

WHEN RECORDED RETURN TO:
Claire Singleton
245 N. Vine Street, #904
Salt Lake City, UT 84103

15-65

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05/24/2010 03:43 PM \$103.00
Book - 9827 Pg - 8025-8039
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
CLAIRE SINGLETON
245 N VINE ST #904
SLC UT 84103
BY: NEH, DEPUTY - WI 15 P.

**NOTICE OF UNLAWFUL ALTERATIONS
AND AMENDMENTS TO
DECLARATION AND BYLAWS OF TREVI TOWERS CONDOMINIUMS**

**In Violation of Section 21 of the Declaration and
In Violation of § 57-8-7, UTAH CODE ANN.**

This Notice is made and executed by the undersigned Claire Singleton and Jill Petersen, being owners of condominium Units 904 and 604, respectively, of Trevi Towers Condominiums.

RECITALS

- A. 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").
- B. The Declaration and Bylaws of the Trevi Towers Condominium (the "Declaration") 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. Two Amendments to the Declaration were recorded prior to 1995.
- C. In 2009 and 2010, the Trevi Towers Association, Inc., recorded two purported Amendments (the "Purported Amendments") to the Declaration that were substantially false and misleading and that were recorded without compliance with Section 21 of the Declaration and without compliance with § 57-8-7, UTAH CODE ANN. The Purported Amendments consist of: (1) Amendment to Declaration and Bylaws recorded on June 18, 2009 as Entry No. 10733107; and (2) and that Acknowledgment of Amendment recorded on March 25, 2010, as Entry No. 10921492.
- D. Neither of the two "Purported Amendments" complied with the requirements of Section 21 of the Trevi Towers Declaration, and neither of the "Purported Amendments" met the requirements of § 57-8-7, UTAH CODE ANN.

DECLARATION OF DEFICIENCIES

The two "Purported Amendments" are deficient, false and misleading for the following reasons:

1. The "Purported Amendment" recorded March 25, 2010, falsely recited that the owners of Trevi Towers approved an amendment to Section 10 of the Trevi Towers Bylaws at a meeting on March 4, 2010. No amendment to Section 10 of the Bylaws was either considered or approved by the owners at the March 4, 2010 meeting; rather, a proposed amendment to Section 21 of the Declaration was proposed but did not receive the approval of 75% of owners as required by Section 21 of the Declaration. The owners rejected the proposed amendment to the Declaration. Notwithstanding the owners' rejection of the proposed amendment, the "Purported Amendment" recorded March 25, 2010, nonetheless falsely recites that an amendment to the Bylaws was approved by owners.
2. The "Purported Amendment" recorded in June of 2009 was not approved "by an instrument in writing signed and acknowledged by unit owners who own three-fourths (3/4) in the aggregate of ownership interest in the common areas and facilities" as required by Section 21 of the Declaration.
3. Exhibit A of the "Purported Amendment" dated June 18, 2009 purports to alter the undivided interests of every condominium unit of Trevi Towers without notice to, or approval by, the unit owners of Trevi Towers, and in violation of Section 21 of the Trevi Towers Declaration of Condominium and in violation of § 57-8-7, UTAH CODE ANN.
4. Exhibit A of the "Purported Amendment" recorded June 18, 2009 purports to assign an undivided interest to Unit 100 without notice to, or approval by, the unit owners of Trevi Towers, in violation of Section 21 of the Trevi Towers Declaration of Condominium and in violation of § 57-8-7, UTAH CODE ANN.
5. Paragraphs D. and G. of the "Purported Amendment" dated June 18, 2009 falsely states that the Honorable Tyrone E. Medley ordered the alteration of undivided interests under the Trevi Towers Declaration of Condominium in the case styled as *Arthur E. Lussier, et al., v. Trevi Towers Association, Inc.*, Civil No. 060917796. To the contrary, Judge Medley expressly declined to determine or declare the allocation of undivided interests or the validity of previous amendments to the Declaration. A copy of Judge Medley's Minute Entry

Decision and Order dated June 12, 2009, is attached hereto as Exhibit "B" and by this reference is incorporated herein.


6. The Rulings of Judge Medley in the captioned case are not legally sufficient to comply with the protective requirements of § 57-8-7, UTAH CODE ANN., or Section 21 of the Trevi Towers Declaration. Judge Medley expressly acknowledged his disinclination to alter owners' undivided interests in the common area: "[T]his court's decision did not rule on the validity of post-1976 amendments." [see, June 12, 2009 Order at page 4.].
7. Therefore, Judge Medley's Orders and Rulings may not be substituted for the precise requirements of Section 21 of the Declaration and for § 57-8-7, UTAH CODE ANN.
8. No court of competent jurisdiction has resolved the question of whether undivided interests in the common area of Trevi Towers Condominiums have been properly assigned to Unit 100 or Apartment 3 (Unit 75) pursuant to Section 21 of the Declaration and § 57-8-7, UTAH CODE ANN.
9. In face of the patent invalidity of the "Purported Amendment" recorded in June of 2009, the current state of the public record reflects that no undivided interest in the common area is currently lawfully assigned to Unit 100 of Trevi Towers and that the Purported Amendment recorded in 2009 did not lawfully alter and reallocate undivided interests among owners of Trevi Towers Condominiums.

Executed this 24 day of May, 2010.

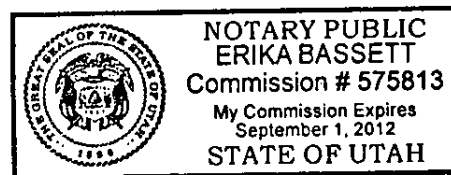

J'Leane Petersen


Claire Singleton

On the 24th day of May, 2010, personally appeared before me J'Leane Petersen and Claire Singleton who, being sworn, signed the foregoing document in my presence.


Notary Public

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EXHIBIT "A"
LEGAL DESCRIPTION

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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Total Parcels Found: 66

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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

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U	505	8364370370000	N
U	506	8364370380000	N
U	507	8364370390000	N
U	508	8364370400000	N
U	601	8364370410000	N
U	602	8364370420000	N
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U	607	8364370470000	N
U	608	8364370480000	N
U	701	8364370490000	N
U	702	8364370500000	N

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SALT LAKE COUNTY RECORDER

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

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Total Parcels Found: 66

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

Block / Building	Type	Lot / Quarter	Parcel Number	Obsolete?
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	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

~~BK 9737 PG 233~~

EXHIBIT "B"

**MINUTE ENTRY DECISION AND ORDER
BY THE HONORABLE TYRONE E. MEDLEY
JUNE 12, 2009
IN CIVIL CASE NO. 060917796
SALT LAKE COUNTY, STATE OF UTAH**

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ARTHUR E. LUSSIER, MYRNA RALPH, : MINUTE ENTRY DECISION AND ORDER
WILLIAM R. WILSON, CLAIRE
SINGLETON, SUE ANDREWS, and : CASE NO. 060917796
PAMELA LINDQUIST, individually, and
derivatively in the right Trevi :
Towers Ass'n, Inc., a Utah
nonprofit corporation, :
:
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

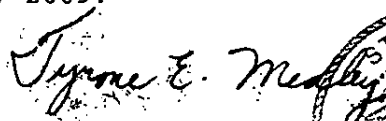
immediately released. Plaintiffs and counsel for plaintiffs are hereby Ordered forthwith to effectuate the necessary steps to release the original and amended Lis Pendens. The Court finds the release of both Lis Pendens was warranted a long time ago when the party plaintiff who filed the original Lis 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

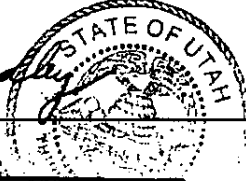
and the totality of the circumstances referenced hereinbefore make the imposition of costs and attorney fees at a minimum just and warranted.

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
By DISTRICT COURT JUDGE
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:

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