COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

March 31, 2010

Kelly D. Gelof, Esquire
Tunnell & Raysor, P.A.
30 East Pine Street
P.O. Box 151
Georgetown, DE 19947-0151

Craig A. Karsnitz, Esquire
Young Conaway Stargatt & Taylor, LLP
110 West Pine Street
P.O. Box 594
Georgetown, DE 19947-0594

Re: Winters v. Sea Chase Condominium Association of Unit Owners, Inc.
C.A. No. 4821-VCN
Date Submitted: November 2, 2009

Dear Counsel:

This is a dispute about the composition of a condominium council. It has been tempting for the Court to reach out and impose a remedy that—at least in the Court's view—would have some chance of restoring an orderly and democratic governance structure. Resolution of internal condominium disputes, however, is best left to the condominium unit owners themselves. Prudence dictates that courts must move cautiously if they contemplate going beyond the question specifically framed for

them by the parties and their counsel. That principle guides the Court to conclude that it should resolve only those issues presented to it for decision and quash its inclination to invoke notions of equity to make subjective sense out of the broader circumstances before it.

This is the Court's decision after trial on a paper record.

* * *

Sea Chase Condominium ("Sea Chase") is near Rehoboth Beach, Delaware. There are sixty-nine units. The unit owners comprise Respondent Sea Chase Condominium Association of Unit Owners, Inc. (the "Association"). The affairs of Sea Chase are governed by a condominium council (the "Council"). Sea Chase's structures have a history of leaks. The Council investigated and decided to embark upon an ambitious program to solve the water intrusion problems. To that end, in December 2008, the Council decided to assess each unit the sum of $19,000 for the cost of repairs. On January 23, 2009, the Council sent, by United States Postal Service, First Class Mail, Postage Prepaid, an invoice to unit owners for the assessment. It would be fair to say that the assessment was not well-received.

Some unit owners decided to seek the removal of members of the Council.[1] In mid-March 2009, they called a special meeting for April 18, 2009; the annual meeting was also convened in June 2009. Although it appears that a majority of units represented at each meeting voted to remove the members of the Council, the Council refused to accept the will of the majority.

* * *

Petitioners are several owners of Sea Chase units and members of the Association. Their rights as such are governed primarily by the Amended and Restated Code of Regulations for Sea Chase Condominium (the "Code of Regulations").[2]

* * *

[1] The members of the Council were joined as Respondents on the eve of trial.
[2] Verified Compl., Ex. GG. The original version of the Code of Regulations appears at *id.*, Ex. C. In the Verified Complaint, ¶ 37, the Petitioners allege that the process for adopting the Amended and Restated Code of Regulations had failed to satisfy the requirements of Delaware's Unit Property Act, 25 *Del. C.* § 2201, et seq. They did not advance that contention at trial.

The Petitioners seek a declaration that either the April 18, 2009 membership vote or the June 27, 2009 membership vote (or both) operated to remove the members of the Council.[3]

Various unit owners called a special meeting for the purpose of removing the Council's members.[4] They scheduled the meeting for April 18, 2009. At that meeting, representatives of a sufficient number of units voted in favor of removing the members of the Council.

The question is whether the meeting was duly convened. Unless otherwise inconsistent with governing law, the Code of Regulations establishes the procedures that are to be followed. By Article II, Section 4 of the Code of Regulations:

> Special Meetings. It shall be the duty of the President to call a special meeting of the Association of Owners if so directed by Resolution of Council or upon a petition signed and presented to the Secretary of Unit Owners owning not less that 25% of the percentage interests of all Unit Owners.

For Sea Chase, either a resolution of the Council or a petition presented by the holders of at least 25% of the percentage interests of all unit owners will require the

[3] Pretrial Stip. § 4(b).
[4] Members of the Council may be removed "[a]t any regular or special meeting" by "a majority of the Unit Owners." Code of Regulations, Art. III, § 5.

President to schedule a special meeting; only the President may actually call a special meeting. There is no methodology by which unit owners themselves may directly schedule a special meeting. For this reason, the unit owners' efforts, however well-intentioned, failed to convene a valid special meeting. Without a validly convened meeting, any vote was ineffective. Thus, the vote at the April 18, 2009 meeting failed to cause the removal of any member of the Council.[5]

The Sea Chase annual meeting was duly convened on June 27, 2009. A motion was presented to remove the members of the Council. Forty-four votes were cast in favor of the resolution;[6] only thirty-five votes, a majority, were required. The success of the motion turns on which unit members could properly vote. By Article V, Section 4 of the Code of Regulations:

---

[5] The Petitioners chafe at the notion that the President, if she opposed the purposes of the special meeting, could delay or otherwise frustrate the intent of the unit members. First, the duty of the President under the specified circumstances to call a meeting is unambiguous and mandatory. Although no specific timeframe is set, a reasonable schedule will be imputed. Second, Petitioners complain about the text of the document which they, presumably, agreed to be bound by when they acquired their units at Sea Chase. It is not for the Court to rewrite that document.

In early February 2009, a petition for the holding of a special meeting was presented to the Secretary. More than a month after the petition had been delivered, the President had not called the special meeting. The "self-help" scheduling of the special meeting occurred, at least in part, because of the perceived delay in scheduling by the President. An effort by the Council in March to schedule a special meeting was defective, and no duly convened special meting has been held.

[6] First Aff. of Janice Bergin, et al. at ¶ 58.

> Voting Rights. Unit Owners with unpaid assessments, including late fees, or unpaid penalty fees or any unpaid associated costs incurred by the Association to correct delinquent fees will forfeit their voting rights until all unpaid assessments, fees, and costs are paid in full.

The owners of at least thirteen units had either failed to pay or failed to make acceptable arrangements to pay the $19,000 assessment. An assessment not paid within thirty days of the date specified is deemed delinquent and unpaid.[7] The invoice had specified that payments were due by May 1, 2009.[8] Thus, by the June 27, 2009 annual meeting, the unit owners who had not paid the assessment were in default. When those thirteen votes were not counted, a majority was not achieved.

The Petitioners argue that the invoice for the assessment was not properly delivered to the unit owners. An invoice not properly delivered, the argument goes, could not provide the basis for holding any unit owners in default for failure to pay the assessment timely. More specifically, the votes of those unit owners would count.

To assess the sufficiency of the delivery of the invoices for the assessment, a return to the Code of Regulations is required. It provides at Article XI, Section 1:

---

[7] Code of Regulations, Art. V, § 3.
[8] The invoice, although sent on January 23, 2009, reported that the official date of the assessment was January 31, 2009. It allowed ninety days for payment. Verified Compl. Ex. YY.

> Notices. All notices, demands, bills, statements, or other communications under this Code of Regulations shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid; . . .

The Petitioners argue that first class mail as used by the Council's representative for transmitting the invoices for the special assessment did not satisfy the mode of delivery specified by the Code of Regulations; they argue that either registered mail or certified mail was required. It is clear that either certified mail or registered mail would have sufficed. This provision, however, begs the question of what to make of the reference to "first class postage prepaid." In construing a document, meaning, where possible, should be ascribed to every term.[9] Ignoring words chosen by the drafter is to be avoided. Here, Petitioners cannot give meaning, through their interpretation, to the reference "first class postage prepaid." In short, the Code of Regulations in this context is ambiguous. With an ambiguous term in a document, one that can reasonably be read to yield more than one meaning, it is appropriate to

[9] *See, e.g.*, *Stockman v. Heartland Indus. Partners, L.P.*, 2009 WL 2096213, at *7 n.31 (Del. Ch. July 14, 2009) (discussing the requirement "that this Court attempt to give meaning to every term in an agreement").

look to extrinsic evidence to ascertain the intended meaning.[10] Here, Sea Chase has routinely used first class mail for all communications with its unit owners except for the formal delinquency notices.[11] Thus, course of conduct and practice demonstrate that the unit owners have a shared understanding that first class mail will suffice for such notice.[12]

Because (i) the invoice for the $19,000 assessment was duly transmitted in accordance with the Code of Regulations; and (ii) at least thirteen of the forty-four votes may not be counted in favor of the motion to remove the members of the Council because they were in default of that assessment, the motion at the June 27, 2009 meeting to remove members of the Council did not pass.[13]

---

[10] *See, e.g.*, *Cephalon, Inc. v. Johns Hopkins Univ.*, 2009 WL 4896227, at *8 (Del. Ch. Dec. 18, 2009) ("If a contract's language is ambiguous, extrinsic evidence should be admitted and considered, and the interpretation of the ambiguity becomes a question for the trier of fact.").

[11] *See AT&T v. Lillis*, 970 A.2d 166, 172 (Del. 2009) ("It is hornbook law that the contracting parties' course of conduct may be considered as evidence of their intended meaning of an ambiguous term.").

[12] Petitioners fairly point out that the $19,000 invoice for assessment may be the most important communication received by a unit owner during the history of Sea Chase. That, however, does not refute the pattern and practice of Sea Chase with respect to delivery of its communications.

[13] Petitioners point out that the Council allowed some unit members to vote who only had committed to pay, or partially paid, the assessment. That the Council may have relaxed the requirements in order to vote for some unit members does not eliminate the standard of the Code of Regulations. The Court need not consider whether the accommodation used by the Council to allow voting by some of the unit owners who had not paid the assessment was proper. Given the

* * *

The Petitioners also seek a declaration that Jeff Cragg, a member of the Council, was improperly appointed to that post, and thus, is really not a member.[14] By Article III, Section 1 of the Code of Regulations, the Council consists of four members. In late winter 2009, it became obvious that one member, Ralph Bradley, was about to resign. Jeff Cragg was named at a meeting to replace the soon-to-be-departed member.

Although the Council may fill a vacancy,[15] Petitioners argue that the Council's "appointment" of Cragg was ineffective because at the time there was no vacancy. In other words, the Council may fill a vacancy only if there first is a vacancy.

The evidence before the Court demonstrates that Cragg was "brought on board" before there was a vacancy. If this were the end of the story, the Petitioners might prevail. The evidence also shows, however, that "[a]fter Mr. Bradley's resignation . . . , the Board appointed [Cragg] to fill the vacancy" caused by Bradley's

---

size of the assessment and the fact that at the time of the June 2009 meeting only a few members had paid in full, one can understand why the Council was seeking some flexibility. Invalidating the votes of those unit owners who had not paid the assessment, but were allowed to vote anyway, would not help the Petitioners' cause.

[14] Pretrial Stip. § 3(e) and § 4(a).

[15] Code of Regulations, Art. III, § 6.

departure.[16] Petitioners may be skeptical and the minutes may be lacking in support, but this is a sufficient evidentiary basis by which the Court may conclude that Cragg was duly appointed following the creation of a vacancy as the result of Bradley's resignation. This is so even if Cragg had become informally involved with Sea Chase's management before his formal appointment to the Council. Simply put, there was a vacancy; it was duly filled with Cragg. Accordingly, Cragg's appointment to the Council cannot be set aside.

* * *

For the foregoing reasons, the Petitioners have failed to demonstrate an entitlement to any of the relief requested in the Pretrial Stipulation. Judgment accordingly is entered in favor of the Respondents and against the Petitioners.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

[16] First Aff. of Janice Bergin, et al. at ¶ 47.