

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

Case No.: 2020-022304-CA-01

2399 COLLINS AVENUE
CONDOMINIUM ASSOCIATION, INC.

Plaintiff/Appellant,
v.

2377 Collins Resort L.P., et al,

Defendants/Appellees.

_____ /

NOTICE OF APPEAL OF FINAL ORDER

NOTICE IS HEREBY GIVEN that Plaintiff/Appellant, 2399 COLLINS AVENUE CONDOMINIUM ASSOCIATION, INC, appeals to the Third District Court of Appeal of Florida, the Omnibus Order Denying Plaintiff's Motion for Final Summary Judgment Against Defendants, Granting Defendant SB Hotel Owner, L.P.'s Cross Motion for Summary Judgment, Denying as Moot Plaintiff's Motion to Strike Affidavit of Francis J. Nardoza and Entering Summary Final Judgment in Favor of Defendants and Against Plaintiff entered by this Court in the above-styled matter on December 21, 2023 (**Exhibit "A"**). A Motion for Rehearing was timely filed and denied by

this Court on June 11, 2024 (**Exhibit "B"**). The Summary Final Judgment is appealable pursuant to Fla. R. App. P. 9.110.

Dated: July 11, 2024.

Respectfully submitted,

ANNESSE ARMENTEROS, PLLC
Counsel for Plaintiff
2151 S. Le Jeune Road
Mezzanine Floor
Coral Gables, FL 33134
(786) 600-7446
miguel@aa-firm.com
mlazo@aa-firm.com
liz@aa-firm.com
service@aa-firm.com

By: /s/ Megan Lazo
Miguel Armenteros, Esq.
Fla. Bar No. 14929
Megan Lazo, Esq.
Fla. Bar No. 111718

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 7-12 AD 20 24

JUAN FERNANDEZ BARQUIN, Clerk of the Court and Comptroller Miami-Dade County

Deputy Clerk [Signature]
e208836



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July 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, including:

AKERMAN LLP

Counsel for Appellee

98 SE 7th Street, Suite 1100

Miami, Florida 33131

Telephone: (305) 374-5600

Facsimile: (305) 374-5095

Jennifer C. Glasser

Florida Bar No. 123145

jennifer.glasser@akerman.com

dorothy.matheis@akerman.com

1251 Avenue of the Americas,

New York, New York 10020

Telephone: (212) 880-3800

Facsimile: (212) 905-6472

Joshua D. Bernstein

New York Bar No. 4019279

joshua.bernstein@akerman.com

Kathleen M. Prystowsky

New York Bar No. 5093539

kathleen.prystowsky@akerman.com

/s/ Megan Lazo

Megan Lazo, Esq.

Exhibit “A”

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

CASE NO: 2020-022304-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

2399 Collins Avenue Condominium Association, Inc.

Plaintiff(s)

vs.

2377 Collins Resort, L.P. et al

Defendant(s)

_____ /

**OMNIBUS ORDER DENYING PLAINTIFF'S MOTION FOR FINAL SUMMARY
JUDGMENT AGAINST DEFENDANTS ON SECOND AMENDED COMPLAINT [D.E. 67],
GRANTING DEFENDANT SB HOTEL OWNER, L.P.'S CROSS MOTION FOR
SUMMARY JUDGMENT [D.E. 75], DENYING AS MOOT PLAINTIFF'S MOTION TO
STRIKE AFFIDAVIT OF FRANCIS J. NARDOZZA AND ENTERING SUMMARY FINAL
JUDGMENT IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFF**

THIS CAUSE came before the Court at a zoom hearing on October 3, 2023 on: (i) Plaintiff's Motion for Final Summary Judgment Against Defendants on Second Amended Complaint [D.E. 67]; (ii) Defendant SB Hotel Owner, L.P.'s Cross Motion for Summary Judgment [D.E. 75]^[1]; and Plaintiff's Motion to Strike Affidavit of Francis J. Nardozza [D.E. 88] (collectively, the "Motions").

Matthew McGuane, Esq. and Jeff Schneider, Esq. appeared on behalf of Plaintiff 2399 Collins Avenue Condominium Association, Inc. (the "Association"). Joshua Bernstein, Esq., Jennifer Glasser, Esq., Kathleen Prystowsky, Esq. and Gerald Cope, Esq. appeared on behalf of Defendant SB Hotel Owner, L.P. ("SB Hotel"). Michael Kreitzer, Esq. appeared on behalf of Defendant 2377 Collins Resort L.P.

The Court has reviewed the parties' Motions and the extensive briefing, [D.E. 67; D.E. 75;

D.E. 80; D.E. 87; D.E. 88; D.E. 89; D.E. 92; D.E. 93; D.E. 94], heard the parties' arguments raised during the October 3, 2023 specially set hearing, and is otherwise fully advised in the premises. It is HEREBY **ORDERED**^[2] **AND ADJUDGED** as follows:

(1) Plaintiff's Motion for Summary Judgment is **DENIED**;

(2) Defendant S.B. Hotel's Cross Motion for Summary Judgment is **GRANTED**; and

(3) Plaintiff's Motion to Strike Affidavit of Francis J. Nardozza is **DENIED AS MOOT**.

BACKGROUND

This lawsuit concerns a mixed-use residential, hotel and commercial project on Miami Beach, known as 1 Hotel & Homes South Beach (the "Project").^[3] The Project includes, among other things, a hotel, a commercial condominium, two separate residential condominiums, and a master association, which are governed by various recorded declarations as described in SB Hotel's Cross-Motion. Defendant SB Hotel is the owner in fee simple of the Hotel Element, Facilities Element, and the Commercial Element at the Project, as more fully described in the recorded declaration known as the "Resort Declaration." Plaintiff is one of the residential condominium associations that represents the Condominium Element, as described in the Resort Declaration. The second residential condominium, the Roney Palace Condominium, and the master association at the Project, the Sandy Lane Master Association, are not parties to this action.

The Second Amended Complaint contains two counts: (1) Count I seeks declaratory judgment and reformation of several voting provisions contained in the Association's Condominium Declaration and By-Laws^[4]; (2) Count II seeks declaratory judgment relating to the Shared Facilities and Shared Components described in the Condominium Declaration and reformation of the Condominium Declaration to reclassify the Shared Facilities and Shared Components, which are owned in fee simple by SB Hotel, as common elements of the Association.

Plaintiff's Motion and Defendant's Cross Motion pertain to both counts of the Second Amended Complaint.

FINDINGS AND DECLARATORY JUDGMENT

1. The Court holds that the Association's Condominium Declaration complies with the Florida Condominium Act (Chapter 718, Florida Statutes). Specifically, the Court concludes that the definition of Common Elements set forth in Section 2.12 of the Condominium Declaration is consistent with the definition of "common elements" in Section 718.108, Florida Statutes.
2. The Court further holds that the Florida Condominium Act applies only to the portions of the real estate which have been submitted to a declaration of condominium and does not apply to the remainder of the mixed-use Project, the Recreational and Other Commonly Used Facilities ("ROCUF") Property, the Hotel Element, the Facilities Element, the Commercial Element, or SB Hotel's ownership of such property, as they were not submitted to the condominium form of ownership.
3. The Court also concludes that this case is factually distinguishable from *IconBrickell Condo. No. Three Ass'n, Inc. v. New Media Consulting, LLC*, 310 So. 3d 477 (Fla. 3d DCA 2020) because *IconBrickell* involved property that had a materially different legal structure than present here. *IconBrickell* involved property that was entirely subject to the Condominium Act, whereas in this case, the Association seeks a declaration that private property never submitted to the condominium form of ownership and not governed by the Condominium Act is condominium property. The Court is unaware of a legal basis for "reclassifying" (meaning taking property belonging to one person and judicially transferring it to another) property that is outside the condominium property into being condominium property and finds that Plaintiff's argument regarding "reclassifying" such property was not squarely addressed by the Third District Court of Appeal in *IconBrickell*. See *IconBrickell*, 310 So.

3d at 481, 482 n.3 (noting the trial court's order did not reform the condominium declaration at issue there).

4. The Court also rules that Plaintiff failed to comply with the necessary conditions precedent to commence this action, which are set forth in Section 9.4 of the Condominium Declaration.
5. The Court further determines that Plaintiff failed to join indispensable parties whose legal and beneficial interests would be adversely affected by the relief Plaintiff seeks.
6. The Court determines that Plaintiff failed to comply with the requirements set forth in Section 718.110(10) of the Condominium Act for bringing an action to reform a condominium declaration, including filing a petition, joining all unit owners and their first mortgagees as parties to the action, and serving all unit owners with the petition.
7. The Court also agrees with SB Hotel's argument that Plaintiff's failure to join indispensable parties and failure to comply with the requirements set forth in Section 718.110(10) of the Condominium Act are not affirmative defenses but rather legal requirements (that may be raised at any time) regarding Plaintiff's ability to proceed with its claims. *See* Fla. R. Civ. P. 1.140(h)(2); Fla. Stat. § 718.110(10).
8. The Court adjudges that, as to the challenges to the voting provisions (Count I), there is no justiciable controversy.
9. The Court further determines that the challenged voting provisions contained in Sections 9.4, 6.1, and 11.2 of the Condominium Declaration and Sections 3.6, 4.1, 4.2, and 4.15 of the By-Laws, do not violate the Condominium Act on their face, are not unconscionable and do not violate public policy.

CONCLUSION

Based upon these findings and all the reasons contained in Defendant's filings, the Court **DENIES** Plaintiff's Motion for Final Summary Judgment Against Defendants on Second Amended Complaint [D.E. 67] and **GRANTS** Defendant's Cross Motion for Summary Judgment [D.E. 75] for all the reasons set forth in SB Hotel's Cross Motion. In addition, Plaintiff's Motion to Strike Affidavit of Francis J. Nardozza [D.E. 88] is **DENIED AS MOOT**.

Accordingly, the Court enters summary final judgment in favor of Defendants and against Plaintiff. Plaintiff 2399 Collins Avenue Condominium Association, Inc., shall take nothing by this action, and Defendants SB Hotel Owner, L.P. and 2377 Collins Resort, L.P. shall go hence without day.

The Court reserves jurisdiction on the issue of attorneys' fees and costs.

[1] Defendant 2377 Collins Resort L.P. filed a Notice of Joinder in SB Hotel's Response to Plaintiff's Summary Judgment Motion and Cross Motion for Summary Judgment, thereby adopting all arguments and requests for relief set forth therein. [D.E. 80]

[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").

[3] The Court adopts the Statement of Undisputed Material Facts set forth in Section I of SB Hotel's Cross Motion, which describes the structure of the Project.

[4] The challenged voting provisions are Sections 6.1, 9.4, and 11.2 of the Condominium Declaration and Sections 3.6, 4.1, 4.2, and 4.15 of the By-Laws.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 21st day of December, 2023.


2020-022304-CA-01 12-21-2023 1:03 PM

2020-022304-CA-01 12-21-2023 1:03 PM

Hon. Thomas J. Rebull

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

Electronically Served:

CBL Section 43 Case Mgr, cbl43@jud11.flcourts.org
Dania S Fernandez, eruiz@dsfpa.com
Dania S Fernandez, asheehy@dsfpa.com
Dania S Fernandez, landrade@dsfpa.com
Eric Dewone Coleman, eric.coleman@akerman.com
Eric Dewone Coleman, lauren.chang-williams@akerman.com
Eric Dewone Coleman, ellise.peyton@akerman.com
James Diamond, diamondj@gtlaw.com
James Diamond, fernandezfe@gtlaw.com
James Diamond, flservice@gtlaw.com
Jeffrey C Schneider, jcs@LKLSG.com
Jeffrey C Schneider, ph@lklsg.com
Jeffrey C Schneider, ams@lklsg.com
Jennifer Glasser, jennifer.glasser@akerman.com
Jennifer Glasser, kelly.connolly@akerman.com
Jennifer Glasser, joan.davis@akerman.com
Jennifer Glasser, jennifer.glasser@akerman.com
Jennifer Glasser, kelly.connolly@akerman.com
Jennifer Glasser, dorothy.matheis@akerman.com
Joshua Bernstein, joshua.bernstein@akerman.com
Kathleen Prystowsky, kathleen.prystowsky@akerman.com
MICHAEL N. KREITZER, kreitzerm@gtlaw.com

MICHAEL N. KREITZER, moisem@gtlaw.com
MICHAEL N. KREITZER, flservice@gtlaw.com
Matthew J. McGuane, Esq., mjm@lklsg.com
Matthew J. McGuane, Esq., ph@lklsg.com
Matthew McGuane, mjm@lklsg.com
Matthew McGuane, ph@lklsg.com
Michael N. Kreitzer, kreitzerm@gtlaw.com
Miguel Armenteros, miguel@aa-firm.com
Miguel Armenteros, paralegal@aa-firm.com
Miguel Armenteros, service@aa-firm.com
Nancy Ginart, ginartn@gtlaw.com
master docket lit, masterdocketlit@akerman.com

Physically Served:

Exhibit “B”

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

CASE NO: 2020-022304-CA-01

SECTION: CA43

JUDGE: Thomas J. Rebull

2399 Collins Avenue Condominium Association, Inc.

Plaintiff(s)

vs.

2377 Collins Resort, L.P. et al

Defendant(s)

**ORDER DENYING PLAINTIFF'S MOTION FOR REHEARING AND/OR
RECONSIDERATION [D.E. 108]**

This action came before the Court at a Zoom hearing on March 4, 2024, on Plaintiff 2399 Collins Avenue Condominium Association, Inc.'s ("Plaintiff") Motion for Rehearing and/or Reconsideration [D.E. 108] (the "Motion") of the Court's Omnibus Order Denying Plaintiff's Motion for Final Summary Judgment Against Defendants On Second Amended Complaint [D.E. 67], Granting Defendant SB Hotel Owner, L.P.'s Cross Motion for Summary Judgment [D.E. 75], Denying as Moot Plaintiff's Motion to Strike Affidavit of Francis J. Nardoza and Entering Summary Final Judgment in Favor of Defendants And Against Plaintiff (the "Summary Judgment Order") [D.E. 103]. The Court has reviewed the Motion, Defendant SB Hotel Owner, L.P.'s ("Defendant") response papers, Plaintiff's reply papers, and hearing the parties' arguments raised during the March 4, 2024 hearing. It is **HEREBY ORDERED AND ADJUDGED** that the Motion is **DENIED**.

BACKGROUND AND PROCEDURAL HISTORY

On May 30, 2023, Plaintiff filed its Motion for Final Summary Judgment [D.E. 67]. In

response, Defendant filed its Response to Plaintiff's Summary Judgment Motion and Cross Motion for Summary Judgment (the "Cross Motion") on July 14, 2023. [D.E. 75.]

On October 3, 2023, the Court held a one-hour special set hearing on both motions for summary judgment. [D.E. 97.] Both parties had 30 minutes to present their oral argument, and each party presented slides in support of their positions. [See D.E. 99, 100.] During the hearing, the Court asked counsel questions about their legal and factual positions, which are recorded in the record. [See D.E. 98 (the "Hearing Tr.").]

At the conclusion of the hearing, the Court granted Defendant's Cross Motion, denied Plaintiff's motion for summary judgment, and stated on the record all the Court's reasons for granting Defendant's Cross Motion and denying Plaintiff's motion. (Hearing Tr. at 55:13-57:3.)^[1]

On December 21, 2023, the Court entered its 7-page Summary Judgment Order denying Plaintiff's motion for summary judgment and granting Defendant's Cross Motion for summary judgment. The Summary Judgment Order consists of a background section detailing the dispute and Plaintiff's causes of action, the Court's rulings, and a conclusion section specifying which motion was granted and which were denied. The Summary Judgment Order contains nine paragraphs explaining the reasons for the Court's entry of summary judgment in favor of Defendant and against Plaintiff. In footnote 3, the Order also expressly "adopt[ed] the Statement of Undisputed Material Facts set forth in Section I of SB Hotel's Cross Motion, which describes the structure of the Project," as there was no genuine issue of material dispute as to these facts. (Summary Judgment Order at n.3.) Additionally, in the concluding section of the Summary Judgment Order, the Court explained that its decision was "[b]ased upon ... [the enumerated] findings and all the reasons contained in Defendant's filings." (*Id.* at p. 5; *see also* Hearing Tr. at 56:25-57:3) ("So for those reasons and all the reasons set forth in the defendant's papers I am going to respectfully grant the defendant's motion and deny the plaintiff's motion.").

Thereafter, on January 8, 2024, Plaintiff filed this Motion for Rehearing and/or Reconsideration, claiming the Court's Order made "unfounded and clearly contradict[ory]" findings and that the Court "lack[ed] the requisite factual support and/or findings to support such conclusions." [D.E. 108 at 1.]

The Court **DENIES** Plaintiff's Motion.

RULINGS AND CONCLUSIONS

1. Plaintiff's Motion is denied. In the Motion, Plaintiff contends it is entitled to rehearing because the Summary Judgment Order purportedly "set[s] forth several findings which appear to be both unfounded and clearly contradicted by the record." (Mot. at ¶ 1.) However, the Motion fails to present any facts or law that Plaintiff claims the Court overlooked or failed to examine in its analysis of the parties' summary judgment motions. Motions for rehearing that set forth no specific issues to be examined by the court or simply re-address issues that have already been evaluated by the trial court are properly denied. *Alberger v. Harvison*, 342 So. 2d 537, 539 (Fla. 3d DCA 1977).
2. The Court also denies the Motion because Plaintiff seeks to modify the rulings in the Summary Judgment because Plaintiff disagrees with those rulings. A motion for rehearing that "disagrees with the court's findings of fact and ruling" is properly denied. *See, e.g., Migueltorena v. Gloger Const. LLC*, No. 18-CA-9881, 2021 WL 7709742, at *1 (Fla. Cir. Ct. Hillsborough Cnty. Aug. 16, 2021); *Mangan v. Ferraro*, No. 50-2020-CA-006654-MB, 2022 WL 19265915, at *1 (Fla. Cir. Cit. Palm Beach Cnty. July 8, 2022).
3. The Motion is also denied because the Summary Judgment Order contains sufficient reasons in accordance with Florida law. Plaintiff brought the Motion under Rule 1.530 of the Florida Rules of Civil Procedure, claiming the Summary Judgment Order "lack[s] the requisite factual support and/or findings to support such conclusions[.]" (Mot. at ¶ 1.) Florida Rule of

Civil Procedure 1.530 provides that to bring an appeal to challenge the trial court’s “failure... to make required findings of fact, a party must raise that issue in a motion for rehearing under this rule.” The logic of this rule is to enable the District Court of Appeal to be “informed as to the reasons for granting or denying the motion on which their rulings rest[.]” *Jones v. Ervolino*, 339 So. 3d 473, 475 (Fla. 3d DCA 2022). However, there is no requirement for “busy trial judges” to “write lengthy opinions.” *Id.* Instead, they “must take reasonable steps to ensure that the parties and the appellate courts are informed as to the reasons for granting or denying the motion on which their ruling rests under [the] new standard.” *Id.* Accordingly, the purpose behind Florida Rule of Civil Procedure 1.530 is to have trial courts establish a clear record as to which claims were accepted or denied and what facts support such a holding.

4. The Court concludes that its rulings in the Summary Judgment Order and on the record during the summary judgment oral argument satisfy Rules 1.510 and 1.530 of the Florida Rules of Civil Procedures. As noted above, after reviewing the parties’ summary judgment papers, hearing oral argument from counsel for an hour, and concluding there was no genuine dispute as to any material fact, the Court detailed its rulings and reasons for denying Plaintiff’s summary motion and granting Defendant’s cross-motion for summary judgment, agreeing with the legal arguments Defendant made in its papers and during oral argument.
5. In the Summary Judgment Order, the Court memorialized its ruling. The Summary Judgment Order incorporates Section I of Defendant’s Statement of Undisputed Material Facts from its Cross-Motion for summary judgment based on the Court’s determination that there was no genuine dispute as to any material fact. The Summary Judgment Order also recites the Court’s reasons and rulings in a detailed, 7-page order, which states each basis for its holding in nine enumerated paragraphs. The Summary Judgment Order also makes clear that the Court agreed with the arguments made by Defendant in its cross motion for summary

judgment. Accordingly, the Court holds that the Summary Judgment Order sufficiently states the Court's rulings and denies Plaintiff's Motion.

6. The Court also addresses each of Plaintiff's arguments made in the Motion with respect to its rulings in the Summary Judgment Order.

7. In Paragraph 1(a) of the Motion, Plaintiff argues that the Court's ruling that Section 2.12 of the Condominium Declaration is consistent with the definition of common elements as presented in Fla. Stat. 718.108 was made "without explanation and/or justification." However, whether Section 2.12 of the Condominium Declaration complied with the Condominium Act was at the heart of this case, was briefed extensively by the parties, and was argued extensively by the parties during the October 3, 2023, special set hearing. As noted in the Court's rulings on the record and in the Summary Judgment Order, the Court agreed with Defendant's argument that the definition of common elements contained in the Condominium Declaration complied with the Condominium Act, as there is a savings provision that also includes as "Common Elements," "[a]ny other parts of the Condominium Property ... required to be Common Elements pursuant to the provisions of the [Condominium] Act." (Condo. Decl § 2.12(d); [D.E. 75 at pp at 21-22]). Additionally, in Section 2.41 of the Condominium Declaration, the "Common Elements" are excluded from the definition of Shared Components. Thus, the Court agreed with Defendant's arguments and held that the definition of "Common Elements" in the Condominium Declaration complied with the Condominium Act.

8. The Court also outlined its reasoning as to why this case was distinguishable from the Third District Court of Appeal's decision in *IconBrickell*. On the record, the Court explained that it agreed with the arguments Defendant made on page 25 of its cross motion for summary judgment. In the Summary Judgment Order, the Court further explained that the property at issue in *IconBrickell* was "a materially different legal structure than presented here" because

in *IconBrickell* the entirety of the property was subject to the Condominium Act, whereas here, the Association was seeking a declaration that certain property, which was not subject to the Condominium Declaration, ought to be considered property of the Condominium. (Order at ¶ 3.) Specifically, Section 1.2 of the Condominium Declaration excludes the Shared Facilities from condominium property. Thus, the Summary Judgment Order sufficiently explains the basis for its holding.

9. In Paragraph 1(b) of its Motion, Plaintiff disagrees with the “Court’s Finding that the Florida Condominium Act ‘does not apply to the remainder of the mixed-use Project,’” including the ROCUF property and Facilities Element (among others), “‘as they were not submitted to the condominium form of ownership’” Plaintiff contends that “‘the so-called ‘Hotel Element and Facilities Element’ clearly includes the requisite ‘common elements’ mandated by § 718.108....” Plaintiff is rearguing the same points it made in its summary judgment moving papers. Plaintiff later conceded in its reply papers and during oral argument that it was not seeking to “reclassify” property outside the Condominium Property. (*See* Hearing Tr. at 25:3-27:10); [D.E. 87 at 8-9 (admitting Plaintiff’s “claims for declaratory judgment ... have nothing to do with *ownership* and *control* of the ... Facilities Element,” which is outside the Condominium Property).] Plaintiff is bound by that admission. Additionally, the Court agreed with Defendant’s arguments and case law that property that was not submitted to the condominium form of ownership is not governed by the Condominium Act. For these reasons, as well, the Court denies Plaintiff’s Motion.

10. Plaintiff’s arguments in 1(c) of the Motion are also denied. Plaintiff argues that the ruling that Plaintiff did not comply with the necessary condition precedent to commence this action that is set forth in Section 9.4 of the Condominium Declaration is “unsupported” and “belied by the Declaration of Condominium and the facts in this case[.]” Again, this point was conceded during oral argument by Plaintiff’s counsel, who admitted there was no evidence in

the record that Plaintiff had taken any vote, including an affirmative vote of the unit owners. (See Hearing Tr. at 7:7-11.) The Court, therefore, adopted Defendant's arguments and granted Defendant's cross motion for summary judgment for Plaintiff's failure to comply with the condition precedent set forth in the Condominium Declaration.

11. Plaintiff's Motion is also denied based on the arguments in Paragraph 1(d) of the Motion that the Summary Judgment Order "lacks any specificity and/or factual support" for the ruling that Plaintiff failed to join indispensable parties. The Court concluded there was no genuine dispute of material fact that Plaintiff was seeking to reclassify property in which parties that had not been joined had property rights, including the Sandy Lane Master Association and the Roney Palace Condominium. Those parties are not joined to this action, but are indispensable parties, as Plaintiff was seeking to modify their property rights. Accordingly, the Court's ruling is specific and based on admitted facts.
12. Plaintiff also argues that the Summary Judgment Order purportedly does not explain why Plaintiff was required to join other parties "despite the clear dictates of § 718.111(3)." This is not an argument that Plaintiff made in its summary judgment papers but appears to be directed toward the Court's ruling that Plaintiff failed to comply with statutory jurisdictional requirements set forth in Section 718.110(10) of the Condominium Act for bringing an action for reformation. Section 718.110(10) provides that "[a]ll unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action." Plaintiff sought reformation; yet no unit owners other than SB Hotel and no mortgagees of a first mortgage of record are named in this action. Thus, the Court's ruling is properly supported by the undisputed facts.
13. The Motion is also denied based on Plaintiff's arguments in Paragraph 1(e) of the Motion, which challenges the Court's ruling that "there is not [a] justiciable controversy" as to "the challenges to the voting provisions." Again, Plaintiff admitted during oral argument that

there was no evidence in the record of any votes and that the relief it was seeking was “prospective.” (*See* Hearing Tr. at 11:14-17.) Considering these admissions and the lack of evidence in the record, the Court agreed with Defendant’s arguments that there was no justiciable controversy.

14. Plaintiff’s Motion is further denied based on the arguments in Paragraph 1(f) of the Motion.

Plaintiff makes the conclusory argument challenging the Court’s ruling that the “challenged voting provisions do not violate the Condominium Act on their face, are not unconscionable and do not violate public policy” because these rulings purportedly “appear to lack the requisite factual findings.” The Court’s rulings are supported by the fact that the record was devoid of evidence supporting Plaintiff’s position. Thus, with Plaintiff having failed to provide any evidence in support of its summary judgment motion on this point or in opposition to Defendant’s cross-motion for summary judgment on this point, the Court agreed with Defendant’s arguments, including its arguments demonstrating that the provisions at issue had been upheld in the courts as facially valid.

CONCLUSION

In conclusion, based upon these rulings and all the reasons contained in Defendant’s filings, the Court **DENIES** Plaintiff’s Motion for Rehearing and/or Reconsideration [D.E. 108].

^[1] Per the Court’s directive at the end of the hearing on each party’s respective motions for summary judgment (Hearing Tr. at 53:4-17), Plaintiff participated in drafting the Order entered by the Court. Thus, Plaintiff had an opportunity to ensure that the Order reflected fulsome reasons based on the Court’s ruling on the record, which Plaintiff did. Plaintiff’s proposed order contained few differences from Defendant’s proposed order, both of which were submitted to the Court.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 11th day of June, 2024.


2020-022304-CA-01 06-11-2024 9:00 AM

2020-022304-CA-01 06-11-2024 9:00 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

Electronically Served:

CBL Section 43 Case Mgr, cbl43@jud11.flcourts.org
Dania S Fernandez, eruiz@dsfpa.com
Dania S Fernandez, asheehy@dsfpa.com
Dania S Fernandez, landrade@dsfpa.com
Eric Dewone Coleman, eric.coleman@akerman.com
Eric Dewone Coleman, lauren.chang-williams@akerman.com
Eric Dewone Coleman, ellise.peyton@akerman.com
James Diamond, diamondj@gtlaw.com
James Diamond, fernandezfe@gtlaw.com
James Diamond, flservice@gtlaw.com
Jeffrey C Schneider, jcs@LKLSG.com
Jeffrey C Schneider, ph@lklsg.com
Jeffrey C Schneider, ams@lklsg.com
Jennifer Glasser, jennifer.glasser@akerman.com
Jennifer Glasser, kelly.connolly@akerman.com
Jennifer Glasser, joan.davis@akerman.com
Jennifer Glasser, jennifer.glasser@akerman.com
Jennifer Glasser, kelly.connolly@akerman.com
Jennifer Glasser, dorothy.matheis@akerman.com
Joshua Bernstein, joshua.bernstein@akerman.com
Kathleen Prystowsky, kathleen.prystowsky@akerman.com
MICHAEL N. KREITZER, kreitzerm@gtlaw.com
MICHAEL N. KREITZER, moisem@gtlaw.com
MICHAEL N. KREITZER, flservice@gtlaw.com
Matthew J. McGuane, Esq., mjm@lklsg.com
Matthew J. McGuane, Esq., ph@lklsg.com

Matthew McGuane, mjm@lklsg.com
Matthew McGuane, ph@lklsg.com
Megan A Lazo, mlazo@aa-firm.com
Megan A Lazo, service@aa-firm.com
Michael N. Kreitzer, kreitzerm@gtlaw.com
Miguel Armenteros, miguel@aa-firm.com
Miguel Armenteros, service@aa-firm.com
Nancy Ginart, ginartn@gtlaw.com
master docket lit, masterdocketlit@akerman.com

Physically Served: