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## Crucial 40-Year Recertification Repairs Continue At Miami Condo, Judge Rules



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Repairs at a Miami condominium where unit owners were hit with over \$100,000 in assessments each will go forward after the association and property management firm was accused of mismanagement and fraud.

Miami Dade Circuit Judge Thomas Rebull ruled in favor of the association, which will allow the 40-year recertification project at the 27-story condo located at 69th Street and Biscayne Bay.

For lawyer Steven Davis of Haber Law in Miami, his biggest takeaway from the case is that the court will give great deference to a condo association and board that is “doing the right thing.”

“The association is doing what it has to do, not only for Florida law but also to make its building safe and to make the board of directors discharge their fiduciary duty to all of the condominium residents,” he said.

Davis, along with Jonathan Goldstein, Nicholas Lashbrook and Jeremy Apisdorf, also of Haber Law, represented the Palm Bay Yacht Club Condominium Association.

In October 2022, 10 residents of the 235-unit Palm Bay Yacht Club sued the association, its board of directors and outside vendors, including the association’s management company, claiming the board had committed fraud, waste, self-dealing and mismanagement. The plaintiffs sought a preliminary injunction and the appointment of a receiver.

Jane Muir of J. Muir & Associates in Miami represented the Palm Bay residents. She did not respond to a request for comment by deadline.

According to Davis, the association was to undergo a \$33 million project, requiring residents to pay \$100,000 to \$150,000 per unit in special assessments.

For the lawyers representing the association, the biggest challenge was dispelling allegations from the plaintiffs. The team said the plaintiffs started a recall campaign for the board, where the credibility of the board members was “attacked.”

“They also attacked the January 2023 election of board members, and the February association votes that approved a loan to finance the recertification project and approve the installation of impact glass to repair the damaged balconies and railings,” the lawyers said in an email.

Goldstein said the association and board had to defend relying on professional engineers and business judgment to make decisions for the association.

“There were a lot of innuendos that were unsubstantiated for wrongdoing for which they really presented no evidence,” Goldstein said.

The hearing, which happened in February, lasted six days with testimony before Rebull. The court found the association witnesses were credible and accepted the defense’s position that it acted in the best interests of the association.

“The court holds that the public interest would not be served by entry of the injunctive relief and receivership sought by the plaintiffs as detailed by the evidence presented by Epic Forensics & Engineering Inc. and noted the seriousness of the matter for the safety of residents and visitors of the condominium,” Rebull wrote in the order. “The court stated that the public interest would not be served by any further delay of the concrete restoration project. The court noted that the recommendation for Epic Forensics & Engineering Inc. to install shoring to the condominium’s parking garage was of great concern in light of the Surfside Condominium collapse that occurred on June 24, 2021. The court observed that the Palm Bay Yacht Club condominium building is 40 years old, is exposed to the roughest elements in the community and the expenses needed to ensure the structural integrity of the building are substantial but necessary.”

As Davis sees it, it’s crucial for attorneys to have a deep understanding of what the facts really are, when taking on a similar case.

“At the end of the day, make sure from the association’s standpoint that the association’s decision-making process relies on highly competent professionals to make their decisions and that they’re acting in accordance with appropriate business judgment requirements as Florida law specifies,” Davis said. “This is a not-for-profit organization. These are board members, and they need to rely on professionals who are doing a job and making sure they’re asking all of the right questions to those professionals and getting answers to those questions.”

As more associations undergo their 40-year recertifications, the Haber Law teams believe there may be similar litigation in the future, as some associations did not keep up with repairs, which can create issues with owners. Goldstein says it is important for associations to do their due diligence too.

“A very important aspect of this is putting together the right kind of team, including the qualified engineers needed to accurately assess the scope of work that’s necessary, and document the reasonable business judgment decision-making from the start,” Goldstein said. “And, of course, working closely with counsel to ensure that any requirements in the Florida law or declaration of condominium concerning those projects are met.”

As litigation may rise, Davis says there may be an increase in plaintiffs hoping to convince a court to have a receiver step in the place of a condo association as special assessments rise.

“This is a tactic that did not work this time, but that will be another road that plaintiffs will follow in the future,” he said.

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