

Judge Grants Luxury Condo Owners Rights to Miami Club

Samantha Joseph, Daily Business Review

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AM Hoyt Joseph H. Serota

Miami-Dade Circuit Judge Bronwyn Miller made it clear: Residents at Miami's luxury Grove Isle condominiums have a right to continued use of its club's amenities—even new ones planned for the site—as long as they don't withhold membership dues from the developer who shelled out \$24 million to acquire the property.

Attorneys on both sides lauded Miller's 32-page order issued Thursday night, shortly before Saturday's expiration of an emergency injunction preventing developer Eduardo Avila from tearing down the decades-old club to make room for sparkling new condos on Biscayne Bay.

"The court is compelled to observe that the unit owners seek the continued operation and maintenance of the club facilities in this suit, yet the evidence demonstrated that in another pending lawsuit unit owners seek to circumvent the financial obligations imposed in conjunction with membership," Miller wrote. "The obligations imposed by the declaration are reciprocal. It is axiomatic that unit owners must pay their dues to support the very club facilities they claim they wish to enjoy."

Her ruling was in large part a victory for owners of the 510 units at the three-tower community on the private island off Coconut Grove.

The order compels the developer to allow residents to access shared facilities on his property even after he builds new amenities to replace aging ones.

"We are ecstatic," said Heller Waldman managing partner Glen Waldman, who teamed with associate Jeffrey Lam to represent co-plaintiff Preserve Grove Isle LLC, a company formed by residents. "The judge saw this for what it really was and preserved and rescued these unit owners to permit them to continue to enjoy the lifestyle they paid for and to which they're entitled on Grove Isle."

Avila owns about 7½ acres adjacent to the three residential towers. His original plan was to create an 18-story tower similar in height and size to the existing ones. But he changed direction under pressure from the condo association and instead proposed a five-story, mid-rise building that complies with the Miami 21 zoning code.

His holdings include the Grove Isle Hotel & Spa, 12 tennis courts, a salon, pool, restaurant and tiki bar long used by owners who insist that covenants running with the land since 1979 require him to maintain the club's amenities for residents.

'Got What We Asked For'

But as he laid out plans for his new project, Avila wrote to residents on April 9 asking them to transfer their club memberships to the Biltmore Hotel, a torturous five-mile drive away in Coral Gables. He suggested the transfer would be temporary, lasting until completion of a new club at Grove Isle.

Residents weren't convinced. They filed an emergency motion for a temporary injunction less than two weeks later, looking to force Avila to reopen shuttered facilities.

The trial started April 27 before Miller, with the condominium association joining the suit as a co-plaintiff. At the end of the hearing, Avila agreed to reopen the club facilities and wait until Aug. 15 before moving ahead with demolition. Miller held an expedited bench trial July 27-29 to determine each group's rights.

"We are really thrilled," attorney Joseph Serota said Friday. "This judge is something. She wrote this 32-page order in less than two weeks and had it to us at 10 o'clock last night."

He teamed with fellow Weiss Serota Helfman Cole & Bierman partners John Quick and Laura Wendell to represent the condo association.

"We got exactly what we asked for," Serota said. "We asked for a declaratory judgment that the unit owners had a legal right to the facilities—a legal right, not just at the whim of the developer—and we got that."

The Weiss Serota and Heller Waldman attorneys also secured a permanent injunction blocking the developer from closing the club and other facilities while he continues a protracted lawsuit with the city. Under Miller's order, Avila can't tear down any part of the property until he has valid building permits.

It could be a long wait for the developer, who sued the city to speed up processing his demolition permit. If he lands the permits, he'll have to strategically plan construction so that new amenities quickly replace old ones to allow residents access to all key-shared areas.

"The court concludes that to allow the new developer to permanently close and demolish the club or exclude existing unit owners from a proposed new club facility would be patently unreasonable as it would destroy the common plan or scheme of development," Miller wrote. "The buyers relied upon the common development plan, inclusive of the amenities, in consideration of the purchase of their units."

Once Avila's done with the project, he must allow access to condo owners in good standing.

"The judge found that there is a contractual right of the unit owners to use the facilities as long as they own the unit and as long as they've paid their dues," Quick said. "That's a very important finding."

John Shubin of Shubin & Bass represented the developer.

"We are very pleased with the court's recognition of our client's right to develop its property and its ruling that the club is not to be fixed in one place in perpetuity," he said in a statement. "We are hopeful that we can now proceed with the balance of our permitting with the city."