

Exhibit “C”



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May 19, 2020

VIA ELECTRONIC MAIL

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Dennis I. Wilenchik, Esq.
John "Jack" D. Wilenchik, Esq.
Ross P. Meyer, Esq.
2810 North Third Street
Phoenix, Arizona 85004

Re: *Jie Cao Xai et. al v PFP Dorsey Investments, LLC at. al*
Maricopa County Superior Court
Case No.: CV2019-055353
Our File: CNA.DORSEY.01

Dear Messrs. Wilenchik and Meyer:

This law firm has been retained to represent the interests of the Dorsey Place Condominium Association (the "Association") in the above-referenced case. We are writing to introduce ourselves and address a few initial issues.

First, Michael Schern provided us the Acceptance of Service documents you sent to him pertaining to the Association. If you would redraft that proposed filing on your letterhead and address it to us, we would be happy to accept service on the Association's behalf.

Second, we have reviewed the Amended Complaint and we would like to address a glaring issue with the same. Your clients' claims against the Association, including their requested relief, are predicated on the Association's alleged failure to follow the requirements of A.R.S. §33-1228, which is cited throughout the Amended Complaint. However, you have cited to the wrong version of the statute, which has real impact on your clients' claims against the Association. As you know, the Association took the steps to terminate the condominium in early-2019, ultimately recording the Notice of Termination

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in April 2019. At the time, the applicable version of A.R.S. §33-1228 did not include much of the language cited in your Amended Complaint. A copy of the version of A.R.S. §33-1228 in effect at the time of termination is attached hereto as Exhibit 1.

A.R.S. §33-1228 was amended in August 2019, at which time the language from your Amended Complaint was added, but there is nothing indicating retroactive application of the amendment, so your citations to the revised version of the statute are improper. The revised version of the statute is attached hereto as Exhibit 2. It is clear that your clients' claims depend on the language from the revised version of the statute, which was not in effect at the time the condominium was terminated, thus making your clients' claims against the Association flawed as a matter of law. Therefore, it is our position that your Amended Complaint should be withdrawn at this time or at least revised to include the correct version of A.R.S. §33-1228. Please advise of any reason you dispute our position on this issue.

The final point we would like to address at this stage is whether you would like to explore substantive settlement discussions before this matter goes any further. In addition to the issues with your clients' position, discussed above, this case is appropriate for settlement from an objective standpoint. As you know, the subject development has been turned into an apartment complex, making it impossible for your clients to quiet title in their former unit – therefore, the reality is that the most relief your clients could get in this case would be to force the Association to redo the termination proceedings, only delaying the inevitable. We are sure your team is aware of this reality, so there must be a monetary figure your clients are looking for (i.e. their perceived value of their unit versus the amount paid), which we should explore before the fees and costs get too high on both sides and settlement becomes much more difficult.

Please review this correspondence with your client and let us know your response to the same. We look forward to working with you on this matter.

Sincerely,



Nicholas Nogami, Esq.
for
CARPENTER, HAZLEWOOD, DELGADO & BOLEN, LLP

Arizona Revised Statutes Annotated

Title 33. Property

Chapter 9. Condominiums ([Refs & Annos](#))

Article 2. Creation, Alteration and Termination of Condominiums

This section has been updated. Click [here](#) for the updated version.

A.R.S. § 33-1228

§ 33-1228. Termination of condominium

Effective: August 3, 2018 to August 26, 2019

A. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

B. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded in each county in which a portion of the condominium is situated and is effective only on recordation.

C. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

D. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections A and B of this section. If any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection G of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit. During the period of that occupancy, each unit owner and the successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

E. If the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium vests in the unit owners on termination as tenants in common in proportion to their respective interests as provided in subsection G of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

F. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units that were recorded before termination may enforce those liens in the same manner as any lienholder.

G. The respective interests of unit owners referred to in subsections D, E and F of this section are as follows:

1. Except as provided in paragraph 2 of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination and an additional five percent of that total amount for relocation costs for owner-occupied units. An independent appraiser selected by the association shall determine the total fair market values. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within sixty days after distribution to the unit owner. Any unit owner may obtain a second independent appraisal at the unit owner's expense and, if the unit owner's independent appraisal amount differs from the association's independent appraisal amount by five percent or less, the higher appraisal is final. If the total amount of compensation owed as determined by the second appraiser is more than five percent higher than the amount determined by the association's appraiser, the unit owner shall submit to arbitration at the association's expense and the arbitration amount is the final sale amount. An additional five percent of the final sale amount shall be added for relocation costs for owner-occupied units.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or element before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

H. Except as provided in subsection I of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title may require from the association, on request, an amendment excluding the real estate from the condominium.

I. If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, on foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

J. The provisions of subsections C, D, E, F, H and I of this section do not apply if the original declaration, an amendment to the original declaration recorded before the conveyance of any unit to an owner other than the declarant or an agreement by all of the unit owners contains provisions inconsistent with these subsections.

K. Beginning on the effective date of this amendment to this section, any provisions in the declaration that conflict with subsection G, paragraph 1 of this section are void as a matter of public policy.

Credits

Added by Laws 1985, Ch. 192, § 3, eff. Jan. 1, 1986. Amended by [Laws 2018, Ch. 235, § 1](#).

[Notes of Decisions \(1\)](#)

A. R. S. § 33-1228, AZ ST § 33-1228

Current through legislation effective March 27, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

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Arizona Revised Statutes Annotated

Title 33. Property

Chapter 9. Condominiums (Refs & Annos)

Article 2. Creation, Alteration and Termination of Condominiums

A.R.S. § 33-1228

§ 33-1228. Termination of condominium

Effective: August 27, 2019

[Currentness](#)

A. Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses. At least thirty days before recording a termination agreement, the board of directors of the association shall convene a regular or special meeting of the board of directors at which a person or entity that purports to have the agreement of at least eighty percent of the votes in the association, or any larger percentage if required, shall produce and make available to the unit owners copies of a signed notarized statement that the owner of a unit has executed a termination agreement. The person or entity shall produce copies of a statement for each unit owner who has agreed to the termination, or may produce the signed termination agreement that includes a sufficient number of unit owners. Any meeting called pursuant to this subsection shall be noticed as otherwise provided by law, except that the board may not take action by written consent or any other method that does not provide for an actual meeting that is open to all the unit owners. Any termination agreement that is recorded without full compliance with this subsection is invalid.

B. An agreement to terminate shall be evidenced by the execution or ratifications of a termination agreement, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications of a termination agreement shall be recorded in each county in which a portion of the condominium is situated and is effective only on recordation.

C. A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

D. The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections A and B of this section. If any real estate in the condominium is to be sold following termination, title to that real estate on termination vests in the association as trustee for the holders of all interest in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection G of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit. During the period of that occupancy, each unit owner and the successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

E. If the real estate constituting the condominium is not to be sold following termination, title to all the real estate in the condominium vests in the unit owners on termination as tenants in common in proportion to their respective interests as provided in subsection G of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit owner's unit.

F. Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units that were recorded before termination may enforce those liens in the same manner as any lienholder.

G. The respective interests of unit owners referred to in subsections D, E and F of this section are as follows:

1. Except as provided in paragraph 2 of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements and common element interests immediately before the termination, their pro rata share of any monies in the association's reserve fund and the operating account and an additional five percent of that total amount for relocation costs. An independent appraiser selected by the association shall determine the total fair market values. The determination of the independent appraiser shall be distributed to the unit owners and becomes final unless disapproved within sixty days after distribution to the unit owner. Any unit owner may obtain a second independent appraisal at the unit owner's expense and, if the unit owner's independent appraisal amount differs from the association's independent appraisal amount by five percent or less, the higher appraisal is final. If the total amount of compensation owed as determined by the second appraiser is more than five percent higher than the amount determined by the association's appraiser, the unit owner shall submit to arbitration by an arbitrator affiliated with a national arbitration association and under the rules of that association at the association's expense and the arbitration amount is the final sale amount. As part of the arbitration process, the appraisers shall fully disclose their appraisal methodologies and shall disclose any other transaction occurring between the buyer and the sellers. An additional five percent of the final sale amount shall be added for relocation costs.

2. If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value of the unit or element before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

H. Except as provided in subsection I of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title may require from the association, on request, an amendment excluding the real estate from the condominium.

I. If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, on foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

J. The provisions of subsections C, D, E, F, H and I of this section do not apply if the original declaration, an amendment to the original declaration recorded before the conveyance of any unit to an owner other than the declarant or an agreement by all of the unit owners contains provisions inconsistent with these subsections.

K. Beginning on August 3, 2018, any provisions in the declaration that conflict with subsection G, paragraph 1 of this section are void as a matter of public policy.

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Added by Laws 1985, Ch. 192, § 3, eff. Jan. 1, 1986. Amended by [Laws 2018, Ch. 235, § 1](#); [Laws 2019, Ch. 233, § 1](#).

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