STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

[FILED: October 3, 2019]

CHARLES A. ANTON and TAMI D. ANTON, as Trustees of the Victoria Avenue Realty Trust, ***Plaintiffs,***	:	
v.	:	**C.A. No. NC-2017-0493**
PHILIPPE L. HOUZE and MARIE HOUZE, ***Defendants.***	:	

DECISION

VAN COUYGHEN, J. This matter is before this Court for decision following a non-jury trial on a complaint by Charles A. Anton and Tami D. Anton (the Plaintiffs or Antons) against Philippe L. Houze and Marie Houze (the Defendants or Houzes). Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13, 8-2-14, 9-30-1, and Rule 65 of the Rhode Island Superior Court Rules of Civil Procedure.

I

Facts

This case involves a dispute between the Unit Owners of the D & J Condominium (the Condominium) concerning the Condominium's governance scheme and the approval required before altering the Condominium's Units and Common Elements. The Condominium is located at 9 Victoria Avenue, Newport, Rhode Island and is comprised of two units: Unit 9 and Unit 9A. The organization and operation of the Condominium is governed by the Rhode Island Condominium Act, G.L. 1956 §§ 34-36.1-1 *et seq.* (the Act), as well as the Condominium's Declaration, By-Laws, and Rules and Regulations. (collectively, the Condominium Documents). The Condominium is a Rhode Island unincorporated association organized under the Act and established by the original property owners, Dr. Richard D. Stengel and JoAnn R. Stengel (the

Stengels), in 1990. The Stengels converted their property into a Condominium in order for Dr. Stengel's father, Charles Stengel, to live in Unit 9A. In May 1997, Charles Stengel transferred ownership of Unit 9A to the Stengels. (Defs.' Ex. O.)

The Antons purchased Unit 9A from the Stengels and have used it as a secondary residence since 2006. The title to Unit 9A is held by their trust, the Victoria Avenue Trust. Trial Tr. (Tr.) 16:11-16, Oct. 2, 2018; Pls.' Exs. 8 & 12. The Houzes purchased Unit 9 from the Stengels on May 24, 2017. (Pls.' Ex. 21.) Disputes regarding the management and renovation of the Condominium have resulted in this litigation.

Plaintiffs' first witness was Mr. Charles Anton. Mr. Anton testified that he and his wife first leased Unit 9A from the Stengels during the summer of 2005. Tr. 6:23-7:2, Oct. 2, 2018. During that summer, Mr. Anton testified that both he and his wife became interested in purchasing Unit 9A from the Stengels. *Id.* at 7:3-7. In early 2006, the Antons broached purchasing Unit 9A with the Stengels. *Id.* at 7:3-14. Although the Stengels previously had no intention to sell Unit 9A, they took their long-standing relationship with the Antons into consideration and ultimately agreed to sell. *Id.* at 7:3-21. Dr. Stengel then explained to the Antons how the Condominium operated, providing copies of the Condominium Documents for their review. *Id.* at 7:22-8:5; Pls.' Ex. 1.

The Condominium Documents were originally drafted to give Dr. Stengel, the Owner of Unit 9, control over the Condominium Association. Dr. Stengel, as the Owner of Unit 9, possessed 67% of the Allocated Interest while the owner of Unit 9A held the remaining 33% of the Allocated Interest.[1] Originally, the Allocated Interest applied to various voting rights of the Unit Owners as

[1] Section 6.1 of the Declaration states the Units' Allocated Interests were "determined on the basis of the respective fair market values of each Unit[.]" (Pls.' Ex. 1.)

well as the apportionment of common expenses related to the management of the Condominium. Prior to purchase the Antons sought, through counsel, to amend the Condominium's Declaration to modify their rights as the Owners of Unit 9A.[2] Tr. 9:19-25, Oct. 2, 2018. Mr. Anton testified that their overarching goal in amending the Declaration was to establish that the Condominium was equally governed by both Units, providing each Unit an equal say in managing the Condominium's affairs. Tr. 10:22-11:4, Oct. 2, 2018. This was so neither Owner could unilaterally make changes to the Condominium without the other Owner's approval—irrespective of their Unit's Allocated Interest. Tr. 10:22-11:4, Oct. 2, 2018. Mr. Anton understood and intended that the First Amendment to the Declaration accomplished this principally through two changes. First, that the Board of Directors consisted of two members, one from Unit 9 and one from Unit 9A. *Id.* at 11:5-10. Second, to be "crystal clear," that the approval from one hundred (100%) percent of the Unit Owners would be required before making changes to the Condominium, including the Common Elements. Tr. 11:10-13, Oct. 2, 2018. The Antons instructed their lawyers to draft the corresponding amendment to the Condominium Declaration. Tr. 11:14-18; Pls.' Exs. 30, 32, 33). Mr. Anton testified that the Stengels had no objection to the substance of the proposed amendment.

On March 24, 2006, prior to the conveyance of Unit 9A to the Antons, the Stengels executed and recorded the First Amendment to the Declaration. (Pls.' Ex. 2.) In fact, the Antons' Purchase and Sale Agreement for Unit 9A was contingent upon the execution of the First Amendment. (Pls.' Exs. 30 & 32.) The Antons purchased Unit 9A on March 28, 2006. (Pls.' Ex.

[2] Mr. Anton testified that he was also a lawyer.

8). On August 31, 2015, for estate reasons, the Antons transferred title to Unit 9A to the Victoria Avenue Trust and took title in their capacity as trustees Tr. 16:11-16; Pls.' Ex. 12.[3]

The First Amendment to the Declaration amended, amongst other things, the definition of "Board of Directors" in § 1.5 of the Declaration.[4] As originally drafted, § 1.5 of the Declaration defined the term "Board of Directors" as follows:

> Board of Directors' means those persons elected from time to time as members of the Executive Board of the Association pursuant to the By-Laws and as defined in the Act, and their successors in office. (Pls.' Ex. 1, § 1.5 of the Declaration.)

Section 1.5 of the Amended Declaration's definition now states:

> 1.5 'Board of Directors' means those persons who are the owners of Units 9 and 9A and who shall also be the Executive Board of the Association. Notwithstanding any other provision in this Declaration, Rules and Regulations and the By-Laws to the contrary (including without limitation Section 3.2 of the By-Laws), the Board of Directors and Executive Board of the Association shall at all times be comprised of those persons who are the owners of Units 9 and 9A. (Pls.' Ex. 2, § 1.5 of the Amended Declaration.)

The First Amendment also changed the percentage of Unit Owner approval required—from 67% Unit Owner approval to 100% Unit Owner approval—in order to make various changes to the Condominium or to the Condominium Documents. Section 8.1(i) of the Declaration originally stated:

> 8.1(i) In addition to all other requirements of this Declaration or the By-Laws, the prior written consent of First Mortgagees holding mortgages on Units entitled to at least fifty-one (51%) percent of the Common Areas and Facilities, and Unit Owners entitled to at least sixty-seven (67%) percent of the Common Areas and Facilities of

[3] Unit 9A's deed is recorded in Book 2541, Page 1 of the Land Evidence Records of the City of Newport.

[4] The First Amendment also amended: § 2.3 of the Declaration's description of the "Condominium Units"; the Unit Owners' rights with respect to leasing out their Units; the definition and rights with respect to the Unit Owners' "Right of First Refusal"; Exhibit B of the Declaration's description of Unit 9; and Exhibit C of the Declaration. (Pls.' Ex. 2.)

> the Condominium shall be required for the following: . . . (Pls.' Ex. 1.)

The First Amendment amended § 8.1(i) of the Declaration and added an additional clause, which now states:

> 8.1(i) In addition to all other requirements of this Declaration or the By-Laws, the prior written consent of . . . Unit Owners entitled to ***one hundred (100% percent) of the Common Areas and Facilities***[5] of the Condominium shall be required for the following:
>
> . . . .
>
> (v) any increase in the Annual Assessment by more than ten (10%) present in any one calendar year period or any additions, alterations, or improvements to the Common Elements costing in excess of One Thousand ($1,000.00) Dollars. (Pls.' Ex. 2) (emphasis added).[6]

Mr. Anton testified these changes were to protect their investment in Unit 9A, preventing the Owner of Unit 9 from making unilateral changes to the Common Elements of the Condominium without their consent. Tr. 14:18-15:3, Oct. 2, 2018.

After the Antons purchased Unit 9A, the Antons and the Stengels ran their Condominium informally. Tr. 18:20-22. Dr. Stengel would discuss the condominium affairs with Mr. Anton when they would meet or contact him by phone or email if something came up in the meantime. Tr. 18:23-19:3. The two would successfully resolve any disagreements that would arise between them. Tr. 19:4-9. The Condominium would not otherwise hold formal Condominium Association meetings, Board of Directors meetings, or set a Condominium budget. Tr. 19:10-15. Instead, Dr. Stengel essentially managed the Condominium and kept track of the expenses, sending invoices

[5] As referenced in this opinion, "Common Elements" and "Common Areas and Facilities" are considered to have the same meaning and are used interchangeably.

[6] For alterations to the Condominium's Common Elements that are not "in excess of One Thousand ($1,000.00) Dollars[,]" § 8.6 of the By-Laws requires the "prior written consent" of the Board of Directors for a Unit Owner to make "any structural addition, alteration, or improvement in or to his Unit, or the Common Elements[.]" (Pls.' Ex. 1.)

or summaries of the expenses to the Antons twice a year. Tr. 19:16-20:1; Pls.' Ex. 23. Dr. Stengel's invoices show each Owner paid an amount of the Condominium's expenses proportionate to their Unit's Allocated Interest in the Common Elements—sixty-seven (67%) percent for the Stengels and thirty-three (33%) percent for the Antons. Tr. 20:4-20, Oct. 2, 2018.

The Antons' and the Stengels' informal management of the Condominium continued until Mrs. Stengel fell and broke her hip in late 2016, making it difficult for her to navigate Unit 9's stairs. At that time, the Stengels informed the Antons of their intention to sell Unit 9. Tr. 23:21-24:1. Mr. Anton first learned about the Houzes as the prospective purchasers of Unit 9 in late December 2016 through Dr. Stengel's broker. Tr. 26:4-10. On December 30, 2016, shortly after being first notified by the broker, Mr. Anton emailed her to ask that she be fully transparent with the prospective purchasers about the contents of the Condominium Documents and what they require of the Unit Owners. Tr. 26:11-21; Pls.' Ex. 34. Mr. Anton further requested that Dr. Stengel's broker confirm that she had advised the buyers of the protections and restrictions of the Condominium contained in the Condominium Documents. Tr. 27:6-22; Pls.' Ex. 34. On January 6, 2017, Mr. Houze signed a Receipt acknowledging that he received the Condominium Documents. (Pls.' Ex. 18.)[7]

On February 4, 2017, the Antons first met the Houzes in Boston, Massachusetts to discuss the sale.[8] Tr. 28:5-10. It was during this meeting Mr. Houze first informed the Antons of his intention to renovate the interior and exterior of the Condominium—the estimated costs of which

[7] The broker, Kate Kirby Greenman, also signed the Receipt for Condominium Documents on January 16, 2017. (Pls.' Ex. 18.)

[8] The Houzes were originally set to close on the purchase of Unit 9 on January 27, 2017, but the closing was delayed by the Antons' attempt to exercise their Right of First Refusal. The Antons and the Houzes had met primarily to discuss the Right of First Refusal, but the right had expired and the issue was subsequently resolved. The Right of First Refusal is not otherwise relevant to the issues of this case.

would exceed $300,000. Tr. 28:11-19. In response, the Antons informed Mr. Houze that—pursuant to the Condominium Documents—he would first need their approval but they would be open to discussing the renovations after reviewing the plans. Tr. 28:20-23. Mr. Anton testified that in light of this information regarding the Condominium, Mr. Houze made no further inquiry into the governance matter or otherwise initiated a conversation about it. Tr. 22:16-23:5, Oct. 2, 2018. On February 7, 2017, Mr. Anton followed up with an email to further explain the relevant provisions of the Condominium Documents regarding the management of the Condominium, but Mr. Houze did not respond. Tr. 28:24-29:2, Oct. 2, 2018; Tr. 22:1-4, Oct. 2, 2018 (Afternoon session) (Pls.' Ex. 36.) Receiving no response to his email, Mr. Anton called Mr. Houze who answered and said he did not want to talk to him. Tr. 28:24-29:2, Oct. 2, 2018.

The Antons, the Stengels, and the Houzes all met in March of 2017 to further discuss the sale. At this meeting, Mr. Anton testified he and Dr. Stengel again informed the Houzes they needed the other Unit Owner's approval to conduct any exterior renovations. Tr. 29:18-30:3, Oct. 2, 2018. On March 31, 2017, at Mr. Anton's direction, his attorney sent an email to Mr. Houze's then lawyer, Mr. Parnagian, regarding the governance issue. *Id.* at 30:4-22; Pls.' Ex. 38. Mr. Parnagian responded stating that "for the time being we will just agree to disagree on the overall governance scheme of the existing documents. The fact remains that the governance scheme (whatever that may be) was and is still in existence long before my clients executed a Purchase and Sale Agreement on the unit." Tr. 5:10-6:7, Oct. 2, 2018 (Afternoon session); Pls.' Ex. 39. It is uncontested that the Houzes were aware of the Antons' position regarding the Condominium Documents as they related to the Condominium's governance scheme prior to their purchase of Unit 9.

The Houzes purchased Unit 9 of the Condominium on May 24, 2017. Shortly after Unit 9's closing, the Antons sent an email welcoming the Houzes to the Condominium, informing them about the Condominium's landscaping service and expressing their interest to review the Houzes' renovation plans—stating they presumed the Houzes would not start their renovations beforehand. Tr. 32:21-25, Oct. 2, 2018; Pls.' Ex. 40. Additionally, at the Antons' request, Attorney Rachelle Green sent a letter to Mr. Parnagian regarding the approval the Houzes were required to obtain before proceeding with their renovations—expressing the Antons' concern that the Houzes may ignore these requirements. Tr. 33:8-34:7, Oct. 2, 2018; Pls.' Ex. 41. By letter dated June 8, 2017, Mr. Parnagian wrote back to Ms. Green, claiming the Antons had been aggressive and noncompliant with various provisions of the Condominium Documents, along with other grievances the Houzes claimed to have had with the Antons' conduct. (Pls.' Ex. 42.) On June 15, 2017, after reading Mr. Parnagian's June 8 letter, the Antons wrote a letter directly to the Houzes, in part to dispute the assertions made in the letter. (Pls.' Ex. 43.) Furthermore, having noticed that the Houzes already began with their renovations to Unit 9's rear deck without the approval from the Board of Directors, the Antons requested the Houzes bring a copy of the plans for the deck to their next meeting. (Pls.' Ex. 43.) The Antons further expressed their willingness to review the planned renovations and also their concern over maintaining their privacy and the Condominium's architectural style. (Pls.' Ex. 43.)

Mr. Anton testified that his wife frequently reached out to Mr. Houze, in person and by email, to discuss landscaping and other maintenance issues with the Condominium, and repeatedly requested copies of the Houzes' planned renovations for review. Tr. 34:1-7, Oct. 2, 2018. Mr. Anton further testified that both he and his wife assumed the Houzes would ultimately provide them with their renovation plans for review before beginning any of the work. Tr. 34:8-13. This

expectation changed, however, when the Houzes began with their interior renovations without first consulting them, although the Antons continued insisting that their consent was needed due to the structural alterations being made to the Unit. Tr. 34:14-19, Oct. 2, 2018; Pls.' Exs. 36 & 41.[9]

Mr. Anton recalled Mr. Houze requesting their consent only once, in October of 2017, when he provided Mrs. Anton with a list of exterior renovations for which he wanted approval. Mrs. Anton requested the corresponding plans before consenting to the renovations, but Mr. Houze did not provide them. Tr. 34:20-35:5. After not receiving this consent from Mrs. Anton because he failed to provide the plans, Mr. Houze represented to the Newport Building Department, in his building permit application, that the Condominium's Board of Directors had approved of the exterior renovations because the Houzes of Unit 9 voted in favor "with 67% of the votes." Tr. 34:20-35:15; Pls.' Exs. 62 & 82. Mr. Houze took the position that Unit 9's Allocated Interest gave him the authority to act on behalf of the Board of Directors, despite clear language to the contrary in the First Amended Declaration and the Condominium By-Laws. Mr. Anton testified he believed the Houzes' exterior renovations were to the Condominium's Common Elements and, therefore, the Houzes still needed the Antons' prior written consent as Unit Owners pursuant to § 8.1(i)(v) of the Amended Declaration. Tr. 35:1-15. On November 27, 2017, the Newport Building Inspector informed Mr. Houze that his building permit was going to be voided because Mr. Houze

[9] In his February 7, 2017 email to Mr. Houze, Mr. Anton attaches § 8.6 of the By-Laws, prohibiting Unit Owners from making "any structural addition, alteration, or improvement in or to his Unit, or the Common Elements, without the prior written consent thereto of the Board of Directors." (Pls.' Ex. 36.) Furthermore, in Attorney Rachelle Green's May 25, 2017 Letter to the Houzes' attorney, she cites § 8.6 of the By-Laws, requiring the written consent of the Board of Directors for any "structural . . . alteration, or improvement." (Pls.' Ex. 41.)

had failed to submit the proper plans for some of the work he intended to perform. (Pls.' Exs. 61 and 82, at 12.)[10]

Filing their original Complaint shortly thereafter, on December 5, 2017, Mr. Anton testified he and his wife brought the instant litigation to prevent the Houzes from taking further unilateral action without their consent and to enforce the Condominium Documents' requirement for 100% of Unit Owner approval for alterations to the Common Elements. Tr. 35:12-36:2, Oct. 2, 2018.

Mrs. Anton was the second witness to testify. She also testified as to their purchase of Unit 9A and to her interactions with Mr. Houze. Just like Mr. Anton, Mrs. Anton testified that the purpose of the First Amendment was to make sure they had equal say in the management of the Condominium as the owners of Unit 9A—irrespective of their Unit's share of the Allocated Interest. Tr. 65:3-66:5, Oct. 2, 2018 (Afternoon session.) Mrs. Anton understood the First Amendment achieved this through two alterations to the Declaration. First, she understood that the Board of Directors would consist of two members with equal voting power. *Id.* at 65:12-19. Second, Mrs. Anton understood that approval from all the Unit Owners must be obtained in order to make changes to the Condominium or the Condominium Documents, in order to assure there was equal control between the two Units. *Id.* at 65:19-66:5.

Mrs. Anton testified that while the Stengels still lived in Unit 9, she and her husband would always ask Dr. Stengel for his approval with respect to anything pertaining to the Condominium, and he would do the same for them. Tr. 66:6-18. Dr. Stengel regularly apprised the Antons of any

[10] Through the Newport Building Department's webpage, the Newport Building Inspector explained that the building permit had only been issued because of Mr. Houze's "inference to the clerk that the permit had been approved for issuance misled her into processing it." (Pls.' Ex. 82, at 12.) The Building Inspector further directed Mr. Houze to "[s]ubmit appropriate drawings for the portico addition, dormer framing[] and interior layout as required prior to re-applying for the permit." *Id.* In response, Mr. Houze claims he never told the clerk that the permit had been approved but only that the Condominium's Board of Directors had approved of it. *Id.*

property services to be performed and would involve them in any decision making. Tr. 67:2-16. When first informed of the Antons' prospective renovations to Unit 9A around 2014, the Stengels supported their efforts. Tr. 68:9-19. In drawing up their renovations, Mrs. Anton instructed her architect to preserve the Condominium's exterior appearance and to be considerate of the Stengels during this process. Tr. 68:20-69:9, Oct. 2, 2018 (Afternoon session.) Before proceeding with their plans, the Antons presented their proposed plans to the Stengels and asked for their input. Tr. 70:1-15; Pls.' Exs. 10 and 11. Mrs. Anton also told their contractor, Peter Raposa, to continually check with the Stengels during construction for any concerns they may have. Tr. 70:16-71:14.

Mrs. Anton agreed with her husband's recollection of their meetings with the Houzes in February and March of 2017. Tr. 71:25-72:14. After not having heard directly back from the Houzes to either their welcoming email in late May or their June 15 letter, Mrs. Anton testified she visited Unit 9 over the July 4th weekend to talk with Mr. Houze. Tr. 76:21-77:15. At that time, Mr. Houze expressed his interest in serving as the Condominium's property manager. Tr. 77:16-23. Mrs. Anton testified she was fine with him acting as the property manager, but emphasized he would still need to check with her as a member of the board of representatives on all matters—and further mentioned that she looked forward to reviewing their renovation plans. Tr. 77:16-78:3. On July 17, 2017, Mrs. Anton followed up this conversation with an email to Mr. Houze, requesting to meet as the Board of Directors to set a common expense budget for the year along with other outstanding issues. Tr. 78:13-23; Pls.' Ex. 44. Mr. Houze did not respond to her email. Tr. 79:24-80:1.

Nevertheless, the Houzes proceeded with renovations in late July 2017—without receiving the Antons' approval—in part by removing privacy fencing, removing a chimney, and beginning their interior renovations on Unit 9. Tr. 80:2-8. Mrs. Anton found the Houzes' building permit

application for this work online and noticed that it included work for interior structural renovations—something she believed required the Board of Directors' approval. Tr. 80:22-81:15; Pls.' Ex. 81. Mrs. Anton also testified she noticed that these renovations would add square footage to Unit 9 and this required the Unit Owners' unanimous approval.[11] Tr. 83:6-16, Oct. 2, 2018 (Afternoon session); Tr. 2:17-3:6, Oct. 3, 2018. Mrs. Anton testified she also believed that the Houzes' exterior alterations—including the removal of a chimney, the privacy fencing, and the awning from the rear deck—required their approval because they were part of the Condominium's Common Elements. Tr. 3:7-14, Oct. 3, 2018. After talking with the Newport Building Inspector, the Antons learned the Houzes were removing Unit 9's bearing walls and installing steel beams in their place. Tr. 3:15-19, Oct. 3, 2018. Mrs. Anton testified she and her husband were concerned about the interior renovations' effect on the Condominium's structural integrity, but the Building Inspector reassured them he would make sure it was done in compliance with the building code. Tr. 3:15-4:6, Oct. 3, 2018. Although the Antons were ultimately disappointed that the Houzes proceeded without their approval, or providing their plans for review, Mrs. Anton testified they decided not to take legal action at that time because they still wanted to try and have an amicable relationship with the Houzes. *Id.*

While choosing not to take legal action, Mrs. Anton testified she sought to address these issues by holding a Board of Directors meeting. Tr. 4:7-19, Oct. 3, 2018. On August 8, 2017, Mrs. Anton emailed Mr. Houze with a request to hold a formal meeting as a Board of Directors on August 18, 2017 at 10 a.m. *Id.* at 4:7-25:14; Pls.' Ex. 46. Mr. Houze did not respond until the morning of the meeting to inform Mrs. Anton that he was unable to make the meeting. *Id.* at 6:10-

[11] During her testimony, when asked to mark what she found in the building permit application which suggested to her that Mr. Houze planned to add square footage to Unit 9, Mrs. Anton marked a schematic found on Page 22 of Exhibit 81. Tr. 83:6-16; Pls.' Exs. 81-022 and 81-023.

17; Pls.' Ex. 46. On September 5, 2017, Mrs. Anton emailed Mr. Houze again, requesting he provide alternate dates in order to arrange a meeting, but Mr. Houze never responded. Tr. 7:2-16, Oct. 3, 2018; Pls.' Ex. 47. Mrs. Anton testified that the Houzes' work on Unit 9's interior renovations was ongoing during this time. *Id.* at Tr. 7:24-8:3. On October 23, 2017, Mr. Houze emailed Mrs. Anton, requesting to meet on October 25 to discuss some planned exterior renovations which he had attached a list of to the email. Tr. 8:3-20; Pls.' Ex. 48.

Mrs. Anton attended the October 25th meeting, stating she was there in her capacity as the Board representative of Unit 9A. Tr. 10:3-5. Mrs. Anton recalled that Mr. Houze stated he was only meeting with her because the Newport Building Inspector would not approve of the building permit for the exterior renovations without the approval of the other condominium owners. Tr. 10:5-11. Upon Mr. Houze's request for Mrs. Anton's approval, she asked to review the plans beforehand. Tr. 10:11-16. Although Mr. Houze had the architectural plans, he told her that she did not need them and refused to provide the plans or any further information about the exterior renovations listed, so the meeting ended without Mrs. Anton providing her approval. Tr. 10:18-11:15. On November 10, 2017, Mrs. Anton emailed Mr. Houze to request the architectural plans for the exterior renovations again, but she received no response. Tr. 12:2-9; Pls.' Ex. 49. On November 18, 2017, Mrs. Anton emailed Mr. Houze again to inform him that, responding before the end of the Board of Director's thirty-day review period pursuant to § 8.6 of the By-Laws, his request for the proposed exterior renovations was denied because she had not yet seen the corresponding plans for review. Tr. 13:17-14:9; Pls.' Ex. 50.[12]

[12] Notably, Mrs. Anton would also address the Houzes' unilateral changes. In her November 10, 2017 email requesting the architectural plans, Mrs. Anton informed Mr. Houze that he should not have removed the holly bushes without her approval. Tr. 12:9-15; Pls.' Ex. 49. In her November 18, 2017 rejection email, in response to cutting out a large opening for a picture window, their plans to add square footage to Unit 9, among other alterations, Mrs. Anton again informed Mr.

Subsequently Mrs. Anton learned, as referenced by Mr. Anton earlier, that Mr. Houze had submitted another building permit application to the Newport Building Inspector, claiming that the Board of Directors had approved of the list of proposed exterior renovations. Tr. 15:1-14; Pls.' Ex. 82. Attached to the application, Mr. Houze wrote a letter to the Building Inspector which stated:

> Following a Board meeting held on October 25th 2017 the association was presented with a schedule of exterior renovations for Unit 9.
>
> Philippe & Marie Houze of Unit 9 with 67% of the votes approved the entire list of exterior renovations submitted at the meeting. Vote for list of exterior renovations attached to this document.
>
> Tami Anton and Charles Anton representing Unit 9A with 33% of the votes informed us of their refusal in an email sent by Tami Anton dated 11/18/2017.
>
> With 67% of the votes the renovation for the exterior of Unit 9 have therefore been approved by the Board of Directors. (Pls.' Ex. 82.)[13]

Mrs. Anton testified she learned that the permit was initially given but then voided until more detailed plans for the renovations were provided. Tr. 17:14-18:5. Mrs. Anton testified that she and Mr. Anton filed suit shortly thereafter because Mr. Houze continued with the renovations despite their repeated objections and efforts to inform him of what was required under the Condominium Documents. Tr. 19:1-13. Mrs. Anton testified she and Mr. Anton are seeking to protect their investment in Unit 9A by having the provisions of the First Amendment to the Declaration and the Condominium Documents as a whole enforced, as it was negotiated in anticipation of this type of situation. Tr. 25:14-26: 3.

Houze that such actions required the approval of the Board as well as 100% Unit Owner approval. Tr. 13:17-14:24; Pls.' Ex. 50.

[13] Mrs. Anton testified the attached list of the exterior renovations was the same list Mr. Houze emailed to her ahead of their October 25th meeting. Tr. 17:3-10, Oct. 3, 2018; Pls.' Ex. 48.

The Plaintiffs also presented the deposition testimony of Mr. Brian Bardorf, an attorney and friend of the Stengels, which was read into the record, explaining how the Condominium came to fruition. Mr. Bardorf, an attorney regularly involved in condominium law that had represented the Stengels in previous real estate transactions, drafted the original Condominium Documents. Tr. 54:5-22, Oct. 3, 2018. Mr. Bardorf provided historical information regarding the inception of the Condominium. He testified that around 1990, Dr. Stengel approached Mr. Bardorf with questions about relocating Dr. Stengel's elderly father, Charles, to Newport. Tr. 54:7-15. Mr. Bardorf recommended building a second home adjacent to the Stengels and turning 9 Victoria into a two-unit condominium. Tr. 54:12-22, Oct. 3, 2018. Before converting the property into the Condominium, Charles Stengel paid for the construction of the addition that would become Unit 9A and his personal residence. Tr. 75:7-20, Oct. 3, 2018.

Mr. Bardorf drafted the original Condominium Documents and recorded them in the Land Evidence Records of the City of Newport. Tr. 55:3-20, Oct. 3, 2018; Pls.' Ex. 1.[14] Mr. Bardorf explained that he created the two-member Board of Directors because he believed the Condominium Act allowed for one representative for each Unit. *Id.* at 56:8-21. Considering the Condominium only had three people between its two Units, Mr. Bardorf testified he saw having two members as practical. *Id*. Mr. Bardorf testified that he included an arbitration provision in § 8.1 of the By-Laws because of the "close-knit situation" between the Unit Owners of this Condominium, and to find a "relatively informal solution" for any problem. Tr. 56:22-57:18.[15] To

[14] Mr. Bardorf testified that he prepared the Condominium Documents under the new Rhode Island Condominium Act by referencing the Uniform Condominium Act and other templates of other Rhode Island condominiums. Tr. 71:1-73:13, Oct. 3, 2018.

[15] Section 8.11 of the By-Laws provides: "Any and all disputes regarding the operation of the Condominium which cannot be resolved by agreement of the owners of the two units comprising this Condominium, shall be resolved by arbitration . . . ." Pls.' Ex. 1.

Mr. Bardorf's knowledge, the Stengels did not have any difficulties with operating the Condominium while Charles Stengel lived in Unit 9A. Tr. 57:19-23.

In 2006, Mr. Bardorf was again involved with the D & J Condominium when the Antons sought to purchase Unit 9A. Mr. Bardorf recalled that the Antons wanted to keep the Units' Allocated Interest the same as it related to shared expenses, agreeing with the Stengels that the 67-33 split between them "was a fair representation of values," but the Antons were concerned about the effect this minority share of the Allocated Interest would have on their control or voting power in significant matters of the Condominium. Tr. 60:1-19, Oct. 3, 2018. Thereafter, Mr. Bardorf spoke with the Antons' lawyers about the Condominium Documents and the proposed changes sought. *Id.* at 59:1-18. Mr. Bardorf learned from his communications with the Antons' lawyers that they sought an amendment to the Declaration "to clarify" that the Board of Directors of the Condominium would "equally represent" both units. Tr. 80:21-81:16, Oct. 3, 2018 .

With respect to the First Amendment's addition of § 8.1(i)(v) of the Declaration, requiring one hundred percent (100%) approval of the Unit Owners to do anything over $ 1,000 to the Common Elements, Mr. Bardorf testified that the purpose for this was so one Unit Owner could not proceed without the other Owner's approval. Tr. 83:10-21.[16] Mr. Bardorf testified that the language in the First Amendment amending § 8.1(i) of the Declaration was added for the purposes of requiring the Unit Owners' unanimous approval before proceeding with such changes, so the Condominium would remain the same if there was no consensus between them. Tr. 60:1-19. Mr. Bardorf further testified that Article VIII of the Declaration, entitled "FHLMC/FNMA PROVISIONS," also contained boilerplate language he would add to all Declarations in order to

[16] Mr. Bardorf further testified: "the whole idea was [to] keep things the same and if you're going to change it, by colors of paint and gardening or planting of trees or anything like that, you get the consent of all parties." Tr. 60:15-22, Oct. 3, 2018.

comply with Fannie Mae and Freddie Mac requirements, enabling the buyers of units to acquire a mortgage. Tr. 85:12-86:1.

During the discussions regarding the First Amendment to the Declaration, Mr. Bardorf testified that Dr. Stengel was involved in the process and had no problem with the Antons' requests. Tr. 61:8-20, Oct. 3, 2018. In addition to regular phone conversations during these discussions, Mr. Bardorf and the Antons' lawyers exchanged drafts of the transaction documents for the prospective purchase of Unit 9A, including drafts of the Purchase and Sale Agreement as well as drafts of the First Amendment to the Declaration. Tr. 64:25-65:6, Oct. 3, 2018. The First Amendment to the Declaration was executed on March 24, 2006 and recorded in the Land Evidence Records in the City of Newport prior to the sale of Unit 9A to the Antons. Tr. 67:3-10, Oct. 3, 2018; Pls.' Ex. 2.

The Plaintiffs also called Edmund A. Allcock who was an attorney with a practice that centers around condominium law in Massachusetts, New Hampshire, and Rhode Island. Mr. Allcock was qualified as an expert witness on condominium law and testified regarding the Rhode Island Condominium Act and the Condominium Documents at issue. Mr. Allcock opined that the Condominium Documents provided for a two-member Board of Directors with one member appointed by each Unit Owner. Tr. 108:16-20, Oct. 4, 2018. Mr. Allcock further interpreted this to mean that each member had an equal vote and that neither member could be removed. Tr. 108: 21-109:7; 162:20-25, Oct. 4, 2018. Mr. Allcock testified that most two-unit condominiums would typically provide for equal board membership and governance between the units. Tr. 123:12-124: 1, Oct. 4, 2018. Mr. Allcock also opined that the Unit Owners have the right to enforce the provisions found in Article VIII of the Declaration. Tr. 116:23-117:6, Oct. 4, 2018.

The Antons' next witness was Peter Raposa. Mr. Raposa, a civil engineer for over forty years, was qualified as an expert in construction. Mr. Raposa testified as to what constitutes the structural components of a building in reference to the Declaration's definition of a "Unit." Pls.' Ex. 1, Declaration § 1.24.) Mr. Raposa is the owner of PJR Construction Company, Inc. and was the contractor for the Antons' renovation of Unit 9A in 2014. Tr. 166:10-13, Oct. 4, 2018. Mr. Raposa testified as to what comprises the structural elements of a roof and vertical walls. Tr. 169: 13-21, Oct. 4, 2018. For both the roof and the vertical walls of a structure, Mr. Raposa testified that the most exterior structural element of either is the plywood wrapped with the weathertight membrane—underneath the shingles or clapboards. Tr. 170:11-171:3, Oct. 4, 2018. Mr. Raposa further testified that a house would not be considered finished until it had the shingles on top of the plywood wrapped with the membrane, although these are not considered structural components. Tr. 173:10-174:6, Oct. 4, 2018.

The Antons also called Mr. Thomas O. Sweeney, who was qualified as an expert in real estate appraisal. Mr. Sweeney testified to the significance the degree of control over the management of a condominium would have on an individual unit's sale price. Mr. Sweeney is a licensed real estate broker in Rhode Island and Massachusetts as well as a certified general appraiser in Rhode Island. Tr. 175:12-18, Oct. 4, 2018. When advising prospective buyers or sellers of condominium units and what the price for it should be, Mr. Sweeney would consider the rights an owner would have and their degree of control within the condominium. Tr. 177:2-17, Oct. 4, 2018. Considering the Houzes' position—that they have the right to vote with Unit 9's 67 percent of the Allocated Interest to elect a three-member board of directors—Mr. Sweeney testified that the value of a unit in a two-unit condominium would be negatively impacted if the other unit

had majority control over the condominium. Tr. 178:21-181:5, Oct. 4, 2018. The Antons rested their case after Mr. Sweeney's testimony.

The Defense presented Mr. Houze as their first witness. Mr. Houze testified that he first learned of Unit 9 being offered for sale at the end of November 2016. Tr. 202:8-25, Oct. 5, 2018. At the time of trial, the Houzes also had another residence in the Point District of Newport. The Houzes visited Unit 9 together on two occasions, but Mr. Houze called Dr. Stengel to arrange subsequent visits, so he could show the property to contractors to get estimates for renovations. Tr. 203:1-19, Oct. 5, 2018.

Mr. Houze testified he read the Declaration and the By-Laws "line by line." Tr. 203:20-24, Oct. 5, 2018. Mr. Houze testified he reviewed the Condominium Documents as originally executed and the Plats and Plans "to find out what had been removed" by the First Amendment. *Id.* at 203:25-205:4; Defs.' Ex. M. The original § 2.3 of the Declaration stated:

> 2.3 The Condominium Units. The general description and number of each Unit, including its dimensions, location, and such other data as may be necessary or appropriate for its identification, are set forth in the Survey and the Plats and Plans. (Pls.' Ex. 1.)

Concerned by the fact that the Plats and Plans were not attached to the Declaration, Mr. Houze obtained copies of the Plats and Plans filed with the original Declaration at Newport City Hall. Tr. 203:25-205:13, Oct. 5, 2018; Defs.' Ex. M. As he expected, Mr. Houze saw that the Plats and Plans depicted "the interior dimensions of the units." *Id.* at 208:21-209:12. Section 2.3 of the Amended Declaration states:

> 2.3 The Condominium Units. The general description and identification of each unit, including unit dimensions, location and such other data as may be necessary or appropriate for its identification, are as set forth in Exhibit 'B' attached hereto. (Pls.' Ex. 2.)

Exhibit B of the Declaration describes each Unit in part as a "two (2) story . . . wood frame dwelling house, customized colonial style" and further identifies the rooms belonging to each Unit. (Pls.' Ex. 1.)

Since § 2.3 of the Amended Declaration omitted the language referring to the Plats and Plans and added a reference to Exhibit B of the Declaration, Mr. Houze testified that in his opinion § 2.3 of the Amended Declaration's new description of "The Condominium Units" had changed what constituted a Unit, altering the Units' boundaries from the Units' interior dimensions to encompass the entire structure.[17] Tr. 209:2-210:3; 229:13-231:8. Mr. Houze testified—based upon his interpretation—that he believed Exhibit B's description of a "wood frame dwelling house" implied he "purchased the entire house, meaning the outside walls, windows, doors, garage, including all walls and everything else." Tr. 209:16-25; 229:13-231:8, Oct. 5, 2018. He further testified that the fact that Dr. Stengel raised no objection when Mr. Houze expressed his interest in renovating Unit 9 was a confirmation for him he would be able to perform these reservations. *Id.* at 209:16-210:3.

Although Mr. Houze acknowledged that Exhibit B—as originally drafted—also referred to both Units as "wood frame dwelling house[s]" and was incorporated into § 1.24 of the Declaration's definition of a Unit, he testified that he believed the original Declaration's definition of a Unit did not refer to the entire structure. Tr. 233:5-11, Oct. 5, 2018. Mr. Houze explained he believed his interpretation of § 2.3 of the Amended Declaration was consistent with the definition of a Unit. Tr. 231:9-17. Mr. Houze points to § 1.24 of the Declaration's reference to "the exterior plane of the finished roof"—something that was also part of the Unit's definition as originally

[17] There is no evidence that Mr. Houze has any legal training. His opinion regarding the Condominium Documents is strictly that of a lay witness.

drafted—as support of his interpretation which included the outermost components of the Condominium as parts of the Units. Tr. 210:10-211:21.

Mr. Houze testified that prior to closing on Unit 9, the Antons and the Houzes met in Boston on February 4, 2017. Tr. 215:14-16. At this meeting, Mr. Houze told the Antons he intended to make renovations to Unit 9 if their purchase went through, and he remembered reading Mr. Anton's February 7, 2017 email regarding the various provisions of the Condominium Documents. Tr. 238:3-10; Pls.' Ex. 36. Having reviewed Mr. Anton's email at that time, Mr. Houze testified he acknowledged that the Antons had a substantially different interpretation of the Condominium Documents than he did, but still did not respond. Tr. 239:2-20. Mr. Houze testified he ultimately decided not to respond to this email—or the Antons' other communications—because he was offended by the Antons at the meeting in Boston, seeing that it was "impossible" to deal with their requests. Tr. 220:9-17. Despite this obvious conflict regarding the governance of the Condominium and the interpretation of the Condominium Documents, the Houzes continued to pursue purchasing Unit 9.

Prior to closing, the Houzes met with the Antons and Stengels on March 19, 2017. Tr. 220: 18-21. Mr. Houze testified that Mrs. Anton had demanded that he present them with plans for their renovations and that he must have the Antons' approval prior to construction. Tr. 221:14-18. On March 31, 2017, the Houzes' attorney forwarded an email to Mr. Houze that he received from the Antons' attorney. Tr. 222:13-23; Pls.' Ex. 38. Mr. Houze testified that after reviewing the email outlining the Antons' legal position, the important part to Mr. Houze was "Section 3.2(i) [of the By-Laws, stating] that all duties are to be performed by the board of directors under the bylaws require majority of the directors." Tr. 223:3-8. This was significant to Mr. Houze because of his interpretation that Unit 9 had 67 percent of the Allocated Interest as opposed to the Antons' 33

percent interest as the owners of Unit 9A. Tr. 223:9-13. When questioned about his understanding of the Board of Directors as defined by § 1.5 of the Amended Declaration, Mr. Houze testified:

> A: My understanding is that since there were only two owners, each unit owner would claim – would come to the board of directors and be on the board of directors with the respective percentage of interest. . . . We just elect them, but in this case there was no election possible because there were only four people, so since there was, to me, no elections, we would come as being board members and vote with our respective applicable interest of 33 and 67 percent. Tr. 224:9-21.

Mr. Houze maintained this opinion even though the Condominium Documents clearly require a majority vote of the Board of Directors without any reference to the Allocated Interest.[18] In addition, Mr. Houze did not believe anything mentioned in the Antons' attorney's email challenged his interpretation of the Condominium Documents. Tr. 225:13-226:4. Mr. Houze actually found that the email "reinforced" his opinion that Unit 9's 67 percent of the Allocated Interest provided him a controlling majority on the Board of Directors under the Condominium Documents, although he acknowledged that the Antons' interpretation of the Condominium Documents was that they had equal representation and equal voting power on the Board of Directors. Tr. 260:2-15; Pls.' Ex. 38.

With respect to the Antons' interpretation of the Condominium Documents, Mr. Houze testified he believed the Antons were trying to persuade him into seeing this form of "equal control" the same way as they did, but he was only concerned about what was stated in the Condominium Documents. Tr. 226:8-19. Mr. Houze testified he saw the Condominium Documents as a "contract between the owners of this condominium, so if anyone has an opinion,

[18] *See* Section IV.A.3 *infra*.

especially someone vested into this property, giving [him] advice, [he would not] take it." Tr. 226:23-227:1.

Mr. Houze testified he did not regularly ask for the Antons' approval before proceeding with various changes to the exterior elements of the Condominium. Tr. 245:25-249:11. Mr. Houze acknowledged that he had certain work done on the exterior of the Condominium amidst this litigation, without requesting the approval of either the Antons or this Court, including installing soffits, exterior lights, a low voltage transformer, as well as removing a privacy fence from the exterior edge of Unit 9's deck. *Id.* Amidst questioning regarding whether he did or did not ask the Antons if he could proceed with these numerous renovations, Mr. Houze stated that they "don't talk to each other." Tr. 246:9-12.

Mr. Houze testified he had requested the Antons' approval for a number of exterior renovations to the Condominium in October of 2017, although he acknowledged that the Newport Building Inspector, William Hanley, had requested that Mr. Houze provide evidence that the Condominium had approved of the proposed renovations in order to obtain a building permit. Tr. 251:13-22; Pls.' Ex. 82. To comply with the Building Inspector's request—while knowing that the Antons refused to approve of the exterior renovations until they had an opportunity to review the corresponding plans—Mr. Houze submitted a letter, dated November 24, 2017, with the alleged results from a Board meeting held on October 25, 2017, voting on a "schedule of exterior renovations for Unit 9." Tr. 252:1-12; Pls.' Ex. 82. As testified to by Mrs. Anton, the letter stated that the Houzes' proposed exterior renovations had been approved by the Board of Directors with Unit 9's "67% of the votes." (Pls.' Ex. 82.) Mr. Houze acknowledged under the Antons' interpretation of the Condominium Documents that this submission representing the approval of the Board was insufficient for obtaining approval, but Mr. Houze chose not to inform the Building

Inspector about their difference of opinion on this issue when requesting the building permit. Tr. 252:23-255:3. Despite knowing of their differing interpretation of the Condominium Documents, Mr. Houze testified that he believed the Antons' approval was inconsequential because he believed he could unilaterally approve of the renovations because of his belief that Unit 9's 67% of the Allocated Interest gave him a "super majority." Tr. 254:16-255:3.

Attorney Frank Lombardi testified for Defendants as an expert with respect to condominium real estate matters. Tr. 279:17-23, Oct. 5, 2018. Mr. Lombardi testified about FHLMC ("Freddie Mac") and FNMA ("Fannie Mae") and their significance to the secondary mortgage market. Tr. 283:2-24, Oct. 5, 2018. He testified that when working with condominium developers, he would regularly submit the declaration to a lender or their mortgage broker to determine whether the declaration contained provisions needed for Fannie Mae and Freddie Mac approval. Tr. 284:3-13, Oct. 5, 2018. Mr. Lombardi stated that Article VIII of the Declaration, titled "FHLMC/FNMA PROVISIONS," is not required by the Rhode Island Condominium Act. Tr. 285:11-18, Oct. 5, 2018. Corroborating Mr. Bardorf's deposition testimony about Article VIII of the Declaration containing standardized language, Mr. Lombardi testified that the standard language is always used and has been consistently approved by loan officers as well as Fannie Mae and Freddie Mac. Tr. 285:19-286:11, Oct. 5, 2018. However, Mr. Lombardi testified that the standardized template had been altered in Article VIII of the Declaration, finding that the language in § 8.1(a) through half of § 8.1(h) of the Declaration was predominantly standard. Tr. 305:18-306:21, Oct. 5, 2018. In particular, Mr. Lombardi testified that Fannie Mae guidelines do not require any such consent from unit owners as found in § 8.1(i) of the Declaration—where the Declaration originally called for the consent of "Unit Owners entitled to at least sixty-seven (67%)

percent of the Common Areas and Facilities" but changed to "one hundred (100%) percent" of the Unit Owners by the First Amendment. Tr. 305:3-17, Oct. 5, 2018; Pls.' Exs. 1 & 2.

Mr. Lombardi further testified that this standardized language is for the protection of eligible first mortgagees and not applicable if there are no "First Mortgagees holding mortgages on Units entitled to least fifty-one (51%) percent of the Common Areas and Facilities." Tr. 286: 12-287:10, Oct. 5, 2018; Pls.' Ex. 1. Furthermore, Mr. Lombardi determined that any holder of a mortgage on Unit 9A would not be able to enforce § 8.1(i)(v) of the Declaration because Unit 9A possessed less than 51% of the Allocated Interest. Tr. 287:11-288:14, Oct. 5, 2018. Accordingly, Mr. Lombardi opined that § 8.1(i)(v) of the Declaration, requiring the consent of 100% of the Unit Owners for improvements to the Common Elements, was not enforceable by the Antons. Tr. 289: 17-290:1, Oct. 5, 2018.

Following the trial, after the parties submitted supplemental memoranda and subsequent reply memoranda, this Court heard oral argument on November 2, 2018.

II

Parties' Arguments

The Antons contend that the Houzes have violated provisions of the Condominium Documents by proceeding with their renovations without first obtaining the necessary approval for making alterations either to their own Unit or to the Condominium's Common Elements. The Antons seek a declaration from this Court as to the valid interpretation of these various provisions in the Condominium Documents pertaining to this issue. The Antons contend that § 8.1(i) of the Amended Declaration required the Houzes to obtain the Antons' "prior written consent" as Unit Owners before performing renovations to the Condominium's Common Elements. The Antons also assert that the Condominium Documents plainly state that the two Units are equally

represented on the two-member Board of Directors, and the Board is only authorized to act when the two members reach a consensus. In response to the Houzes' counterclaim that this two-member Board of Directors conflicts with the Act, the Antons contend the Houzes' claim is time-barred because of the one-year statute of limitations pursuant to § 34-36.1-2.17(b). Alternatively, the Antons argue § 34-36.1-3.03(f) does not require the Board of Directors to have at least three members. They also argue § 34-36.1-3.03(g) does not require a procedure for the removal of said members from the Board, because these subsections are not applicable to this Condominium. The Antons further seek a declaration finding that various components of the Houzes' renovations are part of the Condominium's Common Elements rather than part of the Units, and therefore require the Antons' approval as Unit Owners, pursuant to § 8.1(i)(v) of the Amended Declaration, in addition to obtaining the Board of Directors' approval pursuant to § 3.1 of the Declaration and § 8.6 of the By-Laws. The Antons also seek injunctive relief preventing the Houzes from unilaterally proceeding with any renovations or modifications to either the exterior elements of the Condominium or the interior structural elements of Unit 9. Lastly, the Antons request attorney's fees under § 34-36.1-4.17 and § 10.1 of the Declaration for the Houzes' violations of the Condominium Documents.

The Houzes contend that § 8.1(i)(v) of the Amended Declaration is not enforceable by the Unit Owners because Article VIII of the Declaration was only intended for the protection of any first mortgages on the Condominium's Units and is, therefore, only enforceable by First Mortgagees for that purpose. The Houzes further claim that the exterior of the Condominium in its entirety is part of the Units and, therefore, they did not need to obtain the prior written consent of 100% of the Unit Owners, pursuant to § 8.1(i)(v) of the Amended Declaration, in order to renovate the exterior components of the Condominium.

The Houzes' declaratory judgment counterclaim seeks a determination that the Antons' interpretation of the First Amendment, providing for a non-elected two-member Board of Directors, is inconsistent with §§ 34-36.1-3.03(f) and (g) of the Act and therefore unenforceable. Pursuant to § 34-36.1-3.03(f), the Houzes argue that the Board of Directors must consist of at least three members, all of whom must be elected by the Unit Owners based on each Unit's Allocated Interest. (Defs.' Mem. 16.) Furthermore, the Houzes contend the Antons' interpretation of the non-elected two-member Board of Directors deprives them of their right as Unit Owners to remove a member of the Board of Directors with their Unit's 67% of the Allocated Interest pursuant to § 34-36.1-3.03(g). The Houzes also contend that the one-year statute of limitations under § 34-36.1-2.17(b) does not apply because they argue the First Amendment is void *ab initio*.

III

Standard of Review

In a non-jury trial, the standard of review is governed by Super. R. Civ. P. 52(a). The Rule provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon . . . ." Accordingly, "[t]he trial justice sits as a trier of fact as well as of law." *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984). In a non-jury trial, '"determining the credibility of [the] witnesses is peculiarly the function of the trial justice."' *McEntee v. Davis*, 861 A.2d 459, 464 (R.I. 2004) (quoting *Bogosian v. Bederman*, 823 A.2d 1117, 1120 (R.I. 2003)). This is so because it is "the judicial officer who [actually observes] the human drama that is part and parcel of every trial and who has had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *In re Dissolution of Anderson, Zangari & Bossian*, 888 A.2d 973, 975 (R.I. 2006).

Although the trial justice is required to make specific findings of fact and conclusions of law, "brief findings will suffice as long as they address and resolve the controlling factual and legal issues." *White v. LeClerc*, 468 A.2d 289, 290 (R.I. 1983); Super. R. Civ. P. 52(a). Accordingly, a trial justice is not required to provide an extensive analysis and discussion of all evidence presented in a bench trial. *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998); *see also Anderson v. Town of East Greenwich*, 460 A.2d 420, 423 (R.I. 1983). Competent evidence is needed to support the trial justice's findings. *See Nisenzon v. Sadowski*, 689 A.2d 1037, 1042 (R.I. 1997). Moreover, the trial justice should address the issues raised by the pleadings and testified to during the trial. *Nardone v. Ritacco*, 936 A.2d 200, 206 (R.I. 2007). However, "a trial justice need not 'categorically accept or reject each piece of evidence in his decision for this Court to uphold it because implicit in the trial justice's decision are sufficient findings of fact to support his rulings.'" *Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (quoting *Narragansett Electric Co. v. Carbone*, 898 A.2d 87, 102 (R.I. 2006)).

The UDJA "grants broad jurisdiction to [this Court] to 'declare rights, status, and other legal relations whether or not further relief is or could be claimed.'" *Tucker Estates Charlestown, LLC v. Town of Charlestown*, 964 A.2d 1138, 1140 (R.I. 2009) (citing § 9-30-1). Under the UDJA, the decision to grant declaratory relief is discretionary.[24] *See Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997) (citing *Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket School Committee*, 694 A.2d 727, 729 (R.I. 1997)). Although the availability of alternative methods of relief does not necessarily preclude declaratory relief, "a necessary predicate to a court's exercise of its jurisdiction under the [UDJA] is an actual justiciable controversy." *Sullivan*, 703 A.2d at 751; *Berberian v. Travisono*, 114 R.I. 269, 272, 332 A.2d 121, 123 (1975). Declaratory judgment is not appropriate to determine abstract questions or to issue advisory opinions. *Sullivan*, 703 A.2d

at 751 (citing *Lamb v. Perry*, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967)). To be entitled to declaratory relief, a plaintiff must have both "a personal stake in the outcome of the controversy and . . . an entitlement to actual and articulable relief." *McKenna v. Williams*, 874 A.2d 217, 227 (R.I. 2005).

The decision to grant injunctive relief rests within the sound discretion of the trial justice. *Cullen v. Tarini*, 15 A.3d 968, 981 (R.I. 2011). To grant a permanent injunction, the Court must find that (1) the plaintiff's legal arguments have merit; (2) the plaintiff will suffer irreparable harm if the injunction is not granted; and (3) balancing the equities and hardships of the parties weighs in favor of the plaintiffs. *See Rhode Island Turnpike & Bridge Authority v. Cohen*, 433 A.2d 179, 182 (R.I. 1981). When balancing the equities, the Court may also consider the public interest. *See Rose Nulman Park Foundation ex rel. Nulman v. Four Twenty Corp.*, 93 A.3d 25, 32 (R.I. 2014).

IV

Analysis

When reviewing a condominium declaration and its by-laws, our Rhode Island Supreme Court has said that it is "'appropriate to apply the laws of contract construction."' *America Condominium Association, Inc. v. Mardo*, 140 A.3d 106, 113 (R.I. 2016) (quoting *Sisto v. America Condominium Association, Inc.*, 68 A.3d 603, 611 (R.I. 2013)). The contract "must be viewed in its entirety, and the contract terms must be assigned their plain and ordinary meanings." *Rivera v. Gagnon*, 847 A.2d 280, 284 (R.I. 2004). Consequently, "[i]f the contract terms are clear and unambiguous, judicial construction is at an end for the terms will be applied as written." *Id.* (citing *W.P. Associates v. Forcier, Inc.*, 637 A.2d 353, 356 (R.I. 1994)). The Rhode Island Supreme Court "has stated that when the administration of a condominium complex is at issue, 'the condominium

statutes and the declaration control[ ] the relationship between the parties.'" *Town Houses at Bonnet Shores Condominium Association v. Langlois,* 45 A.3d 577, 582 (R.I. 2012) (quoting *Artesani v. Glenwood Park Condominium Association*, 750 A.2d 961, 963 (R.I. 2000)). "In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with [the Act]." Sec. 34-36.1-2.03(c).

"The Court will refrain from engaging in mental gymnastics or from stretching the imagination to read ambiguity into a [contract] where none is present." *Bliss Mine Road Condominium Association v. Nationwide Property and Casualty Insurance Co.*, 11 A.3d 1078, 1083 (R.I. 2010) (internal quotation marks omitted). "[I]n interpreting a declaration, the subjective intent of the parties should not be considered; rather, th[e] Court looks only to the intent expressed by the language of the declaration." *Langlois*, 45 A.3d at 583 (citing *Bliss Mine Road Condominium Association*, 11 A.3d at 1083). However, even in the absence of an ambiguity, the Court will "consider the situation of the parties and the accompanying circumstances at the time the contract was entered into, not for the purpose of modifying or enlarging or curtailing its terms, but to aid in the interpretive process and to assist in determining its meaning." *Hill v. M. S. Alper & Son, Inc.*, 106 R.I. 38, 47, 256 A.2d 10, 15 (1969). Accordingly, this Court may "consider extrinsic evidence where relevant to prove a meaning to which the language of the instrument is reasonably susceptible . . . . " *Haffenreffer v. Haffenreffer*, 994 A.2d 1226, 1233 (R.I. 2010).

A

The First Amendment's Effect on Governance of the Condominium

To address the issues presented by the parties, the Court must first interpret the relevant provisions found in the First Amendment to the Declaration and then determine their effect on the Condominium's governance scheme. The Court will address the plain language of the Declaration,

the By-Laws, and, to the extent applicable, the intent of the parties when drafting the First Amendment. The relevant provisions pertaining to the Condominium's governance scheme that were changed by the First Amendment are § 1.5 of the Amended Declaration, defining the Condominium "Board of Directors," and § 8.1(i) of the Amended Declaration, requiring 100% Unit Owner approval for various actions—including "improvements to the Common Elements costing in excess of One Thousand ($1,000.00) Dollars."

1

Applicability of Article VIII of the Amended Declaration

As a preliminary matter, the Houzes contend that Article VIII of the Declaration, in its entirety, is exclusively for the protection of a First Mortgagee's ability to sell their mortgage on a condominium unit. Thus, they argue only First Mortgagees can enforce the provisions found in Article VIII of the Declaration. In support, the Houzes point out that Article VIII of the Declaration's title, "FHLMC/FNMA PROVISIONS," expressly refers to Freddie Mac and Fannie Mae respectively. Furthermore, the Houzes assert that Article VIII was intended to be exclusively enforceable by "any First Mortgagee" because § 8.1 of the Declaration states in pertinent part that "the following provisions shall apply for the protection of the holders of the first mortgages (hereinafter "First Mortgagees") of record with respect to the Units and shall be enforceable by any First Mortgagee." (Pls.' Ex. 1.) The Houzes' expert witness, attorney Michael Lombardi, testified that Article VIII of the Declaration contains much of the same standard language inserted in most condominium declarations that are approved by Fannie Mae and Freddie Mac in order for mortgagees to sell the mortgage on the secondary market. However, he also acknowledged that Article VIII of the Declaration's language does deviate from the typical template's regularly-approved language. Tr. 305:18-306:9, Oct. 5, 2018. In particular, Mr. Lombardi testified that the

standard boilerplate language typically includes no requirement whatsoever that the written consent of the unit owners must be obtained. Tr. 305:3-17.

The Houzes' argument lacks merit. This Court finds that the Declaration clearly states that its restrictions and limitations imposed therein are enforceable not only by the Unit Owners but by "any person acquiring or owning an interest in said property"—including "any Mortgagee."[19] (Pls.' Ex. 1). The Fourth Paragraph on the First Page of the Declaration states:

> NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be, and hereby is, subject to the Rhode Island Condominium Act and shall be known as D & J CONDOMINIUM; and said Property hereby is held, conveyed, divided or subdivided, leased, rented and occupied, improved, and encumbered subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges, and liens (hereinafter sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which are declared and agreed to be for the benefit of the Property, and shall be deemed to run with and bind he Property, and shall inure to the benefit of and be enforceable by the Declarant and by any person acquiring or owning an interest in said property and improvements, including, without limitations, any Mortgagee, as that term is hereinafter defined. (Pls.' Ex. 1.)

This Paragraph evidences a clear intention for the entire Declaration to be enforceable by the Unit Owners as well as "any person acquiring or owning an interest in said property and improvements."

In addition, § 11.2 of the Declaration explicitly states that its captions "are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration." (Pls.' Ex. 1, § 11.2 of the Declaration.) Furthermore, regardless of the purpose of the original boilerplate language, the parties' intent is not determined by viewing Article VIII of the Declaration in isolation because '"the meaning should be gathered from the entire context and the language should be interpreted so as to subserve, and not subvert,

[19] Section 1.15 of the Declaration states: "'Mortgagee' means the holder of any recorded first mortgage encumbering one or more units."

the general intention of the parties . . . .'" *Paul v. Paul*, 986 A.2d 989, 995 (R.I. 2010) (quoting *Massasoit Housing Corp. v. Town of North Kingstown*, 75 R.I. 211, 216, 65 A.2d 38, 40 (1949)).

Although § 8.1 of the Declaration states in part that "the following provisions shall apply for the protection of the holders of the first mortgages . . . and shall be enforceable by any First Mortgagee[,]" this boilerplate language alone would not necessarily mean Article VIII is not enforceable by anyone other than First Mortgagees. Regardless, Paragraph Four on the First Page of the Declaration plainly states that the Condominium's "covenants and restrictions" are "enforceable . . . by any person acquiring or owning an interest in said property and improvements, including, without limitations, any Mortgagee[.]" (Pls.' Ex. 1.)

This Court finds Paragraph Four on the First Page of the Declaration evidences a clear intent that Article VIII of the Declaration is enforceable by the Unit Owners. This Court would have to completely disregard the clear language of the Declaration if it were to adopt the Houzes' argument.

2

Section 8.1(i) of the Amended Declaration and Unit Owner Approval[20]

[20] Section 8.1(i) of the Declaration, as amended, states:

> (i) In addition to all other requirements of this Declaration or the By-Laws, the prior written consent of First Mortgagees holding mortgages on Units entitled to at least fifty-one (51%) percent of the Common Areas and Facilities, and Unit Owners entitled to one hundred (100%) percent of the Common Areas and Facilities of the Condominium shall be required for the following:
>
> > (i) the abandonment of the condominium status or the Condominium, except for abandonment provided by statute, in case of substantial loss to the Units and Common Areas and Facilities;

(ii) the partition or subdivision of any Unit or of the Common Areas and Facilities;

"(iii) a change of the beneficial interest of any individual unit;

(iv) to add or amend any material provisions of the Declaration, Rules and Regulations or the By-Laws which establish, provide for, govern, or regulate any of the following:

(a) Voting;

(b) Assessments, assessment liens, or subordination of such liens;

(c) Reserves for maintenance, repair, and replacement of the Common Areas;

(d) Insurance or fidelity bonds;

(e) Rights to use of the Common Areas;

(f) Responsibility for maintenance and repair of the several portions of the project;

(g) Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the property;

(h) Boundaries of any Unit;

(i) The interests of the Common Areas;

(j) Leasing of Units;

(k) Imposition of any right of first refusal or similar restriction on the right of a Unit estate owner to sell, transfer, or otherwise convey his or her Unit estate;

(l) Any provisions which are for the express benefit of mortgage holders,

Having found that Article VIII of the Declaration is enforceable by the Unit Owners, the Court must determine whether the consent of 100% of the Unit Owners is required under § 8.1(i)(v) of the Amended Declaration in order to renovate the Common Elements, as well as to do anything relating to the other matters enumerated under § 8.1(i) of the Amended Declaration. The First Amendment to the Declaration amended § 8.1(i) of the Declaration and added an additional clause, which now states:

> 8.1(i) In addition to all other requirements of this Declaration or the By-Laws, the prior written consent of First Mortgagees holding mortgages on Units entitled to at least fifty-one (51%) percent of the Common Areas and Facilities, and Unit Owners entitled to one hundred (100%) percent of the Common Areas and Facilities of the Condominium shall be required for the following:
>
> . . . .
>
> (v) any increase in the Annual Assessment by more than ten (10%) percent in any one calendar year period or any additions, alterations, or improvements to the Common Elements costing in excess of One Thousand ($1,000.00) Dollars.[21] (Pls.' Ex. 2.)

Aside from adding renovations to the Common Elements to the other enumerated matters which require the Unit Owners' approval under § 8.1(i) of the Declaration, the First Amendment further

---

> eligible mortgage holders, or eligible insurers or guarantors of first mortgages on Units.
>
> (v) any increase in the Annual Assessment by more than ten (10%) percent in any one calendar year period or any additions, alterations, or improvements to the Common Elements costing in excess of One Thousand ($1,000.00) Dollars. (Pls.' Exs. 1 & 2.)

[21] The First Amendment also added the "Rules and Regulations" to § 8.1(i)(iv) of the Declaration. *See* n.20 *supra*.

changed § 8.1(i) of the Declaration from requiring written consent from only "Unit Owners entitled to at least sixty-seven (67%) percent" to "Unit Owners entitled to one hundred (100%) percent[.]"

The language of the Amended Declaration is clear and unambiguous. In order to make any changes to the Common Elements of the Condominium, along with taking any of the other enumerated actions under § 8.1(i) of the Declaration, 100% of the Unit Owners must agree. This interpretation is also consistent with the intent of the Stengels and the Antons in accordance with the testimony of Mr. and Mrs. Anton and Attorney Bardorf. *See Haffenreffer*, 994 A.2d at 1233. Therefore, this Court finds § 8.1(i)(v) of the Declaration is enforceable by the Unit Owners and requires 100% approval of the Unit Owners in order to make additions, alterations, or improvements to the Common Areas costing in excess of $ 1,000.

3

The First Amendment's Definition of the Board of Directors

This Court finds that the Condominium Documents make clear that the Board of Directors consists of two members with equal voting power, providing each Unit Owner with one seat on the Board of Directors. The First Amendment to the Declaration defines the "Board of Directors" as follows:

> 1.5 'Board of Directors' means those persons who are the owners of Units 9 and 9A and who shall also be the Executive Board of the Association. Notwithstanding any other provision in this Declaration, Rules and Regulations and the By-Laws to the contrary (including without limitation Section 3.2 of the By-Laws), the Board of Directors and Executive Board of the Association shall at all times be comprised of those persons who are the owners of Units 9 and 9A. (Pls.' Ex. 2.)

Since the Declaration defines a "Unit Owner" or "Owner" as "any person, ***group of persons***, corporation, trust, or other legal entity, ***or any combination thereof***, which holds legal title to a Unit," this two-unit Condominium can only have two members on its Board of Directors. (Pls.'

Ex. 1) (emphases added).[22] This is consistent with § 3.2(a) of the By-Laws which clearly states the Board of Directors is "composed of two (2) persons." (Pls.' Ex. 1.) Whether title to either Unit is jointly held by a married couple or held solely by a trust for which a married couple serves as its trustees, there can still only be one designated Owner for Unit 9 and another Owner for Unit 9A that can sit on the Board of Directors. The Antons' decision to have the title to Unit 9A held by a trust is of no material consequence on their degree of control over the Condominium's Board of Directors. To rule otherwise would mean that either Unit could artificially install more members on the Board of Directors—and thereby take control of it—by further splitting their interest in the Unit with other individuals, trusts, or other entities. This interpretation renders a clearly unworkable and absurd result.

Furthermore, the Condominium Documents clearly require a consensus between both members to act as the Board of Directors. Section 3.2(i) of the By-Laws states in pertinent part: "[a]t all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. . . ." Attaining a quorum of a "majority of the Directors" of a two-member board invariably means both members must be

[22] The full definition states:

> 1.25 'Unit Owner' or 'Owner' means the Declarant and any person, group of persons, corporation, trust, or other legal entity, or any combination thereof, which holds legal title to a Unit within the Condominium Project; provided, however that any person or group of persons, corporation, trust, or other legal entity, or any combination thereof, which holds such interest solely as security for the performance of an obligation shall not be an Owner. (Pls.' Ex. 1.)

present.[23] Similarly, since this provision also requires "the majority of the Directors present at a meeting at which a quorum is present" to take action, the Board can only act when both members agree. In addition, unlike § 2.3 of the By-Laws—stating Unit Owners are "entitled to cast the number of votes for each Unit equal to the Allocated Interest for each Unit" when voting on matters before the Association—there is no similar provision indicating that members of the Board of Directors are also entitled to cast the number of votes equal to their Unit's Allocated Interest. It is clear that each member of the Board has one equal vote.[24] Accordingly, it is clear that neither member could unilaterally act on behalf of the Board of Directors without the other member's consent, and it is thus further evident that no member could authorize an act on behalf of the Board without the other member's approval.

The Condominium Documents as originally drafted had already in effect required the Board of Directors to unanimously agree on taking any action pertaining to the matters before it, by requiring a majority. Section 3.2(d) of the By-Laws broadly states that the Board of Directors is authorized to exercise "the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things ***as are not by law or by these By-Laws directed to be exercised and done by the Association***[.]" (Emphasis added.) Section 3.1 of the By-Laws indicates that "[t]he Association shall be responsible for the overall policy and administration of the Condominium; but, ***except as otherwise provided in these By-Laws or by statute***, shall act by and through its elected Board of Directors." (Emphasis added.) When § 3.1 and § 3.2(d) of the By-Laws are read in conjunction, it is clear to this Court that the Board of Directors is predominantly responsible for the management of the Condominium's affairs except to the extent

[23] "Majority" is defined as "[a] number that is more than half of a total; a group of more than 50 percent." *Majority*, Black's Law Dictionary 1098 (10th ed. 2014).
[24] *See* Section IV.A.4 *infra*.

the Act requires—or the Condominium Documents delegate—certain matters to be addressed by the Unit Owners as part of the Association. *See* § 34-36.1-3.03(a).[25]

4

The First Amendment Requires Unanimity to Achieve Equal Co-Governance

When reviewing the First Amendment's effect on the Condominium Documents as originally drafted, it is clear the drafters intended for these amended provisions to provide for an equal co-governance scheme between the Units—not exclusively for matters before the Board of Directors but also for those matters before the Unit Owners as part of the Condominium Association. Section 1.4 of the Declaration defines the Association as a "Rhode Island unincorporated association organized under the Rhode Island Condominium Act, ***the sole members of which are the Unit Owners acting as a group*** in accordance with the Declaration." (Pls.' Ex. 1) (emphasis added).[26] The Act requires every condominium to have both a board of directors and an association, but because this Condominium has only two Units, the Board of Directors and the Association consist of the same members—the Owners of Unit 9 and Unit 9A. *See, e.g.*, §§ 34-36.1-1.04, 34-36.1-3.01, 34-36.1-3.03. The First Amendment achieves equal co-governance by requiring the Unit Owners to come to a unanimous agreement pursuant to § 8.1(i) of the Amended Declaration.

As originally drafted, the Condominium Documents did not require the Unit Owners to reach a unanimous agreement when deciding upon matters that came before the Association.

[25] Section 34-36.1-3.03(a) states in part, "[e]xcept as provided in the declaration, the bylaws, subsection (b), or in other provisions of this [Act], the executive board may act in all instances on behalf of the association. . . ."

[26] Section 6.2 of the Declaration states "[t]he Owner or Owners of each Unit shall be entitled to cast the number of votes per Unit as specified in the By-Laws on any matter on which an Owner is entitled to vote pursuant to this Declaration or the By-Laws." (Pls.' Ex. 1.)

Originally, pursuant to § 2.3 of the By-Laws, Unit Owners voting on matters before the Association were "entitled to cast the number of votes for each Unit equal to the Allocated Interest for each Unit." (Pls.' Ex. 1.) Pursuant to § 1.2 of the Declaration, "'Allocated Interests' means the undivided ownership interest in the common elements, the common expense liability, ***and votes in the Association allocated to each Unit***[.]" (Pls.' Ex. 1) (emphasis added). Section 6.1 of the Declaration states that the Units' Allocated Interests—being 67% for Unit 9 and 33% for Unit 9A—"were determined on the basis of the respective fair market values of each Unit[.]" (Pls.' Ex. 1.) Furthermore, § 2.3 of the By-Laws states that "[u]nless otherwise provided by the Declaration or the Act, all votes shall be adopted by the vote of a majority of the Owners." (Pls.' Ex. 1.) Accordingly, since § 2.4 of the By-Laws defines a "majority of owners" as the "Unit Owners representing at least fifty-one (51%) of the votes held by the Owners in good standing[,]" the original Owners of Unit 9, Dr. and Mrs. Stengel, held the controlling majority over the matters voted upon by the Association because of Unit 9's 67% of the Allocated Interest. (Pls.' Ex. 1.)

By reviewing the Condominium Documents as they were originally drafted, it is clear that there was no true co-governance scheme established through the two-member Board of Directors because the Owner of Unit 9 could take action unilaterally through the Condominium Association on account of Unit 9's 67% of the Allocated Interest. Given that § 8.1(i) of the Declaration only required the prior written consent of "Unit Owners entitled to at least sixty-seven (67%) percent of the Common Areas and Facilities," the Owner of Unit 9 had exclusive control over those

enumerated actions.[27] Therefore, pursuant to § 8.1(i)(iv) of the Declaration, as originally drafted, the Owner of Unit 9 could unilaterally amend the Declaration and the By-Laws.[28]

By amending § 8.1(i) of the Declaration to require the prior written consent of "Unit Owners entitled to one hundred (100%) percent of the Common Areas and Facilities," the First Amendment removes any voting advantage that Unit 9 had possessed on account of its 67% of the Allocated Interest. Section 8.1(i) of the Amended Declaration prevents the Owner of Unit 9 from using their 67% of the Allocated Interest to control the Association and interfere with this co-governance scheme because they no longer can amend the Condominium Documents, or take any of the other enumerated actions listed in § 8.1(i) of the Declaration, without first obtaining the Unit Owners' unanimous consent. By requiring the approval of 100% of the Unit Owners for such actions, the disparity between the Units' Allocated Interest is effectively rendered immaterial for voting purposes, while maintaining the Allocated Interest as it relates to each Unit's responsibility for paying for the Common Expenses. (Pls.' Ex. 1.)

The First Amendment requires the Unit Owners' unanimous agreement for those specific actions which are beyond the Board of Directors' authority pursuant to § 34-36.1-3.03(b). Section 34-36.1-3.03(b) states:

---

[27] As explained in n.5, *supra*, the phrase "Common Areas and Facilities" is synonymous with "Common Elements." Section 1.17 of the Declaration defines "Percentage Interest" as "the allocated interest of each Unit in the Common Elements[.]" (Pls.' Ex. 1.) Therefore, for the purposes of § 8.1(i) of the Amended Declaration, a Unit Owner's Percentage Interest in the Common Areas and Facilities is the same as their Unit's Allocated Interest.

[28] Prior to the First Amendment, § 11.1 of the Declaration and § 14.1 of the By-Laws also would have allowed the Owner of Unit 9 to unilaterally amend the Condominium Documents. These provisions are further addressed in footnote 31, *infra*. *See* § 34-36.1-2.17(a) ("the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units ***to which at least sixty-seven percent (67%) of the votes in the association are allocated***, or any larger majority the declaration specifies. . . .").

> The executive board may not act on behalf of the association to amend the declaration (§ 34-36.1-2.17), to terminate the condominium, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

First, § 8.1(i)(i) of the Amended Declaration requires the unanimous consent of the Unit Owners for "the abandonment of the condominium status or the Condominium"—meaning "to terminate the condominium."[29] Second, § 8.1(i)(iv) of the Amended Declaration requires the Unit Owners' unanimous consent in order to amend the Declaration.[30] Lastly, § 34-36.1-3.03(b) states the Board of Directors may not act on behalf of the Association "to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members[.]" By designating each Unit Owner as a member of the Board of Directors, the First Amendment's new definition of the "Board of Directors" obviated any need for § 3.2(b) of the By-Laws' election procedure or § 3.2(e) of the By-Laws' removal procedure. Indeed, it is clear that invalidating the By-Laws' election and removal process was the intended effect of the First Amendment. The second sentence of the new definition of the "Board of Directors" states it applies "[n]ot withstanding any other provision in this Declaration, Rules and Regulations and the By-Laws to

[29] Although § 8.1(i)(i) of the Declaration originally provided for the termination of the condominium status with the prior written consent of "Unit Owners entitled to at least sixty-seven (67%) percent of the Common Areas and Facilities," this conflicted with § 34-36.1-2.18(a), which states "a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies."

[30] Notably, § 11.1(b) of the Declaration as originally drafted already stated "[n]o amendment shall change the Percentage Interest, common expense liability, voting strength, boundaries, or permitted use of any Unit without the approval of all Unit Owners[.]" (Pls.' Ex. 1.) *See also* § 34-36.1-2.17(d) ("Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.").

the contrary (including without limitation Section 3.2 of the By-Laws)," acknowledging the resulting inconsistencies by executing the First Amendment to the Declaration. (Pls.' Ex. 2.) Furthermore, anything pertaining to determining "the qualifications, powers and duties" of the Board of Directors would also require amending the Condominium Documents—requiring the Unit Owners' unanimous consent under § 8.1(i)(iv) of the Amended Declaration.

Although the language of the First Amendment did not specifically alter the procedure or method of voting for the Association based on the Units' Allocated Interest, § 8.1(i) of the Amended Declaration effectively accomplishes the same by requiring the consent of 100% of the Unit Owners on anything that Unit 9 could have previously done unilaterally with its 67% of the Allocated Interest. For any conflicting provision of the Condominium Documents, the First Amendment prevails—invalidating any of the provisions in the By-Laws or Rules and Regulations that are inconsistent therewith—as long as the Declaration's provisions are otherwise consistent with the Act. *See* § 34-36.1-2.03(c). Upon reviewing the Condominium Documents and the Act in their entirety, this Court finds no provision delegating any further responsibility to the Unit Owners that would not also require their unanimous consent under § 8.1(i) of the Amended Declaration. Thus, any such action taken without the Unit Owners' unanimous approval would violate § 8.1(i) of the Amended Declaration and therefore, would not be authorized. As a result, because this Court finds that anything outside of the Board of Directors' authority requires the unanimous consent of all the Unit Owners pursuant to § 8.1(i) of the Amended Declaration, the disparity between the Units' shares of the Allocated Interest has no effect for voting purposes.

Moreover, even if there is anything found in the Condominium Documents which would suggest there is still something for the Association to vote on or authorize based on merely obtaining a majority of the Units' Allocated Interest, this Court finds that such an interpretation

would be inconsistent with the intent of the First Amendment and clearly conflicts with the co-governance scheme put in place and would thus be unenforceable.[31]

Furthermore, although the Houzes cite to provisions of the Act indicating the drafters of the First Amendment could have given the Unit Owners equal control in the Association as well, these provisions would not create the same co-governance scheme that the First Amendment does. First, the Houzes argue the First Amendment could have changed the Units' Allocated Interest, pursuant to § 34-36.1-2.17(d), to provide an equal 50-50 split between the Units. It is clear to this Court that the drafters of the First Amendment had no intention to change the Units' Allocated Interests because it is based on the Unit's value, and proportions the common expense liabilities between each Unit. Additionally, although § 34-36.1-2.07(c)(i) allows for "different allocations of votes [to] be made to the units on particular matters specified in the declaration[,]" § 8.1(i) of the Amended Declaration accomplishes the same by requiring the Unit Owners' unanimous approval. Sec. 34-36.1-2.07(c)(i).

[31] When the Condominium Documents as amended are read in their entirety, it is clear that any decision to be made by the Unit Owners as part of the Association must be made by unanimous consent. For any matter that the Association had authority over pursuant to § 3.1 of the By-Laws, whether required by the Act or by delegation through the Condominium Documents, this Court has determined that § 8.1(i) of the Amended Declaration requires obtaining the Unit Owners' unanimous approval. However, this Court recognizes that the First Amendment has left inconsistencies in the Declaration, including § 11.1 of the Declaration and § 14.1 of the By-Laws. Section 11.1 of the Declaration states that "this Declaration may be amended only by the written consent of the Owners of sixty-seven (67%) percent of the Percentage Interests[.]" Similarly, § 14.1 of the By-Laws states the By-Laws may be amended "by an affirmative vote of the Owners of two-thirds (2/3) of the Percentage Interests[.]" Nevertheless, § 8.1 of the Declaration states that the provisions therein shall apply "[n]otwithstanding anything in the Declaration, the By-Laws of the Condominium Association, or the Rules and Regulations promulgated pursuant thereto to the contrary[.]" More importantly, it is obvious this cannot stand in light of the First Amendment. To suggest that § 11.1 of the Declaration and § 14.1 of the By-Laws would still allow the Owner of Unit 9 to amend any provision of the Condominium Documents that is not identified in § 8.1(i)(iv) of the Amended Declaration would completely undermine the co-governance scheme established and intended by the First Amendment.

From a plain reading of the Condominium Documents in their entirety, it is clear the Amended Declaration provides for a two-member Board of Directors, requiring a consensus for the Board to have the authority to act. By amending the definition of the "Board of Directors," and identifying the Owner of Unit 9 and the Owner of Unit 9A as the members of the Board of Directors, the First Amendment removed the need for any election or removal process for Board members. This was clearly part of the intent to establish a system of equal co-governance for the Condominium, and particularly to remove any uncertainty for the Owner of Unit 9A with a minority share of the Allocated Interest. For the remaining actions which the Board of Directors could not exercise authority over pursuant to § 34-36.1-3.03(b)—or any other matter that the Condominium Documents delegated to the Unit Owners to vote on as part of the Association—§ 8.1(i) of the Amended Declaration requires the Unit Owners' unanimous consent, rendering the Units' differing Allocated Interests inconsequential for voting purposes.

The Antons' stated intent is also clearly and concisely consistent with the literal language of the First Amendment to the Declaration: (1) a two-member Board of Directors consisting of one member from Unit 9 and one member from Unit 9A; and (2) § 8.1(i)(v) of the Amended Declaration requires the consent of 100% of the Unit Owners and is enforceable by them. *See Haffenreffer*, 994 A.2d at 1233; *Hill*, 106 R.I. at 47, 256 A.2d at 15 (citing Restatement (First) of *Contracts* § 235(d) (June 2019 Update)).

Both Charles Anton and Tami Anton were credible witnesses. Their educational and employment backgrounds evidence individuals who understand the potential pitfalls of purchasing a unit in a two-unit condominium. It makes perfect sense that the Antons sought equal co-governance when considering purchasing Unit 9A. It's the only way they could protect their investment and attempt to avoid the situation for which the Houzes are advocating. Furthermore,

the Houzes offered no evidence to refute the Antons' assertion regarding the intent of the parties to the First Amended Declaration.

B

The Rhode Island Condominium Act

The Houzes seek a declaration from this Court determining that the two-member Board of Directors, permitting each Unit Owner to select their own representative, is unenforceable as it is contrary to the mandatory requirements under the Rhode Island Condominium Act.

1

Statute of Limitations

As a preliminary matter, this Court first addresses the Antons' assertion that the Houzes' counterclaim—which the Antons characterize as a challenge against the First Amendment's definition of the "Board of Directors"—is time-barred pursuant to the Act. Section 34-36.1-2.17(b) of the Act states "[n]o action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded." When confronted with § 34-36.1-2.17(b), the Rhode Island Supreme Court has stated when "the amendment being challenged is determined to be void *ab initio*, the one-year statute of limitations does not apply to any subsequent action taken by an interested party." *America Condominium Association, Inc. v. IDC, Inc.*, 844 A.2d 117, 133 (R.I. 2004) (*America Condominium I*). "An agreement or contract is 'void ab initio' if it 'seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract.'" *Bilanko v. Barclay Court Owners Association*, 375 P.3d 591, 594 n.6 (Wash. 2016) (quoting Black's Law Dictionary 1805 (10th ed. 2014)). If § 1.5 of the Amended Declaration, establishing a non-elected, two-member Board of Directors whose members cannot be removed, conflicts with

§ 34-36.1-3.03(f) and (g) as the Houzes contend, then the Association would never have possessed the authority to enact such a provision that is inconsistent with the Act. Unlike something that was *ultra vires* or beyond the Association's authority under the Condominium Documents but not otherwise prohibited by statute, § 1.5 of the Amended Declaration would remain unenforceable for being inconsistent with § 34-36.1-3.03(f) and (g) no matter how much time has elapsed since its adoption. *See Bilanko*, 375 P.3d at 595; 19 C.J.S. Corporations § 662 (1940). Thus, the one-year statute of limitations under § 34-36.1-2.17(b) does not bar the Houzes from challenging provisions which they claim are inconsistent with the Act.

In addition, this Court interprets § 34-36.1-2.17(b) as a much narrower statute of limitations, applying to challenges concerning the "validity of an amendment adopted"—meaning the procedure by which the amendment was adopted by a condominium—and not a categorical bar to challenging any provisions found in an amendment beyond a year after its adoption. *See Bilanko*, 375 P.3d at 594.[32] In the absence of any other statute of limitations found in the Act, it would appear that § 34-36.1-2.17(b) would not apply to an identical provision as long as it was part of the declaration as originally enacted and not in an amendment that is more than one year old.[33] This Court cannot identify any rationale behind why the Act would discern between provisions based solely on whether they are found in the original declaration or a subsequent amendment. Because imposing this one-year statute of limitations in this instance would enable condominiums to enforce provisions contrary to the Act's requirements as long as they were

[32] "Valid" is defined as "[l]egally sufficient; binding." Black's Law Dictionary 1784 (10th ed. 2014).

[33] As seen in § 3.2(a) of the By-Laws, the Condominium Documents as originally drafted already provided for the Condominium's Board of Directors to be composed of two persons. (Pls.' Ex. 1.)

adopted through an amendment more than one year prior to the challenge, this Court finds that § 34-36.1-2.17(b) does not apply to the facts before the Court.

2

Validity of Condominium's Two-Member Board of Directors

In support of their declaratory judgment counterclaim, the Houzes contend that the two-member Board of Directors conflicts with §§ 34-36.1-3.03(f) and (g), which state:

> (f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three (3) members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.
>
> (g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant. Sec. 34-36.1-3.03.[34]

First, the Houzes argue the First Amendment to the Declaration violates § 34-36.1-3.03(f) because it establishes a Board of Directors with less than three members and deprives the Unit Owners of what the Houzes perceive as a right under § 34-36.1-3.03(f) to elect the Board of Directors. The Houzes further claim that § 34-36.1-3.03(g) entitles the Unit Owners to remove members from the Board of Directors by a two-thirds vote. The Houzes contend the First Amendment's definition of the Board of Directors impermissibly conflicts with these mandatory provisions of the Rhode Island Condominium Act and therefore, cannot be enforced.

The Antons contend the Condominium's non-elected, two-member Board of Directors is not prohibited by the Act because §§ 34-36.1-3.03(f) and (g) are not applicable here. The Antons

[34] As used in this opinion, the term "executive board," as used in the Act, is synonymous with what the Declaration defines as the "Board of Directors." (Pls.' Exs. 1 & 2.)

claim § 34-36.1-3.03(f)'s three-member requirement is only for the election of a condominium association's board of directors when transitioning away from declarant control. The Antons further contend that otherwise imposing these provisions on this two-unit condominium "elevates form over substance on a matter that has no relationship to the underlying purpose of the Act as a consumer protection statute." (Pls.' Post-Trial Br. at 13). Even if this requirement is intended to apply to unit owner-controlled boards of directors beyond the initial election when transitioning from declarant control, the Antons argue that the Act must not have been drafted with two-unit condominiums in mind because it has no practical purpose in this context.

"'[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings' in establishing and effectuating statutory intent." *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998) (quoting *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1226 (R.I. 1996)). However, when the '"mechanical application of a statutory definition produces an absurd result or defeats legislative intent, [] court[s] will look beyond mere semantics and give effect to the purpose of the act."' *O'Connell v. Walmsley*, 156 A.3d 422, 428 (R.I. 2017) (quoting *Commercial Union Insurance Co. v. Pelchat*, 727 A.2d 676, 681 (R.I. 1999)). "Statutory construction is a holistic enterprise," *Park v. Ford Motor Co.*, 844 A.2d 687, 692 (R.I. 2004), and courts are directed to interpret a statute "with a view to the problems with which it is intended to deal." *Almac's Inc. v. Rhode Island Grape Boycott Committee*, 110 R.I. 36, 43, 290 A.2d 52, 56 (1972) (citing *Town of Scituate v. O'Rourke*, 103 R.I. 499, 239 A.2d 176 (1968)). "In effectuating the Legislature's intent, [the Court must] review and consider the statutory meaning most consistent with the statute's policies or obvious purposes. Moreover, the court will look to the

[Act] in its entirety." *Bailey v. American Stores, Inc./Star Market*, 610 A.2d 117, 119 (R.I. 1992) (citing *Carr v. Mulhearn*, 601 A.2d 946, 949 (R.I. 1992)).

Under the Rhode Island Condominium Act, condominiums cannot adopt provisions that vary from the statutory requirements "[e]xcept as expressly provided[.]" *See* § 34-36.1-1.04.[35] For most of the Act's provisions, compliance therewith is mandated "because of the need to protect purchasers, lenders, and declarants." Sec. 34-36.1-1.04 cmt. 1. The Rhode Island Supreme Court has recognized the Act '"as a whole contains a strong consumer protection flavor"' because of '"a perceived need for additional consumer protection."' *America Condominium I*, 844 A.2d at 128 (quoting *One Pacific Towers Homeowners' Association v. HAL Real Estate Investments, Inc.*, 61 P.3d 1094, 1100 (Wash. 2002)). Indeed, the Supreme Court has described the Act as "a careful attempt by the Legislature to strike a balance between a declarant's need for flexibility in creating a condominium and the interests of each individual unit owner in the enjoyment of his or her particular parcel of real estate." *America Condominium Association, Inc. v. IDC, Inc.*, 870 A.2d 434, 442 (R.I. 2005) (*America Condominium II*).

In order to adequately address the application of §§ 34-36.1-3.03(f) and (g) to the facts before the Court, it is necessary to discuss the history and evolution of the Act. The Rhode Island Condominium Act is the state's second generation of condominium legislation and applies "to all condominiums created . . . after July 1, 1982[.]" Sec. 34-36.1-1.02. Like many states' initial condominium enabling acts, Rhode Island's first attempt at condominium legislation in 1963, the Condominium Ownership Act, did little more than create a legal basis for the condominium form of ownership. Secs. 34-36-1, *et seq*. The Condominium Ownership Act failed to address issues

[35] The Act does not indicate §§ 34-36.1-3.03(f) or (g) may be varied by agreement. Sec. 34-36.1-1.04 cmt. 3.

relating to the regular operation of condominiums or its continued development after its creation. The Rhode Island Condominium Act attempted to address these inadequacies and substantially mirrors the Uniform Condominium Act (UCA) originally created by the National Conference of Commissioners on Uniform State Laws in 1977. Rhode Island is one of a number of other states that have adopted the UCA, including Pennsylvania, Washington, and Texas.[36] The Rhode Island Supreme Court has previously advised that "[u]nless the statutory language clearly and expressly states otherwise, [the Act's] comments are to be used as guidance concerning the legislative intent in adopting the chapter." *America Condominium I*, 844 A.2d at 127.[37]

The motivations behind the UCA are made apparent when considering the deficiencies identified in states' previous condominium legislation. The individual states' condominium enabling acts were considered "inadequate to deal with the growing condominium industry[,]" because they left a need for additional consumer protection and flexibility in the creation and use of condominiums. Prefatory Notes to Uniform Condominium Act (1977) (as amended (1980)); 1 Gary A. Poliakoff, *Law of Condominium Operations* § 1:11 (July 2019 Update).[38] The states' enabling legislation was considered "ill-suited for lateral developments, large-scale projects[,] phased construction[, and] responded poorly to the needs of the developer, the consumer and the condominium association's board of directors." Inspired by National Housing Act of 1961, 1 Law of Condominium Operations § 1:10. Accordingly, the UCA sought to "provide[] great flexibility

[36] Other states that have adopted the Uniform Condominium Act, each subject to individual variation, are Alabama, Arizona, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, and Virginia. Prefatory Notes to Uniform Condominium Act (1977) (as amended (1980)).

[37] When enacted, "the Legislature authorized and directed the secretary of state to insert the official comments to the Uniform Condominium Act (1980)." *America Condominium I*, 844 A.2d at 127.

[38] The nation's first generation of condominium legislation was patterned after the Puerto Rico statute adopted in 1958 or the 1962 Federal Housing Administration model condominium statute. *See* Prefatory Notes to Uniform Condominium Act (1977) (as amended (1980)).

to a developer in creating a condominium project designed to meet the needs of a modern real estate market, while imposing reasonable restrictions on developers' practices which have a potential for harm to unit purchasers." Prefatory Notes to Uniform Condominium Act (1977) (as amended (1980)).

It is clear to this Court that § 34-36.1-3.03(d) provides the declarant with this needed flexibility principally during a period of time referred to as "declarant control." The "declarant" is essentially the creator of the condominium who is involved in its construction as well as the sale of the units. The significance of this term is further discussed *infra*. During declarant control, "a declarant, or persons designated by [the declarant], may appoint and remove the officers and members of the executive board." Sec. 34-36.1-3.03(d). This allows the declarant to maintain control and continue with the condominium's development.

Declarant control must end when either any one of three specific events identified in § 34-36.1-3.03(d) occur.[39] In addition, § 34-36.1-3.03(e) provides for a gradual transfer of declarant control, requiring a minority of the executive board to be elected by the unit owners during declarant control based on the percentage of units that have been conveyed. When §§ 34-36.1-3.03(d) and (e) are read in conjunction, providing developers with this period of declarant control and a procedure for the gradual transition therefrom, it is clear these statutory provisions are solely intended to effectuate the purpose of declarant control and have no application outside of that context. After reviewing various sections of the Act applicable to declarant control, this Court

[39] Alternatively, under § 34-36.1-3.03(d)(2), Section 34-36.1-3.03(d)(2) states "[a] declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before terminations of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective."

finds that § 34-36.1-3.03(f), requiring unit owners to elect an executive board with at least three members "[n]ot later than the termination of any period of declarant control," is also intended to effectuate declarant control and is not applicable to the case at bar.

Declarant is defined by § 34-36.1-1.03(9) of the Act:

> (9) "Declarant" means any person or group of persons acting in concert who:
>
> > (i) As part of a common promotional plan, offers to dispose of his, her or its interest in a unit not previously disposed of; or
> >
> > (ii) Reserves or succeeds to any special declarant right. Sec. 34-36.1-1.03.

Based on the definition of a "declarant," listing the actions that a declarant will take after the condominium is created but still under development, it is clear the Act's purpose for declarant control is to provide the declarant an opportunity to finish the condominium without excessive conflict with the unit owners. The actions encompassed under this definition suggest the Act's prototypical declarant would be a professional developer that has created a condominium still undergoing development.[40] The Act explains that "[s]ubsections (d) and (e) recognize the practical necessity for the declarant to control the association during the ***developmental*** phases of a condominium project." Sec. 34-36.1-3.03 cmt. 3 (emphasis added). As explicitly stated, "[t]he Act is generally designed to provide great flexibility in the creation of condominiums" and a number of other comments refer to how other provisions of the Act provide the declarant with this

[40] "[D]eveloper" means "[a] person or company whose business is to buy land and then either to build on it or to improve the existing buildings there[.]" Black's Law Dictionary 546 (10th ed. 2014).

needed "flexibility" to address unanticipated changes after the condominium's creation. Sec. 34-36.1-1.04 cmt. 1.[41]

Section 34-36.1-1.03(9)(i) specifically concerns a person or group possessing an interest in a "unit not previously disposed of" and who further offers to dispose of that interest as part of a "common promotional plan." Significantly, this subsection does not include units that were subsequently conveyed back to the developer and this is because the definitions of a "declarant" and a "unit owner" are not mutually exclusive. A "declarant" possessing an interest in any of the units—whether or not the unit was "previously disposed of"—also constitutes a "unit owner." Secs. 34-36.1-1.03(9), (29). More importantly, the use of the term "common promotional plan" further suggests that a declarant is typically a professional developer, selling multiple units in larger condominiums. Although the Act does not define "common promotional plan", the definition found in the Interstate Land Sales Act—legislation covering similar subject-matter—reflects the literal meaning of the phrase and involves a concerted effort of one or a group of developers to sell their shared development in the ordinary course of business.[42] This corresponds

[41] *See, e.g.*, § 34-36.1-1.03 cmt. 8 ("The right 'to create units, common elements, or limited common elements' is frequently useful in commercial or mixed-use condominiums where the declarant needs to retain a high degree of flexibility to meet the space requirements of prospective purchasers who may not approach him until the condominium has already been created."); § 34-36.1-2.05 cmt. 4 ("The flexibility afforded by this section may be important to a declarant as he responds to unanticipated future changes in his market."); § 34-36.1-3.15 cmt. 1 ("This section contemplates that a declarant might find it advantageous, particularly in the early stages of condominium development, to pay all of the expenses of the condominium himself rather than assessing each unit individually. . . . Subsection (a) grants the declarant such flexibility while at the same time providing that once an assessment is made against any unit, all units, including those owned by the declarant, must be assessed for their full portion of the common expense liability.").

[42] A "common promotional plan" is defined under the Interstate Land Sales Act as: "a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by

with one of the triggering events under § 34-36.1-3.03(d)(1)(ii), terminating declarant control if the declarant ceases "to offer units for sale in the ordinary course of business" for two years. This Court finds it significant that § 34-36.1-1.03(9)(i) describes the declarant as one actively intending to sell the units that they possess and not just a developer who possesses units not previously disposed of.

The "special declarant rights" identified in § 34-36.1-1.03(9)(ii) refer to essentially whatever else a developer may need to do to complete the condominium and has reserved such rights in the declaration. *See* § 34-36.1-2.05 cmt. 9 ("Paragraph (a)(8) requires the declaration to describe all development rights and other special declarant rights which the declarant reserves.").[43] Section 34-36.1-1.03(26) states:

> (26) "Special declarant rights" means rights reserved for the benefit of a declarant to:
>
> > (i) Complete improvements indicated on plats and plans filed with the declaration, (§ 34-36.1-2.09),
> >
> > (ii) To exercise any development right, (§ 34-36.1-2.10),
> >
> > (iii) To maintain sales offices, management offices, signs advertising the condominium, and models, (§ 34-36.1-2.15),
> >
> > (iv) To use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium, (§ 34-36.1-2.16),
> >
> > (v) To make the condominium part of a larger condominium or a planned community, (§ 34-36.1-2.21),

each individual offering, as being offered for sale or lease as part of a common promotional plan[.]" 15 U.S.C.A. § 1701(4).

[43] More specifically, § 34-36.1-2.05(a)(8) states the declaration must contain: "[a] description of any development rights and other special declarant rights (§ 34-36.1-1.03(26)) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised."

> (vi) To make the condominium subject to a master association, (§ 34-36.1-2.20),
>
> (vii) Or to appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control, (§ 34-36.1-3.03(d)). Sec. 34-36.1-1.03(26).

The Act identifies these as "rights reserved for the benefit of a declarant which are unique to the declarant and not shared in common with other unit owners. The list, while short, encompasses virtually every significant right which a declarant might seek in the course of creating or expanding a condominium." Sec. 34-36.1-1.03 cmt. 13. Furthermore, the Act describes the "development rights" as "a panoply of sophisticated development techniques that have evolved over time[.] * * * Some of these techniques relate to the phased (or incremental) development of condominiums which the declarant hopes, but cannot be sure, will be successful enough to grow to include more land than he is initially willing to commit to the condominium." *Id.* cmt. 8.[44]

Based on this definition, the Court finds that the Stengels were not considered declarants under the Act. Although the Stengels executed the Condominium's Declaration—and properly define themselves as the "Declarants" in § 1.12 of the Declaration—such "terms have an unvarying meaning in the Act, and any restricted practice which depends on the definition of a term is not affected by a changed term in the documents." Sec. 34-36.1-1.03 cmt. 1. The Act recognizes this definition "is designed to exclude persons who may be called upon to execute the declaration in order to ratify the creation of the condominium, but who are not intended to be charged with the responsibilities imposed on declarants by this Act if that is all they do." Sec. 34-36.1-1.03 cmt. 7.

[44] Section 34-36.1-1.03(11) defines "development rights" as "any right or combination of rights reserved by a declarant in the declaration to: (A) Add real estate to a condominium, (B) Create units, common elements, or limited common elements within a condominium, (C) Subdivide units or convert units into common elements, or (D) Withdraw real estate from a condominium."

As the owners of 9 Victoria Avenue, the Stengels had the interest necessary to execute the Declaration and convert the Property from a single-family residence into a condominium. However, the Stengels did not act or otherwise possess the rights that would qualify them as a declarant under the Act that would necessitate the application of § 34-36.1-3.03(f), requiring at least a three-member board.

First, both units were "previously disposed of." The Stengels may have lived on the Property before the inception of the Condominium, but they were not the Owners of Unit 9 until it was conveyed to them. *See* § 34-36.1-1.03 cmt. 7. ("[U]nit owners reselling their units are not declarants because their units were 'previously disposed of' when originally conveyed."). Furthermore, Unit 9A—the purpose for which the D & J Condominium was originally created—was previously disposed of in 1990 when conveyed to Dr. Stengel's father. Since the plan to build Dr. Stengel's father a home adjacent to theirs on the same Property preceded the execution of the D & J Condominium and the sale of the unit, it is also clear the conveyance of Unit 9A was not a part of some "common promotional plan" or otherwise offered for sale in the ordinary course of business.

Regarding the second defining characteristic of a declarant under § 34-36.1-1.03(9)(ii), the Stengels reserved no special declarant rights in the Declaration and therefore did not have such rights to exercise as a declarant. In order to later exercise any of the rights set forth in § 34-36.1-1.03(26), § 34-36.1-2.05(a)(8) "requires the declaration to describe all development rights and other special declarant rights which the declarant reserves." Sec. 34-36.1-2.05 cmt. 9. Furthermore, as stated in § 12.1 of the Declaration, "there are NO development rights reserved to the Declarant in this Declaration." (Pls.' Ex. 1.)

Ultimately, it is clear that the Stengels were not declarants under the Act for the purposes of § 34-36.1-3.03 at the time they executed the First Amendment to the Declaration. A declarant, as defined under the Act, is involved with a condominium to the extent there is something left for them to do—whether it is selling any units not previously disposed of or exercising the special declarant rights previously reserved in the declaration. Furthermore, the events listed under § 34-36.1-3.03(d)(1)—triggering the termination of declarant control—clearly indicate that the period of declarant control is only intended to continue for the declarant to perform these tasks. Section 34-36.1-3.03(d)(1) states:

> [A] period of declarant control terminates no later than the earlier of:
>
> (i) Sixty (60) days after conveyance of eighty percent (80%) of the units which may be created to unit owners other than a declarant;
>
> (ii) Two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business; or
>
> (iii) Two (2) years after any development right to add new units was last exercised." Sec. 34-36.1-3.03(d)(1).

Therefore, declarant control will end either when eighty percent of the condominium's units have been sold, the declarant has ceased to take certain actions for two years, or when the declarant waives the right to maintain said control pursuant to § 34-36.1-3.03(d)(2).

It is clear to this Court that the purpose of "declarant control" is to allow the declarant to continue developing the condominium after its creation and while the completed units may be offered for sale. Because the declarant can retain control of the condominium association up until any one of § 34-36.1-3.03(d)(1)'s three triggering events are met—even when they lose their majority share of the allocated interest after selling off a share of the units—declarant control allows a declarant to run the management of the condominium as needed to continue with its

development or to sell the remaining units. Indeed, the declarant must remain in control to successfully proceed with the condominium's further development. The growing presence of unit owners during this continued development leads to a situation rife with potential conflict because of the declarant's and the unit owners' competing interests. The Restatement explains:

> The developer needs to retain control of the association long enough to avoid changes that will jeopardize its ability to sell the remainder, while the purchasers need to stabilize assessments and take charge of the rules governing operation of the community. The longer the developer retains control, the greater the likelihood of conflict. Accordingly, modern common-interest-community statutes specify timetables within which the developer must turn over control to the members. Restatement (Third) of *Property* (Servitudes) § 6.19 (2000).

Although the Act provides the declarant with this flexibility in further developing the condominium after its creation, the declarant does not have a guaranteed opportunity to pursue such further development without this period of declarant control because the unit owners could otherwise commandeer control once they collectively possess a majority share of the allocated interest. The purpose of declarant control centers around allowing the declarant to proceed during this intermediate period, when unit owners take possession of the units while the declarant further develops the condominium or sells the remaining units not yet disposed of.

Section 34-36.1-3.03(e) sets forth criteria intended to effect the gradual transition of control of the condominium to the unit owners at the end of declarant control and involves the unit owners in the management of the condominium during declarant control. The Act collectively describes §§ 34-36.1-3.03(d) and (e) as "provid[ing] for a gradual transfer of control of the association to the unit owners from the declarant." Sec. 34-36.1-3.03 cmt. 5. During declarant control, § 34-36.1-3.03(e) requires a minority of the executive board to be elected by the unit owners when a threshold percentage of the units are conveyed. Section 34-36.1-3.03(e) states:

> (e) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units which may be created to unit owners other than a declarant, not less than one-third (1/3) of the members of the executive board must be elected by unit owners other than the declarant.

While the declarant still maintains a functional majority of the executive board for the duration of declarant control, the purpose of installing one of the unit owners on the board is to prepare the unit owners for when they inevitably take control.[45] The Act explains this "gradual transfer is preferable to a one-time turnover of control since it assures that the unit owners will be involved, to some extent, in the affairs of the association from a relatively early date and that some unit owners will acquire experience in dealing with association matters." Sec. 34-36.1-3.03 cmt. 5.

This Court finds that § 34-36.1-3.03(f) requires this election of an executive board with at least three members because it is the smallest the executive board can be and still comply with § 34-36.1-3.03(e)'s gradual transition procedure while preserving the declarant's functional majority to further develop the condominium during declarant control. If § 34-36.1-3.03(f) allowed for the election of an executive board with less than three members, then the declarant would lose control of the board before holding the executive board election identified in § 34-36.1-3.03(f) as part of the transition from declarant control. The declarant that establishes an executive board with less than three members would lose their majority control of that board as soon as 25% of the condominium's units are conveyed because § 34-36.1-3.03(e) requires "at least one member

[45] The Act explains "[t]he existence of the structure clarifies the relationship between the developer and other unit owners and makes it easy for the developer to involve unit owners in the governance of the condominium even during a period of declarant control reserved pursuant to § 34-36.1-3.03(d)." Sec. 34-36.1-3.01 cmt. 1.

and not less than twenty-five percent (25%) of the members of the executive board must be elected by unit owners other than the declarant." Sec. 34-36.1-3.03(e). To avoid this, "[t]he number of members of the executive board" the declarant will include in the bylaws, as required pursuant to § 34-36.1-3.06(a)(1), must be at least three during declarant control to maintain control and comply with § 34-36.1-3.03. Accordingly, in order for § 34-36.1-3.03(e)'s gradual transition procedure to function without interfering with the declarant's work during declarant control, § 34-36.1-3.03(f) requires executive boards to have at least three members.

This functional reason for § 34-36.1-3.03(f)'s three-member requirement is inapplicable to the facts before this Court. The Stengels were not declarants under the Act and nothing pertaining to the transfer of declarant control was ever at issue. Since the execution of the Declaration, no developer has been involved with the Condominium either selling or constructing other units. Thus, the Condominium shares no similarities with the typical scenario where declarant control would be necessary and, therefore, § 34-36.1-3.03(f) is inapplicable.

In addition, upon review of the Act and the official comments, the Court cannot identify any consumer protection purpose served by requiring a two-unit condominium to maintain a board of directors with at least three members. While recognizing the functional purpose of the three-member requirement as part of the transition from declarant control, this Court cannot further identify any purpose served by extending § 34-36.1-3.03(f)'s application beyond the declarant control context. Outside of § 34-36.1-3.03(f) and the declarant control context, there is no indication that the Act requires any number of directors. If the intention was for condominiums to maintain executive boards with at least three members—during and after any period of declarant control—then the drafters could have plainly expressed this in § 34-36.1-3.06(a)(1) by requiring

the bylaws to provide for "[t]he number of members of the executive board" to be no less than three. No such requirement is found in the Act.

Furthermore, other states that have adopted the UCA have recognized exempting smaller condominiums from complying with the three-member board of directors' requirement—permitting the executive boards to only have as many members as there are units. *See, e.g.*, 68 Pa. C.S.A. § 3303(e)(1) (West) (Effective Dec. 18, 2018) ("the unit owners shall elect an executive board of at least three members at least a majority of whom must be unit owners, except that the executive board may consist of two members, both of whom must be unit owners, if the condominium consists of two units."); Wash. RCW § 64.34.308 (Effective July 28, 2019) (West) ("the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. . . .").

Regardless, '"statutes should not be construed to achieve meaningless or absurd results.'" *See Faber v. McVay*, 155 A.3d 153, 158 (R.I. 2017) (quoting *McCain v. Town of North Providence ex rel. Lombardi*, 41 A.3d 239, 243 (R.I. 2012)). Although requiring at least three directors may be reasonable for any other condominium with more than two units, this two-unit condominium presents a unique situation where such a requirement would result in more directors than there are units. By imposing § 34-36.1-3.03(f)'s three-member requirement on this Condominium, the Board of Directors would be able to take action over the objection of one of the two Unit Owners at the behest of the other if the non-owner sitting as the third director agrees. Contrary to the two-member Board of Directors, where the Unit Owners would always be equals, installing a third member here creates a dynamic where one of the Unit Owners could find themselves in the minority. Thus, forcing such a two-unit condominium to have at least three directors may lead to

a power struggle between the Unit Owners where one would not otherwise exist. Although the Stengels' and Antons' system for co-governance may lead to a deadlock, something which could be avoided by installing a non-owner as a third director, a deadlock can work to retain the status quo in a two-unit condominium in the absence of a consensus on any given action. Indeed, in lieu of implicating some third-party to sit as a third member on the Board, § 8.11 of the By-Laws provides for submitting any dispute between the Units to arbitration.

Additionally, this Court finds that enforcing § 34-36.1-3.03(g) on this two-unit condominium would be similarly problematic. This Court cannot conceive of any reasonable situation where § 34-36.1-3.03(g) could be invoked by one Unit Owner to remove the only other Unit Owner's representative from the two-member Board of Directors. Enforcing either §§ 34-36.1-3.03(f) or (g) in this instance would only open the door to the possibility that one of the Unit Owners will have control over the Condominium and the other Unit Owner as a result. This is exactly what the Antons sought to prevent through the execution of the First Amendment to the Declaration. The Houzes would have this Court replace the clearly intended scheme of co-governance—preserving the Condominium's status quo when the Unit Owners cannot agree on a proposed change—for a scheme where they could potentially take action despite the Antons' objection to it.

More importantly, this Court is hard-pressed to find any rationale as to why it would be more consistent with the General Assembly's intent to replace this two-unit condominium's current co-governance scheme with another that places a non-owner in a superior position of control over an owner. Upon review of the Act, it does not appear the drafters would have intended for §§ 34-36.1-3.03(f) or (g) to apply in this context whatsoever. Although the Act does not expressly discern between condominiums based on any number of units, there are various

provisions which are clearly designed to address far more complex problems than those which can possibly arise in smaller condominiums—such as this two-unit condominium. Considering the breadth of potential variation between each and every condominium for which the Act is intended to apply, this Court recognizes that particular provisions of the Act may not have been intended to be uniformly applied to every condominium and enforcing such provisions outside of their intended context could contravene the Act's consumer protection purpose. *See Heppner v. Alyeska Pipeline Service Co.*, 665 F.2d 868, 872 (9th Cir. 1981) (noting that courts may correct an absurdity "when Congress uses more sweeping language than it would if it were attending carefully to fact situations, outside the scope of its purpose, to which the language might be erroneously understood to apply.").[46] It is clear the Act's provisions regarding the transfer of declarant control were drafted in anticipation of far larger and more complex condominium projects than the one before the Court. In the absence of any underlying policy to justify prohibiting owners of a two-unit condominium from designating themselves as the sole members of the Board, this two-member Board would be at most an insubstantial deviation from the Act and strict compliance in this instance would be contrary to the Act's consumer protection roots. The Act states such mandatory requirements are "because of the need to protect purchasers, lenders, and declarants[,]" but these do not readily translate into providing unit owners protection from their fellow unit owners. Sec. 34-36.1-1.04 cmt. 1. By analyzing the Act in its entirety and acknowledging its consumer protection purpose, this Court can find no basis to determine that a three-member board of directors is required by the

[46] *See, e.g.*, *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930) ("Laws enacted with good intention, when put to the test, frequently, and to the surprise of the lawmaker himself, turn out to be mischievous, absurd, or otherwise objectionable."); *State, Township of Pennsauken v. Schad*, 733 A.2d 1159, 1166 (1999) (citations omitted) ("[W]here a statute or ordinance does not expressly address a specific situation, the court will interpret it 'consonant with the probable intent of the draftsman 'had he anticipated the matter at hand.'").

Act or that the Act's purpose would be better served by imposing this requirement based upon facts and circumstances of this case.

This Court finds that the Condominium's non-elected, two-member Board of Directors is not inconsistent with the Act because the requirements of §§ 34-36.1-3.03(f) and (g) do not apply to the facts before this Court. This Court concludes that § 34-36.1-3.03(f) was not intended to apply to a condominium such as the one at issue here because there was never a declarant or a period of declarant control to transition from. Furthermore, the only purpose behind § 34-36.1-3.03(f)'s requirement for an executive board of at least three members is to effectuate the Act's provisions relating to declarant control—ensuring the declarant maintains a functional majority over the board while complying with § 34-36.1-3.03(e). Additionally, this Court finds that §§ 34-36.1-3.03(f) and (g) do not apply because strictly enforcing these requirements on this two-unit condominium would lead to an absurd result that in no way promotes the consumer protection purposes of the Act.

C

Renovations to the Units or the Common Elements

Both parties seek declaratory judgment regarding whether the following components constitute parts of the Condominium's Common Elements or parts of the individual Units: (a) the exterior siding on the vertical walls; (b) the roof shingles or other roofing material; (c) the exterior windows; (d) the exterior doors; (e) the trim color; and (f) the entryways.

The Act defines a "Unit" as "a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to § 34-36.1-2.05(a)(5)"—thus leaving it to the individual condominium developments to distinguish between what comprises a Unit and what comprises the Common Elements. Sec. 34-36.1-1.03(28).

Although the Act simply designates a condominium's "Common Elements" by implication, defining it as "all portions of a condominium other than the units[,]" § 34-36.1-1.03(4), the Act further defines a condominium's "Limited Common Elements" as "a portion of the condominium elements allocated by the declaration or by operation of § 34-36.1-2.02(2) or (4) for the exclusive use of one or more but fewer than all of the units." Sec. 34-36.1-1.03(19). To determine what approval is required for such renovations, this Court must review the Act, the Condominium Documents, and the evidence presented, to distinguish between the Units and the Common Elements.

For the D & J Condominium, the Declaration defines a "Unit" as:

> 1.24 'Unit' means either of the two residential dwellings located on the premises described in Exhibit 'A' and shall be comprised of all structural components thereof, including basement and foundation flooring and walls, all bearing walls, and the exterior plane of the finished roof, vertical walls, glass panels or skylights, as the case may be, as more particularly described in Exhibit 'B.' (Pls.' Ex. 1.)

Following the First Amendment, § 2.3 of the Amended Declaration states:

> 2.3 The Condominium Units. The general description and identification of each unit, including unit dimensions, location and such other data as may be necessary or appropriate for its identification, are as set forth in Exhibit 'B' attached hereto. (Pls.' Ex. 2.)

Exhibit B provides particular descriptions for both Units. Unit 9A, the smaller of the two units, is described in the Declaration as:

> A two (2) [story,] six (6) room wood frame dwelling house, customized colonial style, with full basement, kitchen, living room, sitting room, study, two (2) bedrooms, and two (2) baths. The unit contains gas fired hot water heat and separately metered municipal water and electricity. (Pls.' Ex.1.)

Unit 9, the larger of the two units, is described in the Declaration as:

> A two (2) story, eleven (11) room wood frame dwelling house, customized colonial style, with full basement and attic, and containing kitchen, living, dining, family and music rooms, a den and sunroom, four (4) bedrooms, a second floor storage room on the westerly side of the unit consisting of approximately 140 square feet, more or less, as set forth and depicted on Exhibit A attached to the Second Amendment to D&J Condominium and incorporated by reference, three (3) baths, and a two (2) car garage. The unit contains gas fired hot water heat and separately metered municipal water and electricity. (Pls.' Ex. 3.)

The Condominium's Plats and Plans include a map for the Condominium Project and maps for the basement, first, and second floors, identifying the rooms and their measurements, as well as the location of stairwells, doors, windows, and other such features. (Defs.' Ex. M.)[47] The Plans identify other features on the Property with the annotation "LCA" which means a "Limited Common Area." *Id.* The plan for the First Floor has one "deck[]" and one "patio[]" for each Unit and all are labeled as "LCA." *Id.*[48]

Section 1.8 of the Declaration defines "Common Elements" as meaning "both General Common Elements and Limited Common Elements," and both are further defined in Article V of the Declaration, titled "Common Elements."[49] Article V of the Declaration, states:

> Common Elements. All areas and facilities shown on the Survey which are not part of a Unit shall comprise the Common Elements, and such Elements shall be designated as 'General Common Elements' and 'Limited Common Elements,' defined as follows:
>
> 5.1 Limited Common Elements. In addition to those portions of the Common Elements designated as Limited Common Elements by operation of Sections 34-36.1-2.02(2) or (4) of the Act, the following shall be designated as Limited Common Elements:

[47] The Plans were certified by an independent architect, John Smyth, to be in "compliance with the provisions of [§§ 34-36.1-2.01(b); 34-36.1-2.09; and 34-36.1-4.20]."

[48] In addition, the Second Amendment to the Declaration's Exhibit A provides an amended plan for the Second Floor, identifying the "storage room" belonging to Unit 9. (Pls.' Ex. 3.)

[49] Section 1.8 of the Declaration states "both General Common Elements and Limited Common Elements, as defined in Article III thereof," but Article III, titled "Restrictions on Use of Units," provides no such definitions whereas Article V does.

(a) The stairs, entryways and driveways to each Unit shall be for the private and exclusive use of said Units and shall be appurtenant thereto.

(b) The decks, deck railings, balustrades, supports, terraces, and patios and the like attached to the various Units, as shown on the Survey and Plats and Plans, shall be for the private and exclusive use of the Unit by which they are accessed, and shall [be] appurtenant thereto.

(c) The aforesaid limited common areas shall be kept in a neat, clean and uncluttered condition by the Unit owner to which such areas are appurtenant; and the expense of minor repairs and maintenance thereof shall be borne exclusively by the Unit owner. Also, all major repairs and maintenance to each unit shall be the responsibility of the individual unit owner.

5.2 General Common Elements. The General Common Elements shall be comprised of all of the Common Elements which are not part of the Limited Common Elements, and shall include the following:

(a) The land described in Exhibit 'A' on which the improvements stand; and

(b) The lawns, yards, gardens, driveways, walls, and fences; and

(c) The exterior conduits or installations of central services, such as power, lights, gas, hot and cold water, central heating, compressors, pumps, generators, and the like, including, but in no way limited to, all pipes, ducts, flues, chutes, conduits, cables, wires, and other utility lines, except such as may be included in and for the exclusive use of a Unit; and

(d) All other elements of the Condominium Project rationally of common use or necessary to its existence, upkeep and safety. (Pls.' Ex. 1.)

Section 5.1 of the Declaration incorporates §§ 34-36.1-2.02(2) and (4) from the Act, which identifies various components as Limited Common Elements. In addition, it specifically identifies other Limited Common Elements.

The Declaration must contain "[a] description of the boundaries of each unit created by the declaration, including the unit's identifying number[.]" Sec. 34-36.1-2.05(a)(5). The Act further requires the Plats and Plans to show "[t]he location and dimensions of the vertical boundaries of each unit, and that unit's identifying number[.]" Sec. 34-36.1-2.09(d)(1). The Declaration's description of a unit will be adequate "so long as the requirements of [§ 34-36.1-2.04] are satisfied, and so long as the declaration itself, together with the plats and plans which are a part of the declaration, provides a legally sufficient description." Sec. 34-36.1-2.04 cmt. 1.[50] Thus, the First Amendment's failure to reference the Plats and Plans in § 2.3 of the Declaration does not mean they should not be considered as part of the Court's review because the Plats and Plans are made a part of the Declaration pursuant to § 34-36.1-2.10.[51] *See* § 34-36.1-2.05 cmt. 10. In addition, § 2.3 of the Amended Declaration merely states that "[t]he general description and identification of each unit, . . . are as set forth in Exhibit 'B'[.]" Nowhere in the First Amendment does it state the Plats and Plans should be disregarded.

The Antons claim that each component is part of the Common Elements and therefore any renovation or modification thereto requires obtaining the unanimous prior written approval of the Unit Owners, pursuant to § 8.1(i)(v) of the Amended Declaration, as well as the approval of the Board of Directors, pursuant to § 8.6 of the By-Laws. The Antons point to § 8.1(i)(v) of the Amended Declaration, stating "any additions, alterations, or improvements to the Common

[50] Sec. 34-36.1-2.04 ("A description of a unit which sets forth the name of the condominium, the recording data for the declaration, the municipality, city or town, in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.").

[51] Furthermore, § 1.18 of the Declaration defines the "Plats and/or Plans" as those which were "recorded simultaneously with this Declaration and as described in R.I.G.L. 34-36.1-2.09." (Pls.' Ex. 1.)

Elements costing in excess of One Thousand ($1,000.00) Dollars" require "the prior written consent of . . . Unit Owners entitled to one hundred (100%) percent of the Common Areas and Facilities of the Condominium." The Antons contend the definition of a Unit only extends to the roof plane and not the finishing materials on the plane. They also contend the boundaries of the Units do not extend "to the finished surfaces of the [external] vertical walls and the windows and skylights of the two residential dwellings." First Am. Compl. ¶ 47. The Antons argue that the definition's preceding phrase—"shall be comprised of all structural components thereof"—is a qualification upon the proceeding language intended to limit the boundaries of the Unit to its "structural components" and not include the non-structural exterior elements such as the finished materials on the exterior plane of the roof or the vertical walls.

Alternatively, the Houzes maintain that all of the specific components referenced above are part of the Units and they are therefore entitled to perform renovations thereto without first obtaining the prior written consent of 100% of the Unit Owners pursuant to § 8.1(i)(v) of the Amended Declaration. (Defs.' Mem 26.)[52] The Houzes claim "[t]he definition of 'Unit' at § 1.24 of the Declaration includes the exterior finished surfaces of the roof and vertical walls, the windows, and the skylights of the 'two residential dwellings' identified in said § 1.24." Defs.' Counterclaims ¶ 13. The Houzes contend that the Declaration's definition of a "Unit"

[52] Although the Houzes acknowledge that both Unit and Common Element renovations still require the approval of the Board of Directors pursuant to § 8.6 of the By-Laws, the Houzes maintain that § 34-36.1-3.03(f) requires the Board of Directors to have at least three members that must be elected by the Unit Owners—who are entitled to vote based on their respective Units' Allocated Interest pursuant to § 6.2 of the Declaration. The Houzes' argument here is premised upon the Court determining that the Condominium's non-elected, two-member Board of Directors is inconsistent with the Act and requires the election of a Board of Directors with at least three members. However, this Court has determined that §§ 34-36.1-3.03(f) and (g) do not apply. *See* Section IV.B *supra*. Therefore, obtaining the approval required under § 8.6 of the By-Laws does require the approval of the Antons' member of the Board of Directors.

encompasses the exterior of the building in its entirety. The Houzes emphasize the definition's inclusion of the word "finished"—as used to describe "the exterior plane of the finished roof, vertical walls, glass panels, or skylights"—to suggest that the definition includes all aspects of the Unit's exterior. The Houzes contend this all-encompassing interpretation of what constitutes a Unit is appropriate here because the Condominium's Units "are two otherwise separate free-standing structures but for a shared party wall." (Defs.' Mem. 30, 33.) Moreover, the Houzes claim Exhibit B of the Declaration's description of each Unit as a "wood frame dwelling house, customized colonial style" invariably refers to the entire building, including the exterior elements.

The Houzes' interpretation lacks merit. Given the extensive description found in the definition of a Unit, this Court finds this definition was clearly not intended to include the Condominium's exterior in its entirety. When a court looks for the plain meaning, "every word of the contract should be given meaning and effect; an interpretation that reduces certain words to the status of surplusage should be rejected." *Andrukiewicz v. Andrukiewicz*, 860 A.2d 235, 239 (R.I. 2004). The Houzes' all-encompassing interpretation of this definition would render the extensive description referenced above superfluous. Indeed, if the Unit was intended to include the exterior of the building in its entirety, there would be no need for the definition to refer to the "structural components thereof" or "the exterior plane of the finished roof, vertical walls, glass panels, or skylights[.]" It is therefore clear to this Court that the definition is narrower than the Houzes suggest.

Furthermore, the definition's reference to "all structural components thereof" further suggests its incorporation was intended to limit what constitutes a Unit because this language is found in the Act. *See* § 34-36.1-2.01(b) ("A declaration . . . may not be recorded unless all structural components and mechanical systems of the building containing or comprising any units

thereby created are substantially completed in accordance with the plans of that building[.]").[53]

The significance of this term is further explained in the Act's Comments:

> The concept of 'structural components and mechanical systems' is one commonly understood in the construction field and this comment is not intended as a comprehensive list of those components. For example, however, the term 'structural components' is generally understood to include those portions of a building necessary to keep any part of the building from collapsing, and to maintain the building in a weathertight condition. This would include the foundations, bearing walls and columns, exterior walls, roof, floors and similar components. It would clearly not include such components as interior non-bearing partitions, surface finishes, interior doors, carpeting, and the like. . . . Sec. 34-36.1-2.01 cmt. 6.[54]

The outer-most components of a building are not necessary to keep any part of the building from collapsing, nor are they components that maintain the building in a weathertight condition. *Id.* This is supported by Mr. Peter Raposa's expert testimony on this subject; *see* Restatement (Second) of *Contracts* § 220 cmt. d (1981).[55] Mr. Raposa testified a building such as this

---

[53] *See Allen v. United Services Automobile Association*, Nos. 3:13cv143-MCR/CJK, 3:13cv582-MCR/CJK, 2014 WL 1303650, at *4 (N.D. Fla. Mar. 30, 2014) ("[T]he 'general doctrine' provides that, where a contract involves 'a subject which is surrounded by statutory limitations and requirements' that play an 'integral role' in defining the parties' rights and responsibilities, those statutory limitations and requirements may be implicit in the contract, absent a reason to conclude otherwise.").

[54] *See also* § 34-36.1-2.11(1) ("Subject to the provisions of the declaration and other provisions of law, a unit owner: May make any improvements or alterations to his or her unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium[.]"); § 34-36.1-2.11 cmt. 1 ("This section deals with permissible alterations of the interior of a unit, and impermissible alterations of the exterior of a unit and the common elements, in ways which reflect common practice. The stated rules, of course, may be varied by the declaration where desired.").

[55] *See* Restatement (Second) of Contracts § 220 cmt. d (1981). ("Hence usage relevant to interpretation is treated as part of the context of an agreement in determining whether there is ambiguity or contradiction as well as in resolving ambiguity or contradiction. There is no requirement that an ambiguity be shown before usage can be shown, and no prohibition against showing that language or conduct have a different meaning in the light of usage from the meaning they might have apart from the usage. . . .").

Condominium is structurally finished when the exterior-facing plywood—for both the roof and the vertical walls—is wrapped in the membrane to make it "weathertight." Tr. 172-73, Oct. 4, 2018. The Court gives great weight to Mr. Raposa's testimony. Mr. Raposa was a credible witness. His education and experience in the local building industry is extensive.

Further supporting this Court's interpretation of what constitutes part of the Units, it is clear to this Court that the purely exterior components of the Condominium cannot be considered part of the Unit because the Unit Owner's obligation to maintain and repair their Unit under § 8.4(a) of the By-Laws does not extend to the Condominium's exterior. Since the Unit Owner's obligations to maintain and repair any part of the Condominium is dependent upon whether the component at issue is part of the Unit or the Common Elements, the scope of the Unit Owner's obligation to maintain and repair their Unit should be co-extensive with what is considered part of that Unit.[56] Section 8.4 of the By-Laws sets out the maintenance and repair obligations split between the Unit Owners and the Association. Section 8.4(a) of the By-Laws, describing the Unit Owners' obligations to maintain and repair their Units, states:

> Except for maintenance required herein imposed on the Association, each Owner shall maintain, repair and replace, at his own expense, the interior of his Unit any and all equipment, appliances, or fixtures therein situated, in good order, condition and repair, and in a clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Unit. Each Owner shall be liable for damages, liabilities, costs, and expenses, including reasonable attorneys' fees, caused by or arising out of his failure to perform any such maintenance or repair work. (Pls.' Ex. 1.)

[56] *See, e.g.*, § 34-36.1-3.07(a) ("Except to the extent provided by the declaration, . . . or § 34-36.1-3.13(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his or her unit."); § 34-36.1-2.08 cmt. 1 ("Unless the declaration provides otherwise, the association is responsible for the upkeep of a limited common element and the cost of such upkeep is assessed against all the units.").

Significantly, § 8.4(a) of the By-Laws limits a Unit Owner's obligation to "maintain, repair and replace, at [their] own expense" only to the "interior of his Unit." Similarly, § 6.1(e) of the By-Laws, prescribing what costs pertaining to the Association's maintenance and repair obligations will be paid through the Common Expense Fund, states:

> (e) The cost of painting, maintaining, replacing, repairing, and landscaping the General Common Elements (and the Limited Common Elements to the extent provided in Section 8.4 hereof), and such furnishings and equipment for the Common Elements as the Board of Directors shall determine are necessary and proper; and the Board of Directors shall have the exclusive right and duty to acquire the same; provided, however, that nothing herein contained shall require the Board of Directors or the Association to paint, repair, or otherwise ***maintain the interior of any Unit*** or any fixtures, appliances, or equipment located therein[.] (Pls.' Ex. 1) (emphasis added).

Significantly, both § 8.4(a) and § 6.1(e) of the By-Laws refer to the "interior" of the Unit as a limitation on the physical scope of each provisions' obligations. Given that the Unit Owner's obligations to their Unit and the Association's obligations to the Condominium run up to the boundary that is the "interior" of the Unit, it is clear to this Court that the "interior" of the Unit is a demarcation between the Unit and the Common Elements. Therefore, § 8.4(a) of the By-Laws' restriction of the Unit Owner's obligations to maintain and repair their Unit only to the "interior of [their] Unit" further supports a narrower interpretation of what constitutes a Unit, which does not include the exterior of the building in its entirety.

Having determined that a Unit Owner's maintenance and repairs obligations only run to the "interior of [their] Unit," it follows that the Condominium's purely-exterior components, including the external siding of the vertical walls, the roof shingles, and the trim color, are not considered part of the Units. If the definition of a Unit was intended to include the Condominium's purely-exterior components, then the scope of a Unit Owner's obligation to their Unit under

§ 8.4(a) of the By-Laws would run co-extensively with that very definition and would not have limited it to the interior. Furthermore, because they are not identified as Limited Common Elements in either § 5.1(c) of the Declaration or §§ 34-36.1-2.02(2) or (4), this Court finds that the external siding of the vertical walls, the roof shingles, and the trim color constitute General Common Elements of the Condominium, requiring the prior written approval of the Board of Directors, pursuant to § 8.6 of the By-Laws, and 100% of the Unit Owners, pursuant to § 8.1(i)(v) of the Amended Declaration. Upon determining that the exterior components of the Condominium are clearly intended to be outside of the Units' boundaries and part of the Common Elements, the remaining question this Court must address is whether the Condominium's entryways, exterior doors and windows—components which straddle the boundary line between the interior and exterior—are also intended to be Common Elements.

The maintenance and repair obligations pertaining to the entry doors and windows clearly indicate they constitute Limited Common Elements. Sections 8.4(b) and (c) of the By-Laws state:

> (b) Windows and Doors. Notwithstanding the foregoing subsection 8.4(a), the Board of Directors may resolve that the exterior surfaces of all windows, entry doors of the Units, and/or appurtenant parking areas shall be cleaned and maintained as a Common Expense, in accordance with a schedule determined by the Board of Directors.
>
> (c) Limited Common Elements. Each Unit Owner shall maintain in a neat, clean, and sanitary condition any Limited Common Element reserved for the benefit of his Unit alone. Each unit owner shall paint or stain and make all repairs and replacements to such Limited Common Elements at his or her own expense. (Pls.' Ex. 1.)

When read together with § 6.1(e) of the By-Laws, it is clear to this Court that § 8.4(b) of the By-Laws is an exception to the Unit Owner's regular cleaning and maintenance obligations for the Limited Common Elements. Under § 8.4(c) of the By-Laws, the Unit Owner is wholly responsible,

at their own expense, for any cleaning, maintenance, or repair necessary for the Limited Common Elements.[57] Section 6.1(e) of the By-Laws states that the Association's Common Expense Fund will cover "[t]he cost of painting, maintaining, replacing, repairing, and landscaping the General Common Elements ***(and the Limited Common Elements to the extent provided in Section 8.4 hereof)***[.]" (Emphasis added.) The parenthetical found in § 6.1(e) of the By-Laws is a clear reference to § 8.4(b) of the By-Laws and indicates that the components therein, all of the windows and entry doors and parking areas, are Limited Common Elements.

Furthermore, an interpretation including the exterior doors and windows as part of the Units would be inconsistent with the Declaration's designation of various components as Limited Common Elements. This Court finds it significant that the express designation of certain components as Limited Common Elements under § 5.1(a) and (b) of the Declaration are "[i]n addition to those portions of the Common Elements designated as Limited Common Elements by operation of Section 34-36.1-2.02(2) or (4) of the Act[.]" (Pls.' Ex. 1). Section 34-36.1-2.02, in pertinent part, provides:

> Except as provided by the declaration:
>
> . . . .
>
> (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof

[57] This Court does not find that § 8.4(c) of the By-Laws conflicts with § 5.1(c) of the Declaration simply because the Declaration states that "the expense of minor repairs and maintenance [of the Limited Common Elements] shall be borne exclusively by the Unit owner." *See* § 34-36.1-2.03(c) ("In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter."). The fact that § 5.1(c) of the Declaration states the Unit Owners are liable for "minor repairs and maintenance" does not further mean the Unit Owners will not be responsible if anything requires "major" repairs. Regardless of whether or not these provisions conflict, this Court's determination that the components identified in § 8.4(b) of the By-Laws are Limited Common Elements would remain the same.

> serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.
>
> . . . .
>
> (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.[58]

Given that §§ 34-36.1-2.02(2) and (4) have been expressly incorporated into § 5.1 of the Declaration, this Court finds that the drafters intended for these subsections to apply to this Condominium's Limited Common Elements. *See* 11 *Williston on Contracts* § 30:19 (4th ed. July 2019 Update) ("When a contract expressly incorporates a statutory enactment by reference, that enactment becomes part of the contract for the indicated purposes just as though the words of that enactment were set out in full in the contract."). The comments to the Act explain that "[§ 34-36.1-2.05(a)(6)] makes clear that the limited common elements described in Section [34-36.1-2.02(2) and (4)] need not be described in the declaration." Sec. 34-36.1-2.05 cmt. 7.[59] The comments further explain:

---

[58] *See, e.g.*, § 34-36.1-2.02 cmt. 1 ("This section fills the gap when the declaration merely defines unit boundaries in terms of floors, ceilings, and perimetric walls. The provisions of this section may be varied, of course, to the extent that the declarant wishes to modify the details for a particular condominium."); § 34-36.1-1.04 cmt. 3 ("Section [34-36.1-2.02]. Unit Boundaries. The declaration may vary the distinctions as to what constitutes the units and common elements.").

[59] *See* § 34-36.1-2.05(a)(6) ("The declaration for a condominium must contain: . . . A description of any limited common elements, other than those specified in § 34-36.1-2.02(2) and (4), or as provided in § 34-36.1-2.09(b)(10)."); Sec. 34-36.1-2.05(a)(6) cmt. 6 ("Section [34-36.1-2.02] makes it possible in many projects to satisfy paragraph (a)(5) of this section by merely providing the identifying number of the units and stating that each unit is bounded by its ceiling, floor, and walls. The plats and plans will show where those ceilings, floors, and perimetric walls are located, and Section [34-36.1-2.02] provides all other details, except to the extent the declaration may make additional or contradictory specifications because of the unique nature of the project.").

> Such improvements are treated by the Act as limited common elements, rather than either common elements or parts of units, in order to minimize the attention which the documents need to give them, and to secure the result that would be desired in the usual case. Thus, if these improvements remain limited common elements, and no special provisions concerning them are included in the declaration, they may be used only by the units to which they are physically attached; maintenance of those improvements must be paid for by the association; and such improvements need not be specially referred to in the declaration. Porches, balconies and patios must be shown on the plats and plans (*see* Section [34-36.1-2.09(b)(10)]), but other limited common elements described in Section [34-36.1-2.02(2) and (4)] need not be shown. *Id.*[60]

Although the structural components are part of the Units, this Court does not consider that to meaningfully affect § 34-36.1-2.02(4)'s application or indicate that the exterior components listed under § 34-36.1-2.02(4) are not "located outside the unit's boundaries."[61] The fact that the Act does not require the declaration to identify such components as Limited Common Elements suggests the incorporation of § 34-36.1-2.02(4) was a clear intention for all of the components to be Limited Common Elements in the absence of anything to the contrary.

Nothing found in the Condominium Documents indicates that § 34-36.1-2.02(4)'s listed components would not be Limited Common Elements. Furthermore, having identified "[t]he decks, . . . terraces, and patios and the like attached to the various Units" as Limited Common Elements through § 5.1(b) of the Declaration, there would have been no need to incorporate § 34-

[60] Sec. 34-36.1-2.09(b)(10) ("Each plat must show: . . . [t]he location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in [34-36.1-2.02(2) and (4)[.]").

[61] Although the Unit includes the "structural components," the Act does not require the Condominium's Plats and Plans to provide any further detail. *See* § 34-36.1-2.01 cmt. 6 (acknowledging that the Plats and Plans do not need to show the "structural components and mechanical systems"); s*ee also Reed v. Sunset Cove Condominium Owners Association*, 199 S.W.3d 875, 878-79 (Mo. Ct. App. 2006) ("Neither [the definition of a "Unit"] nor [§ 34-36.1-2.05(a)(5)] limits the boundaries of a condominium unit to interior space[.] . . . A condominium unit may be limited to interior space or it may be something more than interior space.").

36.1-2.02(4) just to refer to the Condominium's "porches, balconies, [and] patios." If the remaining components identified in § 34-36.1-2.02(4)—"shutters, awnings, window boxes, doorsteps, stoops, . . . and all exterior doors and windows or other fixtures"—were not Limited Common Elements, then the reference to § 34-36.1-2.02(4) would be rendered meaningless because the Limited Common Elements identified under §§ 5.1(a) and (b) of the Declaration were "[i]n addition to those portions of the Common Elements designated as Limited Common Elements by operation of Sections 34-36.1-2.02(2) or (4) of the Act[.]" *See Andrukiewicz*, 860 A.2d at 239.

Upon review of what the Declaration designates as the Limited Common Elements, the incorporation of § 34-36.1-2.02(4), and the Condominium Documents as a whole, it is clear that any exterior doors, exterior windows, and entryways are designated to be Limited Common Elements. Section 5.1(a) of the Declaration expressly identifies "entryways" as a Limited Common Element among the other enumerated components identified as Limited Common Elements.[62] Moreover, § 6.1(e) of the By-Laws directly identifies entry doors and windows as Limited Common Elements as part of § 8.4(b) of the By-Laws. In conjunction with the aforementioned provisions found in the Condominium Documents and the absence of anything to the contrary, the incorporation of § 34-36.1-2.02(4) further supports an interpretation designating all exterior doors and windows as Limited Common Elements.

[62] Aside from the locations of doors, the Plats and Plans do not specifically identify any particular doors as "entryways." Presumably, this would refer to the front entrances of each Unit but could also refer to any of exterior doors. Regardless, as explained below, the incorporation of § 34-36.1-2.02(4) into the Declaration evidences the intent to designate all exterior doors as Limited Common Elements.

In addition, the Condominium Documents make clear that the drafters recognized the appearance of the actual Condominium's "building" as something to be maintained—in addition to the Units.[63] Section 3.1(c) of the Declaration states:

> 3.1 Restrictions on Unit Use
>
> Said Units and the common areas and facilities of the Condominium shall be subject to the restrictions that, unless otherwise permitted by instrument in writing duly executed by the Board of Directors of the Condominium Association, pursuant to provisions of the By-Laws thereof, hereinafter referred to, . . . (c) the architectural integrity of the building and the Units shall be preserved without modification, and, to that end, without limiting the generality hereof, no unit shall be further subdivided, and no awning, screen, antenna, sign, banner, or other device, ***and no exterior change, addition, structure, projection, decoration, or other feature shall be erected or placed upon or attached to any such Unit or any part thereof; no addition to or change or replacement of any exterior light, door knocker or other exterior hardware shall be made;*** and no painting, attaching of decalomania, or other decoration shall be done on any exterior part of the surface of any Unit nor on the interior or exterior surface of any window, ***without first obtaining the written approval and permission of the Board of Directors***; . . . . (Pls.' Ex. 1) (Emphases added.)

Section 3.1(c) of the Declaration concerns itself with the Condominium's outward appearance, preserving the building's "architectural integrity" and preserving the Units "without modification." Section 3.1(c) prohibits making practically any conceivable change, alteration, or addition to the exterior of the Condominium without first obtaining the Board of Directors' approval. Similarly, § 3.1(d) of the Declaration—not referring to the Units whatsoever—states:

> (d) all maintenance and use by Unit Owners of all facilities shall be done ***so as to preserve the appearance and***

[63] This is further supported by § 2.2 of the Declaration which states "[t]he Condominium Project shall include the building . . . containing two (2) residential units as set forth in the Survey and accompanying Plats and Plans." (Emphasis added.) By stating the building "contains" two Units—as opposed to being "comprised of" or something similar—this further suggests there is some part of the building that is not part of either Unit.

> ***character of the same and of the grounds and building without modifications;*** . . . (Pls.' Ex. 1) (emphasis added.)

Furthermore, the Rules and Regulations state:

> 3. Outside Display. Without the prior consent of the Board of Directors, (a) Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls or doors of any building, (b) no sign, awning, canopy, shutter, or radio or television antenna shall be affixed to or placed upon the exterior walls or doors, roof or any part thereof, or exposed on or at any window, and (c) no clothes shall be hung outside a Unit.
>
> . . . .
>
> 8. Color. Unit Owners shall not paint, stain, or otherwise change the color of any exterior portion of any of the Buildings.
>
> 9. Maintenance. Each Unit Owner shall keep his Unit and any balcony, patio, or terrace, deck, and outbuilding associated therewith, in a good state of preservation and cleanliness. (Pls.' Ex. 1.)

Accordingly, an interpretation of the Condominium Documents designating the exterior of the Condominium in its entirety as part of the Common Elements is consistent with the Condominium Documents' restrictions regarding the exterior appearance of the Condominium.

Pursuant to § 3.1 of the Declaration, the Unit Owners can seek relief from these restrictions by "obtaining the written approval and permission of the Board of Directors[.]" (Pls.' Ex. 1.) Following the First Amendment to the Declaration, a Unit Owner proposing to make any exterior alteration to the Condominium, costing in excess of One Thousand Dollars, must obtain the prior unanimous written consent of all other Unit Owners—pursuant to § 8.1(i)(v) of the Amended Declaration—in addition to obtaining the unanimous approval of the two-member Board of Directors pursuant to § 3.1 of the Declaration and § 8.6 of the By-Laws. In relation to the Condominium Documents' stated concern regarding the exterior appearance of the Condominium,

it is clear to this Court that § 8.1(i)(v) of the Amended Declaration sought to preserve the exterior appearance of the Condominium in its entirety as part of the Common Elements.

Upon review of the Condominium Documents as a whole, it is clear that the roof shingles, the exterior siding of the vertical walls, the trim color are General Common Elements and that the Condominium's exterior doors and windows are Limited Common Elements. Therefore, renovations to such components require the unanimous approval of the Unit Owners pursuant to § 8.1(i)(v) of the Amended Declaration and the unanimous approval of the Board of Directors pursuant to § 3.1 of the Declaration and § 8.6 of the By-Laws.

D

Permanent Injunction

The Plaintiffs' prayer for injunctive relief is granted. As stated herein, the Plaintiffs have been successful on the merits of their claims. They have also established that they will suffer irreparable harm if the Defendants are allowed to take unilateral action regarding the Condominium's Common Elements without the necessary approval as required by the Condominium Documents. *See National Lumber & Building Materials Co. v. Langevin*, 798 A.2d 429, 434 (R.I. 2002) (quoting *Fund for Community Progress v United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997)) ("A party seeking injunctive relief 'must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.'"). If the Defendants were allowed to take unilateral action regarding the Condominium's Common Elements, it would effectively nullify the Plaintiffs' ability to share in the control of the property that they own in common with the Defendants.

Further, there is no equitable reason why the Defendants should be permitted to disregard the co-governance provisions of the Condominium Documents. *See In re State Employees' Unions*, 587 A.2d 919, 927 (R.I. 1991).

E

Attorneys' Fees

Pursuant to § 34-36.1-4.17 and § 10.1 of the Declaration, the Antons seek attorneys' fees and costs for the ensuing litigation. The Rhode Island Condominium Act states:

> If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney's fees. Sec. 34-36.1-4.17.

"The award of attorneys' fees when statutorily or contractually authorized, is a matter confided to the sound discretion of the presiding judicial officer." *Mullowney v. Masopust*, 943 A.2d 1029, 1034-35 (R.I. 2008) (citing *Women's Development Corp. v. City of Central Falls*, 764 A.2d 151, 162 (R.I. 2001)). In *Mullowney*, the Supreme Court recognized this Act "vests significantly broader discretion in the presiding judicial officer than is the case with some other statutes that authorize the awarding of attorneys' fees." 943 A.2d at 1034 n.4 (citing four other statutory provisions that permit awarding attorneys' fees). The hearing justice may grant attorneys' fees and costs upon a finding that a defendant has "acted 'at least unreasonably' and caused plaintiffs to 'suffer the expense of substantial and complex litigation in order to vindicate their rights."' *Id.* at 1035.[64] Section 10.1 of the Declaration also provides for the recovery of attorneys' fees from

[64] In interpreting "unreasonable" action which warrants attorneys' fees, the Supreme Court stated "[b]ecause unreasonable action would, in our view, be a sufficient predicate for making this case

the Unit Owner or other persons in "[v]iolation of any of the terms of this Declaration, including the By-Laws and the Rules and Regulations[.]"[65] (Pls.' Ex. 1.)

By initiating both the interior and exterior renovations without the Antons' approval or knowledge, Mr. Houze failed to comply with the procedure as set forth in the Condominium Documents. The Houzes' interior renovations which began in July of 2017, including the replacement of support beams, clearly involved structural renovations and therefore required the Board of Directors' "prior written consent" pursuant to § 8.6 of the By-Laws. This section states:

> 8.6 Additions, Alterations, or Improvements by Unit Owners. No Unit Owner shall make any structural addition, alteration, or improvement in or to his Unit, or the Common Elements, without the prior written consent thereto of the Board of Directors. The Board of Directors shall have an obligation to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration, or improvement in such Owner's Unit within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board of Directors to the proposed addition, alteration, or improvement. Notwithstanding the foregoing, no Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any hereditament, without in every such case the prior unanimous written consent of all other Unit Owners. . . . (Pls.' Ex. 1.)[66]

Furthermore, regardless of whether the Houzes' exterior renovations were to the Unit or the Common Elements, the Board of Directors' "prior written consent" was still required pursuant to § 3.1 of the Declaration and § 8.6 of the By-Laws. Section 3.1(c) of the Declaration requires "the

---

an appropriate one for the award of attorneys' fees, we need not and do not decide whether there was any action in bad faith." *Mullowney,* 943 A.2d at 1035 n.5.

[65] Section 10.1 of the Declaration states in part, "each Owner or other person violating the terms hereof shall be liable for all court costs and reasonable attorneys' fees incurred by . . . any Owner relating to such violation."

[66] Alterations of the Common Elements require the approval of both the Board of Directors and 100% of the Unit Owners because the requirements of § 8.1(i)(v) of the Declaration are "[i]n addition to all other requirements of this Declaration or the By-Laws."

architectural integrity of the building and the Units [to] be preserved without modification," and, among an amalgam of other restrictions listed, further requires "no ***exterior*** change, addition, [or] structure, . . ." to be made "without first obtaining the written approval and permission of the Board of Directors[.]" (Emphasis added.)[67] Because Mr. Houze decided to act unilaterally on behalf of the Board to approve his own renovations, without involving the Antons whatsoever, Mr. Houze never obtained such approval for any of his renovations.

Mr. Houze's actions were clearly contrary to the plain language of the First Amendment. In addition, Mr. Houze failed to follow the procedure as set forth in the By-Laws. In order to act, the renovations must have been approved by the Board of Directors either at a meeting where a quorum was attained or "by instrument signed by all of the Directors, or by a telephone poll, if there is unanimous agreement regarding the action to be taken." (Pls.' Ex. 1, Section 3.2(g) of the By-Laws.) Aside from the fact that a quorum under § 3.2(i) of the By-Laws could not be obtained without having both Board members present, a special meeting to vote on any proposed action required Mr. Houze to provide "three (3) business days' notice to each Director" which must have been "given personally or by mail, telephone, or telegraph, and such notice shall state the time, place (as hereinabove provided) and the purposes of the meeting." (Pls.' Ex. 1, Section 3.2(g) of the By-Laws.)

Having testified that he read the Condominium Documents "line by line," Mr. Houze should have been fully aware that the By-Laws clearly required him to notify the Antons, as the other member of the Board, about his proposed renovations since the Condominium Documents contain no alternative method for the Board to take action without doing so. Whether or not Mr.

[67] Section 3 of the Rules and Regulations requires "the prior consent of the Board of Directors" before the Unit Owners can hang, display, or affix anything on the windows, outside walls, and doors. (Pls.' Ex. 1.)

Houze subjectively believed he could act unilaterally on behalf of the Board of Directors in order to obtain the approval needed for his renovations, there is no suggestion in the Condominium Documents that his wrongfully perceived controlling majority would further enable him to proceed with his renovations and entirely forego the procedure for obtaining the Board of Directors' approval. Notifying the Antons of his requested renovations and addressing them at a meeting of the Board of Directors is required. In addition, in order for such approval to serve any meaningful purpose, the request for approval clearly must provide something more than just a summary of the renovations to be performed. Pursuant to § 8.6 of the By-Laws, if the Board of Directors is to impose "terms, conditions, and restrictions in connection with any additions, alterations, or improvements by any Unit Owners which are approved by the Board of Directors[,]" the Board must have more detailed information about the renovations. The procedure for approving of any alteration to the Condominium is just as much about informing others about the proposed alteration as it is about obtaining the necessary approval. Mr. Houze's failure to abide by such procedure was, at the very least, unreasonable.

As their fellow Unit Owner, Mr. Houze has also acted unreasonably toward the Antons in relation to the events that led to this litigation. Although the Houzes were aware that the Antons' opinion regarding the governance of the Condominium was diametrically opposed to theirs since they met in Boston in February of 2017—months prior to his purchase of Unit 9—Mr. Houze continued to pursue purchasing Unit 9 and did not otherwise address the governance issue with them. Since closing on Unit 9 in May of 2017, Mr. Houze demonstrated a complete disregard for the Antons' shared interest in the Condominium. Knowing of their fundamentally different interpretations of the various governance provisions in the Condominium Documents, Mr. Houze still proceeded with his renovations without obtaining the Antons' approval or even informing

them that he was beginning such work. Despite the Antons' repeated objections to him taking such unilateral action in contravention of the Condominium Documents, and their subsequent requests to review his plans for ongoing and future renovations, Mr. Houze made no effort to accommodate the Antons' requests or resolve their conflicting interpretations over what the Condominium Documents require. It is uncontested Mr. Houze continually rebuffed the Antons' attempts to pursue resolution of this dispute in an amicable fashion and continued to wrongfully and unilaterally attempt to proceed with his renovations.

Most significantly, this Court highlights the fact that the instant dispute is the result of Mr. Houze's categorical refusal to provide the Antons with any opportunity to review the renovation plans. The only time Mr. Houze actually sought the Antons' approval for any renovations was when he was required to do so by the Newport Building Inspector. However, when Mrs. Anton asked to review the plans for the requested renovations, Mr. Houze—with the requested renovation plans available—still refused to provide her with any information beyond the mere list of renovations for approval. Mr. Houze's subsequent incorrect representation to the Newport Building Inspector that the Board of Directors approved of the renovations based on Unit 9's 67% of the Allocated Interest further evidences Mr. Houze's intention to bar the Antons from any meaningful involvement in the management of the Condominium.

Mr. Houze's actions were deliberately combative and confrontational even before the purchase of Unit 9 and continued through this litigation and after trial.[68] Although this has been previously addressed by the parties and resolved prior to trial, this Court notes that the record reflects Mr. Houze's additional acts of defiance that continued during this litigation. By way of

[68] See the Court's decision regarding finding Mr. Houze in contempt for failing to abide by this Court's Order regarding modification of the Condominium's Common Elements.

example, on December 2, 2017, Mr. Houze constructed a twenty-five by nine-foot plywood blockade immediately in front of Unit 9A's east-facing windows in order to block a security camera's view. (*See* Tami D. Anton's Aff. ¶ 10, Mar. 26, 2018, Ex. A.) The camera was focused upon the Common Elements including part of the driveway of Unit 9. This action clearly violated the Condominium Documents by building a structure without first obtaining the Antons' approval pursuant to § 3.1 of the Declaration. It was also clearly unreasonable under the circumstances.

Mr. Houze's actions exhibit a concerted effort to unilaterally control the Condominium without any consideration regarding the Antons' ownership of Unit 9A. Mr. Houze's conduct demonstrates an intent to unreasonably disregard the Condominium Documents' procedural requirements, leaving the Antons with no say—let alone information—regarding his plans for the Condominium. Mr. Houze's subjective interpretation of the Condominium Documents and the Act were clearly wrong and his continued conduct based on this was patently unreasonable.

Under these circumstances, this Court finds that the record and the evidence produced at trial demonstrates Mr. Houze acted unreasonably with respect to his obligations to the Condominium and to the Antons as fellow Unit Owners. In fact, his actions fueled this litigation rather than attempting to resolve. If Mr. Houze had simply provided the Antons with the plans as requested, this matter may have been resolved as it related to any proposed renovations which the Antons may not have taken issue with.[69] Rather, Mr. Houze purchased Unit 9 knowing that there was a fundamental disagreement between himself and the Antons regarding the governance of the Condominium. After the purchase, he ignored the Antons' efforts to obtain the plans or even discuss his intended renovations. For whatever reason, he unilaterally proceeded with his attempts to renovate the Common Elements of the Condominium despite the clear language of the Amended

[69] Mr. Houze's plans regarding the proposed renovations were not introduced at trial.

Declaration to the contrary. His actions were clearly without justification and are considered by this Court to be unreasonable. The Antons' request for reasonable attorneys' fees and costs is granted. Counsel shall submit the appropriate documentation as set forth in *Colonial Plumbing & Heating Supply Co. v. Contemporary Construction Company, Inc.*, 464 A.2d 741 (R.I. 1983) and its progeny.

V

Conclusion

For all the reasons stated above, judgment shall enter for the Plaintiffs, including injunctive relief preventing the Defendants from taking any unilateral action associated with further renovation of the Condominium's Common Elements or renovating Unit 9 without obtaining the necessary approval from the Board of Directors and/or the Unit Owners as set forth herein. Counsel shall confer and submit the appropriate order and judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Cover Sheet

TITLE OF CASE:	Charles A. Anton and Tami D. Anton, as Trustees of the Victoria Avenue Realty Trust v. Philippe L. Houze and Marie Houze
CASE NO:	NC-2017-0493
COURT:	Newport County Superior Court
DATE DECISION FILED:	October 3, 2019
JUSTICE/MAGISTRATE:	Van Couyghen, J.
ATTORNEYS:	
For Plaintiff:	
For Defendant:	Rachelle R. Green, Esq.; R. Daniel Prentiss, Esq. for Plaintiffs Evan S. Leviss, Esq. for Defendants