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STATE SOUTH CAROLINA)
COUNTY OF DORCHESER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 12-CP-18-2583

LIVE OAK VILLAGE HOA, INC., et al.,)
Plaintiffs,)

**ORDER GRANTING MAZELL MOTION
FOR PARTIAL SUMMARY JUDGMENT**

vs.)

THOMAS MORRIS, et al.,)
Defendants.)

THOMAS MORRIS and DAVID
HANNEMANN,

Third Party
Plaintiffs,

vs.)

WILLIAM McFARLAND,)
Third Party
Defendant.)

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Clerk of Court
DORCHESTER COUNTY

Co-defendants Michael and Sofia Mazell ("Mazell") filed a motion for summary judgment to dismiss the claims brought in this action in the name of the plaintiff Live Oak Village HOA, Inc. (the "HOA") on the basis that there was no prior meeting and majority vote of the members of the Board of Directors for the HOA to have filed claims in the name of the HOA against Mazell in accordance with the HOA's Bylaws. Mazell further alleged that prior unanimous written consent of all members of the Board of Directors for the HOA to have filed claims against Mazell by the HOA was not otherwise obtained or given.

On November 19, 2014, a hearing on Mazell's motion for summary judgment was held before this Court. Defendants Mazell appeared and were represented by William

B. Jung, Esq. of Mount Pleasant, South Carolina. Plaintiffs appeared and were represented by P. Brandt Shelbourne, Esq. of Summerville, South Carolina. For the following reasons, Mazell's motion for partial summary judgment is hereby GRANTED.

In pertinent part, the By-laws for the HOA do empower the HOA to bring legal actions against members of the Association for violations of HOA By-laws, covenants and restrictions. Live Oak Village Bylaws, page 5, par. 6(A)(6). However, to authorize any such action by and on behalf of the HOA, the Bylaws provide for two alternative means. One requires a decision by a majority of BOD Members at a BOD Meeting: "An act or decision done or made a majority of the number of directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board." Live Oak Village Bylaws, page 4, par. 5(C). The second means by which action by the HOA may be undertaken is following to advance written approval of all members of the Board of Directors: "The directors shall have the right to take any action in the absence of a meeting of the directors which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors." Live Oak Village Bylaws, page 4, par. 4(E).

At the hearing on this motion, counsel for the plaintiffs conceded that prior unanimous written consent of all members of the Board of Directors for the HOA to have instituted claims against Mazell did not occur. Counsel further conceded that a majority of members of the HOA Board of Directors did not vote at a board meeting to institute claims in the name of the HOA against Mazell.

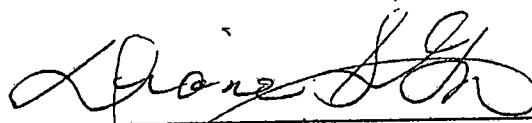
Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that moving party is entitled to a judgment as a matter of law."

Id. Given that there is no dispute over the fact that the plaintiffs' filing of claims in the name of the HOA against Mazell was not properly made in accordance with the procedures set forth in the governing Bylaws, the HOA was not empowered or authorized to have filed any claims in this action against anyone. ~~In effect, the individual plaintiffs have commandeered the HOA as a co-plaintiff in this action without having requisite prior proper authorization from the Board of Directors.~~ Accordingly, the plaintiffs' filing of claims in the name of the HOA is null and void, and Mazell's motion to dismiss said claims is hereby GRANTED.

AND IT IS SO ORDERED: *DS*

Dated: ~~December~~, 2014

March 2, 2015



Hon. Diane S. Goodstein
Judge for the First Judicial Circuit

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April 9, 2015

Honorable Jenny Abbott Kitchings
Clerk of Court for the
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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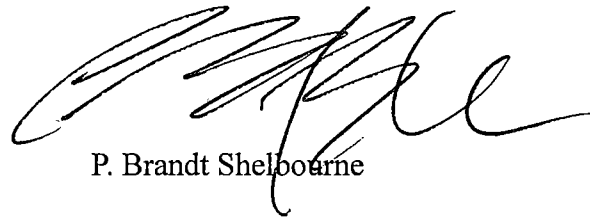
Re: Live Oak Village HOA, et al. v. Thomas Morris, et al.
Case No.: 2012-CP-18-2583
Appellate Case No.: 2015-000599
Our File No. 04402

Dear Madam Clerk:

Enclosed please find a copy of the Order Granting Mazell Motion for Partial Summary Judgment of the Honorable Diane S. Goodstein dated March 2, 2015 and filed with the Dorchester County Clerk of Court on March 3, 2015. I apologize for any inconvenience this has presented.

With best regards I am,

Sincerely yours,



P. Brandt Shelbourne

PBS/jb

Enclosure

cc: counsel of record via email

Shelbourne Law Firm
Attorneys and Counselors at Law
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