IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION
CASE NO.: 2020-20499 CA 01

THOMAS A. LAURIA, et al.,

Plaintiffs,

v.

FISHER ISLAND COMMUNITY ASSOCIATION, INC., et. al.,

Defendants.
_____/

FINAL JUDGMENT GRANTING NOMINAL DEFENDANT FISHER ISLAND COMMUNITY ASSOCIATION, INC'S MOTION TO ADOPT THE SETTLEMENT AND DISMISSING ACTION WITH PREJUDICE[1]

Before the Court is Nominal Defendant Fisher Island Community Association's ("FICA") motion to approve a proposed settlement and dismiss this derivative action (the "Motion"). Defendants Fisher Island Holdings, LLC, and Par 7, LLC (collectively, the "Developer") filed a Notice of Joinder in and Adoption of the Motion on June 28, 2021. This Court, having considered the arguments of the parties and the record evidence introduced during a three-day evidentiary hearing, hereby enters this Order granting the Motion, entering final approval of the

[1] This Final Judgment amends and supersedes the Court's August 1, 2021 Order Granting Defendant Fisher Island Community Association, Inc's Motion to Adopt the Settlement.

settlement (the "Settlement") between FICA and the Developer, and dismissing this action with prejudice.

BACKGROUND

Plaintiff, Thomas Lauria, Jeff Horowitz and George D. Perlman, ("Plaintiffs") bring this action in a derivative capacity advancing claims that belong solely to FICA. *See Rappaport v. Scherr*, 46 Fla. L. Weekly D1231 (Fla. 3d DCA May 26, 2021) ("As a general rule, an action to enforce corporate rights or to redress injuries to the corporation cannot be maintained by a stockholder in his own name or in the name of the corporation, but must be brought by, and in the name of the corporation itself.") (quoting *James Talcott, Inc. v. McDowell*, 148 So. 2d 36, 37 (Fla. 3d DCA 1962)). Given that plaintiffs in a derivative case are advancing claims belonging **solely** to the corporation, the corporate directors and the corporation itself are authorized statutorily to end those claims in one of two ways. § 617.07401, Fla. Stat.

First, the corporation has the right, among others, to appoint independent directors or a committee of two or more independent directors to investigate the case and petition the Court to discontinue the proceedings if the corporation believes that "the maintenance of the derivative suit is not in the best interest of the corporation." § 617.07401(3). Second, corporate directors possess inherent authority to compromise (i.e., settle) derivative claims in a manner they believe is in the best interest of the entity and its members. § 617.07401(4); *Clark v. Lomas & Nettleton*

Fin. Corp., 625 F.2d 49, 52 (5th Cir. 1980) ("[C]orporate directors possess inherent authority to compromise such suits."); *Salovaara v. Jackson Nat. Life Ins. Co.*, 246 F.3d 289, 296 (3d Cir. 2001) ("A corporation may enter into a settlement despite the existence of a derivative action when doing so is in the corporation's best interests."); *Star v. TI Oldfield Dev., LLC*, 962 F.3d 117 (4th Cir. 2020) (applying the *Salovaara* framework and holding that the Board's settlement was in the best interests of the company); *see also Rappaport*, 2021 WL 2125129, at *3 (holding that the corporation has the right "to take over the litigation" in the pre-suit demand context) (quoting *Kamen v. Kemper Fin. Services, Inc.*, 500 U.S. 90, 101 (1991)).

That means that while members of a corporation, shareholders, *et cetera* have the right to advance derivative claims when they feel the corporation has claims that are not being attended to, they do so with the knowledge that the entity on which behalf's the claims are brought has the right to end that litigation, as long as it does so consistent with Florida Statutes § 617.01401.

The parties dispute whether this motion is governed by subsection (3) or subsection (4) of Florida Statute Section 617.07401. The statute is by no means a legislative model of clarity, but in reading of the statute, cohesively as a whole, and *in pari materia*, the Court finds that subsection 617.07401(3) applies only when a corporation seeks **discontinuance** of a derivative case because it has determined that the litigation is not in its best interest. This subsection makes no mention of

"settlement" at all, or a court's need to determine whether any such settlement is fair and reasonable. That is so because, in this Court's view, this subsection only addresses circumstances where the entity seeks to **discontinue** a derivative case as not being in its best interests. And because this subsection addresses circumstances where the entity seeks to **discontinue** litigation, it imposes the requirement that those recommending this course of action be independent, and that they conduct a reasonable investigation in good faith. It makes sense that the entity seeking to **discontinue** a case clear these hurdles, as it is recommending the abandonment of claims.

Subsection 617.07401(4), on the other hand, specifically addresses a situation like this where the corporation decides to **settle** the case. Subsection 617.07401(4) requires no more than court approval and notice to members of the corporation when appropriate. *Id.* The sole focus of this subsection, which expressly addresses settlements, is on the fairness of the settlement itself, not the process leading up to it. The Court is simply called upon to determine whether the actual bargain struck is fair, reasonable and in the best interest of the entity.

Plaintiffs nonetheless cite *Batur v. Signature Properties of Nw. Fla., Inc.*, 903 So. 2d 985 (Fla. 1st DCA 2005), a decision that either holds (or at least suggests in *dicta)* that subsection 617.07401(3) controls this inquiry. In *Batur*, the corporation contended that subsection (4) rather than subsection (3) applied, but the court there rejected the argument as untimely because the corporation "made no mention whatsoever of subsection 607.07401(4) in the proceedings below." *Id.* at 994. The

court also stated that subsection 617.07401(3) governed, but this statement appears to be *dicta* because it was not necessary to the court's holding.

While the Court disagrees with *Batur*, absent contrary precedent from another district court of appeal, it is bound by that decision. *See, e.g., Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992) (absent "interdistrict conflict, district court decisions bind all Florida trial courts"). The Court will therefore follow *Batur* and decide this case under subsection 617.07401(3). Pursuant to 617.07401(4), it will also address whether the settlement is fair, reasonable and in the best interest of FICA, thereby covering all bases.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. **Under Subsection 617.07401(3), the Court Finds the Committee was Independent, Acted in Good Faith, and Conducted a Reasonable Investigation**

If subsection (3) applies, it imposes upon the entity seeking approval of a settlement, in this case FICA, the burden of proving independence, the good faith of the group making the determination, and the reasonableness of the investigation. § 617.07401(3). Absent any legislative indication to the contrary, the Court finds that burden is one of the preponderance of the evidence. *See Klein ex rel. Klein v. FPL Grp., Inc.*, No. 02-cv-20170, 2004 WL 302292, at *4 (S.D. Fla. Feb. 5, 2004) (applying Florida law and the preponderance of the evidence standard).

Two overarching principles have guided the Court's consideration. First, the law encourages settlement in all contexts and looks upon settlement of litigation with

favor. *See State Farm Mut. Auto. Ins. Co. v. InterAmerican Car Rental, Inc.*, 781 So. 2d 500, 501-02 (Fla. 3d DCA 2001) (per curiam); *see also Hanson v. Maxfield*, 23 So. 3d 736, 739 (Fla. 1st DCA 2009) ("Settlements are 'highly favored and will be enforced whenever possible.'") (quoting *Robbie v. City of Miami*, 469 So. 2d 1384, 1385 (Fla. 1985)); *Casablanca Condo. Ass'n of Miami Beach v. Crescent Heights XLII, Inc.*, 819 So. 2d 921 (Fla. 3d DCA 2002) (reversing trial court's order setting aside a valid and enforceable settlement agreement). Second, parties are free, and in fact have a constitutional right to, enter into contracts so long as they are not contrary to law or public policy. *Okeechobee Resorts, L.L.C. v. E Z Cash Pawn, Inc.*, 145 So. 3d 989, 993 (Fla. 4th DCA 2014). A settlement agreement is a contract, plain and simple, and FICA had the constitutional right to enter into a contract to settle this derivative action. *Lazzaro v. Miller & Solomon Gen. Contractors, Inc.*, 48 So. 3d 974, 975 (Fla. 4th DCA 2010). In fact, the **only** reason that this settlement is before the Court for approval is because before the parties entered into a settlement agreement, the Plaintiffs initiated a derivative action. Therefore, FICA's constitutional right to settle this case is subject to review under § 617.07401.

a. The Special Litigation Committee Was Independent

The Court applies what Judge Gold described in the *Klein* case, which the Derivative Plaintiffs rely upon, as a "totality of the circumstances" test to determine whether the members of this Special Litigation Committee (the "SLC") were in a position to base their decision on the merits rather than being governed by extraneous considerations and influences. *Klein ex rel. Klein v. FPL Grp., Inc.*, 2004 WL 302292, at *18 (S.D. Fla. Feb. 5, 2004) (turning to Delaware case law to interpret

Florida's "independence" standard).[2] That test requires the Court look at (1) whether the member is a defendant who has potential liability, (2) their participation or approval in the wrongdoing, (3) past or present dealings with the corporation, (4) past or present business or social dealings with the individual defendants, (5) the number of the committee, and (6) whether the committee has any structural bias. *Klein*, 2004 WL 302292 at *18.

The Court finds as a matter of fact that the members of the SLC, who volunteered their time and spent countless hours reviewing the settlement, speaking to potential witnesses, evaluating the merits of the claims, and doing what they felt was best for the Fisher Island community, acted completely independently and in good faith. And Plaintiffs claim to contrary is all sizzle and very little steak.

As for Mr. Ferraro, the fact that he may have received a case of wine from the Developer, or offered the Developer Tour de France tickets, are completely insignificant in the scope of this case. Mr. Ferraro, a highly respected member of the bar, lives in this community, and this Court finds that he at all times acted in its best interest, without conflict or any dual allegiance. *See Kaplan v. Wyatt*, 499 A.2d 1184, 1189 (Del. 1985) (affirming the independence of an SLC when its members based their "decision on the merits of the issue rather than being governed by extraneous considerations or influences").

[2] Although no Florida appellate court has articulated the precise test used to weigh someone's independence or lack thereof, the Court agrees with Judge Gold's analysis, applying Delaware law, a jurisdiction this Court follows in corporate matters because Florida's corporation statutes are patterned after Delaware. *See Connolly v. Agostino's Ristorante, Inc.*, 775 So. 2d 387, 388 n.1 (Fla. 2d DCA 2000) ("The Florida courts have relied upon Delaware corporate law to establish their own corporate doctrines." (Internal quotation marks omitted)). Like Judge Gold, this Court finds that the "totality of circumstances" test is appropriate in determining independence or lack thereof on the part of the SLC and its members. *See Klein*, 2004 WL 302292, at *18.

With respect to Mr. Drury, the fact that he attempted to acquire property by offering to pay the Developer, in part, through the marketing and promotional activities of his wife, who is a high-end and well-paid model, is simply irrelevant. He had every right to offer her marketing and promotional services as consideration (or partial payment) for a condominium unit. The Court certainly does not think that the fact that he may have done that in the past bears on his independence or suggests that he was somehow biased or under the influence of the Developer in serving his role on the SLC. The Court finds that Mr. Drury selflessly donated his time and energy to assess this settlement, carefully weighing its pros and cons, and he did what he believed was best for the members of the community that he was charged with representing.

With regard to Mr. Smith, there has been virtually no discussion about his alleged lack of independence because there were no facts that could bear on such a discussion. He was completely independent, completely competent, and like Mr. Ferraro and Mr. Drury, devoted his time and energies to evaluating the Settlement and making a determination as to whether it is in the best interest of the community.

The Court finds the testimony of all three members of the SLC to be credible. *See, e.g.*, July 23, 2021 Hr'g Tr. 249:25-250:6 (Ferraro stating he was "[t]otally objective and independent" in evaluating and negotiating the settlement); July 26, 2021 Hr'g Tr. 101:7-14, 166:10-22 (Drury confirming that the Developer is not the source of his business and stating he would "absolutely" be able to litigate when it was in the best interest of the Island); *Id.* at 206:20-207:11 (Smith stating he does not have any business or social relationship with the Developer).

Again, the Court finds that the members of this SLC were completely independent. None of them were under any influence of the Developer in any way, shape, or form. Whatever past business dealings they have had in buying their respective condominiums, or, in Mr. Drury's case, acting as a broker for sale of new units on the Island, do not impugn their independence, integrity, or commitment one iota. The Court also notes in a context of an entity like FICA, a not-for-profit corporation representing a residential community, it is virtually inevitable that the members of any SLC drawn from the members of that community, will necessarily have views on issues that affect the community, such as the issues raised in this litigation. The reality does not undermine their independence. *See Sarnacki v. Golden*, 778 F.3d 217, 223 (1st Cir. 2015) (applying Delaware law) (finding the SLC members were independent despite their previous public statements and noting the fact that they had "preliminary views . . . not surprising and d[id] not by itself constitute prejudgment of the issue"); *In re Life Partners Holdings, Inc.*, No. DR-11-CV-43-AM, 2015 WL 8523103, at *21 (W.D. Tex. Nov. 9, 2015) (holding that "skepticism is not bad faith" and finding that the directors were independent even though the "Directors were initially skeptical toward the allegations because they believed they lacked adequate supporting evidence and were too speculative"); *Borchardt v. King*, No. *1*:10CV261, 2015 WL 410408, at *8 (M.D.N.C. Jan. 29, 2015) (holding that notwithstanding an SLC's prior vote to reject the demand letter, the SLC directors' "behavior [was] consistent with a duty to carefully and open-mindedly investigate the alleged wrongdoing"); *Clifford v. Ghadrdan,* No. 1:12-CV-3683-SCJ, 2014 WL 11829337, at *7 (N.D. Ga. Mar. 5, 2014) (holding that "there

[was] nothing to indicate that [a director's] initial opinion regarding Plaintiffs' claims was entrenched or that it prevented him from conducting an objective investigation of Plaintiffs' claims").[3]

b. The Special Litigation Committee Conducted a Reasonable Investigation in Good Faith

The Court finds that the SLC in good faith conducted a reasonable investigation. Nothing about this SLC was untoward or in the least bit questionable. The Court does not believe their integrity or *bona fides* can be subjected to serious question. A reasonable investigation does not mean that the SLC had to try the underlying cases that are in dispute or weigh every fact and dig into the weeds on every potential claim and defense. *See In re Sunbeam Securities Litigation*, 176 F.Supp.2d 1323, 1329 (S.D. Fla. 2001) (stating that in the class action context the court "should not try the case on the merits nor make a proponent of a proposed settlement justify each term of a settlement against the hypothetical or speculative measure of what concessions might have been gained" (internal quotation marks omitted)). Rather, a reasonable investigation required the committee members to weigh the benefits and detriments of the settlement agreement as a whole and determine whether or not the proposed settlement was a reasonable resolution of the

[3] Indeed, courts expect SLC members to be experienced and well versed on the issues at hand. *Peller v. The S. Co.*, 707 F. Supp. 525, 528 (N.D. Ga. 1988), aff'd sub nom. Peller v. S. Co., 911 F.2d 1532 (11th Cir. 1990) ("If [S]LCs are to be utilized, the court must accept the likelihood that members of an [S]LC will have experience akin to that of the defendant directors. Indeed, the appointment of persons with no background in public utilities or corporate management to the [S]LC would probably be irresponsible.").

pending and potential claims. To do so, the SLC had to investigate claims that are being released and weigh them against the benefits FICA is receiving under the settlement.

The Court finds that the SLC did exactly that and did a more thorough job than would be required by law. They met with capable counsel that was retained to represent their interests, consulted with those lawyers, familiarized themselves with the facts and circumstances of the underlying claims that were being compromised (including this claim), weighed the potential upside of the claims that were being compromised against the benefits of the settlement, and conducted a thorough and more than reasonable investigation before they made a decision to recommend this Settlement. The settlement also was negotiated with the assistance of an experienced mediator and without a hint of collusion. The Court finds that the SLC has acted in good faith, independently, and conducted a more than reasonable investigation before recommending this settlement.

Assuming subsection 617.07401(3) applies (and this court again believes it does not), the Court finds that FICA and the members of the SLC have carried the burden of proof imposed by this statute.

2. **The Settlement Passes a Subsection 617.07401(4) Fairness Analysis**

Turning to the settlement itself, if the Court were conducting a fairness analysis under subsection 617.07401(4), it finds this settlement agreement passes

that test with flying colors. *See Hardwicke Companies, Inc. v. Freed*, 299 So. 2d 116, 118 (Fla. 2d DCA 1974) (holding that proposed settlements must meet the "statutory requirement of fairness and reasonableness"); *Esformes v. Holtz*, 1997 WL 34861313 (Fla. 11th Cir. Ct. Oct. 24, 1997) (same). Florida courts weigh the fairness and reasonableness of the proposed settlement by considering "the validity of the minority shareholders' claims, possible defenses to such claims, the probability of success if the action were pursued to final judgment, the complexity, expense and likely duration of the litigation, and the benefit to the corporation." *Id.*

There are three claims being compromised.

a. Seawall Claim

The first is what the Court is going to refer to as the "seawall claim," *Ashkin et al. v. Ryan, et al.*, No. 2019-0281242-CA-01. There are a number of problems with that claim, most notably a key statute governing not-for-profit corporations such as FICA is very limited in what constitutes a conflict of interest for a member of a Board of Directors. *See* § 617.0832, Fla. Stat. The Court notes that there is a dispute in the seawall case whether the conflict question is governed by Chapter 617, or by Chapter 720, which was enacted after FICA was incorporated and does not generally apply retroactively. That issue has not been decided.

The plaintiffs in the seawall matter also face a standing impediment. While the Derivative Plaintiffs argue that one director should be entitled to sue others for

declaratory relief in the context of a purported conflict, they rely on a single Delaware case for that point. No Florida precedent has authorized that cause of action, and it is an issue of first impression in Florida whether such a cause of action exists. Assuming the standing hurdle is overcome, the substantive question that is still unresolved is whether there was a conflict at all that would disqualify the Developer-appointed directors of FICA's Board from voting.

In the not-for-profit corporation context here, even if the Derivative Plaintiffs overcome that hurdle, and a court were to rule that these Developer-appointed directors had a statutory obligation to abstain, the seawall replacement is almost complete. So assuming the plaintiffs prevail in their current declaratory judgment action, the issue of damages would still have to be resolved in an arbitration through a derivative action on behalf of FICA. Whether FICA is entitled to damages in the form of a $2 million delta between the batter pile system that was put in and the estimate for the cost of putting in a tieback seawall, which was lower also is debatable.

Of course, in that "next" case the Developer would argue that the Board acted reasonably pursuant to advice of counsel, FICA Ex. 8, that FICA and the community also received a benefit from the more expensive method of installation, which permits construction of an underground garage and allows the building to be set back further form the road. It is doubtful that an arbitrator would award the whole $2

million delta to FICA; it would probably be more of a Solomon-like decision giving part of it. The Court thinks the value of that claim at a million dollars is generous, assuming plaintiffs in that action cleared all the hurdles in their path.

b. Transportation Invoicing Claim

Secondly, there is the transportation invoicing claim. The Court has reviewed Judge Shepard's 2017 Final Arbitration Award and Order on FICA's Motion for Clarification. One thing is clear: FICA's unjust enrichment claim was denied because FICA had never invoiced the Developer for its prior use of the barges for construction projects. *See* Pls.' Ex. 1, Oct. 16, 2017 Final Arbitration Award 36-38 and Nov. 14, 2017 Arbitration Order 2. Judge Shepard did not say that merely sending an invoice would result in a $3 million award; he stated that the issue was not properly before him because no invoice had been sent. *Id.* at Nov. 14, 2017 Arbitration Order 2.

Judge Shepard also pointed out, and the Court agrees, that the governing documents give FICA the discretion to use a number of methods to bill for that transportation per person, per route, whatever it may be. *Id.* (stating that "[t]he owner of the Transportation System has the discretion to levy a charge, which it may or may not exercise"). But Judge Shepard did not suggest, nor in this Court's opinion could he reasonably have suggested, that the governing documents would give FICA the ability to discriminate in the charges it imposes for use of the Fisher Island

transportation system. The Developer owns units on Fisher Island, whether he lives there or not; he is an owner, and he pays FICA dues like every other owner. If he is going to be charged for transporting construction materials on the ferries serving the island, the Court thinks there is a very credible argument that could be made in response to any arbitration, should it be brought, that others who use the ferries to transport construction materials, whether individual unit owners who are remodeling or building out their units, or condominium associations that are making repairs or changes to their building, or the Club, should be charged similarly. In this Court's view, FICA does not have the authority to selectively charge individuals and entities who are using the ferries for commercial purposes, depending upon who it is that is using the system for those purposes.

This claim is, to say the least, extremely defensible, and losing it would put FICA on the hook for attorney's fees under the prevailing party fee provision in the 2007 global settlement agreement. So the SLC's decision to compromise this hypothetical transportation claim is not problematic. The Court finds Mr. Smith's testimony credible that at best it is a $500,000 to $750,000 claim. But even if the Court were to credit the Derivative Plaintiffs' version and value the claim in the $2 to $3 million range, it still would not affect the Court's opinion that this settlement is fair, reasonable and in the best interest of FICA.

c. Alleged Unauthorized Modification of 2007 Settlement Agreement

The third claim brought up is the claim that the Developer lacked authority, through the 2020 Agreement with the Fisher Island Club, Inc. (the "Club"), to modify the 2007 covenant not to build above 75 feet. That claim has so many problems that the Court does not know where to begin. The first problem is that if the Developer retracted from that obligation, he did so pursuant to an agreement with the Club where he provided consideration. Parties can agree to one thing and subsequently agree to something totally different provided there is consideration on both sides and mutuality in that later agreement. *St. Joe Corp. v. McIver*, 875 So. 2d 375, 381 (Fla. 2004) ("It is well established that the parties to a contract can discharge or modify the contract, however made or evidenced, through a subsequent agreement.")

In the 2020 Agreement between the Developer and the Club, each party provided consideration to the other, there was mutuality, and the parties accordingly were free to modify the Developer's undertakings in the Amended and Restated Guaranty Agreement, which was an exhibit to the 2007 Global Settlement Agreement. Furthermore, the Court could not deny the Developer the benefit of its bargain under the 2020 Agreement, while at the same time allow the club to retain the **extensive** benefits it received from the Developer under the same contract. Thus, this claim, which attempts to prevent the Developer from building over 75 feet,

places the entire 2020 Agreement in jeopardy, something that no party – not even the Derivative Plaintiffs – want to see happen.

d. Future Removal of Parcel 7 Ramp

That brings the Court to the real issue here and the concern of the Derivative Plaintiffs: whether or not this Settlement results in a safety hazard to the members of the Island. The Court found all three Derivative Plaintiffs to be credible and that each is sincerely looking out for the best interest of the Fisher Island community. But the only competent, substantial expert testimony in the record regarding safety is from an expert proffered by FICA, who testified convincingly that eliminating the auxiliary or emergency ramp will not present any danger or inconvenience to the residents of Fisher Island once the renovations on the ferry landings on parcels 6 and 8 are done and those ramps, with new state-of-the-art hydraulic ramp systems, are open for continuous and permanent use. His analysis included both a comparison of the ferry system on Fisher Island to the ferry systems servicing Martha's Vineyard, Nantucket, Block Island, Catalina Island, and also a quantitative study of how long it would take the residents of Fisher Island to evacuate under different scenarios. He also analyzed whether in case of an emergency, residents of Fisher Island could board ferries without their vehicles from locations other than the landings on Parcels 6 and 8, and determined they could.

The expert, Cameron Clark, is EVP and Chief Strategy & Business Development Officer of Hornblower Groups, a diverse maritime company with global operations including more than 200 vessels making more than 35 million passenger trips per year. In his testimony, Mr. Clark concluded: "It is my expert opinion that the upgraded ferry landings on Parcel 6 and 8, with larger multi-use vessels, will allow for the elimination of the auxiliary landing site at Parcel 7, without detrimental impact on the residents and in fact will exceed the level of historical services and provide residents with a convenient and safe service." Ex. FICA 7, Cameron Clark Expert Witness Dep. 72:10-20. The Court therefore finds that the safety concerns of the derivative Plaintiffs, *while sincere*, do not justify a rejection of this settlement.

CONCLUSION

People who live in a condominium or residential community with some form of joint ownership necessarily relinquish certain rights that would be theirs if they owned a single-family home. Such a community is a "little democratic sub society," *Woodside Vill. Condo. Ass'n, Inc. v. Jahren*, 806 So. 2d 452 (Fla. 2002), and many times people have to abide by the vote and decisions made by their electoral officers and directors even though they do not agree with those decisions. *See, e.g., White Egret Condo., Inc. v. Franklin*, 379 So. 2d 346 (Fla. 1979) ("inherent in the condominium concept is the principle that to promote the health, happiness, and

peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property"). Here, the SLC had the authority to enter into this settlement. For any FICA members who are unhappy with it, their remedy lies at the ballot box, not in the courtroom.

Fisher Island has been embroiled in seemingly endless litigation. As Mr. Ferraro forcefully and credibly testified, this pervasive litigation does nothing but damage the community. It damages property values, and it damages the perception of the community and people who live in it. It is time for all this litigation to meet its end, for as Justice Joseph Story once put it, "it is for the public interest and policy to make an end to litigation . . . [so] that suits may not be immortal, while men are mortal." *Ocean Ins. Co. v. Fields*, 18 F. Cas. 532, 539 (C.C.D. Mass. 1841). FICA, through a statutorily authorized SLC, has wisely decided to finally put an end to Fischer Island's litigation. This Court finds that it had the authority to do so, and that it satisfied both sections 617.07401(3) and (4) in the process.

The Court grants FICA's Motion to approve the settlement and dismisses these derivative claims with prejudice. The Court retains jurisdiction to entertain any authorized and timely filed post-judgment motions.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 2nd day of August, 2021.

MICHAEL A. HANZMAN
Circuit Court Judge

Electronically served:

Alan J. Kluger, akluger@klugerkaplan.com
Alan J. Kluger, miglesias@klugerkaplan.com
Beth Moon, beth.moon@hoganlovells.com
Carl E. Goldfarb Esq., cgoldfarb@bsfllp.com
Carl E. Goldfarb Esq., ftleserve@bsfllp.com
Carl E. Goldfarb Esq., jbalda@bsfllp.com
David Anthony Archer, darcher@klugerkaplan.com
David Anthony Archer, clong@klugerkaplan.com
David Nabors, davidnabors@quinnemanuel.com
David Nabors, olgagarcia@quinnemanuel.com
Elliot H. Scherker, scherkere@gtlaw.com
Elliot H. Scherker, miamiappellateservice@gtlaw.com
Harold Eugene Lindsey III, hel@katzbarron.com
Harold Eugene Lindsey III, lpq@katzbarron.com
Harold Eugene Lindsey III, miaefile@katzbarron.com
John F O'Sullivan, johnosullivan@quinnemanuel.com
John F O'Sullivan, olgagarcia@quinnemanuel.com
John F O'Sullivan, johnosullivan875@gmail.com
Case No: 2020-020499-CA-01 Page 16 of 17
Joshua Thaddeus Fordin, joshuafordin@quinnemanuel.com
Joshua Thaddeus Fordin, olgagarcia@quinnemanuel.com
Olga D Garcia Garcia, jasonsternberg@quinnemanuel.com
Olga D Garcia Garcia, olgagarcia@quinnemanuel.com
Olga Garcia, olgagarcia@quinnemanuel.com
Sashi C. Bach, sbach@bsfllp.com
Sashi C. Bach, ftleserve@bsfllp.com
Sashi C. Bach, jmalave@bsfllp.com
Steven I Silverman, ssilverman@klugerkaplan.com

Steven I Silverman, clong@klugerkaplan.com
Stuart H. Singer, ssinger@bsfllp.com
Stuart H. Singer, aanderson@bsfllp.com
Stuart H. Singer, ftleserve@bsfllp.com