

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC

SUPERIOR COURT

(FILED – AUGUST 27, 2009)

**BENNIE SISTO, AS THE TRUSTEE OF THE :
GOAT ISLAND REALTY TRUST :**

v. :

No. NC-2008-0508

**GOAT ISLAND SOUTH CONDOMINIUM :
ASSOCIATION, INC., AMERICA :
CONDOMINIUM ASSOCIATION, INC., :
CAPELLA SOUTH CONDOMINIUM :
ASSOCIATION, INC., AND HARBOR :
HOUSES CONDOMINIUM :
ASSOCIATION, INC. :**

DECISION

CLIFTON, J. This matter is before the Court for decision on Defendants Capella South Condominium Association, Inc. (“Capella”), America Condominium Association, Inc. (“America”), and Goat Island South Condominium Association, Inc.’s (“GIS”) Motion for Partial Summary Judgment. In this action, Plaintiff Bennie Sisto, as Trustee of the Goat Island Realty Trust (Plaintiff), challenges the validity of the adoption of GIS’s Second Amendment and Restated Declaration.

GIS is a condominium originally created in 1988 by Declaration of Condominium (the “Declaration”). The Declaration was first amended on March 1, 1988 and was thereafter known as the First Amended and Restated Declaration (the “First Declaration”). Over the next two decades, the First Amended and Restated Declaration was amended from time to time. Finally on August 25, 2007, at a meeting of the unit owners and members of GIS, the Second Amended and Restated Declaration of Condominium (the “Second Declaration”) was approved and adopted.

Plaintiff rejected the Second Amended and Restated Declaration, and subsequently filed this action claiming that the Second Declaration adversely affects Plaintiff's rights and obligations. Plaintiff also claims that the Second Declaration is invalid because the voting procedures utilized to adopt the Second Declaration violated the amendment provision of the First Declaration, as well as Sections 34-36.1-2.17(a) and 34-36.1-2.17(d) of the Rhode Island Condominium Act.

Defendants presently move for partial summary judgment claiming that there are adequate provisions within the Second Declaration to address any conflicts, such as those asserted in the instant matter, without invalidating the entire Second Declaration. Specifically, the Second Declaration contains a severability clause (the "Severability Clause") which states:

"The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of this Declaration and the other provisions of this Declaration shall continue in effect as if such invalid provision had never been included herein." See Second Declaration, §11.7.

Plaintiff's complaint, however, challenges the validity of both Section 2.3 of the Second Declaration *and* the entire Second Declaration, which includes the Severability Clause. Thus, if this Court ultimately holds that the entire Second Declaration is null and void, then the Severability Clause will also be deemed inapplicable. Consequently, because a genuine issue of material fact exists as to the validity of Section 2.3, as well as the entire Second Declaration, which includes the Severability Clause, it is premature for this Court to decide whether the Severability Clause applies to the case at hand. Therefore, Defendants' Motion for Partial Summary Judgment is denied.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Partial Summary Judgment is denied.

An appropriate form of order and judgment shall be presented.