

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2014-3136THE TRUSTEES OF THE CAMBRIDGE POINT CONDOMINIUM & another¹

vs.

CAMBRIDGE POINT, LLC & others²**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION
FOR RECONSIDERATION AND REQUEST FOR A HEARING**

On January 14, 2015, the court held a hearing on the Plaintiffs' Motion for Partial Summary Judgment. (Paper #19) The Plaintiffs sought a declaratory judgment, voiding a provision of the Condominium By-Laws that requires an 80% majority of unit owners approve any litigation by the Cambridge Point Condominium Trustees, as violating public policy, or in the alternative, a declaratory judgment that the 80% requirement has been met as a matter of law, when the votes of those parties with an interest in the matter, i.e. the defendants, their relatives and their attorney, is excluded.

On February 25, 2015, the court issued a Memorandum of Decision and Order on Plaintiffs' Motion for Partial Summary Judgment. (Paper #20) The court denied the Plaintiffs' Motion, but confused the issue by stating, "Here, the plaintiffs have established that over 35% of the beneficial interest in the Condominium is held by 'interested' parties with either business,

¹Individuals derivatively on behalf of the Cambridge Point Condominium Trust.

²Northern Development, LLC; CDI Commercial Development, Inc.; Giuseppe Fodera; Frank Fodera; Frank Fodera, Jr.; and Anahid Mardiros.

financial, or familial ties to the defendants... Consequently, the plaintiff trustees may proceed in compliance with the section 1 (o) if they are able to obtain the consent of 80% of the Condominium's disinterested unit owners." This was error.

On March 16, 2015, Defendant Anahid Mardiros filed a motion entitled "Motion of Defendants on Anahid Mardiros for Reconsideration or in the Alternative Motion to Report of a Case under Rule 64 (a)." (Paper #23) In her Motion, Mardiros sought reconsideration of the court's determination that she, as a condominium owner was an "interested" party. This motion was not filed pursuant to Superior Court Rule 9A. Due to a change in the court's computer system the court did not receive that motion until the very end of March.

On March 20, 2015, The Plaintiffs filed a Motion for Reconsideration and/or Clarification. (Paper #24) The Plaintiffs pointed out that the court's denial of their motion seemed in conflict with the reasoning of the Decision. The Defendants filed a Joint Opposition to Plaintiffs' Motion for Reconsideration and/or Clarification. (Paper #24.2) Although those papers were properly filed pursuant to Rule 9A, the court received them piecemeal.

On March 30, 2015, the Plaintiffs filed an Opposition to Anahid Mardiros' Motion for Reconsideration, or in the Alternative, Motion to Report a Case. (Paper #25)

On April 21, 2015, the Defendants filed a Motion for Reconsideration and Request for a Hearing. (Paper #29). The Plaintiffs filed an Opposition to Defendants Motion for Reconsideration and Request for a Hearing. (Paper #29.2).

The court received Paper #23, Paper #24, Paper #24.1, Paper #24.2 and Paper #25 at different times³.

On May 3, 2015, the court allowed the Plaintiffs' Motion for Reconsideration and/or Clarification. (Paper #24)⁴ In the original, February 25, 2015 decision, the court stated that the Plaintiffs "have established that over 35% of the beneficial interest in the Condominium is held by 'interested' parties with either business, financial, or familial ties to the defendants." The statement was a demonstrable error in the original ruling. See Audubon Hill South Condominium Association v. Community Association Underwriters of America, Inc., 82 Mass. App. Ct. 461, 470 (2012).

The court did not receive Paper #29, which requested a hearing, Paper #29.1 (Memorandum of Law in Support of Defendants Motion for Reconsideration) and 29.2 until after the court's May 3, 2015 decision.

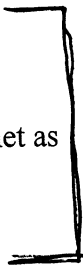
Clearly the court erred in the original Decision in its statement regarding "interested" parties. Whether particular owners are 'interested' is clearly a disputed question of fact. It certainly has not been "established." The court erred. The court's amends the Decision and strikes the last full paragraph beginning with, "Here, the plaintiffs..." and ending with, "in accord with Mass. R. Civ. P. 23.1."

The Plaintiffs Motion for Partial Summary Judgment seeking a declaratory judgment voiding a provision of the Condominium By-Laws that requires an 80% majority of unit owners

³ The court received Paper #23 at the very end of March, just prior to the end of the sitting. The court received additional papers, by mail towards the end of April, 2015. (Papers # 24, 24.1, 24.2 and 25) It should be noted that the clerk sent those submissions in early April, but they did not reach me at my new assignment.

⁴ The Order allowing the Motion was mistakenly put on the back of Paper #29. The clerk is Ordered to remove the Order from Paper #29 and place it on the back of Paper #24.

to approve any litigation by the Cambridge Point Condominium trustees as violating public policy, or in the alternative for a declaratory judgment that the 80% requirement has been met as a matter of law, when the votes of the parties with an interest in the matter are excluded is



→ disputed
issue of
Fact

DENIED.

By order of the Court

(Rosalind H. Miller, J)

Rosalind H. Miller

Justice of the Superior Court

Date: June 29, 2015

Attest:

Dea Roberts-Tyler

Assistant Clerk Magistrate