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Massachusetts Land Court,
DEPARTMENT OF THE TRIAL COURT.
Middlesex County.

Habib AMINIPOUR and Shahin Aminipour,
Plaintiffs
v.
Hugo CAMARGO and Elena Camargo; and Donald Misquitta and Miguel Camargo, Trustees of the 179 Belmont Street **Condominium** Trust,
Defendants

14 MISC. 488846 (JCC)
|
Dated: May 14, **2018**

DECISION GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' CROSS–MOTION FOR SUMMARY JUDGMENT

Judith C. Cutler, Chief Justice

***1** This case involves a dispute among **condominium** owners over parking rights. The Plaintiffs own Unit 1 in a three-unit residential **condominium** in Belmont, Massachusetts, known as the 179 Belmont Street **Condominium** (the "**Condominium**"). Plaintiffs filed their Complaint on December 16, 2013, seeking a declaration that they have rights to the exclusive use of two and one-half parking spaces within the **Condominium's** common area.[1] Defendants Hugo Camargo and Elena Camargo own Unit 2 in the **Condominium**. Defendants Donald Misquitta and Miguel Camargo are named as Trustees of the **Condominium**.[2] Defendants contend that, in accordance with the original Master Deed and the Unit deeds, each Unit has appurtenant to it the exclusive right to use one parking space, and that none of the recorded instruments relied upon by the Plaintiffs effectively altered the parking space rights described in the Master Deed and granted in the First Unit Deeds.

On May 27, 2016, Defendant Misquitta moved for summary judgment on Plaintiffs' Amended Complaint, asking the court to declare that each Unit in the **Condominium** is entitled to a single parking space, and to instruct the Trustees to designate and assign the three parking spaces in accordance with the Master Deed.[3] Plaintiffs opposed Misquitta's motion, and cross-moved for summary judgment, asking the court to declare that two and one-half parking spaces have been validly assigned to Unit 1.[4] Thereafter, Misquitta opposed Plaintiffs' Cross–Motion for Summary Judgment and also filed responses to Plaintiffs' Opposition to Misquitta's original motion.[5] The Camargo Defendants also opposed Plaintiffs' Cross–Motion.[6] Plaintiffs responded to Misquitta's Opposition to their Cross–Motion on August 11, 2016,[7] and to the Camargos' Opposition on August 25, 2016.[8] On September 28, 2016, the court conducted a hearing on the cross-motions for summary judgment, and took them under advisement.

***2** Now, for the reasons set forth below, I find that Plaintiffs, as owners of Unit 1, are presently entitled to the exclusive use of only one parking space and, therefore, Defendants are entitled to summary judgment in their favor.

SUMMARY JUDGMENT STANDARD

Summary judgment may enter if the "pleadings, depositions, answers to interrogatories, and responses to requests for admission ... together with the affidavits ... show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Mass. R. Civ. P. 56(c). The court views the facts in the light most favorable to, and draws "all logically permissible inferences" in favor of, the non-moving parties. *Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.*, 474 Mass. 382, 395 (2016). Where cross-motions have been filed, the court must view the evidence in the light most favorable to the party against whom judgment is to enter, and draw all permissible inferences and resolve any evidentiary conflicts in that party's favor. *Albahari v. Zoning Bd. of Appeals of Brewster*, 76 Mass. App. Ct. 245, 248 n.4 (2010). "[A] party moving for summary judgment in a case in which the opposing party will have the burden of proof at trial is entitled to summary judgment if he demonstrates, by reference to material described in Mass. R. Civ. P. 56(c), unmet by countervailing materials, that

the party opposing the motion has no reasonable expectation of proving an essential element of that party's case." *Kourouvacilis v. Gen. Motors Corp.*, 410 Mass. 706, 716 (1991).

UNDISPUTED MATERIAL FACTS

Based upon the pleadings, the parties' statements of undisputed material facts, and the admissible material submitted in the summary judgment record, I find that the following material facts are undisputed, and entitle the Defendants to summary judgment in their favor as a matter of law.

The Declaration of Trust and Master Deed

1. The Declaration of Trust for the 179 Belmont Street **Condominium** (the "**Condominium** Trust") was executed on May 15, 1986 and recorded with the Middlesex South Registry of Deeds (the "Registry") on June 5, 1986 in Book 17068, Page 225. The declarants and original Trustees were George W. Ruggiero ("Ruggiero") and William T. Conti ("Conti"). Trustees Ruggiero and Conti are referred to collectively as "the Grantor." *See* Decl. of Trust § 3.1.

2. The Master Deed for the three-unit 179 Belmont Street **Condominium** (the "**Condominium**") was executed by the Grantor on May 15, 1986 and recorded with the Registry on June 5, 1986 in Book 17068, Page 210.

3. Section 2 of the Master Deed describes the premises constituting the **Condominium** as consisting of the land and buildings thereon located at 179 Belmont Street, more particularly described on Exhibit 1 to the Master Deed. Exhibit 1 describes the property boundaries of a ±3,696 square feet parcel with buildings thereon.

4. Section 4.A of the Master Deed, "Description of the Units," references and incorporates Exhibit 2 for the description and designation of each Unit, and each Unit's proportionate interest in the **Condominium** common areas and facilities as determined on the basis of proportionate fair value of each Unit.

5. Exhibit 2 to the Master Deed is entitled "Description & Designation of Units." According to the information set forth in Exhibit 2, the percentage of interest held by each Unit is as follows: Unit 1: 28.82%; Unit 2: 22.99%; Unit 3: 48.19%.

***3** 6. Sections 4.C through 4.F of the Master Deed set forth the rights each Unit owner will have as appurtenant to their particular Unit. Pertinent to the instant dispute is Section 4.E, which provides:

> *There shall be appurtenant to each Unit the right to the exclusive use of one parking space ("Parking Space") shown on the **Condominium** site plan (the "Site Plan")*prepared by Eugene J. Mulligan, Registered Land Surveyor, recorded with the Master Deed for the purpose of parking one motor vehicle on the land of the **Condominium**. *A Parking Space will be assigned to each unit by the Grantor of the 179 BELMONT STREET **CONDOMINIUM** Trust by written designation in the first Unit Deed of each such Unit, or by the **Condominium** Trust if not so designated in said Unit Deed, and thereafter the right to use said parking space shall be appurtenant to the Unit.*

[Emphasis added.]

7. The Site Plan referenced in Section 4.E of the Master Deed is recorded with the Registry as Plan 735 of 1986. The Site Plan shows the **Condominium** building located on a 3,292 square foot lot, labeled "Lot A." There are no "Parking Spaces" shown or identified as such on the Site Plan. There is, however, one, approximately 10' X 18' area at the front of the **condominium** building which is labeled "Parking (A)," and an approximately 10' X 30' area on the western side of the building which is labeled "Bit. Conc—Driveway."

8. Section 5 of the Master Deed describes the **Condominium** Common Areas and Facilities as consisting of:

> A. The land described in Exhibit 1, together with the benefit of and subject to all rights, easements, restrictions and agreements of record, if any, so far as the same may be in force and effect;
>
> B. All portions of the Buildings not included in any Unit, including, without limitation, the following to the extent such may exist from time to time ...
>
> (i) All land areas, yards, lawns, landscaping,

parking areas, and other improved or unimproved areas on land and not within any Unit....

[Emphasis added.]

9. Section 5 further provides that "[t]he owners of each Unit shall own an undivided interest in the common areas and facilities in the percentages shown on Exhibit 2," and that the use of the common areas and facilities shall be subject to the Master Deed, the Condominium Trust and the Bylaws promulgated pursuant to said Trust, and G.L. c. 183A, as amended.

10. Section 7.B of the Master Deed sets forth four restrictions and regulations applicable "to the use and occupancy of the Parking Spaces." Subparagraph (2) provides that "[a]ll vehicles shall be parked within their respective Parking Spaces." Subparagraph (3) allows a Unit Owner, by written permission, to "permit any tenant, guest, servant licensee, or other party, the right to use a Parking Space which said Unit Owner is entitled to use...."

11. Section 10 of the Master Deed, entitled "Amendments," provides in pertinent part:

> This Master Deed may be amended by an instrument in writing (a) signed by one or more owners of Units entitled to 66 2/3 % or more of the undivided interest in the common areas and facilities, and (b) signed and acknowledged by the Trustees of the Condominium Trust, and (c) duly filed with the Registry of Deeds; PROVIDED, HOWEVER, that:
>
> ***4** (a) *The date on which any instrument of amendment is first signed by a Unit Owner shall be indicated thereon as the date thereof and no such instrument shall be of any force or effect unless the same has been so filed within six months after such date*;
>
> ....
>
> (c) No instrument of amendment which alters the percentage of the undivided interest to which any Unit is entitled in the common areas and facilities shall be of any force or effect unless the same has been signed by all Unit Owners and all holders of mortgages covering the Unit and said instrument is filed as an Amended Master Deed;
>
> (d) No instrument of amendment affecting any Unit in any manner which impairs the security of a first mortgage of record shall be of any force or effect unless the same has been assented to by the holder of such mortgage;
>
> (e) *No instrument of amendment which alters this Master Deed in any manner which would render it contrary to or inconsistent with any requirements or provisions of Chapter 183A shall be of any force or effect*;
>
> ....
>
> [Emphasis added.]

12. Section 15(A) of the Master Deed § 15(A) provides, in pertinent part: "In the event of a conflict between the Master Deed and said Chapter 183A, as amended, the provisions of Chapter 183A shall control."

The "Parking Designation"

13. On January 30, 1987, Ruggiero and Conti resigned as original Trustees and the Unit owners elected Ralph M. Grieco (a then-owner of Unit 3) and Mohamad Metghalchi (the then-owner of Unit 1) as successor Trustees.[9] Their appointments did not become effective until the Certificate of Trust was recorded with the Registry on November 3, 1987.[10]

14. On February 27, 1987, more than eight months prior to the effective date of their appointment as successor Trustees, Grieco and Metghalchi executed an instrument entitled "Parking Designation" which provided:

> We, [Metghalchi] and [Grieco], as successor Trustees of the [Condominium], hereby agree that [Metghalchi] as owner of Unit 1, shall be henceforth entitled to the exclusive use of two (2) parking spaces for the purpose of parking two (2) motor vehicles on the premises and that [Fagan], as owner of Unit 2, and Ralph M. Grieco and Jayne M. Greico, as owners of Unit 3, shall be entitled to the exclusive use of one (1) parking space for the purpose of parking one (1) motor vehicle on the premises. This designation shall be binding upon our heirs and assigns.

Each of the then-Unit owners signed their assents to the Parking Designation. There is no indication that any mortgagees assented to the Parking Designation.

15. The Parking Designation was recorded with the Registry in Book 18663, Page 237, on November 3,

1987—the same date the appointments of the successor Trustees became effective but more than eight months after the date of its execution.

Unit 1 Chain of Title

***5** 16. On June 23, 1986, original Trustees Ruggiero and Conti, as Grantor, conveyed Unit 1 of the **Condominium** to Metghalchi by means of a First Unit Deed. The First Unit Deed for Unit 1 was recorded with the Registry on June 24, 1986 in Book 17129, Page 319. In relevant part, the First Unit Deed to Metghalchi states:

> Said Unit is conveyed together with:
>
> ...
>
> 5. The exclusive right to use a surface parking space near the Building as shown on the Site Plan, recorded with said Deeds with the Master Deed, said space to be assigned by the Trustees of the **Condominium Trust** and correspondingly numbered in the parking area.

[Hereinafter, the "Parking Right Provision"]

17. Trustees Ruggiero and Conti did not assign Unit 1 a parking space in-this First Unit Deed for Unit 1, or thereafter.

18. On June 15, 1998, Metghalchi conveyed Unit 1 of the **Condominium** to Plaintiffs Habib Aminipour and Shahin Aminipour (the "Aminipours"). The deed to the Aminipours was recorded with the Registry on June 15, 1998 in Book 28703, Page 334. The deed to the Aminipours repeats the Parking Right Provision contained in the First Unit Deed into Metghalchi. It does not contain any reference to the 1987 "Parking Designation."

Unit 2 Chain of Title

19. On June 25, 1986, original Trustees Ruggiero and Conti, as Grantor, conveyed Unit 2 of the **Condominium** to Caren L. Fagan ("Fagan") by means of a First Unit Deed. The First Unit Deed for Unit 2 was recorded with the Registry on June 26, 1986 in Book 17140, Page 141. The First Unit Deed for Unit 2 contains the same Parking Right Provision as was set forth in the First Unit Deed for Unit 1.

20. Trustees Ruggiero and Conti did not assign Unit 2 a parking space in this First Unit Deed or thereafter.

21. On December 2, 1988 Fagan conveyed Unit 2 to Seyed Etezadi ("Etezadi"). The deed to Etezadi was recorded with the Registry on December 5, 1988 in Book 19510, Page 423. The deed to Etezadi repeats the same Parking Right Provision as set forth in the First Unit Deeds for Unit 1 and Unit 2. It does not reference the 1987 "Parking Designation."

22. Federal National Mortgage Association ("FNMA"), as the holder of a mortgage granted by Etezadi, foreclosed on Unit 2 and recorded a foreclosure deed to itself with the Registry on April 22, 1993 in Book 23104, Page 367. The foreclosure deed does not include the Parking Right Provision and is otherwise silent as to parking rights.

23. Thereafter, FNMA conveyed Unit 2 to Hugo Camargo and Eleanna Camargo (the "Camargos") on December 16, 1994. The deed to the Camargos was recorded with the Registry on March 1, 1995 in Book 25202, Page 533. The Deed to the Camargos is also silent as to parking rights.

Unit 3 Chain of Title

24. On June 30, 1986, original Trustees Ruggiero and Conti, as Grantor, conveyed Unit 3 of the **Condominium** to Ralph M. Grieco and Jayne M. Grieco (the "Griecos") by means of a First Unit Deed. The First Unit Deed for Unit 3 was recorded with the Registry on July 3, 1986 in Book 17171, Page 115. The First Unit Deed for Unit 3 contains the identical Parking Right Provision as set forth in the First Unit Deeds for Units 1 and Unit 2.

25. Trustees Ruggiero and Conti did not assign Unit 3 a parking space in this First Unit Deed or thereafter.

26. On March 6, 1987, the Griecos conveyed Unit 3 to Dorsun Ozen ("Ozen"). The deed to Ozen, which was recorded with the Registry on October 16, 1987, in Book 18623, Page 190, contains the Parking Right Provision.

***6** 27. On October 30, 1987 Ozen conveyed Unit 3 to Robert Oczan and Silva Dezan ("Ozcan/Dezan").

The deed to Ozcan/Dezan, which was recorded with the Registry on November 3, 1987, in Book 18663, Page 239, repeats the Parking Right Provision. It does not reference the 1987 Parking Designation, which was recorded on the same date.

28. Terese Trapani ("Trapani"), as the assignee of a mortgage granted to Comfed Savings Bank by Ozcan/Dezan, foreclosed on Unit 3 by a foreclosure deed to herself dated March 3, 1997, recorded with the Registry on March 7, 1997, in Book 27118, Page167. The foreclosure deed did not contain the Parking Right Provision and was otherwise silent as to parking rights.

29. On May 30, 2000, Trapani conveyed Unit 3 to Karen E. Joss ("Joss"). The deed to Joss, which was recorded with the Registry on March 31, 2000, in Book 31263, Page 409, does not contain the Parking Right Provision. In describing the property conveyed, the Unit 3 deed into Ross states in pertinent part:

> Being the same premises conveyed to grantor herein by foreclosure deed, dated March 3, 1997, recorded with Middlesex South Registry of Deeds, Book 27118, Page 167, EXCEPTING THEREFROM any parking space.

[Emphasis in original.]

30. On December 5, 2003, Joss conveyed Unit 3 to Rolando Lima ("Lima"). The deed to Lima, which was recorded with the Registry on December 9, 2003 in Book 41581, Page 593, was silent as to parking rights.

31. On October 12, 2004, Lima conveyed Unit 3 to himself as Trustee of the 480 West Elm Realty Trust. The deed, which was recorded with the Registry on October 15, 2004 in Book 43901, Page 501, was silent as to parking rights.

32. On March 25, 2005, Lima, as Trustee of the 480 West Elm Realty Trust, conveyed Unit 3 back to himself, individually. That deed, which was recorded with the Registry on March 25, 2005 in Book 44874, Page 520, was also silent as parking rights.

33. Mortgage Electronic Registration Systems, Inc. as nominee for WMC Mortgage Corp., foreclosed on Unit 3 and conveyed Unit 3 by foreclosure deed to Wells Fargo Bank, N.A. ("Wells Fargo") dated October 5, 2006, recorded with the Registry on November 3, 2006, in Book 48440, Page 371. The deed was silent as to parking rights.

34. On March 12, 2009, Wells Fargo conveyed Unit 3 to Donald Misquitta and Derek Misquitta (the "Misquittas"). The deed to the Misquittas was recorded with the Registry on March 30, 2009, in Book 52478, Page 91. The deed was silent as to parking rights.

The 2000 "Amendment of Master Deed"

35. On March 30, 2000, a new instrument entitled "Certificate of Trust" was executed by Habib Aminipour, as Trustee (the "2000 Certificate of Trust"). The 2000 Certificate of Trust states:

> Pursuant to Article III section 3.3, of the Declaration of the trust, dated May 15, 1986, recorded with the Middlesex South Registry of Deeds Book 17068, Page 225, a vote of the unit owners at the annual meeting, holding 100% of the beneficial interest appointed as sole trustee, Habib Aminipour, a unit owner, on January 25, 2000, effective on said date and continuing until successive trustee appointed.[11]

Habib Aminipour also signed his acceptance of the appointment as Trustee. The 2000 Certificate of Trust was recorded with the Registry on March 31, 2000, in Book 31263, Page 400.

*7 36. Also on March 30, 2000, an instrument entitled "Amendment of Master Deed" was executed by the Aminipours (as owners of Unit 1 with a 28.82% undivided interest in the Condominium), by Trapani (as owner of Unit 3 with a 48.19% undivided interest in the Condominium), and by Habib Aminipour as Trustee. The Amendment of Master Deed states:

> AMENDMENT is hereby made of Master Deed, dated May 15, 1986, recorded with Middlesex South District Registry of Deeds, Book 17068, Page 210, of the 179 Belmont Street Condominium, pursuant to paragraph 10, to amend paragraph 4(E) by adding the following sentence to the end of the original paragraph: "Any assigned parking space appurtenant to any unit by written designation in the first unit deed o[r] by the Condominium Trust if not so designated in said deed for each unit may be further assigned by any such designated unit owner to any other unit owner."
>
> This amendment is to assist in clarifying all past

and future designated parking spaces.

The Amendment of Master Deed was recorded with the Registry in Book 31263, Page 401 on March 31, 2000.

37. The Camargos, who at the time owned Unit 2, did not assent to, approve, or sign the Amendment of Master Deed instrument. There are also no assents of any mortgagees noted on the Amendment of Master Deed.

38. Also on March 30, 2000, Trapani, the owner of Unit 3, executed an instrument entitled "Parking Space Assignment," which stated:

> I, TERESE TRAPANI, owner of unit 3, for nominal consideration, hereby assign my one-half interest in the exclusive use of the designated parking space appurtenant to said unit 3, recorded with Middlesex South District Registry of Deeds, Book 18663, Page 237, to HABIB AMINPOUR and SHAHIN AMINIPOUR, owners of unit 1, pursuant to Master Deed, dated May 15, 1986, recorded with said Deeds, Book 17068, Page 210, Plan recorded therewith and Amendment of Master Deed, dated March 30, 2000, recorded herewith.

The Parking Space Assignment instrument was recorded with the Registry on March 31, 2000, in Book 31263, Page 402, immediately following the recording of the Amendment of Master Deed instrument.

DISCUSSION

In moving for summary judgment, Defendants take the position that, on the basis of the recorded instruments, Plaintiffs are not entitled to a declaration that they have exclusive rights in two and one-half parking spaces. They argue that there was never an assignment of a designated parking space to any of the Unit Owners either in the First Unit Deeds, or subsequently by the Condominium Trustees, as provided in Section 4.E of the original Master Deed. They further argue that the attempted assignment by the Trustees through the 1987 Parking Designation was never effective because the purported assignment of more than one parking space to Unit 1, and only one parking space to be shared by Units 2 and 3, was not authorized under the Master Deed, and was indeed contrary to the express terms of Section 4.E, as well as the Parking Right Provision in the First Unit Deeds for all three Units.

For their part, Plaintiffs acknowledge that the Master Deed provides that each Unit shall have an appurtenant "right to the exclusive use of *one* parking space." Master Deed, § 4.E (emphasis added). But they nonetheless contend that the "Parking Designation" executed in 1987 validly assigned two of the Condominium's parking spaces to Unit 1 and the remaining third parking space to be shared by Units 2 and 3. They contend, moreover, that the 2000 "Amendment of Master Deed" amended the Master to Deed to authorize inter-Unit-Owner parking space assignments, and that the "Parking Space Assignment" thereafter executed by the then-owner of Unit 3 validly assigned that Unit's remaining one-half interest in the third parking space to Unit 1.

***8** As will be discussed below, I conclude that the 1987 Parking Designation did not effectively assign any parking spaces, or reassign any parking rights; that the 2000 Amendment to Master Deed was void *ab initio*; and, consequently, that the 2000 Parking Space Assignment was ineffective to transfer any parking rights to Plaintiffs. Accordingly, on the basis of the undisputed facts and, in particular, the recorded instruments in the summary judgment record, I conclude as a matter of law that: (1) Plaintiffs are currently entitled to the exclusive use of only *one* parking space to be designated by the Trustees in accordance with Section 4.E and the Parking Right Provision set forth in the First Unit Deeds; (2) that such designation has yet to occur; (3) that, until and unless, the Master Deed is appropriately amended to authorize assignment of more than one parking space to a single Unit and less than one parking space to other Units, the Trustees have no power to assign more than one parking space to a Unit; and (4) that no Unit Owner may unilaterally assign to another Unit Owner all, or a portion, of their rights to use a parking space in the Condominium common area.

The 1987 "Parking Designation"

Section 4.E of the Master Deed expressly provides that each Unit shall have an appurtenant "right to the exclusive use of one parking space" to be either "assigned" to each Unit by "written designation in the first Unit Deed" for each Unit or, if not assigned by the First Unit Deed, to be assigned by the Condominium Trust. None of the First Unit Deeds included an assignment of a parking space. Instead, each First Unit Deed contained the Parking Right Provision stating that

the "Unit is conveyed together with ... [t]he exclusive right to use a surface parking space ... said space to be assigned by the Condominium Trust and correspondingly numbered in the parking area."

The original Trustees, Ruggiero and Conti, never did assign a parking space to any of the Units as prescribed in the Master Deed and in each of the First Unit Deeds. Once Ruggiero and Conti resigned, Grieco and Metghalchi took over as successor Trustees in 1987. The two successor Trustees, with the assents of all of the Unit Owners, executed a so-called "Parking Designation," dated March 1, 1987. The Parking Designation recites an *agreement* of the successor Trustees that "[Metagalchi], as owner of Unit 1 shall henceforth be entitled to the exclusive use of two parking spaces for the parking of two (2) motor vehicles on the premises," and that the owners of Units 2 and 3 "shall be entitled to the exclusive use of one (1) parking space for the purpose of parking one (1) motor vehicle on the premises." The Parking Designation does not refer to any parking space(s) shown on the Site Plan and does not purport to assign any parking space shown on the Site Plan to any of the Units.

I agree with Defendants that the "Parking Designation" cannot be regarded as an assignment or designation of parking spaces pursuant to the Trustees' powers under the Master Deed or the First Unit Deeds. The Master Deed established the right of each Unit to be assigned the exclusive use of a *single* parking space. Thus, any power the Trustees had in relation to assigning or designating parking spaces under the operative instruments was limited to assigning or designating a single parking space to each Unit—that is to say, physically locating such parking space on the ground and labeling it within the parking area shown on the Condominium Site Plan with a corresponding number. The only way to accomplish the allocation of more than one parking space to a single Unit, as attempted, would be by amending the Master Deed to alter the relevant provisions in accordance with Section 10.

The Trustees' agreement that the owner of Unit 1 is entitled to exclusive use of *two* parking spaces for *two* motor vehicles, and that Units 2 and 3 together are entitled to one parking space for one motor vehicle directly conflicts with Section 4.E of the Master Deed, which expressly provides that "[t]here will be appurtenant to each Unit the right to the exclusive use of *one* [parking space] shown on the Condominium site plan ... for the purpose of parking *one* motor vehicle...." (emphasis added). Similarly, the Parking Designation ignores the fact that, consistent with the Master Deed, each of the First Unit Deeds conveyed the subject Unit together with the exclusive right to use *one* parking space to be assigned by the Condominium Trust. I find no authority under the Master Deed, or under the Condominium Declaration of Trust, for the Trustees to alter the parking rights appurtenant to each Unit by transferring the parking rights of one Unit to another. And no mere agreement by the successor Trustees could override the Master Deed or the Unit Deeds, even if assented to by all of the Unit Owners.

***9** To avoid the lack of authority problem, Plaintiffs' alternative argument is that the Parking Designation operated as an amendment to the Master Deed, executed by all the Trustees and Unit Owners and otherwise in compliance with the amendment requirements found in Section 10 of the Master Deed. Defendants argue that the Parking Designation cannot be regarded as an effective amendment to the Master Deed because it failed to comply with the Master Deed's amendment provisions set forth in paragraph (c) of Section 10, which require that all amendments altering the percentage of the undivided interest to which any Unit is entitled in the common areas and facilities be signed by mortgagees of record, and recorded as an "Amended Master Deed."

I agree that the "Parking Designation" did not validly amend the Master Deed, although for a different reason than that advanced by Defendants. All of the parties have overlooked an undisputed fact that is dispositive of this particular issue—namely, that the 1987 Parking Designation was not recorded within six months of its execution and, thus, it is of no force or effect as an amendment pursuant to Master Deed Section 10, subparagraph (a), which provides in relevant part that no such instrument of amendment shall be of any force or effect unless it has been so filed with the Registry within six months after its execution.

Although both of the then-Trustees and all of the then-Unit Owners signed the Parking Designation, it is undisputed that the instrument was not recorded until November 3, 1987—*over eight months after it was first signed in February 1987*. Thus, because it was not filed with the Registry of Deeds within six months of its date of execution in accordance with paragraph (a) of Section 10, the 1987 "Parking Designation" had *no force or effect* as an amendment to the Master Deed, and each Unit's right to the exclusive use of a single parking space, to be assigned by the Condominium Trust remained unchanged by the Parking Designation.[12]

The 2000 "Amendment of Master Deed"

To operate as an effective amendment to the Condominium Master Deed, the instrument must comply with the requirements of the Master Deed and of the condominium enabling statute, G.L. c. 183A. *See* Master Deed, § 10(e) ("No instrument of amendment which alters this Master Deed in any manner which would render it contrary to or inconsistent with any requirements or provisions of Chapter 183A shall be of any force or effect."). To the extent there are direct inconsistencies between these two, the statute controls. *See* Master Deed § 15(A) ("In the event of a conflict between the Master Deed and said Chapter 183A, as amended, the provisions of Chapter 183A shall control.").

Here, it is undisputed that the 2000 "Amendment of Master Deed" was signed by Unit Owners entitled to more than 66 ⅔ % of the undivided interest in the common areas, was signed by the sole Trustee at the time, and was duly recorded with the Registry on March 31, 2000, one day after its execution on March 30, 2000. Thus, in those respects, the 2000 Amendment complied with the requirements in Section 10, subparagraph (a) for amending the Master Deed. However, Defendants contest the effectiveness of the 2000 Amendment.

***10** The March 30, 2000 instrument entitled "Amendment of Master Deed" purported to amend paragraph 4(E) of the Master Deed by adding the following sentence at the end of the original paragraph:

> Any assigned parking space appurtenant to any unit by written designation in the first unit deed o[r] by the Condominium Trust if not so designated in said deed for each unit may be further assigned by any such designated unit owner to any other unit owner.

Defendants argue that the language added by the 2000 Amendment would permit Unit Owners to unilaterally transfer their assigned parking spaces, thereby altering the percentages of undivided interest in the common areas and facilities. Thus, Defendants say, the requirements are triggered for unanimous consent of the Unit Owners and the holders of first mortgages on the Units, as set forth in subparagraphs (c) and (d) of Master Deed § 10. Defendants contend that, because the requirements of subparagraphs (c) and (d) were not met, the 2000 Amendment was never effective as a valid amendment to the Master Deed.

I do not agree that the 2000 Amendment is invalid because of a failure to comply with subparagraphs (c) and (d). Rather, I find that the 2000 Amendment was void, *ab initio,* for the simple reason that it conflicts with the condominium enabling statute, G.L. c. 183A. That is, the Amendment would unlawfully delegate to the individual Unit Owners the powers granted under G.L. c. 183A only to the Condominium Trust, as the organization of Unit Owners,[13] to: "[l]ease, manage, and otherwise deal with such community... facilities as may be provided for in the master deed as being common areas and facilities," G.L. c. 183A, § 10, and to:

> [g]rant to or designate for any unit owner the right to use, whether exclusively or in common with other unit owners, any limited common area and facility,[14] whether or not provided for in the master deed ...; provided, however, that consent has been obtained from (a) all owners and first mortgagees of units shown on the recorded condominium plans as immediately adjoining the limited common area or facility so designated and (b) 51 per cent of the number of all mortgagees holding first mortgages on units within the condominium who have given notice of their desire to be notified thereof as provided in subsection (5) of section 4.

G.L. c. 183A, § 5(b)(1)(ii).

The 2000 Amendment does not purport to be a designation or allocation by the Condominium Trust of any limited common areas. Instead, the Amendment would essentially delegate to the individual Unit Owners the Trustees' own powers under the Master Deed and under G.L. c. 183A to grant or designate the right to use limited common areas and facilities. Such a delegation is inconsistent with the condominium enabling statute, and therefore, the 2000 Amendment is void, regardless of the percentage of Unit Owners consenting to it.[15] *See, e.g., Strauss v. Oyster River Condo. Tr.*, 417 Mass. 442, 447 (1994) ("[F]act that the unit owners acquired their interests with notice of the existence of the unlawful master deed provision does not bind them to accept it. To bind the unit owners in such circumstances would mean that any provision in a master deed would overrule the requirements of the condominium statute.").

The March 30, 2000 "Parking Space Assignment"

***11** On March 30, 2000, the same date on which the Amendment of Master Deed was executed, Terese Trapani, the then-owner of Unit 3, executed an instrument entitled "Parking Space Assignment," which purported to "assign [her] one-half interest in the exclusive use of the designated parking space appurtenant to said unit 3 ... to HABIB AMINPOUR and SHAHIN AMINIPOUR, owners of unit 1." The parties dispute whether this Parking Space Assignment was a valid transfer of Unit 3's rights to use a parking space in the common area. Plaintiffs argue that Trapani's Parking Space Assignment was authorized under the 2000 Amendment. Defendants argue that the Parking Space Assignment was ineffective because the 2000 Amendment to the Master Deed, on which it depended, was itself invalid. Since I have concluded that the 2000 Amendment was void, I agree with Defendants that the Parking Space Assignment was ineffective to transfer Trapani's parking rights, as a matter of law.

Moreover, the March 30, 2000 Parking Space Assignment is legally defective for another reason. Pursuant to Section 4.E, as set forth in the original Master Deed, the right to use a parking space is to become appurtenant to a Unit only *after* an assignment of a particular parking space has been made (either by written designation in the First Unit Deed or, if not so assigned in the First Unit Deed, then by written designation of the Condominium Trust). However, the First Unit Deeds did not assign any parking spaces; they instead conveyed each Unit with the exclusive right to use a parking space shown on the Site Plan "*to be assigned* by the Condominium Trust and correspondingly numbered in the parking area." There is no suggestion in the summary judgment record that the Trustees ever did assign and correspondingly number any parking spaces, however. Without such an assignment having been made for her Unit, Trapani would have had no appurtenant parking right to assign to Plaintiffs in 2000.[16]

Based upon the foregoing, I find and rule that the March 30, 2000 Parking Space Assignment did not effectively assign parking rights in the common area to Plaintiffs as owners of Unit 1.

CONCLUSION

Based upon the undisputed material facts, and for the reasons discussed, I find that summary judgment on the pending Cross-Motions must enter declaring that:

1) the February 27, 1987 "Parking Designation"—purporting to assign the exclusive right to use two parking spaces in the Condominium to Unit 1, and the exclusive right to use one parking space in the Condominium to be shared by Units 2 and 3—is of no force or effect as a Condominium Trust designation of parking spaces pursuant to Section 4.E of the Master Deed;

2) the February 27, 1987 "Parking Designation"—purporting to assign the exclusive right to use two parking spaces in the Condominium to Unit 1, and the exclusive right to use one parking space in the Condominium to be shared by Units 2 and 3—is of no force or effect as an amendment to the Master Deed, because it was not recorded within six months of its execution in conformance with Section 10, paragraph (a) of the Master Deed;

3) the March 30, 2000 "Amendment of Master Deed" which attempted to amend Master Deed Section 4.E to permit Unit Owners to unilaterally transfer their parking rights to other Unit Owners, was an impermissible delegation of the Condominium Trust's powers under G.L. c. 183A and, therefore, void *ab initio*;

4) the March 30, 2000 "Parking Space Assignment"—wherein Trapani purported to further assign Unit 3's exclusive rights to use a parking space to Plaintiffs as owners of Unit 1—is of no force or effect because it was not a permissible action under the Master Deed and G.L. c. 183A; and,

***12** 5) because no parking spaces have ever been assigned to any of the Units, each Unit in the Condominium still has only the "the right to the exclusive use of one parking space" to be assigned by written designation of the Condominium Trust, as provided in Master Deed Section 4.E. Pursuant to Section 4.E, *one* parking space is to be assigned to each Unit by written designation of the Trustees, "and thereafter the right to use said parking space shall be appurtenant to the Unit."

Judgment shall enter accordingly.

All Citations

Not Reported in N.E.3d, 2018 WL 2210287

Footnotes

1 Plaintiffs filed an Amended Complaint on April 22, 2015, which substituted party defendants but did not alter their original claims.

2 According to the summary judgment materials submitted by the parties, Defendant Donald Misquitta, individually, owns Unit 3 of the **Condominium** as a joint tenant with Derek Misquitta, who is not a party to this lawsuit.
The record on summary judgment also shows that Miguel Camargo, named as a Trustee in this lawsuit, was not a Unit Owner in the **Condominium** at the time of his appointment as Trustee in 2012. Although Section 3.3 of the Declaration of Trust for the **Condominium** provides that only Unit Owners may be appointed as Trustees, Plaintiffs have not raised any objection to the Trust's capacity to proceed as a Defendant in this case through the named Trustees. Plaintiffs have also not raised any objection to the Answer or the Summary Judgment Motion filed solely on behalf of Defendant–Trustee Donald Misquitta. As Plaintiffs named both Trustees and have raised no objection on the ground of any defect in the capacity of the Trust to defend this action or pursue summary judgment through its Trustee Donald Misquitta, I consider any objection on this basis waived.

3 Defendant Misquitta filed a Motion for Summary Judgment, a Memorandum of Law in Support, a Statement of Undisputed Material Facts (#1–43), and an Appendix.

4 On June 27, 2016, Plaintiffs filed their Opposition to Misquitta's Motion for Summary Judgment and Response to Misquitta's Statement of Undisputed Facts along with a Statement of Additional Undisputed Facts (# 44–62). Plaintiffs simultaneously filed their Cross–Motion for Summary Judgment, a Statement of Undisputed Facts (# 1–61), a Memorandum of Law in Support, an Affidavit of Habib Aminipour, and an Appendix.

5 As to Plaintiff's Cross–Motion, on July 20, 2016, Misquitta filed an Opposition to Plaintiffs' Cross–Motion, a Memorandum of Law in Support, a Response to Plaintiffs Statement of Undisputed Facts (# 1–61) along with a Statement of Additional Undisputed Facts (# 62), and a Statement of Legal Issues. As to the original Summary Judgment Motion, on July 20, 2016, Misquitta filed a Reply to Plaintiffs' Opposition to Misquitta's Motion for Summary Judgment, a Response to Plaintiffs' Statement of Additional Undisputed Facts (# 44–62) and an Appendix.

6 On July 25, 2016, the Camargo Defendants filed a Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment, a Response to Plaintiffs' Statement of Undisputed Material Facts (# 1–61) along with a Statement of Additional Material Facts (# 62–67), and an Appendix.

7 On August 11, 2016, Plaintiffs filed a response to Misquitta's Statement of Undisputed Additional Facts (# 62), and a Memorandum of Law in Support. On the same date, in apparent response to Misquitta's Reply to Plaintiff's Opposition to Misquitta's Motion for Summary Judgment—but without seeking leave of court to file a sur-reply—Plaintiffs filed a so-styled "Controverting Statement to [Misquitta's] Reply to Plaintiff's Opposi[t]ion to [Misquitta's] Motion for Summary Judgment." Because no leave of court was granted, the sur-reply is not considered herein.

8 On August 25, 2016, Plaintiffs filed a Response to Defendant–Camargo[s'] Statement of Additional Material Facts (# 62–67).

9 The summary judgment record does not indicate why only two successor Trustees were appointed instead of the three specified in Section 3.1 of the Declaration of Trust.

10 *See* Instrument recorded with the Registry in Book 18663, Page 236.

11 There is nothing on the face of the Certificate explaining why only one Trustee was appointed, or the circumstances which led to his appointment, such as the resignation or other termination of prior Trustees.

12 This late filing of the "Parking Designation" with the Registry of Deeds likely leads to other problems that none of the parties have mentioned or briefed. Namely, that ownership of Unit 3 was transferred to Ozen before the Parking Designation was recorded. This may have created "bona fide purchaser" status in the new owner of Unit 3, Ozen, if he took title to Unit 3 without actual notice of any purported changes to the parking rights. Indeed, the Unit Deed transferring ownership of Unit 3 before the Parking Designation was recorded purported to grant the "exclusive right to use a surface parking space." Again, however, I do not need to reach this issue (which may, in any event, introduce disputes of material fact) because the late recording itself nullifies any possibility that the so-called "Parking Designation" operates as an amendment to the Master Deed.

13 The term "organization of unit owners" is defined in G.L. c. 183A, § 1 to mean "the corporation, trust or association owned by the unit owners and used by them to manage and regulate the **condominium**."

14 The term "limited common areas and facilities" is defined in G.L. c. 183A, § 1 to mean "a portion of the common areas and facilities either (i) described in the master deed or (ii) granted or assigned in accordance with the provisions of this chapter by the governing body of the organization of unit owners, for the exclusive use of one or more but fewer than all of the units." The parking spaces, once initially assigned by the **Condominium** Trustees, would fall within this definition.

15 I also note that, in any event, since 1998, an assignment or reassignment of parking spaces *by the Trustees* would not require unanimous consent by the Unit Owners. General Laws c. 183A, § 5(b)(1), as amended in 1998, provided (as it does now) that "...the designation or allocation by the organization of unit owners of limited common areas and facilities... shall not be deemed to affect or alter the undivided interest of any unit owner [in the common areas and facilities]." This statute specifically overrides contrary provisions in a Master Deed. *See* G.L. c. 183A, § 5(c).

16 It may be observed that, *if she had been assigned a Parking Space* in accordance with Section 4.E, then pursuant to Section 7.B(3) of the Master Deed, Trapani, as a Unit Owner, would have had the ability to permit any other Unit Owner(s), including the Plaintiffs, to *use* her assigned and designated parking space without the necessity for a transfer of rights.

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