

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO. : 2020-CP-07-01547

Todd E. Taylor,

Plaintiff,

vs.

RECEIVED
May 09 2022
SC Court of Appeals

Amar and Kennie Gill Living Trust Dated
March 15, 2019; Kennie Lee Miller Gill,
Trustee of the Amar and Kennie Gill Living
Trust Dated March 15, 2019; Kenneth V.L.
Miller; and Anna M. Miller,

Defendants.

**THIRD-PARTY DEFENDANT SOUTH
BEACH VILLAGE LAGOON VILLAS, II,
HORIZONTAL PROPERTY REGIME,
LVII'S MOTION FOR ENTRY OF
ORDER DECLARING MASTER DEED
AMENDMENT VALID AND LAWFUL**

Amar and Kennie Gill Living Trust Dated
March 15, 2019; Kennie Lee Miller Gill,
Trustee of the Amar and Kennie Gill Living
Trust Dated March 15, 2019; Kenneth V.L.
Miller; and Anna M. Miller,

Third-Party Plaintiffs,

v.

South Beach Village Lagoon Villas, II,
Horizontal Property Regime, LVII,

Third-Party Defendant.

COMES NOW, Third-Party Defendant *South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII* (the "Regime"), and files this Motion for Entry of an Order Declaring the Master Deed Amendment approved by a majority of the co-owners of the Regime at the Special Meeting of the Regime held March 17, 2022 to be valid and lawful, showing the Court as follows:

1. 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 and to alter the voting percentage required to approve an amendment to the Master Deed.

2. Following a hearing, on February 3, 2022, the Court entered an Order granting the Regime's Petition (the "2-3-22 Order").

3. Pursuant to the 2-3-22 Order, the Court ordered the Regime to hold a Special Meeting within 45 days of the date of the Order for the purpose of voting on a proposed amendment to the Regime's Master Deed in accordance with the provisions therein.

4. The 2-3-22 Order provides "[s]hould 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 valid and lawful 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."

5. Pursuant to the 2-3-22 Order, the Court ordered that the Regime's Property Management Company would issue a notice of the Special Meeting on behalf of the Regime at least 30 days prior to the date of the Special Meeting, in accordance with additional specific provisions contained in the 2-3-22 Order.

6. On February 15, 2022, the Regime's Property Management Company issued the Notice of Special Meeting for a Meeting to be held March 17, 2022, electronically and via regular mail to all co-owners of record. The notice documents included: (1) Notice of Special Meeting dated 2-15-22; (2) the 2-3-22 Order; (3) Agenda for Special Meeting; (4) Villa Representative Voter Designation Form; and (4) Non-Party Lagoon Villas Co-Owner Consent and Waiver Designation ("Notice Documents"). *See* Affidavit of Kathleen Smith dated March 24, 2022 (hereinafter "Smith Affidavit"), filed contemporaneously herewith, at Exhibit A.

7. On March 7, 2022, Defendants submitted a proposed amendment to the Master Deed to Regime Property Management (“Defendants’ Proposed Amendment”). Also on March 7, 2022, Plaintiff Todd Taylor submitted a proposed amendment to the Master Deed to Regime Property Management (“Plaintiffs’ Proposed Amendment”). Regime Property Management emailed both proposed amendments to all co-owners on March 7, 2022. *See* Smith Affidavit.

8. On March 17, 2022, the Regime held the Special Meeting in accordance with the requirements and procedures set forth in the 2-3-22 Order. The Special Meeting was presided over by a third party neutral, Hamlin O’Kelley. A true and correct copy of the transcript of the Special Meeting held March 17, 2022 is attached hereto as **Exhibit A**.

9. Pursuant to the 2-3-22 Order, the Special Meeting was conducted virtually via “Zoom,” and was transcribed by a Court Reporter. Additionally, per the 2-3-22 Order, the Court Reporter provided live transcription service. *See* Exhibit A.

10. Pursuant to the 2-3-22 Order, the six (6) dwelling units of the Regime were represented as follows at the Special Meeting:

- a. 1591: no attendance;
- b. 1592: no attendance;
- c. 1593: Attended by designated representative Kathy Anderson, on behalf of Non-Party Sizemore Properties, LLC;
- d. 1594: Attended by designated representative John Elder on behalf of Non-Party Maple Mont South, LLC;
- e. 1595: Attended by designated representative Magalie Creech, Esquire, on behalf of Defendants; and
- f. 1596: Attended by designated representative, Plaintiff Todd Taylor. *See* Exhibit A.

11. At the Special Meeting, Defendants presented Defendants' Proposed Amendment. However, Defendants then withdrew Defendants' Proposed Amendment from consideration before a vote could be taken. Consequently, there was no vote on Defendants' Proposed Amendment. *See* Exhibit A.

12. Accordingly and pursuant to the 2-3-22 Order, Plaintiff Todd Taylor presented Plaintiff's Proposed Amendment at the Special Meeting. Plaintiff's Proposed Amendment was submitted to the co-owners for discussion and vote. *See* Exhibit A.

13. Plaintiff's Proposed Amendment received a majority vote, as defined in the 2-3-22 Order. Specifically, the results of the vote on Plaintiff's Proposed Amendment were as follows:

- 1) Unit 1591 (15.939%): No vote/absent¹
- 2) Unit 1592: (15.939%): No vote/absent
- 3) Unit 1593 (18.122%): In favor
- 4) Unit 1594: (18.122%): In favor
- 5) Unit 1595 (15.939%): Opposed
- 6) Unit 1596 (15.939%): In favor. *See* Exhibit A.

14. At the Special Meeting, Plaintiff's Proposed Amendment received a total vote of **52.183 %**, exceeding the majority vote requirement pursuant to the 2-3-22 Order. *See* Exhibit A.

15. Based upon the majority vote and satisfaction of the requirements set forth in the 2-3-22 Order, the President and Secretary of the Regime executed the Declaration of Amendment to Master Deed for South Beach Village Lagoon Villas II Horizontal Property Regime LVII dated March 29, 2022, a true and correct copy of which is attached hereto as **Exhibit C** (hereinafter "Master Deed Amendment").

¹ Owner Kenneth Nyquist returned a voter designation form designating himself as the designated voter for unit 1591 prior to the meeting. He did not attend the meeting, but thereafter sent an email to IMC, noting his vote was for Plaintiff's Proposed Amendment, attached hereto as **Exhibit B**.

16. The 2-3-22 Order also required that the Regime 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 the 2-3-22 Order and Special Meeting Notice. Pursuant to the 2-3-22 Order, all responses were due 10 days prior to the Special Meeting.

17. Pursuant to the 2-3-22 Order, the Notice Documents included a Non-Party Lagoon Villas Co-Owner Consent and Waiver Designation. *See* Smith Affidavit at Exhibit A. All co-owners were notified that responses were due 10 days prior to the Special Meeting. *Id.* All co-owners were notified that failure to respond to the request for consent shall be deemed consent to the procedures stated in the 2-3-22 Order, and Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to the 2-3-22 Order. *Id.*

18. The Regime did not receive any objections from any non-party co-owners to the 2-3-22 Order and Special Meeting Notice. *See* Smith Affidavit.

19. The Regime complied with all notice requirements and procedural requirements set out in the 2-3-22 Order.

20. The Regime conducted a Special Meeting on March 17, 2022, which complied in all respects with the 2-3-22 Order.

21. A majority of co-owners, meaning those co-owners holding 51% or more of the total value of the Property, in accordance with the ownership percentages assigned in the current Master Deed, approved the Master Deed Amendment.

22. Accordingly, pursuant to the 2-3-22 Order, the Regime requests the Court issue an Order, ordering the Master Deed Amendment to constitute a valid and lawful amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements. The Regime further requests the Court Order that the Master Deed Amendment be filed in the public records of Beaufort County.

WHEREFORE, having filed this Motion, the Regime requests the following relief:

- a. That the Court issue an Order, ordering the Master Deed Amendment to constitute a valid and lawful amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements;
- b. That the Court order that the Master Deed Amendment be filed in the public records of Beaufort County; and
- c. The Regime further requests such other relief as the Court may deem appropriate, under S.C. Code § 33-31-160 and otherwise.

This 31st day of March, 2022.

Respectfully submitted,

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