

2025 WL 785160

Only the Westlaw citation is currently available.

Massachusetts Land Court,
Department of the Trial Court,
Essex County.

Martine KELLETT, Plaintiff,

v.

Mark CARON, Robert Walsh, Janine Brown-Smith,
Paul LaPointe, and Donald Thomson, as they are
the Trustees of [Olde Salem Village Condominium
Trust, Olde Salem Condominium Trust](#), Defendants.

MISCELLANEOUS CASE No. 23 MISC 000405 (RBF)

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Dated: March 10, 2025

DECISION

[Robert B. Foster](#), Justice

Introduction

*1 Martine Kellett owns a condominium unit in the Olde Salem Village Condominium in Danvers. Her unit has a deck at the rear with a railing. In 2023, she needed to replace the deck railing. After she sought approval from the condominium board, they insisted that she not use white vinyl. Rather, they wanted the deck to be made of composite materials in a color approved by the condominium--“Alaskan white” by Benjamin Moore which, although it is referred to as “white,” is actually a deeper beige color. She ignored the board, installed a white vinyl railing, and brought this action. The parties have agreed to a case stated, and, after briefing and a view, I find that the board was well within its authority to require the materials and color.

Procedural History

The plaintiff Martine Kellett (Kellett or plaintiff) filed her complaint on August 22, 2023, naming as defendants Mark Caron, Robert Walsh, Janine Brown-Smith, Paul LaPointe, and Donald Thomson, as they are the Trustees of the Olde Salem Village Condominium Trust, and Olde Salem Village Condominium Trust (the Board). The complaint contains one count for declaratory judgment under [G. L. c. 231A](#),

[§ 9](#), seeking a declaration of the rights afforded to plaintiff under the exclusive easement she retains for the use of her condominium unit's deck.

A case management conference was held on October 5, 2023. On August 12, 2024, plaintiff filed Plaintiff's Motion for Summary Judgment and Brief in Support of Plaintiff's Motion for Summary Judgment (Pl.'s Mem). Also on August 12, 2024, plaintiff filed her Statement of Material Facts in Support of Plaintiff's Motion for Summary Judgment and her Appendix (App.). In response, on September 12, 2024, the defendants filed their Statement of Material Facts in Support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment (SOF), which included a Response to Plaintiff's Material Facts and Defendants' Statement of Additional Material Facts. Defendants also filed an Opposition to Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment, and a Brief in Support of Defendants' Opposition (Defs.' Mem). On September 26, 2024, plaintiff filed Plaintiff's Response to Defendants' Statement of Additional Material Facts (ASOF). A hearing on the cross motions for summary judgment was held on October 1, 2024 at the courthouse in Boston.

On October 11, 2024, the parties agreed to convert the cross motions for summary judgment to a case stated. A view of the subject property was taken on November 18, 2024, following which the court took the case stated motion under advisement.

Case Stated

The parties agreed to present this case on a case-stated basis, with the court allowed to draw appropriate factual inferences from the available evidence and then make appropriate rulings of law. See [Town of Ware v. Town of Hardwick](#), 67 Mass. App. Ct. 325, 326 (2006); [W. Mass. Theatres Inc. v. Liberty Mut. Ins. Co.](#), 354 Mass. 655, 657 (1968). A case-stated arises when the parties agree on all the material ultimate facts, on which the rights of the parties are to be determined by law. [Pequod Realty Corp. v. Jeffries](#), 314 Mass. 713, 715 (1943); see also [Frati v. Jannini](#), 226 Mass. 430, 431 (1917).

*2 A case-stated presents all pertinent facts from which the judge might draw inferences. [Reilly v. Local Amalgamated Transit Union](#), 22 Mass. App. Ct. 558, 568 (1986). Once the parties have submitted a case-stated, it is up to the judge to apply the law to the facts stated. [Caissie v. City of Cambridge](#),

317 Mass. 346, 347 (1944). Decisions are made upon the stated facts, all inferences warranted by the facts, and the applicable law as applied to the stated facts and inferences. See *Godfrey v. Mutual Fin. Corp.*, 242 Mass. 197, 199 (1922); see also *Town of Ware*, 67 Mass. App. Ct. at 326 (“any court before which a [case-stated] may come, either in the first instance or upon review, is at liberty to draw from the facts and documents stated in the case any inferences of fact which might have been drawn therefrom at a trial, unless the parties expressly agree that no inferences shall be drawn”).

Findings of Fact

Based on the Agreed Statement of Facts and the view¹, I find the following facts as stated, after drawing appropriate inferences.

1. Kellett owns Unit No. 15 (Unit 15) at Olde Salem Village Condominium located at 15 Carriage Way, Danvers, MA 01923 (OSV) by deed dated October 8, 1995, and recorded at Essex South Registry of Deeds (registry), Book 13254, Page 502.²

2. The defendants Mark Caron, Robert Walsh, Janine Brown-Smith, Paul LaPointe, and Donald Thomson are the trustees of the Olde Salem Village Condominium Trust (the Board).³

3. The defendant Olde Salem Village Condominium Trust is the organization of unit owners of Olde Salem Village Condominium, a Massachusetts condominium organized pursuant to G. L. c. 183A, and created by Master Deed dated May 22, 1981, recorded at the registry in Book 6823, Page 88 (the Trust).⁴

4. Kellett, who is 78 years old, has owned and resided in her unit, which includes a deck outside the rear of the unit since 1995. In or around 2000, Kellett modified her deck for the first time, enlarging it and installing composite materials with a railing.⁵

5. In February 2023, Kellett submitted a unit modification request to the Board to replace her deck.⁶

6. On March 21, 2023, the Trustees approved Kellett's request to use composite material to replace her deck. The modification to the deck railing, however, was not approved. A letter from Michele Bernardo, the Board's on-

site administrator, states that “the railings are not approved in the white coloring. The railings must match the OSV colors and the white is not allowed.”⁷

7. Despite the Board's denial of her request, Kellett proceeded to install white vinyl deck rails as part of the modification.⁸

8. Some other exterior features at the Condominium are white. Out of 164 units, two other decks have white vinyl railings; the widow's walks have white vinyl railings; as of 2023, the Condominium's curbs have been painted white; some exterior pipes sticking out of roofs are white PVC pipes; and various windows, doors, door frames, and rails at the Condominium are also white.⁹

*3 9. Aside from this case there are no other instances in which any unit owner at the Condominium was denied the use of white railings.¹⁰

10. Kellett's deck is located at the rear of her unit and faces a wooded area. The deck is within view but not readily visible from other areas at the Condominium and only receives minimal foot traffic. Kellett's neighbors, James Fuller, Linda Fuller, and David Scherer, are happy with the appearance of her deck, and no unit owners have submitted or verbalized complaints.¹¹

11. While § 4(h) of the Master Deed grants Kellett, as a unit owner, exclusive use of the deck attached to her unit, the deck is a common element of the Condominium, subject at all times to the governing documents, which includes the architectural integrity clause in the Master Deed.¹²

12. The parties agree that the appearance of Kellett's new railing is substantially similar to that of her old deck railing, except that it is new. The Trustees, however, believe that the difference between the new non-conforming deck rails and the OSV-approved colors and materials is significant.¹³

13. On May 24, 2023, the Board's property manager wrote to Kellett and requested that she remove the vinyl railing and replace it with a wood railing. The letter asserted “that the vinyl railing did not comply with the Association's approved materials for decks” and also that Kellett's deck did not comply with the Condominium's Master Deed and Declaration of Trust.¹⁴

14. A purported set of unrecorded Olde Salem Village condominium Rules and Regulations dated May 17, 2021, does not mention approved materials for decks, and does not specify the color that a deck must be. The only reference to white vinyl in the purported rules pertain to window muntins, which states “Muntins internal to the glass are normally white vinyl which is allowed as long as it matches OSV colors.”¹⁵

15. Aside from window muntins, the Condominium's governing documents are otherwise mute as to color, with the exception being that all common areas are subject to the architectural integrity clause in the Master Deed.¹⁶

16. Trustee Mark Caron communicated to the Board in an email dated March 29, 2023, that: “I just looked at the rules and regulations. They call out windows and door colors, but decks and deck railings are not even mentioned. I think we need to approve it on that basis alone.” Trustee Paul LaPointe responded, “there's lots of things that aren't in the rules.”¹⁷

17. Another unit at the Condominium which has white vinyl rails in 19 Carriage Way, which was listed and sold during the pendency of this case. The Trustees took no action to compel the former or the new owners of 19 Carriage Way to replace the vinyl railings on their deck with wood or to replace the color.¹⁸

18. As part of the Condominium all unit owners must comply with the provisions of the Master Deed, the Declaration of Trust, By-laws, and Rules and Regulations.¹⁹

*4 19. The decks and deck rails are a common element of the Condominium. A unit owner has the exclusive right to use the deck attached to their unit.²⁰

20. Common areas “shall be subject to the provisions of the Trust and its By-laws as from time to time amended and Rules and Regulations from time to time promulgated pursuant thereto with respect to the use and maintenance thereof.”²¹

21. Section 9(c) of the Master Deed states:

[T]he architectural integrity of the buildings and Units shall be preserved without modification, and to that end, unless the prior written consent of

the Condominium Trustees shall have been obtained, no porch, deck, yard enclosure, awning, screen, antenna, sign, banner, or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected or placed upon or attached to any such Unit or any part thereof, no addition to or change or replacement of any exterior light, door knocker or other exterior hardware shall be made, and no painting, attaching or decalomania or other decoration shall be done on any existing part or surface of any Unit nor on the interior surface of any window ...²²

22. The Trust determined that the approved color for deck railings at the Condominium is “Alaskan white” by Benjamin Moore. Although it is referred to as “white” it is actually a deeper beige color.²³

23. According to Article XV of the Declaration of Trust, the Trust is responsible for maintenance and repair of the exterior of all Units, “and shall have the sole power to repair, repaint, and redecorate the exterior of the buildings at such time and in such manner as they shall determine to be proper and expedient.”²⁴

24. According to the Condominium By-Laws, Article VI, the Trust is responsible for the maintenance, repair, and replacement of the common areas. As to rules and regulations regarding improvements to common areas and facilities, the governing documents state that:

no unit owner is authorized to do any work to any portion of the shared common areas without prior written consent of the Board of the Trustees.... If work is done by a unit owner without approval of the Board of Trustees, the unit owner will be assessed a fine and will be responsible for the cost to

have the work redone by a licensed professional.²⁵

25. Between March and April 2023, Kellett attended a meeting with the Trustees where she could present her case for the deck modification. Despite the ultimate denial of her request for modification, Kellett installed the white vinyl deck rails.²⁶

26. On April 26, 2023, Adrian Litscher, in an effort to compromise, sent an email on behalf of the Trust offering Kellett an option to paint her vinyl rails Alaskan White instead of rebuilding the deck. Kellett proceeded to file suit.²⁷

Further stated and agreed upon facts are reserved for the discussion.

Discussion

Kellett argues that where nothing in the governing documents regulates the color or materials of deck railings, the exclusive use easement granted to her for the use of her deck entitles her to select and install white vinyl railings. She maintains that her new deck is substantially similar to the old railing, that her neighbors like her new deck, that there have been no complaints about her new deck, that her deck is not readily visible to others at the Condominium, that the Trust was not maintaining her deck as they are required to, and that there are many other exterior features at the Condominium which are white, thereby contradicting the Trustee's argument that white is not an OSV Community color.

*5 The Board contends the pertinent issue is whether Kellett complied with the Condominium's governing documents when she installed white vinyl railings despite the Board's denial of her request to do so. They allege that Kellett failed to comply with the Condominium's governing documents when she redid her deck, considering that all decks are common elements of the Condominium, where the Trust requires prior written consent before modifications of common elements and where the Trust denied Kellett's request to replace her deck because "white vinyl" is not an approved color or material for deck rails.

Kellett further contends that the Board's denial of her deck replacement request was unreasonable where the change in

appearance is trivial or *de minimis* and that the Board was acting under an incorrect premise that white vinyl railings are not allowed because they are not OSV colors. The Board argues that the change in color and materials in plaintiff's deck is not *de minimis*, because aesthetic qualities of common elements are important to the Trust and OSV community and Kellett's white deck rails are significantly different from 98.7% of the beige "Alaskan White" deck rails currently installed at the Condominium.

"Condominium ownership is generally characterized by the relinquishment of some 'personal choice' in exchange for the benefits that may be derived from associating with other property owners." *Lallo v. Szabo*, 75 Mass. App. Ct. 1, 4 (2009), quoting *Franklin v. Spadafora*, 388 Mass. 764,769 (1983). It is "a hybrid interest in real estate, entitling the owner to both exclusive ownership and possession of [their] unit and undivided interest as tenant in common with other unit owners in the common areas." *Id.*, quoting *Noble v. Murphy*, 34 Mass. App. Ct. 452, 455–456 (1993). An individual's ownership of a condominium unit includes an exclusive fee interest in the individual unit, but is subject to limitations set forth in the master deed and the condominium by-laws. *Id.* citing G. L. c. 183A, § 4.

I. Governing Documents

General Laws c. 183A requires condominium unit owners to adhere to the terms of the Master Deed, Declaration of Trust, By-laws, and Rules and Regulations.

Each unit owner shall be entitled to the exclusive ownership and possession of [their] unit, subject to the provisions of this section and of sections seventeen, eighteen and nineteen; provided however that ... (3) Each unit owner shall comply with the by-laws and with any administrative rules and regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the lawful covenants, conditions and restrictions set forth in the master deed or in the deed to [their] unit and with each lease which is submitted to the provisions of this chapter.

G.L. c. 183A, § 4(3).

The Master Deed contains an architectural integrity clause consistent with those which have been upheld by Massachusetts courts. *Xifaras v. Andrade*, 59 Mass. App. Ct. 789, 796 (2003). Section 9(c) of the Master Deed states:

[T]he architectural integrity of the buildings and Units shall be preserved without modification, and to that end, unless the prior written consent of the Condominium Trustees shall have been obtained, no porch, deck, yard enclosure, awning, screen, antenna, sign, banner, or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected or placed upon or attached to any such Unit or any part thereof, no addition to or change or replacement of any exterior light, door knocker or other exterior hardware shall be made, and no painting, attaching of decalcomania or other decoration shall be done on any existing part or surface of any Unit nor on the interior surface of any window...²⁸

*6 The Condominium Rules and Regulations also govern improvements to common areas and facilities, stating that “[n]o unit owner is authorized to do any work to any portion of the shared common areas without prior written consent from the Board of Trustees.”²⁹ If work is done without the prior written consent of the Board, “the unit owner will be assessed a fine and will be responsible for the cost to have the work redone by a licensed professional.”³⁰ Additionally, according to the Declaration of Trust, Article XV, the Trust is responsible for maintenance and repair of the exterior of all units, “and shall have the sole power to repair, repaint, and redecorate the exterior of the buildings at such time and in such manner as they shall determine to be proper and expedient.”³¹

Here, Kellett complied with the Master Deed in that she requested prior written approval to replace her deck in February 2023.³² Subsequently, on March 21, 2023, the Trustees approved Kellett's request to use composite material to replace her deck, however, the modification to the deck railing was not approved.³³ In a letter from Michele Bernardo, the Condominium's on-site administrator, the Trustees made clear that “the railings are not approved in the white coloring. The railings must match the OSV colors and the white is not allowed.”³⁴ Following the rejection of the white deck railing color, Kellett's compliance with the Master Deed ceased. She subsequently installed the deck in the unapproved white coloring.³⁵

According to the General Laws c. 183A and the Condominium's governing documents, Kellett, as a unit owner, is subject at all times to the Condominium's Master Deed, the Declaration of Trust, the Rules and Regulations, and the bylaws. The Master Deed, which contains the architectural integrity clause, grants the Board “full control”³⁶ of common areas, or in other words, the clause grants them the right and the discretion to approve modifications to common areas, which includes Kellett's deck. Consistent with the nature of condominium ownership, the Board determined that in keeping with the Colonial-era appeal for the Condominium, the approved color for deck railings would be “Alaskan white” by Benjamin Moore, which is a deep beige color.³⁷

It is immaterial that other exterior features at the Condominium are white. The Condominium maintains full control of the common areas through the architectural integrity clause, which allows the Board the discretion to select which colors and materials are appropriate for each feature in each individual setting within the Condominium; white may well be an approved OSV color when it comes to window muntins, but not an OSV color when it comes to deck rails. There is no caselaw nor statute requiring condominium boards to craft extensive lists articulating which colors and materials are approved for each area. The Board's discretion in this manner is simply part of the “relinquishment of some ‘personal choice’ in exchange for the benefits that may be derived from associating with other property owners” inherent in condominium ownership. *Lallo*, supra, 75 Mass. App. Ct. at 4.

That two other decks as well as many other exterior features in the Condominium are white is insufficient to render the Board's decision unreasonable. Nor is it sufficient to support

a finding that the Board waived the requirement that the other unit owners' decks be Alaskan White. Nothing in the evidence shows that the unit owners with the two nonconforming decks were explicitly granted a waiver of the color or material choices. "Where waiver is not explicit, it must be premised on 'clear, decisive and unequivocal conduct.'" *KACTION, Inc. v. Rubin*, 62 Mass. App. Ct. 689, 695 (2004); see *Attorney Gen. v. Industrial Natl. Bank*, 380 Mass. 533, 536 n. 4 (1980) (Waiver may occur by an express and affirmative act, or may be inferred by a party's conduct, where the conduct is "consistent with and indicative of an intent to relinquish voluntarily a particular right [such] that no other reasonable explanation of [the] conduct is possible."). Where there is nothing in the record depicting how or why the other decks came to differ from the approved "Alaskan white" color, it is not possible to support or even infer "clear, decisive and unequivocal conduct" that may have led to a waiver. *KACTION, Inc.*, *supra*, 62 Mass. App. Ct. at 695. Indeed, the Board purports to have no knowledge of how the other two decks came to be white, as they did not approve or deny the corresponding requests.³⁸

*7 Likewise, there is no case law or statute requiring or even encouraging condominium boards to pre-select or identify appropriate colors for the exterior of condominium features. Kellett's argument that the denial of her modified deck was unreasonable because the Board does not even have "OSV colors" is legally insignificant. The fact that all but two of the 167 decks at the Condominium are "Alaskan white" contradicts Kellett's argument that the Board's choosing "Alaskan white" an OSV color for deck railings (while not approving white as one) was "invented out of thin air."³⁹

To this end, Kellett's requested modification is also not a *de minimis* change in the appearance of the deck rails. 98.7% of the units comply with the required Alaskan White color, which, as a darker beige color, notably contrasts with the pure white color of Kellett's deck. Kellett argues that the change in deck color is synonymous to the minimal, unapproved changes of an outdoor shower and a picture window deemed *de minimis* and petty in *Stroh v. Milani*, Land Court Misc. Case No. 257907 (July 29, 1987) (Sullivan, C.J.). Kellett's dependence on this case is misguided. By the time of trial in *Stroh*, the unapproved outdoor shower had already been removed and the picture window had been approved by the board. *Id.* Meanwhile, in the present case, the Board rejected Kellett's request pursuant to objective principals and standards which were clearly communicated to Kellett in the governing documents. The Board, acting within their

discretion, communicated their commitment to the Colonial-era appeal of the Condominium, which includes color and material requirements for common elements.⁴⁰

Overall, given the discretion and power granted to the Board through the governing documents, particularly the architectural integrity clause, the Board's rejection of Kellett's deck modification was not arbitrary or capricious, but rather was a reasonable exercise of the powers granted to them under the governing documents that Kellett agreed to abide by when she purchased her unit.

II. Exclusive Use Easement

The Master Deed grants Kellett an easement for the exclusive right to use of her deck.⁴¹ A master deed may provide that a part of the common area may be reserved for the "exclusive use of [one or more but] fewer than all of the unit owners." *Belson v. Thayer & Associates, Inc.*, 32 Mass. App. Ct. 256, 259 (1992). Such an easement reserving part of the common area for the exclusive use of one or more unit owners may be called an "exclusive use area" or a "limited common area," and may be used to reserve an outdoor patio for the exclusive use of the owner of one unit in a condominium. *Trustees of One Hundred Nine Condominium Trust v. Maurer*, 81 Mass. App. Ct. 1131 (2012) (Memorandum and Order Pursuant to Rule 1:28). Such easements for the exclusive use of what is otherwise a part of the common area of the Condominium is explicitly authorized by statute. Such exclusive use easements are often referred to as "limited common areas." See *Dimonda v. Shepard*, Land Court Misc. Case No. 20 MISC 000441 (December 15, 2023) (Rubin, J.)

While an exclusive use easement may allow an owner the exclusive use of a certain area within a condominium, it does not grant an owner exclusive control or authority to change or modify the area. The Condominium's governing documents reflect this principle. In § 4(h) of the Master Deed, decks are identified as common areas.⁴² The same section grants Kellett the exclusive use of the deck attached to her unit.⁴³ As discussed above, the Trust exercises "full control" over common areas, including the integrity of the common area's architecture. "No unit owner is authorized to do any work to any portion of the shared common areas without prior written consent from the Board."⁴⁴

*8 The explicit prohibition of unit owners to make unauthorized changes to common areas contradicts Kellett's

proposition that included in her exclusive use easement is the implied right to select the color and material of the deck railing. See *Anderson v. Devries*, 326 Mass. 127, 134 (1950) (“when an easement or other property right is created, every right necessary for its enjoyment is included by implication”). Kellett’s argument that she replaced the deck, despite the Board’s rejection of material and color choices, because the deck was in disrepair and the Board would not maintain likewise fails. The Trust has the “sole power to repair, repaint, and redecorate the exterior of the buildings at such time and in such manner as they shall determine to be proper and expedient.”⁴⁵ Additionally, Kellett’s deck was on the same maintenance and repair schedule as the rest of the units.⁴⁶

Overall, it is undisputed that Kellett was granted an exclusive use easement for the use of her unit’s deck to exclusion of others at the Condominium. But where the governing documents explicitly prohibit it, the easement cannot be read to include, by implication, a right for Kellett to choose the color or material of her deck, as well as to install it, without the required prior written permission from the Board. Kellett agreed to abide by the governing documents when she purchased her unit. It is no excuse,

and in fact it is unsubstantiated, that Kellett was justified in replacing her deck despite the denial of her request, because the Trustees “did not maintain [her] deck.”⁴⁷ Kellett must pay the appropriate fine issued by the Board and is “responsible for the cost to have the work redone by a licensed professional.”⁴⁸

Conclusion

For the foregoing reasons, the Motion for Judgment is DENIED and the Cross-Motion for Judgment is ALLOWED. Judgment shall enter declaring that Kellett does not enjoy the implied right to select the color and material of her deck railing, and that the trustees of Olde Salem Village were well within their authority to require the use of a specific material and color, specifically, “Alaskan white.”

Judgment Accordingly.

All Citations

Not Reported in N.E. Rptr., 2025 WL 785160

Footnotes

- 1 A view “inevitably has the effect of evidence, and information properly acquired upon a view may properly be treated as evidence in the case.” *Talmo v. Zoning Bd. of Appeals of Framingham*, 93 Mass. App. Ct. 626, 629 n.5 (2018) (internal citations and quotations omitted); see also *Martha’s Vineyard Land Bank Comm’n v. Taylor*, No. 17-P-1277 (Mass. App. Ct. June 22, 2018) (unpublished decision).
- 2 SOF ¶ 1; App. Exh. 2.
- 3 SOF ¶ 2.
- 4 SOF ¶ 3; view.
- 5 SOF ¶¶ 5-8; App. Exhs. 1, 2.
- 6 SOF ¶ 16; App. Exh. 1, Master Deed §§ 4, 9(c); App. Exh. 7.
- 7 SOF ¶¶ 18-19; App. Exh. 8.
- 8 SOF ¶ 88; view.
- 9 SOF ¶¶ 27, 29-34; App. Exhs. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22; view.

- 10 SOF ¶ 39.
- 11 SOF ¶ 40-42; view.
- 12 SOF ¶ 44; App. Exh. 1.
- 13 SOF ¶¶ 45-47.
- 14 SOF ¶¶ 49-51; App. Exh. 23.
- 15 SOF ¶¶ 52-53; App. Exh. 24.
- 16 SOF ¶¶ 54-55; App. Exhs. 1, 2, 24.
- 17 SOF ¶¶ 56-57; App. Exh. 26.
- 18 SOF ¶¶ 59-61; view.
- 19 ASOF ¶ 62.
- 20 ASOF ¶¶ 63-64.
- 21 ASOF ¶ 65.
- 22 ASOF ¶ 66.
- 23 ASOF ¶ 72; view.
- 24 ASOF ¶ 68; App. Exh. 2.
- 25 ASOF ¶ 69; App. Exh. 2.
- 26 ASOF ¶¶ 87-88.
- 27 ASOF ¶ 89.
- 28 App. Exh. 1, Master Deed, § 9(c).
- 29 App. Exh. 24.
- 30 *Id.*
- 31 Facts ¶ 22; App. Exh. 2.
- 32 Facts ¶ 5; App. Exh. 7.
- 33 Facts ¶ 6.
- 34 Facts ¶ 6; App. Exh. 8.
- 35 Facts ¶ 7.
- 36 Facts ¶ 21; ASOF ¶67 (“The Trust has ‘full control over the Common Areas and Facilities’ of the Condominium”).
- 37 Facts ¶ 22.

- 38 ASOF ¶ 78 (“It is unclear when or why two of the 164 units have non-complying deck rails. Things may not have been properly reported The Trust intends ... to bring these units into enforcement”); ASOF ¶ 79 (“The Trust cannot and does not make exception to these rules because once or twice in the Condominium’s 40+ year history, unit owners installed non-conforming deck rails.”); SOF ¶ 39 (“there are no other situations where any other unit owner was told they could not have a white railing ... Admitted.”)
- 39 P’s Mem. p. 12.
- 40 SOF ¶¶ 71–74.
- 41 App. Exh. 1, Master Deed, § 4(h).
- 42 *Id.*
- 43 *Id.*
- 44 *Id.*
- 45 Facts ¶ 22; App. Exh. 2, Declaration of Trust, Article XV.
- 46 SOF ¶ 12.
- 47 SOF ¶ 12.
- 48 SOF ¶ 70.