A COPY, YOUR HONOR,
23 IF YOU'D CARE FOR IT.
24 THE COURT: I'M SORRY, MR. TALL?
25 MR. TALL: I HAVE A COPY, IF IT'S

1 NECESSARY, A CLOCKED COPY.
2 THE COURT: THAT MIGHT HELP; ---
3 MR. TALL: YES, MA'AM.
4 THE COURT: --- BECAUSE SOMETIMES
5 PLEADINGS DON'T QUITE MAKE IT TO THE FILE.
6 WHEN WAS YOUR MOTION FILED?
7 MR. TALL: YOUR HONOR, 15 JANUARY.
8 THE COURT: OKAY. WELL, THAT MIGHT
9 HELP. THAT WOULD HELP IF IT'S IN THE PROPER
10 PLACE.
11 MR. JORDAN: I BELIEVE THE MOTION WAS
12 FILED WITH THE COMPLAINT, CORRECT, CLIFF?
13 MR. TALL: YES, AND MAYBE IT'S ---
14 THE COURT: THERE IT IS.
15 MR. TALL: --- ALL ATTACHED TO IT,
16 YOUR HONOR.
17 THE COURT: IS IT FOR A TEMPORARY
18 RESTRAINING ORDER OR FOR A TEMPORARY
19 INJUNCTION? FOR A TRO?
20 MR. TALL: TEMPORARY RESTRAINING
21 ORDER, YOUR HONOR, AND PERHAPS IT'S THE LAST
22 PAGES OF WHAT LOOKS LIKE THE SUMMONS AND
23 COMPLAINT IN THIS MATTER.
24 THE COURT: OKAY. SO IT'S A TRO, NOT A
25 TEMPORARY INJUNCTION?

1 MR. TALL: YES. YES, YOUR HONOR.
2 THE COURT: OKAY. AND SO YOU'RE GOING
3 TO TURN THAT INTO A TEMPORARY INJUNCTION FOR
4 TODAY'S HEARING?
5 MR. TALL: YOUR HONOR, I'D SAY THAT
6 THERE'S A SUBTLETY BETWEEN THE TWO.
7 THE COURT: GENERALLY, I CONSIDER A TRO
8 IS WITHOUT NOTICE.
9 MR. TALL: WELL, AND WHAT HAPPENED
10 WHEN WE APPROACHED JUDGE JOHN IS, HE SAID,
11 "PLEASE GET ALL THE PARTIES TOGETHER." SO,
12 YES, MA'AM, IT WOULD BE FOR THE TEMPORARY
13 INJUNCTION.
14 THE COURT: OKAY, I UNDERSTAND. ALL
15 RIGHT. SO THEN WE HAVE A ---
16 MR. TALL: AND THEN, DO YOU HAVE THE
17 PLEADINGS, YOUR HONOR?
18 THE COURT: YES, I DO.
19 MR. TALL: THANK YOU, YOUR HONOR.
20 THE COURT: I DO HAVE THE PLEADINGS.
21 SO THEN WE WILL HAVE CROSS-MOTIONS FOR
22 TEMPORARY INJUNCTIONS, THEN?
23 MR. JORDAN: THAT'S CORRECT, YOUR HONOR.
24 THAT IS MY UNDERSTANDING.
25 THE COURT: ALL RIGHT. AND I DO HAVE

1 AN AFFIDAVIT IN SUPPORT OF YOUR MOTION FOR
2 TEMPORARY INJUNCTION.
3 MR. TALL: YES, YOUR HONOR.
4 THE COURT: I HAVE AFFIDAVITS IN
5 SUPPORT OF THE DEFENDANTS' MOTION FOR TEMPORARY
6 INJUNCTION, AND I HAVE A MEMORANDUM OF LAW IN
7 SUPPORT OF THE DEFENDANTS' MOTION FOR TEMPORARY
8 INJUNCTION.
9 MR. JORDAN: CORRECT, YOUR HONOR, AND I
10 BELIEVE THE MOTIONS ARE MUTUALLY EXCLUSIVE, SO
11 I GUESS THE MEMO WOULD ALSO BE IN OPPOSITION TO
12 MR. TALL'S MOTION.
13 THE COURT: EXACTLY. ALL RIGHT. THEN
14 I SUPPOSE WE WILL LET THE PLAINTIFF ---
15 MR. TALL: THANK YOU, YOUR HONOR.
16 THE COURT: --- THEN ARGUE ITS MOTION
17 FIRST.
18 MR. TALL: THANK YOU, YOUR HONOR.
19 THE COURT: AND I'M READY TO HEAR FROM
20 YOU.
21 MR. TALL: THANK YOU, YOUR HONOR.
22 CLIFFORD TALL FOR THE PLAINTIFF, AND I'D LIKE
23 TO INTRODUCE -- I HAVE MR. HOWARD ANDERSON HERE
24 WITH ME. HE IS THE PRESIDENT OF OUR HOMEOWNERS
25 ASSOCIATION, AND THE PROPERTY AT SAND DUNES HAS

1 A MANAGEMENT COMPANY, RESORT ASSOCIATION
2 MANAGEMENT, AND THE PRESIDENT IS AARON
3 HARRISON, AND HE'S WITH ME, AS WELL.

4 THE COURT: YES, SIR.

5 MR. TALL: YOUR HONOR, IT'S NOT EVERY
6 CONFLICT THAT INVOLVES SO MUCH AGREEMENT
7 BETWEEN THE TWO PARTIES. THERE IS PLENTY OF
8 AGREEMENT BETWEEN THESE TWO PARTIES, AND BEFORE
9 WE GET INTO THE PLACES THAT SEPARATE US, I'D
10 LIKE TO REVIEW THOSE. I THINK THE SEVERAL
11 THINGS I'M ABOUT TO SAY COULD BE STIPULATED,
12 AMONG THEM IS THAT WE HAVE A MASTER DEED WHICH
13 GOVERNS THE PROPERTY IN QUESTION AND THAT THE
14 HOMEOWNERS ASSOCIATION, WHERE MR. ANDERSON IS
15 THE PRESIDENT, HAS A FIDUCIARY OBLIGATION TO
16 ENFORCE THAT MASTER DEED. I BELIEVE THE
17 DEFENDANTS, AS WELL AS THE PLAINTIFF, RESPECT
18 THAT MASTER DEED. THEY'VE CITED THE SAME
19 LANGUAGE. WE'RE NOT HERE SUGGESTING THAT
20 THERE'S DIFFERENT LANGUAGE. THAT'S A HELP.

21 IN TERMS OF WHAT PEOPLE WOULD LIKE TO
22 SEE, THIS IS A CONDOMINIUM UNIT RIGHT SMACK
23 AGAINST THE ATLANTIC OCEAN, AND UNLIKE SOME
24 OTHER CONDOMINIUM UNITS IN OUR COMMUNITY, IT'S
25 ONE THAT HAS, AS A LARGE PURPOSE, THE

1 ATTRACTION OF PEOPLE TO COME AND STAY. I DON'T
2 THINK THERE'S ANYTHING WRONG WITH THIS WORD,
3 BUT THE WORD IS, "TRANSIENTS," SOMEONE COME FOR
4 A DAY, SOMEONE COME FOR A WEEK, SOMEONE COME
5 AND HAVE A NICE EXPERIENCE, AND THAT'S GOING TO
6 BE THEIR MYRTLE BEACH EXPERIENCE, AND THE
7 OPERATION OF THIS DEVELOPMENT FOR THE BENEFIT
8 OF ALL OF THE UNIT OWNERS IS DESIGNED TO MAKE
9 SURE THAT THIS REMAINS, IT HAS BEEN FOR MANY,
10 MANY YEARS, AN ATTRACTIVE LOCATION.

11 THE COURT: I'M FAMILIAR WITH THE SAND
12 DUNES.

13 MR. TALL: THANK YOU, YOUR HONOR. AND
14 CERTAINLY, THE SAND DUNES, ONE OF THE OLDER
15 ONES, IS DOING WHAT IT CAN TO COMPETE WITH SOME
16 OF THE NEWER ONES, WITH THE MARRIOTT COMING AND
17 THE HILTON COMING AND ALL THE DIFFERENT OTHER
18 OPTIONS. THIS IS NOT THE ONLY ONE IN TOWN.
19 THESE, AGAIN, ARE THINGS THAT BOTH THE
20 DEFENDANT AND THE PLAINTIFFS AGREE UPON, THAT
21 THIS SHOULD BE A PLACE OF SECURITY, THAT THIS
22 SHOULD BE A PLACE WHERE FAMILIES CAN ENJOY
23 THEMSELVES. THIS IS A PLACE THAT CAN
24 ACCOMMODATE THOSE UNIT OWNERS WHO ARE THERE FOR
25 EXTENDED PERIODS OF TIME, NOT JUST THE FOLKS

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1 WHO HAVE INVESTED IN A VACATION RENTAL AND ARE
2 LOOKING FOR RENTALS. THERE ARE PEOPLE -- IT'S
3 A BALANCING ACT. THERE ARE PEOPLE LIVING IN
4 NUMBER 101 WHO ARE THERE FOR A PERIOD OF TIME,
5 MAYBE ANNUALLY, NEXT TO 102 WHERE WE'VE INVITED
6 FOLKS TO COME AND HAVE A GOOD TIME, AND COME
7 AND HAVE A GOOD TIME SOMETIMES MEANS ALCOHOL,
8 AND SOMEONE FROM CHARLOTTE OR ATLANTA SAYS,
9 "I'M GOING TO MYRTLE BEACH TO BLOW OFF STEAM."
10 WE KIND OF KNOW WHAT THAT MEANS. THERE ARE
11 ISSUES THAT NEED TO BE REASONABLY ADDRESSED ON
12 THIS PROPERTY AND, AGAIN, I'M TALKING ABOUT ALL
13 THE THINGS THAT THE DEFENDANT AND THE PLAINTIFF
14 AGREE UPON.

15 HOW ABOUT THIS TO AGREE UPON? THERE
16 SHOULD BE A CULTURE AT THIS LOCATION WHERE
17 SOMEONE WHO'S TALENTED AND INTELLIGENT AND
18 CARES ABOUT THEIR PRIVATE LIFE, BECAUSE THEY
19 WANT A LITTLE BIT OF THAT, WILL OFFER TO BECOME
20 A MEMBER OF THE BOARD OF DIRECTORS OF THE HOA.
21 NON-STOP CHAOS IS WHAT KEEPS, SOMETIMES,
22 INTELLIGENT, CARING PEOPLE FROM SAYING, "BOY,
23 THAT'S NOT A JOB I WANT." AND WHAT WILL WE DO
24 WHEN WE HAVE A DEVELOPMENT WHERE FOLKS WHO WANT
25 TO VOLUNTEER THEIR TIME, WHO ARE TALENTED, WHO

1 VALUE THEIR TIME WITH THEIR FAMILY, WANT TO
2 HAVE SOMETHING THAT'S PREDICTABLE SAY, "THAT'S
3 NOT FOR ME, BECAUSE THAT'S AN UNPREDICTABLE
4 SITUATION"? WE NEED TO HAVE A CULTURE WHERE
5 SOMEONE WHO STEPS ONTO THE BOARD -- IN A
6 HUMOROUS THING, I HAD A PROFESSOR WHEN I
7 GRADUATED FROM LAW SCHOOL. HE SAID, "WELL,
8 CONGRATULATIONS, HERE'S A T-SHIRT WITH A TARGET
9 PAINTED ON IT, YOU'RE GOING TO ALWAYS HAVE
10 SOMEBODY QUESTION EVERYTHING YOU DO." AND, OH,
11 BOY, HOWDY, IS THAT WHAT HAPPENS WITH A
12 HOMEOWNERS ASSOCIATION DIRECTOR. ALL OF US
13 WANT TO HAVE GOOD CARING, TALENTED PEOPLE
14 MAKING GOOD DECISIONS.

15 THERE'S A BIG BUDGET THAT'S ASSOCIATED
16 WITH RUNNING THIS OPERATION, INCLUDING NEARLY
17 \$200,000 OF INSURANCE. SOME OF THAT, IN TERMS
18 OF A REASONABLE PRICE, IS ASSOCIATED WITH THE
19 RISKS THAT ARE THERE, AND THE ASSOCIATION HAS
20 SOME DUTY TO MAKE SURE THAT THERE ARE
21 REASONABLE RISKS AND YOU RAMP DOWN SOME OF THE
22 RISKS, YOU TAKE CARE OF THEM, YOU MANAGE THEM.
23 ALL OF THESE THINGS ARE ISSUES THAT I THINK THE
24 DEFENDANTS AND THE PLAINTIFF CAN AGREE UPON.
25 CLEARLY, HOWEVER, WE'VE GOT SOME DISAGREEMENTS,

1 AND THAT'S WHY WE'RE HERE.

2 RECENTLY, AN EFFORT WAS MADE BY THE
3 HOMEOWNERS ASSOCIATION TO BRING INTO LINE
4 SOMETHING IN THE NEIGHBORHOOD OF 50 FRONT DOOR
5 LOCKS THAT HAD BECOME NON-UNIFORM WITH ALL THE
6 OTHER LOCKS IN THE BUILDING, AND THE QUESTION
7 THAT DEFENDANTS ARE RAISING, "IS THAT SOMETHING
8 THAT THE HOMEOWNERS ASSOCIATION HAS THE
9 AUTHORITY TO DO?" AND FROM OUR POINT OF VIEW,
10 "IS THAT SOMETHING THAT THE HOMEOWNERS
11 ASSOCIATION HAS AN OBLIGATION TO DO?" WE GET
12 BACK TO SOME OF THE THINGS THAT WE ALL AGREE
13 UPON. THE MASTER DEED SPEAKS OF -- THE SAME
14 LANGUAGE IS USED BY THE PLAINTIFF IS USED BY
15 THE DEFENDANT. THIS MASTER DEED SPEAKS OF THE
16 FRONT DOOR AND THE LOCKING SYSTEM OF EACH
17 INDIVIDUAL CONDOMINIUM UNIT BEING A COMMON
18 ELEMENT, A LIMITED COMMON ELEMENT OF THE
19 PROPERTY, WHERE WE DISAGREE. DEFENDANTS WANT
20 TO SAY TO US THAT THERE NEEDS TO BE SO MUCH
21 INDIVIDUAL FREEDOM IN THIS CONDOMINIUM UNIT.
22 BY THE WAY, PLAINTIFFS ARE IN FAVOR OF FREEDOM
23 FOR ALL OF THE FOLKS THAT ARE IN THIS UNIT TO A
24 DEGREE THAT IS REASONABLE. AND THE FREEDOM
25 THAT THE DEFENDANTS WANT IN THIS CASE IS THE

1 FREEDOM TO EMPLOY WHAT THEY BELIEVE TO BE A
2 SUPERIOR MECHANISM WHICH WILL HELP THEM WITH
3 THEIR RENTAL BUSINESS, A DIFFERENT KIND OF
4 LOCK, RATHER THAN THE ONES THAT ARE UNIFORM
5 THROUGHOUT THE BUILDING, AND RING THE BELL
6 AGAIN, LIMITED COMMON ELEMENTS OF THE PROPERTY,
7 IS WHAT THE DEFENDANTS PREFER, BECAUSE THEY
8 BELIEVE THAT IT HAS SUPERIOR TECHNOLOGY,
9 SUPERIOR CONVENIENCE, AND SO WHERE DO WE GET TO
10 A POINT WHERE -- EVEN THE PLAINTIFF SAYS,
11 "WE'RE IN FAVOR OF INDIVIDUAL UNIT OWNER
12 FREEDOMS, BUT YOU'RE GOING A BIT TOO FAR." AND
13 THE DEFENDANTS ARE SAYING, "NO, YOU HAVE NO
14 RIGHT TO TELL US." WE CERTAINLY DON'T HAVE THE
15 RIGHT, I DON'T BELIEVE, TO TELL THE INDIVIDUAL
16 UNIT OWNERS WHAT COLOR TO PAINT THEIR BATHROOM
17 OR WHAT THE ---

18 THE COURT: ABSOLUTELY NOT.

19 MR. TALL: YOUR HONOR?

20 THE COURT: ABSOLUTELY NOT.

21 MR. TALL: I'M COMFORTABLE WITH THAT,

22 BUT WHEN IT COMES TO SYSTEMS THAT PROVIDE AN
23 OPPORTUNITY FOR THE PEOPLE WHO ARE RUNNING THIS
24 BUILDING -- AND IT'S A REAL BALANCING ACT, YOUR
25 HONOR. IN MR. HARRISON'S AFFIDAVIT, WE'VE

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1 ATTACHED AS AN EXHIBIT, THE LAW ASSOCIATED WITH
2 A INNKEEPER, AND IF YOU'LL TAKE A LOOK AT THE
3 DEFINITIONS THAT ARE THERE, IT'S NOT REAL CLEAR
4 THAT WE'RE A WHOLE LOT DIFFERENT. THERE'S A
5 FRONT DESK. THERE IS SOMEBODY WHO'S
6 RESPONSIBLE FOR MAKING SURE THAT THE BUILDING
7 IS INTACT. THE HOMEOWNERS ASSOCIATION IS
8 COLLECTING DUES AND PAYING INSURANCE TO MAKE
9 SURE THAT THE WHOLE PLACE IS SAFE. THEY'RE
10 DEALING WITH SECURITY. WE COULD DEAL WITH
11 SOMEBODY BEING ILL INSIDE A UNIT. THERE COULD
12 BE A PIPE THAT'S BROKEN. THERE COULD BE A FIRE
13 AND A NEED FOR AN EVACUATION. ALL OF THESE
14 THINGS START TO MAKE THE PROPERTY LOOK, NOT A
15 WHOLE LOT DIFFERENT THAN AN APARTMENT BUILDING
16 THAT NO ONE OWNS, EXCEPT THE APARTMENT BUILDING
17 OWNER. THERE IS A HYBRID HERE AND THERE,
18 AGAIN, IS A BALANCING ACT WITH THIS GOAL THAT I
19 BELIEVE ALL OF US WANT, INTELLIGENT, CARING
20 PEOPLE WHO HAVE GOT GOOD BACKGROUNDS SAY, "YES,
21 I WANT TO SERVE ON THAT BOARD OF DIRECTORS."

22 WHEN YOU TAKE A LOCK SYSTEM, AND
23 BEFORE I EVEN MAKE THE ARGUMENT OF WHY THIS IS
24 APPROPRIATE, HOW ABOUT JUST THE FIRST ONE THAT
25 IT'S A LIMITED COMMON ELEMENT? DON'T CHANGE

1 THE LIMITED COMMON ELEMENT. IF YOU CHANGE THIS
2 ONE, WHAT ELSE OF THE LIMITED COMMON ELEMENTS
3 IS SOMEONE GOING TO CHANGE? BECAUSE THEY HAVE
4 AN IDEA OF SUPERIOR TECHNOLOGY, MORE
5 CONVENIENCE TO THEM, WE GET ALL OF THAT.

6 TO THE EXTENT THAT THE MASTER DEED
7 TALKS ABOUT UNIFORMITY OR TALKS ABOUT IT BEING
8 A COMMON ELEMENT, WHERE IS THE RIGHT TO CHANGE
9 THAT BECAUSE IT'S YOUR CONVENIENCE? FROM OUR
10 POINT OF VIEW, THE UNIFORMITY SUPPORTS THE
11 ABILITY OF THE HOMEOWNERS ASSOCIATION, WHEN
12 APPROPRIATE. BOY, THIS IS A SORE POINT, "THE
13 ASSOCIATION CAN GET ACCESS TO MY PRIVATE UNIT?"
14 HAS TO BE, THAT POWER HAS TO BE EXERCISED WITH
15 CARE, BUT THIS IS NOT SOMEONE'S CABIN IN THE
16 MIDDLE OF THE WOODS WHERE ABSOLUTELY NO ONE
17 COMES AND GOES UNLESS YOU ASK THEM TO. THIS IS
18 A BUILDING THAT HAS ONE UNIT OWNERS,
19 CONDOMINIUM ON TOP OF ONE AND BELOW SOMEONE
20 ELSE'S AND SHARING COMMON WALLS AND BEING RIGHT
21 UP AGAINST THE ATLANTIC OCEAN WHERE HUGO OR
22 SOMETHING ELSE CAN COME AND MAKE A VISIT.

23 THE COURT: I DON'T THINK ANY OF THE
24 DEFENDANTS WOULD DENY THAT THE HOMEOWNERS
25 ASSOCIATION HAS LIMITED ACCESS TO THEIR UNITS

1 FROM TIME TO TIME.

2 MR. TALL: YOUR HONOR, YOU CAN READ
3 SOME OF THOSE AFFIDAVITS TO SEE THAT THAT'S A
4 SORE POINT WITH THE DEFENDANTS.

5 THE COURT: WELL, I UNDERSTAND THAT,
6 BUT I DON'T THINK THAT ANYBODY DENIES THAT THE
7 HOA HAS LIMITED ACCESS FROM TIME TO TIME ---

8 MR. TALL: I LIKE THAT.

9 THE COURT: --- FOR EMERGENCY.

10 MR. JORDAN: AND WE WILL CONCEDE THAT
11 POINT, YOUR HONOR.

12 THE COURT: ABSOLUTELY.

13 MR. JORDAN: IF THAT FURTHERS
14 DISCUSSION, WE WILL CONCEDE THAT THEY HAVE A
15 RIGHT OF ACCESS IN CASE OF EMERGENCY AND
16 LIMITED PURPOSES.

17 THE COURT: CERTAINLY, FOR LIMITED
18 PURPOSES.

19 MR. TALL: SURE. AND SO WHAT WE HAVE
20 IS, WHEN SOMEONE COMES WITH NEW TECHNOLOGY AND
21 CHANGES THE FRONT DOOR LOCK, WHICH THE
22 DEFENDANTS SAY IS WELL WITHIN THEIR RIGHTS, AND
23 THIS IS THE ESSENCE OF THIS CASE, AND THE
24 PLAINTIFF SAYS, "FIRST OF ALL, I'M GOING TO
25 TELL YOU WHY I DON'T THINK THAT'S A GOOD IDEA,

1 BUT BEFORE I DO THAT, LET'S TAKE A LOOK AT THE
2 MASTER DEED, WHICH CALLS THAT A COMMON
3 ELEMENT." THAT'S THE FIRST POINT. THE SECOND
4 POINT IS, THE SPECIFICS OF THE NEW LOCKS AND
5 THE COOPERATION THAT WILL EXIST BETWEEN THE
6 UNIT OWNERS WHO HAVE USED SOMETHING NEW THAT
7 LOOKS DIFFERENT AND OPERATES DIFFERENT, HOW
8 THAT AFFECTS THE MANAGEMENT AS A WHOLE, THAT
9 HAS TO ANSWER TO FIRE MARSHALS, THAT HAS TO
10 ANSWER TO ANYBODY WHO'S THERE ON THE PROPERTY
11 HAS AN IDEA THAT THIS IS A ONE OPERATION, THAT
12 THEY'RE NOT LOOKING AT THIS THAT THIS IS 150
13 DIFFERENT UNITS HERE. THERE ARE NUMEROUS
14 THINGS THAT ARE ASSOCIATED, PARKING LOTS, ALL
15 KINDS OF DIFFERENT THINGS, SECURITY CAMERAS,
16 LIGHTING, ALL OF THESE THINGS, AND SOMEONE LIKE
17 MR. ANDERSON HAS TO ANSWER FOR IT.

18 WHAT WE HAVE IS THE DEFENDANTS TELLING
19 US THAT IT IS ESSENTIAL TO THEIR BUSINESS
20 MODEL, THAT A NEW KIND OF LOCK BE ON THE FRONT
21 DOOR. THE LOCKS THAT ARE CURRENTLY THERE ARE
22 MODERN LOCKS. THEY HAVE ELECTRONIC CAPABILITY,
23 INCLUDING TRACKING WHO'S BEEN IN AND WHO'S BEEN
24 OUT, AND YOU HAVE FIDUCIARY OBLIGATIONS ON THE
25 PART OF THE BOARD TO COOPERATE. THE IDEA THAT,

1 WITH THE NEWER TECHNOLOGY THAT THE DEFENDANTS
2 WANT TO USE, THERE CAN BE PEOPLE COMING AND
3 GOING WITHOUT CHECKING IN ANYWHERE, AND THAT'S
4 A CONVENIENCE, BECAUSE THEY DON'T HAVE TO HAVE
5 A KEY, THEY CAN HAVE A CODE OF SOME KIND. NOW,
6 WE CAN DEBATE WHETHER THAT'S A GOOD SECURITY
7 ISSUE OR NOT A GOOD SECURITY ISSUE. FIVE
8 PEOPLE CAN OVERHEAR WHAT A CODE IS AND, ALL OF
9 A SUDDEN, THEY HAVE ACCESS TO A UNIT AS OPPOSED
10 TO SOMEBODY ACTUALLY HAVING SOMETHING PHYSICAL
11 THAT THEY HAVE TO PUT IN PLACE. MY SON IS A
12 SOFTWARE MAN, AND BOY, I DON'T UNDERSTAND A LOT
13 ABOUT WHAT HE DOES AND I'M SURE THAT THERE'S
14 GOING TO BE NEW DEVELOPMENTS, BUT WE'VE GOT A
15 FORMAT, WHICH IS THE MASTER DEED, AND IF YOU'VE
16 GOT SOMETHING NEW AND IT'S SOMETHING TO
17 PROPOSE, LET'S PROPOSE IT, IF YOU TAKE
18 SOMETHING NEW AND UNIQUE AND IT PUTS IN A
19 RESTRICTIVE ELEMENT OF THE HOMEOWNERS
20 ASSOCIATION HAVING ACCESS WHEN THEY NEED IT.
21 AND WHILE MR. JORDAN AND I WILL AGREE THAT THAT
22 WORD, "EMERGENCY," IS THERE, DON'T KNOW IF
23 WE'LL ALWAYS AGREE ON WHAT CONSTITUTES AN
24 EMERGENCY. A SLOW DRIPPING LEAK THAT WE'VE
25 DISCOVERED, IS THAT AN EMERGENCY? AGAIN,

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1 THERE'S REASONABLE ACCESS, I THINK, IS WHAT WE
2 WOULD ALL AGREE HAS TO BE DONE.

3 WHEN THE DEFENDANTS COME AND SAY, "OUR
4 BUSINESS MODEL, OUR ABILITY TO RENT IS
5 FRUSTRATED BY THE RULES," WHAT RULES, THE RULES
6 THAT ARE IN THE MASTER DEED, OUR ANSWER IS, ALL
7 THAT HAS TO BE DONE IS THE LOCKING SYSTEM THAT
8 REQUIRES A KEY OR A CARD WHERE THEY ARE VERY
9 WELL AVAILABLE, AND YOU'RE GOING TO HAVE
10 COOPERATION FROM THIS HOMEOWNERS ASSOCIATION,
11 BECAUSE THAT'S THEIR FIDUCIARY OBLIGATION. OH,
12 THE DEFENDANTS WILL TELL US, "IT WASN'T
13 COOPERATED HERE AND THERE WAS ANOTHER TIME WHEN
14 IT WASN'T IN GOOD SHAPE." AND THEN WE STIR
15 INTO THE MIX THAT THE DEVELOPER HAS SOME
16 INFLUENCE HERE AND THE DEVELOPER IS A
17 COMPETITOR WITH MR. BENNETT, AND THAT'S WHAT'S
18 GOING ON, IT'S A SINISTER ATTEMPT TO UPSET A
19 BUSINESS MODEL THAT A COMPETITOR IS DOING.

20 YOUR HONOR, THE GREATER PICTURE IS
21 WE'VE GOT A BIG BUILDING WITH A LOT OF ISSUES
22 AND THE WAY IN WHICH IT'S OPERATING AND HAS
23 OPERATED FOR YEARS WITH PEOPLE MAKING LOTS OF
24 MONEY WITH RENTAL. IT'S A PARTICULAR KIND OF
25 KEY SET. AGAIN, WE CAN ARGUE WHETHER IT'S A

1 GOOD IDEA OR A BAD IDEA, BUT IT'S A WORKABLE
2 MODEL, AND IT'S SUPPORTED BY THE MASTER DEED.

3 HERE'S ANOTHER PLACE WHERE WE MIGHT
4 NOT AGREE. I'VE HEARD FROM THE DEFENDANTS,
5 "CHALLENGE YOU, MR. TALL, TO FIND ANYWHERE IN
6 THAT MASTER DEED THAT SAYS YOU HAVE THE ABILITY
7 AS THE HOA TO COME AND REPLACE A LOCK." THE
8 MASTER DEED TALKS ABOUT REPAIR AND MAINTENANCE
9 TO THE LOCKS THAT ARE IN PLACE, THE LIMITED
10 COMMON ELEMENTS. WELL, SOMEONE'S TAKEN AWAY
11 THAT LIMITED COMMON ELEMENT. DID I NEED TO
12 FIND A PARAGRAPH? MR. JORDAN WILL TELL ME THAT
13 I DID. DO I HAVE TO FIND A PARAGRAPH THAT
14 SAYS, "WHEN SOMEONE HAS CHANGED THE LOCK, YOU
15 GET THE CHANCE TO PUT IT BACK SO THAT THERE'S
16 UNIFORMITY"? AND DEFENDANTS WILL POINT TO A
17 PLACE -- I DON'T KNOW THAT THIS MASTER DEED IS
18 A PERFECT DOCUMENT. I LIKE OUR U.S.
19 CONSTITUTION, BUT BOY OH BOY, IT'S BEEN AMENDED
20 AND TWEAKED.

21 THE COURT: AND INTERPRETED.

22 MR. TALL: OH, AND INTERPRETED, YES,
23 YOUR HONOR.

24 THE COURT: AND INTERPRETED WAYS THAT I
25 NEVER THOUGHT IT WOULD BE INTERPRETED.

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1 MR. TALL: YES, YOUR HONOR. SO HERE'S
2 AN INTERPRETATION.

3 THE COURT: CERTAINLY, MOST RECENTLY.

4 MR. TALL: HERE'S AN INTERPRETATION.

5 WE'VE GOT A PART OF OUR MASTER DEED THAT SAYS,
6 AND I MARVEL AT THIS, "IF THE ASSOCIATION COMES
7 ALONG TO ADDRESS A VIOLATION OF THE MASTER DEED
8 BY SOMEONE PLACING A LOCK, THE ASSOCIATION CAN
9 TAKE" -- THE MASTER DEED CALLS IT A VIOLATION
10 -- "THE ASSOCIATION CAN TAKE STEPS AND RECOUP
11 COSTS, INCLUDING THE COST OF GETTING A KEY."
12 THE COST OF GETTING A KEY, DID THAT SOUND LIKE
13 THE MASTER DEED IS CONDONING THE CHANGING OF A
14 COMMON ELEMENT? AND THE ONLY THING THAT THE
15 HOMEOWNERS ASSOCIATION HAVE AS A REMEDY IS
16 GETTING A KEY TO THE NEW NON-CONFORMING LOCK.
17 THAT'S AN ARGUMENT THAT THE DEFENDANT HAS PUT
18 FORWARD IN AFFIDAVIT AND IN RESPONSE, THAT EVEN
19 THOUGH IT'S A VIOLATION, THE VERY SAME
20 SENTENCES WHERE THE DEFENDANTS WILL TELL US,
21 "OUR REMEDY IS GETTING A KEY," THAT VERY SAME
22 SENTENCE CALLS THE CHANGING OF A LOCK A
23 VIOLATION. MAYBE THIS WASN'T AS ARTFULLY
24 DRAFTED AS IT COULD, BUT MR. HARRISON WILL TELL
25 YOU IF WE DON'T HAVE UNIFORMITY AND EASY, CLEAR

1 ACCESS WHEN WE NEED TO GET INTO A UNIT, WE'RE
2 GOING TO HAVE TROUBLE WITH OUR HAZARD
3 INSURANCE, FORGETTING ABOUT THAT WE'RE DEALING
4 WITH A MASTER DEED THAT, IN ITS LANGUAGE, IN
5 THE LANGUAGE THAT THE DEFENDANTS HAS USED IN
6 THE ANSWER HAS BEEN A VIOLATION.

7 THERE'S A WAY, YOUR HONOR, FOR
8 EVERYBODY TO PLAY NICE. IF THERE'S AN
9 OPPORTUNITY TO USE NEW TECHNOLOGY, THAT'S
10 AVAILABLE TO COME TO THE HOMEOWNERS ASSOCIATION
11 AND SAY, "THESE NEW LOCKS THAT YOU GUYS THINK
12 ARE GREAT" -- AND THIS IS THE TECHNOLOGY THAT'S
13 CRAZY. SOMETHING THAT WAS BRAND-NEW, STATE OF
14 THE ART TWO YEARS AGO IS NOW HORSE AND BUGGY,
15 PERHAPS THAT HAPPENS, BUT BRING IT TO THE
16 HOMEOWNERS ASSOCIATION, DON'T PUT YOUR OWN LOCK
17 THERE, AND THESE FOLKS HAVE A BIT OF ANIMOSITY
18 BETWEEN THEM.

19 THE COURT: OBVIOUSLY. WELL, LET ME
20 JUST CUT TO THE CHASE.

21 MR. TALL: YES, YOUR HONOR.

22 THE COURT: WHAT IS YOUR MOTION FOR
23 TEMPORARY INJUNCTION? I KNOW YOU'VE BEEN
24 ARGUING NOW FOR ---

25 MR. TALL: YES, YOUR HONOR.

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1 THE COURT: --- QUITE SOME TIME. I
2 DON'T UNDERSTAND WHAT YOUR MOTION IS.
3 MR. TALL: YES, YOUR HONOR. THANKS.
4 I'LL SHOCK THE COURT BY SAYING MY ARGUMENT IS
5 ALMOST MOOT, BECAUSE FROM THE TIME OF JANUARY
6 15, WHEN WE WERE PUTTING THIS MOTION IN PLACE
7 AND THERE WERE EFFORTS TO TRY AND REPLACE ALL
8 THE 50 UNITS, WE'VE NOW BEEN ABLE TO REPLACE
9 THE 50 UNITS. SO WHAT REMAINS OF THIS MOTION,
10 WE WANTED TO HAVE NO INTERFERENCE WITH OUR
11 EFFORTS, THE HOMEOWNERS ASSOCIATION EFFORTS TO
12 REPLACE THE UNIFORM LOCKS. SO NOW THE UNIFORM
13 LOCKS ARE IN PLACE, MR. TALL? YES, THEY ARE.
14 SO WHAT REMAINS OF MY MOTION? NO MORE
15 INTERFERENCE WITH THE UNIFORM LOCKS WHILE WE GO
16 ABOUT ---
17 THE COURT: SO BASICALLY, YOUR CLIENT
18 HAS ALREADY DONE WHAT IT INTENDS TO DO?
19 MR. TALL: AND WHAT REMAINS ---
20 THE COURT: WITHOUT APPROVAL FROM THE
21 COURT, YOUR CLIENT HAS ALREADY DONE WHAT IT
22 INTENDED TO DO BY SELF-HELP, WITHOUT COURT
23 APPROVAL?
24 MR. TALL: AND, YOUR HONOR, THAT
25 SOUNDS LIKE WE WERE GOING OUTSIDE OF THE COURT.

1 THE COURT: NO, I'M NOT SAYING ---
2 MR. TALL: THAT WAS OUR REASONABLE
3 INTERPRETATION OF THE MASTER DEED.
4 THE COURT: I UNDERSTAND. I'M NOT
5 SAYING THAT IT DID ANYTHING IMPROPER.
6 MR. TALL: YES, YOUR HONOR.
7 THE COURT: I'M JUST SAYING IT'S
8 ALREADY DONE ---
9 MR. TALL: WE HAVE.
10 THE COURT: --- WHAT IT INTENDED TO DO.
11 MR. TALL: WE HAVE.
12 THE COURT: IT JUST, AT THIS POINT,
13 WANTS THE DEFENDANT NOT TO INTERFERE? SO
14 THAT'S ---
15 MR. TALL: THAT'S BASICALLY IT.
16 THE COURT: --- WHAT YOU WANT?
17 MR. TALL: AND THEN THAT BRINGS US TO,
18 ESSENTIALLY, AN OPPOSITION TO THE DEFENDANTS'
19 MOTION, AND SO I'VE GIVEN ---
20 THE COURT: OKAY. I'M JUST TRYING TO
21 UNDERSTAND WHAT YOU WANT AT THIS POINT.
22 MR. TALL: THANK YOU, YOUR HONOR.
23 THE COURT: OKAY. SO YOU JUST WANT THE
24 DEFENDANTS NOT TO INTERFERE, AND YOU WANT THE
25 COURT TO REQUIRE THE DEFENDANTS NOT TO

1 INTERFERE?
2 MR. TALL: AND UNDERSTANDING THAT THIS
3 IS FOR TEMPORARY ACTION THIS AFTERNOON. WE'VE
4 GOT A SUIT THAT WILL COME BACK AND FORTH, ---
5 THE COURT: I UNDERSTAND.
6 MR. TALL: --- SORT THROUGH ALL OF
7 THESE THINGS ABOUT TECHNOLOGY AND WHAT'S
8 REASONABLE AND ALL THOSE TYPES OF THINGS.
9 THE COURT: I UNDERSTAND.
10 MR. TALL: THANK YOU, YOUR HONOR.
11 THE COURT: ALL RIGHT. THANK YOU.
12 MR. TALL: I APPRECIATE YOU ALLOWING
13 ME TO SPEAK.
14 THE COURT: ALL RIGHT. THANK YOU. ALL
15 RIGHT, MR. JORDAN.
16 MR. JORDAN: YOUR HONOR, JUST REAL
17 QUICK. I WOULD DRAW THE COURT'S ATTENTION TO
18 PARAGRAPH NINE OF ANDREW CALNEK'S AFFIDAVIT.
19 WHAT THE HOA HAS DONE, MY CLIENTS REQUESTED
20 THAT THEY NOT REPLACE THEIR LOCKS UNTIL WE HAD
21 A HEARING, AND WHAT THEY DID IS THEY BROKE INTO
22 MY CLIENT'S APARTMENT. THEY BROKE INTO HIS
23 UNIT. WE ASKED THEM TO LEAVE. THEY WOULD NOT
24 LEAVE, AND THEY REPLACED THE LOCK FORCIBLY
25 WHILE WE LOOKED ON AND WHILE ONE OF THEIR

1 EMPLOYEES THREATENED TO KNOCK OUR CLIENT ON HIS
2 ASS, EXCUSE MY LANGUAGE. THAT'S HOW THEY
3 REPLACED THE LOCKS. I DO WANT THE COURT TO BE
4 AWARE OF THAT.

5 THE COURT: ON FEBRUARY THE 5TH?

6 MR. JORDAN: FEBRUARY THE 5TH, YOUR
7 HONOR. THE MOTION HEARING WAS ALREADY -- THE
8 MOTION WAS ALREADY FILED. THAT'S WHAT THEY DID
9 TO ANDREW CALNEK, SAME THING WITH JIM GOWAN'S
10 LOCK. THEY CALLED MR. GOWAN UP, THEY TOLD HIM
11 THERE WAS A LEAK IN THE UNIT, COULD THEY ACCESS
12 THE UNIT. MR. GOWAN SAID, "SURE, HERE'S THE
13 CODE TO MY LOCK." WHEN THEY WALKED TO MR.
14 GOWAN'S UNIT, THEY CHANGED THE LOCK ON THAT
15 UNIT, THEY THEN USED A CROWBAR TO BREAK INTO
16 HIS OTHER UNITS TO CHANGE THE LOCKS ON THOSE
17 UNITS, AND THAT'S HOW THEY CHANGED THE UNITS.

18 THE COURT: WAS THERE A LEAK IN THE
19 UNIT, AS FAR AS YOU KNOW?

20 MR. JORDAN: I'M NOT SURE. I DON'T ---

21 MR. GOWAN: YES.

22 MR. JORDAN: I DON'T RECALL. I ACTUALLY
23 THINK THERE WAS. ACTUALLY, THERE WAS, YOUR
24 HONOR.

25 THE COURT: THERE WAS A LEAK IN THE ONE

1 UNIT?

2 MR. JORDAN: THERE ACTUALLY WAS, THE
3 LEAK ABOVE. THEY NEEDED TO GET IN, WE GAVE
4 THEM A CODE. WHEN THEY CAME IN, THEY CHANGED
5 THE LOCKS WITHOUT OUR KNOWLEDGE OR PERMISSION.
6 SO THE REASON I BRING THAT UP TO THE COURT IS
7 THAT WE ARE HERE ON A TEMPORARY INJUNCTION.
8 USUALLY, A TEMPORARY INJUNCTION IS TO SET THE
9 STATUS QUO DURING THE PENDENCY OF THE LAWSUIT.
10 IN THIS CASE, THE HOA HAS CHANGED THE FACTS OF
11 THE GROUNDS, SINCE THE FILING OF THE LAWSUIT,
12 THEY HAVE CHANGED THE FACTS, SO I DID WANT TO
13 BRING THAT TO THE COURT'S ATTENTION, BUT LET ME
14 START AND INTRODUCE MYSELF. OF COURSE, I'M
15 CHARLES JORDAN.

16 THE COURT: YES, SIR.

17 MR. JORDAN: I DO REPRESENT ALL THE
18 DEFENDANTS IN THIS MATTER. BRADLEY BENNETT IS
19 WITH ME. MR. BENNETT IS THE OWNER OF
20 OCEANFRONT GURU REAL ESTATE.

21 THE COURT: YES, SIR.

22 MR. JORDAN: THEY LEASE APPROXIMATELY 50
23 UNITS ALONG THE GRAND STRAND AT APPROXIMATELY
24 12 DIFFERENT RESORTS. EVERY UNIT HE LEASES HAS
25 THESE SAME LOCKS. BEHIND ME ARE OTHER UNIT

1 OWNERS. I DO WANT TO SHOW YOU -- DAWN AND
2 ANDREW CALNEK, IF YOU COULD RAISE YOUR HAND OR
3 STAND UP. THEY'RE THE DEFENDANTS.
4 THE COURT: THEY'RE THE ONES THAT WE
5 JUST POINTED OUT THEIR AFFIDAVIT, ---
6 MR. JORDAN: CORRECT, YOUR HONOR.
7 THE COURT: --- MR. CALNEK'S AFFIDAVIT?
8 MR. JORDAN: THEY'RE FROM CANADA. WE
9 HAVE JIM GOWAN WHO IS FROM ATLANTA. JIM AND
10 ANGIE GOWAN, THEY SUBMITTED AFFIDAVITS. JIM
11 WAS NAMED IN THE LAWSUIT, AND ROB TOMLINSON,
12 MR. TOMLINSON IS FROM CARY, NORTH CAROLINA, AND
13 HIS COMPANY OWNS THREE UNITS OUT THERE. HE WAS
14 NAMED IN THE SUIT. THE OTHER INDIVIDUALS ARE
15 ON MR. BENNETT'S RENTAL PROGRAM. THEY OWN THE
16 UNITS OUT THERE. THEY'RE ON HIS RENTAL
17 PROGRAM. THEY HAD THE HOA MEETING ON SATURDAY,
18 WHICH IS WHY EVERYBODY'S STILL HERE. THE OUT-
19 OF-TOWNERS SIMPLY TOOK A WEEK OFF AND STAYED
20 OVER, SO I DO HAVE QUITE A CROWD TODAY.
21 THE COURT: VERY GOOD.
22 MR. JORDAN: BUT THAT'S THE REASON, I
23 THINK.
24 THE COURT: WE DIDN'T HAVE GOOD WEATHER
25 UNTIL TODAY, SO NOW WE HAVE, TODAY, THE WEATHER

1 THAT YOU'RE USED TO IN THE GRAND STRAND.
2 MR. JORDAN: IT IS A CHAMBER OF COMMERCE
3 DAY, ISN'T IT?
4 THE COURT: YES, IT IS.
5 MR. JORDAN: IT IS A BEAUTIFUL DAY.
6 WHAT WE ARE FIGHTING OVER, AND I WANT TO SHOW
7 THE COURT EXACTLY WHAT WE'RE FIGHTING OVER.
8 THIS IS THE LOCK.
9 THE COURT: THAT IS WHICH LOCK?
10 MR. JORDAN: THIS IS THE LOCK ---
11 THE COURT: WE'RE TALKING ABOUT TWO
12 DIFFERENT KINDS OF LOCKS.
13 MR. JORDAN: THAT'S THE LOCK THAT USED
14 TO BE ON OUR DOOR.
15 THE COURT: THAT'S THE OLD LOCK OR THE
16 ---
17 MR. JORDAN: CORRECT. THAT'S THE OLD
18 LOCK THAT USED TO BE ON THE DOOR, AND WHEN I
19 TALK ABOUT THE LOCKS, IT'S IMPORTANT THAT THE
20 COURT UNDERSTANDS EXACTLY WHAT KIND OF LOCK
21 THAT WE'RE TALKING ABOUT, A BRIEF HISTORY ON
22 THOSE LOCKS, YOUR HONOR, BECAUSE MR. TALL DID
23 BRING UP A GOOD POINT, AND I AGREE WITH --
24 ABOUT EVERYTHING HE SAID, I WOULD AGREE WITH
25 HIM ON. THE FIRST TEN MINUTES OF HIS TALK, I

1 BELIEVE I AGREE WITH EVERYTHING HE SAID. I
2 WROTE IT DOWN, AND ONE THING THAT HE DID SAY
3 AND I WANT TO BRING TO THE COURT'S ATTENTION,
4 IT IS HARD TO GET GOOD PEOPLE ON THE BOARD OF
5 DIRECTORS, PEOPLE WHO CARE ABOUT THE UNITS,
6 PEOPLE WHO CARE ABOUT THE DEVELOPMENT. JIM
7 GOWAN WAS ON THE BOARD OF DIRECTORS FROM 2008
8 TO 2012. THAT IS IN HIS AFFIDAVIT. HE WAS ON
9 THE BOARD OF DIRECTORS. WHILE HE WAS ON THE
10 BOARD OF DIRECTORS, AND THIS IS IN HIS
11 AFFIDAVIT, NEVER DID IT COME TO HIS ATTENTION
12 THAT THERE WAS EVER ANY PROBLEMS WITH ACCESSING
13 ANY UNITS FROM ANY UNIT OWNER. WHAT'S
14 IMPORTANT IS DURING THIS TIME PERIOD, BEGINNING
15 IN 2011, MR. GOWAN HAD THAT KIND OF LOCK ON HIS
16 UNIT. THAT KIND OF LOCK WAS ON THEIR UNITS IN
17 2011. 2012, THEY PUT MORE LOCKS ON THE UNITS.
18 MR. BENNETT PUT LOCKS ON HIS UNITS IN 2013.
19 2014, WE'RE UP TO 50 UNITS NOW.

20 THE COURT: I GUESS, FOR THE RECORD, WE
21 NEED TO SAY THAT THE LOCK THAT WE'RE TALKING
22 ABOUT IS A LOCK THAT HAS A KEY, THE OLD KEY, AS
23 WELL AS A PUNCH ---

24 MR. TALL: YOUR HONOR, I THINK ON ONE
25 OF THE AFFIDAVITS THE DEFENDANTS ---

1 MR. JORDAN: IT IS ON BRADLEY BENNETT'S
2 AFFIDAVIT, YOUR HONOR.
3 THE COURT: OKAY.
4 MR. JORDAN: A PICTURE OF THAT LOCK OR
5 ONE SUBSTANTIALLY SIMILAR TO IT IS ATTACHED AS
6 EXHIBIT "D" OR "F" TO MR. BENNETT'S AFFIDAVIT.
7 THE COURT: OKAY. SO WE'RE TALKING
8 ABOUT THE PICTURE OF THE KEY THAT'S OF A DOOR
9 LOCK ---
10 MR. JORDAN: EXHIBIT "D."
11 THE COURT: --- THAT IS EXHIBIT "D" ---
12 MR. JORDAN: "D."
13 THE COURT: --- TO ---
14 MR. JORDAN: MR. BENNETT'S AFFIDAVIT.
15 THE COURT: --- MR. BENNETT'S
16 AFFIDAVIT. AND YOU CAN ACTUALLY PUT IN A KEY
17 TO THIS AS WELL AS PUNCHING A CODE?
18 MR. JORDAN: CORRECT, AND THAT'S WHY I
19 WANT THE COURT TO LOOK AT IT. YOU CAN PUT A
20 KEY OR YOU CAN PUNCH A CODE. I DON'T WANT TO
21 REPEAT MY MEMORANDUM. I BELIEVE THE COURT HAS
22 READ THROUGH THAT. I DON'T WANT TO RE-ARGUE
23 THOSE SAME POINTS. MY CLIENTS' BUSINESS MODEL,
24 THE REASON SUPPORTED THAT THEY DON'T HAVE
25 CHECK-INS IT'S FOR RENT BY OWNER. THE GOWANS

1 ARE IN ATLANTA. MR. TOMLINSON IS IN CARY,
2 NORTH CAROLINA. YOU NOW HAVE A PLACE DOWN HERE
3 TO CHECK GUESTS IN AT. WHAT I DO WANT TO GO
4 BACK TO IS THE MASTER DEED, AND I THINK THAT
5 GOVERNS EVERYTHING THAT WE'RE DOING HERE TODAY.
6 MR. TALL AND I AGREE PERFECTLY, I THINK, ON
7 THAT PROVISION. A MASTER DEED, YOUR HONOR, OF
8 COURSE, IS A RESTRICTION ON THE USE OF
9 PROPERTY. I'VE HANDED UP A CASE, YOUR HONOR,
10 PENNY CREEK ASSOCIATES VERSUS FENWICK TARRAGON
11 APARTMENTS. IT'S A SOUTH CAROLINA COURT OF
12 APPEALS DECISION FROM 2007. THE REASON I DO
13 THAT IS BECAUSE IT STANDS WITH THE PROPOSITION,
14 OF COURSE, THAT RESTRICTIONS ON THE USE OF
15 PROPERTY WILL BE STRICTLY CONSTRUED WITH ALL
16 DOUBTS RESOLVED IN FAVOR OF THE FREE USE OF
17 PROPERTY. WE TALKED ABOUT CONSTRUCTION,
18 CONSTRUCTION U.S. CONSTITUTION, CONSTRUCTION
19 AND CONTRACTS. THIS IS WHAT WE DO FOR A LIVING
20 AS ATTORNEYS, IS CONSTRUE WRITTEN DOCUMENTS.
21 THE RULE OF CONSTRUCTIONS ON RESTRICTIONS IS
22 YOU CONSTRUE THE RESTRICTION IN FAVOR OF
23 FREEDOM. YOU DON'T CONSTRUE THE RESTRICTION IN
24 FAVOR OF OPPRESSION. WHATEVER GIVES THE
25 LANDOWNER THE MOST FREEDOM IS HOW WE ARE TO

1 CONSTRUE ANY TYPE OF RESTRICTION. WITH THAT IN
2 MIND, I'D LIKE THE COURT TO LOOK AT ARTICLE 18
3 OF THE MASTER DEED, BECAUSE I THINK THAT
4 LANGUAGE IS IMPORTANT TO WHY WE'RE HERE TODAY.
5 THAT'S ON PAGE 11 OF THE MASTER DEED, YOUR
6 HONOR. I BELIEVE THAT WAS IN THE PACKAGE OF
7 DOCUMENTS THAT I GAVE THE COURT. IT'S ALSO
8 ATTACHED TO EVERYONE'S AFFIDAVIT, I THINK, THAT
9 I SUBMITTED, AT LEAST MR. BENNETT'S AND MR.
10 GOWAN'S AFFIDAVITS, AS WELL.

11 THE COURT: I HAVE IT.

12 MR. JORDAN: THIS ARTICLE IS, "THE RIGHT
13 OF ENTRY INTO UNITS IN CASES OF EMERGENCY."
14 THIS IS ONE OF THE RESPONSIBILITIES OF THE HOA,
15 AND I AGREE WITH MR. TALL. WITHOUT QUESTION,
16 IN CASE OF AN EMERGENCY, A PIPE HAS BURST, FOR
17 WHATEVER REASON THERE'S AN EMERGENCY, THE HOA
18 HAS, NOT ONLY THE ABILITY, BUT I WOULD ALMOST
19 SAY ALMOST A DUTY, TO ACCESS THAT BECAUSE IT'S
20 AN EMERGENCY. THE LAST SENTENCE OF THAT
21 ARTICLE IS WHERE I WANT TO DRAW THE COURT'S
22 ATTENTION, AND IT SAYS THIS, "TO FACILITATE
23 ENTRY IN THE EVENT OF ANY SUCH EMERGENCY, THE
24 OWNER OF EACH UNIT, IF REQUIRED BY THE
25 ASSOCIATION," THAT LANGUAGE IS IMPORTANT,

1 "SHALL DEPOSIT UNDER THE CONTROL OF THE
2 ASSOCIATION A KEY TO SUCH UNIT." ALL OF THE
3 AFFIDAVITS THAT I HAVE SUBMITTED, MR. BENNETT,
4 MR. AND MS. GOWAN, MR. CALNEK, MR. TOMLINSON,
5 HAVE ALL SAID A COUPLE OF THINGS. THEY'VE ALL
6 SAID, NUMBER ONE, "WE ALWAYS ALLOWED THE HOA TO
7 ENTER OUR UNIT WHEN THEY REQUESTED IT." I
8 THINK IT'S IMPORTANT, IF YOU LOOK AT MR.
9 GOWAN'S AFFIDAVIT, EXHIBIT "B" TO MR. GOWAN'S
10 AFFIDAVIT, IF THE COURT CAN LOOK AT THAT FOR
11 ME, IS A SERIES OF TEXT MESSAGES, YOUR HONOR,
12 EXHIBIT "B" TO MR. GOWAN'S AFFIDAVIT, AND IT'S
13 TEXT MESSAGES FROM PAUL CARSCHE (PHONETICALLY
14 SPELLED), WHO WORKS FOR THE RESORT ASSOCIATION
15 MANAGEMENT, WHO IS THE MANAGING AGENT FOR THE
16 HOA, AND WITH MR. GOWAN. WHEN YOU READ THROUGH
17 THESE TEXT MESSAGES, AND THESE ARE FROM,
18 ORIGINALLY, NOVEMBER OF 2013, MR. CARSCHE
19 (PHONETICALLY SPELLED) TALKS ABOUT, "I NEED TO
20 CHECK YOUR CABLE IN UNIT 1026, NO KEY, WHAT'S
21 THE CODE?"

22 MR. GOWAN SAYS, "THAT ONE IS FINE,
23 DON'T HAVE THEM SCREW IT UP, THE ONE THAT NEEDS
24 IT IS 232, USE CODE 8451 TO GET INTO UNIT
25 1026."

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1 AND THE TEXT MESSAGES GO BACK AND
2 FORTH, "WE NEED ACCESS TO YOUR UNIT."

3 "WONDERFUL, HERE'S MY CODE." WE'VE
4 NEVER SAID, "NO, YOU CAN'T GET INTO OUR UNIT."
5 WE SAID, "NO," NOT TO CHANGE THE LOCKS, BUT
6 WE'VE ALWAYS ALLOWED THEM ACCESS TO THE UNITS
7 IN CASE OF AN EMERGENCY.

8 THEY'VE SUBMITTED AN AFFIDAVIT OF MR.
9 ANDERSON AND OF -- I FORGOT WHO THE -- OF MR.
10 HARRISON AND MR. ANDERSON. NEITHER OF THOSE
11 INDIVIDUALS SAID THERE WAS ANY OCCASION WHEN
12 THEY COULD NOT ACCESS THE UNITS OF THE
13 DEFENDANTS OR ANY UNIT. THEY SAID, "WE'VE HAD
14 PROBLEMS," BUT THEY'VE NEVER POINT TO ANYTHING
15 SPECIFIC WHERE THERE'S EVER BEEN A PROBLEM WITH
16 THIS.

17 ADDITIONALLY, YOUR HONOR, IF YOU LOOK
18 IN OUR AFFIDAVITS, EXCEPT FOR MR. TOMLINSON,
19 THE HOA HAS NEVER REQUESTED A KEY TO OUR UNITS.
20 THEY'VE NEVER REQUESTED A KEY. MR. TOMLINSON'S
21 AFFIDAVIT SAYS, "THEY REQUESTED A KEY, I GAVE
22 IT TO THEM FOR ONE OF MY UNITS." BEYOND THAT,
23 THEY'VE NEVER REQUESTED A KEY. WE WILL GIVE
24 THEM A KEY. WHAT'S IMPORTANT, IF YOU LOOK AT
25 THE LOCK IN FRONT OF YOU, THAT'S THE LOCK THAT

1 WAS ON THERE. IT HAS A KEY AND YOU DON'T HAVE
2 TO HAVE A CODE. YOU CAN HAVE AN ACTUAL MANUAL
3 HARD KEY. WE ARE READY, WILLING, AND ABLE AT
4 THE REQUEST OF THE ASSOCIATION TO FULLY COMPLY
5 WITH ARTICLE 18 AND GIVE THEM A KEY SO THEY CAN
6 ACCESS OUR UNIT IN CASE OF EMERGENCY. THAT'S
7 WHAT THIS ARTICLE SAYS WE ARE TO DO. WE WILL
8 COMPLY WITH THE -- WE WILL ABSOLUTELY COMPLY
9 WITH THE MASTER DEED.

10 WHAT THE MASTER DEED DOESN'T SAY AND,
11 AGAIN, WE'RE CONSTRUING IT IN FAVOR OF FREEDOM,
12 IS THAT THE HOA HAS THE RIGHT TO PUT ON UNIFORM
13 LOCKS. THAT'S NOT WHAT THE MASTER DEED SAYS.
14 IT SAYS IF WE HAVE A LOCK, WE HAVE TO GIVE THEM
15 A KEY TO ACCESS. WE'LL BE HAPPY TO GIVE THEM A
16 KEY TO THE ACCESS. WHAT HAS CAUSED US GREAT
17 CONCERN, AND I THINK MR. TALL HIT ON IT WHEN HE
18 WAS TALKING, THAT HIS CLIENT SEES SAND DUNES
19 OCEANFRONT AS ONE BIG UNIT, AS ONE BIG HOTEL
20 THAT THEY'RE RUNNING, AND IT'S SIMPLY NOT THEIR
21 HOTEL TO RUN. THERE ARE 172 UNITS -- 179 UNITS
22 OVER THERE, YOUR HONOR. MOST OF THOSE UNITS
23 ARE RENTED BY RAWCLIFFE RESORTS. RAWCLIFFE
24 RESORTS APPOINTS THE BOARD OF DIRECTORS. TWO
25 OUT OF THREE OF THE DIRECTORS ARE OWNERS OF

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1 RAWCLIFFE RESORTS. THE PRESIDENT OF THE HOA IS
2 AN EMPLOYEE WITH RAWCLIFFE RESORTS. RAWCLIFFE
3 RESORTS HAS THE FRONT DESK. THEY RUN LIKE A
4 HOTEL. YOU CALL UP RAWCLIFFE RESORTS, SAY, "I
5 NEED A TWO BEDROOM," YOU SHOW UP AT THE FRONT
6 DESK, THEY'LL GIVE YOU A KEY, TELL YOU WHAT
7 ROOM TO GO TO, AND THAT'S HOW IT RUNS. THAT'S
8 NOT HOW WE RUN, BECAUSE WE'RE NOT PART OF THEIR
9 RENTAL MANAGEMENT PROGRAM.

10 THE COURT: IS THE FRONT DESK A
11 COMMERCIAL UNIT OWNED BY RAWCLIFFE RESORTS?

12 MR. JORDAN: YES, YOUR HONOR, IT IS,
13 OWNED BY RAWCLIFFE RESORTS, CORRECT. WE DON'T
14 GO THROUGH THE FRONT DESK. IF YOU WANT TO RENT
15 MR. GOWAN'S UNIT, YOU'RE NOT SUPPOSED TO GO TO
16 THE FRONT DESK.

17 THE COURT: I UNDERSTAND.

18 MR. JORDAN: THEY'RE NOT SUPPOSED TO
19 HAVE ACCESS. WHAT HAS OCCURRED HERE, AND IT
20 GOES BACK TO WHO OWNS THE LOCKS, WHENEVER WE
21 TOOK A LOCK OFF -- ALL THESE UNITS AT ONE POINT
22 IN TIME WERE ON RAWCLIFFE RESORTS RENTAL
23 PROGRAM. WHENEVER WE REMOVE ONE OF THE LOCKS
24 AND PUT THAT LOCK ON, WE RETURN THE LOCK TO
25 RAWCLIFFE RESORTS, NOT TO THE HOA, BECAUSE THE

1 OWNER OF THE LOCK WAS RAWCLIFFE. WE RETURNED
2 IT TO HIM, NOT THE HOA. THE NEW LOCKS THAT THE
3 HOA HAS PUT ON ARE ACCESSIBLE BY RAWCLIFFE
4 RESORTS. THEY ARE RAWCLIFFE RESORTS' LOCKS
5 THAT THEY PUT ON THERE.

6 THE COURT: THE NEW ONES?

7 MR. JORDAN: THE NEW ONES ARE, YOUR
8 HONOR, THE ONES THAT THEY PUT ON THERE A COUPLE
9 OF WEEKS AGO. WHEN MR. GOWAN CAME TO HIS UNIT,
10 MR. GOWAN COULD NOT ACCESS HIS UNIT, BECAUSE
11 THE KEY DIDN'T WORK THAT THEY SENT HIM. MR.
12 GOWAN WENT TO THE FRONT DESK OWNED BY RAWCLIFFE
13 RESORTS, THEY COULD OPEN HIS UNIT. THE FRONT
14 DESK CAN OPEN HIS UNIT. RAWCLIFFE RESORTS
15 COULD OPEN HIS UNIT. MR. GOWAN COULDN'T OPEN
16 HIS UNIT BECAUSE OF THE KEYS. IT'S NOT A
17 MATTER OF COMING INTO COMPLIANCE WITH HOA.
18 THEY'RE BRINGING US INTO COMPLIANCE WITH
19 RAWCLIFFE RESORTS, IS WHAT THEY ARE DOING.
20 THAT'S WHAT WE'RE UNDER RIGHT NOW. THAT'S WHAT
21 THEY'RE TRYING TO BRING US UNDER.

22 THE COURT: WAIT JUST A MOMENT. IS
23 THAT TRUE, MR. TALL?

24 MR. TALL: YOUR HONOR, IF THERE WAS A
25 PROBLEM WITH THAT PARTICULAR ---

1 THE COURT: IS THAT TRUE? IS THAT YES
2 OR NO?
3 MR. TALL: WHETHER THE FRONT DESK HAS
4 ACCESS ---
5 THE COURT: NO, NO, NO, NO.
6 MR. TALL: I'M ASKING A QUESTION, YOUR
7 HONOR.
8 THE COURT: ARE THE UNITS THAT THE NEW
9 LOCKS -- ARE DEFENDANTS' UNITS THAT HAVE THE
10 NEW LOCKS ON THEM ACCESSIBLE BY RAWCLIFFE
11 RESORTS?
12 MR. TALL: THEY ARE, YOUR HONOR.
13 THE COURT: ALL RIGHT. THANK YOU.
14 MR. JORDAN: MR. TALL TALKED ABOUT, AND
15 I UNDERLINED THIS AND I CIRCLED IT ON MY PAD,
16 THE COOPERATION ---
17 THE COURT: AND I DIDN'T MEAN TO IMPLY
18 THAT I DIDN'T ---
19 MR. JORDAN: THAT'S ALL RIGHT.
20 THE COURT: --- BELIEVE YOU. I JUST
21 WANTED TO MAKE SURE THAT THE PLAINTIFF WOULD
22 CONCEDE THAT.
23 MR. JORDAN: YOUR HONOR, I DON'T KNOW
24 EVERYTHING, AND SO THAT IS PERFECTLY FINE WITH
25 ME. MR. TALL DID TALK ABOUT THE COOPERATION OF

1 THE HOA, AND I THINK THIS IS WHY IT BELIES TO
2 MR. TALL'S POINT AS TO WHY THEY CHANGED THE
3 LOCKS. WE WERE GIVEN, EACH OF MY UNIT OWNERS
4 WERE GIVEN TWO HARD KEYS, TWO KEYS LIKE, YOU
5 KNOW, THAT YOU USE IN YOUR FRONT DOOR, AND TWO
6 CARD KEYS TO THEIR UNITS. THE GOWANS, ON TEN
7 DIFFERENT OCCASIONS, HAVE REQUESTED MORE CARD
8 KEYS. THEY'VE NEVER GOTTEN THEM. THEY WON'T
9 GIVE US ANY MORE CARD KEYS. I DON'T UNDERSTAND
10 WHY, AND IF YOU LOOK AT MR. AND MS. GOWAN'S
11 SUPPLEMENTAL AFFIDAVIT, THERE IS A SERIES OF
12 EMAILS FROM ANGIE GOWAN TO AARON HARRISON,
13 SAYING, "PLEASE GIVE ME MORE KEYS TO MY LOCKS."
14 I WRITE MR. TALL, "PLEASE GIVE ME MORE KEYS TO
15 THE GOWANS' LOCKS." THE GOWANS HAVE YET TO GET
16 ANY MORE KEYS TO THEIR LOCKS, YOUR HONOR.

17 MR. TALL: YOUR HONOR, IF I MAY BE
18 HEARD ON THIS FOR A MOMENT. I'M CONCERNED THAT
19 IN SOME MEASURE AS WE'RE GOING HERE, MR. TALL
20 AND MR. JORDAN BECOME WITNESSES IN THIS MATTER.
21 COUNSEL HAVE SHARED BACK AND FORTH WITH EACH
22 OTHER, AND WE'VE HAD MORE THAN ENOUGH
23 CONVERSATIONS BETWEEN THE TWO OF US. MR.
24 HARRISON IS CLEAR THERE'S NO ATTEMPT TO
25 RESTRICT ANYBODY'S OPPORTUNITY TO GET NEW KEYS.

1 THOSE KEYS ARE AVAILABLE AT HOME DEPOT AND
2 OTHER PLACES AND FROM THE HOA, AND COUNSEL HAVE
3 SHARED THAT BETWEEN THE TWO OF US. SO NOW WE
4 HAVE AN EXHIBIT OF A MR. JORDAN LETTER TO ME
5 AND AN AFFIDAVIT AND, ALL OF A SUDDEN, WE'RE
6 WITNESSES IN THE CASE?

7 THE COURT: NO, SIR. I DON'T CONSIDER
8 THAT TO BE WITNESSES BETWEEN -- I BELIEVE THERE
9 WAS -- MR. JORDAN WAS REFERRING TO A LETTER
10 FROM THE GOWANS ASKING FOR EXTRA KEYS.

11 MR. JORDAN: I WAS REFERRING TO BOTH,
12 YOUR HONOR. ONE OF THE LETTERS IS A LETTER I
13 DID SEND MR. TALL. I CAN TAKE THAT OUT. IT'S
14 NOT A BIG DEAL, BUT THERE IS A SERIES OF
15 EMAILS, AND I WILL SAY MS. GOWAN CONTACTED MR.
16 HARRISON ON JANUARY 30TH, 2015, JANUARY 31ST,
17 2015, FEBRUARY 2ND, 2015, FEBRUARY 5TH, 2015,
18 AND FEBRUARY 11TH OF 2015, NEVER GOTTEN A LOCK
19 BACK. WHAT MR. TALL JUST TOLD YOU IS VERY
20 IMPORTANT. HERE'S WHAT THEY GAVE US. THEY
21 GAVE US TWO HARD KEYS, LIKE THIS KEY HERE, AND
22 TWO SOFT KEYS. YOU CAN MAKE A COPY OF THE KEY,
23 AS HE JUST SAID, AT HOME DEPOT, WHICH MEANS IF
24 WE RENT OUT TO -- JOE BLOW FROM NEW YORK CITY
25 COMES DOWN AND STAYS IN OUR UNIT, WE GIVE HIM A

1 HARD KEY, JOE BLOW CAN GO TO HOME DEPOT, MAKE A
2 COPY OF THE KEY, WE'LL NEVER KNOW. HE COMES
3 BACK TWO WEEKS LATER AND WE HAVE ANOTHER COUPLE
4 STAYING HERE, HE CAN GO INTO THE UNIT. NOBODY
5 WILL EVER KNOW, BECAUSE HE CAN MAKE A COPY OF
6 THE KEY. THAT'S THE PROBLEM WE HAVE. THE
7 GOWANS ARE VERY CONCERNED FOR THE SAFETY OF THE
8 PEOPLE THEY RENT TO. IF ANY RENTER CAN MAKE A
9 COPY OF A KEY, THE SUBSEQUENT RENTERS SIMPLY
10 AREN'T SAFE, BUT THOSE WERE EQUITABLE
11 ARGUMENTS, BUT I CAN'T -- I DRAW THE COURT'S
12 ATTENTION BACK TO THE MASTER DEED WHICH SAYS
13 ALL WE HAVE TO DO IS DEPOSIT THE KEY WITH THE
14 HOA TO OUR UNIT. WE CAN DO THAT. WILL IT BE
15 INCONVENIENT IF THEY DON'T HAVE A CARD KEY TO
16 EVERY SINGLE THING, IT COULD BE. ALL YOU NEED,
17 THOUGH, IS A NICE LITTLE KEY BOX, ANY BOY SCOUT
18 CAN MAKE THEM, THAT HAS A LITTLE TINY THING ON
19 THE END OF A KEY THAT SAYS, "UNIT 1126," AND
20 YOU HANG IT UP ON A CUP HOOK AND YOU HANG THE
21 NEXT ONE 1127 ON A CUP HOOK. YOU NEED TO GET
22 1126 FROM MR.. GOWAN, YOU CAN GO THERE.

23 THE COURT; WELL, LET ME SEE IF I'M
24 GETTING THE PICTURE RIGHT. IS RAWCLIFFE
25 RESORTS THE PROPERTY MANAGER FOR THE HOA AS

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1 WELL AS THE RENTAL MANAGER?
2 MR. JORDAN: RAWCLIFFE RESORTS IS THE
3 DEVELOPER. HE CLAIMS HE SUCCEEDED THE RIGHT OF
4 THE DEVELOPER. HE OWNS THE COMMERCIAL UNIT,
5 THE FRONT DESK, AND THEREFORE HE RENTS OUT THE
6 MAJORITY OF THE UNITS THERE. RAWCLIFFE RESORTS
7 APPOINTS THE BOARD OF DIRECTORS TO THE HOA.
8 THE COURT: WELL, I DON'T UNDERSTAND
9 WHY IT'S THE DEVELOPER. SAND DUNES WAS
10 DEVELOPED YEARS AGO, SO I DON'T UNDERSTAND WHY
11 IT SAYS IT SUCCEEDED TO THE RIGHTS OF THE
12 DEVELOPER. SAND DUNES HAS BEEN DEVELOPED YEARS
13 AGO. WHEN WAS THIS MASTER DEED ---
14 MR. JORDAN: 2005. LARRY YOUNG
15 DEVELOPED IT UNDER THE SAND DUNES, YOUR HONOR,
16 IN 2005.
17 THE COURT: OKAY.
18 MR. JORDAN: THAT'S ACTUALLY THE SUBJECT
19 OF ANOTHER SUIT IN FRONT OF YOU, YOUR HONOR, IS
20 WHETHER OR NOT HE'S STILL ---
21 THE COURT: I'M SURPRISED IT WAS THAT
22 LATE IN TIME, BUT IT WAS YEARS AGO, SO I DON'T
23 UNDERSTAND THIS BUT ---
24 MR. TALL: PREVIOUSLY, IT OPERATED AS
25 A HOTEL, YOUR HONOR, ---

1 MR. JORDAN: YES, IT PREVIOUSLY OPERATED
2 AS A HOTEL.
3 MR. TALL: --- BEFORE IT WAS A
4 CONDOMINIUM ASSOCIATION.
5 THE COURT: OKAY. SO, I MEAN, IT GOES
6 BACK WAY BEFORE THAT.
7 MR. JORDAN: THE HOTEL ITSELF MAY GO
8 BACK TO THE 1980s, MAYBE.
9 THE COURT: YES.
10 MR. JORDAN: I DON'T KNOW HOW OLD IT IS.
11 I BELIEVE THAT'S PROBABLY TRUE. THE HOTEL GOES
12 BACK TO THE '80s. IT WAS CONVERTED TO CONDOS
13 IN 2005.
14 THE COURT: SO WHO IS THE PROPERTY
15 MANAGER FOR THE HOA?
16 MR. JORDAN: RESORT ASSOCIATION
17 MANAGEMENT.
18 THE COURT: OKAY. SO AS FAR AS I KNOW,
19 THAT SHOULD BE THE ONLY ENTITY THAT HAS KEYS
20 FOR THE HOA.
21 MR. JORDAN: AND WE WILL BE HAPPY TO
22 DEPOSIT A KEY WITH RESORT ASSOCIATION
23 MANAGEMENT TO ACCESS OUR UNITS.
24 THE COURT: THAT'S HOW THAT WORKS.
25 MR. TALL: WE'RE NOT ASKING -- FIRST

1 OF ALL, I DON'T REPRESENT RAWCLIFFE AND WE'RE
2 NOT ASKING THAT RAWCLIFFE HAVE KEYS TO THE
3 UNITS FROM THESE FOLKS. IT IS ---
4 THE COURT: WHY DOES IT?
5 MR. TALL: IT'S A MATTER OF
6 CONVENIENCE, BECAUSE IT'S THE FRONT DESK.
7 THE COURT: WHO GAVE RAWCLIFFE RESORTS
8 THE KEYS?
9 UNIDENTIFIED MALE: RAWCLIFFE RESORTS HAS THE
10 EQUIPMENT TO MAKE, TO ---
11 THE COURT: NO, NO, NO, THAT'S NOT MY
12 QUESTION.
13 MR. TALL: THE HOA.
14 THE COURT: WHO GAVE RAWCLIFFE RESORTS
15 THE KEYS?
16 MR. TALL: THE HOA HAS USED THE
17 SERVICES OF RAWCLIFFE RESORTS WHO OPERATES THE
18 FRONT DESK.
19 THE COURT: SO THE HOA, THE BOARD OF
20 DIRECTORS, GAVE THE KEYS TO RAWCLIFFE RESORTS?
21 MR. TALL: IT SOUNDS SINISTER, YOUR
22 HONOR, THAT WE'RE DOING SOMETHING UNDERHANDED
23 HERE. THERE HAS TO BE SOMETHING ---
24 THE COURT: MY QUESTION AGAIN ---
25 MR. TALL: THE HOA, YOUR HONOR.

1 THE COURT: WHY?
2 MR. TALL: BECAUSE THERE'S A PRACTICAL
3 NEED FOR WHEN SOMEONE COMES DOWN TO THE FRONT
4 DESK LOOKING FOR SOMETHING TO BE DONE, WE HAVE
5 SOMEONE WHO COULD BE RESPONSIVE TO IT.

6 THE COURT: THAT'S NOT THE HOA'S RIGHT
7 TO GIVE RAWCLIFFE RESORTS THE KEYS. THAT'S NOT
8 HOW THAT WORKS. THE HOA HAS A CONTRACT WITH
9 THE PROPERTY MANAGEMENT COMPANY AND THAT IS WHO
10 THE KEYS GO TO.

11 MR. TALL: MAY I FOR A MOMENT, YOUR
12 HONOR?

13 THE COURT: YES, SIR.

14 MR. JORDAN: YOUR HONOR, AND I DO WANT
15 TO POINT OUT THIS, TOO. THERE IS SOME
16 OVERLAPPING OWNERSHIP BETWEEN RAWCLIFFE RESORTS
17 AND RESORT ASSOCIATION MANAGEMENT AND, OF
18 COURSE, THERE'S OVERLAPPING BETWEEN THE BOARD
19 OF THE HOA AND RAWCLIFFE RESORTS. SO IT IS A
20 BIT INCESTUOUS IN THAT WAY, BUT WE'RE HAPPY TO
21 GIVE THE KEY TO RAM, BECAUSE THEY'RE THE
22 MANAGING AGENT. THAT'S WHAT THE BYLAWS --
23 THAT'S WHAT IS REQUIRED, AND WE'RE HAPPY TO
24 GIVE THE KEY THAT FITS THAT LOCK TO RESORT
25 ASSOCIATION MANAGEMENT, BECAUSE THAT'S WHAT THE

1 MASTER DEED REQUIRES, AND WE WILL BE HAPPY TO
2 DO THAT.

3 MR. TALL: I HAVE SOMETHING MORE, YOUR
4 HONOR.

5 THE COURT: ONCE WE GET THERE. ONCE WE
6 GET THERE. I INTERRUPTED YOUR ARGUMENT.

7 MR. JORDAN: YOUR HONOR, AND I THINK,
8 WHEN I LOOKED THROUGH THIS, YOUR HONOR, AND I
9 HAVE PUT THIS IN MY, YOU KNOW, IN MY BRIEF AND,
10 AGAIN, IF YOU WILL, THE NATURE OF THE ANIMOSITY
11 BETWEEN THE HOMEOWNERS AND RAWCLIFFE RESORTS.
12 I DID ENCLOSE AN ORDER FROM JUDGE HYMAN LAST
13 YEAR WHEN RAWCLIFFE RESORTS SOUGHT TO SHUT DOWN
14 THE LOBBY FOR OUR HOMEOWNERS TO ASSESS THE
15 LOBBY OR ANY PART OF THE DOWNSTAIRS, THAT JUDGE
16 HYMAN ACTUALLY ISSUED THE TRO AND A TEMPORARY
17 INJUNCTION AGAINST THEM IN THAT CASE, BUT I DO
18 DRAW, AGAIN, I BELIEVE WE HAVE THE RIGHT TO
19 CHANGE THE LOCKS, BECAUSE THE MASTER DEED DOES
20 TALK ABOUT THE ABILITY TO GIVE A KEY, AND WE'RE
21 WILLING TO DO THAT IF THE COURT WOULD ALLOW US
22 TO PUT THOSE NUMERIC LOCKS BACK ON THE DOOR.
23 THEY DON'T LOOK MUCH DIFFERENT. I DO HAVE ---
24 THE COURT: YOU HAVE A -- NOT A COPY,
25 YOU HAVE A NEW LOCK?

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1 MR. JORDAN: WE DO HAVE A NEW LOCK.
2 NOW, THIS LOCK IS -- THE DIFFERENCE ---
3 THE COURT: THAT'S PRETTY SUBSTANTIAL.
4 MR. JORDAN: WELL, THE DIFFERENCE,
5 THOUGH, IS THIS PART WOULD COME OFF. SO IF YOU
6 LOOKED AT IT, IT WOULD GO ON LIKE THAT. IF
7 THIS LOCK WAS PUT ON THE DOOR, THIS HOUSING
8 HERE WOULD STILL REMAIN. SO YOU TAKE THIS OFF
9 AND THE HOUSING -- I DIDN'T HAVE THE RIGHT
10 SCREWDRIVER TO TAKE IT OFF. YOU TAKE THAT OFF,
11 THE HOUSING, YOU PUT THIS ON THE HOUSING, IS
12 WHAT YOU DO. SO THAT'S THE DIFFERENCE, AND
13 ACTUALLY, THIS ONE DOESN'T -- ANYWAY.
14 THE COURT: AND WHAT YOU'RE SHOWING ME
15 NOW, MR. JORDAN, IS WHERE IN THE RECORD.
16 MR. JORDAN: EXHIBIT "F" TO MR.
17 BENNETT'S AFFIDAVIT.
18 THE COURT: EXHIBIT "F" TO MR.
19 BENNETT'S AFFIDAVIT?
20 MR. JORDAN: BENNETT'S AFFIDAVIT, RIGHT.
21 AND IF YOU NOTICE ON HERE, THIS ALSO HAS A KEY
22 LOCK.
23 THE COURT: YES, SIR.
24 MR. JORDAN: SO THERE SHOULDN'T BE A
25 PROBLEM HAVING KEYS FOR BOTH OF THESE. BUT

1 WHAT WE DO ASK, YOUR HONOR, WHAT WE'RE ASKING
2 THE COURT TO DO, BECAUSE I THINK THAT'S
3 IMPORTANT, ONE OF TWO THINGS, DEPENDING ON HOW
4 THE COURT WANTS TO ORDER IT, WE WANT TO PUT THE
5 NUMERIC LOCKS BACK ON THE DOOR. WE WOULD ASK
6 THE COURT ORDER THE HOA TO PUT THE LOCKS BACK
7 ON THE DOOR, BECAUSE THEY TOOK THEM OFF.
8 ALTERNATIVELY, WE'D ASK THE COURT TO JUST ALLOW
9 US TO PUT THE LOCKS BACK ON THE DOOR AND THE
10 COST OF DOING THAT CAN BE PART OF THE LAWSUIT
11 AND WE CAN SUE THE HOA FOR DAMAGES FOR THE COST
12 OF PUTTING THE LOCKS BACK ON THE DOOR, BUT WHAT
13 WE ARE ASKING IS TO ALLOW THAT TO HAPPEN. IT
14 IS IMPORTANT TO US, AND THAT'S IN THE
15 AFFIDAVITS, IT'S IN MY MEMO. AGAIN, THE
16 GOWANS, FOR EXAMPLE, LIVE IN ATLANTA. IT'S A
17 LOT EASIER TO EMAIL A RENTER A CODE TO GET IN
18 THAN IT IS TO TRY TO FEDEX THEM A KEY, GET THE
19 FEDEX BACK. SO IF THEY HAD 100 KEYS TO THE
20 UNIT, IT STILL MAKES THE LOGISTICS DIFFICULT,
21 IT MAKES THE LOGISTICS MORE EXPENSIVE. I THINK
22 MR. TOMLINSON SAID HE HAS A RENTER NOW THAT HE
23 HAD TO FEDEX FOR \$35 WITH THE KEY TO THEM, AND
24 HOPEFULLY, HE'LL GET THE KEY BACK, BECAUSE HE
25 ONLY HAS TWO, SO WE HOPE WE'LL GET THE KEY

1 BACK. SO THAT'S THE RELIEF WE'RE ASKING FOR,
2 YOUR HONOR, ESPECIALLY BEFORE THE SEASON
3 STARTS, IS TO BE ABLE TO PUT THOSE, THE NUMERIC
4 KEY PADS ON, BACK ON THE DOORS. THEY'VE BEEN
5 ON THOSE DOORS SINCE AT LEAST 2011, ACCORDING
6 TO THE AFFIDAVITS, AND SO THERE WEREN'T
7 PROBLEMS WITH THEM FOR THE LAST THREE YEARS.
8 THERE SHOULDN'T BE PROBLEMS WITH THEM NOW, AND
9 WE'RE HAPPY TO DEPOSIT A KEY IN ACCORDANCE WITH
10 THE MASTER DEED.

11 THE COURT:

MR. TALL?

12 MR. TALL:

THANK YOU, YOUR HONOR. MR.

13 JORDAN HAS NOT SHARED WITH THE COURT, ALTHOUGH
14 HE HAS IN HIS ANSWER, THE OTHER PART OF THE
15 MASTER DEED, PERHAPS, AN IMPERFECT DOCUMENT,
16 THAT CALLS THESE LOCKS COMMON ELEMENTS, AND,
17 YOUR HONOR, PERHAPS THE ISSUE OF WHO'S GOT A
18 KEY TO WHAT. THESE ARE ELECTRONIC LOCKS AT
19 PRESENT TIME. THE HOA HAS ACCESS WITHOUT
20 GETTING A PHYSICAL KEY FROM THE INDIVIDUALS.
21 THAT ALLOWS THE HOMEOWNERS ASSOCIATION TO DO
22 ITS JOB OF MAINTAINING WHAT NEEDS TO BE DONE.
23 MAY WE LOOK, YOUR HONOR, IN THE AFFIDAVIT OF --
24 THIS IS EXHIBIT "A" OF MR. HARRISON'S
25 AFFIDAVIT.

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1 THE COURT: AND WHERE SHOULD I LOOK?
2 MR. TALL: EXHIBIT "A" OF MR.
3 HARRISON'S AFFIDAVIT, YOUR HONOR.
4 THE COURT: YES, SIR.
5 MR. TALL: I APOLOGIZE, YOUR HONOR,
6 THAT'S EXHIBIT "B."
7 THE COURT: EXHIBIT "B"? AND THIS IS
8 PART OF THE MASTER DEED; IS THAT CORRECT?
9 MR. TALL: YES, YOUR HONOR, THE SAME
10 MASTER DEED THAT WAS THE SUBJECT OF ARGUMENT A
11 MOMENT AGO.
12 THE COURT: WHICH SAYS THAT THE LOCKS
13 ARE LIMITED COMMON ELEMENTS; IS THAT RIGHT?
14 MR. TALL: IT IS.
15 THE COURT: OKAY.
16 MR. TALL: AND I UNDERSTAND AND AGREE
17 WHEN YOU'RE TALKING ABOUT RESTRICTIONS, YOU ARE
18 LOOKING FOR THIS REASONABLE INTERPRETATION.
19 THAT'S THE COURT'S INDIVIDUAL FREEDOM, BUT
20 INDIVIDUALS WHO DECIDE TO TAKE IT UPON
21 THEMSELVES TO CHANGE A LIMITED COMMON ELEMENT
22 AND IT'S NOT SOMETHING THAT'S WITHOUT ANY
23 MEANING.
24 THE COURT: WELL, HAS ANYBODY DONE
25 THAT, YET? HAS ANY OWNER CHANGED THE LOCKS?

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1 MR. TALL: THAT'S WHAT WE'RE SPEAKING
2 ABOUT. MR. JORDAN WANTS TO HAVE REINSTALLED.

3 ---

4 THE COURT: BUT HE'S ASKING THE COURT,
5 HE'S ASKING THE COURT FOR PERMISSION. HIS
6 PEOPLE DIDN'T JUST GO CHANGE THEM.

7 MR. TALL: YOUR HONOR, IF I MAY, THE
8 QUESTIONS ASKED ME, ---

9 MR. JORDAN: I'M SORRY, GO AHEAD. GO
10 AHEAD.

11 MR. TALL: --- I'LL BE HAPPY TO ANSWER
12 IT. THE INDIVIDUAL UNIT OWNERS HAVE PLACED --
13 THE KIND OF LOCKS THAT MR. JORDAN HAS PRESENTED
14 TO YOU, THEY HAVE CHANGED THOSE FROM THE PRIOR
15 LOCKS THAT WERE ON THE DOORS. THEY HAVE TAKEN
16 THE LIMITED COMMON ELEMENTS OF THIS UNIT AND
17 SUGGESTED THAT THE LOCKS THEY WANT TO USE AND
18 THAT WE REPLACED AND THEY WISH TO PUT THEM BACK
19 ON. THOSE HAVE SUPERIOR TECHNOLOGY, BUT BEFORE
20 WE TALK ABOUT THE ABILITY TO PUT BACK SOMETHING
21 THAT YOU ONCE UPON A TIME HAD, HOW ABOUT THE
22 ISSUE OF SOMEONE TAMPERING WITH THE LIMITED
23 COMMON ELEMENT THAT WAS THERE IN THE FIRST
24 PLACE? AND THIS MASTER DEED TALKS ABOUT THAT
25 BEING A VIOLATION OF THE MASTER DEED WHEN YOU

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1 DO SO.
2 THE COURT: WELL, WHO HAS TAMPERED WITH
3 IT?
4 MR. TALL: THE INDIVIDUAL UNIT OWNERS
5 HAVE TAKEN THE ORIGINAL UNIFORM LOCKS AND
6 REPLACED THEM WITH THESE PUNCH BUTTON LOCKS
7 THAT THEY CONSIDER TO BE MORE CONVENIENT.
8 THE COURT: WHO'S DONE THAT?
9 MR. TALL: INDIVIDUAL UNIT OWNERS,
10 SUCH AS THE GOWANS, SUCH AS MR. TOMLINSON, SUCH
11 AS MANY OF THE PEOPLE THAT ARE WORKING WITH MR.
12 BENNETT.
13 THE COURT: SO THE GOWANS HAVE CHANGED
14 IT BACK ALREADY?
15 MR. JORDAN: NO.
16 MR. TALL: NO, NO. BEFORE WE HAD THE
17 LAWSUIT, WE HAD THE LAWSUIT OF LOOKING AT
18 CHANGED LOCKS, TAMPERING WITH LIMITED COMMON
19 ELEMENTS, AND THE HOMEOWNERS ASSOCIATION SAYS,
20 "WE'RE GOING TO BE BACK TO UNIFORM."
21 AND SO THE HOMEOWNERS ASSOCIATION, AND
22 MR. JORDAN SAYS, "IF YOU LOOK IN THE MASTER
23 DEED, WHERE'S THAT RIGHT OF THE ASSOCIATION TO
24 CHANGE BACK TO THE LIMITED COMMON ELEMENTS?"
25 AND MAYBE IT'S THE CHICKEN AND THE

1 EGG, BUT THE HOMEOWNERS ASSOCIATION SAID, "WHO
2 HAD THE RIGHT TO REMOVE LIMITED COMMON
3 ELEMENTS?" THAT'S WHAT THIS LAWSUIT IS ALL
4 ABOUT, DIDN'T HAVE THE RIGHT TO REMOVE LIMITED
5 COMMON ELEMENTS, AND DON'T TALK TO US ABOUT
6 CHANGING BACK THE VIOLATION THAT YOU HAD IN THE
7 FIRST PLACE.

8 THE COURT: OKAY. I'M TOTALLY
9 CONFUSED. WHAT ARE YOU SAYING? I'M TOTALLY
10 CONFUSED, MR. TALL.

11 MR. TALL: I'LL MAKE IT AS ---

12 THE COURT: TELL ME WHAT YOU'RE TALKING
13 ABOUT.

14 MR. TALL: --- PLAIN AS I CAN, YOUR
15 HONOR.

16 THE COURT: OKAY, YES. TELL ME EXACTLY
17 WHAT YOU'RE TALKING ABOUT HERE, AND NAME NAMES,
18 DON'T SAY HOMEOWNERS, NAME NAMES.

19 MR. TALL: IN DECEMBER OF 2014, MR.
20 AND MS GOWAN, MR. TOMLINSON, MR. BENNETT, HAD
21 LOCKS ON THEIR FRONT DOORS.

22 THE COURT: OKAY. IS THIS BEFORE OR
23 AFTER THE HOA HAD CHANGED LOCKS?

24 MR. TALL: BEFORE.

25 THE COURT: OKAY.

1 MR. JORDAN: FIVE -- EXCUSE ME, FIVE
2 YEARS AGO, LET'S SAY.
3 THE COURT: FIVE YEARS AGO.
4 MR. JORDAN: LET'S START FIVE YEARS AGO.
5 MR. TALL: I'M GOING TO TALK ABOUT
6 DECEMBER 2014.
7 THE COURT: OKAY. EVERYBODY HAD LOCKS
8 ON THEIR UNITS.
9 MR. TALL: THERE'S A LOCK ON THAT DOOR
10 ---
11 THE COURT: YES, SIR.
12 MR. TALL: --- OWNED BY MR. BENNETT,
13 MR. GOWAN, MR. TOMLINSON ---
14 THE COURT: OKAY.
15 MR. TALL: --- WHICH IS A NON-UNIFORM
16 LOCK, DIFFERENT THAN THE UNIFORM LOCKS
17 THROUGHOUT THE BUILDING.
18 THE COURT: OKAY. THEY HAD A LOCK ON
19 THEIR DOOR THAT MAY BE DIFFERENT FROM THEIR
20 NEIGHBORS?
21 MR. TALL: AND THE REMOVAL OF THAT
22 LOCK IN ORDER TO PLACE THE ONE THAT THEY
23 PREFERRED ---
24 THE COURT: THEY DECIDED TO CHANGE THE
25 LOCKS ON THEIR DOOR?

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1 MR. TALL: YES. AND WHAT WE'RE SAYING
2 IS THAT, THAT WAS AN EFFORT TO REMOVE THE
3 LIMITED COMMON ELEMENT FROM THIS HOA, FROM THIS
4 MASTER DEED.
5 THE COURT: YOU THINK THEY HAD TO ASK
6 SOMEBODY?
7 MR. TALL: YOUR HONOR, I THINK WHEN
8 YOU'RE TALKING ABOUT THE ESSENCE OF A COMMON
9 ELEMENT ---
10 THE COURT: NO, A LIMITED COMMON
11 ELEMENT.
12 MR. TALL: YES, YOUR HONOR.
13 THE COURT: DOES IT SAY THEY HAD TO ASK
14 SOMEBODY?
15 MR. TALL: IT DOES NOT, BUT IT SAYS
16 PUTTING A LOCK, PUTTING A NEW LOCK IS A
17 VIOLATION OF THE MASTER DEED.
18 MR. JORDAN: I DON'T SEE THAT, YOUR
19 HONOR.
20 THE COURT: WHERE DOES IT SAY THAT?
21 MR. JORDAN: I DON'T MEAN TO CONTRADICT
22 MR. TALL.
23 MR. TALL: I'LL READ THE LANGUAGE,
24 YOUR HONOR, "SHOULD OWNER FAIL TO PROVIDE," AND
25 IT TALKS ABOUT MAINTENANCE AND REPAIRS AS

1 REQUIRED, "ASSOCIATION HAVE THE RIGHT TO ENTER
2 THE UNIT TO ACCOMPLISH SAME AT THE SOLE COST OF
3 THE OWNER, AND SAID COST AND EXPENSE SHALL BE
4 CHARGED AGAINST THE OWNER, INCLUDING THE
5 EXPENSE OF MAKING A KEY SHOULD OWNER PLACE A
6 LOCK ON THE ENTRY DOOR IN VIOLATION OF THE
7 REQUIREMENTS."

8 THE COURT: DID THEY NOT GIVE YOU A
9 KEY?

10 MR. TALL: I WOULD SAY THAT WHEN WE
11 ASKED FOR A KEY, THEY'D GIVE US A KEY.

12 THE COURT: NO, THAT'S NOT MY QUESTION.
13 DID YOU ASK FOR A KEY AND DID THEY GIVE YOU A
14 KEY?

15 MR. TALL: I DON'T THINK WE'VE HAD A
16 SITUATION WHERE WE ASKED FOR A KEY AND IT
17 DIDN'T COME. MY POINT IS, YOUR HONOR, IN THIS
18 MASTER DEED THE CHANGING OF A LOCK IS A
19 VIOLATION AND THAT'S THE TERMS OF THE LANGUAGE
20 RIGHT HERE, AND IT'S NOT ---

21 THE COURT: WELL, LET'S LOOK AT THE
22 REQUIREMENTS OF ARTICLE 18. YOU HAVE TO LOOK
23 AT ARTICLE 18, DON'T YOU?

24 MR. TALL: I AGREE THAT YOU DO, YOUR
25 HONOR.

1 THE COURT: WHAT DOES ARTICLE 18 SAY?
2 MR. TALL: THAT'S EXHIBIT "A" OF MR.
3 ---
4 THE COURT: WELL, IT SAYS ARTICLE 17.
5 MR. TALL: --- HARRISON'S AFFIDAVIT.
6 YOUR HONOR?
7 MR. JORDAN: YOUR HONOR, I THINK MR.
8 TALL AND I AGREE THAT'S BOTH ---
9 THE COURT: THAT'S A TYPO?
10 MR. JORDAN: TYPO.
11 THE COURT: IT SHOULD BE ARTICLE 18.
12 SO WHAT DOES ARTICLE 18 SAY? DOESN'T ARTICLE
13 18 SAY IF YOU ASK FOR A KEY, THEY'LL GIVE --
14 YOU MUST ASK FOR A KEY AND THEN THEY'LL GIVE
15 YOU ONE?
16 MR. TALL: IT DOES.
17 THE COURT: OKAY. AND HAS AN HOA ASKED
18 THEM FOR A KEY?
19 MR. TALL: I THINK THAT'S HAPPENED A
20 LOT AND ---
21 THE COURT: NO, NO, NO, NO.
22 MR. TALL: --- THEY HAVE RECEIVED
23 THEM.
24 THE COURT: THE QUESTION IS, IN THIS
25 PARTICULAR CASE, ---

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1 MR. TALL: YES.
2 THE COURT: --- HAS THE HOA ASKED
3 EITHER OF THOSE TWO HOMEOWNERS FOR A KEY?
4 MR. TALL: I BELIEVE THE ANSWER IS
5 YES, AND THEY RECEIVED A KEY.
6 THE COURT: OKAY. SO THEN HOW CAN THAT
7 BE A VIOLATION?
8 MR. TALL: THE VIOLATION, ACCORDING TO
9 THE MASTER DEED, PLAIN LANGUAGE HERE, IS
10 CHANGING THE LOCKS IN THE FIRST PLACE.
11 THE COURT: HOW CAN THAT BE A VIOLATION
12 WHEN IT SAYS -- IT DOESN'T SAY JUST CHANGING
13 THE LOCK IS A VIOLATION?
14 MR. TALL: "PLACE A LOCK ON THE ENTRY
15 DOOR IN VIOLATION OF THE REQUIREMENTS." WHAT
16 DOES PLACING A LOCK ON THE ENTRY DOOR SUGGEST,
17 AND WE'RE ALSO TALKING ABOUT THIS ---
18 THE COURT: IN VIOLATION OF THE
19 REQUIREMENTS OF ARTICLE 18.
20 MR. TALL: YOUR HONOR.
21 THE COURT: ARTICLE 18 SAYS THEY HAVE
22 TO GIVE A KEY ONCE YOU ASK FOR IT.
23 MR. TALL: GIVING A KEY AND NOT GIVING
24 A KEY DOESN'T HAVE ANYTHING TO DO WITH PUTTING
25 A LOCK. THIS SAYS PUTTING A LOCK -- I'M

1 READING HERE THE MASTER DEED, AN IMPERFECT
2 DOCUMENT, PERHAPS. AND, YOUR HONOR, WE'RE
3 SPEAKING ABOUT THE IMPORTANCE OF UNIFORMITY
4 HERE, WHICH WE HAVE MR. HARRISON TALKING ABOUT
5 IN ---
6 THE COURT: WAIT A MINUTE.
7 MR. TALL: YES, YOUR HONOR. PLACE A
8 LOCK ON THE ENTRY DOOR IN VIOLATION ---
9 THE COURT: IN VIOLATION OF THE
10 REQUIREMENTS OF ARTICLE 18. ARTICLE 18 JUST
11 SAYS IF YOU ASK FOR A KEY, THEY GIVE YOU A KEY.
12 YOU SAID YOU DIDN'T ASK FOR A KEY.
13 MR. TALL: YOUR HONOR, WE'RE STUCK ON
14 WHO GIVES WHO A KEY. WHAT ABOUT PLACING ---
15 THE COURT: THAT'S THE VIOLATION.
16 MR. TALL: IT SAYS PLACING A LOCK IS
17 THE VIOLATION.
18 THE COURT: NO, IT DOES NOT. YOU'VE
19 GOT TO READ THE WHOLE SENTENCE, MR. TALL.
20 MR. TALL: I AM, YOUR HONOR. I'M HAPPY
21 TO, AND I'M SORRY IF I'M BEING DIFFICULT, YOUR
22 HONOR, I DON'T MEAN TO BE.
23 THE COURT: YOU ARE BEING DIFFICULT.
24 READ THE WHOLE SENTENCE.
25 MR. TALL: IT SAYS, "PLACING A LOCK ON

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1 THE ENTRY DOOR IN VIOLATION OF THE
2 REQUIREMENTS" ---
3 THE COURT: OF ARTICLE 18.
4 MR. TALL: YES, YOUR HONOR.
5 THE COURT: WE AGREE THAT'S A TYPO.
6 MR. TALL: I AGREE.
7 THE COURT: GO TO ARTICLE 18. ARTICLE
8 18 SAYS WHAT?
9 MR. TALL: ARTICLE 18 IN THIS
10 IMPERFECT DOCUMENT ---
11 THE COURT: I DON'T CARE IF IT'S
12 IMPERFECT OR PERFECT.
13 MR. TALL: YES, YOUR HONOR.
14 THE COURT: WHAT DOES IT SAY?
15 MR. TALL: NOTHING ABOUT PLACING A
16 LOCK ON THE DOOR.
17 THE COURT: IT SAYS IF YOU ASK FOR A
18 KEY, THEY GIVE YOU A KEY.
19 MR. TALL: WHICH HAS NOTHING TO DO
20 WITH WHETHER ---
21 THE COURT: I DON'T CARE IF IT HAS
22 ANYTHING TO DO WITH THE LOCK OR NOT. WHAT IT
23 SAYS IS -- LET'S JUST READ IT.
24 MR. TALL: YES, YOUR HONOR.
25 THE COURT: LET'S JUST READ IT THIS

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1 WAY.
2 MR. TALL: SURE.
3 THE COURT: "SHOULD THE OWNER PLACE A
4 LOCK ON THE ENTRY OF THE DOOR IN VIOLATION OF
5 THE REQUIREMENTS," THAT IF YOU ASK FOR A KEY,
6 THEY DON'T GIVE YOU A KEY. THAT'S WHAT IT
7 SAYS, AND YOU DIDN'T DO THAT.
8 MR. TALL: YOUR HONOR, GIVING ME A KEY
9 OR NOT GIVING ME A KEY ---
10 THE COURT: IT DOES. HERE'S THE DEAL.
11 IF THEY CHANGE THE LOCK AND THEY DON'T GIVE YOU
12 A KEY, THAT'S A PROBLEM. THAT'S A PROBLEM.
13 THEY CHANGE THE LOCK AND THEY FAIL TO GIVE YOU
14 A KEY, THAT'S A REAL PROBLEM.
15 MR. TALL: AND WHAT SHALL ---
16 THE COURT: BUT THEY DIDN'T DO THAT
17 HERE.
18 MR. TALL: WHAT SHALL WE SAY ---
19 THE COURT: YOU KNOW WHY THEY DIDN'T DO
20 IT, BECAUSE YOU DIDN'T GO THAT STEP FURTHER AND
21 SAY, "MAY I PLEASE HAVE A KEY TO THE NEW LOCK?"
22 MR. TALL: YOUR HONOR, I'VE ANSWERED
23 THAT QUESTION. I BELIEVE THAT WE HAVE ASKED
24 FOR KEYS AND THEY HAVE BEEN GIVEN.
25 THE COURT: THEN WHY IS IT A PROBLEM?

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1 MR. TALL: BECAUSE, YOUR HONOR, THE
2 PLACING OF A LOCK, WHICH ---
3 THE COURT: NO, IT'S NOT. THIS
4 DOCUMENT SAYS PLACING A NEW LOCK IS NOT A
5 PROBLEM AS LONG AS YOUR PEOPLE GET A KEY WHEN
6 THEY ASK FOR IT.
7 MR. TALL: RESPECTFULLY, YOUR HONOR,
8 IF I MAY?
9 THE COURT: YOU MAY ASK ME, BUT THAT'S
10 WHAT IT SAYS, AND I DON'T CARE WHO DRAFTED IT
11 OR HOW IMPERFECTLY DRAFTED IT IS. THAT'S WHAT
12 IT SAYS, MR. TALL. I DON'T CARE IF YOU DON'T
13 LIKE WHAT IT SAYS, ---
14 MR. TALL: NO, YOUR HONOR, ---
15 THE COURT: --- THAT'S WHAT IT SAYS.
16 MR. TALL: --- I'M PERFECTLY
17 COMFORTABLE WITH YOUR INTERPRETATION. I DON'T
18 THINK YOU'RE ASKING ME TO GIVE YOU MORE INPUT,
19 AND I DON'T ---
20 THE COURT: NO, I'M TELLING YOU ---
21 MR. TALL: --- WANT TO ---
22 THE COURT: --- THAT'S WHAT IT SAYS.
23 MR. TALL: I'VE READ IT, YOUR HONOR.
24 THE COURT: THAT'S WHAT IT SAYS,
25 DOESN'T IT?

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1 MR. TALL: WELL, NOW, IF YOU'RE ASKING
2 ME, "DOESN'T IT," YOU'RE ASKING ME FOR MY
3 OPINION.
4 THE COURT: NO, NO, NO. I'M TELLING
5 YOU THAT'S WHAT IT SAYS.
6 MR. TALL: YOU ASKED ME A QUESTION,
7 YOUR HONOR.
8 THE COURT: YOU MAY SIT DOWN, MR. TALL.
9 THAT'S WHAT IT SAYS.
10 MR. TALL: OKAY.
11 THE COURT: THAT'S EXACTLY WHAT -- I
12 DON'T KNOW HOW YOU CAN READ IT ANY OTHER WAY.
13 THAT'S WHAT IT SAYS.
14 MR. TALL: YOUR HONOR, YOU'RE LOOKING
15 AT ME AS IF YOU'RE INVITING ME TO RESPOND.
16 THE COURT: I'M NOT. I'M NOT.
17 MR. TALL: THEN ---
18 THE COURT: WE'RE DONE ON THAT ISSUE.
19 MR. TALL: --- THAT'S THE ONLY REASON
20 WHY I'M NOT RESPONDING. I DO HAVE A RESPONSE,
21 BUT THE COURT PREFER THAT I NOT.
22 THE COURT: I KNOW WHAT YOUR RESPONSE
23 IS. I'VE HEARD IT, BUT IT MAKES NO SENSE. YOU
24 SAY THIS IS AN IMPERFECTLY DRAWN DOCUMENT AND
25 YOU DON'T LIKE WHAT IT SAYS, BUT THAT'S WHAT IT

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1 SAYS. ANYTHING FURTHER?

2 MR. JORDAN: NO, YOUR HONOR, I DON'T
3 THINK SO. I WOULD JUST DRAW THE COURT'S
4 ATTENTION TO THE LETTERS WE HAVE RECEIVED FROM
5 MR. RAWCLIFFE THAT HE'S GOING TO CHANGE THE
6 LOCKS ANYWAY, BUT THAT'S BESIDES THE POINT I
7 THINK. WE WOULD REQUEST THE COURT ORDER THE
8 HOA REPLACE THE LOCKS BACK OR BETTER YET LET US
9 PUT THE LOCKS BACK AND THEN REIMBURSE OUR COSTS
10 FOR DOING SO.

11 THE COURT: I THINK THE WAY IT IS NOW
12 YOUR CLIENTS MAY PUT THE LOCKS BACK AT YOUR OWN
13 EXPENSE AND THEN WE'RE WORRY ABOUT THE EXPENSE
14 LATER AT THE TRIAL OF THE MERITS.

15 MR. JORDAN: OKAY. THANK YOU, YOUR
16 HONOR. I WILL ---

17 THE COURT: BUT MAKE SURE THE HOA HAS A
18 KEY, MAKE SURE THE HOA HAS A KEY. THE HOA
19 NEEDS TO UNDERSTAND THE DIFFERENCE BETWEEN THE
20 PROPERTY MANAGEMENT COMPANY AND RAWCLIFFE.
21 THEY'RE ENTIRELY TWO DIFFERENT ENTITIES.

22 MR. TALL: WE AGREE, YOUR HONOR.

23 THE COURT: OKAY. SO RAWCLIFFE SHOULD
24 NOT HAVE ACCESS TO THE UNITS THAT ARE NOT ON
25 THEIR RENTAL AGREEMENT. YOU UNDERSTAND THAT?

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1 MR. TALL: I DO, YOUR HONOR.
2 THE COURT: OKAY. THANK YOU VERY MUCH.
3 I THINK WE'RE ADJOURNED. YOU'LL PREPARE A
4 PROPOSED ORDER, MR. JORDAN, AND MAKE SURE THAT
5 MR. TALL GETS A COPY OF THAT?
6 MR. JORDAN: YES, YOUR HONOR, I WILL.
7 THE COURT: ALL RIGHT. THANK YOU VERY
8 MUCH.
9 MR. JORDAN: THANK YOU, YOUR HONOR.
10 THE COURT: WE'RE ADJOURNED.
11 (The hearing concluded at 4:50 p.m.)
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CERTIFICATE

This is to certify that the foregoing transcript of the hearing held before The Honorable Cynthia Graham-Howe, Master-In-Equity, consisting of SIXTY-SIX (66) pages is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8TH day of MARCH, 2015.

Miranda J. Burton
Verbatim Court Reporter
Notary in and for the State of
South Carolina
My Commission Expires: 6/13/22

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