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 06/18/2009 09:40 AM \$141.00
 Book - 9737 Pg - 228-261
 GARY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
 TREVI TOWERS HOA
 245 N VINE ST #50
 SLC UT 84103
 BY: ZJM, DEPUTY - WI 34 P.

WHEN RECORDED RETURN TO:
 Trevi Towers Homeowners Association
 245 N. Vine Street, #50
 Salt Lake City, UT 84103

**AMENDMENT
 TO
 DECLARATION AND BYLAWS
 OF THE
 TREVI TOWERS CONDOMINIUM**

This Amendment to Declaration and Bylaws of the Trevi Towers Condominium is made and executed by the Trevi Towers Homeowners Association, Inc., of 245 N. Vine Street, #50, Salt Lake City, UT 84103 (the "Association").

RECITALS

A. The Declaration and Bylaws of the Trevi Towers Condominium required by the Utah Condominium Ownership Act was recorded in the office of the County Recorder of Salt Lake County, Utah on March 3, 1976 as Entry No. 2791127 in Book 4123 at Page 480 of the official records (the "Declaration").

B. The Record of Survey Map required by the Utah Condominium Ownership Act was recorded in the office of the Salt Lake County Recorder in Plat Book No. 76-3, at page 38, as Entry No. 2791126 on March 28, 1974 (the "Record of Survey Map").

C. This document affects the real property located in Salt Lake County, Utah, described with particularity on Exhibit "A," attached hereto and incorporated herein by this reference (the "Property").

D. A copy of the August 14, 2008 Ruling of the Honorable Tyrone E. Medley of the Third Judicial District Court in and for Salt Lake County, Utah in the case styled as Arthur E. Lussier, et al., Plaintiffs v. Trevi Towers Association, Inc., Civil No. 060917796, ruling that Unit No. 100 and Unit P-3¹ were condominium units privately owned and not common area, is attached hereto, marked Exhibit "B" and incorporated herein by this reference (the "Order").

E. The Association is the managing agent of the Owners of the Property.

F. The Association desires to note the changes the Order makes to the Record of Survey Map and the Declaration.

G. The Association desires to record an Appendix A in accordance with the Order.

¹ Also sometimes referred to as Unit No. 3 or Unit No. 75.

AMENDMENT

NOW, THEREFORE, for the reasons recited above, and for the benefit of the Project and the Unit Owners thereof, the Association hereby executes this Amendment to Declaration and Bylaws of the Trevi Towers Condominium for and on behalf of and for the benefit of all of the Unit Owners.

1. The Record of Survey Map and the Declaration are hereby amended in accordance with the Order.
2. Appendix A (as heretofore amended or supplemented) is hereby deleted in its entirety and Appendix A attached hereto and incorporated herein by this reference is hereby substituted in lieu thereof.
3. In the event of any conflict, incongruity or inconsistency between the provisions of this Amendment and the provisions of the Declaration (as heretofore amended), the former shall in all respects govern and control.
4. The effective date of this Amendment is the date it is recorded in the office of the County Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, the Association has executed this instrument the 12 day of January, 2009.

TREVI TOWERS HOMEOWNERS ASSOCIATION, INC.

By: *Rene M. Johnson*
Name:
Title: President

STATE OF UTAH)
)ss:
COUNTY OF SALT LAKE)

On the 12 day of January, 2009, personally appeared before me *Rene M. Johnson*, who by me being duly sworn, did say that s/he is the President of the Trevi Towers Homeowners Association, Inc., and that the within and foregoing instrument was signed in behalf of said Association by authority of a resolution of its Board of Directors, and said _____ duly acknowledged to me that said Association executed the same.

NOTARY PUBLIC
Residing At:
Commission Expires:

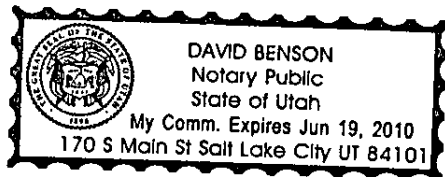


EXHIBIT "A"

**LEGAL DESCRIPTION
TREVI TOWERS CONDOMINIUM**

The land described in the foregoing document is located in Salt Lake County, Utah and is described more particularly as follows:

SALT LAKE COUNTY RECORDER

Recorder | Data Services | Documents | Parcels | Plats | GIS | Help | Log Out

**Subdivision/Dedication Lots and Parcels
(RXLP)
TREV TOWERS CONDO AMD**

[Return to Home Page](#)

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[Return to Sub/Dedication Name Page](#)

Total Parcels Found: 66

[Printer-Friendly Version](#)

[Go to Details \(RXKP\)](#)

Block / Building	Type	Lot / Quarter	Parcel Number	Obsolete?
	U	P3	8364370650000	N
	U	100	8364370020000	N
	U	102	8364370030000	N
	U	103	8364370040000	N
	U	104	8364370050000	N
	U	105	8364370060000	N
	U	106	8364370070000	N
	U	107	8364370080000	N
	U	201	8364370090000	N
	U	202	8364370100000	N
	U	203	8364370110000	N
	U	204	8364370120000	N
	U	205	8364370130000	N
	U	206	8364370140000	N
	U	207	8364370150000	N
	U	208	8364370160000	N
	U	301	8364370170000	N
	U	302	8364370180000	N
	U	303	8364370190000	N
	U	304	8364370200000	N
	U	305	8364370210000	N
	U	306	8364370220000	N
	U	307	8364370230000	N
	U	308	8364370240000	N
	U	401	8364370250000	N
	U	402	8364370260000	N
	U	403	8364370270000	N
	U	404	8364370280000	N
	U	405	8364370290000	N
	U	406	8364370300000	N
	U	407	8364370310000	N
	U	408	8364370320000	N
	U	501	8364370330000	N
	U	502	8364370340000	N
	U	503	8364370350000	N
	U	504	8364370360000	N

U	505	8364370370000	N
U	506	8364370380000	N
U	507	8364370390000	N
U	508	8364370400000	N
U	601	8364370410000	N
U	602	8364370420000	N
U	603	8364370430000	N
U	604	8364370440000	N
U	605	8364370450000	N
U	606	8364370460000	N
U	607	8364370470000	N
U	608	8364370480000	N
U	701	8364370490000	N
U	702	8364370500000	N

12

SALT LAKE COUNTY RECORDER

Recorder | Data Services | Documents | Parcels | Plats | GIS | Help | Log Out

**Subdivision/Dedication Lots and Parcels
(RXLP)
TREV TOWERS CONDO AMD**

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[Return to Sub/Dedication Name Page](#)

Total Parcels Found: 66

[Printer-Friendly Version](#)

[Go to Details \(RXKP\)](#)

Block / Building	Type	Lot / Quarter	Parcel Number	Obsolete?
	U	703	8364370510000	N
	U	704	8364370520000	N
	U	705	8364370530000	N
	U	706	8364370540000	N
	U	707	8364370550000	N
	U	708	8364370560000	N
	U	801	8364370570000	N
	U	802	8364370580000	N
	U	803	8364370590000	N
	U	804	8364370600000	N
	U	901	8364370610000	N
	U	902	8364370620000	N
	U	903	8364370630000	N
	U	904	8364370640000	N
	U	AREA	8364370010000	N
	U	PRKNG	8364350040000	N

EXHIBIT "B"

AUGUST 14, 2008 RULING

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE CITY
SALT LAKE COUNTY, STATE OF UTAH

ARTHUR E. LUSSIER,	: Case No. 060917796
	:
Plaintiff,	:
	:
vs.	:
	:
TREVI TOWERS OWNERS ASSOCIATION,	:
	:
Defendants.	:

RULING AUGUST 14, 2008

BEFORE

THE HONORABLE TYRONE E. MEDLEY

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

APPEARANCES

For the Plaintiff:	RICHARD H. CASPER Attorney at Law
For the Defendants: Perry Defendants:	ALAN SULLIVAN Attorney at Law
Association:	MARY ANN WOOD Attorney at Law
Board Members:	JAMES R. BLAKESLEY Attorney at Law

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SALT LAKE CITY, UTAH - AUGUST 14, 2008

JUDGE TYRONE E. MEDLEY PRESIDING

(Transcriber's note: Speaker identification
may not be accurate with audio recordings)

TELEPHONIC PROCEEDINGS

THE COURT: Let me say for record purposes, this is
in fact Case No. 060917796 and I'd like to start by having
counsel identify themselves for the record starting with
counsel for the plaintiffs.

MR. CASPER: Richard Casper appearing for the
plaintiff.

MR. SULLIVAN: Good afternoon, Your Honor, this is
Alan Sullivan appearing for the Perry defendantS.

MS. WOOD: Your Honor, Mary Anne Wood appearing on
behalf of the Association.

MR. BLAKESLEY: Your Honor, Jim Blakesley appearing
on behalf of the defendant, members of the board other than
Elder Perry.

THE COURT: Okay. We should also have on the line
I believe a Pam, is it Manson?

MS. MANSON: Yes, that's correct.

THE COURT: And Ms. Manson requested to be able to
listen in on this telephone conference ruling and I believe
she writes for the Salt Lake Tribune.

MS. MANSON: That's correct.

1 THE COURT: Counsel, the first thing I would like
2 to do, as you will recall, yesterday I made a disclosure to
3 you of a contact that I had with one of the plaintiffs in
4 this particular case, Pamela Lynquist I believe is her name.
5 That contact arose as a result of the two of us running in a
6 5K race that took place in mid-June of this year. I wanted
7 to give you an opportunity to consider any potential
8 ramifications of that contact, so I gave you some additional
9 time to get that done, so consequently I'd like to address
10 that issue first and turn to Mr. Casper.

11 MR. CASPER: Yes. Your Honor, since our meeting
12 yesterday I've confirmed that the facts are as you recalled
13 them yesterday but there's at least one other contact of
14 which the Court is not aware. A month before the Judge's run
15 a (inaudible) service and a research oncologist from the
16 Huntsman Cancer Institute gave a brunch presentation at Trevi
17 Towers to promote the Stirba Foundation and it's purposes of
18 researching breast cancer issues. About 20 women attended
19 that meeting. Kerry Counter who is Mr. Stirba's assistant
20 asked for volunteers and participants for the judge's run and
21 two of the plaintiffs were present at that meeting and
22 volunteered, Pamela Lynquist and Clair Singleton were there,
23 both were at the judge's run. Claire Singleton has reported
24 to me that she was in a cluster of people near the
25 registration table speaking with a friend of hers, Paul Felt

1 who it appeared was also an acquaintance of yours, Your
2 Honor, and that group engaged in some casual conversation.
3 Ms. Singleton tells me that she did not know who you were at
4 the time but there was some conversation that took place.

5 Now neither of the plaintiffs discussed the case
6 with you according to their recollection but they were there
7 and were participants in what was going on around you and I
8 suppose there was some contact also with Ms. Singleton. Both
9 of them knew not to discuss the case but they did not know
10 that casual conversations were off limits. That's what I've
11 been able to discover since yesterday.

12 THE COURT: Well, I appreciate that and let me say
13 that I have no memory of having any discussions with Ms.
14 Singleton. Of course, I wouldn't have recognized her as a
15 party plaintiff. I don't know her from any other source.

16 In terms of my relationship with Mr. Felt, it
17 really is no different than many other lawyers. He's
18 appeared in front of me on numerous occasions throughout the
19 years that I've been on the district court bench now.

20 But let me ask you, Mr. Casper, and this is really
21 the point of giving you and other counsel time to give this
22 issue some consideration, what if anything do you wish to do
23 at this point in light of this disclosed contact?

24 MR. CASPER: I've already done what I think we
25 ought to do and I've advised all of my clients that they're

1 not to engage in even casual conversation with the Court.

2 THE COURT: Can I assume from what you just stated
3 then that you have no problem with this Court moving forward
4 then?

5 MR. CASPER: That's correct.

6 THE COURT: Let me turn to Mr. Sullivan.

7 MR. SULLIVAN: Your Honor, this is Alan Sullivan.
8 I've conferred with my client, we don't have a problem with
9 any of this. We don't think that this incidental type of
10 contact affects the case one way or the other and we don't
11 intend to do anything.

12 THE COURT: Okay. Ms. Wood?

13 MS. WOOD: Your Honor, we have no objection to your
14 proceeding.

15 THE COURT: And Mr. Blakesley?

16 MR. BLAKESLEY: No problem with the Court moving
17 forward, Your Honor.

18 THE COURT: Okay. With that placed on the record
19 then I am inclined to move forward.

20 Let me first say initially, because I have
21 considered the affidavits and declaration documents submitted
22 with the memoranda as it relates to the motions currently
23 under consideration, I am construing the motions filed by the
24 Perry defendants and the Association defendants, and I refer
25 to them collectively, as Motions for Summary Judgment and

1 have treated them as such. Consequently as it relates to the
2 Perry defendants' Motion to Dismiss as well as the
3 Association defendants, excuse me, Motion for Summary
4 Judgment as well as the Association defendants' Motion for
5 Summary Judgment, I am going to grant both of those motions.
6 I'm doing so for two reasons. I am finding that the
7 plaintiffs do lack standing under Rule 23 of the Utah Rules
8 of Civil Procedure to assert their derivative claims against
9 the Perry defendants as well as the Association defendants as
10 set forth in the fifth and sixth cause of action.

11 Consistent with Rule 23, the plaintiffs are
12 required to show that they were members of the Association
13 and I think the key language of Rule 23 is at the time of the
14 transaction of which they complain of and I am finding that
15 the undisputed material facts demonstrate that they were not
16 members of the Association at the time of the transactions
17 that they complain of.

18 Having reviewed the complaint, the amended
19 complaint, I think it may be the third amended complaint and
20 the moving papers in reference to the Motions for Summary
21 Judgment, I'm satisfied that the core and substance of
22 plaintiff's claims are the alleged title defects going back
23 to the 1977 conveyances in reference to both the Perry
24 defendants and the Association defendants.

25 Mr. Casper, on behalf of his clients, at least at

1 one point in time during the oral argument suggested that at
2 issue was the conveyance, the 2006 conveyance which I believe
3 occurred after the death of Minion Perry - I'm not sure I
4 pronounce that name correctly - was the transaction at issue
5 and when I look at the substance of the allegations in the
6 two causes of action, I'm not persuaded that that transaction
7 is the core substance of the causes of action in the amended
8 complaint if, for no other reason than the reasonable
9 likelihood of a challenge of that 2006 transaction would
10 likely result in title vesting in the estate of Minion Perry
11 and that is inconsistent with the quiet title relief that is
12 sought by the plaintiffs.

13 Additionally, as to the Association, I'm satisfied
14 from the same review that the core and substance of
15 plaintiff's claims really is a challenge to the 1977
16 agreement and transaction, the recorded quit claim deed that,
17 in this Court's view, conveyed Unit 100 as a privately owned
18 unit to the Association. Therefore, I'm satisfied that the
19 plaintiffs lack standing under Rule 23. The plaintiffs were
20 not members of the association at the time of the
21 transactions which are complained of in this particular case,
22 consequently, they are barred from asserting their derivative
23 claims consistent with the express language of Rule 23.

24 Based upon the undisputed material facts, I'm also
25 finding that the Perry family has owned and occupied the Unit

1 3, they have record title to Unit 3. The undisputed material
2 facts demonstrate that they pay taxes and association dues on
3 Unit 3 for over 30 years and that there are no title defects
4 as alleged by the plaintiffs in this particular case.

5 Additionally, I'm satisfied that the undisputed
6 material facts consistent with the law establish that the use
7 and possession of Unit 100 by resident manager nor the intent
8 of the parties to the 1977 agreement can convert the
9 Association's record title ownership as a privately owned
10 unit to Unit 100. Consequently, because the plaintiffs lack
11 standing, I'm granting the defendant's respective Motions for
12 Summary Judgment.

13 Additionally, I'm also satisfied that Utah Code
14 Annotated 78-12-(5) (6) (7) and (8) which are the Statute of
15 Limitation provisions also serve as a bar to the plaintiff's
16 fifth and sixth causes of action.

17 In terms of the breach of fiduciary duty cause of
18 action, those provisions are governed by, in essence, Utah
19 Code Annotated 78-12-24 which has a 4-year statute of
20 limitations and/or 78-12-27 which has a 3-year statute of
21 limitations and I am finding that those provisions would bar
22 the plaintiff's claims in the fifth and sixth causes of
23 action.

24 As to the plaintiff's request for Rule 56(f)
25 relief, as I think all of you know, I initially struggled

1 with this position but after considering the respective
2 argument of counsel and giving this issue further
3 consideration I am specifically finding that to grant Rule
4 56(f) for relief as to the Defendants Motions for Summary
5 Judgment would, in fact, be futile because the record title
6 evidence which is available in this case which goes back to
7 1977 is readily discoverable.

8 Additionally, plaintiff's suggestion that Rule 23
9 can be tolled, I'm satisfied is not supported by competent
10 legal authority. Counsel's suggestion that Rule 56(f) relief
11 would be necessary to discover concealment in an effort
12 somehow to toll the running of either Rule 23 or the
13 applicable statute of limitations, I'm not persuaded by that
14 argument because for the most part the Defendant's Motions
15 for Summary Judgment are based upon readily available public
16 record evidence and I can't find that there is reasonable
17 basis to believe that a continuance for Rule 56(f) further
18 discovery purposes would aid the plaintiffs in responding to
19 the Motions for Summary Judgment as to the standing and
20 statute of limitations grounds. Consequently, the request
21 for Rule 56(f) relief is denied.

22 Let me also say that because of the manner in which
23 I've ruled upon the defendant's respective Motions for
24 Summary Judgment, I am also denying the Plaintiff's Motion
25 for Partial Summary Judgment for the same reasons upon which

1 that I have granted the defendant's respective Motions for
2 Summary Judgment.

3 I'm going to go next to the Plaintiff's Motion for
4 an Order to Show Cause. I've heard argument on this
5 particular motion and considered the moving papers and I am
6 going to rule as follows; I am going to deny the Plaintiff's
7 Motion for an Order to Show Cause. I'm doing so primarily
8 for the reason that I cannot find from the argument presented
9 and the evidence presented in support of this motion that the
10 plaintiffs have demonstrated a prima facie case that would
11 warrant me scheduling an evidentiary hearing on a Motion for
12 an Order to Show Cause. I come to that conclusion for a
13 number of reasons. First let me say that I don't think it's
14 disputed or at least is admitted that discovery was initially
15 slowed in part because of a dispute as to the applicable law
16 in this particular case which was eventually decided by the
17 Court of Appeals.

18 Additionally, and probably most significantly, I am
19 unable to find that there was an intentional failure of the
20 defendants in this particular case to - an intentional
21 failure to follow or disregard discovery obligations in this
22 case. I agree with Mr. Casper's citing of the law to me that
23 as to this element of intentional failure that it does not
24 require ill will or some form of improper motive. I believe
25 he cited to me a case wherein a lawyer made a conscious

1 decision to not make a disclosure and the Court of Appeal was
2 satisfied that that was sufficient to constitute an
3 intentional failure to comply with discovery obligations.
4 But in this particular case based upon what's been presented,
5 I'm satisfied that there was a misrepresentation as to
6 whether or not all of the discovery documents had been
7 provided. That's pretty clear, that there was a
8 misrepresentation, but from all of the surrounding
9 circumstances, I'm inclined to find and I do find that it was
10 in essence a mistaken misrepresentation. I can't find from
11 the evidence presented that the mistake was an intentional
12 failure. I would categorize the mistake more along the line,
13 based upon what's been presented, as an oversight. There is
14 no evidence that the defendants acted in bad faith. I can't
15 find that the defendants acted contrary to a court order at
16 the time.

17 Additionally, I can't find that the defendants
18 intentionally frustrated the judicial process or somehow
19 disrespected the judicial process whereby this Court should
20 exercise its inherent powers to maintain the integrity of the
21 judicial process. In this particular case once it was
22 discovered that the documents were discovered in the file
23 cabinets, I'm satisfied that these documents were, in fact,
24 expeditiously disclosed to counsel for the plaintiffs. They
25 were in due course and within a reasonable time, there was

1 the opportunity to inspect those documents. So I can't find
2 from this evidence that there was, in fact, an intentional
3 failure by the defendants to disregard their discovery
4 obligations in this particular case and I know that Mr.
5 Casper - and I'm certain in good faith, reasonably believes
6 and takes the position that the plaintiffs were put to great
7 expense as a result of the alleged discovery failures by the
8 defendants in this particular case but I just simply cannot
9 find that after the disclosure of the documents in the file
10 cabinets which I believe was in an elevator room on the roof,
11 that it was, in fact, necessary to depose, I think it's Ms.
12 Lang and Mr. Gledhill, as to - that it was necessary to
13 depose them to determine the extent of their knowledge
14 regarding the existence of these documents in the file
15 cabinets and/or that it was necessary to depose them for the
16 purposes of demonstrating a chain of custody as to these
17 documents which was one of the positions taken by Mr. Casper.
18 I just can't find from what was presented that that was
19 reasonably necessary. Consequently, for all of those reasons
20 I'm going to deny the Plaintiff's Motion for an Order to Show
21 Cause.

22 I'm going to direct counsel for the defendants to
23 prepare an order consistent with the manner in which I've
24 ruled here today and I also would like to place on the record
25 that by this reference I am incorporating this oral decision

1 into the written orders that are going to be drafted by
2 counsel for the defendants.

3 That is really all I intended to place on the
4 record today and I'll turn to the counsel for the defendants
5 since you're going to be required to draft an order, is there
6 anything else you would like to state at this time?

7 MS. WOOD: Nothing from Mary Anne Wood.

8 MR. BLAKESLEY: Nothing from Jim Blakesley, Your
9 Honor.

10 MR. SULLIVAN: And nothing from Alan Sullivan.

11 THE COURT: Mr. Casper? Are you still there, Mr.
12 Casper?

13 MR. CASPER: Yes.

14 THE COURT: Anything else you would like to place
15 on the record at this time?

16 MR. CASPER: Yes, Your Honor. One of the ancillary
17 issues appears to have been resolved but I didn't hear the
18 Court say was the implied decision that the post 1977
19 amendments to the declaration are valid. Did the Court make
20 that determination?

21 THE COURT: I did not make that determination.
22 Which document are you specifically referring to?

23 MR. CASPER: The exhibits to Mr. Sullivan's moving
24 papers included two or three amendments to the declaration
25 that assigned an undivided interests to the Perry's unit that

1 was not assigned by the declaration.

2 THE COURT: Through my decision I have determined
3 that the Perry's ownership of Unit 3 is a valid ownership
4 interest in that unit.

5 MR. CASPER: So that there has been a valid
6 interest assigned by an amendment?

7 THE COURT: Correct.

8 MR. CASPER: One other question, Your Honor, the
9 sixth cause of action included some recent activities as to
10 voting processes and in particular the Max Zimmer instance.
11 Is the Court finding that the Statute of Limitations and Rule
12 23(a) precludes that cause of action?

13 THE COURT: To the extent that you attempt to
14 assert claims that are not within the scope of the
15 transactions with occurred in 1977, I am granting the Motion
16 for Summary Judgment for failure to state a claim upon which
17 relief can be granted.

18 MR. CASPER: So if the theory or cause of action
19 includes claims not related to the 1977 transaction, are
20 those still alive?

21 THE COURT: My answer to that question is no as a
22 result of the failure to state the claim upon which relief
23 can be granted resulting from a failure to identify the
24 claimed harm.

25 With that I'm going to ask within 15 days from

1 today, can the defendants have an order submitted to
2 consistent with the manner in which I've ruled here today?

3 MR. BLAKESLEY: Yes, Your Honor.

4 MR. SULLIVAN: Yes.

5 THE COURT: As I do in every case, I'd like to have
6 counsel make the effort to submit an order to me that can be
7 approved only as to form by the opposition. If that effort
8 fails then, of course, the proposed order to me consistent
9 with Rule 7(f).

10 MR. SULLIVAN: Thank you, Your Honor.

11 MS. WOOD: Thank you, Your Honor.

12 MR. ?: Thank you, Your Honor.

13 THE COURT: Thank you, counsel. Bye.

14 (Whereupon the hearing was concluded)

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EXHIBIT "B-1"

JUNE 12, 2009 MINUTE ENTRY DECISION AND ORDER

JUN 12 2009

SALT LAKE COUNTY

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ARTHUR E. LUSSIER, MYRNA RALPH, WILLIAM R. WILSON, CLAIRE SINGLETON, SUE ANDREWS, and PAMELA LINDQUIST, individually, and derivatively in the right Trevi Towers Ass'n, Inc., a Utah nonprofit corporation,	:	MINUTE ENTRY DECISION AND ORDER
	:	CASE NO. 060917796
Plaintiffs,	:	
vs.	:	
TREVI TOWERS ASSOCIATION, INC., a Utah nonprofit corporation,	:	
Defendant, and	:	
L. TOM PERRY, trustee of the Perry Family Childrens' Trust, and RENE JOHNSON, MARK THUYER, BRENT GLEDHILL, SUE LAING, L. TOM PERRY, and DOES 1-10, inclusive,	:	
Derivative Defendants.	:	

Before the Court are plaintiffs' Motion for Summary Judgment, defendants' Motion for Summary Judgment and Motion to Release Lis Pendens. These matters were taken under advisement by the Court after the submission of Memoranda in support, opposition, reply and oral argument by counsel. Further, the Court reviewed again the moving papers related to defendants' Motion to Dismiss, for Summary Judgment, or to Appoint a Panel and Stay Derivative Claims, the Court's August 14, 2008, Ruling

Transcript and the October 16, 2008, Order and Judgment. After further review and consideration, the Court rules as follows.

Plaintiffs' Motion for Summary Judgment is denied in full. Defendants' Motion for Summary Judgment is granted in full as prayed for. Defendants' Motion to Release Lis Pendens is granted in full as prayed for. First, it should be noted that plaintiffs have failed as required by Rule 7(C)(3)(B), Utah R. Civ. P., to properly respond to defendants' Statement of Undisputed Facts by providing an explanation of the grounds for any dispute supported by citation to relevant materials, such as affidavits or discovery materials. Consequently, defendants' Statement of Undisputed Facts are deemed admitted and are incorporated herein by this reference and relied upon by the Court.

Second, in the Court's October 16, 2008, Order and Judgment which disposed of plaintiffs' fifth and sixth causes of action, the Court unequivocally determined that Unit 100 and/or Apartment 3 are privately owned units and are not common areas for the reasons set forth therein which will not be repeated here. Third, upon examination of plaintiffs' Third Amended Complaint, it is evident the first cause of action, (1) Ratification of Unit 100 as a Common Area; second cause of action, (2) Breach of Contract for failure to recognize Unit 100 and/or Apartment 3 as part of the common area; and the third cause of action, (3) Equitable Estoppel, based upon the allegation the Association conducted its business as though Unit 100 had been properly and legally designated by

the Association as part of the common area, are all contingent upon plaintiffs' theory that Unit 100 and/or Apartment 3 are common areas. Plaintiffs' theory that Unit 100 and/or Apartment 3 are common areas, again, was clearly and unequivocally determined by the Court's October 16, 2008, Order and Judgment which is the controlling law of this case, therefore, plaintiffs' first, second and third causes of action cannot survive the October 16, 2008, Order and Judgment. Plaintiffs have failed to demonstrate any of the reasons set forth in Gildea v. Guardian Title Co. of Utah, 31 P.3d 543 (Utah 2001), as to why this Court should revisit its prior ruling. Further, to the extent that plaintiffs' remaining causes of action assert individual claims, the Court's October 16, 2008, Order and Judgment applies with equal force and effect because once again the core and substance of plaintiffs' claims are alleged title defects going back to 1997, all of which would be barred by the seven year statute of limitations in Utah Code Ann., § 78B-2-207, or the six year statute of limitations in Utah Code Ann., § 78B-6-309(2). Last, Summary Judgment in favor of defendants is required because plaintiffs cannot satisfy the standing requirements of Utah Code Ann., § 76B-2-207(2). Plaintiffs' first, second and third causes of action are ordered dismissed totally with prejudice.

Plaintiffs' argument based upon cherry-picked portions of a colloquy from the August 14, 2008, oral ruling, suggesting that the Court determined that the undivided interest in common area appurtenant to Unit

100 was extinguished by amendments to the Declaration is disingenuous. When the oral ruling and colloquy are read together as one connected whole, it cannot be reasonably disputed that this Court's decision did not rule on the validity of post-1976 amendments. The Court was hesitant to engage in the colloquy for the very reason that it finds itself now in the position of having its words construed in a manner totally inapposite to the express lynchpin basis of the Court's decision. In any event, plaintiffs' suggestion that these issues should be revisited based upon some creative uncertainties or that plaintiffs' desired outcome is now mandated based upon the colloquy is without merit.

Plaintiffs' fourth cause of action, (4) Determination of Members Voting Rights Under Controlling Documents and State Law, based on the October 24, 2006 "Proposal to Sell Unit 100" fails to identify any resultant action they seek to challenge, fails to identify any actionable harm, the only specific allegations set forth in the fourth cause of action are intertwined with the status of Unit 100 which have now been rendered moot by the Court's October 16, 2008, Order and Judgment. Therefore, defendants are entitled to Summary Judgment dismissing plaintiffs' fourth cause of action with prejudice.

Defendants' Motion to Release Lis Pendens Notices is granted in full as prayed for, including an award of costs and attorney fees as the prevailing party and as mandated by Utah Code Ann., § 78B-6-1304(6). Plaintiffs' original and amended Lis Pendens are Ordered to be

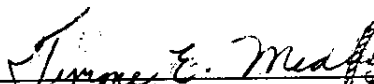
immediately released. Plaintiffs and counsel for plaintiffs are hereby Ordered forthwith to effectuate the necessary steps to release the original and amended Lis Pendens. The Court finds the release of both Lis Pendens was warranted a long time ago when the party plaintiff who filed the original Lis Pendens withdrew from the case in August 2008, resulting in a lack of standing to maintain the Lis Pendens and when the Court extinguished the grounds for the Lis Pendens on Unit 100 as a result of the Court's October 16, 2008, Order and Judgment. Plaintiffs' continued persistence that Unit 100 is a common area in which plaintiffs own an undivided interest is without merit and smacks of bad faith. The Court finds that plaintiffs cannot reasonably assert a probable real property interest in Unit 100 as a common area given the Court's ruling. Plaintiffs' inability to establish by a preponderance of the evidence a probable real property claim in Unit 100 is not even fairly debatable. The Court further finds that plaintiffs' purported list of substantial uncertainties, including any uncertainties regarding allocation of voting rights cannot reasonably support a probable real property interest claim in Unit 100 that would justify a Lis Pendens.

Plaintiffs' refusal to remove the Lis Pendens despite the withdrawal of plaintiff Arthur E. Lussier from the case, the Court's October 16, 2008, Order and Judgment, and the plaintiffs' attempt to use removal of the Lis Pendens as a bargaining chip for other concessions leads the Court to find that plaintiffs acted without any reasonable justification

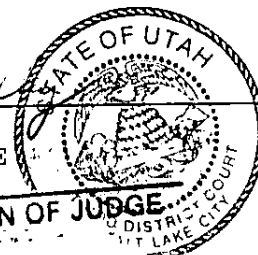
and the totality of the circumstances referenced hereinbefore make the imposition of costs and attorney fees at a minimum just and warranted.

This signed Minute Entry Decision and Order will constitute the Order of the Court resolving the matters referenced herein, no further Order is required. Counsel for defendants is instructed to submit an Affidavit and proposed Judgment in support of the awarded attorney fees and costs.

Dated this 12th day of June, 2009.


TYRONE E. MEDLEY
DISTRICT COURT JUDGE

By _____
STAMP USED AT DIRECTION OF JUDGE



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry Decision and Order, to the following, this 12th day of June, 2009:

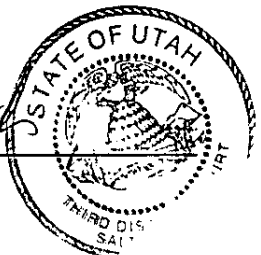
Richard H. Casper
Attorney for Plaintiffs
5450 S. Green Street
Murray, Utah 84123

Alan L. Sullivan
Nathan E. Wheatley
Attorneys for Plaintiffs
15 W. South Temple, Suite 1200
Salt Lake City, Utah 84101-1004

Mary Anne Q. Wood
Rachel A. Asbury
Kathryn O. Balmforth
Attorneys for Defendants
60 E. South Temple, Suite 500
Salt Lake City, Utah 84111

James R. Blakesley
Attorney for Derivative Defendants
Rene Johnson, Mark Thuer,
Brent Gledhill and Sue Laing
1305 N. Commerce Drive, Suite 230
Saratoga Springs, Utah 84045

J Smith

The seal is circular with a double border. The outer border contains the text "STATE OF UTAH" at the top and "THIRD DISTRICT" at the bottom. The inner border contains "SALT LAKE CITY". In the center is a smaller circular emblem featuring a figure holding a scale and a sword, with the text "JULY 24 1896" around it.

APPENDIX A

AMENDED APPENDIX A

**TREVI TOWERS CONDOMINIUM
PERCENTAGES OF OWNERSHIP**

Unit Number	Size in Square Ft.	Percentage of undivided Interest in the Common Areas & Facilities
75	808	.96292
100	1058	1.26085
102	1124	1.33950
103	1397	1.66485
104	1477	1.76019
105	1310	1.56117
106	237	0.28224
107	311	0.37063
201	1352	1.61122
202	1553	1.85076
203	1061	1.26443
204	1270	1.51350
205	1225	1.45987
206	1124	1.33950
207	1477	1.76019
208	1397	1.66485
301	1352	1.61122
302	1553	1.85076
303	1061	1.26443
304	1270	1.51350
305	1225	1.45987
306	1124	1.33950
307	1477	1.76019
308	1397	1.66485
401	1352	1.61122
402	1553	1.85076
403	1049	1.25012
404	1270	1.51350
405	1225	1.45987
406	1124	1.33950
407	1477	1.76019
408	1397	1.66485
501	1352	1.61122

502	1553	1.85076
503	1049	1.25012
504	1270	1.51350
505	1225	1.45987
506	1124	1.33950
507	1477	1.76019
508	1397	1.66485
601	1352	1.61122
602	1553	1.85076
603	1049	1.25012
604	1270	1.51350
605	1225	1.45987
606	1124	1.33950
607	1477	1.76019
608	1397	1.66485
701	1352	1.61122
702	1553	1.85076
703	1049	1.25012
704	1270	1.51350
705	1225	1.45987
706	1124	1.33950
707	1477	1.76019
708	1397	1.66485
801	1737	2.07000
802	1663	1.98185
803	1647	1.96278
804	1743	2.07719
901	1723	2.05335
902	1635	1.94849
903	1650	1.96635
904	1685	2.00807
		100