

and the entire record in this case, the Court **GRANTS** the Regime's Petition for the reasons set forth herein.

Factual Background

This action concerns property within the South Beach Village Lagoon Villas II Horizontal Property Regime LVII, established pursuant to the Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed"). The Regime and Regime property are subject to and governed by and in accordance with the Master Deed, Bylaws and amendments thereto. The Regime is subject to the provisions of the Horizontal Property Act, S.C. Code Ann. § 27-31-10, et. seq. (the "Act"). The Regime is a non-profit corporation formed and existing under the laws of the State of South Carolina, and subject to the provisions of the South Carolina Non-Profit Code, S.C. Code Ann. § 33-31-101, et seq. The Plaintiff in this action is the owner of residential real property in the Regime located at 226 Sea Pines Drive, Apt. 1596, Hilton Head Island, South Carolina. Defendants are the owners of residential real property in the Regime which adjoins Plaintiff's property, located at 226 Sea Pines Drive, Apt. 1595, Hilton Head Island, South Carolina.

The Regime property is located on Hilton Head Island, in Beaufort County, South Carolina, and includes three (3) buildings, containing six (6) individual dwelling units. The six (6) dwelling units are owned by co-owners, each of whom has a particular and exclusive property right to their dwelling unit, as well as an undivided interest in the general and limited common elements of the Regime. As defined in the Master Deed, the general common elements and the limited common elements together comprise the "Common Elements" of the Regime. The general common

elements include all Regime property, excluding the limited common elements and the dwelling units. The limited common elements are further specifically defined in the Master Deed.

Over the past many years, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the “Encroaching Units”) were expanded such that they encroach into common elements of the Regime. Thus three (3) of the six (6) dwelling units that make up the Regime now encroach into the common elements of the Regime. The expansion to Defendant’s Unit (1595) was completed in approximately 1998; the expansion to unit 1594 was completed in approximately 2003; the expansion to Unit 1591 was completed in approximately 2004. As a result of the encroachment, the description and depiction of the Regime property and the Encroaching Units as set forth in the Master Deed no longer conform to the physical layout of Regime property as it currently exists.

The Master Deed establishes the proportionate ownership percentage interests of each co-owner of a Dwelling Unit in the common elements. This percentage also governs each co-owner’s proportionate share in the profits and expenses of the Regime, and proportionate representation for voting purposes. At various points and as the expansions to some of the Encroaching Units were completed, the Regime co-owners modified these proportionate percentage interests, and conducted the business of the Regime, including payment of assessments based on proportionate percentage interests which were different from those set out in the Master Deed.

Pursuant to the Master Deed, “the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all of the co-owners expressed in an amendment to this Deed duly recorded.” *See* Master Deed at Eleventh Paragraph; *see also* S.C. Code Ann. § 27-31-60. Additionally, the

Master Deed requires unanimous consent of “all of the co-owners and the mortgagees of all the mortgages covering Dwelling Units” of the Regime to amend any provisions thereof. *See* Master Deed at Fourteenth Paragraph.

The Regime has discussed the need to amend the Master Deed so that it properly and lawfully describes the Regime property and rights of the co-owners as far back as 2001. In 2018, the Regime commenced a concerted effort to effectuate an amendment to its Master Deed. Since that time the Regime has worked diligently to address the problem regarding the Master Deed. The Regime retained counsel for this purpose, Novit & Scarminach, P.A., and a surveying group, to prepare proposed amendment documents and a revised survey reflecting the current property. The Regime continued to discuss the need for an amendment to the Master Deed, and debate the particular content thereof, throughout 2018 and 2019. Via letter dated October 9, 2019, in an attempt to secure an amendment to the Master Deed, Regime counsel Novit & Scarminach, P.A. sent the co-owners a proposed Consent Resolution, proposed Amendment to Master Deed, and Boundary and As-Built survey (“October 9, 2019 Proposed Amendment”). All co-owners signed the October 9, 2019 Proposed Amendment prepared by Regime Counsel, except for Defendants Kennie Lee Miller Gill and Mr. Amar Singh Gill. After the filing of this lawsuit, Defendants Ken Miller and Anna Miller and the owners of Unit 1592 withdrew their consent to the October 9, 2019 Proposed Amendment. Since that time the Regime has continued to work to procure unanimous consent of all co-owners to the October 9, 2019 Proposed Amendment, as reflected in Regime Meeting Minutes, correspondence, and the Affidavits submitted by the Parties. The Regime has incurred not less than \$20,017.50 in expenses, paid to Regime Counsel, Surveyors, and other charges, associated with its efforts to procure a valid amendment to the Master Deed.

Procedural History

On July 31, 2020, after the failed attempts to pass the October 9, 2019 Proposed Amendment, Plaintiff Taylor filed the instant lawsuit against the Defendants, asserting, *inter alia*, that Defendants illegally expanded Unit 1595 into the Common Area of the Regime, and the encroaching structure must be removed. On December 3, 2020, Defendants filed an Amended Answer and Third Party Complaint against the Regime, seeking, *inter alia*, a Declaratory Judgment that the Regime approved Defendants' addition, and that a valid and enforceable encroachment agreement exists between Defendants and the Regime. On August 26, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia*, the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, to vote on the October 9, 2019 Proposed Amendment, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting. Plaintiff filed no opposition to the Regime's Petition, and at the hearing held November 22, 2021, supported the Regime's Petition. On November 11, 2021, Defendants/Third Party Plaintiffs filed a Response to the Regime's Petition. Defendants/Third Party Plaintiffs joined in the request (1) for a special meeting to be held for the purpose of consideration by the Council of Co-Owners of the October 9, 2019 Proposed Amendment and any alternatives thereto, and for voting to amend the Master Deed; (2) that the Court order proper notice be provided to the co-owners of the meeting; and (3) that all co-owners be required to attend the special meeting, which may be held via video-conferencing platform or other means to allow for remote attendance in an ADA compliant format. Plaintiffs/Third Party Defendants requested that the Regime's Petition be denied insofar as it seeks to alter the unanimous voting requirement to amend the Master Deed.

Applicable Law and Analysis

The South Carolina Non-Profit Code, S.C. Code § 33-31-160, entitled “Judicial Relief” provides in its entirety:

(a) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the court of common pleas... may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authored, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section and that complies with all the provisions of such order, is a valid meeting or vote, as the case may be, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

(emphasis added).

The Master Deed requires an amendment in order to lawfully and properly describe the Regime property, dwelling units, common elements, and the rights of the co-owners. All Parties to this Action agree and concede that the Master Deed requires an amendment, and that the Council of Co-Owners and the Board of Administration have a duty to pass an amendment to the Master Deed. I find that the Regime has shown, based on the lengthy history of attempts to amend the Master Deed, the expenses incurred, the discussions and efforts which have taken place since 2018, and the instant lawsuit, that it is impossible or impractical for the Regime to call or conduct a meeting of its members or otherwise obtain their consent in order to vote on a valid amendment to the Master Deed. I further find that the intervention of the Court is warranted to order that a special meeting of the Regime members be called for the purpose of voting on an amendment to the Master Deed under circumstances this Court finds fair and equitable as set forth herein, that notice shall be provided of the special meeting as set forth herein, that it is necessary and appropriate to modify the voting requirement for passage of an amendment to the Master Deed as set forth herein, and that the subject matter of the special meeting shall be limited as set forth herein.

IT IS THEREFORE ORDERED, pursuant to S.C. Code § 33-31-160 and the equitable powers of this Court, that the Regime's Petition for Relief pursuant to S.C. Code § 33-31-160 is hereby **GRANTED** and the Parties are directed and ordered as follows:

1. Within forty-five (45) days of the date of this Order, the Regime shall hold a Special Meeting for the purpose of voting on a proposed amendment to the Master Deed in accordance with the conditions set forth herein. The Special Meeting may be held virtually

via the video-conferencing platform “Zoom” and shall provide closed captioning or live transcription service;

2. At the Special Meeting, if a proposed amendment to the Master Deed receives a majority vote, the Court shall order the amendment to constitute a valid and lawful amendment by subsequent order. Pursuant to the Regime Bylaws, Section 2, a “majority” of co-owners shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the current Master Deed;
3. Prior to the meeting and on a form created by the Regime, each dwelling unit shall select one representative for purposes of speaking on behalf of that dwelling unit and exercising voting rights on behalf of the dwelling unit at the Special Meeting;
4. All co-owners of the Regime shall be entitled to attend the Special Meeting, but the designated representative for each dwelling unit shall attend the Special Meeting ordered herein. If no representative appears on behalf of a dwelling unit at the Special Meeting, they shall forfeit their right to vote on any proposed amendment;
5. The Regime Property Management Company shall issue a Notice of the Special Meeting on behalf of the Regime at least 30 days prior to the date of the meeting, which shall be mailed and electronically mailed to each co-owner of record. The notice shall state the date and time of the Special Meeting. The Notice shall further state the purpose of the meeting is for discussion of proposals for amendment of the Master Deed and for a vote of the co-owners to approve or disapprove the same. The Notice shall enclose a copy of this Order.
6. The following procedures shall apply to the submission of proposed amendments to the Master Deed and voting:

- a. Defendants shall be permitted to present a proposed amendment to the Master Deed. If Defendants wish to submit a proposed amendment to the Master Deed for the consideration of the ownership, Defendants shall submit the proposed amendment to the Master Deed to the Regime Property Management Company via electronic mail at least 10 days prior to the date of the Special Meeting, for distribution to the co-owners via electronic mail;
- b. Plaintiff shall also be permitted to submit a proposed amendment to the Master Deed, which shall be submitted to the Regime Property Management Company at least 10 days prior to the date of the Special Meeting via electronic mail, for distribution to the co-owners via electronic mail;
- c. At the Special Meeting, Defendants shall be entitled to submit a proposed amendment to the Master Deed to the ownership for consideration, if such proposed amendment was provided ten days in advance of the Special Meeting to the co-owners for consideration, pursuant to the following procedures:
 - i. Defendants shall have a maximum of ten minutes to present a proposed Amendment to the Master Deed.
 - ii. At the conclusion of such presentation, if there is a motion to place the proposed amendment up for discussion of the co-owners and a vote, and the motion is seconded, the proposed Amendment shall be submitted to the co-owners for discussion and vote.

- iii. The appointed representative for each Dwelling Unit shall be entitled to a maximum of 10 minutes to speak in support of or in opposition to Defendants' proposed amendment to the Master Deed.
 - iv. There is no requirement that any Dwelling Unit comment on any proposal.
 - v. Following the conclusion of comments, if any, by the representatives of each Dwelling Unit, the Regime shall vote on Defendants' proposed amendment to the Master Deed.
 - vi. If the proposed amendment receives a majority vote, the meeting shall conclude.
- d. If Defendants' proposed amendment to the Master Deed does not receive a majority vote, Plaintiff shall be permitted to present the Regime's proposed amendment to the Master Deed, subject to the following procedures:
- i. Plaintiff shall have a maximum of ten minutes to present a proposed Amendment to the Master Deed.
 - ii. At the conclusion of such presentation, if there is a motion to place the proposed amendment up for discussion of the co-owners and a vote, and the motion is seconded, the proposed Amendment shall be submitted to the co-owners for discussion and vote.
 - iii. The appointed representative for each Dwelling Unit shall be entitled to a maximum of 10 minutes to speak in support of or in opposition to Plaintiff's proposed amendment to the Master Deed.
 - iv. There is no requirement that any Dwelling Unit comment on any proposal.

- v. Following the conclusion of comment by the representatives of each Dwelling Unit, the Regime shall vote on Plaintiff's proposed amendment to the Master Deed.
 - vi. If the proposed amendment receives a majority vote, the meeting shall conclude.
 - e. If no proposed amendments receive a majority vote, the meeting shall conclude.
7. The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, the Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to this Order, within ten days of the date consent responses were due as set forth herein. If a non-party co-owner makes an affirmative objection, the Special Meeting contemplated herein shall be postponed until the Court has heard and ruled upon the objections of the non-consenting co-owner, subject to further Order of the Court;

8. A true and correct copy of the Notice and attachments, which are expressly approved by the Court as complying with the Court's order, are attached hereto as **Exhibit A**.
9. A transcript of the Special Meeting shall be taken by a Court Reporter;
10. The Special Meeting shall be presided over by a third party neutral, to be designated by mutual agreement of the parties, or by the Court in the event the parties cannot agree. The third party neutral shall ensure the Special Meeting is conducted in accordance with the procedures herein;
11. Should a majority of co-owners approve an amendment to the Master Deed at the Special Meeting, the Court shall issue a subsequent Order, ordering the Amendment to constitute a lawful and valid amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements, and the Court will order the same to be filed in the public records of Beaufort County.

IT IS SO ORDERED:

The Honorable Marvin H. Dukes, III

Beaufort, South Carolina
February, _____, 2022.



Beaufort Common Pleas

Case Caption: Todd E Taylor VS Amar And Kennie Gill Living Trust , defendant, et al
Case Number: 2020CP0701547
Type: Order/Relief

So Ordered:

s/Marvin H. Dukes III #3069