

Oceanfront One Bal Harbour Hosts Bitter Lawsuit Over Shared Facilities

The owners of the hotel-condo unit claim they have been illegally overcharged more than \$2 million for building expenses.

By Lidia Dinkova |

June 26, 2019 at 05:07 PM



The hotel and residential condominium associations at the high-end One Bal Harbour oceanfront tower are fighting over who pays how much for building expenses.

The hotel-condo association claims its residential counterpart illegally adjusted the allocation for the electric, gas, water, sewer and valet bills, leaving the hotel-condo owners to overpay by \$2 million in five years.

The residential-condo association countered it had the right to make changes after buying a third part of the building, the so-called hotel lot.

The lot used to be comprised of a spa, restaurant and lobby, as well as the building's common elements such as exterior walls, hallways and the 5-acre parcel. The residential association carved out the spa, restaurant and lobby and sold them to an affiliate of Miami-based

Lionstone Development. The residential association kept the building's common elements and land.

Lionstone, led by Alfredo Lowenstein, also owns the Ritz-Carlton in South Beach and has an operating agreement with the high-end hotel company. The Ritz-Carlton runs the hotel portion at One Bal Harbour.

All this divided the tower at 10295 Collins Ave. into four parts. The spa, restaurant and lobby are one; then there are the common elements and land; and the two warring factions, the 185 residential condos and the 124 hotel-condo units.

The hotel-condos are individually owned, but the owners are allowed only limited stays since the units also are rented as part of the Ritz-Carlton hotel.

The squabble can be traced back to when the residential association used an affiliate to buy the hotel lot in bankruptcy court in 2014 and then amended the declaration the same year to adjust the fees. Lionstone came into the picture then as well.

The residential association's assertion that it could reword the declaration after buying the hotel lot isn't true, said attorney Stevan Pardo, who sued on behalf of the hotel-condo association.

It's "a way to try to suggest that they had an absolute right to amend under any circumstance for any reason. That's their position, and it just does not follow from the reading of the documents," said Pardo, a partner at Pardo Jackson Gainsburg in Miami.

The original declaration said assessments could be changed if adjacent property is bought or if the use of utilities is metered to show how much the hotel-condos and the residential condos used — none of which happened, Pardo said.

"They just reallocated it arbitrarily when those things weren't even properly metered. They were doing that regardless of the consumption," he said. "They've never shown us even to this day how, where they have done metering for any utilities, which would justify a reallocation of expenses. So we know that they did it arbitrarily. Therefore, it's going to have to be reversed."

Pardo filed an amended complaint for breach of contract and declaratory judgment May 2 in Miami-Dade Circuit Court, claiming the residential association had no right to reallocate expenses and must repay the hotel-condo association. The original complaint was filed Feb. 6.

Steven Cronig, a Hinshaw & Culbertson partner representing the residential association, insists the lawsuit is groundless. The firm's Leonor Lagomasino, also a partner in Miami, is defending the association in court.

When the residential association bought the hotel lot in 2014 through an affiliate, the hotel-condo association did not raise issues with the purchase or its lack of power over the allocation of expenses, Lagomasino [argued in an April 18 motion](#).

[In her May 22 motion to dismiss the amended complaint](#), Lagomasino said the hotel-condo association only references parts of the declaration that support its argument and contested the ground rules for an assessment change.

The amended complaint said the hotel-condo at one point was asked to pay 30% of elevator repair costs; a third of electricity, diesel, beach service and valet costs; and 40% of the water, sewer and natural gas — all more than its original responsibility of 13%.

Asserting the hotel-condo's responsibility was only 13% is an oversimplification applying only to shared expenses, Lagomasino responded. It actually was responsible for its full utility bill, a third of pool-deck expenses, 60% of the spa expenses and 26% of the garage expenses.

She called the allocation allegations "so grossly generalized and incomplete that they are in fact misleading and become emblematic of plaintiff's entire claim."

The hotel-condo association, 10295 Collins Avenue, Hotel Condominium Association Inc., sued the residential-condo association, The Residences at One Bal Harbour Condominium Association Inc., and an affiliate of the residential association, One Bal Harbour Corp.

The hotel-condo also sued LK Hotel LLC, the Lionstone affiliate.

Pardo, the hotel-condo's attorney, remained confident the court will side with his client on assessment changes.

"Once the court determines that to be the case, then their house of cards that they built is going to fall," he said.

The property has a storied litigation past, including two bankruptcy sales. The developer, WCI Communities Inc., in 2009 sold the hotel lot and 51 unsold hotel-condo units to individuals to Elcom Hotel and Spa LLC for \$14.6 million.

That owner filed for bankruptcy protection and was sued for \$20 million by the hotel and condo associations over alleged misappropriation of funds from the property.

Elcom was led by Jorge and Juan Arevalo, who bought the property with help from a loan provided by Lumber Liquidators founder Tom Sullivan. In a separate case, Sullivan claimed Jorge Arevalo concealed \$1 million received from a broker in exchange for future business. Sullivan also claimed Arevalo received help in concealing the payment from Holland & Knight. [The law firm settled the \\$14 million malpractice suit for \\$5 million](#).

Elcom then sold the hotel in bankruptcy in 2014, which is when the residential association acquired it through an affiliate.