

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

JIE CAO, et al.,

No. CV2019-055353

Plaintiff,

v.

LORNE POLGER, et
al.,

Defendant.

Phoenix, Arizona
December 15, 2020
1:33 p.m.

BEFORE THE HONORABLE DANIEL G. MARTIN

TRANSCRIPT OF PROCEEDINGS

Virtual Oral Argument

Proceedings recorded by electronic sound recording; transcript
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Transcriptionist

I N D E X

December 15, 2020

PLAINTIFF'S WITNESSES DIRECT CROSS REDIRECT RECROSS VD

None

DEFENDANT'S WITNESSES DIRECT CROSS REDIRECT RECROSS VD

None

M I S C E L L A N E O U S

PAGE

Matter Taken Under Advisement

24

APPEARANCESDecember 15, 2020

Judge: Daniel G. Martin

For the Plaintiff:

Ross P. Meyer

Witness:

None

For Defendant PFP Dorsey Investments:

Stephanie K. Gintert

Witness:

None

For Defendant Dorsey Place Condominium Association:

Nicholas C. Nogami

Edith I. Rudder

Witnesses:

None

1 Phoenix, Arizona

2 December 15, 2020

3 (Before the Honorable Daniel G. Martin Presiding)

4 VIRTUAL ORAL HEARING:

5 THE COURT: There we go. Much better. Nice to see
6 you all. Everyone's looking well. Glad to see that. Let's
7 get started.

8 Jamie, this will be number 7, I believe, on today's
9 calendar. It is the time set for oral argument on motions to
10 dismiss filed by the Defendants in CV 2019-055353. And we will
11 begin as always with appearances.

12 Let me start with counsel for the Plaintiffs.

13 MR. MEYER: Good afternoon, Your Honor. This is Ross
14 Meyer on behalf of the Plaintiffs.

15 THE COURT: Nice to have you on the line, Mr. Meyer.
16 I am not able to see you. Is that because you're just on the
17 phone.

18 MR. MEYER: Oh, I am on video there, if you can see
19 me.

20 THE COURT: Hey, there you are. Very good. All
21 right. That's better. Thanks, Mr. Meyer.

22 And for the Defendant, PFP Dorsey Investments?

23 MS. GINTERT: Good afternoon, Your Honor. My name is
24 Stephanie Gintert on behalf of PFP Dorsey.

25 THE COURT: Right. Thanks, Ms. Gintert. And for

1 Dorsey Place Condominium Association? I think you're muted,
2 Mr. Nogami.

3 MR. NOGAMI: Okay. Is that better?

4 THE COURT: Better.

5 MR. NOGAMI: Okay. Thank you, Your Honor. Nick
6 Nogami from Carpenter Hazelwood on behalf of Defendant, Dorsey
7 Place Condominium Association. And I also have E. Rudder from
8 our office as well.

9 THE COURT: All right. Nice to see you, Ms. Rudder.
10 Full disclosure, Ms. Rudder and I are in the same Inn of Court
11 and have served together on the executive committee for -- it's
12 probably been five, six, maybe seven years now.

13 MS. RUDDER: Correct, Your Honor.

14 THE COURT: Yeah. That sounds about right. Okay.
15 But I assume, Mr. Nogami, you're going to be taking the
16 laboring work today?

17 MR. NOGAMI: That is correct, Your Honor.

18 THE COURT: All right. Very good. Well, I have
19 carefully read the papers on both of the motions.

20 And Jamie, you'll see when you look at the docket.
21 But for Dorsey Place, it was a motion to dismiss or
22 alternatively a motion for a more definite statement.

23 And what I would like to do is ask Ms. Gintert to
24 start us off.

25 And then Mr. Nogami, I will hear from you on behalf

1 of your client.

2 Mr. Meyer, once I've heard from both Defense counsel,
3 I'll take your response and then any rebuttals that may be
4 appropriate.

5 You know, the one thing about this format is --
6 compared to in-person proceedings is that we don't get to have
7 the typical back and forth that I like in these types of oral
8 arguments, especially when I have such good lawyers. So I am
9 sorry that we're not going to have that opportunity. I will
10 try my best to hold my questions until the end of the argument.
11 But having said that, I may also interrupt -- and if I do --
12 sorry in advance for breaking your trains of thought. All
13 right.

14 With that, Ms. Gintert, why don't you take us out on
15 behalf of PFP Dorsey Investments.

16 MS. GINTERT: Thank you, Your Honor. I know the --
17 both motions from the Defendants, we -- our arguments are
18 premised on the same theories. And so Mr. Nogami and I
19 actually discussed beforehand and I think we're going to try
20 and argue to try and limit the repetitiveness from both motions
21 to kind of argue together in that sense. And Mr. Nogami will
22 supplement with anything after I'm done and vice versa for the
23 rebuttals. So just to give you a little --

24 THE COURT: Okay.

25 MS. GINTERT: -- heads up about that.

1 THE COURT: Sounds good. Thanks.

2 MS. GINTERT: And -- okay. Thank you. So this
3 lawsuit rises out of a condominium termination for a
4 condominium that is formally known as the Dorsey Place
5 Condominium, which is located in Tempe. The lawsuit was
6 brought by the Plaintiffs based upon their trying to overturn
7 the condominium termination as well as the sale of their unit.

8 To give you a little bit of background information, I
9 think the facts are pretty straightforward and simple in this
10 case. Prior to the termination, the condominium was made up of
11 96 units. Plaintiffs had owned one unit. Ninety units were
12 owned by PFP Dorsey and then there were five other unit owners
13 that are not part of this lawsuit. And so according to the
14 condominium declaration that was enforced prior to the
15 termination, each unit owner gets one vote when any type of
16 vote is decided by the entire association.

17 And so a proposal was made that the condominium be
18 terminated as well as selling the condominium. And so that
19 issue was discussed during a meeting on April 4th, 2019.
20 There's Plaintiff's dispute whether it's called an annual or a
21 special meeting, but I think that's just a red herring. There
22 was a meeting. It was properly noticed. The Plaintiffs
23 attended that hearing and participated in it.

24 And so a lot of the arguments that Plaintiffs raised
25 about whether it was special -- a special meeting or an annual

1 meeting about voting and directors I think is not relevant to
2 the issues at hand. And so after the discussion was held at
3 the meeting, a vote was taken. Plaintiffs participated in that
4 vote and actually voted against the termination as well as the
5 sale. PFP, who had 90 of the 96 votes, voted for the
6 termination as well as the sale and so 90 out of 96 is, I think
7 a 93.75 percent. So 93.75 percent of the unit owners agreed to
8 terminate the condominium. And this is in compliance with not
9 only the condominium declaration, but also under the statues
10 for terminating a condominium, which is ARS 33-1228.

11 And so after the process happened, the -- everything
12 was formalized into an actual termination agreement, which was
13 dated April 9, 2019 and that was formally ratified by the unit
14 owners that agreed to the termination and it was subsequently
15 recorded with the recorder's office. And so the -- so the
16 termination happened. The association then facilitated the
17 termination of the association as well as the sale of the
18 property to PFP.

19 Now, Plaintiffs have brought this action alleging
20 seven different counts, but I think Plaintiffs will concede,
21 and I think they did in their response, that this basically all
22 stems from whether or not the condo was properly terminated.
23 And so if the Court finds that -- which is the Defendant's
24 position, that based upon the allegations that the Plaintiffs
25 make in their second amended complaint that the termination was

1 proper, then I think all of the other counts that Plaintiffs
2 have brought fail.

3 And so looking at whether or not the condominium was
4 properly terminated, there's, I think kind of two avenues or
5 two basis of -- in which it was terminated. One, you're
6 looking at the condominium declaration, which is an actual
7 agreement by the parties. It -- the parties, including the
8 Plaintiff, including PFP as unit owners and the association as
9 to how everyone would conduct themselves as to the terms, what
10 was needed to properly terminate the condominium.

11 And this is included in Section 13.4 of the
12 declaration, which has been provided to you as an exhibit.
13 Section 13.4 of the declaration is pretty straightforward.
14 There's, I think, two sentences. The first one states that the
15 condominium may be terminated only by the agreement of unit
16 owners of units to which at least 90 percent of the votes in
17 the association are allocated. There's no dispute that 93.75
18 percent of the unit owners at the time voted to approve the
19 condominium termination. And so I don't think there's a
20 dispute that the 90 percent was necessarily met.

21 The second portion of 13 -- Section 13.4 is that an
22 agreement to terminate the condominium must be evidenced by the
23 execution or ratification of a termination agreement in the
24 same manner as a deed by the requisite number of unit owners.
25 Again, as previously stated, there is a formal termination

1 agreement, which has been provided to you as Exhibit 2 in the
2 motion. And that was ratified by 90 of the 96 unit owners
3 approving it and it was formally filed with the Court or with
4 them. Sorry. The County Recorder's Office.

5 And so there's no dispute that according to the
6 contract documents that the parties agreed to, they properly
7 terminated and sold the condominium. Now, we go into ARS 33-
8 1228 and I think that's kind of where the Plaintiffs are
9 focusing their attention on. But I did want to just bring up
10 the contractual agreement that the parties had, because I don't
11 think they necessarily negate this fact that the parties
12 complied with the contract.

13 This is part of the contract agreement. And ARS 33-
14 1228, it does discuss the method of terminating a contract.
15 And part of the reasoning for, I think, some of these statutes
16 in the process is to make sure there are safeguards, because
17 you know, we are dealing with terminating someone's property
18 rights and selling it. But it's based upon the original
19 agreement that the parties entered into with the condominium
20 declaration.

21 And so I want to turn this Court's attention now to
22 ARS 33-1228. And the statute actually has been amended, I'd
23 say quite a few times, compared to other statutes within the
24 last few years. The version of the state that was in place at
25 the time of this termin -- condominium termination is from

1 2018. And so we've included a copy of that, just for the
2 Court's reference and in our motion as an exhibit.

3 Under ARS 33-1228, again, the statute specifically
4 lines out what is needed to properly terminate a condominium.
5 And those can be found within the first three -- primarily
6 within the first three sections, A, B and C. The first Section
7 A is similar to the declaration condominium, in which it
8 discussed the percentage that is needed from the votes of the
9 unit owners to properly terminate. The statute calls for 80
10 percent, unless it -- unless the parties agree otherwise. In
11 our case, the declaration states 90.

12 Section B discusses the type of documentation that
13 needs to be executed for terminating. And as I previously
14 discussed, a termination agreement was put into place. It was
15 signed by the parties. It was ratified and recorded. Now, I
16 think maybe Section C is probably what the Plaintiffs are
17 latching onto in disputing that the condominium termination was
18 not done properly.

19 But if we look at it and as to what was done, I think
20 you'll see based upon the allegations, taking what Plaintiffs
21 have said in their second amended complaint, everything was
22 complied with. Under Section C, a termination agreement may
23 provide that all of the common elements and units of the
24 condominium shall be sold following termination. If, pursuant
25 to the agreement, any real estate in the condominium is to be

1 sold following termination, the termination agreement shall set
2 forth the minimum terms of the sale.

3 Now, the Plaintiffs are trying to state that all of
4 the condominium was not sold in this transaction, but I think
5 they're trying to make a distinction without the difference,
6 because in this case, it would be absurd for PFP to be buying
7 its own property. PFP already owned 90 of the 96 units. Thus,
8 the transaction was for the remaining six units, plus the
9 undivided interests of the common elements. And that's what
10 the sale of documents discussed.

11 And they went through the whole process and an
12 appraiser was -- independent appraiser was hired to value each
13 property to determine what the appraised value is for the fair
14 market value to sell it. An appraiser (sic) was done. An
15 amount was decided upon based upon that and that was all part
16 of the termination agreement with the parties. And so
17 essentially, the end result is the same of what Plaintiffs are
18 trying to argue. PFP -- after the sale occurred, PFP was the
19 owner of the entire property of what was the condominium.

20 And so what I think Plaintiffs are trying to argue
21 and putting into the statute is to say well the statute
22 prevents a sale to a former or current owner of the
23 condominium, that you can't sell it to someone that is already
24 a unit owner. There's nothing in the statute that says that
25 you have to sell this property to a third party. I mean, in

1 fact, it probably makes no sense that you're really going to
2 get a third party to outright buy every unit. Maybe there is,
3 but realistically, this is kind of the mechanism of what's done
4 for condominiums.

5 Condominiums are created by statute and so likewise,
6 the termination would be dictated by the statutes. And so in
7 this case, with what the Plaintiffs are arguing is that they
8 didn't sell all of the condominium units or that they couldn't
9 have sold it to PFP. And there's nothing in the statutes that
10 call for either of these arguments that Plaintiffs are alleging
11 and neither does the declaration, the condominium declaration
12 call for who can sell or who can buy the condominium.

13 Just that you needed over 90 percent of the votes.
14 You needed to have the documentation, the minimum terms, the --
15 they complied with the statute in getting the appraiser,
16 independent appraiser to determine the fair market value. So
17 everything was complied with throughout the sale. And it's
18 alleged in the second amended complaint all these facts.
19 There's no dispute as to these facts. And so as such, the
20 Plai -- or the Defendants believe that the complaint should be
21 dismissed, as Plaintiffs cannot state a claim against
22 Defendants for the termination of this condominium.

23 THE COURT: All right. Thank you, Ms. Gintert.

24 And Mr. Nogami, anything to add to that argument?

25 MR. NOGAMI: Can you hear me, Your Honor? Okay.

1 Thank you. No, again, Ms. Gintert had a conversation about
2 trying to avoid too many duplicative statements. So yeah, I
3 think the majority of what I would contribute would probably be
4 in rebuttal. But I mean, just to sort of maybe just put a few
5 points out there. Again, I agree with her that I think this
6 claim is predicated entirely upon finding a error in the
7 termination process, the condominium termination process. One
8 has not even been alleged.

9 The complaint, the second amended complaint, which is
10 at issue here, does nothing to concede full compliance with
11 both -- and this is a valid point -- both the statute and with
12 the declaration for the condominium. I think by definition,
13 that means that they haven't stated a claim upon which we
14 granted it. And I also agree that I think there's going --
15 there are -- in the response -- and it's anticipated -- there's
16 going to be several -- there's been several red herrings
17 presented to the Court to try to make sort of a claim out of no
18 claim here. And one that maybe wasn't quite discussed too much
19 is the notion of this meeting and the notice for the meeting in
20 April of 2019.

21 Again, as discussed, there was a meeting. It was
22 attended by a sufficient number of owners. The Plaintiffs were
23 given notice and even appeared and participated in the meeting.
24 And perhaps even more importantly, though, the statute has no
25 requirement or mention of meetings, nor do the bylaws. So to

1 the extent that a technical issue with the bylaw -- with the
2 meeting notice for April, 2019 is noted or argued, that is a
3 complete red herring and has no bearing on this matter. I
4 guess Ms. Gintert covered the rest of notes. So again, I'll
5 reserve the rest of the time for rebuttal. But again, I would
6 just again move that this claim -- this complaint be dismissed
7 at this time. The Plaintiffs have failed to state a claim upon
8 which relief would be granted. But and -- just because this is
9 kind of mine, I would note and I don't believe that the
10 Plaintiffs disagree with this point, that to the extent that
11 our motions to dismiss are not granted, our motion for a more
12 definite statement as argued in the motion should be granted.
13 I believe it's uncontested, but to the extent this claim
14 continues, I believe that that should be granted. That's all I
15 have for now, Your Honor.

16 THE COURT: All right. Thank you, counsel. Mr.
17 Meyer, if I could hear from you please.

18 MR. MEYER: Thank you, Your Honor. Can you hear me?

19 THE COURT: I can, thanks.

20 MR. MEYER: Okay. Great. And I just want to note,
21 Stephanie and Nicholas, excellent jobs. And they've been a
22 pleasure to work with in resolving our disputes and getting
23 this moving forward in this process. And I completely
24 understand their arguments. And I think it's written well.
25 However, I think the problem here is that the statute is not

1 clear in saying that an owner of some of the property can vote
2 that the rest of the owners have to sell their property to
3 themselves.

4 The way the statute's set up is for typical items in
5 commercial real estate, when a condominium wants to convert and
6 either become tenants in common together or to sell to a third
7 party. And that's where the any and all language comes in
8 that's very specific to the statute. And so -- and really,
9 this -- the -- Defense counsel is accurate in that we're not
10 looking to the declaration specifically. We're looking to the
11 statute. There's -- and anytime, if you have questions,
12 obviously jump in and I prefer that type of discussion, so
13 don't feel like you have to wait on my part.

14 But -- so under the statute at 1228 Section C, it
15 does say a termination agreement may provide that all the
16 common elements and the units of the condominium shall be sold
17 following the termination. It doesn't say if some of it or if
18 the majority, you know, wants to buy the smaller portion, the
19 minority, that that's permissible. And I think the statute's
20 structured this way, because in Section E, it talks about if
21 the real estate constituting the condominiums is not sold -- so
22 here we're under the not sold section, then all real estate
23 vests tenants and so there we have a the section of what
24 happens if it's not sold. We have the section of if all of it
25 sold. And then we get to Section D. And it says, okay, if any

1 of the real estate in the condominium is sold, that's where it
2 goes. So this is the middle ground, if anything. This is kind
3 of the encompassing part is that then the association will be
4 trustee for the holders of all the interest in the units. And
5 so it's not indicating that -- I'm sorry. Titled to that real
6 estate on termination vests in the association as trustee for
7 holders of all the units.

8 And so that's where you get to the middle ground of
9 the statute in seeing that there's an all, there's a nothing.
10 And then if there's something in between, that's -- you all
11 share together. And then the association is then the trustee
12 for these remaining holders. And that's where in our response
13 you get into the actions of a trustee and the responsibilities
14 of a trustee. And that's a fiduciary duty. And so as part of
15 this duty -- and I can cite to you the specific statute that is
16 -- I know you're very well read on this.

17 When you go to that type of vote counting, the
18 trustee is not a -- permitted to vote in their self-interest.
19 And so even if you do get to the numbers of the -- that PFP
20 owned 90 of the 96, you have to exclude their numbers from that
21 vote, because it's a self-interested vote. And at that point,
22 even if there's one vote, one of the six remaining unit votes,
23 they're not going to be able to hit that 90 percent number
24 that's in the declaration.

25 And so it's kind of pieces built upon pieces built

1 upon pieces, but it really does make sense that if the -- if
2 there's the trustee, the trustee can't through their fiduciary
3 duty, vote against the interest of the person that they owe the
4 fiduciary duty to. And so that's where the problem comes in
5 with the declaration and the 90 percent vote requirement. And
6 we make an argument that in the alternative, that this is an
7 unconstitutional taking in that you know, converting and not
8 being a complete sale of the property to a third party, but
9 really just to your co-owners and your neighbors, forcing these
10 six units to sell.

11 It doesn't have a public purpose. Transitioning
12 condos to apartments, that's not a public purpose and isn't
13 authorized. And we would be happy to do additional briefing on
14 that, if that's, you know, required by the Court, but we really
15 believe that would be in the alternative in this matter. And
16 then to conclude, unless there's any questions, we do agree
17 with the Defendants that you know, we would make a more
18 definite statement, presuming it's in line with your ruling, et
19 cetera.

20 THE COURT: All right. Thanks, Mr. Meyer. No, I
21 don't have any questions. I thought your brief was very
22 thorough.

23 Ms. Gintert, do you want to take the rebuttal, or is
24 it going to be Mr. Nogami?

25 MR. NOGAMI: I'll -- I guess the agreement was I'd be

1 first, so I'd hate to break that agreement. I'm sure Ms.
2 Gintert will have something to add as well.

3 THE COURT: Okay.

4 MR. NOGAMI: I just want to touch on just a couple
5 points. Just on the unconstitutional thing. Ms. Gintert
6 nailed this point. You know, the notion of a condominium
7 termination is truly a product of contract and it's something
8 that is placed into condominium declarations as a means for the
9 owners to contra -- or to agree to get out of a condominium
10 situation if, you know, they decide that it's not, you know,
11 the best use of their funds, if the property is you know -- if
12 their value is going down and there's a buyer on the table that
13 wants to come in and take all the property.

14 You know, they build it into the contract that they
15 have this option. You know, that's really where a condominium
16 termination is born off. Now, 33-1228 and its, you know, its
17 predecessors, as Ms. Gintert, this a particularly maybe amended
18 with statute is really just there to serve
19 as -- you know, to provide safeguards and protections for those
20 situations, providing, you know, the minimum threshold, voting
21 threshold and a few other safeguards that may not make their
22 way into any condominium declarations, whether developers
23 didn't think of it, whether owners would try to amend at some
24 point, once they retain control of the association.

25 Whatever it may be, the statute is there to ensure

1 that certain protections and safeguards will be in place for
2 these situations, which again, are truly products of contract
3 more so than statutory -- statutorily created. So I do want to
4 address that point. My only other thing in rebuttal is just
5 that essentially, it appears that the argument for Plaintiffs
6 is an issue with PFP Dorsey ultimately being the holder of all
7 the property and contesting that they had no right to vote in
8 the, I guess the termination or process or the sale and
9 ultimately impact that they their votes can be nullified in
10 this process.

11 So 90 of the 96 votes have no say, which you know, we
12 get a little bit of hyperbole in our briefing and I don't think
13 it takes very much more here to say that that simply wouldn't
14 make sense. You know, this was -- this is basically the most
15 by the books condominium termination situation that there could
16 be. One entity owns or purchases a sufficient percentage of
17 the units in order to effect the termination and of course,
18 they would be the ones who would then therefore take the rest
19 in the sale process.

20 The notion that one entity could own 99.9 percent of
21 the units and then have to sit back and it would be up to the
22 only remaining unit owners to determine certain, I guess, the
23 details of -- or whether or not the termination sale goes
24 through is -- it makes no sense and you know, I'm sure we can
25 think creative ways people would get around that, but if

1 nothing else, it would serve to impede the -- I guess, the dire
2 of entities to come in and purchase up and I guess almost
3 rescue certain distressed properties or condominiums that are
4 faltering, which actually goes to another point that PFP Dorsey
5 and this alleged -- and I speak on behalf of the association
6 primarily and -- but bear with me to sort of defend the notion
7 of allowing PFP Dorsey to purchase these units.

8 The notion that there was the self-dealing and that
9 the statute, you know, doesn't want the majority holder of the
10 units to be able to vote on this issue. Again, this is where
11 the safeguards and everything else comes in. And this sort of
12 reflects the idea that the safeguards are there -- are designed
13 to ensure that a fair process is effectuated, just like -- and
14 that's particularly true with the appraisal requirement,
15 ensuring that a fair price is obtained for all the other unit
16 owners.

17 The notion of the other unit owners being powerless
18 in the situation is not true. Not only did they buy into this
19 condominium knowing that this was a possibility, that a
20 termination and sale was a possibility, they're are at least
21 guaranteed that they're the ones getting a fair price for their
22 unit even if it happens, thereby nullifying this -- I guess
23 these -- contrived might be kind of a harsh word, but these
24 contrived concerns being put by the Plaintiff that a majority
25 holder like PFP can just come in and basically steamroll the

1 remaining unit owners and leaving them (indiscernible) dry.

2 I think that the combination of the declaration and
3 the statutory protections guards against that and actually does
4 speak to the fact that the legislature acknowledged that most
5 of the time or every single time, it's going to be a situation
6 exactly like the one here, when it comes in, buys up 90, 95
7 percent of the units and then effectuates the termination of
8 the condominium and sells the remain -- and purchases the
9 remaining in the sale of the condominium property, the
10 guarantees of fair price are there to ensure that the remaining
11 unit owners -- they should call them minority unit owners, are
12 not well held -- otherwise prejudiced.

13 So again, those are really the only two that --
14 points that I wanted to sort of touch upon, the
15 unconstitutional notion and the notion that the argument has
16 basically been broken down into PFP Dorsey was not permitted to
17 be the purchaser of the remaining units or part of the terms of
18 the sale agreement. And I think that when you look at the
19 language in the statute and the facts here, I think that that
20 would lead to an absurd result that simply isn't supported by
21 any authority whatsoever.

22 So again, I would just again move and join Ms.
23 Gintert and asking that the Court dismiss this complaint for
24 failure to state a claim upon relief would be granted.

25 THE COURT: All right. Thank you, Mr. Nogami. Ms.

1 Gintert, you started this out. Do you want to finish this off?

2 MS. GINTERT: Thank you, Your Honor. I just have a
3 couple quick points. I think Mr. Nogami hit most of my
4 arguments. The one thing I do want to make sure is clear is
5 that the association and PFP are separate legal entities and I
6 believe that Plaintiffs are trying to intertwine them into
7 making their argument work, but they're separate entities.
8 PFP, prior to the termination of the condo, was a unit owner,
9 just like Plaintiffs.

10 They had their vote. The association followed the
11 vote of all unit owners of what the major -- or the vote of the
12 majority of the unit owners. And so there is no breach of
13 fiduciary duty. There's no breach of trustee. The reliance on
14 Section D that Plaintiffs were relying on for 33-1228, that's
15 after the termination of the condominium. That's after the
16 sale. Or actually, not after the sale. That's during the
17 process of the sale, but after the termination.

18 So this trustee obligation doesn't necessarily come
19 in to play until after the termination. And so for -- so the
20 argument that PFP can't be voting on this process or the
21 termination and sale before it becomes the buyer doesn't hold
22 up, based upon the caselaw that's out there. The other thing,
23 too, that Plaintiffs cite in their briefs, some of the
24 fiduciary duties and caselaw statutes regarding directors of a
25 corporation, that's distinguishable, because it's not the board

1 of directors that made the decision to terminate the condo
2 here.

3 It was the entire association, the entire company.
4 So you're not talking about five people on a board that's
5 deciding to terminate. They got the vote of everyone that is
6 part of the association in making this decision. And with
7 that, I think we would just reiterate that I don't think there
8 is a basis in which Plaintiffs can seek relief, based upon the
9 facts of this case, and as such, we respectfully request that
10 the complaint be dismissed.

11 THE COURT: All right. Thank you, Ms. Gintert. Well
12 everyone, give me a few days to think it over. I mean, the
13 briefs were solid and I just want to reflect a little bit on
14 the arguments that you've all presented today, but it shouldn't
15 take me too awfully long to get a ruling out. And once you
16 have that in hand, we can reconvene and talk about what happens
17 next in this case. All right. In the meantime, please stay
18 safe, be well, enjoy the holidays, enjoy the time with your
19 friends and family, even if it's from a six-foot distance and
20 you'll be hearing from me next by written minute entry. All
21 right. We're adjourned.

22 MS. GINTERT: Thank you, Your Honor.

23 MR. MEYER: Thank you.

24 MR. NOGAMI: Thank you, Your Honor.

25 (Proceedings concluded at 2:05 p.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/
John Buckley, CET-623
Digital Court Proofreader