Case Number: SU-2024-0034-A
Filed in Supreme Court
Submitted: 1/23/2025 3:51 PM
Envelope: 4974117
Reviewer: Justin Coutu

STATE OF RHODE ISLAND
SUPREME COURT

SU-2024-0034-A

BOYANG SONG and
TRAVIS MCCUNE,

Plaintiffs – Appellants,

v.

EVAN LEMOINE, in his capacity as
President of the 903 Condominium
Owner's Association, Inc., and
STEPHEN RODIO, in his capacity as
Secretary of the 903 Condominium
Owner's Association, Inc.,

Defendants – Appellees.

On Appeal from Judgment of the Superior Court
(Docket No. PC-2023-2781)

AMICUS BRIEF OF COMMUNITY ASSOCIATIONS INSTITUTE IN SUPPORT OF DEFENDANTS – APPELLEES

Edmund A. Allcock (#7651)
Allcock & Marcus, LLC
10 Forbes Road, Suite 400W
Braintree, MA 02184
ed@amcondolaw.com
(781) 884-1660

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUES

CASE LAW

OTHER AUTHORITIES

I. STATEMENT OF IDENTITY AND INTEREST

The Community Associations Institute ("CAI") is an international organization dedicated to providing information, education, resources, and advocacy for community association leaders, members, and professionals with the intent of promoting successful communities through effective, responsible governance and management. CAI's more than 49,000 members include homeowners, board members, association managers, community management firms, and other professionals who provide services to community associations. CAI is the largest organization of its kind, serving more than 75.5 million homeowners who live in more than 365,000 community associations in the United States. CAI and its members recognize that the sustained health of the community association form of ownership in the United States depends in large part upon the willingness of owners to continue to serve on volunteer boards to make their homes and communities better places to live.

CAI submits that their experience in representing and supporting community associations in the United States allows them to understand the various needs of community associations. CAI states that it can provide an important perspective concerning how community association's elected boards have broad discretion to manage the affairs of their associations, so long as the respective boards adhere to their state's relevant statute for community associations and the community

association's own governing documents. CAI further submits their interest in community association governance and how this case may affect other similarly situated community associations. Rhode Island condominium associations are governed by statute, The Rhode Island Condominium Act, R.I. Gen. Laws 34-36.1-1.01 *et seq*. That law is clear and unambiguous as to the delegation of power between a condominium association's elected board and the unit owners. The Rhode Island Condominium Act ("Act") is an adoption of uniform law, specifically the Uniform Condominium Act of 1980. The Uniform Condominium Act of 1980 (UCA) has been adopted in the states of Alabama, Arizona, Kentucky, Louisianna, Maine, Minnesota, Missouri, Nebraska, New Mexico, Pennsylvania, Texas, Virgina, and West Virgina. Appellant Unit Owners are asking this Court to reverse the Trial Court decision and adopt a position on association governance that runs counter to the purpose and intent of the Act and UCA. Doing so would set an impractical precedent whereby unit owners would have the ability to circumvent the governance model mandated by the Act. This would result in groups of unit owners having the ability to micromanage the elected board of directors on discretionary matters. The implications would be detrimental, not only to condominium associations throughout Rhode Island, but in the other jurisdictions that have adopted the same uniform law.

II. SUMMARY OF ARGUMENT

Rhode Island condominium associations are governed by statute, The Rhode Island Condominium Act, R.I. Gen. Laws 34-36.1-1.01 *et seq*., which adopted the Uniform Condominium Act of 1980. The Act, the UCA, and the general principles of condominium and corporate governance afford to the executive board of condominium associations broad discretion in the management and regulation of association affairs. Many courts have refused to interfere with the board's exercise of their broad discretion absent a showing of bad faith or fraud. However, the unit owners in this case attempted to use the special meeting petition to invade and usurp the board's discretionary authority by dictating how and in what manner the board would conduct business (with respect to the allocation of gas expenses). Neither the Act nor the condominium governing documents grant the unit owners the right to micromanage or dictate the board's decisions, and as such their special meeting petition purporting to do so is improper. The lower court correctly and appropriately decided the same.

Case Number: SU-2024-0034-A
Filed in Supreme Court
Submitted: 1/23/2025 3:51 PM
Envelope: 4974117
Reviewer: Justin Coutu

III. ARGUMENT

A. Condominium Association Boards Are Afforded Broad Discretion In Performance Of Their Duties By The Rhode Island Condominium Act, The Uniform Condominium Act, and Many Courts

The governance structure established by the Rhode Island Condominium Act, the Uniform Condominium Act, and the general principles of condominium and corporate governance[1] grant the executive board of condominium associations broad discretion to act on behalf of the association. It is inevitable that not all unit owners may agree with the decisions of a condominium board. In this case, a group of unit owners attempted to dictate and micromanage the board's decision through a special meeting petition with multiple requests, including "to prohibit the Executive Board from using any formula for assessing gas expenses that conflicts with the declaration of condominium", "to direct the Executive Board to obtain and provide every unit owner with cost estimates for repairing and/or replacing the gas metering", and "to direct the Executive Board to call a second special meeting.". The unit owners' right to call a special meeting cannot and should not be used to usurp the power and discretionary process of the executive board of a condominium association. The lower court correctly declared that while the unit owners are within their right to request a special meeting, the purpose of the meeting must first and foremost be

[1] Although condominium association may or may not be incorporated, in the State of Rhode Island, most condominium associations are registered as non-profit corporations.

proper – and the requests of the unit owners which purported to dictate how the board makes decisions were not proper.

Condominiums are the purest form of representational democracy. The unit owners elect the board members to make decisions governing the maintenance, repair, and replacement of common areas; to enforce the rules and covenants of the condominium; and to manage other miscellaneous matters contained in the Act and the condominium governing documents.

"Ownership of a condominium unit is a hybrid form of interest in real estate, entitling the owner to both exclusive ownership and possession of his unit, and an undivided interest as tenant in common together with all the other unit owners in the common area". Noble v. Murphy, 34 Mass. App. Ct. 452, 456 (Mass. 1993); R.I. Gen. L. § 34-36.1-1.03(7). "Central to the concept of condominium ownership is the principle that each owner, in exchange for the benefits of association with other owners, must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property". Noble v. Murphy, 34 Mass. App. Ct. at 456, quoting Hidden Harbour Estates, Inc. v. Norman, 309 So. 2d 180, 182 (Fla. Dist. Ct. App. 1975). A condominium association is the organization of all condominium unit owners and is established to manage the common interests of the condominium. R.I Gen. L. § 34-36.1-3.01 and 3.02. Unit owners democratically (according to their allocated interests) elect the executive board of the condominium

association to manage and regulate the affairs of the association, much like a non-profit organization, R.I. Gen. L. § 7-6-23 (or a school board committee or a municipality). R.I. Gen. L. § 34-36.1-2.07(c); 2.20(e); 3.03. As such, unit owners "give up a certain degree of freedom of choice" and allow the executive board of a condominium association to manage and regulate the common interests of the association.

In order to effectively and efficiently exercise their duties and responsibilities, the board enjoys broad discretion in their decision-making process, dictated to some degree by the condominium governing documents and the Rhode Island Condominium Act (which adopted the Uniform Condominium Act). At a minimum, the board must act in good faith, on an informed basis, and with the honest belief that their action furthers the best interest of the association. Uniform Condominium Act (UCA) (2021) § 3-103, comment 2.[2] The UCA further compares the duties of a condominium association board to the equivalent in a non-profit corporation, UCA (2021) § 3-103, comment 1, which in Rhode Island, a director of a nonprofit organization shall discharge his or her duties (1) in good faith, (2) with the care of

[2] "When it enacted the [Rhode Island Condominium A]ct, the Legislature authorized and directed the secretary of state to insert the official comments to the Uniform Condominium Act (1980). Unless the statutory language clearly and expressly states otherwise, those comments are to be used as guidance concerning the legislative intent in adopting the chapter." Am. Condo. Ass'n, Inc. v. IDC, Inc., 844 A. 2d 117, 127 (R.I. 2004), citing Compiler's Notes to § 34–36.1–1.01.

an ordinarily prudent person in a similar position would exercise under similar circumstances; and (3) in a manner he or she reasonably believes to be in the best interest of the corporation. R.I. Gen. L. § 7-6-22(b). The Rhode Island Condominium Act mandates that the board exercises ordinary and reasonable care. R.I. Gen. L. 34-36.1-3.03(a)(2). Both the UCA and the Rhode Island Condominium Act affords the board of a condominium association broad discretion to manage and regulate the affairs of the association.[3]

Notably, the UCA notes that as long as the board decision might serve a rational business purpose, courts do not interfere by substituting their own ideas of what is or is not a correct or reasonable decision. UCA (2021) § 3-103, comment 2. This Court similarly held in King v. Grand Chapter of R.I. Order of Eastern Star, 919 A. 2d 991, 996 (R.I. 2007) that "[i]t is well settled that, ordinarily, the courts will not interfere with the internal workings of a voluntary organization as long as such rules are reasonable and consistent with public policy." See Gorman v. St. Raphael Academy, 853 A. 2d 28, 37 (R.I. 2004) ("there should be no judicial interference with the internal affairs, rules and by-laws of a voluntary association unless their

[3] C.f., Pompei v. Fincham, No. 07-4743-BLS2, 2007 WL 4626915, at *1 (Mass. Super. Ct. Nov. 16, 2007), citing Podell v. Lahn, 38 Mass. App. Ct. 688, 692 (Mass. App. Ct. 1995) (construing the Massachusetts Condominium Act "as granting [condominium] trustees broad discretion to choose reasonable methods of performing their management functions where the statute does not expressly prohibit a practice or is otherwise silent").

enforcement would be arbitrary, capricious, or constitute an abuse of discretion"). See also Black v. Fox Hills North Community Ass'n, 599 A. 2d 1228, 1231 (Md. Ct. Spec. App. 1992) (precluding judicial review of a legitimate business decision of a condominium association board); Pederzani v. Guerriere, No. 930502A, 1995 WL 1146832 (Mass. Super. Ct. Aug. 11, 1995) ("So long as the [condominium] trustees have not breached th[eir] fiduciary duty, the exercise of their powers for the common and general interests of the unit owners may not be questioned"); Pompei v. Fincham, 2007 WL 4626915 at *3 ("[T]he [condominium] trustees' decision cannot be disturbed as long as the board has acted within the scope of its authority and in good faith").

This principle of not micromanaging the reasonable, good-faith decisions of a condominium association by the courts should similarly be applied to the unit owners of a condominium. Unit owners are encouraged to and should participate in the management of the association's affairs, such as electing board members, voting, attending meetings, and generally engaging in condominium association matters. Occasionally, association matters might require more immediate attention from the community, in which case, a special meeting may be called by the board or requested by the unit owners (holding a certain percentage interest). UCA § 3-108; R.I. Gen. L. § 34-36.1-3.08.

B. A Unit Owners' Special Meeting Request Which Purports To Dictate The Exercise Of The Board's Discretionary Authority Is Improper

In this case, the unit owners expressed concerns about the allocation of gas expenses. Unit owners holding the requisite interest requested a special meeting to address their concerns, but did so in an improper manner. Instead of presenting an opportunity for discussion, the unit owners attempted to direct, dictate, and micromanage how and in what manner the board decided to resolve the unit owners' concerns. Specifically, the unit owners demanded that at the special meeting, the unit owners vote "to prohibit the Executive Board from using any formula for assessing gas expenses that conflicts with the declaration of condominium", "to direct the Executive Board to obtain and provide every unit owner with cost estimates for repairing and/or replacing the gas metering", and "to direct the Executive Board to call a second special meeting." As the lower court correctly held, the requests of the unit owners were improper and void *ab initio* because among other reasons, the unit owners could not lawfully compel the board to act a certain way and would further infringe on the board's broad discretion to manage the affairs of the association.

CAI avers that the lower court's decision is consistent with the Rhode Island Condominium Act and general principles of corporate governance as it applies to condominiums. The unit owners here attempted to use the special meeting mechanism, which mandates that a special meeting be held upon request by unit owners holding the requisite percentage interest, to usurp or invade the discretionary

authority of the board. Not only are the unit owners less likely to be informed of the intricacies of association affairs, but also the unit owners do not have the power or authority to act on behalf of the association – only the executive board does. See R.I. Gen. L. § 34-36.1-3.03 ("…the executive board may act in all instances on behalf of the association"). It would be impractical and unreasonable to allow the unit owners to call a special meeting to force the hand of the association board. Allowing the unit owners to invade the board's discretionary decision-making process would set a dangerous precedent whereby unit owners would have the ability to circumvent the governance model established by the Rhode Island Condominium Act.

While the unit owners' right to request a special meeting is contained in the Act and serves an important function, the purpose of it is to either: (1) call the board's attention to non-discretionary matters, such as to demand the board do something mandated by the condominium governing documents or the Act like holding annual meetings or allowing the unit owners to access association books and records, see e.g., Pastrana v. Cutler, 115 A.D. 3d 725 (N.Y. App. Div. 2014); or (2) to perform a function within the purview of the unit owners, such as to consider amendment of the by-laws, see e.g., Donohue v. Arrowhead Lake Community Ass'n, 718 A. 2d 904 (Pa. 1998), or to call a vote to remove the association board of directors, which happens to be the most common use of the special meeting request, see e.g., U.S. Bank Nat'l Ass'n v. Bellevue Park Homeowners Ass'n, No. 77368-2-I, 2019 WL

2754086 (Wash. Ct. App. Jul. 1, 2019), Orange Landing Condominium Ass'n v. Paul, No. CV030476905S, 2004 WL 2284302 (Conn. Super. Ct. Sept. 20, 2004), People v. Ashil Hyde Park, 295 A.D. 2d 393 (N.Y. App. Div. 2002).

The Rhode Island Condominium Act and the condominium governing documents defines the parameters within which the board can legally transact business on behalf of the association. If the unit owners are not satisfied with the board's actions or believe that it is violative of the Act or the condominium governing documents, it can seek to remove those board members or seek legal recourse. However, there is no right or ability granted in the Act or the condominium governing documents that allow the unit owners to compel the board to act in a certain manner, when that manner is a matter of discretion.

The unit owners' concern about the allocation of gas expenses may have been an appropriate substantive topic for **discussion** at a special meeting, but any attempt to dictate how the board *must* resolve those concerns is inappropriate and improper as it invades their discretion. As established, the executive board ultimately holds the discretionary power on how to resolve community issues, presuming the board acts in good faith, on an informed basis, with the honest belief that their action furthers the best interest of the association, and in accordance with the condominium governing documents and the Act.

Case Number: SU-2024-0034-A
Filed in Supreme Court
Submitted: 1/23/2025 3:51 PM
Envelope: 4974117
Reviewer: Justin Coutu

Regardless of the topic, decisions within the discretionary power of the board cannot and should be controlled by the unit owners because it would disrupt the governance structure of the organization. What happens if there are two or more groups of unit owners seeking special meetings demanding contrary actions from the board on the same topic? It would lead to chaos and would be inconsistent with the intent and purpose of the Act. What if the demand of the unit owners is violative of the condominium documents or the Act? What if the demand of the unit owners is harmful to the association or their community? In addition to managing the day-to-day operations of the association, the executive board must also balance effective and efficient management of resources and risks, consider the future needs of the association, keep the association profitable, ensure sufficient funds are maintained, and achieve other strategic goals. The board would not be able to function efficiently if the unit owners were able to micromanage or dictate the board's actions. Where the request for a special meeting by the unit owners purports to usurp the discretionary power of the executive board, such a request should be found improper and void *ab initio*.

IV. CONCLUSION

For the foregoing reasons, CAI states that this Court should affirm the lower court's decision.

Case Number: SU-2024-0034-A
Filed in Supreme Court
Submitted: 1/23/2025 3:51 PM
Envelope: 4974117
Reviewer: Justin Coutu

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 18(b)

I certify that:

1. This Brief of Amicus Curiae contains 2,846 words, excluding the parts exempted from the word count by Rule 18(b).

2. This Brief of Amicus Curiae complies with the font, spacing, and type size requirements stated in Rule 18(b).

/s/ Edmund A. Allcock

Edmund A. Allcock