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Massachusetts Land Court,
Department of the Trial Court,
Middlesex County.

IN RE: **REGAL CONDOMINIUM**
case 18 MISC 0023

Dated: May 2, **2018**

ORDER UNDER GUIDELINE 57 OF THE LAND COURT GUIDELINES ON REGISTERED LAND

By the Court (Vhay, J.)

*1 On April 12, **2018**, the Trustees of the Regal **Condominium** Trust submitted to the Court an executed amendment to the Regal **Condominium's** Master Deed (the "Amendment"). The original Master Deed was filed on December 29, 1978 with the Middlesex County Southern Registry District of the Land Court as Document No. 579663, and on Master **Condominium** Certificate of title No. c-23. The Master Deed has been amended once before, on August 11, 2014.

The Amendment would add three sub-sections ((e), (f), and (g)) to § 8 of the Master Deed. The Amendment each subsection purports to regulate how unit owners may lease their **condominium** units.

General Laws c. 183A, § 8 requires a **condominium** master deed to be recorded, if the **condominium** is on registered land, "in the land registration office where the real estate is located...." The Regal **Condominium** is one such "registered land" **condominium**. Chapter 183A, § 1 further defines "master deed," as the term appears in c. 183A, to include "any amendment" to a master deed, and thus c. 183A, § 8 requires amendments to a master deed to be filed and registered in the same manner as the original master deed.

In May 2000, this Court issued a set of guidelines called, straightforwardly, Land Court Guidelines on Registered Land. The Introduction to the current Guidelines (issued in March 2009) states that they are intended "to assist

registry personnel and the bar in determining the suitability of documents presented for filing and affecting registered land."

Included in the current Guidelines is Guideline 57, titled "**Condominiums: Approval of Condominium Documents.**" Guideline 57 requires Land Court "approval" of several **condominium** instruments, including amendments to master deeds, before a registry district may accept the instrument for filing. "Approval is indicated by the dated signature of a Justice of the Land Court on the first page of the ... master deed amendment. Subsequent pages of the ... master deed amendment ordinarily bear the initials of the Justice who approved the document."

The word "approval" means different things to different people and in different contexts. See *135 Wells Avenue, LLC v. Housing Appeals Committee*, 478 Mass. 346, 353-55 (2017). In an effort to be crystal clear about what "approval" means under Guideline 57, the Guideline provides additional guidance. Little of that guidance expressly mentions amendments to master deeds, but its comments about approvals of master deeds are nonetheless instructive (emphasis in original):

Extent of Review. The Court reviews these documents for compliance with the elemental statutory requirements discussed below and will approve a master deed if it satisfies the limited express requirements of G.L. Chap. 183A ... necessary for the establishment of a **condominium** and the valid submission of the registered land to the provisions of Chapter 183A. The Court's review is limited to this purpose and, therefore, any approval granted by the Court simply means that the master deed satisfies the minimum statutory requirements of Chap. 183A and that, upon filing for registration, such master deed will create a validly formed **condominium** under G.L. c. 183A.

*2 *Limited nature of the Court's Approval.* Approval does *not* mean that the court considers any other provisions contained in the documents [and not reviewed as part of the review described above] to be lawful or enforceable, in whole or in part. The court does not address, by way of a few examples only, ... the governance ... of the **condominium** and the rights of unit owners among themselves; the rights and remedies of ... the organization of unit owners; the computation, assessment, or enforcement of liens or charges, including common expense charges; any rights, rules or regulations governing the use of units or common elements; etc. ...

Following these comments are requirements that are particular to different **condominium** documents. None of the requirements expressly pertains to master-deed amendments. But there is a list of requirements for master deeds. That list contains ten mandatory items, which this Order will call Items (a) through (j). It stands to reason that if the Court's review of an original master deed is limited to Items (a) through (j), its review of an amendment to a master deed should be limited to the same ten items. And the corollary principle is this: if a master-deed amendment doesn't change the existing master deed's Items (a) through (j), the "approval" process should end there.

That summarizes how this Court reviews master-deed amendments, with only one additional step: historically, the Court has required those offering amendments to provide proof that the amendment complies with the master deed's requirements for amendments, whatever they are. If the master deed calls for a majority of trustees to sign an amendment, the Court will check if that's happened. If the master deed calls for approval by a majority of unit owners, the Court will see if that's happened. If the master deed calls for the process of amendment to conclude within a set period, the Court will look for that too.

With these points in mind, the Court turns to the proposed Amendment. The Amendment doesn't purport to amend the original Master Deed's "statement to the effect that the owner ... proposes to create a **condominium**" (Item (a)). It doesn't change the Master Deed's "description of the land on which the building or buildings and improvements are located" (Item (b)). It doesn't change the Master Deed's "description of each building" (Item (c)). It doesn't change the Master Deed's "unit designation of each unit" and accompanying means of identifying each unit (Item (d)). It doesn't change the Master Deed's "description of the common areas and facilities and the proportionate interest of each unit in the common areas and facilities" (Item (e)). It doesn't change the Master Deed's "floor plans of the building or buildings" (Item (f)). It doesn't change the Master Deed's provisions concerning "the method by which the master deed may be amended" (Item (h)). It doesn't change the "name and mailing address of the ... association which has been formed and through which the unit owners will manage and regulate the **condominium**" (Item (i)). And as the proposed Amendment doesn't mention any "lease that has been submitted to the provisions of G.L. c. 183A," Item (j) has no bearing on the proposed Amendment.

The Amendment thus breezes by nine of the ten Items on Guideline 57's checklist. But there's a tenth checklist Item, Item (g). That one pertains to a master deed's "statement of the purposes for which the building and each of the units are intended and the restrictions, if any, as to their use." The Regal **Condominium's** current Master Deed already contains "Item (g)" provisions—in fact, § 8 of the Master Deed is titled "Restrictions on Use." The Amendment proposes to add further restrictions, and hence the Amendment requires this Court's specific "approval" under Item (g) of Guideline 57.

*3 But what does approval under Item (g) entail? Well, Item (g) comes from c. 183A, § 8(g). Section 8(g)'s purpose is merely to inform unit owners (and prospective unit owners) about the intentions of their fellow unit owners and the **condominium** association when it comes to potential restrictions on the use of **condominium** units. It's a notice provision, one that doesn't promote any general public-policy interest pertaining to restrictions besides buyer beware. See *KACT, Inc. v. Rubin*, 62 Mass. App. Ct. 689, 696 (2004).

Given Item (g)'s limited purposes, the Court may not review the Amendment for what it proposes to do, substantively, to Unit Owners. Instead, the Court must determine only if the proposed Amendment undermines the Master Deed's compliance with Item (g)'s notice requirements. The takeaway from the limited scope of the Court's review for compliance with Item (g) is this: while a **condominium** association's failure to include a use restriction in the **condominium's** master deed could prove fatal to someone's ability to enforce that restriction, the converse isn't necessarily true. A use restriction that violates, say, public policy likely is going to be unenforceable no matter how many times it appears in the master deed.

The Court holds that the Amendment provides adequate notice of the **Condominium's** leasing restrictions for purposes of Item (g) of the Guidelines. The Court thus turns to the question of whether the Association has adopted the Amendment in accordance with the Master Deed. Section 9 of the Master Deed provides that it "may be amended by an instrument in writing (a) signed by the owners of Units entitled to fifty percent (50%) or more of the undivided interests in the common areas and facilities, and (b) signed and acknowledged by a majority of the Trustees of said **Condominium** Trust or signed and acknowledged by owners of record of at least fifty percent (50%) of the Units." The **Condominium** has complied with these requirements. The Trustees have submitted instruments signed by over 50% of the Unit owners of

record (as evidenced by copies of their unit deeds), and a majority of the Trustees, assenting to the Amendment.

This Court hereby APPROVES, within the meaning of Guideline 57, the proposed Amendment to the Regal Condominium Master Deed. The Court will so endorse the Amendment and initial each page. The Court further ORDERS counsel for the Trustees to provide them with a copy of this Order.

SO ORDERED.

All Citations

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