

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2020-016846-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

20 AVENTUR, LLC et al.

Plaintiffs/Appellants,

v.

1100 WEST CONDOMINIUM ASSOCIATION, INC et al

Defendants/Appellees.

NOTICE OF APPEAL OF FINAL ORDER

NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants appeal to the Third District Court of Appeal of Florida the Omnibus Order On Plaintiffs' Motion For Partial Summary , Defendant 1100 West Investments, LLC's Motion for Partial Summary Judgment , and Defendant 1100 West Condominium Association, Inc's Counter-Motion for Summary Final Judgment entered by this Court in the above-styled matter on September 5^h, 2023. A copy of the Omnibus Order is attached hereto as **Exhibit "A."** The Omnibus Order is appealable pursuant to Fla. R. App. P. 9.110.

Dated: February 28, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February 2024, I electronically filed the foregoing document with the Clerk of Courts by using the Court's E-Filing system, which will send a notice of electronic filing to all counsel of record.

/s/ Megan Lazo
Megan A. Lazo, Esq.

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN THIS OFFICE
JUAN FERNANDEZ-BARQUIN, Clerk of the Court and Comptroller, Miami-Dade County
Deputy Clerk

2-29 AD 2024
[Signature]
12602



Exhibit “A”

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-016846-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

20 AVENTUR, LLC et al

Plaintiff(s)

vs.

1100 WEST CONDOMINIUM ASSOCIATION, INC et al

Defendant(s)

_____/

**OMNIBUS ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY [D.E. 532],
DEFENDANT 1100 WEST INVESTMENTS, LLC'S MOTION FOR PARTIAL SUMMARY
JUDGMENT [D.E. 542], AND DEFENDANT 1100 WEST CONDOMINIUM
ASSOCIATION, INC'S COUNTER-MOTION FOR SUMMARY FINAL JUDGMENT [D.E.
546]**

THIS CAUSE came before the Court on zoom on August 24, 2023, on: (i) Plaintiffs' Motion for Partial Summary Judgement and Incorporated Memorandum of Law, [D.E. 532]; (ii) Defendant 1100 West Investments, LLC's Motion for Partial Summary Judgment as to Count I of Plaintiff's Fourth Amended Complaint in Opposition to Plaintiffs' Motion for Partial Summary Judgment as to Count I, [D.E. 542], and (iii) Defendant 1100 West Condominium Association, Inc's Counter-Motion for Summary Final Judgment, [D.E. 546], (collectively, the "Motions"). John Annesser, Esq. and Miguel Armenteros, Jr., Esq. appeared on behalf of the Plaintiffs, Alan St. Louis, Esq., appeared on behalf of Defendant, 1100 West Condominium Association, Inc., and David B. Haber, Esq., Steven W. Davis, Esq., and Kara Olesky, Esq., appeared on behalf of Defendant, 1100 West Investments, LLC. All the parties Motions and briefing relate to Count I of the Fourth Amended Class Action Complaint, [D.E. 358]. Count I seeks a "Declaratory Judgment that provides that the Declaration of 1100 West Condominium Association, Inc. is violative of Florida Statutory Law", [D.E. 532, at p. 39]. The Court having reviewed the parties' Motions and

the extensive briefing, [D.E. 532; D.E. 542; D.E. 547; D.E. 546; D.E. 548, and D.E. 552]; based on the arguments raised and presented by the parties^[1], and being duly advised, it is hereby:

ORDERED^[2] AND ADJUDGED as follows:

1. The Court holds that the Declaration of 1100 West, A Condominium recorded July 16, 2007, as amended (the “Declaration”) does not violate the Florida Condominium Act Chapter 718. Nor is the Declaration void or void ab initio. Specifically, the Court concludes that the section challenged defining Common Elements, Section 2.14 of the Declaration complies with the requirements of Fla. Stat. 718.08. Plaintiffs asserted that the “common elements” of the Hotel Condominium are described as “Shared Components” in the Declaration owned by the Hotel Unit. Plaintiffs assert that the Declaration excludes from the definition certain property that section of the Florida Statutes § 718.108 require to be considered common elements. However, the Declaration’s definition of Common Elements tracks verbatim and is consistent with the definition of “common elements” in section 718.108. *See Harris v. JDI Ft. Lauderdale, et al.*, Case No. 09-25227 (Fla. 17th DCA June 18, 2012) (granting summary judgment in favor of hotel because language of the Declaration “tracks the statute’s definition of common elements”); *Brazilian Court Condominium Association, Inc. v. CSC Brazilian, L.P. et al*, Case No. 50-2011-CA-012080XXXXMB (Fla. 15th DCA Dec. 6, 2012) (dismissing claims in favor of hotel because “Declaration’s definition of Common Elements is consistent with the definition of common elements under Fla. Stat. § 718.108(1).”); *see also* Declaration. Notably, the Declaration at issue in *Icon Brickell Condo. No. Three Ass’n v. New Media Consulting, LLC*, 310 So. 3d 477 (Fla. 3d DCA 2020) (hereinafter “*IconBrickell*”), heavily relied upon by Plaintiffs, does not track the language of the statute as it is completely missing part (d), that is, “(d) The property and installations required for the furnishing of utilities and other

services to more than one unit or to the common elements.” See *IconBrickell*, 310 So. 3d at 481 (“the Declaration designates all ‘property and installations required for the furnishing of utilities and other services to more than one unit’ ... as shared facilities.”). The Court finds the Declaration here and the facts and issues presented are distinguishable from *IconBrickell*.

2. The Court also finds this case factually distinguishable from *IconBrickell*, because in that case the Hotel Unit attempted to control a purely residential entrance or purely residential building. In this instance, there is only one building with comingled hotel and residential property.
3. The Court agrees with Plaintiffs’ argument that the statute of limitations under Chapter 718.110 does not apply; however, to the extent that Chapter 718.110 does apply to the type of error or omission contemplated by Chapter 718.110, the statute in subsection 10 specifically states that “all unit owners, the association, and the mortgages of a first mortgage of record must be joined as parties to the action” which was not complied with by the Plaintiffs.
4. The Court further determines that the plaintiffs who purchased their unit five (5) years before the filing of this action on August 6, 2020, including Plaintiff, Didier Hirsch, are time-barred from bringing the claims set forth in Count I of the Fourth Amended Complaint under Florida Statute Chapter 95.
5. The Court further rules that the Plaintiffs Failed to Join Indispensable Parties. And the Defendants are also entitled to summary judgment because Plaintiffs’ Count I failed to join indispensable parties (such as lienholders/mortgagees) to a determination directly affecting their property rights in part or in whole. Further, unit owners, including the Plaintiffs, would then also be required to pay a significantly higher share for the maintenance if Plaintiffs prevail on their claims regarding items being “common

elements” rather than shared components, and thus they would be required to obtain (and pay) for the necessary insurance and be subject to liabilities arising from any acts therein which are now the responsibility of 1100 West, as the Hotel Unit Owner. Yet, Plaintiffs purposely failed to join other unit owners and lien holders whose rights will be forever altered. That is not allowed under Florida law. Section 718.110(4) of the Florida Statutes states that:

No amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment. Fla. Stat.

§ 718.110(4) (emphasis added).

6. In other words, the statute requires that all members of the Hotel Condominium (plus their record lien holders) approve a “reform” or modification to the Common Elements. *See* Fla. Stat. § 718.110(4). To be clear, there was no impediment to the joinder of other owners, and Florida law requires their joinder. *See* FLA. R. CIV. P. 1.140(b)(7); *Hertz Corp. v. Piccolo*, 453 So. 2d 12, 14 n.3 (Fla.1984) (describing indispensable parties as ones so essential to a suit that no final decision can be rendered without their joinder); *Bastida v. Batchelor*, 418 So. 2d 297, 299 (Fla. 3d DCA 1982) (“An indispensable party [is] one without whom the rights of others cannot be determined”); *Wellington Prop. Mgmt. v. Parc Corniche Condo. Ass'n*, 755 So. 2d 824, 828 (Fla. 5th DCA 2000) (interpreting 718.110(4) and holding that a change in the common elements is a “substantial and substantive change” that requires membership approval per the statute); *Beau Monde, Inc. v. Bramson*, 446 So. 2d 164 (Fla. 2d DCA 1984) (same).

7. Based upon these conclusions above, and the arguments contained in the Defendants' Responses, the Plaintiffs' Motion for Partial Summary Judgment [D.E. 532] is **DENIED**.
8. Based upon these conclusions above and the arguments contained in Defendant 1100 West Investments, LLC's Motion for Partial Summary Judgment As To Count I Of Plaintiffs' Fourth Amended Complaint [D.E. 542], the Defendant 1100 West Investments, LLC's Motion for Partial Summary Judgment As To Count I Of Plaintiffs' Fourth Amended Complaint [D.E. 542] is **GRANTED**.
9. Based upon these conclusions above and the arguments contained in the- Defendant 1100 West Condominium Association, Inc.'s Motion for Partial Summary Judgment and Counter-Motion for Summary Final Judgment [D.E. 546], Defendant 1100 West Condominium Association, Inc.'s Motion for Partial Summary Judgment and Counter-Motion for Summary Final Judgment [D.E. 546] is **GRANTED**.
10. Plaintiffs, including ANTHONY ALIGO, DIDIER HIRSCH, and MONDRIAN WEST AVENUE 1202, LLC shall take nothing by Count I of this action from Defendant, 1100 WEST CONDOMINIUM ASSOCIATION, INC., and Defendant, 1100 WEST CONDOMINIUM ASSOCIATION, INC., shall go hence without day.
11. The Court reserves ruling on the issue of attorney's fees and costs.

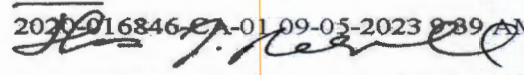
[1] See Defendant's Notice of Filing Excerpt of the August 24, 2023, proceeding before the Honorable Thomas J. Rebull, [D.E.558]

[2] At the conclusion of the hearing the Court orally announced its rulings on the record and requested that Defendant's Counsel prepare an initial draft of the written order. The Court then carefully reviewed and edited counsel's draft, ensuring that this Order accurately reflects its independent and unexaggerated judgment. See, e.g., Corp. Mgmt Advisors, Inc. v. Boghos, 756, So.2d 246, 249 (Fla. 5th DCA 2000) ("a judge's practice of delegating the task of drafting sensitive, dispositive orders to counsel, and then uncritically adopting the orders nearly verbatim would belie the appearance of justice and creates the potential for overreaching and exaggeration on the part of the attorney

preparing findings of fact”); Perlow v. Berg-Perlow, 875 So. 2d 383, 390 (Fla. 2004) (“[w]hen the trial judge accepts verbatim a proposed final judgment submitted by one party without an opportunity for comments or objections by the other party, there is an appearance that the trial judge did not exercise his or her independent judgment in the case. This is especially true when the judge has made no findings or conclusions on the record that would form the basis for the party’s proposed final judgment. This type of proceeding is fair to neither parties involved in a particular case nor our judicial system ... the better practice would be for the trial judge to make some pronouncements on the record of his or her findings and conclusion in order to give guidance for preparation of the proposed final judgment”). The Court has reviewed each side’s proposed orders, and the strikeout and underline comparisons of each side’s proposed language.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 5th day of September, 2023.

2020-016846-CA-01 09-05-2023 9:39 AM



2020-016846-CA-01 09-05-2023 9:39 AM

Hon. Thomas J. Rebull

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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