

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:11-bk-19510-FMD
Chapter 11

Basil Street Partners, LLC,

Debtor.

NBR Shoppes, LLC,

Plaintiff,

v. Adv. No. 9:13-ap-00911-FMD

Antaramian Properties, LLC, *et al.*,

Defendants.

**ORDER ON MOTIONS
FOR SUMMARY JUDGMENT**

THIS REMOVED ACTION came before the Court for hearing on May 23, 2014, on *Defendant, Antaramian Properties, LLC's, Motion for Final Summary Judgment on Its Counterclaim* (Doc. No. 64) and *NBR Shoppes, LLC's Motion for Partial Summary Judgment* (Doc. No. 65).

For the reasons that follow, the Court concludes that, as a matter of law, Antaramian Properties, LLC ("AP") is both the Developer¹ under the Master Declaration and the Class B Member of the Naples Bay Resort West Parcel Master Property Owners' Association, Inc. ("Master Association") as set forth in the Master Association's Articles of Incorporation ("Articles of Incorporation"). Accordingly, AP is entitled to exercise the voting rights accorded to the Class B Member of the Master Association.

Because the Court holds that AP may exercise the voting rights of the Developer and Class B

Member of the Master Association, the Court need not determine whether NBR Shoppes, LLC ("NBR") owns a portion of the Commercial Component or the percentage of such ownership for purposes of calculating the parties' voting rights. However, to the extent that such a determination is necessary, the Court concludes that although NBR owns a portion of the Commercial Component, the nature and extent of the Commercial Component it owns do not entitle NBR to vote as a co-owner of the Commercial Component.

I. Background

A. The Naples Bay Resort

The Naples Bay Resort, a luxury resort located in Naples, Florida, consists of two parcels known as the "East Parcel" and the "West Parcel." The West Parcel is a mixed use property featuring a hotel, marina, privately owned condominiums, and six commercial condominiums that are leased to tenants. The six commercial condominium units were originally owned by Basil Street Partners, LLC ("Basil Street Partners") but are now owned by NBR. Two of the commercial condominium units are leased to restaurants, Bonefish Grill and Mereday's. In addition, the West Parcel includes what are referred to as the "Shared Facilities," essentially common areas that include all means of vehicular and pedestrian access to the West Parcel, all roads, vehicular parking, and landscaping.

B. The Parties

The Debtor herein, Basil Street Partners, developed the Naples Bay Resort. Basil Street Partners is owned, through layers of partnerships and limited liability companies, by four friends of long standing, Jack Antaramian ("Mr. Antaramian") and F. Fred Pezeshkan, Iraj Zand, and Raymond Sehayek (collectively, "PZS"). AP is controlled by Mr. Antaramian; NBR is controlled by PZS. For reasons unknown to the Court, a falling out occurred among the four friends, resulting in a number of disputes and protracted litigation between the parties, including

¹ Capitalized terms are defined below.

the present dispute before the Court.² In a nutshell, the present dispute arises in the context of the following facts.

AP acquired the loan documents of Regions Bank, the senior secured lender on the West Parcel, at a significant discount. AP then substituted in as party plaintiff in Regions Bank's pending state court action for the foreclosure of the mortgage encumbering the West Parcel and the recovery on personal guaranties of PZS, which were capped at \$15,000,000 each (the "Foreclosure Litigation").

After obtaining the appointment of a receiver in the Foreclosure Litigation, AP, as lead petitioning creditor, then filed an involuntary petition for relief under Chapter 7 against Basil Street Partners. After lengthy litigation before Judge Jeffery Hopkins,³ Basil Street Partners consented to the entry of an order for relief and successfully moved to convert the case to Chapter 11. Portions of the Foreclosure Litigation were removed to this Court. The Court determined that AP's mortgage claim against the West Parcel was enforceable in the face amount of the claim (and not its discounted acquisition price), but that AP was barred from enforcing PZS's personal guaranties. AP then proposed a Chapter 11 plan providing for the sale of Basil Street Partners' assets.⁴

² For a history of the disputes (perhaps not complete), see *Antaramian Properties, LLC v. Basil Street Partners, LLC*, *Raymond Sehayek, Iraj Zand, F. Fred Pezeshkan, et al.*, Case No. 9:12-ap-00863-FMD, pending in the United States Bankruptcy Court, Middle District of Florida, Fort Myers Division and *Antaramian Properties, LLC v. Knightsbridge Partners of Naples, LLC, et al.*, Case No. 10-CA-1269, pending in the Circuit Court for the Twentieth Judicial Circuit in and for Collier County, Florida.

³ Judge Hopkins previously served as a visiting judge in the Fort Myers Division.

⁴ Main Case, Doc. No. 598.

C. The Sale of Basil Street Partners' Assets to AP

AP's Chapter 11 plan was confirmed without objection from PZS or NBR.⁵ Pursuant to this Court's *Order Confirming Amended Plan of Liquidation for Basil Street Partners, LLC, Pursuant to Chapter 11 of the United States Bankruptcy Code, as Modified* ("Confirmation Order"),⁶ Basil Street Partners conveyed to AP the assets listed in Schedule One of the Confirmation Order ("Schedule One").⁷ In addition to eleven residential condominium units, 26 hotel units, and 75 boat slips, Schedule One specifically listed the following assets as being conveyed to AP:

- (a) the Commercial Component and the Shared Facilities;
- (b) all contracts and agreements related to the "development, ownership, maintenance or operation" of the real property conveyed;⁸ and
- (c) any and all other rights of Basil Street Partners "to develop and/or operate" the real property in question as a "commercial and/or residential project."⁹

Upon the closing of the sale to AP as contemplated in the Confirmation Order, a bill of sale was issued to AP ("Bill of Sale"). The Bill of Sale incorporates a copy of Schedule One and a list of assets sold that is identical to that attached to the Confirmation Order.¹⁰

D. Disputes Arise Regarding Control over the Shared Facilities.

Although there was no appeal of the Confirmation Order or objection to the Bill of

⁵ Although NBR filed an objection to confirmation (Main Case, Doc. No. 584), the objection was withdrawn on the record at the February 26, 2013 confirmation hearing.

⁶ Main Case, Doc. No. 600.

⁷ *Id.* at pp. 38-46.

⁸ *Id.* at p. 46, § f.

⁹ *Id.* at p. 46, § g.

¹⁰ Doc. No. 13, p. 169-176.

Sale, both of which clearly vested title to the Shared Facilities in AP, disputes between the parties arose when AP allegedly took certain actions impacting upon NBR's tenants' use of portions of the Shared Facilities. Those alleged actions include AP's posting "No Bonefish Parking" signs, barring customers of Bonefish Grill from parking in a portion of the Shared Facilities where such customers had previously parked; prohibiting Mereday's from posting signs on its exterior space and from setting up outdoor seating within a portion of the Shared Facilities, thereby limiting Mereday's square footage and potentially jeopardizing Mereday's compliance with the terms of its liquor license; and blocking an access/emergency access road that the restaurants require for food delivery.¹¹

These alleged actions prompted NBR to file a complaint on June 3, 2013, in the Circuit Court in and for Collier County, Florida, captioned *NBR Shoppes, LLC v. Antaramian Properties, LLC, et al.*, Case No. 13-01780-CA (the "Circuit Court Action"). In its complaint, NBR sought a judicial declaration that, *inter alia*, (1) AP is not the Developer under the Master Declaration; (2) the Class B membership in the Master Association no longer exists and/or that AP is not and cannot be the Class B Member; (3) NBR has one vote for each 87 square feet of floor area it owns in the Commercial Component; and (4) because NBR claims it owns more floor area in the Commercial Component than AP, NBR is entitled to cast all of the Class A votes pertaining to the Commercial Component.¹² As set forth in more detail below, if a court were to find, first, that AP is not the Developer; second, that there is no Class B membership in the Master Association; and, third, that NBR controls the Class A votes pertaining to the Commercial Component in the affairs of the Master Association (based on a finding that NBR owns the majority of the floor area in the Commercial Component), then, as NBR contends, the control of the Shared Facilities would be in its hands.¹³

¹¹ Doc. No. 7, p. 2.

¹² Doc. No. 1-2, p. 8.

¹³ The Court did not calculate whether NBR owns the majority of square footage of the Commercial Component. The Court's conclusion, detailed below,

After filing the Circuit Court Action, NBR filed in this Court a *Motion (I) for Clarification of Confirmation Order; and (II) to Confirm That No Determination Has Been Made as to Ownership or Control of Commercial Component* (the "Clarification Motion").¹⁴ After a hearing, the Court granted the Clarification Motion and entered an order finding that the Confirmation Order merely approved the transfer from Basil Street Partners to AP of whatever rights and interests Basil Street Partners owned (the "Clarification Order").¹⁵ The Court further held that the Confirmation Order did not adjudicate or otherwise determine the full extent of Basil Street Partners' ownership rights and interests in the Commercial Component.

NBR then filed a *Motion to (A) Enforce Clarification Order; (B) to Enjoin [AP] from Taking Action in Contravention of that Order; and (C) Preserve Status Quo* ("Motion to Enforce"), which detailed the actions it alleged AP had taken in contravention of the Clarification Order.¹⁶ In response, AP filed a notice of removal of the Circuit Court Action to this Court ("Removed Action").¹⁷ NBR then re-filed the Motion to Enforce in the Removed Action.¹⁸ When the parties reached an agreement temporarily resolving the limited issues raised in the Motion to Enforce, the Court denied the Motion to Enforce.¹⁹

E. The Motions for Summary Judgment

In its motion for partial summary judgment, NBR seeks an adjudication that (1) AP is not the Developer under the Master Declaration; (2) the

that NBR owns only airspace, and not the requisite "floor area" described in the Class A voting formula, made it unnecessary to resolve this issue. Not surprisingly, the parties disagree on how those calculations should be performed. The Court also has not determined whether the Commercial Component's votes in Class A would control the overall vote of Class A and, thus, the Shared Facilities.

¹⁴ Main Case, Doc. No. 720.

¹⁵ Main Case, Doc. No. 766.

¹⁶ Main Case, Doc. No. 769.

¹⁷ Doc. No. 1.

¹⁸ Doc. No. 7.

¹⁹ Doc. No. 27.

Class B membership in the Master Association no longer exists; (3) NBR and AP each own separate parts of the Commercial Component; and (4) in the voting affairs of the Master Association, NBR and AP, as co-owners of the Commercial Component, are each entitled to one vote for each 87 square feet of the Commercial Component floor area owned by them.²⁰ AP has also moved for summary judgment, asking the Court to find that it is the sole Commercial Component Owner.²¹ The Court's determination of these issues depends upon its interpretation of numerous related controlling documents.

F. The Controlling Documents

1. *The Master Declaration*

The West Parcel is governed by, and subject to, the provisions of the Master Declaration of Restrictive Covenants, Conditions, Reservations and Easements for the Naples Bay Resort West Parcel, recorded on October 13, 2006 in the Official Records of Collier County, Florida at O.R. Book 4121, Page 3092 (the "Master Declaration").²²

The West Parcel, defined in the Master Declaration as the "Property,"²³ is described generally as a parcel of land which has been developed to include:

a marina and a mixed use waterfront commercial and residential living community, together with amenities and facilities for the common use and enjoyment of the owners of all privately owned portions of the Property.

The West Parcel consists of seven "Components:" (1) The Residence I at Naples Bay Resort; (2) The Residence II at Naples Bay Resort; (3) The Hotel at Naples Bay Resort; (4) the "Slips" or the "Docks" of The Marina at Naples Bay Resort; (5) the Commercial Component; (6) The Marina at

Naples Bay Resort (i.e., the water portion of the West Parcel); and (7) the "Shared Facilities."²⁴

The "Shared Facilities" are defined in Article I, Section 1(bb) of the Master Declaration as:

those portions of the Property which are intended to be devoted to the common use, protection and enjoyment of the Owners of the Property, but title to which will be retained by Developer or the Commercial Component Owner.

Article II, Section 1(g) of the Master Declaration further describes the Shared Facilities (i.e., the seventh Component) as consisting of the portions of the West Parcel that are not contained within any of the other six Components. The Shared Facilities include a number of essential portions of the West Parcel, including:

all means of vehicular and pedestrian access to the Property, all Roads, vehicular parking, landscaping, water management and retention systems, utilities serving the other Components, the seawall surrounding the Marina and the water circulation system.²⁵

Pursuant to the Master Declaration, title to the Shared Facilities, together with ownership of the Commercial Component, is retained by the Developer and its successors.²⁶ The Master Declaration defines "Developer" as:

Basil Street Partners, LLC . . . and its successors and assigns who acquire title to any portion of [the] Naples Bay Resort West Parcel for the purpose of development so long as BSP assigns its rights hereunder to such persons by express assignment or by operation of law.²⁷

²⁰ Doc. No. 65, p. 13.

²¹ Doc. No. 64, p. 14.

²² Master Declaration, Doc. No. 2-1, pp. 28-84.

²³ Master Declaration, p. 1, Background § A.

²⁴ Master Declaration, Article II, Section 1.

²⁵ Master Declaration, Article II, Section 1(g).

²⁶ *Id.*

²⁷ Master Declaration, Doc. No. 201, Article I, Section 1(l).

The parties do not dispute that Basil Street Partners was, at all times prior to the sale of its assets to AP, the Developer.

The Master Declaration permits the Developer to unilaterally alter the size and area of the Shared Facilities, as well as designate any portion of the Shared Facilities as a “Restricted Shared Facility,”²⁸ meaning that only certain specified Owners (as opposed to all Owners generally) would be authorized to use the restricted space. In addition, Article IV, Section 7 of the Master Declaration provides that:

Developer and its successors as owner of the Commercial Component will retain title to the Shared Facilities *subject, however, to the rights and easements hereby declared to exist with respect to them in favor of Owners.*

(emphasis supplied).

And Article IV, Section 1 states that “[e]very Owner of a Unit shall have a right and easement of ingress and egress, and of use and enjoyment in, to, and over the Shared Facilities.”

2. *The Supplemental Declarations*

In addition to being generally described in the Master Declaration, the Components of the West Parcel are further defined in, and subject to, separate “Supplemental Declarations.”²⁹ The Supplemental Declarations refer back to the Master Declaration and further describe, and impose restrictions on, the various Components. The two Supplemental Declarations relevant to the motions before the Court are the Declaration of Restrictive Covenants, Conditions, Reservations and Easements for Buildings 1, 2 and 3 of the Naples Bay Resort West Parcel, recorded on January 31, 2008 in the Official Records of Collier County, Florida at O.R. Book 4325, Page 2652 (“Buildings Declaration”)³⁰ and the Declaration of Condominium for The Shoppes at Naples Bay Resort, a Condominium, recorded

on October 22, 2008 in the Official Records of Collier County, Florida at O.R. Book. 4402, Page 2744 (“Shoppes Declaration”).³¹

(a) *The Buildings Declaration and the Commercial Component*

The Buildings Declaration affects three of the Components comprising the West Parcel: The Residence II at Naples Bay Resort; The Hotel at Naples Bay Resort; and the Commercial Component. The Buildings Declaration defines both the Commercial Component and the Non-Commercial Component as follows:

As used herein the term “Non-Commercial Component” consists of Residence II and the Hotel Condominium. The term “Commercial Component” consists of all portions of the Property not included within the Non-Commercial Component which is generally the area described as the Commercial Component in the Master Declaration, but if there is a conflict between them, definitions in this Building Declaration shall control.³²

In other words, the Buildings Declaration defines the Commercial Component as including everything that is not the Non-Commercial Component. And because the Non-Commercial Component consists only of Residence II and the Hotel Condominium, the Commercial Component includes all other space in Buildings 1, 2 and 3 that is not included in Residence II or the Hotel Condominium.

The Buildings Declaration also incorporates the definition of “Commercial Component Owner” from the Master Declaration as meaning:

the entity that is, from time to time, the owner of the Commercial Component . . . including any Sub-associations charged

²⁸ Master Declaration, Article I, Section 1(x).

²⁹ Master Declaration, Article I, Section 1(ff).

³⁰ Doc. Nos. 2-3, pp. 85-111 and 2-4, pp. 1-13.

³¹ Doc. Nos. 2-2, pp. 45-108 and 2-3, pp. 1-39.

³² Buildings Declaration, Section 1.1.

with its operation, if ever submitted to Condominium ownership.³³

(b) *The Shoppes Declaration*

Under the Shoppes Declaration, a portion of the ground floor of Buildings 1, 2 and 3 of the West Parcel (i.e., the buildings in which The Residence II at Naples Bay Resort and The Hotel at Naples Bay Resort are located)³⁴ has been submitted to the condominium form of ownership. This portion is referred to as the “Shoppes Condominium Property.” The Shoppes Condominium Property is divided into six units.³⁵ NBR acquired ownership of the six units from Basil Street Partners by deed recorded on October 29, 2008 (the “Shoppes Deed”).³⁶

3. *Articles of Incorporation of the Master Association and Voting Rights*

Generally speaking, the Master Association is the entity charged with maintaining and regulating the use of the West Parcel.³⁷ The decisions and ultimate actions of the Master Association are made according to the votes of the Master Association’s Members.³⁸

Article VI of the Articles of Incorporation governs the allocation of the Members’ votes. It establishes a two-class membership structure: Class A and Class B. Class A Members are defined as follows:

Class A Members shall be all of those owners as defined in Article V with the

exception of the Developer, as subsequently identified. There will be one (1) vote allocated to each Unit in each of the following Components: Residence I, Residence II, the Hotel Condominium, and the Docks. The Commercial Component will not be a Class A Member so long as it remains, in the discretion of the Developer, as a Class B Member. Should it cease to be the Class B Member or should Class B memberships cease to exist, then the Commercial Component Owner is allocated one (1) vote for each eighty seven (87) square feet of floor area within it.

The Class B Member is then defined as:

The Class B Member is the Owner of the Commercial Component. Initially this will be the Developer, Basil Street Partners, LLC, a Delaware limited liability company. The Class B Member shall have three hundred (300) votes in the affairs of the Association.

If at any time, the Class B membership shall cease to exist or it shall be judicially determined that the Class B Member is not entitled to exercise the number of votes allocated to it, then the Class B membership shall convert to a Class A membership in respect to all Units owned by the Class B Member at such time.

II. Legal Analysis

A. Jurisdiction

The Court has jurisdiction over this proceeding under 28 U.S.C. § 1334 and 28 U.S.C. § 157(a). This is a “core” proceeding under 28 U.S.C. § 157(b)(2)(A) and (L). The parties have also expressly consented to the Court’s entry of a final judgment adjudicating the issues presented in this proceeding.³⁹

³³ Buildings Declaration, Section 1.1 (incorporating Master Declaration, Section 1(j)).

³⁴ Master Declaration, Article II, Section 1(b)-(c).

³⁵ Shoppes Declaration, § 6.1.

³⁶ Doc. No. 2-2, pp. 34-35.

³⁷ Articles of Incorporation (Doc. No. 2-2, pp. 7-13), Article III.

³⁸ “Members” are defined both in Article V of the Articles of Incorporation and Article I, Section 1(s) of the Master Declaration as being the “Owners” of “Units,” as those terms are defined in Article I, Section 1(u) and (gg) of the Master Declaration. Membership in the Master Association by Owners of Units is mandatory. Master Declaration, Article VI; Articles of Incorporation, Article V.

³⁹ Doc. No. 22.

B. Summary Judgment Standard

Summary judgment is appropriate where there is no genuine dispute as to any material fact and judgment can be entered as a matter of law. Fed. R. Civ. P. 56(a). The parties agree that there are no facts in dispute and that the Court may enter summary judgment based upon its interpretation of the Master Declaration, the Buildings Declaration, the Shoppes Declaration, the Articles of Incorporation, and the Confirmation Order.⁴⁰ Indeed, “summary judgment is particularly appropriate in cases involving the interpretation of contractual documents.”⁴¹

C. AP is the “Developer” of the West Parcel as Defined in the Master Declaration.

In order for AP to be deemed the Developer, AP must satisfy a two-part test.⁴² First, AP must have acquired title to any portion of the West Parcel for the purpose of development. Second, Basil Street Partners must have assigned its rights to AP by express assignment or by operation of law.

1. *AP Acquired Title to Portions of the West Parcel for the Purpose of Development.*

With respect to the first prong, NBR acknowledges that AP acquired title to eleven unsold residential condominium units, but NBR contends that these units could not have been acquired for the “purpose of development” because the physical construction of the units had been completed. NBR contends that because the units were “decorator ready,” meaning that only cosmetic improvements, such as floor and wall coverings and paint, remain unfinished,⁴³ AP’s acquisition of the condominium units could not,

by definition, have been for the purpose of development.

But whether the eleven condominium units were “decorator ready” is immaterial to the issue of whether there is still an overall developmental purpose to be served on the West Parcel. NBR’s view of the meaning of “purpose of development” limits the meaning of the word “development” to the construction of the condominium units, while ignoring the broader meaning of the term “development” that the Master Declaration clearly contemplates.

Several provisions of the Master Declaration shed light on the full scope and meaning of the term “development.” And when these provisions are read together within the overall context of the Master Declaration, it is clear that “development” entails more than simply constructing the individual units to a “decorator ready” condition. For example, Article IV, Section 14 of the Master Declaration highlights the operational complexities inherent in a multi-faceted, mixed use resort property and acknowledges the importance of there being a single entity to oversee the entire property. It states:

The Naples Bay Resort (inclusive of the Naples Bay Resort West Parcel and the Naples Bay Resort East Parcel) is an integrated and planned resort style mixed use community. In order to insure that it is operated and maintained in a manner consistent with resort standards, recognizing the operational complexities of its mixed use character, and to insure the preservation of the value of all Components of the Property, it is necessary that a single entity be given the right and power to insure that uses, activities, operations and maintenance of the Properties are properly provided for and in a manner that protects the value and integrity of the commercial uses and marina activities permitted to be conducted on the Property.

Section 14 goes on to reserve six enumerated rights and powers to the Developer, including the right to enforce all provisions of the Master

⁴⁰ Doc. No. 64, p. 5; Doc. No. 65, pp. 5-6.

⁴¹ *Ryan v. Chromalloy American Corp.*, 877 F.2d 598, 602 (7th Cir. 1989). *Cf. Long v. Ohio Cas. Ins. Co.*, 21 F. App’x 213 (4th Cir. 2001) (affirming grant of summary judgment where claims involved only a legal interpretation of documents).

⁴² Doc. No. 2-1, Master Declaration, Article I, Section 1(1).

⁴³ Affidavit of Richard Grant, Doc. No. 65, pp. 16-19.

Declaration, to maintain voting control of the Master Association, and to improve and modify the Shared Facilities. The Developer's broad rights and powers are indicative of a developmental purpose that extends beyond the mere initial construction of the various Components comprising the West Parcel.

The Master Declaration also reserves additional rights and powers to the Developer. For example, the introductory paragraph of Article XIII, titled "Use Restrictions," states that the Developer has established a cohesive architectural theme for the West Parcel and the exterior of all the structures located thereon, and that in order to ensure compliance with that architectural theme, certain restrictions and prohibitions are necessary. One such restriction is contained in Article XIII, Section 1, which states:

Signs. No sign, poster, display, billboard, decoration, logos, or other advertising device of any kind shall be displayed to the public view on any portion of the Property without the prior written consent of the Developer . . . except . . . (iv) signage used by the Developer, its successors or assigns, for advertising during the construction *and sale*.

(emphasis supplied).

This exception, which allows the Developer to publicly display advertising signage to promote the sale of unsold units, is significant because it acknowledges that the Developer is the entity charged with the sale of the individual units located within the West Parcel. The natural implication is that as long as there remain unsold units on the West Parcel, the position of "Developer" remains in existence.

Article XIII, Section 1 also suggests that the term "development" includes not only a construction phase but also marketing and sales phases. The Court's inference is buttressed by Article XIII, Section 10, which states:

Developer. *Until the Developer has sold and conveyed title to all portions of the*

Components within the Property which it plans to develop, the Developer may use any Unit that it owns and the Shared Facilities to facilitate such sales, including, but not limited to, the maintenance of a sales office and the display of signs.

(emphasis supplied).

In other words, there is a Developer who remains in existence until such time as all individual units located on the West Parcel have been sold. Article XIII, Section 17 also supports the concept of the Developer's existence until all units are sold, as it provides the Developer with an exemption from the use restrictions set forth in the prior sections of Article XIII. Section 17 states:

Developer Exemption. Developer or its successors or assigns will undertake the work of constructing Components and Units and improvements. The completion of that work *and the sale, rental and other disposal of Units is essential to the establishment and proper economic function of Napes Bay Resort West Parcel* In order that said work may be completed and Napes Bay Resort West Parcel established as a *fully occupied community as rapidly as possible*, no Owner or the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

. . .

(d) Prevent Developer, its successors or assigns...from maintaining such sign or signs on any property owned or controlled by any of them as may be *necessary in connection with the sale, lease or other marketing of Units*.

(emphasis supplied).

In addition, Article XXIII, Section 16 states, in part, that:

[w]hen rights or powers are reserved to the Developer that relate solely to the

process of marketing units for sale [for example, the right afforded by Article XIII, Section 17(d) to be exempt from the otherwise enforceable use restrictions and sign prohibitions], such rights and powers shall cease to *exist at such time as Developer, or its designated successors, no longer owns any units for sale.*

(emphasis supplied).

Because AP acquired eleven unsold condominium units and still owns unsold units, the development rights that were conveyed by Basil Street Partners to AP under the Confirmation Order still exist.⁴⁴ And because there is still a developmental purpose to be fulfilled, including the sale, lease or marketing of the units, AP satisfies the first prong of the definition of “Developer” within the meaning of the Master Declaration.

2. Basil Street Partners Assigned its Rights to AP.

To satisfy the second prong, AP must establish that Basil Street Partners assigned its rights as Developer to AP by express assignment or by operation of law. NBR contends that AP is not a successor to Basil Street Partners because under the express terms of the Confirmation Order, AP is not a successor-in-interest to Basil Street Partners. The Confirmation Order states both that “[AP] is not a successor in interest to the Debtor or its estate in any respect”⁴⁵ and that “[AP] is not a successor-in-interest to the Debtor in any respect and shall not be deemed to be a successor-in-interest to the Debtor for any purposes.”⁴⁶

But just because AP is not Basil Street Partner’s successor-in-interest does not mean that AP is not Basil Street Partners’ assignee. In *Gary Brown & Assocs., Inc. v. Ashdon, Inc.*,⁴⁷ the court explained the difference between the terms

“successor-in-interest” and “assignee.” A successor-in-interest may be subject to its predecessor’s liabilities if, for example, the successor impliedly assumes the obligations of the predecessor. An assignment, however, is simply a transfer of property, or of a right or interest therein, from one person or entity to another.⁴⁸

The language in the Confirmation Order that AP is not Basil Street Partners’ successor-in-interest shields AP from potential successor liability claims by making it clear that AP is not liable for the obligations of Basil Street Partners. But the fact that AP is not Basil Street Partners’ successor-in-interest does not preclude AP from being Basil Street Partners’ assignee.⁴⁹ The language of both the Confirmation Order and the Bill of Sale leave no doubt that all rights of Basil Street Partners to develop the West Parcel were assigned to AP.⁵⁰

Accordingly, AP has satisfied the second prong of the definition of “Developer” contained in the Master Declaration.

3. AP Is Not Estopped from Asserting that It Is the Developer of the West Parcel.

In its reply to AP’s response to NBR’s motion for partial summary judgment, NBR contends—for the first time—that AP cannot assert that it is the Developer under the Master Declaration because AP does not satisfy the statutory definition of the term “developer” under the Florida Statutes governing condominiums.⁵¹ In support of this argument, NBR presented evidence that AP represented itself to be a “bulk buyer” within the meaning of Fla. Stat. § 718.703(2) in correspondence with the State of Florida Department of Business and Professional Regulation – Division of Florida Condominiums, Timeshares, and Mobile Homes (the “DBPR”).⁵²

⁴⁸ *Id.* (citing Florida law).

⁴⁹ In fact, NBR has conceded that AP is Basil Street Partners’ assignee. (Doc. No. 74, p. 1.)

⁵⁰ Doc. No. 13, p. 17; Main Case, Doc. No. 600.

⁵¹ Doc. No. 74.

⁵² *Id.* at pp. 9-45.

⁴⁴ Main Case, Doc. No. 600, p. 46, § (g).

⁴⁵ *Id.* at paragraph N.

⁴⁶ *Id.* at decretal paragraph 7.

⁴⁷ 268 F. App’x 837, 842-43 (11th Cir. 2008).

NBR argues that because the statutory definitions of “bulk buyer” under Fla. Stat. § 718.703(2) and “developer” under Fla. Stat. § 718.103(16) are mutually exclusive, AP, by representing itself to the DBPR as a “bulk buyer,” is estopped from asserting that it is the Developer of the West Parcel as defined in the Master Declaration. But NBR does not explain how the doctrine of estoppel would apply to these facts. Its argument appears to be a blend of both equitable estoppel and judicial estoppel, such that AP should be estopped from asserting in this Court that it is the Developer of the West Parcel under the Master Declaration while simultaneously representing itself to be a “bulk buyer” to the DBPR. The crux of this argument is that AP, by maintaining what NBR argues are two inconsistent positions, may be able to obtain favorable, but inconsistent, results that would otherwise be precluded. However, as discussed below, neither equitable nor judicial estoppel applies to this case.

The elements of equitable estoppel are: (1) a representation concerning a material fact that is contrary to a later asserted position; (2) reliance on that representation; and (3) a detrimental change in position to the party claiming estoppel, caused by that party’s reliance on the original representation.⁵³ In this case, NBR, as the party claiming estoppel, cannot establish either reliance or a detrimental change in position. Because NBR did not raise this issue until its reply brief, it clearly did not rely on, or change its position based upon, any representations by AP to the DBPR. For the same reason, NBR cannot have detrimentally changed positions because of AP’s representations to the DBPR. At most, NBR has pointed out to the Court what AP has done and complained that it is unfair. That sentiment implicates principles that are often associated with judicial estoppel.

NBR essentially contends that AP should not be allowed to maintain inconsistent positions in different fora (i.e., in this Court and, administratively, before the DBPR) and obtain the benefits of those inconsistent positions. Judicial

estoppel, as explained by the court in *Jackson v. Advanced Disposal Services, Inc.*,⁵⁴ is an equitable doctrine invoked by a court at its discretion in order to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. For judicial estoppel to apply, the inconsistent positions must have been taken under oath and must be calculated to make a mockery of the judicial system.⁵⁵

Even if judicial estoppel could apply to AP’s representations to the DBPR, the Court finds that AP’s representation that it is a “bulk buyer” as to The Residence I condominiums is not inconsistent with AP’s position before this Court that it is the Developer of the West Parcel. This is because by representing itself as a “bulk buyer,” AP has implemented the provisions of the Confirmation Order that decreed that AP was not a successor-in-interest to Basil Street Partners for any purpose.

AP’s position is entirely consistent with Part VII of Chapter 718 of the Florida Statutes, the Distressed Condominium Relief Act.⁵⁶ The lengthy statement of legislative intent set forth in Florida Statutes § 718.702 explains that the purpose of the Distressed Condominium Relief Act is to protect successor purchasers of condominium projects from the liabilities of the initial condominium developer. Under the specific facts of this case, the Court finds that AP, having been shielded from successor liability by the express terms of the Confirmation Order, has not, by holding itself out to the DBPR as a “bulk buyer,” obtained an inequitable advantage or even asserted an inconsistent position.

In any event, AP points out that its correspondence with the DBPR was limited to The Residence I condominiums.⁵⁷ AP contends that even if it no longer qualifies as the “developer” of The Residence I condominiums, AP is still the Developer under the Master Declaration of the other Components of the West

⁵³ *In re Summit View, LLC*, 2011 WL 3268367, at *5-6 (M.D. Fla. Aug. 1, 2011) (Bucklew, J.).

⁵⁴ 2008 WL 958110, at *2 (M.D. Fla. Apr. 8, 2008) (Covington, J.).

⁵⁵ *Id.*

⁵⁶ Fla. Stat. § 718.701.

⁵⁷ Doc. No. 74, pp. 13-28.

Parcel, including the Hotel Condominium and the Marina. The Court concurs with this analysis and concludes that AP is not estopped, either equitably or judicially, from asserting that it is the Developer of the West Parcel.

D. As the Developer, AP Is the Class B Member of the Master Association.

As described above, the Master Association has two classes of voting memberships. The Class B Member, which has 300 votes, effectively controls the affairs of the Master Association. Because the Court has determined that AP is the Developer of the West Parcel, AP is also, by definition, the Class B Member. As discussed below, the Court concludes that based on the interrelationship of the Master Declaration, the Shoppes Declaration, and the Articles of Incorporation, AP's status as the Developer makes it the Class B Member.

1. *The Class B Member*

Article VI of the Articles of Incorporation establishes Class A Members and a single Class B Member of the Master Association for voting purposes. Article VI of the Articles of Incorporation defines the Class B Member as follows:

The Class B Member is the Owner of the Commercial Component. Initially this will be the Developer, Basil Street Partners, LLC, a Delaware limited liability company. The Class B Member shall have three hundred (300) votes in the affairs of the Association.

Article VI then continues to state:

If at any time, the Class B membership shall cease to exist or it shall be judicially determined that the Class B Member is not entitled to exercise the number of votes allocated to it, then the Class B membership shall convert to a Class A membership in respect to all Units owned by the Class B Member at such time.

(emphasis supplied).

The draftsmanship of Article VI is not ideally suited to the facts currently before the Court because the identity of the Class B Member is defined as *the* Owner of the Commercial Component. In other words, Article VI contemplates that the Owner of the Commercial Component is a *single* entity. As discussed below, although the Court finds that AP and NBR are co-owners of the Commercial Component, the Master Declaration and the Shoppes Declaration make clear that the Class B Member was reserved to Basil Street Partners as the Developer. And because AP is the assignee of Basil Street Partners and qualifies as the Developer under the Master Declaration, AP is now the Class B Member.

2. *The Commercial Component Owner under the Master Declaration*

The definition of the Commercial Component set forth in Article II, Section 1(e) states “[i]nitially, the Commercial Component will be owned by the Developer.” Article VI of the Articles of Incorporation identifies the initial Developer, Basil Street Partners, as the Class B Member. Article IV, Section 14(b) of the Master Declaration reserves the power to maintain voting control of the Master Association to the Developer, and thereafter to “the” (i.e., singular) Commercial Component Owner.

When placed in the proper historical context, these intertwined provisions make sense. Although AP and NBR are currently adverse to each other, that was not always the case. When the Master Declaration and the Articles of Incorporation were drafted in October 2006, the principals of AP and NBR, Mr. Antaramian and PZS, were business partners who shared a common interest in working together to maximize the value of the West Parcel and the entire Naples Bay Resort. It made perfect sense for the Master Declaration and the Articles of Incorporation to vest and preserve control over the West Parcel to Basil Street Partners.

3. *The Commercial Component Owner Under the Shoppes Declaration*

Consistent with the Master Declaration's establishment of the Developer as the Commercial Component Owner and Class B Member, the Shoppes Declaration makes it clear that NBR was not intended to be the Commercial Component Owner or Class B Member.

Section 6.2(C) of the Shoppes Declaration identifies one of the appurtenances of ownership of Shoppes condominiums as including "[m]embership and voting rights in the Master Association, which shall be acquired and exercised as provided in the Master Declaration." Article VI of the Master Declaration requires every Owner of a Unit (which includes NBR as the owner of the six commercial units comprising The Shoppes at Naples Bay Resort) to be a member in the Master Association. And Article VII of the Master Declaration states that the voting rights of the members shall exist as set forth in the Articles of Incorporation. Significantly, there are no provisions in the Shoppes Declaration for the owner(s) of Units 1 through 6 to be deemed either the Commercial Component Owner under the Master Declaration or the Class B Member under the Articles of Incorporation.

And to the contrary, several provisions in the Shoppes Declaration imply that the owner(s) of Units 1 through 6 are *not* the Commercial Component Owner or the Class B Member. For example, the Shoppes Declaration defines "Commercial Component Owner" separately from "Unit Owner,"⁵⁸ and multiple sections of the Shoppes Declaration make it clear that the "Commercial Component Owner" was not intended to be the same entity as the individual Unit Owners, including Sections 9.14, 10.3, 11.3, 11.4, 11.5, 12.3, 15.3, and 16.4. In each of these sections, the Commercial Component Owner is delegated duties or rights that are described in relation to the separate obligations of the Unit Owners. For example, Section 9.14 provides that

[i]n the event the Commercial Component Owner fails to maintain the Shared Area as required under the Building Declaration other than as a result of failure of [the] Unit Owners to timely and fully pay to the Commercial Component Owner the assessments with respect to the Shared Area as required under the Building Declaration, the Association shall have the right to perform such duties. . . .

This provision touches upon the division of payment and maintenance responsibilities as between the Commercial Component Owner and NBR, as the owner of the six commercial units. It clearly signals that the Commercial Component Owner and the various Unit Owners were intended to be different entities.

In addition, Section 9.13 of the Shoppes Declaration states that "[b]y acceptance of a deed or other instrument conveying title to a Unit, an Owner becomes a member in the Master Association." This language compels the conclusion that the Unit Owner(s) of Units 1 through 6—whether those units were to be owned by a single owner or multiple owners—were not intended to be the Commercial Component Owner for purposes of exercising the Class B Member's voting rights in the Master Association. Considering that there could potentially have been six different Unit Owners, it would be logically impossible for each of them to be the single Class B Member described in Article VI of the Articles of Incorporation. Furthermore, given the importance of the Class B Member's role in the Master Association (with its corresponding 300 votes on Master Association affairs), if the Shoppes Declaration contemplated that the Shoppes Unit Owners were to be the Class B Member, it would not have stated merely that the Unit Owners have membership and voting rights in the Master Association,⁵⁹ voting rights which entitle them, as Class A Members, to one vote in the Association for each Unit owned.⁶⁰

⁵⁸ Shoppes Declaration, Sections 4.8, 4.25.

⁵⁹ Shoppes Declaration, § 6.2(C).

⁶⁰ Articles of Incorporation, Article V and VI.

4. *The Developer Remains the Class B Member.*

Although Article VI of the Articles of Incorporation contemplates that, at some unspecified time, the Class B membership might cease to exist, there are no identified triggers for this occurrence. Because the definition of “Developer” in the Master Declaration *specifically* includes the Developer’s assigns, the Court concludes that as long as there is an entity that satisfies the Master Declaration’s definition of “Developer,” the Class B membership continues in existence with the Developer serving as the Class B Member.

This conclusion is consistent with the powers reserved to the Developer in Article IV, Section 14(b) of the Master Declaration that grant the Developer the power to control the Master Association. It is also consistent with various other provisions of the Master Declaration that express a stated preference for having the Developer control the operations of the West Parcel.⁶¹

NBR argues the Class B membership has terminated because there are multiple owners of the Commercial Component and, thus, there cannot be a single “Owner of the Commercial Component.” But NBR does not explain why the term “Commercial Component Owner” must refer to a single entity for purposes of the Class B Member but can take on a different meaning for purposes of the Class A Member. The same terminology (a reference to a single “Commercial Component Owner”) exists in the definition of the Class B Member.

Article VI of the Articles of Incorporation states that should the Class B membership cease

to exist, the Class B membership converts to a Class A membership, with the Commercial Component Owner (again, “Owner” in the singular) being allocated one vote for each 87 square feet of floor area within it. NBR would have the Court read in additional, non-existent, language to the effect that if there are multiple owners of the Commercial Component, each owner’s floor area square footage must be calculated to determine the number of votes allocated to that owner.

But the Court must interpret the language of the controlling documents as they are written. And, as the documents are written, two conclusions are clear: first, NBR was never intended to be the Commercial Component Owner; and second, the Developer—so long as one exists—was intended to remain the Class B Member in control of the Master Association. Because AP is the Developer, it remains the Class B Member of the Master Association.

As the Developer and the Class B Member of the Master Association, AP controls the use of the Shared Facilities. This is entirely consistent with the transfer of title to the Shared Facilities to AP pursuant to the Confirmation Order and the Bill of Sale.

E. Alternatively, NBR as a Co-Owner of the Commercial Component, Is Not Afforded Voting Rights as a Class A Member.

In the absence of a Developer, and if the Class B membership has ceased to exist or it has been judicially determined that the Class B Member is not entitled to exercise its 300 votes, the control of the Shared Facilities would fall to the Class A membership of the Master Association. Therefore, if the Court is incorrect that AP is the Developer and Class B Member, then the Court would need to determine (i) whether AP is the sole Commercial Component Owner or whether AP and NBR are co-owners of the Commercial Component; and (ii) if AP and NBR are co-owners of the Commercial Component, how many votes each entity may cast as Class A Members.

AP contends that even if the Court erred in concluding that AP, as the Developer, is the Class

⁶¹ See, e.g., Master Declaration, Background § C (p. 1), noting that the Developer has elected to subject the West Parcel to the terms of the Master Declaration in order to ensure that the general plan of development is adhered to and that the value of the West Parcel is protected, preserved and enhanced; Master Declaration, Article II, Section 1(g), which allows the Developer to retain title to and exercise unilateral control over the Shared Facilities.

B Member, AP is still the Class B Member because it is the sole Commercial Component Owner. On the other hand, NBR contends that it co-owns the Commercial Component with AP and because the definition of the Class B Member contemplates a single Class B Member, the Class B Member has ceased to exist. Therefore, NBR contends that the Court must determine AP's and NBR's respective ownership interests in the Commercial Component in order to determine the parties' respective voting rights in the Master Association according to the formula set forth in the Class A Member definition.

1. *NBR and AP Are Co-Owners of the Commercial Component.*

For the following reasons, the Court concludes that the term "Commercial Component," as redefined in the Buildings Declaration and read together with the terms of the Shoppes Declaration, leads to the conclusion that AP and NBR are co-owners of the Commercial Component.

(a) *The Buildings Declaration*

Section 1.1 of the Buildings Declaration states, in relevant part:

Building Component Breakdown. Reference is made to the Master Declaration and in particular to the definition of the Components described in Article II thereof. Within the Buildings are three (3) Components as therein defined: "Residence II," the "Hotel Condominium," and the "Commercial Component." Declarant plans to submit "Residence II" and the "Hotel Condominium" to the condominium form of ownership as described in the Master Declaration.

This provision explains that two of the three Components that comprise Buildings 1, 2 and 3 (Residence II and the Hotel Condominium) will be submitted to the condominium form of ownership by Supplemental Declarations.

Section 1.1 then further distinguishes Residence II and the Hotel Condominium from the third Component, the Commercial Component, by defining the "Non-Commercial Component" in direct opposition to the "Commercial Component." Section 1.1 reads:

As used herein the term "Non-Commercial Component" consists of Residence II and the Hotel Condominium. The term "Commercial Component" consists of all portions of the Property not included within the Non-Commercial Component which is generally the area described as the Commercial Component in the Master Declaration. . . .

Essentially, the Buildings Declaration supplements the definition of the Commercial Component to include everything that is not the Non-Commercial Component. And because the Non-Commercial Component consists only of Residence II and the Hotel Condominium, the Commercial Component includes all other space in Buildings 1, 2 and 3 that is not included in Residence II or the Hotel Condominium.

Finally, Section 1.1 of the Buildings Declaration expressly delineates certain features of Buildings 1, 2 and 3 that are excluded from the Non-Commercial Component and, thus, by definition, are included within the Commercial Component. Section 1.1 states:

The space that comprises the Non-Commercial Component excludes the exterior structural walls, windows, exterior doors and roof of Buildings 1, 2, 3 and, to the maximum extent possible (except for certain areas designated as common elements thereof), includes only interior airspace inside condominium units within Residence II and the Hotel Condominium within such Buildings. All such excluded areas are part of the Commercial Component.

The definitions of the terms "Non-Commercial Component" and "Commercial Component"

provide clarity on the issue of whether NBR is a co-owner of the Commercial Component by virtue of the provisions in the Shoppes Declaration.

(b) *The Shoppes Declaration*

The Shoppes Condominium Property—six commercial condominium units—are located on the ground floor of Buildings 1, 2 and 3 discussed above. The Shoppes Declaration, which submits the Shoppes Condominium Property to the condominium form of ownership, expressly designates the Shoppes Condominium Property as being part of the Commercial Component as described in the Master Declaration.⁶² This is further confirmed in Section 22.7 of the Shoppes Declaration.

Based on the clear inclusion of the Shoppes Condominium Property within the Commercial Component, NBR, as the record title owner of a portion of the Shoppes Condominium Property, must be deemed a co-owner of the Commercial Component.

2. *NBR's Ownership of "Airspace" in the Commercial Component Does Not Affect Its Voting Rights in Class A as a Co-Owner of the Commercial Component.*

As a co-owner of the Commercial Component, NBR asks the Court to determine that it owns more square feet of floor area in the Commercial Component than AP and, thus, holds all of the voting rights for the Commercial Component in Class A, having one vote for each 87 square feet of floor area within the Commercial Component. This argument assumes that the Commercial Component's votes are cast as a single block. But, even if this were the case, NBR's argument fails because NBR owns only airspace within the Commercial Component, not "floor area."

Section 4.24 of the Shoppes Declaration defines "Unit" as being "a part of the [Shoppes]

Condominium Property which is to be subject to private ownership as designated herein." Section 5.2 then delineates the physical boundaries of each Unit, stating:

Unit Boundaries. Each Unit shall include that part of the [Shoppes] Condominium Property that lies within the following boundaries:

(A) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(1) Upper Boundaries. The *horizontal plane of the unfinished lower surface* of the ceiling of the Unit.

(2) Lower Boundaries. The *horizontal plane of the unfinished upper surface* of the concrete floor of the Unit.

(B) Perimeter Boundaries. The perimeter boundaries of the Unit shall be the *vertical planes of the unfinished interior surfaces of the plasterboard or drywall bounding the Unit* as shown in Exhibit "B" hereto, extended to their intersections with each other and with the upper and lower boundaries.

(emphasis supplied).

In other words, each Unit consists of the interior airspace between the floor, ceiling, and walls of that Unit. It is this interior airspace that was conveyed from Basil Street Partners to NBR in the Shoppes Deed. The Shoppes Deed did not include the underlying real estate (i.e., the "floor area") in the description of the property conveyed. This distinction is critical because, as discussed below, NBR did not take title to that portion of the Shoppes Condominium Property—the floor area—that would have afforded NBR voting

⁶² Shoppes Declaration, Section 2 ("The Condominium Property comprises a portion, but not all, of 'Component 5' or the 'Commercial Component' as described in the Master Declaration.").

rights as a Commercial Component Owner as set forth in the Class A voting provision of the Articles of Incorporation.

Article VI of the Articles of Incorporation provides that the Commercial Component Owner (or, as NBR contends, the Commercial Component “Co-Owners”) is “allocated one (1) vote for each eighty seven (87) square feet of floor area within it.” This formula requires the Commercial Component Owner to own a specific type of property within the Commercial Component, namely *square feet of floor area*. But NBR owns only the cubic feet of airspace within the horizontal and vertical planes of unfinished surfaces of the ceiling, floor, and walls, not “floor area.”

Accordingly, even if the Court were to construe the Articles of Incorporation in the manner NBR urges and apply the voting formula that NBR contends is required, the Court would still conclude that the airspace that NBR owns does not constitute the requisite “floor area” of the Commercial Component for purposes of voting as a Class A co-owner of the Commercial Component in the affairs of the Master Association.⁶³

III. Conclusion

The Court is well aware that the conflicts between Mr. Antaramian and PZS make the management of the Shared Facilities difficult. This is true whether AP or NBR controls the Shared Facilities. The Court’s finding that AP is the Developer and Class B Member essentially determines that AP controls the Shared Facilities. This is consistent with the transfer of the Shared Facilities from Basil Street Partners to AP under the Confirmation Order and in the Bill of Sale. But with AP’s ownership and control of the Shared Facilities come attendant obligations to the owners of the other Components of the West

Parcel. Enforcement of those obligations, if necessary, is left to another court.

For the reasons set forth above, AP’s Motion for Summary Judgment and NBR’s Motion for Partial Summary Judgment are GRANTED in part and DENIED in part. The Court declares as follows:

1. AP, as the assignee of Basil Street Partners pursuant to the Confirmation Order and the Bill of Sale, is the owner of the “Shared Facilities” and the “Developer,” as those terms are defined in the Master Declaration.

2. AP is the Class B Member of the Naples Bay Resort West Parcel Master Property Owners’ Association, Inc., as set forth in the Articles of Incorporation.

3. Alternatively, NBR is a co-owner of the Commercial Component with AP, but NBR’s ownership interest in the Commercial Component is limited to the airspace within Units 1 through 6 of the Shoppes Condominium Property. Because NBR does not own floor area in the Commercial Component, NBR is not entitled to vote as a co-owner of the Commercial Component in the affairs of the Master Association.

4. The Court will enter a separate final summary judgment consistent with this Order.

DATED: July 18, 2014.

/s/
Caryl E. Delano
United States Bankruptcy Judge

Attorney Robert Rocke is directed to serve a copy of this order on interested parties and file a proof of service within three days of entry of the order.

⁶³ Notwithstanding its lack of voting rights in Class A as a co-owner of the Commercial Component, NBR has one Class A vote for each of the Units 1-6 of the Shoppes Condominium Property. Articles of Incorporation, Article V; Shoppes Declaration, Section 6.1.